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Deed

30 Jarvis Street Thirlmere

Planning Agreement

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

Wollondilly Shire Council

Miacro Group Pty Ltd

Date: 28 August 2020

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30 Jarvis Street Thirlmere Planning Agreement

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30 Jarvis Street Thirlmere Planning Agreement

Summary Sheet

Council:

Name: Wollondilly Shire Council

Address: 62-64 Menangle Street Picton NSW 2571

Telephone: 02 4677 1100

Facsimile: 02 4677 2339

Email: council@wollondilly.nsw.gov.au

Representative: Ron Dowd

Developer :

Name: Miacro Group Pty Ltd

Address: Level 1 354 Bay Street Brighton-Le-Sands NSW 2216

Telephone: 0415 440 227

Email: david@miacro.com.au

Representative: Costa Meitanis

Land:

See definition of *Land* in clause 1.1.

Development:

See definition of *Development* in clause 1.1.

Development Contributions:

See Clause 9 and Schedule 1.

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

See clause 8.



Security:

See Part 4.

Registration:

See clause 29.

Restriction on dealings:

See clause 30.

Dispute Resolution:

See Part 3.

30 Jarvis Street Thirlmere NSW

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

Parties

Wollondilly Shire Council ABN 93 723 245 808 of 62-64 Menangle Street Picton NSW 2571 (**Council**)

and

Miacro Group Pty Ltd ABN 45 161 500 554 of Level 1, 354 Bay Street Brighton-Le-Sands NSW 2216 (**Developer**).

Background

- A The Developer is the owner of the land known as 30 Jarvis Street Thirlmere NSW 2572 ('**Land**').
- B The Developer lodged a Development Application DA10.2015.00000543.001 for a 25 lot residential subdivision, demolition, road & associated Works in 3 Stages on the Land ('**Development**').
- C By letter of offer dated 4 July 2018, the Developer has offered to enter into a planning agreement with Council for the provision of the Development Contributions in connection with the Development.
- D The Council granted Development Consent for the Development on 18 July 2018 subject to a condition requiring the Developer to enter into this Deed.

Operative provisions

Part 1 - Preliminary

1 Interpretation

1.1 In this Deed the following definitions apply:

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

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

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



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

- (a) one of the following trading banks:
 - (i) Australia and New Zealand Banking Group Limited,
 - (ii) Commonwealth Bank of Australia,
 - (iii) Macquarie Bank Limited,
 - (iv) National Australia Bank Limited,
 - (iv) St George Bank Limited,
 - (v) Westpac Banking Corporation, or
- (b) any other financial institution approved by the Council in its absolute discretion.

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

Concept Stormwater Drainage Plan means the plan titled '*Concept Stormwater Drainage Plan*' Project No. 17000039 Sub-project No. P01 Drawing No. STW01 Revision 01, prepared by SEEC dated 8 November 2017, a copy of which is in Schedule 3, as approved by Development Consent.

Construction Certificate has the same meaning as in the Act.

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

CPI means the consumer price index (All Groups) for Sydney published by the Australian Bureau of Statistics.

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

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

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

Development means the development described in Development Application DA10.2015.00000543.001 for a 25 lot residential subdivision, demolition, road & associated works in 3 Stages on the Land for which Development Consent was granted by the Council on 18 July 2018.

Development Application has the same meaning as in the Act.

Development Consent has the same meaning as in the Act.

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

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



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

Final Lot means a lot created in the Development for separate residential occupation and disposition or a lot of a kind or created for a purpose that is otherwise agreed by the Parties, not being a lot created by a subdivision of the Land:

- (a) that is to be dedicated or otherwise transferred to the Council, or
- (b) on which is situated a dwelling-house that was in existence on the date of this Deed.

GST has the same meaning as in the GST Law.

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

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

Land means land comprised in Lot 139 DP 751270, otherwise known as 30 Jarvis Street, Thirlmere and any lot created by subdivision of that lot.

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

Maintenance Period in respect of a Stage of Water Quality Works means the period of 1 year commencing on:

- (a) if the Stage of Water Quality Work is wholly on Council owned land, the day immediately after the Stage of Water Quality Works is completed for the purposes of this Deed, or
- (b) if any land on which the Stage of Water Quality Works is located is required to be dedicated to the Council, the day immediately after the land is dedicated to the Council.

Maintenance Obligations means maintenance and repair of the Water Quality Works in accordance with Schedule 2 and any other reasonable requirements notified by the Council to the Developer from time to time.

Party means a party to this Deed.

Rectification Notice means a notice in writing:

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

Rectify means rectify, remedy or correct.

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

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



Stage of Development means a stage of the Development approved by a Development Consent or otherwise approved in writing by the Council for the purposes of this Deed.

Stage of Water Quality Work means a part of the Water Quality Works that immediately adjoins a Stage of Development.

Subdivision Certificate has the same meaning as in the Act.

