

Planning Agreement

Enterprise Avenue & Greenway Drive, Tweed Heads South

Tweed Shire Council (ABN 90 178 732 496) (**Council**)

Bunnings Group Limited (ABN 26 008 672 179) (**Future Tenant**)

Calardu Tweed Heads Pty Limited (ACN 080 347 548) and Calardu Tweed Heads Traders Way Pty Limited (ACN 096 136 211) (**Developers**)

Prepared by:

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Planning Agreement

Enterprise Avenue & Greenway Drive, Tweeds Head South

Parties

Council	Name	Tweed Shire Council
	Address	Tweed Heads Administration Office Civic and Cultural Centre Tumbulgum Road Murwillumbah NSW 2484
	ABN	90 178 732 496
Future Tenant	Name	Bunnings Group Limited
	Address	Level 8, 5 Rider Boulevard Rhodes NSW 2138
	ABN	26 008 672 179
Developers	Name	Calardu Tweed Heads Pty Limited
	Address	Harvey Norman Holdings Ltd A1 Richmond Road Homebush West NSW 2140
	ACN	080 347 548
	Name	Calardu Tweed Heads Traders Way Pty Limited
	Address	Harvey Norman Holdings Ltd A1 Richmond Road Homebush West NSW 2140
	ACN	096 136 211

Background

- A** The Developers own the Land.
- B** The Developers wish to carry out the Development on the New Store Site.

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- C** The Developers have agreed to provide the Contribution on, and subject to, the terms of this document.

Operative Provisions

1 Agreement

The agreement of the parties is set out in the Operative Provisions of this document, in consideration of, among other things, the mutual promises contained in this document.

2 Definitions

2.1 Defined Terms

In this document, words beginning with a capital letter that are defined in Part 1 of **Schedule 2** have the meaning ascribed to them in that schedule.

2.2 Interpretation

The interpretational rules contained in Part 2 of **Schedule 2** apply in the interpretation of this document.

3 Application and operation of this document

3.1 Planning Agreement

This document is a planning agreement:

- (1) within the meaning set out in s7.4 of the Act; and
- (2) governed by Subdivision 2 of Division 7 of the Act.

3.2 Application

This document applies to the:

- (1) Land; and
- (2) Development.

3.3 Operation

This document operates from the date it is executed by all parties.

4 Application of s7.11, s7.12 and s7.24 of the Act

4.1 Section 7.11

This document excludes the application of s7.11 of the Act to the Development.

4.2 Section 7.12

This document excludes the application of s7.12 of the Act to the Development.

4.3 Consideration of Benefits

Section 7.11(6) of the Act does not apply to the Contribution that is provided in accordance with this document.

4.4 Section 7.24

This document excludes the application of s7.24 to the Development.

5 Monetary Contribution

5.1 Payment

- (1) The Developers must pay the Monetary Contribution and the Additional Monetary Contribution to Council in accordance with this document, and in particular in accordance with **Schedule 3**.
- (2) **Schedule 3** has effect as an operative provision of this document.
- (3) The Developers must pay the full amount of the Monetary Contribution and the Additional Monetary Contribution in cash, or by unendorsed bank cheque, or by deposit by means of electronic funds transfer of cleared funds, into a bank account nominated by Council.

5.2 Indexation

The amount of the Monetary Contribution and Additional Monetary Contribution will be indexed in the same way that contributions required to be paid under s7.11 of the Act for the Development would be indexed in accordance with either:

- (1) Council's Contribution Plan entitled No.18 – Council Administration Offices and Technical Support Facilities for the Additional Monetary Contribution; and
- (2) Council's Contribution Plan No. 4 – Tweed Road Contribution Plan (subject to the Contribution payable) for the Monetary Contribution;

from the date of this document until the date that they are paid to Council.

6 The calculation of the Monetary Contribution and the future development of the Existing Store Site

6.1 Background

The parties acknowledge and agree as follows:

- (1) The Development is being undertaken for the purpose of replacing the Existing Store with the New Store.
- (2) The intention of the Developers and Future Tenant is to cease operating the Existing Store upon completion of the Development.

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- (3) Under the Contributions Plan, Council may impose a condition of consent under s7.11 of the Act in the Development Consent which requires the payment of a monetary contribution on account of "trip ends" (as those are described in the Contributions Plan) (**Trip Ends**) generated by the Development.
 - (4) The patronage of the Existing Store will almost certainly transfer to the New Store, meaning that the demand generated by the New Store for the provision of public amenities and services within the relevant Contributions Plan catchment will be less than it otherwise might have been.

6.2 Transfer of Trip End Credit

- (1) On the basis of the matters set out in clause 6.1, Council accepts that the demand generated by the New Store for the provision of public amenities and services within the relevant Contributions Plan catchment will be less than it otherwise might have been.
- (2) Council therefore agrees through this document:
 - (a) to 'transfer' to the Development the benefit of Trip End contributions calculated with respect to the Existing Store; and
 - (b) to a reduction in the monetary contributions that would otherwise have been payable with respect to the Development accordingly as set out in clause 6.3.

6.3 Calculation of the Monetary Contribution

The parties acknowledge and agree that the Monetary Contribution has been calculated on the following basis:

- (1) The amount of the contributions that would have been required to have been paid in accordance with a condition of the Development Consent imposed under s7.11 of the Act, and based on a total floor area of 19,000m² (**Total Floor Area**) as depicted in the Concept Site Plans, is \$4,394,016.
- (2) The amount referred to in paragraph 6.3(1) is based on 5,700 Trip Ends, calculated as 30 Trip Ends per 100m² of Total Floor Area.
- (3) The parties:
 - (a) acknowledge that the total floor area approved as part of a Development Consent for the Development may be either less than or greater than the Total Floor Area of 19,000m² (**Approved GFA**); and
 - (b) agree that in calculating the Monetary Contribution pursuant to the formula in paragraph 6.3(8), Council will calculate the number of Trip Ends based on 30 Trip Ends per 100m² of Approved GFA (**Actual Trip Ends**).
- (4) The Developers wish to retain:
 - (a) 788 Trip Ends for the benefit of the part of the Existing Store Site on which the Existing Store is located (calculated based on 13.3 Trip Ends per 100m² of gross floor area of 4,800m² for Bulky Goods Retailing (638 Trip Ends), plus 150 Trip End retention as requested by the Developer); and
 - (b) 1,368 Trip Ends for the balance of the Existing Store Site other than the Existing Store (Development Application 97/432) (calculated based on 14.4 Trip Ends per 100m² of gross floor area of 9,500m² for Bulky Goods Retailing as determined by the Traffic Report submitted by the Developer);

together, the Retained Trip Ends.

