

24DP018	Planning Agreement - 1377 Hue Hue Road, Wyee - Conservation Land
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Key focus area	1. Unique landscape
Objective	1.1 Natural environments are protected and enhanced
File	F2023/02369/05 - D11666864
Author	Coordinator Developer Contributions - Deborah Scott
Responsible manager	Manager Integrated Planning - Wes Hain

Executive summary

Address	1337 Hue Hue Road, Wyee, Lot 437 DP 755242
Owners	Wyee Nominees Pty Limited
Proponent	TOPA Property Pty Ltd

A planning agreement (PA) is an agreement between a council or the state government and a developer for the provision of infrastructure, services or other public benefit required to support a development.

Wyee Nominees Pty Limited owns 1377 Hue Hue Road, Wyee and is associated with TOPA Pty Ltd (TOPA Property). TOPA Property have lodged a planning proposal to rezone part of 1377 Hue Hue Road, Wyee and part of adjoining Digary Road, Wyee from RU2 Rural Landscape and C2 Environmental Conservation to R2 Low Density Residential.

A PA has been prepared between Wyee Nominees, TOPA Property and Council to dedicate conservation land at the rear of 1377 Hue Hue Road, Wyee to Council to address the biodiversity offsets required for the expected future development on the proposed R2 Low-Density Residential land.

The draft PA was exhibited from 17 September to 16 October 2024, with no submissions received by Council. This report recommends endorsement of the PA between Council, Wyee Nominees Pty Limited, and TOPA Property Pty Ltd, as contained in Attachment 1.

Recommendation

Council authorises the affixing of the Common Seal to the Planning Agreement between Council and Wyee Nominees Pty Limited and TOPA Property Pty Ltd, as contained in Attachment 1.

Context

TOPA Property initiated a planning proposal at 1377 Hue Hue Road, Wyee and part of adjoining Digary Road, Wyee. On 13 February 2023, Council resolved (23DP002) to progress the planning proposal and request Gateway Determination and publicly exhibit the proposal to rezone the site from RU2 Rural Landscape to R2 Low Density Residential and to

realign the C2 Environmental Conservation zone boundary. Figure 1 shows the planning proposal site and its context and Figure 2 shows the existing and proposed zones.

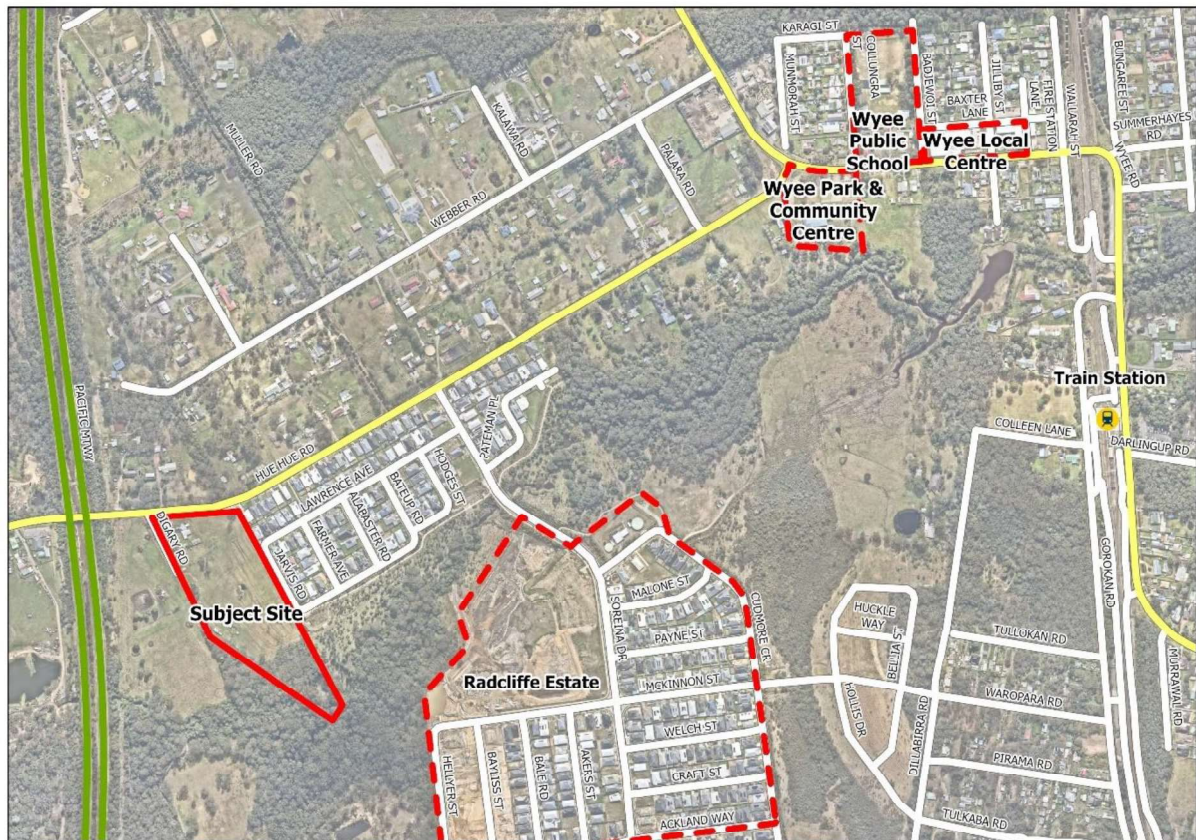


Figure 1: Subject site and context

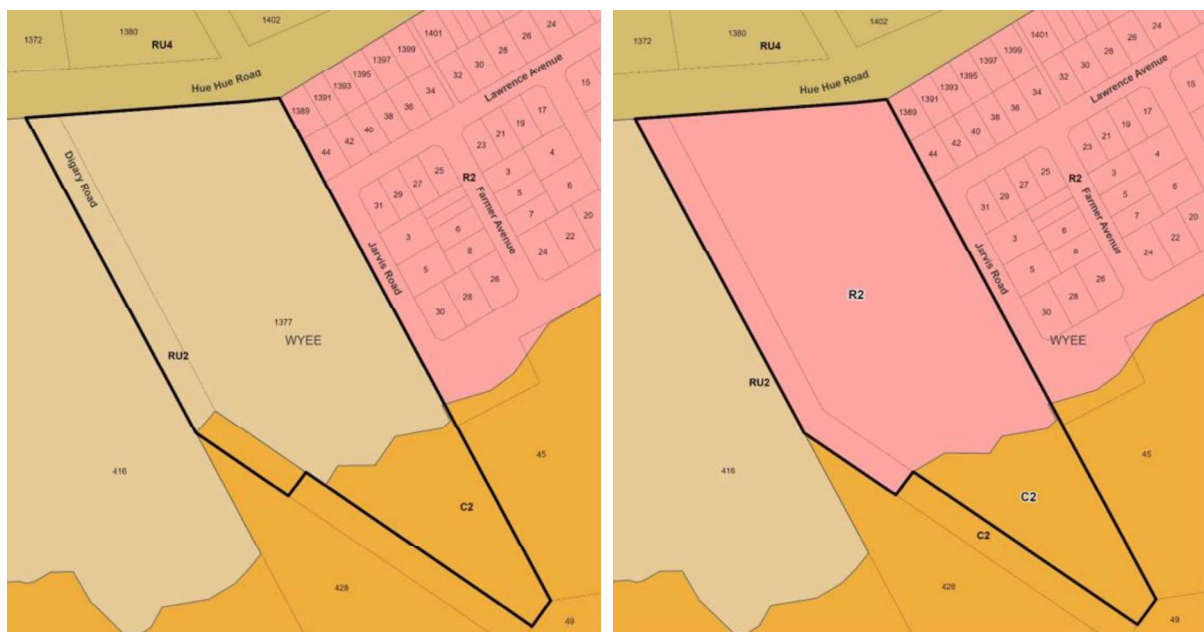


Figure 2: Existing (left) and proposed (right) zones on the subject site

TOPA Property and the owner seek to enter into a PA with Council to rehabilitate, maintain and dedicate conservation land to Council at 1377 Hue Hue Road, Wyee to offset vegetation

loss on the proposed R2 Low-Density Residential land. The PA also requires Wyee Nominees and TOPA Property to pay an endowment fund to Council.

The land labelled C2b in Figure 3 is part of the unformed Digary Road reserve which is currently owned by the Crown. This section of road reserve is part of the conservation land required to offset the vegetation loss on the proposed R2 Low-Density Residential land. Council staff are currently undertaking the process to transfer ownership of the Digary Road reserve from the Crown to Council.

