

PLANNING AGREEMENT

Property Address: 65 Hope Street WARIALDA NSW 2402

Description of Land: Lots 1-3 Section 36 DP 759052 and Lot 233 DP 751137

Council: Gwydir Shire Council

Developer/Applicant: DANIEL GAVIN SHEPHERD

AND

YVETTE ANDREE SHEPHERD

DA 8/2022

January 2024

Prepared by Avern McIntyre & Co
 5A Rivers Street
 INVERELL NSW 2360

SUMMARY SHEET

Council	Name	Gwydir Shire Council
	Address	52 Hope Street Wialda NSW 2402
	Telephone	(02) 6724 2000
	Email	mail@gwydir.nsw.gov.au
	Representative	General Manager
Developer	Name	Daniel Gavin Shepherd and Yvette Andree Shepherd
	Address	89 Lovegrove Dr, Quakers Hill NSW 2763.
	Telephone	0409 568 742
	Email	daniel.shepherd1@gmail.com
Landowner	Name	As for developer
	Address	
	Telephone	
	Email	
	Representative	
Land	65 Hope Street WIALDA NSW 2402 Being Lots 1-3 Section 36 DP 759052 and Lot 233 DP 751137	
Development	7 Lot Residential Subdivision	
Designated Land	See Schedule 3 (not required)	
Works	See Schedule 4	
Monetary Contributions	See Schedule 5 (not required)	
Application of s7.11 and s7.12 of the Act	See clause 25	
Security	See clause 24	
Mechanism for Dispute resolution	See clause 31	
No obligation to grant consent or exercise functions	See clause 4	
Planning instrument and/or development application	<p>(a) The Developer has sought a change to an environmental planning instrument. NO</p> <p>(b) The Developer has made, or proposes to make, a Development Application. YES – DA 8/2022</p> <p>(c) The Developer has entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies. NO</p>	

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A

Planning Agreement


Dated

Parties

Gwydir Shire Council ABN 11 636 419 850 of 52 Hope Street WARIALDA NSW 2402
(Council)

Daniel Shepherd ABN of 125 Bull Street NEWCASTLE New South Wales 2302
(Developer)

Background

- a) The Developer owns the land.
 - b) The Developer wishes to carry out the development.
 - c) The Developer has obtained Development Consent in relation to the development.
 - d) The Developer has agreed to undertake works and/or make the Development Contributions in accordance with the Development Consent and subject to the terms of this document.
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Operative provisions

1. Defined Meanings

Words used in this document and the rules of interpretation that apply are set out and explained in the definitions and interpretation clause at the back of this document.

2. Planning Agreement Under the Act

The parties agree that this document is a planning agreement within the meaning set out in Section 7.4 of the Act and governed by Subdivision 2 of Division 7.1 of Part 7 of the Act.

3. Application of this Document

This document is made in respect of the DA 8/2022 and applies to both the Land and to the Proposed Development.

4. No Restriction on Council's Powers


- 4.1. The parties acknowledge that Council is a consent authority with statutory rights and obligations pursuant to the terms of the Planning Legislation.
- 4.2. This document or anything done under this document:
 - 4.2.1. is not to be taken as approval or consent by the Council as a regulatory authority; and
 - 4.2.2. does not in any way operate to inhibit, deter or prejudice the power of Council to make any Law or the exercise by Council of any statutory functions, duties or powers,pursuant to the Planning Legislation (**Discretion**).
- 4.3. No provision of this document is intended to, or does, constitute any unlawful fetter on any Discretion. If, contrary to the operation of this clause, any provision of this document is held by a court of competent jurisdiction to constitute an unlawful fetter on any Discretion, the parties agree:
 - 4.3.1. they will take all practical steps, including the execution of any further documents, to ensure the objective of this clause 4 is substantially satisfied; and
 - 4.3.2. in the event that paragraph 4.3.1 cannot be achieved without giving rise to an unlawful fetter on a Discretion, the relevant provision is to be severed and the remainder of this document has full force and effect; and
 - 4.3.3. to endeavour to satisfy the common objectives of the parties on relation to the provision of this document which is held to be an unlawful fetter to the extent that it is possible having regard to the relevant court judgment.
- 4.4. Where the Law permits Council to contract out of a provision of that Law or gives Council power to exercise a Discretion, then if Council has in this document contracted out of a provision or exercised a Discretion under this document, then to the extent of this document is not to be taken to be inconsistent with the Law.
- 4.5. Nothing in this document will be deemed to impose any obligation on Council to exercise any of its functions under the Act in relation to the Development Consent, the Land or the Proposed Development in a certain manner.

5. Operation Of This Agreement

This document operates:

- 5.1. as a deed from the date that it is executed by both parties; and
- 5.2. as a planning agreement for the purpose of the Act from the date that the Development Consent becomes operative.



