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## **Beechwood Water Supply, Sewerage Services and Roadworks**

### **Planning Agreement**

Under s93F of the *Environmental Planning and Assessment Act 1979*

**Port Macquarie Hastings Council**

**Kayjay Superannuation Pty Ltd**

16 February 2010

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LP3647



## **Beechwood Water Supply, Sewerage Services and Roadworks**

### **Planning Agreement**

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 Planning Agreement  
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 Kayjay Superannuation Pty Ltd (Developer)**



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**Beechwood Water Supply, Sewerage Services and  
Roadworks  
Planning Agreement**

**Summary Sheet**

**Council:**

**Name:** Port Macquarie-Hastings Council

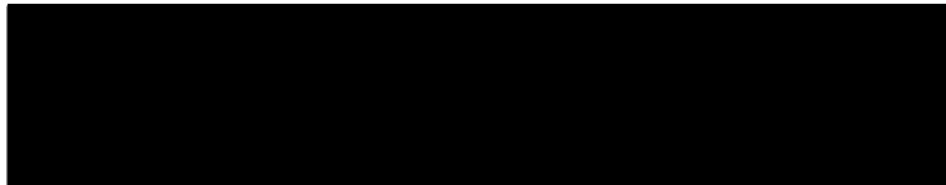
**Address:** Corner Lord and Burrawan Streets, Port Macquarie, New South Wales,  
2444

**Telephone:** (02) 6581 8111

**Facsimile:** (02) 6581 8123

**Representative:** Tim Molloy

**Developer**



**Land:**

See clause 1

**Development:**

See clause 1

**Development Contributions:**

Monetary Development Contributions and Work relating to Water Supply, Sewerage  
Services and Roadworks to serve the Development

**Application of s94 and s94A of the Act**

Not excluded (see clause 5)



**Security:**

Agreed security relating to Work carried out by the Developer (see clause 24).

**Registration**

No registration (see clause 26)

**Restriction on dealings**

See clause 27

**Dispute Resolution**

Expert determination or mediation (see clauses 28 and 29)



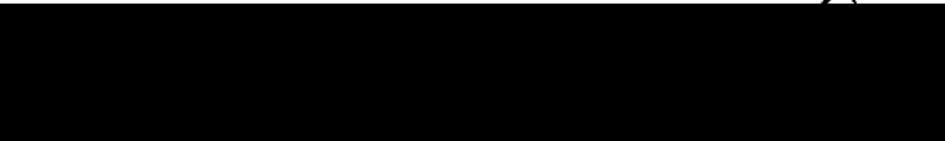
## **Beechwood Water Supply, Sewerage Services and Roadworks Planning Agreement**

Under s93F of the *Environmental Planning and Assessment Act 1979*

### **Parties**

**Port Macquarie Hastings Council** ABN 11 236 901 601 of Corner Lord and Burrawan Streets, Port Macquarie, New South Wales, 2444 (**Council**)

and



### **Background**

- A The Developer is the owner of the Land.
- B The Land, other than the part, which also comprises part of the Proposed Residential Land, is zoned to permit rural/residential development.
- C The Proposed Residential Land is the subject of a resolution of the Council to prepare a draft local environmental plan to permit urban development on that land.
- D The Developer and three other landowners have made a Development Application to the Council relating to the Development.
- E The Developer is prepared to make Development Contributions in connection with the carrying out of the Development in accordance with this Agreement.
- F Until the Planning Agreement operates, this Agreement constitutes the offer by the Developer to make Development Contributions in connection with the Development on the terms and conditions set out in this Agreement.

### **Operative provisions**

#### **Part 1 – Preliminary Provisions**

##### **1 Definitions & Interpretation**

1.1 In this Agreement the following definitions apply:

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

**Agreement** includes any schedules, annexures and appendices to this Agreement.

**Available Water Supply ET** means 80 lots of water supply capacity available to serve the Development and the part of the Proposed Residential Land situated within the Land at the completion of the Water Supply Work Stage A.



**Bank Guarantee** means an irrevocable and unconditional undertaking without any expiry or end date by one of the following trading banks:

- (a) Australia and New Zealand Banking Group Limited;
- (b) Commonwealth Bank of Australia;
- (c) Macquarie Bank;
- (d) National Australia Bank Limited;
- (e) St George Bank Limited;
- (f) Westpac Banking Corporation; or
- (g) any other financial institution approved by the Council, in its absolute discretion, in response to a request from the Developer,

to pay an amount or amounts of money to the Council on demand and containing terms and conditions satisfactory to the Council.

**Construction Certificate** has the same meaning as in the Act.

**Contributions Plan** has the same meaning as in the Act.

**Defects Liability Period**, in relation to a Work, means the period commencing on the date on which the work is taken to have been completed under this Agreement and ending 12 months after that date.

**Development** means the development the subject of DA No. 2007/0701 made by King and Campbell Pty Limited on 24 December 2007 and the future development of the Proposed Residential Land for urban purposes.

**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.

**Development Servicing Plan** means the document of the Council entitled *Port Macquarie-Hastings Water Supply Development Servicing Plans for the Hastings District, Comboyne, Telegraph Point & Long Flat Water Supply Schemes 2006*, a copy of which is available from the Council, or any document that replaces that document.

**Eastern Road Contribution** means a monetary Development Contribution being:

- (a) If the Council has not approved a final design for the Eastern Road Intersection Work at the time the contribution is payable under this Agreement - \$1393 per Residential Lot created by the Developer in the Development;
- (b) If the Council has approved a final design for the Eastern Road Intersection Work at the time the contribution is payable under this Agreement – a monetary contribution per Residential Lot created by the Developer in the Development that is determined by the Council based on a reasonable estimate of the Eastern Road Developer Share;
- (c) If the Eastern Road Intersection Work has been completed at the time the contribution is payable under this Agreement



23.383% of the Eastern Road Developer Share less the amount of any contribution paid by the Developer under paragraph (a) or (b) of this definition, including any interest accrued on that contribution,

in each case, being a contribution indexed as provided for in this Agreement

**Eastern Road Intersection Work** means the works associated with the construction of the new intersection at the eastern end of the frontage of Lot 4 DP 831325 to Beechwood Road, generally in accordance with the concept designs shown on the plans contained in Appendix 2. Final details are to be provided on the drawings submitted to Council with the application for a Construction Certificate in relation to the Development.

**Eastern Road Developer Share** means 23.383% of the costs incurred by the Initial Developer Eastern Road.

**Equivalent Tenement (ET)** has the same meaning as in *Port Macquarie Hastings Council's Development Contribution Assessment Policy 2007*, a copy of which is available from the Council, or any document that relevantly replaces that document.

**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.

**Initial Developer Eastern Road** means the person who is responsible for carrying out the Eastern Road Intersection Work.

**Initial Developer Neville Road** means the person who is responsible for carrying out the Neville Road Intersection Work.

**Initial Developer Stage A** means the person who is responsible for carrying out the Water Supply Work Stage A.

**Initial Developer Stage B** means the person who is responsible for carrying out the Water Supply Work Stage B.

**Land** means Lot 1 in DP 789484.

**Map** means the map (comprised of various Sheets) contained in Appendix 1.

**Neighbouring Land** means Lot 3 DP 800211, Lot A DP 382960 and Lot 4 DP 831326.

**Neville Road Contribution** means a monetary Development Contribution being:

- (a) If the Council has not approved a final design for the Neville Road Intersection Work at the time the contribution is payable under this Agreement - \$1393 per Residential Lot created by the Developer in the Development;
- (b) If the Council has approved a final design for the Neville Road Intersection Work at the time the contribution is payable under this Agreement – a monetary contribution per Residential Lot created by the Developer in the Development that is determined by the Council based on a reasonable estimate of the Neville Road Developer Share;





- (c) If the Neville Road Intersection Work has been completed at the time the contribution is payable under this Agreement – 23.383% of the Neville Road Developer Share less the amount of any contribution paid by the Developer under paragraph (a) or (b) of this definition, including any interest accrued on that contribution,

in each case, being a contribution indexed as provided for in this Agreement

**Neville Road Intersection Work** means the works associated with the upgrade of the existing intersection between Neville Road and Beechwood Road and the existing carriageway of Neville Road, generally in accordance with the concept designs shown on the plans contained in Appendix 2. Final details are to be provided on the drawings submitted to Council with the application for a Construction Certificate in relation to the Development.

