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Planning Agreement Lot 51 DP 1057416 Ocean Parade Coffs Harbour NSW 2450

Coffs Harbour City Council

ABN 79 126 214 487
and

Globuild Pty Limited

ACN 150 397 961
and

NSW National Parks and Wildlife Service

ACN 30 841 387 271

ATF the Coffs Coast Regional Park Trust

Interstate offices
Canberra Melbourne

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Advoc network - www.advoc.com

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Planning Agreement Lot 51 DP 1057416 Ocean Parade Coffs Harbour NSW 2450

Dated

Parties

Name	Coffs Harbour City Council ABN 79 126 214 487
Address	2 Castle Street, Coffs Harbour, 2450
Email	coffs.council@chcc.nsw.gov.au
Contact	Natalia Cowley
Short name	Council

Name	Globuild Pty Limited ACN 150 397 961
Address	34 Sproule Road, Illawong NSW 2234
Email	George@globuild.com.au
Contact	George Daoud
Short name	Developer

Name	NSW National Park and Wildlife Service ACN 30 841 387 271 ATF the Coffs Coast Regional Park Trust
Address	4/32 Edgar Street, Coffs Harbour NSW 2450
Email	ccrptb@chcc.nsw.gov.au
Contact	Rod McKelvey
Short name	CCRP Trust

Background

- A. The Developer intends to undertake the Development on the Land with the prior permission of the Landowner, or for an on behalf of the Landowner.
- B. The Developer has offered to enter into this Agreement to provide the Public Benefits in terms of this Agreement.
- C. The CCRP Trust wishes to receive from the Council the Monetary Contributions for the purpose of the Offsite Environmental Works.
- D. Council wishes to provide a portion of the Monetary Contributions to the CCRP Trust for the purpose of it carrying out the Offsite Environmental Works.



- E. Council wishes to use a portion of the Monetary Contributions for the purpose of developing the Planning Studies.

This Deed witnesses

1. Definitions and Interpretation

1.1 Definitions

In this Deed:

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

Attributed Value means the value the Council and the Developer agree is to be attributed to each element of the Public Benefits as at the date of this document, as set out in clause 1 of Schedule 3 of this document.

Complete, Completed, Completion means completed in accordance with the requirements of this Agreement.

Council means Coffs Harbour City Council.

Development means the development of the Land by the Developer as described in Item 2 of Schedule 2.

Development Application means a development application for the Development identified in Item 3 of Schedule 2 and includes all plans, reports models, photomontages, material boards (as amended or supplemented) submitted to the consent authority before the determination of that Development Application.

Development Consent means the consent granted under the Act with respect to the Development Application and the Development and includes all modification made under section 4.55 of the Act.

First Subdivision Certificate means the first Subdivision Certificate issued under the Act with respect to the Development Consent.

GST Law means *A New Tax System (Goods and Services Tax) Act 1999* (Commonwealth) and any other Act or regulation relating to the imposition or administration of the goods and services tax.

Land means the land described in Item 1 of Schedule 2.

Landowner means Urbain Pty Limited ACN 13753483084 and Werombi Holdings Pty Limited ACN 606636588.

Law means all applicable legislation, regulations, by-laws, common law and other binding order made by any Authority, including any applicable Planning Legislation.

Monetary Contributions means the monetary contributions set out in Schedule 3.

Offsite Environmental Works means the offsite environmental works to be specified in a Vegetation Management Plan that are to be undertaken on the land identified as the Work Area on the plan at Schedule 4.

Planning Studies means the Park Beach Place Manual and the Park Beach Place and Movement Plan.

Planning Legislation means the Act, the *Local Government Act 1993* (NSW) and the *Roads Act 1993* (NSW).

Public Benefits means the provision of benefits to the community by the Developer in the form and at the times specified in Schedule 3.

Subdivision Certificate means a subdivision certificate as defined in section 6.4(d) of the Act.

