

# Planning Agreement

*Environmental Planning and Assessment Act 1979*

**Minister administering the National Parks and Wildlife  
Act 1974**

ABN 20 770 707 468

**Enid Maude Hall**

ABN 33 580 175 147

*Shirley Kelly*

*E. Hall*

*Dr*

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Agreement made at **NSW** on **16/7/2020**

**Parties**      **Minister administering the National Parks and Wildlife Act 1974** ABN 20 770 707 468  
of Level 3, 84 Crown Street, Wollongong NSW 2500 ("**Minister**")

**Enid Maude Hall** ABN 33 580 175 147  
of 26 Abercrombie Crescent, Albion Park NSW 2527 ("**the Developer**")

### **Background**

- A. The Developer owns the Land, which includes the Onsite Environmental Land.
- B. The Developer intends to lodge with Council a Development Application for the Proposed Development.
- C. The Developer has sought an amendment to the LEP to, among other matters, rezone the Land in order to carry out the Proposed Development on the Land.
- D. The Developer has offered to make the Development Contribution to the Minister, in connection with the amendment to the LEP.
- E. Pursuant to the *National Parks and Wildlife Act 1974*, the Minister is a corporation sole for certain purposes (including dealing with land).
- F. The parties have therefore agreed to enter into this Agreement to enable the Developer to make the Development Contribution.

### **Operative provisions**

#### **1. Definitions and Interpretation**

##### **1.1 Definitions**

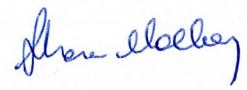


The meaning of capitalised terms and the provisions relating to the interpretation of this Agreement are as follows:

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

**Agreement** means this Planning Agreement.

**Authority** means any governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity and includes an accredited certifier accredited under the Building Professionals Act 2005 (NSW).

**Business Day** means any day except for Saturday or Sunday or a day which is a public holiday or a bank holiday in Sydney and concludes at 5pm on that day.

**Claim** means any allegation, debt, cause of action, liability, claim, proceedings, suit or demand of any nature however arising and whether fixed or unascertained, actual or contingent whether in law, in equity, under statute or otherwise.

**Consent Authority** has the same meaning as in the Act.

**Contamination** has the same meaning as in the *Contaminated Land Management Act 1997* (NSW).

**Contamination Consultant** means a suitably qualified consultant as agreed by the Minister.

**Conveyancing Act** means the *Conveyancing Act 1919* (NSW).

**CoRD Holder Consent** means the electronic document lodged through an ELNO that provides consent to the registration of instruments and plans.

**Council** means Shoalhaven City Council ABN 59 855 182 344 of 36 Bridge Street, Nowra NSW 2541.

**Development Application** has the same meaning as in the Act.

**Development Consent** has the same meaning as in the Act.

**Development Contribution** means the contributions to be provided by the Developer in accordance with Schedule 3.

**ELNO** has the same meaning as in the *Electronic Conveyancing National Law* (NSW).

**Explanatory Note** means the explanatory note required by the Regulation.

**Gazettal** means the publication on the NSW legislation website of an amendment to the LEP generally in accordance with the Planning Proposal.

**General Register of Deeds** means the land registry so entitled and maintained under the Conveyancing Act.

**GST** has the meaning it has in the GST Act.

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

**Land** means the land described in Schedule 2.

**LEP** means the *Shoalhaven Local Environmental Plan 2014*.

**NPW Act** means *National Parks and Wildlife Act 1974* (NSW).

**Land Subdivision** means a subdivision of the Land generally in accordance with the Proposed Development.

**Land Subdivision Plan** means the plan for the Land Subdivision contained in any Development Application submitted to the relevant Authority and which is

generally in accordance with the proposed Land Subdivision Plan attached to this Agreement and marked Annexure A.

**Onsite Environmental Land** means that part of the Land marked as “LAND TO BE TRANSFERRED TO THE MINISTER FOR THE ENVIRONMENT” on the proposed Land Subdivision Plan attached to this Agreement and marked Annexure A.

**Onsite Environmental Land Contribution** means the transfer or dedication of the Onsite Environmental Land to the Minister in accordance with Schedule 3 – Development Contribution of this Agreement.

**Onsite Environmental Land Transfer Date** means a date which is 36 months after Gazettal.

**Party** means a party to this Agreement, including their respective successors and permitted assigns.

**Plan of Subdivision** means a registered plan of subdivision within the meaning of section 195 of the Conveyancing Act.

