

Voluntary Planning Agreement Policy

1 Purpose

The NSW planning framework enables Councils to enter into planning agreements with developers.

A voluntary planning agreement (VPA) is a voluntary agreement between a planning authority and a developer. A VPA can be offered in connection with any of the following:

1. a planning proposal to change the planning controls applying to land
2. a development application for consent to carry out development
3. the modification of a development consent

Under a VPA the developer is required to:

- a) dedicate land free of cost
- b) pay a monetary contribution
- c) provide any other material public benefit; or
- d) provide any combination of the above

to be used or applied for a public purpose.

This Policy sets out City of Coffs Harbour's (Council) position and procedures relating to voluntary planning agreements under the Environmental Planning and Assessment Act 1979 (**Act**) and the Environmental Planning and Assessment Regulation 2021 (Regulation).

The Practice Note issued by the NSW Department of Planning Industry and Environment is the guiding document used in the preparation of this Policy.

This Policy applies to any development application, application to modify a development consent or planning proposal where a VPA is proposed, for land and development within the local government area of Council.

Council's preference is for a VPA to be negotiated between Council and a developer before the development application to which it relates is determined; or the planning proposal is made. This allows the draft VPA to be exhibited alongside the development application or planning proposal.

2 Policy

2.1 Statutory Framework

The Act and the Regulation set out the basic requirements for the preparation and administration of VPAs.

2.2 Relationship to Council strategic documents

Public benefits delivered through VPA's must be consistent with Council's key strategic documents including the *MyCoffs Community Strategic Plan*, *Local Strategic Planning Statement*, *Local Growth Management Strategy*, developer contribution plans, developer serving plans and other infrastructure delivery plans.

2.3 Policy Objectives

- a) To establish a fair, transparent and accountable framework governing the use of VPAs within the Coffs Harbour Local Government Area.
- b) To set out specific requirements relating to the use of VPAs.
- c) To establish a consistent and transparent process for Council and developers to enter into VPAs that meet probity standards.
- d) Ensure that all developers are treated consistently in the negotiation and execution of VPAs.
- e) To provide an efficient and streamlined approach to the negotiation and execution of VPAs.
- f) To enable the community to gain an understanding of the public benefits of VPAs.
- g) To facilitate innovative and flexible approaches to the provision of infrastructure and public benefits in a manner that is consistent with the Act.
- h) To provide certainty for the community, developers and Council in respect to infrastructure and development outcomes.

2.4 Objectives of VPAs

The primary objective of a VPA is for developers to provide land dedications, monetary contributions, or other material public benefits, or any combination of them, for public purposes in connection with the development of land.

In considering, negotiating and entering into a VPA, the Council will consider the following broad objectives:

- a) Meeting the current and future demands created by the development for new or improved public infrastructure, amenities or services.
- b) Meeting specific planning objectives of Council by providing planning benefits.
- c) Compensating for the loss of or damage to a public amenity, service, resource or asset resulting from a development through replacement, substitution, repair or regeneration of amenities, services or assets.
- d) Rectifying a deficiency in existing public facilities in Council's area.
- e) Providing for future and recurrent funding for public infrastructure, amenities and services with sustainable funding.

Development that is unacceptable on planning grounds will not be given consent merely because the developer offers to enter a VPA. Especially if the benefits offered by the developer in the VPA are unrelated to the development, and do not address any adverse impacts of the development that may prevent the development from proceeding.

2.5 General Principles

In considering, negotiating and entering a VPA Council will be guided by the following principles:

- a) planning decisions may not be bought or sold, and all planning matters to which a VPA relates must be considered objectively on their planning merits;
- b) VPAs must not hamper the exercise of the Council's statutory functions or discretion;
- c) VPAs will not to be entered into by Council for an improper purpose (for example, to overcome revenue-raising or spending limitations);
- d) public benefits offered as part of a VPA must be related to the particular planning matter to which the VPA relates. Council will not enter into a VPA where the public benefits offered are wholly unrelated to the planning matter to which the VPA relates;

- e) Council will not give disproportionate weight to a VPA when considering a planning matter;
- f) Council will not allow the interests of individuals or interest groups to outweigh the public interest;
- g) Council will not improperly use its position to extract unreasonable public benefits from developers; and
- h) Council will avoid, wherever possible, being party to a VPA where it also has a stake in the development subject to the agreement.

2.6 Acceptability Test

In considering, negotiating and entering a VPA, the Council will consider whether the terms of the VPA satisfy the 'acceptability test' as provided by the Practice Note.

Council will consider the following matters to determine if a proposed VPA is acceptable:

- a) Is the proposed VPA directed towards legitimate planning purposes, which can be identified in the statutory planning controls and other adopted planning strategies and policies applying to development?
- b) Does the proposed VPA provide for public benefits described in the Potential Public Benefits table in Attachment B of this Policy or another demonstrated public benefit, being a benefit that is not wholly unrelated to the planning matter to which the VPA relates?
- c) Does the proposed VPA produce outcomes that meet the general values and expectations of the public and protect the overall public interest?
- d) Does the proposed VPA provide for a reasonable means of achieving the desired outcomes and securing the benefits?
- e) Does the proposed VPA protect the community against adverse planning decisions?

2.7 Process

2.7.1 Notice of Intention

At the pre-lodgement meeting for a development application or planning proposal, the developer and Council will identify that a VPA is required to accompany the application.

Prior to submitting a development application or planning proposal, the developer must submit a Notice of Intention to lodge a VPA with Council. The Notice of Intention outlines the VPA proposal and must contain all the information in Council's VPA Information Requirements Factsheet.

Council will review the Notice of Intention and will either accept or reject the proposal. Failure to provide sufficient information in the Notice of Intention may delay its review by Council.

If the proposal is accepted in principal, Council and the developer will enter in negotiations for a VPA. If the proposal is rejected, the developer may review the offer based on the feedback provided by Council and resubmit a new Notice of Intention.

2.7.2 Negotiation and Agreement Templates

To avoid unnecessary delays, negotiation of VPA should be completed prior to the lodgement of a development application or planning proposal. VPA negotiations will be coordinated by the Strategic Developer Contributions Officer with a delegated representative from Council's VPA Review Panel.

The key terms of the offer will be negotiated between Council and the developer. A draft VPA and explanatory note will then be prepared by Council's lawyers, based on the offer submitted by the developer and negotiated between the parties, and approved by Council.

A template agreement for the VPA and explanatory note is attached to this policy. This agreement has been endorsed by Council and sets out Council's preferred terms. Council will not negotiate any significant changes to its template agreement.

An explanatory note must accompany a VPA. The purpose of the explanatory note is to help the public understand what the agreement is proposing, how it delivers a public benefit, and why it is acceptable and in the public interest.

2.7.3 Application, public notification and assessment

The submission of the development application or planning proposal should be accompanied by the draft VPA, signed by the developer and the explanatory note.

The VPA, explanatory note and the application to which it relates will be publicly notified together with the associated application. Council will consider all public submissions in deciding whether to enter into a VPA with the developer.

The draft VPA may require further negotiations between the parties to consider any issue arising out of the submissions. This may result in the VPA being amended.

Re-notification of the draft VPA will be required if the proposed amendments to the draft VPA would significantly affect:

1. the material public benefit delivered under the agreement; or
2. the timing of the delivery of contributions, provision of security or the scope of works for an item; or
3. changes to the terms of the agreement; or
4. the Council's interests or the public interest.

The Council will publicly re-notify and make available for public inspection the amended VPA and the application to which it relates.

The draft VPA, explanatory note and related application will be reported to Council. If Council resolves to enter into the VPA, a condition of consent will be applied requiring the developer to enter into a VPA reflecting the final letter of offer from the developer.

Where the application is a planning proposal, the VPA must be executed before the Local Environmental Plan is made or amended.

The VPA process flowchart is at Attachment A.

2.8 Valuation Methodology

Unless otherwise agreed between Council and the developer, where the benefit under a VPA is the provision of land for a public purpose, the value of the development contribution will be the market value of the land (within the meaning of the *Land Acquisition (Just Terms Compensation) Act 1991*).

This will be determined by an independent registered valuer with at least 10 years' experience in valuing land in New South Wales. The valuer will be appointed with the agreement of all parties, or in the event of disagreement between the parties, acceptable to the Council.

Where the benefit under a VPA is the carrying out of works, the value of the benefit will be determined by an independent registered quantity surveyor. The quantity surveyor must be acceptable to both parties, or in the event of disagreement between the parties, acceptable to the Council.

