



lindsaytaylorlawyers
planning • environment • local government

Deed

3-6 Trutes Terrace, Terranora Planning Agreement

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

Tweed Shire Council

Trevor Edser and Christine Edser

Date: *24 February 2020*

© Lindsay Taylor Lawyers



3-6 Trutes Terrace, Terranora Planning Agreement

Tweed Shire Council

Trevor and Christine Edser

3-6 Trutes Terrace, Terranora Planning Agreement

Table of Contents

Summary Sheet	4
Parties	6
Background	6
Operative provisions	6
Part 1 - Preliminary	6
1 Interpretation.....	6
2 Status of this Deed	8
3 Commencement	8
4 Application of this Deed	9
5 Warranties	9
6 Further agreements	9
7 Surrender of right of appeal, etc.	9
8 Application of s7.11, s7.12 and s7.24 of the Act to the Development.....	9
Part 2 – Development Contributions	9
9 Provision of Development Contributions	9
10 Payment of monetary Development Contributions.....	10
11 Adjustment of monetary Development Contributions rates and amounts	10
Part 3 – Dispute Resolution	11
12 Dispute Resolution - mediation.....	11
Part 4 - Enforcement.....	11
13 Breach of obligations	11
14 Enforcement in a court of competent jurisdiction	12
Part 5 – Registration & Restriction on Dealings.....	12
15 Registration of this Deed	12
16 Restriction on dealings	12
Part 6 – Indemnities & Insurance.....	13
17 Risk.....	13
18 Release.....	13
19 Indemnity	13
Part 7 – Other Provisions	13
20 Connection to sewer when available	13



3-6 Trutes Terrace, Terranora Planning Agreement

Tweed Shire Council

Trevor and Christine Edser

21	Prohibition on further development.....	14
22	Notices	14
23	Approvals and Consent	15
24	Costs.....	15
25	Entire Agreement.....	15
26	Further Acts	15
27	Governing Law and Jurisdiction	15
28	Joint and Individual Liability and Benefits.....	16
29	No Fetter	16
30	Illegality	16
31	Severability	16
32	Amendment	16
33	Waiver.....	16
34	GST.....	17
35	Explanatory Note	18
	Schedule 1	19
	Schedule 2.....	23
	Execution.....	24
	Appendix	25



3-6 Trutes Terrace, Terranora Planning Agreement
Tweed Shire Council
Trevor and Christine Edser

3-6 Trutes Terrace, Terranora Planning Agreement

Summary Sheet

Council:

Name: Tweed Shire Council
Address: Tumbulgum Road, Murwillumbah NSW 2484
Telephone: (02) 6670 2400
Email: tsc@tweed.nsw.gov.au
Representative: Troy Green (General Manager)

Developer:

Name: Trevor Edser and Christine Edser
Address: 3 Trutes Terrace, Terranora NSW 2484
Telephone: 07 5513 0025
Email: trevor.edser1@bigpond.com
Representative: Trevor Edser

Land:

See definition of *Land* in clause 1.1.

Development:

See definition of *Development* in clause 1.1.

Development Contributions:

See Clause 9 and Schedule 1.

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

See clause 8.



3-6 Trutes Terrace, Terranora Planning Agreement

Tweed Shire Council

Trevor and Christine Edser

Enforcement:

See Part 4.

Registration:

See clause 15.

Restriction on dealings:

See clause 16.

Dispute Resolution:

See Part 3.



3-6 Trutes Terrace, Terranora Planning Agreement

Tweed Shire Council

Trevor and Christine Edser

3-6 Trutes Terrace, Terranora Planning Agreement

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

Parties

Tweed Shire Council ABN 90 178 732 496 of Tumbulgum Road, Murwillumbah NSW 2484 ('**Council**')

and

Trevor Edser and **Christine Edser** of 3 Trutes Terrace, Terranora NSW 2486 ('**Developer**')

Background

- A The Developer owns the Land.
- B The Developer proposes to carry out the Development on the Land.
- C The Developer is willing to make Development Contributions in accordance with this Deed in connection with the carrying out of the Development.

