

Wollondilly Shire Council ("**Council**")
Cove Residential Pty Limited ("**Cove**")

Voluntary Planning Agreement for 790 Montpelier Drive, The Oaks



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Deed made at Wollondilly on

day of

2019
~~2017~~

Parties

Wollondilly Shire Council

of 60-64 Menangle Street, Picton NSW 2571 ("Council")

Cove Residential Pty Limited ACN 096 886 823

of 4/8 Milson Road, Cremorne NSW 2090 ("Cove")

Background

- A. Cove owns the Land.
- B. Cove intends to develop the Land and has made a development application to the Council seeking consent for that purpose.
- C. This Deed records an irrevocable offer by Cove to the Council pursuant to s93I(3) of the Act to enter into a planning agreement on the terms set out in this Deed if the development is granted consent .
- D. On the date any development consent becomes operable, this Deed constitutes a planning agreement under s.93F of the Act between Cove and the Council for provision of development contributions as required by the Wollondilly Development Control Plan 2016.
- E. The development contributions include:
 - i. dedication of open space to Council;
 - ii. construction of open space facilities for the public;
 - iii. construction, capping and stabilising of a bio-retention basin on the land dedicated to Council and maintenance of the basin for 5 years.
 - iv. construction of an on site detention basin on the land dedicated to Council and maintenance of the basin for 5 years; and
 - v. payment of money to Council to be put towards maintenance of the bio retention basin and in the medium termas set out herein.

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, Construction Certificates, Occupation Certificates, Complying Development Certificates, permits, endorsements, licenses, conditions or requirements (and any modifications or other variations to them) which may be required by law for the commencement and carrying out, as applicable, of the works associated with provision of the Contributions.

"Assignment and Dealing Provisions" means the provisions set out in Schedule 5.

"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.

"Authorised Officer" means in the case of any Party, a director or secretary or an officer whose title contains the word "manager" or a person performing the functions of any of them, or any other person appointed by that Party to act as an Authorised Officer for the purpose of this Deed.

"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.

"Bond" means an insurance bond from a AAA credit rated institution.

"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.

"Compliance Certificate" means a certificate referred to in section 109C(1)(a) of the Act.

"Complying Development Certificate" means a complying development certificate referred to in section 85 of the Act.

"Consent Authority" means, in relation to an Application, the Authority having the function to determine the Application.

"Construction Certificate" means a certificate issued under section 109C(1)(b) of the Act.

"Construction Contract" means any contract entered into between Cove and a third party, requiring the third party to carry out the Construction Works.

"Construction Costs" means the costs of physically constructing the Construction Works, including costs for design, survey, legal costs, valuations, project management and the costs of obtaining any relevant Approvals.

"Construction Works" means the construction works identified in clause 3 of Schedule 2A including building, engineering and construction work as well as associated work such as design and survey work.

"Contributions" means the development contributions, being dedication of land, material public benefits and monetary contributions, as identified in clauses 1, 2 and 3 of Schedule 2A.

"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 Wollondilly Shire Council's Planning Agreement Policy - PLA0037, adopted by Council on 19 October 2015.

Defects Liability Period means the period of 1 year from the date the Plan of Subdivision is registered with Land and Property Information.

"Development" means the development or any part of the development approved in accordance with the Development Consent and any subsequent modification of the Development Consent.

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

"Development Consent" means consent to DA 430/2016, for a 74 lot subdivision, new roads, associated works and demolition.

"Dispute Resolution Procedures" means the procedures under Schedule 4.

"encumbrance" in relation to any land, means any:

- (a) security for the payment of money or performance of obligations, including a mortgage, charge, lien, pledge, trust, power or title Conservation; or
- (b) right, interest or arrangement which has the effect of giving another person a preference, priority or advantage over creditors including any right of set-off; or
- (c) right that a person (other than the owner) has to remove something from land (known as a profit à prendre), easement, public right of way, restrictive or positive Covenant, lease, or licence to use or occupy; or
- (d) third party right or interest or any right arising as a consequence of the enforcement of a judgment,

or any agreement to create any of them or allow them to exist, in respect of that land.

"Explanatory Note" means the explanatory note in relation to the Planning Agreement, as required by Clause 25E of the Regulations, and attached as Annexure "B" to this Deed.

"Gateway Determination" means the Gateway Determination supported Council and determined by the Department of Planning & Infrastructure for the planning proposal to rezone land at No. 780-790 Montpelier Drive, The Oaks.

"Land" means the land known as Lot 1 in Deposited Plan 1043567 known as 790 Montpelier Drive, The Oaks, being in the Local Government area of Wollondilly and more particularly described in annexure "A1" hereto.

"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.

"Minister" means the NSW Minister for Planning.

"Occupation Certificate" means a certificate referred to in section 109C(1)(c) of the Act and which may be interim or final as provided for in section 109(C)(2) of the Act.

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

"Planning Agreement" means the provisions of this Deed under which Cove is required to make the Contributions, and includes any provisions that are incidental or supplementary to those provisions.

"Proposed Lots" means the lots approved in the Development Consent, more particularly described in Annexure A2.

"Real Property Act" means the *Real Property Act 1900* (NSW).

"Register" means the Torrens title register maintained under the Real Property Act.

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

"Review or Replacement Procedures" means the terms set out in Schedule 3.

"Security Arrangements" means those security arrangements set out in Schedule 2B.

"State" means the State of New South Wales.

"Subdivision Certificate" means a certificate referred to in section 109C(1)(d) 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 a document (including this Deed) is to that document as varied, novated, ratified or replaced from time to time;
 - (e) 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;
 - (f) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
 - (g) 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;

- (h) 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;
- (i) "includes" in any form is not a word of limitation;
- (j) The Schedules and Annexures referred to in this Deed form part of this Deed.

