



Planning Agreement

Environmental Planning and Assessment Act 1979

83 Jonathan Street, Eleebana NSW 2282

LAKE MACQUARIE CITY COUNCIL (ABN 25 398 381 822)

NS DR PROPERTIES PTY LTD (ACN 622 960 954)

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This **Planning Agreement** is dated 27th July 20 20

Parties:

Council

LAKE MACQUARIE CITY COUNCIL ABN 81 065 027 868 of 126-138 Main Road, Speers Point NSW 2284

Developer

NS DR PROPERTIES PTY LTD ACN 622 960 954 of 231 Dunbar Street, Stockton NSW 2295

Introduction:

- A The Developer owns the Land.
- B The Developer is seeking the LEP Amendment to facilitate the making of a Development Application to Council for Development Consent to carry out the Development on the Land.
- C The Developer has made an offer in connection with the LEP Amendment to enter into this deed to make the Development Contribution for the public purpose of conserving the natural environment associated with the LEP Amendment and the Development.

It is agreed:

1. Definitions and interpretation

1.1 Definitions

In this **deed**, unless the context clearly indicates otherwise:

Access Licence means an access licence required under clause 3.4 of Schedule 4 on terms acceptable to the Council, acting reasonably.

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

Address for Service means the address of each party appearing in Schedule 2 or any new address notified by any party to all other parties as its new Address for Service.

Approvals means any certificate, licence, consent, permit, approval or other requirement of any Authority having jurisdiction in connection with the activities contemplated by this deed.

Annual Report means the annual report required to be prepared by the Developer in accordance with clause 3.4(a) of Schedule 4 and which addresses the requirements of clause 2.1 of Schedule 6.

Authority means any Federal, State or local government or semi-governmental, statutory, judicial or public person, instrumentality or department.

Bank Guarantee means an irrevocable and unconditional undertaking:

- (a) by an Australian bank which is an eligible financial institution for the purposes of Treasury Circular NSW TC14/01 dated 24 January 2014 as amended, supplemented or substituted from time to time; and

(b) on terms acceptable to the Council, in the Council's absolute discretion,
to pay the face value of that undertaking (being such amount as is required under this deed) on demand.

Base CPI means the CPI number for the quarter ending 30 June 2019.

Business Day means any day that is not a Saturday, Sunday, public holiday or bank holiday in Sydney, and concludes at 5pm on that day.

CLM Act means the *Contaminated Land Management Act 1997* (NSW).

Commencement Date means the date this deed commences in accordance with clause 2.1 of this deed.

Competent and Qualified Contamination Land Consultant means a consultant that is certified with one of the following certification schemes:

- (i) the Site Contamination Practitioners Australia scheme;
- (ii) the Environment Institute of Australia and New Zealand's Contaminated Land Assessment Specialist Certified Environmental Practitioner scheme; and
- (iii) the Soil Science Australia Certified Professional Soil Scientist Contaminated Site Assessment and Management certification.

Consent Authority has the same meaning as in the Act.

Construction Certificate means a construction certificate under Part 6 of the Act.

Contamination has the same meaning as in the CLM Act.

Costs means any loss, cost, fee, charge, expense, Tax, rate, fine, penalty or debts including those in connection with advisors and any compensation payable to any person in accordance with the law.

CoRD Holder Consent means the electronic document lodged through an ELNO that provides consent to the registration of instruments and plans.

CPI means the Sydney Consumer Price Index (All Groups) published by the Commonwealth Statistician, or if that index no longer exists, any similar index that the Council specifies, in its sole discretion, for the purposes of this deed.

Current CPI means the CPI number for the quarter last published before the date of payment of the Monetary Contribution.

Dealing in relation to the Land means, without limitation, selling, transferring, assigning, mortgaging, charging, disposing, encumbering or otherwise dealing with the Land.

Dedication Completion Date means the date on which the dedication of the Offset Lot is taken to have been effected in accordance with clause 2.1(h) of Schedule 4.

Dedication Date means the date on which the Offset Land is to be dedicated to Council, being on the registration of the first Plan of Subdivision.

Development means the subdivision of the Land.

Development Application has the same meaning as in the Act to be prepared by and lodged with the Council by the Developer.

Development Consent has the same meaning as in the Act.

Development Contribution means the development contributions to be provided by the Developer in accordance with Schedule 4.

ELNO has the same meaning as in the *Electronic Conveyancing National Law (NSW)*.

Explanatory Note means the note exhibited with a copy of this deed when this deed is made available for inspection by the public pursuant to the Act, as required by the Regulation.

Final Report means the report required to be prepared by the Developer in accordance with clause 3.4(b) of Schedule 4 and which addresses the requirements of clause 2.2 of Schedule 6.

General Register of Deeds means the land register maintained under the *Conveyancing Act 1919 (NSW)* and so titled.

GST means any form of goods and services tax payable under the GST Legislation.

GST Legislation means the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

Governing Body means the Department of Planning, Industry and Environment (previously the Office of Environment and Heritage), the Biodiversity Conservation Trust or the Commonwealth Department of the Environment and Energy (or its successors or assigns).

Land means the land described in Schedule 3.

LEP means the *Lake Macquarie Environmental Plan 2014*.

LEP Amendment means an amendment to the LEP in response to the Developer's rezoning application to Council numbered RZ-3/2017, including the rezoning of the Land or a substantial part of the Land in accordance with the plans at Annexure B.

LRS means Land Registry Services NSW.

Maintenance Period means a period of 5 years, commencing on the earlier of:

- (a) the issue of the first Construction Certificate for the Development;
- (b) the issue of the first Subdivision Works Certificate for the Development; or
- (c) the clearing of any Native Vegetation in connection with the Development.

Management Plan means the plan setting out management actions for the conservation of the Offset Land during the Maintenance Period prepared under clause 3.1 of Schedule 4.

Mediation Program means the Mediation Program of the Law Society of New South Wales as published on its website and as varied from time to time.

Monetary Contribution means a monetary contribution in the amount of \$49,900, adjusted in accordance with clause 4(b) of Schedule 4.

Monetary Contribution Base means \$49,900.

