
Shoalhaven City Council

and

CVC Mezzanine Pty Ltd
(ACN 110 359 692)

Planning Agreement

In respect of DA 13/2064
190-198 Princes Highway South Nowra

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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	CVC Mezzanine Pty Ltd ACN 110 359 692 (Developer)
Address	Level 42 259 George Street, Sydney NSW 2000
Fax Number	Not applicable
Email Address	jhunter@cvc.com.au
Contact	John Hunter

Background

- A. The Developer is the registered proprietor of the Land.
- B. Zooharbour Pty Ltd is the registered proprietor of the land being Lot 102 DP 603500 situate at 188 Princes Highway, South Nowra (**Lot 102**). Zooharbour has agreed to sell the Acquired Land to the Developer subject to certain conditions.
- C. The CVC Land and Part Lot 102 are the subject of an application for Development Consent lodged with the Council by Cowman Stoddart Pty Ltd on behalf of the Developer seeking approval to construct on the CVC Land a Masters Home Improvement Centre, the details of which are fully set out in Development Application DA 13/2064.

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.

Acquired Land means that part of Lot 102 in DP 603500 denoted Y in the Minor Boundary Adjustment Plan forming part of Annexure A.

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 requiring a third party to carry out the Road Works.

Contributions means the provision of the Road Works and the dedication of the Council Lots to Council by the Developer in accordance with this deed.

Contributions Plan has the same meaning as under the Act.

Council Lots means:

- (a) the Acquired Land;
- (b) that part of the Land hatched blue and yellow in the DA Site Plan; and
- (c) that part of land described as Lot 3 (being severed residue) in the DA Site Plan.

Defects Liability Period means a period of twelve (12) months after the Road Works are completed in accordance with the requirements of this deed.

Development means the development of the Land as a Masters Home Improvement Centre, Fast Food Restaurant, service station and two bulky goods tenancies and associated vehicle access and car parking, and boundary adjustment subdivision to reflect the proposed development, or any part of the development, as approved under DA 13/2064 and any subsequent modifications to that application and approval.

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 this deed, as required by clause 25E of the *Environmental Planning and Assessment Regulation 2000*, and attached as Annexure C to this deed.

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

Land means Lot 14 in DP 625320 and Lots 15 and 16 in DP 598678 and known as 190-198 Princes Highway, South Nowra.

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.

Minor Boundary Realignment Plan means the APA plan 26010-04 dated 22.10.2013 attached as part of Annexure A.

Occupation Certificate means a certificate referred to in s109(1)(c) of the Act and for the purpose of clarity includes an interim and a final Occupation Certificate.

Planning Legislation means the Act, the *Local Government Act 1993* (NSW) and the *Roads Act 1993* (NSW).

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.

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

VPA Policy means the Council's adopted Policy POL12/243.

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 upon Development Consent being granted with respect to the Development, this deed is a planning agreement:
 - (1) within the meaning set out in s93F of the Act; and
 - (2) 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 both:

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

4 Operation of this deed

4.1 Operation

- (a) This deed becomes effective on execution of it by all of the parties to it.
- (b) If Development Consent with respect to the Development is not obtained by the Developer on or before 30 June 2014, the Developer may rescind this deed *in futuro* by notice in writing to the Council to that effect.

5 Development Contributions to be made under this deed

- (a) The Contributions must be provided in accordance with the terms of Schedule 2.
- (b) Schedule 2 has affect accordingly.

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

- (a) This deed excludes the application of s94 and s94A of the Act to the Development.

- (b) This deed does not exclude the application of s94EF of the Act to the Development but the parties acknowledge that there are no Ministerial Special Infrastructure contributions applicable the Development.

7 Interests in the Land

7.1 Ownership

- (a) The Developer represents and warrants that it is the registered proprietor of the Land.
- (b) The Developer represents and warrants that it has been granted a conditional right to acquire the Acquired Land.

7.2 Registration of the Planning Agreement by the Developer

- (a) The Developer agrees to the registration of this deed, under the *Real Property Act 1900* (NSW) in the relevant folios of the Register for the Land and the Acquired Land in accordance with s93H of the Act.
- (b) Promptly and at its own expense, the Developer will take all practical steps and otherwise do all things necessary to procure:
 - (1) the consent of each person who:
 - (A) has an estate or interest in the Land registered under the *Real Property Act 1900* (NSW); or
 - (B) is seized or possessed of an estate or interest in the Land; and
 - (2) the execution of any documents; and
 - (3) the production of the relevant duplicate certificates of title,to enable the registration of this deed against the title to the Land in accordance with clause 7.2(a).
- (c) Promptly after the Developer becomes the registered proprietor of the Acquired Land and at its own expense, the Developer will undertake the steps referred to in clause 7.2(b) with respect to the Acquired Land.
- (d) After the Development Consent is granted with respect to the Development the Developer, at its own expense, must take all practical steps and otherwise do anything that the Council reasonably requires to consolidate the Acquired Land with Lot 14 DP 625320 (being part of the Land).
- (e) The Developer must pay any reasonable costs incurred by Council in undertaking the registration of this deed in accordance with this clause 7.2.

7.3 Caveat

- (a) The Developer acknowledges and agrees that:
 - (1) when this deed is executed, Council is deemed to have acquired, and the Developer 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; and

- (2) it will not object to the Council lodging a caveat in the relevant folios of the Register for the Land nor will it 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, at the Developer's cost, must register a withdrawal of any caveat in respect of the Land within 10 Business Days after being requested to do so to enable the Developer to register any instrument intended to give effect to this deed.

