

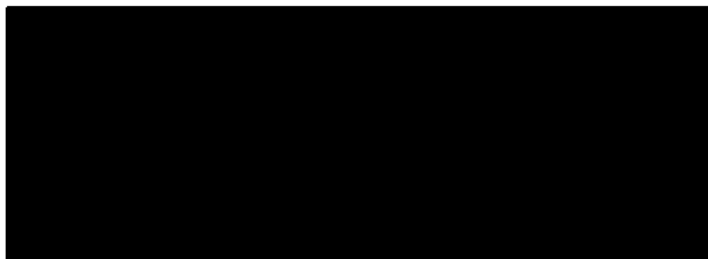
**Deed**

**St Agnes Village  
Planning Agreement**

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

**Port Macquarie-Hastings Council  
The Trustees of the Roman Catholic Church Diocese of  
Lismore**

Date: 29/01/2015



## **St Agnes Village Planning Agreement**

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## **St Agnes Village Planning Agreement**

### **Summary Sheet**

#### **Council:**

**Name:** Port Macquarie-Hastings Council

**Address:** Cnr Lord & Burrawan Streets Port Macquarie NSW 2444

**Telephone:** (02) 6581 8111

**Facsimile:** (02) 6581 8123

**Email:** council@pmhc.nsw.gov.au

**Representative:** Tim Molloy

#### **Landowner:**



#### **Land:**

See definition of *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.

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**Enforcement:**

See Part 5.

**Registration:**

See clause 27.

**Restriction on dealings:**

See clause 28.

**Dispute Resolution:**

See Part 4.

## **St Agnes Village Planning Agreement**

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

### **Parties**

**Port Macquarie-Hastings Council** ABN 11 236 901 601 of Cnr Lord & Burrawan Streets Port Macquarie NSW 2444 (**Council**)

and



### **Background**

- A The Landowner owns the Land
- B The Landowner has made a Development Application for the Development.
- C The Landowner is willing to make Development Contributions provided in accordance with this Deed in connection with carrying out of the Development.

### **Operative provisions**

#### **Part 1 - Preliminary**

##### **1 Interpretation**

- 1.1 In this Deed the following definitions apply:

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

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

**APZ Land** means the part of the Land generally shown marked as 'APZ Unit 1' and 'APZ Unit 2' on the Location Plan.

**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.

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**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.

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

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

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

**Development** means the construction of approximately 12 aged care dwellings in the St Agnes Village Residential Aged Care Facility located on the Land generally as shown in the Location Plan and described in Development Application DA2013/3.

**Development Application** has the same meaning as in the Act.

**Development Consent** has the same meaning as in the Act.

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

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

**Environmental Land** means the part the Land generally shown marked as 'EMU1', 'EMU2', 'EMU3' and 'EMU4' on the Location Plan.

**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.

**Establishment Obligation** means the obligations described in the Vegetation Management Plan that are to be carried out on the Environmental Land and the APZ Land during the Establishment Period.

**Establishment Period** means the period of 1 year commencing on the date the Development is physically commenced within the meaning of the Act, or such other period as agreed in writing between the Parties.

**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.

**Koala Plan of Management** means the document titled '*Koala Plan of Management Residential Aged Care Facility St Agnes Village Stage 9*' dated August 2014, subject to approval by the Council.

**Land** means the land shown bounded by a red dashed line on the Location Plan, being the land comprised in Lot 100 DP 1186143 and part Lot 4 DP

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1119462 as at the date of this Deed and any part of that land comprised in a lot created by Subdivision of that land.

**Location Plan** means the plan in the Schedule.

**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.

**Management Obligation** means:

- (a) in respect of the Environmental Land, the obligations described in the Vegetation Management Plan that are to be carried out on the Environmental Land following the completion of the Establishment Obligation, and
- (b) in respect of the APZ Land, means:
  - (i) the obligations described in the Vegetation Management Plan that are to be carried out on the APZ Land following the completion of the Establishment Obligation, and
  - (ii) maintenance of that land as an 'Inner Protection Area' as referred to and in accordance with the document titled '*Planning for Bushfire Protection*' prepared by the NSW Rural Fire Service dated 2006, or any document that replaces that document.