2. Status of this Deed

2.1 Status

- (a) This Deed operates from the date on which it is executed by all Parties.
- (b) The Parties will use their best endeavours to execute the Deed within 62 Business Days from the end of the public notice period required by cl.25D of the Regulations.
- (c) Until the Planning Agreement operates pursuant to clause 2.1(d), this Deed constitutes an irrevocable offer to the Council from Cove to enter into the Planning Agreement.
- (d) Subject to clause 2.1(d), the Planning Agreement operates, and becomes legally binding on both parties after all of the following have occurred:
 - i. The Deed is executed by all Parties;
 - ii. Development Consent is granted to the Development Application;
 - iii. A Construction Certificate is issued for the building work permitted to be carried out by the Development Consent;
 - iv. Public notice of the granting of the Development Consent has been given in accordance with section 101 of the Act and the relevant provisions of the Regulation;
 - v. 3 months have elapsed since the date on which the public notice was given; and
 - vi. Proceedings challenging the validity of the Development Consent have not been commenced within that 3 month period (other than proceedings commenced by any person acting for or on behalf of Cove or any person acting at the direction of Cove).
- (e) The parties may, before the date of commencement of operation of the Planning Agreement pursuant to clause 2.1(d) , agree in writing that either or both of clause 2.1(d) (ii) and clause 2.1(d) (iii) do not apply, and any such agreement between the parties will have effect accordingly.
- (f) The Council must notify Cove immediately after it executes this Deed and promptly provide Cove with the Deed as executed by the Council.
- (g) This Deed ceases to have effect 5 years from the date of registration of the Plan of Subdivision.

3. Planning Agreement under the Act

- (a) The Planning Agreement constitutes a planning agreement within the meaning of section 93F of the Act and is governed by Subdivision 2 of Division 6 of the Act.
- (b) Schedule 1 of this Deed summarises the requirements for planning agreements under section 93F of the Act and explains how this Deed addresses those requirements.

4. Planning Agreement under Council's Policy

The Planning Agreement has been prepared in accordance with Council's Policy.

5. Application of this Deed

This Deed applies to:

- (a) the Land; and
- (b) the Development.

6. Contributions

6.1 The Contributions

- (a) Cove will provide the Contributions in accordance with the terms of Schedule 2A.

6.2 Access to land by Council

- (a) The Council may enter the Land in order to inspect, examine or test any Construction Works, or to remedy any breach by Cove of its obligations under this Deed relating to the work.
- (b) The Council is to give Cove 2 Business Days prior notice before it enters the Land under this clause.

6.3 Assignment of Intellectual Property

- (a) At the time any Construction Works are to be dedicated to the Council Cove must also provide:
 - (1) any relevant works-as-executed plans to the Council; and
 - (2) a non-exclusive licence to the Council which allows the Council to use the copyright in those plans for the purposes of using and maintaining those works, exercising any of its statutory powers and performing any of its statutory functions.

6.4 Defects in Contributions

- (a) The Council may give Cove a Notice during the Defects Liability Period that a Contribution contains a defect and needs to be rectified.
- (b) Cove, at its cost, must rectify any such defects promptly, in accordance with the terms of the defect notice and to the reasonable satisfaction of Council.

- (c) The Council must provide all reasonable assistance to Cove and its contractors to enable the defect to be rectified, including allowing access to Council land.
- (d) If Cove does not rectify a breach within 60 Business Days of receiving notice under clause 6.4(1) (or within any such further period as the Council may allow) the Council may:
 - (1) Access and use the Security provided under Schedule 2B to rectify that defect; or
 - (2) Require Cove to do all or any of the following:
 - i. assign to Council its rights under any warranties or rights of action which it has under any Construction Contract;
 - ii. appoint the Council as its attorney to exercise its rights and powers under any Construction Contract, including any right to conduct proceedings or prosecute any action to enforce Cove's rights against others under any Construction Contract;
 - iii. execute all such documents and do all such things on Cove's behalf as are necessary or desirable to enable the Council to rectify any defects in accordance with the terms of this deed and any Construction Contract;
 - iv. provide any assistance required for the purpose of defending or settling any claim or the pursuit of any rights of recovery from others under any Construction Contract

7. Application of sections 94, 94A and 94EF of the Act

- (a) This Deed wholly excludes the application of sections 94 and 94A of the Act to the Development.
- (b) The parties agree that section 94EF of the Act does not apply to the Land.

8. Interests in the Land

8.1 Ownership

Cove represents and warrants to the Council that it is the legal owner of the Land and holds the Land in its capacity as registered proprietor.

8.2 Registration of this Planning Agreement

- (a) In accordance with Council's Policy, Cove will produce the certificates of title to the Land to enable Council to procure the registration of the Planning Agreement, under the *Real Property Act 1900* (NSW) in the relevant folios of the Register for the Land in accordance with s93H of the Act.
- (b) Cove at its own expense will, within 20 Business Days after the Planning Agreement comes into operation, take all practical steps, and otherwise do anything that the Council reasonably requires, to procure:

- (1) the consent of each person who:
 - (A) has an estate or interest in the Land registered under the *Real Property Act 1900* (NSW); or
 - (B) 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 duplicate certificates of title,

to enable the registration of the Planning Agreement in accordance with clause 8.2(a).

- (c) Cove will assist Council to take all practical steps, and otherwise do anything that the Council reasonably requires:
 - (1) to procure the lodgement of the Planning Agreement with the Registrar-General as soon as reasonably practicable after the Planning Agreement comes into operation but in any event, no later than 90 Business Days after that date; and
 - (2) to procure 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.