7.4 Release and discharge

If the Developer requests Council to do so, Council will do all things necessary to remove this deed, or withdraw any caveat lodged by the Council, from the title of any part of the Land or Acquired Land if:

- (a) the Developer has provided all of the Contributions which are attributable to that part of the Land or the Acquired Land; or
- (b) the Developer has provided security to the satisfaction of Council with respect to any Contributions which are attributable to that part of the Land or the Acquired Land, but which have not been made at that time.

8 Review of this deed

The parties may agree to review this deed. Subject to the Act, 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 may be enforced by any party in any court of competent jurisdiction.
- (b) The Developer covenants with the Council that the Developer 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 Developer 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 Certificate

The Developer must lodge with the Council within 60 days of the grant of Development Consent with respect to the Development a Subdivision Certificate Application in respect of the Acquired Land referred to in the Minor Boundary Realignment Plan.

10.3 Construction Certificate

Prior to the issue of a Construction Certificate in respect of the Road Works, the Developer must:

- (a) submit detailed plans of the Road Works which are not inconsistent with the plans attached as Annexure B to the relevant road authority for approval (**Road Works Plans**)
- (b) obtain details of inspections required by the relevant road authority; and
- (c) provide evidence to Council of approval of those Road Works Plans by the relevant roads authority.

10.4 Occupation Certificates

Prior to the issue of any Occupation Certificate in respect to the Development, the Developer must:

- (a) lodge with the Council an application for a Subdivision Certificate with respect to a plan which when registered will create the Council Lots as separate lots; and
- (b) complete the Road Works in accordance with clause 2(a) of Schedule 2.

10.5 Compulsory Acquisition of the Designated Land

- (a) The Developer consents to the compulsory acquisition of the Council Lots:
 - (1) in accordance with the *Land Acquisition (Just Terms Compensation) Act* 1991 (NSW) (**Acquisition Act**); and
 - (2) on the terms set out in this clause 10.5.
- (b) The Council may only acquire the Council Lots compulsorily in accordance with the Acquisition Act if the Developer has acted on the Consent and fails to take the steps set out in this Planning Agreement to dedicate to the Council the land being the Council Lots.
- (c) If the Council acquires the Council Lots compulsorily in accordance with the Acquisition Act:
 - (1) the Developer agrees that the compensation payable to it on account of that acquisition under the Acquisition Act is \$1.00; and

- (2) the Council must complete that acquisition within twelve (12) months of the relevant Event of Default.
- (d) The parties agree that the provisions of this clause 10.5 are an agreement with respect to the compulsory acquisition of the Council Lots for the purpose of s30 of the Acquisition Act.

10.6 Delivery to Council of Bank Guarantee

The Developer must deliver to Council an unconditional bank guarantee in a form acceptable to the Council within the relevant time specified, and for the relevant Contribution Value set out in Schedule 5 (**Bank Guarantee**)

10.7 Council may call on Bank Guarantee

If the Developer fails to comply with any term of this deed, Council, without limiting any other avenues available to it, may call on the relevant Bank Guarantee without notice to the Developer to the extent necessary to meet any liability incurred by Council arising as a result of that failure.

10.8 Return of Bank Guarantee

Council must return the Bank Guarantee within one (1) month after the first to occur of:

- (a) the relevant stage of the Road Works for which the Bank Guarantee was provided has been completed to the satisfaction of Council in accordance with this deed; and
- (b) the determination of this deed.

10.9 Security

The parties agree and acknowledge that the restrictions on the issue of Occupation Certificates specified in clause 10.2, the provision of the Bank Guarantee(s) by the Developer under this clause 10, the registration of this deed and the lodgement of a Caveat over the Land and/or Acquired Land constitutes sufficient security for the provision of the Contributions by the Developer in accordance with this deed.

11 Defects

11.1 Defects Notice

- (a) Where any part of the Road Works have been completed but those Road Works contain a material defect which:
 - (1) adversely affects the ordinary use and/or enjoyment of the relevant Road Works; or
 - (2) will require maintenance or rectification works to be performed on them at some time in the future as a result of the existence of the defect,(**Defect**) then Council may issue a defects notice (**Defects Notice**) concerning the Defect but only within the Defects Liability Period.
- (b) A Defects Notice must contain the following information:
 - (1) the nature and extent of the Defect;

- (2) the work Council requires the Developer to carry out in order to rectify the Defect; and
- (3) the time within which the Defect must be rectified (which must be a reasonable time and not less than fourteen (14) days).

11.2 Developer to rectify Defects

- (a) The Developer must rectify the Defects contained within a Defects Notice as soon as practicable after receipt of the Defects Notice.
- (b) The Developer must follow the completion procedure set out in clause 5.2 of Schedule 2 in respect of the satisfaction of the Defects Notice.

11.3 Right of Council to Step-In

Council, at its absolute discretion, may enter upon the Land for the purpose of satisfying the Defects Notice where the Developer has failed to comply with a Defects Notice but only after giving the Developer seven (7) days written notice of its intention to do so.

11.4 Consequence of Step-In

If Council elects to exercise the step-in rights granted to it under clause 11.3 then:

- (a) Council may:
 - (1) enter upon any part of the Land that it requires access to in order to satisfy the obligations of the Developer in accordance with the Defects Notice; and
 - (2) rectify the relevant Defects in accordance with the Defects Notice; and
- (b) the Developer must not impede or interfere with Council in undertaking that work.

