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**Minister for Planning and Infrastructure**  
ABN 38 755 709 681

and

**Newport Property Holdings Pty Ltd** (ABN 40 110 928 624)

**Nealart Pty Ltd** (ABN 081 856 680)

**Glenmon Pty Ltd** (ABN 081 856 715)

**Markcamp Pty Ltd** (ABN 081 856 733)

## **Planning Agreement**

Environmental Planning and Assessment Act 1979

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THIS deed is dated 2nd July

2013

#### **PARTIES:**

**MINISTER FOR PLANNING AND INFRASTRUCTURE** (ABN 38 755 709 681) of Level 33, Governor Macquarie Tower, 1 Farrer Place, Sydney, New South Wales, 2000 (**Minister**)

**NEWPORT PROPERTY HOLDINGS PTY LTD** (ACN 110 928 624) as trustee for the Newport Unit Trust (ABN 39 651 249 434) of Suite 7, 6 Doree Place, Dora Creek NSW 2264 (**Newport**)

(referred to as **the Developer**, but is also a **Landowner**)

**NEALART PTY LTD** (ACN 081 856 680) as trustee for The NM Superannuation Fund ( ABN 62 439 797 590) of Suite 7, 6 Doree Place, Dora Creek NSW 2264 (**Nealart**)

**GLENMON PTY LTD** (ACN 081 856 715) as trustee for The GBM Superannuation Fund (ABN 56 011 606 280) of Suite 7, 6 Doree Place, Dora Creek NSW 2264 (**Glenmon**)

**MARKCAMP PTY LTD** (ABN 081 856 733) as trustee for The MJM Superannuation Fund (ABN 85 069 127 388) of Suite 7, 6 Doree Place, Dora Creek NSW 2264 (**Markcamp**)

(each a Landowner and together referred to as **the Landowners**)

#### **INTRODUCTION:**

- A** The Developer and the Landowners own the Land.
- B** The Developer proposes to carry out the Development on the Land.
- C** The Developer has made a Development Application to the Consent Authority in respect of the Land.
- D** Clause 62 of the LEP provides that the Consent Authority must not grant Development Consent to the Development unless the Director-General has certified in writing to the Consent Authority that satisfactory arrangements have been made to contribute to the provision of designated State infrastructure referred to in clause 62 of the LEP.
- E** The Developer has offered to enter into this deed with the Minister to secure the Development Contribution in order to enable the Director-General to provide the certification required by the LEP.

## 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 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.

**Bank Guarantee** means an irrevocable and unconditional undertaking:

- (a) by an Australian bank which is an eligible financial institution for the purposes of Treasury Circular NSW TC08/01 dated 21 February 2008 as amended, supplemented or substituted from time to time; and
- (b) on terms acceptable to the Minister, in the Minister's absolute discretion,

to pay the face value of that undertaking (being such amount as is required under this deed) on demand.

**Base Bank Guarantee** means that initial Bank Guarantee to be provided by the Developer to the Minister upon execution of this deed.

**Base CPI** means the CPI number for the quarter ending 31 March 2012.

**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.

**Consent Authority** means Lake Macquarie City Council.

**Contribution Amount** means the amount of the monetary contribution to be paid by the Developer as described in Schedule 4.

**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.

**CPI Adjustment Date** means 1 July 2012 and each anniversary of 1 July 2012 thereafter.

**Current CPI** means the CPI number for the quarter ending immediately before 31 March in the relevant adjustment year.

**Development** means subdivision and construction of approximately 234 residential dwellings to be constructed in approximately 16 stages over a 15-20 year period.

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

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

**Development Contribution** means the contributions to be provided by the Developer in accordance with Schedule 4.

**Director-General** means the Director-General of the Department of Planning and Infrastructure from time to time.

**Draft Determination** means the draft *Environmental Planning and Assessment (Special Infrastructure Contribution – Lower Hunter) Determination 2011* as set out in Schedule 6 of this deed.

**Estimated Contribution Amount** means the estimated amount of any monetary contribution to be paid by the Developer under this deed having regard to the estimated Net Developable Area of the Land to which a Planning Application relates.

**Explanatory Note** means the note exhibited with a copy of this deed when this deed is made available for inspection by the public pursuant to the Act, as required by the Regulation.

**General Register of Deeds** means the land register maintained under the *Conveyancing Act 1919* (NSW) and so titled.

**GST** means any form of goods and services tax payable under the GST Legislation.

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

**Land** means the land described in Schedule 3 of this deed.

**LEP** means the Lake Macquarie Local Environmental Plan 2004

**Net Developable Area** means the net developable area of the Land as calculated having regard to the Draft Determination or any determination made in accordance with section 94EE of the Act with respect to the Land.

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

**Planning Application** means:

- (a) a Development Application; or

(b) any other application required under the Act,  
which seeks approval for the subdivision of the Land.

**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).

**Satisfactory Arrangements Certificate** means a certificate issued by the Director-General that satisfactory arrangements have been made to contribute to the provision of designated State public infrastructure in accordance with clause 62 of the LEP.

**Security Amount** means an amount equal to 100% of each Estimated Contribution Amount due and payable by the Developer at any one time under this deed.

**Special Infrastructure Contribution** means a contribution determined in accordance with section 94EE of the Act with respect to the Land.

**Subdivision Certificate** has the same meaning as in the Act.

**Supplementary Bank Guarantee** means one or more Bank Guarantee to be provided by the Developer under clause 5 of Schedule 5 of this deed.

**Tax** means a tax, duty (including stamp duty and any other transaction duty), levy, impost, charge, fee (including a registration fee) together with all interest, penalties, fines and costs concerning them.

**Urban Lot** means a lot located on the Land created by the registration of a Plan of Subdivision, intended to be developed, subject to approval, for the purpose of residential or other urban uses.

## 1.2 Interpretation

In this deed 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 deed 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 deed;
- (e) **clause headings**, **the introduction** and the **table of contents** are inserted for convenience only and do not form part of this deed;
- (f) the **schedules** form part of this deed;
- (g) a reference to a **person** includes a natural person, corporation, statutory corporation, partnership, the Crown or any other organisation or legal entity;
- (h) a reference to a **natural person** includes their personal representatives, successors and permitted assigns;
- (i) a reference to a **corporation** includes its successors and permitted assigns;
- (j) a reference to a right or obligation of a party is a reference to a right or obligation of that party under this deed;
- (k) an **obligation** or **warranty** on the part of 2 or more persons binds them jointly and severally and an obligation or warranty in favour of 2 or more persons benefits them jointly and severally;
- (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) a word that is derived from a defined word has a corresponding meaning;
- (o) **monetary amounts** are expressed in Australian dollars;
- (p) the singular includes the plural and vice-versa;
- (q) words importing one gender include all other genders;
- (r) a reference to a thing includes each part of that thing; and
- (s) neither this deed 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 Operation**

This deed will commence from the date this deed is signed by all the parties.

### **2.2 Planning agreement under the Act**

This deed constitutes a planning agreement within the meaning of section 93F of the Act.

### **2.3 Application**

This deed applies to:

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

## **3 Application of sections 94, 94A and 94EF of the Act**

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

## **4 DEVELOPMENT CONTRIBUTION**

### **4.1 Developer to provide Development Contribution**

The Developer undertakes to provide to the Minister or the Minister's nominee, the Development Contribution in accordance with the provisions of Schedule 4 to this deed.

