

18 August 2014



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Deed

Project 7200

Planning Agreement

Under s93F of the *Environmental Planning and Assessment Act 1979*

Shellharbour City Council

Landcom (t/a UrbanGrowth NSW)

Date:

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Project 7200

Planning Agreement

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Project 7200 Planning Agreement

Summary Sheet

Council:

Name: Shellharbour City Council

Address: Locked Bag 155, Shellharbour City Centre NSW 2529

Telephone: (02) 4221 6111

Facsimile: (02) 4221 6016

Email: Michael.Willis@shellharbour.nsw.gov.au

Representative: Michael Willis

UrbanGrowth NSW:

Name: Landcom (t/a UrbanGrowth NSW)

Address: Level 14, 60 Station Street Parramatta, NSW 2150

Telephone: (02) 9841 8600

Facsimile: (02) 9841 8688

Email: Rwood@urbangrowth.nsw.gov.au

Representative: Richard Wood

Land:

See definition of *Land* in clause 1.1.

Dedication Land:

See definition of *Dedication Land* in clause 1.1.

Development:

See definition of *Development* in clause 1.1.

Development Contributions:

See Clause 9 and Schedule 1.



Application of s94, s94A and s94EF of the Act:

See clause 8.

Security:

See Part 4.

Registration:

See clause 17.

Restriction on dealings:

See clause 18

Dispute Resolution:

See Part 3.



Project 7200 Planning Agreement

Under s93F of the *Environmental Planning and Assessment Act 1979*

Parties

Shellharbour City Council ABN 78 392 627 134 of Lamerton House, Lamerton Crescent, Shellharbour City Centre NSW 2529 (**Council**)

and

Landcom (t/a UrbanGrowth NSW) ABN 79 268 260 688 Level 14, 60 Station Street Parramatta, NSW 2150 (**Developer**)

and

Background

- A The Developer is established as a corporation under s5(1) of the *Landcom Corporation Act 2001* with the corporate name of Landcom.
- B The Developer trades under the name of UrbanGrowth NSW.
- C The Developer owns the Land.
- D The Developer proposes to lodge with the Council a Development Application relating to the Development.
- E The Developer is prepared to make Development Contributions in connection with the carrying out of the Development in accordance with 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.

Bensons Basin means Lot 2000 in DP 717478.

Blackbutt Land means Lot 1071 in DP 1052706.

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

Contribution Value means the \$ amount agreed between the Parties as the value of a Development Contribution made under this Deed.

Contributions Plan means the *Shellharbour City Council Section 94 Contributions Plan 2013*.

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

Dedication Land means Bensons Basin and the Blackbutt Land

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

Development means the subdivision of the Land into 7 lots generally in accordance with the plan in Schedule 2.

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 s93F(3)(g) of the Act.

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

Item means specified in Column 1 of Schedule 1.

ISDP means the *Infrastructure Services Delivery Plan* for Project 7200 Shellharbour and dated March 2014 which is contained in Schedule 3.

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

Land means Lot 2825 in DP 1157943.

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*.

- 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 s93F(1) of the Act.

3 Commencement

3.1 This Deed takes effect on the date when all Parties have executed one counterpart of this Deed.

3.2 The Party who executes this Deed last is to insert on the front page the date they did so and provide a copy of the fully executed and dated Deed to any other person who is a Party.

4 Application of this Deed

4.1 This Deed applies to the Land, the Dedication 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, and

5.1.2 are able to fully comply with their obligations under this Deed.

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 this Deed.



8 Application of s94, s94A and s94EF of the Act to the Development

- 8.1 This Deed excludes the application of s94 and s94A of the Act to the Development.
- 8.2 This Deed does not exclude the application of s94EF 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 Any Contribution Value specified in this Deed in relation to a Development Contribution does not serve to define the extent of the Developer's obligation to make the Development Contribution.
- 9.3 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.
- 9.4 Despite clause 9.2, the Council may apply a Development Contribution made under this Deed, other than the Dedication Land 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.

11 Dedication of land

- 11.1 A Development Contribution comprising the dedication of land is made for the purposes of this Agreement when:
 - 11.1.1 a deposited plan is registered in the register of plans held with the Registrar-General that dedicates land as a public road (including a temporary public road) under the *Roads Act 1993* or creates 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.