11.5 Costs of Council

Where Council exercises its step-in rights pursuant to clause 11.4, Council may call upon the Bank Guarantee(s) provided by the Developer and recover as a debt due in a court of competent jurisdiction any difference between the amount of the Bank Guarantee(s) and the costs incurred by the Council in rectifying the Defects.

12 Assignment and Dealing

The Developer 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, the Acquired Land (once acquired by it) or the Development otherwise than in accordance with the Assignment and Dealing Provisions.

13 Explanatory Note

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

14 Default in Performance

14.1 Events of default

The Developer commits an **Event of Default** if it breaches a term of this deed.

14.2 Consequences of Events of default

- (a) Where the Developer commits an Event of Default, Council may serve a notice on the Developer requiring the relevant breach to be rectified within a reasonable time, but in any event not less than sixty (60) Business Days of the date of the notice.
- (b) If the Developer fails to comply with any notice issued under paragraph (a) the Council may take any action against the Developer that is available to it on account of that breach.

15 Position of Council

15.1 Consent authority

The parties acknowledge that the Council is a consent authority with statutory rights and obligations pursuant to the terms of the Planning Legislation.

15.2 Deed does not fetter discretion

This deed is not intended to operate to fetter, in any unlawful manner:

- (a) the power of the Council to make any Law; or
- (b) the exercise by the Council of any statutory power or discretion, (Discretion).

15.3 Severance of provisions

- (a) No provision of this deed is intended to, or does, constitute any unlawful fetter on any Discretion. If, contrary to the operation of this clause 15, any provision of this document is held by a court of competent jurisdiction to constitute an unlawful fetter on any Discretion, the parties agree:
 - (1) they will take all practical steps, including the execution of any further deed, to ensure the objective of this clause 15 is substantially satisfied;
 - (2) in the event that paragraph (a)(1) cannot be achieved without giving rise to an unlawful fetter on a Discretion, the relevant provision is to be severed and the remainder of this deed has full force and effect; and
 - (3) to endeavour to satisfy the common objectives of the parties on relation to the provision of this deed which is held to be an unlawful fetter to the extent that it is possible having regard to the relevant court judgment.
- (b) Where the Law permits the Council to contract out of a provision of that Law or gives the Council power to exercise a Discretion, then if the Council has in this deed contracted out of a provision or exercised a Discretion under this deed, then to the extent of this deed is not to be taken to be inconsistent with the Law.

15.4 No obligations

Nothing in this deed will be deemed to impose any obligation on the Council to exercise any of its functions under the Act in relation to the Development, the Land or the Acquired Land in a certain manner.

16 General

16.1 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 16.1.
- (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.

16.2 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.

16.3 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.

16.4 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.

16.5 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.

16.6 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.

16.7 Counterparts

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

16.8 Legal expenses and stamp duty

- (a) The Developer must pay Council's reasonable legal costs and disbursements to a maximum sum of \$15,000 plus GST connection with the negotiation, preparation and execution of this deed.
- (b) For the purpose of clarity, paragraph (a) does not apply to any costs incurred by Council in the enforcement of this deed as a result of a breach of this deed by the Developer.
- (c) The Developer 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.

16.9 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.

16.10 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.

16.11 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 16.11(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 16.11(b)(1) or (2) applies.

16.12 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.

16.13 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.

16.14 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 Developer has:</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 Developer has made application denoted by Council as DA 13/2064.</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))	See clause 6: Exclusion of s94 and s94A of the Act only. s94EF does not apply as no Minister Contributions.
Consideration of benefits under this deed if s94 applies (s93F(3)(e))	Not Applicable see Clause 6
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 15
Registration of the agreement (s93H)	Yes. See clause 7.

Schedule 2 Contributions

See Clause 5

1 Dedication of Land

The Developer must dedicate the Council Lots to Council at no cost to Council.

2 The Road Works

The Developer, at its cost, must:

- (a) Carry out the following works (**the Road Works**) as shown on the plans attached at Annexure B:
 - (1) Intersection Works at the round about at Princes Highway and Central Ave (**Round About**).
 - (2) Internal service road from the Round About to enable vehicle access to the Development as per the submitted DA plans.
 - (3) Closure of northern service road, creation of cul-de-sac, ~~and~~ new entrance to Lot 102 and any required works at the service roads entry.
- (b) Complete each stage of the Road Works to the satisfaction of the Council by the time specified in Schedule 5.
- (c) Carry out and complete the Road Works:
 - (1) in accordance with the specification referred to in Schedule 5 for the relevant stage of the Road Works;
 - (2) in accordance with any relevant Development Consent;
 - (3) in accordance with any applicable requirements of, or consents issued by, any Authority;
 - (4) in accordance with any Australian Standards applicable to works of the same nature as each aspect of the Road Works; and
 - (5) in a proper and workmanlike manner complying with current industry practice and standards relating to each aspect of the Works.

3 Timing of Contributions

- (a) The Council Lots must be dedicated prior to or on the release of any Occupation Certificate in respect of the Development.
- (b) The Road Works must be completed before the issue of any Occupation Certificate in respect to the Development.

4 Standard of Works

- (a) The Developer must construct the Road Works for the Round About in accordance with any Approval issued by the Council.

- (b) The Developer 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.
- (c) Unless otherwise specified by the Council in writing, the design and construction of the Road Works must be carried out in accordance with the Development Consent for the Development.

