

15 August 2024

## Planning Agreement

### *Environmental Planning and Assessment Act 1979 (NSW)*

Subdivision – 80 Minmi Road, EDGEWORTH NSW 2285 and 3  
Transfield Avenue, EDGEWORTH NSW 2285

Date of Execution: 25 November 2024

Council of the City of Lake Macquarie  
ABN 81 065 027 868

Twin Rivers Developments Pty Limited ABN 79 065 087 292

Gregory Maurice Cahill

Brenton Jon Cahill



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This Planning Agreement is dated 25 November 2024

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## Parties

Council of the City of Lake Macquarie  
ABN 81 065 027 868

Twin Rivers Developments Pty. Limited ACN 065 087 292

Gregory Maurice Cahill

Brenton Jon Cahill

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## Introduction

- A The Developer owns the Conservation Land.
  - B Gregory Maurice Cahill owns Lot 137 in DP1273014 within the Development Land and is the sole Director and Secretary of the Developer entity.
  - C Brenton Jon Cahill owns Lot 431 in DP 1278821 within the Development Land.
  - D The Developer has made Development Application DA/2236/2017 to the Council to carry out the Development on the Development Land.
  - E The Development Land is mapped as 'environmentally sensitive land' under the LEP.
  - F Consistently with clause 7.20(4) of the LEP, the Developer has offered to enter into this deed with the Council to mitigate, minimise or offset the impact of the Development on the Development Land through the dedication or transfer of the Conservation Land Contribution and the making of the Endowment Fund Contribution.
  - G The Council, being satisfied that the Developer's offer comprises the dedication of land free of cost (in the case of the Conservation Land Contribution) and the payment of a monetary contribution (in the case of the Endowment Fund Contribution) for a public purpose, accepts the Developer's offer and enters into this deed with the Developer pursuant to s 7.4(1) of the Act.
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## 1. Definitions and interpretation

### 1.1 Definitions

Capitalised terms in this deed have the meaning given to them in **Schedule 5**.

### 1.2 Interpretation

The provisions at **Schedule 6** apply in interpreting this deed.



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## **2. Operation and application of this agreement**

### **2.1 Operation**

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

### **2.2 Planning agreement under the Act**

- (a) This deed constitutes a planning agreement within the meaning of section 7.4 of the Act.
- (b) The parties agree on the matters set out in Schedule 1.

### **2.3 Application**

This deed applies to:

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

### **2.4 Application of sections 7.11, 7.12 and 7.24 of the Act**

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

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## **3. Development Contributions**

### **3.1 Requirement to provide Conservation Land Contribution**

The Developer agrees to provide the Conservation Land Contribution in the manner and at the times set out in **Schedule 3**.

### **3.2 Requirement to provide Endowment Fund Contribution**

The Developer agrees to provide the Endowment Fund Contribution in the manner and at the times set out in **Schedule 3**.

### **3.3 Purpose of Development Contributions**

The Developer agrees that the Council has no obligation:

- (a) to use the Development Contribution in whole or in part for any specific purpose; or
- (b) to repay the Endowment Fund Contribution.

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## **4. Enforcement and Indemnity**

### **4.1 Indemnity**

The Developer indemnifies Council in respect of any Claim that may arise in connection with the performance of the Developer's obligations under this deed but only to the extent that any such Claim does not arise as a result of the negligent acts or omissions of Council.

## 4.2 Suitable means of Security

- (a) To ensure enforcement of this deed by suitable means in the event of a breach of this deed by the Developer, the Developer agrees to register this deed in accordance with clause 5.
- (b) The parties acknowledge and agree that the registration of this deed in accordance with clause 5 constitutes 'suitable means' of enforcement for the purposes of section 7.4(3)(g) of the Act.

## 5. Registration on Title

### 5.1 Interest in Land

The Developer represents and warrants that it is:

- (a) the owner of the Conservation Land; and
- (b) legally and beneficially entitled to obtain all consents and approvals and to compel any person referred to in or contemplated by clause 5.2(b) to assist, cooperate and to otherwise do all things necessary for the Developer to comply with its obligations under clause 5.

### 5.2 Registration of deed

- (a) The Developer agrees to register this deed on title to the Development Land and the Conservation Land in accordance with this clause 5.2.
- (b) Brenton Jon Cahill and Gregory Maurice Cahill, as the registered proprietors of the Development Land, acknowledge and agree that entry into the deed constitutes consent to the registration of this deed on the title of the Development Land for the purposes of section 7.6(1)(a) of the Act.
- (c) The Developer at its own cost must take all practical steps and otherwise do anything to procure items 1 to 6 in the 'Item' column of the table below, in accordance with the timing for that Item set out in the 'Timing' column in the table below:

Ref.	Item	Timing
<b>Consent to and lodgement for registration of deed</b>		
1.	<p>Consent to the registration of this deed on the title to the Development Land and the Conservation Land and to the terms of this deed, from each person as required by the Registrar-General, who:</p> <p>(a) has an estate or interest in the Development Land and Conservation Land, registered under the Real Property Act, including any registered proprietor from time to time; or</p>	Prior to the issue of the first Subdivision Works Certificate issued in relation to the Development.

	(b) is seized or possessed of an estate or interest in the Development Land and Conservation Land.	
2.	The electronic lodgement of this deed in a registrable form through an ELNO for registration by the Registrar-General in the relevant folio of the Register for the Development Land and the Conservation Land, or in the General Register of Deeds if this deed relates to land not under the Real Property Act.	Prior to the issue of the first Subdivision Works Certificate issued in relation to the Development.
3.	The execution of any documents to effect clause 5.2(a) and clause 5.2(b) above.	Prior to the issue of the first Subdivision Works Certificate issued in relation to the Development.
<b>Registration of deed</b>		
4.	The registration of this deed in the relevant folio of the Register for the Development Land and the Conservation Land, including promptly responding to any requisitions made by the Registrar-General in respect of this deed and/or any ancillary documents.	Prior to the issue of the first Subdivision Works Certificate issued in relation to the Development.
<b>Evidence of registration</b>		
5.	Provide the Council with evidence of the lodgement of this deed pursuant to clause 5.2.	Within 10 Business Days of such lodgement.
6.	Provide the Council with a copy of the relevant folio of the Register for the Development Land and the Conservation Land and a copy of the registered dealing containing this deed.	Within 10 Business Days of registration of this deed.

