Planning Agreement

Environmental Planning and Assessment Act 1979

52 Christy Road, Bellbird, NSW 2325

Mountview Grange Urban Release Area

Minister for Planning (ABN 38 755 709 681)

Mountview Grange 88 Pty Ltd (ACN 169 556 665) as trustee for the **Mountview Grange 88 Unit Trust**

Janice Aileen Kidd

Glenda Ruth Ingle

J A Kidd

G. R Ingle.

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This deed is dated

Parties:

Minister for Planning (ABN 38 755 709 681)
of Level 15, 52 Martin Place, Sydney, New South Wales 2000 (**Minister**)

Mountview Grange 88 Pty Ltd (ACN 169 556 665) of Level 10, 46 Market Street Sydney, NSW 2000 as trustee for the Mountview Grange 88 Unit Trust (**Developer**)

Janice Aileen Kidd of Unit 6, 22 Yorston Street, Warners Bay NSW 2282 **and**

Glenda Ruth Ingle of 7 Prince Street Bellbird NSW 2325 **(together the Landowners)**

Introduction:

A The Landowners own the Land.

B The Developer has an option to purchase the Land from the Landowners.

C The Developer proposes to carry out the Development on the Land.

D A Development Application has been made to the Consent Authority in respect of the Land on behalf of the Developer.

E Clause 6.1 of the LEP provides that the Consent Authority must not grant Development Consent to the Development unless the Secretary 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.

F The Developer has offered to enter into this deed with the Minister to secure the Development Contribution in order to enable the Secretary to provide the certification required by the LEP.

It is agreed:

1. Definitions and interpretation

1.1 Definitions

In this **deed**, unless the context clearly indicates otherwise:

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

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

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

Bank Guarantee means an irrevocable and unconditional undertaking:

(a) by an Australian bank which is an eligible financial institution for the purposes of Treasury Circular NSW TC14/01 dated 24 January 2014 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 2018.

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

Consent Authority has the same meaning as in the Act.

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 that the Minister specifies, in his or her sole discretion, for the purposes of this deed.

CPI Adjustment Date means 1 July 2019 and each anniversary of 1 July 2019.

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

Dealing means in relation to the Land, to sell, transfer, assign, mortgage, charge, dispose, encumber or otherwise deal with the Land in whole or part.

Developer means the Developer and the Landowners, unless otherwise specified in this deed.

Development means the staged subdivision of the Land into approximately 539 residential lots, generally in accordance with DA 8/2018/837/1, or any other Development Consent that applies to the Land, and the subdivision plan at Schedule 7.

Development Application has the same meaning as in the Act.

Development Consent has the same meaning as in the Act.

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

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).

Insurance Bond means an irrevocable and unconditional undertaking:

(a) by an Insurance Company which is an eligible financial institution for the purposes of

Treasury Circular NSW TC14/01 dated 24 January 2014 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.

Insurance Company means an insurance company authorised under the *Insurance Act 1973* and who is subject to prudential supervision by Australian Prudential Regulatory Authority.

Land means the land described in Schedule 3.

Landowners means Janice Aileen Kidd and Glenda Ruth Ingle.

LEP means *Cessnock Local Environment Plan 2011*.

Mediation Program means the Mediation Program of the Law Society of New South Wales as published on its website and as varied from time to time.

Minister means the Minister for Planning and includes the Secretary and the Secretary's nominee.

Planning Application means:

(a) a Development Application; or

(b) any other application required under the Act,

which seeks approval for the subdivision of the Land.

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

Register means the Torrens title register maintained under the Real Property Act.

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

Satisfactory Arrangements Certificate means a certificate issued by the Secretary 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.

Secretary means the Secretary of the Department of Planning and Environment.

Security means a Bank Guarantee or an Insurance Bond.

SIC Amount means the amount of a monetary contribution calculated in accordance with a Special Infrastructure Contribution that would be payable for a stage of the subdivision authorised by the relevant Development Consent had section 7.24 of the Act not been excluded by this deed.

Subdivision Certificate has the same meaning as in the Act.

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**, a **schedule** or an **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** and **annexures** 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 commences on the date that 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 7.4 of the Act and the parties agree on the matters set out in Schedule 1.

2.3 Application

This deed applies to:

(a) the Land; and

(b) the Development.

3. Application of sections 7.11, 7.12 and 7.24 of the Act

The application of sections 7.11, 7.12 and 7.24 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 Special Infrastructure Contribution

(a) This clause applies where:

(i) the Minister determines a special infrastructure contribution (**SIC**) under section 7.23 of the Act for a special contributions area that includes any part of the Land (**SIC Determination**); and

(ii) the SIC Determination takes effect on or after the commencement of this deed, but before the Development Contribution has been paid in full.

