

**Date:** 17 / 10 / 2022

**Deed**

**Ramsgate Estate Wyee  
Planning Agreement**

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

**Lake Macquarie City Council  
FTLR Pty Limited**

## Ramsgate Estate Wyee Planning Agreement

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**FTLR Pty Limited**

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## **Ramsgate Estate Wyee**

### **Summary Sheet**

#### **Council:**

**Name:** Lake Macquarie City Council

**Address:** Lake Macquarie City Council Administration Building,  
126-138 Main Road, Speers Point, NSW 2284

**Telephone:** 02 4921 0333

**Facsimile:** 02 4958 7257

**Email:** council@lakemac.nsw.gov.au

**Representative:** Developer Contributions Coordinator

#### **Developer:**

**Name:** FTLR Pty Limited

**Address:** PO Box 4156, Kingston ACT 2604

**Telephone:** 0419 699 600

**Facsimile:** n/a

**Email:** gregcusack@gmail.com

**Representative:** Greg Cusack

**Land:**

See definition of *Land* in clause 1.1.

**Development:**

See definition of *Superlot Development* in clause 1.1.

**Contributions:**

See clause 16, Part 3 and 4 and Schedule 1.

**Application of 7.11, s7.12 and s7.24 of the Act:**

See clause 8.

**Security:**

See Part 6.

**Registration:**

See clause 25.

**Restriction on dealings:**

See clause 26.

**Dispute Resolution:**

See Part 5.

## **Ramsgate Estate Wyee Planning Agreement**

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

### **Parties**

**Lake Macquarie City Council** ABN 81 065 027 868 of Lake Macquarie City Council Administration Building, 126-138 Main Road, Speers Point, NSW 2284 (**Council**)

and

**FTLR Pty Limited** ABN 12 002 281 567 of PO Box 4156, Kingston ACT 2604 (**Developer**)

### **Background**

The Developer made a Development Application to the Council to carry out the Superlot Development (as defined) on the Land.

That Development Application was accompanied by an offer by the Developer to enter into this Deed to make Contributions for public purposes.

The Developer proposes to make further Development Applications to develop parts of the Land for urban purposes.

This Deed proposes the making of Contributions in connection with the carrying out of the Superlot Development.

### **Operative provisions**

#### **Part 1 - Preliminary**

##### **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 issued by any Authority.

**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.



**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.

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

**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.

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

**Council C2 Land** means any part of the Ecological Offset Land owned by the Council at the date of this Deed other than the C2 Public Roads.

**CPI** means the Consumer Price Index (Sydney – All Groups) published by the Australian Bureau of Statistics.

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

**Development Application** has the same meaning as in the Act.

**Development Consent** has the same meaning as in the Act.

**Dispute** means a dispute or difference between the Parties under or in relation to this Deed other than an exercise of a power or discretion by the Council under any law or any proposal to vary the terms of this Deed.

**Ecological Offset Land** means the land shown in Schedule 3.

**C2 Public Road** means any public road within the Ecological Offset Land.

**C2 Superlot** means the 43.12ha lot to be created as a result of the subdivision of the Land pursuant to the Superlot DA and which is marked as Lot 3 on the Superlot DA Plan.

**C4 Superlot** means the 6.582ha lot to be created as a result of the subdivision of the Land pursuant to the Superlot DA and which is marked as Lot 2 on the Superlot DA Plan, and which is intended by the Developer to be rezoned to zone R2.

**Final Lot** means a lot created in the Residential Development for separate residential occupation and disposition and which cannot be further subdivided under the planning controls applying to the land at the time of the registration of the plan of subdivision creating the relevant lot.

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**FTLR Pty Limited**

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**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.

**Item** means a Contribution in the table in Schedule 1.

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

**Land** means all of the land shown as proposed lots 1, 2 and 3 in the Superlot DA Plan.

**LEP** means the *Lake Macquarie Local Environmental Plan 2014*.

**Licence** means a licence between Council and the Developer incorporating the terms contained in Schedule 4.

**Maintenance Period** means the period commencing on the earlier of:

- (a) the date noted in the Developer's notice under clause 10.5 as the date on which the Maintenance Works will commence; and
- (b) the date of issue of any Subdivision Certificate for the Superlot Development;

and which ends on the later of:

- (i) the date 6 years after the date of commencement of the Maintenance Works (or a later date if agreed by the parties); and
- (ii) the date when the Parties agree the Maintenance Works are complete and
- (iii) the date of payment of the Offset Deposit Fund Contribution.

**Maintenance Works** means the maintenance of the Ecological Offset Land in accordance with:

- (a) the relevant requirements of any Approval, and
- (b) to the extent not inconsistent with such Approvals, any Vegetation Management Plan approved by the Council.

**Management Works** means the management of the Ecological Offset Land in accordance with:

- (a) the relevant requirements of any Approval, and
- (b) to the extent not inconsistent with any Approval, any Vegetation Management Plan approved by the Council.

**Offset Deposit Fund Contribution** means the payment of the monetary Contribution shown in Item A1 in the table to Schedule 1 which is to be indexed in accordance with the following formula:

$$A = B \times \frac{\text{Payment CPI}}{\text{Original CPI}}$$

**Original CPI**

Where:

**A** is the indexed Offset Deposit Fund Contribution

**B** is the amount of the Offset Deposit Fund Contribution noted in Item A1 in Schedule 1 (but not including indexation);



**Payment CPI** means the most recent CPI index number before the date of payment of the Offset Deposit Fund Contribution; and

**Original CPI** means the December 2020 CPI index number.

**Party** means a party to this Deed.

**R2 Superlot** means the lot of 10.16ha proposed to be created as a result of the subdivision of the Land pursuant to the Superlot DA and which is Lot 1 on the Superlot DA Plan.

**Regulation** means the *Environmental Planning and Assessment Regulation 2021*.

**Residential Development** means the subdivision or re-subdivision of the Superlots for the purposes of urban development.

**Security** means a Bank Guarantee, or a bond or other form of security to the satisfaction of the Council.

**Subdivision Certificate** has the same meaning as in the Act.

**Superlots** means the R2 Superlot, the C4 Superlot and the C2 Superlot.

**Superlot DA** means the Development Application for the Superlot Development, being DA/1430/2018.

**Superlot DA Plan** means the plan in Schedule 2.

**Superlot Development** means the subdivision and consolidation of the Land to create the R2 Superlot, the C4 Superlot, and the C2 Superlot shown on the Superlot DA Plan.

**Superlot Subdivision Plan** means the plan of subdivision which is approved as a result of the grant of any Development Consent to the Superlot DA.

