

ATTACHMENTS UNDER SEPARATE
COVER

ORDINARY COUNCIL MEETING
9 FEBRUARY 2021



PORT STEPHENS
C O U N C I L

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ITEM 2 - ATTACHMENT 2 DRAFT VOLUNTARY PLANNING AGREEMENT
AND EXPLANATORY NOTE.

**Deed
of
Voluntary Planning Agreement**

Parties

Port Stephens Council ABN 16 744 377 876

and

Salsands (NSW) Pty Ltd ACN 139 959 710

Background

- A. On 22 June 2020 the NSWLEC in the Proceedings:
- a. approved Development Application number 16-2018-660-1 for a staged development of a business park consisting of office premises, warehouse, cafe, signage, strata subdivision retaining wall and associated site works at Lot 16 DP 1010867 known as 15 Kara Crescent Taylors Beach, and subdivision of Lot 16 into 2 lots, subject to the conditions in Annexure B to the NSWLEC Orders;
 - b. granted leave to the Developer to rely on an amended application for Development Consent to include an offer to enter into a voluntary planning agreement, as referred to in s 7.4 of the Act, in the terms in Annexure A to the NSWLEC Orders.
- B. Condition 3 of the 2020 Consent provides:
- Within three months of the date of determination of this consent or other timeframe agreed by Council, the Applicant must enter into a Voluntary Planning Agreement with Port Stephens Council in accordance with:*
- a. *Division 7.1 of Part 7 of the Environmental Planning and Assessment Act 1979; and*
 - b. *in the terms of the offer set out in the Offer to Consent Authority to enter into a Voluntary Planning Agreement dated 22 May 2020 (Annexure A to the orders made by consent in LEC Proceedings 2019/00403404).*
- C. This Agreement is the planning agreement required by Condition 3 of the 2020 Consent.
- D. Prior to the Council and the Developer requesting the NSWLEC to make the NSWLEC Orders by consent, the parties had been through a conciliation process required by Section 34 of the *Land and Environment Court Act 1979*. That process resulted in:
- a. the parties inviting the NSWLEC to make the NSWLEC Orders, the conditions of consent, and agreeing to the terms of the VPA Offer prior to that offer being made to the NSWLEC as the consent authority;
 - b. the parties agreeing to create obligations each to the other and to the public as specified in the VPA Offer and to be bound by those obligations.
- E. The purposes of this Agreement include:
- a. To record the provisions made by the Developer for the public purpose in s 7.4(2) of the Act so as to justify the reduction to \$0 of the fixed developer contributions otherwise payable under s 7.12 of the Act.

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- b. To enable the following to be lawfully required pursuant to the terms of the Development Consent to be granted by the NSWLEC as consent authority:
 - i. dedicate to the Council the area marked "road widening" on the Plan of Subdivision as public road for a cul-de-sac turning head area at the end of Kara Crescent without compensation;
 - ii. dedicate to the Council Lot 2 in the Plan of Subdivision as drainage reserve without compensation, and create a public positive covenant requiring maintenance of the drainage infrastructure within the drainage reserve by the owner of Lot 1 in the Plan of Subdivision from time to time;
 - iii. create an easement in gross (for the benefit of the Council) to drain water 3 metres wide marked (D) on the Plan of Subdivision over the stormwater infrastructure to be constructed on Lot 1 in the Plan of Subdivision to convey stormwater emanating from the pipe at the end of Kara Crescent currently discharging into the open drain on Lot 16 DP 1010867;
 - iv. create the right of access marked (C) on the Plan of Subdivision permitting Lot 1 to access Lot 2 (the drainage reserve) for the purpose of maintenance and upkeep.
- c. To record and place into binding terms other commitments made by each of the parties as proposed in the VPA Offer.

Operative provisions

1 Planning agreement under the Act

- 1.1 The Parties agree that this Agreement is a planning agreement within the meaning of section 7.4(1) of the Act, governed by Part 7, Division 7.1, Subdivision 2 of the Act.

2 Application of this Agreement

- 2.1 This Agreement applies to Land, the Council Land and to the Development.

3 Operation of this Agreement

- 3.1 This Agreement takes effect from the date the Agreement is executed by all of the Parties, as required by clause 25C of the Regulation.

4 Definitions and interpretation

- 4.1 In this Agreement, unless the context otherwise requires the following definitions apply:

88B Instrument means the Section 88B Instrument at Annexure A.

2020 Consent means the Development Consent granted by the NSWLEC referred to in the recital A.a. under the heading Background herein.

Act means the *Environmental Planning and Assessment Act 1979*.

Agreement means this Deed.

Claim includes a claim, demand, remedy, suit, injury, damage, loss, cost, liability, action, proceeding or right of action.

Council means Port Stephens Council.

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Council Land means that part of Kara Crescent as shown in Proposed Roadwork and Drainage Plans, prepared by GCA Engineering Solutions, 18086C Revision 2, C100, C101, C102, dated 12/05/2020; and Lot 2 in the Plan of Subdivision.

Dealing means without limitation, a sale, transfer, disposal, assignment, novation, mortgage, charge, encumbrance or other dealing with the Land or any part thereof, and "Deal" is to be interpreted accordingly.

Developer means Salsands (NSW) Pty Ltd ACN 139 959 710.

Development means the development the subject of the 2020 Consent.

Development Application has the same meaning as in the Act.

Development Consent has the same meaning as in the Act.

Development Contribution means a monetary contribution, the dedication of land free of cost or the provision of a material public benefit.

Explanatory Note means the explanatory note required by the Regulation.

GST has the same meaning as in the GST Law.

GST Amount means in relation to a Taxable Supply the amount of GST payable in respect of the Taxable Supply.

GST Law has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any other Act or regulation relating to the imposition or administration of the GST.

Input Tax Credit has the meaning given by the GST Law and a reference to an Input Tax Credit entitlement of a party includes an Input Tax Credit for an acquisition made by that party but to which another member of the same GST Group is entitled under the GST Law.

Just Terms Act means the *Land Acquisition (Just Terms Compensation) Act 1991*

Land means Lot 16 DP 1010867 known as 15 Kara Crescent Taylors Beach NSW.

Lot 16 Consent means the consent granted by the Council by Notice of Determination dated 8 July 2019 the subject of the Proceedings on appeal to the NSWLEC.

NSWLEC means the NSW Land & Environment Court.

