

Minister for Planning and Infrastructure
ABN 38 755 709 681

and

Maitland Nominee Holdings Pty Limited (ACN 122 853 114)

Planning Agreement

Environmental Planning and Assessment Act 1979

Four handwritten signatures are located at the bottom right of the page. The top two are in blue ink: a stylized 'M' and a signature that appears to be 'Maitland'. The bottom two are in black ink: a signature that appears to be 'H' and a signature that appears to be 'G'.

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THIS deed is dated

7 May 2014

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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**)

MAITLAND NOMINEE HOLDINGS PTY LIMITED (ACN 122 853 114) of Level 15, 255 Pitt Street, Sydney NSW 2000 (**Developer**)

INTRODUCTION:

- A** The Developer owns the Land.
- B** The Developer proposes to carry out the Development on the Land.
- C** The Developer proposes to make a number of Development Applications to the Consent Authority in respect of the Land.
- D** Clause 6.1 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 6.1 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.
- F** This Deed provides for the manner in which, and terms upon which, the Developer is to provide the Development Contribution.



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 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 Maitland 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 2013 and each anniversary of 1 July thereafter.

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

Current Stage means the proposed 33 lot residential subdivision in respect of which the Developer has lodged with the Consent Authority a Development Application which has been allocated DA number 13-1601.

Deed of Novation means the document attached at Annexure D.

Development means the residential subdivision of the Land into approximately 383 lots, comprising the Current Stage and the Later Stages.

Development Application has the same meaning as in the Act.

Development Consent has the same meaning as in the Act.

Development Contribution means the sum of the Contribution Amounts to be provided by the Developer in accordance with Schedule 4.

Director-General means the Director-General 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.

Later Stages means the subdivision of the Land shown cross hatched land identified in Annexures A, B and C, which will comprise approximately 350 lots for which the Developer intends apply progressively for Development Consents over the next 3 years, as modified from time to time, but does not include the Current Stage.

LEP means Maitland Local Environmental Plan 2011.

Net Developable Area means the area of land, in hectares, to which the development consent for the development relates. The net developable area does not 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. 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) non-government and 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 section 94EF of the Act;
- (n) any area of land that a development consent authorises, or requires, to be used as a road, or reserved or dedicated as a public road;
- (o) 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,
- (p) 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; or
- (q) any Residue Lot or Super Lot.

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 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 LEP. **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), 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 and is governed by Subdivision 2 of Division 6 of Part 4 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 which applies to the Land; 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.
- (c) 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 more 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 Developer may elect that the Contribution Amount will be deemed to be the amount payable for the purposes of this deed; and
 - (ii) the Developer will not be required to pay the Minister or any other person any part of the difference between the Contribution Amount and the Special Infrastructure Contribution.

4.3 Acknowledgements

The parties acknowledge that:

- (a) the Minister has no obligation to use or expend the Development Contribution for a particular purpose and has no obligation to repay the Development Contribution;
- (b) in circumstances where the Development Contribution is transferred to any Authority, the Minister has not made any representation or warranty that the Development Contribution will or must be used for a particular purpose by that Authority; and
- (c) a Satisfactory Arrangements Certificate, for the purposes of clause 6.1 of the LEP, may be issued for the Land, notwithstanding that the design and construction of additional lanes to the Thornton Railway Bridge have not commenced or been completed.

5 CONCURRENT APPLICATIONS

The parties acknowledge that nothing in this deed prevents the Developer from lodging one or more Development Applications for the Later Stages concurrently with the Development Application for the Current Stage, or with one or more other Development Applications for the Later Stages.

6 INTEREST

6.1 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.

7 ENFORCEMENT

7.1 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.

8 REGISTRATION

8.1 Registration of deed

Within 20 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 of 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.

8.2 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 20 Business Days of registration of this deed.

8.3 Release and discharge of deed

- (a) 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:
 - (i) upon the Developer paying the relevant Contribution Amount under this deed in respect of a Subdivision Certificate Application for the subdivision of that part of the Land; and if that occurs
 - (ii) a request to Land and Property Information to release this deed in respect of that part of the Land can be made concurrently with the lodgement for registration of the plan of subdivision for that part of the Land.

8.4 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 8.1 of this deed; and

legally and beneficially entitled to obtain all consents and approvals and to compel any person referred to in or contemplated by clause 8.1 to assist, cooperate and to otherwise do all things necessary for the Developer to comply with its obligations under clause 8.