Where the benefit under a VPA is the provision of some other type of public benefit, Council and the developer will negotiate the manner in which the benefit is to be valued for the purposes of the agreement. If there is no agreement, the Council will determine the manner the benefit is to be valued.

The Council may require the value of benefits to be made to be indexed, using the same indexation methodology in Council's contributions plans.

2.9 Recurrent Charges

A VPA may require a developer to make development contributions towards the recurrent costs of public facilities. Where the public facility mainly serves the development to which the VPA relates, or a neighbouring development, the arrangement for recurrent development contributions may be in perpetuity.

Where the public facility is intended to serve the wider community, the VPA may only require the developer to make development contributions towards the recurrent costs of the public facility until a public revenue stream is established to fund the ongoing costs of the public facility.

Proposed recurrent charges contributions must be detailed in the letter of offer for consideration in VPA negotiations, and should include a reasonable contribution toward the ongoing maintenance, or the offer to maintain infrastructure for a certain period of time.

2.10 Application of Section 7.11 and 7.12 of the EP&A Act

A VPA must specify whether local infrastructure contributions under s7.11 or s7.12 of the Act will apply to the development the subject of the VPA, in addition to any development contributions to be provided by the developer and included in the VPA.

The Council will only agree to wholly or partially exclude the application of s7.11 or s7.12 in exceptional circumstances. This is a matter to be negotiated between Council and a developer.

Otherwise, developers should assume that s7.11 and s7.12 will apply to the development.

Where the application of s7.11 of the Act is not excluded by a planning agreement, Council's preferred position is to not agree to a provision allowing benefits under the agreement to be taken into consideration in determining a development contribution under section 7.11.

2.11 Implementation Requirements

Council requires that a VPA includes a plan setting out:

- a) the timetable for the fulfilment of obligations under the VPA;
- b) the design, technical specification and standard of any work required by the VPA to be undertaken;
- c) the manner in which ownership of land or other property to be transferred to Council;
- d) the manner in which a material public benefit is to be made available for its public purpose; and
- e) a warranty period for work, materials, buildings and any other property provided. These warranties must be for a minimum of 12 months for materials and services such as electrical works, and 15 years for structural items.

2.12 Probity

To ensure that the negotiation and consideration of a planning agreement by Council is fair, transparent and uphold public confidence Council will:

- a) Comply with the requirements of the Act, Regulation and this Policy in respect of planning agreements;

- b) Only enter into planning agreements that achieve material public benefits;
- c) Ensure planning agreements are voluntary;
- d) Inform developers about the Council's Statement of Business Ethics;
- e) Ensure any conflicts of interest involving the Council are identified and appropriately managed (for example, it may be appropriate to have assessments undertaken by independent third parties where Council has an interest in the VPA);
- f) Ensure appropriate delegations and separation of roles and responsibilities within Council, including, but not limited to, the following:
 - i. Councillors must not be involved in the preparation or negotiation of any VPA, but will be responsible for resolving whether or not to enter into one;
 - ii. Only Council officers with delegated authority will be involved in the preparation or negotiation of a VPA on behalf of Council ;
 - iii. Council staff with key responsibilities in assessing or providing advice on development applications (or ensuring compliance), will not have a role in the negotiation of a VPA or its conditions, except where advice is required on matters relating to the conditions of consent for a particular proposal;
 - iv. Council will ensure that all discussions with a developer and their consultants are:
 - a. sufficiently documented;
 - b. held at Council offices;
 - c. properly minuted; and
 - d. stored in Council's records management system;
 - v. where Council has a commercial stake in development the subject of a VPA, take appropriate steps to ensure conflicts of interest are avoided or managed appropriately.

2.13 Public Notification Period

The minimum exhibition period for a VPA is 28 days. Ideally, a VPA should be notified at the same time as the application to which the VPA relates.

2.14 Council's costs

The developer is responsible for all costs related to the negotiation and execution of the VPA.

These costs include:

- a) negotiating, preparing, advertising and entering into the VPA (including but not limited to legal fees, consultants, valuers, quantity surveyors fees and Council staff costs);
- b) registration of the VPA on the title of any relevant land; and
- c) enforcement of the VPA.

Prior to Council engaging its lawyers or other consultants, Council will require the developer to pay a cash bond to cover these expenses.

Council's fees and charges set out the minimum fees payable by the developer, however additional costs may be incurred by Council during the negotiation and advertising process. The developer will be advised of any additional costs beforehand. The developer will be required to pay any additional on demand from Council.

In addition, Council will require the developer to provide a security in the form of cash or a bond, which will be negotiated and detailed in the VPA.

2.15 Monitoring and Review

Council will routinely monitor the performance of the developer's obligations under a VPA and report them in accordance with the Act. The developer is required to, at its own cost, report periodically to Council on its compliance with obligations under the VPA. The VPA will contain a provision establishing a mechanism under which the VPA is periodically reviewed.

2.16 Modification and Discharge of Obligations

Council may agree to a provision in a VPA permitting the developer's obligations under the VPA to be modified or discharged in the following circumstances:

- a) the developer's obligations have been fully carried out in accordance with the VPA, or
- b) the development consent to which the VPA relates has lapsed, or
- c) the development consent to which the VPA relates has been modified to such an extent that the obligations may not be appropriate, or
- d) the performance of the VPA has been frustrated by an event or events beyond the reasonable control of the parties, or
- e) other material changes affecting the operation of the VPA have occurred, or
- f) Council and the developer otherwise agree to the modification or discharge of the VPA.

Such a provision will require the modification or revocation of the VPA in accordance with the Act and Regulation.

2.17 Assignment and dealings by the developer

Council will not permit the assignment of any or all of the developer's rights or obligations under the VPA, or the novation of the VPA to a third party, or any dealing in relation to any part or the whole of the land the subject of the VPA unless:

- a) the developer has, at no cost to Council, first procured the execution by the person with whom it is dealing of all necessary documents in favour of Council, by which that person agrees to be bound by the VPA as if they were a party to the original VPA;
- b) if the proposed dealing involves a mortgage, charge or other encumbrance in relation to the party's right, title and interest in the land, Council is satisfied that there remains sufficient unencumbered value in the land to enable Council to realise the value in the land under a charge to Council in the event of a breach. Other parties' interest must not rank above Council's interest in the land;
- c) the developer provides Council with evidence that the proposed assignee, novatee or transferee is reasonably capable of performing the obligation of the VPA;
- d) the party is not in breach of the VPA.

This does not affect the operation of any of the other requirements of the VPA.

2.18 Provision of Security under a VPA

Council will require a VPA to make provision for security to cover the developer's obligations under the VPA. The security amount must be adequate to allow Council to ensure that the relevant material public benefit is made available to meet the need generated by the development. Security requirements and enforcement procedures are set out in the VPA template.

The security requirements are:

1. **Monetary contributions** - to be paid prior to the issuing of any Part 6 Certificate under the Act, usually a subdivision certificate or construction certificate.

2. **Works contributions** - the developer will be required to provide an unconditional bank guarantee in favour of Council or bond that is 125% of the agreed value of each of the works in the VPA. The security must be lodged with Council before a construction certificate is issued for each work. Upon completion of each work, to Council's satisfaction, part of the security equivalent to 100% of the value of the work will be returned to the developer. The remaining 25% of the value of the work will be retained by Council as a security bond. The security bond will be returned after the defects liability period and maintenance periods have expired, and relevant Council staff have certified in writing that all obligations and works have been undertaken and completed to the standard set out in the VPA and any relevant approval.
3. **Land dedication** - Council will require a provision in the VPA allowing Council to compulsorily acquire the land to be dedicated, or transferred for a nominal sum, if the landowner defaults.

2.19 Registration of VPAs

All VPAs will:

1. be registered on the title to the land to which they relate; and
2. contain a provision requiring the developer to provide Council with all documents necessary to register the agreement on the land title, at the time of or before the execution of the VPA.

The Council will only execute a VPA if the developer has provided the Council with the written agreement of each person with an estate or interest in the land in a form sufficient to carry out the registration of the VPA at Land and Property Information. Council will attend to the registration of the agreement at the cost of the developer.

2.20 Dispute Resolution

The VPA template provides the preferred mechanism for the resolution of disputes and the means for the enforcement of the VPA.

2.21 Insurance

Council will include provisions requiring the developer to take out and keep current the following insurances in relation to works in the VPA:

1. contract works insurance
2. public liability insurance
3. workers compensation insurance
4. any other insurance required by law.

3 Definitions

Act means the Environmental Planning and Assessment Act 1979.

Application means a development application or application to modify a development consent or planning proposal.

Council means City of Coffs Harbour.