(b) If the SIC Amount for a stage of the subdivision authorised by the relevant Development Consent is less than the Contribution Amount that would otherwise be payable under this deed for that stage, then:

(i) the Developer is required to pay only the SIC Amount; and

(ii) that amount is to be treated as the relevant Contribution Amount for the purposes of clause 4.1 and clauses 1(b) and 2(b) of Schedule 4.

(c) Clause 4.2(b) applies only to a Contribution Amount that has not been paid and is not due and payable at the time the SIC Determination takes effect. To avoid doubt, the Minister is not required to refund or reimburse any part of the Development Contribution paid before that time.

(d) In this clause 4.2, a reference to the SIC Amount for a stage of the subdivision authorised by the relevant Development Consent is a reference to the amount of the monetary contribution for that stage calculated in accordance with the SIC Determination, being the amount that would have been payable if the application of section 7.24 of the Act had not been excluded by this deed and the Development Consent had been granted before the SIC Determination took effect.

4.3 Acknowledgement

The Developer acknowledges and agrees that, subject to section 7.3 of the Act, the Minister:

(a) has no obligation to use or expend the Development Contribution for a particular purpose despite any provision of this deed to the contrary and has no obligation to repay the Development Contribution; and

(b) in circumstances where the Development Contribution is transferred to any Authority, has not made any representation or warranty that the Development Contribution will or must be used for a particular purpose by that Authority.

5. Interest

5.1 Interest for late payment

(a) If the Developer fails to pay a Contribution Amount (as indexed in accordance with Schedule 4) 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 is payable on the daily balance of amounts due from the due date for payment of those amounts until all outstanding amounts (including interest on those amounts) have been paid to the Minister.

6. Enforcement

6.1 Developer to provide Security

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

7. Registration

7.1 Registration of deed

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

(i) the consent of each person, as required by the Registrar-General, who:

(A) has an estate or interest in the Land registered under the Real Property Act; or

(B) is seized or possessed of an estate or interest in the Land,

to the registration of this deed on the title to the Land and to the terms of this deed; and

(ii) the execution of any documents;

(iii) the production of the relevant certificates of title; and

(iv) the lodgement of this deed in a registrable form at the NSW Land Registry Services for registration by the Registrar-General in the relevant folio of the Register for the Land, or in the General Register of Deeds if this deed relates to land not under the Real Property Act.

(b) The Developer will take all practical steps and otherwise do anything to procure the registration of this deed within three months of the date of this deed in the relevant folio of the Register for the Land, or in the General Register of Deeds if this deed relates to land not under the Real Property Act, including promptly responding to any requisitions made by the Registrar-General in respect of this deed and/or any ancillary documents.

7.2 Evidence of registration

(a) The Developer must provide the Minister with evidence of the lodgement of this deed pursuant to clause 7.1(a)(iv) within 10 Business Days of such lodgement at the NSW Land Registry Services.

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

7.3 Release and discharge of deed

The Minister agrees to do all things reasonably required by the Developer to release and discharge this deed with respect to any part of the Land upon the Developer satisfying all of its obligations under this deed in respect of that part of the Land.

7.4 Interest in Land

The Landowners represent and warrant that they:

(a) own the Land as joint tenants; and

(b) are legally and beneficially entitled to obtain all consents and approvals and to compel any person referred to in or contemplated by clause 7.1(a)(i) to assist, cooperate and to otherwise do all things necessary for the Developer to comply with its obligations under clause 7.

The Developer, in its capacity as Developer, represents and warrants that it is:

(c) legally and beneficially entitled to become the owner of the Land and will become the legal and beneficial owner of the Land; and

(d) legally and beneficially entitled to obtain all consents and approvals and to compel any person referred to in or contemplated by clause 7.1(a)(i) to assist, cooperate and to otherwise do all things necessary for the Developer to comply with its obligations under clause 7.

7.5 Right to lodge caveat

(a) Subject to clause 7.5(b) until such time as this deed is registered on the title of the Land in accordance with clause 7.1, the Developer acknowledges that this deed confers on the Minister an interest in the Land and entitles the Minister to lodge and maintain a caveat on the title to the Land to prevent any Dealing in respect of the Land.

(b) If the Minister lodges a caveat in accordance with clause 7.5(a), then the Minister will do all things reasonably necessary to:

(i) ensure that the caveat does not prevent or delay the registration of this deed; and

(ii) remove the caveat from the title to the Land promptly, following registration of this deed in accordance with clause 7.1.