**Vegetation Management Plan** means a plan of management relating to the establishment and maintenance of the Ecological Offset Land in accordance with the Council's Vegetation Management Plan Guidelines or any document that amends, replaces or supplements that document that contains provisions relating to the establishment and maintenance of the Ecological Offset 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 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.
- 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 servants, 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.

## **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

- 4.1.1 the Land, and
- 4.1.2 the Superlot Development.

## **5 Warranties**

- 5.1 The Parties other than the Council warrant to the Council and 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 Not used**

## **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 Superlot Development or Residential Development in so far as the subject-matter of the proceedings relates to this Deed.

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

- 8.1 This Deed does not exclude the application of sections 7.11, 7.12 or 7.24 of the Act to development of the Land.

## **Part 2 – Provisions relating to Public Roads**

### **9 Closing of C2 Public Roads**

- 9.1 All C2 Public Roads have been closed as public roads and were vested in Council on their closure.
- 9.2 The Developer will pay Council the amount of \$192,745 (exclusive of GST) as consideration for the Council agreeing to secure the C2 Public Roads for ecological offsets prior to the issue of the Subdivision Certificate for the Superlot Development.



## **Part 3 – Provisions relating to Ecological Offset Land**

### **10 Approval of Vegetation Management Plan**

- 10.1 The Parties intend to secure the Ecological Offset Land for the purposes of ecological offsets through the Vegetation Management Plan.
- 10.2 The Developer is to prepare a draft Vegetation Management Plan and submit it to Council prior to the grant of Development Consent to the Superlot DA.
- 10.3 The Developer is to ensure that any application for an Approval for the Maintenance Works is accompanied by the approved Vegetation Management Plan.
- 10.4 The Vegetation Management Plan must address at least the following matters:
  - 10.4.1 Rubbish removal;
  - 10.4.2 Installation of access management including gates and fencing;
  - 10.4.3 Perimeter fencing;
  - 10.4.4 Construction of tracks including walking and bush fire trails;
  - 10.4.5 Interpretative signage;
  - 10.4.6 Management of conservation/development interface zones;
  - 10.4.7 Bush fire management and ecological burns – planning and implementation;
  - 10.4.8 Bush regeneration primary, secondary and tertiary – weed management;
  - 10.4.9 Revegetation - planting if required;
  - 10.4.10 Soil translocation if appropriate;
  - 10.4.11 Erosion control;
  - 10.4.12 Feral and pest management;
  - 10.4.13 Nest box maintenance;
  - 10.4.14 Neighbour relations;
  - 10.4.15 Community consultation;
  - 10.4.16 Monitoring surveys; and
  - 10.4.17 Annual reporting.
- 10.5 The Developer is to provide Council with a notice prior to the issue of the Subdivision Certificate for the Superlot Development specifying the date on which it will commence the Maintenance Works. The Maintenance Works are to commence no less than 5 business days after and no more than 10 business days after the date specified in the Developer' notice under this clause.



## **11 Maintenance of Ecological Offset Land by the Developer**

- 11.1 The Developer, at its own cost, is to perform the Maintenance Works during the Maintenance Period, using appropriately qualified persons as provided for in the Vegetation Management Plan.
- 11.2 The Developer is to perform its obligations under clause 11.1 in accordance with:
  - 11.2.1 this Deed,
  - 11.2.2 any Approval for the Maintenance Works, and
  - 11.2.3 the approved Vegetation Management Plan.
- 11.3 The Developer acknowledges that prior to commencement of the Maintenance Works, Council may require the persons who are to carry out the Maintenance Works to be inducted.
- 11.4 Council will require the Developer to enter into the Licence to authorise entry by the Developer onto the Ecological Offset Land
- 11.5 If the Developer has not completed the Maintenance Works within 6 years of the commencement of the Maintenance Period, or such extended period as may be agreed by the Council pursuant to the Vegetation Management Plan, then the Developer will be taken to be in breach of its obligation under clause 11.1, and clause 23 of this Deed applies.

## **12 Management of Ecological Offset Land by Council**

- 12.1 Subject to Council having received the whole of the Offset Deposit Fund Contribution Fund and the Maintenance Period having ended, the Council is responsible for the Management Works on the Ecological Offset Land after the end of the Maintenance Period and for any Approvals required for the Management Works.

## **13 Access to Ecological Offset Land by Developer**

- 13.1 Subject to the Licence being entered into Council authorises the Developer, its employees, agents and contractors to enter and access any part of the Ecological Offset Land owned by the Council for the purpose of performing the Maintenance Works.
- 13.2 The Developer is to take out and keep current to the satisfaction of the Council the following insurances during the Maintenance Period:
  - 13.2.1 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,
  - 13.2.2 workers compensation insurance as required by law, and
  - 13.2.3 any other insurance required by law.
- 13.3 Nothing in this Deed creates or gives the Developer any estate or interest in any part of the land referred to in clause 13.1.
- 13.4 The Developer will notify the Council in writing within 2 business days after any accident or injury or damage to property involving any of its employees, agents

or contractors or any property of the Developer, the Council or any third party while they are on the Ecological Offset Land owned by the Council or any insurance claim made or threatened as a result of any accident or injury or damage on the Ecological Offset Land. Any notice under this clause will be accompanied by reasonable details, including supporting documentation, relevant to the accident or injury or damage to property.

#### **14 Council C2 Land**

- 14.1 In consideration for Council agreeing to the Council C2 Land being secured for ecological offsets in accordance with this Part 3 of this Deed, the Developer will pay to Council an amount of \$143,360 (exclusive of GST) prior to issue of the Subdivision Certificate for the Superlot Subdivision Plan.

#### **15 Naming of Ecological Offset Land**

- 15.1 The Developer and the Council agree to take reasonable steps to cause to name the Ecological Offset Land to be named the "Allen Vogan Conservation Reserve".

### **Part 4 – Contributions**

#### **16 Provision of Contributions**

- 16.1 The Developer is to make Contributions in accordance with Schedule 1 and any other provision of this Deed relating to the making of Contributions.
- 16.2 The Council is to apply each Contribution made by the Developer under this Deed towards the public purpose for which it is made and otherwise in accordance with this Deed.

#### **17 Payment of monetary Contributions**

- 17.1 A monetary 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.

#### **18 Dedication of land**

- 18.1 A Contribution comprising the dedication of land is made for the purposes of this Deed when a deposited plan is registered in the register of plans held with the Registrar-General that creates a public reserve under the *Local Government Act 1993*.
- 18.2 The Developer is to do all things reasonably necessary to enable registration of the deposited plan to effect the dedication of the Ecological Offset Land.