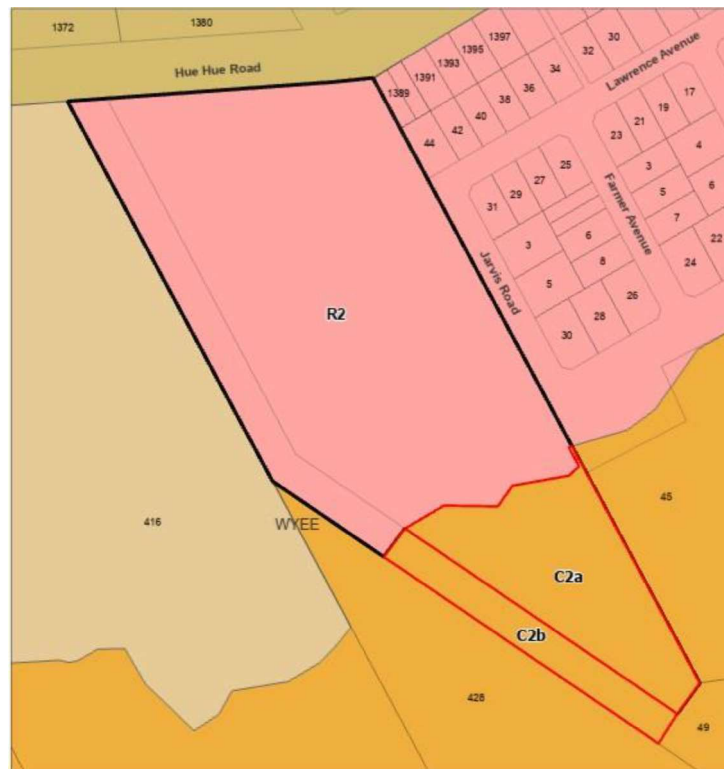


Figure 3: Offset Land – red border and labelled C2a and C2b

Discussion

A PA has been prepared between the owner, TOPA Property and Council to dedicate conservation land to Council and to address the biodiversity offsets required for any future development on the proposed R2 Low-Density Residential land.

Council's technical specialist has advised that the land shown as C2a and C2b in Figure 3 is suitable for the purpose of offsetting the impacts of the expected future development on the proposed R2 Low-Density Residential land. The conservation land will form a contiguous environmental corridor with adjoining conservation land which will be dedicated to Council in the future, as part of the nearby Radcliff Estate development.

The PA requires that Wyee Nominees and TOPA Property rehabilitate and maintain the conservation land for 10 years in accordance with a vegetation management plan. The maintenance period will commence prior to the subdivision or any development works being undertaken on the proposed R2 Low-Density Residential zoned land, whatever occurs first.

The PA also requires the conservation land to be dedicated to Council at the same time as the first subdivision of the proposed residential zoned land.

The endowment fund of \$100,111 (subject to indexation) will be used by Council to maintain and manage the land as a biodiversity offset site in perpetuity. The endowment fund will be paid to Council once the vegetation management plan works have been completed.

The endowment fund amount has been determined based on the ongoing management requirements of the land to be dedicated and in accordance with the State Government's biodiversity offsets calculator.

Community engagement and internal consultation

Staff from Council's Integrated Planning, Environmental Systems, and Property and Business Development departments assisted in the preparation of the proposed PA.

The draft PA was exhibited on Council's Shape Lake Mac webpage for 30 days from 17 September to 16 October 2024, with no submissions received by Council.

There were 817 visits to the Shape Lake Mac project webpage to view further details about the project, and the draft PA was downloaded 122 times.

Assessment of options

It is recommended Council enters into the PA provided in Attachment 1. This is recommended as the PA provides for the dedication of conservation land and address the biodiversity offsets required for any future development on the proposed R2 Low-Density Residential land. It is preferable that biodiversity offsets are resolved at the planning proposal stage.

Alternatively, Council may resolve to not enter the proposed PA included in Attachment 1. This is not recommended as it would require the developer to seek alternate arrangements to offset the biodiversity impacts that may not be as suitable as what is proposed in the PA.

Key considerations

Economic

The PA supports the future development of land at Wyee which will provide benefits to the local economy through construction activity and new homes.

Environment

The proposed PA provides for the rehabilitation, maintenance, and dedication of conservation land to Council, and the payment of an endowment fund of \$100,111 (subject to indexation) to Council to fund the management of the conservation land in perpetuity.

The PA requires the developer to rehabilitate and maintain the conservation land for a 10-year period to ensure the land is in an acceptable and self-sustaining condition by the time Council is responsible for managing the conservation land.

Community

Restoring the conservation land to a self-sustaining native ecosystem, and dedication of this land to Council, offsets and mitigates the environmental impacts of housing development. The provision of ecological offsets achieves a balance between protecting and enhancing the environment and making land available for housing.

Civic leadership

The dedication of conservation land to Council under the PA ensures the protection of the natural environment.

Financial

TOPA Property has covered Council's legal costs associated with the negotiation of the proposed PA.

Infrastructure

The developer will pay \$100,111 (subject to indexation) to Council to fund the maintenance and management of the conservation land in perpetuity.

Compliance

The PA has been prepared by Council's legal representative and meets all legislative requirements. The PA includes security arrangements to minimise risks associated with the conservation land rehabilitation and maintenance works, and payment of the endowment fund to Council.

Legislative and policy considerations

Environmental Planning and Assessment Act 1979

Environmental Planning and Assessment Regulation 2021

Attachments

- | | |
|--|-----------|
| 1. Planning Agreement - 1377 Hue Hue Road Wyee - Conservation Land | D11744508 |
|--|-----------|

12/09/2024

Planning Agreement

Environmental Planning and Assessment Act 1979 (NSW)

1377 Hue Hue Road, Wyee NSW 2259

[INSERT DATE OF EXECUTION]

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

Wyee Nominees Pty Limited
ACN 666 005 358

TOPA Property Pty Ltd
ACN 622 113 133

12/09/2024

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This Planning Agreement is dated [INSERT]

Parties

Council

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

Developer

Wyee Nominees Pty Limited (**Wyee Nominees**)
ACN 666 005 358

TOPA Property Pty Ltd (**TOPA Property**)
ACN 622 113 133

Introduction

- A Wyee Nominees owns the Land and is associated with TOPA Property.
- B TOPA Property has sought a change to an environmental planning instrument to rezone the Development Land, as set out in the Planning Proposal.
- C The Crown Land is vested in the Crown and is managed in accordance with the *Crown Lands Management Act 2016* (NSW).
- D The Developer proposes to make development applications for the Development.
- E Wyee Nominees and TOPA Property have offered to enter into this deed with Council to undertake works to rehabilitate and maintain the Conservation Works Land, to dedicate the Dedication Land free of cost and to provide the Endowment Fund Contribution as a material public benefit to be used or applied towards a public purpose in connection with the Planning Proposal and Development.

It is agreed:

1. Definitions and interpretation

1.1 Definitions

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

1.2 Interpretation

The provisions at Schedule 6 apply in interpreting this deed.

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2. Operation and application of this agreement

2.1 Operation

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

2.2 Planning agreement under the Act

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

2.3 Application

This deed applies to:

- (a) the Land;
- (b) Digary Road;
- (c) the Crown Land; and
- (d) the Planning Proposal.

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

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

3. Development Contributions

3.1 Requirement to provide Development Contribution

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

3.2 Use of Contributions

The Developer agrees that subject to section 7.3 of the Act, Council has no obligation to use or expend the Endowment Fund Contribution for a particular purpose despite any provision of this deed to the contrary and has no obligation to repay any amounts to the Developer in connection with this deed.

3.3 Dedication of Crown Land

- (a) The parties acknowledge that:
 - (i) the Crown Land is 'Crown land' as defined under the *Crown Land Management Act 2016*;
 - (ii) Conservation Works on the Crown Land, being part of the Conservation Works Land, are part of the Development Contribution; and
 - (iii) dedication of the Crown Land to Council is required to meet environmental offset requirements in the context of the Planning Proposal and Development, but is not part of the Development Contribution.

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- (b) Council agrees to use its best endeavours to provide for the dedication of the Crown Land to Council.
- (c) The Developer agrees to pay all associated costs incurred by Council in connection with dedicating the Crown Land to Council.

4. Enforcement, Indemnity and Remediation

4.1 Enforcement of this agreement

The Developer agrees to the mechanisms for enforcement of this deed, in the event of a breach of this deed by the Developer, in accordance with the terms and procedures set out in:

- (a) clause 4 of Item 2 of Schedule 3 entitled 'Security for VMP works and other actions'; and
- (b) clause 2 of Item 4 of Schedule 3 entitled 'Endowment Fund Bond'.