### 5.3 Right to lodge caveat

- (a) Until this deed is registered on title in accordance with clause 5.2, the parties acknowledge and agree that this deed confers on the Council an interest in the Conservation Land and Development Land and entitles the Council to lodge and maintain a caveat on the title to the Conservation Land and Development Land to prevent any Dealing in respect of the Conservation Land and Development Land;
- (b) Council may exercise its right to lodge a caveat in accordance with clause 5.3 if the Developer does not register this deed in accordance with clause 5.2 within 10 Business Days of the deed commencing.
- (c) If Council lodges a caveat in accordance with clause 5.3(b):
  - (i) Council will do all things reasonably necessary:



- (A) to ensure that the caveat does not prevent or delay the Developer's registration of this deed in accordance with clause 5.2; and
- (B) to withdraw the caveat as soon as practicable after Council becomes aware that this deed has been registered on title in accordance with clause 5.2; and
- (ii) the Developer must pay all of Council's costs and expenses incurred in lodging and withdrawing the caveat promptly after receiving a bill of costs from Council following withdrawal of the caveat.

#### **5.4 Release and discharge of deed**

If the Developer satisfies all of its obligations under this deed in respect of the Conservation Land and Development Land, the Council agrees to do all things reasonably required to release and discharge this deed with respect to the Conservation Land and Development Land.

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## **6. Dispute resolution**

### **6.1 Parties not to commence court proceedings without complying with dispute resolution procedures**

- (a) A party must not commence any court proceedings relating to a dispute unless it complies with this clause 6.
- (b) Clause 6.1(a) does not prevent, or prejudice the right of a party to institute, court proceedings for urgent injunctive or declaratory relief in relation to any matter arising out of or relating to this deed.

### **6.2 Written notice of dispute**

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

### **6.3 Attempt to resolve through informal dispute resolution**

After a Dispute Notice is received, the parties must endeavour in good faith:

- (a) to resolve the dispute expeditiously; and
- (b) to agree:
  - (iii) an informal dispute resolution technique;
  - (iv) an independent person required to guide the parties to resolve the matters in the Dispute Notice using the informal dispute resolution technique; and
  - (v) procedures and a timetable for the carrying out of the agreed informal dispute resolution technique.

### **6.4 Mediation if dispute not resolved through informal dispute resolution**

If the parties do not agree to the matters in clause 6.3(b) within 7 Business Days of receipt of a Dispute Notice (or any further period agreed to by the parties in writing), the parties must:



- (a) mediate the dispute in accordance with the Mediation Rules of the Law Society of NSW; and
- (b) in preparing for this mediation, jointly request the president of the Law Society of NSW or the president's nominee to select the mediator and determine the mediator's remuneration.

#### **6.5 When Court proceedings may be commenced**

If the dispute is not resolved through mediation in accordance with clause 6.4, then any party which has complied with the provisions of this clause 6 may:

- (a) terminate the dispute resolution process undertaken under clause 6; and
- (b) following termination, commence court proceedings in relation to the matter set out in the Dispute Notice.

#### **6.6 Parties not to use dispute resolution information for other purposes**

- (a) The parties acknowledge the purpose of any exchange of information or documents or the making of any offer of settlement under this clause 6 is to attempt to settle the matter set out in the Dispute Notice.
- (b) No party may use any information or documents obtained through any dispute resolution process undertaken under this clause 6 for any purpose other than in an attempt to settle the matter set out in the Dispute Notice.

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## **7. Assignment and Transfer**

### **7.1 Right to assign or novate**

- (a) The Developer must not assign this deed to any person except in accordance with this clause.
- (b) If the Developer seeks to assign its rights or benefits or novate its obligations to another party, the Development must:
  - (vi) satisfy the Council that the person to whom the Developer's rights or obligations are to be assigned or novated ('**Incoming Party**') has sufficient assets, resources and expertise required to perform the Developer's obligations under this deed insofar as those obligations are to be assigned or novated to the Incoming Party;
  - (vii) procure the execution of a deed by the Incoming Party with the Council on terms satisfactory to the Council under which the Incoming Party agrees to comply with the terms and conditions of this deed as though the Incoming Party were the Developer;
  - (viii) satisfy Council, acting reasonably, that it is not in material breach of its obligations under this deed; and
  - (ix) obtain Council's written notice that Council consents to the proposed assignment or novation.

- (c) The Assigning Party must pay the Council's reasonable legal costs and other expenses incurred under this clause 7.1 promptly after receiving a bill of costs from Council following the issue of Council's written notice under clause 7.2(b).

## **7.2 Right to transfer Land**

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

- (a) if this deed remains registered under section 7.6 of the Act on either the Conservation Land or the Development Land; or
- (b) if the Conservation Land Contribution required under this deed remains outstanding.

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## **8. Capacity and relationship**

### **8.1 General warranties**

Each party warrants to each other party that:

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

### **8.2 Power of attorney**

If an attorney executes this deed on behalf of any party, the attorney declares that it has no notice of the revocation of that power of attorney.

### **8.3 Assurances**

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

### **8.4 Relationship of parties**

Unless otherwise stated:

- (a) nothing in this deed creates a joint venture, partnership, or the relationship of principal and agent, or employee and employer between the parties; and
- (b) no party has the authority to bind any other party by any representation, declaration or admission, or to make any contract or commitment on behalf of any other party or to pledge any other party's credit.

