



lindsaytaylorlawyers

planning & environmental management

Deed

28 Menangle Street Planning Agreement Planning Agreement

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

Wollondilly Shire Council

Diggers Nest Pty Ltd

24 May 2019

© Lindsay Taylor Lawyers

M.

lindsaytaylorlawyers

Level 9, Suite 3, 420 George Street, Sydney NSW 2000, Australia

T 02 8235 9700 • F 02 8235 9799 • W www.lindsaytaylorlawyers.com.au • E mail@lindsaytaylorlawyers.com.au
ABN 29 682 671 304

Liability limited by a scheme approved under Professional Standards Legislation



28 Menangle Street Planning Agreement

Planning Agreement

Table of Contents

| | |
|--|----------|
| Summary Sheet..... | 4 |
| Parties | 6 |
| Background | 6 |
| Operative provisions | 6 |
| Part 1 - Preliminary | 6 |
| 1 Interpretation..... | 6 |
| 2 Status of this Deed | 8 |
| 3 Commencement | 8 |
| 4 Application of this Deed | 9 |
| 5 Warranties | 9 |
| 6 Further agreements | 9 |
| 7 Surrender of right of appeal, etc. | 9 |
| 8 Application of s7.11, s7.12 and s7.24 of the Act to the Development..... | 9 |
| Part 2 – Development Contributions | 9 |
| 9 Provision of Development Contributions | 9 |
| 10 Car Parking Contribution | 10 |
| 11 Payment of monetary Development Contributions..... | 10 |
| 12 Road Safety Audit..... | 10 |
| Part 3 – Dispute Resolution | 11 |
| 13 Dispute resolution – expert determination..... | 11 |
| 14 Dispute Resolution - mediation..... | 11 |
| Part 4 - Enforcement..... | 12 |
| 15 Breach of obligations | 12 |
| 16 Enforcement in a court of competent jurisdiction | 12 |
| Part 5 – Registration & Restriction on Dealings..... | 13 |
| 17 Registration of this Deed | 13 |
| 18 Restriction on dealings | 13 |
| Part 6 – Indemnities & Insurance | 14 |
| 19 Risk..... | 14 |
| 20 Release..... | 14 |
| 21 Indemnity | 14 |



| | |
|--|-----------|
| Part 7 – Other Provisions | 14 |
| 22 Notices | 14 |
| 23 Approvals and Consent | 15 |
| 24 Costs | 15 |
| 25 Entire Deed | 15 |
| 26 Further Acts | 16 |
| 27 Governing Law and Jurisdiction | 16 |
| 28 Joint and Individual Liability and Benefits | 16 |
| 29 No Fetter | 16 |
| 30 Illegality | 16 |
| 31 Severability | 16 |
| 32 Amendment | 17 |
| 33 Waiver | 17 |
| 34 GST | 17 |
| 35 Explanatory Note | 18 |
| Schedule 1 | 19 |
| Execution | 20 |
| Appendix | 21 |

28 Menangle Street Planning Agreement

Summary Sheet

Council:

Name: Wollondilly Shire Council

Address: 62 – 64 Menangle Street, Picton NSW 2571

Telephone: (02) 4677 1100

Facsimile: (02) 4677 2339

Email: council@wollondilly.nsw.gov.au

Representative: Chief Executive Officer

Developer:

Name: Diggers Nest Pty Ltd

Address: 15 Shelleys Lane, Thirlmere NSW 2572

Telephone: 0409 460 602

Facsimile: n/a

Email: phildigger@bigpond.com

Representative: Phillip Digger

Land:

See definition of *Land* in clause 1.1.

Development:

See definition of *Development* in clause 1.1.

Development Contributions:

See Clause 9 and Schedule 1.

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

See clause 8.



Registration:

See clause 17.

Restriction on dealings:

See clause 18.

Dispute Resolution:

See Part 3.