**Neville Road Developer Share** means 23.383% of the costs incurred by the Initial Developer Neville Road.

**Party** means a Party to this agreement, including their successors and assigns.

**Planning Agreement** means the provisions of this Agreement under which the Developer is required to make Development Contributions in connection with the carrying out of the Development, and includes any provisions that are incidental or supplementary to those provisions.

**Proposed Residential Land** means the land identified as such on Sheet 2 of the Map.

**Provision** means the Developer's provision under this Agreement.

**Public Facility** means a public amenity, a public service, a public facility, public land, public infrastructure, a public road, a public work, or any other act, matter or thing that meets a Public Purpose.

**Public Purpose** means any purpose that benefits the public or a section of the public, including but not limited to a purpose specified in s93F(2) of the Act.

**Rectification Notice** means a notice in writing that identifies a defect in a work and requires rectification of the defect within a specified period of time.

**Regulation** means the *Environmental Planning and Assessment Regulation 2000*.

**Residential Lot** includes a rural residential lot.

**Road Link Land** means the land identified as such on the Map.

**Sewerage Services Contribution** means a monetary Development Contribution being a payment equal to the sewerage services contribution which would be payable under the *Development Servicing Plan – Sewerage for the Wauchope Sewerage Treatment Plant* applicable at the time of issue of the Subdivision Certificate for a stage of the Development for the Serviced Lots, and any other lot created on the Land which is connected to the Sewerage System as defined in clause 13.1

**Serviced Lots** means such of the following lots as shown on the Map, which are located on the Land;

**Beechwood Water Supply, Sewerage Services and Roadworks  
Planning Agreement  
Port Macquarie-Hastings Council  
Kayjay Superannuation Pty Ltd (Developer)**



- (a) lots 1-7;
- (b) lots 11-26;
- (c) lots 30-33;
- (d) lot 37;
- (e) lots 39-54;
- (f) lot 56; and
- (g) lot 57.

**Sheet** means a sheet of the Map.

**Subdivision Certificate** has the same meaning as in the Act.

**Water Supply Contribution** means a monetary Development Contribution payable under the Development Servicing Plan per Residential Lot created by the Developer in the Development.

**Water Supply Contribution Reduction Stage A** means, subject to clause 7.4.1, the Council's share of the cost of the Water Supply Work Stage A being 59% of the costs incurred by Initial Developer Stage A relating to the construction of the Water Supply Works Stage A that the Council considers it would have incurred if it had undertaken that construction instead of the Developer.

**Water Supply Contribution Reduction Stage B** means, subject to clause 9.4.1, the Council's share of the costs of the Water Supply Work Stage B and the Water Supply Reservoir Work being:

- (a) 59% of the costs incurred by the Initial Developer Stage B relating to the construction of the Water Supply Work Stage B, and
- (b) 34% of the costs incurred by the Initial Developer Stage B relating to the Water Supply Reservoir Work,

that the Council considers it would have incurred if it had undertaken that Work instead of the Initial Developer Stage B.

**Water Supply Reservoir Work** means the construction of a water supply reservoir in accordance with a design and specifications approved by the Council and otherwise to the satisfaction of the Council generally in the location identified on Sheet 2 of the Map.

**Water Supply Work Stage A** means the Water Supply Work consisting of the construction of a 250mm diameter inlet water supply main and a 250mm outlet water supply main generally in the locations identified on Sheet 1 of the Map or at such other locations approved by the Council.

**Water Supply Work Stage A Contribution** means a monetary Development Contribution being 23.383% of the Water Supply Work Stage A Developer Share.

**Water Supply Work Stage A Developer Share** means \$164,000 or if the Water Supply Work Stage A has been completed, 41% of the costs incurred by the Initial Developer Stage A relating to the construction of the Water Supply Works Stage A.

**Water Supply Work Stage B** means the Water Supply Work consisting of the construction of a 250mm diameter inlet water supply main and a 250mm outlet water supply main and a water reservoir generally in the locations shown on sheet 2 of the Map.



**Water Supply Work Stage B Contribution** means a monetary Development Contribution being:

- (a) if the Council has not approved a final design for the Water Supply Work Stage B at the time the contribution is payable under this Agreement –\$3,545 per Residential Lot created by the Developer in the Development, or
- (b) if the Council has approved a final design for the Water Supply Work Stage B at the time the contribution is payable under this Agreement – a monetary contribution per Residential Lot created by the Developer in the Development that is determined by the Council based on a reasonable estimate of the Water Supply work Stage B Developer Share, or
- (c) if the Water Supply Work Stage B has been completed at the time the contribution is payable under this Agreement - 23.383% of the Water Supply Work Stage B Developer Share less the amount of any contribution paid by the Developer under paragraph (a) or (b) of this definition, including any interest accrued on that contribution,

in each case, being a contribution indexed as provided for in this Agreement

**Water Supply Work Stage B Developer Share** means:

- (a) 41% of the costs relating to the Water Supply Work Stage B, and
- (b) 66% of the costs relating to the Water Supply Reservoir Work,

**Water Supply Work** has the same meaning as in the *Water Management Act 2000*.

**Work** means the physical result of any building, engineering or construction work in, on, over or under land required to be carried out by the Developer under this Agreement.

1.2 In the interpretation of this Agreement, 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 Agreement.
- 1.2.2 A reference in this Agreement 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 Agreement 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 Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.
- 1.2.5 A reference in this Agreement 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.

- 1.2.6 A reference in this Agreement to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- 1.2.7 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.
- 1.2.8 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- 1.2.9 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.
- 1.2.10 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.
- 1.2.11 References to the word 'include' or 'including' are to be construed without limitation.
- 1.2.12 A reference to this Agreement includes the agreement recorded in this Agreement.
- 1.2.13 A reference to a Party to this Agreement includes a reference to the servants, agents and contractors of the Party, and the Party's successors and assigns.
- 1.2.14 Any schedules, appendices and attachments form part of this Agreement.
- 1.2.15 Notes appearing in this Agreement are operative provisions of this Agreement.

## **2 Application of this Agreement**

- 2.1 This Agreement applies to the Development.

## **3 Status of this Agreement**

- 3.1 The Developer irrevocably offers to enter into the Planning Agreement if Development Consent is granted to the Development.
- 3.2 However, the Planning Agreement operates only if:
  - 3.2.1 Development Consent is granted to the carrying out of the Development subject to a condition requiring the Planning Agreement to be entered into or performed; and
  - 3.2.2 The owners of the Neighbouring Land (other than the Land) also enter into a planning agreement in the same terms as the Planning Agreement.
- 3.3 The Developer consents to a condition of the kind referred to in clause 3.2.1.
- 3.4 The provisions of this Agreement other than the Planning Agreement operate with full force and effect on and from the date this Agreement is entered into by all of the Parties.



**Note:** The provisions that operate on and from the date this Agreement is entered into include (but are not limited to) those relating to the sale of the Land or the assignment of a Party's interest under this Agreement. This note forms part of the agreement between the Parties.

- 3.5 This Agreement ceases to have effect if the Council refuses Development Consent to the Development and the first of one of the following circumstances applies:
- 3.5.1 the period in which the Developer may bring an appeal to the Land and Environment Court under the Act in relation to the Council's refusal has expired and the Developer has not brought such an appeal,
  - 3.5.2 the Land and Environment Court, on appeal, has upheld the Council's refusal to grant Development Consent to the Development.
- 3.6 This Agreement ceases to have effect if any Development Consent granted to the Development lapses.

