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Deed

Mooball

Planning Agreement

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

Tweed Shire Council

Jefferson Lane Pty Ltd

Atf

The Mooball Residential Trust

Mr Raymond Anthony Pirlo and Mrs Margaret Pirlo

Date: *26 July 2016*

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Summary Sheet

Council:

Name: Tweed Shire Council
Address: PO Box 816 Murwillumbah NSW 2484
Telephone: (02) 6670 2400
Facsimile: (02) 6670 2429
Email: tsc@tweed.nsw.gov.au
Representative: Iain Lonsdale

Developer:

Name: Jefferson Lane Pty Ltd atf the Mooball Residential Trust
Address: c/-Planit Consulting, PO Box 1623 Kingscliff NSW 2487
Telephone: (02) 6674 5001
Facsimile: (02) 6674 5003
Email: info@planitconsulting.com.au
Representative: Adam Smith

Landowner:

Name: Mr Raymond Anthony Pirlo and Mrs Margaret Pirlo
Address: 5867 Tweed Valley Way, Mooball NSW 2483
Telephone: (02) 6677 1269
Email: rayandsuepirlo@bigpond.com
Representative: Raymond Anthony Pirlo

Land:

See definition of *Land* in clause 1.1.

Development:

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See definition of *Development* in clause 1.1.

Development Contributions:

See Clause 9 and Part 2.

Application of s94, s94A and s94EF of the Act:

See clause 8.

Security:

See clauses 14 and 36.

Registration:

See clause 38.

Restriction on dealings:

See clause 39.

Dispute Resolution:

See Part 6.

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Mooball Planning Agreement

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

Parties

Tweed Shire Council ABN 90 178 732 496 of PO Box 816 Murwillumbah NSW
(**Council**)

and

Jefferson Lane Pty Ltd ACN 010 265 059 of c/-Planit Consulting, PO Box 1623
Kingscliff NSW as trustee for The Mooball Residential Trust ABN 27 548 492 154
(**Developer**)

and

Mr Raymond Anthony Pirlo and Mrs Margaret Pirlo of 5867 Tweed
Valley Way, Mooball NSW 2483 (**Landowner**)

Background

- A The Landowner owns the Land.
- B The Developer has requested that the Council prepare a planning proposal within the meaning of the Act for the LEP Amendment to facilitate the urban development of the Land.
- C The Developer will, if the LEP Amendment is made, also make a Development Application for the Development.
- D The Land is not connected to Council's reticulated sewerage and water infrastructure.
- E The Developer has agreed to make Development Contributions and commitments to neighbouring landowners in accordance with this Deed if the LEP Amendment is made, and Development Consent is granted to the Development.

Operative provisions

Part 1 - Preliminary

1 Interpretation

1.1 In this Deed the following definitions apply:

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

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

Authority means the Commonwealth or New South Wales government, a Minister of the Crown, a government department, a public authority established by or under any Act, a council or county council constituted under the *Local Government Act 1993*, or a person or body exercising functions under any Act including a commission, panel, court, tribunal and the like.

Bank Guarantee means an irrevocable and unconditional undertaking without any expiry or end date in favour of the Council to pay an amount or amounts of money to the Council on demand issued by:

(a) one of the following trading banks:

- (i) Australia and New Zealand Banking Group Limited,
- (ii) Commonwealth Bank of Australia,
- (iii) Macquarie Bank Limited,
- (iv) National Australia Bank Limited,
- (iv) St George Bank Limited,
- (v) Westpac Banking Corporation, or

(b) any other financial institution approved by the Council in its absolute discretion.

BOM means the Bureau of Meteorology (ABN 92 637 533 532).

Bushfire Guide means the document entitled *Planning for Bush Fire Protection 2006* published by the NSW Rural Fire Service.

CDC Application means an application for a complying development certificate as defined in the Act.

Chapman Land means Lot B in DP 419641.

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

Construction Certificate means a certificate issued under s109C(1)(b) of the Act.

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

CPI means the Consumer Price Index (All Groups – Sydney) published by the Australian Bureau of Statistics.

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

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

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

Development means the development of the Land for urban purposes which can only be carried out once the LEP Amendment is made.

Development Application has the same meaning as in the Act.

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Development Consent has the same meaning as in the Act.

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

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

Equipment means any equipment, apparatus, vehicle or other equipment or thing to be used by or on behalf of the Developer in connection with the performance of its obligations under 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.

Just Terms Act means the *Land Acquisition (Just Terms Compensation) Act 1991*.

Land means Lot 2 in DP 534493 and Lot 7 in DP 593200.

LEP means the *Tweed Local Environmental Plan 2014*.

LEP Amendment means an amendment to the LEP to rezone the Land from RU2 Rural Landscape and RU5 Village to RU5 Village, R5 Large Lot Residential and deferred matters, and to make changes to the maximum height of buildings map, maximum floor space ratio map, minimum lot size map and land application map in the LEP.

Maintain, in relation to a Work, means keep in a good state of repair and working order, and includes repair of any damage to the Work.

Occupation Certificate has the same meaning as in the Act.

Party means a party to this Deed.

Public Purpose has the same meaning as under the Act.

Rectification Notice means a notice in writing:

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

Rectify means rectify, remedy or correct.

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

Security means a Bank Guarantee, or a bond or other form of security to the satisfaction of the Council indexed in accordance with CPI from the date of this Deed.

Sharpe Land means Lot 3 in DP 593194.

Subdivision Certificate has the same meaning as in the Act.

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Water Industry Infrastructure means infrastructure to be constructed by the Developer to manage the water supply and wastewater services for the Development as further described in clause 11.

Water Infrastructure Security means the Security to be provided under clause 14.

WIC Act means the *Water Industry Competition Act 2006* (NSW).

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

- 1.2 In the interpretation of this Deed, the following provisions apply unless the context otherwise requires:
- 1.2.1 Headings are inserted for convenience only and do not affect the interpretation of this Deed.
 - 1.2.2 A reference in this Deed to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
 - 1.2.3 If the day on which any act, matter or thing is to be done under this Deed is not a business day, the act, matter or thing must be done on the next business day.
 - 1.2.4 A reference in this Deed to dollars or \$ means Australian dollars and all amounts payable under this Deed are payable in Australian dollars.
 - 1.2.5 A reference in this Deed to a \$ value relating to a Development Contribution is a reference to the value exclusive of GST.
 - 1.2.6 A reference in this Deed to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
 - 1.2.7 A reference in this Deed to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
 - 1.2.8 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Deed.
 - 1.2.9 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
 - 1.2.10 Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
 - 1.2.11 A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
 - 1.2.12 References to the word 'include' or 'including' are to be construed without limitation.
 - 1.2.13 A reference to this Deed includes the agreement recorded in this Deed.

