

Planning Agreement

Environmental Planning and Assessment Act 1979

Property: Lot 172 DP 755923 and Lot 823 DP 247285, Berringer Road, Cunjurong Point Road and Sunset Strip, Manyana

Ozy Homes Pty Ltd

Shoalhaven City Council

Contents

| | | |
|------------|---|----------|
| 1 | Definitions and interpretation | 1 |
| 1.1 | Definitions | 1 |
| 1.2 | Interpretation | 2 |
| 2 | Operation and application of this deed | 3 |
| 2.1 | Operation | 3 |
| 2.2 | Planning agreement under the Act | 3 |
| 2.3 | Application | 3 |
| 3 | Application of sections 7.11, 7.12 and 7.24 of the Act | 3 |
| 4 | Development Contribution | 3 |
| 4.1 | The Developer undertakes to provide to the Council the Development Contribution in accordance with the provisions of Schedule 4 to this deed. | 3 |
| 5 | Interest | 3 |
| 5.1 | Interest for late payment | 3 |
| 6 | Enforcement | 4 |
| 6.1 | Security | 4 |
| | This deed does not include provision for a bond, guarantee or other means of enforcement for a breach of the agreement by the Developer. Subject to the provisions of clause 8, nothing in this deed prevents the Council from commencing proceedings in a court of competent jurisdiction for a breach of the deed by the Developer. | 4 |
| 7 | Registration | 4 |
| 7.1 | Registration of deed | 4 |
| 7.2 | Evidence of Registration | 4 |
| 7.3 | Removal of Deed | 5 |
| 7.4 | Interest in Land | 5 |
| 7.5 | Right to lodge caveat | 5 |
| 8 | Dispute Resolution | 5 |
| 8.1 | Not commence | 5 |
| 8.2 | Written notice of dispute | 5 |
| 8.3 | Attempt to resolve | 5 |
| 8.4 | Mediation | 5 |
| 8.5 | Court proceedings | 6 |
| 8.6 | Not use information | 6 |
| 8.7 | No prejudice | 6 |
| 9 | GST | 6 |
| 9.1 | Intention of the parties | 6 |
| 9.2 | Consideration GST exclusive | 6 |
| 10 | Assignment and transfer | 6 |
| 9.1 | Right to assign or novate | 6 |
| 10.2 | Right to transfer Land | 6 |
| 11 | Capacity | 7 |
| 11.1 | General warranties | 7 |
| 12 | General Provisions | 7 |
| 12.1 | Entire deed | 7 |
| 12.2 | Variation | 7 |
| 12.3 | Waiver | 7 |
| 12.4 | Further assurances | 7 |

| | | |
|-------------------|---------------------------------|-----------|
| 12.5 | Time for doing acts | 7 |
| 12.6 | Governing law and jurisdiction | 8 |
| 12.7 | Severance | 8 |
| 12.8 | Preservation of existing rights | 8 |
| 12.9 | No merger | 8 |
| 12.10 | Counterparts | 8 |
| 12.11 | Relationship of parties | 8 |
| 12.12 | Good faith | 8 |
| 12.13 | No fetter | 8 |
| 12.14 | Explanatory note | 8 |
| 12.15 | Expenses and stamp duty | 9 |
| 12.16 | Notices | 9 |
| Schedule 1 | | 10 |
| Schedule 2 | | 12 |
| Schedule 3 | | 13 |
| Schedule 4 | | 14 |
| 1 | Development Contribution | 14 |
| | Execution Page | 15 |

This deed is dated

Parties:

Shoalhaven City Council (Council)

of 36 Bridge Road, Nowra, New South Wales 2541

Ozy Homes Pty Ltd (ACN 163 519 079) (Developer)

of Level 1/58 Restwell St, Bankstown NSW 2200

Introduction:

- A. The Developer proposes to carry out the Development on the Land.
- B. On 8 July 2007, the Minister for Planning approved the Development Application for the Development and issued the Consent.
- C. Condition B28 of the Consent requires that prior to the issue of a Construction Certificate the Developer will enter into a planning agreement with Council pursuant to section 93F (now 7.4) of the Act.
- D. The purpose of this agreement is to give effect to condition B28 of the Consent.