(c) If, after 10 Business Days of receipt of a copy of this deed executed by the Minister, the Developer has failed or has been unable to achieve the registration of this deed in accordance with clause 7.1, the Developer must pay the Minister's reasonable costs and expenses, including legal costs, of exercising the Minister's rights under clause 7.5(a) to lodge and withdraw a caveat(s) (as applicable).

8. Dispute Resolution

8.1 Not commence

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

8.2 Written notice of dispute

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

8.3 Attempt to resolve

On receipt of notice under clause 8.2, the parties must endeavour in good faith to resolve the dispute expeditiously using informal dispute resolution processes such as mediation, expert evaluation or other methods agreed by them.

8.4 Mediation

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

(a) the dispute resolution technique and procedures to be adopted;

(b) the timetable for all steps in those procedures; or

(c) the selection and compensation of the independent person required for such technique,

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

8.5 Court proceedings

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

8.6 Not use information

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

8.7 No prejudice

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

9. GST

9.1 Definitions

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

9.2 Intention of the parties

The parties intend that:

(a) Divisions 81 and 82 of the GST Legislation apply to the supplies made under and in respect of this deed; and

(b) no additional amounts will be payable on account of GST and no tax invoices will be exchanged between the parties.

9.3 Reimbursement

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

9.4 Consideration GST exclusive

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

9.5 Additional Amounts for GST

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

(a) the Developer makes payment of the GST Amount on behalf of the Minister, including any gross up that may be required; and

(b) the Developer provides a tax invoice to the Minister.

9.6 Non monetary consideration

Clause 9.5 applies to non-monetary consideration.

9.7 Assumptions

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

9.8 No merger

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

10. Assignment and transfer

10.1 Right to assign or novate

(a) Prior to a proposed assignment or novation of its rights or obligations under this deed, the party seeking to assign its rights or novate its obligations (**Assigning Party**) must seek the consent of the Minister and:

(i) satisfy the Minister (acting reasonably) that the person to whom the Assigning Party's rights or obligations are to be assigned or novated (**Incoming Party**) has

sufficient assets, resources and expertise required to perform the Assigning Party's obligations under this deed insofar as those obligations are to be novated to the Incoming Party;

(ii) procure the execution of an agreement by the Incoming Party with the Minister on terms satisfactory to the Minister (acting reasonably) under which the Incoming Party agrees to comply with the terms and conditions of this deed as though the Incoming Party were the Assigning Party; and

(iii) satisfy the Minister, acting reasonably, that it is not in material breach of its obligations under this deed.

(b) The Assigning Party must pay the Minister's reasonable legal costs and expenses incurred under this clause 10.1.

10.2 Right to transfer Land

(a) The Developer must not sell or transfer to another person (**Transferee**) the whole or part of any part of the Land:

(i) on which this deed remains registered under section 7.6 of the Act; or

(ii) for which the Development Contribution required under this deed remains outstanding.

(b) Notwithstanding clause 10.2(a) the Developer may sell or transfer the whole or any part of the Land to a Transferee if prior to the proposed sale or transfer the Developer:

(i) satisfies the Minister, acting reasonably, that the proposed Transferee has sufficient assets, resources and expertise required to perform any of the remaining obligations of the Developer under this deed or satisfies the Minister, acting reasonably, that the Developer will continue to be bound by the terms of this deed after the transfer has been effected;

(ii) procures the execution of an agreement by the Transferee with the Minister on terms satisfactory to the Minister, acting reasonably, under which the Transferee agrees to comply with the terms and conditions of this deed as though the Transferee were the Developer; and

(iii) satisfies the Minister, acting reasonably, that it is not in material breach of its obligations under this deed.

(c) The Developer must pay the Minister's reasonable legal costs and expenses incurred under this clause 10.2.

(d) This clause 10.2 does not apply to any transfer of the Land from the Landowners to the

Developer.

10.3 Replacement Security

Provided that:

(a) the Developer has complied with clause 10.1 and 10.2; and

(b) the Transferee or Incoming Party (as the case may be) has provided the Minister with a replacement Security in accordance with the requirements of Schedule 5 and on terms acceptable to the Minister,

the Minister will promptly return the Security to the Developer.

10.4 Release of Landowners

The Minister acknowledges and agrees that if the Landowners transfer all of the Land to the Developer, on and from the date of the transfer and subject to the Developer providing, to the Minister's satisfaction, evidence that is has entirely assumed ownership of the Land:

(a) The Developer (and not the Landowners) will assume the sole responsibility for complying with the obligations of the Developer under this deed;

(b) The Landowners will be released and discharged from the obligations arising under this deed, and

(c) The Minister will not seek to enforce the terms of this deed against the Landowners in the event of a breach by the Developer of any obligation arising under this deed.