- (5) Council agrees to allow the 'transfer' of 1,804 Trip Ends from the Existing Store Site to the New Store Site.
- (6) Council agrees that the Retained Trip Ends at the Existing Store Site may be used to offset the contributions liability for any future development application in respect of the Existing Store Site.
- (7) The Monetary Contribution is to be calculated using the formula in paragraph 6.3(8) and is based on the Actual Trip Ends, less the Trip Ends in paragraph 6.3(5) (**Final Trip Ends**).
- (8) The Monetary Contribution = Final Trip Ends * Trip End Cost * Emp. Discount Factor * Shared Purpose Use Factor * Admin Factor

Where:

- **Trip End Cost** is the current Trip End Cost Value for Sector 2 of Council's Contribution Plan No. 4 – Tweed Road Contribution Plan (**TRCP4**) at the time of payment.
- **Emp. Discount Factor** = 0.6 which is the employment generating discount of 40% from the TRCP4
- **Shared Purpose Trip Factor** = 0.8 which allows 20% discount for shared purpose trips
- **Admin Factor** = 1.05 which is a 5% administration levy

6.4 How the Existing Store Site will be treated

- (1) The Developers and Future Tenant acknowledge and agree that the calculation of the Monetary Contribution, and Council's agreement to the matters set out in clause 6.3, are predicated on:
 - (a) the existing development consent for the Existing Store being modified or surrendered to the effect that the Existing Store is no longer permitted to be operated under that consent; and
 - (b) the Existing Store ceasing to operate on or before the commencement of trading from the New Store.
- (2) On account of the matters set out in paragraph 6.4(1):
 - (a) the Developers and Future Tenant must procure that operations cease to be conducted from the Existing Store prior to the commencement of trading of the Development; and
 - (b) the Future Tenant must not commence trading of the Development unless and until Council confirms in writing that it is satisfied that:
 - (i) the development consent for the Existing Store is modified or surrendered in accordance with paragraph 6.4(1)(a); and
 - (ii) the Developers and Future Tenant have complied with paragraph 6.4(2)(a).

7 Warranties and Indemnities

7.1 Warranties

- (1) The Developers warrant to Council that:
 - (a) they are legally and beneficially entitled to the Land;
 - (b) they are able to fully comply with their obligations under this document;
 - (c) they have full capacity to enter into this document; and
 - (d) there is no legal impediment to them entering into this document, or performing the obligations imposed under it.
- (2) The Future Tenant warrants to Council that it is:
 - (a) able to fully comply with its obligations under this document;
 - (b) it has full capacity to enter into this document; and
 - (c) there is no legal impediment to it entering into this document, or performing the obligations imposed under it.

7.2 Indemnity

- (1) The Developers indemnify Council in respect of any Claim that may arise as a result of a breach of this document by the Developers.
- (1) The Future Tenant indemnifies Council in respect of any Claim that may arise as a result of a breach of this document by the Future Tenant.

8 Security – Occupation Certificate

Other than with the express written consent of Council, an Occupation Certificate in respect of the Development must not be issued if the Developers are in breach of any obligation under this document which must be satisfied prior to the issue of that Occupation Certificate has been satisfied.

9 Registration of this document

9.1 Registration of this document

The Developers must register this document on the title to the Land pursuant to section 7.6 of the Act.

9.2 Obligations of Developer

- (1) The Developers, at their own expense, will promptly after this document comes into operation, take all practical steps, and otherwise do anything that the Council reasonably requires, to procure:
 - (a) the execution of any documents; and
 - (b) the production of the relevant duplicate certificates of title,

and to otherwise undertake the registration of this document in accordance with clause 9.1.

- (2) The Developers, at their own expense, will take all practical steps, and otherwise do anything that the Council reasonably requires:
 - (a) to allow the lodgement of this document with the Registrar-General as soon as reasonably practicable after this document comes into operation but in any event, no later than fifteen (15) business days after that date; and
 - (b) to allow the registration of this document by the Registrar-General in the relevant folios of the Register for the Land as soon as reasonably practicable after this document is lodged for registration.

9.3 Discharge from the Register

- (1) Council will execute any form required by the Registrar General, and prepared by the Developers, to allow this document to be removed from the folios of the Register for the Land (or any part of it) when:
 - (a) the obligations under this document have been satisfied; or
 - (b) if this document is terminated or rescinded.
- (2) Subject to clause 9.3(1), Council will remove this document from the title to the Land pursuant to the Existing Store site once the Contribution Credit has been exhausted through any future development consent.

10 Assignment

10.1 Restriction on Assignment

Other than in accordance with this clause 10:

- (1) the Developers and Future Tenant may not Assign their rights or obligations under this document; and
- (2) the Developers may not Assign any part of the Land.

10.2 Procedure for Assignment

- (1) If the:
 - (a) Developers wish to Assign any part of the Land; and/or
 - (b) Developers or Future Tenant wish to Assign their rights or obligations under this document,then the Developers and Future Tenant (as the case may be) must:
 - (c) provide a written request to Council for the consent of Council to the relevant Assignment;
 - (d) provide Council with any evidence required by Council, acting reasonably, to satisfy Council that the third party in whose favour the Assignment is to be made (**Assignee**) is reasonably capable of performing the obligations under this document that are to be Assigned to it;

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- (e) obtain written consent of Council to the relevant Assignment;
 - (f) at no cost to Council, procure the execution by the Assignee of an appropriate deed where the Assignee agrees to be bound by the terms of this document; and
- (2) Council is under no obligation to consider granting its consent to any request made by the Developers or Future Tenant under paragraph 10.2(1) if, at the time the request is made, the Developers or Future Tenant are in breach of this document.

