

PLANNING AGREEMENT

This Deed of Planning Agreement made on 3 March 2009

BETWEEN

COUNCIL OF THE CITY OF LAKE MACQUARIE (ABN 81 065 027 868) of Administrative Centre, Main Road, Speers Point NSW 2284 ("Council") of the first part

AND

STANNIC SECURITIES PTY LIMITED (ACN 000 345 906) of Third Floor, 754 Pacific Highway, Chatswood NSW 2067 ("Developer") of the other part

RECITALS

- A. On 1 June, 2004 the Developer made an application to Council to re-zone part of the Land from 7(2) Conservation to 2(1) Residential under the provisions of the LMLEP.
- B. That re-zoning application was accompanied by an offer by the Developer to enter into this Agreement.

OPERATIVE PROVISIONS

Definitions and Interpretation:

- 1.1 In this Agreement the following definitions apply, unless the context admits otherwise:

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

"Bank Guarantee" means an unconditional and irrevocable undertaking issued by a major Australian trading bank in favour of the Council and which does not have an expiry date and is otherwise in form and substance acceptable to the Council, to pay on demand to the Council the Guarantee Amount.

"Council Lots" are those parts of the Land shown marked 7(1) and 7(2) on Annexure "B".

"Dealing" in relation to the Land or any part of the Land, means, without limitation, a sale, transfer, assignment, mortgage, charge, encumbrance or other dealing with the Land or that part of the Land.

"Dedicate" means to dedicate as public reserve without cost to the Council.

"DLEP" means the Draft Local Environmental Plan to rezone the Land as shown in Annexure "B" hereto.

"Development Lot" means that part of the Land proposed to be rezoned by the DLEP and subdivided, for residential purposes.



"First Subdivision of the Land" means the plan of subdivision of the Land creating three lots, each of which respectively corresponds to the parts of the Land within zones 7(2), 2(1) and 7(1) depicted on the DLEP.

"Gazettal" means the making of the DLEP by notification in the New South Wales Government Gazette.

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

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

"Guarantee Amount" is the amount described in clause 11.1.5 .

"Land" means Lot 991 in DP 1039353 at 270 Fishery Point Road, Bonnells Bay.


"LMLEP" means the Lake Macquarie LEP 2004.

"LPI" means the Land and Property Information division of the Department of Lands (NSW).

"Management Plan" means a plan or plans prepared by the Developer pursuant to the requirements of clause 6 of this Agreement.

"Party" means a party to this Agreement, including its successors and assigns.

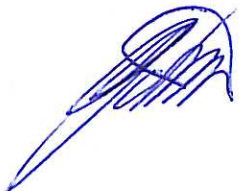
"Registrable" means capable of immediate registration by the Registrar-General for NSW after lodgement at LPI including being duly marked by the Office of State Revenue (if necessary) and properly executed by the registered proprietor, Developer or other person as required.

"Second Subdivision of the Land" means a plan of subdivision of the Land showing the Council Lots proposed to be dedicated, residential allotments in part of the Development Lot and a residue lot, in the remaining part of the Development Lot.
 (if any) 

"Section 94 Contributions Plan" means any relevant operational contribution plan made under s.94 of the Act.

"Security" means the documents referred to in clause 11.1.

1.2 In the interpretation of this Agreement, the following provisions apply unless the context otherwise requires:

- (a) Headings are inserted for convenience only and do not affect the interpretation of this Agreement.
 - (b) A reference in this Agreement to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
 - (c) If the day on which any act, matter or thing is to be done under this Agreement is not a business day, the act, matter or thing must be done on the next business day.
- 

- (d) A reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.
- (e) A reference in this Agreement 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.
- (f) A reference in this Agreement to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- (g) A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.
- (h) An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- (i) 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.
- (j) 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 gender.
- (k) References to the word "include" or "including" are to be construed without limitation.
- (l) A reference to this Agreement includes the agreement recorded in this Agreement.
- (m) A reference to a Party to this Agreement includes a reference to the servants, agents and contractors of the Party, and the Party's successors and assigns.
- (n) Any schedules and attachments form part of this Agreement.
- (o) In the interpretation of this agreement no rule of construction shall apply to disadvantage one party on the basis that that party put forward the particular covenant, term or provision.

2. Planning Agreement under the Act

This Agreement is a planning agreement governed by Subdivision 2 of Division 6 of Part 4 of the Act.

3.1 Application of this Agreement

The Land to which this Agreement applies is Lot 991 in DP 1039353 at No 270 Fishery Point Road, Bonnells Bay in the City of Lake Macquarie.