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- 1.2.14 A reference to a Party to this Deed includes a reference to the servants, agents and contractors of the Party, the Party's successors and assigns.
- 1.2.15 A reference to 'dedicate' or 'dedication' in relation to land is a reference to dedicate or dedication free of cost.
- 1.2.16 Any schedules, appendices and attachments form part of this Deed.
- 1.2.17 Notes appearing in this Deed are operative provisions of this Deed.

2 Status of this Deed

- 2.1 This Deed is a planning agreement within the meaning of s93F(1) of the Act.

3 Commencement

- 3.1 This Deed takes effect on the date when all Parties have executed one counterpart of this Deed.
- 3.2 The Party who executes this Deed last is to insert on the front page the date they did so and provide a copy of the fully executed and dated Deed to any other person who is a Party.

4 Application of this Deed

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

5 Warranties

- 5.1 The Parties warrant to each other that they:
 - 5.1.1 have full capacity to enter into this Deed, and
 - 5.1.2 are able to fully comply with their obligations under this Deed.
- 5.2 Jefferson Lane Pty Ltd enters into this Deed in its capacity as the trustee for The Mooball Residential Trust and warrants that:
 - 5.2.1 it is the sole trustee of The Mooball Residential Trust and no action has been taken to remove or replace it;
 - 5.2.2 it is authorised under the trust deed of the Mooball Residential Trust (**Trust Deed**) to enter into this Deed;
 - 5.2.3 it is not in breach of the Trust Deed;
 - 5.2.4 it has the power under the Trust Deed to execute and perform its obligations under this deed and all necessary action has been taken to authorise the execution and performance of this Deed under the Trust Deed.
- 5.3 If the trustee of the Mooball Residential Trust is replaced in accordance with the Trust Deed then:
 - 5.3.1 Council and the replacement trustee will enter into a new deed on the same terms as this Deed; and

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5.3.2 Council and Jefferson Lane Pty Ltd will release each other from the requirement to observe and perform any future obligation under this Deed; and

5.3.3 Jefferson Lane Pty Ltd will pay the reasonable costs and expenses of Council in relation to the replacement of a trustee under this clause and the costs and expenses of registering any new deed on the title to the Land.

5.4 Jefferson Lane Pty Ltd 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 and caused or contributed to by any breach of the warranties contained in clause 5.2.

6 Further agreements

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

7 Surrender of right of appeal, etc.

7.1 The Landowner and Developer are 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:

7.1.1 the validity of this Deed,

7.1.2 the making of the LEP Amendment, or the granting or modification of any Development Consent for the Development, to the extent that the LEP Amendment was made or the Development Consent was granted or modified having regard to the existence of this Deed, or

7.1.3 the imposition on any Development Consent granted to the Development of conditions of the type contemplated in clause 10 of this Deed.

8 Application of s94, s94A and s94EF of the Act to the Development

8.1 This Deed does not exclude the application of s94, 94A or s94EF to the Development.

8.2 Benefits under this Deed are not to be taken into account in determining any Development Contribution under s94 of the Act in relation to the Development.



9 Application of Development Contributions by the Council

- 9.1 Subject to this Deed, the Council is to apply a 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.

Part 2 –Water Industry Infrastructure

10 Need for the Water Industry Infrastructure

- 10.1 The Developer and Landowner acknowledge that:
- 10.1.1 Council does not intend to connect the Land to its wastewater infrastructure;
 - 10.1.2 The Land is to be connected to Council's reticulated water supply; and
 - 10.1.3 Council agreed to prepare the LEP Amendment on the basis that the Developer would construct the Water Industry Infrastructure if Development Consent is granted to the Development.
- 10.2 The Developer agrees to construct the Water Industry Infrastructure in accordance with any conditions of Development Consent granted to the Development and all relevant Approvals.
- 10.3 The Parties acknowledge that any potable water to service the Development will be sourced from Council.
- 10.4 The Developer and Landowner acknowledge that any Development Consent granted to the Development may:
- 10.4.1 be a deferred commencement consent within the meaning of s80(3) of the Act which will not operate until the Developer has satisfied the Council that:
 - (a) Approvals necessary to construct or operate the Water Industry Infrastructure have been obtained;
 - (b) it has the legal right to construct the Water Industry Infrastructure on the land on which it is proposed to be located; and
 - (c) it has the legal right to dispose of waste water, in perpetuity, from the Land and the Water Industry Infrastructure onto other land on which such waste water is to be disposed;
 - 10.4.2 require any deferred commencement conditions to be satisfied within a specified period from the date of the grant of the Development Consent;
 - 10.4.3 be subject to conditions requiring the construction of the Water Industry Infrastructure and that the Water Industry Infrastructure be complete, and fully operational, to the satisfaction of Council, prior to the release of any Subdivision Certificate for the Development or the



release of an Occupation Certificate for any new building in the Development; and

- 10.4.4 be subject to conditions requiring covenants to be registered on the title to the Land to provide for the ongoing management and operation of the Water Industry Infrastructure, or as otherwise required under the WIC Act or by condition of any approval under the WIC Act.

11 Water Industry Infrastructure

- 11.1 The Water Industry Infrastructure is to include at a minimum, and subject to Council's further requirements:
- 11.1.1 a waste water treatment system on the Land producing non-potable residential reuse standard effluent;
 - 11.1.2 effluent storage facilities that are sufficient to cater for extended wet weather periods of high rainfall as known and recorded by BOM within the North Coast Region of NSW, including rainfall experienced between the months of December and April;
 - 11.1.3 a reticulated potable water supply system, and
 - 11.1.4 a bulk water supply system to service all lots in the Development with a reticulated water supply from the reticulated potable water supply system.
- 11.2 The reticulated potable water supply system in clauses 11.1.3 and 11.1.4 and the land on which it is located, is to be dedicated under this Deed to, and operated by Council.

12 Surrender of right to make application to declare Council as retailer of last resort

- 12.1 The Landowner and Developer must not, and must not cause any other person to make any application or representation to the Minister administering the WIC Act seeking to have the Council declared a retailer of last resort, within the meaning of the WIC Act, or an operator of last resort, if such a concept is incorporated into the WIC Act, in relation to the provision of sewerage services to the Land.

13 Alternative Arrangements

- 13.1 Notwithstanding any other provision of this Deed, if the Council, or any other person constructs infrastructure which would serve the same purpose as the Water Industry Infrastructure, and agrees to the Development connecting to, and relying on that infrastructure, then:
- 13.1.1 the Developer will have no obligations under this Deed in respect of the Water Industry Infrastructure other than to the extent to which the Water Industry Infrastructure is infrastructure of the type usually required to be constructed by a developer in connection with a development similar to the Development, such as internal site sewer, water supply and recycled water reticulation; and



13.1.2 the Developer may, if Development Consent has been granted to the Development subject to conditions of the kind contemplated by clause 10, make applications to modify the Development Consent to delete any conditions requiring licences under the WIC Act to be obtained, or construction of the Water Industry Infrastructure, or anything else to be done in relation to the Water Industry Infrastructure, other than to the extent to which the Water Industry Infrastructure is infrastructure of the type usually required to be constructed by a developer in connection with a development similar to the Development such as internal site sewer, water supply and recycled water reticulation.