Part 3 – Dispute Resolution

12 Dispute resolution – expert determination

- 12.1 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:
- 12.1.1 the Parties to the Dispute agree that it can be so determined, or
 - 12.1.2 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.
- 12.2 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.
- 12.3 If a notice is given under clause 12.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 12.4 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.
- 12.5 The expert determination is binding on the Parties except in the case of fraud or misfeasance by the expert.
- 12.6 Each Party is to bear its own costs arising from or in connection with the appointment of the expert and the expert determination.



- 12.7 The Parties are to share equally the costs of the President, the expert, and the expert determination.

13 Dispute Resolution - mediation

- 13.1 This clause applies to any Dispute arising in connection with this Deed other than a Dispute to which clause 12 applies.
- 13.2 Such a Dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 13.3 If a notice is given under clause 13.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 13.4 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.
- 13.5 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.
- 13.6 Each Party is to bear its own costs arising from or in connection with the appointment of a mediator and the mediation.
- 13.7 The Parties are to share equally the costs of the President, the mediator, and the mediation.

Part 4 - Enforcement

14 Acquisition of land required to be dedicated

- 14.1 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.
- 14.2 The Council is to only acquire land pursuant to clause 14.1 if it considers it reasonable to do so having regard to the circumstances surrounding the failure by the Developer to dedicate the land required to be dedicated under this Deed.
- 14.3 Clause 14.1 constitutes an agreement for the purposes of s30 of the Just Terms Act.
- 14.4 If, as a result of the acquisition referred to in clause 14.1, 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 recover that amount as a debt due in a court of competent jurisdiction.

- 14.5 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.
- 14.6 The Developer is to promptly do all things necessary, and consents to the Council doing all things necessary, to give effect to this clause 14, including without limitation:
 - 14.6.1 signing any documents or forms,
 - 14.6.2 giving land owner's consent for lodgement of any Development Application,
 - 14.6.3 producing certificates of title to the Registrar-General under the *Real Property Act 1900*, and
 - 14.6.4 paying the Council's costs arising under this clause 14.

15 Breach of obligations

- 15.1 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:
 - 15.1.1 specifying the nature and extent of the breach,
 - 15.1.2 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,
 - 15.1.3 specifying the period within which the breach is to be rectified or compensation paid, being a period that is reasonable in the circumstances.
- 15.2 If the Developer fails to fully comply with a notice referred to in clause 15.1, the Council may, without further notice to the Developer, bring an action against the Developer in a court of competent jurisdiction to remedy the Developer's breach.
- 15.3 Any costs incurred by the Council in remedying a breach in accordance with clause 15.2 may be recovered by the Council as a debt due in a court of competent jurisdiction.
- 15.4 For the purpose of clause 15.3, the Council's costs of remedying a breach the subject of a notice given under clause 15.1 include, but are not limited to:
 - 15.4.1 the costs of the Council's servants, agents and contractors reasonably incurred for that purpose,
 - 15.4.2 all fees and charges necessarily or reasonably incurred by the Council in remedying the breach, and
 - 15.4.3 all legal costs and expenses reasonably incurred by the Council, by reason of the breach.
- 15.5 Nothing in this clause 15 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.



16 Enforcement in a court of competent jurisdiction

- 16.1 Without limiting any other provision of this Deed, the Parties may enforce this Deed in any court of competent jurisdiction.
- 16.2 For the avoidance of doubt, nothing in this Deed prevents:
 - 16.2.1 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
 - 16.2.2 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

17 Registration of this Agreement

- 17.1 The Parties agree not to register this Deed for the purposes of s93H(1) of the Act.

18 Restriction on dealings

- 18.1 The Developer is not to:
 - 18.1.1 sell or transfer the Land, or
 - 18.1.2 assign the Developer's rights or obligations under this Deed, or novate this Deed,to any person unless:
 - 18.1.3 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
 - 18.1.4 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
 - 18.1.5 the Developer is not in breach of this Deed, and
 - 18.1.6 the Council otherwise consents to the transfer, assignment or novation, such consent not to be unreasonably withheld.

Part 6 – Indemnities

19 Risk

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

20 Release

- 20.1 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.