Developer is a person who has sought a change to an environmental planning instrument (which includes the making, amendment or repeal of an instrument, or who has made or proposes to make a development application, or who has entered into an agreement with or is otherwise associated with such a person.

Development application has the same meaning as in the Act.

Development contribution means the kind of provision made by a developer under a VPA, being a monetary contribution, the dedication of land free of cost, the provision of a material public benefit or a combination of these.

Explanatory note means a written statement that summarises the objectives, the nature and effect of the proposed VPA, amendment or revocation, and contains an assessment of the merits of the proposed VPA, an amendment or revocation including the impact (positive or negative) on the public or any relevant section of the public.

Material Public Benefit means the benefit enjoyed by the public as a consequence of a development contribution.

Planning Authority means City of Coffs Harbour.

Planning benefit means a development contribution that confers a net public benefit, that is, a benefit that exceeds the benefit derived from measures that would address the impacts of particular development on surrounding land or the wider community.

Planning obligation means an obligation imposed by a VPA on a developer requiring the developer to make a development contribution.

Planning proposal has the same meaning as defined in the Act.

Practice Note means the document titled ‘Planning agreements – Practice note – February 2021’ on Planning Agreements published by the NSW Department of Planning, Industry and Environment.

Public include a section of public.

Public facilities means public infrastructure, facilities, amenities and services.

Public purpose is defined in s7.4(2) of the Act to include the provision of, or the recoupment of the cost of providing public amenities and public services, affordable housing, transport or other infrastructure. It also includes the funding of recurrent expenditure relating to such things as the monitoring of the planning impacts of development and the conservation or enhancement of the natural environment.

Regulation means the Environmental Planning and Assessment Regulation 2021.

Voluntary Planning Agreement (VPA) has the same meaning as planning agreements defined in the Act.

4 Key Responsibilities

Position	Directorate	Responsibility
Mayor	Council	To lead Councillors in their understanding of, and compliance with this policy.
General Manger	Executive	To lead staff (either directly or through delegated authority) in their understanding of, and compliance with this policy.
Directors	All Directorates	To communicate, implement and comply with this policy.
All Council Officials	Council	To abide by and comply with this policy when considering a VPA offer through the planning processes.

5 References

- Environmental Planning and Assessment Act 1979
- Environmental Planning and Assessment Regulation 2021
- Planning agreements – Practice note – February 2021 published by Department of Planning, Industry and Environment

6 Details of Approval and revision

- **Approval date:** 26/09/2022
- **Responsible Group:** Financial Services and Logistics Group
- **Responsible Section:** Financial Planning
- **Superseded policies/procedures:**
- **Next review date:** 28/08/2025

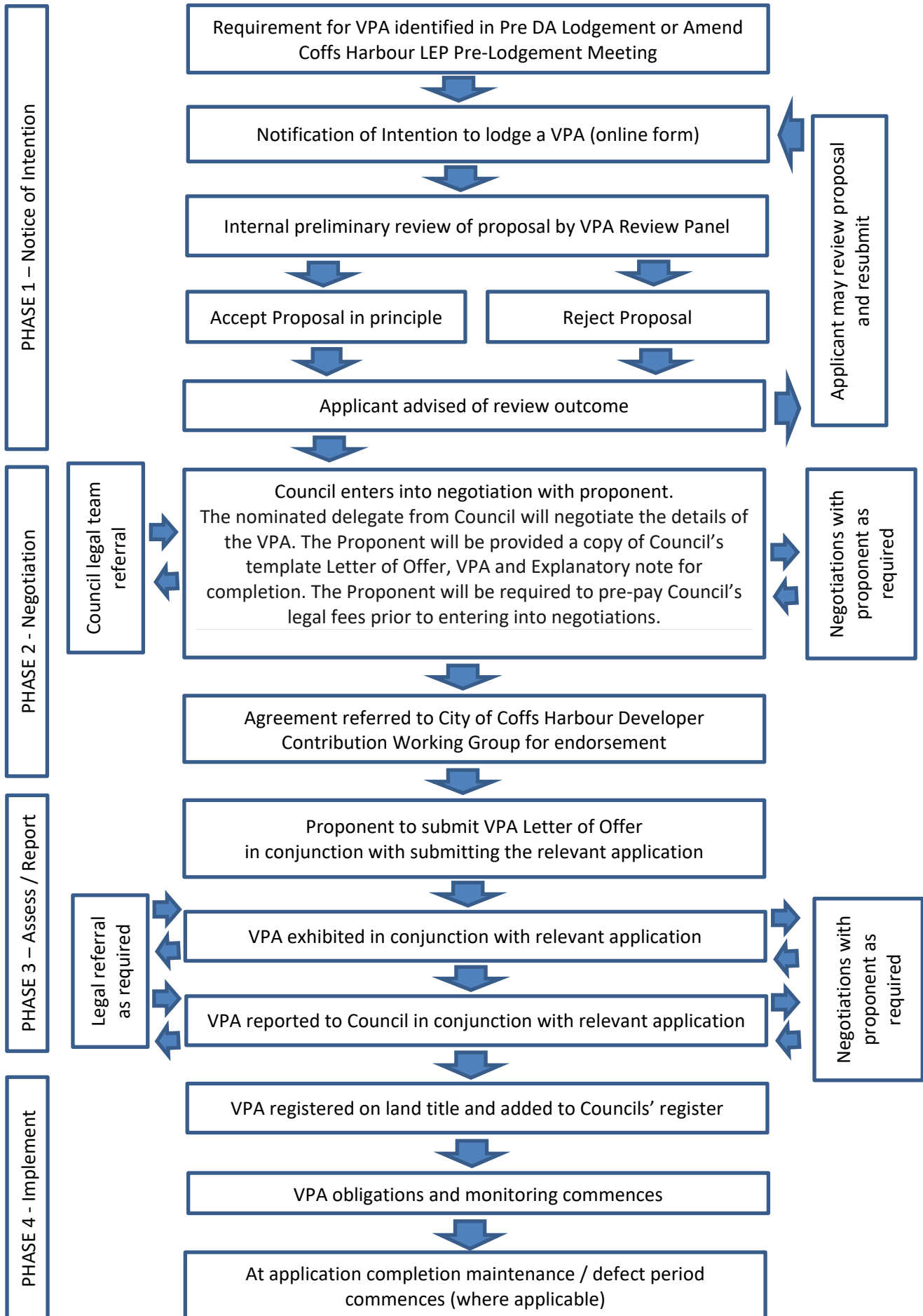
Table of amendments

Amendment	Authoriser	Approval ref	Date
Policy reviewed and amendments made in accordance with practice note and legislation. Also updates to the process based on internal review, attachment A added and attachments C and D updated to reflect new template.	Council	2022/225	26/09/2022

7 Appendices

- Attachment A – VPA process flow chart
- Attachment B – Potential Public Benefits
- Attachment C – Voluntary Planning Agreement Template
- Attachment D - Explanatory Note Template

7.1 Attachment A – VPA process flow chart



7.2 Attachment B – Potential Public Benefits

Possible requirements:

The following table lists examples of public benefits that VPAs may seek to achieve. The list is not exhaustive and developers are encouraged to discuss other public benefits with the Council.

Infrastructure	<ul style="list-style-type: none"> Accessibility improvements – accessible parking, kerb ramps, modifications to public buildings or areas Roads – design and construction Open space – parks, public places, embellishment Drainage and stormwater controls Traffic measures Transport outcomes Pedestrian and cycleway linkages and footpaths Telecommunication networks Power, water, gas Communications and information technology such as WIFI public space Bridges (vehicular and pedestrian) Flood management / mitigation works
Facilities	<ul style="list-style-type: none"> Community buildings – e.g. meeting rooms, halls, libraries Child care centres Public toilets Youth spaces Public leisure facilities Performance spaces Civic spaces Public car parking areas and commuter parking Bus shelters Family care facilities Sport, recreation and activity centres Business, research and creative industries incubator space and ancillary uses Affordable Housing
Public domain improvements	<ul style="list-style-type: none"> Paving – paths, streets and open space areas Plantings – streets and open space areas Furniture – seats, bins Banners Public art in streets, open space and other public domain space Kerbs and gutters Treatment and/or features in public places Facilities such as kiosk in parks and open spaces Turf Public leisure, sport and recreation facilities Environmental management improvements such as water and energy minimising devices Restoration and management of natural areas including beaches, bushland, creeks and lagoons