#### **4 Further Agreements Relating to this Agreement**

- 4.1 The Developer is to enter into such further agreements with the Council as are expressly required to be entered by this Agreement.
- 4.2 The Developer may, at any time, enter into such other agreements with the Council relating to the subject-matter of this Agreement as the Council, acting reasonably, considers necessary or desirable in order to give effect to this Agreement.
- 4.3 An agreement referred to in clause 4.1 or 4.2 is not to be inconsistent with this Agreement. In particular, such an agreement may not alter the kind of Public Facility, the Public Purpose for which it is to be provided or its Contribution Value as specified in Schedule 3.
- 4.4 Without limiting clause 4.1 or 4.2, an agreement may relate to:
- 4.4.1 the particulars of any Public Facility required by this Agreement to be made available for a Public Purpose,
  - 4.4.2 the location at which a Public Facility is to be provided and the time at which and the manner in which it will be made available,
  - 4.4.3 the particulars of any work required by this Agreement to be undertaken by the Developer, and
  - 4.4.4 the time at which and the manner in which a Work is to be handed over to the Council.

#### **5 Application of s94 and s94A of the Act to the Development**

- 5.1 This Agreement does not exclude the application of s94 or s94A or s94EF of the Act to the Development.



## **6 Application of Development Contributions by the Council**

- 6.1 Subject to this Agreement, the Council is to apply a Development Contribution made by the Developer under this Agreement towards the Public Purpose for which it is made, and otherwise in accordance with this Agreement.
- 6.2 The Council acknowledges that under the Act, the Council is required to apply any monetary Development Contribution towards the Public Purpose for which it was required within a reasonable time, and that Council is also required to comply with the accounting requirements for monetary Development Contributions in the *Environmental Planning & Assessment Regulation 2000*.

## **Part 2 – Provisions Relating to Water Supply Work Stage A**

### **7 Construction of Water Supply Work Stage A**

- 7.1 The Developer acknowledges that:
  - 7.1.1 the Development cannot be carried out unless the Water Supply Work Stage A is or will be available to serve the Development,
  - 7.1.2 the Available Water Supply ET applies if the Water Supply Work Stage A has been completed to the satisfaction of the Council.
- 7.2 The Developer is the Initial Developer Stage A and is to construct the Water Supply Work Stage A if the Developer commences any part of the Development, other than development authorised by clause 7.5 and the construction of the Water Supply Work Stage A has not commenced.
- 7.3 The Developer is not to occupy or use the Development unless the Water Supply Work Stage A has been constructed to the satisfaction of the Council.
- 7.4 Clauses 7.4.1 – 7.4.3 apply if the Developer is the Initial Developer Stage A and has complied with its obligations under clauses 7.2 and 7.3:
  - 7.4.1 If development is commenced on the Neighbouring Land before the Initial Developer Stage A receives the full benefit under clause 7.4.3:
    - (a) the Council is to pay to the Initial Developer Stage A an amount equal to all Water Supply Contributions received by it relating to the development of the Neighbouring Land, and
    - (b) the Water Supply Contribution Reduction Stage A is to be reduced by the amount referred to in paragraph (a).
  - 7.4.2 As soon as practicable after the Council receives a payment relating to the Water Supply Work Stage A Contribution, it is to make a payment of an equivalent amount to the Initial Developer Stage A.
  - 7.4.3 The Initial Developer Stage A is not required to incur the cost of Water Supply Contributions to the Council in relation to the Development until such time as the Council has reimbursed the Initial Developer Stage A an amount equal to the amount of the Water Supply Contribution Reduction Stage A in relation to the Development.



- 7.5 Notwithstanding clauses 7.1 to 7.3, the Developer may use any existing dwelling on the Land, and may subdivide the Land to create one additional lot without undertaking the Water Supply Work Stage A, and without being the Initial Developer Stage A, provided that all Development Contributions including the Water Supply Work Stage A Contribution and the Water Supply Work Stage B Contribution are paid.

## **8 Payments Relating to Water Supply Work Stage A**

- 8.1 This clause applies if, at the time the Development commences (within the meaning of the Act):
- 8.1.1 the construction of the Water Supply Work Stage A has been commenced, and
  - 8.1.2 the Developer is not the Initial Developer Stage A.
- 8.2 The Developer is to pay to the Council before the first Subdivision Certificate is issued in respect of any part of the Land the Water Supply Work Stage A Contribution in addition to any other Development Contribution that the Developer is required to make under this Agreement or any Water Supply Contribution that the Developer is required to make in respect of the Development.

## **Part 3 – Provisions Relating to Water Supply Work Stage B**

### **9 Construction of Water Supply Work Stage B**

- 9.1 The Parties acknowledge that if there is insufficient Available Water Supply ET to meet the Development, the Development cannot be carried out unless the Water Supply Work Stage B is or will be available to serve the Development.
- 9.2 The Developer is to construct the Water Supply Work Stage B if, at any time during the carrying out of the Development on the Land, the Available Water Supply ET is exceeded and the construction of the Water Supply Work Stage B has not commenced.
- 9.3 The Developer is not to occupy or use the Development beyond the 80<sup>th</sup> lot created in the Development, unless the Water Supply Work Stage B has been constructed to the satisfaction of the Council.
- 9.4 Clauses 9.4.1 – 9.4.5 apply if the Developer is the Initial Developer Stage B and has complied with its obligations under clauses 9.2 and 9.3:
- 9.4.1 If development is commenced on the Neighbouring Land before the Initial Developer Stage B receives the full benefit under clause 9.4.3:
    - (a) the Council is to pay to the Initial Developer Stage B an amount equal to all Water Supply Contributions received by it relating to the development of the Neighbouring Land, and
    - (b) the Water Supply Contribution Reduction Stage B is to be reduced by the amount referred to in paragraph (a).



- 9.4.2 As soon as practicable after the Council receives a payment relating to the Water Supply Work Stage B Contribution, it is to make a payment of an equivalent amount to the Initial Developer Stage B.
- 9.4.3 The Council is to pay to the Initial Developer Stage B the Water Supply Contribution Reduction Stage B less any payments or benefits made or accruing to the Initial Developer Stage B under clause 9.4.1 or 9.4.2 as follows:
- (a) if the Water Supply Work Stage B is completed before 1 July 2012 – as soon as reasonably practicable after that date,
  - (b) if the Water Supply Work Stage B is not completed before 1 July 2012 – as soon as reasonably practicable after that work is completed to the satisfaction of the Council.
- 9.4.4 The Initial Developer Stage B is not required to incur the cost of Water Supply Contributions to the Council until such time as Council have reimbursed the Initial Developer Stage B an amount equal to the amount of the Water Supply Contribution Reduction Stage B.

## **10 Payments Relating to Water Supply Work Stage B**

- 10.1 The Developer is to pay to the Council the Water Supply Work Stage B Contribution in addition to any other Development Contribution that the Developer is required to make under this Agreement or any Water Supply Contribution that the Developer is required to make in respect of the Development.
- 10.2 The Water Supply Work Stage B Contribution is to be paid prior to the issuing of a Subdivision Certificate relating to the creation of the lot in the Development to which the contribution relates.

## **Part 4 – Provisions Relating to Road Link Land**

### **11 Dedication of Road Link Land**

- 11.1 The Developer is to dedicate that part of the Road Link Land which is part of the Land to the Council free of cost prior to the completion of the first stage of the Development that involves construction of the Water Supply Work Stage A, or at a time directed by Council.

## **Part 5 – Provisions relating to Sewerage Services**

### **12 Payment of Sewerage Services Contribution**

- 12.1 The Developer is to pay, before the first Subdivision Certificate is issued in respect of any part of the Land, the Sewerage Services Contribution in addition to any other Development Contribution that the Developer is required to make under this Agreement or any Water Supply Contribution that the Developer is required to make in respect of the Development.





