

Planning Agreement Policy

Adoption Date:	25/03/2008
Reaffirmed:	26/02/2013. 9/05/2017
Amendment Date:	9/06/2009, 18/1/2021
Minute Number:	MIN08.307, MIN09.719, MIN13.106, MIN17.378, MIN21.2, MIN22.865
Review Date:	01/12/2024
Directorate:	City Futures
Record Number:	POL22/40

Contents

1. Purpose	1
2. Application	1
3. Objectives.....	1
4. Legislative and Policy Context.....	2
5. Guiding Principles of Planning Agreements.....	2
6. The Planning Agreement Preparation and Execution Process.....	4
7. Planning Agreement Particulars	9
8. Operation, Monitoring and Review of a Planning Agreement.....	12
9. Definitions	13
10. Review	14
Attachment 1 – Planning Agreement Template.....	15

1. Purpose

Shoalhaven City Council (Council) is committed to ensuring a fair, transparent and accountable process for developers seeking to enter into Planning Agreements to which Council is a party. A Planning Agreement is a planning tool which can be used to negotiate flexible outcomes for a variety of public purposes, whether tied to Section 7.11 contributions or not.

The purpose of this Policy is to set out Council's framework for the preparation and use of Planning Agreements including:

- The instances in which Council may consider entering into a planning agreement;
- The matters generally covered by a planning agreement;
- The form of development contributions which may be sought under a planning agreement;
- The kinds of public benefits which may be negotiated and whether it includes a planning benefit;
- The method of determining the value of public benefits;
- Whether money paid under different planning agreements is to be pooled and progressively applied towards the provision of public benefits that the different agreements relate;
- Details relating to the timing and delivery of the public benefit to be provided;
- Probity measures and the procedures for making an application, negotiating and entering into a planning agreement;
- How Council will assess an application for a Planning Agreement.

2. Application

This policy applies when a developer seeks to negotiate a Planning Agreement with Council, associated with any Complying Development Certificate (CDC), Development Application (DA) or Planning Proposal (PP). The Planning Agreement could apply to land within the Shoalhaven local government area (including any land owned by the Council), as well as any land outside the Shoalhaven LGA, where Council has entered into a joint Planning Agreement with another council.

This policy will prevail to the extent of any inconsistency with any other policies that would otherwise apply to a Planning Agreement. Whilst this Policy is not legally binding, it is intended that Council and any person a party to a Planning Agreement will follow this Policy to the fullest extent possible.

3. Objectives

This Policy aims to:

- Ensure a consistent approach to the negotiation and preparation of all planning agreements;

- Ensure greater probity and establish a probity framework for the negotiation, preparation exhibition and implementation of planning agreements.
- Supplement, or where appropriate, replace the application of section 7.11 of the Act;
- Facilitate innovative and flexible approaches to the provision of infrastructure and other public benefits, consistent with Shoalhaven Contributions Plan 2019; and
- Provide stakeholders with a greater involvement in the type, standard and location of public facilities and other public benefits.
- Align with Council's strategic plans and documents, including Shoalhaven's Local Strategic Planning Statement.

4. Legislative and Policy Context

A Planning Agreement is a voluntary agreement, entered into by one or more planning authorities and a developer or other party, where that developer seeks to change an environmental planning instrument or who has made, or who proposes to make a DA or an application for a CDC, where the following is required to be used for or applied towards a public purpose:

- Dedication of land.
- A monetary contribution.
- Material public benefit
- A combination of some or all of the above.

Part 7, Subdivision 2 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) and Division 1A of the *Environmental Planning and Assessment Regulation 2000* (EP&A Regulations), prescribes the procedural framework relating to the preparation of planning Agreements in more detail.

5. Guiding Principles of Planning Agreements

In 2021, the NSW Government issued the [Planning Agreements Practice Note](#). The Practice Note identifies a number of key guidelines and safeguards in the application of Planning Agreements which have been expanded upon below.

Fundamental Principles governing the use of Planning Agreements

Council's use of Planning Agreements will be governed by the following principles:

- Planning decisions may not be bought and sold through Planning Agreements;
- Development that is unacceptable on planning grounds will not be permitted because of planning benefits offered by developers that do not make the development acceptable in planning terms;
- The Council will not allow Planning Agreements to improperly fetter the exercise of its functions under the Act, Regulations or any other Act or law;

- The Council will not use Planning Agreements for any purpose other than a proper planning purpose;
- The Council will not seek benefits under a Planning Agreement that are unrelated to particular development;
- The Council will not allow the interests of individuals or interest groups to outweigh the public interest when considering a proposed Planning Agreement;
- The Council will not improperly rely on its statutory position in order to extract unreasonable public benefits from developers under Planning Agreements; and
- The Council will not use Planning Agreements for the primary purpose of value capture in connection with the making of planning decisions.

Where the Council has a commercial stake in the development subject of an agreement, it will take appropriate steps to ensure that it avoids a conflict of interest between its role as a planning authority and its interest in the development. Council will seek to ensure probity of its processes by ensuring applications involving Planning Agreements which involve Council land (excluding road reserves for road and associated infrastructure specified in the Contributions Plan), or development applications made by or on behalf of Council, are assessed by an independent third party.

Acceptability Test to be applied to all Planning Agreements

When considering entering into a Planning Agreement, Council will apply the following test in order to assess the desirability of the possible outcome of a proposed Planning Agreement:

- Is the proposed Planning Agreement directed towards a proper and legitimate planning purpose having regard to its statutory planning controls and other adopted planning policies and the circumstances of the case?
- Does the Planning Agreement result in a public benefit that is not wholly unrelated to the development?
- Does the Planning Agreement provide for a reasonable means of achieving the relevant purpose?
- Can the Planning Agreement be taken into consideration in the assessment of the relevant planning proposal or development application?
- Will the Planning Agreement produce outcomes that meet the general values and expectations of the community, protect the community against adverse planning decisions and protect the overall public interest?
- Does the Planning Agreement promote Council's strategic objectives in relation to the use of Planning Agreements?
- Does the Planning Agreement conform to the fundamental principles governing the Council's use of Planning Agreements?
- Are there any relevant circumstances that may operate to preclude Council from entering into the proposed Planning Agreement?

Matters Council May Consider

The matters that Council may consider in any negotiations for a Planning Agreement include whether:

- The demands created by the development for new public infrastructure, amenities or services are addressed;
- The facilities and/or services to be provided meet the planning and strategic objectives of Council;
- Mitigation of the impact of development is addressed;
- Recurrent funding of public facilities is required;
- Past deficiencies in infrastructure provision that would otherwise prevent a development from occurring are addressed;
- Monitoring the planning impacts of development is required;
- Compensation for the loss of, or damage to, a public amenity, service, resource or asset caused by the developer through its replacement, substitution, repair or regeneration is provided for.
- Planning benefits for the wider community accrue from the Planning Agreement; and
- Any initial or ongoing costs are designated as Council's responsibility.

6. The Planning Agreement Preparation and Execution Process

The Planning Agreement process, from start to execution, consists of 7 key steps as outlined in **Figure 1** and explained below.

The negotiation of Planning Agreements can be complex, and a number of the steps below may need to be repeated, including negotiation and public exhibition.



Figure 1: Summary of Planning Agreement Process Steps

Step 1 – Initial Planning Agreement discussion and negotiation with Council

Prior to submitting a formal request for a Planning Agreement with Council, the applicant must meet with Council's Strategic Planning Section (and other relevant staff as required) to:

- Discuss Council's preliminary expectations for a Planning Agreement, understand background information and ensure the proposal meets Council's requirements;
- Demonstrate that the relevant assessment criteria can be satisfied;
- Discuss the approval process;
- Discuss whether the proposed Planning Agreement is relevant to a DA, CDC or PP (i.e. directed towards appropriate and legitimate planning purposes) and whether it could be considered in connection with the application/proposal. A request to enter into a Planning Agreement will not be accepted if it is not associated with a Complying Development Application (CDC), Development Application (DA) or Planning Proposal (PP). Where a Planning Agreement can be considered in connection with a PP, the role of the Planning Agreement in facilitating the objectives and outcomes of the PP should be clearly set out in the objectives and outcomes section of the PP, and
- Determine the proper planning weight to be given to the proposed Planning Agreement and the public benefits being offered under the proposed terms.

- Discuss whether the proposal meets Council's planning policy objectives, including this Policy, the Shoalhaven Contributions Plan 2019 and other Council policies, procedures and technical specifications (as relevant).
- Discuss whether the proposed Planning Agreement meets the requirements of Council's Capital Works program.
- Determine whether the Planning Agreement seeks to justify a dispensation from an applicable local environmental plan (LEP) development standard/s under clause 4.6 of the LEP. A Planning Agreement can only be used for this purpose if Council is of the opinion that the subject matter of the proposed Planning Agreement addresses the matters specifically required to be addressed under that clause in relation to the dispensation sought.

Through this initial step, the key issues associated with the proposal will be discussed, the parties will decide whether to negotiate a Planning Agreement and if favourable, the negotiations will commence.

Whilst Development Assessment Planners may be involved in preliminary discussions associated with a Planning Agreement, for probity, there is a need for the separation of responsibilities. As such, Development Assessment Planners are not to be involved in the negotiation of Planning Agreements.

Council is not under any obligations to enter into a Planning Agreement.