21 Indemnity

- 21.1 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.

Part 7 – Other Provisions

22 Notices

- 22.1 Any notice, consent, information, application or request that is to or may be given or made to a Party under this Agreement is only given or made if it is in writing and sent in one of the following ways:
- 22.1.1 delivered or posted to that Party at its address set out in the Summary Sheet,
 - 22.1.2 faxed to that Party at its fax number set out in the Summary Sheet, or
 - 22.1.3 emailed to that Party at its email address set out in the Summary Sheet.
- 22.2 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.
- 22.3 Any notice, consent, information, application or request is to be treated as given or made if it is:
- 22.3.1 delivered, when it is left at the relevant address,
 - 22.3.2 sent by post, 2 business days after it is posted,



22.3.3 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

22.3.4 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.

22.4 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.

23 Approvals and Consent

23.1 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.

23.2 A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

24 Costs

24.1 The Parties are to pay their own costs 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.

25 Entire Deed

25.1 This Deed contains everything to which the Parties have agreed in relation to the matters it deals with.

25.2 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.

26 Further Acts

26.1 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.

27 Governing Law and Jurisdiction

27.1 This Deed is governed by the law of New South Wales.

27.2 The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them.



- 27.3 The Parties are not to object to the exercise of jurisdiction by those courts on any basis.

28 Joint and Individual Liability and Benefits

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

29 No Fetter

- 29.1 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.

30 Illegality

- 30.1 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.

31 Severability

- 31.1 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.
- 31.2 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.

32 Amendment

- 32.1 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.

33 Waiver

- 33.1 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.



- 33.2 A waiver by a Party is only effective if it is in writing.
- 33.3 A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

34 GST

- 34.1 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.
- 34.2 Subject to clause 34.4, 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.
- 34.3 Clause 34.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Deed to be GST inclusive.
- 34.4 No additional amount shall be payable by the Council under clause 34.2 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.
- 34.5 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:
- 34.5.1 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;
- 34.5.2 that any amounts payable by the Parties in accordance with clause 34.2 (as limited by clause 34.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 34.6 No payment of any amount pursuant to this clause 34, 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.

- 34.7 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.
- 34.8 This clause continues to apply after expiration or termination of this Deed.

35 Explanatory Note

- 35.1 The Appendix contains the Explanatory Note relating to this Deed required by clause 25E of the Regulation.
- 35.2 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

Column 1	Column 2	Column 3	Column 4
Item/ Contribution	Public Purpose	Manner & Extent	Timing

A. Monetary Contributions

1. Community Facilities contribution	Community Facilities, Parks, Open space & Water Sensitive Urban Design, as set out in the ISDP.	\$360,000.00 calculated in accordance with the Summary Table of the ISDP.	Within 60 days of commencement of this Deed.
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B. Dedication of Land