8.3 Caveat

- (a) Cove acknowledges and agrees that:
 - (1) when this Deed is executed by Cove, the Council is deemed to have acquired, and Cove is deemed to have granted, an equitable estate and interest in the Land for the purposes of s74F(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;
 - (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 must, at Cove'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 and must not lodge any other caveats on the titles to any of the Land.
- (c) Subject to Cove complying with the terms set out in Schedule 2A, Council must, at Cove's cost, lift any caveat within 20 Business Days to permit registration of a transfer of any part of the developed Land.

8.4 Release and Discharge

- (a) Once Cove has made the Contributions in accordance with this Deed and to the satisfaction of the Council and any default by Cove under this Deed has been remedied by Cove or waived by the Council, the Council must promptly, at the request and cost of Cove:

- (1) provide a release and discharge of this Deed to the extent that this Deed affects the Land; and
 - (2) do all things necessary to enable the extinguishment of this Deed from the title of the Land.
- (b) From time to time, Cove may request the Council to provide a release and discharge of this Deed to the extent that this Deed affects any part of the Land on which the Development has been completed and that Cove proposes to sell to a third party.
- (c) The Council must provide a release and discharge of this Deed in accordance with any request made under clause 8.4(b) within 20 Business Days after Cove has so requested in writing provided it is satisfied that acting reasonably Cove has duly satisfied its obligations under this Deed in respect of that part of the Land and Cove is not otherwise in default of any of its obligations under this Deed.
- (d) Prior to the release of the Subdivision Certificate, providing Cove has complied with the terms set out in Schedule 2A, Council shall withdraw all caveats and the registration of the Planning Agreement on lots 1-73 on the Land within 20 Business Days.

9. Security

Cove agrees to provide security to the Council for performance of Cove's obligations under this Deed on the terms and conditions of the Security Arrangements.

10. Enforcement of Obligations

10.1 Enforcement

- (a) This Deed may be enforced by any Party in any court of competent jurisdiction.
- (b) Cove covenants with the Council that Cove will not rescind or terminate this Deed or make a claim that this Deed is void, voidable, illegal or unenforceable because a condition of a Development Consent requires Cove to enter into a planning agreement on the terms of this Deed.
- (c) Nothing in this clause 10.1 prevents:
 - (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
 - (2) 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.

10.2 Subdivision Certificate Requirements

In accordance with the Act:

- (a) Cove must provide the Contributions specified in Schedule 2A (other than the obligations to uncap, stabilise and maintain the bio-retention basin and maintain the on site detention basin described in clauses 3(c) and 3(d) of Schedule 2A) to the satisfaction of Council prior to the issue of the Subdivision Certificate;

11. Review or Replacement of this Deed

The parties agree that this Deed will be reviewed or modified in the circumstances specified in, and in accordance with, the Review or Replacement Procedures.

12. Dispute Resolution

The Parties agree that any disputes under or in relation to this Deed will be resolved in accordance with the Dispute Resolution Procedures.

13. Assignment and Dealing

Cove agrees that it will not sell, transfer, or dispose of the whole or any part of its right, title or interest in the Land or the Development otherwise than in accordance with the Assignment and Dealing Provisions.

14. Costs

Cove will bear the Council's reasonable Costs and disbursements of negotiating, preparing and executing this Deed up to a total amount of \$10,000.00 inclusive of GST.

15. Explanatory Note

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

16. General Provisions

The Parties agree to the miscellaneous and general provisions set out in Schedule 6

Executed as a Deed on 5 MARCH 2019
~~2017~~

EXECUTED for and on behalf of **Wollondilly Shire Council** by its authorised delegate, in accordance with a resolution of the Council made on 20 August 2018 ~~2017~~


Signature of Authorised Delegate

Michael Malone
Name of Authorised Delegate (in full)


Signature of Witness

Bruce McCann
Name of Witness (in full)

EXECUTED by **Cove Residential Pty Limited** ACN 097 886 823 in accordance with section 127 of the *Corporations Act 2001*:

Signature: 

Signature: 

Name: BRIAN HUXLEY

Name: NORMAN ZYLBERBERG

Director
PLEASE PRINT

PLEASE PRINT
Director/Secretary *
* Delete as appropriate

Schedule 1

Section 93F Requirements

SUBJECT AND SUBSECTION OF THE ACT	THIS PLANNING AGREEMENT
Planning Agreement and/or Development Application – Section 93F(1). Cove 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 – (Section 93F(3)(a)).	The whole of the Land.
Description of change to the environmental planning instrument to which this Planning Agreement applies – (Section 93F(3)(b)(i)).	Not applicable.
Description of the development to which this Planning Agreement applies (Section 93F(3)(b)(ii)).	Refer to the definition of Development, set out in Section 1 of this Planning Agreement.
The nature and extent, timing, and manner of delivery of contribution required by this Planning Agreement – (Section 93F (3)(c)).	Refer to Schedule 2A of the Planning Agreement.
Applicability of Section 94 of the Act – (Section 93F(3)(d)).	The application of Section 94 of the Act is excluded in respect of the Development (see clause 7).
Applicability of Section 94A of the Act – (Section 93F(3)(d)).	The application of Section 94A of the Act is excluded in respect of the Development (see clause 7).
Applicability of Section 94EF of the Act – (Section 93F(3)(d)).	The application of Section 94EF of the Act is not applicable in respect of the Development (see clause 7).
Consideration of benefits under this Deed if Section 94 applies – (Section 93F(3)(e)).	Refer Schedule 2A.
Mechanism for dispute resolution – (Section 93F(3)(f))	Yes. See clause 12 and Schedule 4.
Enforcement of this Planning Agreement (Section 93F(3)(g))	Yes. See clauses 10.1 and Schedule 2B .

SUBJECT AND SUBSECTION OF THE ACT	THIS PLANNING AGREEMENT
Registration of this Planning Agreement – (Section 93F(3)(g) and 93H).	Yes. (See clause 8.2 of this Deed).
No obligation to grant consent or exercise functions – (Section 93F(9)).	See clause 9 of Schedule 6.