Native Vegetation has the same meaning as in the *Local Land Services Act 2013*.

Offset Land means that part of the Land shown as "Conservation Land" on the plan at Annexure A.

Offset Lot means the parcel(s) of land that will comprise the Offset Land following the subdivision of the Land.

Permitted Encumbrances means:

- (a) easements benefitting statutory authorities or for the purpose of utility services;
- (b) encumbrances, agreements or arrangements authorised by an Approval;
- (c) environmental management requirements or other instruments registered for the purposes of the protection of biodiversity or conservation of the Offset Land;
- (d) any other encumbrance, agreement or arrangement Council (acting reasonably) agrees in writing is a Permitted Encumbrance; or
- (e) any encumbrance, agreement or arrangement that does not prevent the future use of the relevant land for the public purpose for which it is to be dedicated under this agreement, unless the encumbrance is a charge arising as a result of unpaid taxes or rates.

Planning Application means:

- (a) a Development Application; or
 - (b) any other application required under the Act,
- which seeks approval for the subdivision of the Land.

Plan of Subdivision means a registered plan of subdivision within the meaning of section 195 of the *Conveyancing Act 1919* (NSW).

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

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

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

Remediation has the meaning given to it in *State Environmental Planning Policy No. 55 – Remediation of Land* and **remediate** has a corresponding meaning.

Security means a Bank Guarantee for the amount and on the terms specified in Schedule 5.

Site Audit Report has the same meaning as in the CLM Act.

Site Audit Statement has the same meaning as in the CLM Act.

Site Auditor has the same meaning as in the CLM Act.

Subdivision Works Certificate means a subdivision works certificate under Part 6 of the Act.

Suitably Qualified Person means a person with suitable qualifications and not less than 5 years' experience having regard to the nature of the action required under this deed and approved by the Council in accordance with clause 3.2 of Schedule 4.

Tax means a tax, duty (including stamp duty and any other transaction duty), levy, impost, charge, fee (including a registration fee) together with all interest, penalties, fines and costs concerning them.

Urban Lot means a lot that forms part of the Land to be created by the registration of a Plan of Subdivision and is intended to be developed for residential purposes.

Utility Provider means a provider of electricity, gas or other essential service.

1.2 Interpretation

In this deed unless the context clearly indicates otherwise:

- (a) a reference to **this deed** or another document means this deed or that other document and any document which varies, supplements, replaces, assigns or novates this deed or that other document;
- (b) a reference to **legislation** or a **legislative provision** includes any statutory modification, or substitution of that legislation or legislative provision and any subordinate legislation issued under that legislation or legislative provision;
- (c) a reference to a **body** or **authority** which ceases to exist is a reference to either a body or authority that the parties agree to substitute for the named body or authority or, failing agreement, to a body or authority having substantially the same objects as the named body or authority;
- (d) a reference to the **introduction**, a **clause**, a **schedule** or an **annexure** is a reference to the introduction, a clause, a schedule or an annexure to or of this deed;
- (e) **clause headings**, the **introduction** and the **table of contents** are inserted for convenience only and do not form part of this deed;
- (f) the **schedules** and **annexures** form part of this deed;
- (g) a reference to a **person** includes a natural person, corporation, statutory corporation, partnership, the Crown or any other organisation or legal entity;
- (h) a reference to a **natural person** includes their personal representatives, successors and permitted assigns;
- (i) a reference to a **corporation** includes its successors and permitted assigns;
- (j) a reference to a right or obligation of a party is a reference to a right or obligation of that party under this deed;
- (k) an **obligation** or **warranty** on the part of 2 or more persons binds them jointly and severally and an obligation or warranty in favour of 2 or more persons benefits them jointly and severally;
- (l) a requirement to do any thing includes a requirement to cause that thing to be done and a requirement not to do any thing includes a requirement to prevent that thing being done;
- (m) **including** and **includes** are not words of limitation;
- (n) a word that is derived from a defined word has a corresponding meaning;
- (o) **monetary amounts** are expressed in Australian dollars;
- (p) the singular includes the plural and vice-versa;
- (q) words importing one gender include all other genders;
- (r) a reference to a thing includes each part of that thing; and
- (s) neither this deed nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting.

2. Operation and application of this deed

2.1 Operation

- (a) This deed commences on the date that this deed is signed by all the parties.
- (b) If:
 - (i) the LEP Amendment has not occurred within 2 years after the date of this deed; or
 - (ii) the LEP Amendment has occurred and is declared by a Court to be invalid,either party may terminate this deed by notice in writing to the other.
- (c) On and from the date of termination of this deed in accordance with this clause 2.1, this deed will cease to have effect and Council will immediately return to the Developer any Bank Guarantee, title documentation or other security it holds under this deed and do all things necessary to have the registration of this deed removed from the title to the Land.

2.2 Planning agreement under the Act (cf Schedule 1)

This deed constitutes a planning agreement within the meaning of section 7.4 of the Act and the parties agree on the matters set out in Schedule 1.

2.3 Application

This deed applies to the:

- (a) LEP Amendment;
- (b) Development;
- (c) Land; and
- (d) Offset Land.

3. Application of sections 7.11, 7.12 and 7.24 of the Act (cf Schedule 1)

The application of sections 7.11, 7.12 and 7.24 of the Act are excluded to the extent stated in Schedule 1.

4. Development Contribution

4.1 Developer to provide Development Contribution

The Developer undertakes to provide, or procure the provision of the Development Contribution to the Council or the Council's nominee in accordance with the provisions of Schedule 4 to this deed.

4.2 Acknowledgement

The Developer acknowledges and agrees that, subject to section 7.3 of the Act, the Council has no obligation to repay the Development Contribution.

5. Enforcement

The Developer has agreed to provide Security to the Council for the performance of the Developer's obligations under this deed by:

- (a) agreeing to register this deed in accordance with clause 6; and
- (b) providing the Security in accordance with the terms and procedures set out in Schedule 5.