28 Menangle Street Planning Agreement

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

Parties

Wollondilly Shire Council ABN 93 723 245 808 of 62 – 64 Menangle Street,
Picton NSW 2571 (**Council**)

and

Diggers Nest Pty Ltd ACN 619 163 307 of 15 Shelleys Lane, Thirlmere NSW 2572
(**Developer**)

Background

- A The Developer is the owner of the Land.
- B The Developer has made the Development Application for the Development of the Land.
- C The DCP requires the provision of car spaces for the Development. The car park demand generated by the Development cannot be completely facilitated on the Land.
- D The Developer has offered, in lieu of the provision of on-site parking spaces, to make Development Contributions in accordance with this Deed in connection with the 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.

Car Parking Contribution means Item A1 in the table in Schedule 1.

Car Parking Shortfall means the number of on-site car spaces required in respect of the Development under the DCP, less the number of on-site car spaces provided in the Development.

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



CPI means the Consumer Price Index (All Groups - Sydney) published by the Australian Bureau of Statistics, or if that index no longer exists, any similar index which Council determines in its sole discretion.

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.

DCP means the *Wollondilly Development Control Plan 2016*.

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

Development means the development of the Land to create a mixed use development consisting of 403.5sqm of retail and commercial floor space, shop top housing and car parking.

Development Application means Development Application No. 407 of 2017.

Development Consent has the same meaning as in the Act.

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

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

GST has the same meaning as in the GST Law.

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

Item means specified in Column 1 of Schedule 1.

Land means Lot 1 and 2 in DP 563577, known as 28 Menangle Street, Picton NSW 2571.

Party means a party to this Deed.

Plan of Lot Consolidation means a plan consolidating Lot 1 in DP 563577 with Lot 2 in DP 563577 to be one new parcel.

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

Road Safety Audit means the audit required by clause 12.

Road Safety Contribution means Item A2 in the table in Schedule 1.

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.
- 1.2.15 A reference to 'dedicate' or 'dedication' in relation to land is a reference to dedicate or dedication free of cost.
- 1.2.16 Any schedules, appendices and attachments form part of this Deed.
- 1.2.17 Notes appearing in this Deed are operative provisions of this Deed.

2 Status of this Deed

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

3 Commencement

- 3.1 This Deed commences and has force and effect on and from the date when the Parties have:



3.1.1 both executed the same copy of this Deed, or

3.1.2 each executed separate counterparts of this Deed and exchanged the counterparts.

3.2 The Parties are to insert the date when this Deed commences on the front page and on the execution page.

4 Application of this Deed

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

5 Warranties

5.1 The Parties warrant to each other that they:

5.1.1 have full capacity to enter into this Deed, and

5.1.2 are able to fully comply with their obligations under this Deed.

6 Further agreements

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

7 Surrender of right of appeal, etc.

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

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

8.1 This Deed does not exclude the application of s7.11, s7.12 or s7.24 to the Development.

Part 2 – Development Contributions

9 Provision of Development Contributions

9.1 The Developer is to make Development Contributions to the Council in accordance with Schedule 1, any other provision of this Deed relating to the



making of Development Contributions and otherwise to the satisfaction of the Council.

- 9.2 Any Contribution Value specified in this Deed in relation to a Development Contribution does not serve to define the extent of the Developer's obligation to make the Development Contribution.
- 9.3 The Council is to apply each Development Contribution made by the Developer under this Deed towards the public purpose for which it is made and otherwise in accordance with this Deed.
- 9.4 Despite clause 9.3, 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 Car Parking Contribution

- 10.1 The Car Parking Contribution is calculated as follows:

$$\text{CPC} = \$10,374 \times \text{CPS}$$

where

CPC is the Car Parking Contribution; and

CPS is the Car Parking Shortfall for the Development.

11 Payment of monetary Development Contributions

- 11.1 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.
- 11.2 The monetary Development Contributions are to be indexed from the date of this Deed to the date of payment in accordance with the CPI.
- 11.3 If the Development is proposed to be modified to allow for additional commercial or retail floor space on the Land after the issue of the first Construction Certificate for the Development, the Developer is to pay the difference between the Car Parking Contribution calculated in respect of the Development as proposed in the Development Application and paid under this Deed, and the Car Parking Contribution calculated in respect of the Development as proposed to be modified not later than 7 days after the Development Consent for the Development has been modified or a further Development Consent granted in respect of the Land.