- 18.3 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.

## **Part 5 – Dispute Resolution**

### **19 Dispute resolution – expert determination**

- 19.1 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:
- 19.1.1 the Parties to the Dispute agree that it can be so determined, or
- 19.1.2 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.
- 19.2 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.
- 19.3 If a notice is given under clause 19.2, the Parties are to meet within 121 days of the notice in an attempt to resolve the Dispute.
- 19.4 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.
- 19.5 The expert determination is binding on the Parties except in the case of fraud or misfeasance by the expert.
- 19.6 Each Party is to bear its own costs arising from or in connection with the appointment of the expert and the expert determination.
- 19.7 The Parties are to share equally the costs of the President, the expert, and the expert determination.

### **20 Dispute Resolution – mediation**

- 20.1 This clause applies to any Dispute arising in connection with this Deed other than a Dispute to which clause 19 applies.
- 20.2 Such a Dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 20.3 If a notice is given under clause 20.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 20.4 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.



- 20.5 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.
- 20.6 Each Party is to bear its own costs arising from or in connection with the appointment of a mediator and the mediation.
- 20.7 The Parties are to share equally the costs of the President, the mediator, and the mediation.

## **Part 6 - Enforcement**

### **21 Security**

- 21.1 The Developer is to provide to the Council the following Securities:
  - 21.1.1 \$1,200,000 to secure the performance of the Maintenance Works (**Maintenance Security**);
  - 21.1.2 \$885,755 to secure the payment of the Offset Deposit Fund Contribution (**Offset Security**); and
  - 21.1.3 \$50,000 to secure the performance of the Developer's obligations generally under this Deed (**Enforcement Security**).
- 21.2 The Developer is to provide the Securities to the Council prior to the issue of a Subdivision Certificate in respect of the Superlot Development.
- 21.3 The Council may call-up and apply one or more of the Securities in accordance with clause 23 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.
- 21.4 The Developer may, not more than once every 6 months during the Maintenance Period, submit documentary evidence reasonably satisfactory to Council of the costs which the Developer has incurred during that period in carrying out the Maintenance Works, and requesting the return of the Maintenance Security or part thereof equal in amount to the costs set out in that documentary evidence (**Security Return Claim**).
- 21.5 On acceptance of a Security Return Claim and, if applicable, a replacement Maintenance Security representing the balance of the Maintenance Security less the amount of the relevant Security Return Claim, the Council must, provided the Council is satisfied on reasonable grounds that the Maintenance Security held by it after a proposed Security Return Claim is equal to or greater than the value of outstanding Maintenance Works, return to the Developer the Maintenance Security or part thereof equal to the amount in the Security Return Claim within 20 business days, and the amount of Maintenance Security the Council is entitled to hold under this Deed is reduced by that amount. For the avoidance of doubt, the Council will not be required to return any amount of the Maintenance Security unless it is satisfied on reasonable grounds that following the return of all or any part of the Maintenance Security, the remaining amount of the Maintenance Security will be equal to or greater



- than Council's reasonable estimate of the total value of the Maintenance Works then remaining to be completed.
- 21.6 The Council is to release and return the Maintenance Security or any unused part thereof to the Developer within 20 business days after the end of the Maintenance Period.
- 21.7 The Council is to release and return the Enforcement Security and Offset Security or any unused part of those Securities to the Developer within 20 business days after payment of the Offset Deposit Fund Contribution.
- 21.8 The Developer may provide Council with more than one Security provided that in total the amount of the Security held by the Council equals the amount which the Council is entitled to hold under this clause.
- 21.9 The Developer may at any time provide the Council with a replacement Security and will provide a replacement Security, as a precondition to any release of part of any existing Security, provided that the replacement Security and any Security retained by the Council does not exceed the amount of Security the Council is entitled to hold under this clause.
- 21.10 On receipt of a replacement Security, the Council is to release and return the Security that has been replaced to the Developer.
- 21.11 If the Council calls-up a Security or any portion of it, it may, by written notice to the Developer, require the Developer to provide within 10 business days after receipt of Council's written notice, 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.

## **22 Acquisition of land required to be dedicated**

- 22.1 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.
- 22.2 The Council is to only acquire land pursuant to clause 22.1 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.
- 22.3 Clause 22.1 constitutes an agreement for the purposes of s30 of the Just Terms Act.
- 22.4 If, as a result of the acquisition referred to in clause 22.1, 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.
- 22.5 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.
- 22.6 The Developer is to promptly do all things necessary, and consents to the Council doing all things necessary, to give effect to this clause 22, including without limitation:

- 22.6.1 signing any documents or forms,
- 22.6.2 giving land owner's consent for lodgement of any Development Application,
- 22.6.3 producing certificates of title to the Registrar-General under the *Real Property Act 1900*, and
- 22.6.4 paying the Council's costs arising under this clause 22.

## **23 Breach of obligations**

- 23.1 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:
  - 23.1.1 specifying the nature and extent of the breach,
  - 23.1.2 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,
  - 23.1.3 specifying the period within which the breach is to be rectified or compensation paid, being a period that is reasonable in the circumstances, and in respect of any breach of the obligation to pay the Offset Deposit Fund Contribution, 90 days is taken to be a reasonable period to rectify the breach.
- 23.2 If the Developer fails to fully comply with a notice referred to in clause 23.1 in respect of the Maintenance Works the Council may, after providing 14 days' notice to the Developer, call-up the Maintenance Security and apply it to remedy the Developer's breach, and if the Maintenance Security is insufficient for that purpose may also call on the Enforcement Security.
- 23.3 If the Developer fails to fully comply with a notice referred to in clause 23.1 in respect of the Offset Deposit Fund Contribution, the Council may, after providing 14 days' notice to the Developer, call-up the Offset Security and apply it to remedy the Developer's breach and if the Offset Security is insufficient for that purpose may also call on the Enforcement Security.
- 23.4 If the Developer fails to fully comply with a notice under clause 23.1 in respect of any other breach of this Deed, the Council may, after providing 14 days' notice to the Developer, call up the Enforcement Security and apply it to remedy the Developer's breach and if the Enforcement Security is insufficient for that purpose may also call on the Maintenance Security and the Offset Security.
- 23.5 If Council draws on any of the Enforcement Security, the Maintenance Security or the Offset Security the Developer will comply with clauses 21.11 so as to ensure that the Council holds the full value of the relevant Securities as anticipated by this Deed.
- 23.6 Nothing in this clause 23 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.



