

Deed

Fishermans Paradise Road

Planning Agreement

Under s7.4 of the *Environmental Planning and Assessment Act 1979*

Shoalhaven City Council

Grange Estates (NSW) Pty Limited

Date: 5 July 2022

Fishermans Paradise Road Planning Agreement

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Summary Sheet

Council:

Name: Shoalhaven City Council ABN 59 855 182 344

Address: 36 Bridge Rd, Nowra NSW 2541

Telephone: 1300 293 111

Email: council@shoalhaven.nsw.gov.au

Representative: Stephen Dunshea, CEO

Developer:

Name: Grange Estates (NSW) Pty Limited ACN 079 624 909

Address: 19 / 19-21 Central Road MIRANDA NSW 2228

Telephone: 0413 883 539

Email: darryl@punnettgroup.com.au

Representative: Darryl Punnett

Land:

See definition of *Land* in clause 1.1.

Development:

See definition of *Development* in clause 1.1.

Development Contributions:

See clause 9 and Schedule 1.

Application of s7.11, s7.12 and s7.24 of the Act:

See clause 8.

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Security:

See Part 4.

Registration:

See clause30.

Restriction on dealings:

See clause 31.

Dispute Resolution:

See Part 3.

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Under s7.4 of the *Environmental Planning and Assessment Act 1979*

Parties

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

and

Grange Estates (NSW) Pty Limited ACN 079 624 909 of 19 / 19-21 Central Road MIRANDA NSW 2228 (**Developer**)

Background

- A On 13 December 1991, development consent was granted to development application SF7079 for the subdivision of the Land in stages. The Land comprises Lot 212 DP884276 and Lot 13 DP1218909.
- B The Developer owns the part of the Land that is Lot 212 DP884276 (Stage 2A Land) and other landowners own the part of the Land that is Lot 13 DP1218909.
- C On 8 April 2021, modification application DS19/1344 was determined under s4.55 of the Act modifying the staging of the subdivision of the Land.
- D The Developer proposes to dedicate part of the Stage 2A Land to the Council as a public reserve (Dedication Land) in connection with the carrying out of the development the subject of the development consent. The Developer also proposes to carry out environmental management actions on the Dedication Land prior to dedication and for the first 2 years after dedication, and to pay monetary contributions to the Council to be applied by Council towards further environmental management actions on the Dedication Land.
- E The Council and the Developer enter into this Deed for the Developer's provision of development contributions in connection with the carrying out of the Development.

Operative provisions

Part 1 – Preliminary

1 Interpretation

- 1.1 In this Deed the following definitions apply:

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

Approval includes approval, consent, licence, permission or the like.

Approved Environmental Management Plan means the Environmental Management Plan approved by the Council under clause 10 of this Deed.

Authority means the Commonwealth or New South Wales government, a Minister of the Crown, a government department, a public authority established by or under any Act, a council or county council constituted under the *Local Government Act 1993* (NSW), or a person or body exercising functions under any Act including a commission, panel, court, tribunal and the like.

Bank Guarantee means an irrevocable and unconditional undertaking without any expiry or end date in favour of the Council to pay an amount or amounts of money to the Council on demand issued by:

- (a) one of the following trading banks:
 - (i) Australia and New Zealand Banking Group Limited,
 - (ii) Commonwealth Bank of Australia,
 - (iii) Macquarie Bank Limited,
 - (iv) National Australia Bank Limited,
 - (iv) St George Bank Limited,
 - (v) Westpac Banking Corporation, or
- (b) any other financial institution approved by the Council in its absolute discretion.

Claim includes a claim, demand, remedy, suit, injury, damage, loss, Cost, liability, action, proceeding or right of action.

Clearance Certificate means a clearance certificate issued by the Commissioner for Taxation under paragraph 14-220 of Schedule 1 of the *Taxation Administration Act 1953* (Cth).

Contribution Item means an item of Development Contribution specified in Column 1 of Schedule 1 of this Deed.

Cost means a cost, charge, expense, outgoing, payment, fee and other expenditure of any nature.

Dedication Land means the land identified as 'Public Reserve' on the Land Dedication Plan, having an area of 3,675sqm.

Deed means this Deed and includes any schedules, annexures and appendices to this Deed.

Defect means anything that adversely affects, or is likely to adversely affect, the appearance, structural integrity, functionality or use or enjoyment of a Work or any part of a Work.

Defects Liability Period means the period of 1 year commencing on the day immediately after a Work is completed for the purposes of this Deed.

Development means development within the meaning of the Act on the Land authorised by Development Consent to Development Application SF7079 granted by the Council on 13 December 1991, as modified by modification application DS19/1344 determined by the Council on 8 April 2021, and as further modified from time to time.

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Development Application has the same meaning as in the Act.

Development Consent has the same meaning as in the Act.

Development Contribution means a monetary contribution, the dedication of land free of cost, the carrying out of work, or the provision of any other material public benefit, or any combination of them, to be used for, or applied towards a public purpose, but does not include any Security or other benefit provided by a Party to the Council to secure the enforcement of that Party's obligations under this Deed for the purposes of s7.4(3)(g) of the Act.

Dispute means a dispute or difference between the Parties under or in relation to this Deed.

ELNO has the meaning given to that term in the Participation Rules.

Environmental Management Plan means an environmental management plan prepared by a suitably qualified (to Council's satisfaction) practising ecologist or bushland restoration expert.

Equipment means any equipment, apparatus, vehicle or other equipment or thing to be used by or on behalf of the Developer in connection with the performance of its obligations under this Deed.

Foreign Resident Capital Gains Withholding Amount mean the amount a purchaser is required to pay to the Commissioner for Taxation under paragraph 14-200 of the *Taxation Administration Act 1953* (Cth).

Final Lot means a lot created in the Development for separate residential occupation and disposition or a lot of a kind or created for a purpose that is otherwise agreed by the Parties, not being a lot created by a subdivision of the Stage 2A Land:

- (a) that is to be dedicated or otherwise transferred to the Council, or
- (b) on which is situated a dwelling-house that was in existence on the date of this Deed.

GST has the same meaning as in the GST Law.

GST Law has the same meaning as in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any other Act or regulation relating to the imposition or administration of the GST.

Just Terms Act means the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW).

Land means land which as at the date of this Deed is comprised in Lot 212 DP884276 and Lot 13 DP1218909 and that land as subdivided and consolidated from time to time.

Land Dedication Plan means the plan in Schedule 2 of this Deed.

LEP means the *Shoalhaven Local Environmental Plan 2014*.

Maintain, in relation to a Work, means keep in a good state of repair and working order, and includes repair of any damage to the Work.