SWQM Report means the document titled '*Concept Stormwater and Water Quality Management Report*' prepared by SEEC dated 14 June 2017.

Water Quality Works means the 2 below-ground on-site detention basins and bio retention swales as described in the SWQM Report in the location shown on the Concept Stormwater Drainage Plan, as approved by a Development Consent.

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

- 1.2 In the interpretation of this Deed, the following provisions apply unless the context otherwise requires:
- 1.2.1 Headings are inserted for convenience only and do not affect the interpretation of this Deed.
 - 1.2.2 A reference in this Deed to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
 - 1.2.3 If the day on which any act, matter or thing is to be done under this Deed is not a business day, the act, matter or thing must be done on the next business day.
 - 1.2.4 A reference in this Deed to dollars or \$ means Australian dollars and all amounts payable under this Deed are payable in Australian dollars.
 - 1.2.5 A reference in this Deed to a \$ value relating to a Development Contribution is a reference to the value exclusive of GST.
 - 1.2.6 A reference in this Deed to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
 - 1.2.7 A reference in this Deed to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
 - 1.2.8 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Deed.
 - 1.2.9 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
 - 1.2.10 Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
 - 1.2.11 A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.

- 1.2.12 References to the word 'include' or 'including' are to be construed without limitation.
- 1.2.13 A reference to this Deed includes the agreement recorded in this Deed.
- 1.2.14 A reference to a Party to this Deed includes a reference to the servants, agents and contractors of the Party, the Party's successors and assigns.
- 1.2.15 A reference to 'dedicate' or 'dedication' in relation to land is a reference to dedicate or dedication free of cost.
- 1.2.16 Any schedules, appendices and attachments form part of this Deed.
- 1.2.17 Notes appearing in this Deed are operative provisions of this Deed.

2 Status of this Deed

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

3 Commencement and termination

- 3.1 This Deed commences and has force and effect on and from the date when the Parties have:
 - 3.1.1 both executed the same copy of this Deed, or
 - 3.1.2 each executed separate counterparts of this Deed and exchanged the counterparts.
- 3.2 The Parties are to insert the date when this Deed commences on the front page and on the execution page.
- 3.3 This Deed terminates on the later of:
 - 3.3.1 the fifth anniversary of the date of registration of the first plan of subdivision which creates a Final Lot in the Development, or
 - 3.3.2 the date on which the Developer has completed all obligations under this Deed.

4 Application of this Deed

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

5 Warranties

- 5.1 The Parties warrant to each other that they:
 - 5.1.1 have full capacity to enter into this Deed,
 - 5.1.2 are not entering into this Deed in the capacity as a trustee;
 - 5.1.3 are able to fully comply with their obligations under this Deed.
- 5.2 The Developer warrants that the:

- 5.2.1 Water Quality Works carried out by the Developer will be fit for purpose, comply with the Development Consent and any Construction Certificate for the Development and otherwise constructed to the design, standards and specification approved by Council, and
- 5.2.2 the Maintenance Obligations carried out by the Developer will be fit for purpose.

6 Further agreements

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

7 Surrender of right of appeal, etc.

- 7.1 The Developer is not to commence or maintain, or to cause or procure the commencement or maintenance, of any proceedings in any court or tribunal or similar body appealing against, or questioning the validity of this Deed, or an Approval relating to the Development in so far as the subject-matter of the proceedings relates to the requirement to enter into or comply with this Deed.
- 7.2 For the avoidance of doubt, clause 7.1 does not apply to any proceedings in respect of any condition of Development Consent for the Development other than those relating to the requirement to enter into or comply with this Deed.

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

- 8.1 This Deed does not exclude the application of s7.11, s7.12 or s7.12 of the Act to the Development.
- 8.2 Any benefits under this Deed are not to be taken into consideration when determining a development contribution under s7.11 of the Act in relation to the Development.

Part 2 – Development Contributions

9 Provision of Development Contributions

- 9.1 The Developer is to make Development Contributions to the Council in accordance with Schedule 1, any other provision of this Deed relating to the making of Development Contributions and otherwise to the satisfaction of the Council.
- 9.2 The Council is to apply each Development Contribution made by the Developer under this Deed towards the public purpose for which it is made and otherwise in accordance with this Deed.

- 9.3 Despite clause 9.2, the Council may apply a monetary Development Contribution made under this Deed towards a public purpose other than the public purpose specified in this Deed if the Council reasonably considers that the public interest would be better served by applying the Development Contribution towards that other purpose rather than the purpose so specified.

10 Payment of monetary Development Contributions

- 10.1 A monetary Development Contribution is made for the purposes of this Deed when the Council receives the full amount of the contribution payable under this Deed in cash or by unendorsed bank cheque or by the deposit by means of electronic funds transfer of cleared funds into a bank account nominated by the Council.
- 10.2 A monetary Development Contribution required to be paid under this Deed is to be indexed in accordance with the CPI from the date of this Deed until the date of payment.