**Management Period** means:

- (a) in respect of Environmental Land, a period commencing at the end of the Establishment Period and ending on date the Environmental Land is dedicated to the Minister administering the *National Parks and Wildlife Act 1974*.
- (b) in respect of the APZ Land, in perpetuity,  
or such other period as agreed in writing between the Parties,

**Party** means a party to this Deed.

**Rectification Notice** means a notice in writing:

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

**Rectify** means rectify, remedy or correct.

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

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

**Vegetation Management Plan** means '*Vegetation Management Plan Residential Aged Care Facility St Agnes Village Stage 9*' dated August 2014, subject to approval by the Council.

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

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

1.2.1 Headings are inserted for convenience only and do not affect the interpretation of this Deed.



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- 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.
- 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 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**

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

### **5 Warranties**

- 5.1 The Parties warrant to each other that they:
  - 5.1.1 have full capacity to enter into this Deed, and
  - 5.1.2 are able to fully comply with their obligations under this Deed.
- 5.2 Without limiting clause 5.1, the landowner warrants that it is the owner of the Land.

### **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, or an Approval relating to the Development in so far as the subject-matter of the proceedings relates to 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 or s94A to the Development.
- 8.2 The benefits under this Deed are not to be taken into consideration when determining a development contribution under s94 of the Act in relation to the Development.
- 8.3 This Deed does not exclude the application of s94EF to the Development.

## **Part 2 – Development Contributions**

### **9 Provision of Development Contributions**

- 9.1 The Landowner is to make Development Contributions to the Council in accordance with this Deed and otherwise to the satisfaction of the Council.
- 9.2 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.
- 9.3 Despite clause 9.2, the Council may apply a Development Contribution made under this Deed towards a public purpose other than the public purpose specified in this Deed if the Council reasonably considers that the public interest would be better served by applying the Development Contribution towards that other purpose rather than the purpose so specified.

### **10 Establishment and Management Obligation**

- 10.1 The Landowner, at its own cost, is to carry out:
  - 10.1.1 the Establishment Obligation during the Establishment Period, and
  - 10.1.2 the Management Obligation during the Management Period.
- 10.2 The Landowner is to perform its obligations under clause 10.1 in accordance with:
  - 10.2.1 this Deed, and
  - 10.2.2 the Vegetation Management Plan, and
  - 10.2.3 any further agreement that is entered into by the Landowner and the Council under clause 6, and
  - 10.2.4 any requirements and directions notified in writing by the Council to the Landowner at any time before the Establishment Obligation or Management Obligation is taken to have been completed that are not inconsistent with:
    - (a) this Deed, or
    - (b) any agreement referred to in clause 10.2.2, or
    - (c) any Development Consent relating to the Development.
- 10.3 The Establishment Obligation and the Management Obligation are not to be varied by the Landowner, unless:
  - 10.3.1 the Landowner and the Council agree in writing to the variation, and
  - 10.3.2 any consent or approval required under the Act or any other law to the variation is first obtained.

### **11 Koala Plan of Management**

- 11.1 The Landowner at its own cost is to implement section 4 of the Koala Plan of Management to the Council's satisfaction.

## **12 Vegetation clearing work**

- 12.1 The Landowner agrees that it will not carry out any vegetation clearing work within the meaning of and under s100R of the *Rural Fires Act 1997* on the Land other than any work required to be carried out under clause 10..

## **13 Zoning of Environmental Land**

- 13.1 The Landowner is not to make or procure the making of any objection in relation to the making of a local environmental plan within the meaning of the Act that operates to rezone all or part of the Environmental Land to Zone E3 Environmental Management within the meaning of the standard instrument in clause 33A of the Act.
- 13.2 The Landowner is to assist the Council in addressing any written submissions made to the Council in respect of a planning proposal for the local environmental plan referred to in clause 13.1.

## **Part 3 - Provisions relating to the carrying out of Work**

### **14 Carrying out of Work**

- 14.1 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.
- 14.2 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.

### **15 Variation to Work**

- 15.1 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
- 15.2 Without limiting clause 15.1, 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.
- 15.3 The Council is not to unreasonably delay or withhold its approval to a request made by the Landowner under clause 15.2.
- 15.4 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.