3.2 **Change in Environmental Planning Instrument**

3.2.1 The Land is currently zoned part Conservation 7(1) and part Conservation 7(2) under the LMLEP as shown in the plan that is Annexure "A" hereto.

3.2.2 The Land, excluding the proposed Council Lots is proposed by the Developer to be rezoned for residential purposes as shown on the plan which is Annexure "B" hereto.

4. **Operation of this Agreement**

4.1 This Agreement takes effect on the date it is made.

4.2 If Gazettal does not occur within 18 months of the date hereof, either party may rescind this Agreement by giving written notice of that rescission to the other party.

5. **Nature, Extent, Timing and Manner of Provision to be made by Developer**

5.1 The Developer will dedicate to the Council without cost to the Council, the Council Lots within 24 months from the date of Gazettal.

5.2 The Developer shall effect that dedication by obtaining the registration at LPI of a plan of subdivision that effects the Second Subdivision of the Land and the dedication of the Council Lots.

6. **Maintenance and Rehabilitation of the Council Lots**

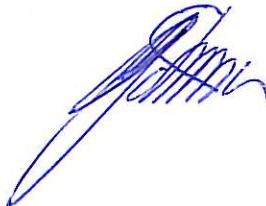
6.1 The Developer shall prepare a Management Plan in respect of the Council Lots, submit it to the Council for its approval and obtain that approval prior to Gazettal

6.2 The Management Plan shall provide for the rehabilitation and maintenance of the Council Lots over a three (3) year period commencing the date of dedication of the Council Lots to the Council, and shall take into account the public use to which the Council Lots are to be put, namely conservation, fire trail access and walking trails.

6.3 The Developer shall comply with the terms of the approval given to the Management Plan and undertake all maintenance and rehabilitation works recommended by the Management Plan during that 3 year period.

6.4 At the expiry of the 3 year period referred to in the previous subclauses, the Council shall have sole responsibility for the Council Lots and any works undertaken thereon.

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



- 7.1 This Agreement does not, wholly or partly, exclude the application of sections 94, 94A or 94 EF of the Act to development applications received by the Council in respect of the Land or part thereof.
- 7.2 Benefits under this Agreement are not to be taken into consideration in determining a development contribution under Section 94 of the Act for those development applications.

8. **Registration of this Agreement – s.93H of the Act**

The Parties shall do all things reasonably necessary after Gazettal to enable the Council to obtain registration of this Agreement under section 93H of the Act by the Registrar-General such that on registration of this Agreement, the Registrar-General will have made an entry in the relevant Folio(s) of the Register kept under the Real Property Act 1900 in relation to the Land. To that end, the Developer will deliver to the Council on the date of making this Agreement all requisite documents in registrable form to enable the Council to register this Agreement immediately following Gazettal (should that occur).

9. **Review of this Agreement**

The Parties agree that from time to time it may become necessary to review this Agreement, but any amendment to this Agreement shall only be effective in writing and signed by all Parties, and registered under Section 93H of the Act.

10. **Dispute Resolution**

- 10.1 If a dispute arises out of or relates to this Agreement, including any dispute as to breach or termination of this Agreement or as to any claim in tort, in equity or under any legislation, a Party cannot commence any court proceedings relating to the dispute unless that Party has complied with the following clauses except where that Party seeks urgent interlocutory relief.
- 10.2 A Party claiming that a dispute has arisen must serve a notice specifying the nature of the dispute.
- 10.3 On receipt of that notice by that other Party, the Parties must endeavour in good faith to resolve the dispute expeditiously using informal dispute resolution techniques such as mediation, expert evaluation or similar techniques agreed by them.
- 10.4 If the Parties do not agree within 7 days of service of the notice, or any further period agreed in writing by them, as to:
- 10.4.1 the dispute resolution technique and procedures to be adopted;
- 10.4.2 the timetable for all steps in those procedures; and



10.4.3 the selection and compensation of the independent person required for that technique,

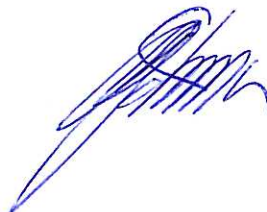
the Parties must mediate the dispute in accordance with the Mediation Rules of the Law Society of New South Wales and must require the President of the Law Society of New South Wales or the President's nominee to select the mediator and determine the mediator's remuneration.

- 10.5 If informal dispute resolution is unsuccessful after 30 days, either Party will be entitled to proceed to litigation.
- 10.6 Each Party shall bear their own costs in relation to any informal dispute resolution technique adopted.