11 Dedication of land

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

out a Work under this Deed, the Developer is to comply with clause 11.1.2 not later than 7 days after the Work is completed for the purposes of this Deed.

12 Design of Water Quality Works

- 12.1 The Developer is to prepare a detailed design of the Water Quality Works which includes all such information as is required for the making of an application for a Construction Certificate for those works.
- 12.2 The Developer is not to make an application for a Construction Certificate for the Water Quality Works unless:
 - 12.2.1 the Developer has provided the detailed design of those works to Council for the Council's approval, and
 - 12.2.2 the application is in accordance with the detailed design approved by the Council.

13 Carrying out of Work

- 13.1 Without limiting any other provision of this Deed, any Work that is required to be carried out by the Developer under this Deed is to be carried out in accordance with any design or specification specified or approved by the Council, the Development Consent for the Development, any other relevant Approval and any other applicable law.
- 13.2 The Developer, at its own cost, is to comply with any reasonable direction given to it by the Council to prepare or modify a design or specification relating to a Work that the Developer is required to carry out under this Deed, provided the Council has first consulted the Developer in relation to the modification.
- 13.3 The Developer is to comply with all work, health and safety requirements as required by law.

14 Variation to Work

- 14.1 The design or specification of any Work that is required to be carried out by the Developer under this Deed may be varied by agreement in writing between the Parties, acting reasonably, without the necessity for an amendment to this Deed.
- 14.2 Without limiting clause 14.1, the Developer may make a written request to the Council to approve a variation to the design or specification of a Work in order to enable it to comply with the requirements of any Authority imposed in connection with any Approval relating to the carrying out of the Work.
- 14.3 The Council is not to unreasonably delay or withhold its approval to a request made by the Developer under clause 14.2.
- 14.4 The Council may from time to time, and after it has first consulted with the Developer, give a written direction to the Developer requiring it to vary the design or specification of a Work before the Work is carried out in a specified manner and submit the variation to the Council for approval.

- 14.5 The Developer is to comply promptly with a direction referred to in clause 14.4 at its own cost.

15 Access to land by Developer

- 15.1 Subject to the Developer obtaining any necessary Approvals, the Council is to permit the Developer, upon receiving reasonable prior notice from the Developer, to enter any Council owned or controlled land shown on the Concept Stormwater Drainage Plan in order to enable the Developer to properly perform its obligations under this Deed.
- 15.2 Nothing in this Deed creates or gives the Developer any estate or interest in any part of the land referred to in clause 15.1.

16 Access to land by Council

- 16.1 The Council may enter any land on which Work is being carried out by the Developer under this Deed in order to audit, inspect, examine or test the Work, or to remedy any breach by the Developer of its obligations under this Deed relating to the Work.
- 16.2 The Council is to give the Developer not less than 48 hours prior notice before it enters land under clause 15.1 except in case of emergency in which case no prior notice is required.

17 Protection of people, property & utilities

- 17.1 The Developer is to ensure to the fullest extent reasonably practicable in relation to the performance of its obligations under this Deed that:
- 17.1.1 all necessary measures are taken to protect people and property,
 - 17.1.2 unnecessary interference with the passage of people and vehicles is avoided, and
 - 17.1.3 nuisances and unreasonable noise and disturbances are prevented.
- 17.2 Without limiting clause 17.1, the Developer is not to obstruct, interfere with, impair or damage any public road, public footpath, public cycleway or other public thoroughfare, or any pipe, conduit, drain, watercourse or other public utility or service on any land except as authorised in writing by the Council or any relevant Authority.

18 Maintenance and Repair of damage prior to completion

- 18.1 The Developer is to Maintain any Work required to be carried out by the Developer under this Deed until the Work is completed for the purposes of this Deed or such later time as agreed between the Parties.
- 18.2 The Developer is to carry out its obligation under clause 18.1 at its own cost and to the satisfaction of the Council.

19 Completion of Work

- 19.1 The Developer is to give the Council written notice of the date on which it will complete Work required to be carried out under this Deed or any Stage of Development.
- 19.2 The Council is to inspect the Work the subject of the notice referred to in clause 19.1 within 14 days of the date specified in the notice for completion of the Work.
- 19.3 Work required to be carried out by the Developer under this Deed, or a Stage of Development, is completed for the purposes of this Deed when the Council, acting reasonably, gives a written notice to the Developer to the effect that the work has been carried out and completed in accordance with this Deed, any relevant Development Consent, any relevant Australian Standards and otherwise to the Council's satisfaction.
- 19.4 If the Council is the owner of the land on which Work the subject of a notice referred to in clause 19.3 is issued, the Council assumes responsibility for the Work upon the issuing of the notice, but if it is not the owner at that time, it assumes that responsibility when it later becomes the owner.
- 19.5 Before the Council gives the Developer a notice referred to in clause 19.3, it may give the Developer a written direction to complete, rectify or repair any specified part of the Work to the reasonable satisfaction of the Council.
- 19.6 The Developer, at its own cost, is to promptly comply with a direction referred to in clause 19.5.