- 6. Designated Land (does not apply)**
- 7. Monetary Contributions (does not apply except as specified in the Development Consent)**
- 8. Indexation of Contribution Values (does not apply except as specified in the Development Consent)**
- 9. Carrying Out / Completion of Works**
- 9.1. The Developer must, at its own cost, carry out and complete the Works at detailed at Clause 7 of the Development Consent.
- 9.2. The Developer's obligation under clause 9.1 exists irrespective of whether the Developer:
- a) carries out the Works itself, or
 - b) enters into an agreement with another person under which the other person carries out the Works on the Developer's behalf.
- 9.2.1. Before the Developer commences the Works, the Developer, at its own cost must:
- a) prepare and submit to Council or a person specified by Council, detailed plans and specifications in relation to the item; and
 - b) obtain approval from Council under s138 of the Roads Act 1993, and any other form of consent required by a relevant Authority, for the construction and use of the Works.
- 9.2.2. Council (acting reasonably) may request that the Developer amend the plans and specifications after they are provided by the Developer, in which case the Developer must amend the plans and specifications and re-submit them for approval by Council under this clause.
- 9.2.3. The Developer must not commence the Works unless the Council or the person specified by the Council has given the Developer a written approval of the plans and specifications relating to the item.
- 9.2.4. The Developer is to design, carry out and complete the Works in accordance with any Austroads Standards applicable to works of the same nature and in a good and workmanlike manner having regard to the intended purpose of the Works and otherwise to the satisfaction of Council, in accordance with:
- a) any development consent issued with respect to the Works.
 - b) all applicable laws, including those relating to work health and safety, and
 - c) this Document to the extent that it is not inconsistent with the Development Consent or an applicable law, and
 - d) the written approval given under clause 9.2.3.
- 9.2.5. It is the Developer's responsibility to ensure that everything necessary for the proper performance of its obligations under this document has been obtained by it.
- 10. Ownership of Works (not required)**
- 11. Determination of Value (not required)**
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12. Access to the land and location of Works

- 12.1. The Developer must permit the Council, its officers, employees, agents and contractors to enter the Land at any time, upon giving reasonable prior notice, in order to inspect, examine or test any the Works.
- 12.2. The Developer must enable Council, its officers, employees, agents and contractors access to the location of the Works where this is not the Land, Council owned land or a public road.

13. Protection of People, Property and the Environment

- 13.1. The Developer must ensure in relation to the carrying out of the Works that:
 - a) all necessary measures are taken to protect people, property and the Environment,
 - b) unnecessary interference with the passage of people and vehicles is avoided;
 - c) nuisances and unreasonable noise and disturbances are prevented; and
 - d) all relevant laws and regulations with respect to water, air, noise and land pollution (including 'pollution incidents') as defined under the *Protection of the Environment Operations Act 1997* (NSW).

14. Damage and Repairs to the Works

- 14.1 The liability of damage and repairs to all works under this planning agreement are the responsibility of the applicant until such time as written acceptance of the works completion has been issued by Council, and
- 14.2 A defects liability period of twelve (12) months is set for all works and will commence from the dated written acceptance of the works completion has been issued by Council.
 - 14.1.1 Within this period any damage due to design and/or construction methodologies will be rectified at the cost of the applicant

15. Variation of Works

- 15.1. The Works are not to be varied by the Developer, unless:
 - 15.1.1. the parties agree in writing to the variation,
 - 15.1.2. any consent or approval required under the Act or any other law to the variation is first obtained, and
 - 15.1.3. the Developer bears all of the Council's costs of and incidental to agreeing to and approving the variation.
- 15.2. For the purposes of clause 15.1.1 a variation may relate to any matter in relation to the Works that is dealt with by this Document.

16. Hand-Over of Works


- 16.1. The applicant shall seek a final inspection of all works referred to in this planning agreement upon the completion of those works.
- 16.2. Once a final inspection has been undertaken and Council is satisfied that the works referred to in this planning agreement have been completed and are in a satisfactory condition, Council shall issue a written Acceptance of the Works as Completed. The Acceptance of Works as Completed will act as the initiate of the Hand-Over of Works and commence the twelve (12) month Defects Liability Period as referred to in item 14.
- 16.3. If a final inspection should discover works referred to in this planning agreement that remain uncompleted and/or unsatisfactorily completed, Council shall issue a

Rectification Notice that lists the works that are uncompleted and/or unsatisfactorily completed and give a reasonable time for those works to be completed.


- 16.4. Once all listed uncompleted and/or unsatisfactorily completed works have been undertaken by the applicant, Council shall re-inspect prior to the issue of the Acceptance of the works as completed.
- 16.5. The steps stated in clauses 16.3 and 16.4 can re-occur as many times as is reasonably necessary in order to produce a satisfactory outcome.
- 16.6. The date of issue of the written Acceptance of Works as Completed will act as the date in which the works referred to in this planning agreement shall become a part of Council's Road Assets.
- 16.7. The date of issue of the written Acceptance of Works as Completed will also act as the commencement date for the twelve (12) month Defects Liability Period as referred to in clause 14.
- 16.8. Council has 14 days in which to inspect the works as referred to in this planning agreement once notice of the completion of works has been given by the applicant.
- 16.9. Council has 14 days after a final inspection has been undertaken to issue a written Acceptance of Works as Completed or Rectification Notice that lists all uncompleted and/or unsatisfactorily completed works.