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## **9. GST**

### **9.1 Definitions**

Words used in this clause that are defined in the GST Law have the meaning given in that legislation.

## **9.2 Intention of the parties**

The parties intend that:

- a) Divisions 81 and 82 of the GST Law apply to the supplies made under and in respect of this deed; and
- b) no additional amounts will be payable on account of GST and no tax invoices will be exchanged between the parties.

## **9.3 Reimbursement**

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

## **9.4 Consideration GST exclusive**

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

## **9.5 Additional Amounts for GST**

- (a) To the extent an amount of GST is payable on a supply made by a party under or in connection with this deed (GST Amount), the Recipient will pay to the Supplier the GST Amount at the same time and in the same manner as the consideration for the supply is to be provided. The supplier must provide a tax invoice to the recipient before the supplier will be entitled to payment of the GST Amount.
- (b) Clause 9.5 applies to non-monetary consideration.

## **9.6 No merger**

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

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# **10. Termination**

## **10.1 Termination**

This deed terminates if:

- (a) the parties agree in writing to terminate the deed; or
- (b) the Developer has satisfied all of the obligations imposed on it under this deed in full; and
- (c) the Council has issued written notice to the Developer stating that Council agrees that the circumstances in above clauses 10.1(a) or 10.1(b) have been achieved.

## **10.2 Consequences of termination**

If this deed terminates:



- (a) all future rights and obligations of the parties under this document are discharged; and
- (b) all rights and obligations of the parties existing at the time of termination including the right for Council to retain the Conservation Land Contribution provided before termination, continue.

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## **11. General provisions**

### **11.1 Entire deed**

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

### **11.2 Notices and time for doing acts**

- (a) The provisions relating to the time for doing acts at Item 2 of Schedule 4 apply.
- (b) The notice provisions at Item 4 of Schedule 3 apply.

### **11.3 Variation**

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

### **11.4 Waiver**

A right created by this deed cannot be waived except in writing signed by the party entitled to that right. Delay by a party in exercising a right does not constitute a waiver of that right, nor will a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.

### **11.5 Preservation of existing rights**

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

### **11.6 No merger**

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

### **11.7 No fetter**

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

### **11.8 Costs**

The Developer must pay the Council's reasonable Costs incurred in preparing and executing this deed promptly after receiving a bill of costs from Council.



### **11.9 Counterparts**

This deed may be executed in any number of counterparts. All counterparts taken together constitute one instrument. Delivery of this deed by email constitutes an effective mode of delivery.

### **11.10 Electronic execution and electronic exchange**

- (a) Each party consents to this deed being executed by a party by way of Electronic Signature using an Approved Signing Method.
- (b) Where this deed is Electronically Signed by a party, the party warrants and agrees that the Electronic Signature has been used to identify the person signing and to indicate that the party intends to be bound by the Electronic Signature.

## Schedule 1 – Requirements under section 7.4 of the Act

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

Requirement under the Act	This deed
<b>Planning instrument and/or development application – (section 7.4(1))</b>  The Developer has: <ul style="list-style-type: none"> <li>(c) sought a change to an environmental planning instrument.</li> <li>(d) made, or proposes to make, a Development Application.</li> <li>(e) entered into a deed with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.</li> </ul>	<ul style="list-style-type: none"> <li>(a) No.</li> <li>(b) Yes.</li> <li>(c) No.</li> </ul>
<b>Description of land to which this deed applies – (section 7.4(3)(a))</b>	See description at Item 1 and Item 2 of Schedule 2.
<b>Description of development to which this deed applies – (section 7.4 (3)(b))</b>	See description at Item 3 of Schedule 2.
<b>Description of change to the environmental planning instrument to which this deed applies – (section 7.4 (3)(b))</b>	NA
<b>The scope, timing and manner of delivery of contribution required by this deed – (section 7.4 (3)(c))</b>	See <b>Schedule 3</b> .
<b>Applicability of sections 7.11 of the Act – (section 7.4 (3)(d))</b>	This deed does not exclude the application of section 7.11 of the Act in respect of the Development.
<b>Consideration of benefits under this deed if section 7.11 applies – (section 7.4 (3)(e))</b>	No.
<b>Applicability of section 7.12 of the Act – (section 7.4 (3)(d))</b>	This deed does not exclude the application of section 7.12 of the Act in respect of the Development.
<b>Applicability of Subdivision 4 of Division 7.1 of the Act – (section 7.4 (3)(d))</b>	NA
<b>Mechanism for Dispute Resolution – (section 7.4(3)(f))</b>	See clause 6.
<b>Enforcement of this deed – (section 7.4(3)(g))</b>	See clause 4.

<b>Requirement under the Act</b>	<b>This deed</b>
<b>No obligation to grant consent or exercise functions</b> – (section 7.4(10))	See clause 11.7.
<b>Registration of the Planning Agreement</b> – (section 7.6 of the Act)	Yes (see clause 5).
<b>Whether the Planning Agreement specifies that certain requirements of the deed must be complied with before a construction certificate is issued</b> – (section 21 of <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i> )	No
<b>Whether the Planning Agreement specifies that certain requirements of the deed must be complied with before an occupation certificate is issued</b> – (section 48 of <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i> )	No
<b>Whether the Planning Agreement specifies that certain requirements of the deed must be complied with before a subdivision certificate is issued</b> – (section 6.15(1)(d) of the Act)	Yes

## Schedule 2 – Land and Development

### Item 1 Development Land

Folio identifier	Area	Landowner
Lot 431 in DP1278821, identified as 80 Minmi Road, Edgeworth	Being the parcel of land denoted as Lot 431 on the deposited plan extract at Annexure A	Brenton Jon Cahill
Lot 137 in DP1273014, identified as 3 Transfield Avenue, Edgeworth	Being the parcel of land denoted as Lot 137 in DP1278821 on the deposited plan extract at Annexure A	Gregory Maurice Cahill

### Item 2 Conservation Land

Folio	Area	Landowner
Lot 2 in DP1297923, identified as 5 Caravel Street, Teralba	Being the parcel of land denoted as Lot 2 on the deposited plan extract at Annexure B	Twin Rivers Developments Pty. Limited ACN 065 087 292

### Item 3 Development

The development which the Developer proposes to carry out on the Development Land in accordance with any relevant Development Consents, Complying Development Certificates or as exempt development or an Activity, following the approval of the Development Application, being DA/2236/2017.

