

Dated

1 July

2016

Deed of Novation

PM Land Pty Ltd (ACN 602 713 771)
(Incoming Landowner)

MMTR Pty Limited (ACN 066 244 871) (Receivers and Managers appointed)
Almaty Pty Limited (ACN 104 852 520) (Receivers and Managers appointed)
Bitonto Pty Limited (ACN 104 852 397) (as mortgagee in possession)
(Exiting Landowners)

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

Sovereign Hills Project Pty Limited (ACN 003 823 274)
Taisei Oncho Australia Pty Limited (ACN 010 715 625)
NT Australia Pty Limited (ACN 003 725 442)
The Gateway (Port Macquarie) Pty Limited (ACN 062 116 723)
MEL Properties Pty Limited (ACN 122 273 858)
Kevin Michael Gleeson and Carol Anne Gleeson
(Continuing Parties)



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This Deed of Novation is dated 1 July 2016

Parties:

Exiting Landowners

MMTR Pty Limited (ACN 066 244 871) (Receivers and Managers Appointed)

Almaty Pty Limited (ACN 104 852 520) (Receivers and Managers Appointed)

Bitonto Pty Ltd (ACN 104 852 397) as mortgagee in possession under registered mortgages AA781784, AA976482 and AA781736

Incoming Landowner

PM Land Pty Ltd (ACN 602 713 771)
of "Australia Square Tower" Suite 3802, Level 38, 264-278 George Street, Sydney NSW 2000

Minister

Minister for Planning (ABN 38 755 709 681)
of Level 15, 52 Martin Place, Sydney NSW 2000

Continuing Parties

Sovereign Hills Project Pty Limited (ACN 003 823 274)
of C/- Lewis Land Group of Companies, Australia Square Tower, Suite 3802, Level 38, 264 George Street, Sydney NSW 2000

Taisei Oncho Australia Pty Limited (ACN 010 715 625)
of Bourne House, Suite 3, 12 Short Street, Port Macquarie NSW 2444

NT Australia Pty Limited (ACN 003 725 442)
of Bourne House, Suite 3, 12 Short Street, Port Macquarie NSW 2444

The Gateway (Port Macquarie) Pty Limited (ACN 062 116 723) as trustee for the **Gateway Unit Trust** (ABN 35 020 853)
of Level 2, Tower 1, 495 Victoria Avenue, Chatswood NSW 2067

MEL Properties Pty Limited (ACN 122 273 858)
of C/- Lewis Land Group of Companies, Australia Square Tower, Suite 3802, Level 38, 264 George Street, Sydney NSW 2000

Carol Anne Gleeson and Kevin Michael Gleeson
of 'Mary River Station' 1 Kakadu Highway, Pine Creek NT 0837

Introduction:

- A** The Exiting Landowners (with the exception of Bitonto), the Continuing Parties and the Minister are parties to the Planning Agreement under which the Exiting Landowners and Continuing Parties agreed to provide the Development Contribution to the Minister.



- B** On the Effective Date, the Land was transferred from Bitonto, in its capacity as mortgagee in possession and exercising its power of sale under registered mortgages AA781784, AA976482 and AA781736, to the Incoming Landowner.
- C** Clause 10.1 of the Planning Agreement provides that the Planning Agreement is personal to each party and no party can assign its rights or benefits except with the prior consent of the other parties which can be either be withheld, given or given conditionally.
- D** The Minister requires, before it will give its consent to an assignment of the Planning Agreement from the Exiting Landowners to the Incoming Landowner, that the Exiting Landowners procure the execution of a novation deed by the Incoming Landowner, the Exiting Landowners and the Continuing Parties.
- E** The parties to this deed have agreed to novate the Planning Agreement on the terms set out in this deed so that the Incoming Landowner replaces the Exiting Landowners on and from the Effective Date.

Operative Provisions

1. Interpretation

1.1 Definitions

Bitonto means Bitonto Pty Ltd (ACN 104 852 397).

Effective Date means 6 March 2015.

Land means the land described in Schedule 1.

Minister means the Minister for Planning and includes the Secretary, or other officer of the Department of Planning and Environment.

Planning Agreement means the Planning Agreement entered into between the Continuing Parties and the Exiting Landowners dated 25 March 2014 and annexed at Annexure A.

1.2 Interpretation

In this deed, unless the context clearly indicates otherwise:

- (a) Unless defined in clause 1.1, a word or phrase has the same meaning as in the Planning Agreement.
- (b) A reference to this deed, or a similar term means either the agreement set out in this deed or the document itself, as the context requires.
- (c) A reference to the singular includes the plural number and vice versa.
- (d) A reference to a gender includes a reference to each gender.
- (e) A reference to a party means a person who is named as a party to this deed.
- (f) Person includes a firm, corporation, body corporate, unincorporated association and a governmental authority.

- (g) A reference to a party or a person includes that party's or person's executors, legal personal representatives, successors, liquidators, administrators, trustees in bankruptcy and similar officers and, where permitted under this deed, their substitutes and assigns.
- (h) Includes means includes but without limitation.
- (i) Where a word or expression has a defined meaning, its other grammatical forms have a corresponding meaning.
- (j) A reference to doing something includes an omission, statement or undertaking (whether or not in writing) and includes executing a document.
- (k) A reference to a clause is a reference to a clause of this deed.
- (l) A reference to time is to the time in the place where a thing is to be done, unless specified otherwise.
- (m) A heading is for reference only. It does not affect the meaning or interpretation of this deed.

2. Novation

2.1 Novation

With effect on and from the Effective Date:

- (a) the Incoming Landowner:
 - (i) obtains the rights and assumes the obligations of the Exiting Landowners under the Planning Agreement; and
 - (ii) must comply with the Planning Agreement on the basis that the Incoming Landowner has replaced the Exiting Landowners under the Planning Agreement in accordance with this deed; and
- (b) the Continuing Parties and the Minister must comply with the Planning Agreement on the basis that the Incoming Landowner has replaced the Exiting Landowners under the Planning Agreement in accordance with this deed.

2.2 Release

Subject to clause 2.3, on and from the Effective Date, the Exiting Landowners and the Minister release each other from:

- (a) the Planning Agreement, including any obligation under the Planning Agreement to be performed by the parties on or after the Effective Date; and
- (b) all actions, claims or proceedings that the parties may have under or in relation to the Planning Agreement, contingent or otherwise, arising on or after the Effective Date.

2.3 Accrued rights

The novation and release under clauses 2.1 and 2.2 does not prejudice any accrued rights, obligations, claims or liabilities which the Exiting Landowners, the Continuing Parties or the Minister may have against each other in relation to the performance of the Planning Agreement before the Effective Date.

2.4 Acknowledgment

Each party acknowledges that nothing in this deed constitutes:

- (a) a breach of any term of the Planning Agreement;
- (b) an event of default under the Planning Agreement; or
- (c) any other event or circumstance which of itself, or with giving notice, lapse of time, satisfaction of some other condition, or any combination of these, causes or enables the acceleration of any payment to be made under, or the termination or enforcement of, the Planning Agreement.

3. Indemnity

- (a) The Incoming Landowner indemnifies the Exiting Landowners in respect of any action, demand or claim commenced or made by the Continuing Parties or the Minister under or in connection with the Planning Agreement relating to the Incoming Landowner's performance of the Planning Agreement on and from the Effective Date.
- (b) The Exiting Landowners indemnify the Incoming Landowner in respect of any action, demand or claim commenced or made by the Continuing Parties or the Minister under or in connection with the Planning Agreement relating to the Exiting Landowners' performance of the Planning Agreement before the Effective Date.

