

Shoalhaven City Council

and

Greslon Pty Ltd
(ACN 002 030 819)

and

Hazcorp Pty Ltd
(ACN 003 121 891)

and

Revesby-Padstow Modern Homes Pty Ltd
(ACN 000 187 940)

Voluntary Planning Agreement Bishop Drive, Mollymook

Newcastle

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Deed

Date

Parties

Name	Shoalhaven City Council (Council)
Address	Administrative Centre, Bridge Road, Nowra, NSW 2541
Fax Number	(02) 4422 1816
Email Address	council@shoalhaven.nsw.gov.au
Contact	The General Manager
Name	Greslon Pty Ltd ACN 002 030 819 (Greslon)
Address	Luxspice Pty Ltd, Unit 3, 184A Raglan Street, Mosman NSW 2088
Fax Number	Not applicable
Email Address	findlayd@bigpond.com.au
Contact	David Findlay
Name	Hazcorp Pty Ltd ACN 003 121 891 (Hazcorp)
Address	"Main House", 975 the Northern Road, Bringelly, NSW 2171
Fax Number	Not applicable
Email Address	petrel@ip.net.au
Contact	Peter Lean
Name	Revesby-Padstow Modern Homes Pty Ltd ACN 000 187 940 (Revesby)
Address	180 Harbord Road, Brookvale, NSW 2100
Fax Number	Not applicable
Email Address	accounts@bennettsurfboards.com
Contact	Margaret Bennett

Background

- A. Greslon is the registered proprietor of Lot 5 DP 220678 (**Lot 5**)
- B. Hazcorp is the registered proprietor of Lot 1 DP 1087105 (**Lot 1**), Lot 4 DP 1087106 (**Lot 4(H)**) and Lot 38 DP 829129 (**Lot 38**)
- C. Revesby is the registered proprietor of Lot 4 DP 220678 (**Lot 4(R)**)
- D. Lot 5 and part of Lot 38 are the subject of a development consent for subdivision granted by the Council, SF9665.
- E. Lot 4(R) is the subject of a development consent for subdivision granted by the Council, SF9225.
- F. Lot 1 and Lot 4(H) are the subject of a project approval granted under the former Part 3A of the Act by the Minister for Planning and Infrastructure, MP06/0276.

- G. The Landowners are proposing to apply for a modification of SF9665, SF9225 and MP06/0276 in accordance with the provisions in Annexure A.
- H. The Landowners have offered to enter into a planning agreement on the terms and conditions of this deed.

Operative part

1 Definitions and interpretation

1.1 Definitions

In this deed:

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

Address means a party's address set out in the Parties section of this deed.

Approval means any certificate, licence, consent, permit, approval or other requirement of any Authority having jurisdiction in connection with the activities contemplated by this deed.

Assignment and Dealing Provisions means the provisions set out in Schedule 4.

Authority means any government, semi-governmental, statutory, administrative, fiscal or judicial body, department, commission, authority, tribunal, public or other person.

Business Day means a day on which banks are open for general banking business in Sydney, excluding Saturdays and Sundays.

Construction Contract means any contract entered into between any of the Landowners and a third party, requiring the third party to carry out the Road Works.

Contributions means the development contributions offered by the Landowners under this deed, being material public benefits and dedication of land.

Contributions Plan has the same meaning as under the Act.

Development means the development or any part of the development approved under SF9225, SF9665 and MP06/0276 and any subsequent modifications of those approvals.

Development Application has the meaning given to that term under the Act.

Development Consent has the meaning given to that term under the Act.

Dispute Resolution Procedures means the procedures under Schedule 3.

Explanatory Note means the explanatory note in relation to the Planning Agreement, as required by clause 25E of the Regulations, and attached as Annexure D to this deed.

Fax Number means a party's facsimile number set out in the Parties section of this deed.

Land means Lot 5, part of Lot 38, Lot 4(R), Lot 4(H) and Lot 1 as shown on the plan at Annexure B.

Landowners means Greslon, Hazcorp and Revesby.

Law means:

- (a) any law applicable including legislation, ordinances, regulations, by-laws and other subordinate legislation;
- (b) any Approval, including any condition or requirement under it; and
- (c) any fees and charges payable in connection with the things referred to in paragraphs (a) and (b).

Legislation means any statute, rule, ordinance, code, regulation, proclamation, by-law or consent by an Authority.

Modifications means the modification of SF9225, SF9665 and MP06/0276 in accordance with the proposed modifications in Annexure A.

MP06/0276 means the Project Approval (S06/00854) for subdivision of Lot 1 and Lot 4(H) into 166 allotments and 3 public reserves granted by the then Minister for Planning on 10 June 2008.

Planning Agreement means the provisions of this deed under which the Landowners are required to make the Contributions, and includes any provisions that are incidental or supplementary to those provisions.

Project Approval means an approval under the former Part 3A of the Act.

Register means the Torrens title register maintained under the *Real Property Act 1900* (NSW).

Road Works means the works described in clause 2 of Schedule 2 including any survey, design, building, engineering and construction work required to complete the Road Works to the standard required under this deed.

SF9225 means the Development Consent (DS07/1562) for subdivision of Lot 4(R) into 34 residential lots, associated roads and reserves granted by the Council on 28 December 2006 and modified on 4 March 2008.

SF9665 means the Development Consent for subdivision of Lot 5 and Lot 38 into 75 residential lots, associated roads and reserves granted by the Council on 28 December 2006.

Subdivision Certificate means a certificate referred to in section 109C(1)(d) of the Act.

1.2 Interpretation

In this deed, unless the context indicates a contrary intention:

(documents) a reference to this deed or another document includes any document which varies, supplements, replaces, assigns or novates this deed or that other document.

(references) a reference to a party, clause, paragraph, schedule or annexure is a reference to a party, clause, paragraph, schedule or annexure to or of this deed.

(headings) clause headings and the table of contents are inserted for convenience only and do not affect interpretation of this deed.

(person) a reference to a person includes a natural person, corporation, statutory corporation, partnership, the Crown and any other organisation or legal entity and their personal representatives, successors, substitutes (including persons taking by novation) and permitted assigns.

(party) a reference to a party to a document includes that party's personal representatives, executors, administrators, successors, substitutes (including persons taking by novation) and permitted assigns.

(rights and obligations) a reference to a right or obligation of a party is a reference to a right or obligation of that party under this deed.

(requirements) a requirement to do any thing includes a requirement to cause that thing to be done, and a requirement not to do any thing includes a requirement to prevent that thing being done.

