

**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

A handwritten signature in black ink, consisting of a stylized 'P' followed by a checkmark-like flourish.

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**THIS deed** is dated

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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 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.

**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 8.18.1 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.

<b>REQUIREMENT UNDER THE ACT</b>	<b>THIS DEED</b>
<b>Planning instrument and/or development application</b> – (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
<b>Description of land to which this deed applies</b> – (section 93F(3)(a))	See Schedule 3
<b>Description of change to the environmental planning instrument to which this deed applies</b> – (section 93F(3)(b))	N/A
<b>The scope, timing and manner of delivery of contribution required by this deed</b> – (section 93F(3)(c))	See Schedule 4
<b>Applicability of sections 94 and 94A of the Act</b> – (section 93F(3)(d))	The application of sections 94 and 94A of the Act is not excluded in respect of the Development.
<b>Applicability of section 94EF of the Act</b> – (section 93F(3)(d))	The application of section 94EF of the Act is excluded in respect of the Development.
<b>Consideration of benefits under this deed if section 94 applies</b> – (section 93F(5))	No
<b>Mechanism for Dispute Resolution</b> – (section 93F(3)(f))	See clause 10
<b>Enforcement of this deed</b> – (section 93F(3)(g))	See clause 7
<b>No obligation to grant consent or exercise functions</b> – (section 93F(10))	See clause 14.12

**Table 2 – Other matters**

<b>REQUIREMENT UNDER THE ACT OR REGULATION</b>	<b>THIS DEED</b>
<b>Registration of the Planning Agreement –</b> (section 93H of the Act)	Yes (see clause 8)
<b>Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a construction certificate is issued –</b> (clause 25E(2)(g) of the Regulation)	No
<b>Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before an occupation certificate is issued –</b> (clause 25E(2)(g) of the Regulation)	No
<b>Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a subdivision certificate is issued –</b> (clause 25E(2)(g) of the Regulation)	Yes (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**

**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 620 in DP 1183001 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 727 in DP 1152174 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 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 \$100,000.
- (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 \$100,000 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 \$100,000.