NSWLEC Orders means the Court orders made in the Proceedings on 22 June 2020 and amended on 19 November 2020.

Party means a party to this agreement, including their successors and assigns.

Plan of Subdivision means the Plan of Subdivision of Lot 16 DP 1010867 drawn by Nigel Delfs surveyor reference 18551 at Annexure B.

Proceedings means *Salsands (NSW) Pty Ltd v Port Stephens Council* [2020] NSWLEC 1263, NSWLEC file number 2019/403404.

Register has the same meaning as *The Register* in section 3 of the *Real Property Act 1900*.

Regulation means the *Environmental Planning and Assessment Regulation 2000*.

Security means a bank guarantee to the satisfaction of the Council.

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Subdivision Certificate has the same meaning as in the Act.

Taxable Supply has the meaning given by the GST Law excluding (except where expressly agreed otherwise) a supply in respect of which the supplier chooses to apply the Margin Scheme in working out the amount of GST on that supply.

Transfer means without limitation, a sale, transfer, disposal, or assignment of the Land or any part thereof.

VPA Offer means the *Offer to Consent Authority to enter into a Voluntary Planning Agreement* dated 22 May 2020 (Annexure A to the NSWLEC Orders).

Work means the physical result of any building, engineering or construction work in, on, over or under land and includes without limitation:

- (a) the cul-de-sac turning head in Kara Crescent;
- (b) the drainage works within Kara Crescent;
- (c) the pipes conveying stormwater through the easement to drain water 3 metres wide marked (D) in the Plan of Subdivision;
- (d) the rain garden drainage infrastructure within proposed Lot 2 in the Plan of Subdivision, in clause 5.2 below.

4.2 In the interpretation of this Agreement, the following provisions apply unless the context otherwise requires:

- (a) Headings are inserted for convenience only and do not affect the interpretation of this Agreement.
- (b) A reference in this Agreement to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
- (c) An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- (d) A reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.
- (e) A reference in this Agreement to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced by agreement of the parties.
- (f) References to the word 'include' or 'including' are to be construed without limitation.
- (g) A reference to this Agreement includes the agreement recorded in this Agreement.
- (h) A reference to a party to this Agreement includes a reference to the servants, agents and contractors of the party, and the party's successors and assigns.
- (i) Any schedules and attachments form part of this Agreement.

5 Obligations of the Developer

5.1 The Developer will register the Plan of Subdivision and 88B Instrument with NSW Land Registry Services including:

- (a) dedicate Lot 2 to the Council as drainage reserve;
- (b) dedicate the area marked "road widening" to the Council as public road;

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- (c) create the right of access marked (C) permitting Lot 1 to access Lot 2 (the drainage reserve) for the purpose of maintenance and upkeep;
- (d) create the easement to drain water 3 metres wide marked (D); and
- (e) create a public positive covenant requiring Lot 1 to maintain the drainage infrastructure within the drainage reserve dedicated as Lot 2;

at the time required by and otherwise in accordance with Condition 45 of the 2020 Consent.

- 5.2 The Developer will construct at its expense at the times required by and otherwise in accordance with the terms of the 2020 Consent:
- (a) a cul-de-sac turning head in Kara Crescent as shown in Proposed Roadwork and Drainage Plans, prepared by GCA Engineering Solutions, 18086C Revision 2, C100, C101, C102, dated 12/05/2020;
 - (b) drainage works within Kara Crescent as shown in Proposed Roadwork and Drainage Plans, prepared by GCA Engineering Solutions, 18086C Revision 2, C100, C101, C102, dated 12/05/2020;
 - (c) the pipes conveying stormwater through the easement to drain water 3 metres wide marked (D) in the Plan of Subdivision in accordance with:
 - (i) Drainage Plan, prepared by GCA Engineering Solutions, 18086C, Revision 7, C01, dated 12/05/2020;
 - (ii) Pollution Control Pit Details Plan prepared by GCA Engineering Solutions, 18086C, Revision 6, C02, dated 22/04/2020;
 - (iii) Rain Garden Details Plan, prepared by GCA Engineering Solutions, 18086C, Revision 6, C03, dated 23/04/2020; and
 - (iv) Pit Details Plan, prepared by GCA Engineering Solution, 18086C, Revision 6, C04, dated 22/04/2020.
 - (d) the rain garden drainage infrastructure within proposed Lot 2 in the Plan of Subdivision in accordance with:
 - (i) Drainage Plan, prepared by GCA Engineering Solutions, 18086C, Revision 7, C01, dated 12/05/2020;
 - (ii) Pollution Control Pit Details Plan prepared by GCA Engineering Solutions, 18086C, Revision 6, C02, dated 22/04/2020;
 - (iii) Rain Garden Details Plan, prepared by GCA Engineering Solutions, 18086C, Revision 6, C03, dated 23/04/2020; and
 - (iv) Pit Details Plan, prepared by GCA Engineering Solution, 18086C, Revision 6, C04, dated 22/04/2020.

6 Obligations of and acknowledgement by the Council

- 6.1 The Council acknowledges that there have been no costs of the consent authority that have been thrown away as a result of the amendment of the application for Development Consent, being costs as referred to in s 8.15(3) of the Act, and will not pursue recovery of those costs even if the NSWLEC makes an order for costs as required by s 8.15(3) because the NSWLEC finds that the amendments made by the Developer by consent are "other than to make a minor amendment".

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6.2 The Council will reimburse the Developer the sum of \$50,000 for part of the costs of stormwater and drainage works within 14 days after the Developer completes construction of those items in clause 5.2(c) and (d) above and Lot 2 is dedicated to the Council as drainage reserve by registering the Plan of Subdivision and 88B Instrument with NSW Land Registry Services pursuant to clause 5.1 above.

6.3 The Council will reimburse the Developer the sum of \$115,000 for part of the costs of the road works within 30 days of the Developer completing construction of the cul-de-sac turning head roadworks in Kara Crescent and the associated drainage works within Kara Crescent being items in clause 5.2(a) and (b) above.

7 Application of s7.11 and s7.12 of the Act to the Development

7.1 This Agreement makes alternative provision for the imposition of Local Infrastructure Contributions such that no contributions have been levied in the 2020 Consent which were payable under s7.11 or s7.12 under the Lot 16 Consent.