4.2 Indemnity

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

4.3 Remediation

- (a) Council may notify the Developer under this clause:
 - (i) at any time if Council becomes aware or reasonably suspects that any part of the Dedication Land is not free from Contamination; or
 - (ii) at any time, provided that the Council owns the Crown Land, and Council becomes aware or reasonably suspects that the Crown Land is not free from Contamination.
- (b) Upon receipt of a notice under clause 4.3(a) the Developer must procure an investigation report to enable the parties to be informed of the nature and extent of the Contamination in, on, under, entering, or leaving the Dedication Land or the Crown Land as the case may be ('**Investigation Report**') and provide the Investigation Report to Council.
- (c) After receipt by Council of the Investigation Report, the parties must meet:
 - (i) to discuss in good faith the method by which the relevant part of the Dedication Land or the Crown Land, as the case may be, might be dealt with so that it will be free from Contamination; and
 - (ii) to agree a standard to which the Developer must remediate the relevant part of the Dedication Land or the Crown Land as the case may be.
- (d) The Developer must at its own cost undertake all reasonable measures to ensure that the relevant part of the Dedication Land or the Crown Land, as the case may be, is remediated to the standard agreed under clause 4.3(c).

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5. Registration on Title

5.1 Interest in Land

- (a) Wyee Nominees represents and warrants that it is the owner of the Land and represents and warrants that it is legally and beneficially entitled to obtain all consents and approvals and to compel any person referred to in or contemplated by clause 5.2(b) to assist, cooperate and to otherwise do all things necessary for the Developer to comply with its obligations under clause 5.
- (b) Wyee Nominees represents and warrants that unregistered dealing 'DP1307735' affecting the Land does not materially or substantially alter the boundaries of the Land as defined in the Crown Plan.

5.2 Registration of deed

- (a) The Developer agrees to register this deed on title to the Land in accordance with this clause.
- (b) The Developer at its own cost must take all practical steps and otherwise do anything to procure items 1 to 6 in the 'Item' column of the table below, in accordance with the timing for that Item set out in the 'Timing' column in the table below:

Ref.	Item	Timing
Consent to and lodgement for registration of deed		
1.	Consent to the registration of this deed on the title to the Land, and to the terms of this deed, from each person as required by the Registrar-General, who: <ul style="list-style-type: none"> (i) has an estate or interest in the Land registered under the Real Property Act; or (ii) is seized or possessed of an estate or interest in the Land. 	Within 10 Business Days of receiving a copy of this deed executed by Council.
2.	The electronic lodgement of this deed in a registrable form through an ELNO for registration by the Registrar-General in the relevant folio of the Register for the Land, or in the General Register of Deeds if this deed relates to land not under the Real Property Act.	Within 10 Business Days of receiving a copy of this deed executed by Council.
3.	The execution of any documents to effect clause 5.2(a) and clause 5.2(b) above.	Within 10 Business Days of receiving a copy of this deed executed by Council.
Registration of deed		
4.	The registration of this deed in the relevant folio of the Register for the Land, including promptly responding to any requisitions made by the	Within three months of the date of this deed.

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	Registrar-General in respect of this deed and/or any ancillary documents.	
Evidence of registration		
5.	Provide Council with evidence of the lodgement of this deed pursuant to clause 5.2.	Within 10 Business Days of such lodgement.
6.	Provide Council with a copy of the relevant folio of the Register for the Land and a copy of the registered dealing containing this deed.	Within 10 Business Days of registration of this deed.

5.3 Right to lodge caveat

- (a) Until this deed is registered on title in accordance with clause 5.2, this deed confers on Council an interest in the Land and entitles the Council to lodge and maintain a caveat on the title to the Land to prevent any Dealing in respect of the Land.
- (b) Council may exercise its right to lodge a caveat in accordance with clause 5.3 if the Developer does not register this deed in accordance with clause 5.2 within 10 Business Days of the deed commencing.
- (c) If Council lodges a caveat in accordance with clause 5.3(b):
 - (i) Council will do all things reasonably necessary:
 - (A) to ensure that the caveat does not prevent or delay the Developer's registration of this deed in accordance with clause 5.2; and
 - (B) to withdraw the caveat as soon as practicable after Council becomes aware that this deed has been registered on title in accordance with clause 5.2; and
 - (ii) the Developer must pay all of Council's costs and expenses incurred in lodging and withdrawing the caveat promptly after receiving a bill of costs from Council following withdrawal of the caveat.

5.4 Release and discharge of deed

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

6. Dispute resolution

6.1 Parties not to commence Court proceedings without complying with dispute resolution procedures

- (a) A party must not commence any court proceedings relating to a dispute unless it complies with this clause 6.
- (b) Clause 6.3 does not prevent, or prejudice the right of a party to institute, court proceedings for urgent injunctive or declaratory relief in relation to any matter arising out of or relating to this deed.

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6.2 Written notice of dispute

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

6.3 Attempt to resolve through informal dispute resolution

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

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

6.4 Mediation if dispute not resolved through informal dispute resolution

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

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

6.5 When Court proceedings may be commenced

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

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

6.6 Parties not to use dispute resolution information for other purposes

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

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7. Assignment and Transfer

7.1 Right to assign or novate

- (a) The Developer must not assign this deed to any person except in accordance with this clause 7.1.
- (b) If the Developer seeks to assign its rights or benefits or novate its obligations to another party, the Development must:
 - (i) satisfy Council that the person to whom the Developer's rights or obligations are to be assigned or novated ('**Incoming Party**') has sufficient assets, resources and expertise required to perform the Developer's obligations under this deed insofar as those obligations are to be assigned or novated to the Incoming Party;
 - (ii) procure the execution of a deed by the Incoming Party with Council on terms satisfactory to Council under which the Incoming Party agrees to comply with the terms and conditions of this deed as though the Incoming Party were the Developer;
 - (iii) satisfy Council, acting reasonably, that it is not in material breach of its obligations under this deed; and
 - (iv) obtain Council's written notice that:
 - (A) Council is satisfied that the requirements in clauses 7.1(b)(i) to 7.1(b)(iii); and
 - (B) that Council consents to the proposed assignment or novation.
- (c) The Developer must pay Council's reasonable legal costs and other expenses incurred under this clause 7.1 promptly after receiving a bill of costs from Council following the issue of Council's written notice under clause 7.1(b)(iv).
- (d) Provided that:
 - (i) the Developer has complied with clause 7.1; and
 - (ii) the Incoming Party has provided Council with a replacement Security in accordance with the requirements of Schedule 3 and on terms acceptable to Council,Council will promptly return the Security to the Developer.

7.2 Right to transfer Land

- (a) Subject to clause 7.2(b), Wyee Nominees must not sell or transfer to another person (**Transferee**) the whole or part of any part of the Land:
 - (i) on which this deed remains registered under section 7.6 of the Act; or
 - (ii) for which the Development Contribution required under this deed remains outstanding.
- (b) The Developer may sell or transfer the whole or any part of the Land to the Transferee if, before the sale or transfer, the Developer:
 - (i) satisfies the Council, acting reasonably, that the proposed Transferee has sufficient assets, resources and expertise required to perform any of the remaining obligations

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of the Developer under this deed or satisfies Council, acting reasonably, that Council will continue to be bound by the terms of this deed after the transfer has been effected;

- (ii) procures the execution of a deed by the Transferee with the Council on terms satisfactory to Council, acting reasonably, under which the Transferee agrees to comply with the terms and conditions of this deed as though the Transferee were the Developer, which may include the provision of a replacement Security;
- (iii) satisfies Council, acting reasonably, that it is not in material breach of its obligations under this deed; and
- (iv) obtains Council's written notice that:
 - (A) Council is satisfied that the requirements in clauses 7.2(b)(i) to 7.2(b)(iii); and
 - (B) that Council consents to the proposed sale or transfer.
- (c) The Developer must pay Council's reasonable legal costs and other expenses incurred under this clause 7.2 promptly after receiving a bill of costs from Council following the issue of Council's written notice under clause 7.2(b)(iv).
- (d) Provided that:
 - (i) the Developer has complied with clause 7.2; and
 - (ii) the Transferee has provided Council with a replacement Security on terms acceptable to Council,

Council will promptly return the Security to the Developer.

8. Capacity and relationship

8.1 General warranties

Each party warrants to each other party that:

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

8.2 Power of attorney

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

8.3 Assurances

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

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8.4 Relationship of parties

Unless otherwise stated:

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

9. GST**9.1 Definitions**

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

9.2 Intention of the parties

The parties intend that:

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

9.3 Reimbursement

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

9.4 Consideration GST exclusive

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

9.5 Additional Amounts for GST

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

9.6 No merger

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

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10. Termination

10.1 Termination

This deed terminates if:

- (a) the parties agree in writing to terminate the deed;
- (b) the Developer has satisfied all of the obligations imposed on it under this deed in full and Council has issued written notice to the Developer stating that Council agrees that the Developer has satisfied all of the obligations imposed on it under this deed in full;
- (c) the Local Environmental Plan has not been amended in accordance with the Planning Proposal within 2 years after the date of this deed; and/or
- (d) the Local Environmental Plan has been amended in accordance with the Planning Proposal and is declared by a Court to be invalid.