14 Water Infrastructure Security

- 14.1 Unless a security is required under any Approval granted for the Water Industry Infrastructure under the WIC Act, the Developer is to provide the Water Infrastructure Security to the Council prior to the issue of the first Subdivision Certificate in respect of the Development in an amount determined in accordance with clause 14.2.
- 14.2 The amount of the Water Infrastructure Security shall be an amount agreed between Council and the Developer which is based on an estimate of the costs to design, construct, commission and prove operational the Water Industry Infrastructure.
- 14.3 The Council is not to call upon the Water Infrastructure Security unless:
- 14.3.1 the Council considers that the Developer has failed to comply with a notice referred to in clause 36 relating to a breach by the Developer of the obligation to construct the Water Industry Infrastructure; or
- 14.3.2 Council seeks to rezone the Land in the circumstances set out in clause 15.2.
- 14.4 The Council may apply the Water Infrastructure Security in satisfaction of:
- 14.4.1 the Developer's obligations under this Deed or any Development Consent granted to the Developer to construct the Water Industry Infrastructure, and
- 14.4.2 any liability, loss, cost, charge or expense directly or indirectly incurred by the Council:
- (a) because of the failure by the Developer to construct the Water Industry Infrastructure; or
- (b) in relation to the rezoning of the Land as contemplated by clause 15.2.
- 14.5 The Council:
- 14.5.1 will, on each anniversary of the date of provision of the Water Industry Infrastructure Security, and
- 14.5.2 may otherwise, in its absolute discretion, progressively release and return the Water Infrastructure Security to the Developer as and when the Developer complies with its obligations under this Deed relating to the construction of the Water Industry Infrastructure to the reasonable satisfaction of the Council but only if the remaining amount of the Water Infrastructure Security held by the Council is not less than the



Council's estimate of the cost to the Developer of completing the Water Industry Infrastructure.

- 14.6 The Council is to release and return the Water Infrastructure Security or any remaining part of it to the Developer within 28 days of:
- 14.6.1 the date on which the Water Industry Infrastructure is commissioned and the whole system is fully operational and has demonstrated satisfactory performance, reliability and repeatability for a period of 12 months, but only if the Developer is not in breach of this Deed at that time; or
- 14.6.2 if clause 15.2 applies, the date on which any rezoning of the Land contemplated by that clause takes effect.
- 14.7 If the Council calls on the Water Infrastructure Security in accordance with this Deed, the Council may, by notice in writing to the Developer, require the Developer to provide a further Water Infrastructure Security in an amount which, together with any unused portion of any existing Water Infrastructure Security, does not exceed the amount specified in clause 14.2, unless the Water Infrastructure Security is called on pursuant to clause 14.3.2, in which case, no further Water Infrastructure Security is to be provided.
- 14.8 Any difference between the amount of the Water Infrastructure Security called upon by the Council and the costs incurred by the Council in:
- 14.8.1 completing the Water Industry Infrastructure; or
- 14.8.2 rezoning the Land pursuant to clause 15.2,
- may be recovered by the Council from the Developer as a debt due in a court of competent jurisdiction.

15 Rezoning of Land

- 15.1 If Development Consent is granted to the Development, and that Development Consent becomes operational, but the Developer determines that it will not act on the Development Consent as it will not or can not construct the Water Industry Infrastructure, then the Developer must immediately notify Council of its intention not to act on the Development Consent, and must surrender the Development Consent.
- 15.2 If the Developer:
- 15.2.1 surrenders the Development Consent in accordance with clause 15.1; or
- 15.2.2 the Development Consent does not become operative because the Developer fails to satisfy any deferred commencement condition by the time required by the Development Consent,
- then the Developer and Landowner agree that they will not make any objection in respect of any proposal by the Council to amend the LEP to remove the amendments made to the LEP by the LEP Amendment, and will not take any action against the Council if the Council determines that it will do so.



Part 3 – Dedication of Land and Carrying out of Work

16 Dedication of land

- 16.1 A Development Contribution comprising the dedication of land is made for the purposes of this Agreement when:
- 16.1.1 a deposited plan is registered in the register of plans held with the Registrar-General that dedicates land as a public road (including a temporary public road) under the *Roads Act 1993* or creates a public reserve or drainage reserve under the *Local Government Act 1993*, or
- 16.1.2 the Council is given:
- (a) an instrument in registrable form under the *Real Property Act 1900* duly executed by the Landowner as transferor that is effective to transfer the title to the land to the Council when executed by the Council as transferee and registered,
 - (b) the written consent to the registration of the transfer of any person whose consent is required to that registration, and
 - (c) a written undertaking from any person holding the certificate of title to the production of the certificate of title for the purposes of registration of the transfer.
- 16.2 The Developer and Landowner are to do all things reasonably necessary to enable registration of the instrument of transfer to occur.
- 16.3 The Developer and Landowner are to ensure that land dedicated to the Council under this Deed is free of all encumbrances and affectations (whether registered or unregistered and including without limitation any charge or liability for rates, taxes and charges) except as otherwise agreed in writing by the Council.
- 16.4 If, having used all reasonable endeavours, the Developer and Landowner cannot ensure that land to be dedicated to the Council under this Deed is free from all encumbrances and affectations, the Developer and Landowner may request that Council agree to accept the land subject to those encumbrances and affectations, but the Council may withhold its agreement in its absolute discretion.
- 16.5 Despite any other provision of this Deed, if the Landowner is required to dedicate land to the Council on which the Developer is also required to carry out a Work under this Deed, the Developer is to comply with clause 16.1.2 not later than 7 days after the Work is completed for the purposes of this Deed.

17 Carrying out of Work

- 17.1 Without limiting any other provision of this Deed, any Work that is required to be carried out by the Developer under this Deed is to be carried out in accordance with any design or specification specified or approved by any relevant Authority any relevant Approval and any other applicable law.
- 17.2 The Developer, at its own cost, is to comply with any reasonable direction given to it by the Council or any other relevant Authority to prepare or modify

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a design or specification relating to a Work that the Developer is required to carry out under this Deed, for which Council or the other Authority is the responsible Authority.

- 17.3 The Developer is to obtain all necessary Approvals for the construction of any Work required to be carried out under this Deed.