(including) **including** and **includes** are not words of limitation, and a list of examples is not limited to those items or to items of a similar kind.

(corresponding meanings) a word that is derived from a defined word has a corresponding meaning.

(singular) the singular includes the plural and vice-versa.

(gender) words importing one gender include all other genders.

(parts) a reference to one or more things includes each part and all parts of that thing or group of things but nothing in this clause implies that part performance of an obligation constitutes performance of that obligation.

(rules of construction) neither this deed nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting.

(legislation) a reference to any legislation or provision of legislation includes all amendments, consolidations or replacements and all regulations or instruments issued under it.

(time and date) a reference to a time or date in connection with the performance of an obligation by a party is a reference to the time and date in Sydney, Australia, even if the obligation is to be performed elsewhere.

(joint and several) an agreement, representation, covenant, right or obligation:

- (a) in favour of two or more persons is for the benefit of them jointly and severally; and
- (b) on the part of two or more persons binds them jointly and severally.

(writing) a reference to a notice, consent, request, approval or other communication under this deed or an agreement between the parties means a written notice, request, consent, approval or agreement.

(replacement bodies) a reference to a body (including an institute, association or Authority) which ceases to exist or whose powers or functions are transferred to another body is a reference to the body which replaces it or which substantially succeeds to its power or functions.

(Australian currency) a reference to **dollars** or **\$** is to Australian currency.

(month) a reference to a month is a reference to a calendar month.

(year) a reference to a year is a reference to twelve consecutive calendar months.

(GST) words defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning in clauses about GST, and references to GST extend to any notional liability of any person for GST and to any amount which is treated as GST under the *A New Tax System (Goods and Services Tax) Act 1999* (Cth), and references to an input tax credit extend to any notional input tax credit to which any person is entitled.

(GST group) if a person is a member of a GST group, references to GST for which the person is liable and to input tax credits to which the person is entitled include GST for which the representative member of the GST group is liable and input tax credits to which the representative member is entitled.

2 Planning agreement under the Act

- (a) The parties agree that the Planning Agreement is a planning agreement governed by Subdivision 2 of Division 6 of Part 4 of the Act.
- (b) Schedule 1 of this deed summarises the requirements for planning agreements under section 93F of the Act and the ways this deed addresses those requirements.

3 Application of this deed

This deed applies to:

- (a) the Land; and
- (b) the Development.

4 Operation of this deed

4.1 Irrevocable offer

This deed constitutes an irrevocable offer from the Landowners to enter into the Planning Agreement if all of the Modifications are granted.

4.2 Operation

- (a) This deed operates on execution by all of the parties.
- (b) The Planning Agreement operates on the date when all of the Modifications have been granted.
- (c) If all of the Modifications have not been granted by 30 June 2015, the Landowners may rescind this Planning Agreement and it will never become operational.
- (d) The Landowners agree that they will not object, oppose, appeal or challenge any decision of the Council to defer or delay the grant of Modifications relating to SF9225 and SF9665 until the Modification relating to MP06/0276 is determined.

5 Development Contributions to be made under this deed

The parties agree that the Contributions will be provided in accordance with the terms of Schedule 2.

6 Application of s94, 94A and 94EF of the Act

- (a) This deed partially excludes the application of s94 of the Act to the development approved under SF9225 and SF9665 to the extent that any s94 contributions for the purpose of works to Bishop Drive, Matron Porter Drive and the Southern Link Road will not be required for development approved under SF9225 and SF9665.
- (b) For the avoidance of doubt, s94 of the Act will apply to the development approved under SF9225 and SF9665, to the extent that Section 94 contributions for all purposes other than works to Bishop Drive, Matron Porter Drive and the Southern Link Road will be required for development approved under SF9225 and SF 9665.
- (c) Benefits under this deed are not to otherwise be taken into consideration in determining development contributions for the Development under s94 of the Act.
- (d) This deed does not exclude the application of s94A or s94EF to the development approved under SF9225 and SF9665.

- (e) This deed does not exclude the application of s94, s94A or s94EF to the development approved under MP06/276.

7 Interests in the Land

7.1 Ownership

- (a) Greslon represents and warrants that it is the registered proprietor of Lot 5.
- (b) Hazcorp represents and warrants that it is registered proprietor of Lot 1, Lot 4(H) and part of Lot 38.
- (c) Revesby represents and warrants that it is the registered proprietor of Lot 4(R).

7.2 Registration of the Planning Agreement by Greslon

- (a) Greslon agrees it will procure the registration of the Planning Agreement, under the *Real Property Act 1900* (NSW) in the relevant folios of the Register for Lot 5 in accordance with s93H of the Act.
- (b) Greslon at its own expense will, promptly after the Planning Agreement comes into operation, take all practical steps, and otherwise do anything that the Council reasonably requires, to procure:
 - (1) the consent of each person who:
 - (A) has an estate or interest in Lot 5 registered under the *Real Property Act 1900* (NSW); or
 - (B) is seized or possessed of an estate or interest in Lot 5; and
 - (2) the execution of any documents; and
 - (3) the production of the relevant duplicate certificates of title, to enable the registration of the Planning Agreement in accordance with clause 7.2(a).
- (c) Greslon at its own expense, will take all practical steps, and otherwise do anything that the Council reasonably requires:
 - (1) to procure the lodgement of the Planning Agreement with the Registrar-General as soon as reasonably practicable after the Planning Agreement comes into operation but in any event, no later than 90 Business Days after that date; and
 - (2) to procure the registration of the Planning Agreement by the Registrar-General in the relevant folios of the Register for Lot 5 as soon as reasonably practicable after the Planning Agreement is lodged for registration.

7.3 Registration of the Planning Agreement by Hazcorp

- (a) Hazcorp agrees it will procure the registration of the Planning Agreement, under the *Real Property Act 1900* (NSW) in the relevant folios of the Register for Lot 1, Lot 4(H) and Lot 38 in accordance with s93H of the Act.
- (b) Hazcorp at its own expense will, promptly after the Planning Agreement comes into operation, take all practical steps, and otherwise do anything that the Council reasonably requires, to procure:
 - (1) the consent of each person who:
 - (A) has an estate or interest in Lot 1, Lot 4(H) or Lot 38 registered under the *Real Property Act 1900* (NSW); or
 - (B) is seized or possessed of an estate or interest in Lot 1, Lot 4(H) or Lot 38; and
 - (2) the execution of any documents; and
 - (3) the production of the relevant duplicate certificates of title,
 to enable the registration of the Planning Agreement in accordance with clause 7.3(a).
- (c) Hazcorp at its own expense, will take all practical steps, and otherwise do anything that the Council reasonably requires:
 - (1) to procure the lodgement of the Planning Agreement with the Registrar-General as soon as reasonably practicable after the Planning Agreement comes into operation but in any event, no later than 90 Business Days after that date; and
 - (2) to procure the registration of the Planning Agreement by the Registrar-General in the relevant folios of the Register for Lot 1, Lot 4(H) and Lot 38 as soon as reasonably practicable after the Planning Agreement is lodged for registration.