11 Dispute Resolution

11.1 Notice of dispute

- (1) If a dispute or lack of certainty between the parties arises in connection with this document or its subject matter (**Dispute**), then either party (**First Party**) must give to the other parties (**Other Parties**) a notice which:
- (a) is in writing;
 - (b) adequately identifies and provides details of the Dispute;
 - (c) stipulates what the First Party believes will resolve the Dispute; and
 - (d) designates its representative (**Representative**) to negotiate the Dispute.
- (2) The Other Parties must, within five (5) Business Days of service of the notice of dispute, provide a notice to the First Party designating as its representative a person to negotiate the Dispute (the representatives designated by the parties being together, the **Representatives**).

11.2 Conduct pending resolution

The parties must continue to perform their respective obligations under this document if there is a Dispute but will not be required to complete the matter the subject of the Dispute, unless the appropriate party indemnifies the other parties against costs, damages and all losses suffered in completing the disputed matter if the Dispute is not resolved in favour of the indemnifying party.

11.3 Further steps required before proceedings

Subject to clauses 11.14 and 11.15 and except as otherwise expressly provided in this document, any Dispute must, as a condition precedent to the commencement of litigation, mediation under clause 11.5 or determination by an expert under clause 11.6, first be referred to the Representatives. The Representatives must endeavour to resolve the dispute within five (5) Business Days of the date a notice under clause 11.1(2) is served.

11.4 Disputes for mediation or expert determination

If the Representatives have not been able to resolve the Dispute, then the parties must agree within five (5) Business Days to either refer the matter to mediation under clause 11.5 or expert resolution under clause 11.6.

11.5 Disputes for mediation

- (1) If the parties agree in accordance with clause 11.4 to refer the Dispute to mediation, the mediation must be conducted by a mediator agreed by the parties and, if the parties cannot agree within five (5) Business Days, then by a mediator appointed by the President of the Law Society of New South Wales for the time being.
- (2) Unless otherwise agreed by the parties, each party must pay their own costs incurred with respect to any mediation of the Dispute.
- (3) If the mediation referred to in paragraph 11.5(1) has not resulted in settlement of the Dispute and has been terminated, the parties may agree to have the matter determined by expert determination under clause 11.6.

11.6 Choice of expert

- (1) If the Dispute is to be determined by expert determination, this clause 11.6 applies.
- (2) The Dispute must be determined by an independent expert in the relevant field:
 - (a) agreed between and appointed jointly by the parties; or
 - (b) in the absence of document within five (5) Business Days after the date that the matter is required to be determined by expert determination, appointed by the President of the Law Society of New South Wales for the time being.
- (3) If the parties fail to agree as to the relevant field within five (5) Business Days after the date that the matter is required to be determined by expert determination, either party may refer the matter to the President of the Law Society of New South Wales for the time being whose decision as to the relevant field is final and binding on the parties.
- (4) The expert appointed to determine a Dispute:
 - (a) must have a technical understanding of the issues in dispute;
 - (b) must not have a significantly greater understanding of one party's business, functions or operations which might allow the other side to construe this greater understanding as a bias; and
 - (c) must inform the parties before being appointed of the extent of the expert's understanding of each party's business or operations and, if that information indicates a possible bias, then that expert must not be appointed except with the written approval of the parties.
- (5) The parties must promptly enter into a document with the expert appointed under this clause 11.6 setting out the terms of the expert's determination and the fees payable to the expert.

11.7 Directions to expert

- (1) In reaching a determination in respect of a dispute under clause 11.6, the independent expert must give effect to the intent of the parties entering into this document and the purposes of this document.
- (2) The expert must:
 - (a) act as an expert and not as an arbitrator;

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- (b) proceed in any manner as the expert thinks fit without being bound to observe the rules of natural justice or the rules of evidence;
 - (c) not accept verbal submissions unless both parties are present;
 - (d) on receipt of a written submission from one party, ensure that a copy of that submission is given promptly to the other party;
 - (e) take into consideration all documents, information and other material which the parties give the expert which the expert in its absolute discretion considers relevant to the determination of the Dispute;
 - (f) not be expected or required to obtain or refer to any other documents, information or material (but may do so if the expert so wishes);
 - (g) issue a draft certificate stating the expert's intended determination (together with written reasons), giving each party ten (10) Business Days to make further submissions;
 - (h) issue a final certificate stating the expert's determination (together with written reasons); and
 - (i) act with expedition with a view to issuing the final certificate as soon as practicable.
- (3) The parties must comply with all directions given by the expert in relation to the resolution of the Dispute and must within the time period specified by the expert, give the expert:
- (a) a short statement of facts;
 - (b) a description of the Dispute; and
 - (c) any other documents, records or information which the expert requests.

11.8 Expert may commission reports

- (1) Subject to paragraph 11.8(2):
 - (a) the expert may commission the expert's own advisers or consultants (including lawyers, accountants, bankers, engineers, surveyors or other technical consultants) to provide information to assist the expert in making a determination; and
 - (b) the parties must indemnify the expert for the cost of those advisers or consultants in accordance with clause 11.6(5) of this deed.
- (2) The parties must approve the costs of those advisers or consultants in writing prior to the expert engaging those advisers or consultants.

11.9 Expert may convene meetings

- (1) The expert must hold a meeting with all of the parties present to discuss the Dispute. The meeting must be conducted in a manner which the expert considers appropriate. The meeting may be adjourned to, and resumed at, a later time in the expert's discretion.
- (2) The parties agree that a meeting under paragraph 11.9(1) is not a hearing and is not an arbitration.

11.10 Other courses of action

If:

- (1) the parties cannot agree in accordance with clause 11.4 to refer the matter to mediation or determination by an expert; or
- (2) the mediation referred to in clause 11.5 has not resulted in settlement of the dispute, the mediation has been terminated and the parties have not agreed to refer the matter to expert determination within five (5) Business Days after termination of the mediation,

then either party may take whatever course of action it deems appropriate for the purpose of resolving the Dispute.