12 Road Safety Audit

- 12.1 The Developer must commission a road safety audit to be carried out at the Developer's cost by a suitably qualified expert approved by the Council.



- 12.2 The road safety audit is to determine the best manner in which to spend the Road Safety Contribution to improve public safety in the vicinity of the Land and the Development.
- 12.3 The road safety audit must be submitted to Council for its consideration prior to the issue of the first Construction Certificate for the Development.

Part 3 – Dispute Resolution

13 Dispute resolution – expert determination

- 13.1 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:
 - 13.1.1 the Parties to the Dispute agree that it can be so determined, or
 - 13.1.2 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.
- 13.2 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.
- 13.3 If a notice is given under clause 13.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 13.4 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.
- 13.5 The expert determination is binding on the Parties except in the case of fraud or misfeasance by the expert.
- 13.6 Each Party is to bear its own costs arising from or in connection with the appointment of the expert and the expert determination.
- 13.7 The Parties are to share equally the costs of the President, the expert, and the expert determination.

14 Dispute Resolution - mediation

- 14.1 This clause applies to any Dispute arising in connection with this Deed other than a Dispute to which clause 13 applies.
- 14.2 Such a Dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 14.3 If a notice is given under clause 14.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 14.4 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.



- 14.5 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.
- 14.6 Each Party is to bear its own costs arising from or in connection with the appointment of a mediator and the mediation.
- 14.7 The Parties are to share equally the costs of the President, the mediator, and the mediation.

Part 4 - Enforcement

15 Breach of obligations

- 15.1 If the Council reasonably considers that the Developer is in breach of any obligation under this Deed, it may give a written notice to the Developer:
 - 15.1.1 specifying the nature and extent of the breach,
 - 15.1.2 requiring the Developer to rectify the breach if it reasonably considers it is capable of rectification, or
 - 15.1.3 specifying the period within which the breach is to be rectified or compensation paid, being a period that is reasonable in the circumstances.
- 15.2 Any costs incurred by the Council in remedying a breach in accordance with clause 15.1 may be recovered by the Council as a debt due in a court of competent jurisdiction.
- 15.3 For the purpose of clause 15.2, the Council's costs of remedying a breach the subject of a notice given under clause 15.1 include, but are not limited to:
 - 15.3.1 the costs of the Council's servants, agents and contractors reasonably incurred for that purpose,
 - 15.3.2 all fees and charges necessarily or reasonably incurred by the Council in remedying the breach, and
 - 15.3.3 all legal costs and expenses reasonably incurred by the Council, by reason of the breach.
- 15.4 Nothing in this clause 15 prevents the Council from exercising any rights it may have at law or in equity in relation to a breach of this Deed by the Developer, including but not limited to seeking relief in an appropriate court.

16 Enforcement in a court of competent jurisdiction

- 16.1 Without limiting any other provision of this Deed, the Parties may enforce this Deed in any court of competent jurisdiction.
- 16.2 For the avoidance of doubt, nothing in this Deed prevents:



- 16.2.1 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
- 16.2.2 the Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Deed or any matter to which this Deed relates.

Part 5 – Registration & Restriction on Dealings

17 Registration of this Deed

- 17.1 The Parties agree to register this Deed for the purposes of s7.6(1) of the Act.
- 17.2 Not later than 10 days after the commencement of this Deed, the Developer is to deliver to the Council in registrable form:
 - 17.2.1 an instrument requesting registration of this Deed on the title to the Land duly executed by the Developer, and
 - 17.2.2 the written irrevocable consent of each person referred to in s7.6(1) of the Act to that registration.
- 17.3 The Developer is to do such other things as are reasonably necessary to enable registration of this Deed to occur.
- 17.4 This Deed must be registered on the title to the Land before the lodgement of the Plan of Lot Consolidation with NSW Land and Registry Services.
- 17.5 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 Developer has completed its obligations under this Deed to the reasonable satisfaction of the Council or this Deed is terminated or otherwise comes to an end for any other reason.