Vegetation Management Plan means a plan concerning the management of vegetation, on and off the Land, in relation to the Development, as conditioned by the Development Consent.

1.2 Interpretation

The following rules of interpretation apply unless the context requires otherwise:

- 1.2.1 Any reference to a **clause, annexures and schedules** refers to a clause in, or annexure or schedule to this Agreement.
- 1.2.2 Any reference to a **statute** refers to 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.
- 1.2.3 The singular includes the plural and vice versa.
- 1.2.4 A reference to a **person** includes an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association or any government agency.
- 1.2.5 A reference to **executors, administrators** or **successors** refers to a particular person that includes their executors, administrators, successors, substitutes (including persons taking by novation) and assigns.
- 1.2.6 **Dollars, Australian dollars, dollars, \$, AUS\$ or A\$** is a reference to the lawful currency of Australia.
- 1.2.7 Where any period of time is calculated from the given day or day of an act or event, it is to be calculated exclusive of that day.
- 1.2.8 A **day** is to be interpreted as the period of time commencing at midnight and ending 24 hours later.
- 1.2.9 A **group of persons** or **things** is a reference to any two or more of them jointly and to each of them individually.
- 1.2.10 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.
- 1.2.11 If an act under this Agreement 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.
- 1.2.12 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.
- 1.2.13 Any time of day referenced in this agreement is a reference to Sydney time.
- 1.2.14 Headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of this Agreement.

- 1.2.15 A reference to any agreement, Agreement or instrument includes the same as varied, supplemented, novated or replaced from time to time.
- 1.2.16 A reference to one gender extends and applies to the other.

2. Status

2.1 Planning Agreement

- 2.1.1 This Agreement is a planning agreement:
- (a) within the meaning set out in section 7.4 of the Act; and
 - (b) governed by Subdivision 2 of Division 7.1 of Part 7 of the Act.
- 2.1.2 Schedule 1 sets out the application of section 7.4 of the Act in this Agreement.

2.2 Application

This Agreement applies to both the Land and the Development.

2.3 Operation of Agreement

- 2.3.1 Subject to clause 2.3.2, this Agreement operates from the date it is executed by both parties.
- 2.3.2 Clauses 3 to 14 of this Agreement will only operate if and when Council grants the Development Consent.

3. Application of section 7.11 and section 7.12

3.1 Application

- 3.1.1 The application of sections 7.11 and 7.12 of the Act to the Development are excluded to the extent described at Items 4 and 5 of Schedule 1, respectively.
- 3.1.2 The Public Benefits are to be taken into consideration in determining a development contribution under section 7.11 of the Act with respect to the Development to the extent described at Item 6 of Schedule 1.

4. PUBLIC BENEFITS

4.1 Developer to provide Public Benefits

The Developer must, at its cost and risk, provide the Public Benefits to the Council in accordance with this Agreement.

5. Registration of this Agreement

5.1 Registration

This Agreement must be registered on the title of the Land pursuant to section 7.6 of the Act.

5.2 Obligations of the Developer

The Developer must:

5.2.1 do all things necessary to allow the registration of this Agreement to occur, including but not limited to obtaining the consent of any mortgagee registered on the title of the Land; and

5.2.2 pay any costs incurred by Council in undertaking that registration.

5.3 Removal from Title of the Land

5.3.1 Council will do all things necessary to allow the Developer to remove the registration of this Agreement from the title of the Land where the Developer has provided all Monetary Contributions.

5.3.2 The Developer must pay any costs incurred by Council in undertaking that discharge.

6. Prohibition on assignment

The Developer may not Assign its rights or obligations under this Agreement without the prior written consent of the Council.

7. Warranties

7.1 Warranties

The Developer warrants to Council that:

7.1.1 it is able to fully comply with its obligations under this Agreement;

7.1.2 it has full capacity to enter into this Agreement; and

7.1.3 there is no legal impediment to it entering into this Agreement, or performing the obligations imposed under it.

8. Determination of this Agreement

8.1 Determination

This Agreement will determine upon the Developer satisfying all of its obligations under the Agreement.