11. Capacity

11.1 General warranties

Each party warrants to each other party that:

(a) this deed creates legal, valid and binding obligations, enforceable against the relevant party in accordance with its terms; and

(b) unless otherwise stated, it has not entered into this deed in the capacity of trustee of any trust.

11.2 Power of attorney

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

11.3 Trustee Developer

(a) Mountview Grange 88 Pty Ltd (ACN 169 556 665) (**Trustee**) enters into this deed in its capacity as the trustee for the Mountview Grange 88 Unit Trust (**Trust**) constituted by a trust deed (**Trust Deed**). The Trustee:

(i) warrants that:

(A) it is the sole trustee of the Trust and no action has been taken to remove or replace it;

(B) entry into this deed is for the benefit of the beneficiaries of the Trust and as trustee it is authorised and empowered under the Trust Deed to enter into and

to perform its obligations and satisfy or discharge its liabilities under this deed;

(C) it is not in breach of the Trust Deed;

(D) it is entitled under the Trust Deed to be indemnified in full in respect of the obligations and liabilities incurred by it under this deed;

(E) it is not aware of any reason why the assets of the Trust might be insufficient to satisfy or discharge the obligations and liabilities incurred by it under this deed; and

(F) it has the power under the Trust Deed to execute and perform its obligations and discharge its liabilities under this deed and all necessary action has been taken to authorise the execution and performance of this deed under the Trust Deed; and

(ii) indemnifies the Minister, and agrees to keep the Minister indemnified, in respect of any loss or liability in any way connected with a breach of a warranty in clause 11.3(a)(i).

(b) Prior to the Trustee being replaced as the trustee of the Trust in accordance with the Trust Deed:

(i) the Trustee must procure that the replacement trustee enters into a new deed with the Minister on the same terms as this deed;

(ii) the Trustee (as outgoing trustee) must procure an agreement from the Minister, under which the Minister releases the Trustee from the requirement to observe and perform any future obligation under this deed;

(iii) the Trustee (as outgoing trustee) must release the Minister, from the requirement to observe and perform any future obligation under this deed; and

(iv) the Trustee (as the outgoing trustee) must pay the reasonable costs and expenses of the Minister in relation to entering into a new deed under this clause 11.3(b) and the costs and expenses of registering any new deed on the title to the Land.

(c) Subject to clause 11.3(e), liability arising under or in connection with this deed (except under or in connection with clause 11.3(a) above) is limited and can be enforced against the Trustee only to the extent to which the Trustee, having sought indemnification to the maximum extent possible, is actually indemnified in respect of that liability out of the assets of the Trust. This limitation of the Trustee's liability extends to all liabilities and obligations of the Trustee in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this deed.

(d) No party to this deed or any person claiming through or on behalf of them will be entitled to:

(i) claim from or commence proceedings against the Trustee in respect of any liability in any capacity other than as the trustee of the Trust;

(ii) seek the appointment of a receiver, receiver and manager, liquidator, an administrator or any similar office-holder to the Trustee, or prove in any liquidation, administration or arrangement of or affecting the Trustee, except in relation to the assets of the Trust; or

(iii) enforce or seek to enforce any judgment in respect of a liability under this deed or

otherwise against the Trustee in any capacity other than as Trustee of the Trust,

except under or in connection with clause 11.3(a) above.

(e) Notwithstanding any other provision of this deed, clauses 11.3(c) and 11.3(d) do not apply to any obligation or liability of the Trustee to the extent to which there is, in respect of that obligation or liability, whether under the Trust Deed or by operation of law, a reduction in the extent of the Trustee's indemnification, or loss of the Trustee's right of indemnification, out of the assets of the Trust as a result of Trustee's failure to properly perform its duties as trustee of the Trust.

(f) Nothing in clause 11.3(e) will make the Trustee liable for any claim for an amount greater than the amount which the Minister would have been able to claim and recover from the assets of the Trust in relation to the relevant obligation or liability if the Trustee's right of indemnification, out of the assets of the Trust had not been prejudiced by the failure of the Trustee to properly perform its duties.

12. Reporting requirement

(a) By 1 September each year or as otherwise agreed with the Secretary, the Developer must deliver to the Secretary a report (in a format acceptable to the Secretary) for the period 1 July to 30 June of the preceding financial year which must include the following matters, as applicable:

(i) details of all Development Consents and Subdivision Certificates issued in relation to the Development;

(ii) a description of the status of the Development including a plan that identifies what parts of the Development have been completed, are under construction and are to be constructed;

(iii) a forecast in relation to the anticipated progression and completion of the Development;

(iv) a compliance schedule showing the details of all Contribution Amounts provided under this deed as at the date of the report and indicating any non-compliance with this deed and the reason for the non-compliance; and

(v) when the Developer expects to lodge the next Planning Application.