#### 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**).

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

Signature of the Minister for Planning and Infrastructure

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/Secretary

Name of Director/Secretary


## Annexure D: Deed of Novation

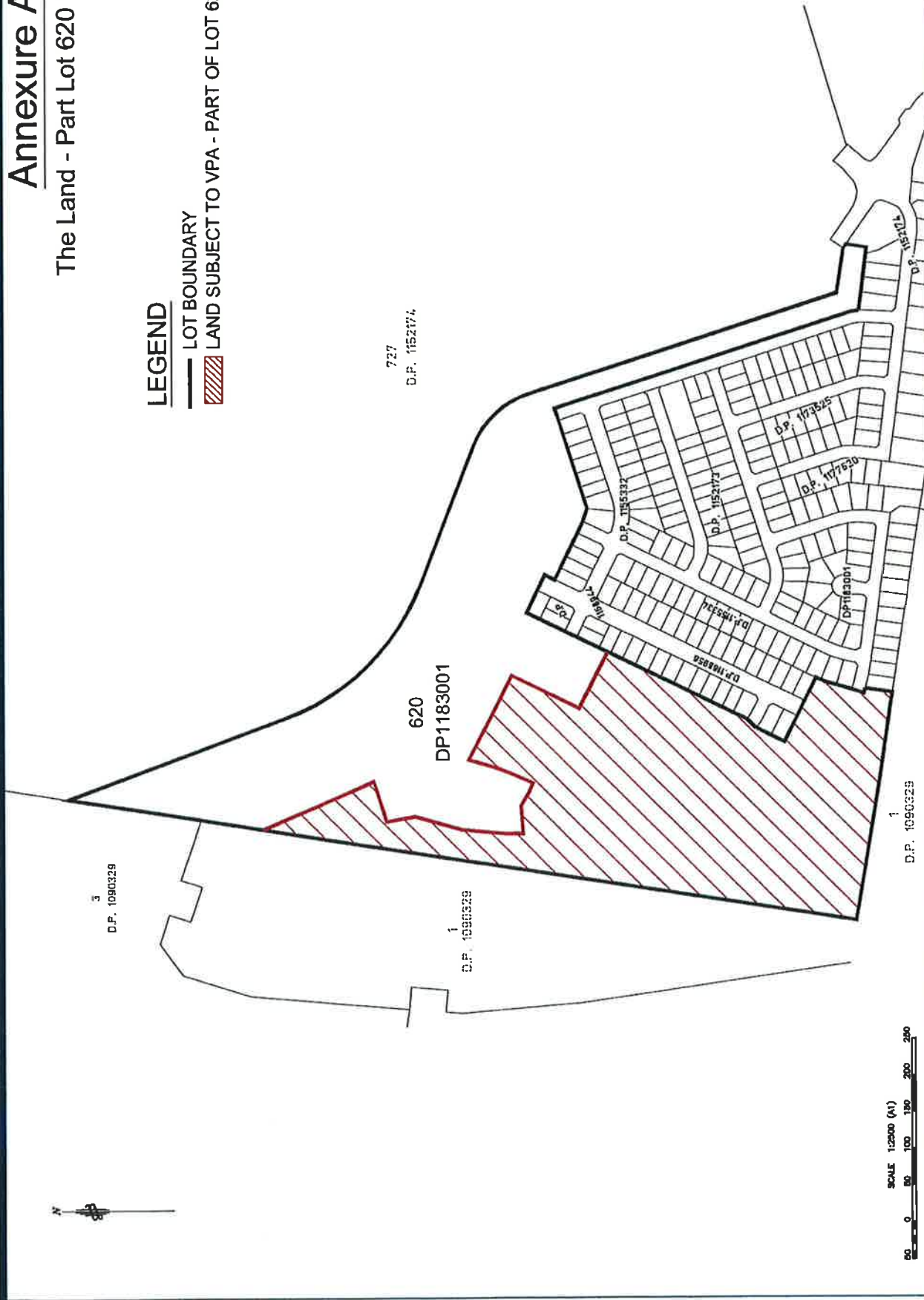




The Land - Part Lot 620 in DP1183001

— LOT BOUNDARY

 LAND SUBJECT TO VPA - PART OF LOT 620 IN DP1183001



SCALE 1:2500 (A1)

**Engineering and Development SOLUTIONS**

PO Box 613 THE JUNCTION NSW 2291

Phone: (02) 4603 5020 Fax: (02) 4603 5621  
E-mail: [res@eta.nsw.au](mailto:res@eta.nsw.au)

AGN: 42 110 867 298

Surveying • Planning • Engineering

**Errores de los países**

### Details of Revision

Date: 06/05/13

Scale: 1:2500 (A1)  
Contour Int.: N/A

Designed:	B.B.
Drawn:	B.B.
Checked:	B.B.

VPA LAND WITHIN  
LOT 620 DP1183001  
WATERFORD COUNTY  
CHISHOLM

Drawing Number	1	Editor	A
		Sheet 1 of 2	

8/9



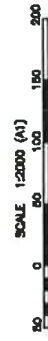
# Annexure B

The Land - Part Lot 812 in DP1171131



## LEGEND

- LOT BOUNDARY
- ▨ LAND SUBJECT TO VPA - PART OF LOT 812 IN DP1171131



**Land Development SOLUTIONS**  
 Surveying • Planning • Engineering  
 PO Box 653, THE JUNCTION NSW 2201  
 Phone: (02) 4393 5436 Fax: (02) 4393 5531  
 Email: info@ldsol.com.au  
 ABN 42 110 807 028

Ed	Issued for approval	Details of revision	Date
A			04/03/13

Scale	1:2000 (A1)	Drawn	Checked	Approved
Drawn by	N/A	N/A	N/A	N/A
Checked by	N/A	N/A	N/A	N/A
Approved by	N/A	N/A	N/A	N/A
Job Number	4379			
Drawing File	034646254379144075474101			
Registered Surveyor	ALAN J. BENT			

