

Voluntary Planning Agreement

91-103 Menangle Street, Picton

Wollondilly Shire Council ("**Council**")

ABN 93 723 245 808

Sloane Place Pty Ltd ("**SPPL**")

ABN 12 658 691 000

10 August 2023

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Parties

Wollondilly Shire Council ("Council")

ABN 93 723 245 808

Sloane Place Pty Ltd ("SPPL")

ABN 12 658 691 000

Background

- A. SPPL is the owner of the Land.
- B. SPPL proposes to carry out the Development on the Land.
- C. There is an offer to enter into a Voluntary Planning Agreement with the Council, in connection with the Development Application which gave rise to the Development Consent.
- D. Condition 5 of the Development Consent requires the entry into this Agreement pursuant to section 7.7(3) of the *Environmental Planning & Assessment Act 1979* (NSW).
- E. SPPL agrees to provide the Development Contributions to the Council on the terms and conditions of this deed.

Operative Provisions

1. Definitions and Interpretation

1.1 Definitions

In this deed:

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

"Approval" means any approvals, consents, modifications, certificates, permits, endorsements, licenses, conditions or requirements (and any modifications or other variations to them) which may be required by law in connection with the commencement and carrying out, as applicable, of the works associated with the provision of the Contributions.

"Authority" means any governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity and includes an "accredited certifier" as that term is defined in the Act.

"Bank Guarantee" means an irrevocable and unconditional undertaking by a bank or financial institution approved by the Council to pay an amount or amounts of money to the Council on demand and containing terms and conditions reasonably acceptable to the Council.

"Business Day" means any day on which banks are open for business generally in NSW, except for Saturday, Sunday or a day which is a public holiday in NSW.

"Business Hours" means from 9am to 5pm on each Business Day.

"Contributions" means the development contributions, being dedication of land, as described in clause 5.

"Construction Certificate" has the same meaning given to that term under the Act.

"Costs" means external costs, charges and expenses, including those incurred in connection with consultants and advisers.

"Council" means Wollondilly Shire Council.

"Council's Policy" means the Council's *Planning Agreement Policy - PLA0037*, adopted by Council on 19 October 2015.

"Dedication Land" means the land zone RE 1 under Wollondilly Local Environmental Plan land at Attachment A with an area of 3,614 m² (subject to survey).

"Development" means the development or any part of the development approved under the Development Consent (including any subsequent modification of the Development Consent).

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

"Development Consent" means the consent granted on 19 October 2018 for DA/2016/472 for the demolition of existing buildings, amalgamation of 7 lots and subdivision of the amalgamated lots by Torrens title into 2 lots, construction and strata subdivision of 2 residential flat buildings containing 26 units, 32 townhouses/terraced row housing and 3 cottages including 78 residential car parking spaces, 26 visitor car parking spaces and 8 accessible car parking spaces, associated road construction, stormwater drainage works and landscaping.

"Explanatory Note" means the explanatory note in relation to the Planning Agreement, as required by clause 205 of the Regulations, and attached as Schedule 2 to this deed.

"Financial Year" means

"GST" has the same meaning as in the GST Law.

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

"Land" means Lots 1 & 2 DP559292, Lots 18 & 19 DP1065519, Lot 1 DP81348 and Lots 22 & 23 DP586861, known as 91-103 Menangle Street, Picton.

"Law" means

- (a) the common law including principles of equity; and
- (b) the requirements of all statutes, rules, ordinances, codes, regulations, proclamations, by-laws or consents by an Authority,

presently applying or as they may apply in the future.

“Legislation” means any statute, rule, ordinance, code, regulation, proclamation, by-law or consent by an Authority.

“Modification Application” means any application to modify the Development Consent under section 4.55 of the Act.

“Monetary Contribution” means the monetary contribution payable by the Developer under clause 5 of this deed.

“Party” means a party to this deed, including their respective successors and assigns.

“Register” means the Torrens title register maintained under the *Real Property Act 1900* (NSW).