### Item 4 Change to environmental planning instrument

NA



## **Schedule 3 – Development Contributions**

### **1. Development Contribution**

- (a) The Development Contributions which the Developer agrees to provide comprises the:
  - (i) Conservation Land Contribution; and
  - (ii) Endowment Fund Contribution.
- (b) The Items in this **Schedule 3** set out:
  - (i) a description of;
  - (ii) the value of;
  - (iii) the timing within which the Developer must provide; and
  - (iv) other commitments of the Developer relating to,  
the relevant Development Contribution to which the Item relates.

## Item 1 – Conservation Land Contribution

### 1.1 Agreement to provide Conservation Land Contribution

The Developer agrees to provide the Conservation Land Contribution to Council in accordance with the timing set out in the table below:

Contribution	Timing for completion
Conservation Land Contribution	<p>Before the earlier of:</p> <ul style="list-style-type: none"> <li>(a) the clearing of any vegetation on the Development Land;</li> <li>(b) the issue of the first Subdivision Works Certificate issued in relation to the Development; or</li> <li>(c) 2 years from the issue of any Development Consent in relation to the Development.</li> </ul>

### 1.2 Contamination

The Developer:

- (a) warrants that as far as it is aware, and other than as disclosed to Council, the Conservation Land is free from Contamination; and
- (b) indemnifies and must keep indemnified Council against all liability for and associated with all Contamination present in, on and under the Conservation Land including full responsibility for compliance with and any liability in respect of such Contamination under the *Contaminated Lands Management Act 1997* (NSW) and all other relevant legislation and the requirements of relevant Authorities.

### 1.3 Remediation

- (a) If Council becomes aware or reasonably suspects that any part of the Conservation Land was not free from Contamination before the date of this deed, Council may notify the Developer.
- (b) Upon receipt of a notice under clause 1.3(a) of Item 1 of this Schedule 3, the Developer must procure an investigation report to enable the parties to be informed of the nature and extent of the Contamination in, on, under, entering, or leaving the Conservation Land ('Investigation Report') and provide the investigation report to Council.
- (c) After receipt by Council of the Investigation Reports the parties must meet:
  - (i) to discuss in good faith the method by which the relevant part of the Conservation Land might be dealt with so that it will be free from Contamination; and
  - (ii) to agree a standard to which the Developer must remediate the relevant part of the Conservation Land.

- (d) The Developer must at its own cost undertake all reasonable measures to ensure that the relevant part of the Conservation Land is remediated to the standard agreed under clause 1.3(d) of this Item 1 of Schedule 3.

#### **1.4 Condition of Conservation Land on dedication**

- (a) Prior to the dedication or transfer of the Conservation Land in accordance with Item 1 of Schedule 3, the Developer must:
  - (i) remove from the Conservation Land:
    - (A) any rubbish;
    - (B) any temporary works; and
    - (C) any construction plant and equipment;
  - (ii) ensure that the Land is free from any noxious weeds, as defined under section 32 of the *Biosecurity Act 2015* (NSW); and
  - (iii) install and/or affix any nesting boxes on the Conservation Land to ensure that the nesting boxes are fit for purpose, to the satisfaction of the Council.
- (b) Any works carried out by the Developer under this clause 1.4 of Item 1 of Schedule 3, must be carried out in such a manner that the Developer:
  - (i) takes all necessary measures to protect people, property, and the environment;
  - (ii) avoids unnecessary interference with the passage of people and vehicles;
  - (iii) prevents nuisances and unreasonable noise and disturbances; and
  - (iv) complies with all relevant laws and regulations; and
  - (v) complies with current industry practice and standards.
- (c) If, on dedication or transfer of the Conservation Land, Council considers that the Developer has failed to comply with its obligations under this clause 1.4 of Item 1 of Schedule 3:
  - (i) Council may request that the Developer carry out any works which Council considers are reasonably necessary to ensure compliance with this clause 1.4 of Item 1 of Schedule 3; and
  - (ii) as soon as reasonably practicable after receiving a request from Council, the Developer must do all things reasonably necessary to ensure compliance with this clause 1.4 of Item 1 of Schedule 3, as requested by Council.

#### **1.5 Manner of providing Land Contribution**

- (a) The Developer must dedicate the Conservation Land to Council free of any trusts, estates, interests, covenants and Encumbrances by the time specified in Schedule 3.



- (b) The Developer must meet all costs associated with the dedication required for the Conservation Land Contribution including any administrative and legal costs incurred by Council in relation to that dedication.
- (c) The Conservation Land is taken to be dedicated to Council under this deed:
  - (i) if the relevant land is dedicated in a plan registered at the NSW Land Registry Services when that plan is registered; or
  - (ii) otherwise when the Developer delivers to Council:
    - (A) a transfer of the relevant land in registrable form;
    - (B) the original Certificate of Title for the relevant land; and
    - (C) any document in registrable which, when registered, will remove any Encumbrances registered on the title of that land, excluding encumbrances that would not in the Council's opinion, acting reasonably, impede the intended use of all or any part of the Conservation Land to be dedicated to the Council including but not limited to easements and covenants for services and drainage.