18 Variation to Work

- 18.1 The design or specification of any Work that is required to be carried out by the Developer under this Deed may be varied by agreement in writing between the Parties, acting reasonably, without the necessity for an amendment to this Deed
- 18.2 Without limiting clause 18.1, the Developer may make a written request to the Council to approve a variation to the design or specification of a Work in order to enable it to comply with the requirements of any Authority imposed in connection with any Approval relating to the carrying out of the Work.
- 18.3 The Council is not to unreasonably delay or withhold its approval to a request made by the Developer under clause 18.2.
- 18.4 The Council, acting reasonably, may from time to time give a written direction to the Developer requiring it to vary the design or specification of a Work before the Work is carried out in a specified manner and submit the variation to the Council for approval.
- 18.5 The Developer is to comply promptly with a direction referred to in clause 18.4 at its own cost.

19 Access to land by Developer

- 19.1 Upon receiving reasonable prior notice from the Developer, the Council will not unreasonably withhold an authorisation to the Developer to enter, occupy and use any Council owned or controlled land for the purpose of performing its obligations under this Deed.
- 19.2 The Council is to permit the Developer, upon receiving reasonable prior notice from the Developer, to enter any other Council owned or controlled land in order to enable the Developer to properly perform its obligations under this Deed.
- 19.3 Nothing in this Deed creates or gives the Developer any estate or interest in any part of the land referred to or affected by clause 19.1 or 19.2.

20 Access to land by Council

- 20.1 The Council may enter any land on which Work is being carried out by the Developer under this Deed in order to inspect, examine or test the Work, or to remedy any breach by the Developer of its obligations under this Deed relating to the Work:
- 20.2 The Council is to give the Developer prior reasonable notice before it enters land under clause 20.1.



21 Council's obligations relating to Work

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

22 Protection of people, property & utilities

- 22.1 The Developer is to ensure to the fullest extent reasonably practicable in relation to the performance of its obligations under this Deed that:
- 22.1.1 all necessary measures are taken to protect people and property,
 - 22.1.2 unnecessary interference with the passage of people and vehicles is avoided, and
 - 22.1.3 nuisances and unreasonable noise and disturbances are prevented.
- 22.2 Without limiting clause 22.1, the Developer is not to obstruct, interfere with, impair or damage any public road, public footpath, public cycleway or other public thoroughfare, or any pipe, conduit, drain, watercourse or other public utility or service on any land except as authorised in writing by the Council or any relevant Authority.

23 Repair of damage

- 23.1 The Developer is to maintain any Work required to be carried out by the Developer under this Deed until the Work is completed for the purposes of this Deed or such later time as agreed between the Parties.
- 23.2 The Developer is to carry out its obligation under clause 23.1 at its own cost and to the satisfaction of the Council.

24 Completion of Work

- 24.1 The Developer is to give the Council written notice of the date on which it will complete Work required to be carried out under this Deed.
- 24.2 The Council is to inspect the Work the subject of the notice referred to in clause 24.1 within 14 days of the date specified in the notice for completion of the Work.
- 24.3 Work required to be carried out by the Developer under this Deed, is completed for the purposes of this Deed when the Council, acting reasonably, gives a written notice to the Developer to that effect.
- 24.4 If the Council is the owner of the land on which Work the subject of a notice referred to in clause 24.3 is issued, the Council assumes responsibility for the Work upon the issuing of the notice, but if it is not the owner at that time, it assumes that responsibility when it later becomes the owner.
- 24.5 Before the Council gives the Developer a notice referred to in clause 24.3, it may give the Developer a written direction to complete, rectify or repair any specified part of the Work to the reasonable satisfaction of the Council.



- 24.6 The Developer, at its own cost, is to promptly comply with a direction referred to in clause 24.5.

25 Rectification of defects

- 25.1 The Council may give the Developer a Rectification Notice during the Defects Liability Period.
- 25.2 The Developer, at its own cost, is to comply with a Rectification Notice according to its terms and to the reasonable satisfaction of the Council.
- 25.3 The Council is to do such things as are reasonably necessary to enable the Developer to comply with a Rectification Notice that has been given to it under clause 25.1.

26 Works-As-Executed-Plan

- 26.1 No later than 60 days after Work is completed for the purposes of this Deed, the Developer is to submit to the Council a full works-as-executed-plan in respect of the Work.
- 26.2 The Developer, being the copyright owner in the plan referred to in clause 26.1, gives the Council a non-exclusive, irrevocable and cost free licence to use the copyright in the plans for the purposes of this Deed.

27 Removal of Equipment

- 27.1 When Work on any Council owned or controlled land is completed for the purposes of this Deed, the Developer, without delay, is to remove any Equipment from the land and make good any damage or disturbance to the land as a result of that removal.

Part 4 – Neighbour Commitments

28 Chapman Land

- 28.1 The Developer and Landowner must ensure that a covenant is registered burdening the Land and benefitting the Chapman Land prior to the commencement of any Work which is part of the Development to the following effect:
- 28.1.1 that the right of way currently benefitting the Chapman Land and burdening the Land, is not to form part of the road network to service new lots in the Development; and
- 28.1.2 requiring the Landowner to establish and maintain a 50m buffer zone on the Land in accordance with the plan in Schedule 1 which:
- (a) is to be kept clear of structures other than fences;

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- (b) is to be maintained as a grassed area to protect the visual amenity of the Chapman Land; and
 - (c) is to act as an inner protection area for an Asset Protection Zone within the meaning of the Bushfire Guide.
- 28.2 The Landowner agrees that it will include in any contracts for sale of any lots in the Development a notation to the effect that the Chapman Land is used for the keeping and breeding of fowl and agricultural pursuits.

29 Sharpe Land

- 29.1 The Developer and Landowner must ensure that a covenant is registered burdening the Land and benefitting the Sharpe Land prior to the commencement of any Work which is part of the Development to the effect that the Landowner is to maintain a cleared buffer on the Land along the frontage of the Land with the Sharpe Land, as shown on the plan in Schedule 1 in order to ensure the retention of a BAL-19 Standard (or better) within the meaning of AS3959:2009 for the existing structures on the Sharpe Land.

Part 5 - Requirements for Development Applications

30 Pre-DA Investigations

- 30.1 The Developer and Landowner agree not to lodge a Development Application for the Development unless documentary evidence has been provided to the Council to satisfy Council that the Landowner or Developer has:
- 30.1.1 dug test pits and tested soil on the Land for Aboriginal artefacts or items or matters of Aboriginal significance in accordance with the requirements of the Tweed Aboriginal Advisory Committee (TAAC) regarding the areas to be tested and the testing methodology;
 - 30.1.2 provided the results of the testing referred to in clause 30.1.1 to the TAAC;
 - 30.1.3 provided to Council a copy of the results of the testing referred to in clause 30.1.1 as well as a copy of the minutes of the TAAC meeting where these results were tabled;
 - 30.1.4 carried out a flood study for the Land which meets the requirements of Council;
 - 30.1.5 prepared a bushfire assessment of the Land to the satisfaction of Council which is signed off by a Fire Protection Association Australia, Bushfire Planning and Design Accredited Practitioner; and
 - 30.1.6 prepared a comprehensive geotechnical assessment for parts of the Land to be used for urban development prepared by a suitably qualified geotechnical engineer to the satisfaction of Council.



