

**Attachment 15 - Draft Voluntary Planning Agreement
(National Park Land Transfer)**

DRAFT

Planning Agreement

Environmental Planning and Assessment Act 1979

Minister for the Environment

ABN 38 755 709 681

Shoalhaven City Council

ABN 59 855 182 344

Enid Maude Hall

ABN 33 580 175 147

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Agreement made at on

Parties **Minister for the Environment** ABN 38 755 709 681
of 320 Pitt Street, Sydney NSW 2000 ("**Minister**")

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

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

Background

- A.** The Landowner owns that part of the Land as nominated to be owned by it in Schedule 2 which includes the Environmental Land.
- B.** The Landowner has sought an amendment to the LEP to rezone the Land in order to allow the Proposed Development on the Land.
- C.** The Landowner intends to lodge with the Council a Development Application(s) for the Proposed Development.
- D.** The Landowner has offered to make the Development Contribution.
- E.** The parties have therefore agreed to enter into this Agreement to make the Development Contribution.

Operative provisions

1. Definitions and Interpretation

1.1 Definitions

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

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

Agreement means this Planning Agreement.

Application means an application for any Approval.

Approval means any approvals, consents, modifications, Part 6 Certificates, Part 3 of the Act approvals, State Significant Development or State Significant infrastructure Approvals under the Act, certificates, Construction Certificates, Compliance Certificate, Occupation Certificates, Complying Development Certificates, permits, endorsements, licences, conditions or requirements (and any variations to them) which may be required by law for the Proposed Development or for the commencement or carrying out of works contemplated by this Agreement.

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

Biobanking Agreement means a biobanking agreement under the *Threatened Species Conservation Act 1995* (NSW).

Business Day means any day except for Saturday or Sunday or a day which is a public holiday in Sydney.

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

Commencement Date means the date that this Agreement operates under clause 2(b).

Commercial Premises has the same meaning as commercial premises under the Standard Instrument.

Consent Authority means, in relation to an Application, the Authority having the function to determine that Application.

Construction Certificate means a certificate referred to in section 6.4 (a) of the Act.

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

Development Application means each Application made or to be made under Part 4 of the Act, by or on behalf of the Landowner, for consent to develop the whole or any part of the Land.

Development Consent means Approval by the Consent Authority under Part 4 of the Act in response to a Development Application, including any Modification of it.

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

Explanatory Note means the explanatory note required by the Regulation.

Gazettal means the publication on the NSW legislation website under section 34(5) of the Act of the making by the Minister administering the Act of the amendment to the LEP.

General Register of Deeds means the land registry so entitled and maintained under the *Conveyancing Act 1919* (NSW).

GST has the meaning it has in the GST Act.

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

Land means Lot 4 in Deposited Plan 834254.

Landowner means the owner of the Land and the Offsite Environmental Land from time to time, and where the context permits includes all of the owners of the Land.

LEP means the Shoalhaven Local Environmental Plan 2014.

LRS means the NSW Land Registry Services or any similar department or authority that may be established from time to time.

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

Land Subdivision means a subdivision of the Land in accordance with the Proposed Development which will create a separate lot for the Environmental Land.

Land Subdivision Plan means the plan for the Land Subdivision contained in any Application submitted to the relevant Authority and which is generally in accordance with the proposed Land Subdivision Plan attached to this Agreement and marked Annexure A.

Offsite Environmental Land means the lots contained in Auto Consol 12516-190 being Lot 7 in Deposited Plan 6123 and Lot 1 in Deposited Plan 571614.

Offsite Environmental Land Contribution means the dedication or otherwise the transfer to an Authority of the Offsite Environmental Land in accordance with the Schedule 3 – Development Contribution of this Agreement.

Onsite Environmental Land means that part of the Land marked as “PROPOSED NPWS LOT” on the proposed Land Subdivision Plan attached to this Agreement and marked Annexure A.

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

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

Plan of Subdivision means a registered plan of subdivision within the meaning of section 195 of the Conveyancing Act 1919 (NSW).

Proposed Development means the development of the Land in the manner proposed in the Planning Proposal report by Michael Brown Planning Strategies dated 8 May 2016 and which includes the subdivision of the Land into 32 lots comprising of 31 rural-residential lots and 1 further lot being the Onsite Environmental Land.

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

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

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

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

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

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

but excluding the Onsite Environmental Land.

Residue Land means the land that forms part of the Land but does not include the Onsite Environmental Land.