11. **Enforcement**

- 11.1 Prior to Gazettal, the Developer will deliver to the Council:
- 11.1.1 a plan of subdivision for the First Subdivision of the Land in registrable form such plan being capable of immediate registration as a deposited plan at LPI and being properly executed by the registered proprietor of the Land, every mortgagee of the Land and every other person having an estate or interest in the land whose execution of the plan is required to secure its immediate registration at LPI, as well as bearing any required executed subdivision certificate, and which plan would, on its registration, effect the dedication of the Council Lots to the Council, and
- 11.1.2 if the Land is mortgaged, a discharge of mortgage in registrable form for the Council Lots, and
- 11.1.3 if the Land is otherwise subject to an estate, interest or charge (not being in favour of the Council), an appropriate instrument in registrable form that when registered by the Registrar-General will remove that estate, interest or charge in respect of the Council Lots.
- 11.1.4 an irrevocable undertaking in the form of a deed poll by the person having possession of the title deeds to the Land, in favour of the Council, promising in consideration of the Council's entering into this planning agreement with the Developer to produce the title documents in relation to the Land when required by the Council to enable registration of the plan referred to in clause 11.1.1 by LPI/Registrar-General.
- 11.1.5 a Bank Guarantee, to the satisfaction of the Council's General Manager, in an amount of \$100,000.00 in favour of the Council.

- 11.2 The documents in the previous clause 11.1 are to be held by the Council as security for the making of the provision by the Developer.
- 11.3 If the Council Lots are not dedicated to the Council by the Developer within the designated time for that dedication in clause 5, then the Council is entitled to register ~~the~~ the First Subdivision of the Land and any other instrument and/or document referred to above at the Registrar-General's Department and become registered as proprietor of the Council Lot. In such circumstances, the Developer will arrange for all necessary documents to be produced to the Registrar-General to enable the Council to be registered as proprietor of the Council Lot.
- 11.4 The Council may call upon the Bank Guarantee referred to in clause 11.1.5, either partially or wholly, to satisfy
- 11.4.1 outstanding rates and charges that may be owing in respect of any Council Lot, up to and including the date of the dedication to it of that lot, or the transfer to it of that lot pursuant to this clause.
- 11.4.2 any other costs of and incidental to the Council becoming registered as proprietor of the Council Lot and protecting beforehand its estate and interest therein.
- 11.4.3 costs incurred by the Council in doing anything under clause 6 which the Developer was required to do but did not do.
- Should the Council use any of that security, the Developer shall, on being advised by the Council of the amount used, provide a further Bank Guarantee so as to restore the security to \$100,000.00.
- 11.5 The Developer will pay all rates and taxes owing in respect of each Council Lot up to and including the date of vesting in or transfer (as the case may be) to the Council of that Council Lot.
- 11.6 On the vesting in the Council of each Council Lot, the Developer promises that the Council will have a title that is freed and discharged from all estates, interests, trusts, restrictions, dedications, reservations, easements (except as may by this Agreement be permitted), rights, charges, rates and contracts in, over and in connection with the Council Lot. If a requisition is raised by the Registrar-General in relation to the registration of any document the Developer will immediately satisfy that requisition at no cost to Council.
- 11.7 The Developer grants to the Council upon Gazettal an equitable and proprietary interest in each Council Lot sufficient



to support a caveat that the Council may lodge with the Registrar-General to protect its estate or interest in each Council Lot pending the vesting in it of that Council Lot. The Developer also promises it will not take, or suffer to be taken, any steps to remove that caveat.

- 11.8 The Developer promises that it will pay all rates, taxes and charges owing on the Land before they become overdue for payment.
- 11.9 Prior to the vesting in the Council of the Council Lots and subject to clause 12, the Developer will not be a party to any Dealing in the Land without informing the Council in writing no less than 14 days beforehand of:
- 11.9.1 the nature and substance of the Dealing,
- 11.9.2 the parties, and
- 11.9.3 the intended date of entry into the Dealing.
- 11.10 No monies are payable to the Developer by the Council in respect of the vesting in the Council of a Council Lot under this Agreement.
- 11.11 The Developer must not permit or suffer the possession of the title deeds to be changed without the person into whose possession the title deed will go executing a similar deed poll in favour of the Council and delivering that deed to the Council beforehand, but this obligation does not apply to a change of possession of the title deeds for the purpose of registration of a document under this agreement, provided the person who produced the deeds is the same to whom the deeds are to be returned.

