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Deed

Ocean Drive, Lake Cathie Planning Agreement

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

Port Macquarie Hastings Council
Catarina Village Pty Limited
Catarina Developments Pty Limited
Seawide Pty Limited
St Vincent's Foundation Pty Limited

17/02/15

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Ocean Drive, Lake Cathie Planning Agreement

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**Ocean Drive, Lake Cathie Planning Agreement
Port Macquarie Hastings Council
Catarina Developments, Catarina Village, Seawide, SVF**



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Ocean Drive, Lake Cathie Planning Agreement

Summary Sheet

Council:

Name: Port Macquarie-Hastings Council

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

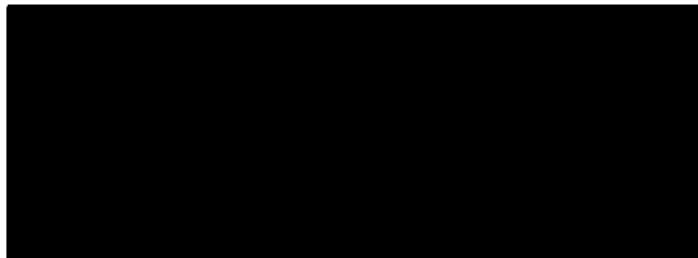
Telephone: (02) 6581 8111

Facsimile: (02) 6581 8123

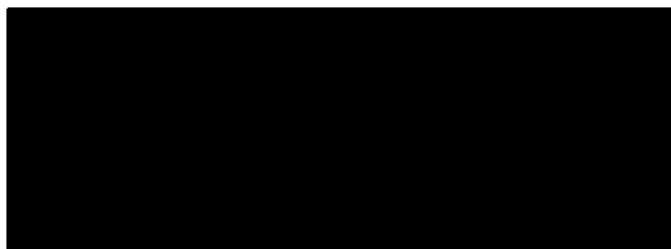
Email: council@pmhc.nsw.gov.au

Representative: Tim Molloy

Landowner: Catarina Village



Developer: Catarina Developments

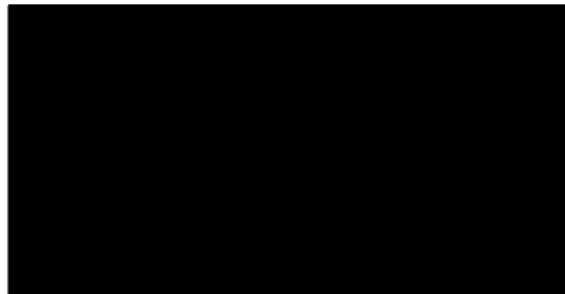


Landowner: Seaside





Landowner: SVF



Land:

See definition of *Landowner Land* in clause 1.1.

Development:

See definition of *Development* in clause 1.1.

Development Contributions:

See Part 2.

Application of s94, s94A and s94EF of the Act:

See clause 8.

Dispute Resolution:

See clauses 33 and 34.

Security:

See clauses 35 and 36.

Registration:



See clause 39.

Restriction on dealings:

See clause 40.



Ocean Drive, Lake Cathie 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



and



and



and



Background

- A The Landowners own the Landowner Land.
- B The Landowners and the Developer propose to make Development Applications for the carrying out of the Development on the Landowner Land.
- C The Landowners are prepared to make Development Contributions to the Council in conjunction with the carrying out of the Development in accordance with this Deed.



Operative provisions

Part 1 – Preliminary

1 Interpretation

1.1 In this Deed the following definitions apply:

Access Road means Catarina Village Access Road No. 1, Catarina Village Access Road No. 2, Seaside Access Road, SVF Access Road, Catarina Village and Seaside Shared Village Square Road, Catarina Village and Seaside Shared Laneway or SVF and Catarina Village Shared Road.

Access Road Work means work relating to the construction of an Access Road as a public road to a standard to serve the Development to the reasonable satisfaction of the Council.

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

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

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

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

(a) one of the following trading banks:

- (i) Australia and New Zealand Banking Group Limited,
- (ii) Commonwealth Bank of Australia,
- (iii) Macquarie Bank Limited,
- (iv) National Australia Bank Limited,
- (v) Westpac Banking Corporation, or

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

Catarina Village means Catarina Village Pty Ltd.

Catarina Village Access Road No. 1 means the road identified as such on Plan No.2.

Catarina Village Access Road No. 2 means the road identified as such on Plan No. 2.

Catarina Village and Seaside Shared Laneway means the road identified as such on Plan No.2.

Catarina Village and Seaside Shared Village Square Road means the road identified as such on Plan No.2.



Catarina Village Land means Lot 1 DP 374315 as shown on Plan No. 1 or other land shown as 'Catarina Village' following a boundary adjustment between Lot 1 DP374315 and Lot 4 DP 615261 as shown on Plan No. 2.

Catarina Village Sewerage Services Work Reduction Amount means the \$ amount calculated by multiplying the Sewerage Services Contribution Distribution Component by 292.

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

Construction Certificate has the same meaning as in the Act.

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

Council Land means Lot 177 DP 754444 and Lot 11 DP 629025.

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

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

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

Developer means Catarina Developments.

Development means the development of the Landowner Land generally in accordance with the subdivision layouts shown on Plan 2 and development for urban purposes on that land.

Development Application has the same meaning as in the Act.

Development Consent has the same meaning as in the Act and as modified under the Act from time to time..

Development Contribution means a monetary contribution, the dedication of land free of Cost, the carrying out of work, or the provision of any other material public benefit, or any combination of them, to be used for, or applied towards a public purpose, but does not include any Security or other benefit provided by a Party to the Council to secure the enforcement of that Party's obligations under this Deed for the purposes of s93F(3)(g) of the Act.

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

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

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

Final Lot means a lot created in the Development that is:

- (a) capable of separate occupation and disposition irrespective of whether or not it can be further subdivided, or
- (b) of a kind or created for a purpose that is otherwise agreed by the Parties,



not being a lot created by a subdivision of the Land:

- (c) resulting from a boundary adjustment between any Landowner Land,
- (d) that is to be dedicated or otherwise transferred to the Council, or
- (e) on which is situated a dwelling-house that was in existence on the date of this Deed.

GST has the same meaning as in the GST Law.

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

Initial Developer, in relation to each Work specified in this definition, means, subject to clauses 10 and 14, the Landowner responsible under this Deed for undertaking the Work so specified, being:

- (a) Ocean Drive Signal Ready Intersection Work,
- (b) Access Road Works or any Work included in the definition of Access Road Work,
- (c) Sewerage Services Work Pump Station,
- (d) Sewerage Services Work Rising Main.

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

Landowner means Catarina Village, Seaside or SVF and includes a reference to the Developer where relevant.

Landowner Land means the Catarina Village Land, Seaside Land or SVF Land.

LEP means *Port Macquarie-Hastings Local Environmental Plan 2011*.

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

Ocean Drive Signalised Dual Lane Intersection Work means the construction of a signalised intersection at the intersection of Ocean Drive, Abel Tasman Drive and the SVF Access Road as shown on Plan No. 5 and to a design and specification approved by Council and the RMS.

Ocean Drive Signalised Single Lane Intersection Work means the construction of a signalised intersection at the intersection of Ocean Drive, Abel Tasman Drive and the SVF Access Road as shown on Plan No. 4 and to a design and specification approved by Council and the RMS.

Ocean Drive Signal Ready Intersection Work means the Ocean Drive Signal Ready Intersection Work as shown on Plan No. 3 and to a design and specification approved by Council and the RMS.

Plan means Plan No.1, Plan No.2, Plan No.3, Plan No.4, Plan No.5, or Plan No.6 in Schedule 1.

Party means a party to this Deed.

Physical Commencement in relation to a Work means the time when building, engineering or construction work relating to the Work physically commences on land.

Rectification Notice means a notice in writing:



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

Rectify means rectify, remedy or correct.

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

RMS means Roads and Maritime Services.

Roads Contribution means a monetary Development Contribution towards the Council's Costs of providing, extending or augmenting public roads, being \$12,076.00 per ET in the Development indexed quarterly after 30 March 2014 in accordance with the Consumer Price Index (All Groups – Sydney) published by the Australian Bureau of Statistics.

Roads Contribution Reduction means the amount notified by the Council to the Initial Developer under clause 10.5, being so much of the Cost incurred by the Initial Developer Ocean Drive Signal Ready Intersection Works in the construction of the Ocean Drive Signal Ready Intersection Works that the Council reasonably considers it would have incurred had it undertaken the work itself but excluding any costs claimed by the Initial Developer under the Sewerage Services Relocation Work Reduction Amount and the Water Supply Services Relocation Work Reduction Amount.

Road Work means the Ocean Drive Signal Ready Intersection Work, the Sewerage Services Relocation Work, Water Supply Services Relocation Work and the relocation of electricity and telecommunications services within the area shown as '*Intersection Limit of Construction*' on Plan No. 3.

Seaside means Seaside Pty Ltd.

Seaside Access Road means the road identified as such on Plan No. 2.

Seaside Equivalent Lots means the sum of the following:

- (a) the number of Final Lots created on the Seaside Land in R1 Zone, and
- (b) the area measured in square metres of any lot created on the Seaside Land in the R3 Zone divided by 144, and
- (c) the area measured in square metres of any lot created on the Seaside Land in the B4 Zone divided by 96.

Seaside Land means Lot 4 DP 615261 as shown on Plan No. 1 or other land agreed between the Parties following a boundary adjustment between:

- (a) Lot 1 DP374315 and Lot 4 DP 615261 and/or
- (b) Lot 1 DP1193553 and Lot 4 DP615261.

Security means a Bank Guarantee, or a bond or other form of security to the satisfaction of the Council indexed quarterly after 30 March 2014 in accordance with Consumer Price Index (All Groups – Sydney) published by the Australian Bureau of Statistics.

Sewerage Services Contribution means a monetary Development Contribution towards the Cost of sewerage services infrastructure determined in accordance with the *Port Macquarie Hastings Development Servicing Plans for Sewerage Services* as in force from time to time.



Sewerage Services Contribution Distribution Component means 26% of the Sewerage Services Contribution.

Sewerage Services Relocation Work means the Work shown as 'Sewer Services Relocation' on Plan No. 3.

Sewerage Services Relocation Work Reduction Amount means the sum of:

- (a) the actual cost of constructing the Sewerage Services Relocation Work within the area marked as 'Area Y' as shown on Plan No. 3, and
- (b) the difference in value, determined by the Council, of the Sewerage Services Relocation Work within the area marked as 'Area X' on Plan No. 3 and the equivalent length of the sewerage service being replaced by that Work.

Sewerage Services Work means the Sewerage Services Work Pump Station and the Sewerage Services Work Rising Main.