18 Restriction on dealings

- 18.1 The Developer is not to:
 - 18.1.1 sell or transfer the Land, or
 - 18.1.2 assign the Developer's rights or obligations under this Deed, or novate this Deed,to any person unless:
 - 18.1.3 the Developer has, at no cost to the Council, first procured the execution by the person to whom the Land or part is to be sold or transferred or the Developer's rights or obligations under this Deed are to be assigned or novated, of a deed in favour of the Council on terms reasonably satisfactory to the Council, and
 - 18.1.4 the Council has given written notice to the Developer stating that it reasonably considers that the purchaser, transferee, assignee or novatee, is reasonably capable of performing its obligations under this Deed, and



- 18.1.5 the Developer is not in breach of this Deed, and
- 18.1.6 the Council otherwise consents to the transfer, assignment or novation, such consent not to be unreasonably withheld.
- 18.2 Subject to clause 18.3, the Developer acknowledges and agrees that it remains liable to fully perform its obligations under this Deed unless and until it has complied with its obligations under clause 18.1.
- 18.3 Clause 18.1 does not apply in relation to any sale or transfer of the Land if this Deed is registered on the title to the Land at the time of the sale.

Part 6 – Indemnities & Insurance

19 Risk

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

20 Release

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

21 Indemnity

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

Part 7 – Other Provisions

22 Notices

- 22.1 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:
 - 22.1.1 delivered or posted to that Party at its address set out in the Summary Sheet,
 - 22.1.2 faxed to that Party at its fax number set out in the Summary Sheet, or
 - 22.1.3 emailed to that Party at its email address set out in the Summary Sheet.



- 22.2 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.
- 22.3 Any notice, consent, information, application or request is to be treated as given or made if it is:
- 22.3.1 delivered, when it is left at the relevant address,
 - 22.3.2 sent by post, 2 business days after it is posted,
 - 22.3.3 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
 - 22.3.4 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.
- 22.4 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.

23 Approvals and Consent

- 23.1 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.
- 23.2 A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

24 Costs

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

25 Entire Deed

- 25.1 This Deed contains everything to which the Parties have agreed in relation to the matters it deals with.
- 25.2 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.



26 Further Acts

- 26.1 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.

27 Governing Law and Jurisdiction

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

28 Joint and Individual Liability and Benefits

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

29 No Fetter

- 29.1 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.

30 Illegality

- 30.1 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.

31 Severability

- 31.1 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.
- 31.2 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.



32 Amendment

- 32.1 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.

33 Waiver

- 33.1 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.
- 33.2 A waiver by a Party is only effective if it:
- 33.2.1 is in writing,
 - 33.2.2 is addressed to the Party whose obligation or breach of obligation is the subject of the waiver,
 - 33.2.3 specifies the obligation or breach of obligation the subject of the waiver and the conditions, if any, of the waiver,
 - 33.2.4 is signed and dated by the Party giving the waiver.
- 33.3 Without limitation, a waiver may be expressed to be conditional on the happening of an event, including the doing of a thing by the Party to whom the waiver is given.
- 33.4 A waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given, and is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.
- 33.5 For the purposes of this Deed, an obligation or breach of obligation the subject of a waiver is taken not to have been imposed on, or required to be complied with by, the Party to whom the waiver is given.

34 GST

- 34.1 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.



- 34.2 Subject to clause 34.4, 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.
- 34.3 Clause 34.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Deed to be GST inclusive.
- 34.4 No additional amount shall be payable by the Council under clause 34.2 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.
- 34.5 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:
- 34.5.1 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;
- 34.5.2 that any amounts payable by the Parties in accordance with clause 34.2 (as limited by clause 34.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 34.6 No payment of any amount pursuant to this clause 34, 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.
- 34.7 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.
- 34.8 This clause continues to apply after expiration or termination of this Deed.