	<p>Water quality devices</p> <p>Water bubblers, lockers and other amenities</p> <p>Signage including suburb identification, way finding, parking, interpretation and information signs for pedestrians, cyclists and vehicular users</p>
Other	<p>Monetary contributions</p> <p>Land, such as dedications for parks, facilities, pedestrian connectivity and new roads</p> <p>Contributions for the development of community facilities plans and cultural facilities plans</p> <p>Aboriginal site protection</p> <p>Other benefits in line with Council plans and strategies - including plans of management, flood plan management plans, traffic and transport plans, masterplans, development control plans, local environmental plans and the management plan</p> <p>Maintenance/Rehabilitation in perpetuity – e.g. pest control and bush regeneration</p> <p>Other public benefits that provide a positive planning outcome for the people of Coffs Harbour and meet the objectives of the Act</p>

7.3 Attachment C – Voluntary Planning Agreement Template

Deed

[Insert Name of Planning Agreement]

Planning Agreement

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

[Drafting Note: Under section 203 of the *Environmental Planning and Assessment Regulation 2021*, Council must consider the Planning Secretary’s Practice Note for Planning Agreements (February 2021) when negotiating or entering into a planning agreement]

City of Coffs Harbour

[Insert Name of Developer]

[Insert Name of Party 3]

Date:

[Insert Date]

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Summary Sheet

Council:

Name: City of Coffs Harbour ABN 79 126 214 487
Address: Corner of Coff and Castle Street, Coffs Harbour NSW 2450
Telephone: (02) 6648 4000
Email: coffs.council@chcc.nsw.gov.au
Representative: [Insert Details]

Developer:

Name: [Insert Details]
Address: [Insert Details]
Telephone: [Insert Details]
Email: [Insert Details]
Representative: [Insert Details]

Landowner:

Name: [Insert Name]
Address: [Insert Details]
Telephone: [Insert Details]
Email: [Insert Details]
Representative: [Insert Details]

Land:

See definition of *Land* in clause 1.1.

Development:

See definition of *Development* in clause 1.1.

Development Contributions:

See Clause 9 and Schedule 1.

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

See clause 8.

Security:

See Part 4.

Registration:

See clause 33.

Restriction on dealings:

See clause 34.

Dispute Resolution:

See Part 3.

[Insert Name of Planning Agreement]

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

Parties

City of Coffs Harbour ABN 79 126 214 487 of Corner of Coff and Castle Street, Coffs Harbour NSW 2450
(Council)
and

[Insert Name of Party 2] ACN [insert ACN] of [Insert Address] (Developer)
and

[Insert Name of Party 3] ACN [insert ACN] of [Insert Address] (Landowner)

[Drafting Notes:

1. If the Developer is not the owner of land required to be dedicated or on which works are to be carried out, the landowner must be a party.
2. A person otherwise associated with the developer can also be an additional party to the deed if necessary or desirable in the circumstances.]

Background

A [Drafting note: Provide a brief background to the Development and this Deed.]

Operative provisions

Part 1 - Preliminary

1 Interpretation

1.1 In this Deed the following definitions apply:

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

Approval includes approval, consent, licence, permission or the like.

Authority means the Commonwealth or New South Wales government, a Minister of the Crown, a government department, a public authority established by or under any Act, a council or county council constituted under the *Local Government Act 1993*, or a person or body exercising functions under any Act including a commission, panel, court, tribunal and the like.

Bank Guarantee means an irrevocable and unconditional undertaking without any expiry or end date in favour of the Council to pay an amount or amounts of money to the Council on demand issued by:

- (a) one of the following trading banks:
 - (i) Australia and New Zealand Banking Group Limited,
 - (ii) Commonwealth Bank of Australia,



- (iii) Macquarie Bank Limited,
- (iv) National Australia Bank Limited,
- (iv) St George Bank Limited,
- (v) Westpac Banking Corporation, or

(b) any other financial institution approved by the Council in its absolute discretion.

Charge means the charge referred to in clause 25.1.

Charge Land means [Drafting Note. Insert land description].

Claim includes a claim, demand, remedy, suit, injury, damage, loss, Cost, liability, action, proceeding or right of action.

Contribution Value means the \$ amount agreed between the Parties as the value of a Development Contribution made under this Deed.

Cost means a cost, charge, expense, outgoing, payment, fee and other expenditure of any nature.

Deed means this Deed and includes any schedules, annexures and appendices to this Deed.

Defect means anything that adversely affects, or is likely to adversely affect, the appearance, structural integrity, functionality or use or enjoyment of a Work or any part of a Work.

Defects Liability Period means the period of 1 year commencing on the day immediately after a Work is completed for the purposes of this Deed.

Development means [Drafting Note. Insert description of the development to which this Deed relates. The description can refer to a specific development application. The description can be included in a schedule to this Deed if appropriate].

Development Application has the same meaning as in the Act.

Development Consent has the same meaning as in the Act.

Development Contribution means a monetary contribution, the dedication of land free of cost, the carrying out of work, or the provision of any other material public benefit, or any combination of them, to be used for, or applied towards a public purpose, but does not include any Security or other benefit provided by a Party to the Council to secure the enforcement of that Party's obligations under this Deed for the purposes of s7.4(3)(g) of the Act.

Dispute means a dispute or difference between the Parties under or in relation to this Deed.

Equipment means any equipment, apparatus, vehicle or other equipment or thing to be used by or on behalf of the Developer in connection with the performance of its obligations under this Deed.

Final Lot means a lot created in the Development for separate residential occupation and disposition or a lot of a kind or created for a purpose that is otherwise agreed by the Parties, not being a lot created by a subdivision of the Land:

- (a) that is to be dedicated or otherwise transferred to the Council, or
- (b) on which is situated a dwelling-house that was in existence on the date of this Deed.

GST has the same meaning as in the GST Law.

GST Law has the same meaning as in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any other Act or regulation relating to the imposition or administration of the GST.

Item means specified in Column 1 of Schedule 1.

Just Terms Act means the *Land Acquisition (Just Terms Compensation) Act 1991*.

Land means [Drafting Note. Insert description of the land to which this Deed relates. This can be done by reference to title or to a map or by other means as appropriate. The description of the land can be included in a schedule to this Deed if appropriate. If a map is used, *Map* should be a defined term in this clause].

Maintain, in relation to a Work, means keep in a good state of repair and working order, and includes repair of any damage to the Work.

Party means a party to this Deed.

Rectification Notice means a notice in writing:

- (a) identifying the nature and extent of a Defect,
- (b) specifying the works or actions that are required to Rectify the Defect,
- (c) specifying the date by which or the period within which the Defect is to be rectified.

Rectify means rectify, remedy or correct.

Regulation means the *Environmental Planning and Assessment Regulation 2021*.

Security means a Bank Guarantee, or a bond or other form of security to the satisfaction of the Council indexed in accordance with [Drafting Note. Insert indexation method] from the date of this Deed.

Stage means a stage of the Development approved by a Development Consent or otherwise approved in writing by the Council for the purposes of this Deed.

Subdivision Certificate has the same meaning as in the Act.

Work means the physical result of any building, engineering or construction work in, on, over or under land.

- 1.2 In the interpretation of this Deed, the following provisions apply unless the context otherwise requires:
- 1.2.1 Headings are inserted for convenience only and do not affect the interpretation of this Deed.
 - 1.2.2 A reference in this Deed to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
 - 1.2.3 If the day on which any act, matter or thing is to be done under this Deed is not a business day, the act, matter or thing must be done on the next business day.
 - 1.2.4 A reference in this Deed to dollars or \$ means Australian dollars and all amounts payable under this Deed are payable in Australian dollars.
 - 1.2.5 A reference in this Deed to a \$ value relating to a Development Contribution is a reference to the value exclusive of GST.
 - 1.2.6 A reference in this Deed to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
 - 1.2.7 A reference in this Deed to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
 - 1.2.8 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Deed.
 - 1.2.9 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
 - 1.2.10 Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
 - 1.2.11 A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
 - 1.2.12 References to the word 'include' or 'including' are to be construed without limitation.
 - 1.2.13 A reference to this Deed includes the agreement recorded in this Deed.
 - 1.2.14 A reference to a Party to this Deed includes a reference to the employees, agents and contractors of the Party, the Party's successors and assigns.
 - 1.2.15 A reference to 'dedicate' or 'dedication' in relation to land is a reference to dedicate or dedication free of cost.
 - 1.2.16 Any schedules, appendices and attachments form part of this Deed.
 - 1.2.17 Notes appearing in this Deed are operative provisions of this Deed.

2 Status of this Deed

- 2.1 This Deed is a planning agreement within the meaning of s7.4(1) of the Act.

3 Commencement

- 3.1 This Deed commences and has force and effect on and from the date when the Parties have:
- 3.1.1 both executed the same copy of this Deed, or
 - 3.1.2 each executed separate counterparts of this Deed and exchanged the counterparts.
- 3.2 The Parties are to insert the date when this Deed commences on the front page and on the execution page.