Sewerage Services Work Cost means the Cost notified to the Initial Developer by the Council under clause 14.4.

Sewerage Services Work Cost Landowner Share means:

- (a) in relation to the Sewerage Services Work Pump Station:
 - (i) in relation to the Catarina Village Land, 63.75 % of the Sewerage Services Work Cost for the Sewerage Services Work Pump Station,
 - (ii) in relation to the SVF Land, 19.87 % of the Sewerage Services Work Cost for the Sewerage Services Work Pump Station, and
 - (iii) in relation to the Seaside Land, 16.38 % of the Sewerage Services Work Cost for the Sewerage Services Work Pump Station,
- (b) in relation to the Sewerage Services Work Rising Main:
 - (i) in relation to the Catarina Village Land, 63.75 % of the Sewerage Services Work Cost for the Sewerage Services Work Rising Main,
 - (ii) in relation to the SVF Land, 19.87 % of the Sewerage Services Work Cost for the Sewerage Services Work Rising Main, and
 - (iii) in relation to the Seaside Land, 16.38 % of the Sewerage Services Work Cost for the Sewerage Services Work Rising Main,

Sewerage Services Work Pump Station means Catarina Village SPS as shown on Plan No.6.

Sewerage Services Work Rising Main means Sewer Rising Main A on the Catarina Village Land, SVF Land and Council Land as shown on Plan No. 6.

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

Stage 1 SVF means that part of the Development to be carried out on Part Lot 1 DP1193553 as shown on Plan No. 1.

Subdivision Certificate has the same meaning as in the Act.



SVF means St Vincent's Foundation Pty Ltd.

SVF Access Road means the road identified as such on Plan No. 2.

SVF and Catarina Village Shared Road means the road identified as such on Plan No. 2.

SVF Land means Lot 1 DP1193553, Lot 5 DP 25886, and Lots 1, 2, 3 and 4 DP 1150758 as shown on Plan No. 1 or other land agreed between the Parties following a boundary adjustment between Lot 1 DP1193553 and Lot 4 DP 615261.

SVF Sewerage Services Work Reduction Amount means the \$ amount calculated by multiplying the Sewerage Services Contribution Distribution Component by 91.

Tendered Cost means the sum of:

- (a) the cost of carrying out Work specified in a tender to carry out the Work which has been accepted, and
- (b) the cost of any design and survey work carried out for the Work approved by the Council, not being a cost referred to in paragraph (a) of this definition,
- (c) survey costs, legal costs, application fees and all other costs of and incidental to the dedication to the Council of the land on which the Work is carried out.

Water Supply Contribution means a monetary Development Contribution towards the cost of water supply infrastructure determined in accordance with the *Port Macquarie Hastings Development Servicing Plans for Water Supply* as in force from time to time.

Water Supply Services Relocation Work means the Work shown as 'Water Supply Relocation' on Plan No. 3.

Water Supply Services Relocation Work Reduction Amount means the sum of:

- (a) the actual cost of constructing the Water Supply Services Relocation Work within the area marked as '*Intersection Limit of Construction*' as shown on Plan No. 3, and
- (b) the difference in value, determined by the Council, of the Water Supply Services Relocation Work within the area marked as '*Area X*' on Plan No. 3 and the equivalent length of the water supply service being replaced by that Work.

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

Zone means a land use zone specified in clause 2.1 of the LEP.

1.2 In the interpretation of this Deed, the following provisions apply unless the context otherwise requires:

- 1.2.1 Headings are inserted for convenience only and do not affect the interpretation of this Deed.
- 1.2.2 A reference in this Deed to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.



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

2 Status of this Deed

- 2.1 This Deed is a planning agreement within the meaning of s93F(1) of the Act.

3 Commencement

- 3.1 This Deed takes effect on the date when all Parties have executed one counterpart of this Deed.



- 3.2 The Party who executes this Deed last is to insert on the front page the date they did so and provide a copy of the fully executed and dated Deed to any other person who is a Party.

4 Application of this Deed & Amendment of other Planning Agreements

- 4.1 This Deed applies to the Council Land and the Landowner Land, and to the Development.
- 4.2 On and from the date this Deed is entered into, the definition of 'Development' in clause 1.1 of the 'Rainbow Beach Central Corridor Planning Agreement' entered into between the Council and SVF on 22 December 2011 is amended to read as follows:

'Development means the development described in the Concept Plan Application excluding the construction of the 'SVF Access Road' defined in clause 1.1 of the 'Ocean Drive Lake Cathie Planning Agreement' entered into between the Council, Catarina Village Pty Limited, Catarina Developments Pty Limited, Seaside Pty Limited and St Vincent's Foundation Pty Limited on or around 17 February 2015.'

- 4.3 On and from the date this Deed is entered into, the provisions of:
- 4.3.1 the 'Seaside Area 14 Stage 1B Planning Agreement' entered into between the Council and Seaside on 14 September 2011, and
- 4.3.2 the 'Milland Area 14 Stage 1B Planning Agreement' entered into between the Council and Milland on 14 September 2011, and
- 4.3.3 the 'Rainbow Beach Central Corridor Planning Agreement' entered into between the Council and SVF on 22 December 2011,
- relating to the payment by the Landowner to the Council of a 'Roads Contribution' as defined in clause 1.1 of each Agreement have no force or effect.

General Manager

5 Warranties

- 5.1 The Parties warrant to each other that they:
- 5.1.1 have full capacity to enter into this Deed, and
- 5.1.2 are able to fully comply with their obligations under this Deed.
- 5.2 Without limiting clause 5.1:
- 5.2.1 Catarina Village, Catarina Developments, Seaside and SVF each warrant that they are solvent,
- 5.2.2 Catarina Village warrants that it is the registered proprietor of the Catarina Village Land at the date of this Deed,
- 5.2.3 Seaside warrants that it is the registered proprietor of the Seaside Land at the date of this Deed,
- 5.2.4 SVF warrants that it is the registered proprietor of the SVF Land at the date of this Deed.



6 Further agreements

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

7 Surrender of right of appeal, etc.

- 7.1 The Landowner is not to commence or maintain, or to cause or procure the commencement or maintenance, of any proceedings in any court or tribunal or similar body appealing against, or questioning the validity of this Deed.

8 Application of s94, s94A and s94EF of the Act to the Development

- 8.1 This Deed does not exclude the application of s94 to the Development except as regards contributions for public roads.
- 8.2 This Deed does not exclude the application of s94A to the Development.
- 8.3 This Deed does not exclude the application of s94EF to the Development.

Part 2 – Road Work and Roads Contribution

9 Restrictions on carrying out certain Development until Road Work completed

- 9.1 The Road Work is to be completed in accordance with this Deed before the issuing of the first Subdivision Certificate for any part of the Development authorising the creation of a Final Lot.
- 9.2 The SVF Access Road is to be completed in accordance with this Deed before the issuing of the first Subdivision Certificate for any part of the Development on the SVF Land authorising the creation of a Final Lot.
- 9.3 The SVF Access Road and the Seaside Access Road are to be completed in accordance with this Deed before the issuing of the first Subdivision Certificate for any part of the Development on the Seaside Land authorising the creation of a Final Lot.
- 9.4 The SVF Access Road, the Seaside Access Road, the Catarina Village Access Road No.1 and the Catarina Village Access Road No. 2 are to be completed in accordance with this Deed before the issuing of the first Subdivision Certificate for any part of the Development on the Catarina Village Land authorising the creation of a Final Lot.
- 9.5 Nothing in this Deed requires any Landowner to carry out Work comprising the Ocean Drive Signalised Single Lane Intersection Work or the Ocean Drive Signalised Dual Lane Intersection Work.
- 9.6 The Parties acknowledge and agree that Work associated with the upgrading of the Ocean Drive Signal Ready Intersection to become the Ocean Drive



Signalised Single Lane Intersection Work or the Ocean Drive Signalised Dual Lane Intersection Work is intended to be carried out by the Council using Roads Contributions paid to it and only when the Council reasonably considers that traffic conditions warrant the carrying out of the Work but nothing in this Deed imposes any obligation on the Council enforceable at law or in equity to carry out that Work.

10 Carrying out of Road Work

- 10.1 A Landowner is the Initial Developer Ocean Drive Signal Ready Intersection Work and is to carry out that Work in accordance with this Deed if it is the first Landowner to give notice in writing to the other Landowners and the Council to that effect.
- 10.2 The Landowner referred to in clause 10.1 remains the Initial Developer:
- 10.2.1 while ever the notice referred to in clause 10.1 is not withdrawn by a further notice in writing to the other Landowners and the Council at any time before the Physical Commencement of that Work, or
- 10.2.2 once Physical Commencement of that Work occurs.
- 10.3 If the Initial Developer is:
- 10.3.1 SVF, it is to complete the Road Work and SVF Access Road in accordance with this Deed,
- 10.3.2 Seaside, it is to complete the Road Work, SVF Access Road and Seaside Access Road in accordance with this Deed,
- 10.3.3 Catarina Village or the Developer, it is to complete the Road Work, SVF Access Road, Seaside Access Road, Catarina Village Access Road No.1 and Catarina Village Access Road No. 2 in accordance with this Deed.
- 10.4 Before the Physical Commencement of any Work required to be carried out under clause 10.3, the Initial Developer is to:
- 10.4.1 submit detailed design plans of the Work to the Council for written approval by the Council, and
- 10.4.2 after having received such approval, notify the Council in writing of the Tendered Cost of the Work , which Cost is to be itemised by reference to the different components of the Access Road Work required to be carried out under clause 10.3.
- 10.5 After receiving notification under 10.4.2, the Council is to notify the Initial Developer in writing whether it agrees to give the Roads Contribution Reduction.
- 10.6 If the Council notifies the Initial Developer under clause 10.5 that it agrees to give the Roads Contribution Reduction, the amount of the Roads Contribution Reduction is the actual cost of that Work incurred by the Initial Developer upon completion of that Work in accordance with the scope of work approved by the Council under clause 10.4 and as verified by tax invoices.
- 10.7 If the Council does not agree to the Tendered Cost notified to it under clause 10.4.2 or notifies the Initial Developer under clause 10.5 that it does not agree to give the Roads Contribution Reduction, a Dispute is taken to have arisen and clauses 33 and 34 apply.