17. Monetary Contribution for Maintenance of Works (not required)

18. Failure to Carry out and Hand-Over Works

- 18.1. If Council considers that the Developer is in breach of any obligation under this Development relating to the carrying out of the Works, Council must give the Developer a notice requiring:
 - 18.1.1. the breach to be rectified to Council's satisfaction, or
 - 18.1.2. the carrying out of the Works to immediately cease, except in relation to the rectification of the breach, and the breach to be rectified to Council's satisfaction.
- 18.2. A notice given under clause 18.1 is to allow the Developer a reasonable period (and in any case not less than twenty eight (28) days) to rectify the breach.
- 18.3. If the Developer fails to rectify the breach the subject of a notice given under clause 18.1, the Council may:
 - ~~18.3.1. call upon the Primary Security; and~~ 
 - 18.3.2. carry out and complete or make safe the Works.
- 18.4. For the purposes of clause 18.3.2:
 - 18.4.1. the Developer must allow Council, its servants, agents and contractors to enter the Land for the purpose of completing the Works; and
 - 18.4.2. the costs incurred by the Council in carrying out, completing, or making safe the Works, may be recovered by the Council from the Developer as a debt due in a court of competent jurisdiction.

19. Works-As-Executed-Plan

- 19.1. Upon completion of the works, the Developer must advise the Council of completion, and
 - 19.2. The Developer must provide Council with the Work-as-Executed Plan(s) all appropriate certificates to verify that the Works have been carried out in accordance with relevant standards.
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20. Rectification of Defects

- 20.1. Council must inspect the works within 14 days of being given notice of completion, and has 14 days thereafter Council may give to the Developer a Rectification Notice in relation to the Works specifying:
 - 20.1.1. Works requiring rectification;
 - 20.1.2. the action required to be undertaken by the Developer to rectify those Works; and
 - 20.1.3. the date on which those Works are to be rectified.
- 20.2. The Developer must comply with a Rectification Notice at its own cost according to the terms of the Rectification Notice.
- 20.3. When the Developer considers that rectification is complete, the Developer may give to Council a Rectification Certificate relating to the Works the subject of the relevant Rectification Notice.
- 20.4. Another site inspection may be conducted by Council to inspect the completed rectification works.
- 20.5. If the Developer does not comply with a Rectification Notice, Council may do such things as are necessary to rectify the defect and may:
 - 20.5.1. enter upon any part of the Land that it requires access to in order to satisfy the obligations of the Developer;
 - 20.5.2. issue an invoice for the recovery of costs of Council undertaking the rectification works as required by the Rectification Notice; and
 - 20.5.3. recover, as a debt due in a court of competent jurisdiction the costs incurred by Council in rectifying the defect.

21. Cost of Works carried out by Council

- 21.1. The parties acknowledge and agree that where, in accordance with this document, Council incurs a cost in carrying out, completing or rectifying a defect in the Works, Council may recover from the Developer in a court of competent jurisdiction its full costs, including costs determined in accordance with clause 5.
- 21.2. Council's costs of carrying out, completing or rectifying the Works in accordance with this document include, but are not limited to:
 - 21.2.1. the reasonable costs of Council's servants, agents and contractors reasonably incurred for that purpose;
 - 21.2.2. all fees and charges necessarily or reasonably incurred by Council in order to have the Works carried out, completed, made safe or rectified; and
 - 21.2.3. without limiting the generality of the preceding sub-clause, all legal costs and expenses reasonably incurred by Council, by reason of the Developer's failure to comply with this document.

22. Indemnity and Insurance

- 22.1. The Developer indemnifies Council, its employees, officers, agents, contractors from and against all losses, damages, costs (including legal costs on a full indemnity basis), charges, expenses, actions, claims and demands whatsoever which may be sustained, suffered, recovered or made arising in connection with the carrying out by the Developer of the Works and any other obligation under this documents, except to the extent that such losses, damages, costs, charges, expenses, actions, claims and demands are caused by Council, its employees, officers, agents and contractors.

22.2. The Developer must take out and keep current to the satisfaction of Council the following insurances in relation to the Works up until the relevant date of Hand-Over to Council:

- 22.2.1. contract works insurance, noting Council as an insured 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;
- 22.2.2. public liability insurance for at least \$20,000,000 for a single occurrence, which covers Council, the Developer and any subcontractor of the Developer, for liability to any third party;
- 22.2.3. workers compensation insurance as required by law; and
- 22.2.4. any other insurance required by law.

22.3. If the Developer fails to comply with clause 22.2, 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 is a debt due from the Developer to Council and may be recovered by Council as it deems appropriate including:

- 22.3.1. by calling upon the Security provided by the Developer to Council under this Document, or
- 22.3.2. recovery as a debt due in a court of competent jurisdiction.

