

Date 1 / 03 / 2021

**Planning Agreement under Section 7.4 of the
*Environmental Planning & Assessment Act 1979***

**Subject Land: Stockland Glendale Shopping Centre,
10 Stockland Drive, Glendale**

Lake Macquarie City Council
and

Stockland Development Pty Ltd

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Planning Agreement under Section 7.4

Dated 1 / 03 / 2021

Parties

Name	Lake Macquarie City Council ABN 81 065 027 868
Address	Lake Macquarie City Council Administration Building, 126-138 Main Road, Speers Point, NSW 2284
Facsimile	(02) 4958 7257
Email	council@lakemac.nsw.gov.au
Contact	Development Contributions Coordinator
Short name	Council

Name	Stockland Development Pty Ltd ACN 000 064 835
Address	133 Castlereagh Street, Sydney, NSW 2000
Facsimile	(02) 8898 2979
Email	Anthony.Martin@stockland.com.au
Contact	Anthony Martin
Short name	Developer

Background

- A. On 30 August 2017, the Developer lodged the Modification Application with Council, seeking consent to modify the Development Consent.
- B. Under condition 7 of the Modification Consent, the Developer must enter into a planning agreement with Council generally on the terms set out in the letter of offer dated 17 October 2018 from the Developer to Council.
- C. This is a Planning Agreement pursuant to section 7.4 of the Act. Schedule 2 of this Agreement sets out the requirements of the Act and Regulation and how this Agreement satisfies those requirements.

The parties agree

1. Definitions

In this Agreement, unless expressed or implied to the contrary:

2004 Development Consent means the consent granted by Council to the development application number 4413/2004, dated 25 February 2005, and any modification of that consent.

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

Agreement means this voluntary planning agreement and any schedules or annexures forming part of the agreement.

API NSW means the NSW Division of the Australian Property Institute.

Bank Guarantee means an unconditional undertaking without an expiry date, by an authorised deposit taking institution under the *Banking Act 1959* (Cth), on terms and in a form acceptable to the Council, acting reasonably.

Business Day means Monday to Friday excluding public holidays in New South Wales.

Claims means all or any claims, proceedings, actions, rights of action, liabilities, damages, losses, remedies, expenses, fines and penalties (including associated expenses and legal costs on a full indemnity basis).

Commencement Date means the date on which Council proposes to commence the Road Works.

Construction Certificate means a certificate referred to in section 109C(1)(b) and its successor, section 6.4(a) of the Act.

Consumer Price Index or **CPI** means:

- (a) the All Groups Consumer Price Index Sydney All Groups number published by the Australian Bureau of Statistics; or
- (b) if the Consumer Price Index Sydney All Groups is suspended or discontinued, the index, published by the Australian Bureau of Statistics at the date of this Agreement and at the date of suspension or discontinuance of the Consumer Price Index Sydney All Groups, which reflects fluctuations in the cost of living in Sydney:
 - (i) as agreed between the parties; or
 - (ii) if the parties are unable to agree, as determined by the President of the API NSW, or by some person nominated by them, whose decision is conclusive and binding and the costs of whose decision are payable by the Developer.

Designated Representative is defined in clause 11.32 of this Agreement.

Development means the development for the purposes of a shopping centre on the Development Land, which is authorised by the Development Consent and the Modification Consent.

Development Consent means the development consent numbered DA/764/2014, dated 24 July 2015, and any modification of that consent including but not limited to the Modification Consent.

Development Land means the land to which the Development relates, being Stockland Glendale Shopping Centre, 10 Stockland Drive, Glendale, legally identified as Lot 1 in Deposited Plan 860494.

Early Works means provision of the pedestrian safety fence in Stockland Drive required under condition 34A of DA/764/2014/A and relocation of the pedestrian crossing from the northern side of the roundabout adjacent the cinemas to the southern side of the roundabout and associated adjustments to pedestrian paths and parking areas as shown on the stamped approved plans for DA/764/2014/A or any subsequent approved modification generally in accordance with the Early Works Plan in Schedule 2 of this Agreement.

Explanatory Note means the Explanatory Note attached at Schedule 4 of this Agreement.

Insolvency Event means, in relation to a person, any of the following events:

- (a) the person, being an individual, commits an act of bankruptcy;
- (b) the person becomes insolvent;
- (c) the person ceases, suspends or threatens to cease or suspend the conduct of a majority of its business, or disposes of or threatens to dispose of its assets, except for the purposes of a solvent reconstruction or amalgamation previously approved by Council;
- (d) the person is or states that it is, or under applicable legislation is taken to be, unable to pay its debts (other than as a result of a failure to pay a debt or claim that is the subject of a dispute in good faith), or stops or suspends, or threatens to stop or suspend, payment of all or a class of its debts;
- (e) a receiver, receiver and manager, administrator, controller or similar officer of any of the assets or the whole or any part of the undertaking of the person is appointed;
- (f) a resolution is passed by the person to appoint an administrator, or an administrator of the person is appointed;
- (g) an order is made to appoint a liquidator or a provisional liquidator of the person;
- (h) the person resolves to wind itself up or otherwise dissolve itself, or gives notice of its intention to do so, except for the purposes of a solvent reconstruction or amalgamation previously approved by the Council, or is otherwise wound up or dissolved;
- (i) an order is made that the person be wound up;
- (j) the person is, or makes a statement from which it may be reasonably inferred by the Council that the person is, the subject of an event described in s 459C(2) of the *Corporations Act 2001* (Cth);
- (k) the person assigns any of its property for the benefit of creditors or any class of them;

- (l) an order is made or a resolution is passed for the person to enter into any arrangement, compromise or composition with, or assignment for the benefit of, its creditors or any class of them, except for the purposes of a solvent reconstruction or amalgamation previously approved by the Council;
- (m) any Security Interest becomes enforceable or is enforced against that person; the person's interest in or under this Agreement or in the subject matter of this Agreement becomes attached or is taken, in execution or under any legal process;
- (n) a distress, attachment or other execution is levied or enforced against that person in excess of \$10,000;
- (o) the person has a judgment or order given against it in an amount exceeding \$10,000 (or the equivalent in another currency) and that judgment or order is not satisfied or quashed or stayed within 20 Business Days after being given;
- (p) any power of sale is exercised or steps are taken to take possession of any assets of the person subject to a Security Interest;
- (q) any step is taken to do anything listed in the above paragraphs; and
- (r) any event that is analogous or has a substantially similar effect to any of the events specified in this definition in any jurisdiction.

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

LMTI Works means both:

- (a) the Section 1 of Stage 1 of the Lake Macquarie Transport Interchange; and
- (b) the Section 2 of Stage 1 of the Lake Macquarie Transport Interchange.

LRS means the NSW Land Registry Services.