(b) Upon the Secretary's request, the Developer must deliver to the Secretary all documents and other information which, in the reasonable opinion of the Secretary are necessary for the Secretary to assess the status of the Development and the Developer's compliance with this deed.

13. General Provisions

13.1 Entire deed

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

13.2 Variation

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

13.3 Waiver

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

13.4 Further assurances

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

13.5 Time for doing acts

(a) If:

(i) the time for doing any act or thing required to be done; or

(ii) a notice period specified in this deed,

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

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

13.6 Governing law and jurisdiction

(a) The laws applicable in New South Wales govern this deed.

(b) The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts competent to hear appeals from those courts.

13.7 Severance

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

13.8 Preservation of existing rights

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

13.9 No merger

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

13.10 Counterparts

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

13.11 Relationship of parties

Unless otherwise stated:

(a) nothing in this deed creates a joint venture, partnership, or the relationship of principal and agent, or employee and employer between the parties; and

(b) no party has the authority to bind any other party by any representation, declaration or admission, or to make any contract or commitment on behalf of any other party or to pledge any other party's credit.

13.12 Good faith

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

13.13 No fetter

Nothing in this deed is to 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.

13.14 Explanatory note

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

13.15 Expenses and stamp duty

(a) The Developer must pay its own and the Minister's reasonable legal costs and disbursements in connection with the negotiation, preparation, execution and carrying into effect of this deed.

(b) The Developer must pay for all costs and expenses associated with the giving of public notice of this deed and the Explanatory Note in accordance with the Regulation.

(c) The Developer must pay all Taxes assessed on or in respect of this deed and any instrument or transaction required or contemplated by or necessary to give effect to this deed (including stamp duty and registration fees, if applicable).

(d) The Developer must provide the Minister with bank cheques, or an alternative method of payment if agreed with the Minister, in respect of the Minister's costs pursuant to clauses 13.15(a) and (b):

(i) where the Minister has provided the Developer with written notice of the sum of such costs prior to execution, on the date of execution of this deed; or

(ii) where the Minister has not provided the Developer with prior written notice of the sum of such costs prior to execution, within 30 Business Days of demand by the Minister for payment.

13.16 Notices

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

(i) hand delivered; or

(ii) sent by prepaid ordinary mail within Australia; or

(iii) in the case of a Notice to be given by the Minister or Secretary, sent by email.

(b) A Notice is given if:

(i) hand delivered, on the date of delivery but if delivery occurs after 5pm New South Wales time or a day that is not a Business Day, is taken to be given on the next Business Day;

(ii) sent by prepaid ordinary mail within Australia, on the date that is 2 Business Days after the date of posting; or

(iii) sent by email:

(A) before 5 pm on a Business Day, on that Day;

(B) after 5 pm on a Business Day, on the next Business Day after it is sent; or

(C) on a day that it is not a Business Day, on the next Business Day after it is sent,

and the sender does not receive a delivery failure notice.

Schedule 1

Table 1 - Requirements under section 7.4 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 7.4(1)) 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) No (c) Yes
Description of land to which this deed applies – (section 7.4(3)(a))	See Schedule 3
Description of development to which this deed applies – (section 7.4 (3)(b))	See definition of Development in clause 1.1
Description of change to the environmental planning instrument to which this deed applies – (section 7.4 (3)(b))	N/A
The scope, timing and manner of delivery of contribution required by this deed – (section 7.4 (3)(c))	See Schedule 4
Applicability of sections 7.11 and 7.12 of the Act – (section 7.4 (3)(d))	The application of sections 7.11 and 7.12 of the Act is not excluded in respect of the Development.
Applicability of section 7.24 of the Act – (section 7.4 (3)(d))	The application of section 7.24 of the Act is excluded in respect of the Development.
Consideration of benefits under this deed if section 7.11 applies – (section 7.4 (3)(e))	No
Mechanism for Dispute Resolution – (section 7.4(3)(f))	See clause 8
Enforcement of this deed – (section 7.4(3)(g))	See clause 6
No obligation to grant consent or exercise functions – (section 7.4(10))	See clause 13.13

Table 2 – Other matters

Requirement under the Act	This deed
Registration of the Planning Agreement – (section 7.6 of the Act)	Yes (see clause 7)
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a construction certificate is issued – (clause 25E(2)(g) of the Regulation)	No
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before an occupation certificate is issued – (clause 25E(2)(g) of the Regulation)	No
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a subdivision certificate is issued – (clause 25E(2)(g) of the Regulation)	Yes (see clause 3 of Schedule 4)