The negotiation of a Planning Agreement will generally involve the following steps:

- The parties will appoint a person to represent them in the negotiations;
- The parties will appoint a third person to attend and take minutes of all negotiations, if required;
- The parties will decide whether to appoint an independent person to facilitate or otherwise participate in the negotiations or aspects of it, if required;
- The parties will identify the key issues for negotiation and undertake negotiations;
- If 'in principle' agreement is reached, Step 2 commences.

Step 2 – Submit a Planning Agreement Application and Fee

Once each party has a real understanding of the proposal and an agreement has been reached at Step 1, the developer can then make the relevant [application](#) and fee to Council accompanied by a written offer to enter into a Planning Agreement, with the specifics of the agreement set out in detail.

The formal request is to be complete and include the developer's details. Where the developer is not the owner of land subject to the Planning Agreement, the landowner must provide owners consent. The owner will also be required to become a party to the Planning Agreement.

The formal request must also include the following mandatory requirements as per Section 7.4(3) of the EP&A Act:

- A description of the land to which the agreement relates, including the legal description;

- A description of:
 - the change to the environmental planning instrument to which the agreement applies, or
 - the development to which the agreement applies,
- The nature and extent of the provision to be made by the developer under the agreement, the time or times by which the provision is to be made and the manner by which the provision is to be made. This includes the public benefits being offered under the terms of the Planning Agreement.
- In the case of development, whether the agreement excludes (wholly or in part) or does not exclude the application of Section 7.11 to the development. If the agreement does not exclude the application of Section 7.11 to the development, whether benefits under the agreement are or are not to be taken into consideration in determining a development contribution under Section 7.11.

The parties will undertake further negotiations on the specific terms of the proposed Planning Agreement as required until a consensus is reached.

At this stage, all Planning Agreement applications may need to be considered by the Contributions Panel (panel of relevant Council staff).

Step 3 – Report to Council

The outcomes of the negotiations and the assessment of the written offer to enter into a Planning Agreement offer will be reported to Council to seek a formal resolution to prepare a draft Planning Agreement for public exhibition, except in the following circumstances:

- Where the Planning Agreement would be in a template format, and
- The contributions that will be required:
 - Are a standard amount of monetary contributions or an amount of monetary contributions that can be easily calculated using a standard rate, or
 - Consists of work and/or dedication land that are listed in Shoalhaven Contributions Plan 2019 and s7.11 contributions are not excluded, or
 - Consists of work and/or dedication of land that are listed in Shoalhaven Contributions Plan 2019 and s7.11 is excluded, but only in relation to s7.11 which are for the same category of infrastructure as the works and land to be provided under the Planning Agreement, and
- The Planning Agreement does not involve credit or refund arrangements or has credit or refund arrangements which are set out in template format.
- The Planning Agreement does not involve maintenance or recurrent funding or has maintenance or recurrent funding that is considered minor, is agreed between parties, and is supported or necessitated via a policy of Council or a plan or study required for the development (e.g., a vegetation management plan).

If as a result of negotiations, additional or different provisions or credit arrangements are required to be included, then the Planning Agreement would need to be reported to the Council before it is entered into.

In relation to Planning Agreements that are to be reported to Council in Step 3, Council at this may stage resolve to delegate authority to Council's Chief Executive Officer, or his delegate,

to negotiate, publicly notify, enter into and register the Planning Agreement consistent with the detailed key terms.

Where a Planning Agreement offer is made in conjunction with a PP, where practical, the report to Council will occur in conjunction with the report seeking endorsement for the PP to be submitted to the Department of Planning and Environment for a Gateway determination.

Step 4 – Preparation of the draft Planning Agreement

Following a formal resolution from Council to proceed with the Planning Agreement, final negotiations will occur, and preparation of the draft Planning Agreement can commence in accordance with the Planning Agreement Template at **Attachment 1**. The template reflects the policies and procedures set out in this Policy.

Council will ordinarily prepare the draft Planning Agreement. Refer to Section 7 below regarding costs.

Step 5 – Public Exhibition

In accordance with the EP&A Act, a Planning Agreement must be publicly exhibited for a minimum period of 28 days, however Council may decide to extend this period. Where possible, the public exhibition of the draft planning agreement should occur concurrently with the public exhibition of the associated PP, DA or CDC; however, it is acknowledged that this is not always practicable.

Clause 25(E) of the Regulation requires that an explanatory note, jointly prepared by the parties, must accompany any Planning Agreement that:

- Summarises the objectives, nature and effect of the proposed agreement, amendment or revocation; and
- Contains an assessment of merits of the proposed agreement, amendment or revocation, including the impact (positive or negative) on the public or any relevant section of the public.

Public submissions received during the public exhibition of the Planning Agreement will be considered separately to those relating to the PP, DA or CDC it relates to, however the content of the submissions may require further negotiations to be undertaken. If Council considers that a material change needs to be made to the terms of the Planning Agreement or the PP, DA or CDC after it has been publicly exhibited, Council may re-exhibit the revised planning agreement and the application to which it relates.

Step 6 – Report to Council

In relation to a Planning Agreement that was reported to Council at Step 3 and where Council did not delegate authority to Council's Chief Executive Officer, or his delegate, the outcomes of the exhibition period will then be reported to Council for consideration and to seek a formal resolution to execute the Planning Agreement.

In relation to a Planning Agreement that was not reported to Council at Step 3 or a Planning Agreement that was reported to Council at Step 3 and where Council did delegate authority to Council's Chief Executive Officer, or his delegate; Step 6 does not apply unless there are objections or substantial issues raised as a result of public notification, in which case the Planning Agreement would need to be reported to Council before it is entered into.

Step 7 – Execution of the Planning Agreement

Following a formal resolution from Council, any required changes will be made to the Planning Agreement and finalisation can occur. A Planning Agreement is executed when it is signed by all of the parties.

Council will usually require a developer to give an irrecoverable offer and execute the Planning Agreement at the following times:

- Development Applications (or modification application):
 - Council will seek to have the planning agreement executed prior to granting development consent.
 - Where the planning agreement is not executed prior to development consent being granted or modified, a condition will be imposed requiring execution of the planning agreement in accordance with the offer made and subsequent registration of the agreement.
 - Council will impose a deferred commencement condition requiring the execution and registration of the planning agreement be satisfied before the consent can become operational.

Council cannot impose a condition of consent that requires a developer to enter into a planning agreement on terms different to those offered, or if a planning agreement was not offered.

- Planning Proposals:
 - Council will seek to have the planning agreement executed prior to finalisation of any instrument change referred to in the planning proposal, or before Council makes that instrument change under delegation.
 - Council may also impose conditions of consent for related development applications requiring compliance with the Planning Agreement and the delivery of relevant contributions at the required time.
 - If the developer refuses to execute a planning agreement in connection with a PP or at the appropriate time, in accordance with Section 3.35 of the EP&A Act, Council may request the Minister not proceed with the instrument change.
- Complying Development Certificates: To be negotiated on a case by case basis.

7. Planning Agreement Particulars

Council's Costs of Negotiating, Entering Into, Monitoring and Enforcing a Planning Agreement

Council will require a Planning Agreement to make provision for payment by the developer of 100% of Councils costs of and incidental to:

- Negotiating, preparing and entering into the agreement (including associated legal costs);
- Enforcing the agreement.

Standard Charges

Wherever possible, Council will seek to standardise development contributions sought under Planning Agreements in order to streamline negotiations and provide fairness, predictability and certainty for developers. This, however, does not prevent public benefits being negotiated on a case by case basis, particularly where planning benefits are also involved.

Recurrent Charges

Council may request developers, through a Planning Agreement, to make development contributions towards the recurrent costs of public facilities. Where the public facility primarily serves the development to which the Planning Agreement relates or neighbouring development, the arrangement for recurrent funding may be in perpetuity. However, where the public facility or public benefit is intended to serve the wider community, the Planning Agreement will only require the developer to make contributions towards the recurrent costs of the facility until a public revenue stream is established to support the on-going costs of the facility.

Credits

Council will not agree to a Planning Agreement providing for the surplus value under a Planning Agreement being refunded to the developer or offset against development contributions required to be made by the developer in respect of other development in the Council's area.

Ongoing administration

In particular cases, Council may require the Planning Agreement to make provision for a development contribution by the developer towards the ongoing administration of the agreement.

Pooling of Development Contributions

Where a proposed Planning Agreement provides for a monetary contribution by the developer, the Council may seek to include a provision permitting money paid under the agreement to be pooled with money paid under other Planning Agreements or by other developer contributions and applied progressively for the different purposes under those agreements or contributions, subject to the specific requirements of the relevant agreements. Pooling may be appropriate to allow public benefits, particularly essential infrastructure, to be provided in a fair, equitable and timely way.

Assignment and Dealings by the Developer

Council will require every Planning Agreement to provide that the developer may not assign its rights or obligations under the agreement nor have any dealing in relation to the land the subject of the agreement unless, in addition to any other requirements of the agreement:

- The Council has given its consent to the proposed assignment or dealing;
- The developer has at no cost to the Council, first procured the execution by the person with whom it is dealing of all necessary documents in favour of the Council by which

that person agrees to be bound by the agreement as if they were a party to the original agreement, and

- The developer is not in breach of the Agreement.

Implementation

Council will require a Planning Agreement to provide for matters that relate to implementation of the proposed works, such as:

- The times at which and, if relevant, the period during which, the developer is to make provision under the Planning Agreement.

Council will generally require a Planning Agreement to provide that the developer's obligations under the agreement take effect when the first development consent operates in respect of development that is the subject of the agreement.