10.2 Consequences of termination

If this deed terminates:

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

11. General provisions

11.1 Entire deed

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

11.2 Notices and time for doing acts

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

11.3 Variation

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

11.4 Waiver

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

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11.5 Preservation of existing rights

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

11.6 No merger

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

11.7 No fetter

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

11.8 Costs

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

11.9 Counterparts

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

11.10 Electronic execution and electronic exchange

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

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Schedule 1 – Requirements under section 7.4 of the Act

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

Requirement under the Act	This deed
Planning instrument and/or development application – (section 7.4(1)) The Developer has: <ul style="list-style-type: none"> (a) sought a change to an environmental planning instrument. (b) made, or proposes to make, a Development Application; and (c) entered into a deed with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies. 	<ul style="list-style-type: none"> (a) Yes. (b) Yes. (c) Yes, in that Wyee Nominees and TOPA Properties are associated entities.
Description of land to which this deed applies – (section 7.4(3)(a))	The land listed in Item 1 of Schedule 2.
Description of development to which this deed applies – (section 7.4 (3)(b))	See description at Item 2 of Schedule 2.
Description of change to the environmental planning instrument to which this deed applies – (section 7.4 (3)(b))	See description at Item 3 of Schedule 2.
The scope, timing and manner of delivery of contribution required by this deed – (section 7.4 (3)(c))	See Schedule 3.
Applicability of sections 7.11 of the Act – (section 7.4 (3)(d)(i))	This deed does not exclude the application of section 7.11 of the Act in respect of the Development or any other development of the Land.
Consideration of benefits under this deed if section 7.11 applies – (section 7.4 (3)(e))	No.
Applicability of section 7.12 of the Act – (section 7.4 (3)(d)(ii))	This deed does not exclude the application of section 7.12 of the Act in respect of the Development or any other development of the Land.
Applicability of Division 7.1, Subdivision 4 of the Act – (section 7.4 (3)(d)(iii))	This deed does not exclude the application of Division 7.1, Subdivision 4 of the Act in respect of

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Requirement under the Act	This deed
	the Development or any other development of the Land.
Mechanism for Dispute Resolution – (section 7.4(3)(f))	See clause 6.
Enforcement of this deed – (section 7.4(3)(g))	See clause 4.
No obligation to grant consent or exercise functions – (section 7.4(10))	See clause 11.7.
Registration of the Planning Agreement – (section 7.6 of the Act)	Yes (see clause 5).
Whether the Planning Agreement specifies that certain requirements of the deed must be complied with before a construction certificate is issued – (section 21 of <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i>)	No.
Whether the Planning Agreement specifies that certain requirements of the deed must be complied with before an occupation certificate is issued – (section 48 of <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i>)	No.
Whether the Planning Agreement specifies that certain requirements of the deed must be complied with before a subdivision certificate is issued – (section 6.15(1)(d) of the Act)	Yes.

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Schedule 2 – Land and Development

Item 1 Land to which deed applies

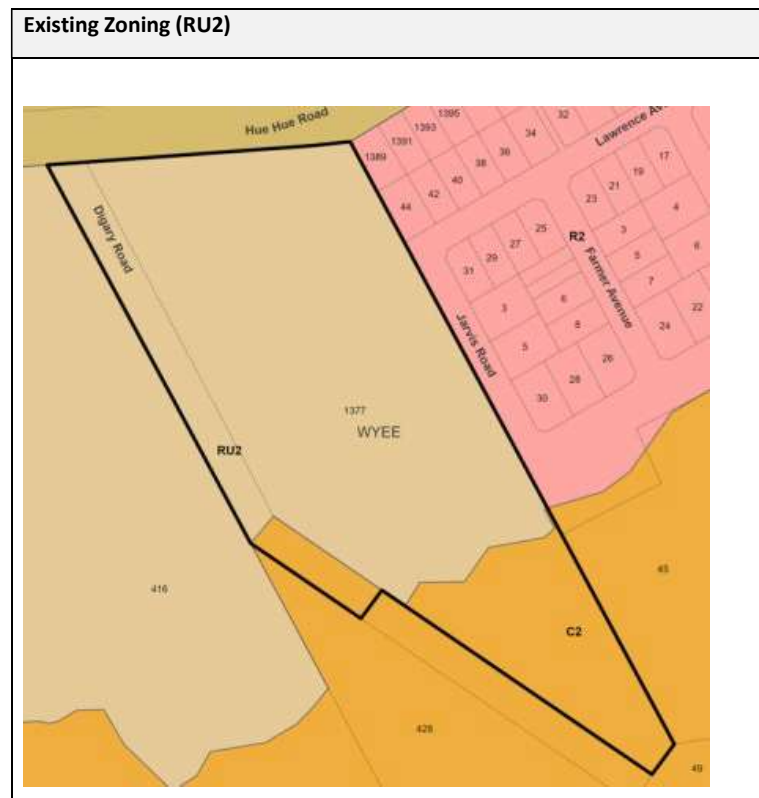
- (a) The Land, being Lot 437 DP 755242, in respect of which Wyee Nominees Pty. Limited is the registered proprietor.
- (b) Digary Road
- (c) The Crown Land.

Item 2 Development

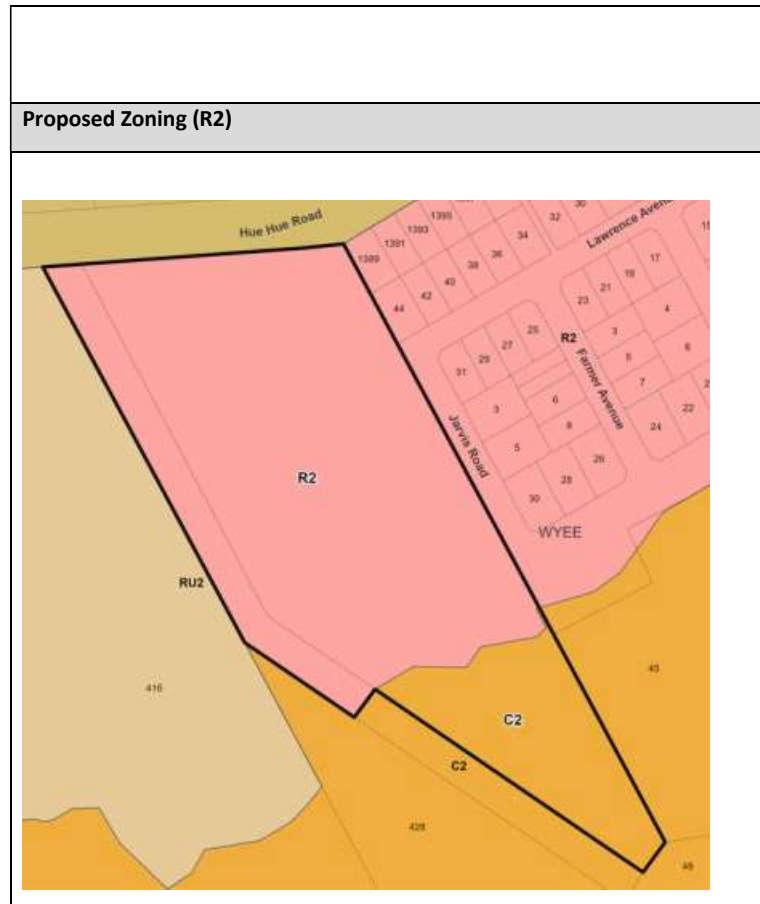
Any development of the Development Land, excluding subdivision of the Land that is solely for the purpose of subdividing the Dedication Land into a separate allotment for dedication to Council in accordance with this deed.

Item 3 Change to environmental planning instrument

As described in the definition of Planning Proposal in Schedule 5, in respect of which the existing zoning and proposed zoning of the Development Land is shown in the diagrams below:



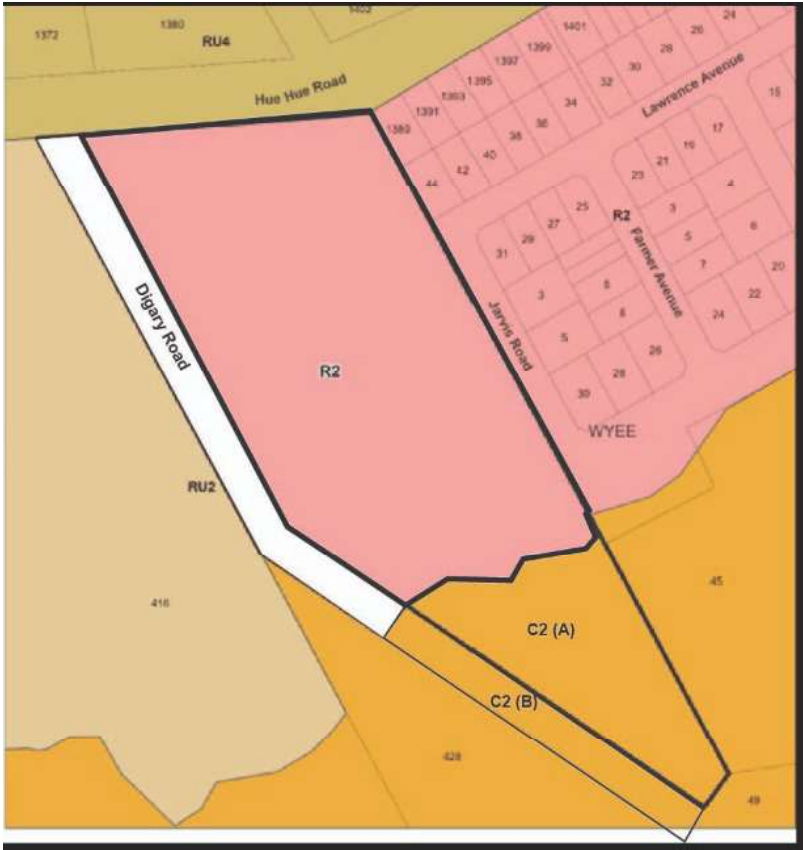
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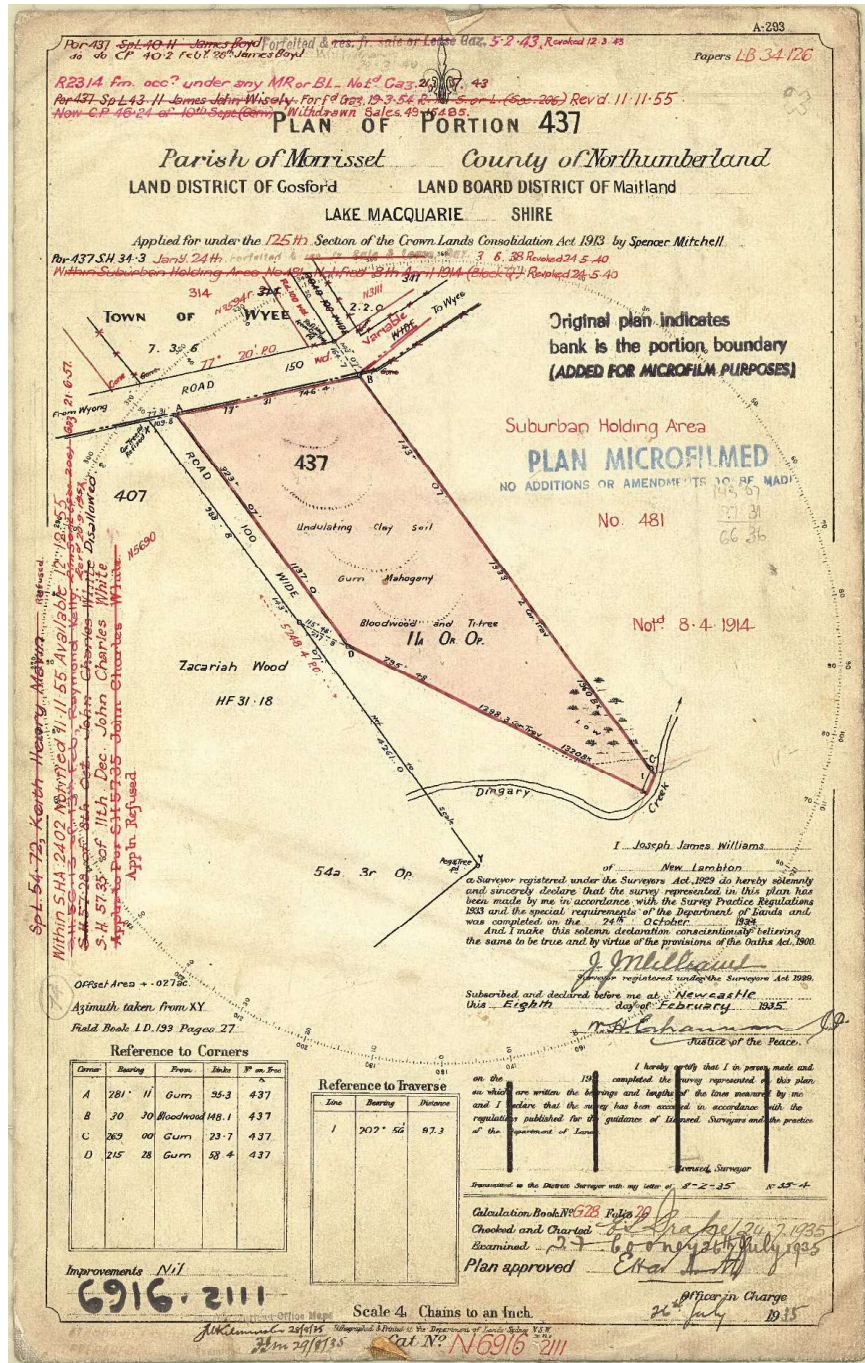
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Item 4 Identification of Dedication Land, Crown Land, and Digary Road



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Crown Plan 06916-2111



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Schedule 3 – Development Contribution**Item 1 Development Contribution**

- (a) The Development Contribution which the Developer agrees to provide comprises the:
 - (i) Conservation Works;
 - (ii) Land Contribution; and
 - (iii) Endowment Fund Contribution.
- (b) The Developer must provide the Development Contribution in accordance with this Schedule 3.

Item 2 Conservation Works**1. Carrying out of Conservation Works in accordance with approved VMP**

Regardless of the identity of the owner of the Conservation Works Land or any part of it, the Developer agrees to carry out the Conservation Works on the Conservation Works Land during the Maintenance Period in accordance with:

- (a) the VMP approved by Council under clause 3 of Item 2 of this Schedule 3; and
- (b) the requirements of Item 2 of this Schedule 3.

2. Content requirements for the VMP

The VMP must:

- (a) relate to the Conservation Works Land;
- (b) be prepared in accordance with the relevant Council Vegetation Management Plan Guidelines and / or other guidelines as notified by Council acting reasonably to the Developer;
- (c) set out the overall short, medium and long term objectives of the VMP, including:
 - (i) the maintenance and enhancement of the Conservation Works Land to achieve a stable state with low weed infestation and good condition by the end of the Maintenance Period; and
 - (ii) the criteria for assessing whether the Conservation Works Land is suitable for handover of management to Council at the end of the Maintenance Period;
- (d) provide for the following works and actions at a minimum to be undertaken during the Maintenance Period:
 - (i) removal of internal fencing if required;
 - (ii) removal of rubbish;
 - (iii) management of waste dumping;
 - (iv) installation of gates, associated posts and cable fencing to manage access to and use of the Conservation Works Land;
 - (v) management of access and use of the Conservation Works Land;
 - (vi) construction, rehabilitation and maintenance of trails;

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- (vii) boundary demarcation including installation of boundary posts on boundary or fencing;
- (viii) means of excluding domestic animals including signage;
- (ix) interpretative and other signage;
- (x) bush regeneration, including primary and secondary weeding and ongoing maintenance;
- (xi) revegetation, supplementary planting of trees, shrubs and ground cover with local endemic species characteristic of the Lake Macquarie native vegetation communities onsite;
- (xii) fire management;
- (xiii) pest management;
- (xiv) management of edge effects from the Development Land including containment of batters, fencing and landscaping species;
- (xv) installation of nest boxes and monitoring;
- (xvi) erosion control and/or restoration of land;
- (xvii) preparation and submission to Council of monitoring surveys and annual reports; and
- (xviii) milestones and timing of works and actions; and
- (e) be submitted to Council for approval in accordance with clause 3 of Item 2 of this Schedule 3 below.

3. **Approval of VMP**

Following submission of a draft VMP prepared in accordance with the content requirements in clause 2 of Item 2 of this Schedule 3 above, Council will consider the draft VMP, and the draft VMP is taken to be the approved when:

- (a) Council issues written notice to the Developer to that effect; and/or
- (b) Council approves a development application for the Development and that consent approves the VMP.