4. Representations and Warranties

Each party represents and warrants to each other party that:

- (a) it has the power and capacity to enter into and perform its obligations under this deed;
- (b) it has taken all action which is necessary to authorise the entry into and performance of its obligations under this deed;
- (c) this deed constitutes legal, valid and binding obligations, enforceable in accordance with their terms; and
- (d) so far as each party is aware, the execution and performance by that party of this deed does not breach any applicable law or other agreement which that party is a party to.

5. Exiting Landowners' Warranties

The Exiting Landowners represent and warrant to the Incoming Landowner that:

- (a) the Planning Agreement is valid, subsisting and enforceable in accordance with its terms and the Exiting Landowners have not breached and are not in breach of any term of the Planning Agreement;
- (b) the Exiting Landowners' rights under the Planning Agreement do not infringe the rights of any third party;
- (c) the Exiting Landowners are not aware of any dispute or claim by the Continuing Parties regarding any alleged breach of the Planning Agreement by the Exiting Landowners; and

- (d) the Exiting Landowners are not aware of any breach of the Planning Agreement by the Continuing Parties.

6. Address for Service

On and from the Effective Date, all notices and communications which are to be given or made by the Continuing Parties to the Incoming Landowner under the Planning Agreement are to be given or made to the following:

PM Land Pty Ltd

Address: Suite 3802, Level 32, Australia Square, 264 George Street, Sydney NSW 2000

Fax: (02) 9251 7302

Contact Person: Sam Terranova

7. General

7.1 Legal costs

The Incoming Landowner is to pay on demand the Minister's reasonable legal costs and disbursements in connection with entering into this deed.

7.2 Stamp duty

The Incoming Landowner must pay all stamp duty on this deed.

7.3 Counterparts and commencement

If this deed is signed in counterparts then:

- (a) each counterpart is deemed an original; and
- (b) together they constitute one document.

7.4 No merger and survival

A party's right or obligation which is of a continuing nature or which is not fully satisfied and discharged on completion of any transaction contemplated by this deed:

- (a) does not merge on completion of that transaction;
- (b) continues in favour of the party to which it is owed; and
- (c) remains in full effect.

7.5 Further assurance

Each party must do everything necessary, or reasonably required, by the other party, to give effect to this deed and the transactions contemplated by this deed.

7.6 Governing law

This deed is governed by the law in force in New South Wales. The parties submit to the jurisdiction of the courts of New South Wales.

Schedule 1**Land**

Lot reference	Folio identifier	Exiting Landowner
Lot 95 in DP1197050 (formerly Lot 54 in DP1175944)	95/1197050	MMTR Pty Limited
Lot 96 in DP1197050	96/1197050	MMTR Pty Limited
Lot 62 in DP1095861	62/1095861	MMTR Pty Limited
Lot 3 in DP1112929	3/1112929	Almaty Pty Limited

Annexure A - Planning Agreement

A handwritten signature in blue ink, appearing to read "Shaw".

Form: 11R
Edition: 1111
Licence: 04-08-444
Licensee: Corrs Chambers Westgarth

REQUEST

New South Wales
Real Property Act 1900



AI777657E

PRIVACY NOTE: Section 31B of the Real Property Act 1900 (RP Act) authorises the Registrar General to collect the information required by this form for the establishment and maintenance of the Real Property Act Register. Section 96B RP Act requires that the Register is made available to any person for search upon payment of a fee, if any.

(A) **STAMP DUTY**

If applicable. Office of State Revenue use only

(B) **TORRENS TITLE**

SEE ANNEXURE "A"

(C) **REGISTERED DEALING**

Number

Torrens Title

(D) **LODGED BY**

Document
Collection
Box

898S

Name, Address or DX, Telephone, and Customer Account Number if any

Customer Account Number: 123648F
Corrs Chambers Westgarth
Level 9, 8 Chifley
8-12 Chifley Square
Sydney NSW 2000
(02) 9210 6500

Reference (optional): 9103767

CODE

R

(E) **APPLICANT**

SEE ANNEXURE "B"

(F) **NATURE OF REQUEST**

Registration of Planning Agreement pursuant to s93H *Environmental Planning and Assessment Act 1979*

(G) **TEXT OF REQUEST**

As set out in Annexure "C" to this Request

DATE:

dd mm yyyy

SEE PAGES 2 TO 5 FOR EXECUTIONS

THIS PAGE CONTAINS EXECUTIONS REFERRED TO IN THE REQUEST BY TAISEI ONCHO AUSTRALIA PTY LIMITED, NT AUSTRALIA PTY LIMITED, MEL PROPERTIES PTY LIMITED, ALMATY PTY LIMITED (RECEIVERS AND MANAGERS APPOINTED), KEVIN MICHAEL GLEESON AND CAROL ANNE GLEESON, MMTR PTY LIMITED (RECEIVERS AND MANAGERS APPOINTED) AND THE GATEWAY (PORT MACQUARIE) PTY LIMITED AND DATED


Execution by Taisei Oncho Australia Pty Limited ACN 010 715 625, the registered proprietor of the land in Folio Identifiers 40/1142520 and 42/1142520 and part of the land in Folio Identifier 2/1185319:

(H) I certify that I am an eligible witness and that the applicant's attorney signed this dealing in my presence.
[See note* below].

Signature of witness:

Name of witness:

Address of witness:


Paul ANTHONY GIORDANO
50/134 Bulwara Rd
PYRMONT NSW 2009

Certified correct for the purposes of the Real Property Act 1900 by the applicant's attorney who signed this dealing pursuant to the power of attorney specified.

Signature of attorney:

Attorney's name:

Office held:

Signing on behalf of:

Power of attorney


John Willoughby Cleland
Sovereign Hills Project Pty Ltd
ACN 003 823 274
Sole Director/Secretary
Taisei Oncho Australia Pty Limited
ACN 010 715 625
-Book: 4447
-No.: 791


Execution by NT Australia Pty Limited ACN 003 725 442, the registered proprietor of part of the land in Folio Identifier 2/1185319:

(H) I certify that I am an eligible witness and that the applicant's attorney signed this dealing in my presence.
[See note* below].

Signature of witness:

Name of witness:

Address of witness:


Paul ANTHONY GIORDANO
50/134 BULWARA RD
PYRMONT NSW 2009

Certified correct for the purposes of the Real Property Act 1900 by the applicant's attorney who signed this dealing pursuant to the power of attorney specified.

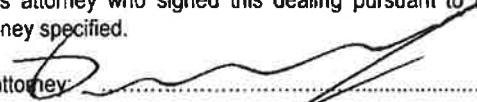
Signature of attorney:

Attorney's name:

Office held:

Signing on behalf of:

Power of attorney


John Willoughby Cleland
Sovereign Hills Project Pty Ltd
ACN 003 823 274
Sole Director/Secretary
NT Australia Pty Limited
ACN 003 725 442
-Book: 4447
-No.: 793

Execution by Mel Properties Pty Limited ACN 122 273 858, the registered proprietor of the land in Folio Identifiers 32/792453 and 102/1106752:

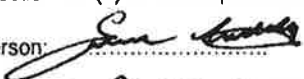
(H) Certified correct for the purposes of the Real Property Act 1900 and executed on behalf of the company named below by the authorised person(s) whose signature(s) appear(s) below pursuant to the authority specified.