12. **Easements and Works**

Should the Developer require easements to be created over and/or stormwater and drainage works to be carried out on the Council Lots for the purposes of the development of the Development Lot, the Council will consent to the creation of those easements and/or the carrying out of stormwater and drainage works only by the Developer provided that

- 12.1 the utility and amenity of the Council Lots will not, in the reasonable opinion of the General Manager of the Council, be significantly affected by those easements or the carrying out of the works; and
- 12.2 the easements will not be for bushfire protection, bushfire risk reduction or asset protection purposes and
- 12.3 it is permitted by law to do so.

The consent of the Council is deemed to have been given if a condition of a development consent requires such easement or works but those works must be carried out and those easements must be created prior to or on registration of the Second Plan of Subdivision that creates the

Council Lots. Easements for the purposes referred to in clause 12.2 that are required as a result of development within the 2(1) zoned lands are not to be provided within the Council Lots.

13. Notices

- 13.1 Any notice, consent, information, application or request that must 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:
- 13.1.1 delivered or posted to that Party at its address set out below.
- 13.1.2 faxed to that Party at its fax number set out below.
- 13.1.3 emailed to that Party at its email address set out below.

Council:

Attention: Developer Contributions Coordinator
 Address: Lake Macquarie City Council Administrative Centre
 126-138 Main Road,
 SPEERS POINT NSW 2284
 Fax Number: (02) 4958 7257
 Email: council@lakemac.nsw.gov.au

Developer:

Attention: Eric Stammer
 Address: C/- Yeramba Estates Pty Limited PO Box 5423 West
 Chatswood NSW 1515
 Fax Number: (02) ~~9262 6226~~ 9411 5144
 Email: estammer@yeramba.com.au

- 13.2 If one Party gives the other Party 3 business days notice of change of its address or fax number, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or faxed to the latest address, fax number or email.
- 13.3 Any notice, consent, information, application or request is to be treated as given or made at the following time:
- 13.3.1 if it is delivered, when it is left at the relevant address, or
- 13.3.2 if it is sent by post, 2 business days after it is posted, or
- 13.3.3 if it is 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

13.3.4 if it is sent by email.

13.4 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.

14. **Assignment and Dealings**

14.1 Notwithstanding anything else in this Agreement, until this Agreement is registered under s 93H of the Act, the Developer shall not be a party to a Dealing.

14.2 Until the Developer has dedicated the Council Lot in accordance with this agreement, the Developer cannot execute any Dealing without the prior written consent of the Council.

14.3 The Council may not refuse consent to any Dealing unless the Dealing is likely to in the opinion of the General Manger of the Council, prevent, tend to hinder or present a risk to the timely and effectual dedication of the Council Lot or prejudice the ability of the Council to obtain registration of the documents held by it pursuant to clause 11.

15. **Costs**

15.1 The Developer will pay all stamp duty imposed on this Agreement; the costs of registering this Agreement and the plan of subdivision dedicating the Council Land at LPI; and Council's administration fee of \$1,500.00 in respect of this Agreement.

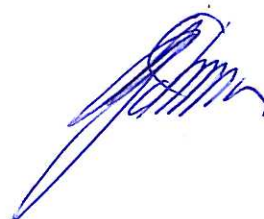
15.2 Otherwise, unless stipulated to the contrary, each Party must bear its own costs of and incidental to the performance of its obligations under this Agreement.

16. **Entire Agreement**

This Agreement contains everything to which the Parties have agreed in relation to the matters it deals with. 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 Agreement was executed, as permitted by law.

17. **Further Acts**

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



18. **Governing Law and Jurisdiction**

This Agreement is governed by the law of New South Wales and the Parties submit to the non-exclusive jurisdiction of its courts. The Parties will not object to the exercise of jurisdiction by those courts on any basis.

19. **No Fetter**

Nothing in this Agreement 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.

20. **Representations and Warranties**

The Parties represent and warrant that they have power to enter into this Agreement and comply with their obligations under the Agreement and that entry into this Agreement will not result in the breach of any law.

21. **Severability**

If a clause or part of a clause of this Agreement 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. 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 Agreement, but the rest of this Agreement is not affected.

22. **Modification**

No modification of this Agreement will be of any force or effect unless it is in writing and signed by the Parties to this Agreement.

23. **Waiver**

The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another Party. A waiver by a Party is only effective if it is in writing. 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.

24. **GST**

24.1 Construction



In this clause 24:

- (a) words and expressions which are not defined in this document but which have a defined meaning in GST Law have the same meaning as in the GST Law; and
- (b) GST Law has the same meaning given to that expression in the *A New Tax System (Goods and Services Tax) Act 1999*.