- The design, technical specification and standard of any work required by the Planning Agreement to be undertaken by the developer;
- The manner in which a work is to be handed over to the Council; and
- The manner in which a material public benefit is to be made available for its public purpose in accordance with the Planning Agreement.

Hand-over of Works

Council will also require the Planning Agreement to:

- Specify that the hand-over of a public work carried out under a Planning Agreement will not be accepted unless the developer furnishes to the Council a certificate to the effect that the work has been carried out and completed in accordance with the agreement and any applicable development consent (which certificate may, at the Council's discretion, be a final occupation certificate, compliance certificate or a subdivision certificate) and, following the issue of such a certificate to the Council, the work is also certified as complete by an appropriate Council officer.
- Provide for a defects liability period during which any defects must be rectified at the developer's expense.

If a Planning Agreement provides for the developer, at the developers cost, to manage or maintain land that has been dedicated to the Council or works that have been handed over to the Council, the Council may require the parties to enter into a separate implementation agreement in that regard (refer to 'Implementation' Section above).

Developers may propose changes to the hand-over procedure as set out in the VPA template for Council consideration and approval, as appropriate in the circumstances of each agreement.

The failure of the parties to reach agreement in relation to management and maintenance of the land or works may be dealt with under the dispute resolution provisions of the Planning Agreement.

Provision of Security Under a Planning Agreement

The Council will require a Planning Agreement to make provision for enforcement of the Planning Agreement (i.e., security) in the event of a breach of the Planning Agreement by the developer, consistent with Section 7.4(3) of the EP&A Act. The form of security will generally be the unconditional bank guarantee from an Australian Bank in favour of the Council to the full value of the developer's provision under the Planning Agreement and on terms otherwise acceptable to the Council. Council may consider a lesser amount, if it can be satisfied that other security measures are implemented to secure the provision of the development contributions and any Council enforcement costs.

Notations on Planning Certificates Under section 10.7 of the Act

Council will require a Planning Agreement to contain an acknowledgement by the developer that the Council may, in its absolute discretion, make a notation under Section 10.7(5) of the EP&A Act about a Planning Agreement on any certificate issued under section 10.7 of the Act relating to the land the subject of the agreement or any other land.

Registration of Planning Agreements

Council will require a Planning Agreement to contain a provision requiring the developer to agree to registration of the agreement pursuant to section 7.6 of the Act if the requirements of that section are satisfied.

Dispute Resolution

In accordance with the EP&A Act, Council will require a Planning Agreement to provide for mediation of disputes between the parties to the agreement before the parties may exercise any other legal rights in relation to the dispute.

Methodology for Valuing Public Benefits Under a Planning Agreement

Unless otherwise agreed, where the benefit under a Planning Agreement is the provision of land for a public purpose, the Council will generally seek to value the benefit on the basis of the estimated amount of compensation to which the Developer would be entitled under *the Land Acquisition (Just Terms Compensation) Act 1991* upon the compulsory acquisition of the land. This means the estimated value of the completed works determined using the method that would be ordinarily adopted by a quantity surveyor.

Public use of Privately-Owned Facilities

If a Planning Agreement provides for the developer to make a privately-owned facility available for public use, Council may require the parties to enter into a separate agreement in that regard.

The failure of the parties to reach agreement in relation to management and maintenance of the land or works may be dealt with under the dispute resolution provisions of the Planning Agreement.

8. Operation, Monitoring and Review of a Planning Agreement

Monitoring and Review of a Planning Agreement

Council will continuously monitor the performance of the developer's obligations under a Planning Agreement.

Council will require the Planning Agreement to contain a provision establishing a mechanism under which the performance and milestones contained under the Planning Agreement are periodically reviewed with the involvement of all parties.

Council may appoint an officer to supervise the implementation of the works that are the subject of the Planning Agreement.

Modification or Discharge of the Developer's Obligations Under a Planning Agreement

Council may agree to a provision in a Planning Agreement permitting the developer's obligations under the agreement to be modified or discharged where the modification or discharge is linked to the following circumstances:

- The developer's obligations have been fully carried in accordance with the agreement.
- The developer has assigned the developer's interest under the agreement in accordance with its terms and the assignee has become bound to the Council to perform the developer's obligations under the agreement.
- The development consent or approval to which the agreement relates has lapsed.
- The performance of the Planning Agreement has been frustrated by an event beyond the control of the parties.
- Other material changes affecting the operation of the Planning Agreement have occurred.
- The Council and the developer otherwise agree to the modification or discharge of the agreement.

Such a provision will require the modification or revocation of the Planning Agreement in accordance with the EP&A Act and the EP&A Regulation.

Reporting and Register Obligations

In accordance with Section 7.5(5) of the EP&A Act, Council is required to include in its annual report the particulars of compliance with and the effect of the planning agreements in force during the year to which the report relates.

Council maintains a [register](#) of all Planning Agreements that have been executed by Council.

9. Definitions

Applicant means the person entitled to act upon a Development Consent or Complying Development Certificate, or in relation to a Planning Proposal.

Complying development certificate has the same meaning as in the EP&A Act.

Council means Shoalhaven City Council.

Developer means a person who has sought a change to an environmental planning instrument (which includes the making, amendment or repeal of an instrument (Section 7.4

(11) of the EP&A Act), or who has made or proposes to make a development application or complying development application, or who has entered into an agreement with or is otherwise associated with such a person.

Development application (DA) has the same meaning as in the EP&A Act.

Development contributions means the kind of provision made by a developer under a planning agreement, being a monetary contribution, the dedication of land free of cost or the provision of a material public benefit.

Contributions plan means a document that has been publicly exhibited and adopted by Council pursuant to Section 7.18 (formerly Section 94EA) of the EP&A Act that authorises the imposition of a condition under Section 7.11 (formerly Section 94) of that Act, as amended from time to time.

EP&A Act means the *Environmental Planning and Assessment Act 1979*.

EP&A Regulation means the Environmental Planning and Assessment Regulation 2000.

Infrastructure item means an item identified in the Contributions Plan or such other public infrastructure item approved by the Council.

Instrument change means a change to an environmental planning instrument to enable a development application to be made to carry out development the subject of a Planning Agreement.

Planning authority means Shoalhaven City Council (Council).

Planning benefit means a development contribution that confers a net public benefit, that is, a benefit that exceeds the benefit derived from measures that would address the impacts of particular development on surrounding land or the wider community.

Planning proposal means a document that explains the intended effect of a proposed local environmental plan (LEP) and sets out the justification for making that plan.

Public includes a section of the public.

Public benefit means the benefit enjoyed by the public as a consequence of a development contribution.

Public purpose means the provision of, or the recoupment of the cost of providing public amenities and public services (as defined in Section 7.4 (11) of the EP&A Act), affordable housing, transport or other infrastructure. It also includes the funding of recurrent expenditure relating to such things as the monitoring of the planning impacts of development and the conservation or enhancement of the natural environment.

Public facilities means public infrastructure, facilities, amenities and services.

10. Review

This policy will be reviewed within one year of the election of every new Council, or earlier should circumstances arise to warrant revision.

Attachment 1 – Planning Agreement Template

Deed

[Insert Name of Planning Agreement]

Planning Agreement

Under s7.4 of the Environmental Planning and Assessment Act 1979

Shoalhaven City Council

[Insert Name of Developer]

[Insert Name of Party 3]

[INSERT DATE]

[Insert Name of Planning Agreement]

Shoalhaven City Council

[Insert Name of Developer]

[Insert Name of Party 3 / Landowner]

[Insert Name of Planning Agreement]

Table of Contents

Summary Sheet.....	4
Parties	6
Background.....	6
Operative provisions	6
Part 1 – Preliminary.....	6
1 Interpretation.....	6
2 Status of this Deed	10
3 Commencement	10
4 Application of this Deed.....	10
5 Warranties	11
6 Further agreements	11
7 Surrender of right of appeal, etc.....	11
8 Application of s7.11, s7.12 and s7.24 of the Act to the Development.....	11
Part 2 – Development Contributions	12
9 Provision of Development Contributions	12
10 Payment of monetary Development Contributions	12
11 Dedication of land.....	12
12 Carrying out of Work.....	13
13 Variation to Work	14
14 Access to land by Developer	14
15 Access to land by Council.....	14
16 Protection of people, property & utilities.....	14
17 Repair of damage	15
18 Completion of Work	15
19 Rectification of defects.....	15
20 Works-As-Executed-Plan.....	16
21 Removal of Equipment	16
Part 3 – Dispute Resolution	16
22 Dispute resolution – expert determination.....	16
23 Dispute Resolution - mediation.....	17
Part 4 - Enforcement.....	17
24 Security for performance of obligations.....	17

[Insert Name of Planning Agreement]

Shoalhaven City Council

[Insert Name of Developer]

[Insert Name of Party 3 / Landowner]

25	Grant of Charge	18
26	Caveat and Discharge	18
27	Priority	19
28	Acquisition of land required to be dedicated	19
29	Breach of obligations	20
30	Enforcement in a court of competent jurisdiction	21
Part 5 – Registration & Restriction on Dealings		21
31	Registration of this Deed	21
32	Restriction on dealings	21
Part 6 – Indemnities & Insurance		22
33	Risk	22
34	Release	22
35	Indemnity	22
36	Insurance	22
Part 7 – Other Provisions		23
37	Annual report by Developer	23
38	Review of Deed	23
39	Notices	24
40	Approvals and Consent	24
41	Costs	24
42	Entire Deed	25
43	Further Acts	25
44	Notations on section 10.7(2) Planning Certificates	25
45	Governing Law and Jurisdiction	25
46	Joint and Individual Liability and Benefits	25
47	No Fetter	25
48	Illegality	26
49	Severability	26
50	Amendment	26
51	Waiver	26
52	GST	27
53	Explanatory Note	28
Schedule 1		29
Execution		30
Appendix		32

[Insert Name of Planning Agreement]

Shoalhaven City Council

[Insert Name of Developer]

[Insert Name of Party 3 / Landowner]

[Insert Name of Planning Agreement]

Summary Sheet

Council:

Name: Shoalhaven City Council ABN 59 855 182 344

Address: 36 Bridge Rd, Nowra NSW 2541

Telephone: [Insert Details]

Email: [Insert Details]

Representative: [Insert Details]

Developer:

Name: [Insert Details]

Address: [Insert Details]

Telephone: [Insert Details]

Email: [Insert Details]

Representative: [Insert Details]

Landowner:

Name: [Insert Name]

Address: [Insert Details]

Telephone: [Insert Details]

Email: [Insert Details]

Representative: [Insert Details]

Land:

See definition of *Land* in clause 1.1.