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- 15.5 The Landowner is to comply promptly with a direction referred to in clause 15.4 at its own cost.

**16 Council's obligations relating to Work**

- 16.1 The Council is not to unreasonably delay, hinder or otherwise interfere with the performance by the Landowner of its obligations under this Deed, and is to use its reasonable endeavours to ensure third parties unrelated to the Landowner do not unreasonably delay, hinder or otherwise interfere with the performance of those obligations.

**17 Protection of people, property & utilities**

- 17.1 The Landowner is to ensure to the fullest extent reasonably practicable in relation to the performance of its obligations under this Deed that:
- 17.1.1 all necessary measures are taken to protect people and property,
  - 17.1.2 unnecessary interference with the passage of people and vehicles is avoided, and
  - 17.1.3 nuisances and unreasonable noise and disturbances are prevented.
- 17.2 Without limiting clause 17.1, 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.

**18 Repair of damage**

- 18.1 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.
- 18.2 The Landowner is to carry out its obligation under clause 18.1 at its own cost and to the satisfaction of the Council.

**19 Completion of Work**

- 19.1 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.
- 19.2 The Council is to inspect the Work the subject of the notice referred to in clause 19.1 within 14 days of the date specified in the notice for completion of the Work.
- 19.3 Work required to be carried out by the Landowner under this Deed is completed for the purposes of this Deed when the Council, acting reasonably, gives a written notice to the Landowner to that effect.
- 19.4 Before the Council gives the Landowner a notice referred to in clause 19.3, 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.

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- 19.5 The Landowner, at its own cost, is to promptly comply with a direction referred to in clause 19.4.

## **20 Rectification of defects**

- 20.1 The Council may give the Landowner a Rectification Notice during the Defects Liability Period.
- 20.2 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.
- 20.3 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 20.1

## **21 Removal of Equipment**

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

## **22 Consistency of this Part**

- 22.1 If there is an inconsistency with this Part 3 and the requirements of the Vegetation Management Plan or the Koala Plan of Management then those plans prevail to the extent of any inconsistency.

## **Part 4 – Dispute Resolution**

### **23 Dispute resolution – expert determination**

- 23.1 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:
- 23.1.1 the Parties to the Dispute agree that it can be so determined, or
- 23.1.2 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.
- 23.2 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.
- 23.3 If a notice is given under clause 23.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.

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- 23.4 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.
- 23.5 The expert determination is binding on the Parties except in the case of fraud or misfeasance by the expert.
- 23.6 Each Party is to bear its own costs arising from or in connection with the appointment of the expert and the expert determination.
- 23.7 The Parties are to share equally the costs of the President, the expert, and the expert determination.

## **24 Dispute Resolution - mediation**

- 24.1 This clause applies to any Dispute arising in connection with this Deed other than a Dispute to which clause 23 applies.
- 24.2 Such a Dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 24.3 If a notice is given under clause 24.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 24.4 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.
- 24.5 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.
- 24.6 Each Party is to bear its own costs arising from or in connection with the appointment of a mediator and the mediation.
- 24.7 The Parties are to share equally the costs of the President, the mediator, and the mediation.

## **Part 5 - Enforcement**

### **25 Breach of obligations**

- 25.1 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:
  - 25.1.1 specifying the nature and extent of the breach,
  - 25.1.2 requiring the Landowner to:
    - (a) rectify the breach if it reasonably considers it is capable of rectification, or

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- (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,
- 25.1.3 specifying the period within which the breach is to be rectified or compensation paid, being a period that is reasonable in the circumstances.
- 25.2 If the Landowner fails to comply with a notice given under clause 26.1 relating to the carrying out of Work or activity 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.
- 25.3 Any costs incurred by the Council in remedying a breach in accordance with clause 25.2 may be recovered by the Council as a debt due in a court of competent jurisdiction.
- 25.4 For the purpose of clause 25.3, the Council's costs of remedying a breach the subject of a notice given under clause 25.1 include, but are not limited to:
  - 25.4.1 the costs of the Council's servants, agents and contractors reasonably incurred for that purpose,
  - 25.4.2 all fees and charges necessarily or reasonably incurred by the Council in remedying the breach, and
  - 25.4.3 all legal costs and expenses reasonably incurred by the Council, by reason of the breach.
- 25.5 Nothing in this clause 25 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.

