

SHOALHAVEN CITY COUNCIL

AND

ALBURY HOLDINGS SA

(ABN 66 132 878 132)

PLANNING AGREEMENT

COMERONG ISLAND ROAD, NUMBAA

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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	Albury Holdings SA (Developer)
Address	8A Collins Street, Merimbula, NSW 2548
Email Address	simone@shoalhavencitymarina.com.au
Contact	Simone Coombes

BACKGROUND:

- A. The Developer is the registered proprietor of the Land.
- B. As part of the Development, the Developer proposes to carry out the Disposal Works which will result in damage being caused to the Road.
- C. The Developer has made, or proposes to make, the Modification Application.
- D. The Developer has offered to make the Contributions if the Modification Application is granted.

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 the 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.

Contributions mean the monetary contributions required to be made by the Developer under this deed and as described in Schedule 2.

DA 84/2166 means the consent granted in 1989 for boat building and repairs, the excavation of boat mooring facilities and the erection of buildings ancillary thereto on the Land.

Development means the development, or any part of it approved under DA 84/2166 and any subsequent modifications of that approval, including, if granted, the Modification Application.

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

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

Disposal Works means the removal by the Developer of excess material left on the Land as a result of the Development by way of road transportation along the Road.

Dispute Resolution Procedures means the procedures set out in 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 B.

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

Land means the land contained in folio identifier 2/1077521..

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 any Authority.

Modification Application means an application to replace Condition 26 d) of DA 84/2166 (as inserted by DS12/1325 and modified by DS14/1168) with a requirement for the Developer to pay the Contributions in accordance with this deed.

Modifications means any previous modifications of DA 84/2166.

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

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

Road means the most easterly section of Commerong Island Road which commences 0.5km east of the intersection with Jindy Andy Lane and shown on the Locality Plan attached as Annexure A.

Security Amount means the amount of \$5,000.00

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 to or part 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 taken by novation) and permitted assigns.

(party) a reference to a party to a document includes that person'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 an defined word has a corresponding meaning.

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

(gender) words imparting 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 noting 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 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 issues 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.

(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, consent, request, 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 causses 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 any 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) 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 Agreement

This deed applies to both:

- (a) the Land; and

(b) the Development.

4. Operation of this deed

This deed becomes effective upon execution of it by all of the parties.
If the Modification Application is not granted by 30 November 2014, the Developer may rescind this deed *in futuro* by notice in writing to Council to that effect.

5. 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

This deed does not exclude the application of S94, S94A or s94EF to the Development.

7. Review of the 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.

8. 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 as per Schedule 3 of this deed.

9. Bank Guarantee

Delivery to Council of Bank Guarantee or Cash Deposit

Prior to commencing the Disposal Works, the Developer must deliver to Council an unconditional bank guarantee in a form acceptable to Council or alternatively a cash deposit for the Security Amount (**Bank Guarantee**).

Council may call on Bank Guarantee/Cash Deposit

If the Developer fails to comply with any term of this deed including any failure to pay any amount it is required to pay to Council by the time or times and in the manner set out in this deed, Council may, without limiting any other avenues available to it, call on the Bank

Guarantee/cash deposit without notice to the Developer to the extent necessary to meet that liability.

Top up of Bank Guarantee/Cash Deposit

If, Council calls on the Bank Guarantee/cash deposit at any time, Council will notify the Developer in writing and the Developer must ensure that the Bank Guarantee/cash deposit is replaced such that it equals the Security Amount.

Return of Bank Guarantee/Cash Deposit

Council must return the Bank Guarantee/cash deposit within one (1) month after:

- (a) the Developer has complied with clause 5; or
- (b) the determination of this deed.

10. Enforcement of Obligations

- (a) This deed may be enforced by any party in any court of competent jurisdiction.
- (b) The Developer covenants with Council that it 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 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.

11. 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 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. Registration of this deed

Registration

This deed will be registered on the title of the Land pursuant to section 93H of the Act.

Obligations of the Developer

The Developer must:

- (a) do all things necessary to allow the registration of this agreement to occur under this clause 13; and
- (b) pay any reasonable costs incurred by Council in undertaking that registration.