“Regulation” means the *Environmental Planning and Assessment Regulation 2021* (NSW).

“State” means the State of New South Wales.

“Subdivision Certificate” has the same meaning given to that term under the Act.

“Subdivision Works Certificate” means a subdivision works certificate of a kind referred to in Part 6 of the Act.

1.2 Interpretation

In this deed:

(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 an Authority in this deed includes,

(1) where an Authority ceases to exist, the body which replaces it; and

(2) where an Authority has its powers or functions transferred to another body the body which has the same or similar powers and which performs the same or similar functions.

(e) neither this deed nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting;

(f) a reference to a document (including this deed) is to that document as varied, novated, ratified or replaced from time to time;

(g) 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;

- (h) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (i) 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 deed, and a reference to this deed includes all schedules, exhibits, attachments and annexures to it;
- (j) 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;
- (k) "includes" in any form is not a word of limitation;
- (l) a reference to dollars or \$ is to Australian currency; and
- (m) a reference to a term or expression defined in the Act shall have the meaning given to it by the Act.

2. Status of this deed

- (a) This deed takes effect from the date on which the last party to the deed executes the deed.
- (b) The last party to execute the deed is to insert the date and, within 1 business day of that date, provide a copy of the executed deed to the other party.
- (c) The Parties will use their best endeavours to execute this deed within 28 Business Days from the end of the public notice period required by clause 204 of the Regulations.

3. Planning Agreement under the Act and Policy

- (a) The Parties agree that this deed is a planning agreement within the meaning of section 7.4 of the Act.
- (b) Schedule 2: Explanatory Note of this deed summarises the requirements for planning agreements under section 7.4 of the Act and the way this deed addresses those requirements.
- (c) This deed has been prepared in accordance with Council's Policy.

4. Application of this deed

This deed applies to:

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

5. Contributions

5.1 Timing of contributions

- (a) The contributions which SPPL is required to make under this clause 5 must, subject to clause 5.2(b), be made prior to the issue of the Construction Certificate for the Development.

- (b) Clause 5.2(a) operates as a restriction on the issue of a Construction Certificate.

5.2 Dedication of Land

- (a) Prior to the issue of the first Construction Certificate SPPL must execute this Deed.
- (b) The land identified on the plan in Attachment A as RE1 Zoned Land with an area of 3,614 m² (subject to survey) (**Dedication Land**), is to be dedicated to Council, at no cost to Council, and in a suitable condition that is free from contamination when it is safe and practical to do so.
- (c) The Dedication Land is to be dedicated to the Council for use as a public reserve.
- (d) The Dedication Land is to be dedicated generally in accordance with Council's *Dedication of Land Policy PLA0036* as in force at the date of this deed.

6. Application of s.7.11, s.7.12 and s.7.24 of the Act to the Development

- (a) This deed excludes the application of section 7.11 of the Act to the Development.
- (b) This deed excludes the application of section 7.12 of the Act to the Development.
- (c) This deed does not exclude the application of section 7.24 of the Act to the Development.

7. Interests in the Land

7.1 Ownership

SPPL represents and warrants to the Council that it is the legal owner of the Land.

7.2 Registration

- (a) SPPL agrees to procure the registration of this deed under the *Real Property Act 1900* (NSW) in the relevant folios of the Register of the Land in accordance with section 7.6 of the Act.
- (b) SPPL, at its own expense, will, within 10 days after this deed takes effect, take all practical steps and otherwise do anything that the Council reasonably requires, to procure:
 - (1) the consent of each person who:
 - i. has an estate or interest in the Land registered under the *Real Property Act 1900* (NSW); or
 - ii. is seized or possessed of an estate or interest in the Land; and
 - (2) the execution of any documents; and
 - (3) the production of the relevant certificates of title,

to enable the registration of the planning agreement in accordance with clause 7.2(a).