#### **1.6 Acquisition of Dedication Land**

- (a) The Developer must act in good faith to provide the Conservation Land Contribution as required under this Item.
- (b) If the Developer does not provide the Conservation Land Contribution by the time required, the Council in its discretion may acquire, and the Developer consents to the Council acquiring, the Conservation Land compulsorily for the amount of \$1 without having to follow the pre-acquisition procedure under the *Land Acquisition (Just Terms) Compensation Act 1991*.
- (c) Clause 1.6(b) of Item 1 of Schedule 3 constitutes an agreement for the purposes of s 30 of the *Land Acquisition (Just Terms) Compensation Act 1991* and the Parties acknowledge and agree that they have agreed on all relevant matters concerning the compulsory acquisition.
- (d) If, as a result of the acquisition referred to in clause 1.6(b) of Item 1 of Schedule 3, the Council is required to pay compensation to any person other than the Developer, the Developer must reimburse the Council that amount within 10 Business Days of receiving that written request.
- (e) 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 Conservation Land or any interest in the Conservation Land in accordance with the terms of this clause.
- (f) The Developer must promptly do all things necessary, and consents to the Council doing all things necessary, to give effect to this clause, without limitation.



## Item 2 – Endowment Fund Contribution

### 1.1 Agreement to provide Endowment Fund Contribution

- (g) The Council and Developer acknowledge and agree that the Endowment Fund Contribution comprises the sum of the Portion 1 Contribution, Portion 2 Contribution and Portion 3 Contribution under this deed.
- (h) The Developer agrees to provide the Endowment Fund Contribution to the Council in accordance with the timing set out in the table below:

Contribution	Value	Timing for completion
<b>Portion 1 Contribution</b>	The greater of: (a) one third (1/3) of \$761,000; and (b) one third (1/3) of the present value of \$761,000, calculated in accordance with clause 1.2 of Item 2 of this Schedule 3, at the time in which the Portion 1 Contribution is required to be made under this Schedule 3.	Before the earlier of: (a) the issue of a Subdivision Certificate for the 40 <sup>th</sup> lot in the Development; and (b) 12 months from the dedication or transfer of the Conservation Land in accordance with clause 1.5 of Item 1 of this Schedule 3.
<b>Portion 2 Contribution</b>	The greater of: (a) an amount equal to one third (1/3) of \$761,000; and (b) one third (1/3) of the present value of \$761,000, calculated in accordance with clause 1.2 of Item 2 of this Schedule 3, at the time in which the Portion 2 Contribution is required to be made under this Schedule 3.	Before the earlier of: (a) the issue of a Subdivision Certificate for the 80 <sup>th</sup> lot in the Development; and (b) 2 years from the dedication or transfer of the Conservation Land in accordance with clause 1.5 of Item 1 of this Schedule 3.
<b>Portion 3 Contribution</b>	The greater of: (a) an amount equal to one third (1/3) of \$761,000; and	Before the earlier of: (a) the issue of a Subdivision Certificate for the

	(b) one third (1/3) of the present value of \$761,000, calculated in accordance with clause 1.2 of Item 2 of this Schedule 3, at the time in which the Portion 3 Contribution is required to be made under this Schedule 3	(b) 120 <sup>th</sup> lot in the Development; and 3 years from the dedication or transfer of the Conservation Land in accordance with clause 1.5 of Item 1 of this Schedule 3.
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## 1.2 Adjustment of Endowment Fund Contribution at payment

- (a) The Portion 1 Contribution, Portion 2 Contribution and Portion 3 Contribution must be adjusted, at time of payment, by multiplying the portion of the Endowment Fund Contribution payable by an amount equal to the Current CPI divided by the Base CPI.
- (b) For the purposes of this clause 1.2 of this Schedule 3, the Current CPI is:
  - (i) if the Contribution Amount is paid between 1 January and 30 June (inclusive) in any calendar year – the CPI number for the most recent quarter ending within that period which precedes the date of payment; and
  - (ii) if the Contribution Amount is paid between 1 July and 31 December (inclusive) in any calendar year – the CPI number for the most recent quarter ending within that period which precedes the date of payment.

## 1.3 Interest for late payment of Endowment Fund Contribution

- (a) If the Developer fails to pay the Portion 1 Contribution, Portion 2 Contribution or Portion 3 Contribution (as indexed in accordance with clause 1.2 of Item 2 of this Schedule 3) in accordance with the timing set out in the table at clause 1.1 of Item 2 of this Schedule 3, the Developer must also pay to the Council interest at a rate of 2% above the loan reference rate charged by the Commonwealth Bank of Australia from time to time in relation to Portion 1 Contribution, Portion 2 Contribution and Portion 3 Contribution, as the case may be.
- (b) Interest is payable on the daily balance of amounts due from the due date for payment of those amounts until all outstanding amounts (including interest on those amounts) have been paid to the Council.

## 1.4 Payment of Endowment Fund Contribution

- (a) The Developer must provide the Council with not less than 10 Business Days' written notice of its intention to lodge an application for the relevant Subdivision Certificate.
- (b) The parties agree that the requirement to pay the Portion 1 Contribution, Portion 2 Contribution and Portion 3 Contribution in accordance with this Schedule 3 is a restriction on the issue of the relevant Subdivision Certificate within the meaning of section 6.15(1)(d) of the Act.

