

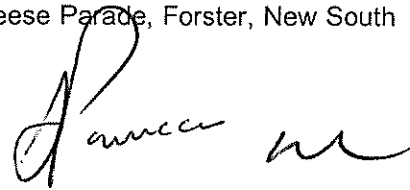
THIS PLANNING AGREEMENT made on 17 MARCH 2020

BETWEEN

Parties

MID – COAST COUNCIL of Administrative Centre, Breese Parade, Forster, New South Wales, 2428 (**Council**)

AND



INA OPERATIONS PTY LTD (ACN 159 195 632) of 115 Pitt Street SYDNEY 2000 as trustee for INA Operations Trust No. 6 (ABN 15 223 236 281) (the **Landowner**), their successors and assigns.

Background

- A. The Landowner is recorded in the Register as the owner of the Land which comprises the Biodiversity Lot and the Dwelling Lot and the Development Lot.
- B. The Landowner has sought an amendment to the GLLEP 2014 (the **LEP Amendment**) to rezone that part of the Land shown hatched on Plan "A" in order to allow additional land uses on the Development Lot.
- C. The Landowner has offered to enter into this Agreement to dedicate the Biodiversity Lot shown hatched on Plan "B" to Council and pay a monetary contribution in order to offset losses in biodiversity likely to be occasioned by the LEP Amendment and any Development Consent granted in respect of future land uses on the Development Lot.
- D. The Landowner has sought the LEP Amendment to the minimum lot size map to facilitate the subdivision of the Land identified in Annexure A, Plan A the Development Lot; Plan B the Biodiversity Lot; and Plan C the Dwelling Lot.

Operative Provisions

1. Definitions and interpretation

- 1.1 In this Agreement, unless the context admits otherwise the following definitions apply:

Agreement means this planning agreement.

Bank Guarantee means an unconditional and irrevocable undertaking issued by a major Australian trading bank in favour of Council and which is not limited in time and does not have an expiry date and is otherwise in form and substance acceptable to Council, to pay on demand to Council the amount therein expressed in Australian currency.

Biodiversity Lot is that part of the Land with an area of approximately 61 hectares shown cross-hatched on Plan "B", which prior to the Registration of the Plan of Subdivision was comprised in Lot 1 DP 653396, Lot 83 DP 753168 and Lot 427 DP 861736.

Business Day means any day except for Saturday or Sunday or a day which is a public holiday in Sydney.

CPI means Consumer Price Index (Sydney – All Groups) as published by the Australian Bureau of Statistics, or if that index ceases to exist, any other index agreed between the parties.

Dealing, in relation to the Land, means, without limitation, a sale, transfer, assignment, mortgage, charge, encumbrance or other dealing with the Land or any part thereof.

Dedicate means to dedicate as a public reserve under section 49(1) of the *Local Government Act 1993* by the registration of a plan on which land is marked with the words "public reserve" and includes, as the context requires, the registration of a Transfer.

Development Application means each application made or to be made under Part 4 of the EP&A Act or any act that replaces or repeals the Act, by or on behalf of the Landowner.

Development Consent has the same meaning as in the EP&A Act.

Development Contributions means the dedication of the Biodiversity Lot and the payment of a monetary contribution for the public purpose of the conservation of the natural environment in accordance with clause 5 and Schedule 3 of this Agreement.

Development Lot means the area of the Land adjoining the northern boundary of the existing caravan park, shown on Plan "A" cross-hatched, with a maximum width of 70 meters when measured from the adjoining boundary of Lot 1 DP 862876 and an approximate area of 2.4 hectares, which prior to

the Registration of the Plan of Subdivision was comprised in Lot 83 DP 753168.

Dwelling Lot means the area of the Land accommodating the existing dwelling house shown on Plan "C" hatched with an approximate area of 1 hectares, consistent with the Survey Plan which forms Annexure 'B' of the Section 88E Restriction on the Use of Land, which prior to the Registration of the Plan of Subdivision was comprised in Lot 427 DP 861736.

EP&A Act or Act means the *Environmental Planning and Assessment Act* 1979 (NSW).

Explanatory Note means the explanatory note required by the *Environmental Planning and Assessment Regulation 2000* (NSW).

Gazettal means the publication of the LEP Amendment on the NSW legislation website under section 3.24(5) of the EP&A Act by the Minister administering the Act.

GLLEP 2014 means the *Great Lakes Local Environmental Plan 2014*.

GST has the same meaning as in the GST Law.

GST Law has the meaning given to that term 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.

Land means the land the subject of this Agreement, and described in the Second Schedule.

LEP Amendment means the amendment to the GLLEP 2014 to rezone the Land shown hatched on Plan "A" from the current zoning of the Land (Zone E2 Environmental Conservation) to Zone RE2 Private Recreation.

LPI means the Land and Property Information NSW.

Plan "A" means the plan marked "A" included in Annexure "A" to this Agreement depicting the LEP Amendment and the Development Lot.

Plan "B" means the plan marked "B" included in Annexure "A" to this Agreement depicting the Biodiversity Lot.