4. **Security for VMP works and other actions**

- (a) Prior to commencement of the Maintenance Period, the Developer must:
 - (i) procure a quantity surveying report which contains advice from a suitably qualified ecologist and bush regenerator on the costs of any incomplete works and other actions required under the VMP at the time the Security is provided (**Costing Report**);
 - (ii) obtain approval from Council on the value of the outstanding works and other actions required under the VMP, which may be informed by the costings in the Costing Report (**Agreed Value**);
 - (iii) procure Security which:
 - (A) names Council as the beneficiary of the Security;
 - (B) has a face value equal to 170% of the Agreed Value to secure the delivery of any incomplete works and other actions required under the VMP (**Security Value**);

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- (C) entitles Council to retain the Security from the commencement of the Maintenance Period until the end of the Maintenance Period; and
 - (D) entitles Council to call on the Security to be applied towards the delivery of works and other actions under the VMP if the Developer fails to deliver them.
 - (b) Notwithstanding clause 4(a)(iii)(B) of Item 2 of this Schedule 3 above, the Security may be reduced (**Reduced Security**) with Council's consent after the end of:
 - (i) the fifth year of the Maintenance Period to a face value which equals 130% of the amount required to secure the delivery of any incomplete works and other actions required under the VMP at that time; and
 - (ii) the eighth year of the Maintenance Period to a face value which equals 111% of the amount required to secure the delivery of any incomplete works and other actions required under the VMP at that time.
 - (c) If Council receives a request to reduce the Security in accordance with clause 4(b) above, Council may:
 - (i) request that the Developer procures a further Costing Report to inform the value any incomplete works and other actions required under the VMP at the time a request is made; and
 - (ii) in its absolute discretion, determine the value of any Reduced Security to be provided at the end of the fifth and/or eighth year of the Maintenance Period.
- 5. **Carrying out of Conservation Works – implementation of VMP**
 - (a) The Developer must, at its cost, obtain any necessary Approvals for the Conservation Works including any licence or other Approval required to carry out the VMP on the Crown Land.
 - (b) The Developer must carry out the Conservation Works:
 - (i) in accordance with:
 - (A) this deed, including for the avoidance of doubt clause 6 of Item 2 of Schedule 3;
 - (B) the VMP; and
 - (C) any relevant Development Consent or other Approvals obtained for the Contribution Works; and
 - (ii) in such a manner that the Developer:
 - (A) takes all necessary measures to protect people, property, and the environment;
 - (B) avoids unnecessary interference with the passage of people and vehicles;
 - (C) prevents nuisances and unreasonable noise and disturbances; and
 - (D) complies with all relevant Laws and regulations; and
 - (iii) in a proper and workmanlike manner complying with current industry practice and standards.

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- (c) The Developer must permit Council, its officers, employees, agents and contractors to enter the Conservation Works Land at any time, upon giving at least one (1) Business Day's prior notice, in order to inspect the Contribution Works.
- (d) The Developer indemnifies Council in respect of any Claim that may arise as a result of the conduct of the Works but only to the extent that any such Claim does not arise as a result of the negligent acts or omissions of Council.

6. Access to Dedication Land to carry out remaining VMP works and other actions

- (a) If the Dedication Land is dedicated before the completion of the Maintenance Period, Council permits the Developer to access, use and occupy the Dedication Land to undertake the activities and works required under the VMP.
- (b) Permission to access the Dedication Land does not confer any rights on the Developer to the exclusive possession of the Dedication Land, nor any tenancy, estate, proprietary interest or exclusive possession in the Dedication Land.
- (c) If the Developer relies on this clause to access the Dedication Land to fulfil its obligations under the VMP and this deed:
 - (i) the Developer must procure and maintain current insurance policies in connection with the Dedication Land covering:
 - (A) public liability for an amount of \$20 million; and
 - (B) any other risks the Developer reasonably considers may materialise in carrying out the works and other actions under the VMP; and
 - (ii) the Developer:
 - (A) releases Council from any Claim that it may have against the Developer; and
 - (B) indemnifies the Council from any Claim that may be brought against Council, arising from the Developer's carrying out the works and other actions under the VMP in reliance on this clause.

7. Annual reporting on VMP compliance

By 8 July of each year after the commencement of the Maintenance Period, the Developer must provide Council with an annual report which must include the following content at a minimum:

- (a) the Developer's progress in achieving the objectives of the VMP;
- (b) works undertaken during the reporting period;
- (c) documentation of the condition of Conservation Works Land before and after rehabilitation actions are undertaken in accordance with the VMP
- (d) numbers and species of plantings and success of plantings;
- (e) photographic records of progress in implementing the VMP, including growth of any revegetation works;
- (f) condition and use of any nest boxes;
- (g) results of flora and fauna monitoring;

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- (h) information in relation to weeding areas and activity, including extent and intensity of weed infestations, areas treated, type of treatment, and monitoring over the reporting period;
- (i) progress of any rehabilitation work including treatments, location, spatial extent area treated, and monitoring over time;
- (j) any matters that affect the successful implementation of the VMP; and
- (k) a comparison of the above matters against the baseline data.

8. Final report on VMP compliance

- (a) 60 days before the end of the Maintenance Period, the Developer must;
 - (i) prepare and submit a final report to Council which:
 - (A) includes all the content required for the annual report under clause 7 of Item 2 of this Schedule 3 for the preceding year;
 - (B) compiles and presents the results of all monitoring and works over the Maintenance Period for the matters included in each annual report under clause 7 of Item 2 of this Schedule 3;
 - (C) assess in detail the condition of the Conservation Works Land at the end of the Maintenance Period and the degree to which the objectives of the management plan VMP have been met;
 - (D) assesses and reports on the suitability for handover of management of the Conservation Works Land to Council;
 - (E) documents any outstanding works i.e. works not completed or where progress has not been sufficient to meet objectives and reasons for this; and
 - (F) make recommendations for the management actions into the future (in perpetuity).

9. Completion of Conservation Works

The Conservation Works are taken to be completed when, after receipt of the report required under clause 8 of Item 2 of this Schedule 3 above, Council provides written notice to the Developer that the Conservation Works have been fulfilled.

Item 3 Land Contribution

1. Subdivision of the Land to provide for the Land Contribution

The Developer must, at its cost:

- (a) obtain Development Consent and any other Approvals necessary to create one or more separate lots for the Dedication Land; and
- (b) prepare a proposed Plan of Subdivision to create one or more separate lot(s) for the Dedication Land (**Proposed Plan of Subdivision**).

2. Preconditions to dedication of the Dedication Land

Prior to the dedication or transfer of the Dedication Land, the Developer:

- (a) must, at its own cost, procure:

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- (i) a survey of the boundaries of the Land which are bounded by a river, lake, creek, waterway and the like to ascertain the boundaries of the Land in respect of any river or lake, noting that the Land is affected by section 235A of the former *Crown Lands Consolidation Act 1913* (NSW); and
- (ii) in conjunction with the survey, a letter from a surveyor registered with the Board of Surveying and Spatial Information to confirm that the area marked for dedication is consistent with the Dedication Land;
- (b) must provide Council with the Proposed Plan of Subdivision for the approval of Council to its satisfaction;
- (c) if required by Council, must deliver to Council for approval a form of transfer that, on registration, will dedicate the Dedication Land to Council;
- (d) must deliver to Council a Contaminated Land Report and Contaminated Land Statement addressed to Council from a Contaminated Land Consultant in respect of the Dedication Land which states that the Dedication Land is suitable or will be suitable for use for its intended use at the date of on which the Dedication Land is dedicated to Council; and
- (e) if the Developer will rely on clause 6 of Item 2 of Schedule 3 to access the Dedication Land after its dedication, must effect the insurance policies required under that clause 6.

3. Dedication or transfer of the Dedication Land

- (a) The Developer must dedicate the Dedication Land to Council free of any trusts, estates, interests, covenants and Encumbrances prior to or in conjunction with the issue of the first Subdivision Certificate relating to the Development.
- (b) The parties acknowledge and agree that the requirement to dedicate the Dedication Land in accordance with Item 3 of Schedule 3 is a restriction on the issue of the relevant Subdivision Certificate for the Development within the meaning of section 6.15(1)(d) of the Act.
- (c) Upon receipt of Council's approval for the purposes of clause 2 of Item 3 of this Schedule 3 above, the Developer must:
 - (i) lodge the Proposed Plan of Subdivision at the NSW Land Registry Services for registration; or
 - (ii) provide evidence that a form of transfer has been lodged for registration through an ELNO; and
 - (iii) promptly comply, or procure compliance with, any requisitions raised by the Registrar-General in relation to the dedication or transfer of the Dedication Land.
- (d) The Developer must meet all costs associated with the dedication required for the Land Contribution including any administrative and legal costs incurred by Council in relation to that dedication.
- (e) The Developer will pay all rates and taxes owing in respect of the Dedication Land up to and including the date that the Developer dedicates the Dedication Land to Council.

4. Condition of Dedication Land

- (a) The Developer:

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- (i) warrants that as far as it is aware, and other than as disclosed to Council, the Dedication Land is free from Contamination on the date that the Dedication Land is dedicated to Council; and
 - (ii) indemnifies and must keep indemnified Council against all liability for and associated with all Contamination present in, on and under, or emanating from the Dedication Land including full responsibility for compliance with and any liability in respect of such Contamination under the *Contaminated Lands Management Act 1997* (NSW) and all other relevant legislation and the requirements of relevant Authorities;
- (b) If Council is required by an Authority to Remediate any Contamination over the whole or any part of:
- (i) the Dedication Land; or
 - (ii) the Crown Land, to the extent that the Contamination originates from the Dedication Land,

the Developer will be responsible for any Costs incurred by Council associated with the Remediation required, but only in relation to Contamination that existed on or before the dedication of the Dedication Land to Council.