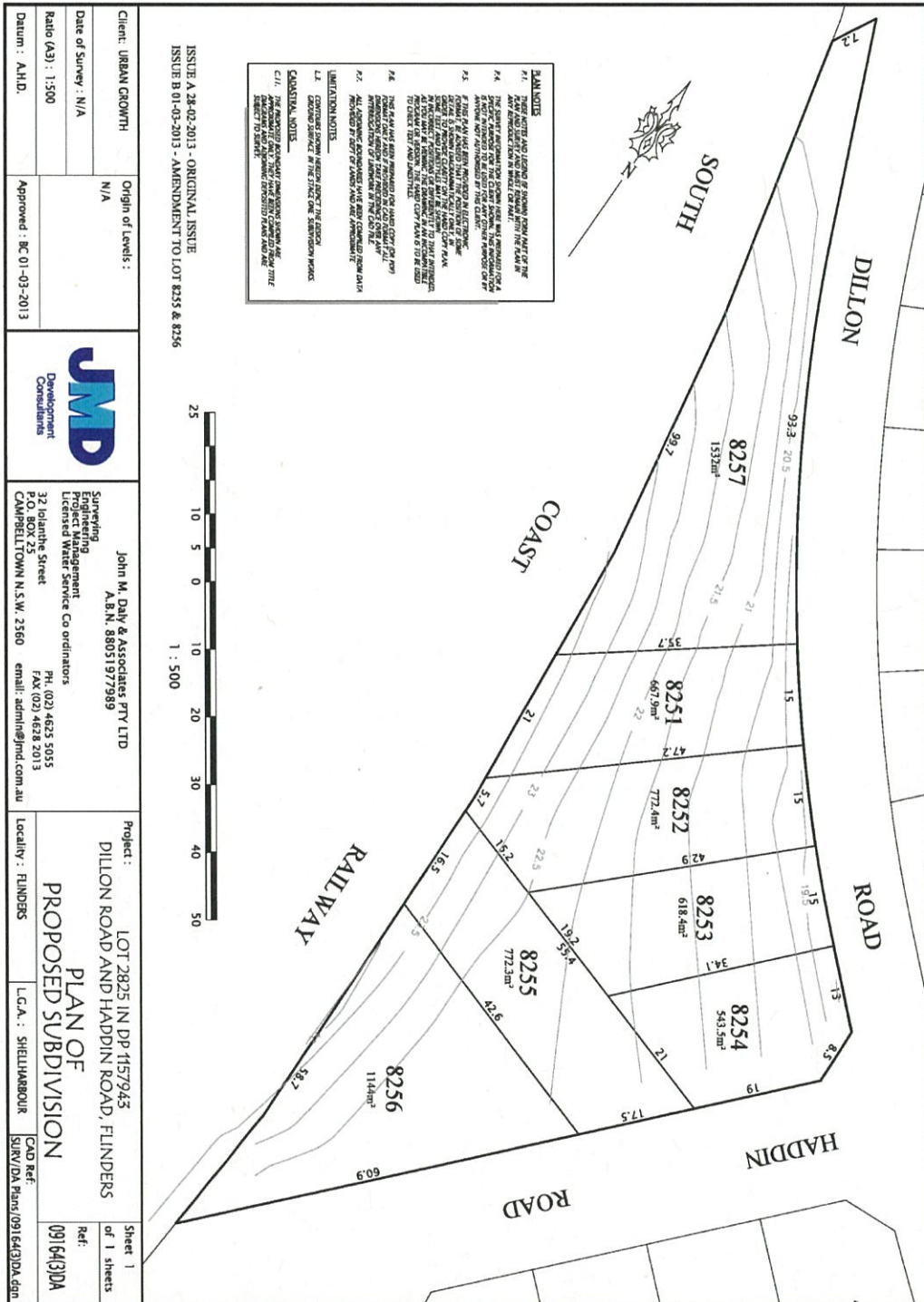
1. Bensons Basin	Open space	Dedication of Lot 2000 in DP717478 as operational land	Within 60 days of commencement of this Deed.
2. Albatross Drive, Blackbutt	Open space	Dedication of Lot 1071 in DP 1052706 as community land	Within 60 days of commencement of this Deed.



Schedule 2

(Clause 1.1)

Plan of Development



The ratio shown on this plan relates to the original plan, produced by JMD only. Any photocopying or printing from digital files provided (particularly PDF files) may significantly alter the ratio of the plan.



Schedule 3

(Clause 1.1)

ISDP



**Urban
Growth
NSW**

Infrastructure Services Delivery Plan

Project 7200 Shellharbour

March 2014

Items of Works listed in Schedule 2 of the Planning Agreement between
UrbanGrowth NSW and Shellharbour City Council

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Purpose

Prior to Council's Section 94 Contributions Plan, UrbanGrowth NSW' obligations for the provision of community facilities, services and open space were described in a Deed of Agreement between Council and the NSW Land & Corporation ("the Deed").

As part of Council's Fifth Review of its Section 94 Contributions Plan, the release from the Deed was negotiated and all facilities are now provided under the Section 94 Contributions Plan 2005. Part of the negotiated outcome was that future Section 94 contributions would be limited to the provision of community facilities as all future open space obligations had been met or exceeded.

The remaining public amenities and services associated with Project 7200 are identified in this Infrastructure Delivery Plan (IDP). This commitment is secured through the accompanying Planning Agreement with Shellharbour City Council. The area to which the Planning Agreement applies is:

- Lot 2825 in DP 1157943
- Lot 1071 in DP 1052706
- Lot 2000 in DP717478
- Myimbarr Sporting Complex and Wetlands.