Monitoring and Implementation Report means a written report prepared by a suitably qualified practising ecologist or bushland restoration expert which sets out details of the monitoring actions and implementation of the Approved Environmental Management Plan that have been carried out.

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Participation Rules means the participation rules as determined by the *Electronic Conveyancing National Law* as set out in the *Electronic Conveyancing (Adoption of National Law) Act 2012* (NSW).

Party means a party to this Deed.

Rectification Notice means a notice in writing:

- (a) identifying the nature and extent of a Defect,
- (b) specifying the works or actions that are required to Rectify the Defect,
- (c) specifying the date by which or the period within which the Defect is to be rectified.

Rectify means rectify, remedy or correct.

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

Security means a Bank Guarantee to the satisfaction of the Council indexed in accordance with upwards movements of the *Consumer Price Index (All Groups – Sydney)* published by the Australian Bureau of Statistics from the date of this Deed.

Stage 2A Land means the part of the Land shown as Stage 2A on the Stage 2A Plan.

Stage 2A Plan means the plan in Schedule 3 of this Deed.

Subdivision Certificate has the same meaning as in the Act.

Subdivision Works Certificate has the same meaning as in the Act.

Work means the physical result of any landscaping, environmental management, building, engineering or construction work in, on, over or under land.

1.2 In the interpretation of this Deed, the following provisions apply unless the context otherwise requires:

- 1.2.1 Headings are inserted for convenience only and do not affect the interpretation of this Deed.
- 1.2.2 A reference in this Deed to a business day means a day, other than a Saturday or Sunday, on which banks are open for business generally in Sydney.
- 1.2.3 If the day on which any act, matter or thing is to be done under this Deed is not a business day, the act, matter or thing must be done on the next business day.
- 1.2.4 A reference in this Deed to dollars or \$ means Australian dollars and all amounts payable under this Deed are payable in Australian dollars.
- 1.2.5 A reference in this Deed to a \$ value relating to a Development Contribution is a reference to the value exclusive of GST.
- 1.2.6 A reference in this Deed to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- 1.2.7 A reference in this Deed to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.

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- 1.2.8 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Deed.
- 1.2.9 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- 1.2.10 Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- 1.2.11 A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
- 1.2.12 References to the word 'include' or 'including' are to be construed without limitation.
- 1.2.13 A reference to this Deed includes the agreement recorded in this Deed.
- 1.2.14 A reference to a Party to this Deed includes a reference to the employees, agents and contractors of the Party, the Party's successors and assigns.
- 1.2.15 A reference to 'dedicate' or 'dedication' in relation to land is a reference to dedicate or dedication free of cost.
- 1.2.16 Any schedules, appendices and attachments form part of this Deed.
- 1.2.17 Notes appearing in this Deed are operative provisions of this Deed.

2 Status of this Deed

- 2.1 This Deed is a planning agreement within the meaning of s7.4(1) of the Act.
- 2.2 The Developer agrees that this Deed operates as a deed poll in favour of the Council on and from the date of execution of this deed by the Developer until the date on which this deed commences.

3 Commencement

- 3.1 This Deed commences and has force and effect on and from the date when the Parties have:
 - 3.1.1 all executed the same copy of this Deed, or
 - 3.1.2 each executed separate counterparts of this Deed and exchanged the counterparts.
- 3.2 The Parties are to insert the date when this Deed commences on the front page and on the execution page.

4 Application of this Deed

- 4.1 This Deed applies to the Stage 2A Land and to the part of the Development on the Stage 2A Land.

5 Warranties

- 5.1 The Parties warrant to each other that they:
 - 5.1.1 have full capacity to enter into this Deed, and
 - 5.1.2 are able to fully comply with their obligations under this Deed.
- 5.2 The Developer warrants that it has obtained the necessary written consents from each registered proprietor and interest holder to register this Deed on the title to the Stage 2A Land in accordance with clause 30.

6 Further agreements

- 6.1 The Parties may, at any time and from time to time, enter into agreements relating to the subject-matter of this Deed that are not inconsistent with this Deed for the purpose of implementing this Deed.

7 Surrender of right of appeal, etc.

- 7.1 The Developer is not to commence or maintain, or to cause or procure the commencement or maintenance, of any proceedings in any court or tribunal or similar body appealing against, or questioning the validity of this Deed, or an Approval relating to the Development in so far as the subject-matter of the proceedings relates to this Deed.

8 Application of s7.11, s7.12 and s7.24 of the Act to the part of the Development on Stage 2A Land

- 8.1 This Deed does not exclude the application of s7.11, s7.12 or s7.24 of the Act to the part of the Development on the Stage 2A Land.
- 8.2 The benefits under this Deed are not to be taken into consideration when determining a development contribution under s7.11 of the Act in relation to the part of the Development on the Stage 2A Land.

Part 2 – Development Contributions

9 Provision of Development Contributions

- 9.1 The Developer is to make Development Contributions to the Council in accordance with Schedule 1, any other provision of this Deed relating to the making of Development Contributions and otherwise to the satisfaction of the Council.
- 9.2 The Council is to apply each Development Contribution made by the Developer under this Deed towards the public purpose for which it is made and otherwise in accordance with this Deed.

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- 9.3 Despite clause 9.2, the Council may apply a Development Contribution made under this Deed towards a public purpose other than the public purpose specified in this Deed if the Council reasonably considers that the public interest would be better served by applying the Development Contribution towards that other purpose rather than the purpose so specified.

10 Preparation of Environmental Management Plan

- 10.1 Prior to the issuing of the first Subdivision Works Certificate for, and commencing the carrying out of, any part of the Development on the Stage 2A Land, the Developer is to:
- 10.1.1 prepare, or procure the preparation of, an Environmental Management Plan in respect of the Dedication Land,
 - 10.1.2 provide the Environmental Management Plan to the Council for approval, and
 - 10.1.3 obtain the Council's approval to the Environmental Management Plan, in accordance with this clause 10.
- 10.2 The Environmental Management Plan referred to in clause 10.1 is to:
- 10.2.1 set out management actions and monitoring requirements to the satisfaction of the Council for the rehabilitation and ongoing management of the Dedication Land for the period prior to the dedication of the Dedication Land and for a period of 5 years after the dedication,
 - 10.2.2 without limiting clause 10.2.1, include a requirement for the installation of a four-strand plain wire fencing supported by treated pine posts along the boundary between the Dedication Land and any road in order to prevent the public accessing the Dedication Land during the first year after the dedication, and for such fencing to be completed prior to the dedication of the Dedication Land, and
 - 10.2.3 without limiting clause 10.2.1, include:
 - (a) identification and mapping of flora and fauna species,
 - (b) short, medium and long-term environmental management actions including planting of endemic species, replacement of failed plantings, weed management, excluding stormwater infrastructure from the parcel of land and other management actions to mitigate the direct and indirect impacts of the Development,
 - (c) intensive weed control and active regeneration such as planting to occur during the first two years after dedication of the Dedication Land,
 - 10.2.4 include an itemised and costed schedule of works in respect of the management actions to be carried out each year,
 - 10.2.5 be prepared in accordance with the document titled '*Guidelines for vegetation management plans on waterfront land*' published by the then Department of Primary Industries and dated July 2012, any amendments to those guidelines and any guidelines which replace those guidelines.