- (c) SPPL, at its own expense, will take all practical steps and otherwise do anything that the Council reasonably requires to procure:
 - (1) the lodgement of this planning agreement with the Registrar-General as soon as reasonably practicable after the planning agreement takes effect but in any event, no later than 30 Business Days after that date; and
 - (2) the registration of the planning agreement by the Registrar-General in the relevant folios of the Register for the Land as soon as reasonably practicable after the planning agreement is lodged for registration.

7.3 Release and Discharge

- (a) Once SPPL has completed its obligations under this deed, SPPL may request in writing that the Council provide a release and discharge of this deed so that it may be removed from the folios of the Register for the Land (or any part of it).
- (b) In response to a request made under clause 7.3(a) the Council agrees to provide a release and discharge of this deed if and when it is satisfied that:
 - (1) SPPL has duly fulfilled all of its obligations under this deed;
 - (2) any default by SPPL under this deed has been remedied by SPPL or waived by the Council; and
 - (3) SPPL is not otherwise in default of any of its obligations under this deed.
- (c) The Council also agrees to provide a release and discharge of this deed if:
 - (1) the development consent to which the deed relates has lapsed or has been surrendered; or
 - (2) the parties agree that the performance of the deed has been frustrated by an event beyond the control of the parties.

8. Security

8.1 Security for dedicated land

- (a) If SPPL does not comply with its obligations in clause 5.2 of this deed, SPPL agrees that the Council may compulsorily acquire the land to be dedicated to Council under that clause. For the purposes of section 30(2) of the *Land Acquisition (Just Terms Compensation) Act 1991*, SPPL agrees that the compensation payable for the acquisition will be \$1.00 and that all relevant matters concerning the compulsory acquisition have been agreed.
- (b) Council may exercise its rights under clause 8.1(a) by serving written notice and delivering a transfer or a registrable section 88B Instrument under the *Real Property Act 1900 (NSW)*, and SPPL must execute and return that form to the Council within 14 days.

- (c) SPPL agrees to do all things necessary to facilitate a transfer under this clause including to enable the Council to execute all such documents and do all such things on SPPL's behalf as are necessary or desirable to enable the transfer of that land to the Council.

9. Enforcement of Obligations

9.1 Default

- (a) If a Party considers that another Party has failed to perform or fulfil an obligation under this deed it may give notice in writing to the other party (**Default Notice**) giving particulars of the default and requiring the default to be remedied within a reasonable time (not being less than 21 days).
- (b) In determining a reasonable time, regard must be had to both the nature of the default and the work or other action required to remedy it, as well as whether or not the continuation of the default constitutes a public nuisance or raises other circumstances of urgency or emergency.
- (c) If a party disputes the Default Notice it may refer the dispute to dispute resolution under clause 10 of this deed.

9.2 Enforcement

- (a) This Deed may be enforced by any Party in any court of competent jurisdiction.
- (b) SPPL covenants with the Council that it will not rescind or terminate this deed or make a claim that this deed is void, voidable, illegal or unenforceable because a condition of the Development Consent requires SPPL to enter into a planning agreement in the terms of this deed.

10. Dispute Resolution

10.1 Parties to meet

- (a) If a dispute between any of the Parties arises in connection with this deed or its subject matter then either Party may give the other Party a Notice of Dispute in writing identifying and providing details of the dispute.
- (b) The Parties must continue to perform their respective obligations under this deed despite the existence of a dispute.
- (c) Representatives of the Parties must promptly (and in any event within 10 Business Days of the Notice of Dispute) meet in good faith to attempt to resolve the notified dispute.
- (d) The disputing Parties may, without limitation:
 - (1) resolve the dispute during the course of that meeting;
 - (2) agree that further material or arbitration about a particular issue or consideration is needed to effectively resolve the dispute (in which event the parties will, in good faith, agree to a timetable for resolution); or
 - (3) agree that the disputing parties are unlikely to resolve the dispute and, in good faith, agree to a form of alternative dispute resolution (including

expert determination, arbitration or mediation) which is appropriate for the resolution of the relevant dispute.