14. Position of Council

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.

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).

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 13, any provision of this deed 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 14 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.

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 or the Land in a certain manner.

15. General

15.1 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 paragraph (a).
- (c) Any communication will be taken to be received by the recipient:
 - (1) in the case of a letter, facsimile or e-mail, on the third (seventh, if sent outside the country in which the letter is posted) Business Day after the date of posting, transmission or sending;
 - (2) if the time of dispatch of a facsimile or time of sending of an e-mail 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.
- (d) All notices to be served on the Council must be served by being addressed and delivered to the General Manager at the Council's office at Bridge Road, Nowra as set out in page 6 of this deed.
- (e) All notices to be served on the Developer may be served by delivering the same to the Developer's registered address as set out in page 6 of this deed.

15.2 Relationship between parties

- (a) For the purposes of this clause 15.2, **Proscribed Relationship** means any of the following relationships:
 - (1) joint venturers;
 - (2) partners;
 - (3) agent and principal;

- (4) trustee and beneficiary; or
 - (5) employer and employee.
- (b) No term of this deed is to be construed so as to give rise to a Proscribed Relationship.
- (c) Each party must ensure that they do not conduct themselves so as to hold out, or otherwise represent, that a Proscribed Relationship exists.
- (d) A party cannot in any way or for any purpose:
- (1) bind another party; or
 - (2) contract in the name of another party.
- (e) 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.

15.3 Time for doing acts

- (a) If the time for doing any act or thing is 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 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.

15.4 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.

15.5 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 subject to conditions.

15.6 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.

15.7 Counterparts

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

15.8 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.

15.9 Representation and warranties

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

15.10 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;
 - (3) The provision is capable of being read down.
- (b) A word or provision must be severed if:
 - (1) Despite the operation of clause 12.11(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.

The remainder of this deed has full effect even if clause 15.10(b)(1) or (2) applies.

15.11 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 right of that party.

15.12 GST

"GST" refers to goods and services tax under A New Tax System (Goods and Services) Tax Act 1999 ("GST Act") and the terms used have the meanings as defined in the GST Act.

It is agreed that the Contributions and all other amounts agreed to be paid by the Developer to the Council, being the consideration for the supply expressed in this Licence, are inclusive of GST.

The Developer's liability under clause 5 is to reimburse the full amount of GST, disregarding and excluding the Council's entitlement to input tax credits or other credits or reimbursements for GST.

In respect of each payment by the Developer under clause 5, Council agrees to deliver to the Developer, as required under the GST Act, tax invoices in a form which complies with the GST Act and the regulations, to enable the Developer to claim input tax credits in respect of the taxable supply.

15.13 Governing law and jurisdictions

- (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.

SCHEDULE 1 SUMMARY OF REQUIREMENTS

Clause 2(b)

Subject and Subsection of the Act	The Planning Agreement
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Planning Amendment and / or Development Application (s93F(1))

The Landowners have:

- | | |
|---|----------|
| (a) Sought a change to a environmental planning instrument | (a) No. |
| (b) Made, or proposes to make, a Development Application | (b) Yes. |
| (c) Entered into an agreement with, or are otherwise associate with, a person, to whom paragraph (a) or (b) applies | (c) No. |

Description of the Land to which the Planning Agreement applies (s93F(3)(a))

The Planning Agreement applies to the land contained in folio identifier 2/1077521.

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 Planning 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))

No exclusion of s94 of the Act. See clause 6.

Consideration of benefits under this deed if s94 applies (s93F(3)(e))

No. See clause 6.

Mechanism for dispute resolution (s93F(3)(f))

Yes. See clause 8 and Schedule 3.

Enforcement of the agreement by a suitable means (s93F(3)(g)) Yes. See clauses 9, 10 and 13.

No obligation to grant consent or exercise functions (s93F(9)) See clause 11.

Registration of the agreement (s93H) See clause 13.

Clause 5

1 Nature and Extent of Contributions

(a) The Developer must pay to Council the amount of \$1.00 per tonne of material transported from the Land as part of the Disposal Works in accordance with this Schedule 2.