Plan "C" means the plan marked "C" included in Annexure "A" to this Agreement depicting the Dwelling Lot.

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

Registrable form means the document is properly executed and witnessed bears an imprint from the Office of State Revenue to the effect that all necessary duties have been paid, and is otherwise capable of immediate registration by the Registrar-General on the title of the relevant piece or parcel of land.

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

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

Registrar-General means the Registrar-General, under the Real Property Act.

Section 88E Restriction on the Use of Land means the Restriction on the Use of Land under section 88E of the *Conveyancing Act 1919* imposed on and recorded in the Register against part of Lot 427 in DP 861736.

Subdivision Certificate means a certificate issued under section 6.3(1)(d) of the Act.

Transfer means a transfer in the approved form under the *Real Property Act 1900* (NSW) which is duly stamped, signed and otherwise in registrable form for the purpose of transferring the Biodiversity Lot to Council.

- 1.2 In the interpretation of this Agreement, the following provisions apply unless the context otherwise requires:
- a) Headings are inserted for convenience only and do not affect the interpretation of this Agreement.
 - b) A reference in this Agreement to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
 - c) If the day on which any act, matter or thing is to be done under this Agreement is not a business day, the act, matter or thing must be done on the next business day.

- d) A reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.
- e) A reference in this Agreement 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.
- f) A reference in this Agreement to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- g) A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.
- h) An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- i) 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.
- j) 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.
- k) References to the word 'include' or 'including' are to be construed without limitation.
- l) A reference to this Agreement includes the agreement recorded in this Agreement.
- m) A reference to a party to this Agreement includes a reference to the servants, agents and contractors of the party, and the party's successors and assigns.
- n) Any schedules and attachments form part of this Agreement.
- o) Any dimension given is approximate.
- p) Nothing contained in this Agreement will be deemed or construed as creating the relationship of partnership.

- q) In the interpretation of this agreement no rule of construction shall apply to disadvantage one party on the basis that that party put forward the particular covenant, term or provision.

2. Planning Agreement under the Act

The Parties agree that this Agreement is a planning agreement governed by Subdivision 2 of Division 7.1 of Part 7 of the EP&A Act.

3. Application of this Agreement

This Agreement applies to:

- (a) the Land; and
- (b) the LEP Amendment.

4. Operation of this Agreement

4.1 This Agreement operates only when it is entered into as required by clause 25C(1) of the *Environmental Planning and Assessment Regulation 2000*.

4.2 This Agreement will remain in force until:

- (a) It is terminated by operation of Law; or
- (b) The Council requests the Minister to determine that the LEP Amendment not proceed in accordance with section 3.35(4) of the Act.
- (c) 2 months after all of the Landowner's obligations under this Agreement are performed or satisfied.

5. The Landowner's Obligations

The Landowner must make the Development Contributions in accordance with the Third Schedule and the terms of this Agreement.

6. Indexation of monetary Development Contributions

Where this Agreement provides that an amount is subject to CPI, then the amount will be increased in accordance the following formula:

$$A = B \times C/D$$

Where:

- A = the indexed amount at the time the payment is to be made.
- B = the contribution amount stated in the Agreement.
- C = the CPI most recently published before the date of payment.
- D = the CPI most recently published before the date of the operation of this Agreement under clause 4.1.

For the avoidance of doubt, if A is less than B, then the relevant amount will not change.

7. Acknowledgements

- 7.1 The Council acknowledges that the Landowner will dedicate the Biodiversity Lot to Council and that the Council will take this Agreement into consideration when assessing and determining any Development Application for the Land.
- 7.2 The Council acknowledges that when assessing a Development Application seeking consent to subdivide the Land as contemplated by clause 1(b) of Schedule 3 of this Agreement, credit will be given to the Landowner for section 7.11 contributions equivalent to one residential lot.

8. Assignment and other dealings

8.1 Dealings by Landowner

The Landowner must not assign, transfer, novate, dispose of, sell or otherwise deal with its right, title or interest in the whole or any part of the Land or its rights or obligations under this agreement to another person (**Transferee**), unless before such assignment, transfer, novation, disposal, sale or other dealing:

- (a) this Agreement is registered on the title to the Land in accordance with this Agreement;
- (b) the Landowner gives to Council at least 20 Business Days prior notice in writing of the proposed dealing;
- (c) the Landowner satisfies Council that the proposed Transferee is respectable and financially capable of complying with such of the

Landowner's obligations under this agreement as Council nominates as required to be adopted by the Transferee (**Required Obligations**);

- (d) the Transferee signs a deed in form and substance acceptable to Council containing provisions under which the Transferee agrees to comply with the Required Obligations as if it were the Landowner (including obligations which arose before the transfer or assignment) with respect to the Land or other interest being dealt with;
- (e) the Transferee gives any bank guarantee, bond or guarantee and indemnity by a third person or other security that Council reasonable requires;
- (f) any default by the Landowner has been remedied by the Landowner or waived by Council; and
- (g) the Landowner and the Transferee pay Council's Costs in relation to that dealing.