## **24 Enforcement in a court of competent jurisdiction**

- 24.1 Without limiting any other provision of this Deed, the Parties may enforce this Deed in any court of competent jurisdiction.
- 24.2 For the avoidance of doubt, nothing in this Deed prevents:
  - 24.2.1 a Party from bringing proceedings in the Land and Environment Court or any other Court to enforce any aspect of this Deed or any matter to which this Deed relates, or
  - 24.2.2 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 7 – Registration & Restriction on Dealings**

### **25 Registration of this Deed**

- 25.1 The Parties agree to register this Deed for the purposes of s7.6(1) of the Act on the title of the Land.
- 25.2 Not later than 3 months after the commencement of this Deed and prior to issue of any Development Consent for the Land (including without limitation, a Development Consent for the Superlot Development), the Developer is to deliver to the Council in registrable form:
  - 25.2.1 an instrument requesting registration of this Deed on the title to the Land executed by the Developer, and
  - 25.2.2 the written irrevocable consent of each person referred to in s7.6(1) of the Act to that registration.
- 25.3 The Developer is to do such other things as are reasonably necessary to enable registration of this Deed to occur, including lodging all documents necessary to register this Deed with Land Registry Services or via the NSW PEXA electronic conveyancing facility within 14 days of receipt by the Developer from Council of the document delivered under clause 25.2.1, signed by Council, and responding to requisitions from Land Registry Services within 14 days and in any case this Deed must be registered on the title to all of the land prior to the issue of any development consent for the Land or any part of the Land.
- 25.4 The Developer acknowledges that pending registration of this Deed the Council may lodge a caveat against the title to the Land reflecting its rights under this Deed. Any caveat lodged by Council under this clause will be released contemporaneously with the registration of this Deed on the title to the Land. Subject to clause 26, the Council will provide the Developer with an executed caveator's consent in relation to a transfer of all or part of the Land as anticipated by clause 26 within 10 Business Days after the date of execution by all relevant parties of a deed in the form of Schedule 5 in respect of the relevant transfer.
- 25.5 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:

- 25.5.1 in so far as the part of the Land concerned is a Final Lot at the time that a Subdivision Certificate is granted for a plan of subdivision of which the Final Lot is a lot to be created;
- 25.5.2 in relation to any other part of the Land, once the Developer has completed all 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.

## **26 Restriction on dealings**

- 26.1 The Developer is not to:
  - 26.1.1 sell or transfer any part of the Land which is subject to this Deed, or
  - 26.1.2 allow any person other than the Developer to sell or transfer any part of the Land not owned by the Developer; or
  - 26.1.3 assign the Developer's rights or obligations under this Deed, or novate this Deed,  
to any person unless:
    - 26.1.4 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 (whether by the Developer or any other person who owns the relevant Land) or to whom the Developer's rights or obligations under this Deed are to be assigned or novated, of a deed in favour of the Council in the terms of the deed included in Schedule 5,
  - 26.1.5 the Developer is not in breach of this Deed, and
  - 26.1.6 the Council otherwise consents to the transfer, assignment or novation, such consent not to be unreasonably withheld.
- 26.2 Subject to clause 26.1, 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 26.1.

## **Part 8 – Other Provisions**

### **27 Sunset Date and Termination**

- 27.1 This Deed will terminate, unless otherwise agreed in writing by the Parties, if:
  - 27.1.1 the Superlot DA is not granted Development Consent by a date which is 5 years from the date of this Deed; or
  - 27.1.2 Development Consent is not granted to the Residential Development within 2 years of the date on which Development Consent is granted to the Superlot DA, provided that the Superlot DA has not been acted on and is surrendered in accordance with the Act; or



- 27.1.3 Development Consent for the Residential Development is granted, but lapses, provided that the Superlot DA has not been acted on and is surrendered in accordance with the Act; or
- 27.1.4 Development Consent for the Residential Development is granted, but is not acted on and is surrendered in accordance with the Act, provided that the Superlot DA has not been acted on and is surrendered in accordance with the Act.

## **28 Annual report by Developer**

- 28.1 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.
- 28.2 The report referred to is to be in such a form and to address such matters as required by the Council from time to time.

## **29 Review of Deed**

- 29.1 The Parties agree to review this Deed every five 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.
- 29.2 For the purposes of clause 29.1, 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 materially restrict or prohibit the carrying out of the Superlot Development or the Residential Development.
- 29.3 For the purposes of addressing any matter arising from a review of this Deed referred to in clause 29.1, the Parties are to negotiate in good faith and act reasonably to agree on and implement appropriate amendments to this Deed.
- 29.4 If this Deed becomes illegal, unenforceable or invalid as a result of any change to a law, the Parties agree to do all things reasonably necessary to ensure that an enforceable agreement of the same or similar effect to this Deed is entered into.
- 29.5 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 29.1 (but not 29.4) is not a Dispute for the purposes of this Deed and is not a breach of this Deed.

## **30 Notices**

- 30.1 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:
  - 30.1.1 delivered or posted to that Party at its address set out in the Summary Sheet,
  - 30.1.2 faxed to that Party at its fax number set out in the Summary Sheet, or
  - 30.1.3 emailed to that Party at its email address set out in the Summary Sheet.

- 30.2 If a Party gives the other Party 3 business days' notice of a change of its address, fax number, email or representative, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted, faxed or emailed to the latest address or fax number and to the changed representative.
- 30.3 Any notice, consent, information, application or request is to be treated as given or made if it is:
- 30.3.1 delivered, when it is left at the relevant address,
  - 30.3.2 sent by post, 7 business days after it is posted,
  - 30.3.3 sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number, or
  - 30.3.4 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.
- 30.4 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.

### **31 Approvals and Consent**

- 31.1 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.
- 31.2 A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

### **32 Costs**

- 32.1 The Developer is to pay to the Council the Council's costs not exceeding \$40,000 (excluding GST) of preparing, negotiating, executing and registering this Deed, and any document related to this Deed within 7 days of a written demand by the Council for such payment.

### **33 Entire Deed**

- 33.1 This Deed contains everything to which the Parties have agreed in relation to the matters it deals with.
- 33.2 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.

### **34 Further Acts**

- 34.1 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.