22.4. The Developer must not commence carrying out the Works unless it has first provided to Council satisfactory written evidence of all the insurances specified in clause 22.2.

23. Contamination

23.1. 23.1 In the event of the unintentional discovery of contaminated or potentially contaminated land the applicant shall stop work immediately, evacuate the site, immediately report the discovery to the EPA and make the site safe as to prevent entry by personnel, contractors or the public.

23.2. 23.2 The responsibility of the identification, reporting, testing, removal, remediation and/or rehabilitation of the site identified as contaminated shall lay with Gwydir Shire Council. As to do the financial implications of that responsibility.

23.3. 23.3 Works as referred to in this planning agreement shall not be recommenced until the EPA have given advice that says so.

23.4. 23.4 The inconvenience, financial or otherwise, of the works having to cease, due to the discovery of contamination, until such time as the site is made safe for the works to recommence, shall be borne by the applicant.

24. Provision of Security

24.1. Provision of Security

24.1.1. In consideration for Council allowing the delay of construction of kerb and gutter across the frontage of proposed lots 1-7 until such time as the final of lots 1, 4 or 7 is sold, the Developer consents to the registration with NSW Land Registry Services of this Planning Agreement on the title of each of proposed lots 1, 4 and 7.

24.1.2. Council will not agree to consent to the removal of this Planning Agreement referred to in 24.1.1 above, on the final of the lots to be sold, until such time as the works are completed in accordance with the Specifications and Design approved by Council, and all defects are remedied to the satisfaction of Council.



- 24.1.3. Until such time as the kerb and gutter is constructed in accordance with the development consent and with Council's Specifications and Design, proposed lots 2, 3, 5 and 6 shall have rural-type access constructed, consisting of pipe culverts, if required, and a gravel turning path.

25. Easements Covenants and Restrictions on Title (not required other than as specified in the Development Consent)

26. Application of Section 7.11 and Section 7.12 of the Act

26.1. Application

This document does not exclude the application of Section 7.11 or Section 7.12 of the Act to the Proposed Development.

26.2. Consideration of Benefits

Section 7.11(6) of the Act does not apply to the Development Contributions that are to be carried out or provided pursuant to this document.

26.3. Section 7.24

This document does not exclude the application of Section 7.24 to the Proposed Development.

27. Termination

27.1. Termination

- a) This document terminates in the following events:
- a) The parties agree in writing to terminate the operation of this document at any time.
 - b) Council serves notice on the Developer terminating this document where the Developer has failed to comply with a notice issued in accordance with clause 30.
 - c) The Development Consent lapses.
 - d) The cessation of the Defects Liability Period twelve (12) months post the issue of an Acceptance of Completion of Works and where no outstanding Rectification Notice have been issued or remain unsatisfied.

27.2. Consequence of termination

- a) Upon termination of this document:
- a) all future rights and obligations of the parties are discharged; and
 - b) all pre-existing rights and obligations of the parties continue to subsist.

27.3. Determination

- a) This document will determine upon the Developer satisfying all the obligations imposed on it in full.

28. Private Certifiers

Where Council is not the certifying authority for any aspect of the Proposed Development the Developer must on the appointment of a private certifier provide a copy of this Agreement to the private certifier.

29. Notices

- 29.1. Any notice to or by a party under this document must be in writing and signed by the sender or, if a corporate party, an authorised officer of the sender.



29.2. Any notice may be served by delivery in person or by post or transmission by facsimile to the address or number of the recipient specified in the Summary Sheet or most recently notified by the recipient to the sender.

29.3. Any notice is effective for the purposes of this document upon delivery to the recipient or production to the sender of a facsimile transmittal confirmation report before 4.00pm local time on a day in the place in or to which the written notice is delivered or sent or otherwise at 9.00am on the next day following delivery or receipt.

30. Breach Notice and Rectification

30.1. Breach Notice

If the Developer breaches this document, Council may serve a notice on the Developer (**Breach Notice**) specifying:

- a) the nature and extent of the alleged breach;
- b) if:
 - I. the breach is capable of being rectified other than by the payment of compensation, what Council requires the Developer to do in order to rectify the breach; or
 - II. the breach is not capable of being rectified other than by payment of compensation, the amount of compensation Council requires the Developer to pay in order to rectify the breach, and
 - III. the time within which Council requires the breach to be rectified, which must be a reasonable time of not less than forty (40) business days.

30.2. Events of Default

The Developer commits an Event of Default if it:

- a) fails to comply with a Breach Notice; or
- b) becomes subject to an Insolvency Event.

30.3. Consequences of Events of default

Where the Developer commits an Event of Default, Council may, in addition to any rights it has at Law:

- a) carry out any work specified in the relevant Breach Notice itself, or
- b) call on the Security to the extent of any compensation claimed in a Breach Notice and not paid by the Developer.

31. Dispute resolution

31.1. Disputes

If there is any dispute, difference of opinion or failure to agree relating to or arising from this document that dispute must be referred for determination under this clause.