9. Registration of this Agreement

9.1 As contemplated by section 7.6 of the Act, the Landowner must, within ten (10) Business Days of the operation of this Agreement under clause 4.1, at the Landowner's expense, procure the registration of this Agreement under the *Real Property Act 1900* (NSW) in the relevant folios of the Register for the Land.

9.2 The Landowner, at its own expense, will take all practical steps, and otherwise do anything that the Council reasonably requires, to procure:

- (a) the consent of each person who:
 - i. has an estate or interest in the Land registered under the *Real Property Act 1900* (NSW); or
 - ii. is seized or possessed of an estate or interest in the Land; and
- (b) the execution of any documents; and
- (c) the production of the relevant duplicate certificates of title, to enable the registration of this Agreement under the *Real Property Act 1900* (NSW) in the relevant folios of the Register for the Land in accordance with section 7.6 of the Act.

- 9.3 The Landowner will, within 15 Business Days of registration of this Agreement on the relevant folios of the Register for the Land in accordance with clause 9.1 and 9.2 above, provide the Council with a copy of the relevant folios of the Register for the Land.

10. Release and discharge of this Agreement

Where the Landowner has satisfied its obligations under this Agreement, the Council will do all things reasonably required by the Landowner to release and discharge this Agreement including removing this Agreement from the title of the Land after a written request to do so by the Landowner.

11. Variation of this Agreement

Any amendment to this Agreement shall only be effective if in writing and signed by all parties and registered under section 7.6 of the Act.

12. Dispute Resolution

- 12.1 If a dispute arises out of or relates to this Agreement, including any dispute as to breach or termination of this agreement or as to any claim in tort, in equity or under any legislation, a party cannot commence any court proceedings relating to the dispute unless that party has complied with the following clauses except where that party seeks urgent interlocutory relief.
- 12.2 A party claiming that a dispute has arisen must serve a notice on the other parties specifying the nature of the dispute.
- 12.3 On receipt of that notice by the other parties, all of the parties must endeavour in good faith to resolve the dispute expeditiously using informal dispute resolution techniques such as mediation, expert evaluation or similar techniques agreed by them.
- 12.4 If the parties do not agree within 21 days of service of the notice, or any further period agreed in writing by them, as to:
- (a) the dispute resolution technique and procedures to be adopted;
 - (b) the timetable for all steps in those procedures; and
 - (c) the selection and compensation of the independent person required for that technique,

the parties must mediate the dispute in accordance with the Mediation Rules of the Law Society of New South Wales and must request the President of the Law Society of New South Wales or the President's nominee to select the mediator and determine the mediator's remuneration.

13. Security and Enforcement

Caveat

- 13.1 The Landowner will not object to Council lodging a caveat in the relevant folio of the Register for the Land nor will the Landowner take, or suffer to be taken, any steps to remove that caveat until the Biodiversity Lot has been dedicated to Council.

Bank Guarantee

- 13.2 On the date this Agreement takes effect (clause 4.1) the Landowner shall deliver to Council a Bank Guarantee in the amount of \$150,000.00 (or other security, acceptable to Council) which Council may call upon, to satisfy, either wholly or in part:
- (a) any outstanding rates and charges as may be owing in respect of the Land up to and including the date of the dedication to Council of the Biodiversity Lot;
 - (b) any other costs of and incidental to Council's becoming registered as proprietor of Biodiversity Lot and/or protecting beforehand its estate or interest therein; and/or
 - (c) the carrying out of the Landowner's obligations in clause 5.
- 13.3 Should Council use the part or whole of the monies under the Bank Guarantee under clause 13.2, the Landowner shall, on being advised in writing by Council to do so, immediately take steps to ensure that the amount of the Bank Guarantee of \$150,000.00 (or other security) is replaced for the benefit of Council.
- 13.4 The Council will release the Bank Guarantee two (2) months following the dedication of the Biodiversity Lot and payment of the monetary development contribution to the satisfaction of the Council in accordance with clause 5 of this Agreement and the Third Schedule.

14. Compulsory acquisition

14.1 If:

- a) the Landowner does not dedicate any part of the Biodiversity Lot to Council in accordance with clause 1 of Schedule 3; or
- b) the Biodiversity Lot has not been dedicated to Council 9 months from the date of Gazettal,

the Landowner consents to Council compulsorily acquiring the Biodiversity Lot, or part of it, in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW) for the amount of \$1.00.

14.2 The Landowner and Council agree that:

- a) clause 14.1 of this Agreement is an agreement between them for the purposes of section 30 of the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW); and
- b) clause 14.1 of this Agreement they have agreed on all relevant matters concerning the compulsory acquisition and the compensation to be paid for the acquisition.

14.3 The Landowner indemnifies and agrees to keep indemnified Council, and/or its nominee against all claims made against Council or its nominee as a result of any compulsory acquisition by Council of the whole or any part of the Biodiversity Lot under clause 15.1 of this Agreement.