5 Manner of Delivery

5.1 Dedication of Land

A Contribution comprising the dedication of the Council Lots is made when the Council Lots are vested in Council either by way of:

- (a) registration of a transfer of the Council Lots to Council under the *Real Property Act 1900* (NSW); or
- (b) dedication to Council in a plan registered at the NSW Land and Property Information Office.

5.2 Road Works

- (a) When the Developer considers that the Road Works, or any part of the Road Works, have been completed, they must send a notice to the Council accompanied by:
 - (1) complete works as executed plans (including a summary of capital costs); and
 - (2) a request for written certification from the Council that the Road Works (or the relevant part of them) 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 Developer that the Road Works (or the relevant part of them) have been completed as fit for purpose and in accordance with this deed; or
 - (2) notify the Developer of any additional information required or matter which must be addressed by the Developer prior to that certification being issued.
- (c) The Developer 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 the relevant part of them) have been completed.
- (d) Council will accept ownership, possession and control of the Road Works (or any part thereof) on the later to occur of:
 - (1) dedication to Council of the land upon which the Road Works are constructed; and
 - (2) provision of written certification to the Developer under clause 5.2(b)(1) of Schedule 2 that those works have been completed.

The Developer acknowledges and agrees 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.

6 Public Purposes

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

7 Payment/Adjustment by Council

- (a) The Council must pay a contribution or make an adjustment in accordance with this clause 7 of Schedule 2.
- (b) Council agrees to review how it will fund the shortfall of contributions it was expected to collect to the sum of \$272,000 towards Fire Service Provision and contribution management costs.
- (c) For the avoidance of doubt, nothing in this deed:
 - (1) requires the Council to make a payment towards the construction of the Road Works; 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 or the Acquired Land where this deed has been released and discharged in accordance with clause 7.4 of this deed, the Developer must not sell, transfer, or dispose of the whole or any part of its relevant right, title or interest in the Land, the Acquired 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 Developer'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 to the satisfaction of Council agreeing to perform the obligations of the Developer under this deed with respect to the relevant part of the Land being assigned;
- (d) any default by the Developer has been remedied or waived by the Council;
- (e) the Developer and the Transferee pay the reasonable costs in relation to the assignment; and
- (f) Council consents to the assignment, acting reasonably.

2 Further documents

The parties must, and the Developer 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 the Developer;
- (b) an easement or restriction as to user burdening or benefiting the Land or the Acquired Land; or
- (c) the sale of a lot created pursuant to a Subdivision Certificate contemplated by this Planning Agreement.

Schedule 5 Provision of Road Works


Item/Stage of Works	Specification	Time for Completion	Contribution Value	Timing of Bank Guarantee
<p>The Road Works</p> <p>The Developer, at its cost, must carry out the following works (the Road Works) as shown on the plans attached at Annexure B:</p> <ul style="list-style-type: none"> Intersection Works at the round about at Princes Highway and Central Ave (Round About). Internal service road from the Round About to enable vehicle access to the Development as per the submitted DA plans. Closure of northern service road, creation of cul-de-sac and new entrance to Lot 102 and any required works at the service roads entry. 	<p>Note: These standards are intended to act as a “base point” or minimum standard if there is an incomplete design or if the design (as submitted) is likely to evolve. The standards should be reviewed. Any current manuals, practices, policies etc which may impact on the Developer Works to be included here</p> <p>The priority should be to identify the most likely Council documents and then – if there are none applicable – the more generic Australian Standards.</p> <p>Section 1 General</p> <p>(a) The standards referred to in this Schedule 5 are included for information purposes only and as guide to the relevant standards for the general nature of the work of the identified as the Developers Works in this Agreement.</p> <p>(b) The Council makes no representation or warranty whatsoever as to the currency of the standards identified, or their application to the final design of any particular element</p> <p>(c) If any standard is replaced or supplemented, then a reference will be deemed to include any other standards as may replace or supplement that standard</p>	<p>Prior to the issue of a Construction Certificate in respect of the Road Works, the Developer must:</p> <ul style="list-style-type: none"> submit detailed plans of the Road Works which are not inconsistent with the plans attached as Annexure B to the relevant road authority for approval (Road Works Plans) and to obtain details of inspections required by the relevant road authority; and provide evidence to Council of approval of those Road Works Plans by the relevant roads authority. <p>All road works must be completed to the satisfaction of Council prior to the issue of an Occupation Certificate for the Development.</p>	<p>\$517,550.00</p>	<p>Prior to issue of a Construction Certificate for the Development.</p>


Signing page

Executed as a deed

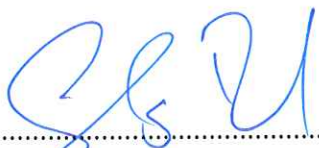
EXECUTED for an on behalf of)
Shoalhaven City Council by its)
authorised delegate, in accordance)
with a resolution of the Council made)
on:)
)
)
)
)
)
)


.....
Signature of Witness


.....
Signature of Authorised
Representative


.....
Print name of Witness

Executed by CVC Mezzanine Pty Ltd)
Pty Ltd ACN 110 359 692 in)
accordance with section 127 of the)
Corporations Act 2001 (Cth) by:)
)