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- 10.3 Prior to giving its approval to the Environmental Management Plan, the Council may give a written direction to the Developer requiring it to vary the Environmental Management Plan and submit the variation to the Council for approval.
- 10.4 The Developer is to comply promptly with a direction referred to in clause 10.3 at its own cost.
- 10.5 The Developer is not to commence the carrying out of any part of the Development on the Stage 2A Land and is not to lodge any application for any Subdivision Works Certificate for the part of the Development on the Stage 2A Land until it has first obtained the Council's approval to the Environmental Management Plan under this clause 10.

11 Monitoring and reporting on implementation of Approved Environmental Management Plan

- 11.1 The Developer is to monitor, or procure the monitoring of, the implementation of the Approved Environmental Management Plan in accordance with the monitoring requirements set out in the Approved Environmental Management Plan.
- 11.2 At each of the following times, the Developer is to provide to the Council a Monitoring and Implementation Report :
 - 11.2.1 upon the making an application for the first Subdivision Certificate that creates any lot within the Stage 2A Land,
 - 11.2.2 at the end of the 1st anniversary of the dedication of the Dedication Land,
 - 11.2.3 at the end of the 2nd anniversary of the dedication of the Dedication Land, and
 - 11.2.4 at such other times as notified in writing by the Council.

12 Payment of monetary Development Contributions

- 12.1 A monetary Development Contribution that is required to be paid under this Deed is to be indexed from the date of this Deed to the date of payment in accordance with the upwards movement of the *Consumer Price Index (All Groups- Sydney)* published by the Australian Bureau of Statistics.
- 12.2 A monetary Development Contribution is made for the purposes of this Deed when the Council receives the full amount of the contribution payable under this Deed in cash or by unendorsed bank cheque or by the deposit by means of electronic funds transfer of cleared funds into a bank account nominated by the Council.

13 Dedication of land

- 13.1 A Development Contribution comprising the dedication of land is made for the purposes of this Deed when:
 - 13.1.1 the Council is provided with:

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- (a) a Clearance Certificate that is valid at the time of dedication of land, or
 - (b) the Foreign Resident Capital Gains Withholding Amount in respect of the land to be dedicated, and
- 13.1.2 one of the following has occurred:
 - (a) a deposited plan is registered in the register of plans held with the Registrar-General that dedicates land as a public road (including a temporary public road) under the *Roads Act 1993* or creates a public reserve or drainage reserve under the *Local Government Act 1993*, or
 - (b) the Council is given evidence that a transfer has been effected by means of electronic lodgement and registration through Property Exchange Australia Ltd or another ELNO.
- 13.2 The Developer is to do all things reasonably necessary to enable registration of the instrument of transfer to occur.
- 13.3 The Developer is to ensure that land dedicated to the Council under this Deed is free of all encumbrances and affectations (whether registered or unregistered and including without limitation any charge or liability for rates, taxes and charges) except as otherwise agreed in writing by the Council.
- 13.4 If, having used all reasonable endeavours, the Developer cannot ensure that land to be dedicated to the Council under this Deed is free from all encumbrances and affectations, the Developer may request that Council agree to accept the land subject to those encumbrances and affectations, but the Council may withhold its agreement in its absolute discretion.

14 Carrying out of Work

- 14.1 Without limiting any other provision of this Deed, any Work that is required to be carried out by the Developer under this Deed is to be carried out in accordance with any design or specification specified or approved by the Council, any relevant Approval and any other applicable law.
- 14.2 The Developer, at its own cost, is to comply with any reasonable direction given to it by the Council to prepare or modify a design or specification relating to a Work that the Developer is required to carry out under this Deed.

15 Variation to Work

- 15.1 The design or specification of any Work that is required to be carried out by the Developer under this Deed may be varied by agreement in writing between the Parties, acting reasonably, without the necessity for an amendment to this Deed.
- 15.2 Without limiting clause 15.1, the Developer may make a written request to the Council to approve a variation to the design or specification of a Work in order to enable it to comply with the requirements of any Authority imposed in connection with any Approval relating to the carrying out of the Work.
- 15.3 The Council is not to unreasonably delay or withhold its approval to a request made by the Developer under clause 15.2.

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- 15.4 The Council, acting reasonably, may from time to time give a written direction to the Developer requiring it to vary the design or specification of a Work before the Work is carried out in a specified manner and submit the variation to the Council for approval.
- 15.5 The Developer is to comply promptly with a direction referred to in clause 15.4 at its own cost.

16 Access to land by Developer

- 16.1 The Council authorises the Developer to enter, occupy and use the Dedication Land (after its dedication to the Council) for the purpose of performing its obligations under this Deed.
- 16.2 The Council is to permit the Developer, upon receiving reasonable prior notice from the Developer, to enter any other Council owned or controlled land in order to enable the Developer to properly perform its obligations under this Deed.
- 16.3 Nothing in this Deed creates or gives the Developer any estate or interest in any part of the land referred to in clause 16.1 or 16.2.

17 Access to land by Council

- 17.1 The Council may enter any land on which Work is being carried out by the Developer under this Deed in order to inspect, examine or test the Work, or to remedy any breach by the Developer of its obligations under this Deed relating to the Work.
- 17.2 The Council is to give the Developer prior reasonable notice before it enters land under clause 17.1.

18 Protection of people, property & utilities

- 18.1 The Developer is to ensure to the fullest extent reasonably practicable in relation to the performance of its obligations under this Deed that:
 - 18.1.1 all necessary measures are taken to protect people and property,
 - 18.1.2 unnecessary interference with the passage of people and vehicles is avoided, and
 - 18.1.3 nuisances and unreasonable noise and disturbances are prevented.
- 18.2 Without limiting clause 18.1, the Developer is not to obstruct, interfere with, impair or damage any public road, public footpath, public cycleway or other public thoroughfare, or any pipe, conduit, drain, watercourse or other public utility or service on any land except as authorised in writing by the Council or any relevant Authority.

19 Repair of damage

- 19.1 The Developer is to Maintain any Work required to be carried out by the Developer under this Deed until the Work is completed for the purposes of this Deed or such later time as agreed between the Parties.
- 19.2 The Developer is to carry out its obligation under clause 19.1 at its own cost and to the satisfaction of the Council.