Schedule 2A The Contributions

1A. Interpretation

In this Schedule 2A, where an obligation is imposed on Cove to carry out construction works, that obligation may be satisfied by Cove engaging suitably qualified consultants and contractors to design and carry out the works.

1. Dedication of Land

1.1 Dedication of Land

- (a) Cove shall dedicate the following land to Council, at no cost to the Council:

Lot 74 in Plan of Proposed subdivision for Lot 1 in DP 1215738 at Montpelier Drive, The Oaks in accordance with the plan by North West Surveys dated 19 February 2016 revision 00 being the whole of lot 74 with an area of 1.86 ha.

- (b) The Dedication of Land is to occur generally in accordance with Council's Draft Dedication of Land Policy – PLA0036, version of 3 May 2016 – as approved by Council for exhibition.

2. Monetary Contributions

- (a) Cove is to contribute \$244,608.76 to the Council to be applied towards the future maintenance of the Bio Retention basin from year 6 to year 35.
- (b) Cove will pay \$308,600.00 to the Council to be applied to the cost to clean out the Bio retention basin, remove and replace the filter media and replant the vegetation after 25 years.

3. Construction Works – Material Public Benefits

- (a) Cove shall construct the public recreation area on Lot 74 in accordance with clause 4.7.3 of Council's Policy and Annexure A3.
- (b) Cove must also submit a Landscaping Plan to the Council for review and approval prior to the issue of the Construction Certificate for the Construction Works. The works must be carried out in accordance with the Landscaping Plan as approved by the Council.
- (c) The works which Cove is required to construct on the public recreation area are as follows:

	Item	Indicative Cost	Note
1.	Construct 275m long x 2.5m wide pedestrian/bicycle path to Council specifications connecting Montpelier Drive to Neki Street, consistent with Annexure A3.	\$68,012 (incl GST)	Applicant to construct to Council's specifications even if the cost exceeds the indicative cost.

	Item	Indicative Cost	Note
2.	Construct 195 metres of 1.5 metre wide footpath to Council specifications as per Annexure A.	\$29,250 (incl GST)	Applicant to construct to Council's specifications even if the cost exceeds the indicative cost.
3.	Construct an additional 40 metres of 2.5m pathway to Council specifications as per Annexure A.	\$10,000 (incl GST)	Applicant to construct to Council's specifications even if the cost exceeds the indicative cost.
4.	Prepare the land to be dedicated to the Council so that all slopes are graded so that the parkland can be easily maintained, consistent with Annexure A. Seed and hydro-mulch approximately 16,000m ² of parkland	\$14,960 (incl GST)	
5.	Plant 24 trees to provide future shade. Trees type and location is to be consistent with Annexure A.	\$5,808 (incl GST)	
6.	Supply and install six park benches on concrete plinths as per Council specification and consistent with Annexure A.	\$6,844 (incl GST)	
7.	Thin out pine tree grove at Montpelier Drive frontage to enable machine mowing of the area around and under the trees	\$16,500 (incl GST)	
8.	Supply and erect 1.2m high post and 3 rail hardwood fence to Montpelier Drive frontage and Neki street frontage, consistent with Annexure A.	\$17,974 (incl GST)	
9.	Plant out Watercourse 120 lineal metres as per Annexure A3.	\$65,652 (incl GST)	
10.	Construct retaining walls to reduce grades 50sqm @ 500 per sqm as per NW Surveys plan 15340 dated 16 May 2017, consistent with Annexure A3.	\$25,000 (incl GST)	
11.	Provisional allowance for supply and installation of proposed children's playground equipment and adult exercise items, to be selected and advised by Council.	\$60,000 (incl GST)	
	TOTAL (Items 1-10 to be constructed by the Applicant at no cost to Council) (Item 11 is a provisional allowance as requested by Council but limited to \$60,000 incl GST cost to the Applicant)	\$320,000 (incl GST)	Council has the discretion to direct the Applicant to provide any or all of the items included in this table to a maximum sum of \$320,000 (GST included) and amount to be indexed to date of payment.

	Item	Indicative Cost	Note
	(Items 1-11 to be provided generally in accordance with Annexure A3)		

- (d) Cove will construct and cap the Bio-retention basin and construct the on site detention basin on the Land in accordance with the Stormwater Management Plan and Flood Impact Assessment, being Issue 2 dated 23 December 2016, prepared by Worley Parsons Services Pty Ltd, submitted to Council on 23 December 2016, and using Friend Civil Quotation dated 30 March 2017 which includes 1.2m pool fencing. The works are to be carried out in accordance with the Development Approval and the Department of Primary Industries' general terms of approval (GTAs) and to Council's satisfaction. The location of these items will be consistent with the plans at Annexures A and B.

The estimate of costs for item (d) is, **\$484,352 (incl GST)**

- (e) Cove must, at its cost, maintain and repair the on site detention basin for years 1-5, commencing on release of the Subdivision Certificate by Council. Maintenance is to be carried out in accordance with
- i. the Stormwater Management Plan and Flood Impact Assessment, being Issue 2 dated 23 December 2016, prepared by Worley Parsons Services Pty Ltd, submitted to Council on 23 December 2016;
 - ii. the Maintenance schedule in Annexure A4; and
 - iii. In relation to the functioning of the on-site detention basin, undertake any other reasonable requirements of the Council as notified to Cove from time to time.
- (f) Cove must, at its cost, maintain and repair the bio-retention basin for 5 years commencing on release of the Subdivision Certificate by doing the following:
- i. Remove the capping of the bioretention basin not later than 3 years after the issue of the Subdivision Certificate;
 - ii. After the capping is removed, undertake mulching and planting in accordance with the Stormwater Management Plan and Flood Impact Assessment, being Issue 2 dated 23 December 2016, prepared by Worley Parsons Services Pty Ltd, submitted to Council on 23 December 2016;
 - iii. Undertake maintenance in accordance with the Maintenance schedule in Annexure A4; and
 - iv. In relation to the functioning of the Bio-retention basin, undertake maintenance or repair in accordance with any other reasonable requirements of the Council as notified to Cove from time to time.