The Planning Agreement specifies how items of material public benefit will be provided in the form of works, monetary contributions and the dedication of land. This IDP provides a framework for the detailed requirements and timeframe for delivery of items of material public benefit.

The Planning Agreement will provide the following contributions and items of material public benefit:

- Monetary contributions from the development of Lot 2825 (and DA170/10 credit)
- Monetary contributions towards bulk earthworks at Bensons Basin and the Myimbarr Gross Pollutant Trap (GPT) offset against the value of bulk earthworks undertaken at the Myimbarr Sporting Complex
- The dedication of both Bensons Basin, being Lot 2000, and Lot 1071 in Albatross Drive, Blackbutt as open space

The Project 7200 IDP will be referenced in the Planning Agreement between UrbanGrowth NSW and Shellharbour City Council as a document which will provide greater detail in respect to the items of work listed in Schedule 2 of the Planning Agreement, including a more detailed description of the scope of works. It should be noted that

- All amenities provided for in the Planning Agreement will be in the form of works, monetary contributions and the dedication of land.
- The proposed monetary contribution of \$360,000 is fixed and not subject to indexation.

The combined value of the total material public benefit is \$360,000 for the Shellharbour LGA. A detailed breakdown of this cost and a description of the items is found in Part B of this document.

Project 7200

Project 7200 consists of a mix of residential, employment, retail, education, conservation and open space uses within the Shellharbour local government area and comprises the suburbs of Blackbutt and Flinders. Lot 2825 is the last parcel of land to be developed in the project.

Contributions

Lot 2825

Community facilities monetary contributions for the proposed seven lot subdivision of Lot 2825 in DP1157943 will be offset against a credit for Section 94 contributions incorrectly charged towards the provision of open space under DA170/10 resulting in a small overall credit.

Myimbarr Sporting Complex

The bulk earthworks for Myimbarr Sporting Complex sports playing fields were completed by UrbanGrowth NSW (Landcom).

This Deed recognises in part the construction costs associated with the bulk earthworks for the sporting fields which UrbanGrowth NSW (Landcom) completed in 2005.

Myimbarr Gross Pollutant Trap (GPT)

UrbanGrowth NSW' remaining obligation for the Myimbarr (Shadforth) wetlands construction is a monetary contribution towards the cost of a gross pollutant trap. The contribution will top up an earlier contribution made by Marksman Homes.

Bensons Basin

Bensons Basin is located on land currently owned by UrbanGrowth NSW and contains a regional stormwater detention basin. Council requires the land to be dedicated to create sporting fields identified in the Section 94 Contributions Plan 2005.

Council has estimated an amount of \$617,604 for site establishment, bulk earthworks and drainage (including a 20% contingency) is required to prepare the site for the planned construction of sporting fields.

The Planning Agreement proposes to offset both this cost and the Myimbarr GPT against the aforementioned Myimbarr Sporting Complex bulk earthworks.

Lot 1071

At its 1 July 2008 meeting Council resolved that:

1. *Lot 1071 in DP 1052706, Albatross Drive, Blackbutt be transferred to Council in fee simple and be included, for its own management purposes, as part of the adjoining Lot 1073 as remnant bushland/community use.*
2. *The Mayor and General Manager be authorised to sign and affix the Seal of Council to any documentation relating to the land transfer.*

This transfer will be completed as part of the proposed Planning Agreement.