### **35 Governing Law and Jurisdiction**

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

### **36 Joint and Individual Liability and Benefits**

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

### **37 No Fetter**

- 37.1 This Deed is not intended to operate to fetter, in any manner, the exercise of any statutory power or discretion of Council, including, but not limited to, any statutory power or discretion of Council relating to a Development Application or any other application for Development Consent or any other action (all referred to in this agreement as a "**Discretion**")
- 37.2 No provision of this Deed is intended to constitute any fetter on the exercise of any Discretion. If, contrary to the operation of this clause, any provision of this Deed is held by a court of competent jurisdiction to constitute a fetter on any Discretion, the Parties agree:
- 37.2.1 they will take all practical steps, including the execution of any further documents, to ensure the objective of this clause is substantially satisfied,
- 37.2.2 in the event that clause 37.2.1 cannot be achieved without giving rise to a fetter on the exercise of a Discretion, the relevant provision is to be severed and the remainder of this agreement has full force and effect, and
- 37.2.3 to endeavour to satisfy the common objectives of the Parties in relation to the provision of this Deed which is held to be a fetter to the extent that is possible having regard to the relevant court judgment.



### **38 Illegality**

- 38.1 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.

### **39 Severability**

- 39.1 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.
- 39.2 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.

### **40 Amendment**

- 40.1 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 204 of the Regulation.

### **41 Waiver**

- 41.1 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.
- 41.2 A waiver by a Party is only effective if it:
- 41.2.1 is in writing,
  - 41.2.2 is addressed to the Party whose obligation or breach of obligation is the subject of the waiver,
  - 41.2.3 specifies the obligation or breach of obligation the subject of the waiver and the conditions, if any, of the waiver,
  - 41.2.4 is signed and dated by the Party giving the waiver.
- 41.3 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.
- 41.4 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.
- 41.5 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.



## 42 GST

42.1 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.

42.2 Subject to clause 42.4, 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.

42.3 Clause 42.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Deed to be GST inclusive.

42.4 No additional amount shall be payable by the Council under clause 42.2 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.

42.5 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:

42.5.1 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;

42.5.2 that any amounts payable by the Parties in accordance with clause 42.2 (as limited by clause 42.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.

42.6 No payment of any amount pursuant to this clause 42, 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.

42.7 Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to a cost, expense or other liability incurred by a party, must exclude the amount of any Input Tax Credit entitlement of that party in relation to the relevant cost, expense or other liability.

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

## **43 Explanatory Note**

- 43.1 The Appendix contains the Explanatory Note relating to this Deed required by clause 205 of the Regulation.
- 43.2 Pursuant to clause 205(5) of the Regulation, the Parties agree that the Explanatory Note is not to be used to assist in construing this Deed.

## **Schedule 1**

(Clause 16)

## **Contributions**

(see next page)



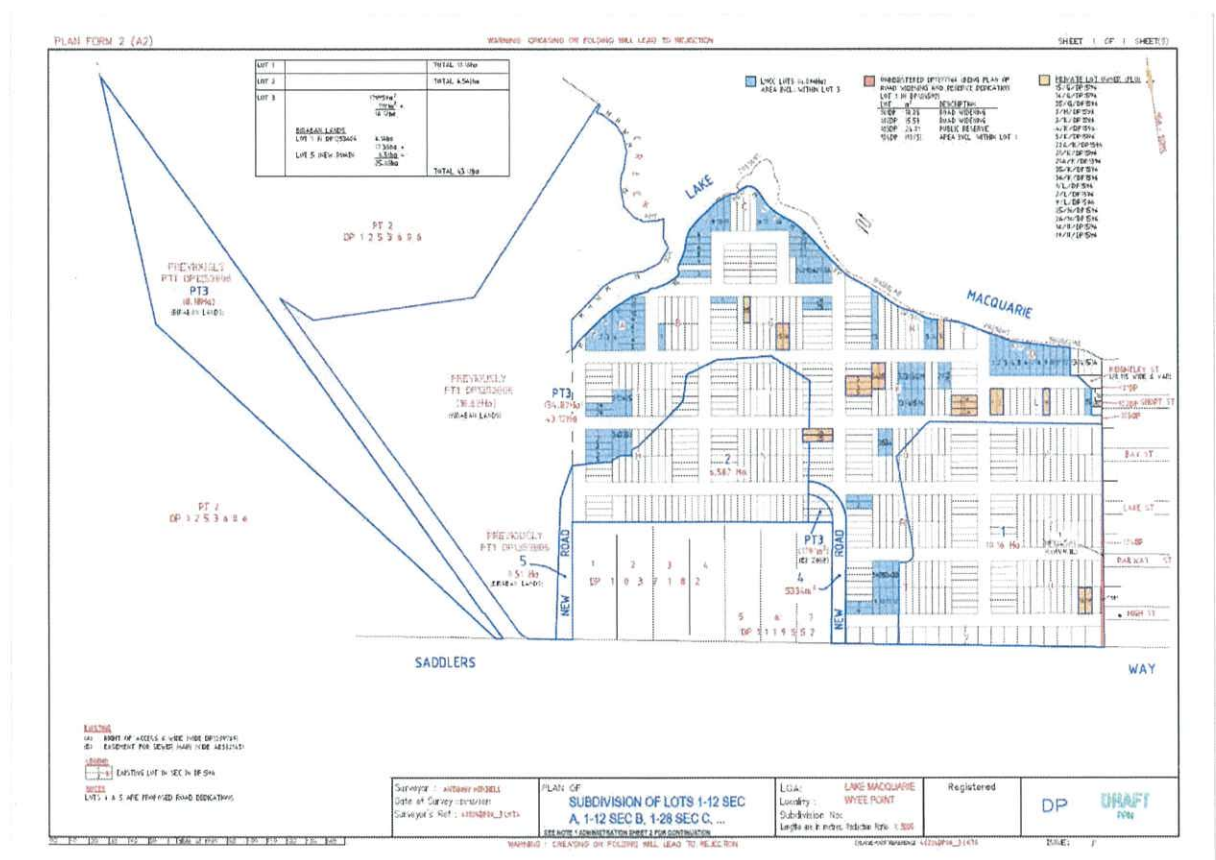


| Column 1   | Column 2          | Column 3   | Column 4   |
|--|-------------------|--|--|
| Contribution   | Public Purpose    | Manner & Extent  | Timing   |
| <b>A. Monetary Contributions</b>                             |                   |  |  |
| 1. Offset Deposit Fund Contribution                          | Ecological Offset | Payment by the Developer to Council of \$885,755 (subject to indexation in accordance with movements in the CPI between December 2020 and the date of payment) | On the day which is 30 days prior to the end of the Maintenance Period |
| <b>B. Dedication of Land</b>                                 |                   |  |  |
| 1. Dedication of Ecological Offset Land not owned by Council | Ecological offset | Dedication to the Council free of cost to the Council  | On registration of the Superlot Subdivision Plan                       |

## Schedule 2

(Clause 1.1)