VPA LAND WITHIN  
 LOT 812 DP1171131  
 WATERFORD COUNTY  
 CHISHOLM

**WATERFORD COUNTY**  
 Drawing Number **3** A  
 Sheet 3 of 4

*Handwritten signature/initials*

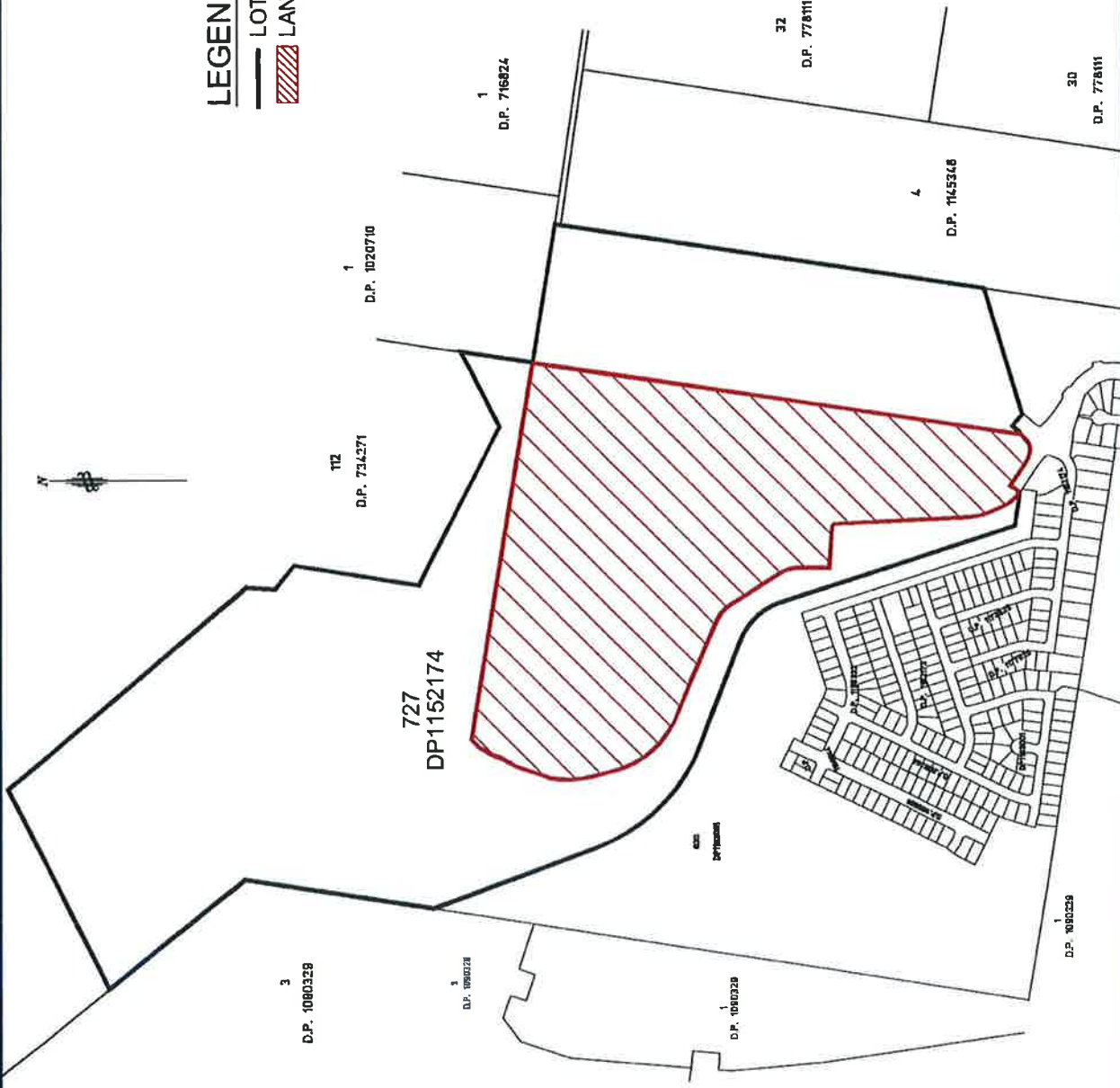


# Annexure C

The Land - Part Lot 727 in DP1152174

## LEGEND

- LOT BOUNDARY
- LAND SUBJECT TO VPA - PART OF LOT 727 IN DP1152174



**LAND DEVELOPMENT SOLUTIONS**  
 Surveying • Planning • Engineering  
 PO Box 683 THE JUNCTION NSW 2201  
 Phone: (03) 4003 5620 • Fax: (03) 4003 5621  
 Email: info@ldsolutions.com.au  
 ABN 42 110 807 028

Issued for approval  
 A

Date: 08/08/23  
 Scale: 1:400 (A3)  
 Designer: N/A  
 Checker: N/A  
 Approver: N/A  
 Job Number: 4079  
 Drawing File: c:\ds-4079\dwg\4079-VPA-3.dwg  
 Registered Surveyor: [Signature]

VPA LAND WITHIN  
 LOT 727 DP1152174  
 WATERFORD COUNTY  
 CHISHOLM

*[Handwritten signature]*



ANNEXURE D



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

A handwritten signature in black ink, appearing to be 'F. Rourke'.

 **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

\_\_\_\_\_  
Name of witness  
(BLOCK LETTERS)

\_\_\_\_\_  
Address of witness



\_\_\_\_\_  
Signature of authorised representative

**Christopher Pak**

\_\_\_\_\_  
Name of authorised representative  
(BLOCK LETTERS)

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

\_\_\_\_\_  
Name of witness  
(BLOCK LETTERS)

\_\_\_\_\_  
Address of witness

\_\_\_\_\_  
Signature of authorised representative

\_\_\_\_\_  
Name of authorised representative  
(BLOCK LETTERS)

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

THE SECRETARY