7.4 Registration of the Planning Agreement by Revesby

- (a) Revesby agrees it will procure the registration of the Planning Agreement, under the *Real Property Act 1900* (NSW) in the relevant folios of the Register for Lot 4(R) in accordance with s93H of the Act.
- (b) Revesby at its own expense will, promptly after the Planning Agreement comes into operation, take all practical steps, and otherwise do anything that the Council reasonably requires, to procure:
 - (1) the consent of each person who:

- (A) has an estate or interest in Lot 4(R) registered under the *Real Property Act 1900* (NSW); or
 - (B) is seized or possessed of an estate or interest in Lot 4(R); and
- (2) the execution of any documents; and
 - (3) the production of the relevant duplicate certificates of title,
- to enable the registration of the Planning Agreement in accordance with clause 7.4(a).
- (c) Revesby at its own expense, will take all practical steps, and otherwise do anything that the Council reasonably requires:
 - (1) to procure the lodgement of the Planning Agreement with the Registrar-General as soon as reasonably practicable after the Planning Agreement comes into operation but in any event, no later than 90 Business Days after that date; and
 - (2) to procure the registration of the Planning Agreement by the Registrar-General in the relevant folios of the Register for Lot 4(R) as soon as reasonably practicable after the Planning Agreement is lodged for registration.

7.5 Caveat

- (a) The Landowners acknowledge and agree that:
 - (1) when this deed is executed, the Council is deemed to have acquired, and each of the Landowners is deemed to have granted, an equitable estate and interest in each relevant parcel of the Land for the purposes of s74F(1) of the *Real Property Act 1900* (NSW) and consequently the Council has a sufficient interest in the Land in respect of which to lodge a caveat over the Land notifying that interest;
 - (2) they will not object to the Council lodging a caveat in the relevant folios of the Register for the Land nor will they seek to remove any caveat lodged by the Council provided the caveat does not prevent registration of any dealing or plan other than a transfer.
- (b) The Council must, at the Landowners' cost, register a withdrawal of any caveat in respect of the Land within 20 Business Days after the Planning Agreement has been registered in accordance with clauses 7.2, 7.3 and 7.4 and must not lodge any other caveats on the titles to any of the Land, providing the withdrawal of a caveat will only apply in respect of such parts of the Land in respect of which registration of the Planning Agreement has been procured.

7.6 Release and discharge

- (a) From time to time, the Landowners may request the Council to provide a release and discharge of this deed to the extent that this deed affects any part of the Land on which the Development has been completed and that the relevant Landowner proposes to sell to a third party.
- (b) The Council must provide a release and discharge of this deed in accordance with any request made under clause 7.6(a) provided the Landowners have duly satisfied their obligations under this deed in respect of that part of the Land and the Landowners are not otherwise in default of any of their obligations under this deed.
- (c) The Council agrees that a release and discharge of this deed must be provided for all lots in a stage in any of the subdivisions MP06/0276, SF9225 and SF9665 (except for any residue lots) provided that the Landowners have duly satisfied their obligations under this deed up to the relevant stage of those subdivisions. The release and discharge must be provided by the Council at the time of the release of a relevant Subdivision Certificate.

8 Review of this deed

The parties may agree to review this deed. Any review or modification will be conducted in the circumstances and in the manner determined in writing by the parties.

9 Dispute Resolution

A party must not commence any court proceedings relating to a dispute of any matter under this deed, unless it complies with the Dispute Resolution Procedures.

10 Enforcement of Obligations

10.1 Enforcement

- (a) This deed, including the obligation imposed on the Council under clause 8 of Schedule 2, may be enforced by any party in any court of competent jurisdiction.
- (b) The Landowners covenant with the Council that the Landowners will not rescind or terminate this deed or make a claim that this deed is void, voidable, illegal or unenforceable because a condition of a Development Consent requires the Landowners or each of them to enter into a planning agreement on the terms of this deed.
- (c) Nothing in this clause 10.1, prevents:
 - (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

- (2) The Council from exercising any function under any Legislation, including the Act, or any other Law relating to the enforcement of any aspect of this deed or any matter to which this deed relates.

10.2 Subdivision Certificates

In accordance with s109J(c1) of the Act:

- (a) the obligations to provide the Contributions specified at clause 2(a) of Schedule 2 must be satisfied prior to the issue of any Subdivision Certificate relating to:
 - (1) Stages 1, 2 or 3 of the subdivision approved under SF9665; or
 - (2) Stages 1, 2 or 3 of the subdivision approved under SF9225,
- (b) the obligation to provide the Contributions specified at 2(b) of Schedule 2 must be satisfied prior to the issue of any Subdivision Certificate relating to:
 - (1) Stages 4 or 5 of the subdivision approved under SF9665; or
 - (2) Stage 4 of the subdivision approved under SF9225,
- (c) the obligation to provide the Contributions specified at clause 2(c) of Schedule 2 must be satisfied prior to the issue of any Subdivision Certificate relating to Stage 7 of the subdivision approved under MP06/0276.

10.3 Security

The parties agree and acknowledge that the restrictions on the issue of Subdivision Certificates specified in clause 10.2 constitute sufficient security for the performance of the Landowners' obligations to carry out the Road Works in accordance with this deed.

11 Assignment and Dealing

Each of the Landowners agrees that it will not sell, transfer, or dispose of the whole or any part of its relevant right, title or interest in the Land or the Development otherwise than in accordance with the Assignment and Dealing Provisions.

12 Explanatory Note

The Explanatory Note must not be used to assist in construing this deed.