Timing

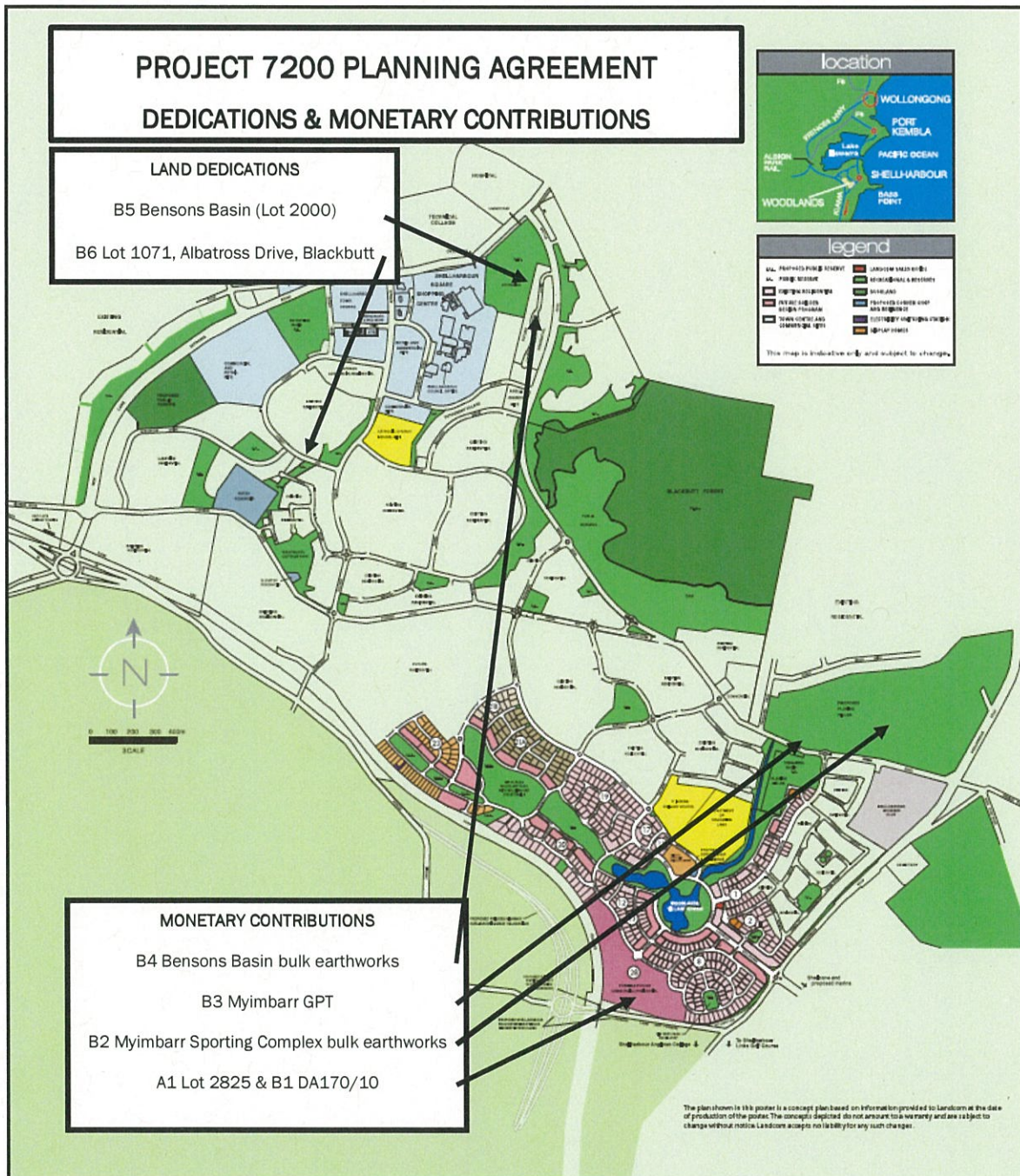
All land dedications and monetary contributions will be made within 60 days of notification of the date the Planning Agreement has been executed by both parties.