14.4 The Landowner must pay Council, promptly on demand, an amount equivalent to all costs incurred by Council compulsorily acquiring the whole or any part of the Biodiversity Lot as contemplated by this clause 15.1.

15. Application of sections 7.11, 7.12 and 7.24 of the Act to the Development.

This Agreement does not exclude sections 7.11, 7.12 or 7.24 of the Act.

16. Notices

16.1 Any notice, consent, information, application or request that must 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:

- (a) delivered or posted to that party at its address set out below.

(b) emailed to that party at its email address set out below.

Council

Attention: General Manager

Mid – Coast Council

Address: PO Box 450, FORSTER, NSW 2428

Email address: council@midcoast.nsw.gov.au

Landowner

Attention: INA OPERATIONS PTY LTD

Address: 115 Pitt Street, SYDNEY

Email address: dcollings@ingeniacommunities.com.au

16.2 If one party gives to another party 3 business days notice of a change of its address or email address, any notice, consent, information, application or request is only given or made by that other party if it is delivered, posted or emailed to the nominated business address.

16.3 Any notice, consent, information, application or request is to be treated as given or made at the following time:

- (a) if it is delivered, when it is left at the relevant address.
- (b) if it is sent by post, 7 business days after it is posted.
- (c) if it is sent by email, as soon as the sender receives a 'delivery receipt' from the recipient.

16.4 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.

17. Expenses and stamp duty

17.1 Costs of this Agreement

The Landowner is to pay the Council's reasonable costs in connection with the negotiation, preparation and execution of this Agreement.

17.2 Expenses

Every obligation to be performed by the Landowner under this Agreement shall be at no cost to the Council.

17.3 Stamp Duty

The Landowner is to pay any duty payable to the Office of State Revenue as a consequence of this Agreement or any document stamped pursuant to it.

18. Entire Agreement

This Agreement contains everything to which the parties have agreed in relation to the matters it deals with. 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 Agreement was executed, except as permitted by law.

19. Further acts

Each party must promptly execute all documents and do all things that another party from time to time reasonably requests to affect, perfect or complete this Agreement and all transactions incidental to it.

20. Governing law and jurisdiction

This Agreement is governed by the law of New South Wales. The parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them. The parties will not object to the exercise of jurisdiction by those courts on any basis.

21. Joint and individual liability and benefits

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

22. No fetter

Nothing in this Agreement shall be construed as requiring Council or the 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.

23. Representations and warranties

23.1 The Landowner represents and warrants to Council that as at the date of this Agreement, they are the legal and beneficial owners of the Land.

23.2 The parties represent and warrant that they have power to enter into this Agreement and comply with their obligations under the Agreement and that entry into this Agreement will not result in the breach of any law.

24. Severability

If a clause or part of a clause of this Agreement 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. 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 Agreement, but the rest of this Agreement is not affected.

This clause does not void the ability of either party to undertake mediation under clause 12.

25. Waiver

The fact that a party fails to do, or delays in doing, something the party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another party. A waiver by a party is only effective if it is in writing. 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.

26. Explanatory Note

The Explanatory Note shall not be used to assist in construing this Agreement.

27. GST

27.1 Interpretation

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

27.2 Intention of the parties

The parties intend that:

(a) Divisions 81 and 82 of the GST Law will apply to the supplies made under and in respect of this Agreement; and

(b) no additional amounts will be payable on account of GST and no tax invoices will be exchanged between the parties.

27.3 Reimbursements

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

27.4 Consideration GST exclusive

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this Agreement are GST Exclusive. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purposes of this clause 27.

27.5 Additional amounts for GST

To the extent an amount of GST is payable on a supply made by a party under or in connection with this Agreement (GST Amount), the Recipient will pay to the Supplier the GST Amount. However, where a GST Amount is payable by Council as Recipient of the supply and Council are not entitled to an input tax credit, the Landowner will ensure that:

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

27.6 Non-monetary consideration

Clause 27.5 applies to non-monetary consideration.

27.7 No merger

This clause 27 will not merge on completion or termination of this Agreement.

28. Trustee Limitation of Liability

28.1 In this Agreement, unless the contrary intention appears:

Trust Deed means the deed constituting the Trust.

Trustee means INA Operations Pty Ltd (ACN 159 195 632) in its capacity as trustee of the Trust or any substitute or replacement trustee of the Trust from time to time.

Trust means the trust known as INA Operations Trust No. 6 (ABN 15 223 236 281).

28.2 Despite any other provision of this Agreement, the Trustee enters into this Agreement as trustee of the Trust and in no other capacity.

28.3 Any liability or obligation of the Trustee arising under or in connection with this Agreement:

(a) is limited; and

(b) can be enforced against the Trustee only,

to the extent to which it can be satisfied out of the assets of the Trust in respect of which the Trustee is actually indemnified under the Trust Deed.

28.4 The limitation of the Trustee's liability under this clause applies despite any other provision of this Agreement and extends to all liabilities and obligations of the Trustee in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this agreement.