### **13 Council to construct sewerage system**

- 13.1 Council will construct a reticulated sewerage system to service the existing village of Beechwood, and will construct sewer junctions to the Serviced Lots, and any other lots created as part of the Development which are adjacent to the sewer main (**Sewerage System**).
- 13.2 The parties acknowledge that:
  - 13.2.1 the provision of sewerage services to the Serviced Lots is subject to approval by the Council of the detailed design of the Sewerage System; and
  - 13.2.2 the provision of sewerage services to lots 26, 30, 39, 40 and 41 as shown on the Map is subject to the final determination of minimum floor levels of any future dwellings on those lots.

### **14 Access to Land**

- 14.1 The Developer is to permit Council, its officers, employees, agents and contractors to enter the Land at any time, upon giving reasonable prior notice, for the purpose of the construction of the Sewerage System.
- 14.2 Council, at its own cost, is to repair and make good to the satisfaction of the Developer any loss or damage to the Land or any improvements on the Land, caused or contributed to by the construction of the Sewerage System.
- 14.3 Should the Development commence prior to the construction of the Sewerage System:
  - 14.3.1 the Council will provide the Developer with the design details of the Sewerage System;
  - 14.3.2 The Developer will, as part of the Development, construct the required sewer road crossings in accordance with the details provided by the Council; and
  - 14.3.3 The Developer will provide Council with works-as executed drawings of the sewer road crossings, including details of their location and depth.,
- 14.4 Any additional costs incurred by the Developer in complying with clause 14.3 shall be met by the Council.

## **Part 6 – Provisions relating to the Neville Road Intersection Work**

### **15 Construction of the Neville Road Intersection Work**

- 15.1 The Developer acknowledges that the Neville Road Intersection Work is to be completed prior to the release of the Subdivision Certificate which creates the 30<sup>th</sup> Residential Lot on the land that comprises Lot 3 DP 800211, Lot 1 DP789484 and Lot A DP 382960.
- 15.2 The Developer is the Initial Developer Neville Road and is to carry out the Neville Road Intersection Work if the Development will create the 30<sup>th</sup>



Residential Lot on the land that comprises Lot 3 DP 800211, Lot 1 DP789484 and Lot A DP 382960. .

- 15.3 Clauses 15.3.1 – 15.3.2 apply if the Developer is the Initial Developer Neville Road and has complied with its obligations under clause 15.2:
- 15.3.1 the Council is to pay to the Initial Developer Neville Road an amount equal to all Neville Road Contributions received by it relating to the development of the Neighbouring Land together with any interest earned on those contributions, and
- 15.3.2 As soon as practicable after the Council receives a payment relating to the Neville Road Contribution, it is to make a payment of an equivalent amount to the Initial Developer Neville Road.
- 15.4 Notwithstanding clauses 15.1 to 15.3, the Developer may use any existing dwelling on the Land, and may subdivide the Land to create one additional lot without undertaking the Neville Road Intersection Work, and without being the Initial Developer Neville Road, provided that all Development Contributions, Water Supply Contributions and Sewerage Services Contributions payable at law, or under this Agreement are paid.

## **16 Payments relating to the Neville Road Intersection Work**

- 16.1 This clause applies if the Developer is not the Initial Developer Neville Road .
- 16.2 The Developer is to pay to the Council before the first Subdivision Certificate is issued in respect of any part of the Land, the Neville Road Contribution in addition to any other Development Contribution that the Developer is required to make under this Agreement, or any Water Supply Contribution or Sewerage Services Contribution that the Developer is required to make in respect of the Development.

## **Part 7 – Provisions relating to the Eastern Road Intersection Work**

### **17 Construction of the Eastern Road Intersection Work**

- 17.1 The Developer acknowledges that the Eastern Road Intersection Work is to be completed prior to the release of the first Subdivision Certificate for Lot 4 DP 831325, other than a Subdivision Certificate only for the creation of those Residential Lots which front Beechwood Road or lot 56 as shown on the Map.
- 17.2 The Developer is the Initial Developer Eastern Road and is to carry out the Eastern Road Intersection Work if the Development will create a Residential Lot on the land that comprises Lot 4 in DP 831325 which requires the construction of the Eastern Road Intersection Work and such work has not yet commenced.
- 17.3 Clauses 17.3.1 – 17.3.2 apply if the Developer is the Initial Developer Eastern Road and has complied with its obligations under clauses 17.2:
- 17.3.1 the Council is to pay to the Initial Developer Eastern Road an amount equal to all Eastern Road Contributions, received by it relating to the development of the Neighbouring Land together with any interest earned on those contributions, and



- 17.3.2 As soon as practicable after the Council receives a payment relating to the Eastern Road Contribution, it is to make a payment of an equivalent amount to the Initial Developer Eastern Road.
- 17.4 Notwithstanding clauses 17.1 to 17.3, the Developer may use any existing dwelling on the Land, and may subdivide the Land to create one additional lot without undertaking the Eastern Road Intersection Work, and without being the Initial Developer Eastern Road, provided that all Development Contributions, Water Supply Contributions and Sewerage Services Contributions payable at law, or under this Agreement are paid.

## **18 Payments relating to the Eastern Road Intersection Work**

- 18.1 This clause applies if, at the time the Development commences (within the meaning of the Act) on the Land:
- 18.1.1 The construction of the Eastern Road Intersection Work has been commenced; and
- 18.1.2 The Developer is not the Initial Developer Eastern Road.
- 18.2 The Developer is to pay to the Council before the first Subdivision Certificate is issued in respect of any part of the Land, the Eastern Road Contribution in addition to any other Development Contribution that the Developer is required to make under this Agreement, or any Water Supply Contribution or Sewerage Services Contribution that the Developer is required to make in respect of the Development.

## **Part 8 – General Provisions relating to monetary Development Contributions**

### **19 Provisions relating to monetary Development Contributions**

- 19.1 A monetary Development Contribution is made for the purposes of this Agreement when the Council receives the full amount of the contribution payable under this Agreement 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.
- 19.2 The Developer is to give the Council not less than 2 business days written notice of:
- 19.2.1 its intention to pay a monetary Development Contribution,
- 19.2.2 the Public Purpose to which the contribution relates, and
- 19.2.3 the amount proposed to be paid.
- 19.3 The Developer is not required to pay a monetary Development Contribution under this Agreement unless the Council, after having received the Developer's notice under clause 19.2, has given to the Developer a tax invoice for the amount of the contribution that the Developer intends to pay.



- 19.4 The Developer is not in breach of this Agreement if it fails to pay a monetary Development Contribution at the time required by this Agreement by reason only of the Council's failure to give to the Developer a tax invoice in relation to the amount proposed to be paid by it.
- 19.5 Any monetary Development Contribution payable by the Developer under this Agreement is to be indexed quarterly in accordance with the *Producer Price Index – Non-Building Construction New South Wales* published by the Australian Bureau of Statistics commencing on the later of the date of this agreement or the date on which the amount of the Development Contribution payable is determined, until the date on which the contribution is paid.

## **Part 9 – General Provisions Relating to Works**

### **20 Determination of Cost of the Works**

- 20.1 The Council is to act reasonably in determining any cost that it is to consider or determine under this Agreement.
- 20.2 To enable the Council to determine a cost referred to in clause 20.1, the Developer is to provide to the Council copies of all documents reasonably requested by Council (including but not limited to all invoices and receipts for payment and other evidence of payment).
- 20.3 The Council is to notify the Developer in writing of its determination of a cost as soon as practicable after it has made the decision.
- 20.4 The Developer is to notify the Council in writing if the Developer does not agree with Council's determination of a cost and specify in the notice the reasons why the Developer does not agree.
- 20.5 The Council is to consider a notice under clause 20.4 and is to notify the Developer in writing whether as a result of that consideration:
- 20.5.1 it has decided to change its determination and, if so, the new amount,  
or
- 20.5.2 it has decided not to change its decision.
- 20.6 Clause 28 applies to a notice under clause 20.5 but not otherwise.