13 No fetter

Nothing in this deed shall be construed as requiring the Council to do anything that would cause it to be in breach of any of its obligations at law,

and without limitation, nothing shall be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

14 General

14.1 Notices

- (a) Any notice, demand, consent or other communication given or made under this deed must be:
 - (1) clearly readable;
 - (2) signed by the party giving or making it (or signed on behalf of that party by its authorised representative); and
 - (3) left at the Address or sent by pre-paid security post (air mail if outside Australia) to the Address or to the Fax Number of the recipient.
- (b) A party may change its Address or Fax Number for the purpose of service by giving notice of that change to the other party in accordance with clause 14.1.
- (c) Any communication will be taken to be received by the recipient:
 - (1) in the case of a letter, on the third (seventh, if sent outside the country in which the letter is posted) Business Day after the date of posting;
 - (2) in the case of a facsimile, on production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile communication was sent in its entirety to the Fax Number of the recipient; and
 - (3) if the time of dispatch of a facsimile is not on a Business Day, or is after 5.00 pm (local time) on a Business Day, it will be taken to have been received at the commencement of business on the next Business Day.

14.2 Relationship between parties

- (a) Nothing in this deed:
 - (1) constitutes a partnership between the parties; or
 - (2) except as expressly provided, makes a party an agent of another party for any purpose.
- (b) A party cannot in any way or for any purpose:
 - (1) bind another party; or
 - (2) contract in the name of another party.

- (c) If a party must fulfil an obligation and that party is dependent on another party, then that other party must do each thing reasonably within its power to assist the other in the performance of that obligation.

14.3 Time for doing acts

- (a) If the time for doing any act or thing required to be done or a notice period specified in this deed expires on a day other than a Business Day, the time for doing that act or thing or the expiration of that notice period is extended until the following Business Day.
- (b) If any act or thing required to be done is done after 5.00 pm on the specified day, it is taken to have been done on the following Business Day.

14.4 Further assurances

Each party must promptly execute all documents and do all other things reasonably necessary or desirable to give effect to the arrangements recorded in this deed.

14.5 Approvals and consents

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. A party is not obligated to give its reasons for giving or withholding consent or for giving consent subject to conditions.

14.6 Variation

A provision of this deed can only be varied by a later written document executed by or on behalf of all parties and in accordance with the provisions of the Act.

14.7 Counterparts

This deed may be executed in any number of counterparts. All counterparts taken together constitute one instrument.

14.8 Legal expenses and stamp duty

- (a) The Landowners must pay the Council's reasonable legal costs and disbursements to a maximum sum of \$28,000.00 plus GST in connection with the negotiation, preparation, execution and carrying into effect of this deed.
- (b) The Landowners must pay all stamp duty assessed on or in relation to this deed and any instrument or transaction required by or necessary to give effect to this deed.

14.9 Entire agreement

The contents of this deed constitute the entire agreement between the parties and supersede any prior negotiations, representations, understandings or arrangements made between the parties regarding the subject matter of this deed, whether orally or in writing.

14.10 Representations and warranties

The parties represent and warrant that they have power to enter into this deed and comply with their obligations under the deed and that entry into this deed will not result in the breach of any law.

14.11 Invalidity

- (a) A word or provision must be read down if:
 - (1) this deed is void, voidable, or unenforceable if it is not read down;
 - (2) this deed will not be void, voidable or unenforceable if it is read down; and
 - (3) the provision is capable of being read down.
- (b) A word or provision must be severed if:
 - (1) despite the operation of clause 14.11(a), the provision is void, voidable or unenforceable if it is not severed; and
 - (2) this deed will be void, voidable or unenforceable if it is not severed.
- (c) The remainder of this deed has full effect even if clause 14.11(b)(1) or (2) applies.

14.12 Waiver

A right or remedy created by this deed cannot be waived except in writing signed by the party entitled to that right. Delay by a party in exercising a right or remedy does not constitute a waiver of that right or remedy, nor does a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.

14.13 GST

If any party reasonably decides that it is liable to pay GST on a supply made to the other party under this deed and the supply was not priced to include GST, then the recipient of the supply must pay an additional amount equal to the GST on that supply.

14.14 Governing law and jurisdiction

- (a) The laws applicable in New South Wales govern this deed.

- (b) The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts competent to hear appeals from those courts.

List of schedules

Number	Description	Clause reference
Schedule 1	Summary of requirements	2(b)
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Schedule 1 Summary of Requirements

Clause 2(b)

Subject and Subsection of the Act	The Planning Agreement
<p>Planning Amendment and / or Development Application (s93F(1))</p> <p>The Landowners have:</p> <p>(a) sought a change to an environmental planning instrument</p> <p>(b) made, or propose to make, a Development Application</p> <p>(c) entered into an agreement with, or are otherwise associated with, a person, to whom paragraph (a) or (b) applies</p>	<p>(a) No.</p> <p>(b) Yes. The Landowners propose to make applications to modify existing approvals.</p> <p>(c) No.</p>
Description of the land to which the planning agreement applies (s93F(3)(a))	The Planning Agreement applies to the Land as identified in the recitals, clause 1 and in Annexure A.
Description of change to the environmental planning instrument to which the planning agreement applies (s93F(3)(b))	Not applicable.
Description of the development to which the agreement applies (s93F(3)(b)).	The Planning Agreement applies to the Development as identified in clause 1.
The nature and extent, timing and manner of delivery of contributions required under the planning agreement (s93F(3)(c))	Clause 5 and Schedule 2.
Applicability of s94, s94A and s94EF of the Act (s93F(3)(d))	Partial exclusion of s94 of the Act only. See clause 6.
Consideration of benefits under this deed if s94 applies (s93F(3)(e))	No. Clause 6(c).
Mechanism for dispute resolution (s93F(3)(f))	Yes. See clause 9 and Schedule 3.
Enforcement of the agreement by a suitable means (s93F(3)(g))	Yes. See clause 10.
No obligation to grant consent or exercise functions (s93F(9))	See clause 13.
Registration of the agreement (s93H)	Yes. See clause 7.

Schedule 2 Contributions

Clause 5

1 Dedication of Land

Each of the Landowners agrees to dedicate to the Council, at no cost to the Council, any land held by it that is required for Bishop Drive, including any land necessary for the Road Works and any road reserve.

2 The Road Works

The Landowners will carry out the following works (**the Road Works**) as shown on the plans attached at Annexure C:

- (a) Stage 1 Road Works, including the construction of 200m of Bishop Drive south of the intersection with Matron Porter Drive / Garside Road to provide permanent vehicle access arrangements to Lot 5 and temporary vehicle access arrangements to Lot 4.
- (b) Stage 2 Road Works, including the extension to Bishop Drive stage 1 works to construct a further 200m of road to provide permanent vehicle access arrangements to the northern part of Lot 38 and Lot 4(R).
- (c) Stage 3 Road Works, including the completion of the remaining section of Bishop Drive.