11 Reimbursement of Cost of Access Road Work

- 11.1 In this clause 11:
- 'Other Landowner' means a Landowner other than the Initial Developer.
 - 'Other Landowner Land' means land owned by the Other Landowner.
- 11.2 This clause applies if and only to the extent to which the Initial Developer Ocean Drive Signal Ready Intersection Work carries out Access Road Work under clause 10.3 on Other Landowner Land or a Landowner otherwise lawfully carries out Access Road Work on Other Landowner Land.
- 11.3 The Initial Developer or Landowner is not to enter Other Landowner Land for the purpose of carrying out Access Road Work unless:
- 11.3.1 it has first notified the Other Landowner in writing of the Tendered Cost of the Work in so far as it relates to that land and has provided such additional information that may be reasonably required by the Other Landowner to consider the Tendered Cost, and
 - 11.3.2 the Other Landowner has notified the Initial Developer or Landowner in writing that it consents to that Work being carried out.
- 11.4 For the purposes of clause 11.3.2:
- 11.4.1 the Other Landowner is not to unreasonably withhold its consent, and
 - 11.4.2 if the Other Landowner fails to give consent within 28 days of the date of the notification referred to in clause 11.3.1, a Dispute is taken to have arisen under this Deed.
- 11.5 Upon completion of Access Road Work by the Initial Developer or Landowner on Other Landowner Land in accordance with this Deed, the Initial Developer or Landowner is to notify the Other Landowner in writing of the actual Cost it incurred in carrying out the Work on that land in respect of the matters covered by the Tendered Cost.
- 11.6 Clause 33 applies if the Other Landowner disputes the actual Cost notified by the Initial Developer or Landowner to the Other Landowner under clause 11.5.
- 11.7 The Other Landowner is not to apply for, or cause, suffer or permit an application to be made for, or procure the issuing of, a Subdivision Certificate relating to Development on its own Landowner Land unless the Council has been provided with written evidence, signed by the Initial Developer or the Landowner, and the Other Landowner, evidencing that the Other Landowner has reimbursed, or has agreed to reimburse, the Initial Developer or the Landowner for the actual Cost incurred by them of carrying out the relevant Work on the Other Landowner Landowner Land.

12 Roads Contribution

- 12.1 Subject to clause 12.2, the Landowner is to pay the Roads Contribution for the Development or each Stage at the following times:
- 12.1.1 if the Stage involves subdivision – before the issuing of the first Subdivision Certificate for the Development or Stage authorising the creation of a Final Lot,



- 12.1.2 if the Stage does not involve subdivision but requires the issuing of a construction certificate – before the issuing of the first Construction Certificate for the Stage,
- 12.1.3 in any other case – before the Physical Commencement of the Stage unless otherwise determined by the Council acting reasonably.
- 12.2 The Roads Contribution payable by the Initial Developer Ocean Drive Signal Ready Intersection Work under clause 12.1 is to be reduced by the Roads Contribution Reduction agreed to by the Council and notified to the Initial Developer Ocean Drive Signal Ready Intersection Work under clause 10.5.
- 12.3 Clause 12.2 only applies if the Ocean Drive Signal Ready Intersection Work has been completed and the Landowner Land on which the Work was carried out has been dedicated to the Council in accordance with this Deed.
- 12.4 If, under clause 12.2, the Roads Contribution is not fully offset by the Roads Contribution Reduction, the Council is to pay to the Landowner from Roads Contributions received by it from time to time the remaining amount necessary to fully offset the Roads Contribution.
- 12.5 Clause 12.4 only applies to Roads Contributions received by the Council:
 - 12.5.1 after the Roads Contribution Reduction is determined,
 - 12.5.2 the expenditure of which by the Council is not otherwise committed by the Council.

Part 3 – Sewerage Services Work and Sewerage Service Contribution

13 Restrictions on carrying out certain Development until Sewerage Services Work completed

- 13.1 The Sewerage Services Work Pump Station is to be completed in accordance with this Deed before the issuing of the first Subdivision Certificate for any part of the Development authorising the creation of a Final Lot other than:
 - 13.1.1 Stage 1 SVF, or
 - 13.1.2 Development anywhere on the Seawide Land in aggregate of not more than 70 Seawide Equivalent Lots.
- 13.2 The Sewerage Services Work Rising Main is to be completed in accordance with this Deed before the issuing of the first Subdivision Certificate for any part of the Development authorising the creation of a Final Lot other than Development anywhere on the Seawide Land in aggregate of not more than 70 Seawide Equivalent Lots.

14 Carrying out of Sewerage Services Work

- 14.1 A Landowner is the Initial Developer Sewerage Services Work and is to carry out that Work in accordance with this Deed if it is the first Landowner to give notice in writing to the other Landowners and the Council to that effect.



- 14.2 The Landowner referred to in clause 14.1 remains the Initial Developer:
 - 14.2.1 while ever the notice referred to in clause 14.1 is not withdrawn by a further notice in writing to the other Landowners and the Council at any time before the Physical Commencement of that Work, or
 - 14.2.2 once Physical Commencement of that Work occurs.
- 14.3 Before the Physical Commencement of any Work required to be carried out under clause 14.1, the Initial Developer is to:
 - 14.3.1 submit detailed design plans of the Work to the Council for written approval by the Council, and
 - 14.3.2 after having received such approval, notify to the Council the Tendered Cost of the Work.
- 14.4 After receiving notification under 14.3.2, the Council is to notify the Initial Developer in writing of the Sewerage Services Work Cost.
- 14.5 If the Council does not agree to the Tendered Cost notified to it under clause 14.3.2 or does not notify the Developer of the Sewerage Services Work Cost under clause 14.4 within a reasonable time, a Dispute is taken to have arisen and clauses 33 and 34 apply.
- 14.6 If:
 - 14.6.1 access is required to enable the Initial Developer Sewerage Services Work Pump Station to carry out the Sewerage Services Work Pump Station, and
 - 14.6.2 the Access Road Work has not been completed or that Work does not provide sufficient access to enable the carrying out of the Sewerage Services Work Pump Station,then,
 - 14.6.3 the Initial Developer Sewerage Services Work Pump Station is to construct so much of an access way that is sufficient to enable it to carry out the Sewerage Services Work Pump Station.
- 14.7 The access way referred to in clause 14.6.3 is to be constructed in the location of an Access Road to a standard to be agreed between the Parties.
- 14.8 For the avoidance of doubt, the access way referred to in clause 14.6.3 is not an Access Road, the construction of that access way is not an Access Road Work and nothing in this clause 14 affects anything in Part 2 of this Deed.
- 14.9 If a gravity sewerage reticulation system is required to connect the land owned by the Initial Developer Sewerage Services Work Pump Station to the Sewerage Services Work Pump Station, then the Initial Developer is to construct such a gravity sewerage reticulation system to a standard agreed to by the Parties.

15 Sewerage Services Contribution

- 15.1 The Landowner is to pay the Sewerage Services Contribution for the Development or each Stage at the following times:
 - 15.1.1 if the Stage involves subdivision – before the issuing of the first Subdivision Certificate for the Development or Stage authorising the creation of a Final Lot,



- 15.1.2 if the Stage does not involve subdivision but requires the issuing of a Construction Certificate – before the issuing of the first Construction Certificate for the Stage,
- 15.1.3 in any other case – before the Physical Commencement of the Stage unless otherwise determined by the Council acting reasonably.
- 15.2 Notwithstanding clause 15.1, if the Landowner:
 - 15.2.1 is SVF, the Sewerage Services Contribution otherwise required to be paid is to be reduced by the SVF Sewerage Services Work Reduction Amount,
 - 15.2.2 is Catarina Village or the Developer, the Sewerage Services Contribution otherwise required to be paid is to be reduced by the Catarina Village Sewerage Services Work Reduction Amount.
- 15.3 If the sum of the Catarina Village Sewerage Services Work Reduction Amount and the SVF Sewerage Services Work Reduction Amount exceeds the Sewerage Services Work Cost, those amounts are to be reduced in proportion to the number of ETs in the Development to which they relate so that the sum of those amounts does not exceed that Cost.
- 15.4 In addition to the amount otherwise payable under clauses 15.1 and 15.2, the Landowner, if it is not the Initial Developer Sewerage Services Work Pump Station, is to pay the Sewerage Services Work Cost Landowner Share in relation to the Sewerage Services Work Pump Station:
 - 15.4.1 if the Landowner is SVF, before the issuing of any Subdivision Certificate that authorises the creation of any Final Lot that are to be connected to the Sewerage Services Work Pump Station,
 - 15.4.2 if the Landowner is Seaside, before the issuing of the Subdivision Certificate that authorises the creation of 71st Seaside Equivalent Lot,
 - 15.4.3 if the Landowner is Catarina Village or the Developer, before the issuing of the Subdivision Certificate that authorises the creation of any Final Lot on the Catarina Village Land after the commencement of construction work relating to the Sewerage Services Work Pump Station.
- 15.5 In addition to the amount otherwise payable under clauses 15.1 and 15.2, the Landowner, if it is not the Initial Developer Sewerage Services Work Rising Main, is to pay the Sewerage Services Work Cost Landowner Share in relation to the Sewerage Services Work Rising Main:
 - 15.5.1 if the Landowner is SVF, before the issuing of any Subdivision Certificate that authorises the creation of any Final Lots that are to be connected to the Sewerage Services Work Rising Main,
 - 15.5.2 if the Landowner is Seaside, before the issuing of the Subdivision Certificate that authorises the creation of 71st Seaside Equivalent Lot,
 - 15.5.3 if the Landowner is Catarina Village or the Developer, before the issuing of the Subdivision Certificate that authorises the creation of any Final Lot on the Catarina Village Land after the commencement of construction work relating to the Sewerage Services Work Rising Main.
- 15.6 As soon as practicable after the Council receives a Sewerage Services Work Cost Landowner Share payment under clause 15.4 or 15.5, the Council is to



pay an equivalent amount to the Initial Developer for the Work in respect of which that payment was made to the Council.

- 15.7 Clause 15.6 only applies if the Sewerage Services Work concerned has been completed and:
- 15.7.1 the Landowner Land on which the Sewerage Services Work Pump Station was carried out has been dedicated to the Council in accordance with this Deed, and
 - 15.7.2 the Landowner Land on which Sewerage Services Work Rising Main was carried out has been dedicated to the Council in accordance with this Deed or included in an easement in favour of and to the satisfaction of the Council .

16 Sewerage Services Relocation Work Reduction Amount

- 16.1 The amount of Sewerage Services Contribution required to be paid by the Initial Developer Ocean Drive Signal Ready Intersection Work calculated under clause 15 is to be reduced by the Sewerage Services Relocation Work Reduction Amount as notified by the Council to the Landowner.
- 16.2 Clause 16.1 only applies if the Sewerage Services Relocation Work has been completed and the Landowner Land on which the Work was carried out has been dedicated to the Council in accordance with this Deed

Part 4 –Water Supply Contribution

17 Water Supply Contributions

- 17.1 Subject to clause 17.2, the Landowner is to pay the Water Supply Contribution for the Development or each Stage at the following times:
- 17.1.1 if the Stage involves subdivision – before the issuing of the first Subdivision Certificate for the Development or Stage authorising the creation of a Final Lot,
 - 17.1.2 if the Stage does not involve subdivision but requires the issuing of a Construction Certificate – before the issuing of the first Construction Certificate for the Stage,
 - 17.1.3 in any other case – before the Physical Commencement of the Stage unless otherwise determined by the Council acting reasonably.
- 17.2 If the Landowner is the Initial Developer Ocean Drive Signal Ready Intersection Work, the Water Supply Contribution payable under clause 17.1 is to be reduced by the Water Supply Services Relocation Work Reduction Amount as notified by the Council to the Landowner.
- 17.3 Clause 17.2 only applies if the Water Supply Services Relocation Work has been completed and the Landowner Land on which the Work was carried out has been dedicated to the Council in accordance with this Deed.