**Planning Proposal** means the document titled ‘Planning Proposal – PP018 Shoalhaven Local Environmental Plan 2014 Beach Road, Berry’, Version 2.2 (Adopted for Finalisation), dated April 2020 relating to the Land.

**Proposed Development** means subdivision of the Land into no less than 29 lots comprising 28 rural-residential lots and 1 lot comprising the Onsite Environmental Land.

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

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

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

**Residential Accommodation** has the same meaning as residential accommodation under the Standard Instrument.

**Residential Lot** means a lot that forms part of the Land to be created by the registration of a:

- (a) Plan of Subdivision and is intended to be developed for Residential Accommodation; or
- (b) Strata Plan and has been or is being developed for Residential Accommodation,

but excluding the Onsite Environmental Land.

**Right of Access** means a right of access as defined in Part 11 of Schedule 4A to the *Conveyancing Act* 1919 (NSW).

**Standard Instrument** means the standard instrument prescribed by the *Standard Instrument (Local Environmental Plans) Order 2006* as amended from time to time.

**Strata Certificate** has the same meaning as in the Strata Schemes Act.

**Strata Plan** means a strata plan or strata plan of subdivision within the meaning of the Strata Schemes Act.

**Strata Schemes Act** means *Strata Schemes Development Act 2015* (NSW).

**Subdivision Certificate** means a certificate issued under section 6.4(d) of the Act.

**Taxes** means taxes, levies, imposts, charges and duties imposed by any Authority (including stamp and transaction duties) together with any related interest, penalties, fines and expenses in connection with them, except if imposed on, or calculated having regard to, the net income of the Minister or the Minister for Energy and Environment.

**Transfer** means a transfer in the approved form under the Real Property Act which is duly stamped, signed and otherwise in registrable form for the purpose of transferring the Onsite Environmental Land to the Minister.

## 1.2 Interpretation

In this Agreement:

- (a) headings are for convenience only and do not affect interpretation;  
and unless the context indicates a contrary intention:
- (b) "person" includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (c) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation;
- (d) a reference to a document is to that document as varied, novated, ratified or replaced from time to time;
- (e) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (f) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (g) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this Agreement, and a reference to this Agreement includes all schedules, exhibits, attachments and annexures to it;
- (h) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (i) "includes" in any form is not a word of limitation;
- (j) a reference to "\$" or "dollar" is to Australian currency;
- (k) the Schedules and Annexures to this Agreement form part of this Agreement; and
- (l) if a party to this Agreement is made up of more than one person:
  - (i) an obligation of those persons is several;
  - (ii) a right of those persons is held by each of them severally; and
  - (iii) any references to that party is a reference to each of those persons separately, so that (for example), a representation, warranty or undertaking is given by each of them separately.



## **2. Operation and status of this Agreement**

- (a) The Parties agree that this Agreement 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.
- (b) This Agreement is entered into and takes effect on the date of execution by all the Parties.

## **3. Application of the Agreement**

This Agreement applies to the Land.

## **4. Application of section 7.11, section 7.12 and section 7.24 of the Act**

The application of sections 7.11, 7.12 and section 7.24 is excluded to the extent stated in Schedule 1 to this Agreement.

## **5. Requirement to provide the Development Contribution**

- (a) The Developer undertakes to provide or procure the provision of the Development Contribution to the Minister in the manner and at the time set out in Schedule 3 to this Agreement and the Parties agree to abide by the procedures and obligations as set out in Schedule 3 to this Agreement.
- (b) The Developer acknowledges and agrees that to the extent a Development Contribution of the Developer is stated or implied as having a particular purpose or use, the Minister:
  - (i) has no obligation to use or spend a Development Contribution for a particular purpose or use; and
  - (ii) does not warrant or represent that any specified or unspecified work is to be provided; and
  - (iii) has no obligation to monitor or follow-up the use of a Development Contribution; and
  - (iv) has no obligation to provide any compensation to the Developer for the Development Contribution.

## **6. Land ownership and Registration of this Agreement**

### **6.1 Ownership**

The Developer represents and warrants to the Minister that as at the date of this Agreement:

- (a) it is the legal and beneficial owner of the Land; and

- (b) it is legally and beneficially entitled to obtain all consents and approvals and to compel any person referred to in or contemplated by clause 6.2(b)(i) to assist, cooperate and otherwise to do all things necessary for the Developer to comply with its obligations under clauses 6.2 and 6.4.