35 Explanatory Note

- 35.1 The Appendix contains the Explanatory Note relating to this Deed required by clause 25E of the Regulation.
- 35.2 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 9)

Development Contributions

| Column 1 | Column 2 | Column 3 | Column 4 |
|----------------------------------|---|--|--|
| Item/ Contribution | Public Purpose | Manner & Extent | Timing |
| A. Monetary Contributions | | | |
| 1. Car Parking Contribution | Future land acquisition, construction and/or embellishment of public car parking in the Picton Town Centre. | The Car Parking Contribution calculated in accordance with clause 10 which is \$51,870 subject to clause 11. | Before the issue of a Construction Certificate for the Development subject to clause 11. |
| 2. Road Safety Contribution | Works to improve public safety in the vicinity of the Land. | \$10,000 to be spent as determined by Council after considering the Road Safety Audit. | Before the issue of a Construction Certificate for the Development. |



Execution

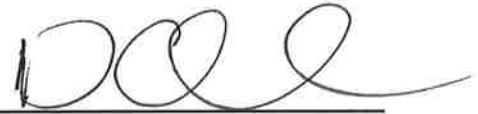
Executed as a Deed

Dated: 24 May 2019

Executed on behalf of the Council



Chief Executive Officer

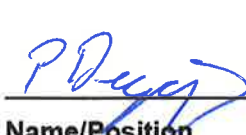


Witness Ron Dowd
62-64 Menangle Street
Picton NSW 2571.

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

 DEBORAH ANN DIGGER. - Director

Name/Position

 PHILLIP LEE DIGGER
- Director

Name/Position

Appendix

(Clause 35)

Environmental Planning and Assessment Regulation 2000

(Clause 25E)

Explanatory Note

Draft Planning Agreement

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

Parties

Wollondilly Shire Council ABN 93 723 245 808 of 62 – 64 Menangle Street, Picton NSW 2571 (**Council**)

Diggers Nest Pty Ltd ACN 619 163 307 of 15 Shelleys Lane, Thirlmere NSW 2572 (**Developer**)

Description of the Land to which the Draft Planning Agreement Applies

Lot 1 and 2 in DP 563577, known as 28 Menangle Street, Picton NSW 2571.

Description of Proposed Development

The Development proposed by Development Application No. 407 of 2017 for the redevelopment of the Land to create a mixed use development consisting of 403.5sqm of retail and commercial floor space, shop top housing and car parking on the Land as approved by a Development Consent.

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

Objectives of Draft Planning Agreement

The Draft Planning Agreement provides for the Developer to make monetary Development Contributions in respect of a shortfall in car parking spaces in the Development (as defined in clause 1.1 of the Draft Planning Agreement) and to improve road safety in the vicinity of the Development.

Nature of Draft Planning Agreement

The Draft Planning Agreement is a planning agreement under s7.4 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 to be made by the Developer for the public purpose of car parking and road safety (as defined in s7.4 of the Act).

Effect of the Draft Planning Agreement

The Draft Planning Agreement:

- relates to the carrying out by the Developer of the Development on the Land,
- does not exclude the application of s7.11, s7.12 and s7.24,
- requires the making of monetary contributions set out in Schedule 1 of the Draft Planning Agreement before a construction certificate can be issued to any part of the Development,
- is to be registered on the title to the Land,
- imposes restrictions on the Developer transferring the Land or part of the Land or assigning an interest under the agreement unless the agreement is registered on the Land,
- 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
- provides for other matters of detail.

Assessment of the Merits of the Draft Planning Agreement

The Planning Purposes Served by the Draft Planning Agreement

- promotes and co-ordinates the orderly and economic use and development of the Land to which the agreement applies,
- provides and co-ordinates the provision of public infrastructure 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 s1.3(c) and (j) 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 elements of the Principles for Local Government (formerly the Council's Charter) in the Local Government Act 1993

The Draft Planning Agreement promotes the following principles in Chapter 3 of the *Local Government Act 1993 (NSW)*:

- Councils should carry out functions in a way that provides the best possible value for residents and ratepayers.
- Councils should plan strategically, using the integrated planning and reporting framework, for the provision of effective and efficient services and regulation to meet the diverse needs of the local community.
- Councils should work with others to secure appropriate services for local community needs.
- Council decision-making should be transparent and decision-makers are to be accountable for decisions and omissions.

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

The Draft Planning Agreement will support Council's Capital Works Program. The Draft Planning Agreement is consistent with and supports Council's Operational 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

Yes. See Schedule 1, clause 11 and clause 12.

DCEL

M.

PDei
THyob