Development:

See definition of *Development* in clause 1.1.

[Insert Name of Planning Agreement]

Shoalhaven City Council

[Insert Name of Developer]

[Insert Name of Party 3 / Landowner]

Development Contributions:

See clause 9 and Schedule 1.

Application of s7.11, s7.12 and s7.24 of the Act:

See clause 8.

Security:

See Part 4.

Registration:

See clause 32.

Restriction on dealings:

See clause 33.

Dispute Resolution:

See Part 3.

[Insert Name of Planning Agreement]

Shoalhaven City Council

[Insert Name of Developer]

[Insert Name of Party 3 / Landowner]

[Insert Name of Planning Agreement]

Under s7.4 of the *Environmental Planning and Assessment Act 1979*

Parties

Shoalhaven City Council ABN 59 855 182 344 of 36 Bridge Rd, Nowra NSW 2541
(Council)

and

[Insert Name of Party 2] ABN [Insert details] of [Insert Address] (**Developer**)

and

[Insert Name of Party 3] ABN [Insert details] of [Insert Address] (**Landowner**)
[Drafting Note: Only required if the Developer is not the owner of land to which this VPA relates.
The landowner must be a party to the VPA.]

Background

A [Drafting note: Provide a brief background to the Development and this Deed.]

Operative provisions

Part 1 – Preliminary

[Drafting note: Some of the definitions in this clause may not be relevant. The definitions should be reviewed and removed, added to, amended and adapted to the circumstances of each particular case.]

1 Interpretation

1.1 In this Deed the following definitions apply:

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

Approval includes approval, consent, licence, permission or the like.

Authority means the Commonwealth or New South Wales government, a Minister of the Crown, a government department, a public authority established by or under any Act, a council or county council constituted under the *Local Government Act 1993*, or a person or body exercising functions under any Act including a commission, panel, court, tribunal and the like.

[Insert Name of Planning Agreement]

Shoalhaven City Council

[Insert Name of Developer]

[Insert Name of Party 3 / Landowner]

Bank Guarantee means an irrevocable and unconditional undertaking without any expiry or end date in favour of the Council to pay an amount or amounts of money to the Council on demand issued by:

- (a) one of the following trading banks:
 - (i) Australia and New Zealand Banking Group Limited,
 - (ii) Commonwealth Bank of Australia,
 - (iii) Macquarie Bank Limited,
 - (iv) National Australia Bank Limited,
 - (iv) St George Bank Limited,
 - (v) Westpac Banking Corporation, or
- (b) any other financial institution approved by the Council in its absolute discretion.

Charge means the charge referred to in clause 25.1.

Charge Land means **[Drafting Note: Insert land description]**

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

Clearance Certificate means a clearance certificate issued by the Commissioner for Taxation under paragraph 14-220 of Schedule 1 of the *Taxation Administration Act 1953* (Cth).

Contribution Item means an item of Development Contribution specified in Column 1 of Schedule 1.

Contribution Value means in respect of a Contribution Item the \$ amount agreed between the Parties as the value of a Development Contribution made under this Deed. **[Drafting Note: A Contribution Value is only necessary if there are credit or offset arrangements under the VPA or for the purposes of calculating the amount of security. If works or land to be dedicated under this VPA are specified in a contributions plan then the value attributed to the work or land in the contributions plan should be used. Otherwise the value of land will generally be the compensation available under the Land Acquisition (Just Terms Compensation Act) 1991 and value of works generally will be based on the estimated cost of completing the work using the method ordinarily adopted by a quantity surveyor. Council will not normally agree to any surplus value being refunded or offset against development contributions required to be made by the developer in respect of other development in the Council's area].**

Cost means a cost, charge, expense, outgoing, payment, fee and other expenditure of any nature.

Deed means this Deed and includes any schedules, annexures and appendices to this Deed.

Defect means anything that adversely affects, or is likely to adversely affect, the appearance, structural integrity, functionality or use or enjoyment of a Work or any part of a Work.

Defects Liability Period means the period of 1 year commencing on the day immediately after a Work is completed for the purposes of this Deed.

Development means **[Drafting Note: Insert description of the development to which this Deed relates. The description can refer to a specific development**

[Insert Name of Planning Agreement]

Shoalhaven City Council

[Insert Name of Developer]

[Insert Name of Party 3 / Landowner]

application. The description can be included in a schedule to this Deed if appropriate].

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, the carrying out of work, or the provision of any other material public benefit, or any combination of them, to be used for, or applied towards a public purpose, but does not include any Security or other benefit provided by a Party to the Council to secure the enforcement of that Party's obligations under this Deed for the purposes of s7.4(3)(g) of the Act.

Dispute means a dispute or difference between the Parties under or in relation to this Deed.

ELNO has the meaning given to that term in the Participation Rules.

Equipment means any equipment, apparatus, vehicle or other equipment or thing to be used by or on behalf of the Developer in connection with the performance of its obligations under this Deed.

Foreign Resident Capital Gains Withholding Amount mean the amount a purchaser is required to pay to the Commissioner for Taxation under paragraph 14-200 of the *Taxation Administration Act 1953* (Cth).

Final Lot means a lot created in the Development for separate residential occupation and disposition or a lot of a kind or created for a purpose that is otherwise agreed by the Parties, not being a lot created by a subdivision of the Land:

- (a) that is to be dedicated or otherwise transferred to the Council, or
- (b) on which is situated a dwelling-house that was in existence on the date of this Deed.

GST has the same meaning as in the GST Law.

GST Law has the same meaning as 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.

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

Land means [Drafting Note Insert description of the land to which this Deed relates. This can be done by reference to title or to a map or by other means as appropriate. The description of the land can be included in a schedule to this Deed if appropriate. If a map is used, Map should be a defined term in this clause].

LEP means the *Shoalhaven Local Environmental Plan 2014*.

LEP Amendment means an amendment to the LEP giving effect to the Planning Proposal. [Drafting Note. Delete if not relevant.]

LEP Amendment Date means the date the LEP Amendment takes effect. [Drafting Note. Delete if not relevant.]

Maintain, in relation to a Work, means keep in a good state of repair and working order, and includes repair of any damage to the Work.

Participation Rules means the participation rules as determined by the *Electronic Conveyancing National Law* (NSW).

[Insert Name of Planning Agreement]

Shoalhaven City Council

[Insert Name of Developer]

[Insert Name of Party 3 / Landowner]

Party means a party to this Deed.

Planning Proposal means [Insert details]. **[Drafting Note. Delete if not relevant.]**

Rectification Notice means a notice in writing:

- (a) identifying the nature and extent of a Defect,
- (b) specifying the works or actions that are required to Rectify the Defect,
- (c) specifying the date by which or the period within which the Defect is to be rectified.

Rectify means rectify, remedy or correct.

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

Security means a Bank Guarantee to the satisfaction of the Council indexed in accordance with **[Drafting Note. Insert indexation method]** from the date of this Deed.

Stage means a stage of the Development approved by a Development Consent or otherwise approved in writing by the Council for the purposes of this Deed.

Subdivision Certificate has the same meaning as in the Act.

Work means the physical result of any building, engineering or construction work in, on, over or under land.

1.2 In the interpretation of this Deed, the following provisions apply unless the context otherwise requires:

1.2.1 Headings are inserted for convenience only and do not affect the interpretation of this Deed.

1.2.2 A reference in this Deed to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.

1.2.3 If the day on which any act, matter or thing is to be done under this Deed is not a business day, the act, matter or thing must be done on the next business day.

1.2.4 A reference in this Deed to dollars or \$ means Australian dollars and all amounts payable under this Deed are payable in Australian dollars.

1.2.5 A reference in this Deed to a \$ value relating to a Development Contribution is a reference to the value exclusive of GST.

1.2.6 A reference in this Deed to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.

1.2.7 A reference in this Deed to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.

1.2.8 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Deed.

