

Minister for Planning and Infrastructure
ABN 38 755 709 681
(Minister)

SH *R*
LL

Coastal Hamlets Pty Limited
ACN 100 126 994
(Developer)

Planning Agreement

Environmental Planning and Assessment Act 1979 (NSW)

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Contact

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Level 65, MLC Centre
19 Martin Place
SYDNEY NSW 2000
Ref: RCM:DSH:11640001

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THIS PLANNING AGREEMENT is dated

3rd

June

2011

PARTIES:

AND INFRASTRUCTURE

 **MINISTER FOR PLANNING** (ABN 38 755 709 681) of Level 3³, Governor Macquarie Tower,
1 Farrer Place, Sydney, New South Wales (**Minister**)

 **COASTAL HAMLETS PTY LIMITED** (ACN 100 126 994) of 47-51 Riley Street,
Woolloomooloo, Sydney, New South Wales (**Developer**)

INTRODUCTION:

- A** The Developer owns the Land.
- B** The Developer intends to develop the Land.
- C** The Developer is the proponent for the Project Application for the Proposed Development.
- D** The Developer has offered to enter into this deed with the Minister to secure the Development Contributions.

IT IS AGREED:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this deed, unless the context clearly indicates otherwise:

Act means the *Environmental Planning and Assessment Act 1979 (NSW)*;

Address for Service means the address of each party appearing in **Schedule 2** of this deed or any new address notified by any party to all other parties as its new Address for Service;

Authority means any Federal, state or local government or semi-governmental statutory judicial or public person, instrumentality or department;

Business Day means any day that is not a Saturday, Sunday, gazetted public holiday or bank holiday in Sydney, and concludes at 5 pm on that day;

Commencement Date means the date that this deed comes into operation in accordance with **clause 2.2**;

CPI means the Sydney Consumer Price Index (All Groups) published by the Commonwealth Statistician, or if that index no longer exists, any similar index which the Minister determines in its sole discretion;

Development Contributions means the contributions provided for in **clause 3**;

Director-General means the Director-General of the Department of Planning, or successor office;

and Infrastructure

Explanatory Note means the explanatory note required by the Regulation;

General Register of Deeds means the land register maintained under the *Conveyancing Act 1919 (NSW)*;

GST means any form of goods and services tax payable under the GST Law;

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

Infrastructure Contribution Amount means the infrastructure contribution amount referred in Item 1 of the table in **Schedule 4**;

Land means the land described in **Schedule 3**;

Lot means a lot located on the Land comprising one of the 600 lots contemplated by the Project Application to the exclusion of a Super Lot;

Modification means a "modification" within the meaning of section 75W of the Act;

Plan of Subdivision means a registered plan of subdivision within the meaning of section 195 of the *Conveyancing Act 1919 (NSW)*;

Practical Completion has the same meaning as the term "Practical Completion" in the Road Works Agreement, or, if the term is not used in the Road Works Agreement means, that stage in the execution of the Road Works where the Road Works have been completed and are ready for their intended public use and occupation as certified by the RTA;

Project Application means project application number MP10_0204 under section 75E of the Act;

Project Approval means any Approval by the Minister pursuant to section 75J of the Act in response to the Project Application, including any Modification to it.

Proposed Development means the development of the Land, the subject of the Project Application, being the subdivision of up to 600 Urban Lots, bulk earthworks and infrastructure;

Real Property Act means the *Real Property Act 1900 (NSW)*;

Register means the torrens title register maintained under the Real Property Act;

Regulation means the *Environmental Planning and Assessment Regulation 2000 (NSW)*;

Road Works means such road works as agreed by the Developer and the RTA, which the parties anticipate will comprise the Development Contribution set out **Item 2** of the table in **Schedule 4**;

Road Works Agreement means a works authorisation deed (or other legally binding agreement approved by the Minister in his absolute discretion) between the Developer (or another entity nominated by the Developer) and the RTA which governs the carrying out of the Road Works;

RTA means the Roads and Traffic Authority of New South Wales or any similar body that may be established from time to time;

Subdivision Certificate has the same meaning as the Act;

Super Lot means a Lot located on the Land which, following registration of a Plan of Subdivision, is intended for further subdivision for residential housing; and

Urban Lot means a Lot located on the Land, created by the registration of a Plan of Subdivision, intended for retail sale for the purpose of residential housing without further subdivision.