This is an estimate only and these works will be completed at no cost to Council.

4. Timing of Contributions

- (a) The Contributions are to be made in accordance with the following timeframe:
- i. Land dedication (clause 1) - The Applicant shall lodge the Subdivision Certificate providing for the dedication of Lot 74 as a public reserve with NSW Land and Property Information within 5 Business Days of issue of the Subdivision Certificate by Council;
 - ii. Payment of monetary contributions towards maintenance of the bio-retention basin (clause 2)– funds must be transferred and received by the Council prior to the issue of the Subdivision Certificate.
 - iii. Construction of riparian corridor, pathway and cycleway and remaining works in recreation area (clause 3(c)) - must be completed before the issue of the Subdivision Certificate;
 - iv. Construction of the on site detention basin (clause 3(d)) – must be completed before the issue of the Subdivision Certificate;
 - v. Maintenance of the on site detention basin (clause 3(e)) – must be carried out in accordance with the requirements of AnnexureA4 for a period of 5 years from the issue of the Subdivision Certificate;
 - vi. Construction and capping of the bio-retention basin, (clause 3(d)) – must be completed before the issue of the Subdivision Certificate.
 - vii. Maintenance of bio-retention basin (clause 3(f)) – capping must be removed within 3 years of the issue of the Subdivision Certificate. Once the capping is removed Cove must install the stormwater quality treatment measures, including the final filter media layer and planting, and maintain the basin and stormwater quality measures in accordance with the requirements of AnnexureA4 for the remainder of the 5 year period calculated from the issue of the Subdivision Certificate.

5. Manner of Delivery of Contributions

5.1 Dedication of Land

A Contribution comprising the dedication of land is made for the purposes of this Deed when Cove registers under the *Real Property Act 1900* an instrument that is effective to transfer title to the land (free from encumbrances unless otherwise agreed by the Council in writing) to the Council.

5.2 Construction Works

A contribution comprising the Construction Works is made for the purposes of this Deed when Council issues the Subdivision Certificate and upon registration of the Subdivision Plan Council will accept ownership, possession and control of the relevant work.

5.3 Monetary Contribution

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

6. Public Purposes

The Parties agree and acknowledge that the Contributions are intended to be used for public purposes including:

- (a) Open space and recreation;
- (b) Public amenities, being community facilities;
- (c) Public roads ; and
- (d) Bio-retention Basin.

Schedule 2B

Security Arrangements

1. Security for dedication of land

Council can compulsorily acquire the land to be dedicated to Council under clause 1 of Schedule 2A for \$1.00 in the event of a breach of clause 1.1 of Schedule 2A by Cove if the alleged breach is not rectified by Cove within 20 Business Days of receiving notice of the breach from Council.

2. Security for completion and maintenance construction of Bio retention basin

Prior to the Construction Certificate being issued Cove must provide ay a security Bond or Bank Guarantee to the Council to the value of **\$44,136**, being equivalent to 120% of the estimated value of the uncapping works, mulching and planting works required to be carried out on the bio-retention basin pursuant to clause 3(d) of Schedule 2A.

3. Security for Open Space Works

(a) Prior to the Construction Certificate being issued Cove must provide a Bond or Bank Guarantee in the sum of \$320,000.00 to the Council to secure the Construction Works described in clause 3(a) of Schedule 2A.

(b) At any time following the provision of a Bond or Bank Guarantee, Cove may provide Council with one or more replacement Bonds or Bank Guarantees totalling the amount of all Bonds or Bank Guarantees required to be provided under this clause for the time being. On receipt of such replacement Bond or Bank Guarantee, within 20 Business Days the Council must release and return to Cove, as directed, the Bonds or Bank Guarantees which it holds that have been replaced.

4. Security for maintenance

(a) Cove must also provide a Bond or Bank Guarantee for years 1 - 5 in the sum of \$30,000 to the Council after the grant of development consent to DA 430/2016 and prior to the issue of the Construction Certificate to secure the performance of the maintenance obligations imposed on Cove under clause 3(e) of Schedule 2A.

5. Access to security

(a) Before Council takes any action to recover the proceeds of a Bond or Bank Guarantee, it must give Cove 20 Business Days for Cove to comply with its obligations for which the Bond or Bank Guarantee has been granted to Council. If after the 20 Business Days have elapsed, and Cove has failed to perform its obligations aforesaid, then Council will proceed as set out below.

(b) The Council may apply the proceeds of a Bond or Bank Guarantee in satisfaction of any obligation of Cove under this Deed to carry out the works specified in clause 2 or 3 of this Schedule 2B or rectify any defect for which notice is given under clause 6.3, and any associated liability, loss, cost charge or expense directly or indirectly incurred by the Council because of the failure of Cove to fulfil that obligation.

- (c) In the event the Council calls on a Bond or Bank Guarantee, the Council, its employees, servants or agents and contractors may access and occupy any part of the Land for the purposes of satisfying the obligation for which the Bond or Bank Guarantee has been provided, without further notice to Cove.
- (d) The Council will return the relevant part of the Bond or Bank Guarantee to Cove on the later of:
 - (1) where no defect notice has been issued, 20 Business Days from the end of the Defects Liability Period for the relevant works specified in clauses 2 or 3 of this Schedule 2B, or
 - (2) Where a defect notice is given under clause 6.3 for one or more works specified in clauses 2 or 3 of this Schedule 2B, 20 Business Days after the defect has been rectified to the satisfaction of the Council :
 - (3)
- (e) If the Council calls on a Bond or Bank Guarantee in accordance with this Deed, the Council may, by notice in writing to Cove, require Cove to provide a further Bond or Bank Guarantee in an amount that, when added to any unused portion of any existing Bank Guarantee, does not exceed the amount of the Bond or Bank Guarantee the Council is entitled to hold under clauses 2 and 3 of Schedule 2B.