### **4.2 Determination of Special Infrastructure Contribution**

- (a) This clause will apply where:
  - (i) the Minister determines a Special Infrastructure Contribution; and
  - (ii) upon the date of determination of the Special Infrastructure Contribution, the Developer has not provided the Development Contribution in full.
- (b) If the determination of a Special Infrastructure Contribution specifies a rate or method of calculation for a contribution amount that if applied to this deed would result in a contribution amount that is less than the amount that would have been payable under this deed having regard to the rate and method of calculation of a Contribution Amount, then:

- (i) the Special Infrastructure Contribution amount will be deemed to be the Contribution Amount for the purpose of this deed;
- (ii) the Minister will not be required to refund any part of the Development Contribution paid by the Developer under this deed to the extent that such amounts exceed the Special Infrastructure Contribution; and
- (iii) the Developer will be entitled to a credit to be offset against the balance of any unpaid Contribution Amounts payable under this deed as at the date of the determination for an amount equal to the difference between:
  - (A) all paid Contribution Amounts as at the date of the determination of the Special Infrastructure Contribution; and
  - (B) the Special Infrastructure Contribution.

#### **4.3 Acknowledgement**

The Developer acknowledges and agrees that the Minister:

- (a) has no obligation to use or expend the Development Contribution for a particular purpose and has no obligation to repay the Development Contribution; and
- (b) in circumstances where the Development Contribution is transferred to any Authority, has not made any representation or warranty that the Development Contribution will or must be used for a particular purpose by that Authority.

### **5 INTEREST**

#### **5.1 Interest for late payment**

- (a) If the Developer fails to pay a Contribution Amount due to the Minister on the due date for payment, the Developer must also pay to the Minister interest at a rate of 2% above the loan reference rate charged by the Commonwealth Bank of Australia from time to time.
- (b) 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.

## **6 ENFORCEMENT**

### **6.1 Developer to provide security**

The Developer has agreed to provide security to the Minister for the performance of the Developer's obligations under this deed by providing the Bank Guarantee to the Minister in accordance with the terms and procedures set out in Schedule 5.

## **7 REGISTRATION**

### **7.1 Registration of deed**

Within 10 Business Days of receiving a copy of this deed executed by the Minister, the Developer at its own expense will take all practical steps and otherwise do anything to procure:

- (a) the consent of each person who:
  - (i) has an estate or interest in the Land registered under the Real Property Act; or
  - (ii) is seized or possessed or an estate or interest in the Land; and
- (b) the execution of any documents; and
- (c) the production of the relevant certificates of title; and
- (d) 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.

### **7.2 Evidence of registration**

The Developer will provide the Minister with a copy of the relevant folio of the Register and a copy of the registered dealing within 10 Business Days of registration of this deed.

### **7.3 Release and discharge of deed**

The Minister agrees to do all things reasonably required by the Developer to release and discharge this deed 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.

### **7.4 Developer's interest in Land**

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 7.1 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 7.1(a) to assist, cooperate and to otherwise do all things necessary for the Developer to comply with its obligations under clause 7.

## **8 DISPUTE RESOLUTION**

### **8.1 Not commence**

A party must not commence any court proceedings relating to a dispute unless it complies with this clause 8.

### **8.2 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.

### **8.3 Attempt to resolve**

On receipt of notice under clause 8.2, 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.

### **8.4 Mediation**

If the parties do not agree within 21 Business Days of receipt of notice under clause 8.2 (or any further period agreed in writing by them) as to:

- (a) the dispute resolution technique and procedures to be adopted;
- (b) the timetable for all steps in those procedures; or
- (c) the selection and compensation of the independent person required for such technique,

the parties must mediate the dispute in accordance with the Mediation Rules of the Law Society of NSW. The parties must request the president of the Law Society of NSW or the president's nominee to select the mediator and determine the mediator's remuneration.

## **8.5 Court proceedings**

If the dispute is not resolved within 60 Business Days after notice is given under clause 8.2 then any party which has complied with the provisions of this clause 8 may in writing terminate any dispute resolution process undertaken under this clause and may then commence court proceedings in relation to the dispute.

## **8.6 Not use information**

The parties acknowledge the purpose of any exchange of information or documents or the making of any offer of settlement under this clause 8 is to attempt to settle the dispute. No party may use any information or documents obtained through any dispute resolution process undertaken under this clause 8 for any purpose other than in an attempt to settle the dispute.

## **8.7 No prejudice**

This clause 8 does not prejudice the right of a party to institute court proceedings for urgent injunctive or declaratory relief in relation to any matter arising out of or relating to this deed.

## **9 GST**

### **9.1 Definitions**

Words used in this clause that are defined in the GST Legislation 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 Legislation 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 (the **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**

#### **10.1 Consent**

This deed is personal to each party and no party may assign the rights or benefits of this deed to any person except:

- (a) to a related body corporate, after obtaining the consent of the other parties, which the other parties 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 deed; or

- (b) to any other person, with the prior consent of the other parties, which the other parties may give, give conditionally or withhold in its absolute discretion.

## **11 CAPACITY**

### **11.1 General warranties**

Each party warrants to each other party that:

- (a) this deed 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 deed in the capacity of trustee of any trust.

### **11.2 Power of attorney**

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

### **11.3 Trustee Developer – Newport**

- (a) Newport represents and warrants that:
  - (i) it is the sole trustee of The Newport Unit Trust (ABN 39 651 249 434) and no action has been taken to remove or replace it;
  - (ii) it is authorised under the trust deed of The Newport Unit Trust to enter into this deed;
  - (iii) it is not in breach of the trust deed of The Newport Unit Trust; and
  - (iv) it has the power under the deed constituting The Newport Unit Trust to execute and perform its obligations under this deed and all necessary action has been taken to authorise the execution and performance of this deed under the trust deed constituting The Newport Unit Trust.
- (b) If the trustee of The Newport Unit Trust is replaced in accordance with the trust deed of The Newport Unit Trust, then:
  - (i) the Minister and the replacement trustee will enter into a new deed on the same terms as this deed; and
  - (ii) the Minister and the outgoing trustee will release each other from the requirement to observe and perform any future obligation under this deed; and

- (iii) the outgoing trustee will pay the reasonable costs and expenses of the Minister in relation to the replacement of a trustee under this clause and the costs and expenses of registering any new deed on the title to the Land.

#### **11.4 Trustee Landowner – Nealart**

- (a) Nealart represents and warrants that:
  - (i) it is the sole trustee of The NM Superannuation Fund (ABN 62 439 797 590) and no action has been taken to remove or replace it;
  - (ii) it is authorised under the trust deed of The NM Superannuation Fund to enter into this deed;
  - (iii) it is not in breach of the trust deed of The NM Superannuation Fund; and
  - (iv) it has the power under the deed constituting The NM Superannuation Fund to execute and perform its obligations under this deed and all necessary action has been taken to authorise the execution and performance of this deed under the trust deed constituting The NM Superannuation Fund.
- (b) If the trustee of The NM Superannuation Fund is replaced in accordance with the trust deed of The NM Superannuation Fund, then:
  - (i) the Minister and the replacement trustee will enter into a new deed on the same terms as this deed; and
  - (ii) the Minister and the outgoing trustee will release each other from the requirement to observe and perform any future obligation under this deed; and
  - (iii) the outgoing trustee will pay the reasonable costs and expenses of the Minister in relation to the replacement of a trustee under this clause and the costs and expenses of registering any new deed on the title to the Land.