Company: MEL PROPERTIES PTY LIMITED ACN 122 273 858
Authority: Section 127(1) of the Corporations Act 2001

Signature of authorised person:

Name of authorised person:

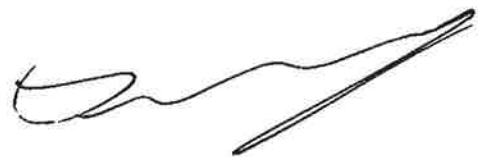
Office held:


James Sevan Lloyd
Director

Signature of authorised person:

Name of authorised person:

Office held:


JOHN WILLOUGHBY
CLELAND
DIRECTOR

Executed by Almaty Pty Limited ACN 104 852 520 (Receivers and Managers Appointed) the registered proprietor of the land in Folio Identifier 3/1112929: and Folio Identifier 6/1112929: *q*

- (H) Executed by Almaty Pty Limited ACN 104 852 520 (Receivers and Managers Appointed)
I certify that I am an eligible witness and that the applicant signed this dealing in my presence. [See note* below].

Signature of witness: *Andrew Yeomans*

Name of witness: *ANDREW YEOMANS*

Address of witness: *c/- FIB ADVISORY
LEVEL 46, 19 MARTIN PLACE*

Certified correct for the purposes of the Real Property Act 1900 by the Receiver and Manager appointed to Almaty Pty Limited ACN 104 852 520

Signature of Receiver and Manager:

Name of Receiver and Manager:

Brett Lord
Brett Lord

Execution by Kevin Michael Gleeson and Carol Anne Gleeson, the registered proprietors of the land in Folio Identifier 1/603648:

- (H) I certify that I am an eligible witness and that the applicant's attorney signed this dealing in my presence.
[See note* below].

Signature of witness: *Paul Anthony Guordano*

Name of witness: *PAUL ANTHONY GUORDANO*

Address of witness: *50/134 BULWARA RD
PYRMONT 2009*

Certified correct for the purposes of the Real Property Act 1900 by the applicant's attorney who signed this dealing pursuant to the power of attorney specified.

Signature of attorney:

Attorney's name: *John Willoughby Cleland*
Sovereign Hills Project Pty Ltd
ACN 003 823 274

Office held: *Sole Director/Secretary*
Signing on behalf of: *Kevin Michael Gleeson and Carol Anne Gleeson*

Power of attorney -Book: 4447
-No.: 794

Executed by M M T R Limited ACN 066 244 871 (Receivers and Managers Appointed) the registered proprietor of the land in Folio Identifiers 95/ 1197050 and 96/1197050 and 62/1095861:

- (H) Executed by M M T R Limited ACN 066 244 871 (Receivers and Managers Appointed)
I certify that I am an eligible witness and that the applicant signed this dealing in my presence. [See note* below].

Signature of witness: *Andrew Yeomans*

Name of witness: *ANDREW YEOMANS*

Address of witness: *c/- FIB ADVISORY
LEVEL 46, 19 MARTIN PLACE*

Certified correct for the purposes of the Real Property Act 1900 by the Receiver and Manager appointed to M M T R Limited ACN 066 244 871

Signature of Receiver and Manager:

Name of Receiver and Manager:

Brett Lord
Brett Lord


Execution by The Gateway (Port Macquarie) Pty Limited ACN 062 116 723, the registered proprietor of the land in Folio Identifier 51/1130161:

(H) I certify that I am an eligible witness and that the applicant's attorney signed this dealing in my presence.
 [See note* below].

Signature of witness:

Name of witness:

Address of witness:


 PAUL ANTHONY GIORDANO

50/134 BUWARA RD
 PYRMONT NSW 2009

Certified correct for the purposes of the Real Property Act 1900 by the applicant's attorney who signed this dealing pursuant to the power of attorney specified.

Signature of attorney:

Attorney's name:

Office held:

Signing on behalf of:

Power of attorney

John Willoughby Cleland
 Sovereign Hills Project Pty Ltd
 ACN 003 823 274

Sole Director/Secretary

The Gateway (Port Macquarie) Pty
 Limited ACN 062 116 723

-Book: 4447

-No.: 792


ING Bank (Australia) Limited ACN 000 893 292 as mortgagee under mortgages no. AG368105, AG368106, AG368107, AG368108, AC855031 and AG368109 consents to the lodgement for registration of the Request to register the Planning Agreement:

(H) I certify that I am an eligible witness and that the applicant's attorney signed this dealing in my presence.
 [See note* below].

Signature of witness:

Name of witness:

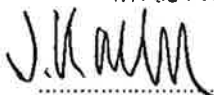
Address of witness:


 Joshua Kamalaneson
 Gadens Lawyers
 Level 12, 77 Castlereagh St
 SYDNEY NSW 2000
 DX 364 SYDNEY

Signature of witness:

Name of witness:

Address of witness:


 Joshua Kamalaneson
 Gadens Lawyers
 Level 12, 77 Castlereagh St
 SYDNEY NSW 2000
 DX 364 SYDNEY

Certified correct for the purposes of the Real Property Act 1900 by the applicant's attorney who signed this dealing pursuant to the power of attorney specified.

Signature of attorney:

Attorney's name:

Signing on behalf of:

Power of attorney

Anthony Dominic Walst

ING BANK (AUSTRALIA) LIMITED
 ACN 000 893 292

-Book: 4650

-No.: 382

Signature of attorney:

Attorney's name:

Signing on behalf of:

Power of attorney

Helen Ord

ING BANK (AUSTRALIA) LIMITED
 ACN 000 893 292

-Book: 4650

-No.: 382

Bitonto Pty Limited ACN 104 852 397 as mortgagee under mortgages no. AA781808, AA781813, AA781784, AA781745, AA976465, AA781736, AA976482 and AA781793 consents to the lodgement for registration of the Request to register the Planning Agreement:

(H) Certified correct for the purposes of the Real Property Act 1900 and executed on behalf of the company named below by the authorised person(s) whose signature(s) appear(s) below pursuant to the authority specified.

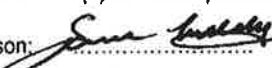
Company: Bitonto Pty Limited ACN 104 852 397

Authority: Section 127(1) of the Corporations Act 2001

Signature of authorised person:

Name of authorised person:


Office held:


 JAMES PAULINE LACEY
 Director

Signature of authorised person:

Name of authorised person:

Office held:


 JOHN WILLUGHBY
 CLELAND
 Director

Lewiac Pty Limited ACN 008 524 801 as mortgagee under mortgage no. AC861753 consents to the lodgement for registration of the Request to register the Planning Agreement:

- (H) Certified correct for the purposes of the Real Property Act 1900 and executed on behalf of the company named below by the authorised person(s) whose signature(s) appear(s) below pursuant to the authority specified.

Company: Lewiac Pty Limited ACN 008 524 801
Authority: Section 127(1) of the Corporations Act 2001

Signature of authorised person:

Name of authorised person: MICHELLE ANN GARRON
Office held: COMPANY SECRETARY

Signature of authorised person:

Name of authorised person:
Office held:

JOHN WILLOUGHBY
CLELAND
DIRECTOR

Lewis Land Group Sovereign Hills Almaty Lender Pty Limited ACN 001 302 638 as mortgagee under mortgage no. AB436673 consents to the lodgement for registration of the Request to register the Planning Agreement:

- (H) Certified correct for the purposes of the Real Property Act 1900 and executed on behalf of the company named below by the authorised person(s) whose signature(s) appear(s) below pursuant to the authority specified.

Company: Lewis Land Group Sovereign Hills Almaty Lender Pty Limited ACN 001 302 638
Authority: Section 127(1) of the Corporations Act 2001

Signature of authorised person:

Name of authorised person:
Office held:

John Willoughby Cleland
Sole Director/Secretary

Lewis Land Group Sovereign Hills MMTR Lender Pty Limited ACN 004 964 863 as mortgagee under mortgages no. AB480540 and 9794506 consents to the lodgement for registration of the Request to register the Planning Agreement:

- (H) Certified correct for the purposes of the Real Property Act 1900 and executed on behalf of the company named below by the authorised person(s) whose signature(s) appear(s) below pursuant to the authority specified.