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

Service Easements means easements for services and drainage which are noted on the Land Subdivision Plan or any other encumbrances as agreed with the Minister.

Standard Instrument means *Standard Instrument (Local Environmental Plans) Order 2006* as at the date of this Agreement.

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

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

Strata Schemes Act means the Strata Schemes (Freehold Development) Act 1973 (NSW).

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

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

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

1.2 Interpretation

In this Agreement:

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

2. Operation and status of this Agreement

- (a) The Parties agree that this Agreement is a planning agreement within the meaning of section 7.4 of the Act.
- (b) This Agreement is entered into and takes effect on its execution by all the Parties.
- (c) This Agreement will terminate at the later of:
 - (i) 1 month after the date of the transfer of the Onsite Environmental Land in accordance with clause 5 of this Agreement; and
 - (ii) In the event that the condition precedent stated at clause 3.1 of Schedule 3 is satisfied, 1 month after the date of the transfer of the Offsite Environmental Land in accordance with clause 5 of this Agreement.

3. Application of the Agreement

This Agreement applies to the Land, the Offsite Environmental Land and the Proposed Development.

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

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

5. Requirement to provide the Development Contribution

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

6. Land ownership and Registration of this Agreement

6.1 Ownership

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

- (a) it is the legal and beneficial owner of the land which is nominated as being owned by it in Schedule 2; and
- (b) legally and beneficially entitled to obtain all consents and approvals and to compel any person referred to in or contemplated by clause 6.2(b)(i) to assist, cooperate and otherwise to do all things necessary for it to comply with its obligations under clause 6.2.

6.2 Registration of this Agreement

- (a) As contemplated by section 7.6 of the Act, the Landowner, within 10 Business Days of the date of this Agreement, agrees to procure the registration of this Agreement under the Real Property Act in the relevant folios of the Register for the Land.
- (b) The Landowner, at its own expense, will take all practical steps, and otherwise do anything that the Minister reasonably requires, to procure:
 - (i) the consent of each person who:
 - A. has an estate or interest in the Land registered under the Real Property Act; or
 - B. is seized or possessed of an estate or interest in the Land; and
 - (ii) the execution of any documents; and
 - (iii) the production of the relevant duplicate certificates of title,to enable the registration of this Agreement under the Real Property Act in the relevant folios of the Register for the Land in accordance with section 7.6 of the Act.
- (c) The Landowner will, within 10 Business Days of registration of this Agreement on the relevant folios of the Register for the Land in accordance with clause 6.2(a) and (b) above, provide the Minister with a copy of the relevant folios of the Register for the Land.

6.3 Release and discharge of this Agreement

- (a) The Minister agrees to do all things reasonably required by the Landowner to release and discharge this Agreement, such that it is no longer registered on the relevant folios under section 7.6 of the Act:
 - (i) in relation to all lots, upon the Landowner satisfying all of its obligations under this Agreement, or

- (ii) in relation to the Onsite Environmental Land, at the same time as the Transfer is lodged for registration under clause 2.2 of Schedule 3.
 - (iii) in relation to the Offsite Environmental Land, and subject to the condition precedent set out in clause 3.1 of Schedule 3 being satisfied, at the same time as the Transfer is lodged for registration under clause 3.2 of Schedule 3.
- (b) If through error or other reason this Agreement is registered on the title to a Residential Lot or the Onsite Environmental Land or the Residue Land (once the Onsite Environmental Land is transferred in accordance with Schedule 3), each Party must do such things as are reasonably necessary, as requested by the other, to facilitate the lodging and grant of a request for the registration of this Agreement to be removed from the titles to those lots.
- (c) If through error or other reason this Agreement is registered on the title of the Offsite Environmental Land (either upon the condition precedent stated in clause 3.1 of Schedule 3 not being satisfied or otherwise once the Offsite Environmental Land is transferred in accordance with Schedule 3), each Party must do such things as are reasonably necessary, as requested by the other, to facilitate the lodging and grant of a request for the registration of this Agreement to be removed from the titles to the Offsite Environmental Land.

6.4 Caveat

The Landowner acknowledges and agrees that upon Gazettal:

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

7. Security and enforcement

7.1 Security

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

- (a) the registration of this Agreement under clause 6.2 of this Agreement; and
- (b) agreeing to clauses 2.3 and 3.3 of Schedule 3; and
- (c) by agreeing to clauses 6.4.

7.2 Enforcement

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

7.3 No prevention to enforcement

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

- (a) a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Agreement or any matter to which this Agreement relates; and
- (b) the Minister or Council from exercising any function under any Legislation, including the Act, or any other Legislation or Law relating to the enforcement of any aspect of this Agreement or any matter to which this Agreement relates.