6. Registration

6.1 Registration of deed

- (a) Within 20 Business Days of receiving a copy of this deed executed by the Council and the Developer, the Developer at its own expense will take all practical steps and otherwise do anything to procure:
 - (i) the consent of each person, as required by the Registrar-General, who:
 - (A) has an estate or interest in the Land registered under the Real Property Act; or
 - (B) is seized or possessed of an estate or interest in the Land,to the registration of this deed on the title to the Land and to the terms of this deed;
 - (ii) the execution of any documents;
 - (iii) the production of the relevant certificates of title or electronic lodgement of the relevant CoRD Holder Consents through an ELNO; and
 - (iv) the lodgement of this deed in a registrable form at the NSW Land Registry Services for registration by the Registrar-General in the relevant folio of the Register for the Land, or in the General Register of Deeds if this deed relates to land not under the Real Property Act.
- (b) The Developer will take all practical steps and otherwise do anything reasonably required to procure the registration of this deed within three months of the date of this deed in the relevant folio of the Register for the Land, or in the General Register of Deeds if this deed relates to land not under the Real Property Act, including promptly responding to any requisitions made by the Registrar-General in respect of this deed and/or any ancillary documents.

6.2 Evidence of registration

- (a) The Developer must provide the Council with evidence of the lodgement of this deed pursuant to clause 6.1(a)(iv) within 10 Business Days of such lodgement at the NSW Land Registry Services.
- (b) The Developer will provide the Council with a copy of the relevant folio of the Register for the Land and a copy of the registered dealing containing this deed within 10 Business Days of receipt of notice of registration of this deed.

6.3 Release and discharge of deed

The Council agrees to do all things reasonably required by the Developer to release and discharge this deed with respect to any part of the Land upon:

- (a) the Developer satisfying all of its obligations under this deed in respect of that part of the Land; or
- (b) on the registration of a Subdivision Certificate in respect of an Urban Lot and the Council being satisfied that the Developer is otherwise in material compliance with this deed.

6.4 Developer's interest in Land

The Developer represents and warrants that it is:

- (a) the owner of that part of the Land identified in Schedule 3; and
- (b) legally and beneficially entitled to obtain all consents and approvals and to compel any person referred to in or contemplated by clause 6.1(a)(i) to assist, cooperate and to otherwise do all things necessary for the Developer to comply with its obligations under clause 4.1 (cf Schedule 4).

6.5 Right to lodge caveat

- (a) Subject to clause 6.5(b) until such time as this deed is registered on the title of the Land in accordance with clause 6.1, the Developer acknowledges that this deed confers on the Council an interest in the Land and entitles the Council to lodge and maintain a caveat on the title to the Land to prevent any Dealing in respect of the Land.
- (b) If the Council lodges a caveat in accordance with clause 6.5(a), then the Council will do all things reasonably necessary to:
 - (i) ensure that the caveat does not prevent or delay the registration of this deed; and
 - (ii) remove the caveat from the title to the Land promptly, following registration of this deed in accordance with clause 6.1.
- (c) If, after 20 Business Days of receipt of a copy of this deed executed by the Council, the Developer has failed or has been unable to achieve the registration of this deed in accordance with clause 6.1, the Developer must pay the Council's reasonable costs and expenses, including legal costs, of exercising the Council's rights under clause 6.5(a) to lodge and withdraw a caveat(s) (as applicable).

6.6 Urban Lots

- (a) This deed is not to remain registered under section 7.6 of the Act in relation to any Urban Lot, subject to the Council being satisfied, acting reasonably and without delay, that the Developer is otherwise in material compliance with this deed.
- (b) If through error or other reason this deed is registered on the title to any Urban Lot, each party must do such things as are reasonably necessary, as requested by the other, to facilitate the lodging and grant of a request for the registration of this deed to be removed from the title to that lot.

7. Dispute Resolution

7.1 Not commence

A party must not commence any court proceedings relating to a dispute unless it complies with this clause 7.

7.2 Written notice of dispute

A party claiming that a dispute has arisen under or in relation to this deed must give written notice to the other party specifying the nature of the dispute.

7.3 Attempt to resolve

On receipt of notice under clause 7.2, the parties must endeavour in good faith to resolve the dispute expeditiously using informal dispute resolution processes such as mediation, expert evaluation or other methods agreed by them.

7.4 Mediation

If the parties do not agree within 21 Business Days of receipt of notice under clause 7.2 (or any further period agreed in writing by them) as to:

- (a) the dispute resolution technique and procedures to be adopted;
- (b) the timetable for all steps in those procedures; or
- (c) the selection and compensation of the independent person required for such technique,

the parties must mediate the dispute in accordance with the Mediation Program. The parties must request the president of the Law Society of NSW or the president's nominee to select the mediator and determine the mediator's remuneration.

7.5 Court proceedings

If the dispute is not resolved within 60 Business Days after notice is given under clause 7.2 then any party which has complied with the provisions of this clause 7 may in writing terminate any dispute resolution process undertaken under this clause and may then commence court proceedings in relation to the dispute.

7.6 Not use information

The parties acknowledge the purpose of any exchange of information or documents or the making of any offer of settlement under this clause 7 is to attempt to settle the dispute. No party may use any information or documents obtained through any dispute resolution process undertaken under this clause 7 for any purpose other than in an attempt to settle the dispute.

7.7 No prejudice

This clause 7 does not prejudice the right of a party to institute court proceedings for urgent injunctive or declaratory relief in relation to any matter arising out of or relating to this deed.

8. GST

8.1 Definitions

Words used in this clause that are defined in the GST Legislation have the meaning given in that legislation.

8.2 Intention of the parties

The parties intend that:

- (a) Divisions 81 and 82 of the GST Legislation apply to the supplies made under and in respect of this deed; and
- (b) no additional amounts will be payable on account of GST and no tax invoices will be exchanged between the parties.

8.3 Reimbursement

Any payment or reimbursement required to be made under this deed that is calculated by reference to a cost, expense, or other amount paid or incurred must be limited to the total cost, expense or amount less the amount of any input tax credit to which any entity is entitled for the acquisition to which the cost, expense or amount relates.

8.4 Consideration GST exclusive

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this deed are exclusive of GST. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purposes of this clause 8.4.