It is agreed:

1 Definitions and interpretation

1.1 Definitions

In this deed, unless the context clearly indicates otherwise:

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

Address for Service means the address of each party appearing in Schedule 2 or any new address notified by any party to all other parties as its new Address for Service.

Agreement means this document, including any schedule or annexure to it, signed by the parties.

Business Day means any day that is not a Saturday, Sunday, public holiday or bank holiday in Sydney, and concludes at 5 pm on that day.

Consent means the conditions of consent for the Development issued by the Minister for Planning on or about 8 July 2007.

Contribution Amount means the amount of the monetary contribution to be paid by the Developer as described in Schedule 4.

Council means Shoalhaven City Council.

Dealing means in relation to the Land, to sell, transfer, assign, mortgage, charge, dispose, encumber or otherwise deal with the Land in whole or part.

Deed means this document, including any schedule or annexure to it, signed by the parties.

Determination means the determination of Major Project Application No. 05-0059 made by the Minister for Planning on 8 July 2008

Developer means the Developer, unless otherwise specified in this deed.

Development means the proposed staged subdivision of the Land into approximately 182 residential lots and associated infrastructure works including roads, pathways, drainage, water quality controls works, removal of trees, landscaping and revegetation in accordance with the Development Application.

Development Application has the same meaning within the Act and also means the development application submitted to the Department of Planning titled Major Project No. 05-0059.

Development Contribution means the contributions to be provided by the Developer in accordance with Schedule 4.

Explanatory Note means the note exhibited with a copy of this deed when this deed is made available for inspection by the public pursuant to the Act, as required by the Regulation.

General Register of Deeds means the land register maintained under the *Conveyancing Act 1919* (NSW) and so titled.

GST means any form of goods and services tax payable under the GST Legislation.

GST Legislation means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Land means the land described in Schedule 3.

Mediation Program means the Mediation Program of the Law Society of New South Wales as published on its website and as varied from time to time.

Real Property Act means the *Real Property Act 1900* (NSW).

Register means the Torrens title register maintained under the *Real Property Act*.

Regulation means the *Environmental Planning and Assessment Regulation 2000* (NSW).

Subdivision Certificate has the same meaning as in the Act.

Tax means a tax, duty (including stamp duty and any other transaction duty), levy, impost, charge, fee (including registration fee) together with all interest, penalties, fines and costs concerning them.

1.2 Interpretation

In this deed unless the context clearly indicates otherwise:

- (a) a reference to **this deed** or another document means this deed or that other document and any document which varies, supplements, replaces, assigns or novates this deed or that other document;
- (b) a reference to **legislation** or a **legislative provision** includes any statutory modification, or substitution of that legislation or legislative provision and any subordinate legislation issued under that legislation or legislative provision,
- (c) a reference to a **body** or **authority** which ceases to exist is a reference to either a body or authority that the parties agree to substitute for the named body or authority or, failing agreement, to a body or authority having substantially the same objects as the named body or authority;
- (d) a reference to the **introduction**, a **clause** or a **schedule** is a reference to the introduction, a clause or a schedule of this deed;
- (e) **clause headings**, the **introduction** and the **table of contents** are inserted for convenience only and do not form part of this deed;
- (f) the **schedules** form part of this deed;
- (g) a reference to a **person** includes a natural person, corporation, statutory corporation, partnership, the Crown or any other organisation or legal entity;