Company: Lewis Land Group Sovereign Hills MMTR Lender Pty Limited ACN 004 964 863
Authority: Section 127(1) of the Corporations Act 2001

Signature of authorised person:

Name of authorised person:
Office held:

John Willoughby Cleland
Sole Director/Secretary

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

"A"

THIS IS ANNEXURE "A" REFERRED TO IN THE REQUEST BY TAISEI ONCHO AUSTRALIA PTY LIMITED, NT AUSTRALIA PTY LIMITED, MEL PROPERTIES PTY LIMITED, ALMATY PTY LIMITED (RECEIVERS AND MANAGERS APPOINTED), KEVIN MICHAEL GLEESON AND CAROL ANNE GLEESON, MMTR PTY LIMITED (RECEIVERS AND MANAGERS APPOINTED) AND THE GATEWAY (PORT MACQUARIE) PTY LIMITED COMPRISING THE TORRENS TITLE REFERENCES AND DATED

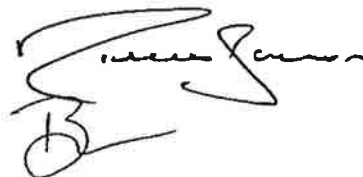
1 FOLIO IDENTIFIER 40/1142520;
2 FOLIO IDENTIFIER 2/1185319;
3 FOLIO IDENTIFIER 32/792453;
4 FOLIO IDENTIFIER 102/1106752;
5 FOLIO IDENTIFIER 42/1142520;
6 FOLIO IDENTIFIER 3/1112929;
7 FOLIO IDENTIFIER 1/603648;
8 FOLIO IDENTIFIER 95/ 1197050 ; R
9 FOLIO IDENTIFIER 96/ 1197050 ; R
10 FOLIO IDENTIFIER 62/1095861; and
11 FOLIO IDENTIFIER 51/1130161.
12 FOLIO IDENTIFIER 6/1112929 R



"B"

THIS IS ANNEXURE "B" REFERRED TO IN THE REQUEST BY TAISEI ONCHO AUSTRALIA PTY LIMITED, NT AUSTRALIA PTY LIMITED, MEL PROPERTIES PTY LIMITED, ALMATY PTY LIMITED (RECEIVERS AND MANAGERS APPOINTED), KEVIN MICHAEL GLEESON AND CAROL ANNE GLEESON, MMTR PTY LIMITED (RECEIVERS AND MANAGERS APPOINTED) AND THE GATEWAY (PORT MACQUARIE) PTY LIMITED COMPRISING THE APPLICANT AND DATED

- 1 Taisei Oncho Australia Pty Limited ACN 010 715 625;
- 2 N T Australia Pty Limited ACN 003 725 442;
- 3 Mel Properties Pty Limited ACN 122 273 858;
- 4 Almaty Pty Limited ACN 104 852 520 (Receivers and Managers Appointed);
- 5 Kevin Michael Gleeson and Carol Anne Gleeson;
- 6 M M T R Pty Limited ACN 066 244 871 (Receivers and Managers Appointed); and
- 7 The Gateway (Port Macquarie) Pty Limited ACN 062 116 723.



"C"

THIS IS ANNEXURE "C" REFERRED TO IN THE REQUEST BY TAISEI ONCHO AUSTRALIA PTY LIMITED, NT AUSTRALIA PTY LIMITED, MEL PROPERTIES PTY LIMITED, ALMATY PTY LIMITED (RECEIVERS AND MANAGERS APPOINTED), KEVIN MICHAEL GLEESON AND CAROL ANNE GLEESON, MMTR PTY LIMITED (RECEIVERS AND MANAGERS APPOINTED) AND THE GATEWAY (PORT MACQUARIE) PTY LIMITED COMPRISING THE TEXT OF REQUEST AND DATED



Minister for Planning and Infrastructure
ABN 38 755 709 681

and

Sovereign Hills Project Pty Limited (ACN 003 823 274)
(Developer)

Taisei Oncho Australia Pty Limited (ACN 010 715 625)
(Land Owner)

NT Australia Pty Limited (ACN 003 725 442)
(Land Owner)

MMTR Pty Limited ACN 066244871 as trustee for The Higgins Families Unit
Trust ABN 97 177 008 961 (Land Owner)

Almaty Pty Limited ACN 104 852 520 as trustee The Higgins Family Unit
Trust No.1 ABN 26 433 684 402 (Land Owner)

The Gateway (Port Macquarie) Pty Limited ACN 062 116 723 as trustee for
the Gateway Unit Trust ABN 35 020 853 130 (Land Owner)

MEL Properties Pty Limited ACN 122 273 858 (Land Owner)

Kevin Michael Gleeson and Carol Anne Gleeson (Land Owner)

Planning Agreement

Environmental Planning and Assessment Act 1979

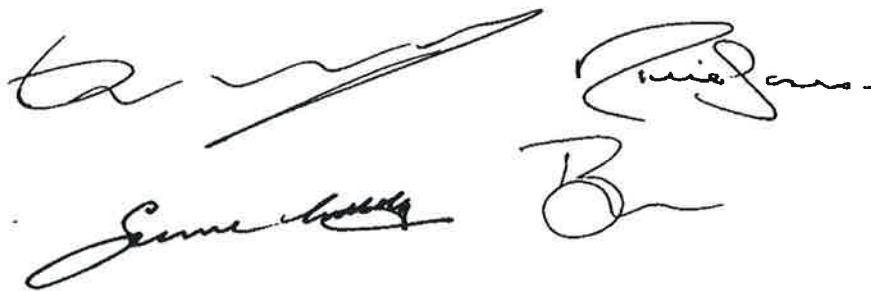


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THIS deed is dated 25 MARCH

2014

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**);

AND

Sovereign Hills Project Pty Limited (ACN 003 823 274) (Developer);

Taisei Oncho Australia Pty Limited (ACN 010 715 625) (Land Owner);

NT Australia Pty Limited (ACN 003 725 442) (Land Owner);

MMTR Pty Limited (ACN 066244871) as trustee for The Higgins Families Unit Trust ABN 97 177 008 961 (Land Owner);

Almaty Pty Limited (ACN 104 852 520) as trustee The Higgins Family Unit Trust No.1 ABN 26 433 684 402 (Land Owner);

The Gateway (Port Macquarie) Pty Limited ACN 062 116 723) as trustee for the Gateway Unit Trust ABN 35 020 853 130 (Land Owner);

MEL Properties Pty Limited (ACN 122 273 858) (Land Owner);

Kevin Michael Gleeson and Carol Anne Gleeson (Land Owner).

(together referred to as the Developer)

INTRODUCTION:

- A** The Land Owners own the Land. The Developer proposes to carry out the Development on the Land with consent of the Land Owners.
- B** The Developer intends to develop the Land for Residential Accommodation and for urban purposes and to subdivide the Land for those purposes. The Developer has lodged two initial Development Applications, DA 2013-331 and DA 2013-332, to the Consent Authority to subdivide the Land for 22 residential allotments.
- C** Clause 6.1 of *Port Macquarie-Hastings Local Environmental Plan 2011* 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 ensure the Developer makes a Development Contribution toward the provision of designated State public infrastructure referred to in clause 6.1.
- D** 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 Clause 6.1 of the *Port Macquarie-Hastings Local Environmental Plan 2011*.

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 CPI means the CPI number for the quarter ending 31 March 2013

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.