31 Development Design Guidelines

- 31.1 The Developer will prepare design guidelines for the Development which are to cover the following:
- 31.1.1 housing types;
 - 31.1.2 materials;
 - 31.1.3 architectural stylistic or character features; and
 - 31.1.4 landscaping,
- (Design Guidelines).
- 31.2 The Developer is to submit the Design Guidelines to the Council for approval.
- 31.3 The Developer is not to make, or cause, suffer or permit the making of a Development Application for the Development until the Council has provided its approval in writing of the Design Guidelines.
- 31.4 The Developer acknowledges that before granting its approval to the Design Guidelines, Council may:
- 31.4.1 publicly exhibit and seek public submissions on the Design Guidelines; and
 - 31.4.2 based on its consideration of any public submissions, require the Developer to modify or amend the Design Guidelines prior to the Council granting its approval.
- 31.5 The Developer and Landowner agree that no Development Application or CDC Application for any part of the Development, or for the erection of any structures on the Land will be made, unless the Development Application or CDC Application complies with the Design Guidelines as approved by Council, or the Council has agreed in writing that the Development Application or CDC Application can be lodged, regardless of this clause.

32 Floor Space Ratio

- 32.1 The Developer and Landowner are not to make, or cause, suffer or permit the making of a Development Application or CDC Application for any part of the Development to be carried out on the part of the Land zoned RU5 Village if the development the subject of the Development Application or CDC Application:
- 32.1.1 has a floor space ratio calculated in accordance with the LEP for residential uses of more than 0.55:1;
 - 32.1.2 has a floor space ratio calculated in accordance with the LEP for commercial and other uses of more than 0.8:1
- provided that if the LEP prescribes a lower floor space ratio for that part of the Development, this clause does not authorise any breach of the floor space ratio development standard in the LEP.



Part 6 – Dispute Resolution

33 Dispute resolution – expert determination

- 33.1 This clause applies to a Dispute between any of the Parties to this Deed concerning a matter arising in connection with this Deed that can be determined by an appropriately qualified expert if:
- 33.1.1 the Parties to the Dispute agree that it can be so determined, or
- 33.1.2 the Chief Executive Officer of the professional body that represents persons who appear to have the relevant expertise to determine the Dispute gives a written opinion that the Dispute can be determined by a member of that body.
- 33.2 A Dispute to which this clause applies is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 33.3 If a notice is given under clause 33.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 33.4 If the Dispute is not resolved within a further 28 days, the Dispute is to be referred to the President of the NSW Law Society to appoint an expert for expert determination.
- 33.5 The expert determination is binding on the Parties except in the case of fraud or misfeasance by the expert.
- 33.6 Each Party is to bear its own costs arising from or in connection with the appointment of the expert and the expert determination.
- 33.7 The Parties are to share equally the costs of the President, the expert, and the expert determination.

34 Dispute Resolution - mediation

- 34.1 This clause applies to any Dispute arising in connection with this Deed other than a Dispute to which clause 33 applies.
- 34.2 Such a Dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 34.3 If a notice is given under clause 34.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 34.4 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.
- 34.5 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.
- 34.6 Each Party is to bear its own costs arising from or in connection with the appointment of a mediator and the mediation.



- 34.7 The Parties are to share equally the costs of the President, the mediator, and the mediation.

Part 7 - Enforcement

35 Acquisition of land required to be dedicated

- 35.1 If the Landowner does not dedicate land required to be dedicated under this Deed at the time at which it is required to be dedicated, the Landowner consents to the Council compulsorily acquiring the land for compensation in the amount of \$1 without having to follow the pre-acquisition procedure under the Just Terms Act.
- 35.2 The Council is to only acquire land pursuant to clause 35.1 if it considers it reasonable to do so having regard to the circumstances surrounding the failure by the Landowner to dedicate the land required to be dedicated under this Deed.
- 35.3 Clause 35.1 constitutes an agreement for the purposes of s30 of the Just Terms Act.
- 35.4 If, as a result of the acquisition referred to in clause 35.1, the Council is required to pay compensation to any person other than the Landowner, the Landowner is to reimburse the Council that amount, upon a written request being made by the Council.
- 35.5 The Landowner indemnifies and keeps indemnified the Council against all Claims made against the Council as a result of any acquisition by the Council of the whole or any part of the land concerned except if, and to the extent that, the Claim arises because of the Council's negligence or default.
- 35.6 The Landowner is to promptly do all things necessary, and consents to the Council doing all things necessary, to give effect to this clause 35, including without limitation:
- 35.6.1 signing any documents or forms,
 - 35.6.2 giving land owner's consent for lodgement of any Development Application,
 - 35.6.3 producing certificates of title to the Registrar-General under the *Real Property Act 1900*, and
 - 35.6.4 paying the Council's costs arising under this clause 35.

36 Breach of obligations

- 36.1 If the Council reasonably considers that the Developer or Landowner is in breach of any obligation under this Deed, it may give a written notice to the Develop or Landowner:
- 36.1.1 specifying the nature and extent of the breach,
 - 36.1.2 requiring the Developer or Landowner to:

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- (a) rectify the breach within 28 days if it reasonably considers it is capable of rectification, or
 - (b) pay compensation to the reasonable satisfaction of the Council in lieu of rectifying the breach if it reasonably considers the breach is not capable of rectification,
- 36.1.3 specifying the period within which the breach is to be rectified or compensation paid, being a period that is reasonable in the circumstances, but not less than 28 days.
- 36.2 If the Developer or Landowner fails to fully comply with a notice referred to in clause 36.1, the Council may, without further notice to the Developer or Landowner, call-up any Security provided by the Developer or Landowner under this Deed which this Deed authorises to be called up in respect of the particular breach and apply it to remedy the Developer's or Landowner's breach.
- 36.3 If the Developer or Landowner fails to comply with a notice given under clause 36.1 relating to the carrying out of Work under this Deed, the Council may step-in and remedy the breach and may enter, occupy and use any land owned or controlled by the Developer or Landowner and any Equipment on such land for that purpose.
- 36.4 Any costs incurred by the Council in remedying a breach in accordance with clause 36.2 or clause 36.3 may be recovered by the Council by either or a combination of the following means:
- 36.4.1 by calling-up and applying any Security provided under this Deed which may be called up in respect of the breach, or
 - 36.4.2 as a debt due in a court of competent jurisdiction.
- 36.5 For the purpose of clause 36.4, the Council's costs of remedying a breach the subject of a notice given under clause 36.1 include, but are not limited to:
- 36.5.1 the costs of the Council's servants, agents and contractors incurred for that purpose,
 - 36.5.2 all fees and charges necessarily incurred by the Council in remedying the breach, and
 - 36.5.3 all legal costs and expenses incurred by the Council, by reason of the breach.
- 36.6 Nothing in this clause 36 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 or Landowner, including but not limited to seeking relief in an appropriate court.