Part 5 – Development contributions generally

18 Provision of Development Contributions

- 18.1 The Landowner is to make Development Contributions to the Council in accordance with Parts 2,3 and 4, any other provision of this Deed relating to the making of Development Contributions and otherwise to the satisfaction of the Council.
- 18.2 The Council is to apply each Development Contribution made by the Landowner under this Deed towards the public purpose for which it is made and otherwise in accordance with this Deed.

19 Payment of monetary Development Contributions

- 19.1 A monetary Development Contribution is made for the purposes of this Deed when the Council receives the full amount of the contribution payable under this Deed in cash or by unendorsed bank cheque or by the deposit by means of electronic funds transfer of cleared funds into a bank account nominated by the Council.
- 19.2 The payment to the Council of a monetary Development Contribution under this Deed may be deferred:
- 19.2.1 in accordance with a policy adopted by the Council and in force from time to time governing the deferred payment of monetary contributions payable to the Council under conditions of development consent imposed under s94 of the Act, or
- 19.2.2 otherwise by written agreement with the Council.

20 Dedication of land

- 20.1 A Landowner on whose Landowner Land Road Work, Access Road Work or Sewerage Services Work is carried out under this Deed must do all things reasonably necessary to cause the land on which the Work has been carried out to be dedicated to the Council not later than 28 days after the Work is completed in accordance with this Deed.
- 20.2 A Development Contribution comprising the dedication of land is made for the purposes of this Deed when:
- 20.2.1 a deposited plan is registered in the register of plans held with the Registrar-General that dedicates land as a public road (including a temporary public road) under the *Roads Act 1993* or creates a public reserve or drainage reserve under the *Local Government Act 1993*, or
- 20.2.2 the Council is given:
- (a) an instrument in registrable form under the *Real Property Act 1900* duly executed by the Landowner as transferor that is effective as the case requires to:
- (i) transfer the title to the land to the Council,



- (ii) impose a relevant restriction as to the user of the land, public positive covenant or easement in favour to the Council or its nominee,
 - (iii) when executed by the Council as transferee and registered,
 - (b) the written consent to the registration of the instrument of any person whose consent is required to that registration, and
 - (c) a written undertaking from any person holding the certificate of title to the production of the certificate of title for the purposes of registration of the instrument.
- 20.3 The Landowner is to do all things reasonably necessary to enable registration of the instrument to occur.
- 20.4 The Landowner is to ensure that land dedicated to the Council under this Deed is free of all encumbrances and affectations (whether registered or unregistered and including without limitation any charge or liability for rates, taxes and charges) except as otherwise agreed in writing by the Council.
- 20.5 If, having used all reasonable endeavours, the Landowner cannot ensure that land to be dedicated to the Council under this Deed is free from all encumbrances and affectations, the Landowner may request that Council agree to accept the land subject to those encumbrances and affectations, but the Council may withhold its agreement in its absolute discretion.
- 20.6 Despite any other provision of this Deed, if the Landowner is required to dedicate land to the Council on which the Landowner is also required to carry out a Work under this Deed, the Landowner is to comply with clause 20.2.2 not later than 7 days after the Work is completed for the purposes of this Deed.

21 Carrying out of Work

- 21.1 The Landowner Parties are to co-operate with each other and co-ordinate the carrying out of Work under this Deed to facilitate the orderly, timely and efficient carrying out of the Development on all Landowner Land.
- 21.2 Without limiting any other provision of this Deed, any Work that is required to be carried out by the Landowner under this Deed is to be carried out in accordance with any design or specification specified or approved by the Council, any relevant Approval and any other applicable law.
- 21.3 The Council is not to specify or approve any design or specification for any Work under this Deed unless it is reasonably satisfied that the design or specification reasonably promotes the objective of facilitating the orderly, timely and efficient carrying out of Development on all Landowner Land.
- 21.4 The Landowner, at its own Cost, is to comply with any reasonable direction given to it by the Council to prepare or modify a design or specification relating to a Work that the Landowner is required to carry out under this Deed.

22 Variation to Work

- 22.1 The design or specification of any Work that is required to be carried out by the Landowner under this Deed may be varied by agreement in writing



between the Parties, acting reasonably, without the necessity for an amendment to this Deed

- 22.2 Without limiting clause 22.1, the Landowner may make a written request to the Council to approve a variation to the design or specification of a Work in order to enable it to comply with the requirements of any Authority imposed in connection with any Approval relating to the carrying out of the Work.
- 22.3 The Council is not to unreasonably delay or withhold its approval to any request made by the Landowner under clause 22.2.
- 22.4 The Council, acting reasonably, may from time to time give a written direction to the Landowner requiring it to vary the design or specification of a Work before the Work is carried out in a specified manner and submit the variation to the Council for approval.
- 22.5 The Landowner is to comply promptly with a direction referred to in clause 22.4 at its own Cost.

23 Access by Landowners to Landowner Land

- 23.1 The Landowners authorise each other to enter, occupy and use only so much of their Landowner Land as is reasonably necessary to enable them to perform their obligations under this Deed subject to such reasonable conditions as they may stipulate by notice in writing.
- 23.2 Nothing in this Deed creates or gives a Landowner any estate or interest in Landowner Land not owned by them.

24 Access to Council Land by Landowner

- 24.1 The Council authorises the Landowner to enter, occupy and use the Council Land for the purpose of performing its obligations under this Deed subject to such reasonable conditions as the Council may stipulate by notice in writing.
- 24.2 The Council is to permit the Landowner, upon receiving reasonable prior notice from the Landowner, to enter any other Council owned or controlled land in order to enable the Landowner to properly perform its obligations under this Deed subject to such reasonable conditions as the Council may stipulate by notice in writing.
- 24.3 Nothing in this Deed creates or gives the Landowner any estate or interest in any land owned by the Council.

25 Access to Landowner Land by Council

- 25.1 The Council may enter any Landowner Land on which Work is being carried out under this Deed in order to inspect, examine or test the Work..
- 25.2 The Council is to give a Landowner prior reasonable notice before it enters land under clause 25.1.



26 Council's obligations relating to Work

- 26.1 The Council is not to unreasonably delay, hinder or otherwise interfere with the performance by the Landowner of its obligations under this Deed.

27 Protection of people, property & utilities

- 27.1 The Landowner is to ensure to the fullest extent reasonably practicable in relation to the performance of its obligations under this Deed that:
- 27.1.1 all necessary measures are taken to protect people and property,
 - 27.1.2 unnecessary interference with the passage of people and vehicles is avoided, and
 - 27.1.3 nuisances and unreasonable noise and disturbances are prevented.
- 27.2 Without limiting clause 27.1, the Landowner is not to obstruct, interfere with, impair or damage any public road, public footpath, public cycleway or other public thoroughfare, or any pipe, conduit, drain, watercourse or other public utility or service on any land except as authorised in writing by the Council or any relevant Authority.

28 Repair of damage

- 28.1 The Landowner is to maintain any Work required to be carried out by the Landowner under this Deed until the Work is completed for the purposes of this Deed or such later time as agreed between the Parties.
- 28.2 The Landowner is to carry out its obligation under clause 28.1 at its own Cost and to the satisfaction of the Council.

29 Completion of Work

- 29.1 The Landowner is to give the Council written notice of the date on which it will complete Work required to be carried out under this Deed or any Stage.
- 29.2 The Council is to inspect the Work the subject of the notice referred to in clause 29.1 within 14 days of the date specified in the notice for completion of the Work.
- 29.3 Work required to be carried out by the Landowner under this Deed, or a Stage, is completed for the purposes of this Deed when the Council, acting reasonably, gives a written notice to the Landowner to that effect.
- 29.4 If the Council is the owner of the land on which Work the subject of a notice referred to in clause 29.3 is issued, the Council assumes responsibility for the Work upon the issuing of the notice, but if it is not the owner at that time, it assumes that responsibility when it later becomes the owner.
- 29.5 Before the Council gives the Landowner a notice referred to in clause 29.3, it may give the Landowner a written direction to complete, rectify or repair any specified part of the Work to the reasonable satisfaction of the Council.
- 29.6 The Landowner, at its own Cost, is to promptly comply with a direction referred to in clause 29.5.



30 Rectification of defects

- 30.1 The Council may give the Landowner a Rectification Notice during the Defects Liability Period.
- 30.2 The Landowner, at its own Cost, is to comply with a Rectification Notice according to its terms and to the reasonable satisfaction of the Council.
- 30.3 The Council is to do such things as are reasonably necessary to enable the Landowner to comply with a Rectification Notice that has been given to it under clause 30.1

31 Works-As-Executed-Plan

- 31.1 No later than 60 days after Work is completed for the purposes of this Deed, the Landowner is to submit to the Council a full works-as-executed-plan in respect of the Work.
- 31.2 The Landowner, being the copyright owner in the plan referred to in clause 31.1, gives the Council a non-exclusive licence to use the copyright in the plans for the purposes of this Deed.

32 Removal of Equipment

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

Part 6 – Dispute Resolution

33 Dispute resolution – expert determination

- 33.1 This clause applies to a Dispute between any of the Parties to this Deed concerning a matter arising in connection with this Deed that can be determined by an appropriately qualified expert if:
 - 33.1.1 the Parties to the Dispute agree that it can be so determined, or
 - 33.1.2 the Chief Executive Officer of the professional body that represents persons who appear to have the relevant expertise to determine the Dispute gives a written opinion that the Dispute can be determined by a member of that body.
- 33.2 A Dispute to which this clause applies is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 33.3 If a notice is given under clause 33.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.



- 33.4 If the Dispute is not resolved within a further 28 days, the Dispute is to be referred to the President of the NSW Law Society to appoint an expert for expert determination.
- 33.5 The expert determination is binding on the Parties except in the case of fraud or misfeasance by the expert.
- 33.6 Each Party is to bear its own costs arising from or in connection with the appointment of the expert and the expert determination.
- 33.7 The Parties are to share equally the costs of the President, the expert, and the expert determination.