Modification Application means the modification application DA/764/2014/A made on 30 August 2017 by the Developer seeking Council's consent to modify the Development Consent and subdivide the Development Land to create the Transfer Land lot.

Modification Consent means the notice of determination issued by Council on 28 November 2018 approving the Modification Application.

Monetary Contribution means \$1,005,900 increased by CPI as provided in this Agreement, calculated as follows:

$$MC = A - B$$

Where:

MC= Monetary Contribution

A = **\$1,919,400** for the Section 1 Stage 1 Lake Macquarie Transport Interchange Works (including Stockland Drive Road Works), comprised of:

- (i) Part 1A – Stockland Drive Extension total cost (including contingency) of \$2,338,350 with the Developer making a 50% contribution, being \$1,169,175;

- (ii) Part 1B – Access Road total cost (including contingency) of \$613,200 with the Developer making a 50% contribution, being \$306,600; and
- (iii) Part 1C – roundabout total cost (including contingency) of \$1,774,500 with the Developer making a 25% contribution, being \$443,625; and

B = \$913,500.00, being the cost to be incurred by the Developer to reconfigure the carpark within the Development Land directly adjoining the Transfer Land.

Notice of Dispute is defined in clause 11.1 of this Agreement.

Original Body is defined in clause 15.2.11 of this Agreement.

Plan of Subdivision means the Proposed Land Dedication Lot (drawing No. DA3009 version A dated 2 November 2018 prepared by Stockland Commercial Design Group), which was approved by the Council as part of the Modification Consent, and once registered with LRS will create the Transfer Land as a separate lot.

Prescribed Rate means the rate prescribed from time to time under the *Uniform Civil Procedure Rules 2005* as the rate of interest on judgment debts plus 2%, calculated daily and compounded on the last day of each month.

Recipient Party is defined in clause 11.2 of this Agreement.

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

Road Works means the Council's road widening and associated road works in connection with Section 2 of Stage 1 of the Lake Macquarie Transport Interchange.

Security Interest means:

- (a) any mortgage, pledge, lien, charge or other preferential right, trust arrangement, agreement or arrangement of any kind given or created by way of security, including a security interest (as defined in the *Personal Property Securities Act 2009* (Cth)); and
- (b) any agreement to create or grant any arrangement described in paragraph (a).

Section 1 of Stage 1 of the Lake Macquarie Transport Interchange means the eastward extension of Stockland Drive and southerly extension of Glendale Drive from Main Road and new Stockland Drive/Glendale Drive/Pennant Street roundabout.

Section 2 of Stage 1 of the Lake Macquarie Transport Interchange means the extension of Pennant Street in Cardiff over the main northern railway line (known as Pennant Street Bridge) to the new intersection of Glendale Drive and Stockland Drive in Glendale.

Stockland Drive Road Works means those parts of Section 1 of Stage 1 of Lake Macquarie Transport Interchange to which the Monetary Contribution will be applied being:

- (a) Part 1(A) – extension to Stockland Drive;
- (b) Part 1(B) – extension to Stockland access road; and
- (c) Part 1(C) Stockland Drive, Pennant Street and Glendale Drive Roundabout.

Sunset Date means 15 years after the commencement of this Agreement pursuant to clause 2.2.

Transfer means the LRS transfer form for the transfer of the Transfer Land from the Developer to Council.

Transfer Land means the 2,451 square metre lot which is to be created in accordance with "Stage 2 Proposed Plan of Subdivision DA3009-A" set out in Schedule 1, which was approved by Council by the Modification Consent.

Value means the agreed value of the Transfer Land.

2. Operation of Agreement

2.1 Application of Agreement

2.1.1 The land to which this Agreement applies is the Development Land.

2.1.2 The development to which this Agreement applies is the Development as modified by the Modification Consent.

2.2 Commencement of Agreement

This Agreement will commence on the date of this Agreement.

3. Specific obligations of the Developer

3.1 Payment of Monetary Contribution by Developer

3.1.1 Subject to clauses 3.1.6 and 3.1.7, the Developer must pay to the Council the Monetary Contribution in the form of cleared funds:

(a) either:

(i) prior to the issue of the first Construction Certificate for any works the subject of the Development Consent as modified by the Modification Consent (but excluding the Early Works); or

(ii) within 6 months of commencement of this Agreement under clause 2.2,

whichever occurs earlier.

3.1.2 Payment of the Monetary Contribution must be made by electronic bank transfer to the Council's nominated bank account.

3.1.3 The Developer must give written notice to the Council of the amount of the Monetary Contribution it proposes to pay (calculated in accordance with clause 3.2) and details of its calculation, by the earlier of:

(a) at least 30 days prior to the anticipated date of the issue of the first Construction Certificate for the Development as modified in the Modification Consent; and

(b) no more than five (5) months after the commencement of this Agreement under clause 2.2.

- 3.1.4 If the Council agrees with the amount of the Monetary Contribution proposed to be paid by the Developer as set out in the notice under clause 3.1.3, the Council must provide the Developer with a tax invoice or other invoice within 21 days of receiving the notice.
- 3.1.5 The Developer must, subject to clause 3.1.1, pay the Monetary Contribution in the form of cleared funds within 30 days after the Council provides the Developer with a tax invoice or other invoice under clause 3.1.4.
- 3.1.6 If the Council does not agree with the amount of the Monetary Contribution proposed to be paid by the Developer as set out in the notice under clause 3.1.3, the dispute resolution process set out in clause 11 of this Agreement will apply.
- 3.1.7 The parties agree that if the Council fails to provide a tax invoice or other invoice under clause 3.1.4 or fails to notify the Developer that it does not agree with the amount of the Monetary Contribution proposed to be paid by the Developer under clause 3.1.1 within the 21 day period, then:
- (a) the Developer will not be in breach of this Agreement as a result of a failure to pay the Monetary Contribution by the time specified in clause 3.1.1 above; and
 - (b) if applicable, any relevant Construction Certificate may be issued.
- 3.1.8 Nothing in this clause 3.1 shall be construed so as to prevent Council from issuing a tax invoice or other invoice after a period described in clause 3.1.4 (**Late Invoice**) and to prevent the Developer being bound by clause 3.1.5 in relation to any such Late Invoice.

3.2 CPI Increases

- 3.2.1 On the date of payment of the Monetary Contribution, the Monetary Contribution will be the greater of:
- (a) \$1,005,900; and
 - (b) the amount calculated as follows:

$$A = \frac{B \times C}{D}$$

Where:

- A = the Monetary Contribution increased by CPI;
- B = \$1,005,900;
- C = the Consumer Price Index last published before the payment date of the Monetary Contribution;
- D = the Consumer Price Index last published before 1 January 2015.

3.2.2 If at any time the Australian Bureau of Statistics changes the reference base for the Consumer Price Index, then, for the purposes of the application of this clause after the change takes place, regard shall be had only to index numbers published in terms of the new reference base.