9 Dispute Resolution

9.1 Not commence

A party must not commence any court proceedings relating to a dispute unless it complies with this clause 9.

9.2 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.

9.3 Attempt to resolve

On receipt of notice under clause 9.2, 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.

9.4 Mediation

If the parties do not agree within 21 Business Days of receipt of notice under clause 9.2 (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 and each party must pay its own costs of the mediation.

9.5 Court proceedings

If the dispute is not resolved within 60 Business Days after notice is given under clause 9.2 then any party which has complied with the provisions of this clause may in writing terminate any dispute resolution process undertaken under this clause and may then commence court proceedings in relation to the dispute.

9.6 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 9 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 9 for any purpose other than in an attempt to settle the dispute.

9.7 No prejudice

This clause 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.

9.8 Performance of obligations

Despite the reference of a dispute to mediation under this clause, the parties must continue to perform their obligations under this deed that are not the subject of a dispute between the parties.

10 GST

10.1 Definitions

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

10.2 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.

10.3 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.

10.4 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 10.

10.5 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.

10.6 Non monetary consideration

Clause 10.5 applies to non-monetary consideration.

10.7 Assumptions

The Developer acknowledges and agrees that in calculating any amounts payable under clause 10.5 the Developer will assume the Minister is not entitled to any input tax credit.

10.8 No merger

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

11 ASSIGNMENT AND NOVATION

11.1 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 party, which the other party must not withhold if it is reasonably satisfied that the related body corporate has sufficient assets, resources and expertise to perform all of the assigning party's obligations under this deed; or
- (b) to any other person, with the prior consent of the other party which must not be withheld if it is reasonably satisfied that the other party has sufficient assets, resources and expertise to perform all of the assigning party's obligations under the deed.

11.2 Sale of land

- (a) While this deed is registered in respect of the Land, the Developer may sell the Land or any portion of the Land provided that:
 - (i) the Minister's consent is obtained in accordance with clause 11.1 of this deed:
 - (ii) the Developer gives the Minister a Deed of Novation, in the form of annexure D, signed by the Developer and the proposed purchaser; and
 - (iii) If the Bank Guarantee has not already been released, the purchaser provides to the Minister a Replacement Bank Guarantee in accordance with Schedule 5.
- (b) Where clause 11.2 has been complied with, the Minister will, as soon as reasonably practicable, sign the Deed of Novation referred to in clause 11.2(a)(ii).

12 CAPACITY

12.1 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.

12.2 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.

12.3 Trustee Developer

- (a) The Developer enters into this deed in its capacity as the trustee for the Maitland Unit Trust.
- (b) The Developer warrants that:
 - (i) it is the sole trustee of the Maitland Unit Trust and no action has been taken to remove or replace it;
 - (ii) it is authorised under the trust deed of the Maitland Unit Trust to enter into this deed;
 - (iii) it is not in breach of the trust deed of the Maitland Unit Trust; and
 - (iv) it has the power under the deed constituting the Maitland 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 Maitland Unit Trust.
- (c) If the trustee of the Maitland Unit Trust is replaced in accordance with the trust deed of the Maitland 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 ant new deed on the title to the Land.

13 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 next 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.

14 GENERAL PROVISIONS

14.1 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.

14.2 Variation

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

14.3 Waiver

A right created by this deed cannot be waived except in writing signed by the party entitled to that right. Failure or 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.

14.4 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 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.

14.5 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.

14.6 Severance

If any clause or part of any clause is in any way unenforceable, invalid or illegal, it is to be read down so as to be enforceable, valid and legal. If this is not possible, the clause (or where possible, the offending part) is to be severed from this 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.

14.7 Preservation of existing rights

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

14.8 No merger

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

14.9 Counterparts

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

14.10 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.

14.11 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.

14.12 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 Minister in exercising any of the Minister's statutory functions, powers, authorities or duties.

14.13 Explanatory note

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

14.14 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 and notification 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 14.14(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.

14.15 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.
- (c) A party may change its address for service or facsimile number by giving Notice of that change to each other party.