## **26 Enforcement in a court of competent jurisdiction**

- 26.1 Without limiting any other provision of this Deed, the Parties may enforce this Deed in any court of competent jurisdiction.
- 26.2 For the avoidance of doubt, nothing in this Deed prevents:
  - 26.2.1 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
  - 26.2.2 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 6 – Registration & Restriction on Dealings**

### **27 Registration of this Agreement**

- 27.1 The Parties agree to register this Deed for the purposes of s93H(1) of the Act.



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- 27.2 The Landowner is not to make or cause, suffer or permit the making of an application for a Construction Certificate in respect of the Development unless and until this Deed is registered on the title to the Land.
- 27.3 For the purposes of clause 27.1 and 27.2 , the Landowner is to deliver to the Council in registrable form:
- 27.3.1 an instrument requesting registration of this Deed on the title to the Land duly executed by the Landowner, and
- 27.3.2 the written irrevocable consent of each person referred to in s93H(1) of the Act to that registration.
- 27.4 The Landowner is to do such other things as are reasonably necessary to enable registration of this Deed to occur.
- 27.5 The Parties are to do such things as are reasonably necessary to remove any notation relating to this Deed from the title to the Land 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.

## **28 Restriction on dealings**

- 28.1 The Landowner is not to:
- 28.1.1 sell or transfer the Land, or
- 28.1.2 assign the Landowner's rights or obligations under this Deed, or novate this Deed,
- to any person unless:
- 28.1.3 the Landowner has, at no cost to the Council, first procured the execution by the person to whom the Land or part is to be sold or transferred or the 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
- 28.1.4 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
- 28.1.5 the Landowner is not in breach of this Deed, and
- 28.1.6 the Council otherwise consents to the transfer, assignment or novation, such consent not to be unreasonably withheld.
- 28.2 Clause 28.1 does not apply in relation to any sale or transfer of the Land if this Deed is registered on the title to the Land at the time of the sale.

## **Part 7 – Indemnities & Insurance**

### **29 Risk**

- 29.1 The Landowner performs this Deed at its own risk and its own cost.

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**30 Release**

- 30.1 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.

**31 Indemnity**

- 31.1 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.

**32 Insurance**

- 32.1 The Landowner is to take out and keep current (or ensure its contractors take out and keep current) to the satisfaction of the Council the following insurances in relation to Work and activities required to be carried out by the Landowner under this Deed up until the Work or activity is taken to have been completed in accordance with this Deed:
- 32.1.1 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,
  - 32.1.2 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,
  - 32.1.3 workers compensation insurance as required by law, and
  - 32.1.4 any other insurance required by law.
- 32.2 If the Landowner fails to comply with clause 32.1, 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 recovery as a debt due in a court of competent jurisdiction.
- 32.3 The Landowner is not to commence to carry out any Work or activity unless it has first provided to the Council satisfactory written evidence of all of the insurances specified in clause 32.1.

## **Part 8 – Other Provisions**

### **33 Access to land by Council**

- 33.1 The Council may enter the Environmental Land and APZ Land in order to inspect or examine that land, or to remedy any breach by the Landowner of its obligations under this Deed.
- 33.2 The Council is to give the Landowner prior reasonable notice before it enters land under clause 33.1.

### **34 Annual report by Landowner**

- 34.1 For a period of 6 years from the date of commencement of the Establishment Period, the Landowner is to provide to the Council by not later than each anniversary of the date of commencement of the Establishment Period a report detailing the performance of its obligations under this Deed.
- 34.2 The report referred is to be in such a form and to address such matters as required by the Council from time to time.