(b) The Contributions are to be increased (with the calculation to be made on each anniversary of the date of this deed) in accordance with the following formula:

$$A = B \times C$$

D

where:

A = the indexed amount;

B = the relevant amount as set out in this deed;

C = the Index most recently published before the calculation with respect to the relevant amount is to be made; and

D = the Index most recently published before the commencement date of this deed.

Index = the Consumer Price Index (All Groups) for Sydney published from time to time.

If A is less than B, then the amount of the relevant Contribution will not change.

(c) The full extent of the Contributions payable under this deed will be determined by the total volume of excess material allowed to be removed from the Land as part of the Disposal Works under the terms of any and all Modifications (including the Modification Application if granted).

2 Timing and Manner of Delivery of Contribution

(a) The Developer must submit to Council a monthly statement of all tonnage of excess material removed from the Land, and remit to Council the agreed amount per tonne of material removed from the Land by the 30th day of the following month.

(b) At the end of each financial year, the Developer will also submit to Council a copy of the Developer's annual financial statements as prepared and submitted to the ATO and to the ASIC, containing the account of all excess material removed from the Land as part of the Disposal Works.

(c) The Developer will further facilitate Council's invoicing of the Contributions payable under this deed by:

- (1) Keeping and maintaining adequate daily and monthly records of the volume of material loaded on each vehicle departing from the Land.
- (2) Keeping and maintaining adequate daily and monthly records and details of each vehicle that departs from the Land as part of the Disposal Works.
- (3) Keeping and maintaining adequate daily and monthly records of the total volume of excess material loaded by the Developer's loading equipment onto all vehicles for removal by road transportation from the Land.
- (4) Provide to Council within 14 days of written request, certified copies of the original records made and held by the Developer under paragraphs (1) through to (3).

If the Developer fails to comply with this paragraph (c), Council may estimate the tonnage of material removed from the Land by the Developer as part of the Disposal Works for the purpose of calculating the Contributions payable and any such estimate is final and binding on the Developer as the tonnage of material removed from the Land.

1 Notice of Dispute

Except for a dispute arising, in or as a consequence of a review under clause 7 of this deed, if a dispute between the parties arises in connection with this deed or its subject matter, then any party may give to the other party a Notice of Dispute in writing, adequately identifying and providing details of the dispute.

2 Further Steps Required Before Proceedings

Any dispute arising between the parties 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 has not resulted in settlement of this dispute, any party may, with the prior written consent of the 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, and:

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

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 allow the other side to construe this greater understanding as bias or as 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 in which to make further submissions;
- (g) Issue a final certificate stating the expert's determination; and
- (h) Act with expedition 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 within a time period specified by the expert give the expert:

- (a) A short statement of facts;
- (b) A description of the dispute;
- (c) Any other information, 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 in 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 arbitration.

9 Final Determination of Expert

- (c) The parties agree that the final determination by the expert will be final and binding upon them.
- (d) 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.
- (e) 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 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 document, information or other material disclosed to them during or in relation to the expert determination or mediation for a purpose other than the expert determination or mediation.

SCHEDULE 4

ASSIGNMENT AND DEALING PROVISIONS

Clause 11

1 Right to Assign Interest

The Developer 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 (**Assignment**) to another person (**Transferee**), unless before it completes that Assignment:

- (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 incurred by Council 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 4 do not apply to:

- (a) a mortgage granted by the Developer; or
- (b) an easement or restriction as to user burdening or benefiting the Land.

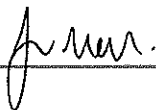
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Executed as a deed

IN WITNESS WHEREOF the parties have hereunto signed their names and affixed their seals on the day and year first hereinbefore written.

