

Dated

Planning agreement

Parties

Shoalhaven City Council (Council)
(ABN 59 855 182 344)

RG Property Ten Pty Ltd (Developer)
(ACN 601 089 329)

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Planning agreement dated

Parties

Shoalhaven City Council ABN 59 855 182 344
of City Administration Centre, 36 Bridge Rd, Nowra 2541 NSW
(Council)

RG Property Ten Pty Ltd ACN 601 089 329
of Suite 1401, Level 14, Pitt Street, Sydney NSW 2000
(Developer)

Introduction

- A** On or around 6 October 2015 the Developer lodged the Development Application with Council for the Development.
- B** On 9 August 2016 Council granted consent to the Development Application.
- C** Council wishes to carry out road upgrade works to the intersection of Princes Highway and Plunkett Street, Nowra.
- D** In connection with the Development, the Developer proposes to enter into this Agreement to make the Monetary Contribution . The Monetary Contribution is to be applied towards the road improvements at Plunkett Street, Nowra as described in this Agreement.
- A** This Agreement describes the payment comprising the Monetary Contribution and provides for the manner in which, and the terms upon which, the Developer is to provide the Monetary Contribution.

It is agreed

1 Definitions and interpretation

1.1 Definitions

In this Agreement:

- (1) **Act** means the *Environmental Planning and Assessment Act 1979* (NSW);
- (2) **Agreement** means this document, including any schedule or annexure to it, signed by the parties;
- (3) **Business Day** means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the place where an act is to be performed or a payment is to be made;
- (4) **Construction Certificate** means a construction certificate within the meaning of section 109C(1)(b) of the Act;
- (5) **Confidential Information** means any information and all other knowledge at any time disclosed (whether in writing or orally) by the parties to each other, or acquired

by the parties in relation to the other's activities or services which is not already in the public domain and which:

- (a) is by its nature confidential;
- (b) is designated, or marked, or stipulated by either party as confidential (whether in writing or otherwise);
- (c) any party knows or ought to know is confidential; or
- (d) is information which may reasonably be considered to be of a confidential nature;

(6) **Council's Discretion** means:

- (a) the Council's power to make any law; or
- (b) the Council's exercise of any statutory power or discretion;

(7) **Development** means the development described in Item 2 in Schedule 1; and

(8) **Development Application** means Development Application DA15/2291, being the development application (as defined in the Act) lodged by the Developer with Council on or about 6 October 2015 seeking development consent for the Development.

(9) **Development Consent** means the consent granted by Council in relation to the Development Application on 9 August 2016;

(10) **Governmental Agency** means any government and any governmental body whether:

- (a) legislative, judicial or administrative;
- (b) a department, commission, authority, tribunal, agency or entity;
- (c) commonwealth, state, territorial or local;

but does not include a governmental body in respect of any service or trading functions as distinguished from regulatory or fiscal functions;

(11) **Land** means the land described in Item 1 in Schedule 1;

(12) **Legislation** means the Act and the *Local Government Act 1993* (NSW);

(13) **LPI** means the Office of Land and Property Information, New South Wales;

(14) **Monetary Contribution** means an unendorsed bank cheque for \$100,000 payable to the Council;

(15) **Occupation Certificate** has the same meaning as under the Act;

(16) **Regulations** means the *Environmental Planning and Assessment Regulation 2000* (NSW);

(17) **Road Upgrade Works** means the future upgrade of the intersection of Princes Highway and Plunkett Street, Nowra.

1.2 Interpretation

- (1) Reference to:
 - (a) one gender includes the others;
 - (b) the singular includes the plural and the plural includes the singular;
 - (c) a person includes a body corporate;
 - (d) a party includes the party's executors, administrators, successors and permitted assigns;
 - (e) a thing includes the whole and each part of it separately;
 - (f) a statute, regulation, code or other law or a provision of any of them includes:
 - (i) any amendment or replacement of it; and
 - (ii) another regulation or other statutory instrument made under it, or made under it as amended or replaced;
 - (g) dollars means Australian dollars unless otherwise stated; and
 - (h) an Item is to an item in Schedule 1.
- (2) "Including" and similar expressions are not words of limitation.
- (3) Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
- (4) Headings and any table of contents or index are for convenience only and do not form part of this Agreement or affect its interpretation.
- (5) A provision of this Agreement must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of the Agreement or the inclusion of the provision in the Agreement.
- (6) If an act must be done on a specified day which is not a Business Day, it must be done instead on the next Business Day.