#### **11.5 Trustee Landowner – Glenmon**

- (a) Glenmon represents and warrants that:
  - (i) it is the sole trustee of The GBM Superannuation Fund (ABN 56 011 606 280) and no action has been taken to remove or replace it;
  - (ii) it is authorised under the trust deed of The GBM Superannuation Fund to enter into this deed;



- (iii) it is not in breach of the trust deed of The GBM Superannuation Fund; and
  - (iv) it has the power under the deed constituting The GBM Superannuation Fund to execute and perform its obligations under this deed and all necessary action has been taken to authorise the execution and performance of this deed under the trust deed constituting The GBM Superannuation Fund.
- (b) If the trustee of The GBM Superannuation Fund is replaced in accordance with the trust deed of The GBM Superannuation Fund, then:
- (i) the Minister and the replacement trustee will enter into a new deed on the same terms as this deed; and
  - (ii) the Minister and the outgoing trustee will release each other from the requirement to observe and perform any future obligation under this deed; and
  - (iii) the outgoing trustee will pay the reasonable costs and expenses of the Minister in relation to the replacement of a trustee under this clause and the costs and expenses of registering any new deed on the title to the Land.

#### **11.6 Trustee Landowner – Markcamp**

- (a) Markcamp represents and warrants that:
- (i) it is the sole trustee of The MJM Superannuation Fund (ABN 85 069 127 388) and no action has been taken to remove or replace it;
  - (ii) it is authorised under the trust deed of The MJM Superannuation Fund to enter into this deed;
  - (iii) it is not in breach of the trust deed of The MJM Superannuation Fund; and
  - (iv) it has the power under the deed constituting The MJM Superannuation Fund to execute and perform its obligations under this deed and all necessary action has been taken to authorise the execution and performance of this deed under the trust deed constituting The MJM Superannuation Fund.
- (b) If the trustee of The MJM Superannuation Fund is replaced in accordance with the trust deed of The MJM Superannuation Fund, then:
- (i) the Minister and the replacement trustee will enter into a new deed on the same terms as this deed; and

- (ii) the Minister and the outgoing trustee will release each other from the requirement to observe and perform any future obligation under this deed; and
- (iii) the outgoing trustee will pay the reasonable costs and expenses of the Minister in relation to the replacement of a trustee under this clause and the costs and expenses of registering any new deed on the title to the Land.

## 12 REPORTING REQUIREMENT

- (a) On each anniversary of the date of this deed or as otherwise agreed with the Director-General, the Developer must deliver to the Director-General a report which must include those matters set out in clauses (b) and (c), as applicable.
- (b) If the Developer has not provided a Contribution Amount in the 12 month period immediately preceding the relevant anniversary of this deed, the Report must include:
  - (i) a description of the status of the Development;
  - (ii) a forecast in relation to the anticipated progression and completion of the Development; and
  - (iii) an estimated date for when the Developer expects to lodge the first Planning Application.
- (c) If the Developer has provided one or more Contribution Amounts under this deed, the report must include:
  - (i) details of all Development Consents granted in relation to the Development;
  - (ii) a schedule that details all Contribution Amounts provided under this deed as at the date of the report; and
  - (iii) an estimated date for when the Developer expects to lodge the next Planning Application.
- (d) Upon the Director-General's request, the Developer must deliver to the Director-General all documents and other information which, in the reasonable opinion of the Director-General are necessary for the Director-General to assess the status of the Development.

## **13 GENERAL PROVISIONS**

### **13.1 Entire deed**

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.

### **13.2 Variation**

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

### **13.3 Waiver**

A right created by this deed 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.

### **13.4 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.

### **13.5 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.

### **13.6 Governing law and jurisdiction**

- (a) The laws applicable in New South Wales govern this deed.
- (b) The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts competent to hear appeals from those courts.

**13.7 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 deed without affecting the enforceability, validity or legality of the remaining clauses (or parts of those clauses) which will continue in full force and effect.

**13.8 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.

**13.9 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.

**13.10 Counterparts**

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

**13.11 Relationship of parties**

Unless otherwise stated:

- (a) nothing in this deed 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.

**13.12 Good faith**

Each party must act in good faith towards all other parties and use its best endeavours to comply with the spirit and intention of this deed.

**13.13 No fetter**

Nothing in this deed shall be construed as requiring either the Ministers to do anything that would cause the Minister to breach any of the Minister's obligations at law and without limitation, nothing in this deed shall be construed as limiting or fettering in any way the discretion of the Ministers in exercising any of the Minister's statutory functions, powers, authorities or duties.

### 13.14 Explanatory note

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

### 13.15 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 Taxes assessed on or in respect of this deed and any instrument or transaction required or contemplated by or necessary to give effect to this deed (including stamp duty and registration fees, if applicable).
- (d) The Developer must provide the Minister with bank cheques in respect of the Minister's costs pursuant to clauses 13.15(a) and (b).
  - (i) where the Minister has provided the Developer with written notice of the sum of such costs prior to execution, on the date of execution of this deed; or
  - (ii) where the Minister has not provided the Developer with prior written notice of the sum of such costs prior to execution, within 30 Business Days of demand by the Minister for payment.

### 13.16 Notices

- (a) Any notice, demand, consent, approval, request or other communication (**Notice**) to be given under this deed must be in writing and must be given to the recipient at its Address for Service by being:
  - (i) hand delivered; or
  - (ii) sent by facsimile transmission; or
  - (iii) sent by prepaid ordinary mail within Australia.
- (b) A Notice is given if:
  - (i) hand delivered, on the date of delivery;
  - (ii) 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; or

- (iii) sent by prepaid ordinary mail within Australia, on the date that is 2 Business Days after the date of posting.

## SCHEDULE 1

**Table 1 - Requirements under section 93F of the Act (clause 2.2)**

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
<b>Planning instrument and/or development application – (section 93F(2))</b>  The Developer has: <ul style="list-style-type: none"> <li>(a) sought a change to an environmental planning instrument.</li> <li>(b) made, or proposes to make, a Development Application.</li> <li>(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.</li> </ul>	<ul style="list-style-type: none"> <li>(a) No</li> <li>(b) Yes</li> <li>(c) N/A</li> </ul>
<b>Description of land to which this deed applies – (section 93F(3)(a))</b>	See Schedule 3
<b>Description of change to the environmental planning instrument to which this deed applies – (section 93F(3)(b))</b>	N/A
<b>The scope, timing and manner of delivery of contribution required by this deed – (section 93F(3)(c))</b>	See Schedule 4
<b>Applicability of sections 94 and 94A of the Act – (section 93F(3)(d))</b>	The application of sections 94 and 94A of the Act is not excluded in respect of the Development.
<b>Applicability of section 94EF of the Act – (section 93F(3)(d))</b>	The application of section 94EF of the Act is excluded in respect of the Development.
<b>Consideration of benefits under this deed if section 94 applies – (section 93F(5))</b>	No
<b>Mechanism for Dispute Resolution – (section 93F(3)(f))</b>	See clause 8
<b>Enforcement of this deed – (section 93F(3)(g))</b>	See clause 6
<b>No obligation to grant consent or exercise functions – (section 93F(10))</b>	See clause 13.13