Schedule 3

Review or Replacement Procedures

The Parties may agree to review this Deed. Any review or modification will be conducted in the circumstances and in the manner determined in writing by the Parties.

Schedule 4 Dispute Resolution

1. Notice of Dispute

Except for a dispute arising, in or as a consequence of a review under Schedule 3, if a dispute between any of the Parties arises in connection with this Deed or its subject matter, then any Party may give to the other Parties a Notice of Dispute in Writing adequately identifying and providing details of the dispute.

The Parties must continue to perform their respective obligations under this Deed. If there is a dispute but will not be required to complete the matter the subject of the dispute, unless each Party indemnifies the other Parties against costs, damages and all losses suffered in completing the disputed matter if the dispute is not resolved in favour of the indemnifying Party.

2. Further Steps Required Before Proceedings

Any dispute between the Parties arising in connection with this Deed or its subject matter must as a condition precedent to the commencement of litigation first be the subject of mediation between a person appointed from time to time by each (under written notice to the other Parties) to represent that Party.

3. Disputes for Expert Determination

If the mediation referred to in paragraph 2 has not resulted in settlement of the dispute, Cove or any Party may, with the prior written consent of each other Party, refer the matter to expert determination in accordance with paragraph 4, such expert to act in accordance with paragraph 6.

4. Choice of Expert

A dispute to be referred to an expert in accordance with paragraph 3 must be determined by an independent expert in the relevant field:

- (a) Agreed between and appointed jointly by the Parties; or
- (b) In the absence of agreement within 5 Business Days of the agreement of the Parties to refer the matter to expert determination under paragraph 3, appointed by the President or other senior officer for the time being of the body administering the relevant field.

If the Parties cannot agree as to the relevant field, any one Party may refer the matter to the President of the New South Wales Bar Association (or the President's nominee) whose decision as to the relevant field is final and binding on the Parties.

5. Requirements for Expert

The expert appointed to determine a dispute:

- (a) must have a technical understanding of the issues in contest;
- (b) must not have a significantly greater understanding of one Party's business or operations which might allow the other side to construe this greater understanding as bias or a conflict of interest;

- (c) must inform the Parties before being appointed to the extent of the expert's understanding of each Party's business or operations and, if that information indicates a possible bias, then that expert must not be appointed except with the written approval of the Parties.

The Parties must enter into an agreement with the expert appointed under this Schedule 4 setting out the terms of the expert's determination and the fees and expenses payable to the expert.

6. Directions to Expert

In reaching a determination in respect of a dispute under paragraph 3, the independent expert must give effect to the intent of the Parties entering into this Deed.

7. Expert not Arbitrator

The expert must:

- (a) act as an expert and not as an arbitrator; and
- (b) proceed in any manner as the expert thinks fit but must observe the rules of natural justice but not the rules of evidence, not accept oral submissions unless both Parties are present and on receipt of written submissions from one Party ensure that a copy of such submission is given promptly to the other party;
- (c) take into consideration all documents, information and other material which the Parties give the expert which the expert in its absolute discretion considers relevant to the determination of the dispute;
- (d) not be expected or required to obtain or refer to any other documents, information or material (but may do so if the expert so wishes);
- (e) issue a draft certificate stating the expert's intended determination giving each Party 15 business days to make further submissions;
- (f) issue a final certificate stating the expert's determination; and
- (g) act with expedition with a view to issuing the final certificate as soon as practicable.

8. Compliance with Directions

The Parties must comply with all directions given by the expert in relation to resolution of the dispute and must within a time period specified by the expert give the expert:

- (a) a short statement of facts;
- (b) a description of the dispute; and
- (c) any other documents, records or information the expert requests.

9. Expert may convene Meetings

- (a) The expert will hold a meeting with all Parties present to discuss the dispute. The meeting must be conducted in a manner which the expert considers appropriate. The meeting may be adjourned to, and resumed at, a later time in the expert's discretion.

- (b) The Parties agree that a meeting under this paragraph is not a hearing and is not an arbitration.

10. Final Determination of Expert

- (a) The Parties agree that the final determination by an expert will be final and binding upon them.
- (b) The expert or mediator will not be liable in respect of the expert determination or mediation, except in the case of fraud or misfeasance by the expert or mediator.
- (c) The Parties agree to release and indemnify the expert from and against all claims, except in the case of fraud or misfeasance by the expert, which may be made against the expert by any person in respect of the expert's appointment to determine the dispute.

11. Other Courses of Action

If the mediation referred to in paragraph 2, or the expert determination required or agreed under paragraph 3, has not resulted in resolution of the dispute, any one Party may take whatever course of action is deemed appropriate for the purpose of resolving the dispute.

12. Confidentiality of Information

The Parties agree, and must obtain the written agreement of the mediator/expert, as a condition of his/her appointment:

- (a) subject to paragraph 12(b) below, to keep confidential all documents, information and other material, disclosed to them during or in relation to the expert determination or mediation; and
- (b) not to disclose any confidential documents, information and other material except:
 - (i) to a Party or adviser who had signed a confidentiality undertaking to the same effect as this paragraph 12; or
 - (ii) if required by Law to do so; or
 - (iii) not to use confidential documents, information or other material disclosed to them during or in relation to the expert determination for a purpose other than the expert determination or mediation.

