



lindsaytaylorlawyers
planning • environment • local government

Macquarie Park Planning Agreement

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

Macquarie Park Developments Pty Ltd

Port Macquarie-Hastings Council

Dated 7th January 2008
Executed by Council 18 June 2008



Planning Agreement

Parties

Macquarie Park Developments Pty Ltd ABN 86 787 716 674 of [REDACTED]

[REDACTED] (Developer)

Port Macquarie-Hastings Council ABN 11 236 901 601 of PO Box 84, Port
Macquarie, New South Wales 2444 (Council)

Background

- A The Developer proposes to carry out the Development on the Land.
- B On 24 December 2007, the Developer made a Development Application to the Council to carry out the Development.
- C The Development does not meet the requirements of the DCP in relation to off street parking.
- D The Developer has offered to make Development Contributions in connection with the carrying out of the Development in accordance with this Agreement.
- E The Development Contributions are to be used by the Council for the Public Purpose of upgrading public parking facilities in the Designated Area.
- F The Parties intend that this Agreement will be publicly notified and entered into for the purposes of the Act in connection with the Development Application for the carrying out of the Development.
- G Until the Planning Agreement operates, this Agreement constitutes the Developer's offer to make Development Contributions in connection with the Development on the terms and conditions set out in this Agreement.

Operative provisions

1 Definitions & Interpretation



- 1.1 The following definitions apply in this Agreement unless the context or subject-matter otherwise indicates or requires:

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

DCP means the *Port Macquarie-Hastings Development Control Plan No. 18 – Off Street Parking Code*.

Designated Area means the area hatched on the map which is Annexure A to this Agreement.

Development means the development the subject of Development Application No. 2007/0699 made by the Developer to the Council on 24 December 2007.

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.

GST has the same meaning as in the GST Law.

GST Law has the meaning given to that term 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.

Land means Lot 2 DP 1112365, in Grant Street Port Macquarie.

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.

Public Purpose has the same meaning as in s93F(2) of the Act.

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

Security means an unconditional bond or bank guarantee in a form acceptable to the Council relating to compliance by the Developer with its obligations under this Agreement.



Work means building, engineering or construction work in, on, over or under land.

- 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.

2 Application of this Agreement

This Agreement applies to the Development.

3 Status of this Agreement

- 3.1 Until the Planning Agreement operates, this document constitutes the Developer's irrevocable offer to enter into the Planning Agreement if development consent is granted to the Development.
- 3.2 The Planning Agreement operates only if 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.
- 3.3 The Developer consents to a condition of the kind referred to in clause 3.2.

4 Further Agreements Relating to this Agreement

- 4.1 The Parties may, at any time, enter into such other agreements relating to the subject-matter of this Agreement that they consider are necessary or desirable in order to give effect to this Agreement.
- 4.2 An agreement referred to in clause 4.1 is not to be inconsistent with:
 - 4.2.1 this Agreement, or



4.2.2 any Development Consent for the Development, as modified from time to time, or

4.2.3 any other applicable law.

4.3 An agreement referred to in clause 4.1 does not have effect to the extent that it contravenes clause 4.2.

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 of the Act to the Development.

5.2 This Agreement does not permit the Council to take into consideration the benefits under this Agreement in determining a Development Contribution under s94 of the Act in relation to the Development.

6 Monetary Contributions

6.1 The Developer is to pay a monetary Development Contribution of \$333,186 to the Council.

6.2 The Development Contribution referred to in clause 6.1 is to be paid to the Council prior to the release of a construction certificate relating to the Development.

6.3 A monetary Development Contribution is made for the purposes of this Agreement when cleared funds are deposited by means of electronic funds transfer into a bank account nominated by the Council.

6.4 The amount of the Development Contribution will be indexed quarterly in accordance with the Consumer Price Index (All Groups- Sydney) as provided by the Australian Bureau of Statistics from the date of execution of this Agreement to the date of payment of the Development Contribution.

7 Application of Development Contributions by the Council

7.1 The Council must apply a Development Contribution made by the Developer under this Agreement towards the provision of new public parking facilities, or the upgrading of public parking facilities, or both, within the Designated Area, together with any associated landscaping and streetscape works.



8 Provision of Security

- 8.1 Prior to commencement of the Development, the Developer is to provide the Council with the Security for the amount of the Development Contribution referred to in clause 6.1, or to pay that Development Contribution in full.
- 8.2 The Council is to release any Security provided under clause 8.1 once the Developer complies with its obligation under clause 6.1.
- 8.3 The amount of any Security provided under clause 8.1 will be indexed quarterly in accordance with the Consumer Price Index (All Groups- Sydney) as provided by the Australian Bureau of Statistics and the Developer must ensure that the Security held by the Council at all times equals the indexed amount notified to the Developer by Council.
- 8.4 The Council may apply any Security provided under clause 8.1 in satisfaction of the Developer's obligation under clause 6.1.