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(1)(b)) 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))	No
Mechanism for Dispute Resolution – (section 93F(3)(f))	See clause 10
Enforcement of this deed – (section 93F(3)(g))	See clause 7
No obligation to grant consent or exercise functions – (section 93F(10))	See clause 14.12

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 8)
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: Planning and Infrastructure
23-33 Bridge Street
SYDNEY NSW 2000

Facsimile No: (02) 9228 6191

Developer

Contact: Gary McMurray

Address: Suite 6, 57 Avalon Parade,
Avalon Beach NSW 2107

Facsimile No: (02) 9973 1405

SCHEDULE 3

Land (clause 1.1)

The Land

1. Part Lot 400 in DP 1192881 as shown cross-hatched in the plan marked Annexure A attached to this deed;
2. Part Lot 812 in DP 1171131 as shown cross-hatched in the plan marked Annexure B attached to this deed; and
3. Part Lot 7270 in DP 1187087, and Lot 7271 in DP 1187087 as shown cross-hatched in the plan marked Annexure C attached to this deed;

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.	\$2.27. per square metre of Net Developable Area 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) Each Contribution Amount will be an amount equal to the sum represented by "X" in the following formula:

$$X = N \times \$2.27$$

"N" means the number of square metres comprised in the Net Developable Area of the Land to which a Subdivision Certificate application 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

- (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 7)****1 Developer to provide a Bank Guarantee**

- (a) In order to secure the payment of the Contribution Amounts, the Developer has agreed to provide security in the form of a Bank Guarantee.
- (b) The Bank Guarantee must:
 - (i) name the "Minister for Planning and Infrastructure and 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.
- (c) The parties agree and acknowledge that \$20,000 is considered sufficient security in the event that multiple Development Applications may be lodged concurrently for stages of subdivision comprising the Development.

3 Claims under the Bank Guarantee

- 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 may 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 the Bank Guarantee the Minister must give the Developer not less than 20 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 within 10 Business Days 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; or
- (c) a Replacement Bank Guarantee has been provided to the Minister as set out in clause 5 of this Schedule 5 and the Minister's consent to an assignment and/or a sale of land has been granted under clauses 11.1 and/or 11.2, whichever is applicable

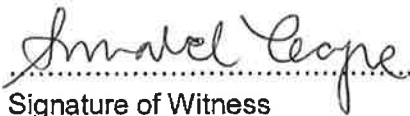
then the Minister will promptly return the Bank Guarantee (less any costs, charges, duties and taxes payable), or the remainder of the monies secured by the Bank Guarantee (as the case may be), to the Developer.

5 **Substitution of Bank Guarantee**

- (a) In the event that the Developer sells the Land or any part of it prior to carrying out the Development on the Land or the relevant part of the Land, the Developer shall procure the purchaser to provide a Bank Guarantee to the Minister which meets the requirements of this Schedule 5 (the **Replacement Bank Guarantee**).

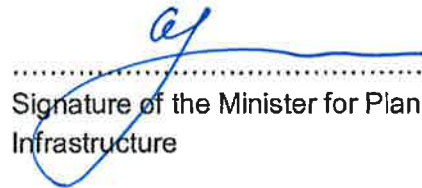
EXECUTED as a deed

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



Signature of Witness

ANNABEL MARGARET
Name of Witness in full TEAGUE



Signature of the Minister for Planning and Infrastructure

SIGNED by me ANDREW JAMES JACKSON as delegate of the Minister administering the Environmental Planning and Assessment Act, 1979, I hereby certify that I have no notice of the revocation of such delegation.

Minister for Planning and Infrastructure

Signed sealed and delivered by Maitland)
Nominee Holdings Pty Limited (ACN 122)
853 114) in accordance with section 127 of)
the Corporations Act:



Signature of Director

CHRISTOPHER PAK
Name of Director



Signature of Director/Secretary

CHRISTOPHER PAK
Name of Director/Secretary

Annexures A, B, C: drawings showing the Later Stages

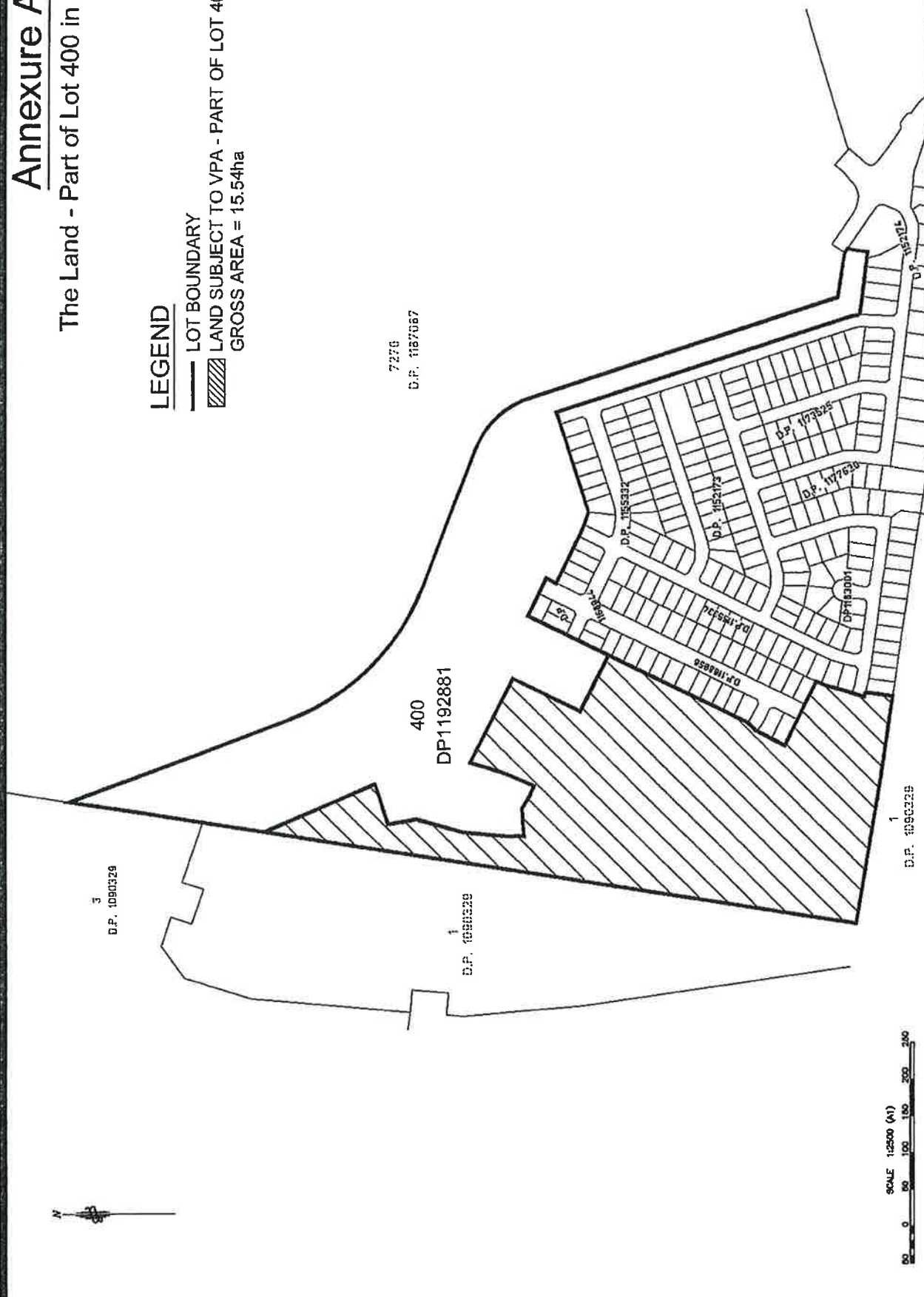
Annexure D: Deed of Novation

cy ll

The Land - Part of Lot 400 in DP1192881

LEGEND

- LOT BOUNDARY
 ▨ LAND SUBJECT TO VPA - PART OF LOT 400 IN DP1192881
 GROSS AREA = 15.54ha



SCALE 1:2500 (A1)

Land Development SOLUTIONS

Surveying • Planning • Engineering


PO Box 263 THE JUNCTION NSW 2201

Phone: (02) 4803 5530 Fax: (02) 4803 5521


Email: info@lmsd.com.au

ABN 42 110 897 026

Id.	Details of Revision	Date
1	Issued for approval	06/08/20

Scale:	1:2500 (A)	Designed:	B.B.
Contour Int.	N/A	Drawn:	B.B.
Datum:	N/A	Checked:	J.H.
Origin:	N/A	Approved:	J.H.
Job Number:	4070		
Drawing File:	c:\job4070\dwg\4070-714.dwg		
Registered Surveyor:			

VPA LAND WITHIN
LOT 400 DP1192881
WATERFORD COUNTY
CHISHOLM



WATERFORD

Drawing Number	1	Editor	A
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101