11.11 Confidentiality of information provided in dispute resolution process

- (1) The parties agree, and must procure that the mediator and the expert agree as a condition of his or her appointment:
 - (a) subject to paragraph 11.11(2), to keep confidential all documents, information and other material disclosed to them during or in relation to the mediation or expert determination;
 - (b) not to disclose any confidential documents, information and other material except:
 - (i) to a party or adviser or consultant who has signed a confidentiality undertaking; or
 - (ii) if required by Law or any Authority to do so; and
 - (c) not to use confidential documents, information or other material disclosed to them during or in relation to the mediation or expert determination for a purpose other than the mediation or expert determination.
- (2) The parties must keep confidential and must not disclose or rely upon or make the subject of a subpoena to give evidence or produce documents in any arbitral, judicial or other proceedings:
 - (a) views expressed or proposals or suggestions made by a party or the mediator or the expert during the expert determination or mediation relating to a possible settlement of the Dispute;
 - (b) admissions or concessions made by a party during the mediation or expert determination in relation to the Dispute; and
 - (c) information, documents or other material concerning the dispute which are disclosed by a party during the mediation or expert determination unless such information, documents or facts would be discoverable in judicial or arbitral proceedings.

11.12 Final determination of expert

The parties agree that the final determination by an expert will be final and binding upon them except in the case of fraud or misfeasance by the expert.

11.13 Costs

If any independent expert does not award costs, each party must contribute equally to the expert's costs in making the determination.

11.14 Remedies available under the Act

This clause 11 does not operate to limit the availability of any remedies available to Council under the Act.

11.15 Urgent relief

This clause 11 does not prevent a party from seeking urgent injunctive or declaratory relief concerning any matter arising out of this document.

12 Breach of this document

12.1 Breach Notice

If the Developers or Future Tenant breach this document, Council may serve a notice on the party responsible for the breach (**Breach Notice**) specifying:

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

12.2 Events of Default

- (1) The Developers commit an Event of Default if they:
 - (a) fail to comply with a Breach Notice; or
 - (b) become subject to an Insolvency Event.
- (2) The Future Tenant commits an Event of Default if it:
 - (a) fails to comply with a Breach Notice; or
 - (b) becomes subject to an Insolvency Event.

12.3 Consequences of Events of default

Where the Developers or Future Tenant commit an Event of Default, Council may, in addition to any rights it has at Law, call on any Security provided by the Developers or Future Tenant in satisfaction of any costs incurred by it in remedying the relevant Event of Default

13 Termination, Rescission or Determination

13.1 Termination

This document terminates if the parties agree in writing to terminate the operation of this document at any time.

13.2 Consequence of termination

Upon termination of this document:

- (1) all future rights and obligations of the parties are discharged; and
- (2) all pre-existing rights and obligations of the parties continue to subsist.

13.3 Determination

This document will determine upon the Developers and Future Tenant satisfying all of the obligations imposed on them in full.

14 Position of Council

14.1 Consent authority

The parties acknowledge that Council is a consent authority with statutory rights and obligations pursuant to the terms of the Planning Legislation.

14.2 Document does not fetter discretion

This document is not intended to operate to fetter, in any unlawful manner:

- (1) the power of Council to make any Law; or
- (2) the exercise by Council of any statutory power or discretion,

(Discretion).

14.3 Severance of provisions

- (1) No provision of this document is intended to, or does, constitute any unlawful fetter on any Discretion. If, contrary to the operation of this clause 14, any provision of this document is held by a court of competent jurisdiction to constitute an unlawful fetter on any Discretion, the parties agree:
 - (a) they will take all practical steps, including the execution of any further documents, to ensure the objective of this clause 14 is substantially satisfied; and
 - (b) in the event that paragraph 14.3(1)(a) cannot be achieved without giving rise to an unlawful fetter on a Discretion, the relevant provision is to be severed and the remainder of this document has full force and effect; and

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- (c) to endeavour to satisfy the common objectives of the parties on relation to the provision of this document which is held to be an unlawful fetter to the extent that it is possible having regard to the relevant court judgment.
 - (2) Where the Law permits Council to contract out of a provision of that Law or gives Council power to exercise a Discretion, then if Council has in this document contracted out of a provision or exercised a Discretion under this document, then to the extent of this document is not to be taken to be inconsistent with the Law.

14.4 No Obligations

Nothing in this document will be deemed to impose any obligation on Council to exercise any of its functions under the Act in relation to the Land or the Development in a certain manner.

15 Confidentiality

15.1 Document not Confidential

The terms of this document are not confidential and this document may be treated as a public document and exhibited or reported without restriction by any party.

15.2 Other Confidential Information

- (1) The parties acknowledge that:
 - (a) Confidential Information may have been supplied to some or all of the parties in the negotiations leading up to the making of this document; and
 - (b) The parties may disclose to each other further Confidential Information in connection with the subject matter of this document.
 - (c) Subject to paragraphs 15.2(2) and 15.2(3), each party agrees:
 - (i) not to disclose any Confidential document received before or after the making of this document to any person without the prior written consent of the party who supplied the Confidential Information; or
 - (ii) to take all reasonable steps to ensure all Confidential Information received before or after the making of this document is kept confidential and protected against unauthorised use and access.
- (2) A party may disclose Confidential Information in the following circumstances:
 - (a) in order to comply with the Law, or the requirements of any Authority; or
 - (b) to any of their employees, consultants, advisers, financiers or contractors to whom it is considered necessary to disclose the information, if the employees, consultants, advisers, financiers or contractors undertake to keep the information confidential.
- (3) The obligations of confidentiality under this clause 15 do not extend to information which is public knowledge other than as a result of a breach of this clause 15.

16 GST

16.1 Defined GST Terms

Defined terms used in this clause 16 have the meaning ascribed to them in the GST Law.

16.2 GST to be Added to Amounts Payable

- (1) If GST is payable on a Taxable Supply made under, by reference to or in connection with this document, the party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.
- (2) This clause 16 does not apply to the extent that the Consideration for the Taxable Supply is expressly agreed to be GST inclusive.
- (3) Unless otherwise expressly stated, prices or other sums payable or Consideration to be provided under or in accordance with this document are exclusive of GST.

16.3 GST Obligations to Survive Termination

This clause 16 will continue to apply after expiration of termination of this document.

17 Miscellaneous

17.1 Obligation to act in good faith

The parties must at all times:

- (1) not unreasonably delay any action, approval, direction, determination or decision which is required of them;
- (2) make approvals or decisions that are required of them in good faith and in a manner consistent with the completion of the transactions set out in this document; and
- (3) be just and faithful in their activities and dealings with the other parties.