3.3 Public Purpose for Monetary Contribution

3.3.1 The Council agrees that:

- (a) the Monetary Contribution constitutes the Developer's contribution to Section 1 of Stage 1 of the Lake Macquarie Transport Interchange and the Stockland Drive Road Works; and
- (b) it will apply the Monetary Contribution only for the purposes of the Section 1 of Stage 1 of the Lake Macquarie Transport Interchange and the Stockland Drive Road Works.

3.3.2 The parties acknowledge and agree that in addition to 3.3.1(a) the Monetary Contribution is also made in lieu of the Developer's obligations under condition 8 of the 2004 Development Consent.

3.4 Transfer Land

3.4.1 The Developer agrees to do all things necessary in order to transfer the Transfer Land to the Council for nominal consideration of \$1.00 prior to the Commencement Date, in accordance with and subject to this clause 3.4.

3.4.2 Following the execution of the VPA the Developer must:

- (a) within 90 Business Days, subdivide the Development Land to create the Transfer Land as a separate Lot. For the avoidance of doubt, that separate Lot will be owned by the Developer until the Transfer is registered in accordance with clause 3.4.9;
- (b) within 5 Business Days after the Developer receives the original certificate of title in the Transfer Land, which it must in good faith use its best efforts to obtain immediately following registration of a plan of subdivision giving effect to clause 3.4.2(a), provide Council with the original certificate of title in the Transfer Land and signed copies of the Transfer and all other documents necessary to effect the transfer of the Transfer Land to Council.

3.4.3 Council agrees that it must hold the original certificate of title in the Transfer Land and the signed copies of the Transfer and other documents provided to it by the Developer in accordance with clause 3.4.2(b) in escrow until Council is entitled to register the Transfer in accordance with clause 3.4.9.

3.4.4 The Council must notify the Developer in writing of the Commencement Date:

- (a) at least 6 months prior to the Commencement Date (or another period, as agreed by the parties in writing); and
- (b) before the Sunset Date.

3.4.5 Subject to clause 3.4.6, following provision of the notification of the Commencement Date by the Council in accordance with clause 3.4.4, the Developer must reconfigure the existing car park on the Development Land, at its

own cost, to facilitate the carrying out of the Road Works by Council. The reconfiguration must be completed prior to the Commencement Date.

- 3.4.6 If the Developer does not complete the reconfiguration of the existing car park on the Development Land by the Commencement Date in accordance with clause 3.4.5, the Developer will have a further 30 days from the Commencement Date to complete the reconfiguration works, provided only where the reconfiguration works have commenced before, but have not been completed by the Commencement Date.
- 3.4.7 The Council may carry out any works necessary to prevent the Transfer Land being used as a car park after the Commencement Date and is entitled to recover the costs of carrying out those works from the Developer, but only if the Developer has not:
- (a) commenced reconfiguration works in accordance with clause 3.4.5 prior to the Commencement Date, or
 - (b) continued the reconfiguration works after the Commencement Date and completed them by the end of the further 30 day period allowed under clause 3.4.6.
- 3.4.8 The Developer is to promptly notify the Council in writing after the reconfiguration works to the existing carpark have been commenced and again when the works are completed.
- 3.4.9 Council is entitled to register the Transfer:
- (a) on the Commencement Date, where the reconfiguration works to the existing car park have been completed by the Developer in accordance with clause 3.4.5; or
 - (b) on completion of the reconfiguration of the carpark, where the reconfiguration works are continued in accordance with clause 3.4.6; or
 - (c) not less than 30 days after the Commencement Date, in all other circumstances.
- 3.4.10 The Council is responsible for and agrees to reimburse the Developer for the reasonable costs associated with the subdivision of the Development Land to create the Transfer Land, including but not limited to:
- (a) the cost of preparing the Plan of Subdivision (including any field survey and s88B instrument required),
 - (b) stamp duty (if any);
 - (c) legal costs and disbursements payable in connection with the creation, registration and dedication or transfer of the Transfer Land, up to a maximum amount of \$10,000.00.
- 3.4.11 If Council has lodged the Transfer for registration in accordance with clause 3.4.9, Stockland shall allow Council, its officers, employees or agents, reasonable access to the Transfer Land for the purpose of undertaking any works on that land, including works in accordance with clause 3.4.7 and shall do all things necessary to facilitate such reasonable access pending registration of the Transfer.

3.5 Value of Transfer Land

- 3.5.1 The parties acknowledge and agree that the Value of the Transfer Land as at the date of the original letter of offer, being 4 June 2015 is \$1,299,030.00.
- 3.5.2 The Council acknowledges and accepts that the value of the Transfer Land may have increased since 4 June 2015.

3.6 Approval for Road Works

- 3.6.1 If the Council:
- (a) is required to obtain any consent or approval from a consent authority or RMS in order to undertake the Road Works; and
 - (b) decides to obtain such consent or approval prior to the registration of the Transfer,

the Developer agrees to provide landowner's consent for the purposes of obtaining the relevant consent or approval required for the Road Works within a reasonable time after a request is made in writing by the Council.

3.7 Public Purpose for Transfer Land

- 3.7.1 The Council acknowledges that the Transfer Land is the Developer's contribution to Section 2 of Stage 1 of the Lake Macquarie Transport Interchange and that the Council will dedicate the Transfer Land as a public road under the *Roads Act 1993* (NSW).
- 3.7.2 Nothing contained in clause 3.7.1 shall be construed as limiting:
- (a) the Council's rights and obligations in relation to the management of the Transfer Land as a public road after dedication as a public road; and
 - (b) the Council's rights to use the Transfer Land for any other purpose, including any purpose other than as a public road, at any time after dedication as a public road.

3.8 Transfer Land Hand Back Provisions

- 3.8.1 In the event that:
- (a) the Transfer Land is transferred to the Council in accordance with this Agreement or compulsorily acquired under clause 4.4; and
 - (b) the Council:
 - (i) has not dedicated the Transfer Land as a public road;
 - (ii) has not received funding for the Road Works;
 - (iii) has not commenced the Road Works; or
 - (iv) has not used the Transfer Land for the public purpose identified in clause 3.7,

within 15 years after the date commencement of this Agreement under clause 2.2,

then the Council must, to the extent that it is able to under the *Local Government Act 1993*:

- (c) do all things necessary to transfer the Transfer Land to the Developer for \$1.00 within 40 Business Days after Council's obligation to transfer under this clause 3.8 arises (or any other later date as agreed between the parties);
- (d) obtain all approvals required under any law to facilitate the transfer of the Transfer Land to the Developer, including under the *Local Government Act 1993*; and
- (e) pay all stamp duty, legal costs and disbursements payable in connection with the transfer of the Transfer Land to the Developer.