24.2 Consideration GST exclusive

Unless expressly stated, all prices or other sums payable or consideration to be provided under this document are exclusive of GST.

24.3 Payment of GST

If GST is payable on any supply made under this document, the recipient will pay to the supplier an amount equal to the GST payable on the supply.

24.4 Timing of GST payment

The recipient will pay the amount referred to in clause 24.3 in addition to and at the same time that the consideration for the supply is to be provided under this document.

24.5 Tax Invoice

The supplier must deliver a tax invoice or an adjustment note to the recipient before the supplier is entitled to payment of an amount under clause 24.3. The recipient can withhold payment of the amount until the supplier provides a tax invoice or adjustment note as appropriate.

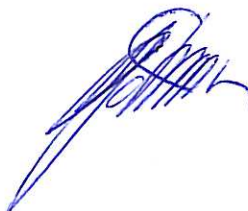
24.6 Adjustment event

If an adjustment event arises in respect of a taxable supply made by a supplier under this document, the amount payable by the recipient under clause 24.3 will be recalculated to reflect the adjustment event and a payment will be made by the recipient to the supplier or by the supplier to the recipient as the case requires.

24.7 Reimbursements

Where a party is required under this document to pay or reimburse an expense or outgoing of another party, the amount to be paid or reimbursed by the first party will be the sum of:

- (a) the amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing to which the other party, or to which the representative member for a



GST group of which the other party is a member, is entitled; and

- (b) if the payment or reimbursement is subject to GST, an amount equal to that GST.

25 **Joint and individual liability and benefits**

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

26 **No Partnership, etc.**

Nothing in this Agreement shall be taken to create a partnership, joint venture or other such relationship between the Developer and the Council.

27. **Counterparts**

27.1 This document may consist of a number of counterparts.

27.2 The counterparts taken together constitute one deed.

28 **Variations in Dimensions of Council Lot**

In the event that

28.1 a survey by a registered land surveyor is carried out on the Land following the issue of a development consent for the subdivision of the whole or any part of the Land (the survey), and

28.2 the survey shows a discrepancy between the boundaries in the survey and those shown in annexure "B", and

28.3 the dedication of the Council Lots has not occurred

then the parties agree to the adjustment of the boundaries to accommodate the requirements of the development consent, provided there is no significant reduction in the area of Land shown in the Council Lots. Any documents held by the Council under clause 11 that in the

opinion of the Council need to be amended or replaced as a result of any such adjustment shall be amended or replaced by the Developer at no cost to the Council in accordance with the requirements of the Council. In this clause "significant" shall mean reduction of more than 3% in area.

29 **Key Considerations**

29.1 The parties acknowledge that the following matters have been considered by each of them prior to entering into this agreement:

29.1.1.1 whether the public infrastructure that is proposed to be funded by the Contributions will be provided within a reasonable time;

29.1.1.2 the impact of the proposed Contributions on the affordability of the Development;

29.1.1.3 the extent to which the proposed Contributions are based on a reasonable apportionment between existing demand and new demand for public infrastructure to be created by the proposed Development to which to contribution relates;

29.1.1.4 whether the proposed Contributions are based on a reasonable estimate of the cost of proposed public infrastructure,

29.1.1.5 whether the estimates of demand for each item of public infrastructure to which the proposed development contribution relates reasonable,

and that they consider that each of these matters has been properly and adequately taken into account under this agreement.

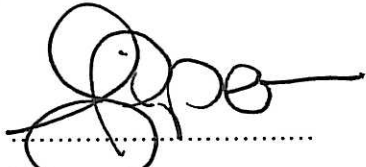
29.2 The parties acknowledge that the facilities provided pursuant to this agreement will directly serve the needs of the residents of the completed Development.



Executed as a Deed

Signed sealed and delivered by the parties



The Common Seal of Council of the)
City of Lake Macquarie was affixed)
pursuant to a resolution made on the)
8th day of December 2008)


.....
Mayor


.....
General Manager

~~The Common Seal of Stannic)
Securities Pty Limited ACN000345906-)
was hereunto affixed pursuant to a)
resolution of its Board of Directors-)
made on-)~~

EXECUTED on behalf of the Corporation by the
authorised person whose signature appears
below pursuant to s. 127 of the Corporations
Act, 2001.


.....
Sole Director and Sole Company Secretary

.....

Print Name

Annexure A

270 Fishery Point Road Bonnells Bay - Existing Zones under Lake Macquarie
LEP 2004