3 Timing of Contributions

- (a) Any land required to be dedicated for Bishop Drive must be dedicated prior to or on the registration of any subdivision of the adjoining land, or upon the Council providing written certification in accordance with this deed that the relevant part of the Road Works have been completed, whichever is the later.
- (b) The Stage 1 Road Works required under clause 2(a) of Schedule 2 must be completed before the end of 2016.
- (c) The Stage 2 Road Works required under clause 2(b) of Schedule 2 must be completed before the end of 2020.
- (d) The Stage 3 Road Works required under clause 2(c) of Schedule 2 must be completed before the end of 2030.
- (e) For the avoidance of doubt, the requirements under clause 10.2 of this deed apply in addition to the requirements under this clause 3 of Schedule 2.

4 Standard of Works

- (a) The Landowners must not commence construction of any part of the Road Works until the Council has approved the design plans for those works and all other relevant Approvals have been obtained.
- (b) Unless otherwise specified by the Council in writing, the design and construction of the Road Works must be carried out in accordance with Council's Subdivision Code DCP 100, including Part 2 Engineering Design Specifications and Part 3 Development Construction Specifications, or any other replacement specification applicable to the design and construction of the Road Works.
- (c) The Landowners must include in any Construction Contracts for the Road Works, terms to the reasonable satisfaction of the Council relating to the following:
 - (1) Standard of work
 - (2) Inspections by Council
 - (3) Indemnities for Council
 - (4) Insurances
 - (5) Defects liability, including a defects liability period in accordance with DCP 100 (or any other replacement specification applicable at the time the Construction Contract is entered into) and associated security or bonds that can be called upon by the Council
 - (6) Information about the progress of works to be provided to the Council
 - (7) Occupational health and safety requirements
- (d) The proposed timing for the Road Works such as a Gantt chart or similar plan must be provided to the Council prior to commencement of works.
- (e) If the Council becomes aware of any breach(es) under the Construction Contracts, the Council may give the Landowners 60 Business Days notice to rectify and failing the Landowners' compliance to so rectify within the 60 Business Days notice period, the Landowners will, if reasonably required by Council:
 - (1) assign to Council any rights under any warranties or rights of action held by an of the Landowners under any Construction Contract;
 - (2) appoint the Council as attorney to exercise rights and powers under any Construction Contract, including any right to conduct proceedings or prosecute any action to enforce any of the Landowners' rights against others under any Construction Contract;

- (3) execute all such documents and do all such things on any of the Landowners' behalf as are necessary or desirable to enable the Council to rectify any defects in accordance with the terms of this deed and any Construction Contract; and
- (4) provide any assistance required for the purpose of defending or settling any claim or the pursuit of any rights of recovery from others under any Construction Contract.

5 Manner of Delivery

5.1 Dedication of Land

A Contribution comprising the dedication of land as a public road is made for the purposes of this deed when the subject road is dedicated as a public road for which the Council is roads authority under the provisions of the *Roads Act 1993*.

5.2 Road Works

- (a) When the Landowners consider that the Road Works, or any part of the Road Works, have been completed, they must send a notice to the Council accompanied by complete works as executed plans (including a summary of capital costs) and a request for written certification from the Council that the Road Works (or part thereof) are complete.
- (b) Within 20 Business Days of receipt of the notice under clause 5.2(a) of this Schedule 2, the Council will carry out an inspection of the Road Works and will either:
 - (1) provide written certification to the Landowners that the Road Works (or part thereof) have been completed; or
 - (2) notify the Landowners of any additional information required or matter which must be addressed by the Landowners prior to the certification being issued.
- (c) The Landowners must provide any additional information or address any matters required by the Council under clause 5.2(b)(2) of Schedule 2 within 20 Business Days of receiving the notice and make a further request under clause 5.2(a) of Schedule 2 for written certification that the Road Works (or part thereof) have been completed.
- (d) The Council will accept ownership, possession and control of the Road Works (or any part thereof) on the provision of written certification to the Landowners under clause 5.2(b)(1) of Schedule 2 that those works have been completed.
- (e) The Landowners acknowledge and agree that the Council will not accept the dedication of the Road Works or any part of the Road Works, unless those works have been completed to the satisfaction of the Council.

- (f) Any right held by the Council to call on any security or bond in accordance with defects liability clauses in a Construction Contract will not be affected by a written certification under clause 5.2(b)(1) of Schedule 2 that works have been completed.

6 Maintenance of Road Work

The Landowners will be responsible for maintenance of the Road Works to standards in accordance with DCP 100 (or any replacement standard applicable at the time of construction of the Road Works) for a period of 6 months from the date the Council accepts ownership, possession and control of the Road Works under clause 5.2 of Schedule 2.

7 Public Purposes

The parties agree and acknowledge that the Contributions are for public purposes as required under the Act, namely public roads.

8 Payment by Council

- (a) The Council must pay a contribution to the construction of the Road Works in accordance with this clause 8 of Schedule 2.
- (b) Council agrees to deposit into its consolidated fund::
 - (1) all development contributions received by the Council towards road works on Bishop Drive; and
 - (2) development contributions received by the Council towards road works on the Southern Link Road and Matron Porter Drive arising from Stages 1 to 6 of the development approved under MP06/0267.

(the Bishop Drive Funds).
- (c) The Bishop Drive Funds will be held and separately accounted for in accordance with s409(3) and (4) of the Local Government Act 1993 (NSW) **(the Bishop Drive Account).**
- (d) In accordance with s93E of the Act, and subject to this clause 8 of Schedule 2, the Bishop Drive Funds will be released by the Council to pay for part of the Stage 3 Road Works.
- (e) Following completion of the Stage 3 Road Works, the Council must maintain the Bishop Drive Account.
- (f) The Landowners may request payment from the Bishop Drive Account:
 - (1) within 20 Business Days of 1 January, 1 April, 1 July and 1 October in each year up until the Council provides written certification in accordance with this deed, that all of the Road Works are completed; and