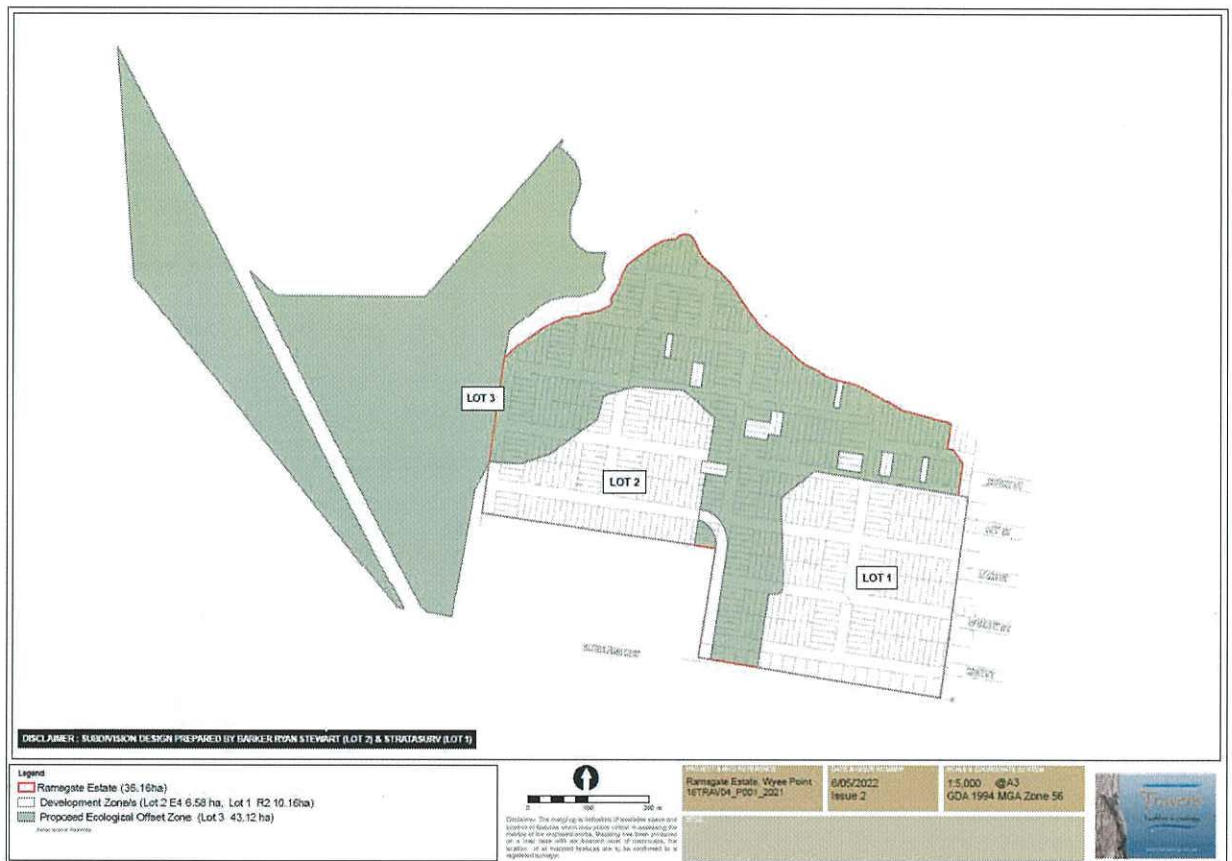
## Superlot DA Plan



### Schedule 3

(Clause 1.1)

## Ecological Offset Land





## **Schedule 4**

(Clause 1.1)

### **Licence**

Terms and Conditions of Access

#### **1. Definitions**

In this licence

- (a) **Occupier** means the person benefiting from the right to access the Ecological Offset Land granted by the Planning Authority in accordance with this Agreement including its contractors, employees and agents.
- (b) **Council** means Lake Macquarie City Council, the Planning Authority.

#### **2. Access**

The Occupier must:

- (a) access the Ecological Offset Land only for the purposes of carrying out Maintenance Works in accordance with the Vegetation Management Plan;
- (b) not do anything that would damage, remove or kill any vegetation (including any trees, saplings or shrubs) within the Ecological Offset Land, otherwise than in accordance with the requirements of the Vegetation Management Plan;
- (c) only access the Ecological Offset Land at the access points nominated by the Council or as identified in the Vegetation Management Plan;
- (d) not do, cause or permit to be done anything that may damage, alter, pollute, contaminate, interfere with, or which is otherwise dangerous or offensive to:
  - i) the Ecological Offset Land; and
  - ii) any land or buildings next to or in the vicinity of the Ecological Offset Land;  
or
  - iii) other owners, users or occupiers of the Ecological Offset Land or surrounding properties, excluding any activities or activities incidental to those permitted under the Vegetation Management Plan.
- (e) immediately repair any damage and take all necessary action to stop / clean up any leakage, spillage or pollution caused by the Occupier and if the Occupier fails to do so, Council can take all action it considers appropriate to repair such damage or stop / clean up the leakage, spillage or pollution at the Occupier's cost;
- (f) comply with all laws, statutes, regulations, ordinances by-laws and notices issued by, and the requirements of, any authority applicable to the Occupier's access to the Ecological Offset Land for the purpose of carrying out the Maintenance Works;

- (g) after a copy of the Council's current public liability insurance policy has been provided to the Occupier, not do anything that may cancel or make that insurance invalid; and
- (h) not assign or sublicense or otherwise seek to transfer its rights of access without the prior written consent of the Council.

### **3. Insurances**

- (a) The Occupier must hold insurance policies in respect of the Ecological Offset Land for:
  - i) Public liability in the amount of \$20,000,000.00;
  - ii) Workers compensation;
  - iii) Property damage for any items in the Ecological Offset Land owned by the Council; and
  - iv) Any other insurance reasonably required by the Council.
- (b) All insurance policies must either note the Council's interests or otherwise extend to cover Council.
- (c) The Occupier must provide certificates of currency of all insurances to the Council for approval prior to accessing the Ecological Offset Land.

### **4. Risk**

The Occupier accesses and occupies the Ecological Offset Land at the Occupier's own risk.

### **5. Release and Indemnity**

- (a) The Occupier releases Council from, and agrees Council is not liable for, liability or loss arising from, or costs incurred in connection with, any accident, damage, loss, injury or death occurring to any person or property during the Occupier's access and occupation of the Ecological Offset Land, except to the extent that any such accident, damage, loss, injury or death is caused by the act, negligence or default of the Council, its contractors, consultants, employees, agents or invitees.
- (b) The Occupier indemnifies the Council against any action or demand arising out of or in any way connected with any accident, damage, loss, injury or death to any person or property to the extent it was caused or contributed to by:
  - i) The Occupier's act, omission, default or negligence;
  - ii) Any breach of the terms of access of the Ecological Offset Land; or
  - iii) The overflow, leakage or spillage of pollutants, chemicals or other hazardous substances in or from the Ecological Offset Land that is caused

by the Occupier or as a consequence of the Occupier's occupation of the Ecological Offset Land.