9 Enforcement

- 9.1 Without limiting any other remedies available to the Parties, this Agreement may be enforced by either Party in any court of competent jurisdiction.
- 9.2 For the avoidance of doubt, nothing in this Agreement prevents:
 - 9.2.1 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,
 - 9.2.2 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.

10 Registration of this Agreement

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

11 Sale of Land, Assignment, etc

- 11.1 The Developer is not to:
 - 11.1.1 sell the Land or part of the Land, or
 - 11.1.2 assign its interest under this Agreement,



to any person unless:

- 11.1.3 it has, at no cost to the Council, first procured the execution by the person of an agreement in favour of the Council on terms reasonably satisfactory to the Council under which the person agrees to be bound by this Agreement, and
- 11.1.4 the Council, by notice in writing to the Developer, has stated that evidence satisfactory to the Council has been produced by the Developer to show that the person is reasonably capable of performing its obligations under this Agreement, and
- 11.1.5 the Developer is not in breach of this Agreement.

12 Dispute Resolution

- 12.1 Except as otherwise specifically provided by this Agreement, should a dispute arise under this Agreement, the Parties shall firstly meet in an attempt to resolve the dispute.
- 12.2 If the dispute is not resolved within 28 days of the date that a Party first raises the issue about which there is a dispute, 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.
- 12.3 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.

13 Notices

- 13.1 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:
 - 13.1.1 delivered or posted to that Party at its address set out in the Schedule.
 - 13.1.2 faxed to that Party at its fax number set out in the Schedule.



13.1.3 emailed to that Party at its email address set out in the Schedule.

13.2 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.

13.3 Any notice, consent, information, application or request is to be treated as given or made if it is:

13.3.1 delivered, when it is left at the relevant address.

13.3.2 sent by post, 2 business days after it is posted.

13.3.3 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.

13.4 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.

14 Costs

14.1 The Developer is to pay to the Council the Council's costs of preparing, negotiating, executing and stamping this Agreement and any document related to this Agreement up to an amount of \$3,000 within 7 days of a written demand by the Council for such payment.

15 Entire Agreement

15.1 This Agreement contains everything to which the Parties have agreed in relation to the matters it deals with.

15.2 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.



16 Further Acts

16.1 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.

17 Governing Law and Jurisdiction

17.1 This Agreement is governed by the law of New South Wales.

17.2 The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them and they will not object to the exercise of jurisdiction by those courts on any basis.

18 Joint and Individual Liability and Benefits

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

19 No Fetter

19.1 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.

20 Representations and Warranties

20.1 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.

21 Severability

21.1 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.



21.2 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.

22 Modification

22.1 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.

23 Waiver

23.1 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.

23.2 A waiver by a Party is only effective if it is in writing.

23.3 A written 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.

24 GST Provisions

24.1 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.

- 24.2 Subject to clause 24.4, 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.
- 24.3 Clause 24.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Agreement to be GST inclusive.
- 24.4 No additional amount shall be payable by the Council under clause 24.2 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.
- 24.5 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:
- 24.5.1 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;
- 24.5.2 that any amounts payable by the Parties in accordance with clause 24.2 (as limited by clause 24.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 24.6 No payment of any amount pursuant to this clause 24, 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.
- 24.7 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.



24.8 This clause continues to apply after expiration or termination of this Agreement.

25 Explanatory Note Relating to this Agreement

25.1 The Appendix contains the Explanatory Note relating to this Agreement required by clause 25E of the Regulation.

25.2 Pursuant to clause 25E(7) of the Regulation, the Parties agree that the Explanatory Note in the Appendix is not to be used to assist in construing this Planning Agreement.



Schedule

(Clause 13)

Contact for Notices

Developer:

Macquarie Park Developments Pty Ltd
C/- King and Campbell Pty Ltd, PO Box 243, Port Macquarie, NSW, 2444
Telephone: [REDACTED]
Fax: [REDACTED]
Email: [REDACTED]

Council:

Port Macquarie Hastings Council
PO Box 84, Port Macquarie, NSW, 2444
Telephone: 02 6581 2111
Fax: 02 6581 8123
Email: council@hastings.nsw.gov.au

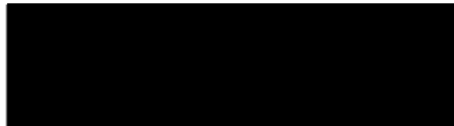


Execution Page

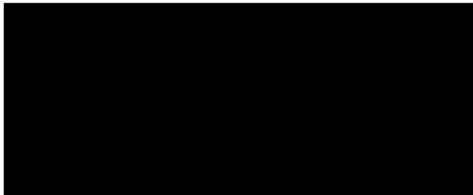
Executed as an Agreement

Dated: 7th January 2008
Executed by Council 18 June 2008.