[Insert Name of Planning Agreement]

Shoalhaven City Council

[Insert Name of Developer]

[Insert Name of Party 3 / Landowner]

- 1.2.9 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- 1.2.10 Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- 1.2.11 A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
- 1.2.12 References to the word 'include' or 'including' are to be construed without limitation.
- 1.2.13 A reference to this Deed includes the agreement recorded in this Deed.
- 1.2.14 A reference to a Party to this Deed includes a reference to the employees, agents and contractors of the Party, the Party's successors and assigns.
- 1.2.15 A reference to 'dedicate' or 'dedication' in relation to land is a reference to dedicate or dedication free of cost.
- 1.2.16 Any schedules, appendices and attachments form part of this Deed.
- 1.2.17 Notes appearing in this Deed are operative provisions of this Deed.

2 Status of this Deed

- 2.1 This Deed is a planning agreement within the meaning of s7.4(1) of the Act.
- 2.2 The Developer agrees that this Deed operates as a deed poll in favour of the Council on and from the date of execution of this deed by the Developer until the date on which this deed commences.

3 Commencement

- 3.1 This Deed commences and has force and effect on and from the date when the Parties have:
 - 3.1.1 all executed the same copy of this Deed, or
 - 3.1.2 each executed separate counterparts of this Deed and exchanged the counterparts.
- 3.2 The Parties are to insert the date when this Deed commences on the front page and on the execution page.

4 Application of this Deed

- 4.1 This Deed applies to the Land and to the Development **[Drafting Note: Include 'and the taking effect of the LEP Amendment' if relevant].**

[Insert Name of Planning Agreement]

Shoalhaven City Council

[Insert Name of Developer]

[Insert Name of Party 3 / Landowner]

5 Warranties

- 5.1 The Parties warrant to each other that they:
- 5.1.1 have full capacity to enter into this Deed, and
 - 5.1.2 are able to fully comply with their obligations under this Deed.

6 Further agreements

- 6.1 The Parties may, at any time and from time to time, enter into agreements relating to the subject-matter of this Deed that are not inconsistent with this Deed for the purpose of implementing this Deed.

7 Surrender of right of appeal, etc.

- 7.1 The Developer is not to commence or maintain, or to cause or procure the commencement or maintenance, of any proceedings in any court or tribunal or similar body appealing against, or questioning the validity of this Deed, or an Approval relating to the Development in so far as the subject-matter of the proceedings relates to the validity of this Deed or any condition in the Approval requiring the entering into or compliance with this Deed.

8 Application of s7.11, s7.12 and s7.24 of the Act to the Development

- 8.1 This Deed [excludes/does not exclude]* **[Drafting Note: Delete whichever is not applicable]** the application of s7.11 of the Act to the Development.
[Drafting Note 1: The Deed may wholly or partially exclude the application of s7.11. If only partially, particulars of the exclusion must be provided.]
[Drafting Note 2: If the Deed does not wholly exclude the application of s7.11, a clause is required to stipulate whether any benefits under this Deed should be taken into consideration when determining a development contribution under s7.11 of the Act in relation to the Development.]
- 8.2 This Deed [excludes/does not exclude]* **[Drafting Note: Delete whichever is not applicable]** the application of s7.12 of the Act to the Development.
[Drafting Note: The Deed may wholly or partially exclude the application of s7.12. If so, particulars of the exclusion must be provided.]
- 8.3 This Deed does not exclude the application of s7.24 of the Act to the Development.

[Insert Name of Planning Agreement]

Shoalhaven City Council

[Insert Name of Developer]

[Insert Name of Party 3 / Landowner]

Part 2 – Development Contributions

9 Provision of Development Contributions

- 9.1 The Developer is to make Development Contributions to the Council in accordance with Schedule 1, any other provision of this Deed relating to the making of Development Contributions and otherwise to the satisfaction of the Council.
- 9.2 Any Contribution Value specified in this Deed in relation to a Development Contribution comprising dedication of land or the carrying out of a Work does not serve to define the extent of the Developer's obligation to make the Development Contribution.
- 9.3 The Council is to apply each Development Contribution made by the Developer under this Deed towards the public purpose for which it is made and otherwise in accordance with this Deed.
- 9.4 Despite clause 9.2, the Council may apply a Development Contribution made under this Deed towards a public purpose other than the public purpose specified in this Deed if the Council reasonably considers that the public interest would be better served by applying the Development Contribution towards that other purpose rather than the purpose so specified.

10 Payment of monetary Development Contributions

- 10.1 A monetary Development Contribution is made for the purposes of this Deed when the Council receives the full amount of the contribution payable under this Deed in cash or by unendorsed bank cheque or by the deposit by means of electronic funds transfer of cleared funds into a bank account nominated by the Council.
- 10.2 If the Development Consent is modified to allow for additional **[Drafting Note. Insert relevant details e.g. dwellings/Final Lots]** after **[Drafting Note. Insert timing, which may, for example, be the issuing of the first relevant Part 6 certificate e.g. Construction Certificate/Subdivision Certificate]** for the Development, the Developer is to pay monetary Development Contributions to the Council for the additional **[Drafting Note. Insert relevant details e.g. dwellings/Final Lots]** not later than 7 days after the Development Consent has been modified.

11 Dedication of land

- 11.1 A Development Contribution comprising the dedication of land is made for the purposes of this Deed when:
 - 11.1.1 the Council is provided with:
 - (a) a Clearance Certificate that is valid at the time of dedication of land, or
 - (b) the Foreign Resident Capital Gains Withholding Amount in respect of the land to be dedicated, and
 - 11.1.2 one of the following has occurred:

[Insert Name of Planning Agreement]

Shoalhaven City Council

[Insert Name of Developer]

[Insert Name of Party 3 / Landowner]

- (a) a deposited plan is registered in the register of plans held with the Registrar-General that dedicates land as a public road (including a temporary public road) under the *Roads Act 1993* or creates a public reserve or drainage reserve under the *Local Government Act 1993*, or
 - (b) the Council is given:
 - (i) an instrument in registrable form under the *Real Property Act 1900* duly executed by the Developer as transferor that is effective to transfer the title to the land to the Council when executed by the Council as transferee and registered,
 - (ii) the written consent to the registration of the transfer of any person whose consent is required to that registration, and
 - (iii) a written undertaking from any person holding the certificate of title to the production of the certificate of title for the purposes of registration of the transfer, or
 - (c) the Council is given evidence that a transfer has been effected by means of electronic lodgement through Property Exchange Australia Ltd or another ELNO.
- 11.2 The Developer is to do all things reasonably necessary to enable registration of the instrument of transfer to occur.
- 11.3 The Developer is to ensure that land dedicated to the Council under this Deed is free of all encumbrances and affectations (whether registered or unregistered and including without limitation any charge or liability for rates, taxes and charges) except as otherwise agreed in writing by the Council.
- 11.4 If, having used all reasonable endeavours, the Developer cannot ensure that land to be dedicated to the Council under this Deed is free from all encumbrances and affectations, the Developer may request that Council agree to accept the land subject to those encumbrances and affectations, but the Council may withhold its agreement in its absolute discretion.
- 11.5 Despite any other provision of this Deed, if the Developer is required to dedicate land to the Council on which the Developer is also required to carry out a Work under this Deed, the Developer is to comply with clause 11.1.2(b) not later than 7 days after the Work is completed for the purposes of this Deed.

12 Carrying out of Work

- 12.1 Without limiting any other provision of this Deed, any Work that is required to be carried out by the Developer under this Deed is to be carried out in accordance with any design or specification specified or approved by the Council, any relevant Approval and any other applicable law.
- 12.2 The Developer, at its own cost, is to comply with any reasonable direction given to it by the Council to prepare or modify a design or specification relating to a Work that the Developer is required to carry out under this Deed.

[Insert Name of Planning Agreement]

Shoalhaven City Council

[Insert Name of Developer]

[Insert Name of Party 3 / Landowner]

13 Variation to Work

- 13.1 The design or specification of any Work that is required to be carried out by the Developer under this Deed may be varied by agreement in writing between the Parties, acting reasonably, without the necessity for an amendment to this Deed
- 13.2 Without limiting clause 13.1, the Developer may make a written request to the Council to approve a variation to the design or specification of a Work in order to enable it to comply with the requirements of any Authority imposed in connection with any Approval relating to the carrying out of the Work.
- 13.3 The Council is not to unreasonably delay or withhold its approval to a request made by the Developer under clause 13.2.
- 13.4 The Council, acting reasonably, may from time to time give a written direction to the Developer requiring it to vary the design or specification of a Work before the Work is carried out in a specified manner and submit the variation to the Council for approval.
- 13.5 The Developer is to comply promptly with a direction referred to in clause 13.4 at its own cost.

14 Access to land by Developer

- 14.1 The Council authorises the Developer to enter, occupy and use **[Drafting Note: Specify particular land owned or controlled by the Council]** for the purpose of performing its obligations under this Deed.
- 14.2 The Council is to permit the Developer, upon receiving reasonable prior notice from the Developer, to enter any other Council owned or controlled land in order to enable the Developer to properly perform its obligations under this Deed.
- 14.3 Nothing in this Deed creates or gives the Developer any estate or interest in any part of the land referred to in clause 14.1 or 14.2.

15 Access to land by Council

- 15.1 The Council may enter any land on which Work is being carried out by the Developer under this Deed in order to inspect, examine or test the Work, or to remedy any breach by the Developer of its obligations under this Deed relating to the Work.
- 15.2 The Council is to give the Developer prior reasonable notice before it enters land under clause 15.1.