8. Dispute resolution

8.1 Not commence

A party must not commence any court proceedings relating to a dispute unless it complies with this clause 8.

8.2 Written notice of dispute

A party claiming that a dispute has arisen under or in relation to this Agreement must give written notice to the other party specifying the nature of the dispute.

8.3 Attempt to resolve

On receipt of notice under clause 8.2, the parties must endeavour in good faith to resolve the dispute expeditiously using informal dispute resolution techniques such as mediation, expert evaluation or other techniques agreed by them.

8.4 Mediation

If the parties do not agree within 21 days of receipt of notice under clause 8.2 (or any further period agreed in writing by them) as to:

- (a) the dispute resolution technique and procedures to be adopted;
- (b) the timetable for all steps in those procedures; or
- (c) the selection and compensation of the independent person required for such technique,

the parties must mediate the dispute in accordance with the Mediation Rules of the Law Society of NSW. The parties must request the president of the Law Society of NSW or the president's nominee to select the mediator and determine the mediator's remuneration.

8.5 Court proceedings

If the dispute is not resolved within 60 days after notice is given under clause 8.2 then any party which has complied with the provisions of this clause 8 may in writing terminate any dispute resolution process undertaken under this clause and may then commence court proceedings in relation to the dispute.

8.6 Not use information

The parties acknowledge the purpose of any exchange of information or documents or the making of any offer of settlement under this clause 8 is to attempt to settle the dispute. No party may use any information or documents obtained through any dispute resolution process undertaken under this clause 8 for any purpose other than in an attempt to settle the dispute.

8.7 No prejudice

This clause 8 does not prejudice the right of a party to institute court proceedings for urgent injunctive or declaratory relief in relation to any matter arising out of or relating to this Agreement.

9. GST

9.1 Interpretation

In this clause 9:

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

- (c) a reference to something done (including a supply made) by a party includes a reference to something done by any entity through which that party acts.

9.2 Intention of the parties

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

9.3 Reimbursement

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

9.4 Consideration GST exclusive

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

9.5 Additional amount of GST payable

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

- (a) any party ("**Recipient**") that is required to provide consideration to the Supplier for that supply must pay an additional amount to the Supplier equal to the amount of GST payable on that supply ("**GST Amount**"), and:
 - (i) where that GST Amount is payable by the Minister, the GST Amount will be limited to the amount of the input tax credit (if

any) to which the Minister (or the representative member of any GST group of which the is a member) is entitled in relation to the Minister's acquisition of that supply and is payable within 5 Business Days after the Minister, in any capacity, is a member) has received the benefit of that input tax credit; and

- (ii) in any other case, the GST Amount is payable at the same time as any other consideration is to be first provided for that supply; and
- (b) the Supplier must provide a tax invoice to the Recipient for that supply, no later than the time at which the GST Amount for that supply is to be paid.

9.6 Variation

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

9.7 Exchange of non-monetary consideration

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

9.8 No merger

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

10. Assignment and Dealing

10.1 Landowner's right to sell

- (a) The Landowner must not sell, transfer or dispose of the whole or any part of the Land and/or the Offsite Environmental Land unless, before it sells, transfers or disposes of any such part of the Land and/or the Offsite Environmental Land to another person ("**Transferee**"):
 - (i) it satisfies the Minister acting reasonably that the proposed Transferee is financially capable (including, without limitation, by providing financial statements for, and credit standing of, the proposed transferee) of complying with such of the Landowner's obligations under this Agreement as the Minister acting reasonably shall nominate must be adopted by the Transferee ("**Required Obligations**");
 - (ii) the rights of the Minister under this Agreement are not diminished or fettered in any way;
 - (iii) the Transferee signs an acknowledgement in form and substance acceptable to the Minister by which the Transferee acknowledges that under section 7.6 of the Act the Transferee is, upon and following transfer of the Land, bound by this Agreement; and
 - (iv) the Minister is satisfied that it holds appropriate security to secure the Landowner 's obligations under this Agreement; and
 - (v) any default by the Landowner has been remedied by the Landowner or waived by the Minister; and
 - (vi) the Landowner and the Transferee pay the Minister's reasonable costs in relation to the transfer.

11. Release and indemnity

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

(ii) the agreement terminates under clause 2(c);
whichever is the earlier.