Annexure B

The Land - Part Lot 812 in DP1171131

727
DP.1152174



DP.1145318

LEGEND

— LOT BOUNDARY

▨ LAND SUBJECT TO VPA - PART OF LOT 812 IN DP1171131
GROSS AREA = 5.141ha



<p>Land Development SOLUTIONS PO Box 523 THE JUNCTION NSW 2201 Phone (02) 4893 5230 Fax (02) 4893 5521 Email m@landdev.au ABN 42 110 097228</p>		<p>Surveying • Planning • Engineering</p>		<p>Ed A (noted for approval)</p>	<p>Date 06/08/20</p>	<p>Scale: 1:2000 (A1) Author for DP: N/A Check: N/A Job Number: 4070 Drawing file: chisholm\4893-5745\4893.dwg Registered Surveyor: [Signature]</p>	<p>Designed: S.A. [Signature] Checked: J.H. [Signature] Approved: J.H. [Signature]</p>	<p>VPA LAND WITHIN LOT 812 DP1171131 WATERFORD COUNTY CHISHOLM</p>	<p>Drawing Number 3 Sheet 3 of 8</p>
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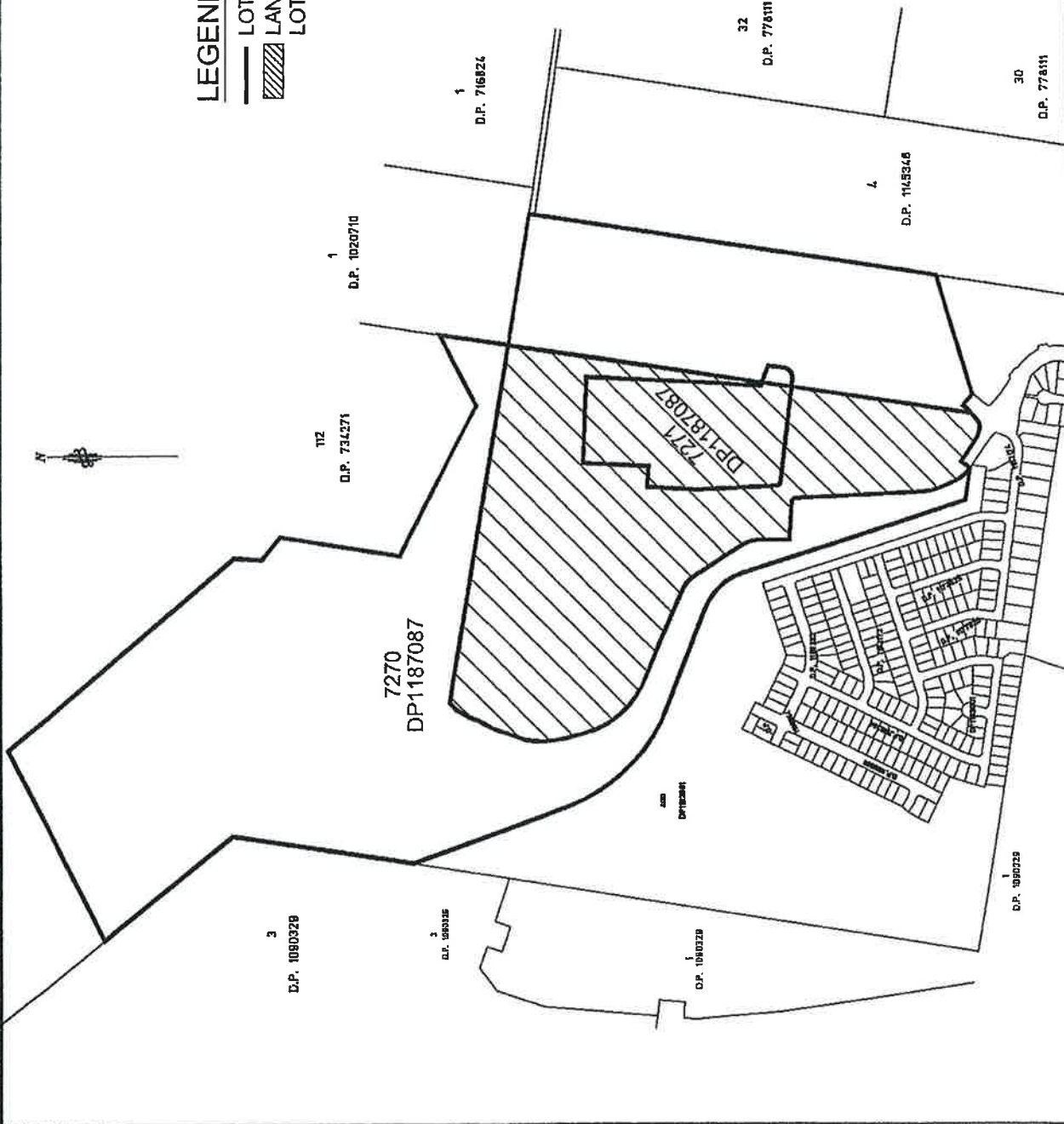
WATERFORD
COUNTY