37 Enforcement in a court of competent jurisdiction

- 37.1 Without limiting any other provision of this Deed, the Parties may enforce this Deed in any court of competent jurisdiction.
- 37.2 For the avoidance of doubt, nothing in this Deed prevents:
- 37.2.1 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



- 37.2.2 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 8 – Registration & Restriction on Dealings

38 Registration of this Agreement

- 38.1 The Parties agree to register this Deed for the purposes of s93H(1) of the Act.
- 38.2 Not later than 10 days after the commencement of this Deed, the Developer or Landowner is to deliver to the Council in registrable form:
- 38.2.1 an instrument requesting registration of this Deed on the title to the Land duly executed by the Landowner, and
- 38.2.2 the written irrevocable consent of each person referred to in s93H(1) of the Act to that registration.
- 38.3 The Developer and Landowner are to do such other things as are reasonably necessary to enable registration of this Deed to occur.
- 38.4 The Parties acknowledge that the Deed is to remain registered on the title to the Land, including after its subdivision, to ensure that subsequent owners of all parts of the Land are bound by clause 31 and 32 of the Deed.

39 Restriction on dealings

- 39.1 The Landowner and Developer are not to:
- 39.1.1 sell or transfer the Land, or
- 39.1.2 assign their rights or obligations under this Deed, or novate this Deed, to any person unless:
- 39.1.3 the Developer or Landowner has, at no cost to the Council, first procured the execution by the person to whom the Land or part is to be sold or transferred or the Developer's or Landowner's rights or obligations under this Deed are to be assigned or novated, of a deed in favour of the Council on terms reasonably satisfactory to the Council, and
- 39.1.4 the Council has given written notice to the Developer or Landowner as the case may be stating that it reasonably considers that the purchaser, transferee, assignee or novatee, is reasonably capable of performing its obligations under this Deed, and
- 39.1.5 the Developer and Landowner are not in breach of this Deed, and
- 39.1.6 the Council otherwise consents to the transfer, assignment or novation, such consent not to be unreasonably withheld.
- 39.2 Clause 39.1 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 9 – Indemnities & Insurance

40 Risk

- 40.1 The Developer and Landowner perform this Deed at its own risk and its own cost.

41 Release

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

42 Indemnity

- 42.1 The Developer and Landowner indemnify 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 and Landowner's obligations under this Deed except if, and to the extent that, the Claim arises because of the Council's negligence or default.

43 Insurance

- 43.1 The Developer and Landowner are to take out and keep current to the satisfaction of the Council the following insurances in relation to Work required to be carried out by the Developer or Landowner under this Deed up until the Work is taken to have been completed in accordance with this Deed:
- 43.1.1 contract works insurance, noting the Council as an interested party, for the full replacement value of the Works (including the cost of demolition and removal of debris, consultants' fees and authorities' fees), to cover the Developer's or Landowner's liability in respect of damage to or destruction of the Works,
 - 43.1.2 public liability insurance for at least \$20,000,000.00 for a single occurrence, which covers the Council, the Developer, the Landowner and any subcontractor of the Developer or Landowner, for liability to any third party,
 - 43.1.3 workers compensation insurance as required by law, and
 - 43.1.4 any other insurance required by law.
- 43.2 If the Developer or Landowner fails to comply with clause 43.1, the Council may effect and keep in force such insurances and pay such premiums as may be necessary for that purpose and the amount so paid shall be a debt due from the Developer or Landowner to the Council and may be recovered by the Council as a debt due in a court of competent jurisdiction.
- 43.3 The Developer or Landowner is not to commence to carry out any Work unless it has first provided to the Council satisfactory written evidence of all of the insurances specified in clause 43.1.



Part 10 – Other Provisions

44 Annual report by Developer

- 44.1 The Developer is to provide to the Council by not later than each anniversary of the date on which this Deed is entered into a report detailing the performance of its obligations under this Deed.
- 44.2 The report referred to is to be in such a form and to address such matters as required by the Council from time to time.

45 Review of Deed

- 45.1 The Parties agree to review this Deed if either party is of the opinion that any change of circumstance has occurred, or is imminent, that materially affects the operation of this Deed.
- 45.2 For the purposes of clause 45.1, the relevant changes include (but are not limited to) any change to a law that restricts or prohibits or enables the Council or any other planning authority to restrict or prohibit any aspect of the Development.
- 45.3 For the purposes of addressing any matter arising from a review of this Deed referred to in clause 45.1, the Parties are to use all reasonable endeavours to agree on and implement appropriate amendments to this Deed.
- 45.4 If this Deed becomes illegal, unenforceable or invalid as a result of any change to a law, the Parties agree to do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Deed is entered into.
- 45.5 A failure by a Party to agree to take action requested by the other Party as a consequence of a review referred to in clause 45.1 (but not 45.4) is not a Dispute for the purposes of this Deed and is not a breach of this Deed.

46 Notices

- 46.1 Any notice, consent, information, application or request that is to or may be given or made to a Party under this Agreement is only given or made if it is in writing and sent in one of the following ways:
- 46.1.1 delivered or posted to that Party at its address set out in the Summary Sheet,
- 46.1.2 faxed to that Party at its fax number set out in the Summary Sheet, or
- 46.1.3 emailed to that Party at its email address set out in the Summary Sheet.
- 46.2 If a Party gives the other Party 3 business days notice of a change of its address, fax number or email, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted, faxed or emailed to the latest address or fax number.
- 46.3 Any notice, consent, information, application or request is to be treated as given or made if it is:

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- 46.3.1 delivered, when it is left at the relevant address,
- 46.3.2 sent by post, 2 business days after it is posted,
- 46.3.3 sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number, or
- 46.3.4 sent by email and the sender does not receive a delivery failure message from the sender's internet service provider within a period of 24 hours of the email being sent.

- 46.4 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, or if on a business day, after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

47 Approvals and Consent

- 47.1 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.
- 47.2 A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

48 Costs

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

49 Entire Deed

- 49.1 This Deed contains everything to which the Parties have agreed in relation to the matters it deals with.
- 49.2 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.