31.2. No legal proceedings

The Parties must not bring or maintain any action on any Dispute (except for urgent injunctive relief to keep a particular position) until it has been referred and determined as provided in this clause.

31.3. Notice of disputes (Dispute Notice)

A Party referring a Dispute for determination must do so by written notice to the other parties which must specify the nature of the Dispute and a nominated officer of the referring party with sufficient authority to determine the Dispute.

31.4. Negotiated resolution and selection of expert

- a) On service of the Dispute Notice the receiving Parties must refer the Dispute to an officer with sufficient authority to determine the Dispute. The nominated officers of each Party must meet at least once and use reasonable endeavours to resolve the Dispute by negotiation within ten (10) business days of service of the Dispute Notice. Any resolution must be recorded in writing and signed by each nominated officer. By agreement, the nominated officers may employ the services of a mediator to assist them in resolving the Dispute.
- b) If the nominated officers are unable to resolve the Dispute within ten (10) business days of service of the Dispute Notice they must endeavour within the following ten (10) business day period to appoint an expert by agreement. That appointment must be recorded in writing and signed by each nominated officer.
- c) If the nominated officers do not record the appointment of an expert within that following ten (10) business day period, the expert must be appointed, at the request of any party, by the President for the time being (or if none, the senior elected member) of the Law Society of New South Wales.

31.5. Assistance to the Expert (the Expert)

- 31.5.1. Once the Expert has been appointed (the Expert), the Parties must:
 - a) each use their best endeavours to make available to the Expert all information the Expert requires to settle or determine the Dispute; and
 - b) ensure that their employees, agents or consultants are available to appear at any hearing or enquiry called by the Expert.
- 31.5.2. The Parties may give written submissions to the Expert but must provide copies to the other Parties at the same time.

31.6. Expert's decision

- 31.6.1. The decision of the Expert must:
 - a) be in writing and give reasons; and
 - b) be made and delivered to the parties within one month from the date of submission of the dispute to the Expert or the date of completion of the last hearing or enquiry called by the Expert, if later.
- 31.6.2. The Expert may conduct the determination of the Dispute in any way it considers appropriate but the Expert may, at its discretion, have regard to the Australian Commercial Disputes Centre's guidelines for expert determination of disputes or such other guidelines as it considers appropriate.
- 31.6.3. The Expert's decision is final and binding on the parties.
- 31.6.4. The Expert must act as an expert and not as an arbitrator.

31.7. Expert's costs

- 31.7.1. The Expert must also determine how the expenses relating to the reference of the Dispute (including the Expert's remuneration) should be apportioned between the parties and in default of a decision by the Expert those expenses must be borne by the parties equally.
- 31.7.2. In determining the apportionment of costs the Expert may have regard to what the Expert, in its reasonable opinion, considers to be a lack of good faith or a failure to use reasonable endeavours by any party in assisting the Expert or resolving the dispute between the parties' nominated officers as required by this clause.

31.8. Confidentiality of information provided in dispute resolution process

31.8.1. The parties agree, and must procure that Expert agree as a condition of his or her appointment:

- (a) subject to paragraph 31.8.2, to keep confidential all documents, information and other material disclosed to them during or in relation to the Expert determination;
- (b) not to disclose any confidential documents, information and other material except to a party or adviser or consultant who has signed a confidentiality undertaking; or if required by Law or any Authority to do so; and
- (c) not to use confidential documents, information or other material disclosed to them during or in relation to the Expert determination for a purpose other than the Expert determination.

31.8.2. The parties must keep confidential and must not disclose or rely upon or make the subject of a subpoena to give evidence or produce documents in any arbitral, judicial or other proceedings:

- (a) views expressed or proposals or suggestions made by a party or the Expert during the Expert determination relating to a possible settlement of the Dispute;
- (b) admissions or concessions made by a party during the Expert determination in relation to the Dispute; and
- (c) information, documents or other material concerning the dispute which are disclosed by a party during the Expert determination unless such information, documents or facts would be discoverable in judicial or arbitral proceedings.

31.9. Continual performance

- b) Each Party must continue to perform its obligations under this document while any dispute is being determined under this clause.

32. Registration of document on Title

32.1. Registration of this document

The Developer acknowledges and agrees that:

- a) this document must be registered on the title to the Lots referred to in clause 24.1.1 herein pursuant to section 7.6 of the Act; and-
- b) subject to clause 32.2, Council will undertake that registration at the cost of the Developer.

32.2. Obligations of Developer

32.2.1. The Developer, at its own expense, will promptly after this document comes into operation, and before the issue of any Construction Certificate or Subdivision Certificate for the Proposed Development, take all necessary and practical steps, and otherwise do anything that the Council reasonably requires, to procure:

- a) the consent of each person who:
 - i. has an estate or interest in the Land; or



- ii. is seized or possessed of an estate or interest in the Land;
- b) the execution of any documents; and
- c) the production of the relevant title documentation,

to enable the registration of this document in accordance with clause 32.1.