17.2 Legal costs

- (1) The Developers agree to:
 - (a) pay or reimburse legal costs and disbursements of Council of the negotiation, preparation, execution, stamping and amending of this document, capped at a maximum of \$10,000;
 - (b) pay the reasonable legal costs and disbursements referred to in paragraph 17.2(a) within ten (10) business days of receipt of a Tax Invoice from Council; and
 - (c) pay or reimburse the reasonable legal costs and disbursements of Council arising from the ongoing administration and enforcement of this document including any breach or default by the Developer of its obligations under this document.
- (2) The Future Tenant agrees to pay or reimburse the reasonable legal costs and disbursements of Council arising from a breach or default by the Future Tenant of its obligations under this document.

18 Administrative Provisions

18.1 Notices

- (1) Any notice, consent or other communication under this document must be in writing and signed by or on behalf of the person giving it, addressed to the person to whom it is to be given and:
 - (a) delivered to that person's address;
 - (b) sent by pre-paid mail to that person's address; or
 - (c) transmitted by facsimile to that person's address.
- (2) A notice given to a person in accordance with this clause 18.1 is treated as having been given and received:
 - (a) if delivered to a person's address, on the day of delivery if a Business Day, otherwise on the next Business Day;
 - (b) if sent by pre-paid mail, on the third Business Day after posting; and
 - (c) if transmitted by facsimile to a person's address and a correct and complete transmission report is received, on the day of transmission if a Business Day, otherwise on the next Business Day.
- (3) For the purpose of this clause 18.1 the address of a person is the address set out in this document or another address of which that person may from time to time give notice to each other person.

18.2 Entire agreement

This document is the entire agreement of the parties on the subject matter. All representations, communications and prior agreements in relation to the subject matter are merged in and superseded by this document.

18.3 Variation of agreement

The parties may agree to vary the terms of this document. Any such variation shall be evidenced by a written variation and must comply with the provisions of section 7.5 of the Act.

18.4 Waiver

The non-exercise of or delay in exercising any power or right of a party does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other or further exercise of it or the exercise of any other power or right. A power or right may only be waived in writing, signed by the parties to be bound by the waiver.

18.5 Cooperation

Each party must sign, execute and deliver all agreements, documents, instruments and act reasonably and effectively to carry out and give full effect to this document and the rights and obligations of the parties under it.

18.6 Counterparts

This document may be executed in any number of counterparts and all of those counterparts taken together constitute one and the same instrument.

18.7 Amendment

This document may only be amended or supplemented in writing signed by the parties.

18.8 Unenforceability

Any provision of this document which is invalid or unenforceable in any jurisdiction is to be read down for the purposes of that jurisdiction, if possible, so as to be valid or enforceable, and is otherwise capable of being severed to the extent of the invalidity or enforceability, without affecting the remaining provisions of this document or affecting the validity or enforceability of that provision in any other jurisdiction.

18.9 Power of Attorney

Each attorney who executes this document on behalf of a party declares that the attorney has no notice of:

- (1) the revocation or suspension of the power of attorney by the grantor; or
- (2) the death of the grantor.

18.10 Governing law

The law in force in the State of New South Wales governs this document. The parties:

- (1) submit to the exclusive jurisdiction of the courts of New South Wales and any courts that may hear appeal from those courts in respect of any proceedings in connection with this document; and
- (2) may not seek to have any proceedings removed from the jurisdiction of New South Wales on the grounds of *forum non conveniens*.

Schedule 1 – Requirements under s7.4 of the Act

REQUIREMENT UNDER THE ACT	THIS PLANNING AGREEMENT
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/or (c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies. 	<ul style="list-style-type: none"> (a) No. (b) Yes. (c) Not applicable.
Description of land to which this agreement applies – (Section 7.4(3)(a))	Refer to definition of 'Land' in Part 1 of Schedule 2 .
Description of change to the environmental planning instrument to which this agreement applies – (Section 7.4(3)(b))	Not applicable.
Application of section 7.11 of the Act – (Section 7.4(3)(d))	Applies (refer to clause 4).
Applicability of section 7.12 of the Act – (Section 7.4(3)(d))	Applies (refer to clause 4).
Consideration of benefits under this agreement if section 7.11 applies – (Section 7.4(3)(e))	Refer to clause 4.3.
Mechanism for Dispute resolution – (Section 7.4(3)(f))	See clause 11.
Enforcement of this agreement (Section 7.4(3)(g))	See clause 8.
No obligation to grant consent or exercise functions – (Section 7.4(3)(9))	See clause 14.

Schedule 2 – Defined Terms and Interpretation

Part 1 – Definitions

Act		means the <i>Environmental Planning and Assessment Act 1979</i> (NSW).
Additional Contribution	Monetary	means the “ <i>Additional Monetary Contribution</i> ” as set out in Schedule 3 , as adjusted in accordance with this document.
Assign		as the context requires refers to any assignment, sale, transfer, disposition, declaration of trust over or other assignment of a legal and/or beneficial interest.
Authority		means (as appropriate) any: (1) federal, state or local government; (2) department of any federal, state or local government; (3) any court or administrative tribunal; or (4) statutory corporation or regulatory body.
Claim		against any person any allegation, action, demand, cause of action, suit, proceeding, judgement, debt, damage, loss, cost, expense or liability howsoever arising and whether present or future, fixed or unascertained, actual or contingent whether at law, in equity, under statute or otherwise.
Concept Site Plans		means the concept site plans for the Development at Annexure 2 .
Contribution Credit		means an offset that the Developer is entitled to from time to time with respect to any contributions required to be paid.
Confidential Information		means any information and all other knowledge at any time disclosed (whether in writing and orally) by the parties to each other, or acquired by the parties in relation to the other’s activities or services which is not already in the public domain and which: (1) is by its nature confidential; (2) is designated, or marked, or stipulated by either party as confidential (whether in writing or otherwise); (3) any party knows or ought to know is confidential; (4) is information which may be reasonably considered to be of a confidential nature.
Contribution		means the payment of the Monetary Contribution and Additional Monetary Contribution.