8.5 Additional Amounts for GST

To the extent an amount of GST is payable on a supply made by a party (**Supplier**) under or in connection with this deed (the **GST Amount**), the recipient must pay to the Supplier the GST Amount. However, where a GST Amount is payable by the Council as recipient of the supply, the Developer must ensure that:

- (a) the Developer makes payment of the GST Amount on behalf of the Council, including any gross up that may be required; and
- (b) the Developer provides a tax invoice to the Council.

8.6 Non monetary consideration

Clause 8.5 applies to non-monetary consideration.

8.7 Assumptions

The Developer acknowledges and agrees that in calculating any amounts payable under clause 8.5 the Developer must assume the Council is not entitled to any input tax credit.

8.8 No merger

This clause does not merge on completion or termination of this deed.

9. Assignment and transfer

9.1 Right to assign or novate

- (a) Prior to a proposed assignment or novation of its rights or obligations under this deed, the party seeking to assign its rights or novate its obligations (**Assigning Party**) must seek the consent of the Council and:
 - (i) satisfy the Council (acting reasonably) that the person to whom the Assigning Party's rights or obligations are to be assigned or novated (**Incoming Party**) has sufficient assets, resources and expertise required to perform the Assigning Party's obligations under this deed insofar as those obligations are to be novated to the Incoming Party;
 - (ii) procure the execution of an agreement by the Incoming Party with the Council on terms satisfactory to the Council (acting reasonably) under which the Incoming Party agrees to comply with the terms and conditions of this deed as though the Incoming Party were the Assigning Party; and

- (iii) satisfy the Council, acting reasonably, that it is not in material breach of its obligations under this deed.
- (b) The Assigning Party must pay the Council's reasonable legal costs and expenses incurred under this clause 9.1.

9.2 Right to transfer Land

- (a) The Developer must not sell or transfer to another person (**Transferee**) the whole or part of any part of the Land:
 - (i) on which this deed remains registered under section 7.6 of the Act; or
 - (ii) for which the Development Contribution required under this deed remain outstanding.
- (b) Contingent on clause 9.2(a) the Developer may sell or transfer the whole or any part of the Land to a Transferee if prior to the proposed sale or transfer the Developer:
 - (i) satisfies the Council, acting reasonably, that the proposed Transferee has sufficient assets, resources and expertise required to perform any of the remaining obligations of the Developer under this deed or satisfies the Council, acting reasonably, that the Developer will continue to be bound by the terms of this deed after the transfer has been effected;
 - (ii) procures the execution of an agreement by the Transferee with the Council on terms satisfactory to the Council, acting reasonably, under which the Transferee agrees to comply with the terms and conditions of this deed as though the Transferee were the Developer; and
 - (iii) satisfies the Council, acting reasonably, that it is not in material breach of its obligations under this deed.
- (c) The Developer must pay the Council's reasonable legal costs and expenses incurred under this clause 9.2.

10. Capacity

10.1 General warranties

Each party warrants to each other party that:

- (a) this deed creates legal, valid and binding obligations, enforceable against the relevant party in accordance with its terms; and
- (b) unless otherwise stated, it has not entered into this deed in the capacity of trustee of any trust.

10.2 Power of attorney

If an attorney executes this deed on behalf of any party, the attorney declares that it has no notice of the revocation of that power of attorney.

11. General Provisions

11.1 Entire deed

This deed constitutes the entire agreement between the parties regarding the matters set out in it and supersedes any prior representations, understandings or arrangements made between the parties, whether orally or in writing.

11.2 Variation

This deed must not be varied except by a later written document executed by all parties.

11.3 Waiver

A right created by this deed cannot be waived except in writing signed by the party entitled to that right. Delay by a party in exercising a right does not constitute a waiver of that right, nor will a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.

11.4 Further assurances

Each party must promptly execute all documents and do everything necessary or desirable to give full effect to the arrangements contained in this deed.

11.5 Time for doing acts

- (a) If:
 - (i) the time for doing any act or thing required to be done; or
 - (ii) a notice period specified in this deed,

expires on a day other than a Business Day, the time for doing that act or thing or the expiration of that notice period is extended until the following Business Day.

- (b) If any act or thing required to be done is done after 5 pm on the specified day, it is taken to have been done on the following Business Day.

11.6 Governing law and jurisdiction

- (a) The laws applicable in New South Wales govern this deed.
- (b) The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts competent to hear appeals from those courts.

11.7 Severance

If any clause or part of any clause is in any way unenforceable, invalid or illegal, it is to be read down so as to be enforceable, valid and legal. If this is not possible, the clause (or where possible, the offending part) is to be severed from this deed without affecting the enforceability, validity or legality of the remaining clauses (or parts of those clauses) which will continue in full force and effect.

11.8 Preservation of existing rights

The expiration or termination of this deed does not affect any right that has accrued to a party before the expiration or termination date.

11.9 No merger

Any right or obligation of any party that is expressed to operate or have effect on or after the completion, expiration or termination of this deed for any reason, does not merge on the occurrence of that event but remains in full force and effect.

11.10 Counterparts

This deed may be executed in any number of counterparts. All counterparts taken together constitute one instrument.

11.11 Review of this deed

- (a) This deed may be reviewed or modified. Any review or modification of this deed will be conducted in the circumstances and in the manner determined by the parties.
- (b) No modification or review of this deed will be of any force or effect unless it is in writing and signed by the parties to this deed.
- (c) A party is not in breach of this deed if it does not agree to an amendment to this deed requested by a party in, or as a consequence of, a review.

11.12 Relationship of parties

Unless otherwise stated:

- (a) nothing in this deed creates a joint venture, partnership, or the relationship of principal and agent, or employee and employer between the parties; and
- (b) no party has the authority to bind any other party by any representation, declaration or admission, or to make any contract or commitment on behalf of any other party or to pledge any other party's credit.

11.13 Good faith

Each party must act in good faith towards all other parties and use its best endeavours to comply with the spirit and intention of this deed.

11.14 No fetter

Nothing in this deed is to be construed as requiring the Council to do anything that would cause the Council to breach any of the Council's obligations at law and without limitation, nothing in this deed shall be construed as limiting or fettering in any way the discretion of the Council in exercising any of the Council's statutory functions, powers, authorities or duties.