50 Further Acts

- 50.1 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.

51 Governing Law and Jurisdiction

- 51.1 This Deed is governed by the law of New South Wales.

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- 51.2 The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them.
- 51.3 The Parties are not to object to the exercise of jurisdiction by those courts on any basis.

52 Joint and Individual Liability and Benefits

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

53 No Fetter

- 53.1 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.

54 Illegality

- 54.1 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.

55 Severability

- 55.1 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.
- 55.2 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.
- 55.3 If any clause is to be treated as removed under clause 55.2, then to the extent permitted by the law, the Parties shall use all reasonable endeavours to negotiate and agree a new clause to be inserted into this Deed, which is of the same or similar intent to the clause treated as removed.

56 Amendment

- 56.1 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.

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57 Waiver

- 57.1 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.
- 57.2 A waiver by a Party is only effective if it is in writing.
- 57.3 A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

58 GST

- 58.1 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.
- 58.2 Subject to clause 58.4, 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.
- 58.3 Clause 58.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Deed to be GST inclusive.
- 58.4 No additional amount shall be payable by the Council under clause 58.2 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.
- 58.5 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:
- 58.5.1 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;

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- 58.5.2 that any amounts payable by the Parties in accordance with clause 58.2 (as limited by clause 58.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 58.6 No payment of any amount pursuant to this clause 58, 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.
- 58.7 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.
- 58.8 This clause continues to apply after expiration or termination of this Deed.

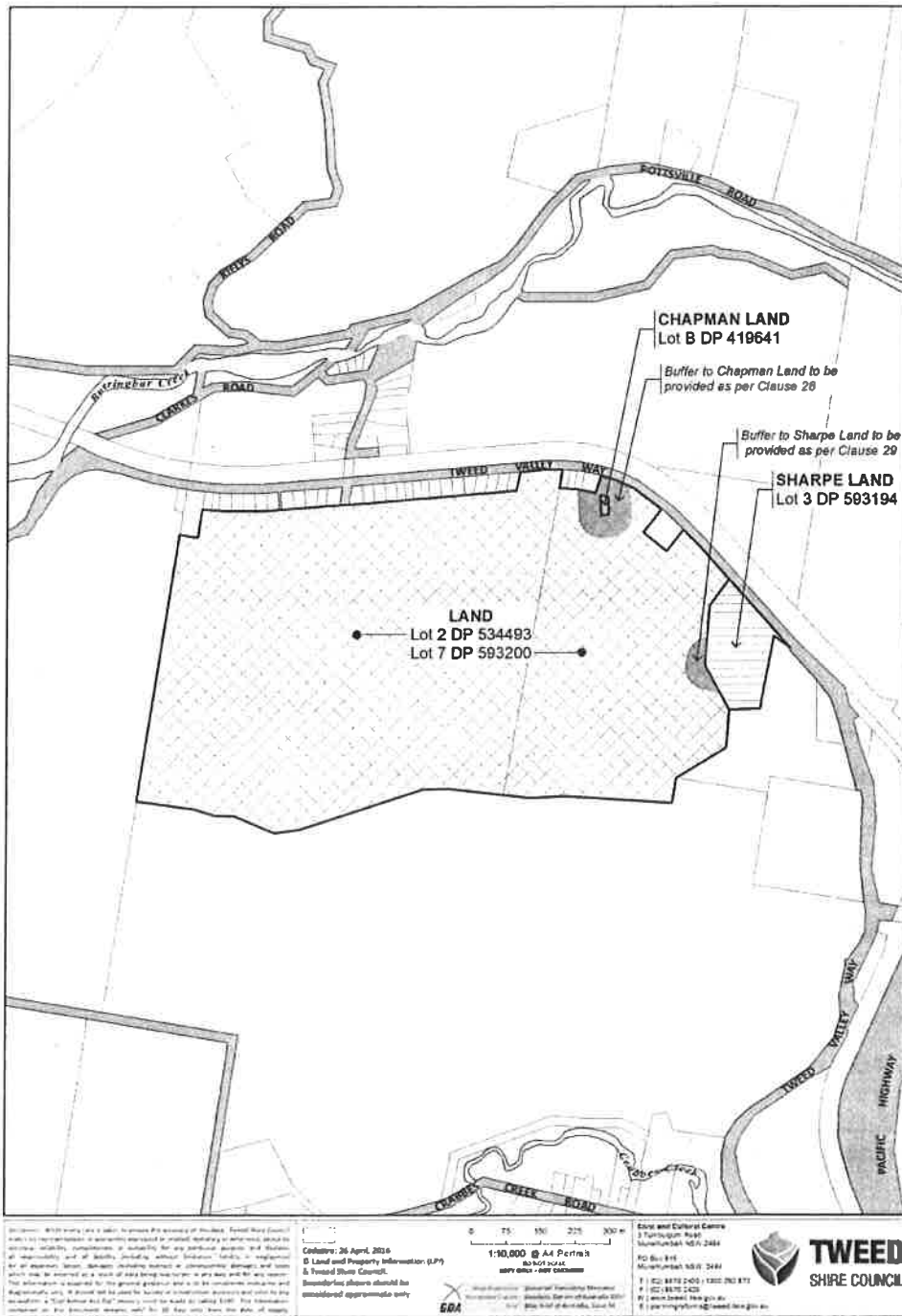
59 Explanatory Note

- 59.1 The Appendix contains the Explanatory Note relating to this Deed required by clause 25E of the Regulation.
- 59.2 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

(Clauses 28 and 29)



Handwritten signatures and initials:
 RB
 [Signature]
 [Signature]



Execution

Executed as a Deed

Dated: 26 July 2016

Executed on behalf of the Council



General Manager



Witness

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




Name/Position

SOLE DIRECTOR



Name/Position

Executed on behalf of the Landowner



Raymond Anthony Pirlo



Witness







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Tweed Shire Council

Jefferson Land Pty Ltd atf The Mooball Residential Trust

Raymond Anthony Pirlo and Margaret Pirlo



Santina Bonomi

Margaret Pirlo

Witness

By her
attorney, Domenico Steffena Pirlo
Santina Teresa Bonomi



Appendix

(Clause 59)

Environmental Planning and Assessment Regulation 2000

(Clause 25E)

Explanatory Note

Draft Planning Agreement

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

Parties

Tweed Shire Council ABN 90 178 732 496 of PO Box 816 Murwillumbah NSW (**Council**)

Jefferson Lane Pty Ltd ACN 010 265 059 of c/-Planit Consulting, PO Box 1623
Kingscliff NSW as trustee for The Mooball Residential Trust ABN 27 548 492 154
(**Developer**)

Mr Raymond Anthony Pirlo and Mrs Margaret Pirlo of 5867 Tweed Valley Way,
Mooball NSW 2483 (**Landowner**)

Description of the Land to which the Draft Planning Agreement Applies

The land comprised of Lot 2 in DP 534493 and Lot 7 in DP 593200 (**Land**).