10.2 Further Notice if Not Settled

If the dispute is not resolved within 20 Business Days after the nominated representatives have met, any disputing Party may give to the other a written notice calling for determination of the dispute (**Determination Notice**) by mediation under clause 10.3.

10.3 Mediation

If a disputing Party gives a Determination Notice calling for the dispute to be mediated:

- (a) The disputing Parties must agree to the terms of reference for the mediation within 20 Business Days of the receipt of the Determination Notice (or any further period agreed in writing by them), and those terms are to include a requirement that the mediation rules of the Institute of Arbitrators and Mediators Australia (NSW Chapter) apply.
- (b) The mediator will be agreed between the disputing Parties or, failing agreement within 20 Business Days of receipt of the Determination Notice (or any further period agreed in writing by them), any disputing Party may request the President of the Institute of Arbitrators and Mediators Australia (NSW Chapter) to appoint a mediator.
- (c) The mediator appointed pursuant to this clause 10.3 must:
 - (1) have reasonable qualifications and practical experience in the area of the dispute; and
 - (2) have no interest or duty which conflicts or may conflict with his or her function as a mediator and disclose any such interest or duty before his or her appointment.
- (d) The mediator is to be required to give an undertaking to keep confidential all matters coming to his or her knowledge by reason of his or her appointment and performance of his or her duties.
- (e) The disputing Parties must within 20 Business Days of receipt of the Determination Notice notify each other of their representatives who will be involved in the mediation (except if a resolution of the Council is required to appoint a representative, in which case the Council must give notice of its representative within 5 Business Days of the resolution).
- (f) The disputing Parties agree to be bound by a mediation settlement (if settlement is achieved) and may only initiate court proceedings in respect of a dispute which is the subject of a mediation settlement for the purpose of enforcing that mediation settlement.
- (g) In relation to costs and expenses:
 - (1) each Party will bear its own professional and expert costs incurred in connection with the mediation; and
 - (2) the costs of the mediator will be shared equally by the disputing Parties unless the mediator determines that a Party has engaged in vexatious

or unconscionable behaviour in which case the mediator may require the full costs of the mediation to be borne by that Party.

10.4 Litigation

- (a) If a dispute arises between the Council and SPPL in relation to this deed then the disputing Parties must not commence any court proceedings relating to the dispute unless the disputing Parties have first complied with the processes in clauses 10.1-10.3.
- (b) If the dispute is not finally resolved in accordance with the process in clauses 10.1-10.3 then any disputing Party is at liberty to litigate the dispute.
- (c) Nothing in this clause 10 prevents:
 - (1) either party from seeking urgent interlocutory relief;
 - (2) the Council from bringing proceedings in a Court of competent jurisdiction to enforce any aspect of this deed or any matter to which this deed relates; or
 - (3) the Council from exercising any function under any Legislation, including the Act, or any other Law relating to the enforcement of any aspect of this deed or any matter to which this deed relates.

11. Assignment, Novation and Dealing

- (a) SPPL may not transfer the Land to any person or transfer, assign or novate its rights or obligations under the deed unless:
 - (1) the person to whom the Land or rights are transferred agrees to be bound by the deed at no cost to Council;
 - (2) Council is satisfied that the person to whom the Land or rights are to be transferred is able to perform the obligations under the deed, based on such reasonable evidence as the Council requires to be provided;
 - (3) SPPL is not in breach of the deed; and
 - (4) the Council otherwise consents to the transfer.
- (b) Any change of ownership or control (as defined in section 50AA of the *Commonwealth Corporations Act 2001*) of a Party (excluding the Council) shall be deemed to be an assignment of this deed for the purposes of this clause.
- (c) Any purported dealing in breach of this clause is of no effect.

12. Review and amendment of this Deed

- (a) The Council and SPPL agree to review this deed:
 - (1) within 28 days of the end of each Financial Year; and
 - (2) if the Development Consent is modified.