7.2 The public purposes of the dedication of land and other interests in favour of the Council, reduction in developer contributions, and other material public benefits, or any combination of them, to be used for or applied towards a public purpose as referred to in s7.4(2) of the Act being made by the Developer include:

- (a) construction of the pipes conveying stormwater through the easement to drain water 3 metres wide marked (D) in the Plan of Subdivision and the rain garden drainage infrastructure within proposed Lot 2 in the Plan of Subdivision, with the Council to reimburse the Developer the sum of \$50,000 for part of the costs of the works;
- (b) dedicate to the Council Lot 2 in the Plan of Subdivision as drainage reserve at no cost to the Council;
- (c) create a public positive covenant requiring maintenance of the drainage infrastructure within the drainage reserve by the owner of Lot 1 in the Plan of Subdivision from time to time, leaving no maintenance costs for the Council in perpetuity, at no cost to the Council;
- (d) create an easement in gross to drain water 3 metres wide marked (D) on the Plan of Subdivision over the stormwater infrastructure to be constructed on Lot 1 in the Plan of Subdivision to convey stormwater emanating from the pipe at the end of Kara Crescent currently discharging into the open drain on Lot 16 DP 1010867, at no cost to the Council;
- (e) dedicate to the Council the area marked "road widening" on the Plan of Subdivision as public road for a cul-de-sac turning head area at the end of Kara Crescent, at no cost to the Council;
- (f) construction of the Kara Crescent cul-de-sac turning head and drainage infrastructure in Kara Crescent, with the Council to reimburse the Developer the sum of \$115,000 for part of the costs of the works.

7.3 The public purpose benefits in the carrying out of those works and dedications justifying the reduction of developer contributions previously required by Condition 5 of the Lot 16 Consent in the sum of \$74,680 (subject to CPI increases) to \$0 are demonstrated by:

- (a) Construction by the Developer of public stormwater infrastructure including the rain garden within the drainage reserve will cost the Developer approximately \$139,151.

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- (b) The value of the land dedicated free of cost to the Council by the Developer for the drainage reserve is an acquisition cost not imposed upon the Council. The value of the area of land on a square metre basis has been calculated by the Developer at 205.3 m² x \$115-\$125 psm = \$23,600 - \$25,600, based upon the value of the land, not taking into account other elements forming part of a valuation upon resumption under the *Just Terms Act*.
- (c) The Developer and/or its successors in title will be obliged to maintain the rain garden within the drainage reserve. There is long term benefit in perpetuity to the Council in having the maintenance of the rain garden and drainage infrastructure within the drainage reserve maintained and repaired.
- (d) The grant of easement in gross over the drainage infrastructure has an acquisition cost not imposed upon the Council. The acquisition cost has not been valued. The Developer contends the acquisition cost to the Council would have been in the order of at least \$20,000 if the Council sought to acquire the easement by lawful acquisition/resumption applying the *Just Terms Act*.
- (e) Construction by the Developer of a turning head extension of Kara Crescent and associated stormwater drainage infrastructure within the road reserve at a current cost of \$265,233.
- (f) The dedication of land as public road for Kara Cres cul-de-sac has a value of the area of land on a square metre basis has been calculated by the Developer at 73.77 m² x \$115-\$125 psm = \$8,500 - \$9,200, based upon the value of the land, not taking into account other elements forming part of a valuation upon resumption under the *Just Terms Act*.
- (g) As recorded herein the Obligations of the Council include:
 - (i) The Council will reimburse the Developer the sum of \$50,000 for part of the costs of stormwater and drainage works within 14 days after the Developer completes construction of those items in clause 5.2(c) and (d) above and Lot 2 is dedicated to the Council as drainage reserve by registering the Plan of Subdivision and 88B Instrument with NSW Land Registry Services pursuant to clause 5.1 above;
 - (ii) The Council will reimburse the Developer the sum of \$115,000 for part of the costs of the road works within 30 days of the Developer completing construction of the cul-de-sac turning head roadworks in Kara Crescent and the associated drainage works within Kara Crescent being items in clause 5.2(a) and (b) above.
- (h) Claims in nuisance and negligence by the Developer against the Council arising from the discharge of stormwater onto Lot 16 by the Council will be avoided for the Council.
- (i) The Developer takes the risk of blowout in construction costs, with the Council making only a fixed contribution.

7.4 The minimum net financial benefit to the Council is calculated and agreed by the parties to be:

• Value of works constructed for drainage infrastructure (rain garden)	\$139,151
• Current cost of construction of Kara Crescent and associated drainage infrastructure	\$265,233

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• Cost of construction of drainage pipes on Lot 16	not separately costed
• Minimum value of dedications	\$52,000
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Total of costed works by Developer	\$456,384
Less Council reimbursements:	-\$165,000
• \$50,000	
• \$115,000	
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Minimum net financial benefit of public infrastructure conferred upon the Council	\$291,384

7.5 That financial benefit to the Council in the minimum sum of \$291,384, together with the Collateral Provisions provided by the Developer, justifies the reduction to \$0 of developer contributions otherwise payable in the amount is \$74,680 (or such other amount as is applicable according to the operation of the relevant Contributions Plan).

8 Collateral provisions

8.1 Subject to Council complying with clause 6, the Developer agrees not to commence or make any Claim for damages arising out of nuisance and/or negligence against the Council in respect of the discharge of stormwater from Kara Crescent and upstream properties currently discharging onto the Land, and this Agreement may be pleaded by the Council as a full and complete defence to any Claim commenced, continued or taken at any time.

9 Registration of this Agreement

- 9.1 This Agreement can be registered pursuant to s7.6 of the Act if the Council requests registration and pays all costs associated with registration.
- 9.2 The Developer represents and warrants to Council that as at the date of this Agreement, it is the legal and beneficial owner of the Land.
- 9.3 As contemplated by s7.6 of the Act, the Developer agrees to lodge this Agreement for registration under the *Real Property Act 1900* on the relevant folio of the Register for the Land or any part thereof including Lot 1 in the Plan of Subdivision, within 30 days of Council making a written request to the Developer, subject to the Council executing all necessary documents and doing all things reasonably requested to enable lodgement, and the Developer will do all things reasonably required to procure registration as soon as practicable thereafter.
- 9.4 The Developer shall provide to Council a copy of the relevant folio of the Register within 14 days after the date of registration of this Agreement.
- 9.5 If :
- (a) this Agreement is rescinded, terminated, or comes to an end for any other reason; or
 - (b) all of the Developer's obligations under this Agreement have been completed to the reasonable satisfaction of the Council,
- then within 28 days of the Developer submitting to Council the documentation necessary to remove this Agreement from the relevant folio of the Register, the Council must promptly

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execute the documentation and do all things reasonably requested by the Developer to have this Agreement removed from the relevant folio of the Register.

