Voluntary Planning Agreement

90 and 100 Myrtle Creek Avenue, Tahmoor

Wollondilly Shire Council ("**Council**")

ABN 93 723 245 808

TCM Development Pty Limited ("**TCM**")

ABN 73 628 843 685

BALLAWYERS.COM.AU
P • 02 6274 0999
F • 02 6274 0888
E • reception@ballawyers.com.au

BRADLEY ALLEN LOVE LAWYERS
9th Floor Canberra House
40 Marcus Clarke Street
Canberra ACT 2601

GPO Box 240
Canberra ACT 2601
DX 5626 Canberra

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Deed made at Picton on .....

Parties

Wollondilly Shire Council ("**Council**")

ABN 93 723 245 808

TCM Development Pty Limited ("**TCM**")

ABN 73 628 843 685

Background

A. TCM is the owner of the Land.

B. On 8 February 2021 TCM obtained Development Consent to carry out the Development on the Land.

C. Condition 12 of the Development Consent requires TCM to enter into a Voluntary Planning Agreement with the Council prior to the issue of the first Subdivision Works Certificate for the Development.

D. The Council and TCM have agreed to enter into this deed to satisfy the requirements of Condition 12 of the Development Consent.

E. TCM agrees to provide the Development Contributions to the Council on the terms and conditions of this deed.

Operative Provisions

1. Definitions and Interpretation

1.1 Definitions

In this deed:

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

"**Approval**" means any approvals, consents, modifications, certificates, permits, endorsements, licenses, conditions or requirements (and any modifications or other variations to them) which may be required by law in connection with the commencement and carrying out, as applicable, of the works associated with the provision of the Contributions.

"**Authority**" means any governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity and includes an "accredited certifier" as that term is defined in the Act.

"**Bank Guarantee**" means an irrevocable and unconditional undertaking by a bank or financial institution approved by the Council to pay an amount or amounts of money to the Council on demand and containing terms and conditions reasonably acceptable to the Council.

"Business Day" means any day on which banks are open for business generally in NSW, except for Saturday, Sunday or a day which is a public holiday in NSW.

"**Business Hours**" means from 9am to 5pm on each Business Day.

"Contributions" means the development contributions, being dedication of land and infrastructure and making of monetary contributions, as described in clause 5.

"**Costs**" means external costs, charges and expenses, including those incurred in connection with consultants and advisers.

"**Council**" means Wollondilly Shire Council.

"Council's Policy" means the Council's *Planning Agreement Policy - PLA0037*, adopted by Council on 19 October 2015.

"**Development**" means the development or any part of the development approved under the Development Consent (including any subsequent modification of the Development Consent).

"**Development Application**" has the meaning given to that term under the Act.

"**Development Consent**" means the consent granted by the Council on 8 February 2021 for DA/2019/20/1 for the 58-Lot Torrens title subdivision, construction and dedication of new roads & associated civil works and demolition of all structures.

"**Explanatory Note**" means the explanatory note in relation to the Planning Agreement, as required by clause 25E of the Regulations, and attached as Schedule 2 to this deed.

"**GST**" has the same meaning as in the GST Law.

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

"**Land**" means the land with folio identifiers 101/597260 and 102/597260 being all of the land contained within lots 101 and 102 DP 597260, known as 90 and 100 Myrtle Creek Avenue, Tahmoor.

"**Law**" means

(a) the common law including principles of equity; and

(b) the requirements of all statutes, rules, ordinances, codes, regulations, proclamations, by-laws or consents by an Authority,

presently applying or as they may apply in the future.

"**Legislation**" means any statute, rule, ordinance, code, regulation, proclamation, by-law or consent by an Authority.

"**Modification Application**" means any application to modify the Development Consent under section 4.55 of the Act.

"**Monetary Contribution**" means the monetary contribution payable by the Developer under clause 5 of this deed.

"**Party**" means a party to this deed, including their respective successors and assigns.

"**Register**" means the Torrens title register maintained under the *Real Property Act 1900* (NSW).

"**Regulation**" means the *Environmental Planning and Assessment Regulation 2000* (NSW).

"**State**" means the State of New South Wales.

"**Subdivision Certificate**" has the same meaning given to that term under the Act.