12. Costs

- (a) Each party agrees to pay its own costs in relation to the negotiation, preparation, and execution of this Agreement, including, without limitation, legal costs and expenses on a solicitor and own client basis, and including, without limitation, any in-house legal costs and expenses.
- (b) The Landowner agrees to pay the reasonable costs incurred in relation to the advertising, stamping and registration of this Agreement.
- (c) In the event that the Landowner defaults with respect to any of its obligations pursuant to this Agreement, the Landowner agrees to pay or reimburse the Minister and the Council on demand for:
 - (i) costs of the Minister and the Council in connection with any enforcement or preservation of any rights under this Agreement; and
 - (ii) taxes and fees (including, without limitation, registration fees) and fines and penalties in respect of fees which may be payable or determined to be payable in connection with this Agreement,

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

13. Effect of Scheduled terms and conditions

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

14. General provisions

14.1 Exercise of Minister's Powers

The Landowner acknowledges that the Minister may authorise any officer of the Office of Planning and Environment to exercise any of the Minister's functions under the agreement on the Minister's behalf.

14.2 Entire Agreement

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

14.3 Counterparts

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

14.4 Further Acts

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

14.5 Governing Law and Jurisdiction

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

14.6 Joint and individual liability and benefits

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

14.7 No fetter

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

14.8 Representations and warranties

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

14.9 Severability

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

14.10 Modification

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

14.11 Waiver

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

14.12 Good Faith

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

15. Notices

15.1 Form

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

- (a) delivered or posted to that Party at its address set out below; or
- (b) faxed to that Party at its fax number set out below:

The Minister

Address: GPO Box 39, Sydney NSW 2001
Telephone: 1300 305 695
Fax:
Attention:

The Council

Address: PO Box 42 Nowra NSW 2541
Telephone: (02) 4429 3111
Fax: (02) 4422 1816
Attention: The General Manager

The Landowner

Enid Maude Hall

Address: 26 Abercrombie Crescent, Albion Park NSW 2527

Telephone: (02) 4256 1449

Fax:

Attention: Robyn Bates

15.2 Receipt

(a) Any notice, consent, information, application or request is to be treated as given or made at the following time:

- (i) if it is delivered, when it is left at the relevant address;
- (ii) if it is sent by post, 2 Business Days after it is posted; or
- (iii) if it is sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number.

(b) Receipt - next Business Day

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

Schedule 1 - Requirements under section 7.4 of the Act

SUBJECT and SUB-SECTION OF THE ACT	THE PLANNING AGREEMENT
<p>Planning instrument and/or Development Application - (Section 7.4(1))</p> <p>The Landowner has:</p> <p>sought a change to an environmental planning instrument.</p> <p>made, or proposes to make a Development Application.</p> <p>entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.</p>	<p>(a) Yes</p> <p>(b) Yes</p> <p>(c) No</p>
Description of the land to which the Planning Agreement applies - (Section 7.4(3)(a))	The whole of the Land.
Description of change to the environmental planning instrument to which the Planning Agreement applies - (Section 7.4(3)(b))	Rezoning of the Land to allow for the Proposed Development.
The scope, timing and manner of delivery of contribution required by the Planning Agreement - (Section 7.4(3)(c))	See the Schedule 3
Applicability of section 7.11 of the Act - (Section 7.4(3)(d))	The application of section 7.11 of the Act is not excluded.
Applicability of section 7.12 of the Act - (Section 7.4(3)(d))	The application of section 7.12 of the Act is not excluded.
Applicability of section 7.24 of the Act - (Section 7.4(3)(d))	The application of section 7.24 of the Act is not excluded.
Mechanism for dispute resolution - (Section 7.4(3)(f))	See clause 8.
Enforcement of the Planning Agreement - (Section 7.4(3)(g))	See clause 7.

SUBJECT and SUB-SECTION OF THE ACT	THE PLANNING AGREEMENT
Registration of the Planning Agreement - (Section 7.4(3)(g)) The Parties agree that the Planning Agreement will be registered in accordance with clause Registration of this Agreement.	Yes
No obligation to grant consent or exercise functions - (Section 7.4(9))	No obligation. See clause 14.5.

Schedule 2 - Land

The whole of the land described in the following table:

Lot	Deposited Plan	Folio Identifier	Landowner
4	834254	4/834254	Enid Maude Hall
7	6123	Auto Consol 12516-190	Enid Maude Hall
1	571614	Auto Consol 12516-190	Enid Maude Hall

Schedule 3 – Development Contribution

1. Development Contribution

- (a) The Landowner undertakes to provide or procure the provision of the Development Contribution as set out and provided for in Column 2 of the Development Contribution Table below no later than the date or event described in Column 3 of the Development Contribution Table.