### **21 Procedures relating to the carrying out & hand-over of Works**

- 21.1 Any Work that is required to be carried out by the Developer under this Agreement is to be carried out in accordance with any design or specification specified by the Council, any relevant development consent and any other applicable law, and otherwise to the satisfaction of the Council.
- 21.2 The Developer is not to make, or procure the making of an application to the Council under s96 of the Act to modify any relevant development consent relating to a Work referred to in clause 21.1 unless the Council is of the opinion that the development consent as proposed to be modified is consistent with the design or specification referred to in clause 21.1.
- 21.3 A Development Contribution comprising the carrying out of a Work is made for the purposes of this Agreement when the Council accepts the hand-over of the Work in accordance with this clause.

- 21.4 Subject to this Agreement, when the Developer considers that a Work required to be carried out by the Developer under this Agreement is complete, the Developer is to give to the Council a notice in writing to that effect.
- 21.5 The Council is taken to have accepted the hand-over by the Developer of a Work that is the subject of a notice referred to in clause 21.4:
- 21.5.1 where the Council has not given the Developer a Rectification Notice under clause 22.1 – at the expiration of the Defects Liability Period, or
- 21.5.2 where the Council has given the Developer a Rectification Notice under clause 22.1 – on the date on which the Council gives the Developer a written notice stating that the defect the subject of the Rectification Notice has been rectified to the Council's satisfaction.
- 21.6 On hand-over of the Work, the Council accepts responsibility for the Work.

## **22 Procedures relating to the rectification of defects**

- 22.1 During the Defects Liability Period, the Council may give to the Developer a Rectification Notice.
- 22.2 The Developer is to comply with a Rectification Notice at its own cost according to its terms and to the satisfaction of the Council.
- 22.3 If the Developer breaches clause 22.2, the Council may have the relevant defect rectified and may recover its costs of so doing as a debt due in a court of competent jurisdiction.

## **23 Performance of Work by Council**

- 23.1 This clause 23 applies if the Developer enters into a contract with the Council under which the Council agrees to carry out any Work that the Developer is otherwise required to carry out under this Agreement.
- 23.2 The Council is to carry out the relevant Work to the agreed standard in accordance with the development consent relating to the Work.
- 23.3 The Developer is to pay to the Council the contract amount for the carrying out of the relevant Work less:
- 23.3.1 any Monetary Development Contributions then held by the Council relating to the Work, and
- 23.3.2 if the Work is the Water Supply Work Stage B, and if the payment is made after 1 July 2012 - the amount of the Water Supply Work Stage B Council Share.
- 23.4 The amount payable under clause 23.3 is to be paid in two instalments as follows:
- 23.4.1 50% at the time of Council ordering the materials for the Work; and
- 23.4.2 50% prior to the commencement of the Work;
- 23.5 The Developer is not required to provide the Security referred to in clause 24.
- 23.6 Clauses 21 and 22 of this Agreement do not apply in relation to the Work.



## **Part 10 – Other Provisions**

### **24 Security relating to the carrying out of Work**

- 24.1 The Developer is not to carry out any Work to which this Agreement applies unless the requirements of this clause have been complied with.
- 24.2 Prior to the commencement of the carrying out of a Work, the Developer is to provide the Council with security in a form, on terms and for an amount agreed between the Parties.
- 24.3 For the purposes of clause 24.2, the Parties are to have regard to any policy or practice of the Council, current at the time, relating to the provision of security to the Council for the construction of public infrastructure by developers.
- 24.4 Clause 28 does not apply to a dispute arising under or in relation to this clause.

### **25 Enforcement & other security**

- 25.1 Without limiting any other remedies available to the Parties, this Agreement may be enforced by the Parties in any court of competent jurisdiction.
- 25.2 For the avoidance of doubt, nothing in this Agreement prevents:
  - 25.2.1 a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Agreement or any matter to which this Agreement relates,
  - 25.2.2 the Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Agreement or any matter to which this Agreement relates.

### **26 No Registration of this Agreement**

- 26.1 The Parties agree not to register this Agreement under s93H of the Act.

### **27 Assignment, Sale of Land, etc**

- 27.1 Unless the matters specified in clause 27.2 are satisfied, the Developer is not to do any of the following:
  - 27.1.1 if the Developer is the owner of the Land, to transfer the Land or any part of it to any person, or
  - 27.1.2 assign or novate to any person this Agreement or any of the Developer's rights or obligations under this Agreement.
- 27.2 The matters required to be satisfied for the purposes of clause 27.1 are as follows:
  - 27.2.1 the Developer has, at no cost to the Council, first procured the execution by the person to whom the Land or any part of it is to be transferred or this Agreement or any of the Developer's rights or obligations under this Agreement are to be assigned or novated, of an agreement in favour of the Council on terms which are not inconsistent with this Agreement, and

27.2.2 the Council, by notice in writing to the Developer, has stated that evidence satisfactory to the Council has been produced to show that the transferee, assignee or novatee, is reasonably capable of performing its obligations under the Agreement, and

27.2.3 the Developer is not in breach of this Agreement.

## **28 Dispute Resolution – expert determination**

- 28.1 This clause applies to a dispute under this Agreement, which relates to a matter that can be determined by an appropriately qualified expert unless expressly provided to the contrary by this Agreement.
- 28.2 Any dispute between the Parties as to whether a dispute to which this clause applies can be determined by an appropriately qualified expert is to be referred to the Chief Executive Officer of the professional body that represents persons with the relevant expertise for determination, which is to be final and binding on the Parties.
- 28.3 Such a dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the dispute.
- 28.4 If a notice is given under clause 28.3, the Parties are to meet within 14 days of the notice in an attempt to resolve the dispute.
- 28.5 If the dispute is not resolved within a further 28 days, the dispute must be referred to the President of the NSW Law Society to appoint an Expert for Expert Determination.
- 28.6 The Expert Determination is binding on the Parties except in the case of fraud or misfeasance by the Expert.
- 28.7 Each Party must bear its own costs arising from or in connection with the appointment of the Expert and the Expert Determination.

## **29 Dispute Resolution - mediation**

- 29.1 This clause applies to any dispute under this Agreement other than a dispute to which clause 28 applies.
- 29.2 Such a dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the dispute.
- 29.3 If a notice is given under clause 29.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the dispute.
- 29.4 If the dispute is not resolved within a further 28 days, the Parties must mediate the dispute in accordance with the Mediation Rules of the Law Society of New South Wales published from time to time and must request the President of the Law Society, or the President's nominee, to select a mediator.
- 29.5 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.



### **30 Notices**

- 30.1 Any notice, consent, information, application or request that must or may be given or made to a Party under this Agreement is only given or made if it is in writing and sent in one of the following ways:
- 30.1.1 delivered or posted to that Party at its address set out in the Summary Sheet,
  - 30.1.2 faxed to that Party at its fax number set out in the Summary Sheet.
- 30.2 If a Party gives the other Party 3 business days notice of a change of its address or fax number, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or faxed to the latest address or fax number.
- 30.3 Any notice, consent, information, application or request is to be treated as given or made if it is:
- 30.3.1 delivered, when it is left at the relevant address.
  - 30.3.2 sent by post, 2 business days after it is posted.
  - 30.3.3 sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number.
- 30.4 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.

### **31 Approvals and Consent**

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

### **32 Costs**

- 32.1 The Developer is to pay to the Council its costs of preparing, negotiating and executing this Agreement up to a maximum of \$3,741 (excluding GST) within 28 days of a written demand by the Council for that payment.