"**Subdivision Works Certificate**" means a subdivision works certificate of a kind referred to in Part 6 of the Act.

1.2 Interpretation

In this deed:

(a) headings are for convenience only and do not affect interpretation;

and unless the context indicates a contrary intention:

(b) "person" includes an individual, the estate of an individual, a corporation, an Authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;

(c) a reference to a Party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation;

(d) a reference to an Authority in this deed includes,

(1) where an Authority ceases to exist, the body which replaces it; and

(2) where an Authority has its powers or functions transferred to another body the body which has the same or similar powers and which performs the same or similar functions.

(e) neither this deed nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting;

(f) a reference to a document (including this deed) is to that document as varied, novated, ratified or replaced from time to time;

(g) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;

(h) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;

(i) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this deed, and a reference to this deed includes all schedules, exhibits, attachments and annexures to it;

(j) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;

(k) "includes" in any form is not a word of limitation;

(l) a reference to dollars or $ is to Australian currency; and

(m) a reference to a term or expression defined in the Act shall have the meaning given to it by the Act.

2. Status of this deed

(a) This deed takes effect from the date on which the last party to the deed executes the deed.

(b) The last party to execute the deed is to insert the date at the top of page 3 and, within 1 business day of that date, provide a copy of the executed deed to the other party.

(c) The Parties will use their best endeavours to execute this deed within 28 Business Days from the end of the public notice period required by clause 25D of the Regulations.

3. Planning Agreement under the Act and Policy

(a) The Parties agree that this deed is a planning agreement within the meaning of section 7.4 of the Act.

(b) Schedule 2: Explanatory Note of this deed summarises the requirements for planning agreements under section 7.4 of the Act and the way this deed addresses those requirements.

(c) This deed has been prepared in accordance with Council's Policy.

4. Application of this deed

This deed applies to:

(a) the Land; and

(b) the Development.

5. Contributions

5.1 Timing of contributions

(a) The contributions which TCM is required to make under this clause 5 must be made prior to the issue of a Subdivision Certificate for the Development.

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(b) Clauses 5.2- 5.3 operate as a restriction on the issue of a Subdivision Certificate pursuant to section 6.15 of the Act.

5.2 Dedication of Land

(a) Prior to the issue of a Subdivision Certificate TCM must dedicate the following land to the Council, at no cost to the Council:

The land identified on the plan in Attachment A as lot 59 with an area of 2443m^2 (subject to survey) (**Lot 59**).

(b) Lot 59 is to be dedicated to the Council for use as a drainage reserve.

(c) Lot 59 is to be dedicated generally in accordance with Council's *Dedication of Land Policy PLA0036* as in force at the date of this deed.

5.3 Monetary Contribution

(a) TCM must pay the Council a monetary contribution of $97,775 plus GST, as adjusted to reflect the change in the All Groups (Sydney) Consumer Price Index between 24 September 2020 and the date the contribution is to be paid.

(b) The Monetary Contribution must be paid by way of bank cheque in favour of Council or by deposit by means of electronic funds transfer into an account specified by Council.

(c) The Monetary Contribution will be taken to have been made when the Council receives the full, cleared amount of the contribution by bank cheque or by electronic funds transfer to the Council's bank account.

(d) It is a requirement of this deed that the Council receive the Monetary Contribution before a Subdivision Certificate for the Development will be issued.

(e) The Monetary Contribution is to be applied by the Council towards the cost of maintaining Lot 59 as a drainage reserve and the associated stormwater management infrastructure to be situated within Lot 59.

6. Application of s.7.11, s.7.12 and s.7.24 of the Act to the Development

(a) This deed does not exclude the application of section 7.11 of the Act to the Development.

(b) This deed does not exclude the application of section 7.12 of the Act to the Development.

(c) This deed does not exclude the application of section 7.24 of the Act to the Development.

7. Interests in the Land

7.1 Ownership

TCM represents and warrants to the Council that it is the legal owner of the Land.

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7.2 Registration

(a) TCM agrees to procure the registration of this deed under the *Real Property Act 1900* (NSW) in the relevant folios of the Register of the Land in accordance with section 7.6 of the Act.