4 Application of this Deed

- 4.1 This Deed applies to the Land and to the Development.

5 Warranties

- 5.1 The Parties warrant to each other that they:
- 5.1.1 have full capacity to enter into this Deed, and
 - 5.1.2 are able to fully comply with their obligations under this Deed.

6 Further agreements

- 6.1 The Parties may, at any time and from time to time, enter into agreements relating to the subject-matter of this Deed that are not inconsistent with this Deed for the purpose of implementing this Deed.

7 Surrender of right of appeal, etc.

- 7.1 The Developer is not to commence or maintain, or to cause or procure the commencement or maintenance, of any proceedings in any court or tribunal or similar body appealing against, or questioning the validity of this Deed, or an Approval relating to the Development in so far as the subject-matter of the proceedings relates to this Deed.

8 Application of s7.11, s7.12 and s7.24 of the Act to the Development

- 8.1 This Deed [excludes/does not exclude]* [Drafting Note. Delete whichever is not applicable] the application of s7.11 to the Development.

[Drafting Note 1. The Deed may wholly or partially exclude the application of s7.11. If only partially, particulars of the exclusion must be provided.]

[Drafting Note 2. If the Deed does not wholly exclude the application of s7.11, a clause is required to stipulate whether any benefits under this Deed should be taken into consideration when determining a development contribution under s7.11 of the Act in relation to the Development.]

- 8.2 This Deed [excludes/does not exclude]* [Drafting Note. Delete whichever is not applicable] the application of s7.12 to the Development.

[Drafting Note. The Deed may wholly or partially exclude the application of s7.12. If so, particulars of the exclusion must be provided.]

- 8.3 This Deed does not exclude the application of s7.24 to the Development.

Part 2 – Development Contributions

9 Provision of Development Contributions

- 9.1 The Developer is to make Development Contributions to the Council in accordance with Schedule 1, any other provision of this Deed relating to the making of Development Contributions and otherwise to the satisfaction of the Council.
- 9.2 Any Contribution Value specified in this Deed in relation to a Development Contribution does not serve to define the extent of the Developer's obligation to make the Development Contribution.
- 9.3 The Council is to apply each Development Contribution made by the Developer under this Deed towards the public purpose for which it is made and otherwise in accordance with this Deed.
- 9.4 Despite clause 9.2, the Council may apply a Development Contribution made under this Deed towards a public purpose other than the public purpose specified in this Deed if the Council reasonably considers that the public interest would be better served by applying the Development Contribution towards that other purpose rather than the purpose so specified.

10 Payment of monetary Development Contributions

- 10.1 A monetary Development Contribution is made for the purposes of this Deed when the Council receives the full amount of the contribution payable under this Deed in cash or by unendorsed bank cheque or by the deposit by means of electronic funds transfer of cleared funds into a bank account nominated by the Council.
- 10.2 If the Development Consent is modified to allow for additional [Drafting Note. Insert relevant details e.g. dwellings/Final Lots] after [Drafting Note. Insert timing, which may, for example, be the issuing of the first relevant Part 4A certificate e.g. Construction Certificate/Subdivision Certificate] for the Development, the Developer is to pay monetary Development Contributions to the Council for the additional [Drafting Note. Insert relevant details e.g. dwellings/Final Lots] not later than 7 days after the Development Consent has been modified.

11 Dedication of land

- 11.1 A Development Contribution comprising the dedication of land is made for the purposes of this Deed when:
- 11.1.1 a deposited plan is registered in the register of plans held with the Registrar-General that dedicates land as a public road (including a temporary public road) under the *Roads Act 1993* or creates a public reserve or drainage reserve under the *Local Government Act 1993*, or
- 11.1.2 the Council is given:
- an instrument in registrable form under the *Real Property Act 1900* duly executed by the Developer as transferor that is effective to transfer the title to the land to the Council when executed by the Council as transferee and registered,
 - the written consent to the registration of the transfer of any person whose consent is required to that registration, and
 - a written undertaking from any person holding the certificate of title to the production of the certificate of title for the purposes of registration of the transfer.
- 11.2 The Developer is to do all things reasonably necessary to enable registration of the instrument of transfer to occur.
- 11.3 The Developer is to ensure that land dedicated to the Council under this Deed is free of all encumbrances and affectations (whether registered or unregistered and including without limitation

any charge or liability for rates, taxes and charges) except as otherwise agreed in writing by the Council.

- 11.4 If, having used all reasonable endeavours, the Developer cannot ensure that land to be dedicated to the Council under this Deed is free from all encumbrances and affectations, the Developer may request that Council agree to accept the land subject to those encumbrances and affectations, but the Council may withhold its agreement in its absolute discretion.
- 11.5 Despite any other provision of this Deed, if the Developer is required to dedicate land to the Council on which the Developer is also required to carry out a Work under this Deed, the Developer is to comply with clause 11.1.2 not later than 7 days after the Work is completed for the purposes of this Deed.

12 Carrying out of Work

- 12.1 Without limiting any other provision of this Deed, any Work that is required to be carried out by the Developer under this Deed is to be carried out in accordance with any design or specification specified or approved by the Council, any relevant Approval and any other applicable law.
- 12.2 The Developer, at its own cost, is to comply with any reasonable direction given to it by the Council to prepare or modify a design or specification relating to a Work that the Developer is required to carry out under this Deed.

13 Variation to Work

- 13.1 The design or specification of any Work that is required to be carried out by the Developer under this Deed may be varied by agreement in writing between the Parties, acting reasonably, without the necessity for an amendment to this Deed
- 13.2 Without limiting clause 13.1, the Developer may make a written request to the Council to approve a variation to the design or specification of a Work in order to enable it to comply with the requirements of any Authority imposed in connection with any Approval relating to the carrying out of the Work.
- 13.3 The Council is not to unreasonably delay or withhold its approval to a request made by the Developer under clause 13.2.
- 13.4 The Council, acting reasonably, may from time to time give a written direction to the Developer requiring it to vary the design or specification of a Work before the Work is carried out in a specified manner and submit the variation to the Council for approval.
- 13.5 The Developer is to comply promptly with a direction referred to in clause 13.4 at its own cost.

14 Access to land by Developer

- 14.1 The Council authorises the Developer to enter, occupy and use [Drafting Note. Specify particular land owned or controlled by the Council] for the purpose of performing its obligations under this Deed.
- 14.2 The Council is to permit the Developer, upon receiving reasonable prior notice from the Developer, to enter any other Council owned or controlled land in order to enable the Developer to properly perform its obligations under this Deed.
- 14.3 Nothing in this Deed creates or gives the Developer any estate or interest in any part of the land referred to in clause 14.1 or 14.2.

15 Access to land by Council

- 15.1 The Council may enter any land on which Work is being carried out by the Developer under this Deed in order to inspect, examine or test the Work, or to remedy any breach by the Developer of its obligations under this Deed relating to the Work.

15.2 The Council is to give the Developer prior reasonable notice before it enters land under clause 15.1.

16 Protection of people, property & utilities

16.1 The Developer is to ensure to the fullest extent reasonably practicable in relation to the performance of its obligations under this Deed that:

16.1.1 all necessary measures are taken to protect people and property,

16.1.2 unnecessary interference with the passage of people and vehicles is avoided, and

16.1.3 nuisances and unreasonable noise and disturbances are prevented.

16.2 Without limiting clause 16.2, the Developer is not to obstruct, interfere with, impair or damage any public road, public footpath, public cycleway or other public thoroughfare, or any pipe, conduit, drain, watercourse or other public utility or service on any land except as authorised in writing by the Council or any relevant Authority.

17 Repair of damage

17.1 The Developer is to maintain any Work required to be carried out by the Developer under this Deed until the Work is completed for the purposes of this Deed or such later time as agreed between the Parties.

17.2 The Developer is to carry out its obligation under clause 17.1 at its own cost and to the satisfaction of the Council.

18 Completion of Work

18.1 The Developer is to give the Council written notice of the date on which it will complete Work required to be carried out under this Deed or any Stage.

18.2 The Council is to inspect the Work the subject of the notice referred to in clause 18.1 within 14 days of the date specified in the notice for completion of the Work.

18.3 Work required to be carried out by the Developer under this Deed, or a Stage, is completed for the purposes of this Deed when the Council, acting reasonably, gives a written notice to the Developer to that effect.

18.4 If the Council is the owner of the land on which Work the subject of a notice referred to in clause 18.3 is issued, the Council assumes responsibility for the Work upon the issuing of the notice, but if it is not the owner at that time, it assumes that responsibility when it later becomes the owner.