8.2 Effect of Determination

Upon the determination of this Agreement Council will do all things necessary to allow the Developer to remove this Agreement from the title of the whole or any part of the Land as quickly as possible.

9. Dispute Resolution

9.1 Notice of Dispute

9.1.1 If a dispute between the parties arises in connection with this Agreement or its subject matter (**Dispute**), then either party (**First Party**) must give to the other (**Second Party**) 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**) with the necessary authority to negotiate and resolve the Dispute.

9.1.2 The Second Party must, within seven (7) Business Days of service of the notice of dispute, provide a notice to the First Party designating as its representative a person with the necessary authority to negotiate and settle the Dispute (the representatives designated by the parties being together, the **Representatives**).

9.2 Conduct Pending Resolution

The parties must continue to perform their respective obligations under this Agreement 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.

9.3 Further Steps Required before Proceedings

Subject to clause 9.11 and except as otherwise expressly provided in this Agreement, any Dispute must, as a condition precedent to the commencement of litigation, or mediation under clause 9.4, first be referred to the Representatives. The Representatives must endeavour to resolve the Dispute within seven (7) Business Days of the date a notice under clause 9.1 is served.

9.4 Disputes for Mediation

9.4.1 If the Representatives are unable to resolve the Dispute in accordance with clause 9.3, the parties must refer the Dispute to mediation which must be conducted by a mediator agreed by the parties and, if the parties cannot agree within seven (7) Business Days, then by a mediator appointed by the President of the Law Society of New South Wales for the time being.

9.4.2 If the mediation referred to in clause 9.4.1 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 9.5.

9.5 Choice of Expert

9.5.1 If the Dispute is to be determined by expert determination, this clause 9.5 applies.

9.5.2 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 agreement within seven (7) 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.

9.5.3 If the parties fail to agree as to the relevant field within seven (7) 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.

9.5.4 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.

9.5.5 The parties must promptly enter into an agreement with the expert appointed under this clause setting out the terms of the expert's determination and the fees payable to the expert.

9.6 Directions to Expert

9.6.1 In reaching a determination in respect of a dispute under clause 9.5, the independent expert must give effect to the intent of the parties entering into this Agreement and the purposes of this Agreement.

9.6.2 The expert must:

- (a) act as an expert and not as an arbitrator;
- (b) not accept verbal submissions unless both parties are present;
- (c) on receipt of a written submission from one party, ensure that a copy of that submission is given promptly to the other party;
- (d) 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;
- (e) 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);

- (f) issue a draft certificate stating the expert's intended determination (together with written reasons), giving each party fourteen (14) Business Days to make further submissions;
- (g) issue a final certificate stating the expert's determination (together with written reasons); and
- (h) act with expedition with a view to issuing the final certificate as soon as practicable.

9.6.3 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.

9.7 Expert May Convene Meetings

9.7.1 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.

9.7.2 The parties agree that a meeting under clause 9.7.1 is not a hearing and is not an arbitration.

9.8 Other Courses of Action

If the mediation referred to in clause 9.4 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 seven (7) 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.

9.9 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.

9.10 Costs

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

9.11 Remedies Available under the Act

This clause 9 does not operate to limit the availability of any remedies available to Council under sections 9.45 and 9.46 and Division 9.6 of the Act.

9.12 Urgent Relief

This clause 9 does not prevent a party from seeking urgent injunctive or declaratory relief concerning any matter arising out of this Agreement.

10. Position of Council

10.1 Consent Authority

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

10.2 Agreement does not Fetter Discretion

This Agreement is not intended to operate to fetter:

10.2.1 the power of Council to make any Law; or

10.2.2 the exercise by Council of any statutory power or discretion (**Discretion**).