11.15 Explanatory note

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

11.16 Expenses and stamp duty

- (a) The Developer must pay its own and the Council's reasonable legal costs, valuation costs and disbursements in connection with the negotiation, preparation, execution and carrying into effect of this deed.
- (b) The Developer must pay for all reasonable costs and expenses associated with the giving of public notice of this deed and the Explanatory Note in accordance with the Regulation.

- (c) The Developer must pay all Taxes assessed on or in respect of this deed and any instrument or transaction required or contemplated by or necessary to give effect to this deed (including stamp duty and registration fees, if applicable).
- (d) The Developer must provide the Council with bank cheques, or an alternative method of payment if agreed with the Council, in respect of the Council's costs pursuant to clauses 11.16(a) and (b):
 - (i) where the Council has provided the Developer with written notice of the sum of such costs prior to execution, on the date of execution of this deed; or
 - (ii) where the Council has not provided the Developer with prior written notice of the sum of such costs prior to execution, within 30 Business Days of demand by the Council for payment.

11.17 Default

- (a) In the event a party considers another party has failed to perform and fulfil an obligation under this deed, it may give notice in writing to the other party (**Default Notice**) giving all particulars of the matters in respect of which it considers default has occurred and by such notice require the default to be remedied within a reasonable time not being less than 30 days.
- (b) In determining a reasonable time, regard must be had to both the nature of the default and the work or other action required to remedy it and whether or not the continuation of the default constitutes a public nuisance or raises other circumstances of urgency or emergency.
- (c) If a party disputes the Default Notice it may, if the Default Notice relates to a Dispute, refer the dispute to dispute resolution under clause 7 of this deed.

11.18 Notices

- (a) Any notice, demand, consent, approval, request or other communication (**Notice**) to be given under this deed must be in writing and must be given to the recipient at its Address for Service by being:
 - (i) hand delivered; or
 - (ii) sent by facsimile transmission; or
 - (iii) sent by prepaid ordinary mail within Australia; or
 - (iv) in the case of a Notice to be given by the Council, sent by email.
- (b) A Notice is given if:
 - (i) hand delivered, on the date of delivery but if delivery occurs after 5pm New South Wales time or a day that is not a Business Day, is taken to be given on the next Business Day;
 - (ii) sent by facsimile and the sending party's facsimile machine reports that the facsimile has been successfully transmitted;
 - (A) before 5pm on a Business Day, on that day;
 - (B) after 5pm on a Business Day, on the next Business Day after it is sent; or
 - (C) on a day that is not a Business Day, on the next Business Day after it is sent; or

(iii) sent by prepaid ordinary mail within Australia, on the date that is 2 Business Days after the date of posting; or

(iv) sent by email:

(A) before 5pm on a Business Day, on that Day;

(B) after 5pm on a Business Day, on the next Business Day after it is sent; or

(C) on a day that it is not a Business Day, on the next Business Day after it is sent,

and the sender does not receive a delivery failure notice.

Schedule 1 Compliance with the *Environmental Planning and Assessment Act*

Table 1 - Requirements under section 7.4 of the Act (clause 2.2)

The parties acknowledge and agree that the table set out below provides for certain terms, conditions and procedures for the purpose of the deed complying with the Act.

Requirement under the Act	This deed
Planning instrument and/or development application – (section 7.4(1)) The Developer has: (a) sought a change to an environmental planning instrument (b) made, or proposes to make, a Development Application (c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies	(a) Yes (b) Yes (c) No
Description of land to which this deed applies – (section 7.4(3)(a))	See Schedule 3
Description of development to which this deed applies – (section 7.4(3)(b))	See definition of Development in clause 1.1
Description of change to the environmental planning instrument to which this deed applies – (section 7.4(3)(b))	The LEP Amendment
The scope, timing and manner of delivery of contribution required by this deed – (section 7.4(3)(c))	See Schedule 4
Applicability of sections 7.11 and 7.12 of the Act – (section 7.4(3)(d))	The application of sections 7.11 and 7.12 of the Act is not excluded in respect of the Development
Applicability of section 7.24 of the Act – (section 7.4(3)(d))	The application of section 7.24 of the Act is excluded in respect of the Development
Consideration of benefits under this deed if section 7.11 applies – (section 7.4(3)(e))	No
Mechanism for Dispute Resolution – (section 7.4(3)(f))	See clause 7
Enforcement of this deed – (section 7.4(3)(g))	See clauses 5 and 11.7
No obligation to grant consent or exercise functions – (section 7.4(10))	See clause 11.14

Table 2 – Other matters

Requirement under the Act	This deed
Registration of the Planning Agreement – (section 7.6 of the Act)	Yes (see clause 6)
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a construction certificate is issued – (clause 25E(2)(g) of the Regulation)	No
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before an occupation certificate is issued – (clause 25E(2)(g) of the Regulation)	No
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a subdivision certificate is issued – (clause 25E(2)(g) of the Regulation)	Yes

Schedule 2 – Address for Service

(clause 1.1)

Council

Contact: The Chief Executive Officer

Address: 126-138 Main Road, Speers Point, NSW 2284

Postal Address: BOX 1906, Hunter Region Mail Centre, NSW 2310

Email: council@lakemac.nsw.gov.au

Developer

Contact: Nick Sovechles

Address: 231 Dunbar Street, Stockton NSW 2295

Email: Nick@agmconsulting.com.au

Schedule 3 – Land

(clause 1.1)

Lot	Deposited Plan	Folio Identifier
1	228896	1/228896

Schedule 4 - Development Contributions

(clause 4)

1. Development Contributions

The Developer undertakes to provide the Development Contribution to the Council or their nominee in the manner set out in the table below:

Development Contribution	Timing
Dedication of Offset Land to Council	As detailed in clause 2 of this Schedule 4 and by the Dedication Date in accordance with clause 2 of this Schedule 4
Maintenance of the Offset Land	As detailed in clause 3 of this Schedule 4 and for the duration of the Maintenance Period in accordance with clause 3.3 of this Schedule 4
Payment of the Monetary Contribution	As detailed and in accordance with clause 4 of this Schedule