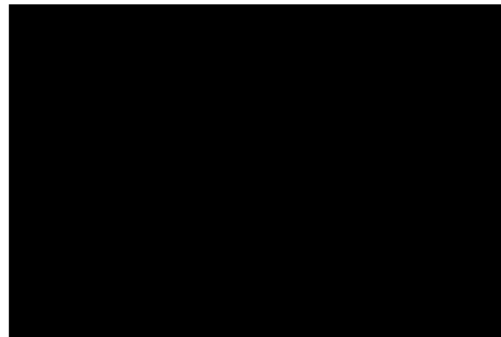
Signed on behalf of the Developer:



Signed on behalf of the Council:



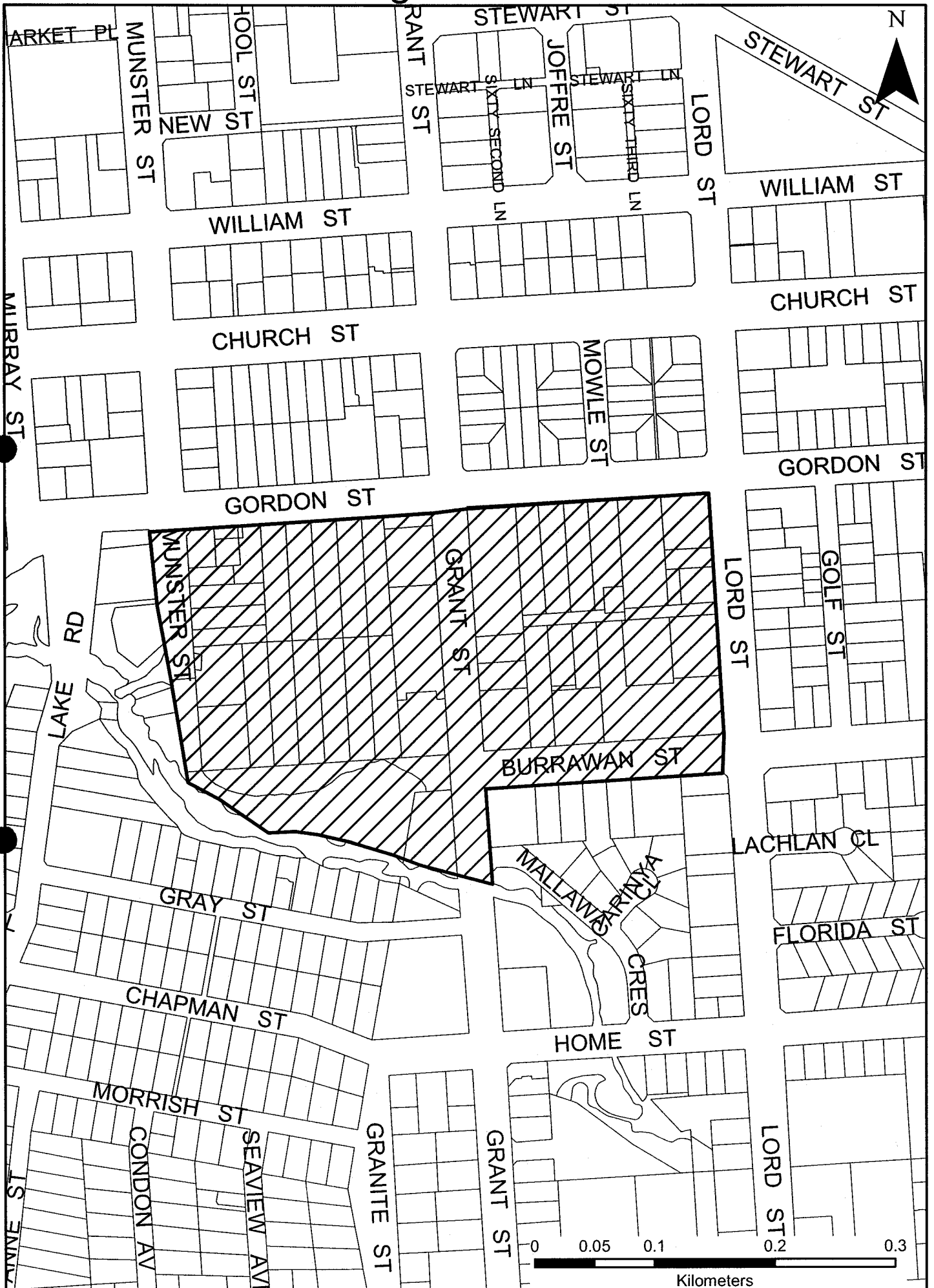
General Manager





ANNEXURE A
Designated Area
(Clause 1.1)