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 2013 and each anniversary of 1 July 2013 thereafter.

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

Developer means:

- a) Sovereign Hills Project Pty Limited (ACN 003 823 274);
- b) Taisei Oncho Australia Pty Limited (ACN 010 715 625);
- c) NT Australia Pty Limited (ACN 003 725 442);
- d) MTR Pty Limited (ACN 066244871) as trustee for The Higgins Families Unit Trust ABN 97 177 008 961;
- e) Almaty Pty Limited (ACN 104 852 520) as trustee The Higgins Family Unit Trust No.1 ABN 26 433 684 402;
- f) The Gateway (Port Macquarie) Pty Limited (ACN 062 116 723) as trustee for the Gateway Unit Trust ABN 35 020 853 130;
- g) MEL Properties Pty Limited (ACN 122 273 858); and
- h) Kevin Michael Gleeson and Carol Anne Gleeson.

Development means the development of the Land for Residential Accommodation.

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.

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 *Port Macquarie Hastings Local Environmental Plan 2011*.

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).

Residential Accommodation has the same meaning as residential accommodation under the Standard Instrument.

Residue Lot means a lot that is created for one or more of the following purposes:

- (a) to be dedicated or otherwise transferred to an Authority; or
- (b) for any public utility undertaking within the meaning of the Standard Instrument as at the date of this deed

but does not include a Super Lot.

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 6.1 of the *Port Macquarie-Hastings Local Environmental Plan 2011*.

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.

Super Lot means a lot that forms part of the Land which, following the registration of a Plan of Subdivision, is intended for further subdivision (including strata and community title subdivision) for Residential Accommodation, but does not include a Residue Lot.

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.

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 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 - MMTR Pty Limited (ACN 066244871) as trustee for The Higgins Families Unit Trust ABN 97 177 008 961

- (a) MMTR Pty Limited (ACN 066244871) enters into this deed in its capacity as the trustee for the Higgins Families Unit Trust ABN 97 177 008 961.
- (b) MTR Pty Limited (ACN 066244871) warrants that:

- (i) it is the sole trustee of the Higgins Families Unit Trust ABN 97 177 008 961 and no action has been taken to remove or replace it;
 - (ii) it is authorised under the trust deed of the Higgins Families Unit Trust ABN 97 177 008 961 to enter into this deed;
 - (iii) it is not in breach of the trust deed of the Higgins Families Unit Trust ABN 97 177 008 961; and
 - (iv) it has the power under the deed constituting the Higgins Families Unit Trust ABN 97 177 008 961 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 Higgins Families Unit Trust ABN 97 177 008 961 .
- (c) If the trustee of the Higgins Families Unit Trust ABN 97 177 008 961 is replaced in accordance with the trust deed of the Higgins Families Unit Trust ABN 97 177 008 961 , 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 a new deed on the title to the Land.

11.4 Trustee Developer - Almaty Pty Limited (ACN 104 852 520) as trustee The Higgins Family Unit Trust No.1 ABN 26 433 684 402

- (a) Almaty Pty Limited (ACN 104 852 520) enters into this deed in its capacity as the trustee for the Higgins Family Unit Trust No.1 ABN 26 433 684 402.
- (b) Almaty Pty Limited (ACN 104 852 520) warrants that:
 - (i) it is the sole trustee of the Higgins Family Unit Trust No.1 ABN 26 433 684 402 and no action has been taken to remove or replace it;
 - (ii) it is authorised under the trust deed of the Higgins Family Unit Trust No.1 ABN 26 433 684 402 to enter into this deed;
 - (iii) it is not in breach of the trust deed of the Higgins Family Unit Trust No.1 ABN 26 433 684 402; and

- (iv) it has the power under the deed constituting the Higgins Family Unit Trust No.1 ABN 26 433 684 402 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 Higgins Family Unit Trust No.1 ABN 26 433 684 402.
- (c) If the trustee of the Higgins Family Unit Trust No.1 ABN 26 433 684 402 is replaced in accordance with the trust deed of the Higgins Family Unit Trust No.1 ABN 26 433 684 402, 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 ant new deed on the title to the Land.

11.5 Trustee Developer - The Gateway (Port Macquarie) Pty Limited (ACN 062 116 723) as trustee for the Gateway Unit Trust ABN 35 020 853 130

- (a) The Gateway (Port Macquarie) Pty Limited (ACN 062 116 723) enters into this deed in its capacity as the trustee for the Gateway Unit Trust ABN 35 020 853 130.
- (b) The Gateway (Port Macquarie) Pty Limited (ACN 062 116 723) warrants that:
 - (i) it is the sole trustee of the Gateway Unit Trust ABN 35 020 853 130 and no action has been taken to remove or replace it;
 - (ii) it is authorised under the trust deed of the Gateway Unit Trust ABN 35 020 853 130 to enter into this deed;
 - (iii) it is not in breach of the trust deed of the Gateway Unit Trust ABN 35 020 853 130; and
 - (iv) it has the power under the deed constituting the Gateway Unit Trust ABN 35 020 853 130 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 Gateway Unit Trust ABN 35 020 853 130.

- (c) If the trustee of the Gateway Unit Trust ABN 35 020 853 130 is replaced in accordance with the trust deed of the Gateway Unit Trust ABN 35 020 853 130, 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 a 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 the Minister 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
Planning instrument and/or development application – (section 93F(2)) The Developer has: (a) sought a change to an environmental planning instrument. (b) made, or proposes to make, a Development Application. (c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.	(a) No (b) Yes (c) N/A
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))	N/A
The scope, timing and manner of delivery of contribution required by this deed – (section 93F(3)(c))	See Schedule 4
Applicability of sections 94 and 94A of the Act – (section 93F(3)(d))	The application of sections 94 and 94A of the Act is not excluded in respect of the Development.
Applicability of section 94EF of the Act – (section 93F(3)(d))	The application of section 94EF of the Act is excluded in respect of the Development.
Consideration of benefits under this deed if section 94 applies – (section 93F(5))	N/A
Mechanism for Dispute Resolution – (section 93F(3)(f))	See clause 8
Enforcement of this deed – (section 93F(3)(g))	See clause 6
No obligation to grant consent or exercise functions – (section 93F(10))	See clause 13.13

Table 2 – Other matters

REQUIREMENT UNDER THE ACT OR REGULATION	THIS DEED
Registration of the Planning Agreement – (section 93H of the Act)	Yes (see clause 7)
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a construction certificate is issued – (clause 25E(2)(g) of the Regulation)	No
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before an occupation certificate is issued – (clause 25E(2)(g) of the Regulation)	No
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a subdivision certificate is issued – (clause 25E(2)(g) of the Regulation)	Yes (see clause 3(b) of Schedule 4)

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 Sovereign Hills Project Pty Limited (ACN 003 823 274)

Contact: John Cleland

Address: c/ Lewis Land Group, Australia Square Tower, Suite 3802,
Level 38, 264-278 George Street, Sydney, New South
Wales, 2000

Facsimile No: 02 9251 7302

Landowner Taisei Oncho Australia Pty Limited (ACN 010 715 625)

Contact:

Address: c/ Lewis Land Group, Australia Square Tower, Suite 3802,
Level 38, 264-278 George Street, Sydney, New South
Wales, 2000

Facsimile No:

Landowner NT Australia Pty Ltd (ACN 003 725 442)

Contact:

Address: c/ Lewis Land Group, Australia Square Tower, Suite 3802,
Level 38, 264-278 George Street, Sydney, New South
Wales, 2000

Facsimile No:

Landowner MMTR Pty Limited ABN 11066244871 as trustee for The
Higgins Families Unit Trust ABN 97 177 008 961