32.2.2. The Developer, at its own expense, will take all practical steps, and otherwise do anything that the Council reasonably requires:

- a) to allow the lodgement of this document with the Registrar-General as soon as reasonably practicable after this document comes into operation but in any event, no later than sixty (60) business days after that date; and
- b) to allow the registration of this document by the Registrar-General in the relevant folios of the Register for the Land as soon as reasonably practicable after this document is lodged for registration.

32.3. Discharge from the Register

The parties must do all things reasonably necessary to remove any notation relating to this document from the title to the Land on the earlier of:

- a) the Developer's obligations under this document having been performed to Council's satisfaction; and
- b) if this document is terminated or otherwise comes to an end for any other reason.

33. Costs

The Developer must pay or reimburse to the Council, the Council's costs associated with the negotiation, preparation, exhibition, legal review, execution and registration of this document within ten (10) business days of a written demand by the Council for such payment.

34. GST

If any payment made by one party to any other party under or relating to this document constitutes consideration for a taxable supply for the purposes of GST or any similar tax, the amount to be paid for the supply will be increased so that the net amount retained by the supplier after payment of that GST is the same as if the supplier was not liable to pay GST in respect of that supply. This provision is subject to any other agreement regarding the payment of GST on specific supplies and includes payments for supplies relating to the breach or termination of, and indemnities arising from, this document. Unless otherwise expressly stated, prices or other sums payable or consideration to be provided under or in accordance with this document are exclusive of GST.

35. Assignment

35.1. Restriction on Assignment

Other than in accordance with this clause 35, the Developer may not:

- a) Assign any part of the Land; and/or
- b) Assign their rights or obligations under this document.

35.2. Procedure for Assignment

If the Developer:

- a) wishes to Assign any part of the Land; and/or
- b) wishes to Assign its rights or obligations under this document,

then the Developer must:



- c) provide a written request to Council for the consent of Council to the relevant Assignment;
- d) provide Council with any evidence required by Council, acting reasonably, to satisfy Council that the third party in whose favour the Assignment is to be made (Assignee) is reasonably capable of performing the obligations under this document that are to be Assigned to it;
- e) obtain written consent of Council to the relevant Assignment (which cannot be refused if paragraph 35.2(d) is complied with); and
- f) at no cost to Council, procure:
 - i. the execution by the Assignee of an appropriate deed where the Assignee agrees to be bound by the terms of this document; and
 - ii. the provision of all Securities to Council by the Assignee that the Developer is required to provide under this document (and any additional securities if required by Council acting reasonably) at the same time as, or prior to, entering into that deed.

Council is under no obligation to consider granting its consent to any request made by the Developer under paragraph c) if, at the time the request is made, the Developer is in breach of this document.

36. General

36.1. Governing law and jurisdiction

- a) This document is governed by and construed under the law in the State of New South Wales.
- b) Any legal action in relation to this document against any party or its property may be brought in any court of competent jurisdiction in the State of New South Wales.
- c) Each party by execution of this document irrevocably, generally and unconditionally submits to the nonexclusive jurisdiction of any court specified in this provision in relation to both itself and its property.

36.2. Amendments

Any amendment to this document has no force or effect, unless effected by a document executed by the parties.

36.3. Third parties

This document confers rights only upon a person expressed to be a party, and not upon any other person.

36.4. Obligation to act in good faith

The parties must at all times:

- a) cooperate and use their best endeavours to profitably and professionally give effect to their rights and obligations set out in this document;
- b) not unreasonably delay any action, approval, direction, determination or decision which is required of them;
- c) make approvals or decisions that are required of them in good faith and in a manner consistent with the completion of the transactions set out in this document; and
- d) be just and faithful in their activities and dealings with the other parties.

36.5. Pre-contractual negotiation

This document:

- a) expresses and incorporates the entire agreement between the parties in relation to its subject matter, and all the terms of that agreement; and
- b) supersedes and excludes any prior or collateral negotiation, understanding, communication or agreement by or between the parties in relation to that subject matter or any term of that agreement.

36.6. Further assurance

Each party must execute any document and perform any action necessary to give full effect to this document, whether before or after performance of this document.

36.7. Continuing performance

- a) The provisions of this document do not merge with any action performed or document executed by any party for the purposes of performance of this document.
- b) Any representation in this document survives the execution of any document for the purposes of, and continues after, performance of this document.
- c) Any indemnity agreed by any party under this document:
 - i. constitutes a liability of that party separate and independent from any other liability of that party under this document or any other agreement; and
 - ii. survives and continues after performance of this document.

36.8. Waivers

Any failure by any party to exercise any right under this document does not operate as a waiver and the single or partial exercise of any right by that party does not preclude any other or further exercise of that or any other right by that party.

36.9. Remedies

The rights of a party under this document are cumulative and not exclusive of any rights provided by law.