1.1 Interpretation

In this agreement, unless the context clearly indicates otherwise:

- (a) a reference to **this deed** or another document means this deed or that other document and any document which varies, supplements, replaces, assigns or novates this agreement or that other document;
- (b) a reference to **legislation** or a **legislative provision** includes any statutory modification or substitution of that legislation or legislative provision and any subordinate legislation issued under that legislation or legislative provision;
- (c) a reference to a **body** or **authority** which ceases to exist is a reference to either a body or authority that the parties agree to substitute for the named body or authority or, failing agreement, to a body or authority having substantially the same objects as the named body or authority;
- (d) a reference to the **introduction**, a **clause**, **schedule** or **annexure** is a reference to the introduction, a clause, a schedule or an annexure to or of this agreement;
- (e) **clause headings** and the **table of contents** are inserted for convenience only and do not form part of this agreement;
- (f) the **introduction**, **schedules** (if any) and **annexures** (if any) form part of this agreement;

- (g) the **introduction** accurately sets out the circumstances in which the parties have entered into this agreement;
- (h) a reference to a **person** includes a natural person, corporation, statutory corporation, partnership, the Crown or any other organisation or legal entity;
- (i) a reference to a **natural person** includes their personal representatives, successors and permitted assigns;
- (j) a reference to a **corporation** includes its successors and permitted assigns;
- (k) a reference to a right or obligation of a party is a reference to a right or obligation of that party under this agreement;
- (l) a requirement to do any thing includes a requirement to cause that thing to be done and a requirement not to do any thing includes a requirement to prevent that thing being done;
- (m) **including** and **includes** are not words of limitation;
- (n) the words **at any time** mean at any time and from time to time;
- (o) a reference to a time is to that time in New South Wales;
- (p) a word that is derived from a defined word has a corresponding meaning;
- (q) the singular includes the plural and vice-versa; and
- (r) a reference to a thing includes each part of that thing.

1.2 Construction

Neither this agreement nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting.

2 OPERATION AND APPLICATION OF THIS DEED

2.1 Status of the deed

- (a) Until this deed comes into operation, this deed constitutes an irrevocable offer from the Developer to enter into a planning agreement.
- (b) Subject to **clause 2.1(a)**, this deed constitutes a planning agreement within the meaning of section 93F of the Act.

2.2 Operation

- (a) This deed operates only if:
 - (i) Project Approval is granted; and
 - (ii) the deed is entered into as required by clause 25C(1) of the Regulation.
- (b) This deed terminates when the Developer provides all of the Development Contributions.
- (c) Despite anything else in this **clause 2.2, clauses 6 and 7** commence when the deed is signed by the parties.

2.3 Application

This deed applies to:

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

3 DEVELOPMENT CONTRIBUTIONS

3.1 Requirement to provide Development Contributions

The Developer will provide, or procure the provision of, the Development Contributions in the manner and at the times set out in **Schedule 4**.

3.2 Use of Development Contribution

The parties agree that:

- (a) the Minister acknowledges to the Developer that it is the Minister's present intention that the Infrastructure Contribution Amount which the Developer pays the Minister in cash will be made available for use for expenditure towards the acquisition of land for education and emergency services;
- (b) to the extent that a Development Contribution may described in, or implied by this deed, including, having a particular use (intended or otherwise), the Developer acknowledges and agrees that the Minister:
 - (i) has no obligation to use or expend a Development Contribution for a particular purpose and has no obligation to repay a Development Contribution; and
 - (ii) in circumstances where a Development Contribution is transferred to any Authority, has not made any representation or warranty that

the Development Contribution will or must be paid for a particular purpose by that Authority.

4 INTEREST

If the Developer fails to pay any amount due to the Minister on the due date for payment, the Developer must also pay to the Minister interest at a rate of 1% above the loan reference rate charged by the Commonwealth Bank of Australia from time to time. That interest will be payable on the daily balance of amounts due from the due date for payment of those amounts until all outstanding amounts (including interest on those amounts) have been paid to the Minister.

5 APPLICATION OF SECTION 94, SECTION 94A, SECTION 94EF OF THE ACT

The application of sections 94, 94A and 94EF of the Act are excluded to the extent stated in **Schedule 1**.