- (b) This deed may also be reviewed or modified by the Parties at any time. Any review or modification of this deed will be conducted in the circumstances and in the manner determined by the Parties.
- (c) No modification or review of this deed will be of any force or effect unless it is in writing and signed by both Parties.
- (d) A Party is not in breach of this deed if it does not agree to an amendment to this deed requested by a Party in, or as a consequence of, a review.

13. Costs

- (a) SPPL is to pay:
 - (1) its own costs and expenses (including legal fees) of and incidental to the preparation, negotiations, execution and (where applicable) the stamping and registration of this deed, including all Stamp Duty payable; and
 - (2) the Council's reasonable costs of and incidental to the preparation, negotiation and execution, not exceeding \$10,000 and, where necessary, enforcement of this deed.

14. GST

- (a) Words and expressions which are not defined in this deed but which have a defined meaning in GST Law have the same meaning as in the GST Law.
- (b) Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this deed are exclusive of GST.
- (c) If GST is imposed on any supply made under or in accordance with this deed, SPPL must pay the GST or pay to the Council an amount equal to the GST payable on or for the taxable supply, whichever is appropriate in the circumstances.

15. Use of Explanatory Note

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

16. Notices

- (a) A notice given by either Party pursuant to this deed has no legal effect unless it is in writing.
- (b) All written notices given under this deed may be validly given by any one of the following means:
 - (1) by sending it by prepaid post or by document exchange to the address of the Party to be served or its solicitor;
 - (2) by email to the email address of the Party to be served or its solicitor; or
 - (3) by delivering it to the Party to be served or to its solicitor.
- (c) The Parties expressly acknowledge that it is each Party's responsibility to ensure that the other is fully aware of that Party's current contact details at all

times throughout the duration of this deed. Notices sent by one Party to the other Party which are addressed to an address previously notified to the delivering Party as the other Party's address are deemed received by the other Party unless and until that other Party can prove it had notified the delivering Party of a more recent address.

- (d) A notice shall be deemed to be given and received:
- (1) if sent by pre-paid post or by document exchange, 2 Business Days after it has been posted or has been delivered to the Document Exchange Centre;
 - (2) if sent by email during Business Hours, on the day it was sent and, if sent by email outside Business Hours, on the first Business Day after the day it was sent; and
 - (3) if delivered during Business Hours, on the day of delivery and, if delivered outside Business Hours, on the first Business Day after the day of delivery.
- (e) As at the date of this deed each Party's address for service is as follows:

For the Council:

Delivery address: 60-64 Menangle Street
Picton NSW 2571

Post: PO Box 21
Picton NSW 2571

Email: council@wollondilly.nsw.gov.au

For SPPL

Delivery address: c/- Dentons Australia

Email: stephanie.vatala@dentons.com
and
john.grimble@dentons.com

- (f) A notice given or a document signed or served on behalf of any Party by any director or company secretary or solicitor of that Party shall be deemed to have been given, signed or served by that Party personally.
- (g) Any notice sent by email will be taken to have been received by the addressee for the purposes of this deed unless the sender receives a message indicating that delivery has failed.
- (h) A Party may change its address for notices by giving the other Party 3 Business Days' written notice of the change.

17. Miscellaneous

17.1 Relationship of the Parties

- (a) Nothing in this deed creates a relationship of agency between the Parties or, except as expressly provided, authorises one of them to enter into any contracts or other commitments which bind any other Party without their express written approval.
- (b) Nothing in this deed is intended or to be implied to create a relationship of employment, partnership or joint venture between the Parties or any of their respective agents, employees, sub-contractors and assigns.

17.2 No Waiver

- (a) Any delay or failure to enforce any term of this deed will not be deemed to be a waiver.
- (b) There is no implied waiver by either Party in respect of any term of this deed and any waiver granted by either Party shall be without prejudice to any other rights.
- (c) Any waiver must be in writing.
- (d) A waiver by a Party of its rights under this deed is only effective in relation to the particular obligation or breach in respect of which it is given, and does not cover subsequent breaches of the same or a different kind.