Contribution Value	means the amount specified in Schedules 3 in the column headed "Contribution".
Development Consent	means a consent issued under the Act for the Development.
Development	means the proposed development of the New Store on the New Store Site as generally depicted in the Concept Site Plans for a Bunnings Warehouse, including construction of a two (2) level commercial building to be used for hardware and building supplies, a garden centre, ancillary earthworks, tree removal and signage.
Dispute	has the meaning ascribed to it in clause 11.1.
Encumbrance	means an interest or power: <ul style="list-style-type: none"> (1) reserved in or over an interest in any asset; (2) arising under, or with respect to, a Bio-Banking Agreement; (3) 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 (4) by way of security for the payment of a debt or other monetary obligation or the performance of any obligation
Encumber	Means to grant an Encumbrance.
Existing Store	means the existing Bunnings store located on the Existing Store Site.
Existing Store Site	means the land on which the Existing Store, and other buildings, are located being the land contained in Certificate of Title Folio Identifier 2145/879149 and located at 41 Greenway Drive, Tweed Heads South (and as shown outlined in green on the plan attached as Annexure 1).
GST Law	means <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth) and any other Act or regulation relating to the imposition or administration of the GST.
Land	means: <ul style="list-style-type: none"> (1) the New Store Site; and (2) the Existing Store Site.

Law	means all legislation, regulations, by-laws, common law and other binding order made by any Authority.
LEP	means the Tweed Local Environmental Plan 2014.
Monetary Contribution	means the monetary contribution set out in Schedule 3 , as adjusted in accordance with this document.
New Store	means the Bunnings hardware and building supplies store proposed to be constructed as part of the Development on the New Store Site.
New Store Site	means the land contained in Certificate of Title Folio Identifier 2/1077990 and located at 44 Enterprise Avenue, Tweed Heads (and shown outlined in red on the plan attached as Annexure 1).
Occupation Certificate	has the same meaning as in section 6.4(c) of the Act.
Planning Legislation	means the Act, the <i>Local Government Act 1993</i> (NSW) and the <i>Roads Act 1993</i> (NSW).
Subdivision Certificate	has the same meaning as in section 6.4(d) of the Act.
Trip Ends Per Day	means the measure used to calculate traffic generation with regard to the Existing Store and New Store.

Part 2 - Interpretational Rules

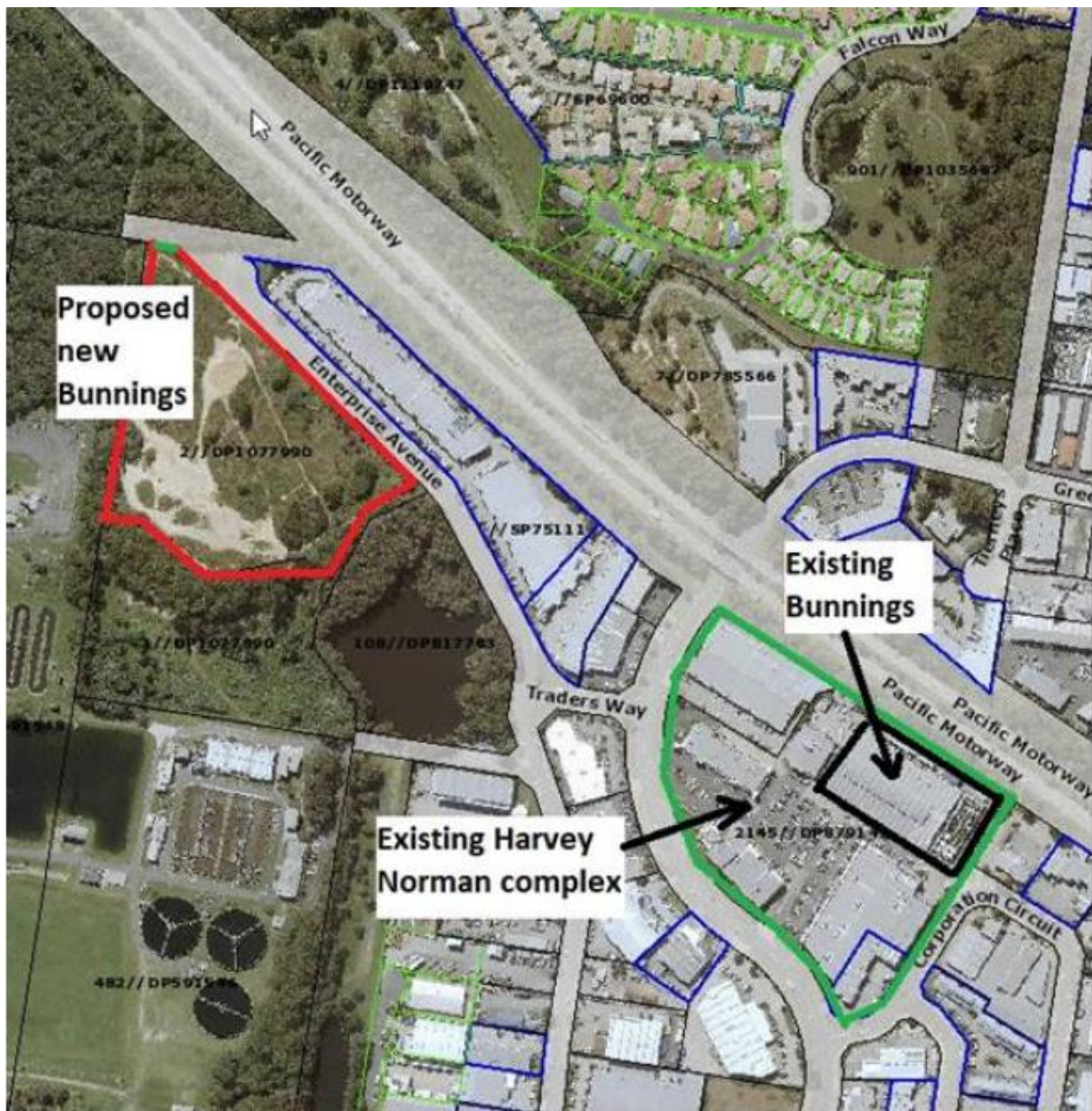
clauses, annexures and schedules	a clause, annexure or schedule is a reference to a clause in or annexure or schedule to this document.
reference to statutes	a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them.
singular includes plural	the singular includes the plural and vice versa.
person	the word “person” includes an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association or any government agency.
executors, administrators, successors	a particular person includes a reference to the person’s executors, administrators, successors, substitutes (including persons taking by novation) and assigns.
dollars	Australian dollars, dollars, \$ or A\$ is a reference to the lawful currency of Australia.
calculation of time	if a period of time dates from a given day or the day of an act or event, it is to be calculated exclusive of that day.
reference to a day	a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later.
accounting terms	an accounting term is a reference to that term as it is used in accounting standards under the Corporations Act or, if not