Column 1	Column 2	Column 3	Column 4
Item	Development Contribution	Timing	Public purpose
1	Onsite Environmental Land Contribution The Landowner must transfer the Onsite Environmental Land to the Minister or his/her nominee.	In accordance with the requirements of clause 2 of this Schedule 3	To achieve appropriate conservation outcomes for the Development
2	Offsite Environmental Land Contribution Subject to clause 3.1 of this Schedule 3, the Landowner must transfer the Offsite Environmental Land to the Minister or his/her nominee.	In accordance with the requirements of clause 3 of this Schedule 3	To achieve appropriate conservation outcomes for the Development

2. Onsite Environmental Land Contribution

2.1 Registration of Land Subdivision Plan

- (a) The Landowner must within 90 days of the Gazettal lodge a Development Application for the Land Subdivision.
- (b) The Land Subdivision Plan and any associated instrument pursuant to section 88B of the Conveyancing Act must:
- (i) include a provision for access to the Onsite Environmental Land from a public road, being no less than 6m wide, for the benefit of the Minister or her/his nominee (**Transferee**) including but not limited to a formal Right of Access if the access to the Onsite Environmental Land is through a Residential Lot; and
 - (ii) not create a boundary line through the area known as Jim's Forest being the forest area contained in Lot 31 of the proposed Land Subdivision Plan attached to this Agreement and marked Annexure A.

- (c) Within 1 month of obtaining any relevant Subdivision Certificate for the Land Subdivision, the Landowner must lodge the relevant Land Subdivision Plan for registration under section 195G of the Conveyancing Act at NSW Land Registry Services.
- (d) Within 10 days of the date of notification of the registration of the Land Subdivision Plan, the Landowner must notify all Parties.

2.2 Transfer of Onsite Environment Land to the Minister

- (a) The Landowner must, within 30 Business Days of the registration of Land Subdivision Plan, serve on the Minister or her/his nominee **(Transferee)**:
 - (i) an executed Transfer which transfers the Onsite Environmental Land to the Transferee; and
 - (ii) the relevant certificate of title with respect to the Onsite Environmental Land and in circumstances where:
 - (A) the Onsite Environmental Land is free from any encumbrances other than relevant Service Easements;
 - (B) any relevant discharges in registrable form are also served on the Transferee at the same time in relation to any encumbrances other than relevant Service Easements.
- (b) The Landowner must immediately comply, or procure compliance with, any requisitions raised by the Registrar-General in relation to the transfer of the Onsite Environmental Land.
- (c) The Minister agrees to consider, as soon as practicable after the registration of the Transfer, how conservation of the Onsite Environmental Land is most appropriately achieved, whether by reservation as national park, as reserve of another category under NPW Act, or by a combination of these or otherwise.
- (d) The Landowner will pay all rates and taxes owing in respect of the Onsite Environmental Land up to and including the date of Transfer of the Onsite Environmental Land after which the Transferee will be liable.

2.3 Compulsory acquisition

- (a) If the Landowner does not transfer the Onsite Environmental Land to the Transferee as required by clause 2.2 of this Schedule 3, the Landowner consents to the Transferee compulsorily acquiring the Onsite Environmental Land, in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW), for the amount of \$1.00.

- (b) The Landowner and the Minister agree that:
 - (i) this clause 2.3 is an agreement between them for the purposes of section 30 of the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW); and
 - (ii) in this clause 2.3 they have agreed on all relevant matters concerning the compulsory acquisition and the compensation to be paid for the acquisition.
- (c) The Landowner indemnifies and agrees to keep indemnified the Transferee against all claims made against the Transferee that result in the Transferee being required to pay compensation under Part 3 of the *Land Acquisition (Just Terms Compensation) Act 1991* to any person, other than the Landowner as a result of the acquisition by the Transferee of the Onsite Environmental Land under this clause 2 of Schedule 3.
- (d) The Landowner must pay the Minister, promptly on demand, an amount equivalent to all reasonable costs incurred by the Minister acquiring the Environmental Land as contemplated by clause 2.3 of Schedule 3.

3. Offsite Environmental Land Contribution

3.1 Condition Precedent

This Offsite Land Contribution and the provisions of this clause 3 of Schedule 3 are subject to and conditional upon the subdivision of the Land into not less than 29 lots comprising of not less than 28 rural-residential lots and 1 further lot being the Onsite Environmental Land.