- 9.6 Despite clause 9.5, from time to time the Developer may submit to Council the necessary documentation to enable the Developer to remove the registration of this Agreement from the relevant folio of the Register for any part of the Land for which the Developer has been issued a Subdivision Certificate. If all of the Developer's obligations under this Agreement relating to that part of the Land subject to the Subdivision Certificate have been completed to the reasonable satisfaction of the Council then within 28 days the Council must promptly execute the documentation and do all things reasonably requested by the Developer to have this Agreement removed from the relevant folio of the Register for that part of the Land subject to the Subdivision Certificate.

10 Dispute Resolution

- 10.1 If a dispute arises between the parties in relation to this Agreement, a party must not commence any court proceedings relating to the dispute unless that party has complied with this clause 10, except where that party seeks urgent interlocutory relief.
- 10.2 The party wishing to commence the dispute resolution process must give written notice (**Notice of Dispute**) to the other parties of:
- (a) The nature of the dispute,
 - (b) The alleged basis of the dispute, and
 - (c) The position which the party issuing the Notice of Dispute believes is correct.
- 10.3 The representatives of the parties must promptly (and in any event within 10 business days of the Notice of Dispute) meet in good faith to attempt to resolve the notified dispute. The parties may, without limitation:
- (a) resolve the dispute during the course of that meeting,
 - (b) agree that further material or expert determination in accordance with clause 10.6 about a particular issue or consideration is needed to effectively resolve the dispute (in which event the parties will, in good faith, agree to a timetable for resolution); or
 - (c) agree that the parties are unlikely to resolve the dispute and, in good faith, agree to a form of alternative dispute resolution (including expert determination, arbitration or mediation) which is appropriate for the resolution of the relevant dispute.
- 10.4 If the dispute is not resolved within 20 business days after the nominated representatives have met, either party may give to the other party a written notice calling for determination of the dispute (**Determination Notice**) by mediation under clause 10.5 or by expert determination under clause 10.6.
- 10.5 If a party gives a Determination Notice calling for the dispute to be mediated:
- (a) The parties must agree to the terms of reference of the mediation within 10 business days of the receipt of the Determination Notice (the terms shall include a requirement that the mediation rules of the Institute of Arbitrators and Mediators Australia (NSW Chapter) apply;
 - (b) The mediator will be agreed between the parties, or failing agreement within 10 business days of receipt of the Determination Notice, either Party may request the President of the Institute of Arbitrators and Mediators Australia (NSW Chapter) to appoint a mediator;

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- (c) The mediator appointed pursuant to this clause 10.5 must:
 - (i) Have reasonable qualifications and practical experience in the area of the dispute; and
 - (ii) Have no interest or duty which conflicts or may conflict with his or her function as a mediator he or she being required to fully disclose any such interest or duty before his or her appointment;
 - (d) The mediator shall be required to undertake to keep confidential all matters coming to his or her knowledge by reason of his or her appointment and performance of his or her duties;
 - (e) The parties must within 10 business days of receipt of the Determination Notice notify each other of their representatives who will be involved in the mediation;
 - (f) The parties agree to be bound by a mediation settlement and may only initiate judicial proceedings in respect of a dispute which is the subject of a mediation settlement for the purpose of enforcing that mediation settlement; and
 - (g) In relation to costs and expenses:
 - (i) Each party will bear its own professional and expert costs incurred in connection with the mediation; and
 - (ii) The costs of the mediator will be shared equally by the parties unless the mediator determines that a party has engaged in vexatious or unconscionable behaviour in which case the mediator may require the full costs of the mediation to be borne by that party.
- 10.6 If the dispute is not resolved under clause 10.3 or clause 10.5, or the parties otherwise agree that the dispute may be resolved by expert determination, the parties may refer the dispute to an expert, in which event:
- (a) The dispute must be determined by an independent expert in the relevant field:
 - (i) Agreed upon and appointed jointly by the parties; and
 - (ii) In the event that no agreement is reached or no appointment is made within 10 business days of the agreement to refer the dispute to an expert, appointed on application of a party by the then President of the Law Society of New South Wales.
 - (b) The expert must be appointed in writing and the terms of the appointment must not be inconsistent with this clause;
 - (c) The determination of the dispute by such an expert will be made as an expert and not as an arbitrator and will be in writing and contain the reasons for the determination;
 - (d) The expert will determine the rules for the conduct of the process but must conduct the process in accordance with the rules of natural justice;
 - (e) Each party will bear its own costs in connection with the process and the determination by the expert and will share equally the expert's fees and costs; and

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- (f) Any determination made by an expert pursuant to this clause is final and binding upon the parties except unless:
 - (i) Within 20 business days of receiving the determination, a party gives written notice to the other party that it does not agree with the determination and commences litigation; or
 - (ii) The determination is in respect of, or relates to, termination or purported termination of this agreement by any party, in which event the expert is deemed to be giving a non-binding appraisal.
- 10.7 If the dispute is not *finally* resolved in accordance with this clause 10, then either party is at liberty to litigate the dispute.
- 10.8 Subject to any interlocutory order obtained under clause 10.1, the referral to or undertaking of a dispute resolution process under this clause 10 does not suspend the parties' obligations under this Agreement.
- 11 Enforcement
- 11.1 In the event a party considers another party has failed to perform and fulfil an obligation under this Agreement, it may give notice in writing to the other party (**Default Notice**) giving all particulars of the matters in respect of which it considers default has occurred and by such notice require the default to be remedied within a reasonable time not being less than 21 days.
- 11.2 In determining a reasonable time, regard must be had to both the nature of the default and the work or other action required to remedy it and whether or not the continuation of the default constitutes a public nuisance or raises other circumstances of urgency or emergency.
- 11.3 If a party disputes the Default Notice it may refer the dispute to dispute resolution under clause 10 of this Agreement.
- 11.4 Without limiting any other remedies available to the parties, this Agreement may be enforced by any party in any Court of competent jurisdiction.
- 11.5 Nothing in this Agreement prevents:
 - (a) a party from bringing proceedings in a Court of competent jurisdiction to enforce any aspect of this Agreement or any matter to which this Agreement relates, or seeking damages for breach of any obligation under this Agreement; and
 - (b) the Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Agreement or any matter to which this Agreement relates.
- 12 Assignment and other dealings
- 12.1 Except as required by this Agreement and until all of the Developer's obligations under this Agreement have been performed to the reasonable satisfaction of the Council, the Developer must not otherwise Transfer its right, title or interest in the whole or any part of the Land, including Lot 1 in the Plan of Subdivision, or its rights or obligations under this Agreement to another person (**Transferee**), unless before such Transfer:
 - (a) the Developer gives to Council at least 20 business days prior notice in writing of the proposed Transfer;

