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## **Planning Agreement – Escarpment Drive, Calderwood**

### **Explanatory Note**

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Shellharbour City Council (ABN 78 392 627 134) (**Council**)

RBWI Pty Ltd (ACN 610 758 337) (**Developer**)

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# Planning Agreement – Escarpment Drive, Calderwood

## Explanatory Note

### 1 Introduction

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This Explanatory Note has been prepared jointly between the parties in accordance with clause 25E of the *Environmental Planning & Assessment Regulation 2000* (NSW).

The purpose of this Explanatory Note is to provide a plain English summary to support the notification of a draft planning agreement (**Planning Agreement**) between the parties under s7.4 of the *Environmental Planning & Assessment Act 1979* (NSW) (**EPA Act**).

This Explanatory Note is not to be used to assist in construing the Planning Agreement.

### 2 Parties to the Planning Agreement

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The parties to the Planning Agreement are:

- (1) Shellharbour City Council (ABN 78 392 627 134) (**Council**).
- (2) RBWI Pty Ltd (ACN 610 758 337) (**Developer**).

### 3 Description of the Subject Land

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The land to which the Planning Agreement applies, and to which the Planning Agreement will be registered, is set out in the table below (**Land**).

Folio Identifier	Location
Lot 102 DP1249814	79 Escarpment Drive, CALDERWOOD NSW 2527
Lot 1 DP1276130	Escarpment Drive, CALDERWOOD NSW 2527
Lot 2 DP1276130	
Lot 4 DP1276130	

### 4 Description of the Development

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The development to which the Planning Agreement relates is the development generally described in DA0569/2017 for the provision of approximately 141 allotments for residential dwellings (**Development**).

The Development constitutes part of the Calderwood Urban Development Precinct (**CUDP**), which covers approximately 700 hectares of land to the north-west of Albion Park, spanning both the Shellharbour and Wollongong Local Government Areas.

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## 5 Summary of objects, nature and effect of the Planning Agreement

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The **objective** of the Planning Agreement is to provide infrastructure, amenities and resources to the Shellharbour community by facilitating the delivery of development contributions (**Contributions**) with respect to the Development.

The Contributions will be monetary contributions (unless Council and the Developer otherwise agree that the Contributions, or part of the Contributions, will take the form of works to be performed by the Developer within a period of time appropriate to Council).

The Contributions will facilitate the completion of the following projects that will cater for demand from the Development without placing a financial burden on the broader Shellharbour community:

- (1) Albion Park Library upgrade (which will contribute towards buildings, fit outs, landscaping, car parking, public art, site works and/or library resources, equipment and technology).
- (2) The construction of the Albion Park bypass.
- (3) City-wide infrastructure, including but not limited to:
  - (a) Shellharbour City Performance Theatre;
  - (b) Council Administration Offices;
  - (c) City Library; and
  - (d) Civic Auditorium.
- (4) City Wide Open Space and Recreation Infrastructure, including but not limited to:
  - (a) Beach foreshore; and
  - (b) Shellharbour City Stadium.
- (5) Administration of the Planning Agreement.

The **intent** of the Planning Agreement is to facilitate the provision of the Contributions by the Developer in accordance with the following table and allows for the indexation of Contributions over the life of the development:

Number of CUDP Dwellings	Contribution per Dwelling
Where the relevant Dwelling is within the first 1,000 CUDP Dwellings (0-1,000 CUDP Dwellings)	\$3,310

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Where the relevant Dwelling is within the 1,001 <sup>st</sup> CUDP Dwelling and the 2,000 <sup>th</sup> CUDP Dwelling (1,001 – 2,000 CUDP Dwellings)	\$3,710
Where the relevant Dwelling is within the 2,001 <sup>st</sup> CUDP Dwelling and the 3,000 <sup>th</sup> CUDP Dwelling (2,001 – 3,000 CUDP Dwellings)	\$4,110
Where the relevant Dwelling is within the 3,001 <sup>st</sup> CUDP Dwelling and the 4,000 <sup>th</sup> CUDP Dwelling (3,001 – 4,000 CUDP Dwellings)	\$4,510
Where the relevant Dwelling is the 4,001 <sup>st</sup> CUDP Dwelling or greater	\$4,810

Payment of the Contribution is based on the anticipated number of dwellings provided. A contribution will be paid for a nominated number of dwellings on each residential lot created prior to the release of the subdivision certificate. The number of dwellings actually completed will be reviewed on a six monthly basis and a payment will be required for any additional dwellings completed at that time.