36.10. Counterparts

This document may be executed in any number of counterparts, all of which taken together are deemed to constitute one and the same document. A party who has executed a counterpart of this document may exchange it with another party by emailing a pdf (portable document format) copy of, the executed counterpart to that other party, and if requested by that other party, will promptly deliver the original by hand or post. Failure to make that delivery will not affect the validity and enforceability of this document.

36.11. Party acting as trustee

If a party enters into this document as trustee of a trust, that party and its successors as trustee of the trust will be liable under this document in its own right and as trustee of the trust. Nothing releases the party from any liability in its personal capacity. The party warrants that at the date of this document:

- a) all the powers and discretions conferred by the deed establishing the trust are capable of being validly exercised by the party as trustee and have not been varied or revoked and the trust is a valid and subsisting trust;
- b) the party is the sole trustee of the trust and has full and unfettered power under the terms of the deed establishing the trust to enter into and be bound by this document on behalf of the trust and that this document is being executed and entered into as part of the due and proper administration of the trust and for the benefit of the beneficiaries of the trust;

- c) no restriction on the party's right of indemnity out of or lien over the trust's assets exists or will be created or permitted to exist and that right will have priority over the right of the beneficiaries to the trust's assets.

36.12. Representations and warranties

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

36.13. Severability

If a clause or part of a clause of this document 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. 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 document, but the rest of this document is not affected.

37. Definitions and interpretation

In this document unless the context otherwise requires:

Acquisition Act	means the <i>Land Acquisition (Just Terms Compensation) Act 1991</i> (NSW).
Act	means the <i>Environmental Planning and Assessment Act 1979</i> (NSW)
Assign	as the context requires refers to any assignment, sale, transfer, disposition, declaration of trust over or other assignment of a legal and/or beneficial interest.
Authority	means (as appropriate) any: (1) federal, state or local government; (2) department of any federal, state or local government; (3) any court or administrative tribunal; or (4) statutory corporation or regulatory body.
Bank Guarantee	means an irrevocable and unconditional written guarantee without any expiry date acceptable to Council issued by an Australian Bank.
Business Day	means a day that is not a Saturday, Sunday, public holiday or bank holiday in New South Wales.
Claim	means against any person any allegation, action, demand, cause of action, suit, proceeding, judgement, debt, damage, loss, cost, expense or liability howsoever arising and whether present or future, fixed or unascertained, actual or contingent whether at law, in equity, under statute or otherwise.
Construction Certificate	has the same meaning as in the Act.
Contribution Value	means the amount specified in the Schedules for any of the Development Contributions in the column headed "Contribution Value" (as applicable).
Designated Land	means the land required to be dedicated to the Council as specified in Schedule 3 .
Development Application	has the same meaning as the EP&A Act
Development Consent	has the same meaning as the EP&A Act

Development Contribution	means the Works
Dispute Notice	means written notice provided by a party referring a dispute for determination, specifying the nature of the dispute and a nominated officer of the referring party with sufficient authority to determine the dispute.
Encumbrance	means an interest or power: <ul style="list-style-type: none"> a) reserved in or over an interest in any asset; b) arising under, or with respect to, a Bio-Banking Agreement; c) 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 d) by way of security for the payment of a debt or other monetary obligation or the performance of any obligation.
Environment	has the same meaning as set out in the Dictionary to the Protection of the Environment Operations Act 1997 (NSW).
Event of Default	has the meaning ascribed to is in clause 30.2 .
GST	means any tax, levy, charge or impost implemented under the <i>New Tax System (Goods and Services Tax) Act 1999</i> (Cth) (GST Act) or an Act of the Parliament of the Commonwealth of Australia substantially in the form of, or which has a similar effect to, the GST Act;
Hand-Over	means the hand-over to the Council of the Works in accordance with this document.
Insolvency Event	means the happening of any of the following events: <ul style="list-style-type: none"> (a) Application which is not withdrawn or dismissed within fourteen (14) days is made to a court for an order or an order is made that a body corporate be wound up. (b) An application which is not withdrawn or dismissed within fourteen (14) days is made to a court for an order appointing a liquidator or provisional liquidator in respect of a body corporate or one of them is appointed, whether or not under an order. (c) Except to reconstruct or amalgamate while solvent, a body corporate enters into, or resolves to enter into, a scheme of arrangement, agreement of company arrangement or composition with, or assignment for the benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration involving any of them. (d) A body corporate resolves to wind itself up, or otherwise dissolve itself, or gives notice of intention to do so, except to reconstruct or amalgamate while solvent or is otherwise wound up or dissolved. (e) A body corporate is or states that it is insolvent. (f) As a result of the operation of section 459F (1) of the Corporations Act 2001 (Cth) (Corporations Act), a body corporate is taken to have failed to comply with a statutory demand;

(g) A body corporate is or makes a statement from which it may be reasonably deduced that the body corporate is, the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act.

(h) A body corporate takes any step to obtain protection or is granted protection from its creditors, under any applicable legislation or an administrator is appointed to a body corporate.

(i) A person becomes an insolvent under administration as defined in section 9 of the Corporations Act or action is taken which could result in that event.

