

# Explanatory Note

## Planning Agreement

### 128 North Macquarie Road, Calderwood

#### 1 Introduction

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- (1) The purpose of this Explanatory Note is to provide a plain English summary to support the notification of a proposed Voluntary Planning Agreement (**Planning Agreement**) under s7.4 of the *Environmental Planning and Assessment Act 1979* (NSW) (**Act**).
- (2) This Explanatory Note has been prepared jointly between the parties as required by clause 205 of the *Environmental Planning and Assessment Regulation 2021* (NSW) (**Regulations**).
- (3) This Explanatory Note must not be used to assist in construing the Planning Agreement.

#### 2 Parties to the Planning Agreement

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The parties to the Planning Agreement are:

- (1) Shellharbour City Council (ABN 78 392 627 134) (**Council**); and
- (2) North Mac Residential Pty Ltd (ACN 690 684 032) (**Developer**).

#### 3 Description of the Land to which the Planning Agreement applies

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The Planning Agreement applies to Lot 100 in Deposited Plan 1251724, known as 128 North Macquarie Road, Calderwood (**Land**).

#### 4 Description of the Development to which the Planning Agreement applies

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The Planning Agreement applies to the proposed development of the Land as permitted under Development Consent DA0577/2017 which includes:

- (1) the subdivision of the Land; and
- (2) the provision of:
  - (a) approximately 223 residential lots;
  - (b) a local park; and
  - (c) a district park,

as identified in the Concept Approval Plan granted by the Minister for Planning for Major Project Number 09-0082 on December 2010 (**Proposed Development**).

#### 5 Summary of objects, nature and effect of the Planning Agreement

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The **objective** of the Planning Agreement is to provide community infrastructure, amenities and resources to the Shellharbour LGA community by facilitating the provision of the works

and monetary contributions as set out in **Schedule 1** of this Explanatory Note in a timely and efficient manner (**Contributions**).

The **intent** of the Planning Agreement is to facilitate the provision of the Contributions by the Developer.

The Planning Agreement will be registered on the title of the Land.

The Developer will provide Council with the following bank guarantees to secure the provision of the Contributions (other than the dedication of land):

- (1) A bank guarantee for the face value equivalent to the sum of the Notional Values of any Contribution Works (except with respect to the design, construction and dedication of the Macquarie Rivulet Bridge).
- (2) A bank guarantee, prior to the issue of any Subdivision Certificate that will create a final Allotment within the Proposed Development, in an amount determined by Council acting reasonably but in any event not more than fifty percent (50%) of the Contribution Amount required to be paid for the final stage of the Proposed Development as security for the payment of the Contribution after the issue of that Subdivision Certificate.

To the extent that the Contributions are the dedication of Land, and the Developer does not dedicate any part of the land required to be dedicated by the time required under the Planning Agreement, then the Developer permits Council to compulsorily acquire that land for compensation in the amount of \$1.00.

The **nature** of the Planning Agreement is a contractual relationship between the Council and the Developer for providing the Contributions.

The **effect** of the Planning Agreement is that the Developer will provide the Contributions in the manner provided for by the Planning Agreement (as applicable) and as set out in **Schedule 1** of this Explanatory Note.

## **6 Assessment of the merits of the Planning Agreement**

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### **6.1 The planning purposes served by the Planning Agreement**

In accordance with section 7.4(2) of the Act, the Planning Agreement promotes the public purpose of the provision of contributions to accommodate and meet the demands of future developments and to mitigate the potential impacts of the Proposed Development on existing infrastructure.

### **6.2 How the Planning Agreement promotes the public interest**

In accordance with the objects of the Act, the Planning Agreement promotes the public interest in the following manner:

- (1) By ensuring appropriate arrangements are in place to ensure the timely provision of the infrastructure required to meet the demand generated by the Proposed Development
- (2) By providing certainty for the Developer and Council as to the provision of the Contributions directed towards community infrastructure within the Shellharbour LGA community.
- (3) By promoting the social and economic welfare of the community and a better environment.
- (4) By providing transparency regarding the scope of works and the monetary contributions to be provided for the Proposed Development.