3.2 Transfer of Environment Land to the Minister

- (a) Subject to the condition precedent as stated in clause 3.1 of this Schedule 3 above being satisfied and after the expiration of 15 years from the registration of the Land Subdivision Plan, the Landowner must, within 30 Business Days after receiving a written notice from the Minister or her/his nominee, serve on the Minister or her/his nominee (**Transferee**):
 - (i) an executed Transfer which transfers the Offsite Environmental Land to the Transferee; and
 - (ii) the relevant certificate of title with respect to the Offsite Environmental Land and in circumstances where:
 - (A) the Offsite Environmental Land is free from any encumbrances other than relevant Service Easements;

- (B) any relevant discharges in registrable form are also served on the Transferee at the same time in relation to any encumbrances other than relevant Service Easements.
- (b) The Landowner may at any time after the registration of the Land Subdivision Plan and prior to the expiration of 15 years from the registration of the Land Subdivision Plan serve a written notice on the Minister requesting an early transfer of the Offsite Environmental Land to the Transferee and should the Minister agree to such a request by serving a written notice on the Landowner accordingly then the Landowner must, within 30 Business Days after receiving that written notice from the Minister or her/his nominee, serve on the Minister or her/his nominee (**Transferee**):
 - (i) an executed Transfer which transfers the Offsite Environmental Land to the Transferee; and
 - (i) the relevant certificate of title with respect to the Offsite Environmental Land and in circumstances where:
 - (A) the Offsite Environmental Land is free from any encumbrances other than relevant Service Easements;
 - (B) any relevant discharges in registrable form are also served on the Transferee at the same time in relation to any encumbrances other than relevant Service Easements.
- (c) The Landowner must immediately comply, or procure compliance with, any requisitions raised by the Registrar-General in relation to the transfer of the Offsite Environmental Land.
- (d) The Minister agrees to consider, as soon as practicable after the registration of the Transfer, how conservation of the Offsite Environmental Land is most appropriately achieved, whether by reservation as national park, as reserve of another category under NPW Act, or by a combination of these or otherwise.
- (e) The Landowner will pay all rates and taxes owing in respect of the Offsite Environmental Land up to and including the date of Transfer of the Offsite Environmental Land after which the Transferee will be liable.
- (f) The Landowner will be entitled to any monies and credit with respect to any Biobanking Agreement in respect of the Offsite Environmental Land up to and including the date of Transfer of the Offsite Environmental Land.
- (g) The Landowner and the Minister agree that prior to the Transfer of the Offsite Environmental Land, the Landowner will collect and receive

the balance of any monies and credits of any Biodiversity Conservation Fund account in respect of the Offsite Environmental Land.

3.3 Compulsory acquisition

- (a) If the Landowner does not transfer the Offsite Environmental Land to the Transferee as required by clause 3.2 of this Schedule 3, the Landowner consents to the Transferee compulsorily acquiring the Offsite Environmental Land, in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW), for the amount of \$1.00.
- (b) The Landowner and the Minister agree that:
 - 3.2.1.1 this clause 3.3 is an agreement between them for the purposes of section 30 of the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW); and
 - 3.2.1.2 in this clause 3.3 they have agreed on all relevant matters concerning the compulsory acquisition and the compensation to be paid for the acquisition.
- (c) The Landowner indemnifies and agrees to keep indemnified the Transferee against all claims made against the Transferee that result in the Transferee being required to pay compensation under Part 3 of the *Land Acquisition (Just Terms Compensation) Act 1991* to any person, other than the Landowner as a result of the acquisition by the Transferee of the Offsite Environmental Land under this clause 2 of Schedule 3.
- (d) The Landowner must pay the Minister, promptly on demand, an amount equivalent to all reasonable costs incurred by the Minister acquiring the Offsite Environmental Land as contemplated by this clause 3.3 of Schedule 3.

Executed as a deed

Signed by the
**Minister for Planning & Environment for
the State of New South Wales**

Signature of Witness

Minister for the Environment

Name of Witness in full

Signed for and on behalf of)
Shoalhaven City Council)
by ,)
who hereby declares that he/she has
been duly authorised to do so, in the
presence of:

.....
Signature of witness

.....
Signature of authorised representative

.....
Print Name

.....
Print Name

Signed, Sealed and Delivered by the)
Landowner in the presence of:)
)

.....
Signature of Witness

.....
Signature of the Landowner

.....
Name of Witness

Annexure A – Proposed Land Subdivision Plan