## **6.2 Registration of this Agreement**

- (a) As contemplated by section 7.6 of the Act, the Developer must, within 10 Business Days of the date of this Agreement, procure the registration of this Agreement under the Real Property Act in the relevant folios of the Register for the Land.
- (b) The Developer, at its own expense, is to take all practical steps, and otherwise do anything that the Minister reasonably requires, to procure:
  - (i) the consent of each person, as required by the NSW 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; and
  - (ii) the execution of any documents; and
  - (iii) the production of the relevant certificates of title or electronic lodgement of the relevant CoRD Holder Consents through Property Exchange Australia Limited or another ELNO,to enable the registration of this Agreement under the Real Property Act in the relevant folios of the Register for the Land in accordance with section 7.6 of the Act.
- (c) The Developer is, within 10 Business Days of registration of this Agreement on the relevant folios of the Register for the Land in accordance with clause 6.2(a) and (b) above, to provide the Minister with a copy of the relevant folios of the Register for the Land and a copy of the registered document containing this Agreement.

## **6.3 Release and discharge of this Agreement**

The Minister agrees to do all things reasonably required by the Developer to release and discharge this Agreement, such that it is no longer registered on the relevant folios of the Register, with respect to any part of the Land under section 7.6 of the Act upon the Developer satisfying all of its obligations under this Agreement in respect of that land.

## **6.4 Caveat**

The Developer acknowledges and agrees that upon Gazettal:

- (a) the Minister is deemed to have acquired, and the Developer is deemed to have granted, an equitable estate and interest in the Land for the purposes of section 74F(1) of the Real Property Act and consequently the Minister has a sufficient interest in the Land to lodge with the NSW Land Registry Services a caveat notifying that interest;
- (b) it will not object to the Minister lodging a caveat in the relevant folio of the Register for the Land nor will it seek to remove any caveat lodged by the Minister; and
- (c) it will indemnify and keep indemnified the Minister against all Claims made against the Minister including, without limitation, Claims made by any person who has an estate or interest in any part of the Land registered under the Real Property Act, by virtue of or in connection with the Minister lodging a caveat in the relevant folio of the Register for the Land.

## **7. Security and enforcement**

### **7.1 Security**

In consideration of the Minister entering into this Agreement, the Developer has agreed to provide security to the Minister for the performance of the Developer's obligations under this Agreement by agreeing to:

- (a) registration of this Agreement in accordance with the terms and procedures set out under clause 6.2 of this Agreement; and
- (b) the Minister exercising its compulsory acquisition powers in accordance with clause 2.5 of Schedule 3; and
- (c) the Minister registering a caveat in accordance with clause 6.4.

### **7.2 Enforcement**

This Agreement may be enforced by any Party in any court of competent jurisdiction in New South Wales.

### **7.3 No prevention to enforcement**

For the avoidance of doubt, nothing in this Agreement prevents:

- (a) a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Agreement or any matter to which this Agreement relates; and

- (b) the Minister from exercising any function under any legislation, including the Act, or any other legislation or law relating to the enforcement of any aspect of this Agreement or any matter to which this Agreement relates.

## **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.

### **8.2 Written notice of dispute**

A party claiming that a dispute has arisen under or in relation to this Agreement 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 techniques such as mediation, expert evaluation or other techniques agreed by them.

### **8.4 Mediation**

If the parties do not agree within 21 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,

the parties must mediate the dispute in accordance with the Law Society of NSW 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 8 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 8 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 8 for any purpose other than in an attempt to settle the dispute.

## **8.7 No prejudice**

This clause 8 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 Agreement.

## **9. GST**

### **9.1 Interpretation**

In this clause 9:

- (a) except where the context suggests otherwise, terms used in this clause 9 have the meanings given to those terms by the GST Act (as amended from time to time);
- (b) any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 9; and
- (c) a reference to something done (including a supply made) by a party includes a reference to something done by any entity through which that party acts.

