

Planning Agreement

Environmental Planning and Assessment Act 1979

393 and 409 John Oxley Drive, Thrumster 2444

Thrumster Urban Release Area

Minister administering the *Environmental Planning and Assessment Act 1979* (ABN 20 770 707 468)

Mach Management Pty Ltd (ACN 651 933 792)

DocuSigned by:

Christopher White

D1F19B324C084D3...

DocuSigned by:

A8780EAE8EA949F...

SVPA2023-62 – Mach Management Pty Ltd

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This deed is dated

Parties:

Minister administering the *Environmental Planning and Assessment Act 1979* (ABN 20 770 707 468)
c/- NSW Department of Planning and Environment
of Level 11, 4 Parramatta Square, 12 Darcy Street, Parramatta NSW 2150

Mach Management Pty Ltd (ACN 651 933 792)
c/- Business Class Accounting
of Unit 2323, 340 Scottsdale Drive, Robina QLD 4226

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 public 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 Secretary to provide the certification required by the LEP.
- F** The parties agree that no contribution will be payable in relation to any lot created for the purpose of residential accommodation that contains a dwelling which was located on the Land on the date of commencement of this deed.

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 2023.

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 Consumer Price Index (All Groups Index) for Sydney published by the Commonwealth Statistician, or if that index no longer exists, any similar index that the Minister specifies, in the Minister's sole discretion, for the purposes of this deed.

Current CPI means the CPI number as provided for in clause 4.1.

Developer means the Landowner, unless otherwise specified in this deed.

Development means the demolition of an existing dwelling and shed, the subdivision of the Land to create approximately forty-five (45) vacant residential lots, one (1) public reserve lot, and one (1) lot containing an existing dwelling, and the installation of associated public infrastructure services and roads, generally in accordance with the plan in Schedule 4 and DA/2023/416 lodged with Port Macquarie-Hastings 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.

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.

Landowner means the owner of the Land from time to time and includes the parties listed in Schedule 3.

LEP means *Port Macquarie-Hastings Local Environmental 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 administering the *Environmental Planning and Assessment Act 1979* and includes the Secretary and the Secretary's nominee.

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

Residential Accommodation has the same meaning as in the Standard Instrument 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 as at the date of this deed,

but which does not include a Super Lot.

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

Standard Instrument means the standard instrument set out at the end of the *Standard Instrument (Local Environmental Plans) Order 2006*.

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 and 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 made 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 **Department of Planning and Environment** continues to be a reference to the Department even if renamed and, if that Department is abolished or ceases to include the group of staff principally responsible for the administration of the Act, is a reference to any other Department or other Public Service agency (within the meaning of the *Government Sector Employment Act 2013*) that includes that group of staff, whether or not the change in relation to the Department occurs before or after the execution of this deed by the Minister;
- (e) 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;
- (f) **clause headings**, the **introduction** and the **table of contents** are inserted for convenience only and do not form part of this deed;
- (g) the **schedules** form part of this deed;
- (h) a reference to a **person** includes a natural person, corporation, statutory corporation, partnership, the Crown or any other organisation or legal entity;
- (i) a reference to a **natural person** includes their personal representatives, successors and permitted assigns;
- (j) a reference to a **corporation** includes its successors and permitted assigns;

- (k) a reference to a right or obligation of a party is a reference to a right or obligation of that party under this deed;
- (l) 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;
- (m) 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;
- (n) **including** and **includes** are not words of limitation;
- (o) a word that is derived from a defined word has a corresponding meaning;
- (p) **monetary amounts** are expressed in Australian dollars;
- (q) the singular includes the plural and vice-versa;
- (r) words importing one gender include all other genders;
- (s) a reference to a thing includes each part of that thing; and
- (t) 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 development contributions provisions of the Act

The application of the following provisions of the Act to the Development is excluded or not excluded to the extent stated in Schedule 1:

- (a) sections 7.11 and 7.12; and
- (b) Subdivision 4 of Division 7.1.

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 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 \$1,715.
- (c) The Development Contribution will be an amount equal to "X" in the following formula:

$$X = N \times \$1,715$$

"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 dwelling and any lots intended to be a Residue Lot or Super Lot.