Contact:

Address: c/ Lewis Land Group, Australia Square Tower, Suite 3802,
Level 38, 264-278 George Street, Sydney, New South
Wales, 2000

Facsimile No:

Landowner Almaty Pty Limited ABN 73 104 852 520 as trustee The
Higgins Family Unit Trust No.1 ABN 26 433 684 402

Contact:

Address: c/ Lewis Land Group, Australia Square Tower, Suite 3802,
Level 38, 264-278 George Street, Sydney, New South
Wales, 2000

Facsimile No:

Landowner The Gateway (Port Macquarie) Pty Limited ABN 28 062
116 723 as trustee for the Gateway Unit Trust ABN 35
020 853 130

Contact:

Address: c/ Lewis Land Group, Australia Square Tower, Suite 3802,
Level 38, 264-278 George Street, Sydney, New South
Wales, 2000

Facsimile No:

Landowner Kevin Michael Gleeson and Carol Anne Gleeson

Contact:

Address: c/ Lewis Land Group, Australia Square Tower, Suite 3802,
Level 38, 264-278 George Street, Sydney, New South
Wales, 2000

Landowner MEL Properties Pty Limited ABN 26 122 273 858

Contact:

Address: c/ Lewis Land Group, Australia Square Tower, Suite 3802,
Level 38, 264-278 George Street, Sydney, New South
Wales, 2000

Facsimile No:

SCHEDULE 3

Land (clause 1.1)

1 Lots proposed for development

Lot	Deposited Plan	Folio Identifier
40	1142520	40/1142520
41	1142520	41/1142520
32	792453	32/792453
102	1106752	102/1106752
42	1142520	42/1142520
3	1112929	3/1112929
1	603648	1/603648
43	1158318	43/1158318
62	1095861	62/1095861
54	1175944	54/1175944
51	1130161	51/1130161

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	\$1,365 for each lot created for the purpose of Residential Accommodation, excluding any Residue Lot and Super Lot, on the Land to which each Subdivision Certificate application relates.	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) On each CPI Adjustment Date, the value provided in column 2 of the table to clause 1(a) of this Schedule will be adjusted by an amount equal to the Current CPI divided by the Base CPI.

3 Payment of Contribution Amounts

- (a) The Developer must pay to the Minister or the Minister's nominee each Contribution Amount prior to the issue of the relevant Subdivision Certificate.
- (b) The parties agree that the requirement to make a payment under this clause is a restriction on the issue of the relevant Subdivision Certificate within the meaning of section 109J(1)(c1) of the Act.

SCHEDULE 5

Security terms (clause 6)

1 Developer to provide Bank Guarantee

- (a) In order to secure the payment of each Contribution Amount, the Developer has agreed to provide security in the form of Bank Guarantee.
- (b) The 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 Bank Guarantee

- (a) Upon execution of this deed, the Developer will provide security to the Minister in the form of the Bank Guarantee for a face value equivalent to \$20,000.
- (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 Bank Guarantee.

3 Claims under Bank Guarantees

- (a) The Minister may call upon the Bank Guarantee where the Developer has failed to pay a Contribution Amount on or before the date for payment under this deed 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 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 Bank Guarantee in accordance with clause 3(b) of this Schedule 5,

then the Developer must provide to the Minister a replacement 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 Bank Guarantee for a face value equivalent to \$20,000.

4 Release of Bank Guarantee

If:

- (a) the Developer has satisfied all of its obligations under this deed secured by the Bank Guarantee; and
- (b) the whole of the monies secured by the Bank Guarantee have not been expended and the monies accounted for in accordance with clause 3 of this Schedule 5,

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

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

[Signature]
Signature of the Minister for Planning and Infrastructure

Jesse Monaco

Name of Witness in full

As delegate
Minister for Planning and Infrastructure

Signed sealed and delivered by)
Sovereign Hills Project Pty Limited (ACN)
003 823 274) in accordance with section)
127 of the Corporations Act:

[Signature]

Signature of Witness

[Signature]

Signature of *JENN CLARKE*

VANESSA WALSH
Name of Witness in full

JOHN CLARKE
^{sole}
Name of Director/Secretary

Signed sealed and delivered by Taisei)
Oncho Australia Pty Limited (ACN 010)
715 625) in accordance with section 127 of)
the Corporations Act:

by its attorney
Sovereign Hills
Project Pty Ltd
by its sole director
and secretary

[Signature]
Signature of Witness in full

[Signature]
Signature of JOHN CLARKE

VANESSA WALSH
Name of Witness in full

JOHN CLARKE
^{sole}
Name of Director/Secretary

Signed sealed and delivered by NT)
Australia Pty Limited (ACN 003 725 442))
in accordance with section 127 of the)
Corporations Act:

by its attorney
Sovereign Hills Project
Pty Ltd by its sole
director and secretary

[Signature]
Signature of Witness

[Signature]
Signature of JOHN CLARKE

VANESSA WALSH
Name of Witness in full

JOHN CLARKE
^{sole}
Name of Director/Secretary

32

Signed sealed and delivered by MMTR)
Pty Limited (ACN 066244871) in)
accordance with section 127 of the)
Corporations Act:

R. Heggus
~~C. Difrancesco~~
Signature of Witness DIRECTOR *PH*

T. Higgins
Signature of ~~TERENCE~~ HIGGINS

1 RHEANDA ANN HIGGINS
~~CARLA DIFFRANCESCO~~
Name of Witness in full
DIRECTOR *PH*

TERENCE HIGGINS
Name of Director/Secretary

Signed sealed and delivered by Signed)
sealed and delivered by Almaty Pty)
Limited (ACN 104 852 520) in accordance)
with section 127 of the Corporations Act:

R. Heggus
~~C. Difrancesco~~
Signature of Witness DIRECTOR *PH*

T. Higgins
Signature of ~~TERENCE~~ HIGGINS

33

Rhonda Ann Higgins
~~CARLA DIFRANCESCO~~

Name of Witness in full

DIRECTOR

TERENCE HIGGINS

Name of Director/Secretary

Signed sealed and delivered by Signed)
sealed and delivered by The Gateway)
(Port Macquarie) Pty Limited (ACN 062)
116 723) in accordance with section 127 of
the Corporations Act:

*By its attorney
Sovereign Hills Pastoral
Pty Ltd by its sole
director and secretary*

[Signature]

Signature of Witness

[Signature]

Signature of *JOHN GARRANA*

VANESSA WALSH

Name of Witness in full

JOHN GARRANA

Name of Director/Secretary

Signed sealed and delivered by MEL)
Properties Pty Limited (ACN 122 273 858))
in accordance with section 127 of the)
Corporations Act:

[Signature]

Signature of Witness

[Signature]

Signature of *JOHN GARRANA*

VANESSA WALSH

Name of Witness in full

JOHN GARRANA


Name of Director/Secretary

Signed and delivered by Kevin Michael
Gleeson and Carol Anne Gleeson:

By his attorney Sovereign
Hills Project Pty Ltd by
its sole director and secretary



Signature of Witness


JOHN GLEESON
JOHN GLEESON AND
SECRETARY

Signature of Kevin Michael Gleeson

VANESSA WALSH
Name of Witness in full

By her attorney Sovereign
Hills Project Pty Ltd by
its sole director and secretary