Schedule 2

Address for Service (clause 1.1)

Minister

Contact:	The Secretary
Address:	Department of Planning and Environment 320 Pitt Street SYDNEY NSW 2000
Email:	planningagreements@planning.nsw.gov.au

Developer

Contact:	The Company Sole Director
Address:	Mountview Grange 88 Pty Ltd as trustee for the Mountview Grange 88 Unit Trust Level 10, 46 Market Street Sydney NSW 2000
Email:	bryang@johnsonpropertygroup.com.au

Landowners

Contact:	Janice Aileen Kidd and Glenda Ruth Ingle
Address:	c/- Laycock Burke Castaldi Lawyers Level 2, 77 Hunter St Newcastle NSW 2300
Email:	andrew@lbclawyers.com.au

Schedule 3

Land (clause 1.1)

1. Lots proposed for development

Lot	Deposited Plan	Folio Identifier
2	597226	2/597226

Schedule 4

Development Contribution (clause 4)

1. Development Contribution

(a) For the purposes of this Schedule, Net Developable Area, in relation to a part of the Land means the net developable area of that part as defined and determined in accordance with Schedule 6.

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

Development Contribution	Value	Timing
Contribution Amount - Monetary contribution towards designated State public infrastructure	$83,800 per hectare of Net Developable Area for any part of the Land to which a Subdivision Certificate application relates.	Pursuant to clause 3 of this Schedule 4

(c) The Minister and Developer acknowledge and agree that the Development Contribution is the sum of the Contribution Amounts 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:

$X = N \times \$83,800$

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

(b) On the CPI Adjustment Date, each Contribution Amount is to be adjusted by multiplying the Contribution Amount payable (as previously adjusted in accordance with this clause, where relevant) 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 Developer must provide the Minister with not less than 10 Business Days' written notice of its intention to lodge an application for the relevant Subdivision Certificate.

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 6.15(1)(d) of the Act.

Schedule 5

Security terms (clause 6)

1. Developer to provide Security

(a) In order to secure the payment or performance of the Development Contribution the Developer has agreed to provide the Security.

(b) The Security must:

(i) name the "Minister for Planning" and the "Department of Planning and Environment ABN 38 755 709 681" as the relevant beneficiaries; and

(ii) not have an expiry date.

2. Security

(a) At the time the Developer signs this deed, the Developer must provide the Security to the Minister having a face value amount of $20,000 (**Security Amount**) in order to secure the Developer's obligations under this deed.

(b) From the date of execution of this deed until the date that the Developer has provided the Development Contribution, the Minister is entitled to retain the Security.

3. Claims under Bank Guarantees

(a) The Minister may:

(i) call upon the Security where the Developer has failed to pay a Contribution Amount for the Development on or after the date for payment under this deed; and

(ii) retain and apply such monies towards the Contribution Amount and any costs and expenses incurred by the Minister in rectifying any default by the Developer under this deed.

(b) Prior to calling upon the Security the Minister must give the Developer not less than 10 Business Days written notice of his or her intention to call upon the Security.

(c) If:

(i) the Minister calls upon the Security; and

(ii) applies all or part of such monies towards the Contribution Amount and any 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 Security in accordance with clause (b) of this Schedule 5,

then the Developer must provide to the Minister a replacement Security to ensure that at all times until the date that the Security is released in accordance with clause 4 of this Schedule, the Minister is in possession of Security for a face value equivalent to the Security Amount.

4. Release of Security

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 has not been expended and the monies accounted for in accordance with clause 2 of this Schedule 5,

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

Schedule 6

Definition of Net Developable Area (Schedule 4, clauses 1 and 2)

1. The net developable area of a part of the Land (*the net developable area for the proposed subdivision*) is the area of land, in hectares, shown on the proposed plan of subdivision (that is, the area to which the relevant application for a subdivision certificate for that part of the Land relates), subject to the other provisions of this Schedule 6.

2. The net developable area does not include the area of any land that the proposed subdivision reserves, dedicates or otherwise sets aside as, or for the purpose of, any of the following:

   (a) school;

   (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) place of public worship;

   (h) public open space, including a public reserve (within the meaning of the *Local Government Act 1993*);

   (i) drainage reserve (within the meaning of the *Local Government Act 1993*);

   (j) public utility undertaking;

   (k) bus depot;

   (l) recreation area;

   (m) cemetery (within the meaning of the *Cemeteries and Crematoria Act 2013*);

   (n) public roads; and

   (o) public amenities or public services, in connection with which development contributions have been imposed under section 7.11 or section 7.12 of the Act or may be imposed in accordance with a contributions plan approved under section 7.18 of the Act.