(b) TCM, at its own expense, will, within 10 days after this deed takes effect, take all practical steps and otherwise do anything that the Council reasonably requires, to procure:

(1) the consent of each person who:

i. has an estate or interest in the Land registered under the *Real Property Act 1900* (NSW); or

ii. is seized or possessed of an estate or interest in the Land; and

(2) the execution of any documents; and

(3) the production of the relevant certificates of title,

to enable the registration of the planning agreement in accordance with clause 7.2(a).

(c) TCM, at its own expense, will take all practical steps and otherwise do anything that the Council reasonably requires to procure:

(1) the lodgement of this planning agreement with the Registrar-General as soon as reasonably practicable after the planning agreement takes effect but in any event, no later than 30 Business Days after that date; and

(2) the registration of the planning agreement by the Registrar-General in the relevant folios of the Register for the Land as soon as reasonably practicable after the planning agreement is lodged for registration.

7.3 Caveat

(a) TCM acknowledges and agrees that:

(1) when this deed is executed, the Council is deemed to have acquired and TCM is deemed to have granted, an equitable estate and interest in the Land for the purposes of section 74F(1) of the *Real Property Act* 1900 (NSW) and consequently the Council has a sufficient interest in the Land in respect of which to lodge a caveat over the Land notifying that interest; and

(2) it will not object to the Council lodging a caveat in the relevant folio of the Register for the Land nor will it seek to remove any caveat lodged by the Council provided the caveat does not prevent registration of any dealing or plan other than a transfer.

(b) The Council may, at TCM's cost, register a withdrawal of any caveat in respect of the Land within 20 Business Days after the planning agreement is registered on the certificate of title for the Land.

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7.4 Novation on certificate

(a) The Council may, at its discretion, decide to make a notation on any planning certificate issued under section 10.7 of the Act in relation to the Land about the planning agreement.

7.5 Release and Discharge

(a) Once TCM has completed its obligations under this deed, TCM may request in writing that the Council provide a release and discharge of this deed so that it may be removed from the folios of the Register for the Land (or any part of it).

(b) In response to a request made under clause 7.5(a) the Council agrees to provide a release and discharge of this deed if and when it is satisfied that:

(1) TCM has duly fulfilled all of its obligations under this deed;

(2) any default by TCM under this deed has been remedied by TCM or waived by the Council; and

(3) TCM is not otherwise in default of any of its obligations under this deed.

(c) The Council also agrees to provide a release and discharge of this deed if:

(1) the development consent to which the deed relates has lapsed or has been surrendered; or

(2) the parties agree that the performance of the deed has been frustrated by an event beyond the control of the parties.

8. Security

8.1 Security for dedicated land

(a) If TCM does not comply with its obligations in clause 5.2 of this deed, TCM agrees that the Council may compulsorily acquire the land to be dedicated to Council under that clause. For the purposes of section 30(2) of the *Land Acquisition (Just Terms Compensation) Act 1991*, TCM agrees that the compensation payable for the acquisition will be $1.00 and that all relevant matters concerning the compulsory acquisition have been agreed.

(b) Council may exercise its rights under clause 8.1(a) by serving written notice and delivering a transfer or a registrable section 88B Instrument under the *Real Property Act* 1900 (NSW), and TCM must execute and return that form to the Council within 14 days.

(c) TCM agrees to do all things necessary to facilitate a transfer under this clause including to enable the Council to execute all such documents and do all such things on TCM's behalf as are necessary or desirable to enable the transfer of that land to the Council.

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9. Enforcement of Obligations

9.1 Default

(a) If a Party considers that another Party has failed to perform or fulfil an obligation under this deed it may give notice in writing to the other party (**Default Notice**) giving particulars of the default and requiring the default to be remedied within a reasonable time (not being less than 21 days).

(b) In determining a reasonable time, regard must be had to both the nature of the default and the work or other action required to remedy it, as well as whether or not the continuation of the default constitutes a public nuisance or raises other circumstances of urgency or emergency.

(c) If a party disputes the Default Notice it may refer the dispute to dispute resolution under clause 10 of this deed.

9.2 Enforcement

(a) This Deed may be enforced by any Party in any court of competent jurisdiction.

(b) TCM covenants with the Council that it will not rescind or terminate this deed or make a claim that this deed is void, voidable, illegal or unenforceable because a condition of the Development Consent requires TCM to enter into a planning agreement in the terms of this deed.