### **9.2 Intention of the parties**

- (a) Without limiting the operation of this clause 9, the parties intend that:
  - (i) Divisions 81 and 82 of the GST Act apply to the supplies made under and in respect of this Agreement;
  - (ii) no tax invoices will be exchanged between the parties; and
  - (iii) no additional amounts will be payable on account of GST.
- (b) If it is subsequently determined that GST is payable by the Developer in respect of any supply made pursuant to this Agreement, the Developer must pay to the Minister an amount equal to the Minister's liability for GST in respect of the relevant supply to the Minister within 10 Business Days after the Minister has provided a tax invoice to the Developer with respect to the supply to the Minister.
- (c) The Developer indemnifies the Minister against any claims against, or costs, losses or damages suffered or incurred by the Principal, arising out of, or in any way in connection with, the Minister's liability for GST in respect of any supply made pursuant to this Agreement.

### 9.3 Reimbursement

Any payment or reimbursement required to be made under this Agreement that is calculated by reference to a cost, expense, or other amount paid or incurred will be limited to the total cost, expense or amount less the amount of any input tax credit to which any entity is entitled for the acquisition to which the cost, expense or amount relates.

### 9.4 Consideration GST exclusive

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this Agreement are exclusive of GST. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purposes of this clause 9.

### 9.5 Additional amount of GST payable

Subject to clause 9.7, if GST becomes payable on any supply made by a party ("**Supplier**") under or in connection with this Agreement:

- (a) any party ("**Recipient**") that is required to provide consideration to the Supplier for that supply must pay an additional amount to the Supplier equal to the amount of GST payable on that supply ("**GST Amount**"), and:
  - (i) where that GST Amount is payable by the Minister, the GST Amount will be limited to the amount of the input tax credit (if any) to which the Minister (or the representative member of any GST group of which the is a member) is entitled in relation to the Minister's acquisition of that supply and is payable within 5 Business Days after the Minister, in any capacity, is a member) has received the benefit of that input tax credit; and
  - (ii) in any other case, the GST Amount is payable at the same time as any other consideration is to be first provided for that supply; and
- (b) the Supplier must provide a tax invoice to the Recipient for that supply, no later than the time at which the GST Amount for that supply is to be paid.

### 9.6 Variation

- (a) If the GST Amount properly payable in relation to a supply (as determined in accordance with clauses 9.5 and clause 9.7), varies from the additional amount paid by the Recipient under clause 9.5, then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient.
- (b) The Supplier must issue an adjustment note to the Recipient in respect of any adjustment event occurring in relation to a supply made under or in connection with this Agreement as soon as reasonably practicable after the Supplier becomes aware of the adjustment event.

## 9.7 Exchange of non-monetary consideration

- (a) To the extent that the consideration provided for the Supplier's taxable supply to which clause 9.5 applies is a taxable supply made by the Recipient (the "**Recipient Supply**"), the GST Amount that would be otherwise be payable by the Recipient to the Supplier in accordance with clause 9.5 shall:
  - (i) if the Supplier is the Minister, be reduced by the amount of the input tax credit (if any) to which the Minister (or the representative member of any GST group of which the Minister, in any capacity, is a member) is entitled in relation to the Minister's acquisition of the Recipient Supply; and
  - (ii) in any other case, be reduced by the amount of GST payable by the Recipient on the Recipient Supply.
- (b) The Recipient must issue to the Supplier an invoice for any Recipient Supply on or before the time at which the Recipient must pay the GST Amount in accordance with clause 9.5 (or the time at which such GST Amount would have been payable in accordance with clause 9.5 but for the operation of clause 9.7).

## 9.8 No merger

This clause will not merge on completion or termination of this Agreement.

## 10. Assignment and Dealing

### 10.1 Developer's right to sell

- (a) The Developer must not sell, transfer or dispose of the whole or any part of the Land unless, before it sells, transfers or disposes of any such part of the Land to another person ("**Transferee**"):
  - (i) it satisfies the Minister acting reasonably that the proposed Transferee is financially capable (including, without limitation, by providing financial statements for, and credit standing of, the proposed Transferee) of complying with the Developer's obligations under this Agreement ("**Required Obligations**"); and
  - (ii) the Transferee signs an agreement in form and substance acceptable to the Minister by which the Transferee agrees that under section 7.6 of the Act the Transferee is, upon and following transfer of the Land, bound by this Agreement; and
  - (iii) the Minister is satisfied that the Minister holds appropriate security to secure the Required Obligations under this Agreement; and
  - (iv) any default by the Developer has been remedied by the Developer or waived by the Minister; and

- (v) the Developer and the Transferee pay the Minister's reasonable costs in relation to the sale, transfer or disposal.