- (h) a reference to a **natural person** includes their personal representatives, successors and permitted assigns;
- (i) a reference to a **corporation** includes its successors and permitted assigns;
- (j) a reference to a right or obligation of a party is a reference to a right or obligation of that party under this deed;
- (k) an **obligation** or **warranty** on the part of 2 or more persons binds them jointly and severally and an obligation or warranty in favour of 2 or more persons benefits them jointly and severally;
- (l) a requirement to do anything includes a requirement to cause that thing to be done and a requirement not to do anything includes a requirement to prevent that thing being done;
- (m) **including** and **includes** are not words of limitation;
- (n) a word that is derived from a defined word has a corresponding meaning;
- (o) **monetary amounts** are expressed in Australian dollars;
- (p) the singular includes the plural and vice-versa;
- (q) words importing one gender include all other genders;
- (r) a reference to a thing includes each part of that thing; and
- (s) 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.

2 Operation and application of this deed

2.1 Operation

This deed commences on the date that this deed is signed by all the parties.

2.2 Planning agreement under the Act

This deed constitutes a planning agreement within the meaning of section 7.4 of the Act and the parties agree on the matters set out in Schedule 1.

2.3 Application

This deed applies to:

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

3 Application of sections 7.11, 7.12 and 7.24 of the Act

The application of sections 7.11, 7.12 and 7.24 of the Act are excluded to the extent stated in Schedule 1.

4 Development Contribution

- 4.1 The Developer undertakes to provide to the Council the Development Contribution in accordance with the provisions of Schedule 4 to this deed.

5 Interest

5.1 Interest for late payment

- (a) If the Developer fails to pay a Development Contribution (as indexed in accordance with Schedule 4) due to Council on the due date for payment, the Developer must also pay to Council interest at a rate of 2% above the loan

reference rate charged by the Commonwealth Bank of Australia from time to time.

- (b) Interest is payable on the daily balance of amounts due from the due date for payment of those amounts until all outstanding amounts (including interest on those amounts) have been paid to Council.

6 Enforcement

6.1 Security

This deed does not include provision for a bond, guarantee or other means of enforcement for a breach of the agreement by the Developer. Subject to the provisions of clause 8, nothing in this deed prevents the Council from commencing proceedings in a court of competent jurisdiction for a breach of the deed by the Developer.

7 Registration

7.1 Registration of deed

- (a) Within 10 Business Days of receiving a copy of this deed executed by the Council, the Developer, at its own expense, is to take all practical steps and otherwise do anything to procure:
 - (i) the consent of each person, as required by the Registrar-General, who:
 - (A) has an estate or interest in the Land registered under the Real Property Act; or
 - (B) is seized or possessed of an estate or interest in the Land,to the registration of this deed on the title to the Land and to the terms of this deed; and
 - (ii) the execution of any documents;
 - (iii) the production of the relevant certificates of title; and
 - (iv) the lodgement of this deed in a registrable form at the NSW Land Registry Services for registration by the Registrar-General in the relevant folio of the Register for the Land.
- (b) The Developer will take all practical steps and otherwise do anything to procure the registration of this deed within three months of the date of this deed in the relevant folio of the Register for the Land, including promptly responding to any requisitions made by the Registrar-General in respect of this deed and/or any ancillary documents.

7.2 Evidence of Registration

- (a) The Developer must provide Council with evidence of the lodgement of this deed pursuant to clause 7.1(a)(iv) within 10 Business Days of such lodgement at the NSW Land Registry Services.
- (b) The Developer will provide Council with a copy of the relevant folio of the Register for the Land and a copy of the registered dealing containing this deed within 10 Business Days of registration of this deed.

7.3 Removal of Deed

The Developer is to do such other things as are reasonably necessary to remove any notation relating to this Agreement from the title to the Land once the Developer has completed its obligations under this Agreement or this Agreement is terminated or otherwise comes to an end for any other reason. To the extent that the Council's co-operation is required to enable the Developer to comply with this clause, such co-operation shall be promptly provided.