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- (b) any default by the Developer has been remedied by the Developer or waived in writing by Council; and
 - (c) the Developer delivers to the Council a Deed of Assignment executed by the Developer and the Transferee in form and substance acceptable to Council containing provisions under which:
 - (i) the Developer's rights and obligations under this Agreement are assigned to the Transferee on and from the date of the assignment or any other date specified in the deed;
 - (ii) the Transferee undertakes to comply with the Developer's obligations under this Agreement as if it were the Developer (including obligations which arose before the transfer or assignment); and the Transferee undertakes to pay the Council's reasonable costs in relation to the assignment.
- 12.2 Provided that this Agreement is registered on the relevant folio of the Register for the Land or any part thereof, the Developer may register any Dealing, other than a Transfer of its right, title or interest in the whole or any part of the Land in which case clause 12.1 applies, against the relevant folio of the Register for the Land or any part thereof that is not inconsistent with or contrary to the obligations of the Developer under clause 5 of this Agreement.
- 12.3 Any purported Transfer or Dealing that is not permitted by this clause 12 or is not otherwise consented to by Council is of no effect.
- 13 Carrying out of Work**
- 13.1 Without limiting any other provision of this Agreement, any Work that is required to be carried out by the Developer under this Agreement must be constructed and completed by the Developer:
- (a) in accordance with all relevant Development Consents, standards, specifications, approvals, licences and applicable laws;
 - (b) in accordance with any construction certificate;
 - (c) in a good and workmanlike manner, and fit for the purpose of the Work;
 - (d) without any defect; and
 - (e) to the satisfaction of Council, acting reasonably.
- 13.2 The design or specification of any Work that is required to be carried out by the Developer under this Agreement may be varied by written agreement between the Parties, acting reasonably, without the necessity for an amendment to this Agreement.
- 13.3 The Council may after giving reasonable notice to the Developer enter the Land or any part of it on which Work is being carried out by the Developer under this Agreement in order to inspect, examine or test the Work, or to remedy any breach by the Developer of its obligations under this Agreement relating to the Work.
- 14 Security for performance of Work**
- 14.1 This clause applies to the construction of any Work required under clause 5.2.
- 14.2 The Developer must on execution of this Agreement, provide to the Council Security in an amount equivalent to the estimate cost of any outstanding Work as set out in clause 7.4, minus the value of any payment yet to be made by Council to the Developer under clause 6.

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- 14.3 The Council is to:
- (a) release and return the Security or any unused part of it less 5% of the total cost of the Work as set out in clause 7.4 to the Developer within 14 days of completion of the Works to the satisfaction of Council, acting reasonably; and
 - (b) release and return the balance of the Security being the 5% of the total cost of the Work as set out in clause 7.4 or any unused part of it to the Developer within 6 months of completion of the Works to the satisfaction of Council, acting reasonably.
- 14.4 The Developer may at any time provide the Council with a replacement Security.
- 14.5 On receipt of a replacement Security, the Council is to release and return to the Developer, as directed, the Security it holds that has been replaced.
- 14.6 If the Council reasonably considers that the Developer has failed to complete any Work as required under this Agreement or comply with its obligations under this Agreement including without limitation rectify any defect in the Work, the Council may, after giving the Developer 21 days' notice in accordance with clause 11:
- (a) call-up the Security; and
 - (b) withhold any reimbursement for the construction of that Work to be paid by Council under clause 6.
- 14.7 If the Council calls-up the Security, it may use the amount paid to it in satisfaction of any costs incurred by it in remedying the non-compliance including but not limited to:
- (a) the reasonable costs of the Council's servants, agents and contractors reasonably incurred for that purpose,
 - (b) all fees and charges necessarily or reasonably incurred by the Council in order to have the Work carried out, completed or rectified, and
 - (c) all legal costs and expenses reasonably incurred by the Council, by reason of the Developer's non-compliance.
- 14.8 If the Council calls-up the Security, it may, by notice in writing to the Developer, require the Developer to provide a further or replacement Security in an amount that, when added to any unused portion of any existing Security, does not exceed:
- (a) the estimated costs of any outstanding Works as specified under clause 7.4; or
 - (b) 5% of the total cost of the Work as set out in clause 7.4 within 6 months of completion of the Works to the satisfaction of Council, acting reasonably.
- 14.9 The dispute resolution provisions in clause 10 of this Agreement do not apply to any matter the subject of this clause 14.
- 15 Risk, Release & Indemnity
- 15.1 The Developer performs the Developer's obligations under this Agreement at its own risk and cost, subject to the obligations of Council under clause 6 to reimburse the Developer the sum of \$50,000 for part of the costs of stormwater and drainage works, and the sum of \$115,000 for part of the costs of the road works.
- 15.2 The Developer indemnifies the Council from and against all Claims that may be sustained, suffered, recovered or made against the Council by a third party arising in connection with the

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performance of the Developer's obligations under this Agreement except if, and to the extent that, the Council's negligence or default causes or contributes to the Claim.

16 Insurance

- 16.1 The Developer must take out and keep current to the satisfaction of the Council the following insurances in relation to Work required to be carried out by the Developer under this Agreement until the Work is taken to have been completed in accordance with this Agreement:
- (a) contract works insurance, noting the Council as an interested party, for the full replacement value of the Works (including the cost of demolition and removal of debris, consultants' fees and authorities' fees);
 - (b) public liability insurance for at least \$20,000,000.00 for a single occurrence, which covers the Council, the Developer and any subcontractor of the Developer, for liability to any third party;
 - (c) workers compensation insurance as required by law, and
 - (d) any other insurance required by law.
- 16.2 If the Developer fails to comply with clause 16.1 above, the Council may effect and keep in force such insurances and pay such premiums as may be necessary for that purpose and the amount so paid shall be a debt due from the Developer to the Council and may be recovered by the Council as it deems appropriate including:
- (a) by calling upon the Security provided by the Developer to the Council under this Agreement, or
 - (b) recovery as a debt due in a court of competent jurisdiction.
- 16.3 The Developer must not commence or carry out any Work unless it has first provided to the Council satisfactory written evidence of all of the insurances specified in clause 16.1 above.