Table 2 – Other matters

REQUIREMENT UNDER THE ACT OR REGULATION	THIS DEED
<b>Registration of the Planning Agreement –</b> (section 93H of the Act)	Yes
<b>Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a construction certificate is issued –</b> (clause 25E(2)(g) of the Regulation)	No
<b>Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before an occupation certificate is issued –</b> (clause 25E(2)(g) of the Regulation)	No
<b>Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a subdivision certificate is issued –</b> (clause 25E(2)(g) of the Regulation)	Yes



## **SCHEDULE 2**

### **Address for Service (clause 1.1)**

#### **Minister**

**Contact:** The Director-General

**Address:** Department of Planning and Infrastructure  
23-33 Bridge Street  
SYDNEY NSW 2000

**Facsimile No:** (02) 9228 6191

#### **Developer**

**Contact:** Mark Moncrieff

**Address:** Suite 7, 6 Doree Place Dora Creek NSW 2264  
P O Box 5153 Dora Creek NSW 2264

**Facsimile No:** (02) 4970 5100

**SCHEDULE 3****Land (clause 1.1)****1 Lots proposed for development**

<b>Lot</b>	<b>Deposited Plan</b>	<b>Folio Identifier</b>
Lot 1	DP 134235	1/143235
Lot 3	DP 228684	3/228684
Lot 5001	DP 585398	5001/585398
Lots 1-24	DP 9149	1-24/9149

**NOW BEING DESCRIBED AS FOLLOWS:**

<b>Lot</b>	<b>Deposited Plan</b>	<b>Folio Identifier</b>
1	1180679	1/1180679
2	1180679	2/1180679
3	1180679	3/1180679
4	1180679	4/1180679
5	1180679	5/1180679



## SCHEDULE 4

### Development Contributions (clause 4)

#### 1 Development Contributions

The Developer undertakes to make the following Development Contributions:

- (a) The Developer undertakes to provide the Development Contribution in the manner set out in the table below:

Development Contribution	Value	Timing
Contribution Amount - Cash contribution towards designated state public infrastructure	\$72,451 per hectare of Net Developable Area in a Plan of Subdivision for any part of the Land	Pursuant to clause 3 of this Schedule 4.

- (b) The Minister and Developer acknowledge and agree that the sum of the Contribution Amounts form the Development Contribution under this deed.

#### 2 Calculation of the value of a Contribution Amount

- (a) Each Contribution Amount will be an amount equal to the sum represented by "X" in the following formula:

$$X = N \times \$72,451$$

"N" means the number of hectares comprised in the Net Developable Area of the Land to which a Subdivision Certificate relates.

- (b) On each CPI Adjustment Date, the value of X in clause 2(a) will be adjusted by multiplying X by an amount equal to the Current CPI divided by the Base CPI.

#### 3 Payment of Contribution Amounts

The Developer must pay to the Minister or the Minister's nominee a Contribution Amount on the date this is the earlier of:

- (a) 21 days prior to the transfer of an Urban Lot;
- (b) 3 years after the issue of a Subdivision Certificate in respect of an Urban Lot.

## SCHEDULE 5

### Security terms (clause 6)

#### 1 **Developer to provide Bank Guarantees**

- (a) In order to secure the payment of each Contribution Amount, the Developer has agreed to provide security in the form of Bank Guarantees.
- (b) Each Bank Guarantee must:
  - (i) name the "Minister for Planning and Infrastructure and Department of Planning and Infrastructure ABN 38 755 709 681" as the relevant beneficiaries; and
  - (ii) not have an expiry date.

#### 2 **Base Bank Guarantee**

- (a) Upon execution of this deed, the Developer will provide security to the Minister in the form of the Base Bank Guarantee for a face value equivalent to \$77,000.
- (b) From the date of execution of this deed until the date that the Developer has provided the Development Contribution in full, the Minister will be entitled to retain the Base Bank Guarantee.

#### 3 **Supplementary Bank Guarantees**

The Developer will provide to the Minister one or more Supplementary Bank Guarantees to top up the Base Bank Guarantee either:

- (a) prior to the issue of a Satisfactory Arrangements Certificate; or
- (b) where such a certificate is not required, within 10 Business Days of lodging the relevant Planning Application,

to ensure that at all times the Minister holds Bank Guarantees for a face value equivalent to the Security Amount.

#### 4 **Reduction or replacement of Supplementary Bank Guarantees**

If at any time the Supplementary Bank Guarantees held by the Minister exceed the Security Amount, then upon the request of the Developer the Minister will:

- (a) promptly return any Supplementary Bank Guarantees; and
- (b) allow the Developer to replace such Bank Guarantees with Bank Guarantees with a face value of a lesser amount.

## 5 **Claims under Bank Guarantees**

- (a) The Minister may call upon a Bank Guarantee where:
- (i) the Developer has failed to pay an Contribution Amount on or before the date for payment under this deed; or
  - (ii) the Developer has failed to provided one or more Bank Guarantees to ensure that at all times the value of the security held by the Minister is for a face value equivalent to the Security Amount,
- and retain and apply such monies towards the costs and expenses incurred by the Minister in rectifying any default by the Developer under this deed.
- (b) Prior to calling upon a Bank Guarantee the Minister must give the Developer not less than 10 Business Days written notice.
- (c) If :
- (i) the Minister calls upon the Base Bank Guarantee; and
  - (ii) applies all or part of such monies towards the costs and expenses incurred by the Minister in rectifying any default by the Developer under this deed; and
  - (iii) has notified the Developer of the call upon the Base Bank Guarantee in accordance with clause 5(b) of this Schedule 5,
- then the Developer must provide to the Minister a replacement Base Bank Guarantee to ensure that at all times until the date that the Developer has provided the Development Contribution in full, the Minister is in possession of a Base Bank Guarantee for a face value equivalent to \$77,000.

## 6 **Release of Base Bank Guarantee**

If:

- (a) the Developer has satisfied all of its obligations under this deed secured by the Base Bank Guarantee; and
- (b) the whole of the monies secured by the Base Bank Guarantee have not been expended and the monies accounted for in accordance with clause 5 of this Schedule 5,

then the Minister will promptly return the Base Bank Guarantee (less any costs, charges, duties and taxes payable), or the remainder of the monies secured by the Base Bank Guarantee (as the case may be), to the Developer.

## SCHEDULE 6

### Draft Determination (clause 1.1)

#### Public Consultation Draft

#### Environmental Planning and Assessment (Special Infrastructure Contribution – Lower Hunter) Determination 2011

under the

Environmental Planning and Assessment Act 1979

I, the Minister for Planning, in pursuance of section 94EE of the *Environmental Planning and Assessment Act 1979*, make the following Determination.

Minister for Planning

Dated:

#### 1 Name of Determination

This Determination is the *Environmental Planning and Assessment (Special Infrastructure Contribution – Lower Hunter) Determination 2011*.

#### 2 Commencement

This Determination takes effect on [insert date].

#### 3 Definitions

(1) In this Determination:

**contribution rate** – see clauses 7 and 8.

**deferred payment arrangement** – see clause 17.

**developer** means the person having the benefit of a development consent for the time being.

**industrial land** means:

(a) land within any of the following land use zones specified in the Standard Instrument:

- (i) Zone B5 Business Development,
- (ii) Zone B7 Business Park,
- (iii) Zone IN1 General Industrial,
- (iv) Zone IN2 Light Industrial,
- (v) Zone IN3 Heavy Industrial, and

- (b) land within a land use zone that is equivalent to any such land use zone, and
- (c) land within any land use zone:
  - (i) that adjoins industrial land described in paragraph (a) or (b), and
  - (ii) on which development for a purpose permitted on the adjoining industrial land is authorised to be carried out under a development consent that is granted pursuant to a provision of an environmental planning instrument that is in the same terms, or substantially the same terms, as clause 5.3 (Development near zone boundaries) of the Standard Instrument.