7.4 Interest in Land

The Developer represents and warrants that it is:

- (a) The owner of the Land; and
- (b) Legally and beneficially entitled to obtain consents and approvals and to compel any person referred to in or contemplated by clause 7.1(a)(i) to assist, cooperate and to otherwise do all things necessary for the Developer to comply with its obligations under clause 7.

7.5 Right to lodge caveat

- (a) Subject to clause 7.5(b) until such time as this deed is registered on the title of the Land in accordance with clause 7.1, the Developer acknowledges that this deed confers on the Council an interest in the Land and entitles the Council to lodge and maintain a caveat on the title to the Land to prevent any Dealing in respect of the Land.
- (b) If the Council lodges a caveat in accordance with clause 7.5(a), then the Council will do all things reasonably necessary to:
 - (i) ensure that the caveat does not prevent or delay the registration of this deed; and
 - (ii) remove the caveat from the title to the Land promptly, following registration of this deed in accordance with clause 7.1.

8 Dispute Resolution

8.1 Not commence

A party must not commence any court proceedings relating to a dispute unless it complies with this clause.

8.2 Written notice of dispute

A party claiming that a dispute has arisen under or in relation to this deed must give written notice to the other party specifying the nature of the dispute.

8.3 Attempt to resolve

On receipt of notice under clause 8.2, the parties must endeavour in good faith to resolve the dispute expeditiously using informal dispute resolution processes such as mediation, expert evaluation or other methods agreed by them.

8.4 Mediation

If the parties do not agree within 20 Business Days of receipt of notice under clause 8.2 (or any further period agreed in writing by them) as to:

- (a) the dispute resolution technique and procedures to be adopted;
- (b) the timetable for all steps in those procedures; or
- (c) the selection and compensation of the independent person required for such technique,

G.S.

the parties must mediate the dispute in accordance with the Mediation Program. The parties must request the President of the Law Society of NSW or the President's nominee to select the mediator and determine the mediator's remuneration.

8.5 Court proceedings

If the dispute is not resolved within 60 Business Days after notice is given under clause 8.2 then any party which has complied with the provisions of this clause may in writing terminate any dispute resolution process undertaken under this clause and may then commence court proceedings in relation to the dispute.

8.6 Not use information

The parties acknowledge the purpose of any exchange of information or documents or the making of any offer of settlement under this clause is to attempt to settle the dispute. No party may use any information or documents obtained through any dispute resolution process undertaken under this clause for any purpose other than in an attempt to settle the dispute.

8.7 No prejudice

This clause does not prejudice the right of a party to institute court proceedings for urgent injunctive or declaratory relief in relation to any matter arising out of or relating to this deed.

9 GST

9.1 Intention of the parties

The parties intend that no additional amounts will be payable on account of GST and no tax invoices will be exchanged between the parties.

9.2 Consideration GST exclusive

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this deed are exclusive of GST.

10 Assignment and transfer

9.1 Right to assign or novate

- (a) Prior to a proposed assignment or novation of its rights or obligations under this deed, the party seeking to assign its rights or novate its obligations (Assigning Party) must seek the consent of the Council and:
 - (i) satisfy the Council (acting reasonably) that the person to whom the Assigning Party's rights or obligations are to be assigned or novated (Incoming Party) has sufficient assets, resources and expertise required to perform the Assigning Party's obligations under this deed insofar as those obligations are to be novated to the Incoming Party;
 - (ii) procure the execution of an agreement by the Incoming Party with the Council on terms satisfactory to the Council (acting reasonably) under which the Incoming Party agrees to comply with the terms and conditions of this deed as though the Incoming Party were the Assigning Party; and
 - (iii) satisfy the Council, acting reasonably, that it is not in material breach of its obligations under this deed.