3.8.2 If a transfer occurs pursuant to clause 3.8.1 then the provisions of clause 4.4 no longer apply.

The Transfer Land is to be used by Council for the Road Works or other public purposes as determined by the Chief Executive Officer of Council from time to time.

4. Enforcement

4.1 Provision of Bank Guarantee – Monetary Contribution

The Developer must, on the commencement of this Agreement, provide to the Council a Bank Guarantee for \$1,005,900, as indexed in accordance with clause 3.2, as security for the due, prompt and proper observance and performance by the Developer of its obligations under clause 3.1.

4.2 Council's right to call upon Bank Guarantee

- 4.2.1 The Council may, without further notice to the Developer, call upon the Bank Guarantee for any amount payable to the Council by the Developer under this Agreement if:
 - (a) subject to clause 3.1.7, the Developer fails to pay the Monetary Contribution to the Council in accordance with clause 3.1 and fails to rectify the breach within 20 Business Days after it receives written notice from the Council of the breach; or
 - (b) an Insolvency Event occurs in respect of the Developer.
- 4.2.2 The Council must act reasonably and mitigate its loss when calling upon the Bank Guarantee.
- 4.2.3 If, at any time the Council has called upon the Bank Guarantee in accordance with clause 4.2.1 or the Bank Guarantee amount increases by operation of clause 4.3, the Developer must at the request of the Council provide the Council with a supplementary or replacement Bank Guarantee so that the amount of the Bank Guarantee held by the Council is the amount properly required to be provided under clause 4.1, subject to clause 5.1 of this Agreement.

4.3 CPI Increases – Bank Guarantee

On each anniversary of the date of this Agreement, the Developer must provide the Council with a replacement Bank Guarantee and the amount of the replacement Bank Guarantee provided will be the amount of the Bank Guarantee provided immediately prior to that anniversary increased by the same percentage as the percentage increase, if any, in the Consumer Price Index in the 12 months prior to the relevant anniversary.

4.4 Compulsory Acquisition – Transfer Land

4.4.1 If the Developer does not dedicate the Transfer Land in accordance with the timing in clause 3.4, the Developer consents to the Council compulsorily acquiring the relevant part of the Transfer Land in accordance with the Just Terms Act for the amount of \$1.00.

4.4.2 The Council is to only acquire the relevant part of the Transfer Land pursuant to clause 4.4.1 if it considers it reasonable to do so having regard to the circumstances surrounding the failure by the Developer to dedicate the Transfer Land under this Agreement.

4.4.3 The Developer and the Council agree that:

- (a) clause 4.4.1 is an agreement between the Developer and the Council for the purpose of section 30 of the Just Terms Act; and
- (b) in clause 4.4.1, the Developer and the Council have agreed on all relevant matters concerning the compulsory acquisition of the Transfer Land and the compensation to be paid for the compulsory acquisition of the Transfer Land.

5. Specific Obligations of the Council

5.1 Return of Bank Guarantee

5.1.1 The Council must return the Bank Guarantee to the Developer within 15 Business Days of receipt of a written request by the Developer and where either:

- (a) the Developer has paid the Monetary Contribution; or
- (b) a third party who has purchased or been assigned the Developer's interests in the Development Land has provided a replacement Bank Guarantee to the Council in accordance with the assignment provisions in clause 7.1.1 of this Agreement.

6. Registration of VPA on Title

6.1 Acknowledgement

6.1.1 The parties agree that this Agreement is not to be registered on the title of the Development Land under section 7.6 of the Act.

7. Transfer or Sale of Development Land

7.1.1 If the Developer enters into an agreement with a third party to sell, transfer, assign or novate or similarly deal with its right, title or interest in the Development Land or its rights or obligations under this Agreement the Developer may not complete the sale, transfer, assignment or novation unless before completion of the relevant transaction:

- (a) the Developer has first procured the execution by the third party of an agreement in favour of the Council on the same terms as this Agreement, as if the third party were a party to this Agreement, and the third party has provided to the Council a replacement Bank Guarantee in lieu of the Bank Guarantee (if at the time of the transfer, assignment or novation the Monetary Contribution has not been paid by the Developer); and
- (b) the Developer proves to the Council's reasonable satisfaction that it is not breach of its obligations under this Agreement on the completion of the sale or the transfer.

8. Sections 7.11, 7.12 and 7.24 of the Act

8.1 Application of Sections 7.11, Section 7.12 and Section 7.24 of the Act

This Agreement does not exclude the application of sections 7.11, section 7.12 and section 7.24 of the Act from the Development.

9. Section 7.4 of the Act

9.1 Planning Agreement

Council and the Developer agree that this Agreement is made as a Planning Agreement pursuant to section 7.4 of the Act.

9.2 Offer by the Developer

It is acknowledged and agreed that this Agreement is in the terms generally of an offer made by the Developer in connection with the Modification Application.

9.3 No Fettering of Council's Powers

It is acknowledged and agreed that this Agreement does not fetter or restrict the power or discretion of Council to make any decision or impose any requirements or conditions in connection with the granting of any development consent or certification of any development consent or certification of any plans of subdivision applicable to the Development Land relating to any use or development of the Development Land.

10. Default

10.1 Notice of Default

The Developer will be in default under this Agreement if the Developer fails to comply with an obligation under this Agreement within 30 days after receiving a written request from the Council to rectify the default.

10.2 Costs on Default

The Developer must pay the Council's reasonable expenses including internal management costs and legal fees and disbursements in connection with any breach of a provision of this Agreement or default by the Developer.

10.3 Interest on Overdue Payments

10.3.1 Subject to clause 10.3.2, the Developer must pay interest on any money due to Council but not paid on the due date from the date payment was due at the Prescribed Rate.

10.3.2 For the avoidance of doubt, the Developer is not required to pay any interest under this clause 10.3 where clause 3.1.7 applies.

11. Dispute Resolution

11.1 If a dispute between Council and the Developer arises out of or in any way connected with this Agreement, except a dispute arising out of or in any way connected with a proposal by either Party to review or vary this Agreement, then either party may deliver by hand or send by certified mail to the other party a notice of dispute (**Notice of Dispute**) which must:

11.1.1 identify and provide adequate details of the dispute so as to enable the other party to fully understand the nature of the dispute; and

11.1.2 designate as a party's representative in negotiations a person with authority to settle the dispute.

11.2 Within 10 Business Days after a party receives a Notice of Dispute under this clause (**Recipient Party**) it must give a notice to the other party designating the Recipient Party's representative who will have authority to settle the dispute (**Designated Representative**).

11.3 The Designated Representatives will have 25 Business Days from the date of the Notice of Dispute within which to negotiate a resolution of the dispute.

11.4 The parties will ensure that the Designated Representatives use their best endeavours to settle the dispute by negotiation within 25 Business Days of receipt of Notice of Dispute by Recipient Party.