Operative provisions

Part 1 - Preliminary

1 Interpretation

- 1.1 In this Deed the following definitions apply:

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

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

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

Construction Certificate has the same meaning as in the Act.

Contributions Plan means a contributions plan within the meaning of Subdivision 3, Division 1 of Part 7 of the Act.

Council's Sewer means the system of reticulated sewers for sewerage disposal operated by the Council.

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



3-6 Trutes Terrace, Terranora Planning Agreement

Tweed Shire Council

Trevor and Christine Edser

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

Development means the subdivision of the Land into two lots and the erection of a new dwelling on proposed Lot 2 pursuant to the Development Consent granted to DA 13/0385.

Development Application has the same meaning as in the Act.

Development Consent has the same meaning as in the Act.

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

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

Final Lot means a lot created in the Development for separate residential occupation and disposition not being a lot created by a subdivision of the Land on which is situated a dwelling-house that was in existence on the date of this Deed.

GST has the same meaning as in the GST Law.

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

IPD Index means the index titled '*Value of Work Done (Implicit Price Deflator); Chain Volume Measures; Engineering Construction*', series ID A405071T, published by the Australian Bureau of Statistics with product number 8782.0.65.001.

Land means Lot 63 in DP804148, being the land known as 3-6 Trutes Terrace, Terranora and identified on the plan at Schedule 2 to this Deed.

Party means a party to this Deed.

Planning Agreement means a planning agreement under s7.4 of the Act

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

Subdivision Certificate has the same meaning as in the Act.

- 1.2 In the interpretation of this Deed, the following provisions apply unless the context otherwise requires:
- 1.2.1 Headings are inserted for convenience only and do not affect the interpretation of this Deed.
 - 1.2.2 A reference in this Deed to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
 - 1.2.3 If the day on which any act, matter or thing is to be done under this Deed is not a business day, the act, matter or thing must be done on the next business day.
 - 1.2.4 A reference in this Deed to dollars or \$ means Australian dollars and all amounts payable under this Deed are payable in Australian dollars.



3-6 Trutes Terrace, Terranora Planning Agreement

Tweed Shire Council

Trevor and Christine Edser

- 1.2.5 A reference in this Deed to a \$ value relating to a Development Contribution is a reference to the value exclusive of GST.
- 1.2.6 A reference in this Deed to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- 1.2.7 A reference in this Deed to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- 1.2.8 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Deed.
- 1.2.9 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- 1.2.10 Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- 1.2.11 A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
- 1.2.12 References to the word 'include' or 'including' are to be construed without limitation.
- 1.2.13 A reference to this Deed includes the agreement recorded in this Deed.
- 1.2.14 A reference to a Party to this Deed includes a reference to the servants, agents and contractors of the Party, the Party's successors and assigns.
- 1.2.15 A reference to 'dedicate' or 'dedication' in relation to land is a reference to dedicate or dedication free of cost.
- 1.2.16 Any schedules, appendices and attachments form part of this Deed.
- 1.2.17 Notes appearing in this Deed are operative provisions of this Deed.

2 Status of this Deed

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

3 Commencement

- 3.1 This Deed commences and has force and effect on and from the date when the Parties have:
 - 3.1.1 both executed the same copy of this Deed, or
 - 3.1.2 each executed separate counterparts of this Deed and exchanged the counterparts.
- 3.2 The Parties are to insert the date when this Deed commences on the front page and on the execution page.



3-6 Trutes Terrace, Terranora Planning Agreement

Tweed Shire Council

Trevor and Christine Edser

4 Application of this Deed

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

5 Warranties

5.1 The Parties warrant to each other that they:

5.1.1 have full capacity to enter into this Deed, and

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

6 Further agreements

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

7 Surrender of right of appeal, etc.

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

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

8.1 This Deed excludes the application of s7.12 to the Development.

8.2 This Deed does not exclude the application of s7.11 or 7.24 to the Development.

Part 2 – Development Contributions

9 Provision of Development Contributions

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

9.2 The Council is to apply each Development Contribution made by the Developer under this Deed towards the public purpose for which it is made and otherwise in accordance with this Deed.