EXECUTED for and on behalf of
Shoalhaven City Council by its
authorised delegate, in accordance with a
resolution of the Council made on [insert
date]:

)
)
)
)
)



Signature of Witness

JUDEE NOLAN

Print name of Witness in FULL



Signature of Authorised
Representative

RUSSELL DESMOND PIGGIN

Print name of Authorised
Representative in FULL

EXECUTED for and on behalf of the
Developer by its authorised delegate:

)
)
)
)
)

Alan

Signature of Witness

ALAN COOMBES

Print name of Witness in FULL

Simone Coombes

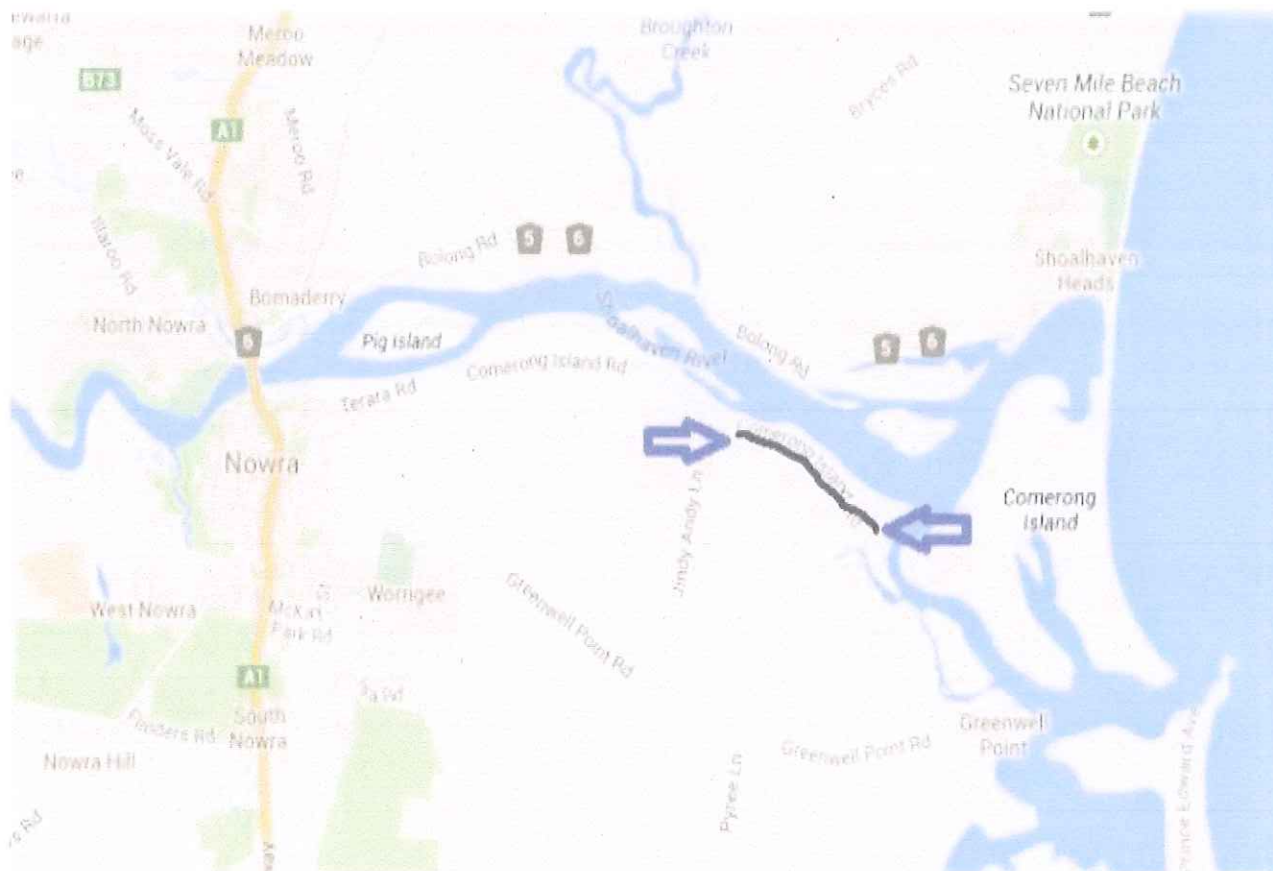
Signature of Authorised
Representative

SIMONE ADELE COOMBES

Print name of Authorised
Representative in FULL

Annexure A

Locality Plan



Map showing section of Comerong Island Road that is the subject of this Planning Agreement. This section of Comerong Island Road is approximately 3 km long, starts 0.5km east of Jindy Andy Lane and ends at the development site, 1178 Comerong Island Road.