Description of Proposed Development

The development of the Land for urban purposes made possible by the amendment to the *Tweed Local Environmental Plan 2014 (LEP)* by making changes to the following LEP maps: Land Application, Land Zoning, Maximum Height of Buildings, Maximum Floor Space Ratio and Minimum Lot Size.



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

Objectives of Draft Planning Agreement

The objective of the Draft Planning Agreement is to ensure that adequate water and waste water infrastructure is provided to the Development on the Land and to ensure that impacts on neighbouring properties and the environment are managed.

Nature of Draft Planning Agreement

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

Effect of the Draft Planning Agreement

The Draft Planning Agreement:

- relates to the carrying out by the Developer of the Development on the Land,
- does not exclude the application of ss94, 94A and 94EF of the Act to the Development,
- requires the carrying out of specified Work by the Developer for the water and waste water infrastructure to service the Land,
- imposes obligations on the Developer in relation to the carrying out of specified Work, and the rectification of defects in the Work,
- requires the Developer to provide the Council with Security relating to the satisfactory completion of the specified Work,
- requires covenants to be registered on the title to the Land, and requires design guidelines for the development of the Land to be developed,
- is to be registered on the title to the Land,
- imposes restrictions on the Parties transferring the Land or part of the Land or assigning an interest under the Agreement,
- provides two dispute resolution methods for a dispute under the Agreement, being expert determination and mediation, and
- provides that the Agreement is governed by the law of New South Wales, and provides that the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* applies to the Agreement.

Assessment of the Merits of the Draft Planning Agreement

The Planning Purposes Served by the Draft Planning Agreement

The Draft Planning Agreement:

- promotes and co-ordinates of the orderly and economic use and development of the Land to which the Deed applies,

Mooball Planning Agreement

Tweed Shire Council

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- provides land for public purposes in connection with the Development, and
- provides increased opportunity for public involvement and participation in environmental planning and assessment of the Development.

How the Draft Planning Agreement Promotes the Public Interest

The Draft Planning Agreement promotes the public interest by promoting the objects of the Act as set out in s5(a)(ii)-(v) and 5(c) of the Act.

For Planning Authorities:

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

N/A

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

N/A

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

The Draft Planning Agreement promotes the elements of the Council's charter by:

- by providing a means for the private funding of public facilities for the benefit of the Development and the wider community, and
- providing a means that allows the wider community to make submissions to the Council in relation to the Agreement.

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

The Draft Planning Agreement requires specified Work to be carried out by the Developer for the establishment of provision of water and wastewater infrastructure to service the Development.

The Work is not included in the Council's relevant current capital works program.

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

The Draft Planning Agreement specifies that certain obligations must be complied with before the issuing of occupation certificates, subdivision certificates or construction certificates.



Morris Hayes & Edgar hereby certifies that the information contained in this document has been provided electronically by the Registrar General in accordance with Section 96B(2) of the Real Property Act.
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LAND AND PROPERTY INFORMATION NEW SOUTH WALES - TITLE SEARCH

FOLIO: 2/534493

| SEARCH DATE | TIME | EDITION NO | DATE |
|-------------|----------|------------|-----------|
| 13/5/2016 | 10:57 AM | 5 | 16/8/2010 |

LAND

LOT 2 IN DEPOSITED PLAN 534493
AT MOOBALL
LOCAL GOVERNMENT AREA TWEED
PARISH OF MOOBALL COUNTY OF ROUS
TITLE DIAGRAM DP534493

FIRST SCHEDULE

RAY ANTHONY PIRLO
MARGARET PIRLO
AS TENANTS IN COMMON IN EQUAL SHARES (TA AF694917)

SECOND SCHEDULE (6 NOTIFICATIONS)

- 1 LAND EXCLUDES MINERALS AND IS SUBJECT TO RESERVATIONS AND CONDITIONS IN FAVOUR OF THE CROWN - SEE CROWN GRANT(S)
- 2 C223846 EASEMENT FOR DRAINAGE AFFECTING THE PIECE OF LAND SHOWN AS 30 3/10 LINKS WIDE IN DP534493
- 3 N369197 MORTGAGE TO COMMONWEALTH BANK OF AUSTRALIA
- 4 R68929 EASEMENT FOR UNDERGROUND TELECOMMUNICATION AND ELECTRICITY CABLES AFFECTING THAT PART OF THE LAND WITHIN DESCRIBED SHOWN IN DP596119
- 5 I329100 MORTGAGE TO COMMONWEALTH BANK OF AUSTRALIA
- 6 U125600 MORTGAGE TO COMMONWEALTH BANK OF AUSTRALIA

NOTATIONS

UNREGISTERED DEALINGS: NIL

*** END OF SEARCH ***



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Information provided through Tri-Search an approved LPI/NSW Information Broker

LAND AND PROPERTY INFORMATION NEW SOUTH WALES - TITLE SEARCH

FOLIO: 7/593200

| SEARCH DATE | TIME | EDITION NO | DATE |
|-------------|----------|------------|-----------|
| 13/5/2016 | 10:03 AM | 4 | 16/8/2010 |

LAND

LOT 7 IN DEPOSITED PLAN 593200
AT MOOBALL
LOCAL GOVERNMENT AREA TWEED
PARISH OF MOOBALL COUNTY OF ROUS
TITLE DIAGRAM DP593200

FIRST SCHEDULE

RAY ANTHONY PIRLO
MARGARET PIRLO
AS TENANTS IN COMMON IN EQUAL SHARES (TA AF694917)

SECOND SCHEDULE (6 NOTIFICATIONS)

- 1 LAND EXCLUDES MINERALS AND IS SUBJECT TO RESERVATIONS AND CONDITIONS IN FAVOUR OF THE CROWN - SEE CROWN GRANT(S)
- * 2 LAND EXCLUDES RAILWAY LAND AND LOT B IN DP419641 SHOWN IN DP593200
- 3 DP231846 RIGHT OF CARRIAGEWAY AFFECTING THE PART(S) SHOWN SO BURDENED IN THE TITLE DIAGRAM
- 4 DP231846 RIGHT OF CARRIAGEWAY APPURTENANT TO THE LAND ABOVE DESCRIBED
- 5 S785540 EASEMENT FOR TELECOMMUNICATION CABLES AFFECTING THE PART OF THE LAND WITHIN DESCRIBED SHOWN SO BURDENED IN DP607306
- 6 O1082 MORTGAGE TO COMMONWEALTH BANK OF AUSTRALIA

NOTATIONS

UNREGISTERED DEALINGS: NIL

*** END OF SEARCH ***