9.3 Despite clause 9.2, the Council may apply a Development Contribution made under this Deed towards a public purpose other than the public purpose



3-6 Trutes Terrace, Terranora Planning Agreement

Tweed Shire Council

Trevor and Christine Edser

specified in this Deed if the Council reasonably considers that the public interest would be better served by applying the Development Contribution towards that other purpose rather than the purpose so specified.

- 9.4 For the avoidance of doubt, nothing in this Deed shall be taken to require the Developer if the Development has not been physically commenced - to carry out all or part of the Development.
- 9.5 However, nothing in this clause 9 exempts the Developer from the obligation to comply with the provisions of this Deed that impose obligations other than the making of Development Contributions including without limitation, any that require:
- 9.5.1 the submission of plans, reports and the like; and
- 9.5.2 other facilitation of the implementation of the Deed including for registration of this Deed.

10 Payment of monetary Development Contributions

- 10.1 A monetary Development Contribution is made for the purposes of this Deed when the Council receives the full amount of the contribution payable under this Deed in cash or by unendorsed bank cheque or by the deposit by means of electronic funds transfer of cleared funds into a bank account nominated by the Council.

11 Adjustment of monetary Development Contributions rates and amounts

- 11.1 Monetary Development Contributions are to be indexed in accordance with this clause 11.
- 11.2 The monetary Development Contribution at the time of payment is determined by the following formula:

$$\frac{\$C_c \times I_p}{I_c}$$

I_c

Where:

- 11.2.1 $\$C_c$ is the relevant contribution value shown in column 3 of Schedule 1,
- 11.2.2 I_p is the last published IPD Index at the time of the payment of the monetary Development Contribution,
- 11.2.3 I_c is the last published IPD Index at 3 July 2018.



3-6 Trutes Terrace, Terranora Planning Agreement

Tweed Shire Council

Trevor and Christine Edser

Part 3 – Dispute Resolution

12 Dispute Resolution - mediation

- 12.1 This clause applies to any Dispute arising in connection with this Deed.
- 12.2 Such a Dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 12.3 If a notice is given under clause 12.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 12.4 If the Dispute is not resolved within a further 28 days, the Parties are to mediate the Dispute in accordance with the Mediation Rules of the Law Society of New South Wales published from time to time and are to request the President of the Law Society to select a mediator.
- 12.5 If the Dispute is not resolved by mediation within a further 28 days, or such longer period as may be necessary to allow any mediation process which has been commenced to be completed, then the Parties may exercise their legal rights in relation to the Dispute, including by the commencement of legal proceedings in a court of competent jurisdiction in New South Wales.
- 12.6 Each Party is to bear its own costs arising from or in connection with the appointment of a mediator and the mediation.
- 12.7 The Parties are to share equally the costs of the President, the mediator, and the mediation.

Part 4 - Enforcement

13 Breach of obligations

- 13.1 If the Council reasonably considers that the Developer is in breach of any obligation under this Deed, it may give a written notice to the Developer:
 - 13.1.1 specifying the nature and extent of the breach,
 - 13.1.2 requiring the Developer to rectify the breach, and
 - 13.1.3 specifying the period within which the breach is to be rectified, being a period that is reasonable in the circumstances.
- 13.2 If the Developer fails to comply with a notice referred to in clause 13.1, any costs incurred by the Council in remedying the breach referred to in the notice may be recovered by the Council as a debt due in a court of competent jurisdiction. .
- 13.3 For the purpose of clause 13.2, the Council's costs of remedying a breach the subject of a notice given under clause 13.1 include, but are not limited to:
 - 13.3.1 the costs of the Council's servants, agents and contractors reasonably incurred for that purpose,
 - 13.3.2 all fees and charges necessarily or reasonably incurred by the Council in remedying the breach, and



3-6 Trutes Terrace, Terranora Planning Agreement

Tweed Shire Council

Trevor and Christine Edser

- 13.3.3 all legal costs and expenses reasonably incurred by the Council, by reason of the breach.
- 13.4 Nothing in this clause 13 prevents the Council from exercising any rights it may have at law or in equity in relation to a breach of this Deed by the Developer, including but not limited to seeking relief in an appropriate court.