10. Dispute Resolution

10.1 Parties to meet

(a) If a dispute between any of the Parties arises in connection with this deed or its subject matter then either Party may give the other Party a Notice of Dispute in writing identifying and providing details of the dispute.

(b) The Parties must continue to perform their respective obligations under this deed despite the existence of a dispute.

(c) Representatives of the Parties must promptly (and in any event within 10 Business Days of the Notice of Dispute) meet in good faith to attempt to resolve the notified dispute.

(d) The disputing Parties may, without limitation:

(1) resolve the dispute during the course of that meeting;

(2) agree that further material or arbitration about a particular issue or consideration is needed to effectively resolve the dispute (in which event the parties will, in good faith, agree to a timetable for resolution); or

(3) agree that the disputing parties are unlikely to resolve the dispute and, in good faith, agree to a form of alternative dispute resolution (including expert determination, arbitration or mediation) which is appropriate for the resolution of the relevant dispute.

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10.2 Further Notice if Not Settled

If the dispute is not resolved within 20 Business Days after the nominated representatives have met, any disputing Party may give to the other a written notice calling for determination of the dispute (**Determination Notice**) by mediation under clause 10.3.

10.3 Mediation

If a disputing Party gives a Determination Notice calling for the dispute to be mediated:

(a) The disputing Parties must agree to the terms of reference for the mediation within 20 Business Days of the receipt of the Determination Notice (or any further period agreed in writing by them), and those terms are to include a requirement that the mediation rules of the Institute of Arbitrators and Mediators Australia (NSW Chapter) apply.

(b) The mediator will be agreed between the disputing Parties or, failing agreement within 20 Business Days of receipt of the Determination Notice (or any further period agreed in writing by them), any disputing Party may request the President of the Institute of Arbitrators and Mediators Australia (NSW Chapter) to appoint a mediator.

(c) The mediator appointed pursuant to this clause 10.3 must:

(1) have reasonable qualifications and practical experience in the area of the dispute; and

(2) have no interest or duty which conflicts or may conflict with his or her function as a mediator and disclose any such interest or duty before his or her appointment.

(d) The mediator is to be required to give an undertaking to keep confidential all matters coming to his or her knowledge by reason of his or her appointment and performance of his or her duties.

(e) The disputing Parties must within 20 Business Days of receipt of the Determination Notice notify each other of their representatives who will be involved in the mediation (except if a resolution of the Council is required to appoint a representative, in which case the Council must give notice of its representative within 5 Business Days of the resolution).

(f) The disputing Parties agree to be bound by a mediation settlement (if settlement is achieved) and may only initiate court proceedings in respect of a dispute which is the subject of a mediation settlement for the purpose of enforcing that mediation settlement.

(g) In relation to costs and expenses:

(1) each Party will bear its own professional and expert costs incurred in connection with the mediation; and

(2) the costs of the mediator will be shared equally by the disputing Parties unless the mediator determines that a Party has engaged in vexatious or unconscionable behaviour in which case the mediator may require the full costs of the mediation to be borne by that Party.

10.4 Litigation

(a) If a dispute arises between the Council and TCM in relation to this deed then the disputing Parties must not commence any court proceedings relating to the dispute unless the disputing Parties have first complied with the processes in clauses 10.1-10.3.

(b) If the dispute is not finally resolved in accordance with the process in clauses 10.1-10.3 then any disputing Party is at liberty to litigate the dispute.

(c) Nothing in this clause 11 prevents:

(1) either party from seeking urgent interlocutory relief;

(2) the Council from bringing proceedings in a Court of competent jurisdiction to enforce any aspect of this deed or any matter to which this deed relates; or

(3) the Council from exercising any function under any Legislation, including the Act, or any other Law relating to the enforcement of any aspect of this deed or any matter to which this deed relates.

11. Assignment, Novation and Dealing

(a) TCM may not transfer the Land to any person or transfer, assign or novate its rights or obligations under the deed unless:

(1) the person to whom the Land or rights are transferred agrees to be bound by the deed at no cost to Council;

(2) Council is satisfied that the person to whom the Land or rights are to be transferred is able to perform the obligations under the deed, based on such reasonable evidence as the Council requires to be provided;

(3) TCM is not in breach of the deed; and

(4) the Council otherwise consents to the transfer.