### **35 Review of Deed**

- 35.1 The Parties agree to review this Deed if either party is of the opinion that any change of circumstance has occurred, or is imminent, that materially affects the operation of this Deed.
- 35.2 For the purposes of clause 35.1, the relevant changes include (but are not limited to) any change to a law that restricts or prohibits or enables the Council or any other planning authority to restrict or prohibit any aspect of the Development.
- 35.3 For the purposes of addressing any matter arising from a review of this Deed referred to in clause 36.1, the Parties are to use all reasonable endeavours to agree on and implement appropriate amendments to this Deed.
- 35.4 If this Deed becomes illegal, unenforceable or invalid as a result of any change to a law, the Parties agree to do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Deed is entered into.
- 35.5 A failure by a Party to agree to take action requested by the other Party as a consequence of a review referred to in clause 35.1 (but not 35.4) is not a Dispute for the purposes of this Deed and is not a breach of this Deed.

### **36 Notices**

- 36.1 Any notice, consent, information, application or request that is to 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:
- 36.1.1 delivered or posted to that Party at its address set out in the Summary Sheet,

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- 36.1.2 faxed to that Party at its fax number set out in the Summary Sheet, or
- 36.1.3 emailed to that Party at its email address set out in the Summary Sheet.
- 36.2 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.
- 36.3 Any notice, consent, information, application or request is to be treated as given or made if it is:
  - 36.3.1 delivered, when it is left at the relevant address,
  - 36.3.2 sent by post, 2 business days after it is posted,
  - 36.3.3 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
  - 36.3.4 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.
- 36.4 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.

### **37 Approvals and Consent**

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

### **38 Costs**

- 38.1 The Landowner is to pay to the Council the Council's costs not exceeding \$5,500 (excl. GST) 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.
- 38.2 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.

### **39 Entire Deed**

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

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- 39.2 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.

## **40 Further Acts**

- 40.1 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.

## **41 Governing Law and Jurisdiction**

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

## **42 Joint and Individual Liability and Benefits**

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

## **43 No Fetter**

- 43.1 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.

## **44 Illegality**

- 44.1 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.

## **45 Severability**

- 45.1 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.
- 45.2 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.

## **46 Amendment**

- 46.1 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.

## **47 Waiver**

- 47.1 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.
- 47.2 A waiver by a Party is only effective if it is in writing.
- 47.3 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.

## **48 GST**

- 48.1 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.
- 48.2 Subject to clause 48.4, 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.

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- 48.3 Clause 48.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Deed to be GST inclusive.
- 48.4 No additional amount shall be payable by the Council under clause 48.2 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.
- 48.5 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:
- 48.5.1 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;
- 48.5.2 that any amounts payable by the Parties in accordance with clause 48.2 (as limited by clause 48.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 48.6 No payment of any amount pursuant to this clause 48, 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.
- 48.7 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.
- 48.8 This clause continues to apply after expiration or termination of this Deed.

**49 Explanatory Note**

- 49.1 The Appendix contains the Explanatory Note relating to this Deed required by clause 25E of the Regulation.
- 49.2 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**

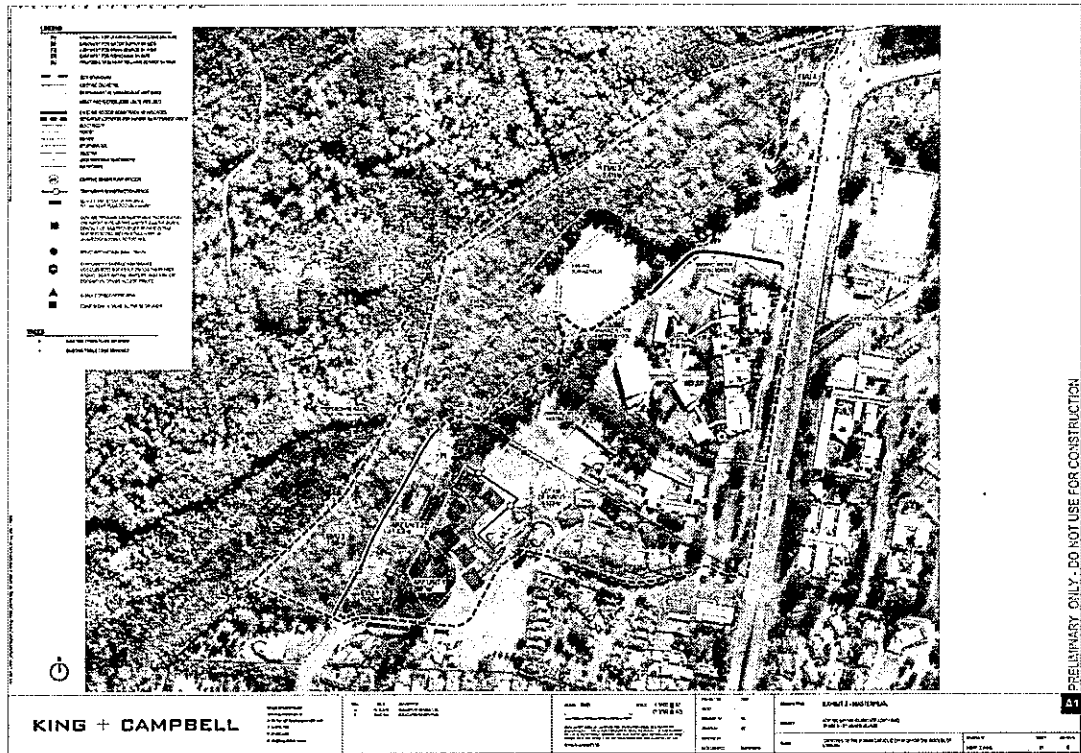
(Clause 1.1)