### **33 Entire Agreement**

- 33.1 This Agreement contains everything to which the Parties have agreed in relation to the matters it deals with.
- 33.2 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 Agreement was executed, except as permitted by law.





### **34 Further Acts**

- 34.1 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 Agreement and all transactions incidental to it.

### **35 Governing Law and Jurisdiction**

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

### **36 Joint and Individual Liability and Benefits**

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

### **37 No Fetter**

- 37.1 Nothing in this Agreement 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.

### **38 Representations and Warranties**

- 38.1 The Parties represent and warrant that they have power to enter into this Agreement and comply with their obligations under the Agreement and that entry into this Agreement will not result in the breach of any law.

### **39 Severability**

- 39.1 If a clause or part of a clause of this Agreement 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.
- 39.2 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 Agreement, but the rest of this Agreement is not affected.

### **40 Modification**

- 40.1 No modification of this Agreement will be of any force or effect unless it is in writing and signed by the Parties to this Agreement.



## **41 Waiver**

- 41.1 The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another Party.
- 41.2 A waiver by a Party is only effective if it is in writing. A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given.
- 41.3 It 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.

## **42 GST**

- 42.1 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.

- 42.2 Subject to clause 42.4, if GST is payable on a Taxable Supply made under, by reference to or in connection with this Agreement, the Party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.
- 42.3 Clause 42.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Agreement to be GST inclusive.
- 42.4 No additional amount shall be payable by the Council under clause 42.2 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.
- 42.5 If there are Supplies for Consideration which is not Consideration expressed as an amount of Money under this Agreement 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:
  - 42.5.1 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;
  - 42.5.2 that any amounts payable by the Parties in accordance with clause 42.2 (as limited by clause 42.4) to each other in respect of those



Supplies will be set off against each other to the extent that they are equivalent in amount.

- 42.6 No payment of any amount pursuant to this clause 42, 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.
- 42.7 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.
- 42.8 This clause continues to apply after expiration or termination of this Agreement.

### **43 Explanatory Note Relating to this Agreement**

- 43.1 Appendix 3 contains the Explanatory Note relating to this Agreement required by clause 25E of the Regulation.
- 43.2 Pursuant to clause 25E(7) of the Regulation, the Parties agree that the Explanatory Note in Appendix 3 is not to be used to assist in construing this Planning Agreement.



## **Execution**

Executed as an Agreement

Dated: 16 February 2010

---

### **Executed by the Council:**

Andrew Roach, General Manager

Witness/Name/Position:

---

### **Executed by the Developer in accordance with s127 of the Corporations Act 2001 (Cth):**

Director/Name:

Company Secretary/Name

23 July 09



## **Appendix 1**

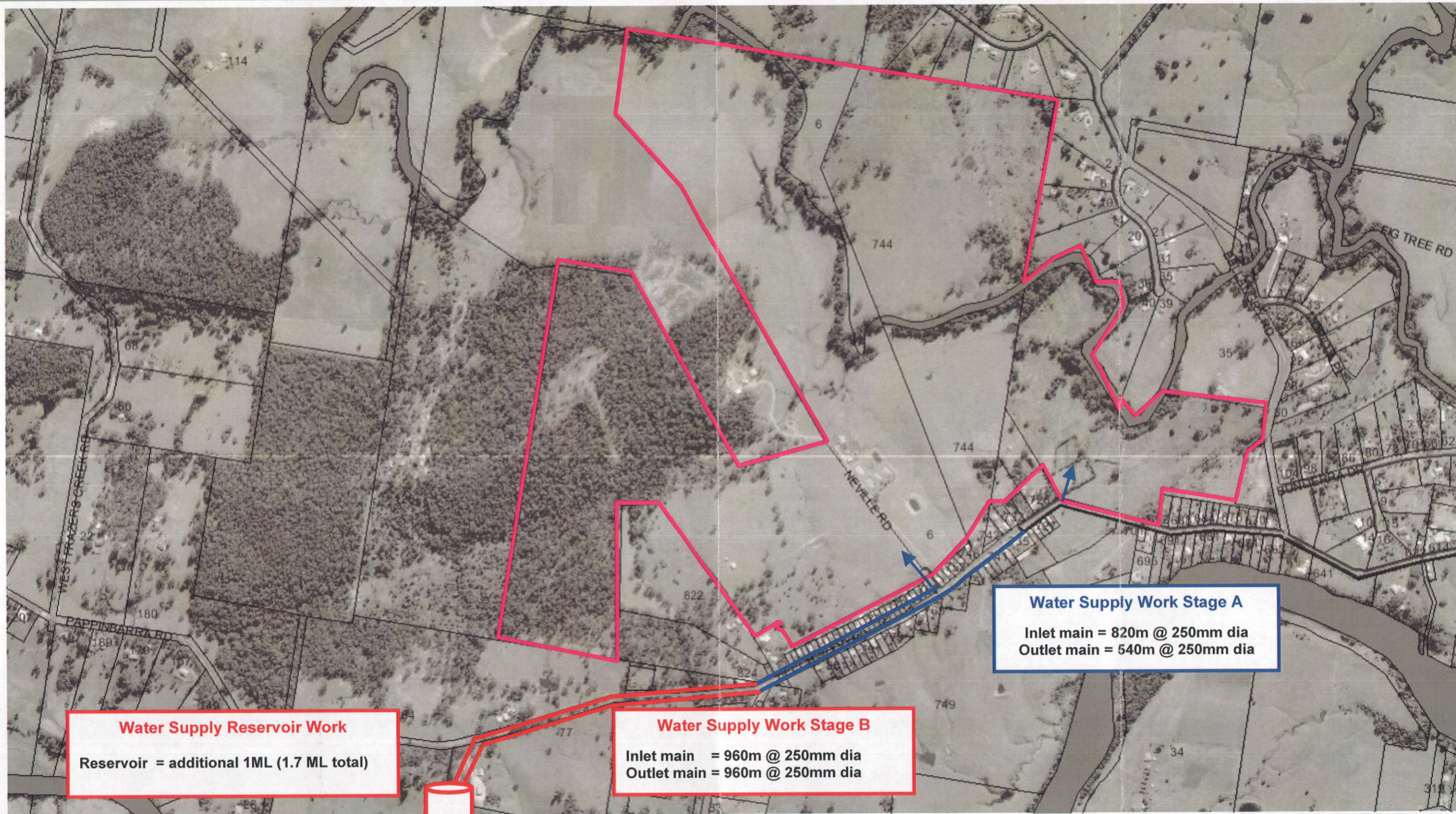
(Clause 1.1)

### **Map**

[The Map is on the next and following pages]



**Sheet 1  
Water Supply Work Stage A and Water Supply Work Stage B**



**Water Supply Reservoir Work**  
 Reservoir = additional 1ML (1.7 ML total)

**Water Supply Work Stage B**  
 Inlet main = 960m @ 250mm dia  
 Outlet main = 960m @ 250mm dia

**Water Supply Work Stage A**  
 Inlet main = 820m @ 250mm dia  
 Outlet main = 540m @ 250mm dia



12/07/2007



Scale = 1:10,000

**DISCLAIMER**  
 This map was produced by the Geographic Information Services section of the Port Macquarie-Hastings Council using information available to Port Macquarie-Hastings Council and the Department of Lands, Bathurst. The data was captured at a scale of 1:25000 for rural areas and 1:4000 for urban areas. The positional accuracy of plots becomes less reliable when viewed at scales greater than the capture scale. Port Macquarie-Hastings Council accepts no responsibility either in contract or tort (and particularly in negligence) for any errors, omissions or inaccuracies whatsoever contained within or arising from this map.

