

## **Planning Agreement**

### **Environmental Planning and Assessment Act 1979**

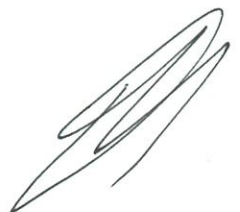
Bowdens Lane, Moore Creek

Hills Plain URA

**Minister for Planning and Public Spaces** (ABN 20 770 707 468)

and

**Kode Holdings Pty Limited** (ACN 006 547 128)

A handwritten signature in blue ink, appearing to read 'Brett Whitehead', is written over the text of the Minister for Planning and Public Spaces.A handwritten signature in black ink, appearing to read 'Brett Whitehead', is written in the bottom right corner of the page.

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This deed is dated

5 May 2021



**Parties:**

**Minister**

**Minister for Planning and Public Spaces** (ABN 20 770 707 468)  
of c/- NSW Department of Planning, Industry and Environment, Level 11, 4 Parramatta Square,  
Parramatta, New South Wales 2150

**Developer**

**Kode Holdings Pty Limited** (ACN 006 547 128)  
of 21 Supply Road Bentley Park Queensland 4869

**Introduction:**

- A The Developer owns the Land.
- B The Developer proposes to carry out the Development on the Land.
- C The Developer has made a Development Application to the Consent Authority in respect of the Land.
- D Clause 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.
- E The Developer had previously obtained development consent for subdivision of the Land into 144 and 29 residential lots in accordance with DA 800-2007 and DA 803-2007 respectively. The Developer has made a contribution to the Minister in connection with those 173 residential lots.
- F The Developer did not proceed with carrying out subdivision of the Land in accordance with DA 800-2007 and DA 803-2007. The Minister agrees to take into account the contribution made by the Developer in connection with proposed development under DA 800-2007 and DA 803-2007 when determining the Development Contribution.
- G 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.

**Base CPI** means the CPI number for the quarter ending 31 March 2020.

**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.

**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 2021 and each anniversary of 1 July 2021.

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

**Development** means the proposed 10 stage subdivision of the Land into approximately 255 residential lots and associated infrastructure, generally in accordance with the plan in Schedule 4 and DA 2019-0527 lodged with Tamworth Regional Council.

**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 clause 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.

**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.

**LEP** means the *Tamworth Regional Local Environmental Plan 2010*.

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

**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 Public Spaces and includes the Secretary and the Secretary's nominee.

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

**Residential Accommodation** has the same meaning as in the standard local environment plan prescribed by the *Standard Instrument (Local Environmental Plans) Order 2006* as at the date of this deed.

**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 (Local Environmental Plans) Order 2006* as at the date of this deed,

but which does not include a Super Lot.

**Secretary** means the Secretary of the Department of Planning, Industry and Environment.

**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 community title subdivision but excluding strata subdivision) for Residential Accommodation, but does not include a Residue Lot.

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

## 1.2 Interpretation

In this deed unless the context clearly indicates otherwise:

- (a) a reference to **this deed** or another document means this deed or that other document and any document which varies, supplements, replaces, assigns or novates this deed or that other document;
- (b) a reference to **legislation** or a **legislative provision** includes any statutory modification, or substitution of that legislation or legislative provision and any subordinate legislation issued under that legislation or legislative provision;
- (c) a reference to a **body** or **authority** which ceases to exist is a reference to either a body or authority that the parties agree to substitute for the named body or authority or, failing agreement, to a body or authority having substantially the same objects as the named body or authority;
- (d) a reference to the **introduction**, a **clause**, or a **schedule** is a reference to the introduction, a clause, or a schedule 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 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**

- (a) The Developer undertakes to provide to the Minister, or the Minister's nominee, the Development Contribution on or prior to the commencement of this deed.
- (b) The Minister and the Developer acknowledge and agree that the Development Contribution for the purposes of this deed will be calculated on the basis that the rate per lot is \$741.00.

- (c) The Minister and the Developer acknowledge and agree that a contribution has already been made in respect of 173 residential lots on the Land, and that 173 lots are to be excluded from the number of lots for the purposes of determining the Development Contribution under this clause 4.1.
- (d) The Development Contribution will be an amount equal to the sum represented by "X" in the following formula:  
$$X = (N - 173) \times \$741.00$$

"N" means the number of lots that are shown on the then-current proposed plan of subdivision for the Land as at the date that the Minister requires payment of the Development Contribution which are to be created for the purpose of Residential Accommodation, excluding any lots containing an existing lawfully constructed dwelling and any lots intended to be a Residue Lot or Super Lot.
- (e) If the Development Contribution is paid on or after the CPI Adjustment Date, the amount payable is to be adjusted by multiplying the Development Contribution that would have been payable before the CPI Adjustment Date by an amount equal to the Current CPI divided by the Base CPI.