11.5 In the event that the Designated Representative cannot resolve the dispute within the 25 Business Days of referral, either party may give notice of particulars of such dispute to the other party and require that such dispute be resolved by an expert acceptable to both parties.

11.6 If the parties are unable to agree on an expert within 10 Business Days of the date of such notice of dispute, either party may require the President for time being of the Institute of Arbitrators and Mediators in Australia (New South Wales Chapter) nominate an appropriate

person or persons (having regard to the matters the subject of dispute) to determine the matters under dispute and the parties agree to accept as expert the person so nominated.

- 11.7 When an expert is agreed under clause 11.5 or nominated under clause 11.6 the parties must submit to the arbitration of the dispute in accordance with and subject to The Institute of Arbitrators & Mediators Australia Rules for the Conduct of Commercial Arbitrations.
- 11.8 The determination of an expert under this clause 11 shall not be final or binding upon the parties, unless agreed to in writing by the parties either prior to the appointment of the expert or after the determination of the expert is made.

12. GST

12.1 Definitions

In this clause:

- 12.1.1 words and expressions that are not defined in this Agreement but which have a defined meaning in the GST Law have the same meaning as in the GST Law;
- 12.1.2 **GST** means GST within the meaning of the GST Law and includes penalties and interest; and
- 12.1.3 **GST Law** has the meaning given to that term in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

12.2 GST exclusive

Except as otherwise provided in this Agreement, all consideration payable under this Agreement in relation to any supply is exclusive of GST.

12.3 Increase in consideration

If GST is payable in respect of any supply made by a supplier under this Agreement (**GST Amount**), the recipient must pay to the supplier an amount equal to the GST payable on the supply. Subject to clause 12.4, the recipient must pay the GST Amount at the same time and in the same manner as the consideration for the supply is to be provided under this Agreement in full and without deduction, set off, withholding or counterclaim (unless otherwise provided in this Agreement).

12.4 Tax invoice

The supplier must provide a tax invoice to the recipient before the supplier will be entitled to payment of the GST Amount under clause 12.3.

12.5 Reimbursements

If this Agreement requires a party to pay, reimburse or contribute to any expense, loss or outgoing suffered or incurred by another party, the amount which the first party must pay, reimburse or contribute is the sum of:

- 12.5.1 the amount of the payment, reimbursement or contribution, less any input tax credit in respect of the payment, reimbursement or contribution to which the other party is entitled; and
- 12.5.2 if the payment, reimbursement or contribution is subject to GST, an amount equal to that GST.

12.6 Adjustment events

If an adjustment event occurs in relation to a taxable supply under this Agreement:

- 12.6.1 the supplier must issue an adjustment note to the recipient within 7 days after becoming aware of the adjustment; and
- 12.6.2 any payment necessary to give effect to that adjustment must be made within 7 days after the date of receipt of the adjustment note.

13. Notices

13.1 Service of Notice

A notice or other communication required or permitted, under this Agreement to be served on a person must be in writing and may be served:

- 13.1.1 personally on the person;
- 13.1.2 by leaving it at the person's current address for service;
- 13.1.3 by posting it by prepaid post addressed to that person at the person's current address for service; or
- 13.1.4 by facsimile to the person's current number for service.

13.2 Particulars for Service

13.2.1 The particulars for service of Council are:

address: Lake Macquarie City Council
126-138 Main Road
Speers Point NSW 2284

Attention: Development Contributions Coordinator

facsimile number: (02) 4958 7257

13.2.2 The particulars for service of the Developer are:

address: Stockland Development Pty Ltd
133 Castlereagh Street
Sydney NSW 2000

Attention: Anthony Martin

facsimile number: (02) 8898 2979

13.2.3 Any party may change the address or facsimile number for service by giving notice to the other parties.

- 13.2.4 If the person to be served is a company, the notice or other communication may be served on it at the company's registered office.

13.3 Time of Service

A notice or other communication is deemed served:

- 13.3.1 if served personally or left at the person's address, upon service;
- 13.3.2 if posted within Australia to an Australian address, five Business Days after posting and in any other case, seven Business Days after posting;
- 13.3.3 if served by facsimile, subject to clause 13.3.4, at the time indicated on the transmission report produced by the sender's facsimile machine indicating that the facsimile was sent in its entirety to the addressee's facsimile;
- 13.3.4 if received after 6.00pm in the place of receipt or on a day which is not a Business Day, at 9.00am on the next Business Day.

14. Governing law

This Agreement is governed by the law applying in New South Wales and the parties submit to the non-exclusive jurisdiction of the courts of New South Wales.

15. Interpretation

15.1 Words and headings

In this Agreement, unless expressed to the contrary:

- 15.1.1 words denoting the singular include the plural and vice versa;
- 15.1.2 the word 'includes' in any form is not a word of limitation;
- 15.1.3 where a word or phrase is defined, another part of speech or grammatical form of that word or phrase has a corresponding meaning;
- 15.1.4 headings and sub-headings are for ease of reference only and do not affect the interpretation of this Agreement; and
- 15.1.5 no rule of construction applies to the disadvantage of the party preparing this Agreement on the basis that it prepared or put forward this Agreement or any part of it.

15.2 Specific references

In this Agreement, unless expressed to the contrary, a reference to:

- 15.2.1 a gender includes all other genders;
- 15.2.2 any legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced and includes any subordinate legislation issued under it;

- 15.2.3 any document (such as a deed, agreement or other document) is to that document (or, if required by the context, to a part of it) as amended, novated, substituted or supplemented at any time;
- 15.2.4 writing includes writing in digital form;
- 15.2.5 'this Agreement' is to this Agreement as amended from time to time;
- 15.2.6 'A\$', '\$', 'AUD' or 'dollars' is a reference to Australian dollars;
- 15.2.7 a clause, schedule or attachment is a reference to a clause, schedule or attachment in or to this Agreement;
- 15.2.8 any property or assets of a person includes the legal and beneficial interest of that person of those assets or property, whether as owner, lessee or lessor, licensee or licensor, trustee or beneficiary or otherwise;
- 15.2.9 a person includes a firm, partnership, joint venture, association, corporation or other body corporate;
- 15.2.10 a person includes the successors and permitted assigns of that person, and in the case of a trustee, includes any substituted or additional trustee; and
- 15.2.11 any body (**Original Body**) which no longer exists or has been reconstituted, renamed, replaced or whose powers or functions have been removed or transferred to another body or agency, is a reference to the body which most closely serves the purposes or objects of the Original Body.

16. General

16.1 Legal Costs and Expenses

Each party is responsible for its own legal costs and expenses in relation to the negotiation, preparation and execution of this Agreement and other documents referred to in it, unless expressly stated otherwise.

16.2 Stamp Duty

The Council must pay all stamp duty (including all fines and penalties except those arising from the default of another party) in relation to this Agreement and any document executed under it.