17 Caveatable Interest

- 17.1 The Developer acknowledges and agrees that:
- (a) When this Agreement comes in to operation, Council is deemed to have acquired, and the Developer is deemed to have granted, an equitable estate and interest in the Land or any part thereof including Lot 1 in the Plan of Subdivision, for the purposes of Section 74F(1) of the *Real Property Act 1900* and consequently Council has a sufficient interest in the Land or any part thereof including Lot 1 in the Plan of Subdivision, with respect of which to lodge with the NSW Land Registry Services a caveat prohibiting the recording in the Register of any Dealing affecting that interest.
 - (b) It will not object to Council lodging a caveat in the relevant folio of the Register for the Land or any part thereof, nor will it seek to remove the caveat lodged by Council provided the caveat only prohibits the recording in the Register of any Dealing affecting Council's equitable estate and interest in the Land or any part thereof.
- 17.2 The Council agrees to:

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- (a) consent to the registration of any Dealing, other than a Transfer of the Developer's right, title or interest in the whole or any part of the Land, and to do all things required to procure registration; and
- (b) remove any caveat lodged pursuant clause 17.1 above within 10 business days of this Agreement being registered against the relevant folio of the Register for the Land or any part thereof.

18 Explanatory Note

18.1 The Explanatory Note shall not be used to assist in construing this Agreement.

19 Notices

19.1 The preferred method of providing any notice, consent, information, application or request that must or may be given or made to a Party under this Agreement is by email, except where actual hardcopy documentation is required to be delivered to the other party.

19.2 Such documentation must be sent in one of the following ways:

- (a) Delivered to that Party at its address set out below and written acknowledgement of receipt obtained upon delivery.
- (b) Where practical and preferably emailed to that Party at its email address set out below.

Council

Must be sent to both:

Attention: General Manager and Lisa Marshall

Address: Port Stephens Council Administration Building
116 Adelaide Street, Raymond Terrace NSW 2324

Email: council@portstephens.nsw.gov.au

and

Attention: Ben Swain

Address: Local Government Legal
4 Sandringham Ave, Thornton NSW 2322

Email: admin@lglegal.com.au

Developer

Must be sent to both:

Attention: Grant Staples

Julien Castaldi

Address: c/- Sparke Helmore Lawyers
Level 7, 28 Honeysuckle Drive, Newcastle NSW 2300

Email: grant.staples@theglovecompany.com

julien.castaldi@sparke.com.au

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- 19.3 If a Party gives the other Party 3 business days notice of a change of these particulars, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or emailed to the latest particular provide.
- 19.4 Any notice, consent, information, application or request is to be treated as given or made at the following time:
- (a) If it is delivered, when it is left at the relevant address.
 - (b) If it is sent by post, 2 business days after it is posted.
- 19.5 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, or if on a business day, after 5pm on that day in the place of the
- 19.6 Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

20 Costs

- 20.1 The Developer must pay the Council's costs not exceeding \$3,000 (plus GST) of negotiating, preparing, executing and stamping this Agreement and the Explanatory Note under *Environmental Planning and Assessment Regulation 2000* cl 25.
- 20.2 The Council will be responsible for the costs of registering the Agreement if it wishes the Agreement to be registered as per clause 9 hereof.

21 Entire agreement

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

22 Further acts

Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to affect, perfect or complete this Agreement and all transactions incidental to it.

23 Governing law and jurisdiction

- 23.1 This Agreement is governed by the law of New South Wales. The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them. The Parties will not object to the exercise of jurisdiction by those courts on any basis.

24 No fetter

- 24.1 Nothing in this Agreement shall be construed as requiring Council to do anything that would cause it to be in breach of any of its obligations at law, and without limitation, nothing shall be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

25 Representations and warranties

- 25.1 The Parties represent and warrant that they each:
- (a) have power to enter into this Agreement and comply with their obligations under the Agreement;
 - (b) that entry into this Agreement will not result in the breach of any law, and

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- (c) the person(s) who executes this Agreement on the part of the Party has the authority to execute.

26 Severability

- 26.1 If a clause or part of a clause of this Agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Agreement, but the rest of this Agreement is not affected.

27 Modification

- 27.1 No modification of this Agreement will be of any force or effect unless it is in writing and signed by the Parties to this Agreement.

28 Waiver

- 28.1 The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another Party. A waiver by a Party is only effective if it is in writing. A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

29 GST

- 29.1 Subject to clause 29.3, if GST is payable on a Taxable Supply made under, by reference to or in connection with this Agreement, the Party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.
- 29.2 Clause 29.1 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Agreement to be GST inclusive.
- 29.3 No additional amount shall be payable by the Council under clause 29.1 unless, and only to the extent that, the Council (acting reasonably and in accordance with the GST Law) determines that it is entitled to an Input Tax Credit for its acquisition of the Taxable Supply giving rise to the liability to pay GST.
- 29.4 If there are Supplies for Consideration which is not Consideration expressed as an amount of Money under this Agreement by one Party to the other Party that are not subject to Division 82 of the *A New Tax System (Goods and Services Tax) Act 1999*, the Parties agree:
 - (a) To negotiate in good faith to agree the GST inclusive market value of those Supplies prior to issuing Tax Invoices in respect of those Supplies.
 - (b) That any amounts payable by the Parties in accordance with clause 29.1 (as limited by clause 29.3) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
 - (c) No payment of any amount pursuant to this clause 29, and no payment of the GST Amount where the Consideration for the Taxable Supply is expressly agreed to be GST inclusive, is required until the supplier has provided a Tax Invoice or Adjustment Note as the case may be to the recipient.
 - (d) Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to a cost, expense or other liability incurred by a party, must exclude the amount of any Input Tax Credit entitlement of that party in relation to the relevant cost, expense or other liability.

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- (e) In this clause 29, Adjustment Note, **Consideration, GST, GST Group, Margin Scheme, Money, Supply** and **Tax Invoice** have the meaning given by the GST Law. This clause 29 continues to apply after expiration or termination of this Agreement.