(b) Any change of ownership or control (as defined in section 50AA of the *Commonwealth Corporations Act 2001*) of a Party (excluding the Council) shall be deemed to be an assignment of this deed for the purposes of this clause.

(c) Any purported dealing in breach of this clause is of no effect.

12. Review and amendment of this Deed

(a) The Council and TCM agree to review this deed:

(1) within 20 days of each anniversary of the commencement of the deed; and

(2) if the Development Consent is modified.

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(b) This deed may also be reviewed or modified by the Parties at any time. Any review or modification of this deed will be conducted in the circumstances and in the manner determined by the Parties.

(c) No modification or review of this deed will be of any force or effect unless it is in writing and signed by both Parties.

(d) A Party is not in breach of this deed if it does not agree to an amendment to this deed requested by a Party in, or as a consequence of, a review.

13. Costs

(a) TCM is to pay:

(1) its own costs and expenses (including legal fees) of and incidental to the preparation, negotiations, execution and (where applicable) the stamping and registration of this deed, including all Stamp Duty payable; and

(2) the Council's reasonable costs of and incidental to the preparation, negotiation, execution, stamping and registration and, where necessary, enforcement of this deed.

14. GST

(a) Words and expressions which are not defined in this deed but which have a defined meaning in GST Law have the same meaning as in the GST Law.

(b) Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this deed are exclusive of GST.

(c) If GST is imposed on any supply made under or in accordance with this deed, TCM must pay the GST or pay to the Council an amount equal to the GST payable on or for the taxable supply, whichever is appropriate in the circumstances.

15. Use of Explanatory Note

The Explanatory Note must not be used to assist in construing this deed.

16. Notices

(a) A notice given by either Party pursuant to this deed has no legal effect unless it is in writing.

(b) All written notices given under this deed may be validly given by any one of the following means:

(1) by sending it by prepaid post or by document exchange to the address of the Party to be served or its solicitor;

(2) by email to the email address of the Party to be served or its solicitor; or

(3) by delivering it to the Party to be served or to its solicitor.

(c) The Parties expressly acknowledge that it is each Party's responsibility to ensure that the other is fully aware of that Party's current contact details at all times throughout the duration of this deed. Notices sent by one Party to the other Party which are addressed to an address previously notified to the delivering Party as the other Party's address are deemed received by the other Party unless and until that other Party can prove it had notified the delivering Party of a more recent address.

(d) A notice shall be deemed to be given and received:

(1) if sent by pre-paid post or by document exchange, 2 Business Days after it has been posted or has been delivered to the Document Exchange Centre;

(2) if sent by email during Business Hours, on the day it was sent and, if sent by email outside Business Hours, on the first Business Day after the day it was sent; and

(3) if delivered during Business Hours, on the day of delivery and, if delivered outside Business Hours, on the first Business Day after the day of delivery.

(e) As at the date of this deed each Party's address for service is as follows:

For the Council:

Delivery address: 60-64 Menangle Street

Picton NSW 2571

Post: PO Box 21

Picton NSW 2571

Email: council@wollondilly.nsw.gov.au

For TCM

Delivery address: 15 GIBBONS STREET

OATLANDS NSW 2117

Post: AS ABOVE

Email: MELISSAMAINTERIORS@GMAIL.COM

(f) A notice given or a document signed or served on behalf of any Party by any director or company secretary or solicitor of that Party shall be deemed to have been given, signed or served by that Party personally.

(g) Any notice sent by email will be taken to have been received by the addressee for the purposes of this deed unless the sender receives a message indicating that delivery has failed.

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(h) A Party may change its address for notices by giving the other Party 3 Business Days' written notice of the change.

17. Miscellaneous

17.1 Relationship of the Parties

(a) Nothing in this deed creates a relationship of agency between the Parties or, except as expressly provided, authorises one of them to enter into any contracts or other commitments which bind any other Party without their express written approval.

(b) Nothing in this deed is intended or to be implied to create a relationship of employment, partnership or joint venture between the Parties or any of their respective agents, employees, sub-contractors and assigns.

17.2 No Waiver

(a) Any delay or failure to enforce any term of this deed will not be deemed to be a waiver.