## **11. Release and indemnity**

- (a) The Developer agrees that the obligation to provide the Development Contribution is at the risk of the Developer. The Developer releases the Minister from any Claim, liability or loss arising from, and costs incurred in connection with, the Developer's obligation to provide the Development Contribution.
- (b) The Developer indemnifies the Minister against any costs incurred in connection with the Minister enforcing the Developer's obligation to provide the Development Contribution in accordance with this Agreement, except to the extent caused or contributed to by the Minister's negligent act or default under this Agreement.
- (c) The release and indemnity in clause 11(b) ends once the Minister has confirmed, in writing, that the Developer has fulfilled all of its obligations under this Agreement (such confirmation not to be unreasonably withheld or refused).

## **12. Costs**

- (a) The Developer agrees to pay its own costs and the Minister's costs to a maximum of \$5,000 (excluding GST) in relation to the negotiation, preparation, execution and the carrying into effect of this Agreement, including, without limitation, legal costs and expenses on a solicitor and own client basis, and including, without limitation, any in-house legal costs and expenses.
- (b) The Developer also agrees to pay the reasonable costs incurred in relation to the giving of public notice, stamping and registration of this Agreement and the Explanatory Note.
- (c) In the event that the Developer defaults with respect to any of its obligations pursuant to this Agreement, the Developer agrees to pay or reimburse the Minister on demand for:
  - (i) costs of the Minister in connection with any enforcement or preservation of any rights under this Agreement; and
  - (ii) taxes and fees (including, without limitation, registration fees) and fines and penalties in respect of fees which may be payable or determined to be payable in connection with this Agreement,

including in each case, without limitation, legal costs and expenses on a solicitor and own client basis, and including, without limitation, any in-house legal costs and expenses, however all such costs must be reasonable in the circumstances.



### **13. Effect of Scheduled terms and conditions**

The Parties agree to comply with the terms and conditions contained in the Schedules to this Agreement as if those rights and obligations were expressly set out in full in the operative parts of this Agreement.

### **14. General provisions**

#### **14.1 Exercise of Minister's Powers**

The Developer acknowledges that the Minister may authorise any officer of the Department of Planning, Industry and Environment to exercise any of the Minister's functions under the agreement on the Minister's behalf.

#### **14.2 Entire Agreement**

This Agreement contains everything to which the Parties have agreed in relation to the matters it deals with. No Party can rely on an earlier document, anything said or done by another Party, or by an officer, agent or employee of that Party, before the Agreement was executed.

#### **14.3 Counterparts**

This Agreement may be executed by counterparts by the respective Parties, which together will constitute one agreement.

#### **14.4 Further Acts**

Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to affect, perfect or complete this Agreement and all transactions incidental to it.

#### **14.5 Governing Law and Jurisdiction**

This Agreement is governed by the law of New South Wales. The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them. The Parties will not object to the exercise of jurisdiction by those courts on any basis.

#### **14.6 Joint and individual liability and benefits**

Except as otherwise set out in this Agreement, any agreement, covenant, representation or warranty under this Agreement by two or more persons binds them jointly and each of them individually, and any benefit in favour of two or more persons is for the benefit of them jointly and each of them individually.

#### **14.7 No fetter**

Nothing in this Agreement is to be construed as requiring the Minister or an Authority to do anything that would cause the Minister or an Authority to be in

breach of any obligations at law and without limitation, nothing in this Agreement is to be construed as limiting or fettering in any way the discretion of the Minister or an Authority in exercising the Minister's or an Authority's statutory functions, powers, authorities or duties.

#### **14.8 Representations and warranties**

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

#### **14.9 Severability**

- (a) If any part of this Agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way.
- (b) If any part of this Agreement is illegal, unenforceable or invalid, that part is to be treated as removed from this Agreement, but the rest of this Agreement is not affected and will continue in full force and effect.

#### **14.10 Modification**

No modification of this Agreement will be of any force or effect unless it is in writing and signed by the Parties as a deed.

#### **14.11 Waiver**

- (a) The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or a breach of obligation by, another Party.
- (b) A waiver by a Party is only effective if it is in writing.
- (c) A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

#### **14.12 Good Faith**

Each party must act in good faith towards the other Party and use its best endeavours to comply with the spirit and intention of this Agreement.