10.3 Severance of Provisions

10.3.1 No provision of this Agreement is intended to, or does, constitute any unlawful fetter on any Discretion. If, contrary to the operation of this clause, any provision of this Agreement 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 10 is substantially satisfied;
- (b) in the event that clause 10.3.1(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 Agreement has full force and effect; and
- (c) to endeavour to satisfy the common objectives of the parties on relation to the provision of this Agreement which is held to be an unlawful fetter to the extent that it is possible having regard to the relevant court judgment.

10.3.2 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 Agreement contracted out of a provision or exercised a Discretion under this Agreement, then to the extent of this Agreement is not to be taken to be inconsistent with the Law.

10.4 No Obligations

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

11. Confidentiality

11.1 Agreement not Confidential

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

12. GST

12.1 Definitions

In this clause:

Taxable Supply, GST, Tax Invoice and **Input Tax Credit** have the same meaning given to them in GST Law.

12.2 Supply Expressed in Terms of Money

12.2.1 If any party reasonably believes that it is liable to pay GST on a supply expressed in terms of money (or where the consideration for the supply is expressed in terms of money) and made to the other party under this Agreement and the supply was not expressed to include GST, then:

- (a) the recipient of the supply must pay an amount equal to the GST on that supply to the other party;
- (b) the party making the supply will issue a Tax Invoice to the other party; and
- (c) the recipient of the supply will pay the amount of the GST to the supplier within fifteen (15) days of receiving the Tax Invoice.

12.3 Expenses and Costs Incurred

If any expenses or costs incurred by one party are required to be reimbursed by the other party under this Agreement, then the amount of the reimbursement will be calculated as follows:

12.3.1 The amount of the cost or expense incurred by the party seeking reimbursement will be initially calculated excluding any Input Tax Credit to which that party is entitled to claim.

12.3.2 This amount initially calculated will be increased by the applicable rate of GST to equal a GST inclusive reimbursement amount and this amount will be paid by the party liable to make the reimbursement.

12.3.3 The party being reimbursed will issue a Tax Invoice to the other at the GST inclusive reimbursement amount prior to being reimbursed.

12.4 Survival of Clause

This clause 12 continues to apply after the expiration or termination of this agreement.

13. Legal Costs

The Developer shall bear its own costs and those of Council in relation to the preparation of this Agreement, negotiation, execution and registration of this Agreement and any document related to this Agreement.

14. Administrative Provisions

14.1 Notices

14.1.1 Any notice, consent or other communication under this Agreement 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) sent by email to that person's email address.

14.1.2 A notice given to a person in accordance with this clause 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 sent by email to a person's email address and a conformation of receipt can be retrieved, on the day it was sent if a Business Day, otherwise on the next Business Day.

14.1.3 For the purpose of this clause the address of a person is the address set out in this Agreement or another address of which that person may from time to time give notice to each other person.

14.2 Entire Agreement

This Agreement 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 Agreement.

14.3 Waiver

14.3.1 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.

14.3.2 Without limitation, a waiver may be expressed to be conditional on the happening of an event, including the doing of a thing by the Party to whom the waiver is given.

14.3.3 A waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given and is not to be taken as an implied waiver of any other obligation or breach in any other circumstance or instance.

14.4 Counterparts

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

14.5 Unenforceability

Any provision of this Agreement 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 Agreement or affecting the validity or enforceability of that provision in any other jurisdiction.

14.6 Power of Attorney

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

14.6.1 the revocation or suspension of the power of attorney by the grantor; or

14.6.2 the death of the grantor.

14.7 Governing Law

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

14.7.1 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 Agreement; and

14.7.2 may not seek to have any proceedings removed from the jurisdiction of New South Wales on the grounds of *forum non conveniens*.

14.8 Review Requirements

14.8.1 The Parties agree to review this agreement during the event that either party believes that a change in circumstance has or will occur that will affect the operation and carrying out of this agreement.

14.8.2 Review of this agreement is required if any Legislation is introduced or changed to the affect that it would limit, stop, substantially change or otherwise hinder the operation or implementation of this agreement in the opinion of either Party.