### **6.3 How the Planning Agreement promotes Council's guiding principles**

The Planning Agreement promotes a number of Council's guiding principles under section 8A of the *Local Government Act 1993* (NSW), as follows:

- (1) The exhibition of the Planning Agreement facilitates the involvement of members of the public in the consultation process for the Planning Agreement.
- (2) To plan strategically for the provision of effective and efficient services and regulation to meet the diverse needs of the local community.
- (3) To act fairly, ethically and without bias to the interests of the local community.
- (4) To recognise diverse local community needs and interests.
- (5) To have regard to the long term and cumulative effects of its decisions on future generations.
- (6) Transparent decision-making and active engagement with local communities, through the use of the integrated planning and reporting framework and other measures.
- (7) To engage in long-term strategic planning on behalf of the local community;
- (8) The Planning Agreement makes it clear that Council has a statutory role as consent authority in relation to the development proposal and that the Planning Agreement is not intended to unlawfully influence the exercise of Council's regulatory functions.

## **7 Identification of whether the Planning Agreement conforms with the Council's capital works program**

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The Planning Agreement conforms with Council's capital works program.

## Schedule 1 – Development Contributions

The following contributions will be provided in accordance with the Planning Agreement.

### Part 1 - Contribution Land and Contribution Works by the Developer

#### 1 Contribution Land and Contribution Works

| Item | Description   | Manner of Delivery   | Timing for Completion   |
|------|---|--|---|
| 1    | <p><b>Local Park (L13)</b></p> <p>Embellishment and dedication of a minimum of 0.2 Ha of land. Unless otherwise agreed by the parties in writing, the Local Park embellishment and community facilities are:</p> <ul style="list-style-type: none"> <li>• retention of existing vegetation and native trees where appropriate;</li> <li>• native grassland revegetation beneath existing trees;</li> <li>• integrated cycle/pedestrian pathways;</li> <li>• integrated fitness trail nodes and equipment;</li> <li>• identity, directional and/or interpretive signage;</li> <li>• informal kickabout space;</li> <li>• informal natural playground/playspace with shade provision;</li> <li>• fencing, post and rail barrier and/or bollards;</li> <li>• lighting balanced with street network;</li> <li>• picnic shelter, tables, bins, seating;</li> </ul> | <p><b>Contribution Works by the Developer:</b></p> <p>Developer to design and construct items (Notional Value \$827,279.00)</p> <p>Developer to maintain item for three years following Practical Completion of item (Notional Value \$46,702.00)</p> <p><b>Contribution Land by the Developer:</b><br/>(Notional Value \$40,000.00)</p> <p><b>Total value of Development Contribution Item:</b><br/>(Notional Value \$913,981.00)</p> | <p>The Developer must create the lot that will comprise Local Park (L13) in the plan of subdivision that will create the Allotments within Stage 1B (<b>L13 Plan</b>).</p> <p>The Developer must dedicate the lot that will comprise Local Park (L13) to Council upon the registration of the L13 Plan.</p> <p>The Developer must achieve Practical Completion of this item no later than twelve (12) months and one day following the issue of the Subdivision Certificate for the L13 Plan.</p> |