28.5 Despite any other provision of this Agreement, the Trustee is not obliged to do or refrain from doing anything under this Agreement unless the Trustee's liability is limited in the manner set out in this clause.

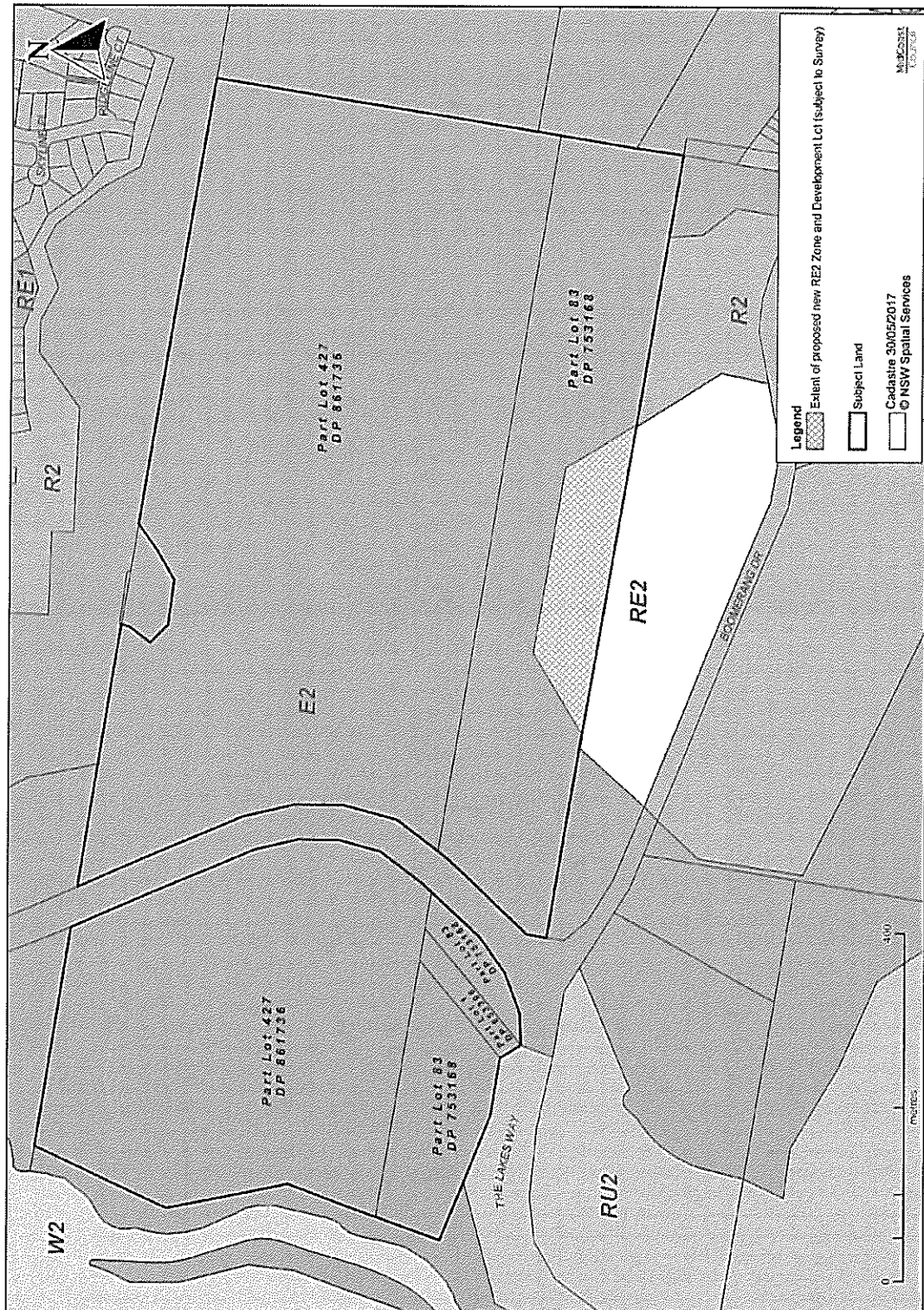
28.6 Council must not take any action of any kind against the Trustee in any capacity other than as the trustee of the Trust.

28.7 Despite any other provision of this Agreement:

(a) the limitation of the Trustee's liability under this clause shall, subject to paragraph (b) immediately below, not apply to any obligation or liability of the Trustee to the extent that it is not satisfied because there is a reduction in the extent of the Trustee's indemnification out of the assets of the Trust as a result of the Trustee's fraud, negligence or breach of trust; and