**infrastructure** has the same meaning as it has in Subdivision 4 of Division 6 of Part 4 of the Act.

**relevant development** means development for which a special infrastructure contribution must be made under this Determination.

**residential land** means:

- (a) land within any of the following land use zones specified in the Standard Instrument:
  - (i) Zone R1 General Residential,
  - (ii) Zone R2 Low Density Residential,
  - (iii) Zone R3 Medium Density Residential,
  - (iv) Zone R4 High Density Residential,
  - (vi) Zone R5 Large Lot Residential,
  - (vi) Zone RE2 Private Recreation,
  - (vii) Zone E4 Environmental Living, and

Note. Examples of land uses zones equivalent to those specified in the Standard Instrument are Zone 2 (Residential Zone) and Zone 6(b) (Private Open Space and Recreation Zone), as provided by *Singleton Local Environmental Plan 1996*.

- (b) land within a land use zone that is equivalent to any such land use zone, and
- (c) land within any land use zone:
  - (i) that adjoins residential land described in paragraph (a) or (b), and
  - (ii) on which development for a purpose permitted on the adjoining residential land is authorised to be carried out under a development consent that is granted pursuant to a provision of an environmental planning instrument that is in the same terms, or substantially the same terms, as clause 5.3 (Development near zone boundaries) of the Standard Instrument.

**special infrastructure contribution** means a development contribution that is determined under section 94EE of the Act.

**special infrastructure contribution works-in-kind agreement** – see clause 25.

**Standard Instrument** means the standard instrument for a principal local environmental plan prescribed by the Standard Instrument (Local Environmental Plans) Order 2006.

**strata certificate** means a strata certificate within the meaning of the *Strata Schemes (Freehold Development) Act 1973* or the *Strata Schemes (Leasehold Development) Act 1986*.

**strata lot** means a lot within the meaning of section 5 (1) of the *Strata Schemes (Freehold Development) Act 1973* or section 4 (1) of the *Strata Schemes (Leasehold Development) Act 1986*.

**Sydney CPI number** means the Consumer Price Index (All Groups Index) for Sydney issued by the Australian Statistician.

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

**the map marked "Lower Hunter – Special Contributions Area"** means the map marked "Lower Hunter – Special Contributions Area" referred to in Schedule 5A to the Act.

**Lower Hunter Special Contributions Area** means the land described in Schedule 5A to the Act as the land shown edged heavy black on the map marked "Lower Hunter – Special Contributions Area".

- (2) A word or expression used in this Determination has the same meaning as it has in the Act, unless otherwise defined.

Note. See section 4B of the *Environmental Planning and Assessment Act 1979* for the meaning of **subdivision of land**. Subdivision of land includes community title subdivision under the *Community Land Development Act 1989*.

- (3) The following words or expressions have the same meanings as they have in the Standard Instrument:

- (a) emergency services facility,
- (b) health services facility,
- (c) neighbourhood shop,
- (d) passenger transport facility,
- (e) public utility undertaking,
- (f) recreation area,
- (g) shop top housing.

- (4) A reference in this Determination to the Minister in relation to a deferred payment arrangement or special infrastructure contribution works-in-kind agreement includes a reference to the Director-General, or other officer of the Department of Planning, acting for and on behalf of the Crown in right of the State of New South Wales.

- (5) Notes in this Determination are provided for guidance only.

#### **4 Development for which SIC must be made**

- (1) Subject to this clause, a special infrastructure contribution must be made for development on the following land within the Lower Hunter Special Contributions Area:

- (a) residential land within the Lower Hunter Special Contributions Area,
- (b) industrial land within the Lower Hunter Special Contributions Area.



Note. A special infrastructure contribution may be imposed only as a condition of development consent. Accordingly, such a contribution can be required only in respect of development that may be carried out with development consent. A special infrastructure contribution cannot be imposed as a condition of consent if a planning agreement made in accordance with section 93F of the *Environmental Planning and Assessment Act 1979* excludes the application of section 94EF.

- (2) A special infrastructure contribution is not required to be made for development for the purpose of any of the following:
- (a) government school (within the meaning of the *Education Act 1990*),
  - (b) TAFE establishment,
  - (c) emergency services facility,
  - (d) health services facility owned or operated by a public authority,
  - (e) golf course (but not including any associated building such as a club house),
  - (f) neighbourhood shop,
  - (g) passenger transport facility,
  - (h) public utility undertaking,
  - (i) bus depot, whether or not owned or operated by a public authority,
  - (j) recreation area,
  - (k) shop top housing,
  - (l) roads, or other public amenities or public services, in connection with which development contributions have been imposed under section 94 or section 94A of the Act or may be imposed in accordance with a contributions plan approved under section 94EA of the Act,
  - (m) roads or other infrastructure in connection with which special infrastructure contributions have been, or may be, imposed in accordance with this Determination.

Note. See Appendix 1 to this Determination for the items of infrastructure in connection with which a special infrastructure contribution is required to be made under this Determination

- (3) If a special infrastructure contribution has been required to be made for development on land in accordance with this Determination, a further special infrastructure contribution is not required to be made for other development on that land.
- (4) A special infrastructure contribution is not required to be made for any of the following kinds of development:
- (a) subdivision for the purpose only of creating a lot (no more than 0.1 hectare in area) to contain an existing lawful habitable dwelling,
  - (b) subdivision for the purpose only of rectifying an encroachment on any existing lot,
  - (c) development on land in relation to which the Director-General has certified to the consent authority that satisfactory arrangements have been made to contribute to the provision of designated State public infrastructure.
- (5) A special infrastructure contribution is not required to be made for development that satisfies both of the following:
- (a) the development comprises the subdivision of land (other than a strata subdivision or a subdivision that is only for the purpose of a creating a lot to contain an existing habitable dwelling),
  - (b) the Director-General has, having regard to relevant planning controls, certified to the consent authority that each lot resulting from the subdivision is a lot that will be further subdivided in accordance with a further development consent (or approval under Part 3A of the Act) for the purpose of the orderly development of the land for urban purposes in the future.

Note. A lot referred to in paragraph (b) is commonly referred to as a super lot.

- (6) A special infrastructure contribution is not required to be made in respect of complying development for which a complying development certificate is issued.
- (7) To avoid doubt, a special infrastructure contribution is required to be made:
  - (a) for any part of the land to which a development consent relates within the Lower Hunter Special Contributions Area, even if the same development consent authorises development on land outside the Special Contributions Area, and
  - (b) for any part of the land on which relevant development is authorised to be carried out by a development consent, even if the same development consent also authorises development that is not relevant development (because, for example, of land use zoning) on another part of the land.
- (8) An exclusion from the requirement to make a special infrastructure contribution provided by a subclause of this clause is not limited by the terms of an exclusion provided by any other subclause of this clause.

Note. See section 75R (4) of the *Environmental Planning and Assessment Act 1979* for the application of this Determination to a project under Part 3A of that Act.