6 REGISTRATION ON TITLE

6.1 Land ownership

The Developer represents and warrants that it is:

- (a) the owner of the Land; or
- (b) legally and beneficially entitled to become the owner of the Land and will become the legal and beneficial owner of the Land, prior to the date that this deed is required to be registered under **clause 6.2** of this deed; and
- (c) legally and beneficially entitled to obtain all consents and approvals and to compel any person referred to in or contemplated by **clause 6.2(b)(i)** to assist, cooperate and to otherwise do all things necessary for the Developer to comply with its obligations under **clause 6.2**.

6.2 Registration of Deed

- (a) As contemplated by section 93H of the Act, the Developer agrees to procure the registration of this deed under the Real Property Act in the relevant folio of the Register not later than 10 Business Days after the Minister provides to the Developer this deed duly executed by the Minister.
- (b) The Developer at its own expense, will take all practical steps and otherwise do anything to procure:
 - (i) the consent of each person who:
 - (A) has an estate or interest in the Land registered under the Real Property Act; or

- (B) is seized or possessed of an estate or interest in the Land; and
 - (ii) the execution of any documents; and
 - (iii) the production of the relevant certificates of title; and
 - (iv) the lodgement and registration of this deed, by the Registrar-General in the relevant folio of the Register, or in the General Register of Deeds if this deed relates to land not under the Real Property Act.
- (c) The Developer will provide the Minister with a copy of the relevant folio of the Register within 10 Business Days of registration of this Deed in accordance with this **clause 6.2**.

6.3 Release and discharge of Deed

The Minister agrees to do all things reasonably required by the Developer to release and discharge this deed, in a timely fashion, with respect to any part of the Land upon the Developer satisfying all of its obligations under this deed in respect of that part of the Land at the time of issue of a Subdivision Certificate for any Plan of Subdivision relating to the creation of an Urban Lot (or earlier if the Developer so satisfies its obligations).

7 SECURITY

7.1 Security

The Developer agrees to provide security to the Minister for the performance of the Developer's obligations under this deed by registering this deed on the title to the Land.

8 DISPUTE RESOLUTION

8.1 Written notice of dispute

A party claiming that a dispute has arisen under or in relation to this deed must give written notice to the other party specifying the nature of the dispute.

8.2 Attempt to resolve

On receipt of notice under **clause 8.1**, the parties must endeavour in good faith to resolve the dispute expeditiously using informal dispute resolution techniques such as mediation, expert evaluation or other techniques agreed by them.

8.3 Referral to Director-General

Should the matter not be resolved under **clause 8.2**, the matter shall be referred to the Director-General whose determination of the disagreement shall be final and binding on the parties.

9 GST

9.1 Definitions

Words used in this clause that are defined in the GST Law have the meaning given in that legislation.

9.2 Intention of the parties

The parties intend that:

- (a) Divisions 81 and 82 of the GST Law apply to the supplies made under and in respect of this deed; and
- (b) no additional amounts will be payable on account of GST and no tax invoices will be exchanged between the parties.

9.3 Reimbursement

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

9.4 Consideration GST exclusive

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this deed are GST Exclusive. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purposes of this **clause 9**.

9.5 Additional Amounts for GST

To the extent an amount of GST is payable on a supply made by a party under or in connection with this deed (**GST Amount**), the Recipient will pay to the Supplier the GST Amount. However, where a GST Amount is payable by the Minister as Recipient of the supply, the Developer will ensure that:

- (a) the Developer makes payment of the GST Amount on behalf of the Minister, including any gross up that may be required; and
- (b) the Developer provides a Tax Invoice to the Minister.

9.6 Non monetary consideration

Clause 9.5 applies to non-monetary consideration.

9.7 Assumptions

The Developer acknowledges and agrees that in calculating any amounts payable under **clause 9.5** the Developer will assume the Minister, is not entitled to any input tax credit.

9.8 No merger

This clause will not merge on completion or termination of this deed.

10 ASSIGNMENT

This agreement is personal to each party and neither party may assign the rights or benefits of this agreement to any person except:

- (a) to a related body corporate, after obtaining the consent of the other party, which the other party must not withhold if it is reasonably satisfied that the related body corporate has sufficient assets, resources and expertise to perform all of the assigning party's obligations under this agreement; or
- (b) to any other person, with the prior consent of the other party, which the other party may give, give conditionally or withhold in its absolute discretion.