20 Rectification of defects

- 20.1 The Council may give the Developer a Rectification Notice during the Defects Liability Period.
- 20.2 The Developer, at its own cost, is to comply with a Rectification Notice according to its terms and to the reasonable satisfaction of the Council.
- 20.3 The Council is to do such things as are reasonably necessary to enable the Developer to comply with a Rectification Notice that has been given to it under clause 20.1.

21 Works-As-Executed-Plan

- 21.1 No later than 60 days after Work is completed for the purposes of this Deed, the Developer is to submit to the Council a full works-as-executed-plan in respect of the Work.
- 21.2 The Developer, being the copyright owner in the plan referred to in clause 21.1, gives the Council a non-exclusive licence to use the copyright in the plans for the purposes of this Deed.

22 Removal of Equipment

- 22.1 When Work on any Council owned or controlled land is completed for the purposes of this Deed, the Developer, without delay, is to:

- 22.1.1 remove any Equipment from Land and make good any damage or disturbance to the land as a result of that removal, and
- 22.1.2 leave the land in a neat and tidy state, clean and free of rubbish.

Part 3 – Dispute Resolution

23 Dispute resolution – expert determination

- 23.1 This clause applies to a Dispute between any of the Parties to this Deed concerning a matter arising in connection with this Deed that can be determined by an appropriately qualified expert if:
 - 23.1.1 the Parties to the Dispute agree that it can be so determined, or
 - 23.1.2 the Chief Executive Officer of the professional body that represents persons who appear to have the relevant expertise to determine the Dispute gives a written opinion that the Dispute can be determined by a member of that body.
- 23.2 A Dispute to which this clause applies is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 23.3 If a notice is given under clause 23.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 23.4 If the Dispute is not resolved within a further 28 days, the Dispute is to be referred to the President of the NSW Law Society to appoint an expert for expert determination.
- 23.5 The expert determination is binding on the Parties except in the case of fraud or misfeasance by the expert.
- 23.6 Each Party is to bear its own costs arising from or in connection with the appointment of the expert and the expert determination.
- 23.7 The Parties are to share equally the costs of the President, the expert, and the expert determination.

24 Dispute Resolution - mediation

- 24.1 This clause applies to any Dispute arising in connection with this Deed other than a Dispute to which clause 23 applies.
- 24.2 Such a Dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 24.3 If a notice is given under clause 24.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 24.4 If the Dispute is not resolved within a further 28 days, the Parties are to mediate the Dispute in accordance with the Mediation Rules of the Law Society of New South Wales published from time to time and are to request the President of the Law Society to select a mediator.
- 24.5 If the Dispute is not resolved by mediation within a further 28 days, or such longer period as may be necessary to allow any mediation process which has



been commenced to be completed, then the Parties may exercise their legal rights in relation to the Dispute, including by the commencement of legal proceedings in a court of competent jurisdiction in New South Wales.

- 24.6 Each Party is to bear its own costs arising from or in connection with the appointment of a mediator and the mediation.
- 24.7 The Parties are to share equally the costs of the President, the mediator, and the mediation.

Part 4 - Enforcement

25 Security for performance of obligations

- 25.1 The Developer is to provide Security to the Council in the amount of \$6,000.00 in relation to the performance of the Maintenance Obligations under this Deed.
- 25.2 The Developer is to provide the Security to the Council before the issuing of the first Construction Certificate for the Development and before the issuing of the Subdivision Certificates for the Development.
- 25.3 The Council, in its absolute discretion and despite clause 15, may refuse to allow the Developer to enter, occupy or use any land owned or controlled by the Council or refuse to provide the Developer with any plant, equipment, facilities or assistance relating to the carrying out the Development if the Developer has not provided the Security to the Council in accordance with this Deed.
- 25.4 The Council may call-up and apply the Security in accordance with clause 27 to remedy any breach of this Deed notwithstanding any other remedy it may have under this Deed, under any Act or otherwise at law or in equity.
- 25.5 The Council is to release and return the Security or any unused part of it to the Developer within 14 days of completion of the obligation to which the Security relates.
- 25.6 The Developer may at any time provide the Council with a replacement Security.
- 25.7 On receipt of a replacement Security, the Council is to release and return the Security that has been replaced to the Developer.
- 25.8 If the Council calls-up the Security or any portion of it, it may, by written notice to the Developer, require the Developer to provide a further or replacement Security to ensure that the amount of Security held by the Council equals the amount it is entitled to hold under this Deed.
- 25.9 The Developer is to ensure that the Security provided to the Council is at all times maintained to the full current indexed value.

26 Acquisition of land required to be dedicated

- 26.1 If the Developer does not dedicate land required to be dedicated under this Deed at the time at which it is required to be dedicated, the Developer



consents to the Council compulsorily acquiring the land for compensation in the amount of \$1 without having to follow the pre-acquisition procedure under the Just Terms Act.