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ITEM 2 - ATTACHMENT 2 DRAFT VOLUNTARY PLANNING AGREEMENT AND EXPLANATORY NOTE.**Explanatory Note****Proposed Deed of Voluntary Planning Agreement****Requirement for an Explanatory Note**

The *Environmental Planning and Assessment Regulation 2000* cl 25E and Explanatory Note in respect of a proposed planning agreements:

25E Explanatory note

- (1) A planning authority proposing to enter into a planning agreement, or an agreement that revokes or amends a planning agreement, must prepare a written statement (referred to in this Division as an **explanatory note**)—
 - (a) that summarises the objectives, nature and effect of the proposed agreement, amendment or revocation, and
 - (b) that contains an assessment of the merits of the proposed agreement, amendment or revocation, including the impact (positive or negative) on the public or any relevant section of the public.
- (2) Without limiting subclause (1), an explanatory note must—
 - (a) identify how the agreement, amendment or revocation promotes the public interest and one or more of the objects of the Act, and
 - (b) if the planning authority is a development corporation, identify how the agreement, amendment or revocation promotes one or more of its responsibilities under the *Growth Centres (Development Corporations) Act 1974*, and
 - (c) if the planning authority is a public authority constituted by or under an Act, identify how the planning agreement, amendment or revocation promotes one or more of the objects (if any) of the Act by or under which it is constituted, and
 - (d) if the planning authority is a council, identify how the agreement, amendment or revocation promotes one or more of the elements of the council's charter under section 8 of the *Local Government Act 1993*, and
 - (e) identify a planning purpose or purposes served by the agreement, amendment or revocation, and contain an assessment of whether the agreement, amendment or revocation provides for a reasonable means of achieving that purpose, and
 - (f) identify whether the agreement, amendment or revocation conforms with the planning authority's capital works program (if any), and
 - (g) state whether the agreement, amendment or revocation specifies that certain requirements of the agreement must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued.
- (3) The explanatory note is to be prepared jointly with the other parties proposing to enter into the planning agreement.
- (4) However, if 2 or more planning authorities propose to enter into a planning agreement, an explanatory note may include separate assessments prepared by the planning authorities in relation to matters affecting only one of the planning authorities, or affecting those planning authorities in a different manner.
- (5) A copy of the explanatory note must be exhibited with the copy of the proposed agreement, amendment or revocation when it is made available for inspection by the public in accordance with the Act.
- (6) If a council is not a party to a planning agreement that applies to the area of the council, a copy of the explanatory note must be provided to the council when a copy of the agreement is provided to the council under section 7.5(4) of the Act.
- (7) A planning agreement may provide that the explanatory note is not to be used to assist in construing the agreement.

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ITEM 2 - ATTACHMENT 2 DRAFT VOLUNTARY PLANNING AGREEMENT AND EXPLANATORY NOTE.

This is the Explanatory Note required by cl 25E of the Regulation.

Terms used in this Explanatory Note have the definitions and interpretation as specified in clause 4 of the Agreement.

1. Introduction

The purpose of this Explanatory Note is to provide a plain English summary to support the exhibition of the proposed Agreement prepared under section 7.4 of the Act.

2. Parties

The parties to the proposed Agreement are the Council and the Developer. This explanatory note has been prepared jointly by the parties.

3. Description of the Subject Land

The Planning Agreement applies to the Land owned by the Developer.

4. Description of the Development

The development is the subject of the 2020 Consent, being approved Development Application number 16-2018-660-1 for a staged development of a business park consisting of office premises, warehouse, cafe, signage, strata subdivision retaining wall and associated site works, and subdivision of Lot 16 into 2 lots, subject to the conditions in Annexure B to the NSWLEC Orders.

5. Summary of Objectives, Nature and Effect of the proposed Planning Agreement

a. A summary of the Objectives, Nature and Effect of the Agreement include:

- i. The Developer commenced the Proceedings against Council and raised a number of contentions regarding the lawfulness of conditions imposed by the Lot 16 Consent;
- ii. Prior to the Council and the Developer requesting the NSWLEC to make the NSWLEC Orders by consent, the parties had been through a conciliation process required by Section 34 *Land and Environment Court Act 1979*. That process resulted in:
 - A. the parties inviting the NSWLEC to make the NSWLEC Orders, the conditions of consent, and agreeing to the terms of the VPA Offer prior to that offer being made to the NSWLEC as the consent authority;
 - B. the parties agreeing to create obligations each to the other and to the public as specified in the VPA Offer and to be bound by those obligations.
- iii. On 22 June 2020 the NSWLEC in the Proceedings:
 - A. approved Development Application number 16-2018-660-1 for a staged development of a business park consisting of office premises, warehouse, cafe, signage, strata subdivision retaining wall and associated site works at Lot 16 DP 1010867 known as 15 Kara Crescent Taylors Beach, and subdivision of Lot 16 into 2 lots, subject to the conditions in Annexure B to the NSWLEC Orders;
 - B. granted leave to the Developer to rely on an amended application for Development Consent to include an offer to enter into a voluntary planning agreement, as referred to in s 7.4 of the Act, in the terms in Annexure A to the NSWLEC Orders.
- iv. The purposes of the Agreement include:

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- A. To record the provisions made by the Developer for the public purpose in s 7.4(2) of the Act so as to justify the reduction to \$0 of the fixed developer contributions otherwise payable under s 7.12 of the Act.
- B. To enable the following to be lawfully required pursuant to the terms of the Development Consent granted by the NSWLEC as consent authority:
- dedicate to the Council the area marked "road widening" on the Plan of Subdivision as public road for a cul-de-sac turning head area at the end of Kara Crescent without compensation;
 - dedicate to the Council Lot 2 in the Plan of Subdivision as drainage reserve without compensation, and create a public positive covenant requiring maintenance of the drainage infrastructure within the drainage reserve by the owner of Lot 1 in the Plan of Subdivision from time to time;
 - create an easement in gross (for the benefit of the Council) to drain water 3 metres wide marked (D) on the Plan of Subdivision over the stormwater infrastructure to be constructed on Lot 1 in the Plan of Subdivision to convey stormwater emanating from the pipe at the end of Kara Crescent currently discharging into the open drain on Lot 16 DP 1010867;
 - create the right of access marked (C) on the Plan of Subdivision permitting Lot 1 to access Lot 2 (the drainage reserve) for the purpose of maintenance and upkeep.
- C. To record and place into binding terms other commitments made by each of the parties as proposed in the VPA Offer.
- v. The obligations of the Developer are secured by Security being required to be provided by the Developer to Council, the timing of the Council reimbursing the Developer for part of the costs towards the works to be completed by the Developer, registration of the public positive covenant and the Agreement on the Register, and the ability for Council to lodge a caveat on the Register.