**Schedule 5**

(clause 26)

**Novation Deed**

(see following pages)

**Deed of Novation**  
**Ramsgate Estate Wyee Planning Agreement**

**Council of the City of Lake Macquarie**  
**FTLR Pty Ltd**  
**[Insert name of Incoming Party]**

Date:

**Deed of Novation**  
**Ramsgate Estate Wyee Planning Agreement**

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## Deed of Novation of Ramsgate Estate Wyee planning Agreement

### Parties

**Council of the City of Lake Macquarie** ABN 81 065 027 868 of 126-138 Main Road, Speers Point NSW 2284 (**Council**)

and

**FTLR Pty Ltd** ABN 12 002 281 567 of 'Cusack Centre', Unit 1, Level 1, 27 Eyre Street, Kingston ACT 2604 (**Original Developer**)

and

**[Insert Name of Incoming Party]** ABN [Insert ABN] of [Insert Address] (**New Developer**)

### Background

- A The Original Developer and the Council are parties to the Planning Agreement.
- B The Original Developer owns the FTLR Land to which the Planning Agreement relates.
- C The Original Developer wishes to transfer the FTLR Land to the New Developer.
- D The Original Developer wishes to novate the Planning Agreement and all of the respective rights and obligations in the Planning Agreement to the New Developer.
- E The Council consents to the transfer of the FTLR Land to the New Developer and agrees to the novation of the Planning Agreement to the New Developer on the terms set out in this Deed.

### Operative provisions

## Part 1 - Preliminary

### 1 Definitions and Interpretation

- 1.1 In this Deed the following definitions apply:

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

**Effective Date** means the later of the following dates:

- (a) the date of this Deed, and

- (b) the date the New Purchaser becomes registered proprietor of the FTLR Land.

**FTLR Land** means the Land as defined in the Planning Agreement which is owned by Original Developer at the date of this Deed.

**Planning Agreement** means the Ramsgate Estate Wyee Planning Agreement entered into between Council and the Original Developer on [insert date].

**Party** means a party to this Deed.

- 1.2 In this Deed unless the contrary intention appears:

- 1.2.1 words defined in the Planning Agreement have the same meaning in this Deed unless the word is separately defined in this Deed;
- 1.2.2 words in the singular include the plural and vice versa;
- 1.2.3 any gender includes the other genders;
- 1.2.4 if a word or phrase is defined its other grammatical forms have corresponding meanings;
- 1.2.5 "includes" means includes without limitation;
- 1.2.6 no rule of construction will apply to a clause to the disadvantage of a Party merely because that Party put forward the clause or would otherwise benefit from it; and
- 1.2.7 a reference to:
  - (a) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;
  - (b) a person includes the person's legal personal representatives, successors, assigns and persons substituted by assignment;
  - (c) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced; and
  - (d) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation.
- 1.2.8 headings do not affect the interpretation of this Deed.

## **2 Novation**

- 2.1 Subject to clause 3 and with effect from the Effective Date:
  - 2.1.1 the New Developer is substituted for the Original Developer as a Party to the Planning Agreement;
  - 2.1.2 the New Developer is bound by the Planning Agreement to perform all of the obligations in the Planning Agreement;
  - 2.1.3 the New Developer is entitled to the benefit of the Planning Agreement as if the New Developer was a Party to Planning Agreement; and

- 2.1.4 the Original Developer is released and discharged from all obligations and liabilities, and from all claims (whether for costs, damages, fees, expenses or otherwise), arising under the Planning Agreement, except in relation to any breaches of the Planning Agreement which arose prior to the Effective Date.
- 2.2 With effect from the Effective Date:
  - 2.2.1 all references to the Original Developer in the Planning Agreement are construed as references to the New Developer; and
  - 2.2.2 the Council must address all notices and communications given or made by it to the New Developer under the Planning Agreement to the following address for the New Developer:
    - Name: [Insert details]
    - Mailing Address: [Insert details]
    - Email: [Insert details]
    - Telephone: [Insert details]
    - Representative: [Insert details]

### **3 Affirmation of the Planning Agreement**

- 3.1 The Planning Agreement will be read and construed subject to this Deed, and in all other respects the provisions of the Planning Agreement are ratified and confirmed, and, subject to the novation contained in this Deed, the Planning Agreement will continue in full force and effect.
- 3.2 On and from the Effective Date, the New Developer must properly and punctually observe and perform all of the Original Developer's obligations (both present, future, actual and contingent) under the Planning Agreement or which arise as a result of the Council exercising any right under the Planning Agreement and which are due to be performed on or after the Effective Date.
- 3.3 Until the Effective Date, the Original Developer must continue to properly and punctually observe and perform all of the Original Developer's obligations both future, actual and contingent under the Planning Agreement.

### **4 Indemnity**

- 4.1 The New Developer indemnifies the Original Developer from and against all Claims that may be sustained, suffered, recovered or made against the Original Developer arising in connection with the Planning Agreement on or after the Effective Date.

### **5 Council Satisfaction and Consent**

- 5.1 The Council acknowledges that:
  - 5.1.1 this Deed is the agreement referred to in clauses 26.1.4 of the Planning Agreement,
  - 5.1.2 the Council is satisfied with the terms of this Deed; and



5.1.3 the Council consents to the novation effected by this Deed.

## **6 Warranties and Representations**

- 6.1 Each Party other than the Council represents and warrants that, at the time of execution, and at the Effective Date:
- 6.1.1 it has capacity unconditionally to execute, deliver and comply with its obligations under this Deed;
  - 6.1.2 it has taken all necessary action to authorise the unconditional execution and delivery of, and the compliance with, its obligations under this Deed;
  - 6.1.3 this Deed is a valid and legally binding obligation and is enforceable against it by each other Party in accordance with its terms; and
  - 6.1.4 its unconditional execution and delivery of, and compliance with its obligations under, this Deed do not contravene:
    - (a) any law or directive from a government entity;
    - (b) its constituent documents;
    - (c) any agreement or instrument to which it is a Party; or
    - (d) any obligation of it to any other person.
- 6.2 The warranties and representations in clause 6.1 survive the execution of this Deed and the novation and assignment of the Planning Agreement.