(b) There is no implied waiver by either Party in respect of any term of this deed and any waiver granted by either Party shall be without prejudice to any other rights.

(c) Any waiver must be in writing, and in the case of the Council, signed by the General Manager.

(d) A waiver by a Party of its rights under this deed is only effective in relation to the particular obligation or breach in respect of which it is given, and does not cover subsequent breaches of the same or a different kind.

17.3 No Fetter

Nothing in this deed is to be construed as requiring an authority to do anything that would cause it to be in breach of any of its obligations at Law, and without limitation:

(a) nothing in this deed is to be construed as limiting or fettering in any way the exercise of any statutory discretion or duty; and

(b) nothing in this deed imposes any obligation on the Council to:

(1) grant development consent or project approval; or

(2) exercise any function or power under the Act in relation to a change, or a proposed change, in an environmental planning instrument.

17.4 Governing Law

This deed shall be governed by and construed in accordance with the Law of New South Wales and the Commonwealth of Australia and the parties submit themselves to the exclusive jurisdiction of the courts of those jurisdictions and those that have jurisdiction to hear any appeals from them.

17.5 Entire Agreement

This deed:

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(a) is the entire agreement of the Parties concerning everything connected with the subject matter of this deed; and

(b) supersedes any prior representations, statements, promises or understanding on anything connected with that subject matter.

17.6 Severability

If any provision of this deed is void, unenforceable or illegal in the jurisdiction governing this deed, then:

(a) it is to be read down so as to be valid and enforceable; or

(b) if it cannot be read down, the provision (or where possible the offending words), is severed from this deed and the rest of this deed remains in force.

17.7 Counterparts

This deed may be executed in any number of counterparts, all of which taken together constitute one and the same document.

17.8 Further assurances

Each Party must promptly execute all documents and do all other things reasonably necessary or desirable to give effect to the arrangements recorded in this deed.

17.9 Representation and Warranties

The Parties represent a warrant that they have the power to enter into this deed and to comply with their obligations under this deed.

17.10 Confidentiality

This deed may be treated as a public document.

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Executed as a Deed on

EXECUTED for and on behalf of **Wollondilly Shire Council** by its authorised delegate, in accordance with a resolution of the Council made on

.....
Signature of Authorised Delegate

.....
Name of Authorised Delegate (in full)

.....
Signature of Witness

.....
Name of Witness (in full)

EXECUTED by **TCM Development Pty Limited** ABN 73 628 843 685 in accordance with section 127 of the *Corporations Act 2001*:

Signature: .....

Name: Ruikun Peng
PLEASE PRINT

Director/Secretary

Signature: .....