- (2) within 20 Business Days of 1 July each year following written certificate by the Council in accordance with this deed that all of the Road Works are completed.
- (g) Within 15 Business Days of receiving a request by the Landowners issued in accordance with clause 8(f) of Schedule 2, the Council will supply to the Landowners:
 - (1) a statement of contributions received into the Bishop Drive Account during the financial year immediately preceding that request; and
 - (2) subject to the provisions of this clause 8 of Schedule 2, payment from the Bishop Drive Account, by cheque payable to Rygate & West Pty Limited (Reference: The Bishop Drive Account) in the amount requested or, if the amount requested is more than the amount held in the Bishop Drive Account at the time, in an amount equivalent to the balance of the Bishop Drive Account.
- (h) The Council will not make a payment from the Bishop Drive Account unless:
 - (1) the Council has issued a written certificate or certificates under clause 5.2(b)(1) of Schedule 2 confirming completion of the Stage 3 Road Works or the relevant part of the Stage 3 Road Works for which payment is sought;
 - (2) the Council has been provided with a copy of a tax invoice in accordance with the terms of any Construction Contract for the Stage 3 Road Works; and
 - (3) the Council is satisfied that the work specified in the tax invoice is reasonable and necessary for the construction of the Stage 3 Road Works;
 - (4) there are no outstanding claims for defects in the relevant work; and
 - (5) there are sufficient funds in the Bishop Drive Account to pay the amount (or part thereof) sought by the Landowners.
- (i) If the whole of an amount sought to be paid by the Landowner is not paid because there are insufficient funds in the Bishop Drive Account, the Landowners will be entitled to make a further request for payment under clause 8(f) of Schedule 2 for any outstanding amount.
- (j) Nothing in this deed requires the Council to make any payment towards the construction of the Stage 3 Road Works after 31 August 2035.

- (k) For the avoidance of doubt, nothing in this deed:
- (1) requires the Council to make a payment towards the construction of the Road Works otherwise than from the Bishop Drive Account in accordance with this clause; or
 - (2) requires the Council to pay interest on any amount required to be paid under this deed.

Schedule 3 Dispute Resolution Procedures

Clause 9

1 Notice of Dispute

Except for a dispute arising, in or as a consequence of a review under clause 8 of this deed, if a dispute between any of the parties arises in connection with this deed or its subject matter, then any party may give to the other parties a Notice of Dispute in writing adequately identifying and providing details of the dispute.

2 Further Steps Required Before Proceedings

Any dispute between the parties arising in connection with this deed or its subject matter must be the subject of mediation.

3 Disputes for Expert Determination

If the mediation referred to in clause 2 of this Schedule 3 has not resulted in settlement of the dispute, any party may, with the prior written consent of each other party, refer the matter to expert determination in accordance with clause 4 of this Schedule 3.

4 Choice of Expert

A dispute to be referred to an expert in accordance with clause 3 of this Schedule 3 must be determined by an independent expert in the relevant field:

- (a) Agreed between and appointed jointly by the parties; or
- (b) In the absence of agreement within 5 Business Days, appointed by the President or other senior officer for the time being of the body administering the relevant field.

If the parties cannot agree as to the relevant field, any one party may refer the matter to the President of the New South Wales Bar Association (or the President's nominee) whose decision as to the relevant field is final and binding on the parties.

5 Requirements for Expert

The expert appointed to determine a dispute:

- (a) must have a technical understanding of the issues in contest;
- (b) must not have a significantly greater understanding of one party's business or operations which might allow the other side to construe this greater understanding as bias or a conflict of interest;
- (c) must inform the parties before being appointed to the extent of the expert's understanding of each party's business or operations and, if

that information indicates a possible bias, then that expert must not be appointed except with the written approval of the parties.

The parties must enter into an agreement with the expert appointed under this Schedule 3 setting out the terms of the expert's determination and the fees and expenses payable to the expert.

6 Expert not Arbitrator

The expert must:

- (a) act as an expert and not as an arbitrator;
- (b) proceed in any manner as the expert thinks fit but must observe the rules of natural justice but not the rules of evidence;
- (c) not accept oral submissions unless both parties are present and on receipt of written submissions from one party ensure that a copy of such submission is given promptly to the other party;
- (d) take into consideration all documents, information and other material which the parties give the expert which the expert in its absolute discretion considers relevant to the determination of the dispute;
- (e) not be expected or required to obtain or refer to any other documents, information or material (but may do so if the expert so wishes);
- (f) issue a draft certificate stating the expert's intended determination giving each party 15 business days to make further submissions;
- (g) issue a final certificate stating the expert's determination; and
- (h) act with expedition with a view to issuing the final certificate as soon as practicable.

7 Compliance with Directions

The parties must comply with all directions given by the expert in relation to resolution of the dispute and must within a time period specified by the expert give the expert:

- (a) a short statement of facts;
- (b) a description of the dispute; and
- (c) any other documents, records or information the expert requests.

8 Expert may convene Meetings

- (a) The expert may hold a meeting with all parties present to discuss the dispute. The meeting must be conducted in a manner which the expert considers appropriate. The meeting may be adjourned to, and resumed at, a later time in the expert's discretion.

- (b) The parties agree that a meeting under this clause is not a hearing and is not an arbitration.

9 Final Determination of Expert

- (a) The parties agree that the final determination by an expert will be final and binding upon them.
- (b) The expert or mediator will not be liable in respect of the expert determination or mediation, except in the case of fraud or misfeasance by the expert or mediator.
- (c) The parties agree to release and indemnify the expert from and against all claims, except in the case of fraud or misfeasance by the expert, which may be made against the expert by any person in respect of the expert's appointment to determine the dispute.

10 Other Courses of Action

If the mediation referred to in clause 2 of this Schedule 3, or the expert determination required or agreed under clause 3 of this Schedule 3, has not resulted in resolution of the dispute, any one party may take whatever course of action is deemed appropriate for the purpose of resolving the dispute.

11 Confidentiality of Information

The parties agree, and must obtain the written agreement of the mediator/expert, as a condition of his/her appointment:

- (a) subject to clause 11(b) of this Schedule 3, to keep confidential all documents, information and other material, disclosed to them during or in relation to the expert determination or mediation;
- (b) not to disclose any confidential documents, information and other material except:
 - (1) to a party or adviser who had signed a confidentiality undertaking to the same effect as this clause 11; or
 - (2) if required by Law to do so; and
- (c) not to use confidential documents, information or other material disclosed to them during or in relation to the expert determination for a purpose other than the expert determination or mediation.

Schedule 4 Assignment and Dealing Provisions

Clause 11

1 Right to Assign Interest

Except in respect of any part of the Land where this deed has been released and discharged in accordance with clause 7.6 of this deed, each of the Landowners must not sell, transfer, or dispose of the whole or any part of its relevant right, title or interest in the Land or the Development to another person (**Transferee**), unless before it sells, transfers or disposes of that right, title or interest:

- (a) it satisfies the Council acting reasonably that the proposed Transferee is financially capable of complying with the relevant Landowner's obligations under this deed;
- (b) the rights of the Council are not diminished or fettered in any way;
- (c) the Transferee executes a novation deed agreeing to perform the obligations of the relevant Landowner under this deed;
- (d) any default by the Landowners has been remedied or waived by the Council; and
- (e) the relevant Landowner and the Transferee pay the Council's reasonable costs in relation to the assignment.