2. Offset Land Contribution

2.1 Dedication of Offset Land

- (a) The Developer agrees not to transfer or otherwise deal with the Offset Land unless the Council has consented in writing to the transfer or dealing.
- (b) In order to give effect to the dedication of the Offset Land to the Council in accordance with clause 1 of this Schedule 4 there must be a subdivision of the Land to create the Offset Lot.
- (c) The Developer must obtain all Approvals required to subdivide the Offset Land and create the Offset Lot so it can be dedicated to Council.
- (d) Council agrees that the dimensions of the Offset Lot may vary from those specified in Annexure A, provided that the area of the Offset Land is not reduced by more than 3% in total.
- (e) Within 12 months of the commencement of the Maintenance Period, the Developer must lodge for registration at LRS a plan to subdivide the Land to create the Offset Lot (**Offset Subdivision Plan**).
- (f) The Developer must on the Dedication Date, ensure that the Offset Lot is free from any encumbrances other than the Permitted Encumbrances.
- (g) The Developer must immediately comply, or procure compliance with, any requisitions raised by the Registrar-General in relation to the Offset Subdivision Plan.
- (h) The dedication of the Offset Lot will be taken to have been effected when a Certificate of Title is issued by LRS for the Offset Lot identifying Council as the registered proprietor of the Offset Land and the Certificate of Title is held by Council (or if the Certificate of Title is an electronic Certificate of Title, Council has control of the right to deal).
- (i) The Developer will pay all rates and taxes owing in respect of the Offset Land up to Dedication Completion Date after which the Council will be liable.

- (j) Notwithstanding clause 2.1(a) of this deed, the Developer must, from the date that this deed is signed by all the parties not undertake any action or activity, prior to the Dedication Completion Date that will have a detrimental effect on the conservation or Aboriginal heritage values of the Offset Land except where the Developer is:
- (i) directed to undertake such action or activity by another government agency or instrumentality (such as the Rural Fire Service); or
 - (ii) otherwise required by law to undertake such an action or activity.

2.2 Contamination

- (a) Stage 1 — Preliminary Site Investigation Report
- (i) Not more than 6 months prior to the Dedication Date, the Developer must, at no cost to Council, provide an up to date Stage 1 — Preliminary Site Investigation Report (**PSIR**) in relation to the Offset Land.
 - (ii) The PSIR must be:
 - (A) prepared by a Competent and Qualified Contaminated Land Consultant;
 - (B) prepared in accordance with the National Environment Protection (Assessment of Site Contamination) Measure 1999 as amended 2013 (**NEPM**), NSW EPA Guidelines for Consultants Reporting on Contaminated Sites (**Reporting Guidelines**) and NSW EPA Sampling Design Guidelines (**Sampling Guidelines**); and
 - (C) submitted to Council for review. Council may submit the PSIR for a third-party desktop review by a Competent and Qualified Contaminated Land Consultant. The desktop review costs will be at nil cost to Council and all costs reimbursed by the Developer to Council, provided that Council first notifies the Developer of the estimated costs of the review.
 - (iii) If, after the review of the PSIR:
 - (A) Council, acting reasonably, deems that the Offset Land is not suspected of being Contaminated no further contamination assessments are required; or
 - (B) Council reasonably suspects that the Offset Land is Contaminated, the Developer will be required to progress the assessment of Contamination on the Offset Land to Stage 2 — Detailed Site Investigation, in accordance with clause 2.2(b) of this Schedule.
- (b) Stage 2 - Detailed Site Investigation Report
- (i) If required in accordance with clause 2.2(a)(iii)(B), the Developer must, at no cost to Council, commission a Stage 2 — Detailed Site Investigation Report (**DSIR**) in relation to the Offset Land.
 - (ii) The DSIR must be:
 - (A) prepared by a Competent and Qualified Contaminated Land Consultant;
 - (B) prepared in accordance with the NEPM, Reporting Guidelines and Sampling Guidelines; and

- (C) submitted to Council for review. Council may submit the DSIR for third- party desktop review by a Competent and Qualified Contaminated Land Consultant. The document review costs will be at nil cost to Council and all costs reimbursed by the Developer to Council, provided that Council first notifies the Developer of the estimated costs of the review.
- (iii) If, after review of the DSIR Council considers, acting reasonably, that:
 - (A) the Offset Land is suitable for is intended use as a Public Reserve, no further contamination assessment is required; or
 - (B) the Offset Land is Contaminated and unsuitable for its intended use as a Public Reserve, the Developer will be required to provide a Site Audit Statement and Site Audit Report, in accordance with clause 2.2(c) of this Schedule 4.
- (c) Stage 3 — Site Audit Statement and Site Audit Report
 - (i) If required in accordance with clause 2.2(b)(iii)(B) of this Schedule 4, the Developer must, prior to the Dedication Date provide the Council with a Site Audit Report and Site Audit Statement.
 - (ii) The Site Audit Report and Site Audit Statement must:
 - (A) state that the Offset Land is suitable for the purposes of a Public Reserve;
 - (B) be in favour of Council; and
 - (C) not be subject to any conditions (unless otherwise agreed by Council).
 - (iii) The Developer indemnifies and agrees to keep indemnified the Council against all claims made against the Council as a result of any Contamination on or migrating from the Offset Land, but only in relation to Contamination that existed on or before the Dedication Completion Date.
 - (iv) Council reserves its rights to undertake enforcement action and to terminate this deed on the basis that Contamination of the Offset Land is unable to be Remediated to be suitable for the purposes of a Public Reserve.