14 Enforcement in a court of competent jurisdiction

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

Part 5 – Registration & Restriction on Dealings

15 Registration of this Deed

- 15.1 The Parties agree to register this Deed for the purposes of s7.6(1) of the Act.
- 15.2 Not later than 30 days after the commencement of this Deed, the Developer is to deliver to the Council in registrable form:
 - 15.2.1 an instrument requesting registration of this Deed on the title to the Land duly executed by the Developer, and
 - 15.2.2 the written irrevocable consent of each person referred to in s7.6(1) of the Act to that registration.
- 15.3 The Developer is to do such other things as are reasonably necessary to enable registration of this Deed to occur.

16 Restriction on dealings

- 16.1 The Developer is not to:
 - 16.1.1 sell or transfer the Land or any part of it, or
 - 16.1.2 assign the Developer's rights or obligations under this Deed, or novate this Deed,to any person unless:
 - 16.1.3 the Developer has, at no cost to the Council, first procured the execution by the person to whom the Land or part is to be sold or transferred or the Developer's rights or obligations under this Deed



3-6 Trutes Terrace, Terranora Planning Agreement

Tweed Shire Council

Trevor and Christine Edser

- are to be assigned or novated, of a deed in favour of the Council on terms reasonably satisfactory to the Council, and
- 16.1.4 the Council has given written notice to the Developer stating that it reasonably considers that the purchaser, transferee, assignee or novatee, is reasonably capable of performing its obligations under this Deed, and
- 16.1.5 the Developer is not in breach of this Deed, and
- 16.1.6 the Council otherwise consents to the transfer, assignment or novation, such consent not to be unreasonably withheld.
- 16.2 Subject to clause 16.3, the Developer acknowledges and agrees that it remains liable to fully perform its obligations under this Deed unless and until it has complied with its obligations under clause 16.1.
- 16.3 Clause 16.1 does not apply in relation to any sale or transfer of the Land if this Deed is registered on the title to the Land at the time of the sale.

Part 6 – Indemnities & Insurance

17 Risk

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

18 Release

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

19 Indemnity

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

Part 7 – Other Provisions

20 Connection to sewer when available

- 20.1 The Parties acknowledge that the Land is not currently serviced by the Council's Sewer, but that such connection will be available in future.



3-6 Trutes Terrace, Terranora Planning Agreement

Tweed Shire Council

Trevor and Christine Edser

- 20.2 The Council is to notify the Developer, in writing, once connection to the Council's Sewer is available for the Land.
- 20.3 The Developer is to undertake or procure all works required to ensure that the Land is connected to Council's Sewer within 6 months of the date that it is notified by Council, under clause 20.2, that the Land is able to be connected to the Council's Sewer.

21 Prohibition on further development

- 21.1 The Developer is not to make any Development Application or any application to modify any Development Consent relating to the Land to create more than 2 lots on the Land until such time as:
 - 21.1.1 the Council has notified the Developer, in accordance with clause 20.2 of this Deed, that connection to Council's Sewer is available for the Land; and
 - 21.1.2 either:
 - (a) Council has received an irrevocable offer from the owner or developer of the Land, to enter into a further Planning Agreement with respect to the further subdivision of the Land, on terms acceptable to Council; or
 - (b) a Contributions Plan has been adopted which applies to the Land and which Council is satisfied requires similar Development Contributions to be made as those required to be made under this Deed.