11 WARRANTIES OF CAPACITY

11.1 General warranties

Each party warrants to each other party that:

- (a) this agreement creates legal, valid and binding obligations, enforceable against the relevant party in accordance with its terms; and
- (b) unless otherwise stated, it has not entered into this agreement in the capacity of trustee of any trust.

11.2 Power of attorney

If an attorney executes this agreement on behalf of any party, the attorney declares that it has no notice of the revocation of that power of attorney.

12 GENERAL PROVISIONS

12.1 Entire agreement

This deed constitutes the entire agreement between the parties regarding the matters set out in it and supersedes any prior representations, understandings or arrangements made between the parties, whether orally or in writing.

12.2 Variation

This deed must not be varied except by a later written document executed by all parties.

12.3 Waiver

A right created by this agreement cannot be waived except in writing signed by the party entitled to that right. Delay by a party in exercising a right does not constitute a waiver of that right, nor will a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.

12.4 Further assurances

Each party must promptly execute all documents and do every thing necessary or desirable to give full effect to the arrangements contained in this deed.

12.5 Time for doing acts

(a) If:

- (i) the time for doing any act or thing required to be done; or
- (ii) a notice period specified in this deed,

expires on a day other than a Business Day, the time for doing that act or thing or the expiration of that notice period is extended until the following Business Day.

(b) If any act or thing required to be done is done after 5 pm on the specified day, it is taken to have been done on the following Business Day.

12.6 Severance

If any clause or part of any clause is in any way unenforceable, invalid or illegal, it is to be read down so as to be enforceable, valid and legal. If this is not possible, the clause (or where possible, the offending part) is to be severed from this agreement without affecting the enforceability, validity or legality of the remaining clauses (or parts of those clauses) which will continue in full force and effect.

12.7 Preservation of existing rights

The expiration or termination of this Deed does not affect any right that has accrued to a party before the expiration or termination date.

12.8 No merger

Any right or obligation of any party that is expressed to operate or have effect on or after the completion, expiration or termination of this deed for any reason, will not merge on the occurrence of that event but will remain in full force and effect.

12.9 Counterparts

This Deed may be executed in any number of counterparts. All counterparts taken together constitute one instrument.

12.10 Relationship of parties

Unless otherwise stated:

- (a) nothing in this agreement creates a joint venture, partnership, or the relationship of principal and agent, or employee and employer between the parties; and
- (b) no party has the authority to bind any other party by any representation, declaration or admission, or to make any contract or commitment on behalf of any other party or to pledge any other party's credit.

12.11 No fetter

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

12.12 Explanatory note

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

12.13 Expenses and stamp duty

- (a) The Developer must pay its own and the Minister's reasonable legal costs and disbursements in connection with the negotiation, preparation, execution and carrying into effect of this deed.
- (b) The Developer must pay for all costs and expenses associated with the giving of public notice of this deed and the Explanatory Note in accordance with the Regulation.

- (c) The Developer must pay all stamp duty assessed on or in respect of this deed and any instrument or transaction required by or necessary to give effect to this deed.
- (d) On execution of this deed, the Developer must provide the Minister with a **bank cheque in respect of the Minister's costs pursuant to clauses (a) and (b) above** which have been notified to the Developer in writing.

12.14 Notices

Any notice, demand, consent, approval, request or other communication (notice) to be given under this agreement must be in writing and must be given to the recipient at its Address for Service by being:

- (a) hand delivered;
- (b) sent by facsimile transmission;
- (c) sent by prepaid ordinary mail within Australia; or
- (d) sent by prepaid Express Post International airmail to the Address for Service of the recipient party, if the Address for Service of the sender and the recipient are in different countries.

A notice is given if:

- (e) hand delivered, on the date of delivery;
- (f) sent by facsimile transmission during any Business Day, on the date that **the sending party's facsimile machine records that the facsimile has been successfully transmitted;**
- (g) sent by prepaid ordinary mail within Australia, on the date that is 2 Business Days after the date of posting; or
- (h) sent by prepaid Express Post International airmail between countries, on the date that is 10 Business Days after the date of posting.

EXECUTED as a deed.