**NOTE:** Cadastral information outside the Port Macquarie-Hastings LGA not updated.



**Sheet 2  
Proposed Residential Land**



PRELIMINARY ONLY - NOT TO BE USED FOR CONSTRUCTION

- LEGEND**
- SITE BOUNDARY
  - EXISTING PROPERTY BOUNDARIES
  - PROPOSED LOT BOUNDARIES
  - STAGING BOUNDARY
  - FUTURE RESIDENTIAL 2(v) 'VILLAGE' ZONE
  - EXISTING RURAL 1(a)1 ZONE
  - EXISTING RESIDENTIAL 2(v) 'VILLAGE' ZONE
  - PROPOSED ROAD LINK LAND
  - (B) — BUILDING ENVELOPE
  - - - DRAINAGE EASEMENT  
DRAINAGE EASEMENTS ARE INDICATIVE ONLY AND ARE SUBJECT TO DETAILED DESIGN
  - (W) — WATER SUPPLY EASEMENT 5 WIDE



Caution This plan has been prepared for the purposes of a Subdivision proposal. The information shown herein is only reliable for that purpose and should not therefore be used for any other purpose without verification. All measurements and areas are subject to Council's development approval, detailed engineering design, final survey and registration of deposited plan. The final plan may have accompanying draft 888 instrument attached. The restrictions and easements contained therein will be subject to conditions contained within the development consent and construction certificate, civil construction, final survey and council approval.

C:\REF\14563\_BEECHWOOD\Beechwood\PA\Plan\_14563P\_Layout\_VPA.dwg - Layout:swt.dwg, 26 Feb 2020, 10:58

<p><b>KING + CAMPBELL</b></p> <p>1st Floor, Colonial Arcade 25-27 Hay Street Port Macquarie NSW 2444</p> <p>PO Box 243 Port Macquarie NSW 2444</p> <p>T: 02 6586 2555 F: 02 6583 4064</p> <p>E: info@kingcampbell.com.au</p>	<p>Rev</p> <table border="1"> <tr><th>Rev</th><th>Date</th><th>Description</th></tr> <tr><td>A</td><td>07.11.2007</td><td>PRELIMINARY FOR REVIEW</td></tr> <tr><td>B</td><td>08.11.2007</td><td>PRELIMINARY FOR REVIEW. SECTION MARKERS ADDED</td></tr> <tr><td>C</td><td>21.11.2007</td><td>PRELIMINARY FOR REVIEW.</td></tr> <tr><td>D</td><td>4.12.2007</td><td>ISSUED FOR PRE DA MEETING</td></tr> <tr><td>E</td><td>18.12.2007</td><td>ISSUED TO BUSHFIRE CONSULTANT</td></tr> <tr><td>F</td><td>19.12.2007</td><td>ISSUED TO MARTENS</td></tr> <tr><td>G</td><td>21.12.2007</td><td>ISSUED FOR DEVELOPMENT APPLICATION</td></tr> <tr><td>H</td><td>09.10.2008</td><td>ISSUED FOR VPA</td></tr> </table>	Rev	Date	Description	A	07.11.2007	PRELIMINARY FOR REVIEW	B	08.11.2007	PRELIMINARY FOR REVIEW. SECTION MARKERS ADDED	C	21.11.2007	PRELIMINARY FOR REVIEW.	D	4.12.2007	ISSUED FOR PRE DA MEETING	E	18.12.2007	ISSUED TO BUSHFIRE CONSULTANT	F	19.12.2007	ISSUED TO MARTENS	G	21.12.2007	ISSUED FOR DEVELOPMENT APPLICATION	H	09.10.2008	ISSUED FOR VPA	<p>Scale 1:4000 @ A1</p> <p>Datum AHD</p> <p>Caution: The stated scale of this drawing may have been altered by copying or other means. The scale should be verified prior to using the drawing to derive measurements.</p> <p>Copyright King &amp; Campbell Pty Ltd</p>	<p>Client</p> <p>Kayjay Superannuation Pty Ltd, Midco Holdings Pty Ltd, Mr RG Willcox and Mr &amp; Mrs Bowen</p>	<p>Project Number 14563</p> <p>DA Number</p> <p>Designed DAT</p> <p>Drawn AB / KW</p> <p>Checked DAT</p> <p>Date Created 21.06.2007</p>	<p>Drawing Title</p> <p>Voluntary Planning Agreement Proposed Subdivision Layout - Stages 1 - 6</p> <p>Project</p> <p>Lot A DP382960, Lot 1 DP789484, Lot 3 DP800211 &amp; Lot 4 DP831325, Beechwood</p> <p>Drawing No. 14563P_Layout_VPA.dwg</p> <p>Sheet 1</p> <p>Rev H</p>
	Rev	Date	Description																													
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**Beechwood Water Supply, Sewerage Services and Roadworks  
Planning Agreement  
Port Macquarie-Hastings Council  
Kayjay Superannuation Pty Ltd (Developer)**

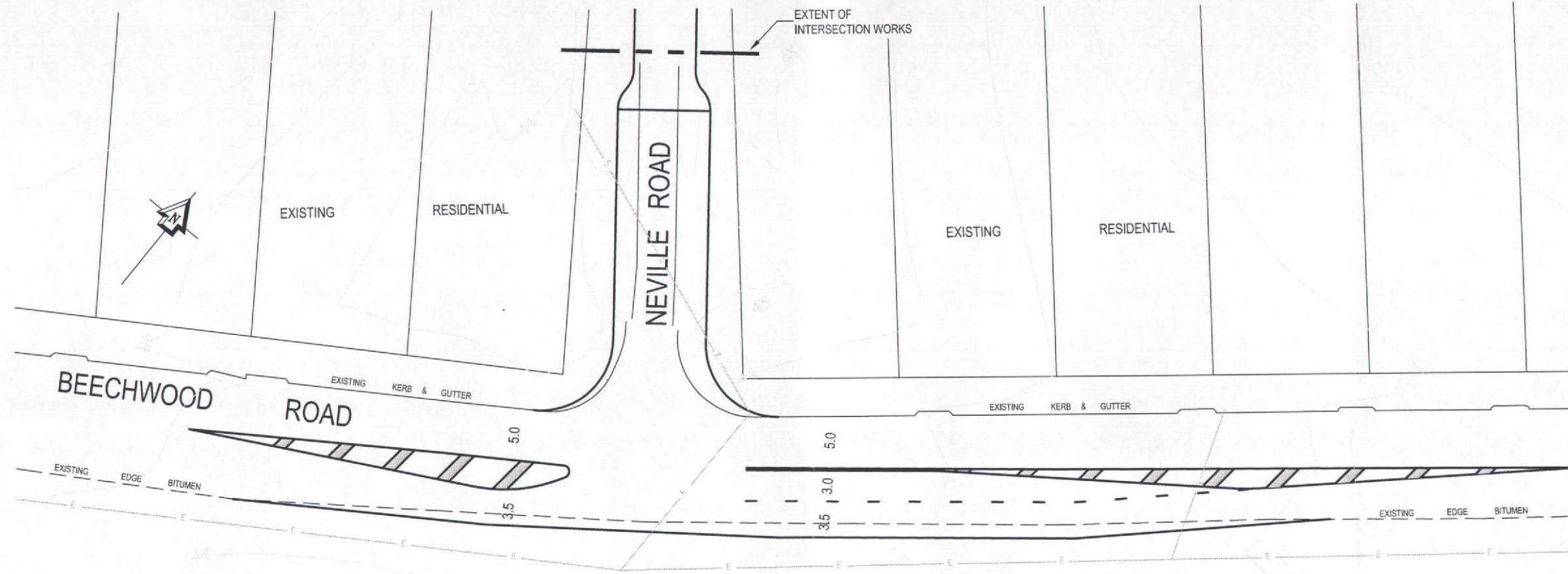
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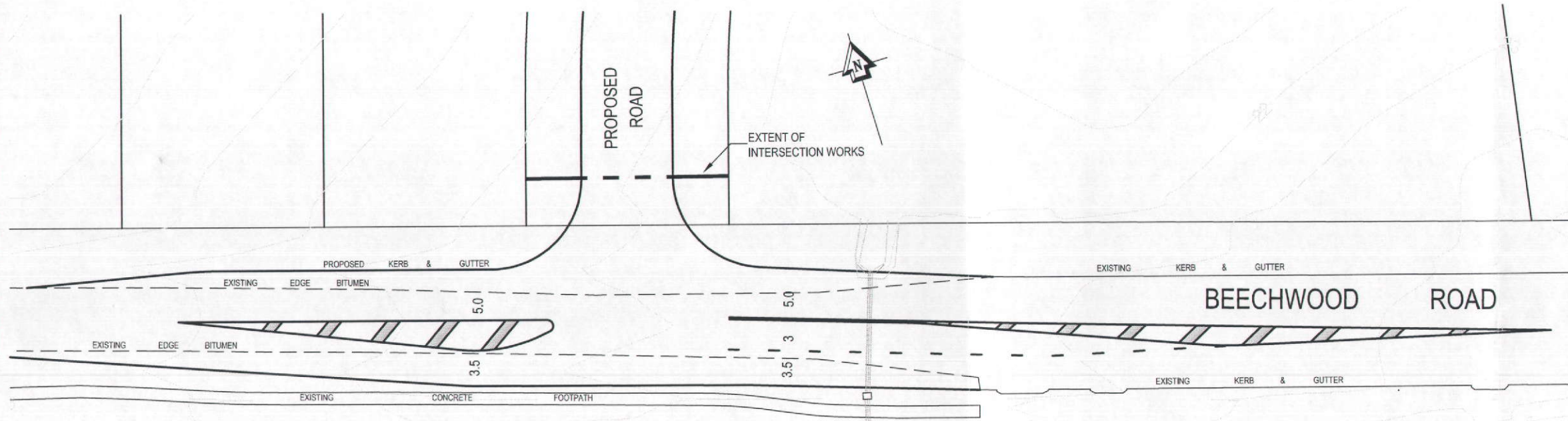
**Appendix 2**  
(Clause 1.1)

