

Explanatory Note

This Explanatory Note has been prepared jointly by the parties and is not to be used to assist in construing the Planning Agreement.

Draft Planning Agreement

Under s7.4 of the *Environmental Planning and Assessment Act 1979*

Parties

Lake Macquarie City Council ABN 81 065 027 868 of Lake Macquarie City Council Administration Building, 126-138 Main Road, Speers Point, NSW 2284 (**Council**)

FTLR Pty Limited ABN 12 002 281 567 of PO Box 4156, Kingston ACT 2604 (**Developer**)

Description of the Land to which the Draft Planning Agreement Applies

The Draft Planning Agreement applies to all of the Land shown as proposed lots 1, 2, and 3 in schedule 3 of the draft planning agreement.

Description of Proposed Development

The proposed development is the subdivision of the land into the 3 proposed lots 1, 2 and 3, and the residential development of superlots 1 and 2.

Summary of Objectives, Nature and Effect of the Draft Planning Agreement

Objectives of Draft Planning Agreement

The objective of the Draft Planning Agreement is to secure land as an ecological offset, including securing its restoration back to a self-sustaining native ecosystem and ongoing management in perpetuity.

Nature of Draft Planning Agreement

The Draft Planning Agreement is a planning agreement under s7.4 of the *Environmental Planning and Assessment Act 1979 (Act)*. The Draft Planning Agreement is a voluntary agreement under which Contributions (as defined in clause 1.1 of the Draft Planning

Agreement) are made by the Developer for various public purposes (as defined in s7.4(3) of the Act).

Effect of the Draft Planning Agreement

The Draft Planning Agreement:

- relates to the carrying out of the Superlot Development on the Land by the Developer,
- imposes obligations on the Developer to make Contributions,
- does not exclude the application of ss7.11, 7.12 or 7.24,
- makes provision for the Developer to:
 - dedicate the Ecological Offset Land on registration of the Superlot Subdivision Plan,
 - make monetary contributions towards the ongoing management of the Ecological Offset Land in perpetuity 30 days prior to the end of the Maintenance Period,
- requires the Developer to carry out works to establish and restore the Ecological Offset Land prior to the land being dedicated to Council,
- is to be registered on the Land,
- imposes restrictions on the Developer transferring the Land or part of the Land or assigning, or novating an interest under the agreement,
- provides two dispute resolution methods for a dispute under the agreement, being expert determination and mediation,
- provides that the agreement is governed by the law of New South Wales, and
- provides that the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) applies to the agreement.

Assessment of the Merits of the Draft Planning Agreement Including the Impact on the Public

How the Planning Agreement Promotes the Objects of the Act and the public interest

The Planning Purposes Served by the Draft Planning Agreement

The Draft Planning Agreement:

- provides for the conservation or enhancement of the natural environment, and
- Provides funding of recurrent expenditure for the ongoing management of the Ecological Land in perpetuity.

How the Draft Planning Agreement Promotes the Public Interest

The draft Planning Agreement promotes the public interest by promoting the objects of the Act as set out in s1.3(a), (b) (c), (e), and (j) of the Act.

Whether the Draft Planning Agreement Conforms with the Authority's Capital Works Program

Council will need to consider the maintenance of the Ecological Offset Land when determining the annual Capital Works Program at the time the land is to be dedicated to Council, utilising the monetary contributions paid to Council for this purpose.

Whether the Draft Planning Agreement specifies that certain requirements must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued

The following must be undertaken prior to issue of the Subdivision Certificate for the Superlot Subdivision Plan:

- a) The Developer will pay Council the amount of \$192,745 (exclusive of GST) as consideration for the Council agreeing to secure the C2 Public Roads for ecological offsets, and
- b) The Developer will pay to Council an amount of \$143,360 (exclusive of GST) as consideration for Council agreeing to the Council C2 Land being secured for ecological offsets.

The Draft Planning Agreement provides that the Ecological Offset Land to be dedicated to Council on registration of the Superlot Subdivision Plan,

The maintenance of the Ecological Offset Land will commence on the earlier of a notice to Council or issue of the Superlot Subdivision Certificate.