## 5 Nature of contribution

- (1) The special infrastructure contribution that must be made for relevant development is:
  - (a) a monetary contribution, or
  - (b) a contribution of a kind specified in a special infrastructure contribution works-in-kind agreement that is in force in relation to the relevant development (being the carrying out of works for the provision of infrastructure or the dedication or other provision of land).
- (2) The special infrastructure contribution may comprise part of the amount of the monetary contribution otherwise payable and the balance as a contribution provided by a special infrastructure contribution works-in-kind agreement.

## 6 Amount of monetary contribution

The monetary contribution that is payable as a special infrastructure contribution for a relevant development is the amount calculated by applying the contribution rate for the relevant development, as at the date of payment, to the net developable area for the development, that is, the monetary contribution is an amount calculated as follows:

$$\$C_p = NDA \times \$C_R$$

where:

$\$C_p$  is the monetary contribution payable

$NDA$  is the net developable area, in hectares, for the relevant development (determined in accordance with clauses 9 to 13)

$\$C_R$  is the amount in dollars of the contribution rate, applicable at the date of payment, for the relevant development (as provided by clauses 7 and 8).

## 7 Contribution rates

- (1) The contribution rate that is to be used in the calculation of the monetary contribution for a relevant development is the rate specified in the table to subclause (2) for development of the class to which the relevant development belongs.
- (2) Each amount specified in the table to this subclause applies to the determination of the relevant contribution rate at any time before 1 July 2011.

**Table**

<b>Class of development</b>	<b>Contribution rate</b>
1. Development on <b>residential land</b> that is within the Lower Hunter Special Contributions Area (as referred to in clause 4 (1) (a))	\$105,340 per hectare of net developable area
2. Development on <b>industrial land</b> within the Lower Hunter Special Contributions Area (as referred to in clause 4 (1) (b))	\$42,134 per hectare of net developable area

- (3) The amounts that apply to the determination of the contribution rates at any time during the 12 month period commencing 1 July 2011, and during each subsequent 12 month period, are the amounts as adjusted in accordance with clause 8.

#### **8 Annual adjustment of amounts used in contribution rates**

- (1) For the purposes of this clause, each of the amounts of \$105,340 and \$42,134 specified in the table to clause 7 (2) is an adjustable amount.
- (2) On 1 July 2011 and on 1 July in each subsequent year, each adjustable amount is to be adjusted by multiplying the amount by the following fraction:

**latest Sydney CPI number / 170.5**

where:

**latest Sydney CPI number** is the Sydney CPI number for the March quarter in the year in which the adjustment is made (the March quarter being the quarter commencing on and including 1 January and ending on and including 31 March in that same year).

Note. The figure **170.5** is the Sydney CPI number for the March quarter in 2010.

- (3) If an adjustable amount, as adjusted in accordance with subclause (2), is not a multiple of \$1, the amount is to be rounded to the nearest \$1.

#### **9 Net developable area**

- (1) The net developable area for a relevant development is the area of land, in hectares, to which the development consent for the development relates, subject to this Determination.
- (2) The net developable area for a relevant development includes the area of any land that the development consent authorises, or requires, to be used as a road, or reserved or dedicated

as a public road (other than a road referred to in subclause (3)). The net developable area does not, however, include the area of any existing road in respect of which the development consent authorises, or requires, road work (such as road widening) to be carried out.

- (3) To avoid doubt, the net developable area does not include the area of any land that the development consent authorises, or requires, to be reserved, dedicated or otherwise set aside as, or for the purpose of, any of the following:
- (a) government school (within the meaning of the *Education Act 1990*),
  - (b) TAFE establishment,
  - (c) emergency services facility,
  - (d) health services facility owned or operated by a public authority,
  - (e) golf course,
  - (f) passenger transport facility
  - (g) public reserve or drainage reserve (within the meaning of the *Local Government Act 1993*),
  - (h) public transport corridor (other than a road corridor),
  - (i) public utility undertaking,
  - (j) bus depot, whether or not owned or operated by a public authority,
  - (k) recreation area,
  - (l) roads, or other public amenities or public services, in connection with which development contributions have been imposed under section 94 or section 94A of the Act or may be imposed in accordance with a contributions plan approved under section 94EA of the Act,
  - (m) roads or other infrastructure in connection with which special infrastructure contributions have been, or may be, imposed in accordance with this Determination.
- (4) The following areas of land are also not to be included in the calculation of the net developable area for the relevant development:
- (a) any part of the land to which the development consent for the relevant development relates that is at or below the level of a 1:100 ARI (average recurrent interval) flood event, if that part of the land is unsuitable for the relevant development by virtue of it being at or below that level,
  - (b) any part of the land to which the development consent for the relevant development relates that is identified as public open space in a development control plan or in a contributions plan approved under section 94EA of the Act.

#### **10 Net developable area where large lot created to contain an existing habitable dwelling**

The net developable area for a relevant development comprising subdivision of land for the purpose only of creating a lot of more than 0.1 hectare in area to contain an existing lawful habitable dwelling is taken to be reduced by 0.1 hectare.

Note. See also clause 4 (4) (a) which provides that a SIC is not required to be made for a subdivision of land the only purpose of which is to create a lot that is no more than 0.1 hectare in area so as to contain an existing habitable dwelling.

#### **11 Net developable area not to include any residue lot or super lot**

The net developable area for a relevant development comprising subdivision of land does not include any lot that the Director-General has, having regard to relevant planning controls, certified to the consent authority is a lot that will be further subdivided in accordance with a further development consent (or approval under Part 3A of the Act) for the purpose of the orderly development of the land for urban purposes in the future.

#### **12 Reduction of net developable area where land within heritage curtilage or Environmental Living Zone**

- (1) This clause applies to a relevant development if any lot of land to which the development consent for the development relates includes (wholly or partly):
  - (a) land that is within the curtilage of a building listed on the State Heritage Register, or
  - (b) land that is within Zone E4 Environmental Living.
- (2) For the purpose of calculating the net developable area for a relevant development to which this clause applies, any such lot that is more than 0.1 hectare in area is taken to be 0.1 hectare.
- (3) In this clause, **curtilage**, in relation to a building, means the curtilage of that building, or the site of that building, as specified or described in the listing of the building on the State Heritage Register.

#### **13 Final determination of net developable area by Director-General**

The Director-General may make any determination required to be made for the purpose of calculating the net developable area for a relevant development in accordance with this Determination and, for that purpose, may have regard to any information available at the time, such as construction plans and any measurements made by a registered surveyor of the land concerned.

#### **14 When a monetary contribution for development other than subdivision is to be paid**

If a special infrastructure contribution is made as a monetary contribution, the monetary contribution must be paid for relevant development (other than subdivision):

- (a) before a construction certificate is issued in relation to a building to which the development consent for the relevant development relates, and
- (b) if a construction certificate is not required for the relevant development, before any work that the development consent authorises to be carried out is physically commenced on the land.

#### **15 When a monetary contribution for subdivision (other than strata subdivision) is to be paid**

- (1) If a special infrastructure contribution for a subdivision (other than strata subdivision) is made as a monetary contribution, the monetary contribution must be paid:
  - (a) before a subdivision certificate is issued for the subdivision, or
  - (b) in accordance with clause 18 if a deferred payment arrangement is in force in relation to the monetary contribution at the time the subdivision certificate is issued for the subdivision.
- (2) For the purpose of subclause (1) (a), if a subdivision certificate is sought for a plan of subdivision that would, on registration, create only some of the lots authorised to be created by the relevant development consent, the monetary contribution for the subdivision authorised by the development consent may be paid progressively, with an amount being paid before the issue of each subdivision certificate for a plan of subdivision authorised by that consent (a ***subdivision certificate for a staged subdivision***).
- (3) The amount that must be paid before the issue of each subdivision certificate for a staged subdivision is to be calculated:
  - (a) as if the subdivision of land to which the subdivision certificate relates comprised the entire subdivision authorised by the development consent, and
  - (b) on the basis that the net developable area does not include the area of any "transitional lot" in the plan of subdivision for which the subdivision certificate is sought.