18.5 Before the Council gives the Developer a notice referred to in clause 18.3, it may give the Developer a written direction to complete, rectify or repair any specified part of the Work to the reasonable satisfaction of the Council.

18.6 The Developer, at its own cost, is to promptly comply with a direction referred to in clause 18.5.

19 Rectification of defects

19.1 The Council may give the Developer a Rectification Notice during the Defects Liability Period.

19.2 The Developer, at its own cost, is to comply with a Rectification Notice according to its terms and to the reasonable satisfaction of the Council.

19.3 The Council is to do such things as are reasonably necessary to enable the Developer to comply with a Rectification Notice that has been given to it under clause 19.1

20 Works-As-Executed-Plan

- 20.1 No later than 60 days after Work is completed for the purposes of this Deed, the Developer is to submit to the Council a full works-as-executed-plan in respect of the Work.
- 20.2 The Developer, being the copyright owner in the plan referred to in clause 20.1, gives the Council a non-exclusive licence to use the copyright in the plans for the purposes of this Deed.

21 Removal of Equipment

- 21.1 When Work on any Council owned or controlled land is completed for the purposes of this Deed, the Developer, without delay, is to:
- 21.1.1 remove any Equipment from Land and make good any damage or disturbance to the land as a result of that removal, and
- 21.1.2 leave the land in a neat and tidy state, clean and free of rubbish.

Part 3 – Dispute Resolution

22 Dispute resolution – expert determination

- 22.1 This clause applies to a Dispute between any of the Parties to this Deed concerning a matter arising in connection with this Deed that can be determined by an appropriately qualified expert if:
- 22.1.1 the Parties to the Dispute agree that it can be so determined, or
- 22.1.2 the Chief Executive Officer of the professional body that represents persons who appear to have the relevant expertise to determine the Dispute gives a written opinion that the Dispute can be determined by a member of that body.
- 22.2 A Dispute to which this clause applies is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 22.3 If a notice is given under clause 22.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 22.4 If the Dispute is not resolved within a further 28 days, the Dispute is to be referred to the President of the NSW Law Society to appoint an expert for expert determination.
- 22.5 The expert determination is binding on the Parties except in the case of fraud or misfeasance by the expert.
- 22.6 Each Party is to bear its own costs arising from or in connection with the appointment of the expert and the expert determination.
- 22.7 The Parties are to share equally the costs of the President, the expert, and the expert determination.

23 Dispute Resolution - mediation

- 23.1 This clause applies to any Dispute arising in connection with this Deed other than a Dispute to which clause 22 applies.
- 23.2 Such a Dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 23.3 If a notice is given under clause 23.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.



- 23.4 If the Dispute is not resolved within a further 28 days, the Parties are to mediate the Dispute in accordance with the Mediation Rules of the Law Society of New South Wales published from time to time and are to request the President of the Law Society to select a mediator.
- 23.5 If the Dispute is not resolved by mediation within a further 28 days, or such longer period as may be necessary to allow any mediation process which has been commenced to be completed, then the Parties may exercise their legal rights in relation to the Dispute, including by the commencement of legal proceedings in a court of competent jurisdiction in New South Wales.
- 23.6 Each Party is to bear its own costs arising from or in connection with the appointment of a mediator and the mediation.
- 23.7 The Parties are to share equally the costs of the President, the mediator, and the mediation.

Part 4 - Enforcement

24 Security for performance of obligations

- 24.1 The Developer is to provide Security to the Council in the amount of [Drafting Note. Insert \$ amount] in relation to the performance of its obligations under this Deed.
- 24.2 The Developer is to provide the Security to the Council before it commences any part of the Development unless, before that time, the Council agrees in writing to apportion the Security to different Stages, in which case the Developer is to provide the portion of the Security relating to a particular Stage to the Council before it commences any part of the Development comprised in the Stage.
- 24.3 The Council, in its absolute discretion and despite clause 14, may refuse to allow the Developer to enter, occupy or use any land owned or controlled by the Council or refuse to provide the Developer with any plant, equipment, facilities or assistance relating to the carrying out the Development if the Developer has not provided the Security to the Council in accordance with this Deed.
- 24.4 The Council may call-up and apply the Security in accordance with clause 30 to remedy any breach of this Deed notwithstanding any other remedy it may have under this Deed, under any Act or otherwise at law or in equity.
- 24.5 The Council is to release and return the Security or any unused part of it to the Developer within 14 days of completion of the obligation to which the Security relates.
- 24.6 The Developer may at any time provide the Council with a replacement Security.
- 24.7 On receipt of a replacement Security, the Council is to release and return the Security that has been replaced to the Developer.
- 24.8 If the Council calls-up the Security or any portion of it, it may, by written notice to the Developer, require the Developer to provide a further or replacement Security to ensure that the amount of Security held by the Council equals the amount it is entitled to hold under this Deed.
- 24.9 The Developer is to ensure that the Security provided to the Council is at all times maintained to the full current indexed value.

25 Grant of Charge

- 25.1 On the date of execution of this Deed, the Developer grants to the Council a fixed and specific charge over the Developer's right, title and interest in the Charge Land, to secure:
 - 25.1.1 the performance of the Developer's obligation to make monetary Development Contributions under this Deed, and
 - 25.1.2 any damages that may be payable to the Council, or any costs which may be incurred by the Council in the event of a breach of this Deed by the Developer

- 25.2 Upon the execution of this Deed, the Developer is to give to the Council an instrument in registrable form under the *Real Property Act 1900* duly executed by the Developer that is effective to register the Charge on the title to the Charge Land.
- 25.3 If the Charge Land comprises part only of a lot in a deposited plan at the time that the instrument referred to in clause 25.2 is required to be given, the Developer is to give the Council an instrument that charges a greater area of the Land which includes the whole of the Charge Land.
- 25.4 The Developer is to do all other things necessary, including execute all other documents, to allow for the registration of the Charge.

26 Caveat and Discharge

- 26.1 The Developer agrees that:
- 26.1.1 the Council may lodge a caveat on the title of the Land to which the Charge applies,
- 26.1.2 the Council is to release the caveat from any part of the Land to which the Charge applies that is not the Charge Land once that part of the Land is contained in a separate lot to the Charge Land, and
- 26.1.3 the Council cannot be required to have the caveat removed from the title to the Charge Land other than in accordance with clause 26.2.
- 26.2 In order to enable Final Lots to be sold, the Council is to release the Charge and withdraw the caveat from the title to any Final Lot on satisfaction by the Developer of its obligations under this Deed to make Development Contributions in respect of the creation of the lot.
- 26.3 For the purposes of clause 26.2 the Council is to use its reasonable endeavours to provide any documentation necessary to enable the release of the Charge and withdrawal of the caveat from the title of a Final Lot on or immediately prior to the date for settlement of the sale of that lot.
- 26.4 Nothing in this Deed prevents the registration of a plan of subdivision in respect of the Charge Land nor the creation of a Final Lot from the Charge Land.

27 Priority

- 27.1 The Developer is not to create any mortgage or charge over the Charge Land or grant any other interest in the Charge Land ranking in priority equal with or ahead of the Charge created under this Deed without the prior written approval of the Council.

28 Acquisition of land required for Work

- 28.1 This clause applies if, by [Drafting Note. Insert Date], the Developer is not the owner of all of the land on which the Work described in Item [Drafting Note. Insert Item number from Table in Schedule 1] of Schedule 1 will be carried out.
- 28.2 Not later than [Drafting Note. Insert Date], the Developer is to notify the Council in writing that it is not the owner of all of the land on which the Work referred to in clause 28.1 will be carried out.
- 28.3 A notice under clause 28.2 is to be accompanied by Security separate to the Security referred to in clause 24 in the amount of \$[Drafting Note. Insert Amount].
- 28.4 As soon as practicable after receipt of both the notice referred to in clause 28.2 and the Security referred to in clause 28.3, the Council is to consider a report on whether it should acquire the land not owned by the Developer on which the Work referred to in clause 28.1 will be carried out.
- 28.5 Within 14 days of receipt of a written notice from the Council, the Developer is to pay to the Council:
- 28.5.1 the Council's costs, as specified in the notice, of and incidental to an acquisition of land not owned by the Developer on which the Work referred to in clause 28.1 will be carried out, and

- 28.5.2 the amount of any compensation paid by the Council in relation to the acquisition.
- 28.6 The Developer is not to question the amounts specified in a notice referred to in clause 28.5.
- 28.7 The Council may call on the Security referred to in clause 28.3 if the Developer is in breach of clause 28.5.
- 28.8 The Council is to return the Security referred to in clause 28.3 to the Developer if and when the Developer complies with clause 28.5.
- 28.9 The Council may recover in any court of competent jurisdiction the difference between its costs of and incidental to the acquisition referred to in clause 28.5 together with the amount of any compensation paid by the Council in relation to that acquisition and the amount of the Security referred to in clause 28.3 as called upon under clause 28.7.