3. The following areas of land are not to be included in the calculation of the net developable area for the proposed subdivision:

   (a) any area of land that is at or below the level of a 1:100 ARI (average recurrent interval) flood event, if the Secretary is satisfied that the area is unsuitable for developing for the purposes of the subdivision by virtue of it being at or below that level;

   (b) any area of land that is identified as public open space in a development control plan or in a contributions plan approved under section 7.18 of the Act;

   (c) any area of land that is within Zone E2 Environmental Conservation;

   (d) any area of land within the curtilage of a building listed on the State Heritage Register;

   (e) any area of land this is within an asset protection zone:

      (i) that is specified in a bush fire safety authority issued under the *Rural Fires Act 1997*; or

(ii) that is required to be established by the development consent relating to the subdivision,

if the Secretary is satisfied that the area is unsuitable for developing for the purposes of the subdivision by virtue of it being within that zone;

(f) an area of land that is subject to an easement in favour of a public utility undertaking for the purpose of the supply of the utility service to the public as shown on the title to that land or as confirmed in writing by the public utility undertaking, if the Secretary is satisfied the that the area is unsuitable for developing for the purposes of the subdivision by virtue of the easement; and

(g) any area of land that is within a public transport corridor (other than a road corridor) as shown on a Land Zoning Map for the purposes of an environmental planning instrument or a development control plan made under the Act, if the Secretary is satisfied that the area is unsuitable for development for the purposes of the subdivision by virtue of it being within the public transport corridor.

4. The net developable area does not include the area of any lot in the proposed plan of subdivision that may be further subdivided (other than under a strata scheme) in accordance with the development consent relating to the subdivision.

5. The net developable area does not include the area of any lot in the proposed plan of subdivision that the Secretary has determined (in writing), at the Secretary's discretion and having regard to the relevant planning controls, will be further subdivided (other than under a strata scheme) in accordance with a future development consent for the purpose of the orderly development of the land for urban purposes in the future.

6. If a proposed lot contains an existing lawful habitable dwelling (being a dwelling that lawfully existed on the proposed lot at the date this deed commences) and:

(a) is no more than 0.1 hectare, the net developable area does not include the area of the lot, or

(b) is more than 0.1 hectare in area, the net developable area is reduced by 0.1 hectare,

for the purpose of calculating the net developable area for the proposed subdivision.

7. If a proposed lot is wholly within Zone E3 Environmental Management, Zone E4 Environmental Living or Zone R5 Large Lot Residential and is more than 0.1 hectare, that lot is taken to be 0.1 hectare for the purpose of calculating the net developable area for the proposed subdivision.

8. The parties agree that the Secretary may make any determination required to be made for the purpose of calculating the net developable area for the proposed subdivision in accordance with this clause and, for that purpose, may have regard to any information available at the time, such as construction plans and any measurements made by a registered surveyor of the land concerned.

9. In this Schedule 6, the following words or expressions have the same meanings as they have in the Standard Instrument (that is, the standard instrument for a principal local environmental plan prescribed by the Standard Instrument (Local Environmental Plans) Order 2006 (**Standard Instrument**):

(a) emergency services facility;

(b) health services facility;

(c) passenger transport facility;

(d) place of public worship;

(e) public utility undertaking;

(f) recreation area; and

(g) school.