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|   | <ul style="list-style-type: none"> <li>landscaping including turf or turf seeding, garden beds, tree planting; and</li> <li>other associated works, services and embellishments.</li> </ul>  |  |  |
| 2 | <p><b>District Park (D5)</b></p> <p>Embellishment and dedication of a minimum of 1.0 Ha of land. Unless otherwise agreed by the parties in writing, the District Park embellishment and community facilities are:</p> <ul style="list-style-type: none"> <li>dedicated carparking for parklands (approximately 10 spaces);</li> <li>irrigation;</li> <li>retention of existing vegetation where appropriate;</li> <li>integrated cycle/pedestrian pathways, including a shared pedestrian / cycle way (2.5m wide), with Australian Standard lighting;</li> <li>identity, directional and/or interpretive signage;</li> <li>public artworks;</li> <li>informal natural kickabout space and play area;</li> <li>fitness nodes and equipment, including bike racks;</li> <li>half basketball court/hardcourt;</li> <li>formal structured playground/ playspace with shade provision through trees and/or structures;</li> <li>fencing/bollards and/or post and rail;</li> </ul> | <p><b>Contribution Works by the Developer:</b></p> <p>Developer to design and construct item. (Notional Value \$3,124,226.00)</p> <p>Developer to maintain item for three years following Practical Completion of item (Notional Value \$186,811.00)</p> <p><b>Contribution Land by the Developer:</b> (Notional Value \$200,000.00)</p> <p><b>Total value of Development Contribution Item:</b> (Notional Value \$3,511,037.00)</p> | <p>The Developer must achieve Practical Completion no later than the date on which District Park (D5) is dedicated to Council.</p> |

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|   | <ul style="list-style-type: none"> <li>• picnic shelters with lighting, barbecues, tables, bins, seating, and drinking fountains;</li> <li>• landscaping including turf or turf seeding, garden beds and local provenance tree planting;</li> <li>• feature tree planting; and</li> <li>• other associated works, services and embellishments, including WiFi.</li> </ul> |  |  |
| 3 | <p><b>Macquarie Rivulet Bridge</b></p> <p>The construction and dedication of a bridge over the Macquarie Rivulet generally in accordance with the Macquarie Rivulet Bridge Plan.</p>  | <p>The Developer must design and construct the Macquarie Rivulet Bridge.</p> <p>The Developer must dedicate the land comprising that Bridge, including the Bridge itself, to Council as public road.</p> | <p>The Developer must deliver the Macquarie Rivulet Bridge as follows.</p> <ul style="list-style-type: none"> <li>(a) Prior to the issue of the Subdivision Certificate for a plan which when registered would create any Allotments within Stage 1A, the design of the Macquarie Rivulet Bridge is to be approved by the Council.</li> <li>(b) Prior to the issue of the Subdivision Certificate for a plan which when registered would create any Allotments within Stage 1B, the Macquarie Rivulet Bridge piers are to be completed to the satisfaction of the Council.</li> <li>(c) Prior to the issue of the Subdivision Certificate for a plan which when registered would create any Allotments within Stage 1C, Stage 1D, Stage 2 or Stage 3, the land comprising the Macquarie</li> </ul> |

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|  |  |  | Rivulet Bridge is to be dedicated to Council as a public road and opened for traffic. |
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2 Contribution Land



### 3 Contribution Works



## Part 2 – Contribution Amounts to Council

### 1 Contribution Items

| Item | Description   | Contribution Amount                                      | Timing for Completion  |
|------|---|--|--|
| 1    | <p><b>Albion Park Library Upgrade</b></p> <p>Monetary contributions are to be made towards one or more of the following:</p> <ul style="list-style-type: none"> <li>• Buildings;</li> <li>• fit out;</li> <li>• landscaping;</li> <li>• car parking;</li> <li>• public art;</li> <li>• site works;</li> <li>• library resources, equipment and technology.</li> </ul> | Contribution Amount will be calculated as set out below. | Contribution Amount to be paid prior to the issue of the relevant Subdivision Certificate. |
| 2    | <p><b>Local Roads</b></p> <p>Albion Park Bypass [TMAP 14;15;16 &amp; 30]</p>  | Contribution Amount will be calculated as set out below. | Contribution Amount to be paid prior to the issue of the relevant Subdivision Certificate. |
| 3    | <p><b>City Wide Community Infrastructure</b></p> <p>Including but not limited to:</p> <ul style="list-style-type: none"> <li>• Shellharbour City Performance Theatre;</li> </ul>  | Contribution Amount will be calculated as set out below. | Contribution Amount to be paid prior to the issue of the relevant Subdivision Certificate. |