Annexure C

The Land - Part of Lot 7270 &
Part of Lot 7271 in DP1187087

LEGEND

- LOT BOUNDARY
- ▨ LAND SUBJECT TO VPA - PART OF LOT 7270 & PART OF LOT 7271 IN DP1187087 - GROSS AREA = 39.31ha



Land Development SOLUTIONS Surveying • Planning • Engineering PO Box 263 THE JUNCTION NSW 2201 Phone: (02) 4903 6250 Fax: (02) 4903 6421 Email: info@ldevsolutions.com.au ABN: 42 110 897 928		Drawing Number: 5 Editor: A Sheet: 5 of 8	
VPA LAND WITHIN LOT 7270 & LOT 7271 IN DP1187087 WATERFORD COUNTY CHISHOLM		WATERFORD COUNTY	
Scale: 1:4000 (A1) Contour Int: 1m Datum: NAD83 Job Number: 4020 Drawing File: 43334407944144303744-10-25	Design: S.B. Drawn: S.B. Checked: J.H. Approved: J.H.	Registered Surveyor:	
Ed: A Issued for approval	Date: 04/08/2013	Details of Revisions:	

ANNEXURE D

 NORTON ROSE FULBRIGHT

Dated

Deed of novation of VPA

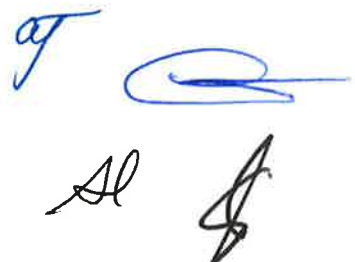
Parties

Minister for Planning and Infrastructure
ABN 38 755 798 681

Maitland Nominee Holdings Pty Limited
ACN 122 853 114

Full name of Purchaser
Developer's ACN (if applicable)

Felicity Rourke
Norton Rose Fulbright Australia
225 George Street
Sydney NSW 2000
Tel: +61 2 9330 8665
nortonrosefulbright.com
Our ref: 2788686



 **NORTON ROSE FULBRIGHT**

Contents

1	Definitions and interpretation	1
2	Novation of the Planning Agreement	3
3	Assumption of rights and liabilities by Purchaser	3
4	Release of the Developer from obligations	3
5	Representations and warranties	3
6	Costs and outlays	4
7	Governing law and jurisdiction	4

Deed dated

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**)

Maitland Nominee Holdings Pty Limited ACN 122 853 114 of Level 15, 255 Pitt
Street, Sydney NSW 2000 (**Developer**)

Full name of Purchaser # # Purchaser's ACN (if applicable)
of # address of Purchaser #
(Purchaser)

Introduction

A The parties agree to novate the Planning Agreement on the terms of this Deed.

It is agreed

1 Definitions and interpretation

1.1 Definitions

In this Deed, unless the contrary intention appears:

- (1) **Business Day** means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the place where an act is to be performed or a payment is to be made;
- (2) **Claim** includes a claim, damage, Loss, cost, expense or liability incurred by or to or made or recovered by or against any person, however arising, whether present, unascertained, immediate, future or contingent, and whether made by a party to the Contract or a third person;
- (3) **Deed** means this document, including any schedule or annexure to it;
- (4) **Effective Date** means # insert the date on which the Purchaser takes over the rights, obligations and liabilities of the Developer under the Contract #;
- (5) **Loss** includes any damage, loss, cost, liability (including a present, prospective or contingent liability or expense);
- (6) **Planning Agreement** means the Planning Agreement dated # insert date # between the Developer and the Minister which is governed by Subdivision 2 of Division 6 of Part 4 of the Act. Including all amendments or supplements to, or replacements, assignments or novations of it;

- (7) **Sale Land** means # description of land being sold #; and
- (8) **Related Body Corporate, Subsidiary and Holding Company** each has the meaning given in section 9 of the *Corporations Act 2001*.