17.3 No Fetter

Nothing in this deed is to be construed as requiring an authority to do anything that would cause it to be in breach of any of its obligations at Law, and without limitation:

- (a) nothing in this deed is to be construed as limiting or fettering in any way the exercise of any statutory discretion or duty; and
- (b) nothing in this deed imposes any obligation on the Council to:
 - (1) grant development consent or project approval; or
 - (2) exercise any function or power under the Act in relation to a change, or a proposed change, in an environmental planning instrument.

17.4 Governing Law

This deed shall be governed by and construed in accordance with the Law of New South Wales and the Commonwealth of Australia and the parties submit themselves to the exclusive jurisdiction of the courts of those jurisdictions and those that have jurisdiction to hear any appeals from them.

17.5 Entire Agreement

This deed:

- (a) is the entire agreement of the Parties concerning everything connected with the subject matter of this deed; and

- (b) supersedes any prior representations, statements, promises or understanding on anything connected with that subject matter.

17.6 Severability

If any provision of this deed is void, unenforceable or illegal in the jurisdiction governing this deed, then:

- (a) it is to be read down so as to be valid and enforceable; or
- (b) if it cannot be read down, the provision (or where possible the offending words), is severed from this deed and the rest of this deed remains in force.

17.7 Counterparts

This deed may be executed in any number of counterparts, all of which taken together constitute one and the same document.

17.8 Further assurances

Each Party must promptly execute all documents and do all other things reasonably necessary or desirable to give effect to the arrangements recorded in this deed.

17.9 Representation and Warranties

The Parties represent a warrant that they have the power to enter into this deed and to comply with their obligations under this deed.

17.10 Confidentiality

This deed may be treated as a public document.

Executed as a Deed on 10 August 2023

EXECUTED for and on behalf of **Wollondilly Shire Council** by its authorised delegate, in accordance with a resolution of the Council.


.....
Ben Taylor
Chief Executive Officer

EXECUTED by **Sloan Place Pty Ltd** ABN 12 658 691 000 in accordance with section 127 of the *Corporations Act 2001*:

Signature: 

Name: Jean-Marc Hakim

PLEASE PRINT

Director/Secretary

Signature: 