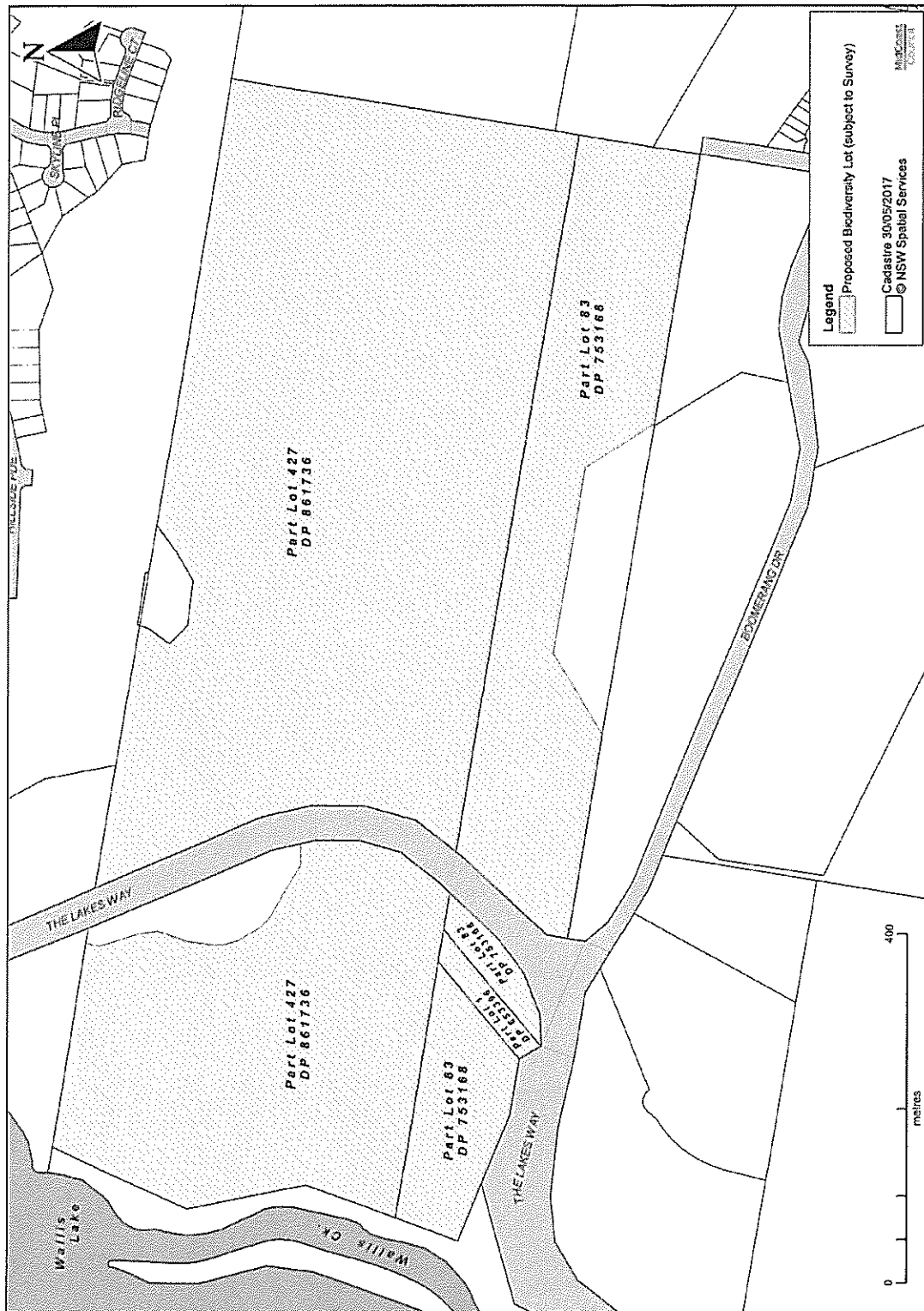
- (b) nothing in this clause shall make the Trustee liable to any claim for an amount greater than the amount which the Council would have been able to claim and recover from the assets of the Trust in relation to the relevant liability if the Trustee's right of indemnification out of the assets of the Trust had not been prejudiced by fraud, negligence or breach of trust.

Annexure "A": Plan "A" (the LEP Amendment and the Development Lot)