Summary Table

#	Item	Description	Area (m2)	Contribution Type	Value
Schedule A – Community Facilities					
1	Lot 2825	Community facilities contributions for a proposed seven lot subdivision of Lot 2825 in DP1157943 in accordance with the Contributions Plan	N/A	Monetary	\$61,756.31
Schedule B - Parks, Open space & Water Sensitive Urban Design					
1	DA 170/10	Credit for contributions incorrectly charged for the provision of open space for DA170/10	N/A	Monetary	(\$64,260.00)
2	Myimbarr Sporting Complex Earthworks	Myimbarr Earthworks Contributions - Field pre-construction preparation earthworks Agreed Value of Credit (\$440,426.97)	N/A	Works	\$362,503.69
3	Myimbarr Gross Pollutant Trap	Cost of the facility Shellharbour City Council advice Feb 2013 less the indexed value of contributions by Marksman Homes Agreed Value of Works \$185,326.66	N/A	Monetary	
4	Bensons Basin Earthworks	Cost of site establishment, bulk earthworks & drainage (inclusive of a 20% contingency on the latter two items) per Shellharbour City Council advice Feb 2013 Agreed Value of Works \$617,604.00	N/A	Monetary	
					\$360,000.00
Schedule B - Parks, Open space & Water Sensitive Urban Design – Land Dedications					
5	Bensons Basin	Dedication of Lot 2000 in DP717478 as operational land identified for future active open space in the Shellharbour City Council Section 94 Contributions Plan 2005.	93,674	Land	N/A
6	Albatross Drive, Blackbutt	Dedication of Lot 1071 in DP1052706 as community land for urban bushland in accordance with a resolution passed by Shellharbour City Council at its 1 July 2008 meeting This resolution was on the basis that as Council owns the adjoining parcel of Bush Community Land (Lot 1073) and there being minimal costs to Council in the ongoing maintenance of this additional lot and the threatened plant species on i	725	Land	N/A

Appendix 1 - Map of Planning Agreement Area and Contributions

Land within Shellharbour Council LGA to which the proposed Planning Agreement applies is shown below. Lot descriptions of the land are found in **Schedule 1** to the Planning Agreement.





Execution

Executed as a Deed

Dated: 18 August 2014

Executed on behalf of the Council

General Manager

Witness

Mayor

Witness

Executed on behalf of the Developer in accordance with s127(1) of the Corporations Act (Cth) 2001 by its duly authorised delegate

Name/Position

Executed by Richard Wood as delegate of Landcom and I certify that I have no notice of revocation of such delegation.

Name/Position

Witness.

Appendix

(Clause 54)

Environmental Planning and Assessment Regulation 2000

(Clause 25E)

Explanatory Note

Draft Planning Agreement

Under s93F of the *Environmental Planning and Assessment Act 1979*

Parties

Shellharbour City Council ABN 78 392 627 134 of Lamerton House, Lamerton Crescent, Shellharbour City Centre NSW 2529 (Council)

Landcom (t/a UrbanGrowth NSW) ABN 79 268 260 688 of Level 14, 60 Station Street Parramatta, NSW 2150 (Developer)

Description of the Land to which the Draft Planning Agreement Applies

Lot 2825 in DP 1157943.

Description of Proposed Development

Subdivision of the land into seven lots.

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

Objectives of Draft Planning Agreement

The objective of the Draft Planning Agreement is to provide funding for and provide infrastructure, facilities and dedication of land to meet the needs of the Development.

Nature of Draft Planning Agreement

The Draft Planning Agreement is a planning agreement under s93F of the *Environmental Planning and Assessment Act 1979* (Act). It is a voluntary agreement, under which the Developer makes Development Contributions (as defined in clause 1.1 of the Draft Planning Agreement) for various public purposes (as defined in s 93F(3) of the Act).

Effect of the Draft Planning Agreement

The Draft Planning Agreement:

- relates to the carrying out by the Developer of the Development,
- excludes the application of s 94 and s 94A of the Act to the Development,
- does not exclude the application of s 94EF of the Act to the Development,
- requires the payment of monetary Development Contributions and the dedication of land,
- is not to be registered on the title to the Land,
- provides a dispute resolution method for a dispute under the Agreement being mediation and expert determination,
- provides that the Agreement is governed by 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 and co-ordinates the orderly and economic use and development of the Land to which the Agreement applies,
- provides land for public purposes in connection with the Development, and
- provides funding for community services and facilities in connection with the Development

How the Draft Planning Agreement Promotes the Public Interest

The Draft Planning Agreement promotes the public interest by promoting the objects of the Act as set out in ss5(a)(ii), (iv), (v),

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 Elements of the Council's Charter

The Draft Planning Agreement promotes the elements of the Council's charter by effectively planning for, accounting for and managing the public assets for which it is responsible, while having regard to the long term and cumulative effects of its decisions.

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

Yes, the dedication of land to accommodate additional sporting fields will allow Council to fulfil its obligation under the Shellharbour City Council s94 Contributions Plan 2013. The provision of this facility is reflected in Council's Long Term Financial Plan and Delivery Program and is identified for construction in 2015/16.

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

No.