## **7 Stamp duty and costs**

- 7.1 The Original Developer is responsible for the Council's legal fees and costs incidental to the negotiation, preparation and execution of this Deed.
- 7.2 The New Developer must pay all stamp duty (if any) arising directly or indirectly from this Deed.
- 7.3 This clause continues to apply after termination of this Deed.

## **8 Entire Deed**

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

## **9 Amendment**

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

## **10 Governing law**

- 10.1 This Deed is governed by the law in force in New South Wales and the Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them.

## **11 Counterparts**

- 11.1 This Deed may consist of a number of counterparts and the counterparts taken together constitute one and the same instrument.

**Ramsgate Estate Wyee Planning Agreement**  
**Lake Macquarie City Council**  
**FTLR Pty Limited**

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**Execution**

**Executed as a Deed**

**Dated:**

The Common Seal of the COUNCIL     )  
of the CITY of LAKE MACQUARIE         )  
was hereto affixed, in pursuance of     )  
a Council resolution passed on the     )  
          day of                            in the     )  
presence of:                                 )

.....  
.....  
Kay Diane Fraser  
Mayor

Morven Cameron  
Chief Executive Officer

---

**Executed on behalf of FTLR Pty Ltd** in accordance with s127(1) of the  
Corporations Act (Cth) 2001

---

**Name:**

**Position: Director**

---

**Name:**

**Position: Director/Secretary**



**Ramsgate Estate Wyee Planning Agreement**  
**Lake Macquarie City Council**  
**FTLR Pty Limited**

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**Executed on behalf of [Insert name of Incoming party]** in  
accordance with s127(1) of the Corporations Act (Cth) 2001

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**Name:**

**Position: Director**

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**Name:**

**Position: Director/Secretary**

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**Ramsgate Estate Wyee Planning Agreement**  
**Lake Macquarie City Council**  
**FTLR Pty Limited**

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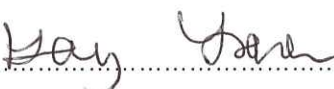
**Execution**

**Executed as a Deed**

**Dated:**

The Common Seal of the COUNCIL )  
of the CITY of LAKE MACQUARIE )  
was hereto affixed, in pursuance of )  
a Council resolution passed on the )  
10 day of October<sup>2022</sup> in the )  
presence of: )



  
.....  
.....

Kay Diane Fraser  
Mayor



Morven Cameron  
Chief Executive Officer

---

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

Name/Position

PETER CUSACK / "DIRECTOR"



Name/Position

STEPHEN CUSACK / "DIRECTOR"

## **Appendix**

(Clause 50)

*Environmental Planning and Assessment Regulation 2000*

(Clause 205)

## **Explanatory Note**

This Explanatory Note has been prepared jointly by the parties and is not to be used to assist in construing the Planning Agreement.

## **Draft Planning Agreement**

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

## **Parties**

Lake Macquarie City Council ABN 81 065 027 868 of Lake Macquarie City Council  
Administration Building, 126-138 Main Road, Speers Point, NSW 2284 (**Council**)

FTLR Pty Limited ABN 12 002 281 567 of PO Box 4156, Kingston ACT 2604 (**Developer**)

## **Description of the Land to which the Draft Planning Agreement Applies**

The Draft Planning Agreement applies to all of the Land shown as proposed lots 1, 2, and 3 in schedule 3 of the draft planning agreement.

## **Description of Proposed Development**

The proposed development is the subdivision of the land into the 3 proposed lots 1, 2 and 3, and the residential development of superlots 1 and 2.

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

### **Objectives of Draft Planning Agreement**



The objective of the Draft Planning Agreement is to secure land as an ecological offset, including securing its restoration back to a self-sustaining native ecosystem and ongoing management in perpetuity.

### **Nature of Draft Planning Agreement**

The Draft Planning Agreement is a planning agreement under s7.4 of the *Environmental Planning and Assessment Act 1979 (Act)*. The Draft Planning Agreement is a voluntary agreement under which Contributions (as defined in clause 1.1 of the Draft Planning Agreement) are made by the Developer for various public purposes (as defined in s7.4(3) of the Act).

### **Effect of the Draft Planning Agreement**

The Draft Planning Agreement:

- relates to the carrying out of the Superlot Development on the Land by the Developer,
- imposes obligations on the Developer to make Contributions,
- does not exclude the application of ss7.11, 7.12 or 7.24,
- makes provision for the Developer to:
  - dedicate the Ecological Offset Land on registration of the Superlot Subdivision Plan,
  - make monetary contributions towards the ongoing management of the Ecological Offset Land in perpetuity 30 days prior to the end of the Maintenance Period,
- requires the Developer to carry out works to establish and restore the Ecological Offset Land prior to the land being dedicated to Council,
- is to be registered on the Land,
- imposes restrictions on the Developer transferring the Land or part of the Land or assigning, or novating an interest under the agreement,
- provides two dispute resolution methods for a dispute under the agreement, being expert determination and mediation,
- provides that the agreement is governed by the law of New South Wales, and
- provides that the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) applies to the agreement.

### **Assessment of the Merits of the Draft Planning Agreement Including the Impact on the Public**

#### **How the Planning Agreement Promotes the Objects of the Act and the public interest**

#### **The Planning Purposes Served by the Draft Planning Agreement**

The Draft Planning Agreement:

- provides for the conservation or enhancement of the natural environment, and
- Provides funding of recurrent expenditure for the ongoing management of the Ecological Land in perpetuity.

### **How the Draft Planning Agreement Promotes the Public Interest**

The draft Planning Agreement promotes the public interest by promoting the objects of the Act as set out in s1.3(a), (b) (c), (e), and (j) of the Act.

#### ***Whether the Draft Planning Agreement Conforms with the Authority's Capital Works Program***

Council will need to consider the maintenance of the Ecological Offset Land when determining the annual Capital Works Program at the time the land is to be dedicated to Council, utilising the monetary contributions paid to Council for this purpose.

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

The following must be undertaken prior to issue of the Subdivision Certificate for the Superlot Subdivision Plan:

- a) The Developer will pay Council the amount of \$192,745 (exclusive of GST) as consideration for the Council agreeing to secure the C2 Public Roads for ecological offsets, and
- b) The Developer will pay to Council an amount of \$143,360 (exclusive of GST) as consideration for Council agreeing to the Council C2 Land being secured for ecological offsets.

The Draft Planning Agreement provides that the Ecological Offset Land to be dedicated to Council on registration of the Superlot Subdivision Plan,

The maintenance of the Ecological Offset Land will commence on the earlier of a notice to Council or issue of the Superlot Subdivision Certificate.