14.8.3 The Parties are to use all reasonable endeavours to agree on and implement appropriate amendments to this agreement should reasonable and necessary amendments be identified.

14.8.4 If this agreement becomes illegal, unenforceable or invalid as a result of any change to Legislation, the Parties agree to do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Agreement is entered into.

14.9 Further Agreements

This Agreement does not restrict further agreements between the Parties that are not inconsistent with this Agreement.

14.10 Surrender of Right of Appeal

The Developer is not to commence or maintain any proceedings in any court, tribunal or similar appealing against or questioning the validity of this agreement or an Approval relating to the Development in so far as the subject-matter of the proceedings relates to this Agreement.



14.11 Notations under section 10.7(5) of the Act

Council may, at its absolute discretion, make a notation on a planning certificate issued under section 10.7(5) of the Act detailing the application or affect the planning agreement has on the Land.

Schedule 1 Requirements under section 7.4 of the Act

ITEM	REQUIREMENT UNDER THE ACT	THIS PLANNING AGREEMENT
1.	<p>Planning instrument and/or Development Application – (Section 7.4(1))</p> <p>The Developer has:</p> <p>(a) sought a change to an environmental planning instrument.</p> <p>(b) made, or proposes to make, a Development Application.</p> <p>(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.</p>	<p>(a) No</p> <p>(b) As set out in Schedule 2.</p> <p>(c) No</p>
2.	<p>Description of land to which this agreement applies – (Section 7.4(3)(a))</p>	<p>The land to which the Agreement applies is the Land.</p>
3.	<p>Description of the development to which this agreement applies – (Section 7.4(3)(b))</p>	<p>The development to which this Agreement applies is the Development.</p>
4.	<p>Application of section 7.11 of the Act – (Section 7.4(3)(d))</p>	<p>The application of sections 7.11 of the Act is not excluded in respect of the Development and for the avoidance of doubt, contributions (if any) under section 7.11 will be required to be paid.</p>
5.	<p>Applicability of section 7.12 of the Act – (Section 7.4(3)(d))</p>	<p>The application of sections 7.12 of the Act is not excluded in respect of the Development and for the avoidance of doubt, contributions (if any) under section 7.12 will be required to be paid.</p>
6.	<p>Consideration of benefits under this agreement if section 7.11 applies – (Section 7.4(3)(e))</p>	<p>The Public Benefits are to be taken into consideration in determining a development contribution under section 7.11 of the Act. However, this does not mean that the Public Benefits operate as a credit to any contribution required under section 7.11 of the Act.</p>



7.	Mechanism for Dispute resolution – (Section 7.4(3)(f))	Refer to clause 9 of the Agreement.
8.	Enforcement of this agreement – (Section 7.4(3)(g))	Refer to clause 9 of the Agreement.
9.	No obligation to grant consent or exercise functions – (Section 7.4(3)(9))	Refer to clause 10.4 of the Agreement.



Schedule 2 Contract details

Item	Term	Description
1.	Land	Lot 51 DP 1057416 Ocean Parade Coffs Harbour NSW 2450
2.	Development	Subdivision of the Land into two lots and the erection of two 13 storey residential apartment buildings on the Land as authorised by the Development Consent
3.	Development Application	0541/22DA

Schedule 3 Public Benefits

1. OVERVIEW – PUBLIC BENEFITS

The Developer must provide the Public Benefits in accordance with Schedule 3 and this Agreement. The Attributed Value, timing of delivery and value of the Public Benefits is set out in the table below.

Item	Public Benefit	Timing of delivery	Attributed Value
1.	Monetary Contribution	Prior to the issue of the First Subdivision Certificate	\$200,000.00

2. PAYMENT OF MONETARY CONTRIBUTION

2.1 Payment

Subject to clauses 2.2, 2.3, and 2.4, the Developer must pay the Monetary Contribution to the Council prior to the issue of the First Subdivision Certificate under the Development Consent for the Development in cash or by unendorsed bank cheque.