6. Assessment of the merits of the proposed Planning Agreement

- a. An assessment of the merits of the proposed Agreement, including the impact (positive or negative) on the public or any relevant section of the public includes:
- i. This Agreement makes alternative provision for the imposition of Local Infrastructure Contributions such that no contributions have been levied in the 2020 Consent which were payable under s7.11 or s7.12 under the Lot 16 Consent.
 - ii. The public purposes of the dedication of land and other interests in favour of the Council, reduction in developer contributions, and other material public benefits, or any combination of them, to be used for or applied towards a public purpose as referred to in s7.4(2) of the Act being made by the Developer include:
 - A. construction of the pipes conveying stormwater through the easement to drain water 3 metres wide marked (D) in the Plan of Subdivision and the rain garden drainage infrastructure within proposed Lot 2 in the Plan of Subdivision, with the Council to reimburse the Developer the sum of \$50,000 for part of the costs of the works;

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- B. dedicate to the Council Lot 2 in the Plan of Subdivision as drainage reserve at no cost to the Council;
 - C. create a public positive covenant requiring maintenance of the drainage infrastructure within the drainage reserve by the owner of Lot 1 in the Plan of Subdivision from time to time, leaving no maintenance costs for the Council in perpetuity, at no cost to the Council;
 - D. create an easement in gross to drain water 3 metres wide marked (D) on the Plan of Subdivision over the stormwater infrastructure to be constructed on Lot 1 in the Plan of Subdivision to convey stormwater emanating from the pipe at the end of Kara Crescent currently discharging into the open drain on Lot 16 DP 1010867, at no cost to the Council;
 - E. dedicate to the Council the area marked "road widening" on the Plan of Subdivision as public road for a cul-de-sac turning head area at the end of Kara Crescent, at no cost to the Council;
 - F. construction of the Kara Crescent cul-de-sac turning head and drainage infrastructure in Kara Crescent, with the Council to reimburse the Developer the sum of \$115,000 for part of the costs of the works.
- iii. The Parties to the Agreement have assessed the minimum financial benefit being conferred upon the Council, as set out in clause 7 of the Agreement for the construction and dedication of public infrastructure and the land upon which that infrastructure is constructed to be conferred upon the Council is \$291,384.
 - iv. The financial benefit to the Council in the minimum sum of \$291,384, together with the Collateral Provisions provided by the Developer, justifies the reduction to \$0 of developer contributions otherwise payable in the amount is \$74,680 (or such other amount as is applicable according to the operation of the relevant Contributions Plan).
 - v. The Collateral Provisions provided by the Developer is that the Developer agrees not to commence or make any Claim for damages arising out of nuisance and/or negligence against the Council in respect of the discharge of stormwater from Kara Crescent and upstream properties currently discharging onto the Land.
 - vi. Public benefits flowing from the Agreement which have not been quantified include:
 - A. avoidance of the cost of proceedings in nuisance and/or negligence against the Council and the damages arising from such proceedings if successful against the Council;
 - B. avoidance of further legal costs in the Proceedings before the NSWLEC;
 - C. the certainty of resolution of drainage issues relating to Kara Crescent and the Land in a certain and timely manner;
 - D. no ongoing maintenance costs to the Council of the rain garden within the drainage reserve to be dedicated to the Council;
 - E. the Council being aware of fixed costs it will pay the Developer as contribution to the public works being undertaken with the Developer taking on the obligation in risk of a blowout in those costs;

7. How the Planning Agreement promotes the public interest and the objects of the Act

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- a. Further to paragraph 6 above, the Agreement promotes the public interest and the objects in section 1.3 of the Act in that it:
 - i. promotes the orderly and economic use and development of land (s1.3(c));
 - ii. promotes good design and amenity of the built environment (s1.3(g)).
- 8. How the agreement promotes one or more of the elements of the council's charter under section 8 of the *Local Government Act 1993***
 - a. The Agreement promotes the principles for local government under Chapter 3 of the *Local Government Act 1993*. In particular:
 - i. Councils should carry out functions in a way that provides the best possible value for residents and ratepayers (s8A(b)).
 - ii. Councils should manage lands and other assets so that current and future local community needs can be met in an affordable way (s8A(f)).
 - iii. Councils should work with others to secure appropriate services for local community needs (s8A(g)).
 - iv. Councils should invest in responsible and sustainable infrastructure for the benefit of the local community (s8B(b)).
 - v. Councils should identify and prioritise key local community needs and aspirations and consider regional priorities (s8C(a)).
- 9. The planning purpose or purposes served by the Agreement**
 - a. The planning purposes served by this Agreement include but are not limited to:
 - i. The Agreement facilitates the planning and development of:
 - A. drainage infrastructure within Kara Crescent and surrounding land catchments; and
 - B. road infrastructure with a cul-de-sac turning head in Kara Crescent.
 - ii. The resolution of the Proceedings through this Agreement serves:
 - A. the Aims of the *Port Stephens Local Environmental Plan 2013*; and
 - B. the Objective of the Zone B5 which applies to the Land to enable a mix of business and warehouse uses, and specialised retail premises that require a large floor area, in locations that are close to, and that support the viability of, centres.
- 10. Whether the Agreement conforms with the Council's capital works program (if any)**
 - a. The Agreement requires the Developer to carry out specified drainage and road works and dedicate land to Council. The works are not included in the Council's relevant current capital works program. However, the Council's Management Plan identifies these type of works in the relevant capital works program. Accordingly, the provision of these works under the Agreement is consistent and conforms with the capital works envisioned by the Council's Management Plan.
- 11. The requirements of the Agreement which must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued**

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Construction Certificate

Conditions 4 to 20 of the 2020 Consent must be complied with before a construction certificate is issued.

Occupation Certificate

Requirements which must be complied with before a Occupation Certificate is issued are set out in Conditions 45 to 57 of the 2020 Consent in respect of each stage of the development.

Subdivision Certificate

Condition 5, Conditions 58 to 68 of the 2020 Consent must be complied with before the Strata Subdivision Certificate is issued.

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