Designated Area





Appendix

(Clause 25)

Environmental Planning and Assessment Regulation 2000

(Clause 25E)

Explanatory Note

Macquarie Park Planning Agreement

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

Parties

Macquarie Park Developments Pty Ltd ABN 86 787 716 674 of [REDACTED]

[REDACTED] (Developer)

Port Macquarie-Hastings Council ABN 11 236 901 601 of PO Box 84, Port Macquarie, New South Wales 2444 (Council)

1 Description of Subject Land

Lot 2 DP 1112365, Grant Street, Port Macquarie

2 Description of Proposed Change to Environmental Planning Instrument/Development Application

The development application to which the planning agreement relates is for the construction of a two storey commercial building and basement car park together with associated landscaping and streetscape works.

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

The objective of the Planning Agreement is for the Developer to make a monetary Development Contribution which can be used by Council for the Public Purpose of upgrading public parking facilities in the Designated Area. The Development Contribution is made in lieu of the Developer providing off street parking in accordance with the requirements of the DCP.

4 Assessment of the Merits of the Draft Planning Agreement



4.1 The Planning Purposes Served by the Draft Planning Agreement

The proposed agreement provides funding for the upgrading of public parking facilities, in lieu of the provision of off street car parking within the Development.

4.2 How the Draft Planning Agreement Promotes the Public Interest

The draft agreement will promote the public interest in terms of providing a monetary contribution towards the upgrading of public parking facilities.

4.3 For Planning Authorities:

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

N/A

4.3.2 Other Public Authorities – How the Draft Planning Agreement Promotes the Objects (if any) of the Act under which it is Constituted

N/A

4.3.3 Councils – How the Draft Planning Agreement Promotes the Elements of the Council's Charter

- **Effectively account for and manage the assets for which it is responsible**

The contribution under the planning agreement will provide Council with the financial resources to upgrade public parking facilities.

4.3.4 All Planning Authorities – Whether the Draft Planning Agreement Conforms with the Authority's Capital Works Program

The draft Agreement does not form part of Council's capital works program.

KM 14449
14449.131.doc

KING + CAMPBELL

15- 1- 08 021

9 January 2008

The General Manager
Hastings Council
Burrawan Street
PORT MACQUARIE NSW 2444

urban design
civil engineering
architecture
town planning
landscape architecture
surveying

Attention: Mr Patrick Galbraith - Robertson

Dear Patrick,

RE: DEVELOPMENT APPLICATION FOR PROPOSED COMMERCIAL BUILDING
'STAGE 2 MACQUARIE BUSINESS PARK'
GRANT STREET, PORT MACQUARIE
DA 2007/699

We refer to the abovementioned matter and enclose herewith two (2) copies of the final Voluntary Planning Agreement as endorsed by Macquarie Park Developments Pty Ltd.

If you require additional information in relation to this matter please contact [redacted] or the writer on [redacted]

Yours faithfully
King & Campbell Pty Ltd

per [redacted]

encl 2 x signed VPA

directors

Paul Rowlandson
B Serv (Hons), MIS Aust

Anthony Thorne
B Surv, MIS Aust
Grad Dip Planning (UTS)

David Tooby
B L Arch, AAILA
Registered Landscape Architect

Scott Marchant
B Surv (Hons)

Craig Teasdel
B Arch, BA (Arch), RAIA
NSW Architects Registration Board No 6952

consultant

Andrew Campbell
M Surv Sci, B Surv
MIS Aust, M Planning (UTS)

Copy for **DA**

Port Macquarie HASTINGS COUNCIL	
Parcel	52807
15 JAN 2008	
Library	DA 2007-0699
Room	
Cabinet	
Binder	

PROCESSED

SCANNED

King & Campbell Pty Ltd
1st Floor, Colonial Arcade
25-27 Hay Street
Port Macquarie

PO Box 243
Port Macquarie, NSW, 2444

DX 7409, Port Macquarie

ABN 44 564 476 716

T: 02 6586 2555
F: 02 6583 4064

info@kingcampbell.com.au

www.kingcampbell.com.au