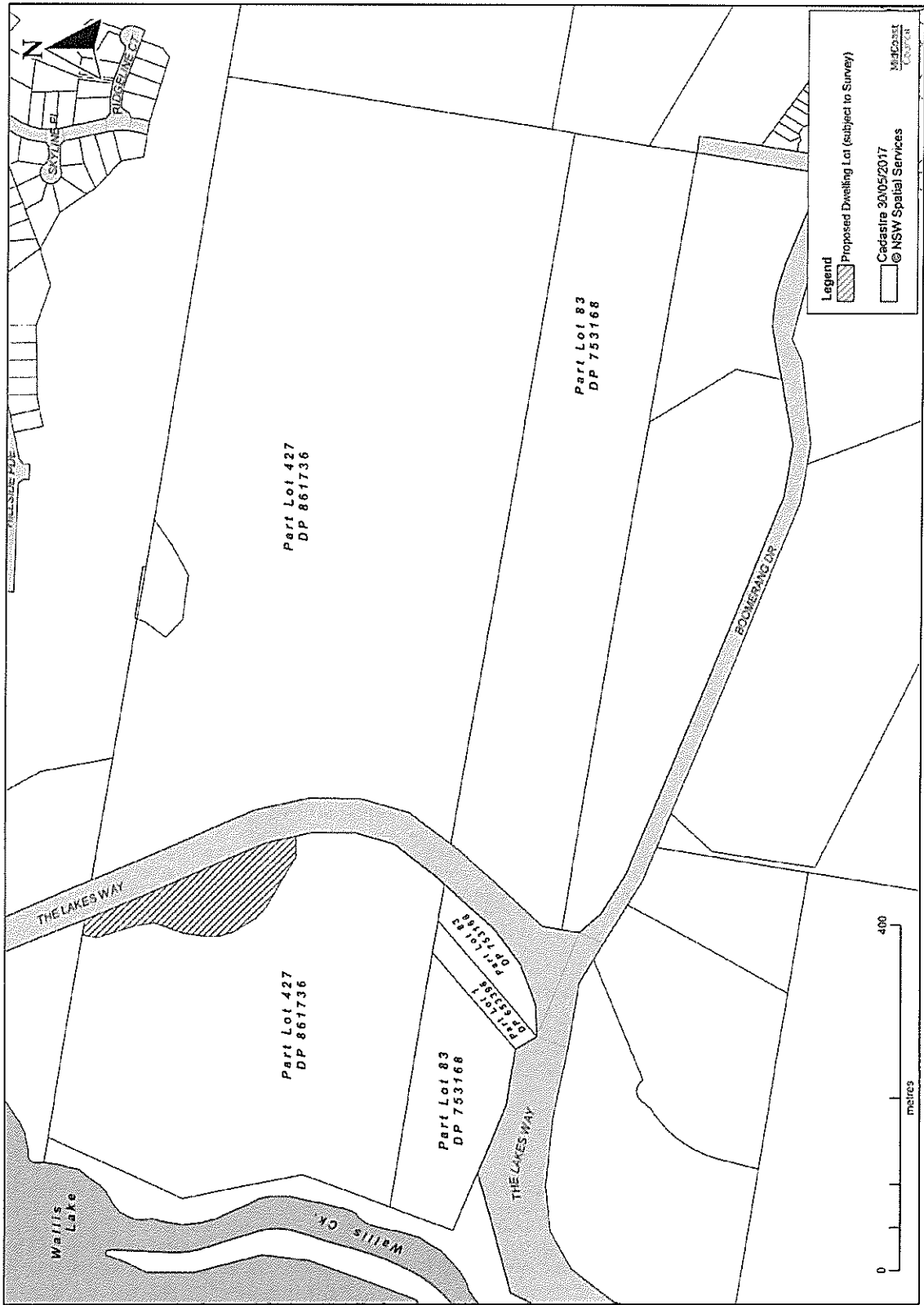
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Annexure "A": Plan "B" (the Biodiversity Lot)



Spencer

Annexure “A”: Plan “C” (the Dwelling Lot)



Spencer

THE FIRST SCHEDULE – SECTION 93F REQUIREMENTS

SUBJECT and SUB-SECTION OF THE ACT	THE PLANNING AGREEMENT
Planning instrument and/or Development Application - (Section 7.4(1)) The Landowner has sought a change to an environmental planning instrument. The Landowner has made, or proposes to make a Development Application. The Landowner has entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.	(a) Yes. Clause C and D. (b) Yes. Clause C and Schedule 3. (c) Yes. Clause B.
Description of the land to which the Planning Agreement applies - (Section 7.4(3)(a))	Definition of "Land" and Schedule 2.
Description of change to the environmental planning instrument to which the Planning Agreement applies - (Section 7.4(3)(b))	The definition of "LEP Amendment".
The scope, timing and manner of delivery of contribution required by the Planning Agreement - (Section 7.4(3)(c))	Third Schedule
Applicability of section 94 of the Act - (Section 7.4(3)(d))	Clause 15
Applicability of section 94A of the Act - (Section 7.4(3)(d))	Clause 15
Applicability of section 94EF of the Act - (Section 7.4(3)(d))	Clause 15
Consideration of benefits under this Agreement if section 94 applies (Section 7.4(3)(e))	Clause 15
Mechanism for dispute resolution - (Section 7.4(3)(f))	Clause 12
Enforcement of the Planning Agreement - (Section 7.4(3)(g))	Clause 13
Registration of the Planning Agreement - (Section 7.4(3)(g)) The Parties agree that the Planning Agreement will be registered in accordance with clause	Clause 9
No obligation to grant consent or exercise functions - (Section 7.4(9))	Clause 22 and Clause 23.2

THE SECOND SCHEDULE – THE LAND

The Land is:

Lot 1 DP 653396;
Lot 83 DP 753168; and
Lot 427 DP861736

known as 3801 The Lakes Way, BOOMERANG BEACH NSW, 2428.