10.2 Right to transfer Land

- (a) The Developer must not sell or transfer to another person (Transferee) the whole or part of any part of the Land:

CS

- (i) on which this deed remains registered under section 7.6 of the Act; or
 - (ii) for which the Development Contribution required under this deed remains outstanding.
- (b) Notwithstanding clause 10.2(a) the Developer may sell or transfer the whole or any part of the Land to a Transferee if prior to the proposed sale or transfer the Developer:
 - (i) satisfies the Council, acting reasonably, that the proposed Transferee has sufficient assets, resources and expertise required to perform any of the remaining obligations of the Developer under this deed or satisfies the Council, acting reasonably, that the Developer will continue to be bound by the terms of this deed after the transfer has been effected;
 - (ii) procures the execution of an agreement by the Transferee with the Council on terms satisfactory to the Council, acting reasonably, under which the Transferee agrees to comply with the terms and conditions of this deed as though the Transferee were the Developer; and
 - (iii) satisfies the Council, acting reasonably, that it is not in material breach of its obligations under this deed.

11 Capacity

11.1 General warranties

Each party warrants to each other party that-

- (a) this deed creates legal, valid and binding obligations, enforceable against the relevant party in accordance with its terms; and
- (b) unless otherwise stated, it has not entered into this deed in the capacity of trustee of any trust.

12 General Provisions

12.1 Entire deed

This deed constitutes the entire agreement between the parties regarding the matters set out in it and supersedes any prior representations, understandings or arrangements made between the parties, whether orally or in writing.

12.2 Variation

This deed must not be varied except by a later written document executed by all parties.

12.3 Waiver

A right 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 does not constitute a waiver of that right, nor will 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.

12.4 Further assurances

Each party must promptly execute all documents and do everything necessary or desirable to give full effect to the arrangements contained in this deed.

12.5 Time for doing acts

- (a) If:
 - (i) the time for doing any act or thing required to be done; or

G.S.

(ii) 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 pm on the specified day, it is taken to have been done on the following Business Day.

12.6 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.

12.7 Severance

If any clause or part of any clause is in any way unenforceable, invalid or illegal, it is to be read down so as to be enforceable, valid and legal. If this is not possible, the clause (or where possible, the offending part) is to be severed from this deed without affecting the enforceability, validity or legality of the remaining clauses (or parts of those clauses) which will continue in full force and effect.

12.8 Preservation of existing rights

The expiration or termination of this deed does not affect any right that has accrued to a party before the expiration or termination date.

12.9 No merger

Any right or obligation of any party that is expressed to operate or have effect on or after the completion, expiration or termination of this deed for any reason, does not merge on the occurrence of that event but remains in full force and effect.

12.10 Counterparts

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

12.11 Relationship of parties

Unless otherwise stated:

(a) Nothing in this deed creates a joint venture, partnership, or the relationship of principal and agent, or employee and employer between the parties; and

(b) No party has the authority to bind any other party by any representation, declaration or admission, or to make any contract or commitment on behalf of any other party or to pledge any other party's credit.

12.12 Good faith

Each party must act in good faith towards all other parties and use its best endeavours to comply with the spirit and intention of this deed

12.13 No fetter

Nothing in this deed is to be construed as requiring the Council to do anything that would cause the Council to breach any of the Council's obligations at law and without limitation, nothing in this deed shall be construed as limiting or fettering in any way the discretion of the Council in exercising any of the Council's statutory functions, powers, authorities or duties.

12.14 Explanatory note

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

CS

12.15 Expenses and stamp duty

- (a) The Developer is to pay its own and Council's reasonable legal costs and disbursements in connection with the negotiation, preparation, execution and carrying into effect of this deed, capped to an amount of \$3,500.00.
- (b) The Developer must pay for all costs and expenses associated with the giving of public notice of this deed and the Explanatory Note in accordance with the Regulation.
- (c) The Developer must pay stamp duty and any other registration fees required or contemplated by or necessary to give effect to this deed.