34 Dispute Resolution - mediation

- 34.1 This clause applies to any Dispute arising in connection with this Deed other than a Dispute to which clause 33 applies.
- 34.2 Such a Dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 34.3 If a notice is given under clause 34.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 34.4 If the Dispute is not resolved within a further 28 days, the Parties are to mediate the Dispute in accordance with the Mediation Rules of the Law Society of New South Wales published from time to time and are to request the President of the Law Society to select a mediator.
- 34.5 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.
- 34.6 Each Party is to bear its own costs arising from or in connection with the appointment of a mediator and the mediation.
- 34.7 The Parties are to share equally the costs of the President, the mediator, and the mediation.

Part 7 - Enforcement

35 Security for performance of obligations

- 35.1 This clause applies to the construction of following Work:
 - 35.1.1 the Ocean Drive Signal Ready Intersection Work,
 - 35.1.2 any Work required to be carried out on Council Land under this Deed.
- 35.2 The Landowner is not to carry out any Work to which this clause applies unless, before the commencement of the Work, the Landowner provides the Council with Security to secure the performance of the Landowner's obligations relating to the Work in accordance with an agreement between the Council and the Landowner relating to the provision of Security or, failing such



- agreement, on such terms and conditions required by the Council acting reasonably.
- 35.3 For the purposes of clause 35.2, the Parties are to have regard to any policy or practice of the Council, current at the time the Security is provided, relating to the provision of security to the Council for the construction of public infrastructure by Landowners.
- 35.4 The Council is to release and return the Security or any unused part of it to the Landowner within 14 days of compliance by the Landowner of its obligations under this Deed to the reasonable satisfaction of the Council.
- 35.5 The Landowner may at any time provide the Council with a replacement Security.
- 35.6 On receipt of a replacement Security, the Council is to release and return to the Landowner, as directed, the Security it holds that has been replaced.
- 35.7 The Council may call-up the Security if it reasonably considers that the Landowner has not complied with its Development Contributions obligations under this Deed.
- 35.8 However, the Council is not to call-up the Security unless it has given the Landowner not less than 30 days notice of its intention to do so and particulars of why it intends to do so, and the Landowner has not rectified the non-compliance to the Council's reasonable satisfaction before that period has expired.
- 35.9 If the Council calls-up the Security, it may use the amount paid to it in satisfaction of any costs incurred by it in remedying the non-compliance including but not limited to:
- 35.9.1 the reasonable costs of the Council's servants, agents and contractors reasonably incurred for that purpose,
- 35.9.2 all fees and charges necessarily or reasonably incurred by the Council in order to have the Work carried out, completed or rectified, and
- 35.9.3 all legal costs and expenses reasonably incurred by the Council, by reason of the Landowner's non-compliance.
- 35.10 If the Council calls-up the Security, it may, by notice in writing to the Landowner, require the Landowner to provide a further or replacement Security in an amount that, when added to any unused portion of any existing Security, does not exceed the amount of the Security the Council is entitled to hold under this Deed.
- 35.11 The dispute resolution provisions of this Deed do not apply to any matter the subject of this clause.

36 Acquisition of land required to be dedicated

- 36.1 If the Landowner does not dedicate land required to be dedicated under this Deed when it is required to be dedicated, the Landowner consents to the Council compulsorily acquiring the land (or any interest of the Landowner in the land) for compensation in the amount of \$1 without having to follow the pre-acquisition procedure under the Just Terms Act.
- 36.2 The Council is to only acquire land pursuant to this clause if it considers it reasonable to do so having regard to the circumstances surrounding the



failure by the Landowner to dedicate the land required to be dedicated under this Deed.

- 36.3 Clause 36.1 constitutes an agreement for the purposes of s30 of the Just Terms Act.
- 36.4 If, as a result of the acquisition referred to in this clause, the Council is required to pay compensation to any person other than the Landowner, the Landowner is to reimburse the Council that amount, upon a written request being made by the Council, or the Council can call on any Security provided under this Deed.
- 36.5 The Landowner indemnifies and keeps indemnified the Council against all Claims made against the Council as a result of any acquisition by the Council of the whole or any part of the land concerned except if, and to the extent that, the Claim arises because of the Council's negligence or default.
- 36.6 The Landowner is to promptly do all things necessary, and consents to the Council doing all things necessary, to give effect to this clause, including without limitation:
 - 36.6.1 signing any documents or forms,
 - 36.6.2 giving land owner's consent for lodgement of any Development Application,
 - 36.6.3 producing certificates of title to the Registrar-General under the *Real Property Act 1900*, and
 - 36.6.4 paying the Council's costs arising under this clause 36.

37 Breach of obligations

- 37.1 If the Council reasonably considers that the Landowner is in breach of any obligation under this Deed, it may give a written notice to the Landowner:
 - 37.1.1 specifying the nature and extent of the breach,
 - 37.1.2 requiring the Landowner to:
 - (a) rectify the breach if it reasonably considers it is capable of rectification, or
 - (b) pay compensation to the reasonable satisfaction of the Council in lieu of rectifying the breach if it reasonably considers the breach is not capable of rectification,
 - 37.1.3 specifying the period within which the breach is to be rectified or compensation paid, being a period that is reasonable in the circumstances.
- 37.2 If the Landowner fails to fully comply with a notice referred to in clause 37.1, the Council may, without further notice to the Landowner, call-up the Security provided by the Landowner under this Deed and apply it to remedy the Landowner's breach.
- 37.3 If the Landowner fails to comply with a notice given under clause 37.1 relating to the carrying out of Work under this Deed, the Council may step-in and remedy the breach and may enter, occupy and use any land owned or controlled by the Landowner and any Equipment on such land for that purpose.



- 37.4 Any costs incurred by the Council in remedying a breach in accordance with clause 37.2 or clause 37.3 may be recovered by the Council by either or a combination of the following means:
- 37.4.1 by calling-up and applying the Security provided by the Landowner under this Deed, or
 - 37.4.2 as a debt due in a court of competent jurisdiction.
- 37.5 For the purpose of clause 37.4, the Council's costs of remedying a breach the subject of a notice given under clause 37.1 include, but are not limited to:
- 37.5.1 the costs of the Council's servants, agents and contractors reasonably incurred for that purpose,
 - 37.5.2 all fees and charges necessarily or reasonably incurred by the Council in remedying the breach, and
 - 37.5.3 all legal costs and expenses reasonably incurred by the Council, by reason of the breach.
- 37.6 Nothing in this clause 37 prevents the Council from exercising any rights it may have at law or in equity in relation to a breach of this Deed by the Landowner, including but not limited to seeking relief in an appropriate court.

38 Enforcement in a court of competent jurisdiction

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

Part 8 – Registration & Restriction on Dealings

39 Registration of this Deed

- 39.1 The Parties agree to register this Deed on all Landowner Land for the purposes of s93H(1) of the Act.
- 39.2 Not later than 30 days after the commencement of this Deed, each Landowner is to deliver to the Council in registrable form:
- 39.2.1 an instrument requesting registration of this Deed on the title to the relevant Landowner Land duly executed by the Landowner, and
 - 39.2.2 the written irrevocable consent of each person referred to in s93H(1) of the Act to that registration.



- 39.3 Each Landowner is to do such other things as are reasonably necessary to enable registration of this Deed to occur.
- 39.4 The Parties are to do such things as are reasonably necessary to remove any notation relating to this Deed from the title to each Landowner Land:
 - 39.4.1 in so far as the part of the relevant Landowner Land concerned is a Final Lot,
 - 39.4.2 in relation to any other part of the relevant Landowner Land, once the relevant Landowner has completed its obligations under this Deed to the reasonable satisfaction of the Council or this Deed is terminated or otherwise comes to an end for any other reason.
- 39.5 Nothing in clause 39.4 requires the Council to take any action to remove any notation relating to this Deed from the title to any part of the Landowner Land in so far as the part concerned is a proposed Final Lot if, at the time, the relevant Landowner of that Landowner Land is in breach of any of its obligations under this Deed.

40 Restriction on dealings

- 40.1 A Landowner is not to:
 - 40.1.1 sell or transfer the Landowner Land, or any part, other than a Final Lot, or
 - 40.1.2 assign the Landowner's rights or obligations under this Deed, or novate this Deed,
to any person unless:
 - 40.1.3 the Landowner has, at no Cost to the Council, first procured the execution by the person to whom the relevant Landowner Land or part is to be sold or transferred or the Landowner's rights or obligations under this Deed are to be assigned or novated, of a deed in favour of the Council on terms reasonably satisfactory to the Council, and
 - 40.1.4 the Council has given written notice to the Landowner stating that it reasonably considers that the purchaser, transferee, assignee or novatee, is reasonably capable of performing its obligations under this Deed, and
 - 40.1.5 the Landowner is not in breach of this Deed, and
 - 40.1.6 the Council otherwise consents to the transfer, assignment or novation, such consent not to be unreasonably withheld.
- 40.2 Clause 40.1 does not apply in relation to any sale or transfer of the relevant Landowner Land, or part:
 - 40.2.1 if this Deed is registered on the title to that Landowner Land at the time of the sale; or
 - 40.2.2 once the Landowner has completed its obligations under this Deed to the reasonable satisfaction of the Council or this Deed is terminated or otherwise comes to an end for any other reason.



Part 9 – Indemnities & Insurance

41 Risk

- 41.1 The Landowner performs this Deed at its own risk and its own Cost.

42 Release

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

43 Indemnity

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

44 Insurance

- 44.1 The Landowner is to take out and keep current, and ensure that its contractors take out and keep current, to the satisfaction of the Council the following insurances (as relevant to the Landowner or contractor) in relation to Work required to be carried out by the Landowner under this Deed up until the time that the Work is taken to have been completed in accordance with this Deed:
- 44.1.1 contract works insurance, noting the Council as an interested party, for the full replacement value of the Works (including the Cost of demolition and removal of debris, consultants' fees and authorities' fees), to cover the Landowner's liability in respect of damage to or destruction of the Works,
 - 44.1.2 public liability insurance for at least \$20,000,000.00 for a single occurrence, which covers the Council, the Landowner and any subcontractor of the Landowner, for liability to any third party,
 - 44.1.3 workers compensation insurance as required by law, and
 - 44.1.4 any other insurance required by law.
- 44.2 If a Landowner fails to comply with clause 44.1, the Council may effect and keep in force such insurances and pay such premiums as may be necessary for that purpose and the amount so paid shall be a debt due from the Landowner to the Council and may be recovered by the Council as it deems appropriate including:
- 44.2.1 by calling upon the Security provided by the Landowner to the Council under this Deed, or



- 44.2.2 recovery as a debt due in a court of competent jurisdiction.
- 44.3 The Landowner is not to commence to carry out any Work unless it has first provided to the Council satisfactory written evidence of all of the insurances specified in this clause 44.1.