.....
Signature of Director

ALEXANDER BEARD
.....
Print name of Director


.....
Signature of Director/Secretary

JOHN HUNTER
.....
Print name of Director/Secretary

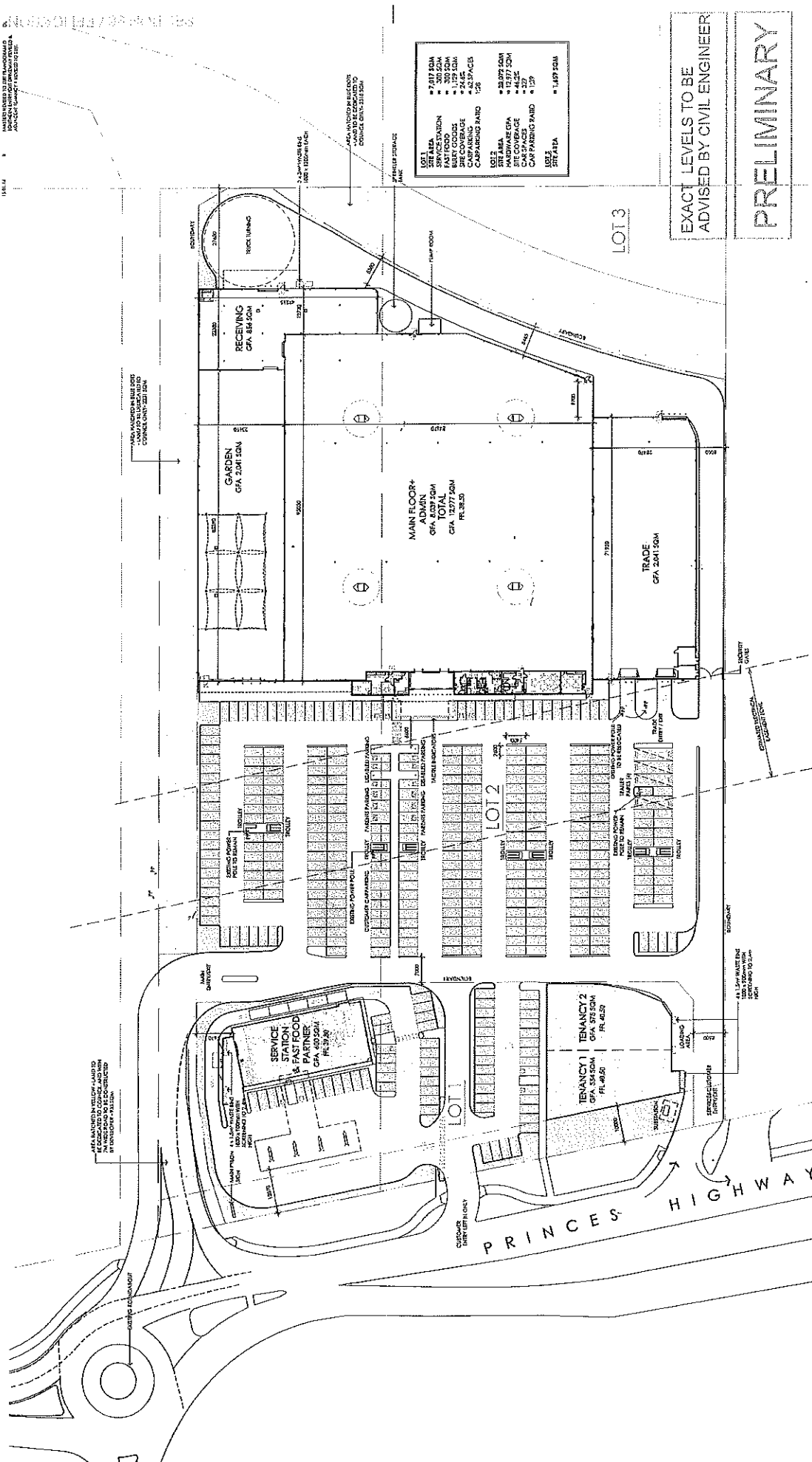
Annexure A Plan of the Land

Plans:

Minor Boundary Adjustment Plan APA ref 26010-04 dated 22.10.13







DA Site plan by Leffler Simes Architects


DATE	SALE AGREEMENT	CHK
7/26/13	POWER POLE PROCEED	543
7/26/13	PAINT 600-GRAMS EVIDENCE	543
	AGE LAST ORIGINAL	
7/26/13	POUNCE VOUCHER AT POLICE STATION	143
07/30/13	QUAD 600 PA	143
11/8/14	INVESTIGATION REPORT PROVIDED A ADVANCED FINANCIAL REPORT TO DMR	543



EXACT LEVELS TO BE ADVISED BY CIVIL ENGINEER

PRELIMINARY



Masters Home Improvement
Princes Highway, South Nowra, NSW

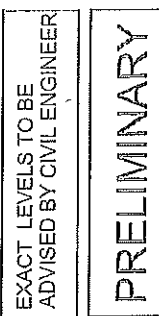
DA01/B
LEFFLER SIMES ARCHITECTS

DOB NO: 3107
DATE: JAN 2014

LEFFLER SIMES PTY LTD
 ABN 33 010 43 992
 SYDNEY
 7 YOUNG ST NEUTRAL BAY NSW 2089 T+61 2 93093044
 MELBOURNE
 LEVEL 2 - 18 OLIVER LANE VIC 3000 T+61 3 95513314
 AUSTIN
 10000 MCRAE ST DALLAS TX 75243 T+1 214 343 7211
 AUSTIN
 10000 MCRAE ST DALLAS TX 75243 T+1 214 343 7211