### **15. Notices**

#### **15.1 Form**

Any notice, demand, consent, approval, information, application or request that must or may be given or made to a Party under this Agreement is only given or made if it is in writing and sent in one of the following ways:

- (a) delivered or posted to that Party at its address set out below;

- (b) faxed to that Party at its fax number (if any) set out below; or
- (c) sent to that Party by email at its email address (if any) set out below:

**The Minister**

Address: Level 3, 84 Crown Street, Wollongong NSW 2500  
Telephone: (02) 4224 4180  
Email: npws.shoalhaven@environment.nsw.gov.au  
Attention: The Secretary

**The Developer**

**Enid Maude Hall**

Address: 26 Abercrombie Crescent, Albion Park NSW 2527  
Telephone: (02) 4256 1449  
Attention: Robyn Bates

**15.2 Receipt**

- (a) Any notice, demand, consent, approval, information, application or request is to be treated as given or made at the following time:
  - (i) if it is delivered, when it is left at the relevant address;
  - (ii) if it is sent by prepaid post, 2 Business Days after it is posted;
  - (iii) if it is sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number; or
  - (iv) if it is sent by email, as soon as the email is sent, provided that the sender does not receive a delivery failure notice.
- (b) Receipt - next Business Day

If any notice, demand, consent, approval, information, application or request is delivered or sent, or an error free transmission report in relation to it is received, on a day that is not a Business Day or after 5pm on any Business Day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next Business Day.

## Schedule 1 - Requirements under section 7.4 of the Act and other matters

SUBJECT and SUB-SECTION OF THE ACT	THE PLANNING AGREEMENT
<p><b>Planning instrument and/or Development Application - (Section 7.4(1))</b></p> <p>The Developer has:</p> <p>sought a change to an environmental planning instrument.</p> <p>made, or proposes to make a Development Application.</p> <p>entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.</p>	<p>(a) Yes</p> <p>(b) No</p> <p>(c) No</p>
<p><b>Description of the land to which the Planning Agreement applies - (Section 7.4(3)(a))</b></p>	<p>The whole of the Land.</p>
<p><b>Description of the development to which the Planning Agreement applies – (Section 7.4(3)(b))</b></p>	<p>Not applicable.</p>
<p><b>Description of change to the environmental planning instrument to which the Planning Agreement applies - (Section 7.4(3)(b))</b></p>	<p>Rezoning of and changing the minimum lot size in respect of the Land to allow for the Proposed Development.</p>
<p><b>The scope, timing and manner of delivery of contribution required by the Planning Agreement - (Section 7.4(3)(c))</b></p>	<p>See Schedule 3.</p>
<p><b>Applicability of section 7.11 of the Act - (Section 7.4(3)(d))</b></p>	<p>The application of section 7.11 of the Act is not excluded.</p>
<p><b>Applicability of section 7.12 of the Act - (Section 7.4(3)(d))</b></p>	<p>The application of section 7.12 of the Act is not excluded.</p>
<p><b>Applicability of section 7.24 of the Act - (Section 7.4(3)(d))</b></p>	<p>The application of section 7.24 of the Act is not excluded.</p>
<p><b>Consideration of benefits under this Agreement if section 7.11 is not excluded – (section 7.4(3)(e))</b></p>	<p>No.</p>
<p><b>Mechanism for dispute resolution - (Section 7.4(3)(f))</b></p>	<p>See clause 8.</p>

<b>SUBJECT and SUB-SECTION OF THE ACT</b>	<b>THE PLANNING AGREEMENT</b>
<b>Enforcement of the Planning Agreement</b> - (Section 7.4(3)(g))	See clause 7.
<b>No obligation to grant consent or exercise functions</b> - (Section 7.4(9))	No obligation. See clause 14.7.
<b>Registration of the Planning Agreement</b> - (Section 7.6)	Yes. The Parties agree that the Planning Agreement will be registered in accordance with clause 6.2 Registration of this Agreement.
<b>Whether this Agreement specifies that certain requirements must be complied with before a construction certificate is issued</b> - (Clause 25E(2)(g) of the Regulation)	No.
<b>Whether this Agreement specifies that certain requirements must be complied with before an occupation certificate is issued</b> - (Clause 25E(2)(g) of the Regulation)	No.
<b>Whether this Agreement specifies that certain requirements must be complied with before a subdivision certificate is issued</b> - (Clause 25E(2)(g) of the Regulation)	See Schedule 3.