Name: MELISSA MA
PLEASE PRINT

Director/Secretary

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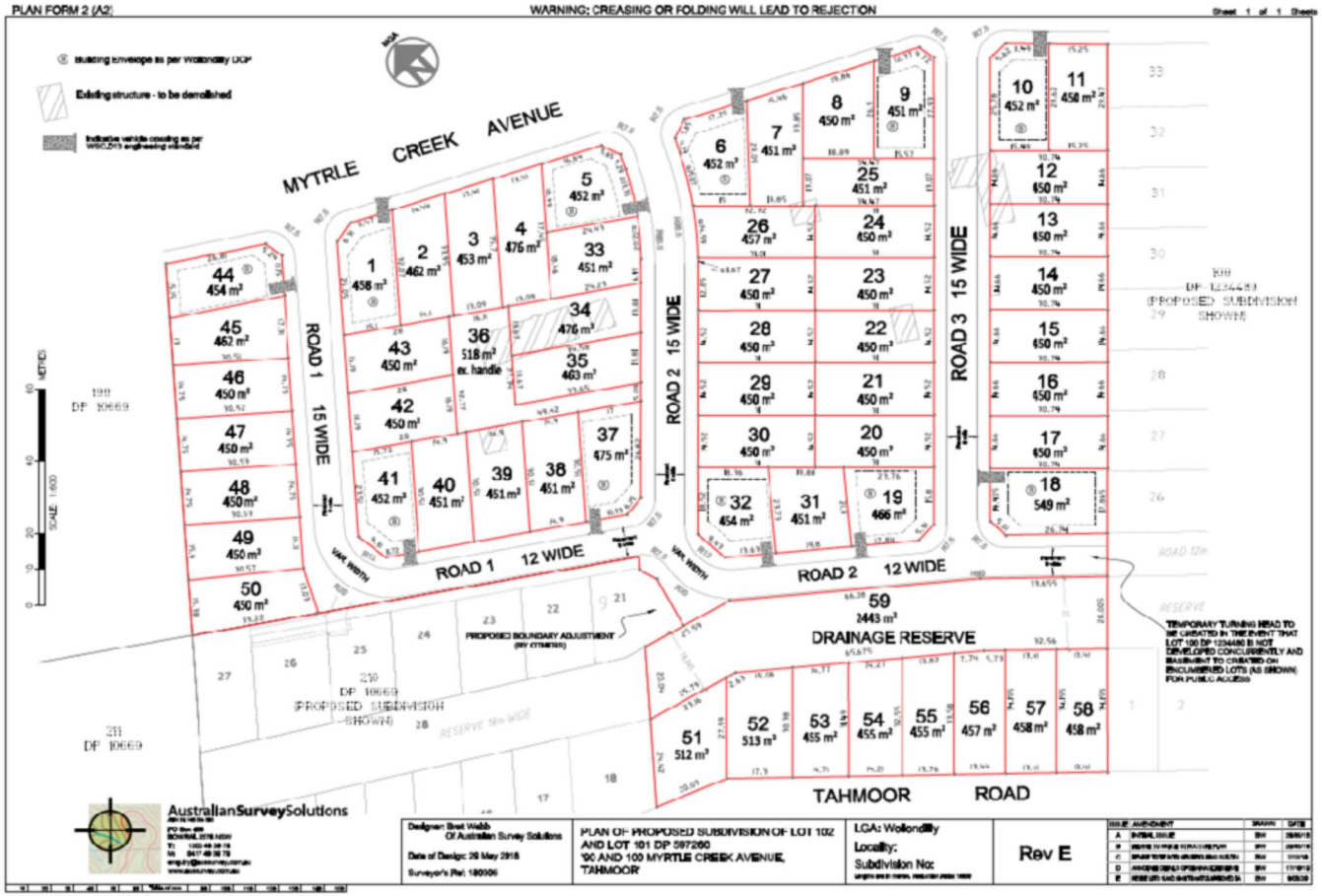
Attachment A:



Schedule 1: Section 7.4 Requirements

SUBJECT AND SUBSECTION OF THE ACT	THIS PLANNING AGREEMENT
TCM has: (a) sought a change to an environmental planning instrument (b) made, or proposes to make, a Development Application (c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies	 (a) No. (b) Yes. (c) No.
Description of the land to which this Planning Agreement applies – s.7.4(3)(a)	The whole of the Land.
Description of the development –s.7.4(3)(b)	Refer to the definition of Development in clause 1
The nature and extent, timing, and manner of delivery of contribution required by this Planning Agreement – s. 7.4(3)(c)	Refer to clause 5
Applicability of s.7.11 of the Act – Section 7.4(3)(d)	Refer to clause 6
Applicability of section 7.12 of the Act – Section 7.4(3)(d)	Refer to clause 6
Applicability of section 7.24 of the Act – Section 7.4(3)(d)	Refer to clause 6
Whether benefits are to be taken into account under section 7.11 – Section 7.4(3)(e)	Refer to clause 6
Mechanism for dispute resolution – Section 7.4(3)(f)	Refer to clause 10
Enforcement of the Planning Agreement – Section 7.4(3)(g)	Refer to clause 9
Registration of the Planning Agreement – Section 7.6	Refer to clause 7.2
No obligation to grant consent or exercise functions – Section 7.4(9)	Refer to clause 17.3

Schedule 2: Explanatory Note

Planning Agreement for provision of Works on the Land and Payment of a Monetary Contribution

Introduction

The purpose of this Explanatory Note is to provide a plain English summary to support the notification of the proposed Planning Agreement (the **"Planning Agreement"**) prepared under Section 7.4 of the *Environmental Planning & Assessment Act* 1979 (the **"the Act"**).

This Explanatory Note has been prepared jointly by the Parties as required by clause 25E of the *Environmental Planning & Assessment Regulation 2000* (**"the Regulation"**).