2.3 Compulsory acquisition of the Offset Land

- (a) If the Developer does not dedicate the Offset Land as required by clause 2.1 of this Schedule 4, the Council may elect to, and the Developer consents to, the Council or the Council's nominee compulsorily acquiring the whole or any part of the Offset Land in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991 (NSW)*, for the amount of \$1.00.
- (b) The Developer and the Council agree that:
 - (i) this clause 2.3 is an agreement between them for the purposes of section 30 of the *Land Acquisition (Just Terms Compensation) Act 1991 (NSW)*; and
 - (ii) in this clause 2.3 they have agreed on all relevant matters concerning the compulsory acquisition and the compensation to be paid for the acquisition.
- (c) The Developer must ensure that the Offset Land is free of all encumbrances and affectations (including any charge or liability for rates, Taxes and charges), on the date that the Developer is liable to transfer the Offset Land to the Council or the Council's nominee in accordance with this clause 2.3.

- (d) The Developer indemnifies and keeps indemnified the Council or the Council's nominee against all Claims made against the Council or the Council's nominee as a result of any acquisition by the Council or the Council's nominee of the whole or any part of the Offset Land under this clause 2.3.
- (e) The Developer must pay the Council or the Council's nominee, promptly on demand, an amount equivalent to all Costs reasonably and properly incurred by the Council in acquiring the whole or any part of the Offset Land as contemplated by this clause 2.3.

3. Maintenance of the Offset Land

3.1 Management Plan

- (a) The Developer will, at no cost to Council, cause a Management Plan for the Offset Land to be prepared by a Suitably Qualified Person.
- (b) The Management Plan must:
 - (i) set out the works and management actions required to be undertaken on the Offset Land to maintain or improve the biodiversity values of the Offset Land over the Maintenance Period; and
 - (ii) contain as a minimum the actions specified in Schedule 6.
- (c) A draft Management Plan, which is no more than 6 months old, must be provided to Council at the same time as, or within a reasonable time of, the Developer lodging the Development Application with Council.
- (d) Council will, acting reasonably, advise the Developer of any suggested changes to the draft Management Plan:
 - (i) within 20 Business Days after receiving the draft Management Plan; or
 - (ii) if another Governing Body is required under any Law to review, comment or approve the draft Management Plan, within 20 Business Days after receiving advice from that Governing Body.
- (e) Provided Council's suggested changes to the draft Management Plan are reasonable the Developer must accept Council's suggested changes and incorporate the changes into the draft Management Plan.
- (f) Comments from another Governing Body must be incorporated into the draft Management Plan.
- (g) The Developer must provide a final version of the Management Plan to Council within 20 Business Days of receiving Council's suggested changes under clause 3.1(d) of this Schedule 4.
- (h) The Developer must provide a final version of the Management Plan to Council prior to the grant of a Development Consent for the Development.

3.2 Appointment of a Suitably Qualified Person

- (a) Prior to contracting with any person to carry out actions required to be undertaken by a Suitably Qualified Person under this deed:

- (i) the Developer will advise Council in writing of the name of the person to be retained and the person's relevant qualifications and experience;
 - (ii) within 20 Business Days of receiving that information, Council will notify the Developer in writing whether it agrees, acting reasonably, to the appointment of that person; and
 - (iii) if Council does not agree to that person being retained, the Developer will not enter into a contract with that person and will seek to engage the services of another Suitably Qualified Person following the procedure in clauses 3.2(a)(i) and 3.2(a)(ii) of this Schedule 4 again.
- (b) For the avoidance of doubt:
- (i) the Developer will bear the costs of any Suitably Qualified Person appointed in accordance with this deed; and
 - (ii) if, during the Maintenance Period, the Developer needs to appoint a new Suitably Qualified Person, the Developer must seek the Council's approval in accordance with clause 3.2(a) of this Schedule 4.

3.3 Maintenance of Offset Land

- (a) The Offset Land must be maintained by the Developer in accordance with the Management Plan for the Maintenance Period.
- (b) Despite clause 3.3(a) of this Schedule 4, Council may (at its sole discretion) elect to accept an assignment of the Developer's obligation to maintain the Offset Land in accordance with the Management Plan, provided:
 - (i) the assignment does not occur in the first 2 years of the Maintenance Period;
 - (ii) the Developer pays to Council the costs of carrying out any outstanding obligations as specified in the Maintenance Plan; and
 - (iii) the Developer pays the Monetary Contribution to Council.
- (c) If Council elects to accept an assignment at clause 3.3(b) of this Schedule 4, the Developer is unconditionally released from its obligation to maintain the Offset Land at clause 3.3(a).

3.4 Access Licence

- (a) To allow the Developer to carry out its obligations at clause 3.3(a) of this Schedule 4 after the Dedication Completion Date, the Developer will be required to obtain an Access Licence from the Council.
- (b) The Developer must:
 - (i) not less than 3 months prior to the Dedication Completion Date, seek an Access Licence from the Council; and
 - (ii) do all things reasonably necessary to ensure that the Access Licence is in place as at the Dedication Completion Date.
- (c) Council will (at the Developer's cost) grant the Access Licence to the Developer.

3.5 Reporting

- (a) On the 31st July for each year during the Maintenance Period, the Developer must:

- (i) engage the Suitably Qualified Person to prepare an Annual Report relating to the immediately preceding year; and
 - (ii) provide the Annual Report to Council.
- (b) Not less than one month prior to the end of the Maintenance Period, the Developer must:
- (i) engage the Suitably Qualified Person to:
 - (A) carry out an inspection of the Offset Land; and
 - (B) prepare the Final Report; and
 - (ii) submit the Final Report to Council.
- (c) If the Council is not satisfied (acting reasonably) that:
- (i) the Final Report adequately addresses the requirements of clause 2.2 of Schedule 6; or
 - (ii) the Developer has otherwise complied with the requirements of this clause 3,
- the Developer must, if required by Council:
- (iii) amend the Final Report having regard to any comments received by Council and submit an amended Final Report to Council; and/or
 - (iv) undertake works required on the Offset Land to Council's satisfaction, acting reasonably.

4. Monetary Contribution

- (a) The Developer must pay the Monetary Contribution to Council within 10 Business Days of the completion of the Maintenance Period.
- (b) The parties agree that the Monetary Contribution is to be adjusted on the date of payment in accordance with the following formula:

$$MC = MC \text{ Base} \times (\text{Current CPI} / \text{Base CPI})$$

where:

MC = the Monetary Contribution

MC Base = the Monetary Contribution Base

4.1 Public Purposes

The parties agree and acknowledge that the Development Contribution made in accordance with this Schedule 4 serve the public purpose of conserving and enhancing the natural environment.