20 Completion of Work

- 20.1 The Developer is to notify the Council in writing of the following events upon each of them occurring:
 - 20.1.1 the making an application for the first Subdivision Certificate that creates any lot within the Stage 2A Land,
 - 20.1.2 the end of the 1st anniversary of the dedication of the Dedication Land, and
 - 20.1.3 the end of the 2nd anniversary of the dedication of the Dedication Land.
- 20.2 The written notices referred to in clause 20.1 are to be accompanied by the relevant Monitoring and Implementation Report referred to in clause 11.
- 20.3 The Council is to inspect the Dedication Land and the Work carried out on that land within 14 days of the date of the notice.
- 20.4 Work required to be carried out by the Developer under this Deed is completed for the purposes of this Deed when:
 - 20.4.1 in respect of any Work for which a compliance certificate under the Act may be issued, the Developer gives the Council a compliance certificate within the meaning of s6.4(e)(i) or (iv) of the Act to the effect that the Work has been completed in accordance with this Deed and any applicable Development Consent and standards and specifications, and
 - 20.4.2 Council, acting reasonably, gives a written notice to the Developer that the Work is complete.
- 20.5 If the Council is the owner of the land on which Work the subject of a notice referred to in clause 20.4 is issued, the Council assumes responsibility for the Work upon the issuing of the notice, but if it is not the owner at that time, it assumes that responsibility when it later becomes the owner.
- 20.6 Before the Council gives the Developer a notice referred to in clause 20.4, it may give the Developer a written direction to complete, rectify or repair any specified part of the Work to the reasonable satisfaction of the Council and to provide the Council with a further Monitoring and Implementation Report.
- 20.7 The Developer, at its own cost, is to promptly comply with a direction referred to in clause 20.6.

21 Rectification of defects

- 21.1 The Council may give the Developer a Rectification Notice during the Defects Liability Period.

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- 21.2 The Developer, at its own cost, is to comply with a Rectification Notice according to its terms and to the reasonable satisfaction of the Council.
- 21.3 The Council is to do such things as are reasonably necessary to enable the Developer to comply with a Rectification Notice that has been given to it under clause 21.1.

22 Works-As-Executed-Plan

- 22.1 No later than 60 days after Work is completed for the purposes of this Deed, the Developer is to submit to the Council a full works-as-executed-plan in respect of the Work.
- 22.2 The Developer, being the copyright owner in the plan referred to in clause 22.1, gives the Council a non-exclusive licence to use the copyright in the plans for the purposes of this Deed.

23 Removal of Equipment

- 23.1 When Work on any Council owned or controlled land is completed for the purposes of this Deed, the Developer, without delay, is to:
 - 23.1.1 remove any Equipment from that land and make good any damage or disturbance to the land as a result of that removal, and
 - 23.1.2 leave the land in a neat and tidy state, clean and free of rubbish.

Part 3 – Dispute Resolution

24 Dispute resolution – expert determination

- 24.1 This clause applies to a Dispute between any of the Parties to this Deed concerning a matter arising in connection with this Deed that can be determined by an appropriately qualified expert if:
 - 24.1.1 the Parties to the Dispute agree that it can be so determined, or
 - 24.1.2 the Chief Executive Officer of the professional body that represents persons who appear to have the relevant expertise to determine the Dispute gives a written opinion that the Dispute can be determined by a member of that body.
- 24.2 A Dispute to which this clause applies is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 24.3 If a notice is given under clause 24.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 24.4 If the Dispute is not resolved within a further 28 days, the Dispute is to be referred to the President of the NSW Law Society to appoint an expert for expert determination.
- 24.5 The expert determination is binding on the Parties except in the case of fraud or misfeasance by the expert.

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- 24.6 Each Party is to bear its own costs arising from or in connection with the appointment of the expert and the expert determination.
- 24.7 The Parties are to share equally the costs of the President, the expert, and the expert determination.

25 Dispute resolution - mediation

- 25.1 This clause applies to any Dispute arising in connection with this Deed other than a Dispute to which clause 24 applies.
- 25.2 Such a Dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 25.3 If a notice is given under clause 25.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 25.4 If the Dispute is not resolved within a further 28 days, the Parties are to mediate the Dispute in accordance with the Mediation Rules of the Law Society of New South Wales published from time to time and are to request the President of the Law Society to select a mediator.
- 25.5 If the Dispute is not resolved by mediation within a further 28 days, or such longer period as may be necessary to allow any mediation process which has been commenced to be completed, then the Parties may exercise their legal rights in relation to the Dispute, including by the commencement of legal proceedings in a court of competent jurisdiction in New South Wales.
- 25.6 Each Party is to bear its own costs arising from or in connection with the appointment of a mediator and the mediation.
- 25.7 The Parties are to share equally the costs of the President, the mediator, and the mediation.

Part 4 - Enforcement

26 Security for performance of obligations

- 26.1 Upon approving the Environmental Management Plan under clause 10, the Council is to notify the Developer in writing of the amount of Security that the Developer is to provide to the Council in relation to the performance of its obligations under this Deed.
- 26.2 In determining the amount of Security to be provided by the Developer, the Council is to take into account:
 - 26.2.1 the itemised costing of Contribution Item B.2. as set out in the EMP, and
 - 26.2.2 the amount of the monetary Development Contribution Item C.1.
- 26.3 The Developer is to provide the Security to the Council prior to the issuing of the first Subdivision Works Certificate for any part of the Development on the Stage 2A Land.

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- 26.4 The Council, in its absolute discretion and despite clause 16, may refuse to allow the Developer to enter, occupy or use any land owned or controlled by the Council or refuse to provide the Developer with any plant, equipment, facilities or assistance relating to the carrying out the Development if the Developer has not provided the Security to the Council in accordance with this Deed.
- 26.5 The Council may call-up and apply the Security in accordance with clause 28 to remedy any breach of this Deed notwithstanding any other remedy it may have under this Deed, under any Act or otherwise at law or in equity.
- 26.6 The Council is to release and return the Security or any unused part of it to the Developer within 14 days of completion of the obligation to which the Security relates.
- 26.7 The Developer may at any time provide the Council with a replacement Security.
- 26.8 On receipt of a replacement Security, the Council is to release and return the Security that has been replaced to the Developer.
- 26.9 If the Council calls-up the Security or any portion of it, it may, by written notice to the Developer, require the Developer to provide a further or replacement Security to ensure that the amount of Security held by the Council equals the amount it is entitled to hold under this Deed.
- 26.10 The Developer is to ensure that the Security provided to the Council is at all times maintained to the full current indexed value.