Part 10 – Other Provisions

45 Notices

- 45.1 Any notice, consent, information, application or request that is to or may be given or made to a Party under this Deed is only given or made if it is in writing and sent in one of the following ways:
- 45.1.1 delivered or posted to that Party at its address set out in the Summary Sheet,
 - 45.1.2 faxed to that Party at its fax number set out in the Summary Sheet, or
 - 45.1.3 emailed to that Party at its email address set out in the Summary Sheet.
- 45.2 If a Party gives the other Party 3 business days notice of a change of its address, fax number or email, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted, faxed or emailed to the latest address or fax number.
- 45.3 Any notice, consent, information, application or request is to be treated as given or made if it is:
- 45.3.1 delivered, when it is left at the relevant address,
 - 45.3.2 sent by post, 2 business days after it is posted,
 - 45.3.3 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, or
 - 45.3.4 sent by email and the sender does not receive a delivery failure message from the sender's internet service provider within a period of 24 hours of the email being sent.
 - 45.3.5 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.

46 Costs

- 46.1 Each Party comprising the Landowner (other than Catarina Developments) is to pay to the Council the Council's costs not exceeding \$9,500.00 of preparing, negotiating, executing and stamping this Deed, and any document related to this Deed within 7 days of a written demand by the Council for such payment.



- 46.2 The Landowner is also to pay to the Council the Council's reasonable costs of enforcing this Deed within 7 days of a written demand by the Council for such payment.

47 Entire Deed

- 47.1 This Deed contains everything to which the Parties have agreed in relation to the matters it deals with.
- 47.2 No Party can rely on an earlier document, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, before this Deed was executed, except as permitted by law.

48 Further Acts

- 48.1 Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to effect, perfect or complete this Deed and all transactions incidental to it.
- 48.2 Without limitation, clause 48.1 requires a Party to use its best endeavours to procure the execution of documents and the doing of other things by third parties.

49 Governing Law and Jurisdiction

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

50 Joint and Individual Liability and Benefits

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

51 No Fetter

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



52 Illegality

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

53 Severability

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

54 Amendment

- 54.1 No amendment of this Deed will be of any force or effect unless it is in writing and signed by the Parties to this Deed in accordance with clause 25D of the Regulation.

55 Waiver

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

56 GST

- 56.1 In this clause:
- Adjustment Event, Adjustment Note, Consideration, GST, GST Group, Margin Scheme, Money, Recipient, Supply and Tax Invoice** have the meaning given by the GST Law.
- 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.

- 56.2 Subject to clause 56.4, if GST is payable on a Taxable Supply made under, by reference to or in connection with this Deed, the Party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.
- 56.3 Clause 56.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Deed to be GST inclusive.
- 56.4 No additional amount shall be payable by the Council under clause 56.2 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.
- 56.5 If there are Supplies for Consideration which is not Consideration expressed as an amount of Money under this Deed by one Party to the other Party that are not subject to Division 82 of the *A New Tax System (Goods and Services Tax) Act 1999*, the Parties agree:
- 56.5.1 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;
- 56.5.2 that any amounts payable by the Parties in accordance with clause 56.2 (as limited by clause 56.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 56.6 No payment of any amount pursuant to this clause 56, 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.
- 56.7 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.
- 56.8 If an Adjustment Event arises in respect of a Taxable Supply made by a Supplier under this Deed, the GST Amount payable under clause 54.2 will be recalculated to reflect the Adjustment Event and a payment will be made by the Recipient to the Supplier or by the Supplier to the Recipient as the case requires.
- 56.9 This clause continues to apply after expiration or termination of this Deed.

57 Explanatory Note

- 57.1 The Appendix contains the Explanatory Note relating to this Deed required by clause 25E of the Regulation.



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

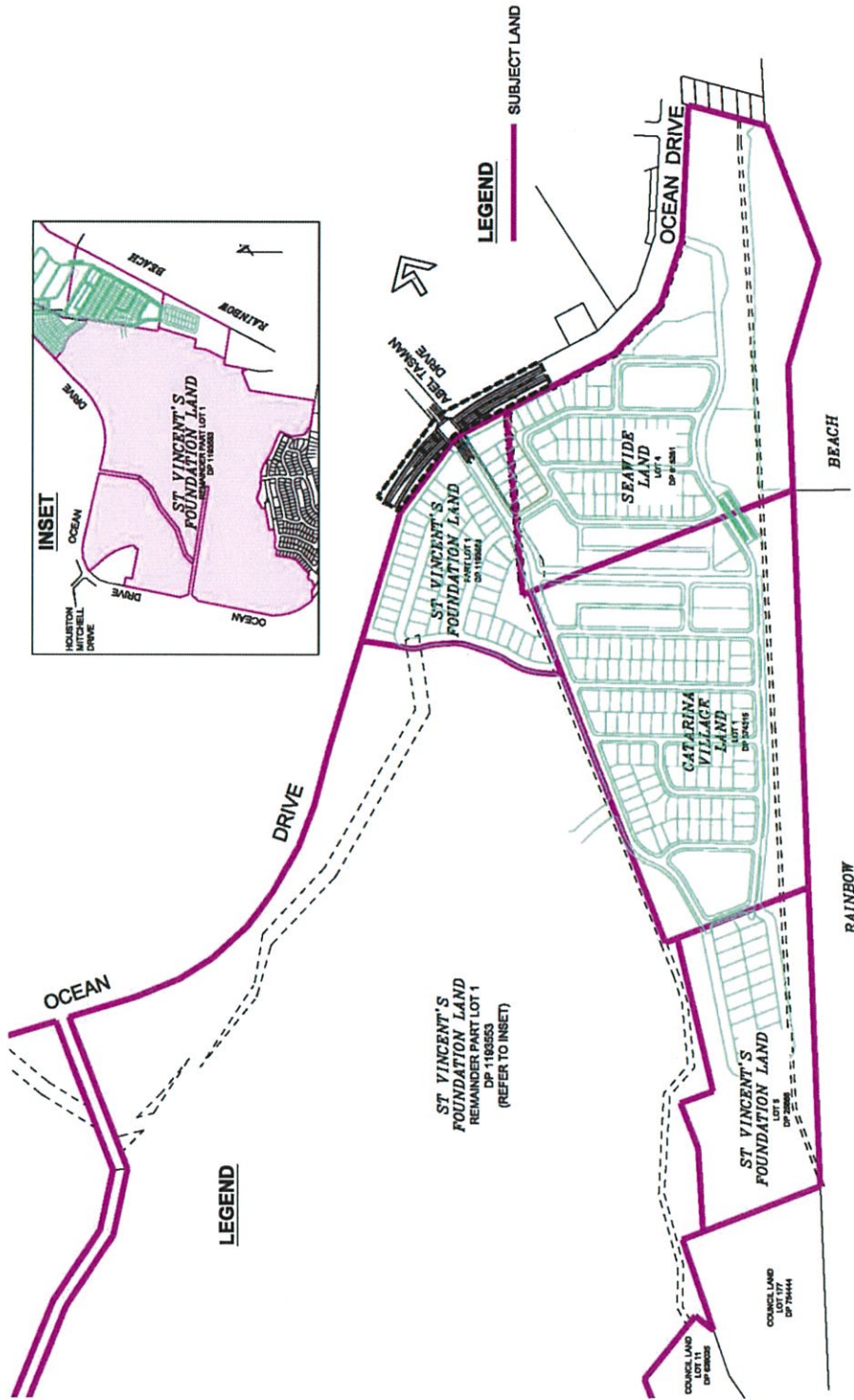


Schedule 1

(Clause 1.1)

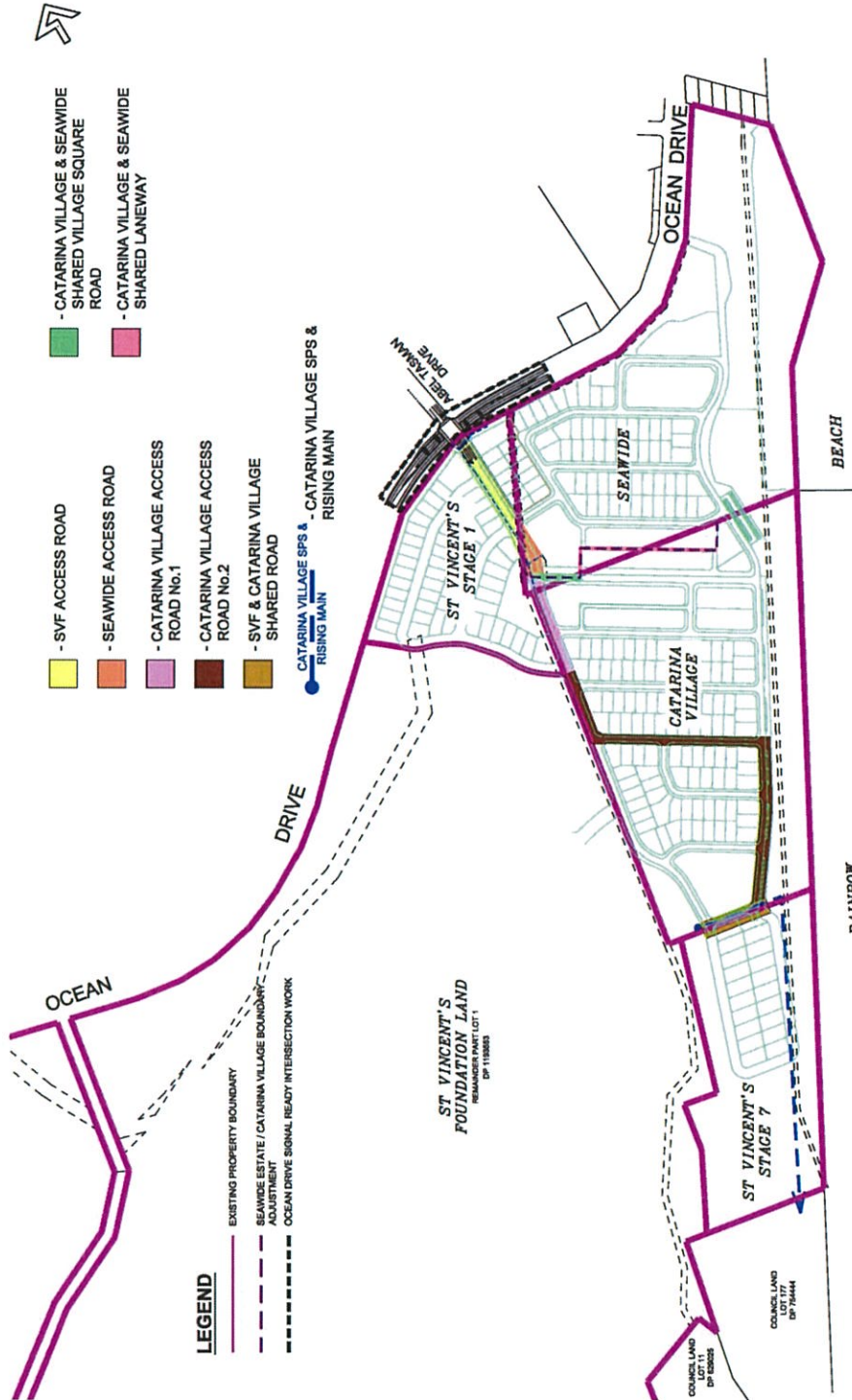
Plan

Plan on the following pages.