Other Planning Agreements are already in place with respect to the CUDP which require the payment of a monetary contribution for each dwelling constructed as part of those developments. The monetary contributions set out in the table referred to above are consistent with the monetary contributions required to be paid under those existing Planning Agreements.

The tiers for the contribution amount per dwelling in the table reflects the number of dwellings delivered within the whole of the CUDP, and not just within the Development. Further, because the monetary contributions in the table are consistent with those contained in other Planning Agreements within the CUDP, this will ensure that the monetary contributions in each Planning Agreement are consistent and that the total monetary contribution received by Council across the CUDP under those Planning Agreements is adequate.

This structure is necessary because the timing of the delivery of dwellings within the Development cannot be predicted with certainty because the Development may be undertaken concurrently with the development of other parts of the CUDP.

Upon the issue of the final subdivision certificate for the Development, Council will require the Developer to deliver to Council, as security for the Developer's obligations to make the Contributions with respect to dwellings within the Development which have not been completed at that time. The amount of that Bank Guarantee will be determined by Council acting reasonably, but which will be equivalent to or less than fifty percent (50%) of the Contribution Amount for the final stage of the Development. If any subsequent Contribution is

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not paid by the time required under the Planning Agreement, Council will be able to call on the Bank Guarantee to satisfy payment of that contribution under the Planning Agreement.

The Planning Agreement will also be registered on the title to the Land and not released from a lot until the Developer has satisfied all its obligations with respect to the provision of Contributions under the Planning Agreement, or has provided the security referred to above, in relation to that lot.

The **nature** of the Planning Agreement is a contractual relationship between the Council and the Developer for providing the Contributions with respect to the Development.

The **effect** of the Planning Agreement is that the Developer will provide the Contributions in the manner provided for by the Planning Agreement (as applicable) and as set out above.

## **6 Assessment of the merits of the Planning Agreement**

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### **6.1 The planning purposes served by the Planning Agreement**

In accordance with section 7.4 of the EPA Act, the Planning Agreement promotes the following public purposes:

- (1) Provision of contributions to accommodate and meet the demands of future developments and to mitigate the potential impacts of the Development on existing infrastructure.
- (2) Enables the Land to be developed in a timely and efficient manner to promote economic development and employment opportunities.
- (3) The provision of monetary contributions to meet the demands for infrastructure in relation to public amenities and public services.

### **6.2 How the Planning Agreement promotes the public interest**

In accordance with the objects of the EPA Act, the Planning Agreement promotes the public interest in the following manner:

- (1) By providing certainty for the Developer and Council as to the provision of the Contributions directed towards community infrastructure within the Shellharbour community.
- (2) The proper management and development of land to which the Planning Agreement applies.
- (3) The promotion and co-ordination of the orderly and economic use and development of Land to which the Planning Agreement applies.

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- (4) The Planning Agreement will provide an opportunity for involvement and participation by members of the community in development assessment, and are invited to make comment on the Planning Agreement.

### **6.3 How the Planning Agreement promotes Council's guiding principles**

The Planning Agreement promotes a number of Council's guiding principles under section 8A of the *Local Government Act 1993* (NSW), as follows:

- (1) The exhibition of the Planning Agreement facilitates the involvement of members of the public in the consultation process for the Planning Agreement;
- (2) To plan strategically for the provision of effective and efficient services and regulation to meet the diverse needs of the local community;
- (3) To act fairly, ethically and without bias to the interests of the local community;
- (4) To recognise diverse local community needs and interests.
- (5) To have regard to the long term and cumulative effects of its decisions on future generations.
- (6) To engage in long-term strategic planning on behalf of the local community;
- (7) To bear in mind that it is the custodian and trustee of public assets and to effectively plan for, account for and manage the assets for which it is responsible.
- (8) The Planning Agreement makes it clear that Council has a statutory role as consent authority in relation to the development proposal and that the Planning Agreement is not intended to unlawfully influence the exercise of Council's regulatory functions.

## **7 Identification of whether the Planning Agreement conforms with the Council's capital works program**

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The Planning Agreement conforms to Council's capital works program and has been accounted for in Council's long-term financial plan.

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