THE THIRD SCHEDULE – THE DEVELOPMENT CONTRIBUTIONS

1. Dedication of Land

- (a) The Landowner must dedicate the Biodiversity Lot to the Council. In order to give effect to the dedication there must be a subdivision of the Land to create the parcels of land that will comprise the Biodiversity Lot, the Development Lot and the Dwelling Lot.
- (b) The Landowner must lodge one Development Application for the subdivision of the Land to create the Biodiversity Lot, the Development Lot and the Dwelling Lot no later than 2 months immediately following Gazettal (but may lodge them before Gazettal).
- (c) Within 1 month of the granting of Development Consent to the subdivision creating the Biodiversity Lot, Development Lot and Dwelling Lot the Landowner must lodge an application for a Subdivision Certificate in respect of the Biodiversity Lot, the Development Lot and the Dwelling Lot.
- (d) Within 1 month of any approval being given by the Council for the Subdivision Certificate, the Landowner must lodge the Plan of Subdivision for registration under s195G of the *Conveyancing Act 1919* at the LPI.
- (e) If the Plan of Subdivision registered in accordance with clause (d) of this Schedule 3 does not Dedicate the Biodiversity Lot to the Council, the Landowner must within 7 Business Days of the date of notification that the Plan of Subdivision has been registered, serve a Transfer on Council or her/his nominee with the relevant certificates of title and in circumstances where:
 - (i) the Biodiversity Lot is free from any encumbrances other than the Service Easements and the Section 88E Restriction on the Use of Land and any other restrictions on the title imposed by the NSW Government or its Agencies; or
 - (ii) relevant discharges in registrable form are also served on Council or her/his nominee at the same time in relation to any encumbrances other than the Service Easements and the Section 88E Restriction on the Use of Land.
- (f) The Landowner must immediately comply, or procure compliance with, any requisitions raised by the Registrar-General in relation to the Transfer of the Biodiversity Lot.
- (g) The Landowner will not be a party to any Dealing in relation to the Biodiversity Lot that will prejudice the ability of Council to obtain registration of any document delivered to it.

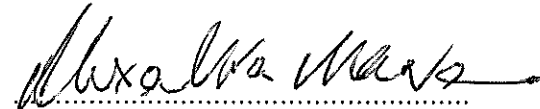
- (h) The Landowner will raise no objection to the rezoning of the Land or any part thereof and will not seek compensation for the dedication of the Biodiversity Lot.
- (i) The Landowner will pay all rates and taxes owing in respect of the Biodiversity Lot up to and including the date of dedication of the Biodiversity Lot after which Council will be liable.
- (j) The Landowner, from the date of this Agreement, must not undertake any action or activity, prior to the Transfer being registered, that will degrade, alter or have a detrimental effect on the ecological or conservation value or Aboriginal heritage values of the Biodiversity Lot except where the Landowner is:
 - (i) directed to undertake such action or activity by a NSW Government or its Agencies (such as the Rural Fire Service);
 - (ii) maintaining existing access and existing tracks; or
 - (iii) otherwise required by law to undertake such an action or activity.

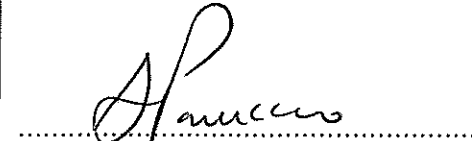
2. Monetary Development Contribution

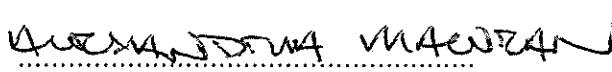
Within 28 Business Days of the Gazettal, the Landowner must pay the Council a monetary contribution in the amount of \$129,425 (subject to CPI) to provide for the future maintenance of the Biodiversity Lot as detailed in the *Evaluation of Restoration Activities and Draft Costings for the Long term Public Conservation Management of Lands at Palms Oasis, Pacific Palms*, prepared by the Senior Ecologic - MidCoast Council which forms Appendix C to the Mid-Coast Council Planning Proposal, NSW Department of Planning & Environment reference number PP_2016_MCOAS_003, inclusive of the *Wetland Management Plan* prepared by Coastplan Group Pty Ltd, which forms Annexure "C" of the Section 88E Restriction on the Use of Land.

Executed as a Deed

Executed by **Mid - Coast Council** by its authorised delegate in accordance with a resolution of the Council made on 19 April 2017.


 General Manager / SIGNATURE OF WITNESS


 Mayor/Administrator
 GENERAL MANAGER

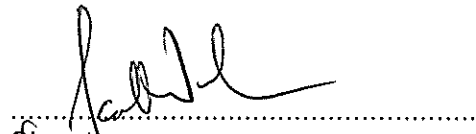

 Name of Witness in full


 Signature of Witness NAME

Executed by the **Landowner**
 INA OPERATIONS PTY LTD (ACN 159 195 632) in accordance with s127(1) of the Corporations Act (Cth) 2001

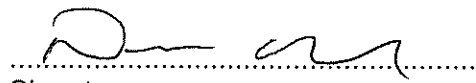
Scott Noble


.....
 Name / Position Director


 Signature

Natalie Kwok

.....
 Name / Position company secretary


 Signature


 Name of Witness in full


 Signature of Witness