1.3 Parties

- (1) If a party consists of more than 1 person, this Agreement binds each of them separately and any 2 or more of them jointly.
- (2) An obligation, representation or warranty in favour of more than 1 person is for the benefit of them separately and jointly.
- (3) A party which is a trustee is bound both personally and in its capacity as a trustee.

2 Planning agreement under the Act

- 2.1 The parties agree that this Agreement is a planning agreement governed by Subdivision 2 of Division 6 of Part 4 of the Act.

3 Application of this Agreement

- 3.1 This Agreement applies to the Land and to the Development.

4 Operation of this Agreement

- 4.1 This Agreement commences on the date on which all of the following have occurred:

- (1) all the parties have signed this Agreement;
- (2) public notice of the granting of the Development Consent has been given in accordance with the Act and the Regulations; and
- (3) the Developer notifies the Council in writing that it intends to commence the Development.

- 4.2 The Council must notify the Development Consent in accordance with the Act and Regulations in a timely manner.

5 Monetary Contribution by the Developer and expenditure by Council

- 5.1 The Developer must make the Monetary Contribution to the Council prior to the issue of a Construction Certificate for stage 2 of the Development, as described in the Development Application.
- 5.2 The Council must apply the Monetary Contribution towards the carrying out of the design, approval and construction of the Road Upgrade Works.

6 Application of s94 and s94A of the Act to the Development

- 6.1 This Agreement does not exclude the application of sections 94 and 94A of the Act to the Development Consent.

7 Registration of this Agreement

- 7.1 The parties agree that this Agreement shall not be registered on the title to the Land.

8 Bank guarantee for performance

- 8.1 At the time of execution of this Agreement the Developer must provide to the Council an unconditional and irrevocable written undertaking (**Bank Guarantee**):

- (1) issued by a bank as defined by the *Banking Act 1959* (Cth) or a financial organisation approved by the Council;
- (2) for the amount of \$100,000;

in favour of and on terms acceptable to the Council, as security for the performance by the Developer of its obligations under this Agreement.

- 8.2 The Developer must:

- (1) ensure that the Bank Guarantee is kept current and enforceable; and
 - (2) pay all expenses associated with the provision and maintenance of the Bank Guarantee.
- 8.3 The Developer agrees that the Council may make an appropriation from the Bank Guarantee upon giving the Developer 7 days' notice to the Developer if the Monetary Contribution is not paid prior to the issue of an Occupation Certificate in respect of the Development.
- 8.4 The amount appropriated by the Council under clause 8.3 must be applied towards carrying out the Road Upgrade Works.
- 8.5 The Council agrees that once the Developer has paid the Monetary Contribution to Council, Council will promptly return the Bank Guarantee within 14 days, or the remainder of the money secured under the Bank Guarantee (as the case may be), to the Developer, or as the Developer directs.

9 Dispute resolution

- 9.1 If a dispute arises in connection with this Agreement, a party to the dispute must give to the other party or parties to the dispute notice specifying the dispute and requiring its resolution under this clause 9 (**Notice of Dispute**).
- 9.2 The chief executive officers of each party, or their respective authorised senior representatives, must confer within 3 days after the Notice of Dispute is given to try to resolve the dispute and must negotiate in good faith for this purpose.
- 9.3 If the dispute is not resolved within 7 days after the Notice of Dispute is given to the other party or parties, a party at any time may commence proceedings in a Court of competent jurisdiction in relation to any dispute or claim arising under or in connection with this Agreement, or to enforce this Agreement.
- 9.4 This clause 9 continues in force even where the Agreement has been fully performed, terminated or rescinded or where the parties or any of them have been discharged from the obligation to further perform the Agreement for any reason.
- 9.5 This clause 9 applies even where the Agreement is otherwise void or voidable.
- 9.6 The parties must:
 - (1) keep confidential any information or documents disclosed under this clause; and
 - (2) only use any information or documents disclosed under this clause to attempt to resolve the dispute.

10 Confidentiality

- 10.1 The terms of this Agreement are not confidential. This Agreement may be exhibited by either party.
- 10.2 Except as stated in this Agreement, Council must not and must not permit any of its officers, employees, agents, contractors or related companies to use or to disclose any Confidential Information to any person without the prior written consent of the Developer.

10.3 If requested by a party, the other party must:

- (1) not issue, publish or authorise any media release, advertisement or publicity concerning this Agreement without obtaining the prior written consent of the other party; and
- (2) ensure that its officers, employees, agents, contractors and related companies do the same.