## Schedule 4 – Address for service and Notices

### Item 1 Address for service

Council	
<b>Contact:</b>	Developer Contributions Coordinator
<b>Address:</b>	126-138 Main Rd, Speers Point NSW 2284
<b>Email:</b>	council@lakemac.nsw.gov.au
Developer	
<b>Contact:</b>	The Company Directors and Secretary
<b>Address:</b>	90 Scott Street Newcastle NSW 2300
<b>Email:</b>	trdmail@bigpond.com
Gregory Maurice Cahill	
<b>Contact:</b>	Gregory Cahill
<b>Address:</b>	90 Scott Street Newcastle NSW 2300
<b>Email:</b>	trdmail@bigpond.com
Brenton Jon Cahill	
<b>Contact:</b>	Brenton Cahill
<b>Address:</b>	90 Scott Street Newcastle NSW 2300
<b>Email:</b>	trdmail@bigpond.com

### Item 2 Time for doing acts

2. If:

- (a) the time for doing any act or thing required to be done; or
- (b) a notice period specified in this deed,

expires on a day other than a Business Day, the time for doing that act or thing or the expiration of that notice period is extended until the following Business Day.

3. If any act or thing required to be done is done after 5 pm on the specified day, it is taken to have been done on the following Business Day.



**Item 3 Notice provisions**

1. Any notice, demand, consent, approval, request or other communication (**Notice**) to be given under this deed must be in writing and must be given to the recipient at its Address for Service by being:
  - (a) hand delivered;
  - (b) sent by prepaid ordinary mail within Australia; or
  - (c) sent by email.
2. A Notice is taken to have been given at the time stated in column 4, in relation to the method of giving the Notice stated in column 2 below, depending on the timing of delivery if relevant as set out in column 3 of the table below:

Ref.	Method of giving notice	Timing of delivery	When the notice is taken to be given
1	Hand delivery	If delivery occurs after 5pm New South Wales time or a day that is not a Business Day,	The next Business Day.
		If delivery occurs before 5pm New South Wales time on a Business Day,	On the date of delivery.
2	Prepaid ordinary mail within Australia	NA	On the date that is 7 Business Days after the date of posting.
3	Email	If the email is sent before 5 pm on a Business Day, and the sender does not receive a delivery failure notice,	On the date of sending.
		If the email is sent after 5 pm on a Business Day or on a day that is not a Business Day	On the next Business Day after the email is sent.

## Schedule 5 – Definitions

(clause 1.1)

In this deed, unless the context clearly indicates otherwise:

<b>Act</b>	means the <i>Environmental Planning and Assessment Act 1979</i> (NSW).
<b>Address for Service</b>	means the address of each party appearing in Item 1 of Schedule 4 to this deed or any new address notified by any party to all other parties as its new Address for Service.
<b>Approved Signing Method</b>	means signing electronically by: <ul style="list-style-type: none"><li>(a) the person including a statement on the Deed near or above their electronic signature to the following effect: Electronic signature of me, [insert full name], affixed by me, or at my direction, on [insert date]; or</li><li>(b) using a digital platform that indicates on the Deed that a digital signature was applied, and the date and time that this occurred;</li></ul>
<b>Authority</b>	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 constituted under the <i>Local Government Act 1993</i> (NSW), or a person or body exercising functions under any Act including a commission, panel, court, tribunal and the like.
<b>Base CPI</b>	means the CPI number for the quarter ending <b>30 September 2022</b> .
<b>Business Day</b>	means any day that is not a Saturday, Sunday, gazetted public holiday or bank holiday in Sydney, and concludes at 5 pm on that day.
<b>Claim</b>	includes any claim, demand, remedy, suit, injury, damage, loss, cost, liability, action, proceeding or right of action howsoever arising and whether present or future, fixed or unascertained, actual or contingent whether at law, in equity, under statute or otherwise.
<b>Commencement Date</b>	means the date that this deed comes into operation in accordance with clause 2.1.
<b>Conservation Land</b>	means the parcel(s) of land identified at Item 2 of <b>Schedule 2</b> .
<b>Conservation Land Contribution</b>	means the dedication or transfer of the Conservation Land to Council, as specified in <b>Schedule 3</b> , in accordance with the provisions of this deed.
<b>Cost</b>	means any cost, charge, expense, outgoing, payment, fee and other expenditure.
<b>Contamination</b>	means any material, gas, substance, liquid, chemical or biological mineral or other physical matter which would, if present on the Land: <ul style="list-style-type: none"><li>(a) result in an Authority issuing a notice, direction or order under an Environmental Law; or</li><li>(b) which would constitute a violation of contribution of contravention of any Environmental Law.</li></ul>

<b>Council</b>	means the Council of the City of Lake Macquarie ABN 81 065 027 868.
<b>CPI</b>	means the Consumer Price Index (Sydney) released by the Australian Bureau of Statistics, Catalogue Number 6401.
<b>Current CPI</b>	means the CPI number as provided in clause 1.2 of <b>Schedule 3</b> , Item 2.
<b>Dealing</b>	means in relation to the Development Land and Conservation Land (where applicable), to sell, transfer, assign, mortgage, charge, dispose, encumber or otherwise deal with the Land in whole or part.
<b>Developer</b>	means 'Twin Rivers Developments Pty. Limited ACN 065 087 292'.
<b>Development</b>	means the development described at <b>Schedule 2</b> .
<b>Development Application</b>	has the same meaning as in the Act.
<b>Development Consent</b>	has the same meaning as in the Act.
<b>Development Contribution</b>	means the Conservation Land Contribution and the Endowment Fund Contribution, which the Developer agrees to provide under this deed as set out in <b>Schedule 3</b> .
<b>Development Land</b>	means the parcel(s) of land identified at Item 1 of Schedule 2.
<b>Electronic Signature</b>	<p>means a digital signature or a visual representation of a person's handwritten signature or mark which is placed on a physical or electronic copy of this Deed by using:</p> <ul style="list-style-type: none"><li>(a) the DocuSign platform made available by DocuSign, Inc; or</li><li>(b) any other electronic or mechanical means which is either:<ul style="list-style-type: none"><li>(i) as reliable as appropriate for the purpose for which this Deed is generated or communicated, in light of all the circumstances, including any relevant agreement; or</li><li>(ii) proven in fact to have fulfilled the functions described in paragraph (c)(ii)(B), by itself or together with further evidence,</li></ul></li></ul> <p>and "<b>Electronically Signed</b>" has a corresponding meaning;</p>
<b>ELNO</b>	has the same meaning as in the <i>Electronic Conveyancing National Law (NSW)</i> .
<b>Encumbrance</b>	<p>means an interest or power:</p> <ul style="list-style-type: none"><li>(a) reserved in or over an interest in any asset;</li><li>(b) created or otherwise arising in or over any interest in any asset under any mortgage, charge (whether fixed or floating), pledge, lien, hypothecation, title retention, conditional sale agreement, hire or hire purchase agreement, option, restriction as to transfer, use or possession, easement, covenant, lease, subordination to any right of any other person and any other encumbrance or security interest, trust or bill of sale; or</li></ul>