29 Acquisition of land required to be dedicated

- 29.1 If the Developer does not dedicate land required to be dedicated under this Deed at the time at which it is required to be dedicated, the Developer consents to the Council compulsorily acquiring the land for compensation in the amount of \$1 without having to follow the pre-acquisition procedure under the Just Terms Act.
- 29.2 The Council is to only acquire land pursuant to clause 29.1 if it considers it reasonable to do so having regard to the circumstances surrounding the failure by the Developer to dedicate the land required to be dedicated under this Deed.
- 29.3 Clause 29.1 constitutes an agreement for the purposes of s30 of the Just Terms Act.
- 29.4 If, as a result of the acquisition referred to in clause 29.1, the Council is required to pay compensation to any person other than the Developer, the Developer is to reimburse the Council that amount, upon a written request being made by the Council, or the Council can call on any Security provided under clause 24.
- 29.5 The Developer indemnifies and keeps indemnified the Council against all Claims made against the Council as a result of any acquisition by the Council of the whole or any part of the land concerned except if, and to the extent that, the Claim arises because of the Council's negligence or default.
- 29.6 The Developer is to promptly do all things necessary, and consents to the Council doing all things necessary, to give effect to this clause 29, including without limitation:
- 29.6.1 signing any documents or forms,
 - 29.6.2 giving land owner's consent for lodgement of any Development Application,
 - 29.6.3 producing certificates of title to the Registrar-General under the *Real Property Act 1900*, and
 - 29.6.4 paying the Council's costs arising under this clause 29.

30 Breach of obligations

- 30.1 If the Council reasonably considers that the Developer is in breach of any obligation under this Deed, it may give a written notice to the Developer:
- 30.1.1 specifying the nature and extent of the breach,
 - 30.1.2 **requiring the Developer to:**
 - (a) rectify the breach if it reasonably considers it is capable of rectification, or
 - (b) pay compensation to the reasonable satisfaction of the Council in lieu of rectifying the breach if it reasonably considers the breach is not capable of rectification,
 - 30.1.3 **specifying the period within which the breach is to be rectified or compensation paid, being a period that is reasonable in the circumstances.**

- 30.2 If the Developer fails to fully comply with a notice referred to in clause 30.1, the Council may, without further notice to the Developer, call-up the Security provided by the Developer under this Deed and apply it to remedy the Developer's breach.
- 30.3 If the Developer fails to comply with a notice given under clause 30.1 relating to the carrying out of Work under this Deed, the Council may step-in and remedy the breach and may enter, occupy and use any land owned or controlled by the Developer and any Equipment on such land for that purpose.
- 30.4 Any costs incurred by the Council in remedying a breach in accordance with clause 30.2 or clause 30.3 may be recovered by the Council by either or a combination of the following means:
- 30.4.1 by calling-up and applying the Security provided by the Developer under this Deed, or
- 30.4.2 as a debt due in a court of competent jurisdiction.
- 30.5 For the purpose of clause 30.4, the Council's costs of remedying a breach the subject of a notice given under clause 30.1 include, but are not limited to:
- 30.5.1 the costs of the Council's employees, agents and contractors reasonably incurred for that purpose,
- 30.5.2 all fees and charges necessarily or reasonably incurred by the Council in remedying the breach, and
- 30.5.3 all legal costs and expenses reasonably incurred by the Council, by reason of the breach.
- 30.6 Nothing in this clause 30 prevents the Council from exercising any rights it may have at law or in equity in relation to a breach of this Deed by the Developer, including but not limited to seeking relief in an appropriate court.

31 Enforcement in a court of competent jurisdiction

- 31.1 Without limiting any other provision of this Deed, the Parties may enforce this Deed in any court of competent jurisdiction.
- 31.2 For the avoidance of doubt, nothing in this Deed prevents:
- 31.2.1 a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Deed or any matter to which this Deed relates, or
- 31.2.2 the Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Deed or any matter to which this Deed relates.

Part 5 – Registration & Restriction on Dealings

32 Registration of this Deed

- 32.1 The Parties agree to register this Deed for the purposes of s7.6(1) of the Act.
- 32.2 Upon commencement of this Deed, the Developer is to deliver to the Council in registrable form:
- 32.2.1 an instrument requesting registration of this Deed on the title to the Land duly executed by the Developer, and
- 32.2.2 the written irrevocable consent of each person referred to in s7.6(1) of the Act to that registration.
- 32.3 The Developer is to do such other things as are reasonably necessary to enable registration of this Deed to occur.

- 32.4 The Parties are to do such things as are reasonably necessary to remove any notation relating to this Deed from the title to the Land:
- 32.4.1 in so far as the part of the Land concerned is a Final Lot,
- 32.4.2 in relation to any other part of the Land, once the Developer has completed its obligations under this Deed to the reasonable satisfaction of the Council or this Deed is terminated or otherwise comes to an end for any other reason.

33 Restriction on dealings

- 33.1 The Developer is not to:
- 33.1.1 sell or transfer the Land, other than a Final Lot, or
- 33.1.2 assign the Developer's rights or obligations under this Deed, or novate this Deed, to any person unless:
- 33.1.3 the Developer has, at no cost to the Council, first procured the execution by the person to whom the Land or part is to be sold or transferred or the Developer's rights or obligations under this Deed are to be assigned or novated, of a deed in favour of the Council on terms reasonably satisfactory to the Council, and
- 33.1.4 the Council has given written notice to the Developer stating that it reasonably considers that the purchaser, transferee, assignee or novatee, is reasonably capable of performing its obligations under this Deed, and
- 33.1.5 the Developer is not in breach of this Deed, and
- 33.1.6 the Council otherwise consents to the transfer, assignment or novation, such consent not to be unreasonably withheld.
- 33.2 Subject to clause 33.3, the Developer acknowledges and agrees that it remains liable to fully perform its obligations under this Deed unless and until it has complied with its obligations under clause 33.1.
- 33.3 Clause 33.1 does not apply in relation to any sale or transfer of the Land if this Deed is registered on the title to the Land at the time of the sale.

Part 6 – Indemnities & Insurance

34 Risk

- 34.1 The Developer performs this Deed at its own risk and its own cost.

35 Release

- 35.1 The Developer releases the Council from any Claim it may have against the Council arising in connection with the performance of the Developer's obligations under this Deed except if, and to the extent that, the Claim arises because of the Council's negligence or default.

36 Indemnity

- 36.1 The Developer indemnifies the Council from and against all Claims that may be sustained, suffered, recovered or made against the Council arising in connection with the performance of the Developer's obligations under this Deed except if, and to the extent that, the Claim arises because of the Council's negligence or default.

37 Insurance

- 37.1 The Developer is to take out and keep current to the satisfaction of the Council the following insurances in relation to Work required to be carried out by the Developer under this Deed up until the Work is taken to have been completed in accordance with this Deed:
- 37.1.1 contract works insurance, noting the Council as an interested party, for the full replacement value of the Works (including the cost of demolition and removal of debris, consultants' fees and authorities' fees), to cover the Developer's liability in respect of damage to or destruction of the Works,
 - 37.1.2 public liability insurance for at least \$20,000,000.00 for a single occurrence, which covers the Council, the Developer and any subcontractor of the Developer, for liability to any third party,
 - 37.1.3 workers compensation insurance as required by law, and
 - 37.1.4 any other insurance required by law.
- 37.2 If the Developer fails to comply with clause 37.1, the Council may effect and keep in force such insurances and pay such premiums as may be necessary for that purpose and the amount so paid shall be a debt due from the Developer to the Council and may be recovered by the Council as it deems appropriate including:
- 37.2.1 by calling upon the Security provided by the Developer to the Council under this Deed, or
 - 37.2.2 recovery as a debt due in a court of competent jurisdiction.
- 37.3 The Developer is not to commence to carry out any Work unless it has first provided to the Council satisfactory written evidence of all of the insurances specified in clause 37.1.

Part 7 – Other Provisions

38 Annual report by Developer

- 38.1 The Developer is to provide to the Council by not later than each anniversary of the date on which this Deed is entered into a report detailing the performance of its obligations under this Deed.
- 38.2 The report referred is to be in such a form and to address such matters as required by the Council from time to time.