SCHEDULE 1 - REQUIREMENTS UNDER SECTION 93F

The parties acknowledge and agree that the table set out below provides for certain terms, conditions and procedures for the purpose of the Deed complying with the Act.

Requirement under the Act	This deed
Planning instrument and/or development application – (section 93F(1)) The Developer has: (a) sought a change to an environmental planning instrument (b) made, or proposes to make, a development/ project application (c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies	No Yes No
Description of land to which this Deed applies – (section 93F(3)(a))	See Schedule 3
Description of change to the environmental planning instrument to which this Deed applies – (section 93F(3)(b))	Not applicable
The scope, timing and manner of delivery of contribution required by this Deed – (section 93F(3)(c))	See clause 3.1 and Schedule 4
Applicability of section 94 of the Act – (section 93F(3)(d))	Not Excluded
Applicability of section 94A of the Act – (section 93F(3)(d))	Not Excluded
Applicability of section 94EF of the Act – (section 93F(3)(d))	Excluded
Consideration of benefits under this Deed if section 94 applies – (section 93F(3)(e))	No
Mechanism for Dispute Resolution - (Section 93F(3)(f))	See clause 8
Enforcement of this Deed – (section 93F(3)(g))	See clause 7
No obligation to grant consent or exercise functions – (section 93F(9))	See clause 12.11

SCHEDULE 2 - ADDRESS FOR SERVICE**Minister for Planning**

Contact: The Director-General
and Infrastructure
Address: Department of Planning, 23-33 Bridge Street, Sydney NSW 2000
Facsimile No: (02) 9228 6191

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Coastal Hamlets Pty Limited

Contact: Bryan Rose
Address: 47-51 Riley Street, Woolloomooloo NSW 2011
Facsimile No: (02) 8302 1444

SCHEDULE 3 – LAND

Lots and Deposited Plans
Lots 100, 101, 102, 103 and 106 Deposited Plan 1129872
Lot 1 Deposited Plan 114989
Lot 1 Deposited Plan 1129299
Lot 1 Deposited Plan 1151628

SCHEDULE 4 – DEVELOPMENT CONTRIBUTIONS

1 Development Contributions

The Developer undertakes to make the following Development Contributions in the manner set out in the table below:

Item	Development Contribution	Value/Work	Timing
1.	Infrastructure Contribution Amount	\$902.26 per Urban Lot (if paid prior to 30 June 2011) \$1,353.40 (if paid after 30 June 2011 subject to increases in CPI)	Must be paid on or prior to the issue of the first Subdivision Certificate which creates the first Urban Lot within the Land.
2.	Road Works	The Developer is to upgrade the intersection of Montefiore Street and Pacific Highway.	On or prior to the issue of the first Subdivision Certificate which creates the first Urban Lot within the Land.

2 CPI Adjustments

A payment of the Infrastructure Contribution Amount post 30 June 2011 will be increased to reflect any increase in the CPI since the date of this deed.

3 Road Works

(a) The Developer must:

- (i) enter into a Road Works Agreement with the RTA (on terms acceptable to both the Developer and the RTA), in respect of carrying out and completion of the Road Works, unless otherwise agreed in writing by the Director-General in his absolute discretion; and
- (ii) achieve Practical Completion of the Road Works, by the date of the issue of a Subdivision Certificate which creates the first Urban Lot within the Land.

(b) The Developer must notify the Minister as soon as reasonably practicable following entry into the Road Works Agreement and provide the Minister with a copy of that agreement.

- (c) The Developer must comply with the terms and conditions of the Road Works Agreement.
- (d) The Developer must procure the RTA to provide a letter of confirmation to the Minister issued by or on behalf of the Chief Executive of the RTA confirming Practical Completion of the RTA Works.

EXECUTED as a deed:

SIGNED SEALED AND DELIVERED)

By the **MINISTER FOR PLANNING** in the)
presence of: **AND INFRASTRUCTURE**

Signature of witness

Signature

Name of witness

Name of signatory

Under delegation from the
Minister for Planning and Infrastructure
dated 9 February 2011

EXECUTED by **COASTAL HAMLETS PTY**)
LIMITED (ACN 100 126 994) in accordance)
with section 127 of the Corporations Act:)

Signature of Director

Signature of Director/Secretary

BRYAN ROSE

Name of Director

ROBERT ROSE

Name of Director/Secretary

12 W 123076

12 W 123076