12.16 Notices

- (a) Any notice, demand, consent, approval, request or other communication (Notice) to be given under this deed must be in writing and must be given to the recipient at its Address for Service by being:
 - (i) hand delivered; or
 - (ii) sent by prepaid ordinary mail within Australia; or
 - (iii) in the case of a Notice to be given by the Council, sent by email.
- (b) A Notice is given if
 - (i) hand delivered, on the date of delivery but if delivery occurs after 5pm New South Wales time or a day that is not a Business Day, is taken to be given on the next Business Day;
 - (ii) sent by prepaid ordinary mail within Australia, on the date that is 2 Business Days after the date of posting, or
 - (iii) sent by email:
 - (A) before 5 pm on a Business Day, on that Day;
 - (B) after 5 pm on a Business Day, on the next Business Day after it is sent, or
 - (C) on a day that it is not a Business Day, on the next Business Day after it is sent,
 - (D) and the sender does not receive a delivery failure notice.

CS

Schedule 1

Table 1 - Requirements under section 7.4 of the Act (clause 2.2)

The parties acknowledge and agree that the table set out below provides for certain terms, conditions and procedures for the purpose of the deed complying with the Act.

| Requirement under the Act | This Deed |
|---|--|
| <p>Planning instrument and/or development application - (section 7.4(1))</p> <p>The Developer:</p> <p>(a) has sought a change to an environmental planning instrument.</p> <p>(b) has made, or proposes to make, a development application.</p> <p>(c) has entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.</p> | <p>(a) No</p> <p>(b) Yes</p> <p>(c) No</p> |
| Description of land to which this deed applies - (section 7.4(3)(a)) | See Schedule 3 |
| Description of change to the environmental planning instrument to which this deed applies - (section 7.4(3)(b)(i)) | N/A |
| Description of Development to which this deed applies - (section 7.4(3)(b)(ii)) | See definition of Development in clause 1.1 |
| Nature and extent of the provision to be made by the Developer under the Agreement, the time or times by which the provision is to be made and the manner by which the provision is to be made - (section 7.4(3)(c)) | See Schedule 4 |
| Whether the development excludes (wholly or in part) or does not exclude the application of section 7.11 - (section 7.4(3)(d)) | The Development does not exclude the application of section 7.11. Condition E8 of the Consent has made provision for the payment of a contribution under section 7.11 of the Act |
| Whether the development excludes (wholly or in part) or does not exclude the application of section 7.12 - (sections 7.4(3)(d) and 7.4(3A)) | The Development does not exclude the application of section 7.12 of the Act. There is, however, no s.7.12 contribution payable under the Consent. |
| Whether the development excludes (wholly or in part) or does not exclude the application of section 7.24 - (section 7.4(3)(d)) | The Development does exclude the application of section 7.24 of the Act |
| Whether benefits under the Agreement are or are not to be taken into consideration in determining a development contribution under section 7.11 - (section 7.4(3)(e)) | The benefits under the Agreement are not to be taken into consideration for the purpose of the contribution under section 7.11. The contribution under section 7.11 has been |

G's

| Requirement under the Act | This Deed |
|--|--|
| | determined under condition E8 of the Consent. |
| Mechanism for Dispute Resolution - (section 7.4(3)(f)) | See clause 7 |
| Enforcement of this deed by a suitable means, such as the provision of a bond or guarantee, in the event of a breach of the agreement by the Developer - (section 7.4(3)(g)) | This agreement does not include provision for a bond or guarantee for a breach of the agreement by the Developer (see Clause 6). |
| No obligation to grant consent or exercise functions - (section 7.4(10)) | See clause 12.13 |
| Registration of the Planning Agreement - (section 7.6 of the Act) | Yes (see clause 7) |
| Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a construction certificate is issued - (clause 25E(2)(g) of the Regulation) | No. |
| Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before an occupation certificate is issued - (clause 25E(2)(g) of the Regulation) | No |
| Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a subdivision certificate is issued - (clause 25E(2)(g) of the Regulation) | Yes - see clause 1 of Schedule 4. |

CS

Schedule 2

Address for Service

Council

| | |
|---------|----------------------------------|
| Contact | The General Manager |
| Address | 36 Bridge Road Nowra NSW 2541 |
| Email | council@shoalhaven.nsw.gov.au |

Developer

| | |
|---------|---|
| Contact | Ghazi Sangari |
| Address | Level 1, 58 Restwell Street Bankstown NSW 2200 |
| Email | ghazi@ozyhomes.com.au |

G.S.