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|   | <ul style="list-style-type: none"> <li>• Council Administration Offices;</li> <li>• City Library; and</li> <li>• Civic Auditorium</li> </ul>  |  |  |
| 4 | <p><b>City Wide Open Space and Recreation Infrastructure</b></p> <p>Including but not limited to:</p> <ul style="list-style-type: none"> <li>• Beach Foreshore; and</li> <li>• Shellharbour City Stadium</li> </ul> | Contribution Amount will be calculated as set out below. | Contribution Amount to be paid prior to the issue of the relevant Subdivision Certificate. |
| 5 | <b>Administration of Planning Agreement</b>   | Contribution Amount will be calculated as set out below. | Contribution Amount to be paid prior to the issue of the relevant Subdivision Certificate. |

## 2 Calculation of Contribution Amount

2.1 A '**Residential Plan**' is a plan of subdivision with respect to the Development which when registered would create one or more Allotments.

2.2 A '**CUDP Dwelling**' means a room, or suite of rooms, occupied or used, or so constructed or adapted, as to be capable of being occupied or used, as a separate domicile to be erected within the CUDP and is not limited to a dwelling that is capable of being subject to a separate title and on-sold separately from other Allotments within the CUDP.

2.3 Prior to the issue of a Subdivision Certificate in respect of a Residential Plan, the Developer must pay a Contribution Amount being the relevant cumulative "Contributions per CUDP Dwelling" for the Anticipated Dwelling Yield for the relevant Residential Plan as determined in accordance with the table set out below:

| <b>Number of CUDP Dwellings</b>   | <b>Contribution per Dwelling</b> |
|---|----------------------------------|
| Where the relevant Dwelling is within the first 1,000 CUDP Dwellings (0-1,000 CUDP Dwellings) | \$4,343.59                       |

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|---|------------|
| Where the relevant Dwelling is between the 1,001 <sup>st</sup> CUDP Dwelling and the 2,000 <sup>th</sup> CUDP Dwelling (1,001 – 2,000 CUDP Dwellings) | \$4,868.50 |
| Where the relevant Dwelling is between the 2,001 <sup>st</sup> CUDP Dwelling and the 3,000 <sup>th</sup> CUDP Dwelling (2,001 – 3,000 CUDP Dwellings) | \$5,393.41 |
| Where the relevant Dwelling is between the 3,001 <sup>st</sup> CUDP Dwelling and the 4,000 <sup>th</sup> CUDP Dwelling (3,001 – 4,000 CUDP Dwellings) | \$5,918.31 |
| Where the relevant Dwelling is the 4,001 <sup>st</sup> CUDP Dwelling or greater   | \$6,311.99 |

2.4 The current indexed figures set out in the above table are to be calculated in accordance with the following formula and included in the VPA prior to execution:

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

Where:

**A** is the indexed amount.

**B** is the monetary amount specified in this the Planning Agreement and referred to above.

**C** is the most recent June quarter CPI published as at the date of calculation; and

**D** is the most recent CPI published at the date of the Planning Agreement.

- 2.5 The above formula does not apply to any Notional Values assigned to an item of Contribution Land listed at **Part 1 of Schedule 1**.
- 2.6 Any amount specified as a Notional Value for an item of Contribution Land will be increased as follows:
- (1) At five (5) year intervals from the date of the Planning Agreement, the Developer must appoint an independent registered valuer who has the required experience and is acceptable to the Council (acting reasonably) to undertake a determination of the market value of all items of Contribution Land not then dedicated to the Council.
  - (2) Any such valuation must be provided to the Council within one (1) month of the date that the relevant five (5) year interval ends.
  - (3) The market value determined by the valuer for an item of Contribution Land will be taken to be the Notional Value of that Contribution Land.