A "***transitional lot***" is a lot in the plan of subdivision for which the subdivision certificate is sought that may be further subdivided in accordance with the relevant development consent.

#### **16 When a monetary contribution for strata subdivision is to be paid**

If a special infrastructure contribution for a strata subdivision is made as a monetary contribution, the monetary contribution must be paid:

- (a) before a strata certificate for the strata subdivision is issued, or
- (b) in accordance with clause 18 if a deferred payment arrangement is in force in relation to the monetary contribution at the time the strata certificate is issued.

#### **17 Deferred payment arrangement for subdivision**

- (1) For the purposes of this Determination, a deferred payment arrangement in relation to the payment of a monetary contribution for a subdivision is an arrangement described in this clause.
- (2) A deferred payment arrangement is made, in relation to a subdivision, if a deed of charge is executed by the owner of the land and the Minister, and that deed:
  - (a) grants the Minister a charge over the land to which the development consent for the subdivision relates, and
  - (b) is generally in accordance with the Memorandum of Deed of Charge Standard Terms and Conditions, executed by the Minister and registered by the Registrar-General, and
  - (c) is registered on the title to the land.



- (3) A deferred payment arrangement is also made, in relation to a subdivision, if a bank guarantee is provided to the Minister and:
- (a) the Minister has agreed in writing to the terms of the bank guarantee, and
  - (b) the bank guarantee:
    - (i) secures the payment of the monetary contribution (including the payment of any contribution amount referred to in clause 19, 20 or 21), and
    - (ii) is for 100% of the monetary contribution (or any contribution amount referred to in clause 19, 20 or 21) at the time it becomes due, and
    - (iii) the bank guarantee provides that the Minister may call upon the bank guarantee (in full or in part) in the event of a failure to pay the monetary contribution, or any contribution amount, at the time it becomes due.

#### **18 When a monetary contribution must be paid if deferred payment arrangement in place**

If a deferred payment arrangement in relation to a monetary contribution for subdivision is in force, a separate amount is payable in respect of each lot or strata lot in the subdivision (the **contribution amount** calculated in accordance with clause 19, 20 or 21) and must be paid:

- (a) before the end of 3 years from the date of issue of the subdivision certificate or strata certificate that relates to that lot or strata lot, or
  - (b) at least 21 working days before the lot or strata lot is first transferred (following its creation),
- whichever is the earlier.

#### **19 Amount payable in respect of each lot in subdivision – deferred payment arrangement**

- (1) The contribution amount that is payable in respect of a lot in a subdivision (other than a subdivision to which clause 20 or 21 applies) for which a subdivision certificate has been issued is to be calculated, as at the date of payment, in accordance with the following formula:

$$\text{\$CA}_P = L / \text{LT} \times \text{NDA} \times \text{\$C}_R$$

where:

**\\$CA<sub>P</sub>** is the contribution amount payable for the lot

**L** is the area (in hectares) of the lot

**LT** is the total area (in hectares) of the lots to which the subdivision certificate relates

**NDA** is the net developable area for the subdivision

**\\$C<sub>R</sub>** is the amount in dollars of the contribution rate, applicable at the date of payment, for the subdivision (as provided by clauses 7 and 8)

- (2) If the subdivision certificate referred to in subclause (1) is a subdivision certificate for a staged subdivision (as referred to in clause 15 (2)), the net developable area for the subdivision is to be calculated:

- (a) as if the subdivision of land to which the subdivision certificate relates comprised the entire subdivision authorised by the relevant development consent, and
- (b) on the basis that the net developable area does not include the area of any "transitional lot" in the plan of subdivision to which the subdivision certificate relates (in which case a reference to a lot in subclause (1) does not include a reference to a transitional lot).

A "**transitional lot**" is a lot in the plan of subdivision to which the subdivision certificate relates that may be further subdivided in accordance with the relevant development consent.

- (3) A separate contribution amount is not payable in respect of a lot comprising a road, even though the area of the road is included in the calculation of the net developable area for the subdivision and is taken into account in calculating the contribution amounts that must be paid in respect of other lots in the subdivision. (Accordingly, a reference to a lot in subclause (1) does not include a reference to a lot comprising a road.)

## **20 Amount payable in respect of each strata lot in a strata subdivision – deferred payment arrangement**

The contribution amount that is payable in respect of a strata lot in a strata subdivision for which a strata certificate has been issued is to be calculated, as at the date of payment, in accordance with the following formula:

$$\text{\$CA}_P = U / \text{UT} \times \text{NDA} \times \text{\$C}_R$$

where:

**\\$CA<sub>P</sub>** is the contribution amount payable for the strata lot

**U** is the unit entitlements of the strata lot

**UT** is the total (aggregate) unit entitlements of all strata lots in the strata subdivision

**NDA** is the net developable area for the strata subdivision

**\\$C<sub>R</sub>** is the amount in dollars of the contribution rate, applicable at the date of payment, for the strata subdivision (as provided by clauses 7 and 8)

## **21 Amount payable in respect of a lot in a community title subdivision – deferred payment arrangement**

- (1) This clause applies to a lot in a subdivision of land procured by the registration of any of the following plans of subdivision within the meaning of the *Community Land Development Act 1989* (and in respect of which there is a deferred payment arrangement in force):

- (a) community plan,
- (b) community plan of subdivision,
- (c) neighbourhood plan,
- (d) neighbourhood plan of subdivision,
- (e) precinct plan,
- (f) precinct plan of subdivision.



- (2) The contribution amount that is payable in respect of a lot in a subdivision of land to which this clause applies (and for which a subdivision certificate has been issued) is to be calculated, as at the date of payment, in accordance with the following formula:

$$\text{\$CA}_p = U / \text{UT} \times \text{NDA} \times \text{\$C}_R$$

where:

**\\$CA<sub>p</sub>** is the contribution amount payable for the lot

**U** is the unit entitlements of the lot

**UT** is the total (aggregate) unit entitlements of the lots in the subdivision

**NDA** is the net developable area for the subdivision

**\\$C<sub>R</sub>** is the amount in dollars of the contribution rate, applicable at the date of payment, for the subdivision (as provided by clauses 7 and 8)

- (3) A separate contribution amount is not payable:

(a) in respect of a lot shown in a community plan as community property, a lot shown in a neighbourhood plan as neighbourhood property and a lot shown in a precinct plan as precinct property, or

(b) in respect of a lot comprising a road,

even though the area of such a lot is included in the calculation of the net developable area for the subdivision and is taken into account in calculating the contribution amounts that must be paid in respect of the other lots in the subdivision. (Accordingly, a reference to a lot in subclause (2) does not include a reference to lot referred to in paragraph (a) or (b)).

- (4) If the subdivision certificate referred to in subclause (2) is a subdivision certificate for a staged subdivision (as referred to in clause 15 (2)), the net developable area for the subdivision is to be calculated:

(a) as if the subdivision of land to which the subdivision certificate relates comprised the entire subdivision authorised by the relevant development consent, and

(b) on the basis that the net developable area does not include the area of any “transitional lot” in the plan of subdivision to which the subdivision certificate relates (in which case a reference to a lot in subclause (2) does not include a reference to a transitional lot).