16 Protection of people, property & utilities

- 16.1 The Developer is to ensure to the fullest extent reasonably practicable in relation to the performance of its obligations under this Deed that:
 - 16.1.1 all necessary measures are taken to protect people and property,
 - 16.1.2 unnecessary interference with the passage of people and vehicles is avoided, and

[Insert Name of Planning Agreement]

Shoalhaven City Council

[Insert Name of Developer]

[Insert Name of Party 3 / Landowner]

16.1.3 nuisances and unreasonable noise and disturbances are prevented.

- 16.2 Without limiting clause 16.2, the Developer is not to obstruct, interfere with, impair or damage any public road, public footpath, public cycleway or other public thoroughfare, or any pipe, conduit, drain, watercourse or other public utility or service on any land except as authorised in writing by the Council or any relevant Authority.

17 Repair of damage

- 17.1 The Developer is to Maintain any Work required to be carried out by the Developer under this Deed until the Work is completed for the purposes of this Deed or such later time as agreed between the Parties.
- 17.2 The Developer is to carry out its obligation under clause 17.1 at its own cost and to the satisfaction of the Council.

18 Completion of Work

- 18.1 The Developer is to give the Council written notice of the date on which it will complete Work required to be carried out under this Deed or any Stage.
- 18.2 The Council is to inspect the Work the subject of the notice referred to in clause 18.1 within 14 days of the date specified in the notice for completion of the Work.
- 18.3 Work required to be carried out by the Developer under this Deed, or a Stage, is completed for the purposes of this Deed when:
- 18.3.1 the Developer gives the Council a compliance certificate within the meaning of s6.4(e)(i) or (v) of the Act to the effect that the Work has been completed in accordance with this Deed and any applicable Development Consent and standards and specifications, and
- 18.3.2 Council, acting reasonably, gives a written notice to the Developer that the Work is complete.
- 18.4 If the Council is the owner of the land on which Work the subject of a notice referred to in clause 18.3 is issued, the Council assumes responsibility for the Work upon the issuing of the notice, but if it is not the owner at that time, it assumes that responsibility when it later becomes the owner.
- 18.5 Before the Council gives the Developer a notice referred to in clause 18.3, it may give the Developer a written direction to complete, rectify or repair any specified part of the Work to the reasonable satisfaction of the Council.
- 18.6 The Developer, at its own cost, is to promptly comply with a direction referred to in clause 18.5.

19 Rectification of defects

- 19.1 The Council may give the Developer a Rectification Notice during the Defects Liability Period.
- 19.2 The Developer, at its own cost, is to comply with a Rectification Notice according to its terms and to the reasonable satisfaction of the Council.

[Insert Name of Planning Agreement]

Shoalhaven City Council

[Insert Name of Developer]

[Insert Name of Party 3 / Landowner]

- 19.3 The Council is to do such things as are reasonably necessary to enable the Developer to comply with a Rectification Notice that has been given to it under clause 19.1

20 Works-As-Executed-Plan

- 20.1 No later than 60 days after Work is completed for the purposes of this Deed, the Developer is to submit to the Council a full works-as-executed-plan in respect of the Work.
- 20.2 The Developer, being the copyright owner in the plan referred to in clause 20.1, gives the Council a non-exclusive licence to use the copyright in the plans for the purposes of this Deed.

21 Removal of Equipment

- 21.1 When Work on any Council owned or controlled land is completed for the purposes of this Deed, the Developer, without delay, is to:
- 21.1.1 remove any Equipment from Land and make good any damage or disturbance to the land as a result of that removal, and
- 21.1.2 leave the land in a neat and tidy state, clean and free of rubbish.

Part 3 – Dispute Resolution

22 Dispute resolution – expert determination

- 22.1 This clause applies to a Dispute between any of the Parties to this Deed concerning a matter arising in connection with this Deed that can be determined by an appropriately qualified expert if:
- 22.1.1 the Parties to the Dispute agree that it can be so determined, or
- 22.1.2 the Chief Executive Officer of the professional body that represents persons who appear to have the relevant expertise to determine the Dispute gives a written opinion that the Dispute can be determined by a member of that body.
- 22.2 A Dispute to which this clause applies is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 22.3 If a notice is given under clause 22.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 22.4 If the Dispute is not resolved within a further 28 days, the Dispute is to be referred to the President of the NSW Law Society to appoint an expert for expert determination.
- 22.5 The expert determination is binding on the Parties except in the case of fraud or misfeasance by the expert.
- 22.6 Each Party is to bear its own costs arising from or in connection with the appointment of the expert and the expert determination.

[Insert Name of Planning Agreement]

Shoalhaven City Council

[Insert Name of Developer]

[Insert Name of Party 3 / Landowner]

- 22.7 The Parties are to share equally the costs of the President, the expert, and the expert determination.

23 Dispute Resolution - mediation

- 23.1 This clause applies to any Dispute arising in connection with this Deed other than a Dispute to which clause 22 applies.
- 23.2 Such a Dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 23.3 If a notice is given under clause 23.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 23.4 If the Dispute is not resolved within a further 28 days, the Parties are to mediate the Dispute in accordance with the Mediation Rules of the Law Society of New South Wales published from time to time and are to request the President of the Law Society to select a mediator.
- 23.5 If the Dispute is not resolved by mediation within a further 28 days, or such longer period as may be necessary to allow any mediation process which has been commenced to be completed, then the Parties may exercise their legal rights in relation to the Dispute, including by the commencement of legal proceedings in a court of competent jurisdiction in New South Wales.
- 23.6 Each Party is to bear its own costs arising from or in connection with the appointment of a mediator and the mediation.
- 23.7 The Parties are to share equally the costs of the President, the mediator, and the mediation.

Part 4 - Enforcement

24 Security for performance of obligations

- 24.1 The Developer is to provide Security to the Council in the amount of **[Drafting Note: Insert \$ amount. This amount will normally be full value of the developer's provision under the VPA]** in relation to the performance of its obligations under this Deed.
- 24.2 The Developer is to provide the Security to the Council **[Drafting Note: Insert timing for provision of Security. At the latest it should be before the developer commences any part of the Development]** unless, before that time, the Council agrees in writing to apportion the Security to different Stages, in which case the Developer is to provide the portion of the Security relating to a particular Stage to the Council before it commences any part of the Development comprised in the Stage.
- 24.3 The Council, in its absolute discretion and despite clause 14, may refuse to allow the Developer to enter, occupy or use any land owned or controlled by the Council or refuse to provide the Developer with any plant, equipment, facilities or assistance relating to the carrying out the Development if the Developer has not provided the Security to the Council in accordance with this Deed.

[Insert Name of Planning Agreement]

Shoalhaven City Council

[Insert Name of Developer]

[Insert Name of Party 3 / Landowner]

- 24.4 The Council may call-up and apply the Security in accordance with clause 29 to remedy any breach of this Deed notwithstanding any other remedy it may have under this Deed, under any Act or otherwise at law or in equity.
- 24.5 The Council is to release and return the Security or any unused part of it to the Developer within 14 days of completion of the obligation to which the Security relates.
- 24.6 The Developer may at any time provide the Council with a replacement Security.
- 24.7 On receipt of a replacement Security, the Council is to release and return the Security that has been replaced to the Developer.
- 24.8 If the Council calls-up the Security or any portion of it, it may, by written notice to the Developer, require the Developer to provide a further or replacement Security to ensure that the amount of Security held by the Council equals the amount it is entitled to hold under this Deed.
- 24.9 The Developer is to ensure that the Security provided to the Council is at all times maintained to the full current indexed value.

25 Grant of Charge

- 25.1 On the date the Developer **[Drafting Note: Or Landowner if the landowner is a different entity]** executes this Deed, the Developer **[Drafting Note: Or Landowner if the landowner is a different entity]** grants to the Council a fixed and specific charge over the Developer's right, title and interest in the Charge Land, to secure:
 - 25.1.1 the performance of the Developer's obligation to make monetary Development Contributions under this Deed, and
 - 25.1.2 any damages that may be payable to the Council, or any costs which may be incurred by the Council in the event of a breach of this Deed by the Developer
- 25.2 Upon the execution of this Deed, the Developer is to give to the Council an instrument in registrable form under the *Real Property Act 1900* duly executed by the Developer that is effective to register the Charge on the title to the Charge Land.
- 25.3 If the Charge Land comprises part only of a lot in a deposited plan at the time that the instrument referred to in clause 25.2 is required to be given, the Developer is to give the Council an instrument that charges a greater area of the Land which includes the whole of the Charge Land.
- 25.4 The Developer is to do all other things necessary, including execute all other documents, to allow for the registration of the Charge.

26 Caveat and Discharge

- 26.1 The Developer agrees that:
 - 26.1.1 the Council may lodge a caveat on the title of the Land to which the Charge applies,

[Insert Name of Planning Agreement]

Shoalhaven City Council

[Insert Name of Developer]

[Insert Name of Party 3 / Landowner]

- 26.1.2 the Council is to release the caveat from any part of the Land to which the Charge applies that is not the Charge Land once that part of the Land is contained in a separate lot to the Charge Land, and
- 26.1.3 the Council cannot be required to have the caveat removed from the title to the Charge Land other than in accordance with clause 26.2.
- 26.2 In order to enable Final Lots to be sold, the Council is to release the Charge and withdraw the caveat from the title to any Final Lot on satisfaction by the Developer of its obligations under this Deed to make Development Contributions in respect of the creation of the lot.
- 26.3 For the purposes of clause 26.2 the Council is to use its reasonable endeavours to provide any documentation necessary to enable the release of the Charge and withdrawal of the caveat from the title of a Final Lot on or immediately prior to the date for settlement of the sale of that lot.
- 26.4 Nothing in this Deed prevents the registration of a plan of subdivision in respect of the Charge Land nor the creation of a Final Lot from the Charge Land.