27 Acquisition of land required to be dedicated

- 27.1 If the Developer does not dedicate land required to be dedicated under this Deed at the time at which it is required to be dedicated, the Developer consents to the Council compulsorily acquiring the land for compensation in the amount of \$1 without having to follow the pre-acquisition procedure under the Just Terms Act.
- 27.2 The Council is to only acquire land pursuant to clause 27.1 if it considers it reasonable to do so having regard to the circumstances surrounding the failure by the Developer to dedicate the land required to be dedicated under this Deed.
- 27.3 Clause 27.1 constitutes an agreement for the purposes of s30 of the Just Terms Act.
- 27.4 If, as a result of the acquisition referred to in clause 27.1, the Council is required to pay compensation to any person other than the Developer, the Developer is to reimburse the Council that amount, upon a written request being made by the Council, or the Council can call on any Security provided under clause 26.
- 27.5 The Developer indemnifies and keeps indemnified the Council against all Claims made against the Council as a result of any acquisition by the Council of the whole or any part of the land concerned except if, and to the extent that, the Claim arises because of the Council's negligence or default.
- 27.6 The Developer is to promptly do all things necessary, and consents to the Council doing all things necessary, to give effect to this clause 27, including without limitation:

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- 27.6.1 signing any documents or forms,
- 27.6.2 giving land owner's consent for lodgement of any Development Application,
- 27.6.3 producing certificates of title to the Registrar-General under the *Real Property Act 1900*, and
- 27.6.4 paying the Council's costs arising under this clause 27.

28 Breach of obligations

- 28.1 If the Council reasonably considers that the Developer is in breach of any obligation under this Deed, it may give a written notice to the Developer:
 - 28.1.1 specifying the nature and extent of the breach,
 - 28.1.2 requiring the Developer to:
 - (a) rectify the breach if it reasonably considers it is capable of rectification, or
 - (b) pay compensation to the reasonable satisfaction of the Council in lieu of rectifying the breach if it reasonably considers the breach is not capable of rectification,
 - 28.1.3 specifying the period within which the breach is to be rectified or compensation paid, being a period that is reasonable in the circumstances.
- 28.2 If the Developer fails to fully comply with a notice referred to in clause 28.1, the Council may, without further notice to the Developer, call-up the Security provided by the Developer under this Deed and apply it to remedy the Developer's breach.
- 28.3 If the Developer fails to comply with a notice given under clause 28.1 relating to the carrying out of Work under this Deed, the Council may step-in and remedy the breach and may enter, occupy and use any land owned or controlled by the Developer and any Equipment on such land for that purpose.
- 28.4 Any costs incurred by the Council in remedying a breach in accordance with clause 28.2 or clause 28.3 may be recovered by the Council by either or a combination of the following means:
 - 28.4.1 by calling-up and applying the Security provided by the Developer under this Deed, or
 - 28.4.2 as a debt due in a court of competent jurisdiction.
- 28.5 For the purpose of clause 28.4, the Council's costs of remedying a breach the subject of a notice given under clause 28.1 include, but are not limited to:
 - 28.5.1 the costs of the Council's employees, agents and contractors reasonably incurred for that purpose,
 - 28.5.2 all fees and charges necessarily or reasonably incurred by the Council in remedying the breach, and
 - 28.5.3 all legal costs and expenses reasonably incurred by the Council, by reason of the breach.

- 28.6 Nothing in this clause 28 prevents the Council from exercising any rights it may have at law or in equity in relation to a breach of this Deed by the Developer, including but not limited to seeking relief in an appropriate court.

29 Enforcement in a court of competent jurisdiction

- 29.1 Without limiting any other provision of this Deed, the Parties may enforce this Deed in any court of competent jurisdiction.
- 29.2 For the avoidance of doubt, nothing in this Deed prevents:
- 29.2.1 a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Deed or any matter to which this Deed relates, or
- 29.2.2 the Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Deed or any matter to which this Deed relates.

Part 5 – Registration & Restriction on Dealings

30 Registration of this Deed

- 30.1 The Parties agree to register this Deed for the purposes of s7.6(1) of the Act.
- 30.2 Upon the commencement of this Deed, the Developer must procure the registration of this Deed under the Real Property Act in the relevant folios of the Register for the Land.
- 30.3 The Developer is to do such other things as are reasonably necessary to enable registration of this Deed to occur.
- 30.4 The Parties are to do such things as are reasonably necessary to remove any notation relating to this Deed from the title to the Stage 2A Land:
- 30.4.1 in so far as the part of the Stage 2A Land concerned is a Final Lot,
- 30.4.2 in relation to any other part of the Stage 2A Land, once the Developer has completed its obligations under this Deed to the reasonable satisfaction of the Council or this Deed is terminated or otherwise comes to an end for any other reason.

31 Restriction on dealings

- 31.1 The Developer is not to:
- 31.1.1 sell or transfer the Stage 2A Land, other than a Final Lot, or
- 31.1.2 assign the Developer's rights or obligations under this Deed, or novate this Deed,
- to any person unless:
- 31.1.3 the Developer has, at no cost to the Council, first procured the execution by the person to whom the Stage 2A Land or part is to be

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sold or transferred or the Developer's rights or obligations under this Deed are to be assigned or novated, of a deed in favour of the Council on terms reasonably satisfactory to the Council, and

- 31.1.4 the Council has given written notice to the Developer stating that it reasonably considers that the purchaser, transferee, assignee or novatee, is reasonably capable of performing its obligations under this Deed, and
- 31.1.5 the Developer is not in breach of this Deed, and
- 31.1.6 the Council otherwise consents to the transfer, assignment or novation, such consent not to be unreasonably withheld.
- 31.2 Subject to clause 31.3, the Developer acknowledges and agrees that it remains liable to fully perform its obligations under this Deed unless and until it has complied with its obligations under clause 31.1.
- 31.3 Clause 31.1 does not apply in relation to any sale or transfer of the Stage 2A Land if this Deed is registered on the title to the Stage 2A Land at the time of the sale.

Part 6 – Indemnities & Insurance

32 Risk

- 32.1 The Developer performs this Deed at its own risk and its own cost.

33 Release

- 33.1 The Developer releases the Council from any Claim it may have against the Council arising in connection with the performance of the Developer's obligations under this Deed except if, and to the extent that, the Claim arises because of the Council's negligence or default.

34 Indemnity

- 34.1 The Developer indemnifies the Council from and against all Claims that may be sustained, suffered, recovered or made against the Council arising in connection with the performance of the Developer's obligations under this Deed except if, and to the extent that, the Claim arises because of the Council's negligence or default.