**Neville Road and Eastern Road Intersection Works**

PRELIMINARY ONLY - NOT TO BE USED FOR CONSTRUCTION



BEECHWOOD ROAD / NEVILLE ROAD INTERSECTION UPGRADE



EASTERN ROAD INTERSECTION AT BEECHWOOD ROAD

NOTE:  
1. CONCEPT DESIGNS ONLY SUBJECT TO DEVELOPMENT APPROVAL AND PREPARATION OF DETAILED ENGINEERING DESIGN

**KING + CAMPBELL**

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REV.	DATE	DESCRIPTION
A	22.11.07	ISSUED FOR INFORMATION
B	24.02.09	ISSUED FOR VOLUNTARY PLANNING AGREEMENT

DATUM: AHD      SCALE: 1:250 @ A1

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PROJECT NO: 14553  
DA NO:  
DESIGNED BY: AB  
DRAWN BY: ABRW  
CHECKED BY: AJT  
DATE CREATED: NOV, 2007

DRAWING TITLE: VOLUNTARY PLANNING AGREEMENT  
EXHIBIT 6: Proposed Intersections

PROJECT: Lot A DP382960, Lot 1 DP789484, Lot 3 DP800211 & Lot 4 DP831325, Beechwood

CLIENT: Kayjay Superannuation Pty Ltd, Misco Holdings Pty Ltd, Mr RG Wilcox and Mr and Mrs Bowen

DRAWING NO:	SHEET:	REVISION:
14553P_Intersections_VPA.dwg	1	B

### **Appendix 3**

(Clause 43)

*Environmental Planning and Assessment Regulation 2000*

(Clause 25E)

## **Explanatory Note**

### **Draft Planning Agreement**

Under s93F of the Environmental Planning and Assessment Act 1979

#### **Parties**

**Port Macquarie Hastings Council** ABN 11 236 901 601 of Corner Lord and Burrawan Streets, Port Macquarie, New South Wales 2444 (**Council**)

and



### **Description of the Land to which the Draft Planning Agreement Applies**

Lot 1 in DP 789484

### **Description of Proposed Development**

Rural Residential Subdivision involving the development the subject of DA No. 2007/0701 made by King and Campbell Pty Limited to the Council on 24 December 2007.

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

#### **Objectives of Draft Planning Agreement**

The objective of the Draft Planning Agreement is to provide suitable funding for the provision of infrastructure, facilities and services to meet the Development.

#### **Nature of Draft Planning Agreement**

The Draft Planning Agreement is a planning agreement under s93F of the *Environmental Planning and Assessment Act 1979 (Act)*. The Draft Planning Agreement is a voluntary agreement under which Development Contributions (as



defined in clause 1.1 of the Draft Planning Agreement) are made by the Developer for various public purposes (as defined in s93F(3) of the Act).

### **Effect of the Draft Planning Agreement**

The Draft Planning Agreement:

- relates to the carrying out by the Developer of development on the Land
- does not exclude the application of s 94 and s94A of the Act to the Development,
- requires monetary Development Contributions,
- requires the carrying out of specified Works by the Developer for the purposes of providing other public purposes,
- allows offsets of a specified percentage against specified monetary Development Contributions, in consideration of the benefits provided to the Council by the Developer under the agreement,
- requires the Council to apply monetary Development Contributions made under the agreement towards the specified purpose for which they were made and at the location, in the manner and to the standard (if any) specified in the agreement,
- imposes obligations on the Developer in relation to the carrying out of specified Works, the handing over of those Works to the Council and the rectification of defects in those Works.
- requires the Developer to provide the Council with security in the event that the Council is required to enforce the terms of the agreement,
- is not to be registered on the title to the Land,
- imposes restrictions on the Parties transferring the Land or part of the Land or assigning an interest under the agreement,
- provides two dispute resolution methods for a dispute under the agreement, being expert determination and mediation,
- provides that the agreement is governed by the law of New South Wales, and
- provides that the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) applies to the agreement.

### **Assessment of the Merits of the Draft Planning Agreement**

#### **The Planning Purposes Served by the Draft Planning Agreement**

The Draft Planning Agreement:

- promotes and co-ordinates of the orderly and economic use and development of the Land to which the agreement applies,
- provides land for public purposes in connection with the Development,
- provides and co-ordinates community services and facilities in connection with the Development, and
- provides increased opportunity for public involvement and participation in environmental planning and assessment of the Development.



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**How the Draft Planning Agreement Promotes the Public Interest**

The draft Planning Agreement promotes the public interest by promoting the objects of the Act as set out in s5(a)(ii)-(v) and 5(c) of the Act.

**For Planning Authorities:**

***Development Corporations - How the Draft Planning Agreement Promotes its Statutory Responsibilities***

N/A

***Other Public Authorities - How the Draft Planning Agreement Promotes the Objects (if any) of the Act under Which it is Constituted***

N/A

***Councils - How the Draft Planning Agreement Promotes the Elements of the Council's Charter***

The Draft Planning Agreement promotes the elements of the Council's charter by:

- providing services and facilities for the community,
- ensuring that public facilities provided by the Developer and Owners under the agreement are transferred to and managed by the Council or are otherwise subject to the Council's control,
- by providing a means for the private funding of public facilities for the benefit of the Development and the wider community,
- providing a means that allows the wider community to make submissions to the Council in relation to the agreement.

***All Planning Authorities - Whether the Draft Planning Agreement Conforms with the Authority's Capital Works Program***

The Draft Planning Agreement requires that specified Works be carried out by the Developer for water supply, sewerage services and roadworks.

The water supply and roadworks are not included in the Council's relevant current capital works program. However, the Council's Management Plan identifies these types of works in the relevant capital works program. The sewerage services works are included in Council's current capital works program.

Accordingly, the provision of these Works under the agreement is consistent and conforms with the capital works envisioned by the Council's Management Plan.