- 26.2 Clause 26.1 constitutes an agreement for the purposes of s30 of the Just Terms Act.
- 26.3 If, as a result of the acquisition referred to in clause 26.1, the Council is required to pay compensation to any person other than the Developer, the Developer is to reimburse the Council that amount, upon a written request being made by the Council, or the Council can call on any Security provided under clause 25.
- 26.4 The Developer indemnifies and keeps indemnified the Council against all Claims made against the Council as a result of any acquisition by the Council of the whole or any part of the land concerned except if, and to the extent that, the Claim arises because of the Council's negligence or default.
- 26.5 The Developer is to promptly do all things necessary, and consents to the Council doing all things necessary, to give effect to this clause 26, including without limitation:
 - 26.5.1 signing any documents or forms,
 - 26.5.2 giving land owner's consent for lodgement of any Development Application,
 - 26.5.3 producing certificates of title to the Registrar-General under the *Real Property Act 1900*, and
 - 26.5.4 paying the Council's costs arising under this clause 26.

27 Breach of obligations

- 27.1 If the Council reasonably considers that the Developer is in breach of any obligation under this Deed, it may give a written notice to the Developer:
 - 27.1.1 specifying the nature and extent of the breach,
 - 27.1.2 requiring the Developer to:
 - (a) rectify the breach if it reasonably considers it is capable of rectification, or
 - (b) pay compensation to the reasonable satisfaction of the Council in lieu of rectifying the breach if it reasonably considers the breach is not capable of rectification,
 - 27.1.3 specifying the period within which the breach is to be rectified or compensation paid, being a period that is reasonable in the circumstances.
- 27.2 If the Developer fails to fully comply with a notice referred to in clause 27.1, the Council may, without further notice to the Developer, call-up the Security provided by the Developer under this Deed and apply it to remedy the Developer's breach.
- 27.3 If the Developer fails to comply with a notice given under clause 27.1 relating to the carrying out of Work under this Deed, the Council may step-in and remedy the breach and may enter, occupy and use any land owned or controlled by the Developer and any Equipment on such land for that purpose.



- 27.4 Any costs incurred by the Council in remedying a breach in accordance with clause 27.2 or clause 27.3 may be recovered by the Council by either or a combination of the following means:
- 27.4.1 by calling-up and applying the Security provided by the Developer under this Deed, or
- 27.4.2 as a debt due in a court of competent jurisdiction.
- 27.5 For the purpose of clause 27.4, the Council's costs of remedying a breach the subject of a notice given under clause 27.1 include, but are not limited to:
- 27.5.1 the costs of the Council's servants, agents and contractors reasonably incurred for that purpose,
- 27.5.2 all fees and charges necessarily or reasonably incurred by the Council in remedying the breach, and
- 27.5.3 all legal costs and expenses reasonably incurred by the Council, by reason of the breach.
- 27.6 Nothing in this clause 27 prevents the Council from exercising any rights it may have at law or in equity in relation to a breach of this Deed by the Developer, including but not limited to seeking relief in an appropriate court.

28 Enforcement in a court of competent jurisdiction

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

Part 5 – Registration & Restriction on Dealings

29 Registration of this Deed

- 29.1 The Parties agree to register this Deed for the purposes of s7.6(1) of the Act at no cost to the Council.
- 29.2 Upon commencement of this Deed, the Developer is to deliver to the Council:
- 29.2.1 an instrument in registrable form requesting registration of this Deed on the title to the Land duly executed by the Developer and any other person (other than the Council) required by the Registrar-General to execute such an instrument, and
- 29.2.2 the written irrevocable consent of each person referred to in s7.6(1) of the Act to that registration.



- 29.3 The Developer is to do such other things as are reasonably necessary to enable registration of this Deed to occur including, without limitation lodging the registrable instrument and consents for registration at the Land Registry Services within 7 days of receiving the registrable instrument as executed by the Council.
- 29.4 The Parties are to do such things as are reasonably necessary to remove any notation relating to this Deed from the title to a Final Lot, once the Developer has completed its obligations under this Deed in respect of the Final Lot to the reasonable satisfaction of the Council or this Deed is terminated or otherwise comes to an end for any other reason.

30 Restriction on dealings

- 30.1 The Developer is not to:
- 30.1.1 sell or transfer the Land, or
 - 30.1.2 assign the Developer's rights or obligations under this Deed, or novate this Deed;
- to any person unless:
- 30.1.3 the Developer has, at no cost to the Council, first procured the execution by the person to whom the Land or part is to be sold or transferred or the Developer's rights or obligations under this Deed are to be assigned or novated, of a deed in favour of the Council on terms reasonably satisfactory to the Council, and
 - 30.1.4 the Council has given written notice to the Developer stating that it reasonably considers that the purchaser, transferee, assignee or novatee is reasonably capable of performing its obligations under this Deed, and
 - 30.1.5 the Developer is not in breach of this Deed, and
 - 30.1.6 the Council otherwise consents to the transfer, assignment or novation, such consent not to be unreasonably withheld.
- 30.2 Subject to clause 30.3, the Developer acknowledges and agrees that the Developer remains liable to fully perform the Developer's obligations under this Deed unless and until the Developer has complied with the Developer's obligations under clause 30.1.
- 30.3 Clause 30.1 does not apply in relation to any sale or transfer of the Land if this Deed is registered on the title to the Land at the time of the sale.