2.2 Indexation

2.2.1 At the date of payment of the Monetary Contribution, the Monetary Contribution must be indexed as follows:

$$A = B \times \frac{C}{D}$$

where:

A = the Monetary Contribution to be paid following indexation;

B = the Attributed Value of the Monetary Contribution as set out in Item 1 of clause 1 above;

C = the Index most recently published before the date the Monetary Contribution is paid; and

D = the Index current as at the date the agreement comes into effect.

2.2.2 If after the formula is applied the Monetary Contribution will be less than the Attributed Value as stated in item 1 of clause 1 above, the Monetary Contribution will not be adjusted.

2.2.3 For the purposes of clause 2.2.1 above the Index means the *Consumer Price Index (All Groups) for Sydney* or such other index which replaces it from time to time.

2.3 No trust

Nothing in this Agreement creates any form of trust arrangement or fiduciary duty between the Council and the Developer. Following receipt of the Monetary Contribution, the Council is not required to separately account for the Monetary Contribution, report to the Developer

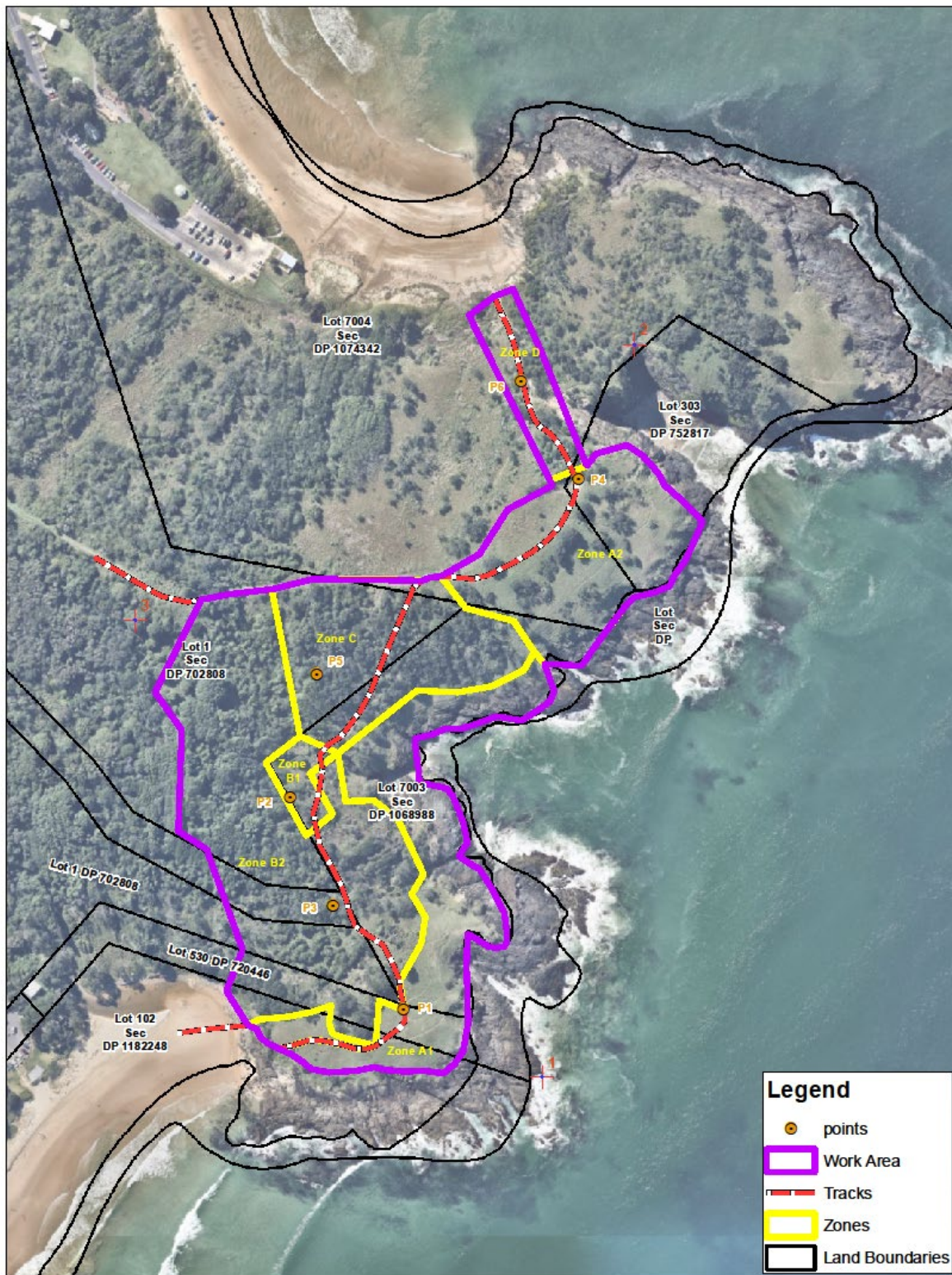
regarding expenditure of the Monetary Contribution or comply with any request by the Developer to trace the Monetary Contribution.