100 SCALE: 1:500 @ A1



10	20	40	60
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Abstract

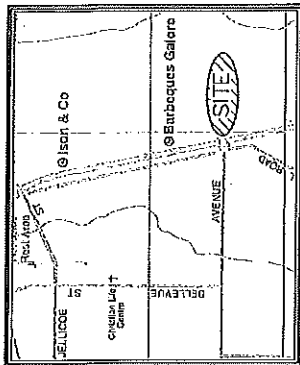
DA02/B LEFFLER SIMES ARCHITECT

SCALE 1/250 @ A1

100 120 140 160 180

Plan showing area of minor boundary realignment

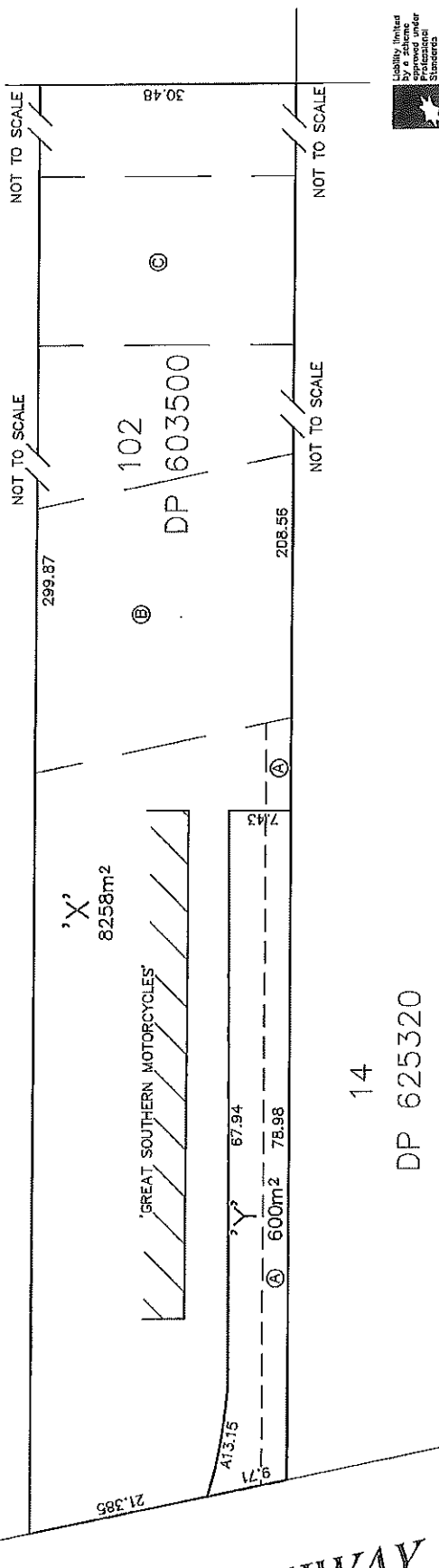
Locality Sketch



101
DP 603500

PRINCES
HIGHWAY

Map drawn and published by Cartodraft Aust P/L



NOTE:

This plan was prepared for CVC Mezzanine Finance Pty Ltd as an indicative design to accompany a subdivision certificate application to Shadown City Council for approval to a minor boundary realignment pursuant to C 2.75 SEPP Exempt and Complying Code 2008.

The information shown on this plan is not suitable for any other purpose.

The intention is for the existing Lot 102 DP603500 to be reduced to the area 'X' and for Lot 14 DP 625320 to be increased by the addition of the land 'Y' shown as 600m2.

The property dimensions and other physical features have been compiled from existing information and have not been verified by field survey.

The dimensions, areas and total number of lots shown on this plan are subject to field survey and also to the requirements of Council and any other authority which may have requirements under any relevant legislation.

In particular, no reliance should be placed on the information on this plan for detailed subdivision design or for any financial dealings involving the land.

Allen, Price and Associates therefore disclaims any liability for any loss or damage whatsoever or howsoever incurred, arising from any party using or relying upon this plan for any purpose other than as a document prepared for the sole purpose of accompanying an application to Council for subdivision and which may be subject to alteration for reasons beyond the control of Allen, Price and Associates.

Unless stamped by Council, this plan is not a plan of an approved subdivision.

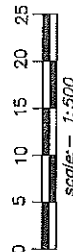
This note is an integral part of this plan.



PROPOSED BOUNDARY REALIGNMENT FOR ROAD CONSTRUCTION OVER LOT 102 DP 603500 AT PRINCES HIGHWAY, SOUTH NOWRA FOR CVC MEZZANINE FINANCE PTY LTD

- Ⓐ EXISTING EASEMENT FOR ELECTRICITY TRANSMISSION LINE 3.05 WIDE
- Ⓑ EXISTING EASEMENT FOR TRANSMISSION LINE 30.48 WIDE
- Ⓒ EXISTING RESTRICTION ON THE USE OF LAND

NOTES



RATIO 1:500 DATE 22.10.2013 REF: 26010-04

(AT A3 SIZE)