Signature of Witness

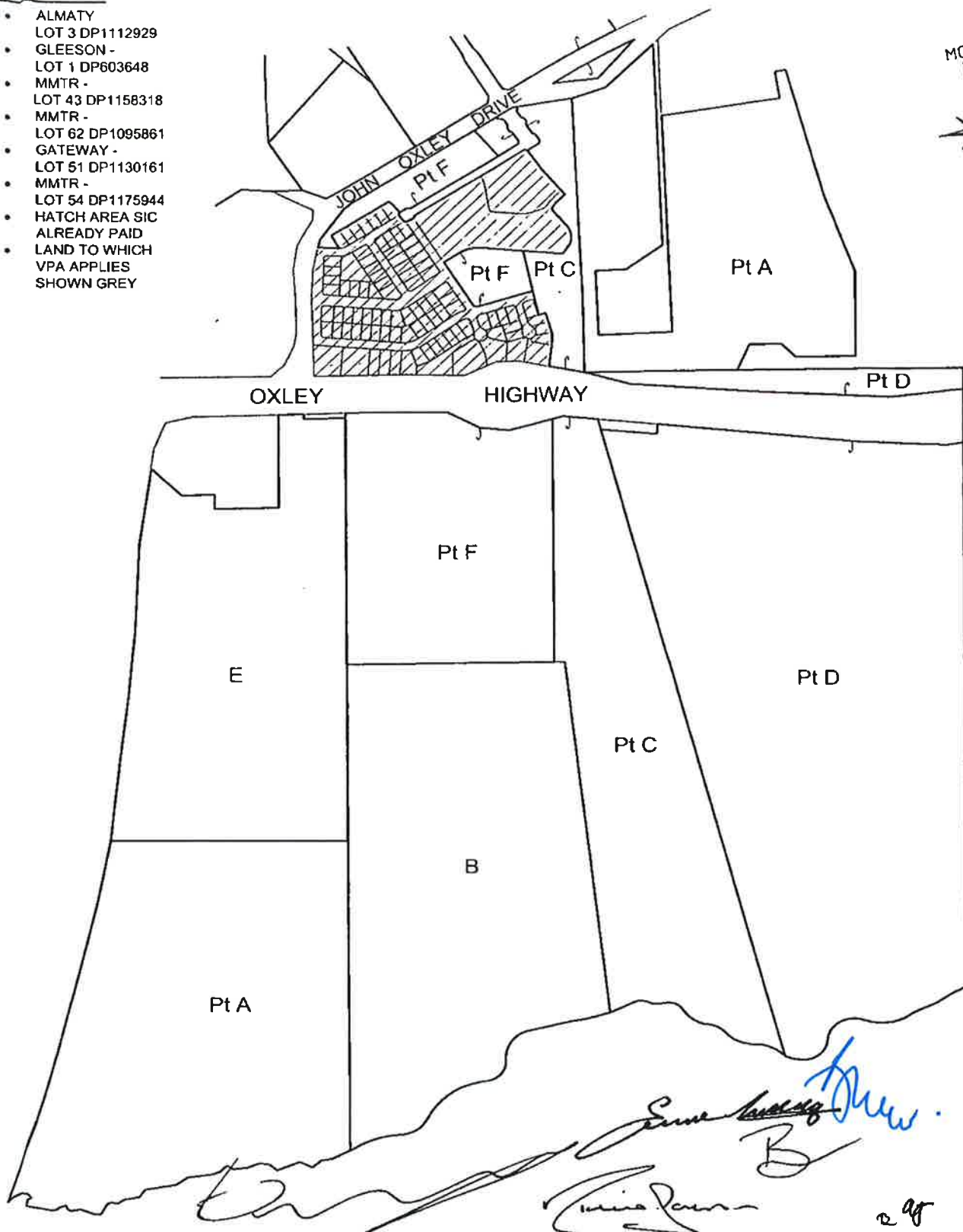

JOHN GLEESON
JOHN GLEESON AND
SECRETARY

Signature of Carol Anne Gleeson

VANESSA WALSH
Name of Witness in full

LEGEND

- A • ALMATY
LOT 3 DP1112929
- B • GLEESON -
LOT 1 DP603648
- C • MMTR -
LOT 43 DP1158318
- D • MMTR -
LOT 62 DP1095861
- E • GATEWAY -
LOT 51 DP1130161
- F • MMTR -
LOT 54 DP1175944
- ☐ • HATCH AREA SIC
ALREADY PAID
- ☐ • LAND TO WHICH
VPA APPLIES
SHOWN GREY



List City Belling by a scheme approved under Professional Standards Legislation



HOPKINS CONSULTANTS

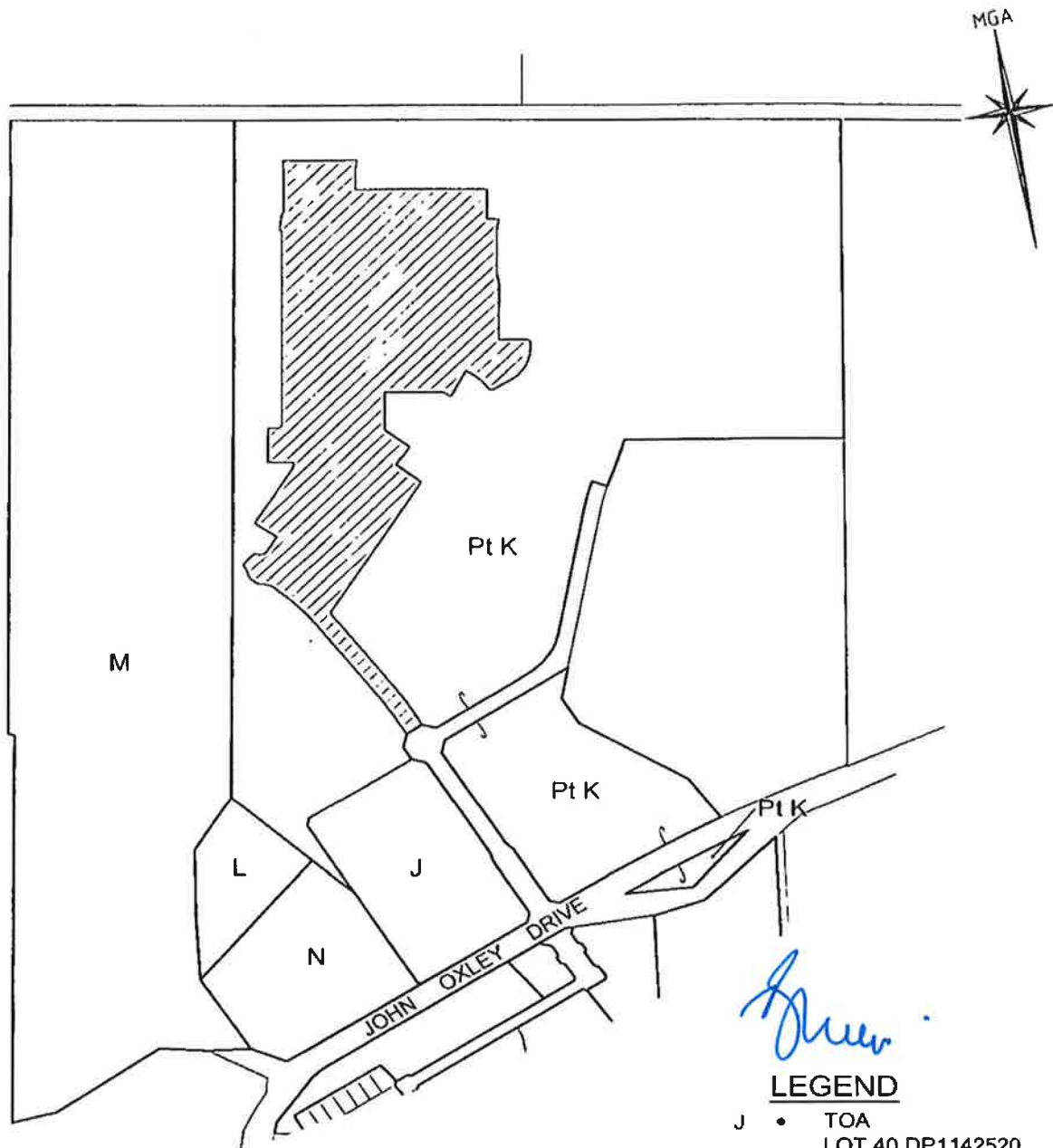
Level 1, 100 William Street, PO Box 1000 Port Macquarie NSW 2444
 Telephone: 02 6551 6700 Fax: 02 6551 6701 Email: info@hopkins.com.au