22 Notices

- 22.1 Any notice, consent, information, application or request that is to or may be given or made to a Party under this Deed is only given or made if it is in writing and sent in one of the following ways:
 - 22.1.1 delivered or posted to that Party at its address set out in the Summary Sheet, or
 - 22.1.2 emailed to that Party at its email address set out in the Summary Sheet.
- 22.2 If a Party gives the other Party 3 business days' notice of a change of its address or email, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or emailed to the latest address.
- 22.3 Any notice, consent, information, application or request is to be treated as given or made if it is:
 - 22.3.1 delivered, when it is left at the relevant address,
 - 22.3.2 sent by post, 2 business days after it is posted, or
 - 22.3.3 sent by email and the sender does not receive a delivery failure message from the sender's internet service provider within a period of 24 hours of the email being sent.
- 22.4 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a



3-6 Trutes Terrace, Terranora Planning Agreement

Tweed Shire Council

Trevor and Christine Edser

business day, or if on a business day, after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

23 Approvals and Consent

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

24 Costs

- 24.1 The Developer is to pay to the Council the Council's costs of preparing, negotiating, executing and stamping this Deed, and any document related to this Deed within 30 days of a written demand by the Council for such payment.
- 24.2 The Developer is also to pay to the Council the Council's reasonable costs of enforcing this Deed within 30 days of a written demand by the Council for such payment.

25 Entire Agreement

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

26 Further Acts

- 26.1 Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to effect, perfect or complete this Deed and all transactions incidental to it.

27 Governing Law and Jurisdiction

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



3-6 Trutes Terrace, Terranora Planning Agreement

Tweed Shire Council

Trevor and Christine Edser

28 Joint and Individual Liability and Benefits

28.1 Except as otherwise set out in this Deed:

28.1.1 any agreement, covenant, representation or warranty under this Deed by 2 or more persons binds them jointly and each of them individually, and

28.1.2 any benefit in favour of 2 or more persons is for the benefit of them jointly and each of them individually.

29 No Fetter

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

30 Illegality

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

31 Severability

31.1 If a clause or part of a clause of this Deed can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way.

31.2 If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Deed, but the rest of this Deed is not affected.

32 Amendment

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

33 Waiver

33.1 The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Deed, does not amount to a waiver of any obligation of, or breach of obligation by, another Party.

33.2 A waiver by a Party is only effective if it:

33.2.1 is in writing,



3-6 Trutes Terrace, Terranora Planning Agreement

Tweed Shire Council

Trevor and Christine Edser

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

34 GST

- 34.1 In this clause:
 - Adjustment Note, Consideration, GST, GST Group, Margin Scheme, Money, Supply and Tax Invoice** have the meaning given by the GST Law.
 - GST Amount** means in relation to a Taxable Supply the amount of GST payable in respect of the Taxable Supply.
 - GST Law** has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.
 - Input Tax Credit** has the meaning given by the GST Law and a reference to an Input Tax Credit entitlement of a party includes an Input Tax Credit for an acquisition made by that party but to which another member of the same GST Group is entitled under the GST Law.
 - Taxable Supply** has the meaning given by the GST Law excluding (except where expressly agreed otherwise) a supply in respect of which the supplier chooses to apply the Margin Scheme in working out the amount of GST on that supply.
- 34.2 Subject to clause 34.4, if GST is payable on a Taxable Supply made under, by reference to or in connection with this Deed, the Party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.
- 34.3 Clause 34.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Deed to be GST inclusive.
- 34.4 No additional amount shall be payable by the Council under clause 34.2 unless, and only to the extent that, the Council (acting reasonably and in accordance with the GST Law) determines that it is entitled to an Input Tax Credit for its acquisition of the Taxable Supply giving rise to the liability to pay GST.
- 34.5 If there are Supplies for Consideration which is not Consideration expressed as an amount of Money under this Deed by one Party to the other Party that are not subject to Division 82 of the *A New Tax System (Goods and Services Tax) Act 1999*, the Parties agree:



3-6 Trutes Terrace, Terranora Planning Agreement

Tweed Shire Council

Trevor and Christine Edser

- 34.5.1 to negotiate in good faith to agree the GST inclusive market value of those Supplies prior to issuing Tax Invoices in respect of those Supplies;
- 34.5.2 that any amounts payable by the Parties in accordance with clause 33.2 (as limited by clause 33.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 34.6 No payment of any amount pursuant to this clause 34, and no payment of the GST Amount where the Consideration for the Taxable Supply is expressly agreed to be GST inclusive, is required until the supplier has provided a Tax Invoice or Adjustment Note as the case may be to the recipient.
- 34.7 Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to a cost, expense or other liability incurred by a party, must exclude the amount of any Input Tax Credit entitlement of that party in relation to the relevant cost, expense or other liability.
- 34.8 This clause continues to apply after expiration or termination of this Deed.