## Schedule 2 - Land

The whole of the land described in the following table:

Lot	Deposited Plan	Folio Identifier	Developer
4	834254	4/834254	Enid Maude Hall

## Schedule 3 – Development Contribution

### 1. Development Contribution

The Developer undertakes to provide or procure the provision of the Development Contribution as set out and provided for in Column 2 of the table below no later than the date or event described in Column 3 of the table.

Column 1	Column 2	Column 3	Column 4
Item	Development Contribution	Timing	Public purpose
1	<b>Onsite Environmental Land Contribution</b>  The Developer must transfer the Onsite Environmental Land to the Minister.	On the Onsite Environmental Land Transfer Date	To achieve appropriate conservation of the natural environment

### 2. Onsite Environmental Land Contribution

#### 2.1 Land Subdivision Plan and Easement

- (a) The Developer must at its cost within 90 days of the Gazettal make a Development Application for the Land Subdivision.
- (b) The Land Subdivision Plan and any associated instrument pursuant to section 88B of the Conveyancing Act forming part of the Development Application for the Land Subdivision referred to in clause 2.1(a) above must:
  - (i) include a provision for access to the Onsite Environmental Land from a public road, being no less than 6m wide, for the benefit of the Minister including but not limited to a formal Right of Access if the access to the Onsite Environmental Land is through a Residential Lot (**Easement**); and
  - (ii) not create a boundary line though the area known as Jim's Forest being the forest area contained in the proposed Land Subdivision Plan attached to this Agreement and marked Annexure A.
- (c) No later than 6 months before the Onsite Environmental Land Transfer Date, the Developer must, at its cost, make an application for a Subdivision Certificate for the Plan of Subdivision prepared in accordance with the Development Consent for the Land Subdivision (that **Subdivision Certificate**). For the avoidance of doubt, any delay or failure by the Developer to receive Development Consent to a

Development Application for the Land Subdivision referred to in clause 2.1(a) or that Subdivision Certificate does not affect the Developer's obligation to:

- (i) transfer the Onsite Environmental Land to the Minister in accordance with clauses 1 and 2.4 of this Schedule 3; or
- (ii) grant the Easement in favour of the Minister in accordance with clause 2.1(b)(i) of this Schedule 3.

## **2.2 Contamination**

- (a) The Developer must, at its cost, within the 45 day period before the Onsite Environmental Land Transfer Date, obtain and provide to the Minister a report in respect of the Onsite Environmental Land that is addressed to the Minister, prepared by a Contamination Consultant and does the following:
  - (i) identifies the nature and extent of any Contamination on the Onsite Environmental Land;
  - (ii) identifies any works which are required to be undertaken on the Onsite Environmental Land to make it suitable for the purposes of a nature reserve;
  - (iii) if no such works are identified, states that the Onsite Environmental Land is suitable for its intended use for the purposes of a nature reserve;
  - (iv) is otherwise on terms satisfactory to the Minister.
- (b) If the report referred to in clause 2.2(a) identifies works that are required to be undertaken on the Onsite Environmental Land to make it suitable for the purposes of a nature reserve, the Developer must, at its cost and within a timeframe determined by the Minister, undertake those works to the satisfaction of the Minister.
- (c) If the Developer does not comply with clauses 2.2(a) and 2.2(b), the Minister may:
  - (i) refuse to accept the transfer of the Onsite Environmental Land; and
  - (ii) without limiting the Developer's obligations under clauses 2.2(a) and 2.2(b), require the Developer to undertake works, at the Developer's cost and within a timeframe determined by the Minister, so as to enable the Developer to comply with clauses 2.2(a) and 2.2 (b),

in which case the Developer must comply with the Minister's requirements.



- (d) If the Minister is satisfied that the Developer has complied with its obligations under this clause 2.2, the Minister will notify the Developer in writing within 14 days of the Minister being so satisfied.