	inconsistent with those standards, in accounting principles and practices generally accepted in Australia.
reference to a group of persons	a group of persons or things is a reference to any two or more of them jointly and to each of them individually.
meaning not limited	the words “include”, “including”, “for example” or “such as” are not used as, nor are they to be interpreted as, words of limitation, and, when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind.
next day	if an act under this document to be done by a party on or by a given day is done after 4.30pm on that day, it is taken to be done on the next day.
next Business Day	if an event must occur on a stipulated day which is not a Business Day then the stipulated day will be taken to be the next Business Day.
time of day	time is a reference to Sydney time.
headings	headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of this document.
agreement	a reference to any agreement, document or instrument includes the same as varied, supplemented, novated or replaced from time to time.

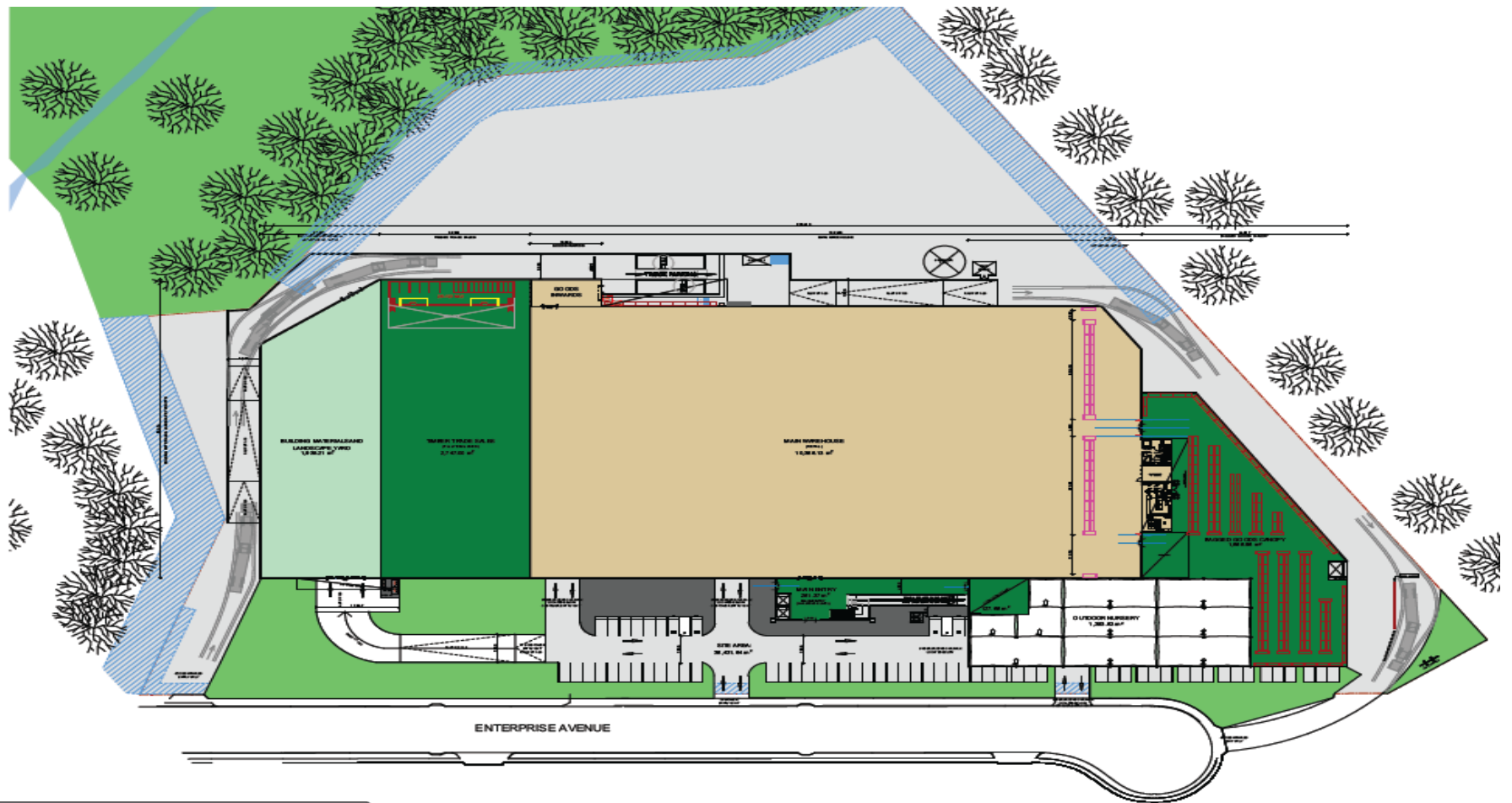
Schedule 3 - Monetary Contribution

Contribution	Time for payment	Public Purpose
<u>Monetary Contribution</u> A monetary contribution of an amount calculated in accordance with the formula set out at clause 6.3(8) of this document	Prior to the issue of the first Occupation Certificate (whether interim or final) in respect of the Development.	To enable the provision of additional road capacity to service increased traffic loading as a result of urban growth and/or development demands.
<u>Additional Monetary Contribution</u> A monetary contribution in an amount of \$21,435.00	Prior to the issue of the first Occupation Certificate (whether interim or final) in respect of the Development.	Provision and upgrading of Council's administration office and technical support facilities, generated by increased demands generated by new development within its area.