ANNEXURE B

EXPLANATORY NOTE

Explanatory Note

Draft Planning Agreement

Under s93F of the Environmental Planning and Assessment Act 1979 (EPA 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 Planning Agreement are:

- (a) Shoalhaven city council (**Council**); and
- (b) Albury Holdings SA ABN 66 132 878 132 (**Developer**).

3. Description of the Subject Land

- (a) The land the subject of the Planning Agreement is Lot 2 in Deposited Plan 1077521 (**Land**), Comerong Island Road in Numbaa;
- (b) The Land is subject to Development Consent 84/2166 (**Existing Development Consent**) granted by the Council.

4. Description of Proposed Development Application

The Developer is proposing to apply for modification of the Existing Development Consent and project approval that will:

- (a) allow the removal of all excess material from the Land by way of road transportation along Comerong Island Road, Numbaa (**Road**);
- (b) remove obligations of the Developer to:
 - (1) obtain a dilapidation report; and
 - (2) provide a bank guarantee,

- (c) in respect of the Road and the works to be conducted in respect of the Road under Condition 26 d) of the Existing Development Consent (as inserted by DS12/1325); and will not remove the existing requirement to pay s94 contributions related to the approved development and provide sufficient security for payment of those contributions under the Planning Agreement.

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

The Planning Agreement requires the Developer to pay a monetary contribution of \$1.00 for every tonne of excess material removed from the Land by road transportation along the Road (**Monetary Contribution**).

The Road is a rural road servicing the farming and other communities of Numbaa. It is used on a daily basis by heavy vehicles carting farming supplies and products to and from the existing farming operations in the area and along the Road.

Including school buses, on average, seven (7) heavy vehicle movements take place along the Road on a daily basis; and an estimated 600 cattle crossings per day are made over the section of the Road that is the subject of this Planning Agreement. Extensive research proves the detrimental effects of animal manure (ammonia) on bituminous road surfaces and the detrimental effects of heavy vehicles upon road surfaces.

Council has not been able to implement a major maintenance program for the Road due to other more pressing road infrastructure needs within the Shoalhaven Local Government Area.

The provision of the Monetary Contribution will allow Council to implement a program of ongoing maintenance of the Road; and will also enable Council to better manage the matching of the timing of the contributions with the required maintenance programme.

6. Assessment of the Merits of the Planning Agreement

The Planning Purposes Served by the Planning Agreement

The Planning Agreement will provide contributions towards the maintenance and development of public road infrastructure. This infrastructure is required to adequately serve the subject development and the existing agricultural and residential activities in the area.

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

By providing for the maintenance and development of public road infrastructure that will serve the current and 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.
- (c) To encourage the provision of land for public purposes.

How the Planning Agreement Promotes the Public Interest

The Planning Agreement promotes the public interest by requiring the contribution of financial resources towards the maintenance and development of public roads necessary for the development of the Land.

How the Planning Agreement Promotes the Objects of the Local Government Act 1993 (NSW) (LG Act)

By requiring contribution towards the maintenance and development of public road infrastructure that will serve the needs of current and future residents, the Planning Agreement would give 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 Planning Agreement promotes the objects set out in s7 of the LG Act.

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 LG Act as follows:

- (a) 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.
- (b) 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.
- (c) 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.
- (d) 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.

Whether the Planning Agreement Conforms with the Authority's Capital works Program

The maintenance and development of the Road has not been anticipated under Council's current s94 Contributions Plan. Council considers that the arrangement under the Planning Agreement represents a reduction in Council's capital works liability for the Road and will have a positive effect of Council's capital works forward planning.

Under the s94 Contributions arrangements in place at the time of the development applications determination in 1989, the Road was to be repaired and maintained after the completion of the approved development. Under the Planning Agreement, a programme of ongoing maintenance and development is able to be implemented during the course of use of the Road where this use is related to the activities that will occur throughout the process of development of the approved project. This will allow for the acceleration of the maintenance and development of the Road as well as for the effect of further repairs after the approved development has been completed at an unspecified time in the future.

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

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

- (a) Contributions towards maintenance and development of public road infrastructure will be provided; and
- (b) Council's capital works liability for the Road will be reduced, allowing Council funds to be allocated to other public facilities and services.