5. Acquisition of Dedication Land

- (a) The Developer must act in good faith to provide the Land Contribution.
- (b) If the Developer does not provide the Land Contribution by the time required, Council in its discretion may acquire, and the Developer consents to Council acquiring, the Dedication Land compulsorily for the amount of \$1 without having to follow the pre-acquisition procedure under the *Land Acquisition (Just Terms) Compensation Act 1991*.
- (c) Clause 5(b) in Item 3 of this Schedule 3 constitutes an agreement for the purposes of s 30 of the *Land Acquisition (Just Terms) Compensation Act 1991* and the Parties acknowledge and agree that they have agreed on all relevant matters concerning the compulsory acquisition.
- (d) If, as a result of the acquisition referred to in clause 5(b) in Item 3 of this Schedule 3, Council is required to pay compensation to any person other than the Developer, the Developer must reimburse Council that amount within 10 Business Days of receiving that written request.
- (e) The Developer indemnifies and keeps indemnified Council against all Claims made against Council as a result of any acquisition by Council of the whole or any part of the Dedication Land or any interest in the Dedication Land in accordance with the terms of this clause.
- (f) The Developer must promptly do all things necessary, and consents to Council doing all things necessary, to give effect to this clause, without limitation.

6. Completion of obligation to dedicate the Dedication Land

The Dedication Land is taken to be dedicated to Council for the purposes of fulfilling the Land Contribution requirement under this deed:

- (a) if the relevant land is dedicated in a plan registered at the Land Registry Services of NSW; or
- (b) otherwise when the Developer delivers to Council:
 - (i) a transfer of the relevant land in registrable form;

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- (ii) the original Certificate of Title for the relevant land; and
- (iii) any document in registrable which, when registered, will remove any Encumbrances registered on the title of that land, excluding encumbrances that would not in Council's opinion, acting reasonably, impede the intended use of all or any part of the Dedication Land including but not limited to easements and covenants for services and drainage.

Item 4 Endowment Fund Contribution

1. Endowment Fund Contribution

- (a) The Developer agrees to provide the Endowment Fund Contribution to Council in accordance with the value (**Endowment Fund Contribution Amount**) and timing set out in the table below:

Endowment Fund Contribution Amount	Timing
The base sum of \$100,111 indexed in accordance with clause 3 of Item 4 of Schedule 3.	Within 7 days of receipt of written notice from Council under clause 9 in Item 2 of Schedule 3.

2. Endowment Fund Bond

- (a) To secure the performance of the Endowment Fund Contribution, the Developer must provide Security prior to the issue of the first Subdivision Certificate for the Development.
- (b) The amount of Security required to be provided to Council is 170% of the face value of the Endowment Fund Contribution Amount.
- (c) All Security must:
 - (i) name Council as the relevant beneficiary; and
 - (ii) not have an expiry date.
- (d) From the date of execution of this deed until the date that the Developer has provided the Development Contribution in full, Council is entitled to retain the Security.
- (e) Council may call upon the Security immediately if the Developer does not pay the Endowment Fund Contribution on or after the date for payment for the Endowment Fund Contribution.
- (f) If the Developer has satisfied all of its obligations under this deed secured by the Security, Council will promptly return the Security (less any costs, charges, duties and taxes payable) or the remainder of the monies secured (as the case may be), to the Developer.

3. Indexation of Endowment Fund Contribution Amount

- (a) The Endowment Fund Contribution Amount is to be adjusted, at time of payment, by multiplying the base sum of \$100,111 by an amount equal to the Current CPI divided by the Base CPI.

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- (b) For the purposes of this clause 3 of Item 4 of Schedule 3, the Current CPI is the CPI for the calendar year quarter which precedes the payment of the Endowment Fund Contribution Amount.

4. **Interest for late payment of Endowment Fund Contribution Amount**

- (a) If the Developer fails to pay the Endowment Fund Contribution Amount (as indexed in accordance with clause 3 of Item 4 of Schedule 3) in accordance with the timing set out in the table at clause 1 of Item 4 of Schedule 3, the Developer must also pay to Council interest at a rate of 2% above the loan reference rate charged by the Commonwealth Bank of Australia from time to time.
- (b) Interest is payable on the daily balance of amounts due from the due date for payment of those amounts until all outstanding amounts (including interest on those amounts) have been paid to Council.

5. **Completion of obligation to pay Endowment Fund Contribution**

The obligation under this deed to pay the Endowment Contribution Fund is taken to be completed when Council provides written notice to the Developer that the Endowment Contribution Fund Amount payable has been received to Council's satisfaction.

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Schedule 4 – Address for Service and Notices**Item 1 Address for Service**

Council	
Contact:	Developer Contributions Coordinator
Address:	126-138 Main Rd, Speers Point NSW 2284
Email:	council@lakemac.nsw.gov.au
Wyee Nominees	
Contact:	George Rounis & Olga Masella
Address:	Suite 7 114 Majors Bay Road, Concord NSW 2137
Email:	olga@topaproperty.com.au
Topa Property	
Contact:	George Rounis & Olga Masella
Address:	Suite 7 114 Majors Bay Road, Concord NSW 2137
Email:	olga@topaproperty.com.au

Item 2 Time for doing acts

1. If:
 - (a) the time for doing any act or thing required to be done; or
 - (b) a notice period specified in this deed,
 expires on a day other than a Business Day, the time for doing that act or thing or the expiration of that notice period is extended until the following Business Day.
2. If any act or thing required to be done is done after 5 pm on the specified day, it is taken to have been done on the following Business Day.

Item 3 Notice provisions

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

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

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Schedule 5 – Definitions

(clause 1.1)

In this deed, unless the context clearly indicates otherwise:

Act	means the <i>Environmental Planning and Assessment Act 1979</i> (NSW).
Address for Service	means the address of each party appearing in Item 1 of Schedule 4 to this deed or any new address notified by any party to all other parties as its new Address for Service.
Approvals	means any approvals, consents, certificates, permits, licences, conditions or permissions (and any modifications or variations to them) which may be required by Law or by any Authority exercising its functions and powers, for the commencement and carrying out of any works required under this deed or the Development and includes a Development Consent, assessment of an Activity under Part 5 of the Act, or other approval under the Act.
Approved Signing Method	means signing electronically by: <div><div>(a) the person including a statement on the Deed near or above their electronic signature to the following effect: Electronic signature of me, [insert full name], affixed by me, or at my direction, on [insert date]; or</div><div>(b) using a digital platform that indicates on the Deed that a digital signature was applied, and the date and time that this occurred.</div></div>
Authority	means the Commonwealth or New South Wales government, a Minister of the Crown, a government department, a public authority established by or under any Act, a council constituted under the <i>Local Government Act 1993</i> (NSW), or a person or body exercising functions under any Act including a commission, panel, court, tribunal and the like.
Bank Guarantee	means an irrevocable and unconditional undertaking without any expiry or end date in favour of Council to pay an amount or amounts of money to the Council on demand (being such amount as is required under this Deed) issued by: <div><div>(a) one of the following trading banks:<div><div>(i) Australia and New Zealand Banking Group Limited,</div><div>(ii) Commonwealth Bank of Australia,</div><div>(iii) Macquarie Bank Limited,</div><div>(iv) National Australia Bank Limited,</div><div>(v) St George Bank Limited,</div><div>(vi) Westpac Banking Corporation, or</div></div></div><div>(b) any other financial institution approved by Council in its absolute discretion.</div></div>

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Base CPI	means the CPI number for the quarter ending 30 June 2024.
Business Day	means any day that is not a Saturday, Sunday, gazetted public holiday or bank holiday in Sydney, and concludes at 5 pm on that day.
Claim	includes any claim, demand, remedy, suit, injury, damage, loss, Cost, liability, action, proceeding or right of action howsoever arising and whether present or future, fixed or unascertained, actual or contingent whether at law, in equity, under statute or otherwise.
Commencement Date	means the date that this deed comes into operation in accordance with clause 2.1.
Conservation Works	means the works detailed in the VMP required to be implemented under this deed on the Conservation Works Land.
Conservation Works Land	means the area comprising the Dedication Land and the Crown Land.
Construction Certificate	has the same meaning as in the Act.
Contaminated Land Consultant	means a certified environmental practitioner under the Environment Institute of Australia and New Zealand's Certified Environmental Practitioner (Site Contamination) (CEnvP(SC)) scheme or a certified professional soil scientist under the Soil Science Australia Certified Professional Soil Scientist Contaminated Site Assessment and Management (CPSS CSAM) scheme.
Contaminated Land Report	means a report provided by the Contaminated Land Consultant to support the Contaminated Land Statement.
Contaminated Land Statement	means a statement from the Contaminated Land Consultant with the content required in clause 2(d) of Item 3 of Schedule 3.
Contamination	has the same meaning as in the <i>Contaminated Land Management Act 1997</i> (NSW).
Cost	means any cost, charge, expense, outgoing, payment, fee and other expenditure, and " Costs " has a corresponding meaning.
Contamination	means any material, gas, substance, liquid, chemical or biological mineral or other physical matter which would, if present on the Land: <ul style="list-style-type: none"> (a) result in an Authority issuing a notice, direction or order under an Environmental Law; or (b) which would constitute a violation of contribution of contravention of any Environmental Law.
Council	means the Council of the City of Lake Macquarie ABN 81 065 027 868.