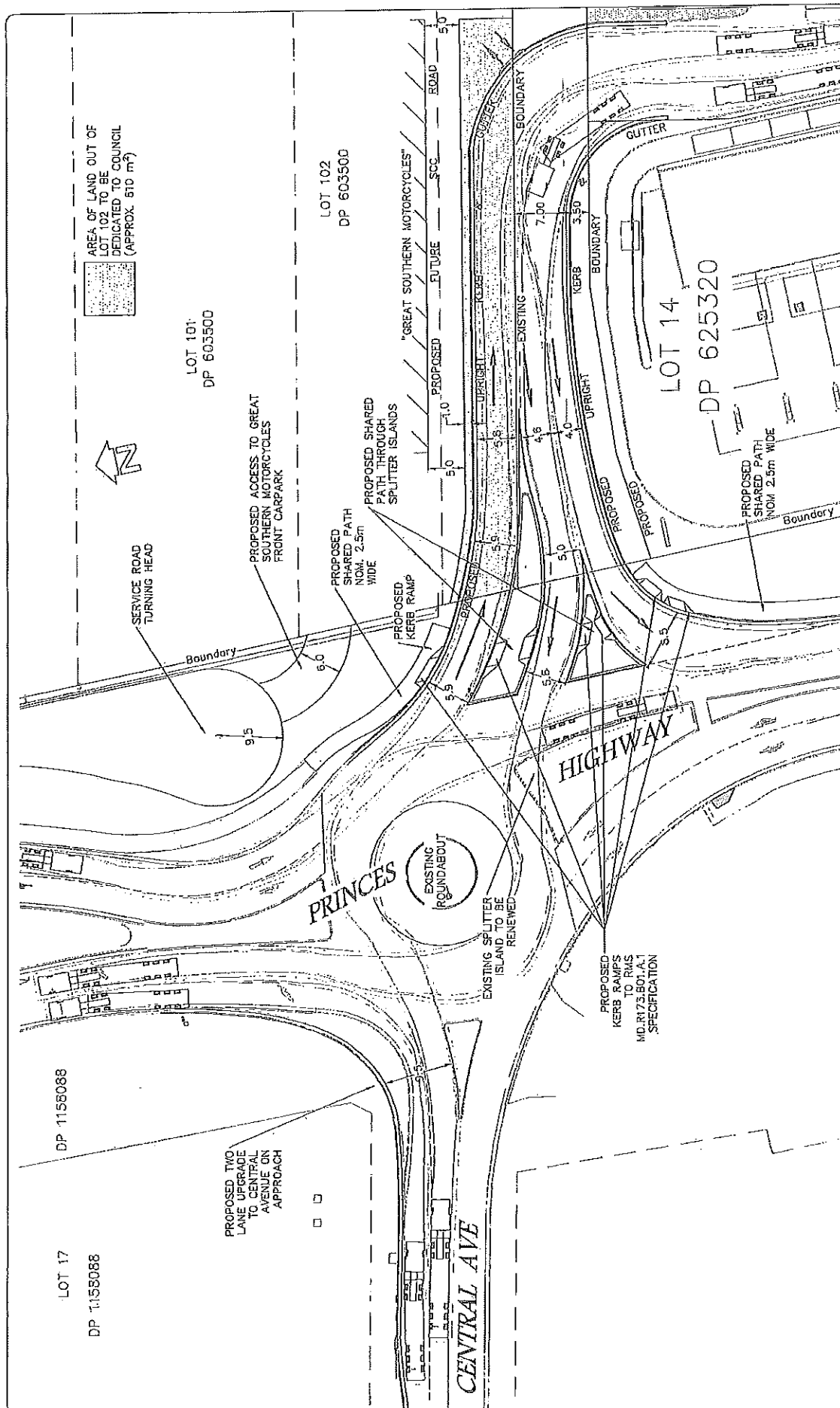
REV. 1

REVISION	BY	DATE

allen, price & associates
land and development consultants
75 plunkett street, nowra, nsw, 2541
phone: (02) 4421 4544 fax: (02) 4422 1821
consultants@allenprice.com.au www.allenprice.com.au

Annexure B Road Works

Plans showing Round About Works and internal access to Development with specifications including engineering sheets.



BEWARE!
THE CONTRACTOR IS TO VERIFY THE LOCATION OF ALL EXISTING SERVICES PRIOR TO COMMENCEMENT OF CONSTRUCTION AND SHALL BE RESPONSIBLE, AT THE CONTRACTOR'S EXPENSE, FOR ANY REPAIRS TO DAMAGE CAUSED DURING CONSTRUCTION.

NOT FOR CONSTRUCTION

VEHICLE MANOEUVRE LEGEND—ARTICULATED VEHICLE

- PART OF TRUCK FRONT WHEEL TRACKING MOVEMENT
- TRUCK FRONT WHEEL TRACKING MOVEMENT
- TRUCK REAR WHEEL TRACKING MOVEMENT
- TRUCK FRONT WHEEL TRACKING MOVEMENT (TURNING MANOEUVRE)
- TRUCK REAR WHEEL TRACKING MOVEMENT (TURNING MANOEUVRE)
- TRUCK FRONT WHEEL TRACKING MOVEMENT (TURNING MANOEUVRE)
- TRUCK REAR WHEEL TRACKING MOVEMENT (TURNING MANOEUVRE)

This drawing has been prepared using vehicle tracking software. It is not intended to be used for any other purpose. It is not intended to be used for any other purpose. It is not intended to be used for any other purpose.

PLAN SHOWING PROPOSED MANOEUVRING & LINEWORK AT PRINCES HIGHWAY & CENTRAL AVE INTERSECTION, FOR LOTS 14 DP625320, & LOTS 15 & 16 DP598678, PRINCES HIGHWAY, SOUTH NOWRA FOR CVC MEZZANINE FINANCE PTY LTD

<p>1 : 250 (AT A1 SIZE)</p>		<p>DATE OF PLAN 20 SEPT 2013</p>	
<p>NAME AUSTRALIAN HEART DATA SSM RL42498</p>	<p>DATE 20 SEPT 2013</p>	<p>BY [Signature]</p>	<p>DATE 20 SEPT 2013</p>
<p>PLAN 26010-408</p>			

Annexure C Explanatory Note

**Environmental Planning and Assessment Regulation 2000
(Clause 25E)**

Explanatory Note

Planning Agreement

Under s93F of the Environmental Planning and Assessment Act 1979 ('EP&A Act')

1. Introduction

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

The purpose of this Explanatory Note is to provide a plain English summary to support the notification of a draft planning agreement (**Planning Agreement**) between the parties under s93F of the *Environmental Planning & Assessment Act 1979* (NSW) (**EPA Act**).