10. In this Schedule, a reference to:

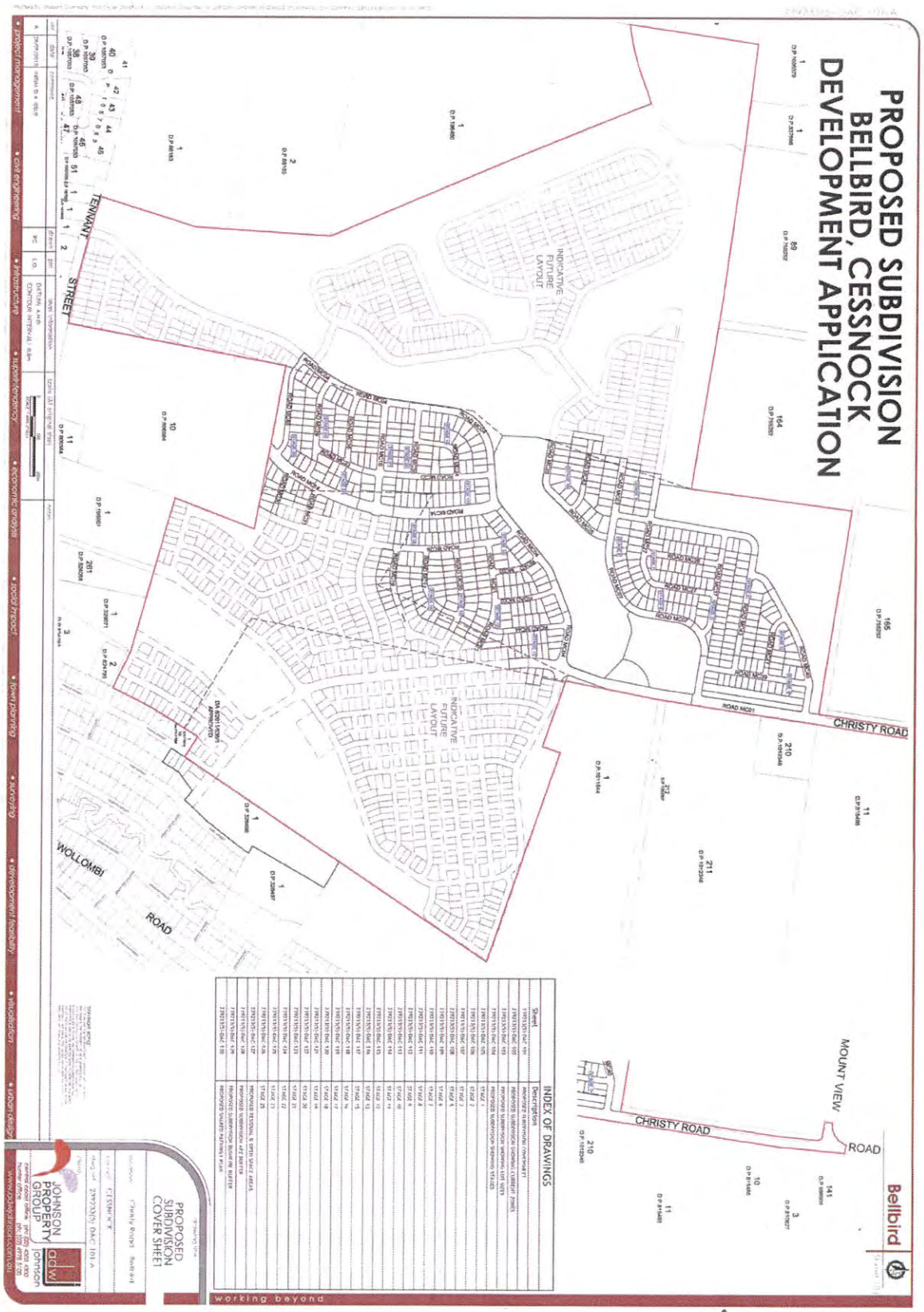
(a) a land use zone is a reference to a land use zone specified in the Standard Instrument and to a land use zone that is equivalent to any such land use zone; and

(b) curtilage of a building listed on the State Heritage Register is a reference to the curtilage of that building, or the site of that building, as specified or described in the listing of the building on the State Heritage Register kept under Part 3A of the *Heritage Act 1977*; and

(c) a "strata scheme" means a reference to a strata scheme as that term is defined in the *Strata Scheme (Freehold Development) Act 1973* or a leasehold strata scheme as that term is defined in the *Strata Scheme (Leasehold Development) Act 1986*.

Schedule 7: proposed plan of subdivision

(INDICATIVE ONLY – this plan does not describe the land subject to this agreement)



NLS\NLS\67844775\1

Execution

Executed as a deed

Signed, sealed and delivered for and on behalf of the **Minister for Planning ABN 38 755 709 681**, in the presence of:

.....
Signature of witness

.....
Signature of the Minister for Planning or delegate

.....
Name of witness in full

.....
Name of Minister for Planning or delegate

.....
Address of witness

Signed sealed and delivered
by **Janice Aileen Kidd** in the presence of:

.....
Signature of witness

.....
Signature of **Janice Aileen Kidd**

.....
Name of witness in full

ANDREW STUART KNIGHT
SOLICITOR
Level 2, 77 Hunter Street
Newcastle NSW 2300

.....
Address of witness

Signed sealed and delivered
by **Glenda Ruth Ingle** in the presence of:

.....
Signature of witness

G. R Ingle
.....
Signature of **Glenda Ruth Ingle**

.....
Name of witness in full

ANDREW STUART KNIGHT
SOLICITOR
Level 2, 77 Hunter Street
Newcastle NSW 2300

.....
Address of witness

Executed by **Mountview Grange 88 Pty Ltd (ACN 169 556 665)** as trustee for the Mountview Grange 88 Unit Trust in accordance with section 127 of the Corporations Act 2001:

.....
Signature of Sole Director and Secretary

KEITH JOHNSON
.....
Name of Sole Director and Secretary