### **2.3 In kind Works**

- (a) No later than 45 days before the Onsite Environmental Land Transfer Date, the Developer must, at its cost, perform or procure the performance of the following works on the Onsite Environmental Land to the satisfaction of the Minister:
  - (i) removal of the existing fence structure and replacing it with a type of fencing approved by the Minister; and
  - (ii) removal of the water infrastructure, whether located above or below ground level.
- (b) If the Minister is satisfied that the Developer has complied with its obligations under clause 2.3(a), the Minister will notify the Developer in writing within 14 days of the Minister being so satisfied. For the avoidance of doubt, any failure or delay by the Minister to provide a notice in accordance with this clause 2.3(b) does not affect the Developer's obligation to transfer the Onsite Environmental Land to the Minister in accordance with clause 2.4 of this Schedule 3

### **2.4 Transfer of Onsite Environment Land to the Minister**

- (a) The Developer must, not later than 30 days before the Onsite Environmental Land Transfer Date, serve on the Minister:
  - (i) an executed Transfer which transfers the Onsite Environmental Land to the Minister; and
  - (ii) the relevant certificate of title with respect to the Onsite Environmental Land (or electronic lodgement of the relevant CoRD Holder Consents through Property Exchange Australia Limited or another ELNO) and in circumstances where:
    - (A) the Onsite Environmental Land is free from any encumbrances; and
    - (B) any relevant discharges in registrable form are also served on the Minister at the same time in relation to any encumbrances.
- (b) The Developer must immediately comply, or procure compliance with, any requisition raised by the Registrar-General in relation to the transfer of the Onsite Environmental Land.
- (c) The Minister agrees to consider, as soon as practicable after the registration of the Transfer, how conservation of the Onsite

Environmental Land is most appropriately achieved, whether by reservation as national park, as reserve of another category under NPW Act, or by a combination of these or otherwise.

- (d) The Developer will pay all rates and taxes owing in respect of the Onsite Environmental Land up to and including the date on which the Transfer is registered after which the Minister will be liable.

## **2.5 Compulsory acquisition**

- (a) If the Developer does not:

- (i) Transfer the Onsite Environmental Land to the Minister as required by clauses 1 and 2.4 of this Schedule 3; and/or
- (ii) grant the Minister an Easement as required by clause 2.1(b)(i) of this Schedule 3,

the Developer consents to the Minister compulsorily acquiring the Onsite Environmental Land and/or the Easement, in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW), for the amount of \$1.00 each.

- (b) The Developer and the Minister agree that:

- (i) this clause 2.5 is an agreement between the Parties for the purposes of section 30 of the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW); and
- (ii) in this clause 2.5 they have agreed on all relevant matters concerning the compulsory acquisition and the compensation to be paid for the acquisition.

- (c) The Developer indemnifies and agrees to keep indemnified the Minister against all claims made against the Minister that results in the Minister being required to pay compensation under Part 3 of the *Land Acquisition (Just Terms Compensation) Act 1991* to any person, other than the Developer, as a result of the acquisition by the Minister of the Onsite Environmental Land and/or the Easement under this clause 2.5 of Schedule 3.
- (d) The Developer must pay the Minister, promptly on demand, an amount equivalent to all reasonable costs incurred by the Minister in connection with remediating the Onsite Environmental Land of any Contamination, undertaking the in kind works and/or acquiring the Onsite Environmental Land as contemplated by clause 2 of this Schedule 3.

**Executed as a deed**

**Signed, sealed and delivered** by the  
**Minister administering the National  
Parks and Wildlife Act 1974** ABN 20 770  
707 468, in the presence of:

Callaghan Cotter  
Signature of Witness

CALLAGHAN COTTER  
Name of Witness in full

140 TOMAREE ROAD  
SHOAL BAY NSW 2315  
Address of Witness

Sharon Molloy  
Signature of the delegate of the  
**Minister administering the  
National Parks and Wildlife Act  
1974**

SHARON MOLLOY  
Name of delegate of the **Minister  
administering the National Parks  
and Wildlife Act 1974**  
EXECUTIVE DIRECTOR  
BIODIVERSITY & CONSERVATION DIVISION  
Title of delegate

**Signed, sealed and delivered** by **Enid** )  
**Maude Hall** ABN 33 580 175 14 in the )  
presence of: )

[Signature]  
Signature of Witness

PETER NOVESKI  
Name of Witness in full

71-73 BUAELLI STREET WOLLONGONG NSW 2500  
Address of Witness

E. Hall  
Signature of **Enid Maude Hall**

## Annexure A – Proposed Land Subdivision Plan

Shan Kelly  
E. Hall  
D.



[illegible]

Shenandoah  
E. Hall Jr.