16.3 Variation

This Agreement may only be varied by a document executed by the parties.

16.4 Counterparts

This Agreement may be executed in counterparts, all of which taken together constitute one document.

16.5 Liability

If a party consists of 2 or more people or entities, an obligation of that party binds each of them jointly and severally.

16.6 Entire agreement and no reliance

16.6.1 This Agreement:

- (a) constitutes the entire agreement between the parties; and
- (b) supersedes and cancels any contract, deed, arrangement, warranty, indemnity or representation imposed, given or made by a party (or an agent of a party) prior to entering into this Agreement.

16.6.2 The Developer acknowledges that in entering into this Agreement it has not relied on any representations made by Council (or its agents or employees) other than matters expressly set out in this Agreement.

16.7 Severability

16.7.1 Any provision of this Agreement that is held to be illegal, invalid, void, voidable or unenforceable must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable.

16.7.2 If it is not possible to read down a provision as required by this clause, part or all of the clause of this Agreement that is unlawful or unenforceable will be severed from this Agreement and the remaining provisions continue in force.

16.8 Waiver

The failure of a party at any time to insist on performance of any provision of this Agreement is not a waiver of the party's right at any later time to insist on performance of that or any other provision of this Agreement.

16.9 Further assurance

Each party must promptly execute and deliver all documents and take all other action necessary or desirable to effect, perfect or complete the transactions contemplated by this Agreement.

16.10 Survival and enforcement of indemnities

16.10.1 Each indemnity in this Agreement is a continuing obligation, separate and independent from the other obligations of the parties and survives termination of this Agreement.

16.10.2 It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity conferred by this Agreement.

16.11 No merger

The warranties, undertakings, agreements and continuing obligations in this Agreement do not merge on completion of this Agreement.

16.12 Business Day

If a payment or other act is required by this Agreement to be made or done on a day which is not a Business Day, the payment or act must be made or done on the next following Business Day.

16.13 Explanatory note

The Explanatory Note is prepared in accordance with clause 25E of the Regulation but must not be used to assist in construing this Agreement.

Signing Page

Executed by the parties as an agreement

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



23 - 03 - 2020

Signature: *Morven Cameron*
Chief Executive Officer

Signature: *CR Kay Fraser*
Mayor

Name: MORVEN CAMERON
Please Print

Name: CR KAY FRASER
Please Print

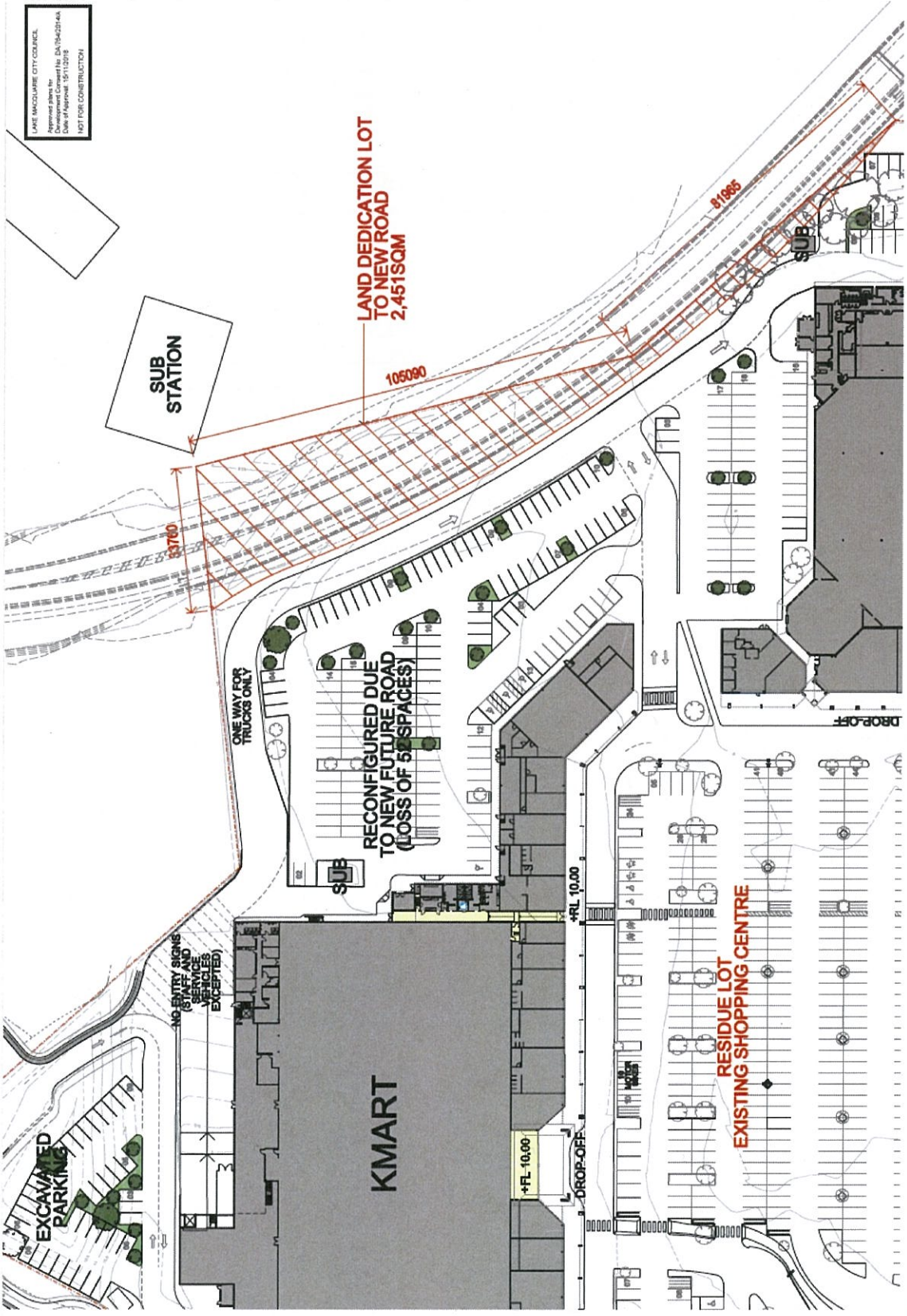
Executed by Stockland Development Pty Ltd (ACN 000 064 835) by its attorney pursuant to power of attorney registered Book No 742 4741 who states that no notice of revocation of the power of attorney has been received in the presence of:

Agata Ryan
Witness
AGATA RYAN
Full name

Yangmin Park
Attorney
Yangmin Park
Full name

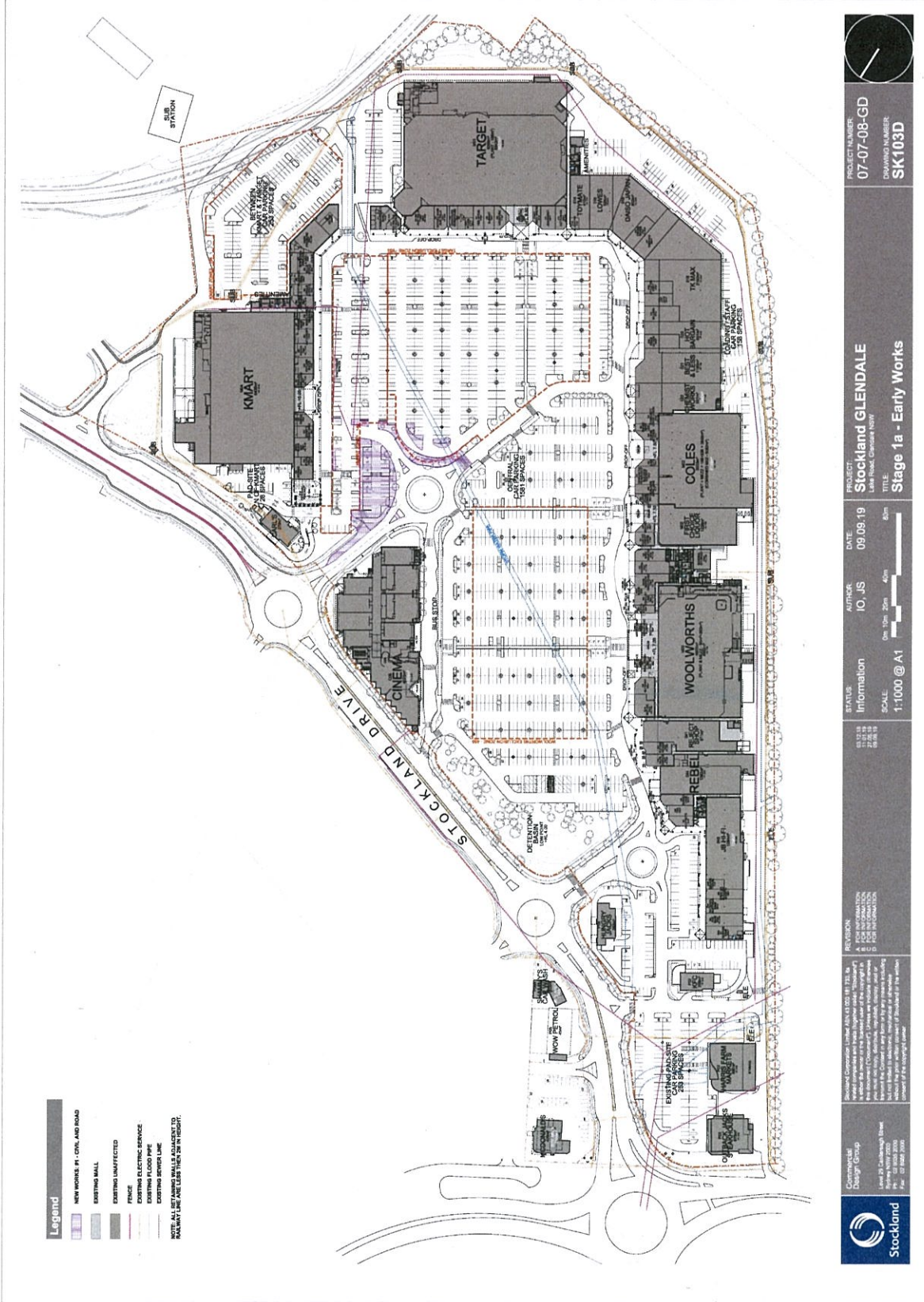
Schedule 1 Identification of Transfer Land

LAKE MACQUARIE CITY COUNCIL
 Approved Plans for
 Development Consent No. DA/156/2014-6A
 Date of Approval: 15/11/2015
 NOT FOR CONSTRUCTION



<p>Stockland Commercial Design Group Level 10, Cornerbank Street Sydney NSW 1510 Ph: 02 9550 2000 Fax: 02 9550 2000</p>	<p>PROPOSED: Section 98(2)</p>	<p>DATE: 02.11.18</p>	<p>PROJECT NUMBER: 07-07-08-GD</p>
	<p>SCALE: 1:400 @ A1</p>	<p>AUTHOR: IO.M.L.R.R</p>	<p>DRAWING NUMBER: DA3009-A</p>
<p>PROJECT: Stockland GLENDALE Lake Road, Glendale NSW</p>	<p>TITLE: Proposed Land Dedication Lot</p>		

Schedule 2 Early Works Plan



- Legend**
- NEW WORKS IN CIVIL AND ROAD
 - EXISTING MALL
 - EXISTING UNLIMITED
 - EXISTING ELECTRIC SERVICE
 - EXISTING WATER SERVICE
 - EXISTING SEWER LINE
 - NOTE: ALL SETBACKS SHALL BE ADJUSTED TO MAINTAIN A MINIMUM CLEARANCE OF 10 METRES.



PROJECT NUMBER: 07-07-08-GD
DRAWING NUMBER: SK103D

PROJECT: Stockland GLENDALE
Leura Road, Cherrilee NSW
TITLE: Stage 1a - Early Works

STATUS: Information
AUTHOR: IO, JS
DATE: 09.09.19
SCALE: 1:1000 @ A1
0m 20m 40m 80m

REVISION:
A FOR INFORMATION
B FOR INFORMATION
C FOR INFORMATION

Stockland Commercial Limited ABN 42 000 99 122, is a member of the Stockland Group of Companies. The Stockland Group of Companies includes Stockland Residential, Stockland Commercial, Stockland Infrastructure, Stockland Energy and Stockland Services. All members of the Stockland Group of Companies are subject to the same standards of conduct and are bound by the same code of ethics.

Commercial Design Group
10/12 Leura Road, Cherrilee NSW
Phone: 02 9600 0000
Fax: 02 9600 0000

Schedule 3 Requirements under the Act and Regulation

The below table summarises how this Agreement complies with the Act and Regulation.