Schedule 5 Assignment and Dealing Provisions

1. Right to assign interest

Except in respect of any part of the Land where this Deed has been released and discharged or where the Subdivision Certificate has been issued, Cove must not settle on the sale, transfer, or disposal of the whole or any part of its right, title or interest in the Land to another person (**Transferee**), unless before it does so:

- (a) it complies with clause 4.7.13 of Council's Policy;
- (b) it satisfies the Council acting reasonably that the proposed Transferee is financially capable of complying with Cove's obligations under this Deed;
- (c) the rights of the Council are not diminished or fettered in any way;
- (d) the Transferee executes a novation deed agreeing to perform the obligations of Cove under this Deed;
- (e) any default by Cove has been remedied by Cove or waived by the Council;
and
- (f) Cove and the Transferee pay the Council's reasonable costs in relation to the assignment.

2. Purpose of the Assignment and Dealing Provisions

The purpose of the Assignment and Dealing provisions is to restrict the undeveloped or partly developed Land from being transferred from Cove to a third party transferee without first obtaining the Transferee's novation of this Planning Agreement to the satisfaction of the Council. The purpose of the Assignment and Dealing Provisions is not to prevent Cove settling on the sale, transfer or disposal of any part of the Land over which it has received a Subdivision Certificate.

3. Release

If Cove settles on the sale, transfer or disposal of the whole or any part of the right, title or interest in the Land or the Development in accordance with this Schedule 5, Cove will be released from all obligations under this Deed arising after the date of novation, to the extent of the transfer of Cove's interest in the Land or the Development.

4. Further documents

The Parties must, and Cove will cause any Transferee to, enter into all such further documents as are reasonably required to implement the provisions set out in this Schedule 5.

Schedule 6 General Terms

5. Notices

5.1 Form

Any notice, consent, information, application or request that must or may be given or made to a Party under this Deed is only given or made if it is in writing or sent in one of the following ways:

- (a) Delivered or posted to that Party at its address set out below; or
- (b) Faxed to that Party at its fax number set out below:

Council address:

62-64 Menangle Street
PICTON NSW 2571

Telephone: (02) 4677 1100
Fax: (02) 4677 2339
Attention: General Manager

Cove Residential Pty Limited

4/8 Wilson Road
CREMORNE NSW 2090

Telephone: (02) 9906 5222
Fax: (02) 9906 7788
Attention: Chief Operating Officer

5.2 Change of Address

If a Party gives another Party 3 Business Days notice of a change of its address of facsimile number, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or faxed to the latest address or fax number.

5.3 Delivery

Any notice, consent, information, application or request is to be treated as given or made at the following time:

- (a) If it is delivered, when it is left at the relevant address;
- (b) If it is sent by post, 2 Business Days after it is posted;
- (c) If it is sent by facsimile, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number.

6. Entire agreement

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

7. Further acts

Each Party must promptly execute all documents and do all things that the other Party from time to time reasonably request to give effect to, perfect or complete this Deed and all transactions incidental to it.

8. Governing Law and Jurisdiction

This Deed is governed by the Law of New South Wales, the Parties submit to a non-exclusive jurisdiction of its Courts and Court of Appeal. The Parties will not object to the exercise of jurisdiction by those Courts on any basis.

9. 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:
 - (i) grant development consent or project approval; or
 - (ii) exercise any function or power under the Act in relation to a change, or a proposed change, in an environmental planning instrument.

10. Representation and Warranties

- (a) The Parties represent a warrant that they have the power to enter into this Deed and to comply with their obligations under this Deed.
- (b) Cove warrants that it will carry out the works pursuant to the Consent so that only one application will be made for a subdivision certificate;
- (c) Cove warrants that the Contributions will be fit for purpose.

11. Severability

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

12. Modification

No modification to this Deed will be of any force or effect unless:

- (a) it has complied with clause 4.7.15 of Council's Policy;
- (b) it is in writing;
- (c) is signed by the Parties as a Deed; and
- (d) any requirements under the Act relating to modification of planning agreements have been complied with.

13. Waiver

- (a) 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 in breach of obligation by, another Party;
- (b) A waiver by a Party is only effective if it is in writing and, in the case of the Council, is signed by the General Manager;
- (c) 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.

14. Confidentiality

This Deed may be treated as a public document.

15. GST

- (a) If any party reasonably decides that it is liable to pay GST on a supply made to the other party under this Deed and the supply was not priced to include GST, then the recipient of the supply must, within 90 days of receipt of a Tax Invoice, pay an additional amount equal to GST on that supply.
- (b) Any Tax Invoice must comply with the GST Law.

Annexure A1

Title Searches of the Land

Lot 1 DP 1215738

LAND AND PROPERTY INFORMATION NEW SOUTH WALES - TITLE SEARCH

FOLIO: 1/1215738

SEARCH DATE	TIME	EDITION NO	DATE
11/7/2017	2:19 PM	1	11/3/2016

LAND

LOT 1 IN DEPOSITED PLAN 1215738
AT THE OAKS
LOCAL GOVERNMENT AREA WOLLONDILLY
PARISH OF WEROMBA COUNTY OF CAMDEN
TITLE DIAGRAM DP1215738

FIRST SCHEDULE

COVE RESIDENTIAL PTY LTD

SECOND SCHEDULE (1 NOTIFICATION)

1 RESERVATIONS AND CONDITIONS IN THE CROWN GRANT(S)

NOTATIONS

UNREGISTERED DEALINGS: PP DP1231818.