- (c) by way of security for the payment of a debt or other monetary obligation or the performance of any obligation.

<b>Endowment Fund Contribution</b>	means the monetary amount comprising the Portion 1 Endowment Fund Contribution, Portion 2 Endowment Fund Contribution and Portion 3 Endowment Fund Contribution to be paid by the Developer to Council in accordance with the requirements of the table at Item 2 of Schedule 3.
<b>Environmental Law</b>	means all planning, environmental or pollution laws and any regulations, orders, directions, ordinances or requirements, permissions, permits, licences issued under those laws or instruments.
<b>Explanatory Note</b>	means the note exhibited with a copy of this deed when this deed is made available for inspection by the public pursuant to the Act.
<b>General Register of Deeds</b>	means the land register maintained under the <i>Conveyancing Act 1919</i> (NSW).
<b>GST</b>	means any form of goods and services tax payable under the GST Law.
<b>GST Law</b>	means the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).
<b>Late Payment Interest</b>	means a rate of interest that is 2% above the loan reference rate charged by the Commonwealth Bank of Australia from time to time.
<b>LEP</b>	means the <i>Lake Macquarie Local Environmental Plan 2014</i> (NSW), as amended from time to time.
<b>Mediation Rules of the Law Society of NSW</b>	means the mediation rules published by the Law Society of NSW, from time to time.
<b>Plan of Subdivision</b>	means a registered plan of subdivision within the meaning of section 195 of the <i>Conveyancing Act 1919</i> (NSW).
<b>Portion 1 Contribution</b>	The monetary amount, being one third (1/3) of the Endowment Fund Contribution, paid by the Developer to Council at the time required by the table at Item 2 of Schedule 3.
<b>Portion 2 Contribution</b>	The monetary amount, being one third (1/3) of the Endowment Fund Contribution, paid by the Developer to Council at the time required by the table at Item 2 of Schedule 3.
<b>Portion 3 Contribution</b>	The monetary amount, being one third (1/3) of the Endowment Fund Contribution, paid by the Developer to Council at the time required by the table at Item 2 of Schedule 3.
<b>Real Property Act</b>	means the <i>Real Property Act 1900</i> (NSW).
<b>Register</b>	means the Torrens Title register maintained under the Real Property Act.
<b>Subdivision Certificate</b>	has the same meaning as in the Act.

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

## Schedule 6 – Interpretation

- (a) 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.
- (b) The Explanatory Note must not be used to assist in construing this deed.
- (c) If any clause or part of any clause in this deed is in any way unenforceable, invalid or illegal, it is to be read down so as to be enforceable, valid and legal. If this is not possible, the clause (or where possible, the offending part) is to be severed from this deed without affecting the enforceability, validity or legality of the remaining clauses (or parts of those clauses) which will continue in full force and effect.
- (d) In this deed unless the context clearly indicates otherwise:
  - (i) a reference to **this deed** or another document means this deed or that other document and any document which varies, supplements, replaces, assigns or novates this deed or that other document;
  - (ii) a reference to **legislation** or a **legislative provision** includes any statutory modification or substitution of that legislation or legislative provision and any subordinate legislation issued under that legislation or legislative provision;
  - (iii) a reference to a **body** or **authority** which ceases to exist is a reference to either a body or authority that the parties agree to substitute for the named body or authority or, failing agreement, to a body or authority having substantially the same objects as the named body or authority;
  - (iv) a reference to the **introduction**, a **clause**, **schedule** or **annexure** is a reference to the introduction, a clause, a schedule or an annexure to or of this deed;
  - (v) **clause headings** and the **table of contents** are inserted for convenience only and do not form part of this deed;
  - (vi) the **introduction**, **schedules** (if any) and **annexures** (if any) form part of this deed;
  - (vii) the **introduction** accurately sets out the circumstances in which the parties have entered into this deed;
  - (viii) a reference to a **person** includes a natural person, corporation, statutory corporation, partnership, the Crown or any other organisation or legal entity;
  - (ix) a reference to a **natural person** includes their personal representatives, successors and permitted assigns;
  - (x) a reference to a **corporation** includes its successors and permitted assigns;
  - (xi) **related** or **subsidiary** in respect of a corporation has the same meaning given to that term in the Corporations Act;
  - (xii) a reference to a right or obligation of a party is a reference to a right or obligation of that party under this agreement;



- (xiii) an **obligation or warranty** on the part of 2 or more persons binds them jointly and severally and an obligation or warranty in favour of 2 or more persons benefits them jointly and severally;
- (xiv) a reference to a **breach of warranty** includes that warranty not being complete, true or accurate;
- (xv) a requirement to do any thing includes a requirement to cause that thing to be done and a requirement not to do any thing includes a requirement to prevent that thing being done;
- (xvi) **including** and **includes** are not words of limitation;
- (xvii) the words **at any time** mean at any time and from time to time;
- (xviii) a reference to a time is to that time in New South Wales;
- (xix) a word that is derived from a defined word has a corresponding meaning;
- (xx) **monetary amounts** are expressed in Australian dollars;
- (xxi) the singular includes the plural and vice-versa;
- (xxii) words importing one gender include all other genders; and
- (xxiii) a reference to a thing includes each part of that thing.

