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Deed of Novation
South Lindfield Urban Release Area
Planning Agreement

Nigel Bruce Mann, Patricia Marie Mann, Phillip John Mann, Johanna Elizabeth Mann, Philip J Pye, Brett Christian Pye

and

Koala Meadows Pty Limited

and

Port Macquarie-Hastings Council

[Redacted]
Dated: *6 April* 2022



Deed of Novation
South Lindfield Urban Release Area Planning Agreement

Summary Sheet

Outgoing Party:

Name: Nigel Bruce Mann, Patricia Marie Mann, Phillip John Mann, Johanna Elizabeth Mann, Philip J Pye, Brett Christian Pye

Address:

Telephone:

Email:



Incoming Party:

Name: Koala Meadows Pty Limited ABN 35 648 235 287,

Address:

Telephone:

Email:



Council:

Name: Port Macquarie-Hastings Council

Address: Corner Lord and Burrawan Streets, Port Macquarie, NSW 2444

Telephone: (02) 6581 8111

Email: council@pmhc.nsw.gov.au



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Deed of Novation

South Lindfield Urban Release Area Planning Agreement

Parties

Outgoing Party	Nigel Bruce Mann, Patricia Marie Mann, Phillip John Mann, Johanna Elizabeth Mann, Philip J Pye, Brett Christian Pye all [REDACTED] [REDACTED]
Incoming Party	Koala Meadows Pty Limited ABN 35 648 235 [REDACTED]
Council	Port Macquarie-Hastings Council ABN 11 236 901, 601 Corner Lord and Burrawan Streets, Port Macquarie, New South Wales, 2444

Background

- A The Outgoing Party and the Council are parties to the Planning Agreement.
- B The Planning Agreement was entered into pursuant to s7.4 of the Act.
- C The Outgoing Party owned the Land when the Planning Agreement was entered into.
- D The Outgoing Party transferred the Land to the Incoming Party on 29 July 2021.
- E The Outgoing Party wishes to novate the Planning Agreement to the Incoming Party.
- F Clause 44 of the Planning provides for the novation of the Planning Agreement.
- G The Planning Agreement unregistered on the title to the Land.
- H The Parties have agreed to enter into this Deed in order to give effect to the novation of the Planning Agreement and related matters.

Operative provisions

1 Definitions & Interpretation

Definitions

- 1.1 In this Deed, the words and phrases appearing in Column 1 of the following table have the meaning set out in Column 2 of that table corresponding to those words or phrases except in so far as the context or subject-matter otherwise indicates or requires.

Table

Column 1	Column 2
Word or phrase	Meaning
Act	the <i>Environmental Planning and Assessment Act 1979</i> (NSW)
Claim	all actions, suits, claims, demands, investigations and proceedings of any kind, open, pending or threatened, whether mature, unmatured, contingent, known or unknown, at law or in equity, in any forum
Deed	this Deed
Development	has the same meaning as in the Planning Agreement
Effective Date	the date when all of the Parties have executed this Deed
Final Lot	has the same meaning as in the Planning Agreement
Land	Lot 3 DP 533058 and any lot created because of the subdivision of that lot.
Party	a party to this Deed
Planning Agreement	<i>South Lindfield Urban Release Area Planning Agreement</i> between Nigel Bruce Mann, Patricia Marie Mann, Phillip John Mann, Johanna Elizabeth Mann, Philip J Pye, Brett Christian Pye and Port Macquarie-Hastings Council dated 16 January 2019
Subdivision Certificate	has the same meaning as in section 6.4(d) of the Act

Interpretation

- 1.2 In this Deed:
- (a) words denoting any gender include all genders,
 - (b) headings are for convenience only and do not affect interpretation,
 - (c) the singular includes the plural and vice versa,
 - (d) any schedule or annexure attached to this Deed forms part of it,
 - (e) a reference to a Party includes its legal personal representatives, successors and permitted assigns, servants, contractors and agents.
 - (f) a reference to a person includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity,
 - (g) a reference to a statute or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them,
 - (h) all references to dates and times are to New South Wales time,
 - (i) all references to '\$' and 'dollars' are to the lawful currency of Australia,
 - (j) no rule of construction applies to the disadvantage of a Party because that Party was responsible for the preparation of, or seeks to rely on, this Deed or any part of it,
 - (k) unless expressly stated to be otherwise, the meaning of general words is not limited by specific examples introduced by '*including*', '*for example*' or similar inclusive expressions,
 - (l) a reference to this Deed includes any schedules, annexures and appendices to this Deed, and any variation or replacement of this Deed.