*** END OF SEARCH ***

Annexure A2

**Plan of Subdivision by North Western Surveys dated
11/07/2017**

Revision 01

Annexure A3

Plan of proposed Pathway Landscaping and Facilities over proposed Lot 74 being Council's open space facilities by North Western Surveys dated 18/08/2017

Revision: 07

Annexure A4
Maintenance of Stormwater Basins

**Indicative Costs for Maintenance of Stormwater Basins as per Attachment 1 of Draft
Dedication of Land Policy – PLA0036**

Item	Details	Unit Cost	Recurrence	Annualised cost*
Council Inspection	<p>Testing of bio-retention basins Check attachment of orifice plate to wall of pit and check attachment of screen to wall of pit</p> <p>Check screen for corrosion/damage Inspect DCP walls/headwall structure for cracks and spalling</p> <p>Inspect DCP sump (if present (for sediment/sludge)</p> <p>Inspect bioretention basins structures for sediment and debris accumulation, vegetation, weed growth, erosion, scour, excessive ponding, vandalism</p>	\$440	2/year	\$880
Insurance	Council to assess and renew insurance policy annually	\$100	1/year	\$100
Repair of OSD Structures	Replace/repair corroded or damaged componentry (grates, screens concrete structures etc) as necessary	\$3,000	0.1/yr	\$300
Mowing and Debris/ sediment removal	<p>Mow basin, clear debris from headwall and screen, overflow weir, grates and outlet pipes. Clear sediment, debris, weeds and dead/dying vegetation.</p> <p>Replace plants as necessary</p>	\$750	8/yr	\$6000
Fence Repair	Repair/replace damaged fence components as required	\$1500	0.1/yr	\$150
Filter media replacement	Replace rejuvenate filter media to 0.05 m for bioretention structures as per manufacturer's spec	\$3000	0.2/yr	\$600
GPT Cleanout		\$300	3/yr	\$900
TOTAL				\$8,930
35 YEAR TOTAL	Before CPI indexing and Net Present Value			\$312,550
35 YEAR TOTAL	CPI indexed as per clause 4.5.1(a) of Council's Dedication of Land Policy and Net Present Value (as advised by Council).			\$244,608.76

Annexure B

Planning Agreement for provision of Works on the Land Explanatory Note

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 93F 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 Agreement.

Parties to the Planning Agreement

The Parties to the Planning Agreement are Wollondilly Shire Council ("**Council**") and Cove Residential Pty Limited ("**Cove**"). Cove has lodged Development Application DA 430/2016 with the Council for a 74 lot subdivision of Lot 1 in Deposited Plan 1215738 and has made the offer to carry out the following works and dedicate land in full satisfaction of all section 94 contributions applying to 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 Cove and its obligations to provide certain material public benefits in lieu of paying section 94 contributions to the Council.

The effect of the agreement is that, if the Planning Agreement between Cove and the Council takes effect, Cove will be required to provide the following public benefits:

- (c) Dedicate an area of land 1.86 ha in size, and with an estimated value of \$945,000, to Council for use as public open space (lot 74);
- (d) provide amenities with an estimated value of \$320,000 for the use of Lot 74 as dedicated as open space, with the amenities to be available for use by the public;
- (e) build a bio-retention basin and on site detention basin on the open space land to assist with drainage (estimated value of \$484,352);
- (f) contribute \$308,600.00 to Council to be applied to the cost to clean out the bio-retention basin, remove and replace the filter media and replant the vegetation after 25 years;
- (g) maintain the bio-retention basin and on site detention basin for 5 years and make a monetary contribution to the Council to assist the Council to maintain the bio-retention basin from years 6-35 of \$244,608.76.

The total estimated value of the contributions which Cove will make is \$2,302,560.76 [

Cove is also required to provide security for each contribution and register the planning agreement on the title of the land in accordance with s93H of the Act (until the subdivision is registered).

Certain requirements need to be met prior to the Planning Agreement becoming operative, including the Council granting development consent to DA430/2016.

Assessment of the Merits of the Planning Agreement

The benefits of the Planning Agreement are that

- (a) Cove will provide public amenities, in the form of dedication of Lot 74 as open space and the construction of community facilities upon the open space. The locality of the development is currently deficient in public open space. The planning agreement therefore provides an opportunity to obtain an area of embellished open space which will add to the amenity of the area and improve amenity for the population which will occupy the new subdivision.
- (b) Cove will construct drainage works in the form of a bio-retention facility and on site detention basin on the open space land and dedicate these to Council.
- (c) Cove will provide funding for recurrent expenditure relating to the provision of public amenities in the form of paying money to the Council towards the maintenance of the bio-retention facility and on site detention basin.

The value of the public benefits Cove is providing under the Agreement exceed those the Council would be able to obtain from Cove if Cove paid Section 94 contributions in accordance with the Act.

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) and the provision of community facilities (in the form of public amenities and drainage infrastructure) 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 promotes the Council's Charter under section 8 of the *Local Government Act 1993* by providing;

- (a) adequate, equitable and appropriate services and facilities for the community in the form of the dedication of land, public amenities and drainage infrastructure; and
- (b) ensuring that those services and facilities are managed efficiently and effectively, including having regard to the need to maintain those facilities in the medium term by undertaking to maintain the drainage infrastructure for a period of 5 years and providing a monetary contribution to the Council to assist with maintenance beyond that time.

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 community facilities (in the form of the construction of public amenities and drainage infrastructure on that land).

In accordance with Section 93F(2) of the Act, the Planning Agreement provides a reasonable means of achieving these public purposes, as the value of the Contributions to be provided exceeds the amount the Council would recover if Cove paid Section 94 contributions in accordance with the Act.

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

The planning agreement does not conform with Council's capital works program. However it conforms with the Council's Draft Section 94 Plan, exhibited in 2016, which identified the need for the acquisition of more open space in precinct 2.

How the Planning Agreement promotes the public interest

The Planning Agreement promotes the public interest by providing a large area of open space, public amenity facilities on that open space and a drainage infrastructure (bio-retention facility and on site detention basin) to be used by the community in perpetuity.