(j) A receiver, manager or receiver and manager is appointed to the Company.

(k) A claim is filed in a court against a person that is not defended, released or otherwise settled within twenty eight (28) days of the date of its filing at the court.

(l) Anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction.

Item of Works	means an item of the Works.
Land	means the "Land" as set out in Summary Sheet.
Law	means all legislation, regulations, by-laws, common law and other binding order made by any Authority.
Location Plan	means the plan contained in Schedule 1 (not required).
Monetary Contributions	means the monetary development contributions required to be paid to the Council as specified in Schedule 5 (if any).
Planning Legislation	means the Act, the <i>Local Government Act 1993</i> (NSW) and the <i>Roads Act 1993</i> (NSW).
Producer Price Index	means the Producer Price Index for NSW (Non-Residential Building Construction for NSW) #3020 published by the Australian Bureau of Statistics.
Proposed Development	means the proposed development as described in Schedule 2 .
Rectification Certificate	means a certificate to the satisfaction of Council to the effect that work the subject of a Rectification Notice has been completed in accordance with the notice.
Rectification Notice	means a notice in writing that identifies a defect in a work and requires rectification of the defect within a specified period of time.
Regulation	means the <i>Environmental Planning and Assessment Regulation 2021</i> (NSW).
Security	means the Primary Security and Defects Security (if applicable).
Subdivision Certificate	has the same meaning as in the Act.
Suitably Gravelled	means the use of a medium plasticity gravel (plasticity index 15-30) which is adequately compacted to ensure loose gravel does not migrate to the road formation.
Summary Sheet	means the summary sheet at the start of this document.

Works

means the works specified or described in **Schedule 4** and includes any Item of Works and any part of any Item of Works.

38. Interpretation

In this document unless the context otherwise requires:

- a) clause and subclause headings are for reference purposes only;
- b) the singular includes the plural and vice versa;
- c) words denoting any gender include all genders;
- d) reference to a person includes any other entity recognised by law and vice versa;
- e) where a word or phrase is defined its other grammatical forms have a corresponding meaning;
- f) any reference to a party to this document includes its successors and permitted assigns;
- g) any reference to a provision of an Act or Regulation is a reference to that provision as at the date of this document;
- h) any reference to any agreement or document includes that agreement or document as amended at any time;
- i) the use of the word includes or including is not to be taken as limiting the meaning of the words preceding it;
- j) the expression at any time includes reference to past, present and future time and the performance of any action from time to time;
- k) an agreement, representation or warranty on the part of two or more persons binds them jointly and severally;
- l) an agreement, representation or warranty on the part of two or more persons is for the benefit of them jointly and severally;
- m) reference to an exhibit, annexure, attachment or schedule is a reference to the corresponding exhibit, annexure, attachment or schedule in this document;
- n) reference to a provision described, prefaced or qualified by the name, heading or caption of a clause, subclause, paragraph, schedule, item, annexure, exhibit or attachment in this document means a cross reference to that clause, subclause, paragraph, schedule, item, annexure, exhibit or attachment;
- o) when a thing is required to be done or money required to be paid under this document on a day which is not a Business Day, the thing must be done, and the money paid on the immediately following Business Day; and
- p) reference to a statute includes all regulations and amendments to that statute and any statute passed in substitution for that statute or incorporating any of its provisions to the extent that they are incorporated

A

Schedule 1 – Location Plan and Designated Lands Plan (not required)

1

Schedule 2 – Proposed Development

A 7 lot residential subdivision within the township of Warialda, with each lot to have an area of not less than 1,189m²

A

Schedule 3 – Designated Land (Not required)



Schedule 4 – The Works



Upon sale of the final of lots 1, 4 or 7, kerb and gutter is to be constructed across the frontage of lots 1-7 in accordance with Council Specifications and Design approved by Council's Director of Engineering Services.

Prior to this construction, rural style access is to be provided for lots 2, 3, 5 and 6 consisting of pipe culverts, if required, and a suitably gravelled turning path into the lots.

Schedule 5 – Monetary Contributions (not required other than as specified in the Development Consent)



Execution Page

Executed as a deed

The common seal of Gwydir Shire Council was
affixed under a resolution passed by council on

.....
in the presence of:

My General
General Manger

MAX EASTCOTT
Print Name

[Signature]
Witness

Saul Gauderwick
Print Name

[Signature]
Mayor

Tiffany Galvin
Print Name

Thomas
Witness

HELEN THOMAS
Print Name

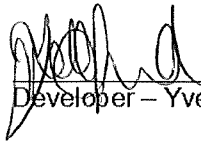
Signed, sealed and delivered by the Developer
in the presence of

[Signature]
Developer – Daniel Shepherd

[Signature]
Witness

Amanda Bortolus
Print name

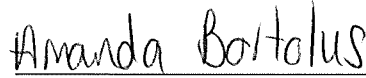
Signed, sealed and delivered by the Developer
in the presence of:



Developer – Yvette Andree Shepherd



Witness



Print name