Part 6 – Indemnities & Insurance

31 Risk

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



32 Release

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

33 Indemnity

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

34 Insurance

- 34.1 The Developer is to, or is to procure its contractor to, take out and keep current to the satisfaction of the Council the following insurances in relation to Work required to be carried out by the Developer under this Deed up until the Work is taken to have been completed in accordance with this Deed:
- 34.1.1 contract works insurance, noting the Council as an interested party, for the full replacement value of the Works (including the cost of demolition and removal of debris, consultants' fees and authorities' fees), to cover the Developer's liability in respect of damage to or destruction of the Works,
 - 34.1.2 public liability insurance for at least \$20,000,000.00 for a single occurrence, which covers the Council, the Developer and any subcontractor of the Developer, for liability to any third party,
 - 34.1.3 workers compensation insurance as required by law, and
 - 34.1.4 any other insurance required by law.
- 34.2 If the Developer fails to comply with clause 34.1, the Council may effect and keep in force such insurances and pay such premiums as may be necessary for that purpose and the amount so paid shall be a debt due from the Developer to the Council and may be recovered by the Council as it deems appropriate including:
- 34.2.1 by calling upon the Security provided by the Developer to the Council under this Deed, or
 - 34.2.2 recovery as a debt due in a court of competent jurisdiction.
- 34.3 The Developer is not to commence to carry out any Work unless it has first provided to the Council satisfactory written evidence of all of the insurances specified in clause 34.1.

Part 7 – Other Provisions

35 Annual report by Developer

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

36 Review of Deed

- 36.1 The Parties agree to review this Deed every year, and otherwise if either party is of the opinion that any change of circumstance has occurred, or is imminent, that materially affects the operation of this Deed.
- 36.2 For the purposes of clause 36.1, the relevant changes include (but are not limited to) any change to a law that restricts or prohibits or enables the Council or any other planning authority to restrict or prohibit any aspect of the Development.
- 36.3 For the purposes of addressing any matter arising from a review of this Deed referred to in clause 36.1, the Parties are to use all reasonable endeavours to agree on and implement appropriate amendments to this Deed.
- 36.4 If this Deed becomes illegal, unenforceable or invalid as a result of any change to a law, the Parties agree to do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Deed is entered into.
- 36.5 A failure by a Party to agree to take action requested by the other Party as a consequence of a review referred to in clause 36.1 (but not 36.4) is not a Dispute for the purposes of this Deed and is not a breach of this Deed.

37 Notices

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



- 37.3.1 delivered, when it is left at the relevant address,
 - 37.3.2 sent by post, 2 business days after it is posted,
 - 37.3.3 sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number, or
 - 37.3.4 sent by email and the sender does not receive a delivery failure message from the sender's internet service provider within a period of 24 hours of the email being sent.
- 37.4 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, or if on a business day, after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

38 Approvals and Consent

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

39 Costs

- 39.1 The Developer is to pay to the Council the Council's costs not exceeding \$20,000.00 (incl. GST) of preparing, negotiating, executing and stamping this Deed, and any document related to this Deed within 7 days of a written demand by the Council for such payment.
- 39.2 The Developer is to pay to the Council the Council's costs relating to registration of this Deed on and removal of this Deed from title.
- 39.3 The Developer is to pay to the Council the Council's reasonable costs of enforcing this Deed within 7 days of a written demand by the Council for such payment, if the Developer has failed to comply with a notice referred to in clause 27.1 for more than 14 days.

40 Entire Deed

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



41 Further Acts

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

42 Governing Law and Jurisdiction

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

43 Joint and Individual Liability and Benefits

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

44 No Fetter

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

45 Illegality

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

46 Severability

- 46.1 If a clause or part of a clause of this Deed can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way.
- 46.2 If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Deed, but the rest of this Deed is not affected.



47 Amendment

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

48 Waiver

- 48.1 The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Deed, does not amount to a waiver of any obligation of, or breach of obligation by, another Party.
- 48.2 A waiver by a Party is only effective if it:
- 48.2.1 is in writing,
 - 48.2.2 is addressed to the Party whose obligation or breach of obligation is the subject of the waiver,
 - 48.2.3 specifies the obligation or breach of obligation the subject of the waiver and the conditions, if any, of the waiver,
 - 48.2.4 is signed and dated by the Party giving the waiver.
- 48.3 Without limitation, a waiver may be expressed to be conditional on the happening of an event, including the doing of a thing by the Party to whom the waiver is given.
- 48.4 A waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given, and is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.
- 48.5 For the purposes of this Deed, an obligation or breach of obligation the subject of a waiver is taken not to have been imposed on, or required to be complied with by, the Party to whom the waiver is given.