1.2 Interpretation

- (1) Unless the context otherwise requires, any term used in this Deed which is a defined term in the Planning Agreement has the same meaning in this Deed as in the Planning Agreement.
- (2) Reference to:
 - (a) one gender includes the others;
 - (b) the singular includes the plural and the plural includes the singular;
 - (c) a person includes a body corporate;
 - (d) a party includes the party's executors, administrators, successors and permitted assigns;
 - (e) a thing includes the whole and each part of it separately;
 - (f) a statute, regulation, code or other law or a provision of any of them includes:
 - (i) any amendment or replacement of it; and
 - (ii) another regulation or other statutory instrument made under it, or made under it as amended or replaced; and
 - (g) dollars means Australian dollars unless otherwise stated.
- (3) "Including" and similar expressions are not words of limitation.
- (4) Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
- (5) Headings and any table of contents or index are for convenience only and do not form part of this Deed or affect its interpretation.
- (6) A provision of this Deed must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of this Deed or the inclusion of the provision in this Deed.
- (7) If an act must be done on a specified day which is not a Business Day, it must be done instead on the next Business Day.

1.3 Parties

- (1) If a party consists of more than 1 person, this Deed binds each of them separately and any 2 or more of them jointly.
- (2) An obligation, representation or warranty in favour of more than 1 person is for the benefit of them separately and jointly.
- (3) A party which is a trustee is bound both personally and in its capacity as a trustee.

2 Novation of the Planning Agreement

- 2.1 On and from the Effective Date a reference in the Planning Agreement to the Developer must be read as a reference to the Purchaser in respect of rights and obligations under the Planning Agreement arising on and after the Effective Date.

3 Assumption of rights and liabilities by Purchaser

- 3.1 On and from the Effective Date, the Purchaser:
- (1) enjoys all the Developer's rights and benefits under the Planning Agreement;
 - (2) assumes all the Developer's obligations under the Planning Agreement; and
 - (3) assumes all the Developer's liability for Claims under the Planning Agreement,
- in so far as the Planning Agreement applies to the Sale Land.

4 Release of the Developer from obligations

- 4.1 On and from the Effective Date:
- (1) the Minister accepts the Purchaser's assumption of the Developer's obligations in accordance with clause 4.1(2) and liability for Claims in accordance with clause 4.1(3);
 - (2) each of the Minister and the Developer releases the other from any obligations under the Planning Agreement in connection with the Sale Land;
 - (3) each of the Minister and the Developer releases the other from any other Claims in connection with the Sale Land arising under the Planning Agreement.

5 Representations and warranties

- 5.1 Each party represents and warrants to each other party that:
- (1) It has full power and authority to enter into and perform its obligations under this Deed, whether express or implied;
 - (2) It has taken all necessary action to authorise the execution, delivery and performance of this Deed in accordance with its terms; and
 - (3) this Deed constitutes its legal, valid and binding obligations and is enforceable in accordance with its terms subject to any necessary stamping and registration and to equitable principles and laws generally affecting creditors' rights.

6 Costs and outlays

- 6.1 Each party must pay its own costs and outlays connected with the negotiation, preparation and execution of this Deed.
- 6.2 The Purchaser must pay all stamp duty and other government imposts payable in connection with this Deed and all other documents and matters referred to in this Deed when due or earlier if requested in writing by any other Party.

7 Governing law and jurisdiction

- 7.1 The law of New South Wales governs this Deed.
- 7.2 The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and of the Commonwealth of Australia.

Executed as a deed and delivered on the date shown on the first page.

Signed sealed and delivered for and on behalf of **Maitland Nominee Holdings Pty Limited** ACN 122 853 114 by its authorised representative in the presence of:

Signature of witness

Signature of authorised representative

Name of witness
(BLOCK LETTERS)

Name of authorised representative
(BLOCK LETTERS)

Address of witness

Signed sealed and delivered for and on behalf of **#insert full name of Purchaser#** **#insert ACN / ABN including "ACN/ABN" before the number#** by its authorised representative in the presence of:

Signature of witness

Signature of authorised representative

Name of witness
(BLOCK LETTERS)

Name of authorised representative
(BLOCK LETTERS)

Address of witness

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

Signature of witness

Name of witness (BLOCK LETTERS)

Address of witness



Explanatory Note

Minister for Planning and Infrastructure and Maitland Nominee Holdings Pty Limited (ACN 122 853 114)

Draft Planning Agreement

Introduction

The purpose of this explanatory note is to provide a plain English summary to support the notification of the draft planning agreement (the **Planning Agreement**) prepared under Subdivision 2 of Division 6 of Part 4 of the *Environmental Planning and Assessment Act 1979* (the **Act**).