- (d) The Development Contribution is to be adjusted, at time of payment, by multiplying the Development Contribution payable by an amount equal to the Current CPI divided by the Base CPI.
- (e) For the purposes of this clause 4.1, the Current CPI is:
 - (i) if the Development Contribution is paid between 1 January and 30 June (inclusive) in any calendar year – the CPI number for the quarter ending on 31 March in the preceding calendar year; and
 - (ii) if the Development Contribution is paid between 1 July and 31 December (inclusive) in any calendar year – the CPI number for the quarter ending on 31 March in that calendar year.

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 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.

8.2 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.

8.3 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.

8.4 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.

8.5 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.

8.6 Counterparts

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

8.7 Explanatory note

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

8.8 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.
- (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 8.4(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.

8.9 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.

8.10 Electronic execution

- (a) Each party consents to this deed and any variations of this deed being signed by electronic signature by the methods set out in this clause.
- (b) This clause applies regardless of the type of legal entity of the parties. If this deed or any subsequent variations are signed on behalf of a legal entity, the persons signing warrant that they have the authority to sign.
- (c) For the purposes of this clause, the parties agree that the following methods validly identify the person signing and indicate that person's intention to sign this deed and any variation of it:
 - (i) insertion of an image (including a scanned image) of the person's own unique signature on to the deed;
 - (ii) insertion of the person's name on to the deed; or
 - (iii) use of a stylus or touch finger or a touch screen to sign the deed,

provided that in each of the above cases, words to the effect of '*Electronic signature of me, [NAME], affixed by me on [DATE]*' are also included on the deed;

 - (iv) use of a reliable electronic signature and exchange platform (such as DocuSign or AdobeSign) to sign the deed; or
 - (v) as otherwise agreed in writing (including via email) between the parties.
- (d) The parties agree that the above methods are reliable as appropriate for the purpose of signing this deed and that electronic signing of this deed by or on behalf of a party indicates that party's intention to be bound.
- (e) A signed copy of this deed transmitted by email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this deed for all purposes.

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(2)) The Developer has: <ul style="list-style-type: none"> (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. 	<ul style="list-style-type: none"> (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 clause 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 to the Development is not excluded.
Applicability of Subdivision 4 of Division 7.1 of the Act – (section 7.4(3)(d))	The application of Division 7.1, Subdivision 4, of the Act to the Development is excluded.
Consideration of benefits under this deed if section 7.11 applies – (section 7.4(5))	No
Mechanism for Dispute Resolution – (section 7.4(3)(f))	See clause 5
Enforcement of this deed – (section 7.4(3)(g))	Not required
No obligation to grant consent or exercise functions – (section 7.4(9) and section 7.4(10))	See clause 8.5

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 – (section 21 of <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i>)	No
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before an occupation certificate is issued – (section 48 of <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i>)	No
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a subdivision certificate is issued – (section 6.15(1)(d) of the Act)	No

Schedule 2

Address for Service (clause 1.1)

Minister

Contact: The Secretary

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

Email: planningagreements@planning.nsw.gov.au

Developer

Contact: The Company Director(s) and Secretary

Address: c/- Business Class Accounting
Unit 2323, 340 Scottsdale Drive
Robina QLD 4226

Email: info@kingcampbell.com.au

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

Lot/Deposited Plan	Folio Identifier	Landowner
Lot 1 DP574816	1/574816	Mach Management Pty Ltd
Lot 1 DP505954	1/505954	Mach Management Pty Ltd

Execution page

Executed as a deed

Signed, sealed and delivered by the **Minister administering the *Environmental Planning and Assessment Act 1979*** (ABN 20 770 707 468) in the presence of:

.....
Signature of witness

.....
Signature of delegate of the Minister administering the *Environmental Planning and Assessment Act 1979*

.....
Name of witness in full


.....
Name of delegate of the Minister administering the *Environmental Planning and Assessment Act 1979*

.....
Address of witness


*By signing this deed, the witness states that they witnessed the signing of this deed by:

.....
(being the name of the Minister's delegate)
over audio visual link (and signed as a witness in counterpart if applicable) in accordance with section 14G of the *Electronic Transactions Act 2000* (NSW).

Signed, sealed and delivered by **Mach Management Pty Ltd** (ACN 651 933 792) in accordance with section 127(1) of the *Corporations Act 2001* by:

DocuSigned by:

.....
D4F19B324C084D3.....
Signature of Director

.....
Christopher Sean White
Name of Director in full

DocuSigned by:

.....
A8780EAE8EA940F.....
Signature of Director/Secretary

.....
Michael James Kemp
Name of Director/Secretary in full