#### **4.2 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. Dispute Resolution**

#### **5.1 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.

#### **5.2 Attempt to resolve**

On receipt of notice under clause 5.1, 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.

#### **5.3 Referral to the Secretary**

Should the matter not be resolved under clause 5.2, the matter shall be referred to the Secretary whose determination of the disagreement shall be final and binding on the parties.

## **6. GST**

### **6.1 Definitions**

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

### **6.2 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.

### **6.3 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.

### **6.4 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 6.

### **6.5 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.

### **6.6 Non-monetary consideration**

Clause 6.5 applies to non-monetary consideration.

### **6.7 Assumptions**

The Developer acknowledges and agrees that in calculating any amounts payable under clause 6.5 the Developer must assume the Minister is not entitled to any input tax credit.

### **6.8 No merger**

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

## **7. Capacity**

### **7.1 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.

### **7.2 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.

## **8. General Provisions**

### **8.1 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.

### **8.2 Explanatory note**

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

### **8.3 Expenses and stamp duty**

- (a) The Developer must pay its own and the Minister's reasonable valuation costs, 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 8.3(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.

#### 8.4 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
<b>Planning instrument and/or development application – (section 7.4(2))</b>  The Developer has: <ul style="list-style-type: none"> <li>(a) sought a change to an environmental planning instrument.</li> <li>(b) made, or proposes to make, a Development Application.</li> <li>(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.</li> </ul>	<ul style="list-style-type: none"> <li>(a) No</li> <li>(b) Yes</li> <li>(c) No</li> </ul>
<b>Description of land to which this deed applies – (section 7.4(3)(a))</b>	See Schedule 3
<b>Description of development to which this deed applies – (section 7.4(3)(b))</b>	See definition of Development in clause 1.1
<b>Description of change to the environmental planning instrument to which this deed applies – (section 7.4(3)(b))</b>	Not applicable
<b>The scope, timing and manner of delivery of contribution required by this deed – (section 7.4(3)(c))</b>	See clause 4
<b>Applicability of sections 7.11 and 7.12 of the Act – (section 7.4(3)(d))</b>	The application of sections 7.11 and 7.12 of the Act is not excluded in respect of the Development.
<b>Applicability of section 7.24 of the Act – (section 7.4(3)(d))</b>	The application of section 7.24 of the Act is excluded in respect of the Development.
<b>Consideration of benefits under this deed if section 7.11 applies – (section 7.4(5))</b>	No
<b>Mechanism for Dispute Resolution – (section 7.4(3)(f))</b>	See clause 5
<b>Enforcement of this deed – (section 7.4(3)(g))</b>	Not required
<b>No obligation to grant consent or exercise functions – (section 7.4(10))</b>	See clause 8.1

Table 2 – Other matters

Requirement under the Act	This deed
Registration of the Planning Agreement – (section 7.6 of the Act)	No
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)	No

## Schedule 2

### Address for Service (clause 1.1)

#### Minister

**Contact:** The Secretary

**Address:** Department of Planning, Industry and Environment  
4 Parramatta Square, 12 Darcy Street  
PARRAMATTA NSW 2150

**Email:** [planningagreements@planning.nsw.gov.au](mailto:planningagreements@planning.nsw.gov.au)

#### Developer

**Contact:** The Company Director and Secretary, Kode Holdings Pty Limited

**Address:** c/o David Lord  
Bath Stewart Associates Pty Ltd  
239 Marius Street  
PO Box 403  
TAMWORTH NSW 2340

**Email:** [office@bathstewart.com.au](mailto:office@bathstewart.com.au)

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


<b>Lot</b>	<b>Deposited Plan</b>	<b>Folio Identifier</b>
52	1120933	52/1120933
165	753851	165/753851
166	753851	166/753851



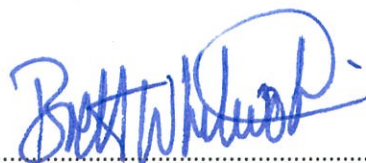
**Execution page**

**Executed as a deed**

**Signed, sealed and delivered by the Minister  
for Planning and Public Spaces (ABN 20 770  
707 468), in the presence of:**



Signature of witness



Signature of the delegate of the Minister for  
Planning and Public Spaces



Name of witness in full

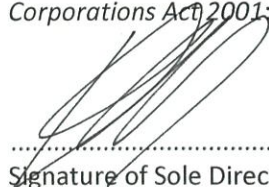


Name of the delegate of the Minister for  
Planning and Public Spaces



Address of witness

**Signed, sealed and delivered by Kode  
Holdings Pty Ltd (ACN 006 547 128) in  
accordance with section 127(1) of the  
Corporations Act 2001:**



Signature of Sole Director and Secretary



Name of Sole Director and Secretary in full