2. Parties

The parties to the proposed Planning Agreement are:

- (a) Shoalhaven City Council (**Council**); and
 - (b) CVC Mezzanine Finance Pty Ltd (**Developer**),
- for the purposes of s93F of the EPA Act.

3. Description of the Subject Land

The land the subject of the proposed Planning Agreement is:

- (a) Lot 14 DP 625320, Lot 15 & 16 DP 598678 being 190-198 Princes Highway, South Nowra (the **CVC Land**)
- (b) Part Lot 102 DP 603500 being 188 Princes Highway, South Nowra (**Lot 102**),

4. Description of Proposed Development Application

The CVC Land and part Lot 102 are the subject of an Application for development consent for an approval to construct a Masters Home Improvement Centre, Service Station, Fast Food Restaurant and two bulky goods retailing tenancies with associated access and parking, the details of which are more fully set out in the Development Application DA 13/2064 (**Development**).

The Developer is proposing a Planning Agreement that will waive the requirement to pay monetary contributions that would otherwise be levied under the provisions of s94 of the EPA Act having regard to the value of the contributions proposed in the Planning Agreement to be made by the Developer.

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

The Objective of the Planning Agreement is to enable the provision of the proposed Quinns Land/Old Southern Road Link (Internal Service Road) as proposed by Shoalhaven City Council. The provision of this road would not otherwise be the case upon the strict application of the relevant Contributions Plan.

The Planning Agreement requires the developer to:

- Acquire Land being part of Lot 102 (**Acquired Land**)
- Dedicate Land to Council being part of the CVC Land as well as the Acquired Land (**Land Dedication**).
- Construct the following Road Works :
 - Intersection at the round about at Princes Highway and Central Ave (**Round About**).
 - Internal Service Road from the Round About to enable vehicle access to the Development in accordance with the submitted DA plans.
 - Closure of northern service road, creation of cul-de-sac and new entrance to Lot 102.

(collectively the **Road Works**).

The Road Works are not presently included in the Council's Section 94 Contributions Plan as proposed infrastructure for which contributions could be sought. .

Concept plans of the Road Works and Land Dedication are included as an Annexure to the Planning Agreement.

The estimated value of the Acquired Land, Dedicated Land and the cost of the Road Works exceeds the total contributions that would otherwise be required to be paid by the Developer under Council's applicable Section 94 Contributions Plan.

Assessment of the Merits of the Planning Agreement

6. The Planning Purposes Served by the Planning Agreement

The Planning Agreement will provide for dedication of land and construction of public road infrastructure. The dedicated land will become part of future public road infrastructure in this area. This infrastructure is required to adequately serve the subject development and the future development of the area.

Further, In accordance with section 93F(2) of the EPA Act, the Planning Agreement promotes the following public purpose:

- (a) the provision of public amenities and public services; and
- (b) the monitoring of the planning impacts of development of the Land.

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

By dedicating land and 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.

To encourage the provision of land for public purposes.

8. How the Planning Agreement Promotes the Public Interest

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

- (a) by requiring the dedication of land and the construction of public roads necessary for future development of land in the locality.
- (b) the proper management, development and conservation of land; and
- (c) the Planning Agreement will not preclude the public being provided with the opportunity for involvement and participation in development assessment. The public have been provided the opportunity to be involved with the development assessment and are invited to make comment on the Planning Agreement, particularly with regard to the public interest.

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

By requiring the dedication of land and 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.

10. How the Planning Agreement Promotes the Elements of the Council's Charter

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

- (1) The exhibition of the Planning Agreement facilitates the involvement of members of the public, while council staff were involved in the development of the Planning Agreement.
- (2) This explanatory note is prepared for the purposes of keeping the local community and the State government (and through it, the wider community) informed about its activities.
- (3) The Planning Agreement makes it clear that Council has a statutory role as consent authority for development and that the Planning Agreement is not

intended to unlawfully influence the exercise of its regulatory functions, ensuring that Council will act consistently and without bias, particularly where an activity of the Council is affected.

- (4) Ensuring that appropriate services for the community are managed efficiently and effectively by the carrying out of the Development to adequately serve future development of the area.
- (5) To have regard to the long term and cumulative effects of its planning decisions by ensuring the Development is carried out to a high standard.

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

The Land Dedication and construction of the Road Works were not anticipated under the Council's s94 Contributions Plan. The Council considers that the arrangement under the Planning Agreement represents a significant planning benefit that would otherwise not have been achieved by the strict application of the Contribution Plan. As the Planning Agreement has surplus value to contributions that would be charged under Council's Contributions Plan, entry into the Planning Agreement will have a positive effect on Council's capital works forward planning.

12. The Impact of the Planning Agreement on the Public or Any Section of the Public

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

- (a) necessary land and public road infrastructure will be provided; and
- (b) Council's capital works liability for the provision of public facilities in the future will be reduced, allowing funds to be allocated to other public facilities and services.