2.4 Use of Monetary Contribution

- 2.4.1 Council and the Developer acknowledge that the Monetary Contributions are to be used for the purpose of:
- (a) the Offsite Environmental Works to be carried out by the CCRP Trust; and
 - (b) the development of the Planning Studies.
- 2.4.2 Council, the Developer and the CCRP Trust acknowledge that the CCRP Trust will, following receipt of the Monetary Contributions from Council, undertake the Offsite Environmental Works.
- 2.4.3 Council may, at its absolute discretion, determine what portion of the Monetary Contributions are used in relation to any of the works that comprise the Offsite Environmental Works and Planning Studies.



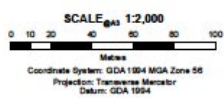
Schedule 4 Plan of Work Area



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Environmental Works

This map produced by GIS Section
 Coffs Harbour City Council
 Creation Date: 9/07/2021



Annexure A Explanatory Note

Planning Agreement

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

Parties

Coffs Harbour City Council ABN 79 126 214 487 of 2 Castle Street, Coffs Harbour NSW 2450 (**Council**)

Coffs Coast Regional Park Trust ACN 30 841 387 271 of 4/32 Edgar Street, Coffs Harbour (**CCRP Trust**)

Globuild ACN 150 397 961 of 34 Sproule Road, Illawong NSW 2234 (**Developer / Landowner**)

Description of the Land to which the Planning Agreement Applies

Lot 51 DP 1057416, Ocean Parade Coffs Harbour NSW 2450

Description of Proposed Development

Subdivision of Lot 51 DP 10576416 into two lots and the erection of two 13 storey residential apartment buildings on each of the two lots.

Description of Development Contributions

This planning agreement requires the Developer to:

- Pay a monetary contribution of \$200,000 for the purpose of Offsite Environmental Works.
- Council will provide a portion of the funds to the Coffs Coast Regional Park Trust for the purpose of carrying out the Offsite Environmental Works.
- Any funds remaining will be used to towards planning studies in the Park Beach area.

Summary of Objectives, Nature and Effect of the Planning Agreement

Objectives, Nature and Effect of Planning Agreement

The objective of the planning agreement is to require the Developer to:

- Pay a monetary contribution of \$200,000 for the purpose of Offsite Environmental Works.
- Council will provide the funds required to undertake the Offsite Environmental Works to the Coffs Coast Regional Park Trust.
- The Offsite Environmental Works will be identified in a Vegetation Management Plan approved by Council.
- The Offsite Environmental Works will be undertaken at Macaulay's Headland
- Council will use any remaining funds for the development of planning studies in the Park Beach area.

Assessment of the Merits of the Planning Agreement

How the Planning Agreement Promotes the Public Interest

A condition of Development Consent 0541/22DA requires the Developer to obtain approval of a Vegetation Management Plan from Council.