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DP/MASTERLOT INFORMATION SOVEREIGN HILLS PROJECT PORT MACQUARIE

Page 43 of 44

DRAWING NUMBER/REFERENCE		REV
5802-0288-01		
DESIGNER	ORIGIN OF LEVELS	DATE
SURVEYOR	HEIGHT	29/08/2013
STATION	DATUM	SHEET SIZE
CH		A4
DB	SCALE	SHEET NO.
	1:1000	01
		TOTAL
		02



[Handwritten signatures]

[Handwritten signature]

LEGEND

- J • TOA
LOT 40 DP1142520
- K • TOA & NT AUST
LOT 41 DP 1142520
- L • MEL
LOT 32 DP792453
- M • MEL
LOT 102 DP1106752
- N • TOA
LOT 42 DP1142520
- ☐ • HATCH AREA SIC
ALREADY PAID
- ☐ • LAND TO WHICH VPA
APPLIES SHOWN GREY

[Handwritten initials]

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HOPKINS CONSULTANTS

Level 17 180 Sydney Road - PO Box 1188 Port Macquarie NSW 2444 - Australia
 Telephone: 02 9923 1233 Fax: 02 9923 1234 Email: info@hopkins.com.au

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Page 44 of 44

DRAWING NUMBER/REFERENCE		REV.
5802-0288-02		
DESIGNER	ORIGIN OF LEVELS	DATE
SURVEYOR	HEIGHT	SHEET SIZE
DRAFTING	DATUM	SHEET NO
APPROVED	SCALE	TOTAL
DB	1:800	02


Execution page

Executed as a deed.

Signed sealed and delivered for and on behalf
of the **MINISTER FOR PLANNING** (ABN 38 755
709 681) in the presence of:



Signature of Witness



Signature of the Minister for Planning or
delegate



Name of Witness in full



Name of the Minister for Planning or delegate



Address of Witness

Executed by PM LAND PTY LTD (ACN 602 713
771) in accordance with section 127 of the
Corporations Act:



Signature of Director

Michelle Ann Barron

Name Director



Signature of Director/~~Secretary~~

Christopher Dale Calvert

Name of Director/~~Secretary~~

Executed by MMTR Pty Limited (ACN 066 244 871) by one of its joint and several receivers and managers in the presence of:


.....
Signature of Witness

Gina Smith
.....
Name of Witness


.....
Signature of Receiver and Manager

Brett Lord
.....
Name of Receiver and Manager

Executed by ALMATY PTY LIMITED (ACN 104 852 520) by one of its joint and several receivers and managers in the presence of:


.....
Signature of Witness

Gina Smith
.....
Name of Witness


.....
Signature of Receiver and Manager

Brett Lord
.....
Name of Receiver and Manager

Executed by **BITONTO PTY LTD** (ACN 104 852 397) as mortgagee in possession under registered mortgages AA781784, AA976482 and AA781736



Company Secretary/Director

Michelle Ann Barron

Name of Company Secretary/Director (print)



Director

Christopher Dale Calvert

Name of Director (print)


Executed by **SOVEREIGN HILLS PROJECT PTY LIMITED** (ACN 003 823 274) in accordance with section 127 of the Corporations Act:



Company Secretary/Director

Michelle Ann Barron

Name of Company Secretary/Director (print)



Director

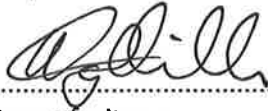
Christopher Dale Calvert

Name of Director (print)

Signed sealed and delivered by

SOVEREIGN HILLS PROJECT PTY LTD

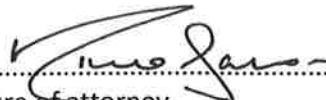
as attorney for **TAISEI ONCHO AUSTRALIA PTY LIMITED** (ACN 010 715 625) under registered power of attorney Book 4447 No. 791 dated 14/01/05 in the presence of:



Signature of witness

MATT HILLS

Name of witness (block letters)



Signature of attorney

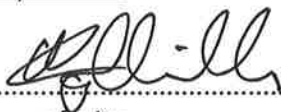
Michelle Ann Barron

By executing this deed the attorney states that the attorney has received no notice of revocation of the power of attorney

Signed sealed and delivered by

SOVEREIGN HILLS PROJECT PTY LTD

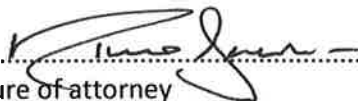
as attorney for **NT AUSTRALIA PTY LIMITED** (ACN 003 725 442) under registered power of attorney Book 4447 No. 793 dated 14/01/05 in the presence of:



Signature of witness

MATT HILLS

Name of witness (block letters)



Signature of attorney

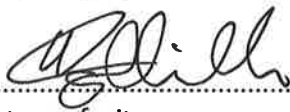
Michelle Ann Barron

By executing this deed the attorney states that the attorney has received no notice of revocation of the power of attorney

Signed sealed and delivered by

SOVEREIGN HILLS PROJECT PTY LTD

as attorney for **THE GATEWAY (PORT MACQUARIE) PTY LIMITED** (ACN 062 116 723) under registered power of attorney Book 4447 No. 792 dated 14/01/05 in the presence of:



Signature of witness

MATT HILLS

Name of witness (block letters)



Signature of attorney

Michelle Ann Barron

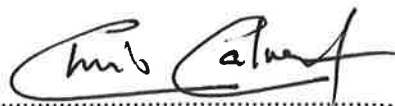
By executing this deed the attorney states that the attorney has received no notice of revocation of the power of attorney

Executed by MEL PROPERTIES PTY LIMITED
(ACN 122 273 858) in accordance with
section 127 of the Corporations Act:


.....
Company Secretary/Director

Michelle Ann Barron

.....
Name of Company Secretary/Director (print)


.....

Director

Christopher Dale Calvert

.....
Name of Director (print)

Signed sealed and delivered by

Sovereign Hills Project Pty Ltd
as attorney for **KEVIN MICHAEL GLEESON** under
registered power of attorney Book 4447 No.
794 dated 14/01/05 in the presence
of:


.....
Signature of witness

MATT HILLS
.....
Name of witness (block letters)


.....
Signature of attorney Michelle Ann Barron

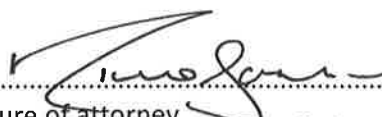
By executing this deed the attorney states
that the attorney has received no notice of
revocation of the power of attorney

Signed sealed and delivered by

Sovereign Hills Project Pty Ltd
as attorney for **CAROL ANNE GLEESON** under
registered power of attorney Book 4447 No.
794 dated 14/01/05 in the presence
of:


.....
Signature of witness

MATT HILLS
.....
Name of witness (block letters)


.....
Signature of attorney Michelle Ann Barron

By executing this deed the attorney states
that the attorney has received no notice of
revocation of the power of attorney