35 Insurance

- 35.1 The Developer is to take out and keep current to the satisfaction of the Council the following insurances in relation to Work required to be carried out by the Developer under this Deed up until the Work is taken to have been completed in accordance with this Deed:

Fishermans Paradise Road Planning Agreement

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- 35.1.1 contract works insurance, noting the Council as an interested party, for the full replacement value of the Works (including the cost of demolition and removal of debris, consultants' fees and authorities' fees), to cover the Developer's liability in respect of damage to or destruction of the Works,
- 35.1.2 public liability insurance for at least \$20,000,000.00 for a single occurrence, which covers the Council, the Developer and any subcontractor of the Developer, for liability to any third party,
- 35.1.3 workers compensation insurance as required by law, and
- 35.1.4 any other insurance required by law.
- 35.2 If the Developer fails to comply with clause 35.1, the Council may effect and keep in force such insurances and pay such premiums as may be necessary for that purpose and the amount so paid shall be a debt due from the Developer to the Council and may be recovered by the Council as it deems appropriate including:
 - 35.2.1 by calling upon the Security provided by the Developer to the Council under this Deed, or
 - 35.2.2 recovery as a debt due in a court of competent jurisdiction.
- 35.3 The Developer is not to commence to carry out any Work unless it has first provided to the Council satisfactory written evidence of all of the insurances specified in clause 35.1.

Part 7 – Other Provisions

36 Review of Deed

- 36.1 The Parties agree to review this Deed every 2 years, and otherwise if either party is of the opinion that any change of circumstance has occurred, or is imminent, that materially affects the operation of this Deed.
- 36.2 For the purposes of clause 36.1, the relevant changes include (but are not limited to) any change to a law that restricts or prohibits or enables the Council or any other planning authority to restrict or prohibit any aspect of the Development.
- 36.3 For the purposes of addressing any matter arising from a review of this Deed referred to in clause 36.1, the Parties are to use all reasonable endeavours to agree on and implement appropriate amendments to this Deed.
- 36.4 If this Deed becomes illegal, unenforceable or invalid as a result of any change to a law, the Parties agree to do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Deed is entered into.
- 36.5 A failure by a Party to agree to take action requested by the other Party as a consequence of a review referred to in clause 36.1 (but not 36.4) is not a Dispute for the purposes of this Deed and is not a breach of this Deed.

37 Notices

- 37.1 Any notice, consent, information, application or request that is to or may be given or made to a Party under this Deed is only given or made if it is in writing and sent in one of the following ways:
 - 37.1.1 delivered or posted to that Party at its address set out in the Summary Sheet, or
 - 37.1.2 emailed to that Party at its email address set out in the Summary Sheet.
- 37.2 If a Party gives the other Party 3 business days' notice of a change of its address or email, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or emailed to the latest address.
- 37.3 Any notice, consent, information, application or request is to be treated as given or made if it is:
 - 37.3.1 delivered, when it is left at the relevant address,
 - 37.3.2 sent by post, 2 business days after it is posted, or
 - 37.3.3 sent by email and the sender does not receive a delivery failure message from the sender's internet service provider within a period of 24 hours of the email being sent.
- 37.4 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, or if on a business day, after 5pm on that 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.

38 Approvals and Consent

- 38.1 Except as otherwise set out in this Deed, and subject to any statutory obligations, a Party may give or withhold an approval or consent to be given under this Deed in that Party's absolute discretion and subject to any conditions determined by the Party.
- 38.2 A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

39 Costs

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

40 Entire Deed

- 40.1 This Deed contains everything to which the Parties have agreed in relation to the matters it deals with.
- 40.2 No Party can rely on an earlier document, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, before this Deed was executed, except as permitted by law.

41 Further Acts

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

42 Notations on section 10.7(2) Planning Certificates

- 42.1 The Parties agree that the Council may, in its absolute discretion, make a notation under section 10.7(5) of the Act regarding this Agreement on any certificate issued under section 10.7(2) of the Act relating to the Stage 2A Land.

43 Governing Law and Jurisdiction

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

44 Joint and Individual Liability and Benefits

- 44.1 Except as otherwise set out in this Deed:
 - 44.1.1 any agreement, covenant, representation or warranty under this Deed by 2 or more persons binds them jointly and each of them individually, and
 - 44.1.2 any benefit in favour of 2 or more persons is for the benefit of them jointly and each of them individually.

45 No Fetter

- 45.1 Nothing in this Deed shall be construed as requiring Council to do anything that would cause it to be in breach of any of its obligations at law, and without limitation, nothing shall be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

46 Illegality

- 46.1 If this Deed or any part of it becomes illegal, unenforceable or invalid as a result of any change to a law, the Parties are to co-operate and do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Deed is entered into.

47 Severability

- 47.1 If a clause or part of a clause of this Deed 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.
- 47.2 If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Deed, but the rest of this Deed is not affected.

48 Amendment

- 48.1 No amendment of this Deed will be of any force or effect unless it is in writing and signed by the Parties to this Deed in accordance with clause 25C of the Regulation.

49 Waiver

- 49.1 The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Deed, does not amount to a waiver of any obligation of, or breach of obligation by, another Party.
- 49.2 A waiver by a Party is only effective if it:
- 49.2.1 is in writing,
 - 49.2.2 is addressed to the Party whose obligation or breach of obligation is the subject of the waiver,
 - 49.2.3 specifies the obligation or breach of obligation the subject of the waiver and the conditions, if any, of the waiver, and
 - 49.2.4 is signed and dated by the Party giving the waiver.
- 49.3 Without limitation, a waiver may be expressed to be conditional on the happening of an event, including the doing of a thing by the Party to whom the waiver is given.
- 49.4 A waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given, and 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.
- 49.5 For the purposes of this Deed, an obligation or breach of obligation the subject of a waiver is taken not to have been imposed on, or required to be complied with by, the Party to whom the waiver is given.

50 GST

50.1 In this clause:

Adjustment Note, Consideration, GST, GST Group, Margin Scheme, Money, Supply and Tax Invoice have the meaning given by the GST Law.

GST Amount means in relation to a Taxable Supply the amount of GST payable in respect of the Taxable Supply.

GST Law has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Input Tax Credit has the meaning given by the GST Law and a reference to an Input Tax Credit entitlement of a party includes an Input Tax Credit for an acquisition made by that party but to which another member of the same GST Group is entitled under the GST Law.

Taxable Supply has the meaning given by the GST Law excluding (except where expressly agreed otherwise) a supply in respect of which the supplier chooses to apply the Margin Scheme in working out the amount of GST on that supply.

50.2 Subject to clause 50.4, if GST is payable on a Taxable Supply made under, by reference to or in connection with this Deed, the Party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.