Plan No.1
SUBJECT LAND - PLANNING AGREEMENT
 Date - 24th Jan 2014 Scale - 1:5000 Ref - 6766-007 (VPA)

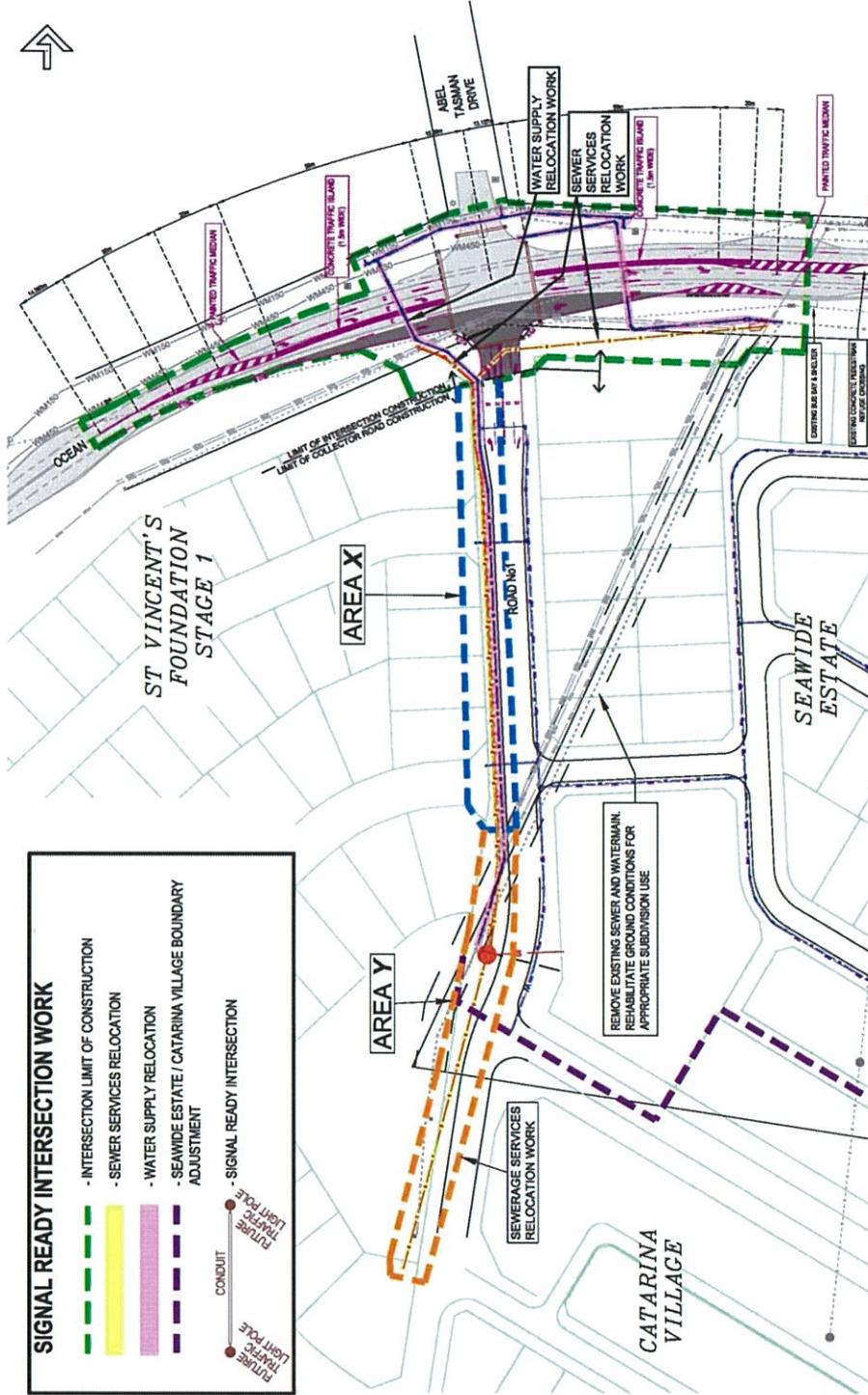
HOPKINS CONSULTANTS
 11/159 William Street - PO Box 1158 Port Macquarie NSW 2444 - ABN 27 065 000 878
 Telephone: 65 653 6722 • Fax: 65 653 6000 • Email: info@hopkins.com.au
 DEVELOPMENT MANAGERS • SURVEYORS • ENGINEERS • PLANNERS



Plan No.2

PROPOSED DEVELOPMENT - PLANNING AGREEMENT
 Date - 14th March 2014
 Scale - 1:5000
 Ref - 6766-007 (VPA)

HOPKINS CONSULTANTS
 DEVELOPMENT MANAGERS - SURVEYORS - ENGINEERS - PLANNERS
 Suite 1/109 William Street - PO Box 1388 Port Macquarie NSW 2444 - ABN 27 085 092 274
 Telephone: 65 652 8722 - Facsimile: 65 654 9090 - Email: mail@hopkins.com.au



SIGNAL READY INTERSECTION WORK

- INTERSECTION LIMIT OF CONSTRUCTION
- SEWER SERVICES RELOCATION
- WATER SUPPLY RELOCATION
- SEAWIDE ESTATE / CATARINA VILLAGE BOUNDARY ADJUSTMENT

CONDUIT

FUTURE TRAFFIC LIGHT POLE

FUTURE TRAFFIC LIGHT POLE

Plan No.3

SIGNAL READY INTERSECTION - PLANNING AGREEMENT

Date - 14th March 2014

Scale - 1:1250

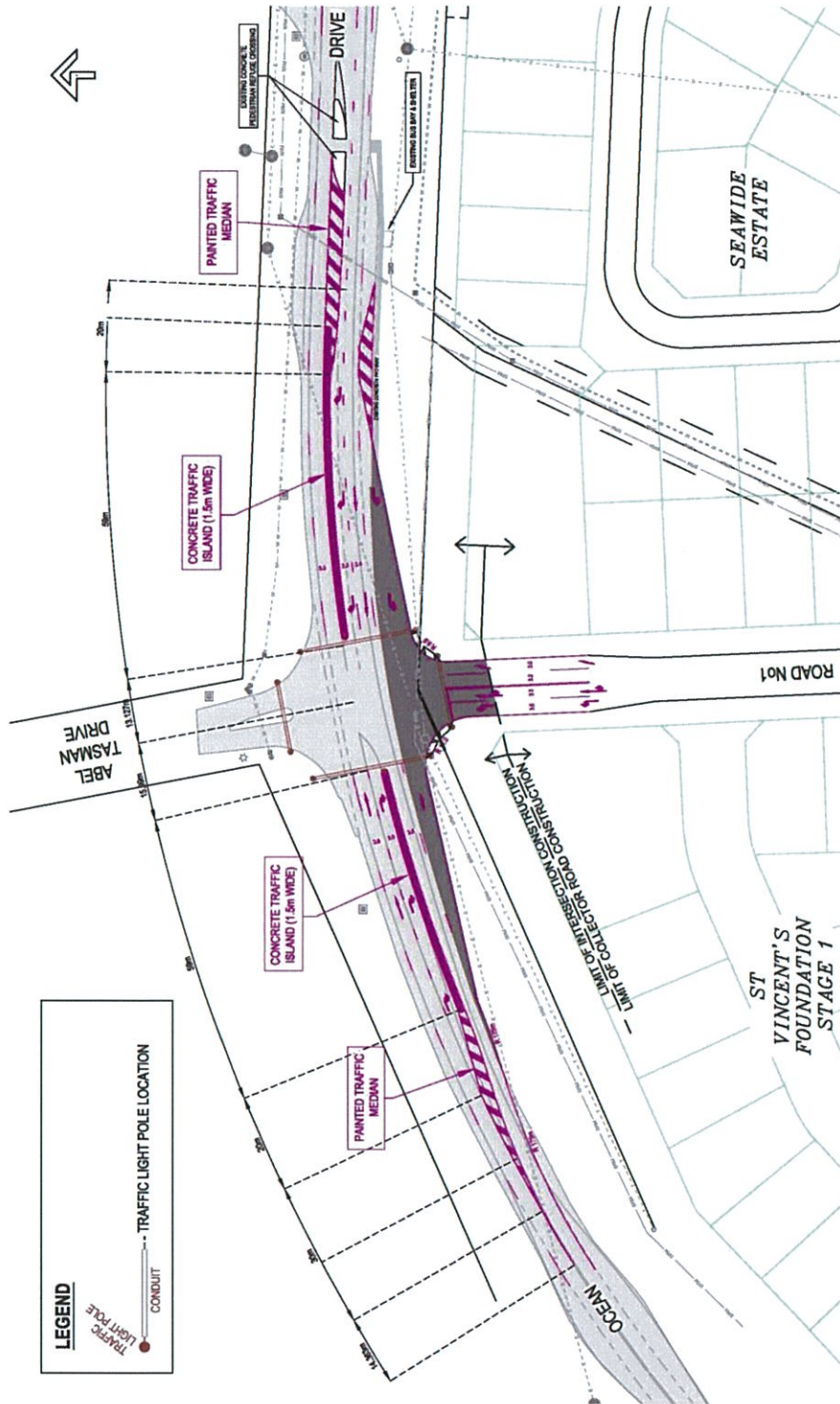
Ref - 6766-007 (VPA + Inln)

HOPKINS CONSULTANTS PTY LTD

Suite 1/108 William Street • PO Box 1504 Port Macquarie NSW 2444 • ABN 27 635 900 878