A “**transitional lot**” is a lot in the plan of subdivision to which the subdivision certificate relates that may be further subdivided in accordance with the relevant development consent.

## 22 Payment of monetary contribution where subdivision and other development on same land

If a single development consent authorises both the subdivision of land and the carrying out of subdivision work on that land, the monetary contribution is required to be paid before the issue of the subdivision or strata certificate (or in accordance with clause 18), rather than before the issue of a construction certificate in relation to the work (even if that occurs first).

**23 Payment of monetary contribution where different kinds of development on different parts of land**

- (1) This clause applies if:
  - (a) a single development consent authorises different kinds of relevant development on different parts of the land to which the development consent relates, and
  - (b) this Determination would otherwise require a monetary contribution to be paid at different times in respect of each kind of development.
- (2) The special infrastructure contribution for relevant development in any such case (if made as a monetary contribution) is to be paid:
  - (a) at the earliest time by which payment would be required to be made for any of the different kinds of development, or
  - (b) as provided by subclause (3).
- (3) Separate monetary contributions may be made for each kind of relevant development as if, instead of a single development consent, a separate development consent had been granted for each kind of development. Accordingly, the monetary contributions are payable at the various times provided by this Determination in relation to the different kinds of development concerned.

**24 Reduction in contribution if made by 1 July 2011**

If a special infrastructure contribution is made as a monetary contribution that is paid before 1 July 2011, then the amount that would otherwise be payable under this Determination is reduced by one third.

**25 Special infrastructure contribution works-in-kind agreement**

- (1) For the purposes of this Determination, a special infrastructure contribution works-in-kind agreement is an agreement that meets the requirements set out in this clause.
- (2) A special infrastructure contribution works-in-kind agreement is an agreement between the Minister and the developer for the carrying out of works to provide an item of infrastructure specified in Appendix 1 to this Determination, or for the dedication or other provision of land for the purpose of any such infrastructure, in lieu (in part or in whole) of the payment of a monetary contribution for the development concerned.
- (3) A special infrastructure contribution works-in-kind agreement, in relation to the carrying out of works, is to:
  - (a) specify or acknowledge the monetary contribution that would otherwise be payable for the relevant development, and
  - (b) describe the works that are to be carried out by or on behalf of the developer to contribute to the provision of a specified item or items of infrastructure, and

- (c) specify the attributable cost of the item or items of infrastructure and provide for the adjustment of that cost due to inflation or deflation, and
  - (d) provide that the maximum amount of the liability to make the special infrastructure contribution that may be discharged by the carrying out of the works is not to exceed the attributable cost of the item or items of the infrastructure, and
  - (e) specify times by which specified stages of the works involved must be completed ("key project milestones"), and
  - (f) provide for the nature or form of security to be provided by the developer for a failure to meet obligations with respect to the special infrastructure contribution.
- (4) A special infrastructure contribution works-in-kind agreement, in relation to the dedication or other provision of land, is to:
- (a) specify or acknowledge the monetary contribution that would otherwise be payable for the relevant development, and
  - (b) specify the time by which the land is to be dedicated or otherwise provided, and
  - (c) specify the manner in which the value of that land is to be calculated, and
  - (d) provide for the nature or form of security to be provided by the developer for a failure to meet obligations with respect to the special infrastructure contribution.
- (5) In this clause, **attributable cost**, in relation to an item of infrastructure, means the amount specified in Appendix 1 to this Determination for that item.

**26 Part of special infrastructure contribution is for matters referred to in section 94ED (1) (d) of Act**

For the purpose of section 94EE (3A) of the Act:

- (a) no part of the special infrastructure contribution required to be made by this Determination is for the provision of infrastructure by a council, and
- (b) no part of the special infrastructure contribution required to be made by this Determination is for matters specified in section 94ED (1) (d) of the Act.

Note. The matters specified in section 94ED (1) (d) of the *Environmental Planning and Assessment Act 1979* are the carrying out of any research or investigation, preparing any report, study or instrument, and doing any other matter or thing in connection with the exercise of any statutory function under the Act, by the Minister, the corporation, the Director-General or the Department.

**27 Reasons for the level and nature of the special infrastructure contribution**

For the purpose of section 94EE (5) of the Act, the reasons for the level and nature of the special infrastructure contribution required to be made by this Determination are as follows:

- (a) to assist in providing adequate funding for regional public infrastructure (described in Appendix 1 to this Determination) in the Lower Hunter Special Contributions Area,

- (b) to ensure that future development bears a share of the cost of the provision of such infrastructure,
  - (c) to provide for the adjustment of the special infrastructure contribution to reflect changes in economic conditions between the time of imposing the contribution and the time at which the contribution is made,
  - (d) to provide flexibility as to the manner in which the special infrastructure contribution may be made,
  - (e) to ensure that the special infrastructure contribution reflects a reasonable apportionment between the demand for infrastructure generated by existing development and the demand for that infrastructure that is likely to be generated by new development for which the contribution must be paid.
-

**EXECUTED** as a deed

**Signed sealed and delivered** for and on behalf of the **Minister for Planning and Infrastructure** in the presence of:

J. Monaco ..... Signature of Witness

*As delegate of the Minister for Planning and Infrastructure*  
[Signature] ..... Signature of the Minister for Planning and Infrastructure

Jesse Monaco ..... Name of Witness in full  
23-33 Bridge Street  
Sydney NSW 2000  
ag

Andrew Jackson, Executive Director  
 ..... Minister for Planning and Infrastructure

**Signed sealed and delivered** by **Newport Property Holdings Pty Ltd** (ACN 110 928 624) in accordance with section 127 of the Corporations Act:

[Signature] ..... Signature of Director

GLENN MONCRIEFF ..... Name of Director

[Signature] ..... Signature of Director/Secretary

M MONCRIEFF ..... Name of Director/Secretary  
Mark Campbell Moncrieff

**Signed sealed and delivered** by **Nealart Pty Ltd** (ACN 081 856 680) in accordance with section 127 of the Corporations Act:

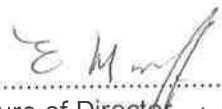
[Signature] ..... Signature of Director

GLENN MONCRIEFF ..... Name of Director

[Signature] ..... Signature of Director/Secretary


M MONCRIEFF ..... Name of Director/Secretary  
Mark Campbell Moncrieff

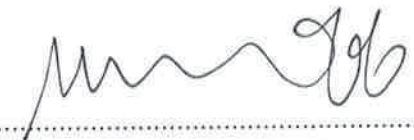
Signed sealed and delivered by Glenmon )  
 Pty Ltd (ACN 081 856 715) in accordance )  
 with section 127 of the Corporations Act: )

  
 Signature of Director  
 Elizabeth Moncrieff  
 Name of Director

  
 Signature of Director/Secretary  
 GLENN MONCRIEFF  
 Name of Director/Secretary

Signed sealed and delivered by )  
 Markcamp Pty Ltd (ACN 081 856 733) in )  
 accordance with section 127 of the )  
 Corporations Act: )

  
 Signature of Director  
 J. Moncrieff  
 Name of Director  
 Judith Helen Moncrieff

  
 Signature of Director/Secretary  
 M MONCRIEFF  
 Name of Director/Secretary  
 Mark Campbell Moncrieff