50.3 Clause 50.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Deed to be GST inclusive.

50.4 No additional amount shall be payable by the Council under clause 50.2 unless, and only to the extent that, the Council (acting reasonably and in accordance with the GST Law) determines that it is entitled to an Input Tax Credit for its acquisition of the Taxable Supply giving rise to the liability to pay GST.

50.5 If there are Supplies for Consideration which is not Consideration expressed as an amount of Money under this Deed by one Party to the other Party that are not subject to Division 82 of the *A New Tax System (Goods and Services Tax) Act 1999*, the Parties agree:

50.5.1 to negotiate in good faith to agree the GST inclusive market value of those Supplies prior to issuing Tax Invoices in respect of those Supplies;

50.5.2 that any amounts payable by the Parties in accordance with clause 50.2 (as limited by clause 50.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.

50.6 No payment of any amount pursuant to this clause 50, and no payment of the GST Amount where the Consideration for the Taxable Supply is expressly agreed to be GST inclusive, is required until the supplier has provided a Tax Invoice or Adjustment Note as the case may be to the recipient.

50.7 Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to a cost, expense or other liability incurred by a party, must exclude the amount of any Input Tax Credit entitlement of that party in relation to the relevant cost, expense or other liability.

50.8 This clause continues to apply after expiration or termination of this Deed.

51 Explanatory Note

- 51.1 The Appendix contains the Explanatory Note relating to this Deed required by clause 25E of the Regulation.
- 51.2 Pursuant to clause 25E(7) of the Regulation, the Parties agree that the Explanatory Note is not to be used to assist in construing this Deed.

Schedule 1

(Clause 9)

Development Contributions

Fishermans Paradise Road Planning Agreement
Shoalhaven City Council
Grange Estates (NSW) Pty Limited

Column 1	Column 2	Column 3	Column 4
Item/ Contribution	Public Purpose	Manner & Extent	Timing

A. Dedication of Land

1.Dedication Land	Public reserve	Dedicate to the Council free of cost the Dedication Land.	Upon the registration of the first plan of subdivision that creates any lot within the Stage 2A Land.
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B. Carrying out of Work

1.Management of Dedication Land prior to dedication	Environmental management	Carry out and complete any actions on the Dedication Land that the Approved Environmental Management Plan identifies are to be carried out prior to the dedication of the Dedication Land, including without limitation the installation of four-strand plain wire fencing supported by treated pine posts along the boundary between the Dedication Land and any road in accordance with the Approved Environmental Management Plan	Prior to the issuing of the first Subdivision Certificate that creates any lot within the Stage 2A Land.
2. Management of Dedication Land for 2 years following dedication	Public reserve	Carry out and complete any management actions on the Dedication Land that the Approved Environmental Management Plan identifies are to be carried out during the 1 st and 2 nd year after the Dedication Land is dedicated to the Council.	In accordance with the Approved Environmental Management Plan.

C. Monetary Contributions

Fishermans Paradise Road Planning Agreement

Shoalhaven City Council

Grange Estates (NSW) Pty Limited

1. Monetary contributions for environmental management by the Council

Environmental management

Payment to the Council of \$6,720 in 3 instalments

1. First instalment in the amount of \$2,240 to be paid on or before the date that is the 3rd anniversary of the date the Dedication Land is dedicated to the Council.
2. Second instalment in the amount of \$2,240 to be paid on or before the date that is the 4th anniversary of the date the Dedication Land is dedicated to the Council.
3. Third instalment in the amount of \$2,240 to be paid on or before the date that is the 5th anniversary of the date the Dedication Land is dedicated to the Council.

Schedule 2

(Clause 9)

Land Dedication Plan

See next page

Schedule 2

(Clause 9)

Stage 2A Plan

See next page



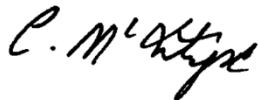
Fishermans Paradise Road Planning Agreement
Shoalhaven City Council
Grange Estates (NSW) Pty Limited

Execution

Executed as a Deed

Dated: 5 July 2022

**Executed on behalf of the Council, pursuant to s378 of the
Local Government Act 1993**



Carey McIntyre

Witness

Director City Futures

Name of Witness: Rachel Marshall

Executed on behalf of the Developer in accordance with s127(1) of the
Corporations Act 2001 (Cth)

Director

Director/Secretary

Name of Director:

Name of Director/Secretary:

Fishermans Paradise Road Planning Agreement
Shoalhaven City Council
Grange Estates (NSW) Pty Limited

Execution

Executed as a Deed

Dated:

Executed on behalf of the Council

Chief Executive Officer

Name of Chief Executive Officer:

Witness

Name of Witness:


Executed on behalf of the Developer in accordance with s127(1) of the
Corporations Act 2001 (Cth)



Director

Name of Director:

MARK BEVER KENNEDY



Director/Secretary

Name of Director/Secretary:

TREVOR CHARLES PENNANT

Fishermans Paradise Road Planning Agreement
Shoalhaven City Council
Grange Estates (NSW) Pty Limited

Executed on behalf of the Landowner in accordance with s127(1) of the
Corporations Act 2001 (Cth)



Director

Name of Director:

DANIEL BRUCE PUNNETT



Director/Secretary

Name of Director/Secretary:

TREVOR CHARLES PUNNETT

Appendix

(Clause 51)

Environmental Planning and Assessment Regulation 2000

(Clause 25E)

Explanatory Note

Draft Planning Agreement

Under s7.4 of the *Environmental Planning and Assessment Act 1979*

Parties

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

Grange Estates (NSW) Pty Ltd ACN 079 624 909 of 19 / 19-21 Central Road
MIRANDA NSW 2228 (**Developer**)