35 Explanatory Note

- 35.1 The Appendix contains the Explanatory Note relating to this Deed required by clause 25E of the Regulation.
- 35.2 Pursuant to clause 25E(7) of the Regulation, the Parties agree that the Explanatory Note is not to be used to assist in construing this Planning Deed.

Schedule 1

(Clause 9)

Development Contributions

	Column 1	Column 2	Column 3	Column 4
	Development Contribution	Public Purpose	Manner & Extent	Timing
1	Monetary contribution towards construction of Broadwater Parkway and Mahers Lane to connect to Fraser Drive	Works - Roads	Monetary Contribution of \$19,360.88 per Final Lot	Prior to issue of the Subdivision Certificate which creates the Final Lot

	Column 1	Column 2	Column 3	Column 4
	Development Contribution	Public Purpose	Manner & Extent	Timing
2	Monetary contribution towards construction of levee, culvert and floodgate improvements	Works - Flood Mitigation	Monetary Contribution of \$346.37 per Final Lot	Prior to issue of the Subdivision Certificate which creates the Final Lot
3	Monetary Contribution towards environmental restoration of wetland and habitat areas identified in Council's Wetland and Habitat Restoration Plans, as at the date of this Deed	Works - Environmental	Monetary Contribution of \$3,605.76 per Final Lot	Prior to issue of the Subdivision Certificate which creates the Final Lot

	Column 1	Column 2	Column 3	Column 4
	Development Contribution	Public Purpose	Manner & Extent	Timing
4	Monetary contribution towards construction of structured open space playing fields and related facilities, in accordance with DCP B24 Area E Urban Release Development Code, as at the date of this Deed	. Works - Structured Open Space	Monetary Contribution of \$9,271.23 per Final Lot	Prior to issue of the Subdivision Certificate which creates the Final Lot
5	Monetary contribution towards purchase of road reserve for Broadwater Parkway	Land Acquisition – Roads	Monetary Contribution of \$1,533.71 per Final Lot	Prior to issue of the Subdivision Certificate which creates the Final Lot
6	Monetary contribution towards purchase of easement over Lot 227 DP 755740 for flood levee	Land Acquisition – Flood Mitigation	Monetary Contribution of \$37.78 per Final Lot	Prior to issue of the Subdivision Certificate which creates the Final Lot
7	Monetary contribution towards purchase of Lot 227 DP 755740, buffer areas, habitat areas and additional areas "outside urban footprint" in DCP B24 Area E Urban Release Development Code Figure 2.1, as at the date of this Deed	Land Acquisition – Environmental	Monetary Contribution of \$1,892.11 per Final Lot	Prior to issue of the Subdivision Certificate which creates the Final Lot
8	Monetary contribution towards purchase of land for structured open space, in accordance with DCP B24 Area E Urban Release Development Code, as at the date of this Deed.	Land Acquisition – Structured Open Space	Monetary Contribution of \$1,533.54 per Final Lot	Prior to issue of the Subdivision Certificate which creates the Final Lot

Schedule 2

(clause 1.1)

Land

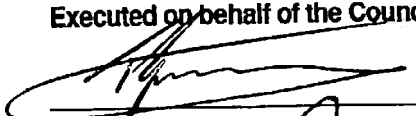
Lot 63 DP 804148 being 3 – 6 Trutes Terrace, Terranora

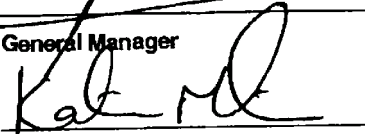
Execution

Executed as a Deed


Dated:


Executed on behalf of the Council



General Manager


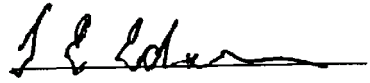
Mayor

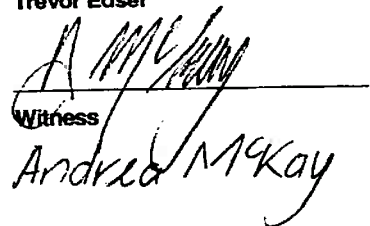


Witness



Witness

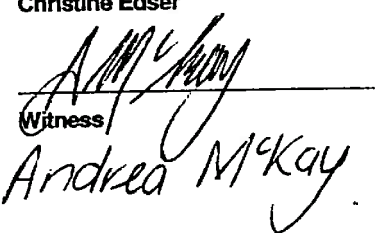
Executed on behalf of the Developer



Trevor Edser


Witness
Andrea McKay



Christine Edser


Witness
Andrea McKay

Appendix

(Clause 35)

Environmental Planning and Assessment Regulation 2000

(Clause 25E)

Explanatory Note

Draft Planning Agreement

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

Parties

Tweed Shire Council ABN 90 178 732 496 of Tumbulgum Road, Murwillumbah NSW 2484 ('Council')

and

Trevor and Christine Edser of 3 Trutes Terrace, Terranora NSW 2486 ('Developer')

Description of the Land to which the Draft Planning Agreement Applies

Lot 63 in Deposited Plan DP804148, being the land known as 3-6 Trutes Terrace, Terranora ('Land').

Description of Proposed Development

Subdivision of the Land into two lots and erection of a dwelling on proposed lot 2.

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

Objectives of Draft Planning Agreement

To secure the payment of monetary contributions towards the provision of infrastructure required for the development of the Land and the surrounding area.

Nature of Draft Planning Agreement

The Draft Planning Agreement is a planning agreement under s7.4 of the *Environmental Planning and Assessment Act 1979* ('Act').

It is an agreement between Council and the Developer under which the Development Contributions (as defined in clause 1.1 of the Draft Planning Agreement) are to be made by the Developer for public purposes (as defined in s7.4(2) of the Act).

Effect of the Draft Planning Agreement

The Draft Planning Agreement:

- relates to the Development;
- does not exclude the effect of ss 7.11 and 7.24 of the Act but excludes the application of section 7.12 of the Act;
- provides for the payment of monetary contributions by the Developer in respect of the Development;
- requires the Land to be connected to Council's Sewer when possible, and prevents the further subdivision of the Land until the Land can be connected to Council's Sewer and either a further planning agreement is offered, or a contributions plan has been made applying to the Land;
- is to be registered on the title to the Land;
- imposes restrictions on the transfer of the Land, or the assignment or novation of the Developer's obligations under the Draft Planning Agreement;
- provides for dispute resolution by mediation;
- provides that the Draft Planning Agreement is subject to the law of New South Wales; and
- provides that the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) applies to the Agreement.

Assessment of the Merits of the Draft Planning Agreement

The Planning Purposes Served by the Draft Planning Agreement

The Draft Planning Agreement:

- promotes and co-ordinates the orderly and economic use and development of the land to which it applies,
- provides for land for public purposes,
- provides for the provision infrastructure, and
- provides increased opportunity for public involvement and participation in environmental planning and assessment of the Development.

How the Draft Planning Agreement Promotes the Public Interest

The draft Planning Agreement promotes the public interest by promoting the objects of the Act as set out in s1.3(b) and (c) of the Act.

For Planning Authorities:

Development Corporations - How the Draft Planning Agreement Promotes its Statutory Responsibilities

N/A

Other Public Authorities – How the Draft Planning Agreement Promotes the Objects (if any) of the Act under which it is Constituted

N/A

Councils – How the Draft Planning Agreement Promotes the Elements of the Council’s Charter

The Draft Planning Agreement promotes the elements of the Council's charter by achieving the objectives of clause 2.1 of Council's *Community Strategic Plan 2017 – 2027* furthering the strategies and actions set out in that clause, specifically, to 'provide infrastructure to meet the needs of local and regional growth'.

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

Yes, the Draft Planning Agreement conforms with Council’s Capital Works Program by ensuring that the developers contribute to key infrastructure for the Development of the Land.

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

The Development Contributions under the Draft Planning Agreement must be made prior to the issue of Subdivision Certificates