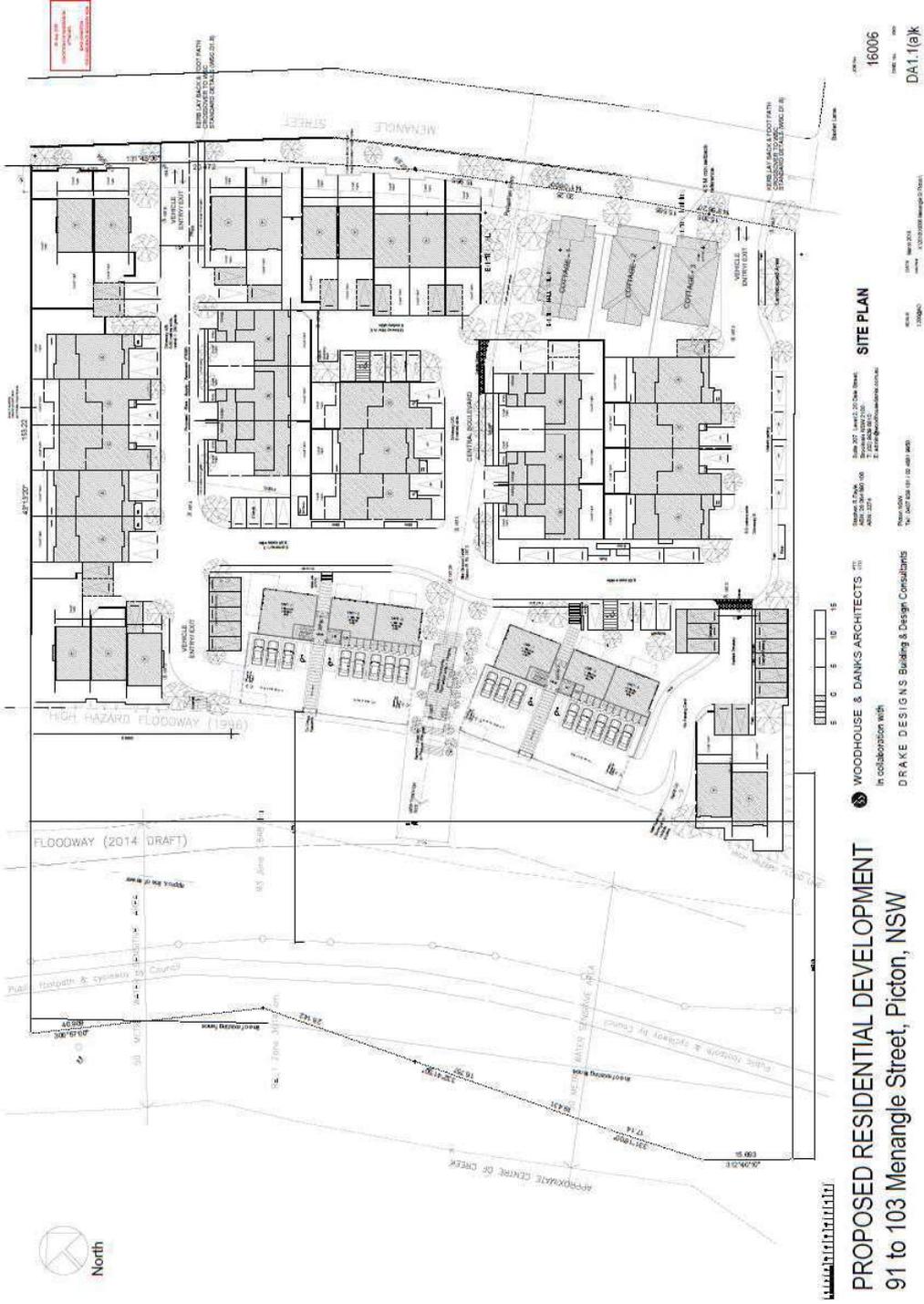
Name: Patrick Rehayem

PLEASE PRINT

Director/Secretary

nee

Attachment A:



Schedule 1: Section 7.4 Requirements

SUBJECT AND SUBSECTION OF THE ACT	THIS PLANNING AGREEMENT
SPPL has: (a) sought a change to an environmental planning instrument (b) made, or proposes to make, a Development Application (c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies	(a) No. (b) Yes. (c) No.
Description of the land to which this Planning Agreement applies – s.7.4(3)(a)	The whole of the Land.
Description of the development –s.7.4(3)(b)	Refer to the definition of Development in clause 1
The nature and extent, timing, and manner of delivery of contribution required by this Planning Agreement – s. 7.4(3)(c)	Refer to clause 5
Applicability of s.7.11 of the Act – Section 7.4(3)(d)	Refer to clause 6
Applicability of section 7.12 of the Act – Section 7.4(3)(d)	Refer to clause 6
Applicability of section 7.24 of the Act – Section 7.4(3)(d)	Refer to clause 6
Whether benefits are to be taken into account under section 7.11 – Section 7.4(3)(e)	Refer to clause 6
Mechanism for dispute resolution – Section 7.4(3)(f)	Refer to clause 10
Enforcement of the Planning Agreement – Section 7.4(3)(g)	Refer to clause 9
Registration of the Planning Agreement – Section 7.6	Refer to clause 7.2
No obligation to grant consent or exercise functions – Section 7.4(9)	Refer to clause 17.3

Schedule 2: Explanatory Note

Planning Agreement for provision of Land Dedication

Introduction

The purpose of this Explanatory Note is to provide a plain English summary to support the notification of the proposed Planning Agreement (the "**Planning Agreement**") prepared under Section 7.4 of the *Environmental Planning & Assessment Act 1979* (the "**the Act**").