27 Priority

- 27.1 The Developer is not to create any mortgage or charge over the Charge Land or grant any other interest in the Charge Land ranking in priority equal with or ahead of the Charge created under this Deed without the prior written approval of the Council.

28 Acquisition of land required to be dedicated

- 28.1 If the Developer does not dedicate land required to be dedicated under this Deed at the time at which it is required to be dedicated, the Developer consents to the Council compulsorily acquiring the land for compensation in the amount of \$1 without having to follow the pre-acquisition procedure under the Just Terms Act.
- 28.2 The Council is to only acquire land pursuant to clause 28.1 if it considers it reasonable to do so having regard to the circumstances surrounding the failure by the Developer to dedicate the land required to be dedicated under this Deed.
- 28.3 Clause 28.1 constitutes an agreement for the purposes of s30 of the Just Terms Act.
- 28.4 If, as a result of the acquisition referred to in clause 28.1, the Council is required to pay compensation to any person other than the Developer, the Developer is to reimburse the Council that amount, upon a written request being made by the Council, or the Council can call on any Security provided under clause 24.
- 28.5 The Developer indemnifies and keeps indemnified the Council against all Claims made against the Council as a result of any acquisition by the Council of the whole or any part of the land concerned except if, and to the extent that, the Claim arises because of the Council's negligence or default.
- 28.6 The Developer is to promptly do all things necessary, and consents to the Council doing all things necessary, to give effect to this clause 28, including without limitation:
 - 28.6.1 signing any documents or forms.

[Insert Name of Planning Agreement]

Shoalhaven City Council

[Insert Name of Developer]

[Insert Name of Party 3 / Landowner]

28.6.2 giving land owner's consent for lodgement of any Development Application,

28.6.3 producing certificates of title to the Registrar-General under the *Real Property Act 1900*, and

28.6.4 paying the Council's costs arising under this clause 28.

29 Breach of obligations

29.1 If the Council reasonably considers that the Developer is in breach of any obligation under this Deed, it may give a written notice to the Developer:

29.1.1 specifying the nature and extent of the breach,

29.1.2 requiring the Developer to:

(a) rectify the breach if it reasonably considers it is capable of rectification, or

(b) pay compensation to the reasonable satisfaction of the Council in lieu of rectifying the breach if it reasonably considers the breach is not capable of rectification,

29.1.3 specifying the period within which the breach is to be rectified or compensation paid, being a period that is reasonable in the circumstances.

29.2 If the Developer fails to fully comply with a notice referred to in clause 29.1, the Council may, without further notice to the Developer, call-up the Security provided by the Developer under this Deed and apply it to remedy the Developer's breach.

29.3 If the Developer fails to comply with a notice given under clause 29.1 relating to the carrying out of Work under this Deed, the Council may step-in and remedy the breach and may enter, occupy and use any land owned or controlled by the Developer and any Equipment on such land for that purpose.

29.4 Any costs incurred by the Council in remedying a breach in accordance with clause 29.2 or clause 29.3 may be recovered by the Council by either or a combination of the following means:

29.4.1 by calling-up and applying the Security provided by the Developer under this Deed, or

29.4.2 as a debt due in a court of competent jurisdiction.

29.5 For the purpose of clause 29.4, the Council's costs of remedying a breach the subject of a notice given under clause 29.1 include, but are not limited to:

29.5.1 the costs of the Council's employees, agents and contractors reasonably incurred for that purpose,

29.5.2 all fees and charges necessarily or reasonably incurred by the Council in remedying the breach, and

29.5.3 all legal costs and expenses reasonably incurred by the Council, by reason of the breach.

29.6 Nothing in this clause 29 prevents the Council from exercising any rights it may have at law or in equity in relation to a breach of this Deed by the Developer, including but not limited to seeking relief in an appropriate court.

[Insert Name of Planning Agreement]

Shoalhaven City Council

[Insert Name of Developer]

[Insert Name of Party 3 / Landowner]

30 Enforcement in a court of competent jurisdiction

- 30.1 Without limiting any other provision of this Deed, the Parties may enforce this Deed in any court of competent jurisdiction.
- 30.2 For the avoidance of doubt, nothing in this Deed prevents:
 - 30.2.1 a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Deed or any matter to which this Deed relates, or
 - 30.2.2 the Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Deed or any matter to which this Deed relates.

Part 5 – Registration & Restriction on Dealings

31 Registration of this Deed

- 31.1 The Parties agree to register this Deed for the purposes of s7.6(1) of the Act.
- 31.2 Upon the commencement of this Deed, the Developer is to deliver to the Council in registrable form:
 - 31.2.1 an instrument requesting registration of this Deed on the title to the Land duly executed by the registered proprietor of the land, and
 - 31.2.2 the written irrevocable consent of each person referred to in s7.6(1) of the Act to that registration.
- 31.3 The Developer is to do such other things as are reasonably necessary to enable registration of this Deed to occur.
- 31.4 The Parties are to do such things as are reasonably necessary to remove any notation relating to this Deed from the title to the Land:
 - 31.4.1 in so far as the part of the Land concerned is a Final Lot,
 - 31.4.2 in relation to any other part of the Land, once the Developer has completed its obligations under this Deed to the reasonable satisfaction of the Council or this Deed is terminated or otherwise comes to an end for any other reason.

32 Restriction on dealings

- 32.1 The Developer is not to:
 - 32.1.1 sell or transfer the Land, other than a Final Lot, or
 - 32.1.2 assign the Developer's rights or obligations under this Deed, or novate this Deed,to any person unless:
 - 32.1.3 the Developer has, at no cost to the Council, first procured the execution by the person to whom the Land or part is to be sold or transferred or the Developer's rights or obligations under this Deed are

[Insert Name of Planning Agreement]

Shoalhaven City Council

[Insert Name of Developer]

[Insert Name of Party 3 / Landowner]

to be assigned or novated, of a deed in favour of the Council on terms reasonably satisfactory to the Council, and

- 32.1.4 the Council has given written notice to the Developer stating that it reasonably considers that the purchaser, transferee, assignee or novatee, is reasonably capable of performing its obligations under this Deed, and
- 32.1.5 the Developer is not in breach of this Deed, and
- 32.1.6 the Council otherwise consents to the transfer, assignment or novation, such consent not to be unreasonably withheld.
- 32.2 Subject to clause 32.3, the Developer acknowledges and agrees that it remains liable to fully perform its obligations under this Deed unless and until it has complied with its obligations under clause 32.1.
- 32.3 Clause 32.1 does not apply in relation to any sale or transfer of the Land if this Deed is registered on the title to the Land at the time of the sale.

Part 6 – Indemnities & Insurance

33 Risk

- 33.1 The Developer performs this Deed at its own risk and its own cost.

34 Release

- 34.1 The Developer releases the Council from any Claim it may have against the Council arising in connection with the performance of the Developer's obligations under this Deed except if, and to the extent that, the Claim arises because of the Council's negligence or default.

35 Indemnity

- 35.1 The Developer indemnifies the Council from and against all Claims that may be sustained, suffered, recovered or made against the Council arising in connection with the performance of the Developer's obligations under this Deed except if, and to the extent that, the Claim arises because of the Council's negligence or default.

36 Insurance

- 36.1 The Developer is to 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 Deed up until the Work is taken to have been completed in accordance with this Deed:
 - 36.1.1 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), to cover

[Insert Name of Planning Agreement]

Shoalhaven City Council

[Insert Name of Developer]

[Insert Name of Party 3 / Landowner]

the Developer's liability in respect of damage to or destruction of the Works,

- 36.1.2 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,
- 36.1.3 workers compensation insurance as required by law, and
- 36.1.4 any other insurance required by law.
- 36.2 If the Developer fails to comply with clause 36.1, 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:
 - 36.2.1 by calling upon the Security provided by the Developer to the Council under this Deed, or
 - 36.2.2 recovery as a debt due in a court of competent jurisdiction.
- 36.3 The Developer is not to commence to carry out any Work unless it has first provided to the Council satisfactory written evidence of all of the insurances specified in clause 36.1.

Part 7 – Other Provisions

37 Annual report by Developer

- 37.1 The Developer is to provide to the Council by not later than each anniversary of the date on which this Deed is entered into a report detailing the performance of its obligations under this Deed.
- 37.2 The report referred is to be in such a form and to address such matters as required by the Council from time to time.

38 Review of Deed

- 38.1 The Parties agree to review this Deed every **[Drafting Note. Insert number]** years, and otherwise if either party is of the opinion that any change of circumstance has occurred, or is imminent, that materially affects the operation of this Deed.
- 38.2 For the purposes of clause 38.1, the relevant changes include (but are not limited to) any change to a law that restricts or prohibits or enables the Council or any other planning authority to restrict or prohibit any aspect of the Development.
- 38.3 For the purposes of addressing any matter arising from a review of this Deed referred to in clause 38.1, the Parties are to use all reasonable endeavours to agree on and implement appropriate amendments to this Deed.
- 38.4 If this Deed becomes illegal, unenforceable or invalid as a result of any change to a law, the Parties agree to do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Deed is entered into.