49 GST

- 49.1 In this clause:
- Adjustment Note, Consideration, GST, GST Group, Margin Scheme, Money, Supply and Tax Invoice** have the meaning given by the GST Law.
- GST Amount** means in relation to a Taxable Supply the amount of GST payable in respect of the Taxable Supply.
- GST Law** has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- Input Tax Credit** has the meaning given by the GST Law and a reference to an Input Tax Credit entitlement of a party includes an Input Tax Credit for an acquisition made by that party but to which another member of the same GST Group is entitled under the GST Law.
- Taxable Supply** has the meaning given by the GST Law excluding (except where expressly agreed otherwise) a supply in respect of which the supplier chooses to apply the Margin Scheme in working out the amount of GST on that supply.

- 49.2 Subject to clause 49.4, if GST is payable on a Taxable Supply made under, by reference to or in connection with this Deed, the Party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.
- 49.3 Clause 49.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Deed to be GST inclusive.
- 49.4 No additional amount shall be payable by the Council under clause 49.2 unless, and only to the extent that, the Council (acting reasonably and in accordance with the GST Law) determines that it is entitled to an Input Tax Credit for its acquisition of the Taxable Supply giving rise to the liability to pay GST.
- 49.5 If there are Supplies for Consideration which is not Consideration expressed as an amount of Money under this Deed by one Party to the other Party that are not subject to Division 82 of the *A New Tax System (Goods and Services Tax) Act 1999*, the Parties agree:
- 49.5.1 to negotiate in good faith to agree the GST inclusive market value of those Supplies prior to issuing Tax Invoices in respect of those Supplies;
- 49.5.2 that any amounts payable by the Parties in accordance with clause 49.2 (as limited by clause 49.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 49.6 No payment of any amount pursuant to this clause 49, and no payment of the GST Amount where the Consideration for the Taxable Supply is expressly agreed to be GST inclusive, is required until the supplier has provided a Tax Invoice or Adjustment Note as the case may be to the recipient.
- 49.7 Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to a cost, expense or other liability incurred by a party, must exclude the amount of any Input Tax Credit entitlement of that party in relation to the relevant cost, expense or other liability.
- 49.8 This clause continues to apply after expiration or termination of this Deed.

50 Explanatory Note

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



Schedule 1

(Clause 9)

Development Contributions

See next page



Column 1	Column 2	Column 3	Column 4
Item/ Contribution	Public Purpose	Manner & Extent	Timing
A. Monetary Contributions			
1. A lump sum of \$138,615.00.	Maintenance by the Council of the Water Quality Works for 35 years after the end of the Maintenance Period	Payment to the Council of \$138,615.00	Payment to be made before the issuing of the first Subdivision Certificate for the Development.
B. Dedication of Land			
1. The land on which the Water Quality Works are located.	Stormwater drainage	Developer is to dedicate to the Council, free of cost to the Council, any part of the Land on which the Water Quality Works are located which is not owned by the Council.	Land within a Stage of Development is to be dedicated upon the registration of the Plan of Subdivision for the Stage of Development.
C. Carrying out of Work			
2. Construct Water Quality Works	Stormwater drainage	The construction and completion of the Water Quality Works in stages in accordance with the SWQM Report	A Stage of Water Quality Works is to be completed before the issuing of the first Subdivision Certificate for the adjoining Stage of Development.
3. Maintenance of the Water Quality Works	Stormwater drainage	The carrying out of the Maintenance Obligations for each Stage of Water Quality Work during the Maintenance Period.	Maintenance Obligations of a Stage of Water Quality Work are to be carried out during the Maintenance Period for that stage.

Schedule 2

(clause 18)

Maintenance Obligation

Maintenance of below-ground on-site detention basins

For each on-site detention basin, one inspection and clean out during the Maintenance Period.

The clean-out is to be undertaken by a pump out truck with only clean stormwater pumped back into the existing stormwater drainage system. All sediment and gross pollutants are to be taken off-site and disposed of at an appropriate waste recycling centre.