The Vegetation Management Plan ensures lands are managed and protected for 5 years during the subdivision works and thereby improving the ecological condition of the land during construction and into the future. The plan will also identify the Offsite Environmental Works that are required to be undertaken at Macaulay's Headland. The works undertaken at Macaulay's Headland will benefit biodiversity by compensating for any adverse impacts of development of Lot 51 DP 1057416.

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

The Planning Agreement is not consistent with Council's Capital Works Program.

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

Prior to the issue of the first Subdivision Certificate the Developer is to:

- Pay a monetary contribution of \$200,000 to Council.


Signing Page

Executed by the parties as a deed

Dated: 30 March 2023

Signed, Sealed and Delivered by Natalia Cowley on)
behalf of Coffs Harbour City Council pursuant to the)
power delegated to her by an Instrument of Delegation)
in the presence of:)


Signature of General Manager
Natalia Cowley
Print full name


Signature of Witness
Amy Mott
Print full name

Executed as a deed by Globuild Pty Limited)
ACN 150 397 961 in accordance with s 127(1) and s)
127(3) of the Corporations Act 2001:)

Signature of Director
Print full name

Signature of Director/Company Secretary
Print full name

Executed as a deed by Rod McKelvey ACN 30 841)
387 271 in accordance with s 127(1) and s 127(3) of)
the Corporations Act 2001 in its capacity as trustee of)
the Coffs Coast Regional Park Trust:)

Signature of Chairperson
Print full name

Signature of Witness
Print full name



Signing Page

Executed by the parties as a deed

Dated: 30 March 2023

Signed, Sealed and Delivered by Natalia Cowley on behalf of Coffs Harbour City Council pursuant to the power delegated to her by an Instrument of Delegation in the presence of:

Signature of General Manager

Signature of Witness

Print full name

Print full name

Executed as a deed by Globuild Pty Limited ACN 150 397 961 in accordance with s 127(1) and s 127(3) of the Corporations Act 2001:

Signature of Director

Signature of Director/Company Secretary

George Daoud

Christopher Cheong

Print full name

Print full name

Executed as a deed by Rod McKelvey ACN 30 841 387 271 in accordance with s 127(1) and s 127(3) of the Corporations Act 2001 in its capacity as trustee of the Coffs Coast Regional Park Trust:

Signature of Chairperson

Signature of Witness

Print full name

Print full name



Signing Page

Executed by the parties as a deed

Dated: 30 March 2023

Signed, Sealed and Delivered by Natalia Cowley on behalf of **Coffs Harbour City Council** pursuant to the power delegated to her by an Instrument of Delegation in the presence of:

.....
Signature of General Manager

.....
Signature of Witness

.....
Print full name

.....
Print full name

Executed as a deed by **Globuild Pty Limited** ACN 150 397 961 in accordance with s 127(1) and s 127(3) of the *Corporations Act 2001*:

.....
Signature of Director

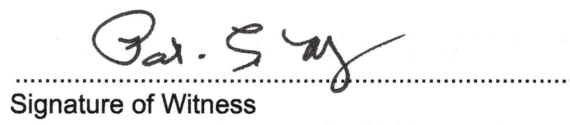
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Signature of Director/Company Secretary

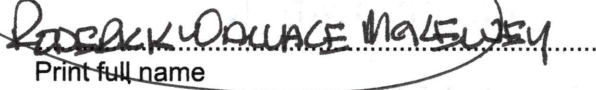
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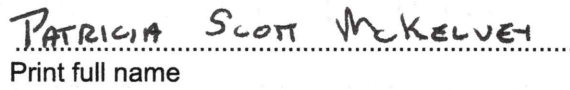
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Print full name

Executed as a deed by Rod McKelvey ACN 30 841 387 271 in accordance with s 127(1) and s 127(3) of the *Corporations Act 2001* in its capacity as trustee of the **Coffs Coast Regional Park Trust**:


.....
Signature of Chairperson


.....
Signature of Witness


.....
Print full name


.....
Print full name