Telephone: 02 6553 8722 • Facsimile: 02 6554 6306 • Email: info@hopkins.com.au

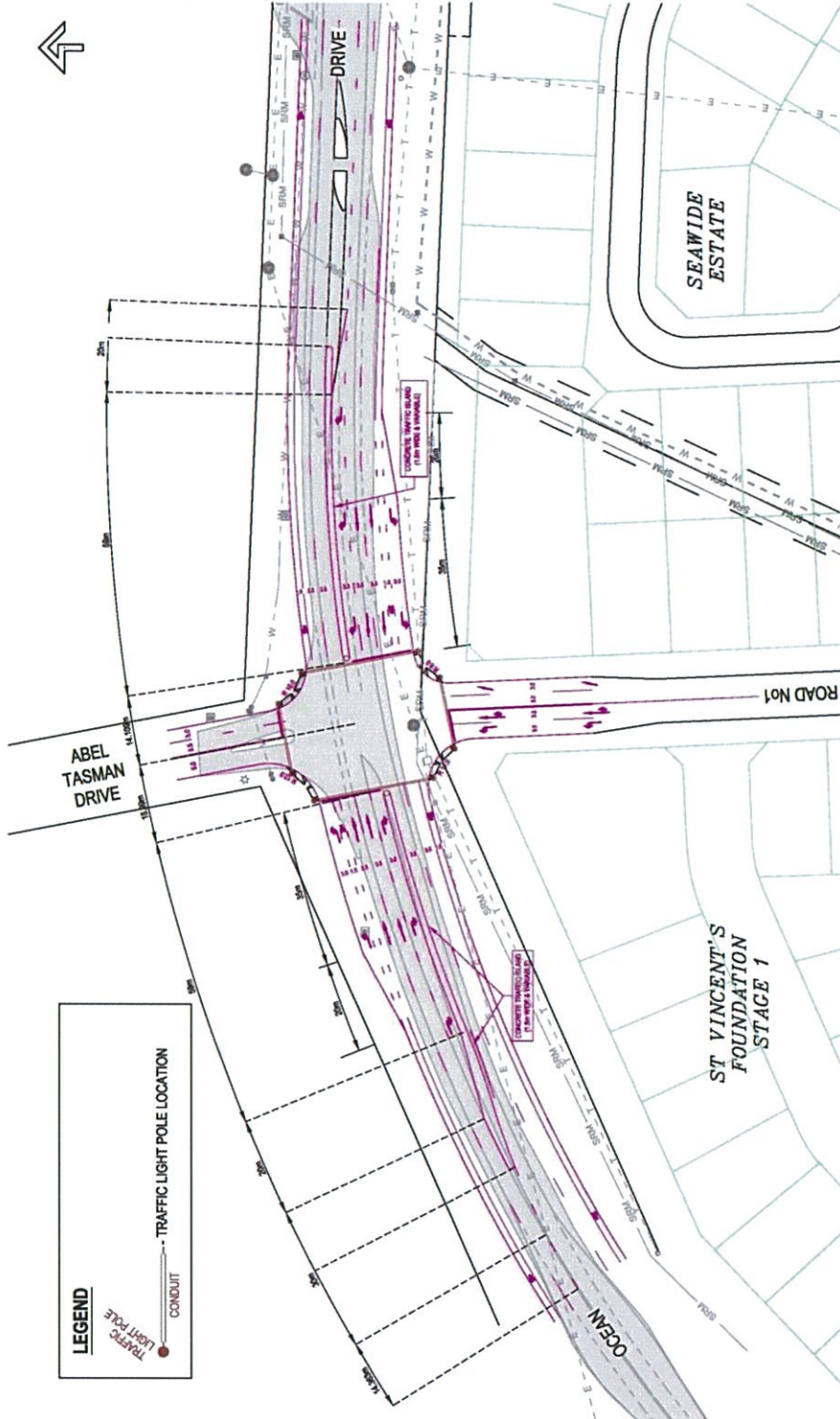
DEVELOPMENT MANAGERS • SURVEYORS • ENGINEERS • PLANNERS



Plan No.4

SIGNALISED - SINGLE LANE - PLANNING AGREEMENT
 Date - 24th Jan 2014
 Scale - 1:800
 Ref - 6766-007 (VPA + Intn)

HOPKINS CONSULTANTS
 1/108 William Street, PO Box 6168 Port Macquarie NSW 2444, Australia
 Telephone: 02 6852 0722 - Facsimile: 02 6854 8091 - Email: info@hopkins.com.au
 DEVELOPMENT MANAGERS • SURVEYORS • ENGINEERS • PLANNERS



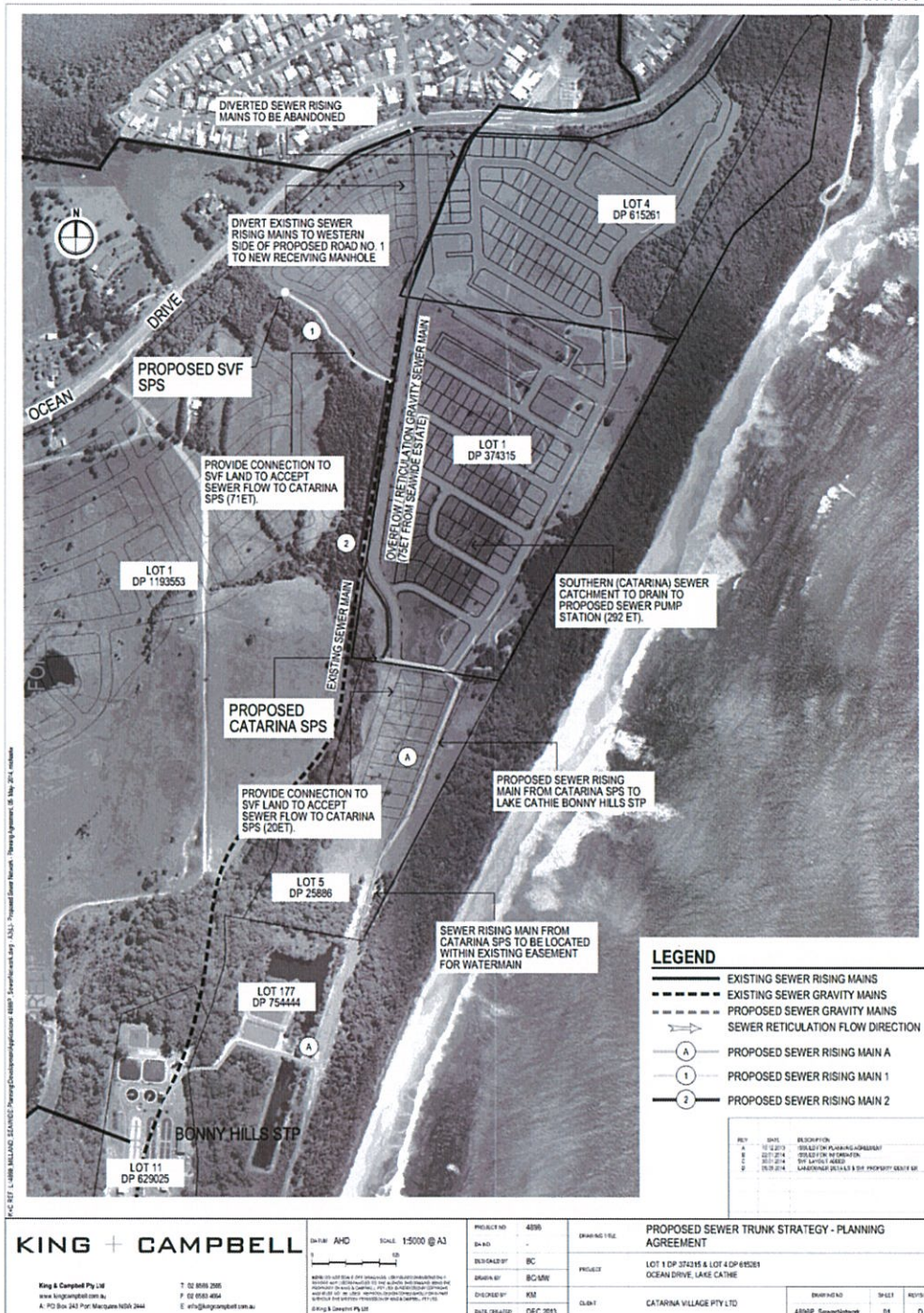
Plan No.5
SIGNALISED - DUAL LANE - PLANNING AGREEMENT
 Date - 24th Jan 2014
 Scale - 1:800
 Ref - 6766-007 (VPA + Intr)

HOPKINS CONSULTANTS
 Pty Ltd
 1105 Victoria Street, PO Box 1308 Port Macquarie NSW 2444, Australia
 Telephone: 02 4333 8722 | Facsimile: 02 4333 8008 | Email: mail@hopkins.com.au

Ocean Drive, Lake Cathie Planning Agreement
 Port Macquarie Hastings Council
 Catarina Developments, Catarina Village, Seaside, SVF



PLAN No. 6





Execution

Executed as a Deed

Dated: 17/02/15

Executed on behalf of the Council

X 

General Manager

X 

Witness

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



Name/Position DAMIAN OBEID | DIRECTOR



Name/Position PAUL OBEID | DIRECTOR

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



Name/Position DAMIAN OBEID | DIRECTOR



Name/Position GERARD OBEID | SECRETARY



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

Name/Position

Name/Position

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

Name/Position

Name/Position



Appendix

(Clause 56)

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



and



and



and



Description of the Land to which the Draft Planning Agreement Applies

Council Land being Lot 177 DP 754444 and Lot 11 DP 629025.



Landowner Land being:

- Catarina Village Land, Lot 1 DP 374315 as shown on Plan No. 1 or other land shown as 'Catarina Village' following a boundary adjustment between Lot 1 DP374315 and Lot 4 DP 615261 as shown on Plan No. 2.
- Seaside Land means Lot 4 DP 615261 as shown on Plan No. 1 or other land agreed between the Parties following a boundary adjustment between Lot 1 DP374315 and Lot 4 DP 615261 and/or between Lot 1 DP1193553 and Lot 4 DP615261.
- SVF Land means Lot 1 DP1193553, Lot 5 DP 25886, and Lots 1, 2, 3 and 4 DP 1150758 as shown on Plan No. 1 or other land agreed between the Parties following a boundary adjustment between Lot 1 DP1193553 and Lot 4 DP615261.

Description of Proposed Development

The development of the Landowner Land generally in accordance with the subdivision layouts shown on Plan 2 and development for urban purposes on that land.

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 for the coordination of Water Supply and Sewerage services and the provision of an intersection on Ocean Drive to serve 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 Landowner 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 Landowner of Development on the Land
- does not exclude the application of s94 and s94A of the Act to the Development.
- requires either monetary Development Contributions for Road works, Sewerage Services and Water Supply
- is to be registered on the title to the Land,
- imposes restrictions on the Landowner 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 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.

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), (iv), (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 water sewerage and road facilities for the 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 the Landowner to carry out specified water supply, sewerage and road works. The works 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. Accordingly, the provision of these Works under the Agreement is consistent and conforms with the capital works envisioned by the Council’s Management Plan.

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

This Draft Planning agreement contains requirements that must be complied with before a construction certificate or subdivision certificate is issued.