Maintenance of bio retention swales

Each bio retention swale is to be inspected and maintained according to the following table:

See next page



Bioretention Swale Maintenance Checklist – Table 3

Frequency:	After significant rainfall (>50mm/day) within months of such significant rainfall			
Site Inspection By:				
Instructions:	Fill out the inspection checklist below. Every row must have a tick. If there is a tick placed in a shaded box action is required.			
Inspection Items	Y	N	Possible Actions	Actioned
Litter on surface?			Remove litter to Council garbage collection	By: Date:
Sediment accumulation at inflow points?			Remove sediment and ensure inflow point is stabilised with gravel as necessary	By: Date:
Any weeds?			Remove the weeds	By: Date:
Any dead or dying plants?			Any plants that might be sick or have died should be replaced with native plants that are efficient in nutrient removal, species such as Carex and Juncus (a local nursery can help)	By: Date:
Any erosion/scouring?			Check for evidence of preferential flow paths. Replace filter media in eroded areas. Add rock protection around inlets (if required)	By: Date:
Is the gravel mulch intact?			Replace gravel layer with 50-75mm aggregate gravel to achieve a depth of 100mm	By: Date:
Is the vegetation too dense (at least 15 percent of the surface should be clear)?			Remove excess vegetation	By: Date:
Is the high-flow outlet/weir clear of debris?			Remove debris and place in Council garbage collection or on compost heap	By: Date:
Is there a cake of sediment on the surface more than 5mm thick?			Remove it and dispose it at landfill	By: Date:
Are the subsoil drains clear (flush them via the inspection ports)			Flush pipes and retest. Seek professional advice if necessary	By: Date:
NOTE: Water should not pond on the bioretention basin surface for more than 24 hours after rainfall ceases				
Is there sediment in the outlet pit?			Remove it	By: Date:
Is there oil on the surface?			Remove it and investigate why is it a one-off event or is there a concentrated source?	By: Date:
Are the information protective structures and the slw informative signs intact and readable?			Repair/replace as necessary	By: Date:
Additional comments				



Schedule 3

(Clause 1.1)

Concept Stormwater Drainage Plan

See next page

Appendix

(Clause 50)

Environmental Planning and Assessment Regulation 2000

(Clause 25E)

Explanatory Note

Draft Planning Agreement

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

Parties

Wollondilly Shire Council ABN 93 723 245 808 of [62-64 Menangle Street Picton NSW 2571 (**Council**)

and

Miacro Group Pty Ltd ABN 45 161 500 554 of LEVEL 1 354 Bay Street Brighton-Le-Sands NSW 2216 (**Developer**).]

Description of the Land to which the Draft Planning Agreement Applies

Lot 1 in Deposited Plan 751270 known as 30 Jarvis Street Thirlmere NSW ('Land').

Description of Proposed Development

A 25 lot residential subdivision, demolition, road & associated works in 3 Stages on the Land in accordance with the Development Consent granted by the Council on 18 July 2018.

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

Objectives of Draft Planning Agreement

To secure the construction by the Developer of 2 below-ground on-site detention basins and bio retention swales ('Water Quality Works') on the Land, maintenance of the Water Quality

Works for 12 months, payment of a monetary contribution of \$138,615.00 towards maintenance of the Water Quality Works by Council and the dedication to Council by the Developer of the Land on which the Water Quality Works are located.

Nature of Draft Planning Agreement

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

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

Effect of the Draft Planning Agreement

The Draft Planning Agreement:

- relates to the Development;
- does not exclude the effect of ss 7.11, 7.12 and 7.24 of the Act;
- provides for the payment of a monetary contribution, the dedication of land free of cost and the carrying out and maintenance of water quality work by the Developer in respect of the Development;
- is to be registered on the title to the Land;
- imposes restrictions on the transfer of the Land, or the assignment or novation of the Developer's obligations under the Draft Planning Agreement;
- provides for dispute resolution by expert determination and mediation;
- provides that the Draft Planning Agreement is subject to the law of New South Wales; and
- provides that the A New Tax System (Goods and Services Tax) Act 1999 (Cth) applies to the Agreement.

Assessment of the Merits of the Draft Planning Agreement

The Planning Purposes Served by the Draft Planning Agreement

The Draft Planning Agreement:

- Promotes a better environment by the proper management and development of the State's natural and other resources;
- Facilitates ecologically sustainable development by integrating environmental and economic considerations in the Development of the Land;
- Promotes the orderly and economic use and development of the Land.

How the Draft Planning Agreement Promotes the Public Interest

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

For Planning Authorities:

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

N/A

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

N/A

Councils - How the Draft Planning Agreement Promotes the Principles for local government (formerly the Council's charter) in the Local Government Act 1993

The Draft Planning Agreement promotes the principles for local government by:

- ensuring the management of lands and other assets so that current and future local community needs can be met in an affordable way,
- working with others to secure appropriate services for local community needs,
- engaging with the local community, through the public notification of this deed

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

The draft Planning Agreement conforms with Council's Delivery Program and Operational Plan 2018 by:

- managing development to achieve positive environmental outcomes (GR2),
- ensuring quality assets are contributed to the community and the completion of the subdivision (GR2.4);
- ensuring the Developer contributes infrastructure to increase community benefits from the Development (GR2.5);
- ensuring the Developer contributes to the management of infrastructure (IN3.3 and IN3.4).

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

The draft Planning Agreement contains requirements that must be complied with before Construction Certificates and Subdivision Certificates are issued.