[Insert Name of Planning Agreement]

Shoalhaven City Council

[Insert Name of Developer]

[Insert Name of Party 3 / Landowner]

- 38.5 A failure by a Party to agree to take action requested by the other Party as a consequence of a review referred to in clause 38.1 (but not 38.4) is not a Dispute for the purposes of this Deed and is not a breach of this Deed.

39 Notices

- 39.1 Any notice, consent, information, application or request that is to or may be given or made to a Party under this Deed is only given or made if it is in writing and sent in one of the following ways:
- 39.1.1 delivered or posted to that Party at its address set out in the Summary Sheet, or
- 39.1.2 emailed to that Party at its email address set out in the Summary Sheet.
- 39.2 If a Party gives the other Party 3 business days' notice of a change of its address or email, 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 address.
- 39.3 Any notice, consent, information, application or request is to be treated as given or made if it is:
- 39.3.1 delivered, when it is left at the relevant address,
- 39.3.2 sent by post, 2 business days after it is posted, or
- 39.3.3 sent by email and the sender does not receive a delivery failure message from the sender's internet service provider within a period of 24 hours of the email being sent.
- 39.4 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 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.

40 Approvals and Consent

- 40.1 Except as otherwise set out in this Deed, and subject to any statutory obligations, a Party may give or withhold an approval or consent to be given under this Deed in that Party's absolute discretion and subject to any conditions determined by the Party.
- 40.2 A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

41 Costs

- 41.1 The Developer is to pay to the Council the Council's costs of and incidental to preparing, negotiating, executing and stamping this Deed, and any document related to this Deed within 7 days of a written demand by the Council for such payment.

[Insert Name of Planning Agreement]

Shoalhaven City Council

[Insert Name of Developer]

[Insert Name of Party 3 / Landowner]

- 41.2 The Developer is also to pay to the Council the Council's costs of and incidental to enforcing this Deed within 7 days of a written demand by the Council for such payment.

42 Entire Deed

- 42.1 This Deed contains everything to which the Parties have agreed in relation to the matters it deals with.
- 42.2 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 Deed was executed, except as permitted by law.

43 Further Acts

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

44 Notations on section 10.7(2) Planning Certificates

- 44.1 The Parties agree that the Council may, in its absolute discretion, make a notation under section 10.7(5) of the Act regarding this Agreement on any certificate issued under section 10.7(2) of the Act relating to the Land.

45 Governing Law and Jurisdiction

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

46 Joint and Individual Liability and Benefits

- 46.1 Except as otherwise set out in this Deed:
- 46.1.1 any agreement, covenant, representation or warranty under this Deed by 2 or more persons binds them jointly and each of them individually, and
- 46.1.2 any benefit in favour of 2 or more persons is for the benefit of them jointly and each of them individually.

47 No Fetter

- 47.1 Nothing in this Deed 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

[Insert Name of Planning Agreement]

Shoalhaven City Council

[Insert Name of Developer]

[Insert Name of Party 3 / Landowner]

limitation, nothing shall be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

48 Illegality

- 48.1 If this Deed or any part of it becomes illegal, unenforceable or invalid as a result of any change to a law, the Parties are to co-operate and do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Deed is entered into.

49 Severability

- 49.1 If a clause or part of a clause of this Deed 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.
- 49.2 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 Deed, but the rest of this Deed is not affected.

50 Amendment

- 50.1 No amendment of this Deed will be of any force or effect unless it is in writing and signed by the Parties to this Deed in accordance with clause 25C of the Regulation.

51 Waiver

- 51.1 The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Deed, does not amount to a waiver of any obligation of, or breach of obligation by, another Party.
- 51.2 A waiver by a Party is only effective if it:
- 51.2.1 is in writing,
 - 51.2.2 is addressed to the Party whose obligation or breach of obligation is the subject of the waiver,
 - 51.2.3 specifies the obligation or breach of obligation the subject of the waiver and the conditions, if any, of the waiver,
 - 51.2.4 is signed and dated by the Party giving the waiver.
- 51.3 Without limitation, a waiver may be expressed to be conditional on the happening of an event, including the doing of a thing by the Party to whom the waiver is given.
- 51.4 A waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given, and 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.

[Insert Name of Planning Agreement]

Shoalhaven City Council

[Insert Name of Developer]

[Insert Name of Party 3 / Landowner]

- 51.5 For the purposes of this Deed, an obligation or breach of obligation the subject of a waiver is taken not to have been imposed on, or required to be complied with by, the Party to whom the waiver is given.

52 GST

- 52.1 In this clause:

Adjustment Note, Consideration, GST, GST Group, Margin Scheme, Money, Supply and Tax Invoice have the meaning given by 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 by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

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.

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.

- 52.2 Subject to clause 52.4, if GST is payable on a Taxable Supply made under, by reference to or in connection with this Deed, the Party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.
- 52.3 Clause 52.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Deed to be GST inclusive.
- 52.4 No additional amount shall be payable by the Council under clause 52.2 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.
- 52.5 If there are Supplies for Consideration which is not Consideration expressed as an amount of Money under this Deed 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:
- 52.5.1 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;
- 52.5.2 that any amounts payable by the Parties in accordance with clause 52.2 (as limited by clause 52.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 52.6 No payment of any amount pursuant to this clause 52, 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.
- 52.7 Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to a cost, expense or other liability incurred

[Insert Name of Planning Agreement]

Shoalhaven City Council

[Insert Name of Developer]

[Insert Name of Party 3 / Landowner]

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.

52.8 This clause continues to apply after expiration or termination of this Deed.

53 Explanatory Note

- 53.1 The Appendix contains the Explanatory Note relating to this Deed required by clause 25E of the Regulation.
- 53.2 Pursuant to clause 25E(7) of the Regulation, the Parties agree that the Explanatory Note is not to be used to assist in construing this Planning Deed.

[Insert Name of Planning Agreement]

Shoalhaven City Council

[Insert Name of Developer]

[Insert Name of Party 3 / Landowner]

Schedule 1

(Clause 9)

Development Contributions

Column 1	Column 2	Column 3	Column 4
Item/ Contribution	Public Purpose	Manner & Extent	Timing

A. Monetary Contributions

1. [Drafting Note: Insert description]

[Drafting Note: Insert public purpose]

[Drafting Note: Insert manner in which contributions are to be provided including details of any design, technical specification and standards of work. Details can also be provided in a separate Schedule]

[Drafting Note: Insert timing by which contributions are to be provided]

B. Dedication of Land

1.

C. Carrying out of Work

1.

D. Other material public benefits

1.

[Insert Name of Planning Agreement]

Shoalhaven City Council

[Insert Name of Developer]

[Insert Name of Party 3 / Landowner]

Execution

Executed as a Deed

Dated:

Executed on behalf of the Council

Chief Executive Officer

Name of Chief Executive Officer:

Witness

Name of Witness:

Executed on behalf of the Developer in accordance with s127(1) of the Corporations Act (Cth) 2001

Director

Name of Director:

Director/Secretary

Name of Director/Secretary:

[Insert Name of Planning Agreement]

Shoalhaven City Council

[Insert Name of Developer]

[Insert Name of Party 3 / Landowner]

Executed on behalf of the Landowner in accordance with s127(1) of the
Corporations Act (Cth) 2001

Director

Name of Director:

Director/Secretary

Name of Director/Secretary:

[Insert Name of Planning Agreement]

Shoalhaven City Council

[Insert Name of Developer]

[Insert Name of Party 3 / Landowner]

Appendix

(Clause 53)

Environmental Planning and Assessment Regulation 2000

(Clause 25E)

Explanatory Note

Draft Planning Agreement

Under s7.4 of the *Environmental Planning and Assessment Act 1979*

Parties

Shoalhaven City Council ABN 59 855 182 344 of [Insert Address] (Council)

[Insert name of Party 2] ABN [Insert] of [Insert Address] (Developer)

[Insert Name of Party 3 / Landowner] ABN [Insert] of [Insert Address] (Landowner)

Description of the Land to which the Draft Planning Agreement Applies

[Drafting Note: To be completed]

Description of Proposed Development

[Drafting Note: To be completed]

Summary of Objectives, Nature and Effect of the Draft Planning Agreement

Objectives of Draft Planning Agreement

[Drafting Note: To be completed]

[Insert Name of Planning Agreement]

Shoalhaven City Council

[Insert Name of Developer]

[Insert Name of Party 3 / Landowner]

Nature of Draft Planning Agreement

[Drafting Note: To be completed]

Effect of the Draft Planning Agreement

[Drafting Note: To be completed]

Assessment of the Merits of the Draft Planning Agreement

The Planning Purposes Served by the Draft Planning Agreement

[Drafting Note: To be completed]

How the Draft Planning Agreement Promotes the Public Interest

[Drafting Note: To be completed]

For Planning Authorities:

Development Corporations - How the Draft Planning Agreement Promotes its Statutory Responsibilities

N/A

Other Public Authorities – How the Draft Planning Agreement Promotes the Principles for Local Government (formerly the Council's charter) in the Local Government Act 1993

N/A

Councils – How the Draft Planning Agreement Promotes the Elements of the Council's Charter

The Draft Planning Agreement promotes the Principles for Local Government by:

[Drafting Note: To be completed]

All Planning Authorities – Whether the Draft Planning Agreement Conforms with the Authority's Capital Works Program

[Drafting Note: To be completed by Council]

All Planning Authorities – Whether the Draft Planning Agreement specifies that certain requirements must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued

[Drafting Note: To be completed]