**Location Plan**

Location Plan on the next page



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St Agnes Village Planning Agreement - Execution December 2014

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**Execution**

**Executed as a Deed**

**Dated:** 29/01/2015

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**Executed on behalf of the Council**

X   
General Manager

X   
Witness

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

  
Name/Position

  
Name/Position

## **Appendix**

(Clause 49)

*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 Cnr Lord & Burrawan  
Streets Port Macquarie NSW 2444 (Council)

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

The land comprised in Lot 100 DP 1186143 and part Lot 4 DP 1119462 as at the date of this Deed

### **Description of Proposed Development**

The construction of approximately 12 aged care dwellings in the St Agnes Village Residential Aged Care Facility located on the Land generally as shown in the Location Plan.

## **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 conservation or enhancement of the natural environment in connection with the Development.

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

The Draft Planning Agreement is a planning agreement under s93F of the Environmental Planning and Assessment Act 1979 (Act). The Draft Planning Agreement is a voluntary agreement under which Development Contributions (as defined in clause 1.1 of the Draft Planning Agreement) are made by the Developer for various public purposes (as defined in s93F(3) of the Act).

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

The Draft Planning Agreement:

- relates to the carrying out by the Landowner of development on the Land
- does not exclude the application of s 94, s94A or s94EF of the Act to the Development,
- requires the carrying out of establishment and management obligations of environmental land and carrying out measures for koala protection by the Landowner,
- requires the Council to apply Development Contributions made under the agreement towards the specified purpose for which they were made and at the location, in the manner and to the standard (if any) specified in the agreement,
- imposes obligations on the Landowner in relation to the carrying out of specified Works, the handing over of those Works to the Council and the rectification of defects in those Works,
- is to be registered on the title to the Land,
- imposes restrictions on the Parties transferring the Land or part of the Land or assigning an interest under the agreement,
- provides two dispute resolution methods for a dispute under the agreement, being expert determination and mediation,
- provides that the agreement is governed by the law of New South Wales, and
- provides that the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) applies to the agreement.

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

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

The Draft Planning Agreement:

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- promotes the proper management and conservation of natural resources, including natural areas, for the purpose of promoting the social and economic welfare of the community and a better environment,
- promotes the protection of the environment, including the protection and conservation of native animals and plants, including threatened species, populations and ecological communities, and their habitats
- promotes ecologically sustainable 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)(i), (vi), (vii) 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 a means to properly manage, develop, protect, restore, enhance and conserve the environment of the area for which it is responsible, in a manner that is consistent with and promotes the principles of ecologically sustainable development
- 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 does not conform with the capital works program set out in the Council's Operational Plan for 1 July 2014 to 30 June 2015 but conforms with the Council's 2011-2015 Delivery Program.

##### ***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***

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The Draft Planning Agreement specifies that an application for a construction certificate is not to be made unless the Agreement is registered on the title to the Land.