Annexure 1 – Overview of the Land and Proposed Development



Annexure 2 - Proposed New Store Site Plan (Concept Site Plans only)



		Large 10000	
	Building	Proposed	Difference
Main Warehouse (Broomfield Area)	4,743.00sqm	10,306.00sqm	5,563.00sqm
Woods Entry	40.00sqm	40.00sqm	0.00sqm
Warehouse Area	4,783.00sqm	10,306.00sqm	5,523.00sqm
Outdoor Nursery Area	842.00sqm	1,265.00sqm	423.00sqm
Shaded Outdoor Canopy Area	270.10sqm	1,265.00sqm	994.90sqm
Total Nursery Area	5,120.00sqm	2,530.00sqm	2,590.00sqm
Timber Trade Trade Area	407.00sqm	2,547.00sqm	2,140.00sqm
Shaded Materials and Landscaping Trade Area	800.00sqm	1,265.00sqm	465.00sqm
Total Timber Trade Area	1,207.00sqm	3,812.00sqm	2,605.00sqm
Total Retail Area	7,230.00sqm	10,306.00sqm	3,076.00sqm
Standard Car Parks	100	400	300
Disabled Car Parks	10	10	0
Trailer Bays	10	10	0
Total Site Car Parks	110	410	300
On-site Car parking (Broomfield)	10	10	0
Trailer Bays	10	10	0
Land Size	24,171.00sqm	24,171.00sqm	0.00sqm
Land Size	24,171.00sqm	24,171.00sqm	0.00sqm
Total Land	24,171.00sqm	24,171.00sqm	0.00sqm

ADJACENT BUILDING

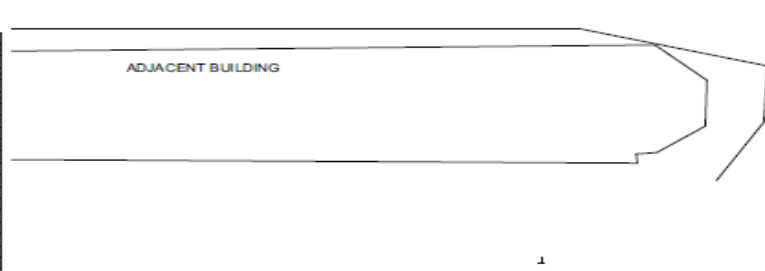
PROPOSED SITE PLAN - WAREHOUSE LVL
SCALE: 1:500 @ A1

NON STANDARD ITEMS

1. LOCATION OF BGC AND NURSERY
2. NURSERY ENTRY PATH UNDER SHADE SAILS AND NOT CANOPY
3. CHAMFER TO BGC
4. NURSERY LOADING BAY NEEDED
5. UNDERGROUND CAR PARK SIZE AND SHAPE
6. 2 x CUSTOMER LIFTS INSTEAD OF 3
7. WAREHOUSE DEPTH - 9 X 9 BAY RUN



Tweed Heads, NSW, SPO_G3 - Area Analysis				Large 10000			
	Existing	Proposed	Difference	2000/10/14	Difference		
Main Warehouse (Minimum Area)	6,742.34sq	10,038.1sq	3,295.76sq	10,138.9sq	380.76sq		
Main Entry	48.3sq	244.8sq	196.5sq	76.7sq	119.8sq		
Warehouse Area	6,790.64sq	10,282.9sq	3,492.26sq	10,215.6sq	342.3sq		
Customer Service Area	452.3sq	1,000.0sq	547.7sq	1,000.0sq	547.7sq		
Design/Service Counter Area	275.1sq	1,000.0sq	724.9sq	1,075.3sq	325.2sq		
Total Working Area	11,120.3sq	12,282.9sq	1,162.6sq	12,290.9sq	10.0sq		
Truck/Trailer Service Area	447.3sq	2,747.3sq	2,299.9sq	2,299.9sq	44.6sq		
Building Materials and Landscaping Yard Area	452.3sq	1,000.0sq	547.7sq	1,000.0sq	547.7sq		
Total Truck/Trailer Area	1,346.9sq	4,747.3sq	3,400.4sq	4,399.9sq	104.5sq		
Total Plant Area	7,285.3sq	10,038.1sq	2,752.8sq	17,594.4sq	1,406.6sq		
Overhead Car Park	150	428	278	-	-		
Overhead Car Park	150	428	278	-	-		
Truck Bay	15	15	0	-	-		
Total New Car Parks	165	443	278	-	-		
5 Year Car Parking Requirement	15	428	413	-	-		
Truck Bay	15	15	0	-	-		
Land Size	34,175.8sq	34,175.8sq	0.0sq	-	-		
Land Size	0.0sq	0.0sq	0.0sq	-	-		
Total Land	34,175.8sq	34,175.8sq	0.0sq	-	-		



- PROPOSED SITE PLAN - UNDERGROUND CARPARK**
SCALE 1:500 @ A1
- NON STANDARD ITEMS**
1. LOCATION OF BGC AND NURSERY
 2. NURSERY ENTRY PATH UNDER SHADE SAILS AND NOT CANOPY
 3. CHAMFER TO BGC
 4. NURSERY LOADING BAY NEEDED
 5. UNDERGROUND CAR PARK SIZE AND SHAPE
 6. 2 x CUSTOMER LIFTS INSTEAD OF 3
 7. WAREHOUSE DEPTH - 9 X 9 BAY RUN

Execution page

Executed as a deed

Dated:

Executed by Tweed Shire Council (ABN 90 178 732 496) by its General Manager and Mayor by the affixing of the Common Seal of Council in accordance with resolution dated

Witness (Signature)

Chief Executive Officer (Signature)

Name of witness (Print Name)

Name of Chief Executive Officer (Print Name)

Executed by Bunnings Group Limited (ACN 008 672 179) in accordance with section 127(1) of the *Corporations Act 2001* (Cth) by authority of its directors.

Director/Secretary (Signature)

Director (Signature)

Name of Director/ Secretary (Print Name)

Name of Director (Print Name)

Executed by Calardu Tweed Heads Pty Limited (ACN 080 347 548) in accordance with section 127(1) of the *Corporations Act 2001* (Cth) by authority of its directors.

Director/Secretary (Signature)

Director (Signature)

Name of Director/ Secretary (Print Name)

Name of Director (Print Name)

Executed by **Calardu Tweed Heads Traders Way Pty Limited** (ACN 096 136 211) in accordance with section 127(1) of the *Corporations Act 2001* (Cth) by authority of its directors.

Director/Secretary (Signature)

Director (Signature)

Name of Director/ Secretary (Print Name)

Name of Director (Print Name)