Item	Section of Act or Regulation	Provision/clause of this Agreement
1.	<p>Planning instrument and/or development application (section 7.4(1) of the Act)</p> <p>The Developer has:</p> <p>(a) sought a change to an environmental planning instrument;</p> <p>(b) made, or proposes to make, a Development Application; or</p> <p>(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.</p>	<p>(a) No</p> <p>(b) Yes – a Modification Application</p> <p>(c) No</p>
2.	<p>Description of land to which this Agreement applies (section 7.4(3)(a) of the Act)</p>	Refer to the definition of “Development Land”.
3.	<p>Description of change to the environmental planning instrument to which this Agreement applies and/or the development to which this Agreement applies (section 7.4(3)(b) of the Act)</p>	The development to which this Agreement applies is the Development, as modified by the Modification Consent.
4.	<p>The scope, timing and manner of delivery of public benefits required by this Agreement (section 7.4(3)(c) of the Act)</p>	Clause 3.
5.	<p>Applicability of sections 7.11 and 7.12 of the Act (section 7.4(3)(d) of the Act)</p>	The application of sections 7.11 and 7.12 of the Act are not excluded in respect of the Development.
6.	<p>Applicability of section 7.24 of the Act (section 7.4(3)(d) of the Act)</p>	The application of section 7.24 of the Act is not excluded in respect of the Development.
7.	<p>Consideration of benefits under this Agreement if section 7.11 applies (section 7.4(3)(e) of the Act)</p>	The public benefits are not to be taken into consideration in determining a development contribution under section 7.11 of the Act.
8.	<p>Mechanism for Dispute Resolution (section 7.4(3)(f) of the Act)</p>	Clause 11.
9.	<p>Enforcement of this Agreement (section 7.4(3)(g) of the Act)</p>	Clause 4.
10.	<p>No obligation to grant consent or exercise functions (section 7.4(9) of the Act)</p>	Clause 9.3.

Item	Section of Act or Regulation	Provision/clause of this Agreement
11.	Registration of this Agreement (section 7.6 of the Act)	Clause 6.
12.	Whether certain requirements of this Agreement must be complied with before a construction certificate is issued (clause 25E(2)(g) of the Regulation)	Clause 3.1.
13.	Whether certain requirements of this Agreement must be complied with before a subdivision certificate is issued (clause 25E(2)(g) of the Regulation)	Clause 3.4.2.
14.	Whether certain requirements of this Agreement must be complied with before an occupation certificate is issued (clause 25E(2)(g) of the Regulation)	None.
15.	Whether the explanatory note that accompanied exhibition of this Agreement may be used to assist in construing this Agreement (clause 25E(7) of the Regulation)	Clause 16.13.

Schedule 4 Explanatory Note

Explanatory Note

Clause 25E of the Environmental Planning and Assessment Regulation 2000

Summary

The purpose of this Explanatory Note is to provide a plain English summary to support the notification of the proposed planning agreement (**Planning Agreement**) under section 7.4 of the *Environmental Planning and Assessment Act 1979 (EP&A Act)*.

This Explanatory Note has been prepared jointly by the parties as required by clause 25E of the *Environmental Planning and Assessment Regulation 2000 (EP&A Regulation)*.

This Explanatory Note is not to be used to assist in construing the Planning Agreement.

Parties

The parties to the proposed Planning Agreement are:

Lake Macquarie City Council (ABN 81 065 027 868) (**Council**); and

Stockland Development Pty Ltd (ACN 000 064 835) (**Developer**).

Land

The Planning Agreement applies to land known as the Stockland Glendale Shopping Centre, at 10 Stockland Drive, Glendale being Lot 1 in DP860494 (Land).

Development to which the Planning Agreement Applies

The Developer has obtained approval to a Modification Application (**Modification Consent**) for the shopping centre development consent (DA764/2014) on the Land (**Development**).

Summary of Objectives, Nature and Effect of the Planning Agreement

The Developer has offered to make the following Development Contributions in connection with the Modification Application:

- (a) **Monetary Contributions:** The Developer is to pay to the Council \$1,005,900 (increased by CPI from January 2015) towards the construction of road works by the Council associated with Section 1 of Stage 1 of the Lake Macquarie Transport Interchange and Stockland Drive. The calculation of the total contribution includes an offset of \$913,500 for the reconfiguration of the carpark within the Development as a consequence of the Land Transfer (see (b) below). The Monetary Contribution also satisfies Stockland's contribution under condition 8 of DA4413/2004 which applies to the Land; and
- (b) **Land Transfer:** The Developer will transfer land to the Council for the purpose of road widening associated with Section 2 of Stage 1 of the Lake Macquarie Transport Interchange (**Transfer Land**). The value of the Transfer Land agreed between the parties is \$1,299,030.

Sections 7.11, 7.12 and 7.24 of the EP&A Act are **not excluded** as they apply to the Development.

Security is to be provided for the delivery of the Development Contributions as follows:

- (a) a bank guarantee for the Monetary Contributions;
- (b) the VPA includes an agreement under section 30 of the *Land Acquisition (Just Terms Compensation) Act 1991* for the Council to acquire the Transfer Land for \$1.00, in the

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event the Developer fails to dedicate the Transfer Land in accordance with the terms of the Agreement.

The Planning Agreement is not to be registered on the Land.

Merits of Proposed Planning Agreement

1. How the proposed Planning Agreement promotes the public interest and objects of the EP&A Act

The Planning Agreement promotes the public interest by:

- securing the payment of Monetary Contributions to the Council in the amount of \$1,005,900 (subject to CPI increase) as a contribution to the construction of Section 1 of Stage 1 of the LMTI Works and Stockland Drive; and
- securing the provision of land to the Council for road widening as part of Section 2 of Stage 1 of the LMTI Works.

The Planning Agreement promotes the following objects of section 1.3 of the EP&A Act:

- (ii) to promote the orderly and economic use and development of land

2. How the proposed Planning Agreement promotes the guiding principles for councils under section 8A of the Local Government Act 1993

The Planning Agreement promotes the following guiding principles for councils set out section 8A of the *Local Government Act 1993*:

- Councils should carry out functions in a way that provides the best possible value for residents and ratepayers;
- Councils should plan strategically, using the integrated planning and reporting framework, for the provision of effective and efficient services and regulation to meet the diverse needs of the local community;
- Councils should apply the integrated planning and reporting framework in carrying out their functions so as to achieve desired outcomes and continuous improvements;
- Councils should manage lands and other assets so that current and future local community needs can be met in an affordable way; and
- Councils should work with others to secure appropriate services for local community needs.

3. Planning purpose served by the proposed Planning Agreement

The Monetary Contributions and Land Dedication facilitated under the Planning Agreement will be used to achieve a positive outcome for the local community as part of the LMTI works.

The Planning Agreement is a reasonable means for achieving the planning purpose as it provides a timeframe for the payment of the monetary contribution and land dedication to be made to Council.

4. Whether the proposed Planning Agreement conforms with Council's Capital Works Program

Council will need to consider the relevant Capital Works Program when seeking to secure funding for Section 2 of Stage 1 of the Lake Macquarie Transport Interchange Council. The monetary contribution to be made to Council relates to works already undertaken.

5. Requirements of proposed Planning Agreement to be complied with before Construction Certificate, Occupation Certificate or Subdivision Certificate issued

The Developer must pay the Monetary Contributions prior to the issue of the first Construction Certificate for any works subject of the Development Consent as modified (except where Council fails to provide a tax invoice within the relevant period of time).