This Explanatory Note has been prepared jointly by the Parties as required by clause 205 of the *Environmental Planning & Assessment Regulation 2021* ("**the Regulation**").

This explanatory note is not to be used to assist in construing the deed.

Parties to the Planning Agreement

The Parties to the Planning Agreement are Wollondilly Shire Council ("**Council**") and Sloane Plan Pty Ltd ("**SPPL**").

Development Consent has been granted means the consent granted on 19 October 2018 for DA/2016/472 for the demolition of existing buildings, amalgamation of 7 lots and subdivision of the amalgamated lots by Torrens title into 2 lots, construction and strata subdivision of 2 residential flat buildings containing 26 units, 32 townhouses/terraced row housing and 3 cottages including 78 residential car parking spaces, 26 visitor car parking spaces and 8 accessible car parking spaces, associated road construction, stormwater drainage works and landscaping.

SPPL has made the offer to dedicate the land identified as **Dedication Land** as a public reserve as part of the development.

Summary of the objectives, nature and effect of the Planning Agreement

The objective of the Planning Agreement is to record the terms of the offer made by SPPL and its obligations to provide certain material public benefits to the Council.

The effect of the agreement is that SPPL will be required to provide the following public benefits:

- (a) Dedicate the following land to the Council, at no cost to the Council, for use as a public reserve:

The land identified on the plan in Attachment A **Dedication Land** as RE 1 zoned land with an area of 3,614m² (subject to survey).

SPPL is also required to provide security for each contribution and register the planning agreement on the title of the land in accordance with section 7.6 of the Act and the Council's *Planning Agreements Policy (037)*.

Assessment of the Merits of the Planning Agreement

The benefits of the Planning Agreement are that:

- (a) SPPL will dedicate the land identified on the plan in Attachment A as RE 1 zoned land with an area of 3,614m² to the Council as a public reserve, in lieu of making a s7.11 monetary contribution to Council.

Identification of how the Planning Agreement promotes the public interest and the objects of the Act

The Planning Agreement promotes the public interest and the objects of the Act by providing land for public purposes (in the form of the dedication of land to the Council) in the vicinity of the development.

Identification of how the Planning Agreement promotes elements of the Council's Charter under the *Local Government Act 1993*

The Planning Agreement is consistent with the following guiding principles for Councils in section 8A of the *Local Government Act 1993* (which have replaced the Council Charter):

- In exercising functions generally:
 - Councils should carry out functions in a way that provides the best possible value for residents and ratepayers.
 - Councils should plan strategically, using the integrated planning and reporting framework, for the provision of effective and efficient services and regulation to meet the diverse needs of the local community.
 - Councils should work co-operatively with other councils and the State government to achieve desired outcomes for the local community.
 - Councils should manage lands and other assets so that current and future local community needs can be met in an affordable way.
 - Councils should work with others to secure appropriate services for local community needs.
- In decision making:
 - Councils should recognise diverse local community needs and interests.
 - Councils should consider the long term and cumulative effects of actions on future generations.

The Planning Agreement is consistent with and promotes these principles in that it establishes a long term mechanism for mitigating the costs of the impacts of the Development on residents and ratepayers by requiring the Developer (SPPL) to:

- dedicate the land to the Council as a public reserve for the benefit of the community.
- .

Identification of the planning purpose served by the Planning Agreement and whether the Planning Agreement provides for a reasonable means of achieving that purpose

The planning purpose served by the Planning Agreement is the provision of land for public purposes (in the form of the dedication of land to the Council).

The Planning Agreement provides a reasonable means of achieving these public purposes.

Identify whether the agreement, amendment or revocation conforms with the planning authority's capital works program (if any),

The planning agreement is consistent with Council's capital works program.

Identification of the certain requirements of the agreement must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued

The Planning Agreement requires the dedication of land as a public reserve prior to the release of a construction certificate.

How the Planning Agreement promotes the public interest

The Planning Agreement promotes the public interest by providing land for use a public reserve.