Description of the Land to which the Draft Planning Agreement Applies

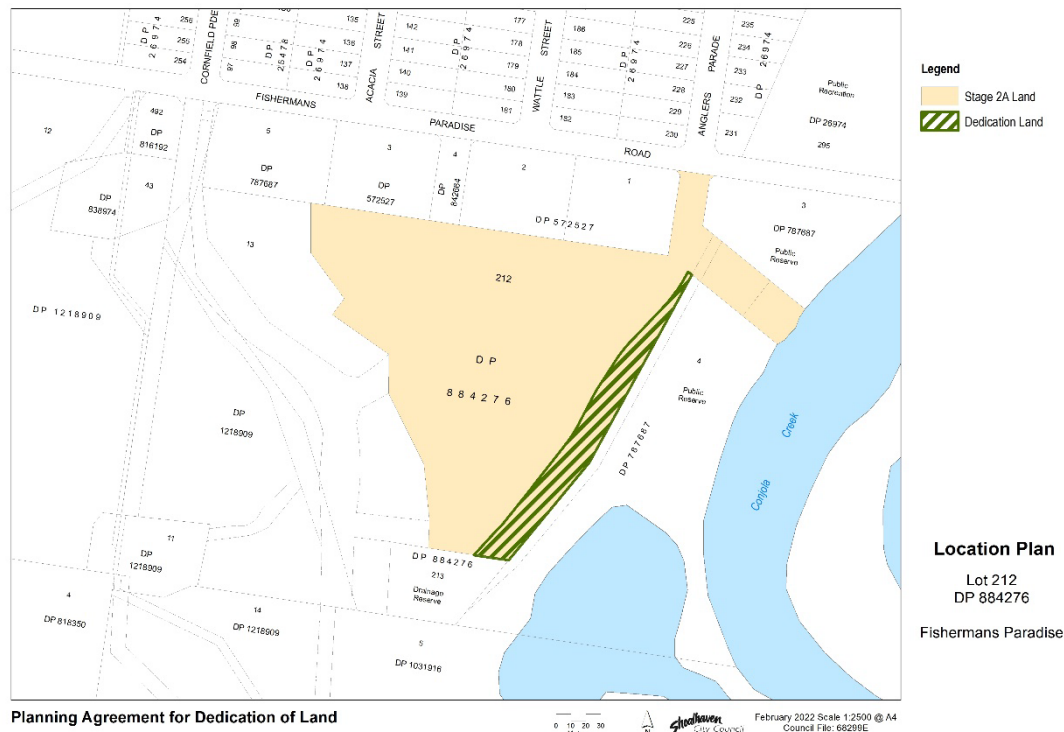
This Draft Planning Agreement applies to the land comprised in Lot 212 DP884276.

A plan showing the land to which this VPA applies is provided below:

Fishermans Paradise Road Planning Agreement

Shoalhaven City Council

Grange Estates (NSW) Pty Limited



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Description of Proposed Development

This Draft Planning Agreement applies to the part of the development that is on Lot 212 DP884276 that is authorised by a Development Consent to Development Application SF7079 granted by the Council on 13 December 1991, as modified by modification application DS19/1344 determined by the Council on 8 April 2021, and as further modified from time to time. The development is for the staged subdivision of the land.

Description of Development Contributions

This draft Planning Agreement requires the Developer to:

- dedicate 3,675sqm of land as public reserve. The land is identified as 'Public Reserve' on the Land Dedication Plan,
- prepare an environmental management plan which sets out management actions on the public reserve and provide it to the Council for approval,
- carry out the management and monitoring actions set out in the approved environmental management plan for the period prior to the dedication of land and for the 2 years after dedication. This includes the installation of fencing around the public reserve,
- pay to Council monetary contributions to be applied towards the Council's management of the public reserve after it is dedicated to the Council.

Summary of Objectives, Nature and Effect of the Draft Planning Agreement

Objectives, Nature and Effect of Draft Planning Agreement

The Draft Planning Agreement is a planning agreement under s7.4 of the *Environmental Planning and Assessment Act 1979*. The Draft Planning Agreement is a voluntary agreement under which Development Contributions (as defined in clause 1.1 of the Draft Planning Agreement) are made by the Developer for various public purposes (as defined in s7.4(3) of the Act).

The objective of the Draft Planning Agreement is to require the dedication of land to the Council for a public reserve, the preparation of an environmental management plan for the land to be dedicated, the carrying out of management and monitoring actions prior to the dedication of the land and for the 2 years after dedication, and the payment of monetary contributions to the Council to be applied towards the Council's management of the dedicated land.

The Development Contributions are provided in connection with the development of Stage 2A of the land.

The Draft Planning Agreement:

- relates to the carrying out of the part of the Development (as defined in clause 1.1 of the Draft Planning Agreement) that is on the Stage 2A Land by the Developer,
- does not exclude the application of s7.11, s7.12 or s7.24 of the Act to the part of the Development that is on the Stage 2A Land,
- makes provision for the preparation of an environmental management plan and carrying out of management and monitoring actions in accordance with that plan,
- makes provision for the dedication of land,
- makes provision for the payment of monetary contributions to Council,
- is to be registered on the title to the Stage 2A Land,
- imposes restrictions on the Parties transferring the Stage 2A Land or any part of it or assigning, or novating an interest under the agreement,
- provides two dispute resolution methods for a dispute under the agreement, being expert determination and mediation,
- provides that the agreement is governed by the law of New South Wales, and
- provides that the A New Tax System (Goods and Services Tax) Act 1999 (Cth) applies to the agreement.

Assessment of the Merits of the Draft Planning Agreement

How the Draft Planning Agreement Promotes the Public Interest

The dedication of the public reserve under this Deed will ensure this land will be secured for environmental conservation purposes and help promote the health of the adjacent coastal wetland and waterway.

The carrying out of management actions in accordance with an approved environmental management plan will mitigate the direct and indirect impacts of the subdivision works, improve the ecological condition of the land and ensure future maintenance costs are minimised.

Specific objectives include:

- extend the public foreshore reserve in Fishermans Paradise,
- improve the ecological condition and function of the Dedication Land,
- protect the ecological integrity of the wetland reserve, which is classified as an Endangered Ecological Community,
- help secure the long-term health of the adjacent coastal wetland and waterway.

The Draft Planning Agreement will also require the payment of monetary contributions by the Developer to the Council towards the management of the dedicated land by the Council after it is dedicated to the Council.

The Draft Planning Agreement:

- promotes good design and amenity of the built environment,
- provides increased opportunity for public involvement and participation in environmental planning and assessment of the Development.

The Draft Planning Agreement promotes the public interest by promoting the objects of the Act as set out in s1.3(g) and (j) of the Act.

The Draft Planning Agreement promotes the guiding principles for local government as set out in s8A of the *Local Government Act 1993* by:

- providing a means for the lands to be managed so that current and future local community needs, in the form of public amenity, can be met, and
- providing a means for Council to work with the Developer to secure the public amenity through establishment and management of landscaping,
- providing a means that allows the wider community to make submissions to the Council in relation to this Agreement.

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

The Draft Planning Agreement is not inconsistent with the Council's Capital Works Program.

Fishermans Paradise Road Planning Agreement
Shoalhaven City Council
Grange Estates (NSW) Pty Limited

Whether the Draft Planning Agreement specifies that certain requirements must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued

Yes.

Prior to the issuing of any Subdivision Works Certificate for any part of the Development that is on the Stage 2A Land, the Developer is to:

- prepare and obtain Council's approval to an Environmental Management Plan, and
- provide the Council with Security.

Prior to the issuing of the first Subdivision Certificate that creates any lot within the Stage 2A Land, the Developer is to:

- complete fencing work and work set out in the approved Environmental Management Plan, and
- provide to the Council a Monitoring and Implementation Report.