Schedule 3

Land (Clause 1.1)

| Lot | Deposited Plan | Folio Identifier |
|-----|----------------|------------------|
| 172 | 755923 | 172 / 755923 |
| 823 | 247285 | 823 / 247285 |

G.S.

Schedule 4

Development Contribution (clause 4)

1 Development Contribution

The Developer undertakes to provide the Development Contribution in the manner set out in the table below:

| Development Contribution | Value | Timing |
|---|-------------|------------------------------|
| Monetary contribution towards the extension of the community hall, Yulunga Reserve | \$36,134.00 | In accordance with Clause 3 |
| Monetary contribution towards upgrading foreshore facilities, including the provision of car parking | \$15,265.00 | In accordance with Clause 3 |
| Monetary contribution towards upgrade works to Bendalong Road and Inyadda Drive | \$56,160.00 | In accordance with Clause 3. |
| Monetary contribution towards the construction of a rural road type B intersection, at Bendalong Road and Inyadda Drive | \$12,721.00 | In accordance with Clause 3 |

2 Calculation of the Value of the Development Contribution

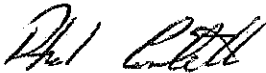
The Council and Developer acknowledge and agree that the total value of the Development Contribution is \$120,280.00 as detailed in the table above forming part of this Schedule. The Development Contribution is not subject to indexation by the Consumer Price Index or any other means of indexation. The total sum of the development contribution, whenever paid, is \$120,280.00

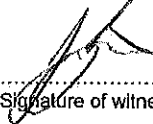
3 Payment of Developer Contributions

- (a) The Developer must pay to Council each Development Contribution amount prior to the issue of the Subdivision Certificate for Stage 1 of the Development.
- (b) The Developer must provide Council with not less than 10 Business Days' written notice of its intention to lodge an application for the Subdivision Certificate for Stage 1 of the Development.
- (c) The parties agree that the requirement to make a payment under this clause is a restriction on the issue of the relevant Subdivision Certificate within the meaning of section 6.15(1)(d) of the Act.

Execution Page

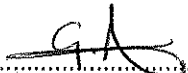
Executed by Shoalhaven City Council by its authorised officer.

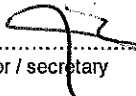

.....
Signature of the General Manager or delegate
Phil Costello
.....
Name of the General Manager or delegate - BLOCK LETTERS



.....
Signature of witness
JAMES BONNER
.....
Name of Witness – BLOCK LETTERS


42 Bridge Rd, Warran
.....
Address of witness

Executed by Ozy Homes Pty Ltd (ACN 163 519 079) in accordance with section 127 of the Corporations Act 2001


.....
Signature of director
Ghazi Sangari
.....
Name of Sole director– BLOCK LETTERS


.....
Signature of director / secretary
Mohamad Habi
.....
Name of director / secretary – BLOCK LETTERS


.....
Signature of witness
AHMAD WEHOB
.....
Name of Witness – BLOCK LETTERS


.....
Signature of witness
AHMAD WEHOB
.....
Name of Witness – BLOCK LETTERS

130 MARION ST BANKSTOWN
.....
Address of witness

136 MARION ST BANKSTOWN,
.....
Address of witness

Explanatory Note
Shoalhaven City Council
and
Ozy Homes Pty Ltd ACN 163 519 079
Planning Agreement

Introduction

The purpose of this explanatory note is to provide a plain English summary to support the notification of the draft planning agreement (the **Planning Agreement**) prepared under Subdivision 2 of Division 7.1 of Part 7 of the Environmental Planning and Assessment Act 1979 (the **Act**).