39 Review of Deed

- 39.1 The Parties agree to review this Deed every **[Drafting Note. Insert number]** years, and otherwise if either party is of the opinion that any change of circumstance has occurred, or is imminent, that materially affects the operation of this Deed.
- 39.2 For the purposes of clause 39.1, the relevant changes include (but are not limited to) any change to a law that restricts or prohibits or enables the Council or any other planning authority to restrict or prohibit any aspect of the Development.

- 39.3 For the purposes of addressing any matter arising from a review of this Deed referred to in clause 39.1, the Parties are to use all reasonable endeavours to agree on and implement appropriate amendments to this Deed.
- 39.4 If this Deed becomes illegal, unenforceable or invalid as a result of any change to a law, the Parties agree to do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Deed is entered into.
- 39.5 A failure by a Party to agree to take action requested by the other Party as a consequence of a review referred to in clause 39.1 (but not 39.4) is not a Dispute for the purposes of this Deed and is not a breach of this Deed.

40 Notices

- 40.1 Any notice, consent, information, application or request that is to or may be given or made to a Party under this Deed is only given or made if it is in writing and sent in one of the following ways:
- 40.1.1 delivered or posted to that Party at its address set out in the Summary Sheet, or
- 40.1.2 emailed to that Party at its email address set out in the Summary Sheet.
- 40.2 If a Party gives the other Party 3 business days' notice of a change of its address or email, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or emailed to the latest address.
- 40.3 Any notice, consent, information, application or request is to be treated as given or made if it is:
- 40.3.1 delivered, when it is left at the relevant address,
- 40.3.2 sent by post, 2 business days after it is posted, or
- 40.3.3 sent by email and the sender does not receive a delivery failure message from the sender's internet service provider within a period of 24 hours of the email being sent.
- 40.4 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, or if on a business day, after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

41 Approvals and Consent

- 41.1 Except as otherwise set out in this Deed, and subject to any statutory obligations, a Party may give or withhold an approval or consent to be given under this Deed in that Party's absolute discretion and subject to any conditions determined by the Party.
- 41.2 A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

42 Costs

- 42.1 The Developer is to pay to the Council the Council's costs related to preparing, negotiating, executing, stamping, registering and removal of registration of this Deed, and any document related to this Deed within 7 days of a written demand by the Council for such payment.
- 42.2 The Developer is also to pay to the Council the Council's reasonable costs of enforcing this Deed within 7 days of a written demand by the Council for such payment.

43 Entire Deed

- 43.1 This Deed contains everything to which the Parties have agreed in relation to the matters it deals with.

- 43.2 No Party can rely on an earlier document, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, before this Deed was executed, except as permitted by law.

44 Further Acts

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

45 Governing Law and Jurisdiction

- 45.1 This Deed is governed by the law of New South Wales.
- 45.2 The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them.
- 45.3 The Parties are not to object to the exercise of jurisdiction by those courts on any basis.

46 Joint and Individual Liability and Benefits

- 46.1 Except as otherwise set out in this Deed:
- 46.1.1 any agreement, covenant, representation or warranty under this Deed by 2 or more persons binds them jointly and each of them individually, and
- 46.1.2 any benefit in favour of 2 or more persons is for the benefit of them jointly and each of them individually.

47 No Fetter

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

48 Illegality

- 48.1 If this Deed or any part of it becomes illegal, unenforceable or invalid as a result of any change to a law, the Parties are to co-operate and do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Deed is entered into.

49 Severability

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

50 Amendment

- 50.1 No amendment of this Deed will be of any force or effect unless it is in writing and signed by the Parties to this Deed in accordance with section 203(5) of the Regulation.

51 Waiver

- 51.1 The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Deed, does not amount to a waiver of any obligation of, or breach of obligation by, another Party.
- 51.2 A waiver by a Party is only effective if it:
- 51.2.1 is in writing,
 - 51.2.2 is addressed to the Party whose obligation or breach of obligation is the subject of the waiver,
 - 51.2.3 specifies the obligation or breach of obligation the subject of the waiver and the conditions, if any, of the waiver,
 - 51.2.4 is signed and dated by the Party giving the waiver.
- 51.3 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.
- 51.4 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 or as an implied waiver of that obligation or breach in relation to any other occasion.
- 51.5 For the purposes of this Deed, an obligation or breach of obligation the subject of a waiver is taken not to have been imposed on, or required to be complied with by, the Party to whom the waiver is given.

52 GST

- 52.1 In this clause:

Adjustment Note, Consideration, GST, GST Group, Margin Scheme, Money, Supply and Tax Invoice have the meaning given by the GST Law.

GST Amount means in relation to a Taxable Supply the amount of GST payable in respect of the Taxable Supply.

GST Law has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Input Tax Credit has the meaning given by the GST Law and a reference to an Input Tax Credit entitlement of a party includes an Input Tax Credit for an acquisition made by that party but to which another member of the same GST Group is entitled under the GST Law.

Taxable Supply has the meaning given by the GST Law excluding (except where expressly agreed otherwise) a supply in respect of which the supplier chooses to apply the Margin Scheme in working out the amount of GST on that supply.

- 52.2 Subject to clause 52.4, if GST is payable on a Taxable Supply made under, by reference to or in connection with this Deed, the Party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.
- 52.3 Clause 52.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Deed to be GST inclusive.
- 52.4 No additional amount shall be payable by the Council under clause 52.2 unless, and only to the extent that, the Council (acting reasonably and in accordance with the GST Law) determines that it is entitled to an Input Tax Credit for its acquisition of the Taxable Supply giving rise to the liability to pay GST.
- 52.5 If there are Supplies for Consideration which is not Consideration expressed as an amount of Money under this Deed by one Party to the other Party that are not subject to Division 82 of the *A New Tax System (Goods and Services Tax) Act 1999*, the Parties agree:
- 52.5.1 to negotiate in good faith to agree the GST inclusive market value of those Supplies prior to issuing Tax Invoices in respect of those Supplies;
 - 52.5.2 that any amounts payable by the Parties in accordance with clause 52.2 (as limited by clause 52.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.

- 52.6 No payment of any amount pursuant to this clause 52, and no payment of the GST Amount where the Consideration for the Taxable Supply is expressly agreed to be GST inclusive, is required until the supplier has provided a Tax Invoice or Adjustment Note as the case may be to the recipient.
- 52.7 Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to a cost, expense or other liability incurred by a party, must exclude the amount of any Input Tax Credit entitlement of that party in relation to the relevant cost, expense or other liability.
- 52.8 This clause continues to apply after expiration or termination of this Deed.

53 Explanatory Note

- 53.1 The Appendix contains the Explanatory Note relating to this Deed required by section 205 of the Regulation.
- 53.2 Pursuant to section 205(5) of the Regulation, the Parties agree that the Explanatory Note is not to be used to assist in construing this Planning Deed.

Schedule 1

(Clause 9)

Development Contributions

Column 1	Column 2	Column 3	Column 4
Item/ Contribution	Public Purpose	Manner & Extent	Timing

A. Monetary Contributions

1.

B. Dedication of Land

1.

C. Carrying out of Work

1.

D. Other material public benefits

1.

Execution

Executed as a Deed

Dated:

Executed on behalf of the Council

General Manager

Witness

Mayor

Witness

Executed on behalf of the Developer in accordance with s127(1) of the Corporations Act (Cth) 2001

Name/Position

Name/Position

7.4 Attachment D - Explanatory Note Template

Appendix

(Clause 53)

Environmental Planning and Assessment Regulation 2021

(Section 205)

Explanatory Note

[Drafting Note: Under section 205(2) of the Environmental Planning and Assessment Regulation 2021, Council must consider the Planning Secretary's Practice Note for Planning Agreement (February 2021) when preparing the Explanatory Note]

Draft Planning Agreement

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

Parties

City of Coffs Harbour ABN 79 126 214 487 of Corner of Coff and Castle Street, Coffs Harbour NSW 2450 (Council)

[Insert name of Party 2] ACN [Insert ACN] of [Insert Address] (Developer)

[Insert Name of Party 3 / Landowner] ACN [Insert ACN] of [Insert Address] (Landowner)

Description of the Land to which the Draft Planning Agreement Applies

[Drafting Note: To be completed]

Description of Proposed Development

[Drafting Note: To be completed]

Description of Development Contributions

[Drafting Note: To be completed]

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

Objectives, Nature and Effect of Draft Planning Agreement

[Drafting Note: To be completed]

Assessment of the Merits of the Draft Planning Agreement

How the Draft Planning Agreement Promotes the Public Interest

[Drafting Note: To be completed]

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

[Drafting Note: To be completed]

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

[Drafting Note: To be completed]