10.4 This clause 10 does not apply to any information which:

- (1) is generally available to the public (other than as a result of the wrongful disclosure by the Council); or
- (2) is required to be disclosed by any law.

11 Severability

11.1 If any provision in this Agreement is unenforceable, illegal or void or makes this Agreement or any part of it unenforceable, illegal or void, then that provision is severed and the rest of this Agreement remains in force.

12 No fetter

12.1 The parties:

- (1) acknowledge that the Council is a consent authority, having statutory rights and obligations under the Legislation;
- (2) do not intend this Agreement to fetter Council's Discretion.

12.2 If, contrary to the parties' intention, any provision in this Agreement is held by a court of competent jurisdiction to constitute an unlawful fetter on Council's Discretion:

- (1) the parties must take all practical steps, including the execution of any further documents, to ensure that the objective of this clause 12 is substantially satisfied; and
- (2) if clause 12.2(1) cannot be achieved without unlawfully fettering Council's Discretion, the relevant provision is severed and the rest of this Agreement remains in force.

12.3 If:

- (1) the Legislation permits the Council to contract out of a provision of that Legislation or gives the Council power to exercise Council's Discretion; and
- (2) the Council has in this Agreement contracted out of a provision or exercised Council's Discretion, then to that extent this Agreement is to be regarded as consistent with the Legislation.

13 Goods and services tax

13.1 Definitions

In this clause 13:

- (1) **GST** means GST as defined in *A New Tax System (Goods and Services Tax) Act 1999* as amended (**GST Act**) or any replacement or other relevant legislation and regulations; and
- (2) words or expressions used in this clause which have a particular meaning in the **GST law** (as defined in the GST Act, and also including any applicable legislative determinations and Australian Taxation Office public rulings) have the same meaning, unless the context otherwise requires.

13.2 No taxable supply

The parties believe that there is no GST liability in respect of the grant of the Development Consent by Council or the payment or provision of the Development Contribution because:

- (1) the Development Contribution is a monetary contribution:
 - (a) it is not consideration for the grant of the Development Consent by Council in accordance with section 81-5(2) of the GST Act; and
 - (b) the payment of a monetary Developer's Contribution is not a supply by the Developer under section 9-10(4) of the GST Act; and

13.3 If supply is a taxable supply

Despite clause 13.2, to the extent that the Commissioner of Taxation, a court or tribunal determines that any supply made under or in connection with this Agreement is a taxable supply, the GST exclusive consideration otherwise to be paid or provided for that taxable supply is increased by the amount of any GST payable in respect of that taxable supply and that amount must be paid at the same time and in the same manner as the GST exclusive consideration is otherwise to be paid or provided. A party's right to payment under this clause is subject to a valid tax invoice being delivered to the recipient of the taxable supply.

14 Further assurance

- 14.1 Each party must promptly at its own cost do all things (including executing and if necessary delivering all documents) necessary or desirable to give full effect to this Agreement.

15 Entire understanding

- 15.1 Subject to clause 15.2, this Agreement:

- (1) is the entire agreement and understanding between the parties on everything connected with the subject matter of this Agreement; and
- (2) supersedes any prior agreement or understanding on anything connected with that subject matter.

- 15.2 The explanatory note prepared in relation to this Agreement under clause 25E(1) of the *Environmental Planning and Assessment Regulation 2000* (NSW) may be used to assist in construing this Agreement.

16 Variation

- 16.1 An amendment or variation to this Agreement is not effective unless it is in writing and signed by the parties.

17 Waiver

- 17.1 A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.
- 17.2 The exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right.
- 17.3 A waiver is not effective unless it is in writing.
- 17.4 Waiver of a power or right is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given.

18 Costs and outlays

- 18.1 The Developer is to pay to the Council the Council's costs of preparing, negotiating, executing and stamping this Agreement and any document related to this Agreement within 7 days of a written demand by the Council for such payment.
- 18.2 The Developer is also to pay to the Council, Council's reasonable costs of enforcing this Agreement within 7 days of a written demand by the Council for such payment.