Schedule 5 – Security

1. Developer to provide Security

- (a) This Developer must provide the Security to the Council prior to the issue of the first Subdivision Certificate for the Development.
- (b) The Security must:
 - (i) name “Lake Macquarie City Council” as the relevant beneficiary;
 - (ii) be in the amount as set out in the table below;
 - (iii) be as security for the Secured Obligation as set out in the table below; and
 - (iv) not have an expiry date.

Security Amount	Secured Obligation
\$80,000	The Developer’s obligations under this deed

2. Claims under Bank Guarantees

- (a) The Council may:
 - (i) call upon the Security provided in accordance with this deed where the Developer has failed to fulfil the Secured Obligation in accordance with this deed; and
 - (ii) retain and apply such monies towards any costs and expenses incurred by the Council in rectifying any default by the Developer under this deed.
- (b) Prior to calling upon the Security, the Council must give the Developer not less than 10 Business Days written notice of its intention to call upon the Security.
- (c) If:
 - (i) the Council calls upon the Security; and
 - (ii) applies all or part of such monies towards and any costs and expenses incurred by the Council in rectifying any default by the Developer under this deed; and
 - (iii) has notified the Developer of the call upon the Security in accordance with clause 2(b) of this Schedule 5,

then the Developer must provide the Council with a replacement Security to ensure that, at all times, until the date the Security is released in accordance with clause 3 of this Schedule, the Council is in possession of Security for a face value equivalent to the Security required to be provided in accordance with clause 3 of this Schedule 5.

3. Release of Security

- (a) If:
- (i) the Developer has paid or satisfied all of its obligations under this deed; or
 - (ii) the Council takes an assignment of the Developer's obligations under clause 3.3(b) of Schedule 4; and
 - (iii) the Developer has provided the Monetary Contribution to the Council; and
- (b) the whole of the Security relevant to the Secured Obligation has not been expended,
- then the Council will promptly return the Security (less any costs, charges, duties and taxes payable) to the Developer.

Schedule 6 - Maintenance Works

1. Minimum Maintenance Works

1.1 Offset site establishment

- (a) Internal fence removal;
- (b) Installation of new revegetation fence sediment fence attached on road side and around 10m APZ to boundary of 108 Jonathan Street to prevent ongoing weed seed source;
- (c) Installation of animal proof fence at rear of residential allotment i.e. along the proposed E2 zone boundary (the northern boundary of the offset area and southern boundary of the proposed residential allotment);
- (d) Installation of at least 3 log posts on boundary with 68 Cherry Road;
- (e) No nest boxes are installed given no tree hollows are being removed; and
- (f) Sediment control fences are installed.

1.2 Offset site maintenance

- (a) Maintenance of fence with sediment control road side;
- (b) Maintenance of animal proof fence at rear of residential allotment owner to maintain i.e. along the proposed E2 zone boundary (the northern boundary of the offset area and southern boundary of the proposed residential allotment);
- (c) Maintenance of posts on boundary with 68 Cherry Road; and
- (d) Maintenance of nest boxes.

1.3 Offset site bush regeneration and weed management

- (a) Primary, secondary, tertiary weeding (by hand and recognised bush regeneration techniques);
- (b) Ongoing bush regeneration maintenance, at minimum half day per year;
- (c) Maintenance of 10m APZ to 108 Jonathan Street (mowing) at minimum 9 times per annum;
- (d) Ongoing removal of litter or dumped materials; and
- (e) Fire management ecological burns including recommended frequency and intensity.

2. Reporting requirements

2.1 Annual Report Minimum Requirements

The Annual Report must include but not be limited to the following information:

- (a) Progress in achieving the objectives of the Management Plan;
- (b) Document condition of area before and after rehabilitation and over time;
- (c) Photo records of progress and growth;
- (d) The condition of any nest boxes;
- (e) The condition of any sediment fencing and other fencing;
- (f) Works undertaken during the reporting period;
- (g) Weeding areas include the extent and intensity of weed infestations, areas treated, type of treatment and monitoring over time;
- (h) Progress of any rehabilitation work including treatments, location, spatial extent, area treated, numbers of plantings and success and monitoring over time; and
- (i) Any other matters that affect the successful implementation of the management plan.

2.2 Minimum requirements for the Final Annual Report

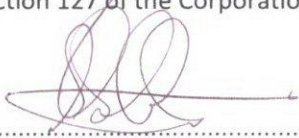
The Final Annual Report must include but not be limited to the following information:

- (a) Documenting the final year implementation of the management plan;
- (b) Compile the results of all monitoring and works over the maintenance period for the matters included in each Annual Report;
- (c) Assess suitability for dedication to Council;
- (d) Assess in detail the condition of the site at the end of the maintenance period and the degree to which the objectives of the management plan have been met;
- (e) Document any outstanding works i.e. works not completed or where progress has not been sufficient to meet objectives and reason for this; and
- (f) Make recommendations for the management actions into the future in perpetuity for Council to consider.

Execution Page

Executed as a deed

Executed by or on behalf of **NS DR PROPERTIES
PTY LTD** ACN 622 960 954 in accordance with
section 127 of the Corporations Act:



.....
Signature of Director

NICHOLAS SOVELLHLES

.....
Name of Director




.....
Signature of Director/Secretary

DAVID GLEN ROGBMS


.....
Name of Director/Secretary

THE COMMON SEAL OF COUNCIL OF THE CITY)
OF LAKE MACQUARIE WAS HEREUNTO)
AFFIXED PURSUANT TO RESOLUTION MADE)
BY THE COUNCIL ON: 27 April 2020)



Signature: .....
General Manager

Name: MORVEN CAMERON
PLEASE PRINT

Signature: .....
Mayor

Name: KAY FRASER
PLEASE PRINT

Annexure A – Offset Land

(INDICATIVE ONLY – this plan does not describe the land subject to this agreement)



Annexure B – Rezoning Plan

(INDICATIVE ONLY – this plan does not describe the land subject to this agreement)