This explanatory note has been prepared jointly by the parties as required by clause 25E of the Environmental Planning and Assessment Regulation 2000 (the **Regulation**).

Parties to the Planning Agreement

The parties to the Planning Agreement are Shoalhaven City Council (Council) and Ozy Homes Pty Ltd ACN 163 519 079 (the **Developer**).

Description of the Subject Land

The Planning Agreement applies to:

- Lot 172 DP 755923; and
- Lot 823 DP 247285

at Berringer Road, Cunjurong Point Road and Sunset Strip, Manyana (**Subject Land**).

Description of the Proposed Development

The Developer is seeking to subdivide the Subject Land into 182 residential lots generally in accordance with the determination issued by the Minister for Planning on 8 July 2008 for Major Project Application No. 05-0059 (**Development**).

Summary of Objectives, Nature and Effect of the Planning Agreement

Condition B28 of the Minister's determination requires a Planning Agreement to be entered into with the Council, the terms of which require a monetary payment as indicated in the third column in the table below towards the provision of works described in the second column in the table below:

| <i>Item</i> | <i>Description</i> | <i>Amount</i> |
|--------------|--|---------------------|
| 1 | Extension of the Community Hall, Yulunga Reserve | \$36,134.00 |
| 2 | Upgrade Foreshore Facilities, Including the Provision of Car Parking | \$15,265.00 |
| 3 | Upgrade Works to Bendalong Road and Inyadda Drive | \$56,160.00 |
| 4 | Construction of a Rural Road Type B Intersection, Bendalong Road and Inyadda Drive | \$12,721.00 |
| Total | | \$120,280.00 |

The monetary contribution will be payable prior to a subdivision certificate. The requirement for the timing of the payment is set out in Schedule 4 to the Planning Agreement.

The Developer is not required to provide a Bank Guarantee. The Developer is required to register the Planning Agreement on the title to the Subject Land.

The objective of the Planning Agreement is to facilitate the delivery of the Developer's contributions towards the provision of works described in column 2 of the table above.

Assessment of Merits of Planning Agreement

The Planning Purpose of the Planning Agreement

In accordance with section 7.4(2) of the Act, the Planning Agreement serves the following public purposes:

- the provision of (or the recoupment of the cost of providing) public amenities or public services, and
- the provision of (or the recoupment of the cost of providing) transport or other infrastructure relating to land.

The Planning Agreement will provide a reasonable means of achieving the public purposes set out above. This is because it will ensure that the Developer makes appropriate contributions towards the provision of public amenities and infrastructure.

How the Planning Agreement Promotes the Public Interest

The Planning Agreement promotes the public interest by ensuring that an appropriate contribution is made towards the provision of public amenities and infrastructure including demand for public amenities and infrastructure that will arise from development of the Subject Land.

How the Planning Agreement Promotes the Objects of the Act

The Planning Agreement promotes the objects of the Act by encouraging:

- the promotion of the orderly and economic use and development of land.

The Planning Agreement promotes the object of the Act set out above by requiring the Developer to make a contribution towards the provision of public amenities and infrastructure.

How the Planning Agreement Promotes the Principles for Local Government

The Planning Agreement promotes the principles for Local Government (formerly the Council's Charter) by encouraging Council to manage land and other assets so that current and future local community needs can be met in an affordable way.

Requirements relating to Construction, Occupation and Subdivision Certificates

The Planning Agreement does not specify requirements that must be complied with prior to the issue of a construction certificate or an occupation certificate.

The Planning Agreement requires the Development Contribution to be paid prior to the issue of a relevant subdivision certificate and therefore contains a restriction on the issue of a subdivision certificate within the meaning of section 6.15 (1) (d) of the Act.

Whether the Agreement Conforms with the Council's Capital Works Program

The contribution will not be inconsistent with capital works to be implemented by the Council.

GS