19 Notices

- 19.1 A notice or other communication connected with this Agreement (**Notice**) has no legal effect unless it is in writing.
- 19.2 In addition to any other method of service provided by law, the Notice may be:
- (1) sent by prepaid ordinary post to the address for service of the addressee, if the address is in Australia and the Notice is sent from within Australia;
 - (2) sent by prepaid airmail to the address for service of the addressee, if the address is outside Australia or if the Notice is sent from outside Australia;
 - (3) sent by email to the addressee; or
 - (4) delivered at the address for service of the addressee.
- 19.3 A certificate signed by a party giving a Notice or by an officer or employee of that party stating the date on which that Notice was sent or delivered under clause 19.2 is prima facie evidence of the date on which that Notice was sent or delivered.
- 19.4 If the Notice is sent or delivered in a manner provided by clause 19.2, it must be treated as given to and received by the party to which it is addressed:

- (1) if sent by post from within Australia to an address in Australia, on the 2nd Business Day (at the address to which it is posted) after posting;
 - (2) if sent by post to an address outside Australia or sent by post from outside Australia, on the 5th Business Day (at the address to which it is posted) after posting;
 - (3) if sent by email before 5pm on a Business Day at the place of receipt, on the day it is sent and otherwise on the next Business Day at the place of receipt; or
 - (4) if otherwise delivered before 5pm on a Business Day at the place of delivery, upon delivery, and otherwise on the next Business Day at the place of delivery.
- 19.5 If a Notice is served by a method which is provided by law but is not provided by clause 19.2, and the service takes place after 5pm on a Business Day, or on a day which is not a Business Day, it must be treated as taking place on the next Business Day.
- 19.6 A Notice sent or delivered in a manner provided by clause 19.2 must be treated as validly given to and received by the party to which it is addressed even if:
- (1) the addressee has been liquidated or deregistered or is absent from the place at which the Notice is delivered or to which it is sent; or
 - (2) the Notice is returned unclaimed.
- 19.7 Council's address for service and facsimile number are:
- Name : Shoalhaven City Council
 Attention : The General Manager
 Address : P.O. Box 42
 Nowra NSW 2541 Australia
 Email :
- 19.8 Developer's address for service and facsimile number are:
- Name : RG Property Ten Pty Ltd
 Attention : Rhett Williams, CEO
 Address : Suite 1401, Level 4, 56 Pitt Street Sydney NSW 2000
 Email : rhett@rgproperty.com.au
- 19.9 A party may change its address for service or facsimile number by giving Notice of that change to each other party.
- 19.10 If the party to which a Notice is intended to be given consists of more than 1 person then the Notice must be treated as given to that party if given to any of those persons.
- 19.11 Any Notice by a party may be given and may be signed by its solicitor.

20 Governing law and jurisdiction

- 20.1 The law of New South Wales governs this Agreement.
- 20.2 The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and of the Commonwealth of Australia.

Schedule 1

Item 1 **Land**

18 Haigh Avenue (Lot 1 in DP 781046) and 103 Plunkett Street (Lot 1001 in DP 1176270), Nowra.

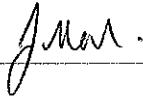
Item 2 **Development**

The partial demolition of existing structures, alterations to an existing building, construction of a service station (BP), food and drink premises (McDonalds), car parking, signage and associated works.

Executed as an agreement.

Signed for and on behalf of **Shoalhaven City Council** ABN 59 855 182 344 by its authorised representative in the presence of:

Signature of witness



JUDEE LYNNE NOLAN

Name of witness
(BLOCK LETTERS)

C/- SHOALHAVEN CITY COUNCIL
Address of witness

Signature of authorised representative



RUSSELL DESMOND PIGG
Name of authorised representative
(BLOCK LETTERS)

Executed by **RG Property Ten Pty Ltd** ACN 601 089 329 in accordance with section 127 of the *Corporations Act 2001*:

Director/company secretary

PETER S. RIFICI

Name of director/company secretary
(BLOCK LETTERS)

Director




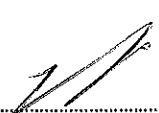
FERDINANDO ZATTAVIGNA
Name of director secretary
(BLOCK LETTERS)



DOCUMENT EXECUTION

Shoalhaven City Council

Received

DATE:	23-Feb-17	28 FEB 2017
ASSET:	Nowra	File No. _____
DOCUMENTS:	Nowra Planning Agreement (VPA)	Referred to: _____
LESSEE:	n/a	
EXECUTED BY TENANT:	n/a	
CHECKED BY DENTONS:	Yes	
CHECKED BY RG PROPERTY (RW/GR/MF):	Yes	
DEPOSIT PAID:	n/a	
BANK GUARANTEE PROVIDED:	n/a	
INSURANCES PROVIDED:	n/a	
SIGNED:		
	23-Feb-17	
..... Rhett Williams Date:	
		
..... Peter Rifici Date:	