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CPI	means the Consumer Price Index (Sydney) released by the Australian Bureau of Statistics, Catalogue Number 6401.
Crown Land	means the parcel of land at the southern end of Digary Road identified as "C2(B)" and shaded brown in the diagram at Item 4 of Schedule 2.
Crown Plan	means Crown plan 06916-2111 which is annexed to this deed at Item 5 of Schedule 2.
Current CPI	means the CPI number as provided in clause 3(b) of Item 4 of Schedule 3.
Dealing	means in relation to the Land, to sell, transfer, assign, mortgage, charge, dispose, encumber or otherwise deal with the Land in whole or part.
Dedication Land	means the area of land identified as "C2(A)" in Item 4 of Schedule 2 of this deed, being an area which is consistent with the area denoted as 'C2' within the Land in the 'Proposed Zoning' diagram in the table at Item 3 of Schedule 2, which for the purpose of making the Land Contribution is to be defined in the Plan of Proposed Subdivision under Item 3 of Schedule 3.
Developer	means Wyee Nominees and TOPA Property.
Development	means the development described at Item 2 of Schedule 2.
Development Application	has the same meaning as in the Act.
Development Consent	has the same meaning as in the Act.
Development Contribution	means the contributions which the Developer agrees to provide under this deed as set out in Schedule 3 .
Development Land	means the land comprising Digary Road and the Land, where part of the Land shown in the 'Proposed Zoning' diagram in the table at Item 3 of Schedule 2 is proposed to be rezoned "R2 – Low Density Residential" under the Planning Proposal.
Digary Road	means the parcel of land as shown in white and labelled 'Digary Road' in the diagram at Item 4 of Schedule 2 which was transferred to Council as the Roads Authority under the <i>Roads Act 1993</i> under NSW Government Gazette 2 February 2024 page n2024-0174 and as described therein.
Electronic Signature	means a digital signature or a visual representation of a person's handwritten signature or mark which is placed on a physical or electronic copy of this Deed by using: <ul style="list-style-type: none"> (a) the DocuSign platform made available by DocuSign, Inc; or (b) any other electronic or mechanical means which is either: <ul style="list-style-type: none"> (i) as reliable as appropriate for the purpose for which this Deed is generated or communicated, in light of all the circumstances, including any relevant agreement; or

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	(ii) proven in fact to have fulfilled the functions described in paragraph (c)(ii)(B), by itself or together with further evidence, and “ Electronically Signed ” has a corresponding meaning;
ELNO	has the same meaning as in the <i>Electronic Conveyancing National Law</i> (NSW).
Encumbrance	means an interest or power: <ul style="list-style-type: none"> (a) reserved in or over an interest in any asset; (b) created or otherwise arising in or over any interest in any asset under any mortgage, charge (whether fixed or floating), pledge, lien, hypothecation, title retention, conditional sale agreement, hire or hire purchase agreement, option, restriction as to transfer, use or possession, easement, covenant, lease, subordination to any right of any other person and any other encumbrance or security interest, trust or bill of sale; or (c) by way of security for the payment of a debt or other monetary obligation or the performance of any obligation, and “ Encumbrances ” has a corresponding meaning.
Endowment Fund Bond	means the Security required to be paid by the Developer under Item 4 of Schedule 3.
Endowment Fund Contribution	means the contributions which the Developer agrees to provide under this deed as set out in Schedule 3 for the ongoing maintenance and improvement of biodiversity values of the Conservation Works Land after the end of the Maintenance Period.
Endowment Fund Contribution Amount	means the endowment fund contribution amount described in the table at clause 1 of Item 4 of Schedule 3.
Environmental Law	means all planning, environmental or pollution Laws and any regulations, orders, directions, ordinances or requirements, permissions, permits, licences issued under those Laws or instruments.
General Register of Deeds	means the land register maintained under the <i>Conveyancing Act 1919</i> (NSW).
GST	means any form of goods and services tax payable under the GST Law.
GST Law	means the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).
Land	means Lot 437 in DP755242 described in Schedule 2 and shown in the Crown Plan.
Land Contribution	means the dedication of the Dedication Land to Council in the manner set out in Item 3 of Schedule 3.
Local Environmental Plan	means the <i>Lake Macquarie Local Environmental Plan 2014</i> .

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Law	means any law applicable including legislation, rules, ordinances, codes, regulations, proclamations or by-laws and other subordinate legislation.
Maintenance Period	means a period of 10 years, commencing on the earlier of: <ul style="list-style-type: none"> (a) the issue of the first Construction Certificate for any Development; (b) the issue of the first Subdivision Works Certificate for any Development; (c) the issue of the first Subdivision Certificate for any Development; or (d) the clearing of any native vegetation in connection with any Development.
Mediation Rules of the Law Society of NSW	means the mediation rules published by the Law Society of NSW, from time to time.
Plan of Subdivision	means a registered plan of subdivision within the meaning of section 195 of the <i>Conveyancing Act 1919</i> (NSW).
Planning Proposal	means the planning proposal, with Planning portal reference PP-2022-3016 and Council reference RZ/1/2022, for the rezoning of the Development Land from RU2 Rural Landscape to R2 Low-Density Residential, as shown in the diagram at Item 3 of Schedule 2 to this deed, extracted from the Planning Proposal documents, by way of amendment to the Local Environmental Plan.
Real Property Act	means the <i>Real Property Act 1900</i> (NSW).
Register	means the Torrens Title register maintained under the Real Property Act.
Remediate	has the meaning given to 'remediation' in the <i>State Environmental Planning Policy (Resilience and Hazards) 2021</i> , and " Remediation " has a corresponding meaning.
Security	means a Bank Guarantee in the amounts required: <ul style="list-style-type: none"> (a) in respect of the VMP – as set out in clause 4 of Item 2 of Schedule 3; and/or (b) In respect of the Endowment Fund Contribution Amount – as set out in clause 2 of Item 4 of Schedule 3.
Subdivision Certificate	has the same meaning as in the Act.
Subdivision Works Certificate	has the same meaning as in the Act.
VMP	means the vegetation management plan required to be prepared, approved, and implemented in accordance with the provisions of Schedule 3.

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Schedule 6 – Interpretation

- (a) Neither this deed nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting.
- (b) The Explanatory Note must not be used to assist in construing this deed.
- (c) If any clause or part of any clause in this deed is in any way unenforceable, invalid or illegal, it is to be read down so as to be enforceable, valid and legal. If this is not possible, the clause (or where possible, the offending part) is to be severed from this deed without affecting the enforceability, validity or legality of the remaining clauses (or parts of those clauses) which will continue in full force and effect.
- (d) In this deed unless the context clearly indicates otherwise:
 - (i) a reference to **this deed** or another document means this deed or that other document and any document which varies, supplements, replaces, assigns or novates this deed or that other document;
 - (ii) a reference to **legislation** or a **legislative provision** includes any statutory modification or substitution of that legislation or legislative provision and any subordinate legislation issued under that legislation or legislative provision;
 - (iii) a reference to a **body** or **authority** which ceases to exist is a reference to either a body or authority that the parties agree to substitute for the named body or authority or, failing agreement, to a body or authority having substantially the same objects as the named body or authority;
 - (iv) a reference to the **introduction**, a **clause**, **schedule** or **annexure** is a reference to the introduction, a clause, a schedule or an annexure to or of this deed;
 - (v) **clause headings** and the **table of contents** are inserted for convenience only and do not form part of this deed;
 - (vi) the **introduction**, **schedules** (if any) and **annexures** (if any) form part of this deed;
 - (vii) the **introduction** accurately sets out the circumstances in which the parties have entered into this deed;
 - (viii) a reference to a **person** includes a natural person, corporation, statutory corporation, partnership, the Crown or any other organisation or legal entity;
 - (ix) a reference to a **natural person** includes their personal representatives, successors and permitted assigns;
 - (x) a reference to a **corporation** includes its successors and permitted assigns;
 - (xi) **related** or **subsidiary** in respect of a corporation has the same meaning given to that term in the Corporations Act;
 - (xii) a reference to a right or obligation of a party is a reference to a right or obligation of that party under this agreement;

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

Execution page

Executed as a deed

Signed, sealed and delivered
by Lake Macquarie City Council by its
authorised delegate pursuant to s 377 of the
Local Government Act 1993 (NSW), in the
presence of:

.....
Signature of Witness

.....
Signature of

.....
Name of Witness

.....
Name of delegate

Signed, sealed and delivered by Wyee
Nominees Pty Limited ACN 666 005 358 in
accordance with section 127 of the
Corporations Act 2001 (Cth):

.....
Signature of

.....
Signature of

.....
Name of Director/Secretary

.....
Name of Director

Signed, sealed and delivered by TOPA Property
Pty Ltd ACN 622 113 133in accordance with
section 127 of the *Corporations Act 2001* (Cth):

.....
Signature of

.....
Signature of

.....
Name of Director/Secretary

.....
Name of Director