This explanatory note has been prepared jointly by the parties as required by clause 25E of the *Environmental Planning and Assessment Regulation 2000* (the **Regulation**).

Parties to the Planning Agreement

The parties to the Planning Agreement are Maitland Nominee Holdings Pty Limited (ACN 122 853 114) (the **Developer**) and the Minister for Planning and Infrastructure (the **Minister**).

Description of the Subject Land

The Planning Agreement applies to the following land:

1. Part Lot 620 in DP 1183001 as shown cross-hatched in the plan marked Annexure A attached to Planning Agreement;
2. Part Lot 812 in DP 1171131 as shown cross-hatched in the plan marked Annexure B attached to Planning Agreement; and
3. Part Lot 727 in DP 1152174 as shown cross-hatched in the plan marked Annexure C attached to Planning Agreement;

Description of the Proposed Development

The Developer is seeking to subdivide the land into approximately 383 residential lots (**Proposed Development**) and has made an offer to the Minister to enter into the Planning Agreement in connection with the Proposed Development. The Proposed Development is intended to be carried out in stages, some of which may occur concurrently.

Summary of Objectives, Nature and Effect of the Planning Agreement

The Planning Agreement provides that the Developer will make a monetary contribution of \$2.27 per square metre of Net Developable Area for any part of the Land to which each Subdivision Certificate application relates for the purposes of the provision of designated State public infrastructure within the meaning of clause 6.1 of the Maitland Local Environmental Plan 2011 (**LEP**).

The amount of the monetary contribution will be paid in instalments calculated on the basis of an estimate of the net developable area for each development application. The instalments are payable prior to the issue of each relevant subdivision certificate as set out in Schedule 4 to the Planning Agreement.

The Developer is required to provide a Bank Guarantee and register the Planning Agreement on the title to the Land in accordance with section 93H of the Act.

The objective of the Planning Agreement is to facilitate the delivery of the Developer's contributions towards the provision of infrastructure, facilities and services referred to in clause 6.1 of the LEP.

No relevant capital works program by the Minister is associated with this agreement.

Assessment of Merits of Planning Agreement

The Planning Purpose of the Planning Agreement

In accordance with section 93F(2) of the Act, the Planning Agreement has the following public purpose:

- the provision of (or the recoupment of the cost of providing) public amenities or public services; and
- the provision of (or the recoupment of the cost of providing) transport or other infrastructure relating to land.

The Minister and the Developer have assessed the Planning Agreement and both hold the view that the provisions of the Planning Agreement provide a reasonable means of achieving the public purpose set out above. This is because it will ensure that the Developer makes appropriate contributions towards the provision of infrastructure, facilities and services referred to in clause 6.1 of the LEP.

How the Planning Agreement Promotes the Public Interest

The Planning Agreement promotes the public interest by ensuring that an appropriate contribution is made towards the provision of infrastructure, facilities and services to satisfy needs that arise from development of the Land. It is intended the monetary contribution will go towards the construction of additional lanes to the Thornton Railway Bridge.

How the Planning Agreement Promotes the Objects of the Act

The Planning Agreement promotes the objects of the Act by encouraging the promotion and co-ordination of the orderly and economic use and development of land. The Planning Agreement promotes the objects of the Act set out above by requiring the Developer to make a contribution towards the provision of infrastructure, facilities and services referred to in clause 6.1 of the LEP.

The Developer's offer to contribute towards the provision of State infrastructure will have a positive public impact as funds from the Developer will be available towards the provision of infrastructure, facilities and services referred to in clause 6.1 of the LEP.

Requirements relating to Construction, Occupation and Subdivision Certificates

The Planning Agreement does not specify requirements that must be complied with prior to the issue of a construction certificate or an occupation certificate.

The Planning Agreement requires each instalment of the monetary contribution to be paid prior to the issue of the relevant subdivision certificate and therefore contains a restriction on the issue of a subdivision certificate within the meaning of section 109J(1)(c1) of the Act.