2 Commencement

- 2.1 This Deed commences and has effect on and from the Effective Date.
- 2.2 The Party who executes this Deed last is to insert the date they did so on the cover page and the Execution page and provide a copy of the fully executed and dated deed to the other Parties.

3 Novation of Planning Agreement

- 3.1 Subject to this Deed and with effect from the Effective Date:
- 3.1.1 the Incoming Party is substituted for the Outgoing Party as a Party to the Planning Agreement,
 - 3.1.2 the Incoming Party is bound by the Planning Agreement to perform all of the obligations in the Planning Agreement,
 - 3.1.3 the Incoming Party is entitled to the benefit of the Planning Agreement as if the Incoming Party was a Party to the Planning Agreement when it was entered into, and
 - 3.1.4 the Outgoing Party is released and discharged from all obligations and liabilities, and from all Claims, prior to the Effective Date.
- 3.2 With effect from the Effective Date:



- 3.2.1 all references to the Outgoing Party in the Planning Agreement are construed as references to the Incoming Party, and
- 3.2.2 the Council must address all notices and communications given or made by it under the Planning Agreement to the Incoming Party.

4 Waiver of breaches of Planning Agreement

- 4.1 The Parties acknowledge that on the Effective Date, the Outgoing Party is in breach of clauses 43.2 and 44.1 of the Planning Agreement.
- 4.2 Subject to compliance by the Incoming Party of clause 5 of this Deed, the Council waives the breach of clauses 43.2 and 44.1 of the Planning Agreement by the Outgoing Party.

5 Registration of Planning Agreement

- 5.1 Not later than 28 days after the Effective Date, the Incoming Party is to deliver to the Council the following documents and such other documents as may be reasonably required by the Council to enable registration of this Deed by the Council on the title to the Land:
 - 5.1.1 an instrument requesting registration of this Deed on the title to the Land in registrable form duly executed by the Incoming Party, and
 - 5.1.2 the written irrevocable consent of each person referred to in section 7.6(1)(a) of the Act to that registration.
- 5.2 Despite clause 5.1, if a Subdivision Certificate is issued in respect of the Land within 28 days after the Effective Date, the Incoming Party is only required to deliver to the Council:
 - 5.2.1 an instrument in registrable form duly executed by the Incoming Party requesting registration of this Deed on the title to any lot created by the registration of the plan of subdivision to which the Subdivision Certificate Relates other than a Final Lot, and
 - 5.2.2 the written irrevocable consent of each person referred to in section 7.6(1)(a) of the Act to that registration.

6 Affirmation of Planning Agreement

- 6.1 The Planning Agreement is to be read and construed subject to this Deed, and in all other respects the provisions of the Planning Agreement are ratified and confirmed, and, subject to the variation and novation contained in this Deed, the Planning Agreement will continue in full force and effect.
- 6.2 Subject to this Deed:
 - 6.2.1 on and from the Effective Date, the Incoming Party must properly and punctually observe and perform all of the Outgoing Party's obligations (both present, future, actual and contingent) under the Planning Agreement or which arise as a result of the Council exercising any right under the Planning Agreement and which are due to be performed on or after the Effective Date,
 - 6.2.2 until the Effective Date, the Outgoing Party must continue to properly and punctually observe and perform all of the Outgoing Party's



obligations both future, actual and contingent under the Planning Agreement.

7 Council Consent

- 7.1 For the purposes of clause 44 of the Planning Agreement, the Council confirms that:
- 7.1.1 this Deed is the deed in favour of the Council referred to in that clause,
 - 7.1.2 the Council is satisfied that the Incoming Party is reasonably capable of performing the obligations under the Planning Agreement, and
 - 7.1.3 the Council consents to the novation of the Planning Agreement by the Outgoing Party to the Incoming Party.