This explanatory note is not to be used to assist in construing the deed.

Parties to the Planning Agreement

The Parties to the Planning Agreement are Wollondilly Shire Council (**"Council"**) and TCM Development Pty Limited (**"TCM"**).

The Wollondilly Shire Council has granted development consent to the development application lodged by TCM (Development Application No.010.2019.00000020.001) for the 58 lot Torrens title subdivision (comprising fifty-eight (58) residential lots (lots 1 to 58) and one (1) drainage reserve lot (Lot 59)), construction and dedication of new public roads and associated civil works and demolition of existing structures.

TCM has made the offer to dedicate the land identified as Lot 59 as a drainage reserve and pay a monetary contribution to the Council in connection with the ongoing maintenance of the drainage reserve and associated stormwater management infrastructure to be provided as part of the development.

Summary of the objectives, nature and effect of the Planning Agreement

The objective of the Planning Agreement is to record the terms of the offer made by TCM and its obligations to provide certain material public benefits to the Council.

The effect of the agreement is that TCM will be required to provide the following public benefits:

(a) Dedicate the following land to the Council, at no cost to the Council, for use as a drainage reserve:

The land identified on the plan in Attachment A as lot 59 with an area of 2443m^2 (subject to survey).

(b) Pay a monetary contribution of $97,775 plus GST to the Council, which is to be applied by the Council towards the cost of maintaining the drainage reserve and associated stormwater management infrastructure once the Council assumes ownership and control of the drainage reserve.

TCM is also required to provide security for each contribution and register the planning agreement on the title of the land in accordance with section 7.6 of the Act and the Council's *Planning Agreements Policy (037)*.

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Assessment of the Merits of the Planning Agreement

The benefits of the Planning Agreement are that:

(a) TCM will dedicate the land identified on the plan in Attachment A as Lot 59 with an area of 2443 m^2 to the Council as a drainage reserve.

(b) TCM will provide funding for recurrent expenditure in the form of paying a lump sum monetary contribution to the Council towards the costs of maintaining the drainage reserve and associated stormwater management and drainage infrastructure.

Identification of how the Planning Agreement promotes the public interest and the objects of the Act

The Planning Agreement promotes the public interest and the objects of the Act by providing land for public purposes (in the form of the dedication of land to the Council) in the vicinity of the development.

Identification of how the Planning Agreement promotes elements of the Council's Charter under the *Local* Government *Act 1993*

The Planning Agreement is consistent with the following guiding principles for Councils in section 8A of the *Local Government Act 1993* (which have replaced the Council Charter):

- In exercising functions generally:
  - 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 co-operatively with other councils and the State government to achieve desired outcomes for the local community.
  - Councils should manage lands and other assets so that current and future local community needs can be met in an affordable way.
  - Councils should work with others to secure appropriate services for local community needs.
- In decision making:
  - Councils should recognise diverse local community needs and interests.
  - Councils should consider the long term and cumulative effects of actions on future generations.

The Planning Agreement is consistent with and promotes these principles in that it establishes a long term mechanism for mitigating the costs of the impacts of the Development on residents and ratepayers by requiring the Developer (TCM) to:

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- dedicate the land to the Council as a drainage reserve for the benefit of the community; and
- contribute a monetary amount towards cost of maintenance of that drainage reserve and stormwater management infrastructure.

Identification of the planning purpose served by the Planning Agreement and whether the Planning Agreement provides for a reasonable means of achieving that purpose

The planning purpose served by the Planning Agreement is the provision of land for public purposes (in the form of the dedication of land to the Council) and the provision of a monetary contribution towards the cost of maintenance of that drainage reserve and stormwater management infrastructure.

The Planning Agreement provides a reasonable means of achieving these public purposes.

Identify whether the agreement, amendment or revocation conforms with the planning authority's capital works program (if any),

The planning agreement is not inconsistent with Council's capital works program.

Identification of the certain requirements of the agreement must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued

The Planning Agreement requires the dedication of land as a drainage reserve and payment of a monetary contribution for the future costs of the maintenance of that reserve prior to the release of a subdivision certificate.

How the Planning Agreement promotes the public interest

The Planning Agreement promotes the public interest by providing land for use a drainage reserve and a contribution towards the cost of maintaining stormwater and drainage infrastructure.

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