2 Further documents

The parties must, and the relevant Landowner will cause any Transferee to, enter into all such further documents as are reasonably required to implement the provisions set out in this Schedule 4.

3 Restriction does not apply to certain dealings

The constraints on assignment and transfer in this Schedule do not apply to:

- (a) a mortgage granted by a Landowner;
- (b) an easement or restriction as to user burdening or benefiting the Land;
or
- (c) the sale of a lot created pursuant to a Subdivision Certificate issued under MP06/0276, SF9225 or SF9665 (except for a residue lot).

Signing page

Executed as a deed

EXECUTED for an on behalf of)
Shoalhaven City Council by its)
authorised delegate, in accordance)
with a resolution of the Council made)
on 24 September 2013:)
)
)
)
)
)
)


.....
Signature of Witness

Melinda Lockhart
.....
Print name of Witness


.....
Signature of Authorised Delegate

Signing page

Executed as a deed

Executed by **Greslon Pty Ltd**)
ACN 002 030 819 in accordance with)
section 127 of the *Corporations Act*)
2001 (Cth) by:)


Signature of Director


Signature of Director/Secretary


DAVID FINDLAY
Print name of Director

CARMEN MARGARET FINDLAY
Print name of Director/Secretary

Signing page

Executed as a deed

Executed by Hazcorp Pty Ltd)
ACN 003 121 891 in accordance with)
section 127 of the *Corporations Act*)
2001 (Cth) by:)


.....
Signature of Director

DAVID CAMERON HAZLETT
.....
Print name of Director



.....
Signature of Director/Secretary

PETER WILLIAM LEAN
.....
Print name of Director/Secretary

Signing page

Executed as a deed

Executed by Revesby-Padstow)
Modern Homes Pty Ltd)
ACN 000 187 940 in accordance with)
section 127 of the Corporations Act)
2001 (Cth) by:)


Signature of Director

BARRY BENNETT
Print name of Director


Signature of Director/Secretary

Margaret E Bennett
Print name of Director/Secretary

Annexure A Proposed Modification

Modification of the conditions of SF9225, SF9665 and MP06/0276 to reflect the offer by the Landowners to carry out roadworks on Bishop Drive in lieu of paying certain development contributions under s94 of the Act, in accordance with the terms of this deed as follows:

SF9225

- deletion of that part of condition 52 relating to the section 94 contributions concerning the construction of Bishop Drive (Northern Link Road, Southern Link Road and Matron Porter Drive; and
- deletion of condition 5.

SF9665

- deletion of that part of condition 51 relating to payment of the section 94 contributions concerning the construction of Bishop Drive (Northern Link Road), Southern Link Road and Matron Porter Drive; and
- deletion of condition 5.

MP06/0276

- insertion of a new condition E27(5) in terms similar to the following:

“(5) **Works on Bishop Drive**

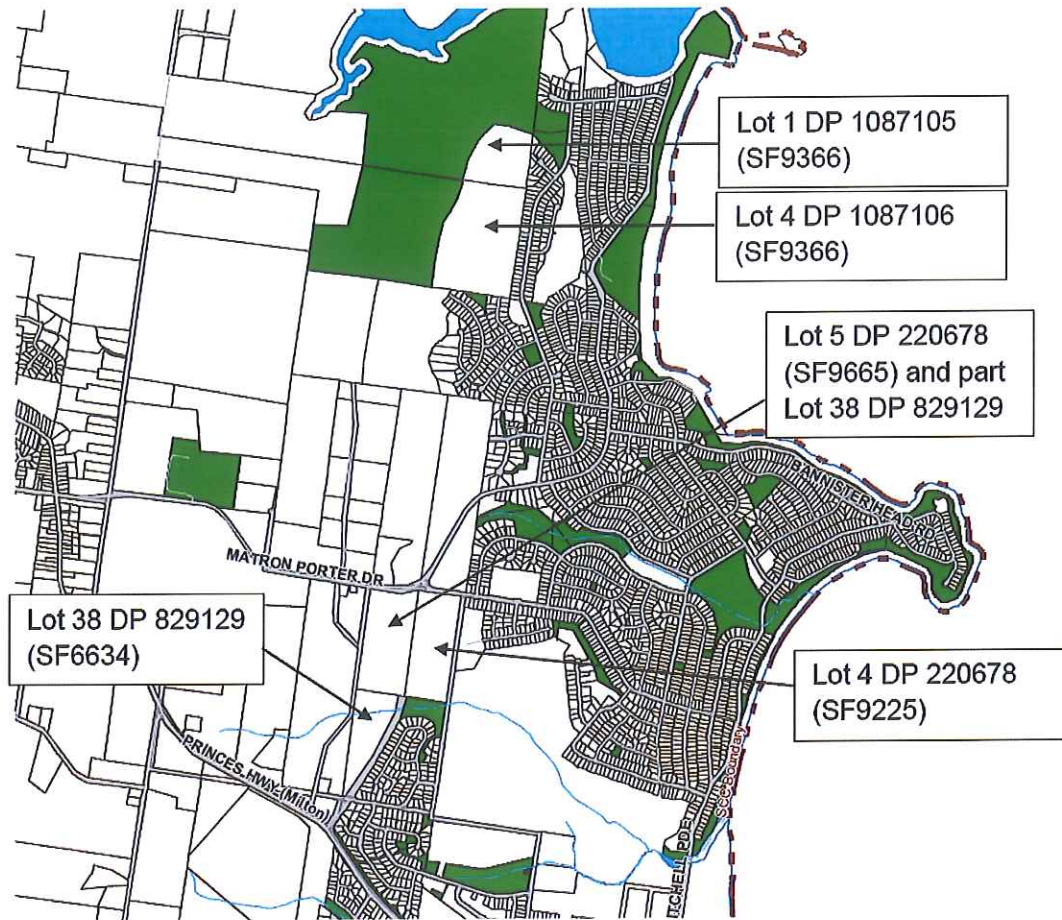
Provided that:

- (i) *the Proponent has entered into a voluntary planning agreement with the Council to carry out roadworks to Bishop Drive in accordance with that agreement; and*
- (ii) *the Council has provided written certification to the Proponent that roadworks to construct Bishop Drive south of the intersection with Matron Porter Drive / Garside Drive have been certified as satisfactory and completed in accordance with the plans of Simon Punnett and Associates Pty Limited job no. 480 sheets 1 – 25 (as amended from time to time),*

then the Proponent shall not be required to pay any monetary contributions under condition E27(1) in relation to:

- (a) *Bishop Drive (Northern Link Road) – 05ROAD 2001*
- (b) *Southern Link Road – 05ROAD 2011*
- (c) *Matron Porter Drive – 05ROAD 2061”*

Annexure B Plan of the Land



Annexure C Road Works

Annexure D Explanatory Note

Environmental Planning and Assessment Regulation 2000

(Clause 25E)

Explanatory Note

Draft Planning Agreement

**Under s93F of the Environmental Planning and Assessment Act 1979
(‘EPA Act’)**

1. Parties

The parties to the proposed Planning Agreement are:

- (a) Shoalhaven City Council (**the Council**)
- (a ‘planning authority’ for the purposes of s93F of the EPA Act)
- (c) Greslon Pty Ltd (**Greslon**)
- (d) Hazcorp Pty Ltd (**Hazcorp**)
- (e) Revesby-Padstow Modern Homes Pty Ltd (**Revesby**)
- (all ‘developers’ for the purposes of s93F of the EPA Act)

2. Description of the Subject Land

The land the subject of the proposed Planning Agreement is:

- (a) Lot 5 DP 220678 (**Lot 5**, owned by Greslon)
- (b) Lot 1 DP 1087105 (**Lot 1**), Lot 4 DP 1087106 (**Lot 4H**) and Lot 38 DP 829129 (**Lot 38**) (owned by Hazcorp)
- (c) Lot 4 DP 220678 (**Lot 4R**, owned by Revesby)

Lot 5 and part Lot 38 are the subject of a development consent for subdivision granted by the Council, SF9665.

Lot 4R is the subject of a development consent for subdivision granted by the Council, SF9225.

Lot 1 and 4H are the subject of a project approval granted under the former Part 3A of the EPA Act by the Minister, MP06/0276.

3. Description of Proposed Development Application

The developers are proposing to apply for modification of the existing development consents and project approval that will:

- (a) remove requirements under SF9225 and SF9665 to carry out certain road works;
- (b) remove requirements to pay s94 contributions towards road works on Bishop Drive, Matron Porter Drive and Southern Link Road under SF9225 and SF9665; and
- (c) remove requirements to pay s94 contributions towards road works on Bishop Drive, Matron Porter Drive and Southern Link Road under MP06/0276 once the road works under the Planning Agreement have been completed.

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

The draft Planning Agreement requires the developers to dedicate land and to carry out road works to construct Bishop Drive. These road works are included in the Council's Section 94 Contributions Plan as proposed infrastructure for which contributions will be sought (the Northern Link Road 05ROAD 2001).

Detailed plans of the required road works are included as an Annexure to the draft Planning Agreement. The road works to construct Bishop Drive are separated into three stages, with the last stage to be completed before the end of 2030.

Each stage of the road works must be completed prior to the issue of subdivision certificates for various stages of the proposed development. This means that the development will not be able to be progressed, unless the road works are complete. Accordingly, the road works will be carried out as the residential subdivisions progress and the demand for the infrastructure is created.

Once each stage of the road works is complete, the works will be handed over to the Council and the developers will be responsible for maintaining the works for a period of time.

The estimated cost of constructing Bishop Drive will exceed the contributions normally required to be paid by each of the developers towards those road works under the Council's Section 94 Contributions Plan. The Council therefore proposes to agree to the following:

- (a) Section 94 of the EPA Act will not apply to SF9225 and SF9665 so that contributions for Bishop Drive, Matron Porter Drive and Southern Link Road will not be required to be paid;

- (b) Section 94 of the EPA Act will not apply to MP06/0276 so that contributions for Bishop Drive, Matron Porter Drive and Southern Link Road will not be required to be paid once the Bishop Drive road works have been completed; and
- (c) The Council will contribute to the cost of constructing the Bishop Drive road works by paying to the developers:
 - (i) s94 contributions received from any other development towards the road works on Bishop Drive; and
 - (ii) s94 contributions received from Stages 1 to 6 of development approved under MP06/0267 towards road works on the Southern Link Road and Matron Porter Drive.

5. Assessment of the Merits of the Draft Planning Agreement

The Planning Purposes Served by the Draft Planning Agreement

The Planning Agreement will provide public road infrastructure. This infrastructure is required to adequately serve the subject development and the future residential development in the area.

How the Draft Planning Agreement Promotes the Objects of the Environmental Planning and Assessment Act 1979

By providing public road infrastructure that will serve the future needs of residents in the local area, the Planning Agreement promotes the following objects under s5 of the EPA Act:

- (a) To encourage the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment.
- (b) To encourage the promotion and co-ordination of the orderly and economic use and development of land.
- (b) To encourage the provision of land for public purposes.

How the Draft Planning Agreement Promotes the Public Interest

The draft Planning Agreement promotes the public interest by requiring the construction of public roads necessary for future development of the land.

How the Draft Planning Agreement Promotes the Objects of the Local Government Act 1993

By requiring the provision of public road infrastructure that will serve the needs of future residents, the draft Planning Agreement would give the Council the ability to provide facilities appropriate to the current and future needs of the local

community and the wider public. In this way, the draft Planning Agreement promotes the objects set out in s7 of the Local Government Act 1993.

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

By requiring the provision of public road infrastructure that will serve the needs of future residents, the Planning Agreement promotes the following element of the Council's charter (under s8 of the Local Government Act 1993):

- To provide directly or on behalf of other levels of government, after due consultation, adequate, equitable and appropriate services and facilities for the community and to ensure that those services and facilities are managed efficiently and effectively.

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

The acquisition of land and road works to construct Bishop Drive were anticipated under the Council's s94 Contributions Plan. The Council considers that the arrangement under the draft Planning Agreement represents a significant reduction in Council's capital works liability for Bishop Drive and will have a positive effect on Council's capital works forward planning.

Under the Council's s94 Contributions Plan, Bishop Drive was to be completed by 2018. Under the draft Planning Agreement the works are to be completed in accordance with stages of the proposed development and at least by 2030. This extension of time has been given in light of the current market for residential development and will mean that the road is constructed as development progresses and demand for the infrastructure is created.

The Impact of the Draft Planning Agreement on the Public or Any Section of the Public

The draft Planning Agreement will have a positive impact on the wider public because:

- (a) necessary public road infrastructure will be provided; and
- (b) Council's capital works liability for Bishop Drive will be reduced, allowing funds to be allocated to other public facilities and services.