8 Representations & Warranties

- 8.1 Each Party represents and warrants that at the time of execution of this Deed and at the Effective Date:
- 8.1.1 it has capacity unconditionally to execute, deliver and comply with its obligations under this Deed,
 - 8.1.2 it has taken all necessary action to authorise the unconditional execution and delivery of, and the compliance with, its obligations under this Deed,
 - 8.1.3 this Deed is a valid and legally binding obligation and is enforceable against it by each other Party in accordance with its terms, and
 - 8.1.4 its unconditional execution and delivery of, and compliance with its obligations under this Deed do not contravene:
 - (a) any law or directive from a government entity,
 - (b) its constituent documents,
 - (c) any agreement or instrument to which it is a Party, or
 - (d) any obligation of it to any other person.
- 8.2 The warranties and representations in clause 8.1 survive the execution of this Deed and the novation and assignment of the Planning Agreement.

9 General

Costs

- 9.1 The Outgoing Party and the Incoming Party are jointly and severally liable for the Council's legal costs associated with the negotiation, preparation, and execution of this Deed.
- 9.2 The Incoming Party must pay all stamp duty (if any) arising directly or indirectly from this Deed.



GST

- 9.3 Where a supply made under this Deed gives rise to a liability for GST, the consideration to be provided for that supply (other than under this clause) is to be increased by an additional amount equal to the GST payable on the supply.
- 9.4 The additional amount must be paid, and the supplier must provide a tax invoice, at the same time as the other consideration for that supply is to be provided under this Deed.
- 9.5 Terms used in this clause have the meanings in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Entire Deed

- 9.6 This Deed contains everything to which the Parties have agreed in relation to the matters it deals with.
- 9.7 No Party can rely on an earlier document, or anything said or done by another Party, or a director, officer, agent or employee of that Party, before this Deed was executed, except as permitted by law.

Amendment

- 9.8 This Deed may only be varied or replaced by a document executed by the Parties.

Governing law and jurisdiction

- 9.9 This Deed is governed by the laws of New South Wales and the Commonwealth.
- 9.10 Each Party irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales and the Commonwealth.

Severability

- 9.11 If a provision of this Deed is invalid, illegal, or unenforceable, it must, to the extent that it is invalid, illegal, or unenforceable, be treated as severed from this Deed.
- 9.12 Severance of a provision will not affect the validity and enforceability of the remaining provisions.

[The next page is the Execution page]



Execution

Executed as a Deed.

Dated: 6 APRIL 2022

Executed by the Outgoing Party:



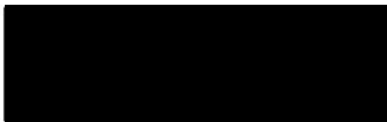
Nigel Bruce Mann



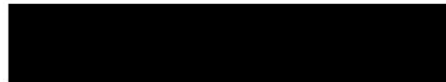
Witness

ANTHONY THORNE

Name



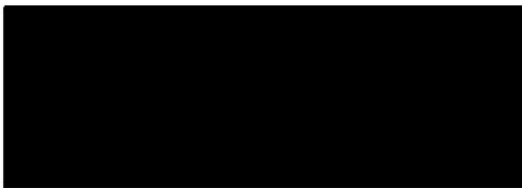
Patricia Marie Mann



Witness

ANTHONY THORNE

Name



Phillip John Mann



Witness

ANTHONY THORNE

Name



.....
[Redacted]
Johanna Elizabeth Mann

[Redacted]
Witness

ANTHONY THORNE

Name

.....
[Redacted]
Philip J Pye

[Redacted]
Witness

ANTHONY THORNE

Name

[Redacted]
Brett Christian Pye

[Redacted]
Witness

ANTHONY THORNE

Name



Executed by the Incoming Party in accordance with s127 of the Corporations Act 2001 (Cth):



~~Nigel Bruce Mann~~

Sole Director / Secretary

Executed by the Council by Dr Clare Molly Allen, Chief Executive Officer of the Council, as an authorised delegate pursuant to s377 of the Local Government Act 1993 (NSW):



~~Dr Clare Molly Allen~~
Melissa Waters
Chief Executive Officer (Acting)



Witness

DAVID TROEMEL
.....

Name

*17 BURRAWAY STREET
POST MACQUARIE NSW 2444*