**Execution page**

**Executed as a deed**

**Dated:**

The Common Seal of the **COUNCIL of the City of LAKE MACQUARIE** was hereto affixed, in pursuance of a Council resolution passed on the 28 day of October 2024 in the presence of :



*Adam J. L. Shultz*

Adam John Lindsay Shultz

Mayor

*Morven Cameron*

Morven Cameron

Chief Executive Officer

**Signed, sealed and delivered on behalf of the Developer,** Twin Rivers Developments Pty. Limited ACN 065 087 292 in accordance with section 127 of the *Corporations Act 2001* (Cth):

*Gregory Cahill*

Signature of

GREGORY CAHILL

*Sole*  
Name of Director/Secretary

Signature of

Name of Director

**Execution page**

**Signed sealed and delivered**  
by **Gregory Maurice Cahill** in the presence of:

Virginia Cahill  
Signature of witness

VIRGINIA CAHILL  
Name of witness in full

90 SCOTT STREET  
NEWCASTLE NSW 2300  
Address of witness

Gregory Maurice Cahill  
Signature of **Gregory Maurice Cahill**

**Signed sealed and delivered**  
by **Brenton Jon Cahill** in the presence of:

Virginia Cahill  
Signature of witness

VIRGINIA CAHILL  
Name of witness in full

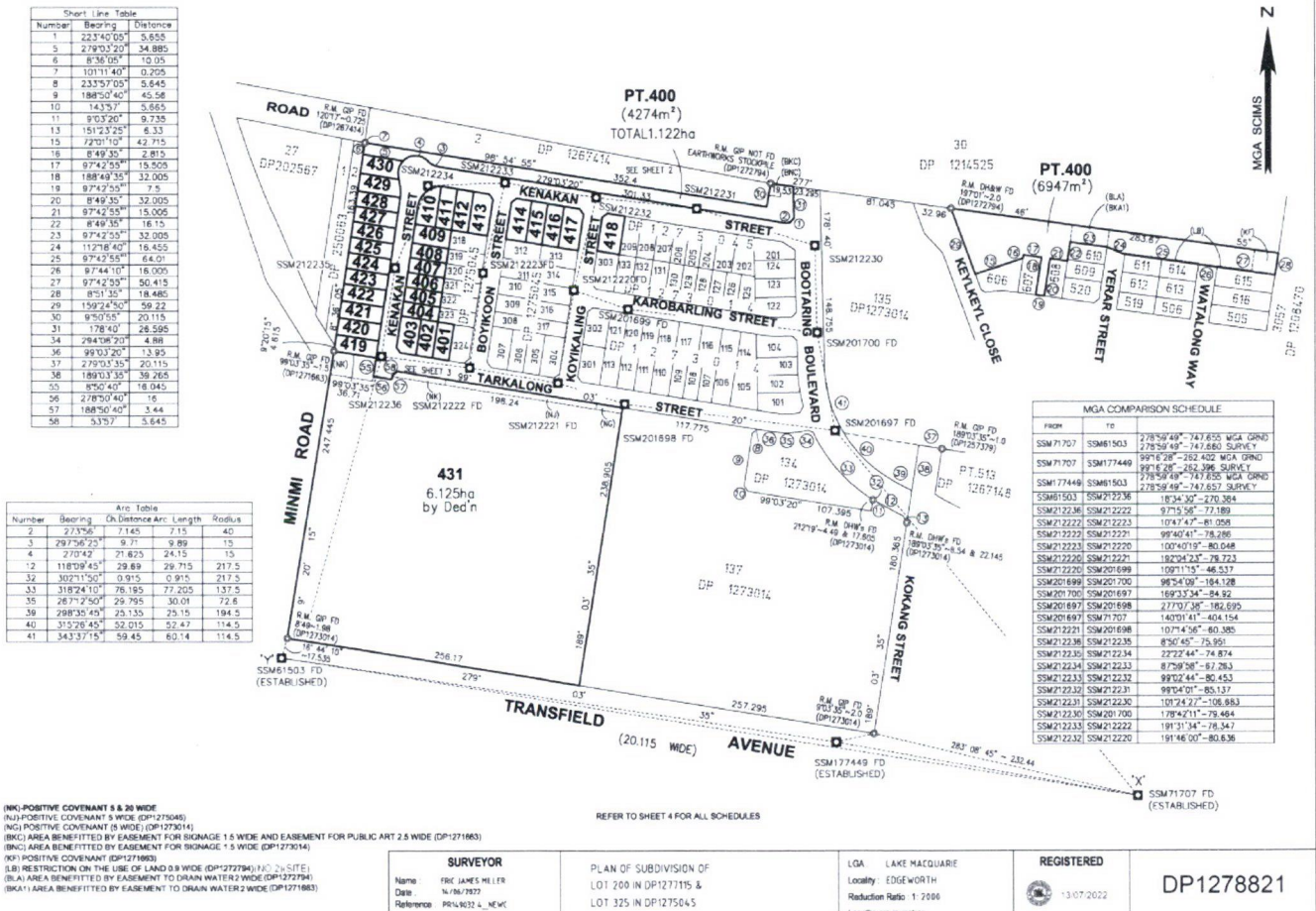
90 SCOTT STREET  
NEWCASTLE NSW 2300  
Address of witness

Brenton Jon Cahill  
Signature of **Brenton Jon Cahill**



Annexure A – Development Land

Extract of DP1278821



## Annexure B – Conservation Land

Extract of DP1297923

