



Voluntary Planning Agreement

**In respect of Lot 100 DP 1139447, also known as
9844 Pacific Highway Bulahdelah NSW 2423**

Mid-Coast Council
ABN 44 961 208 161

Lindfield Property Nominee Pty Ltd & N G P Investments
(No 2) Pty Ltd
ABN 76 811 462 481

Contents

Parties	5
Background	5
Operative part	5
1 <i>Definitions</i>	5
2 <i>Interpretation</i>	7
3 <i>Planning Agreement under the Act</i>	9
4 <i>Application of this agreement</i>	9
5 <i>Operation of this agreement</i>	9
6 <i>Contributions to be made under this agreement</i>	9
6.1 <i>Monetary Contribution</i>	9
7 <i>Application of s 7.11, s 7.12 and s 7.24 of the Act to the Development</i>	9
8 <i>Registration of this agreement</i>	10
8.1 <i>Developers Interest</i>	10
8.2 <i>Registration of this agreement</i>	10
8.3 <i>Removal from Register</i>	10
8.4 <i>Caveat</i>	11
9 <i>Review of this agreement</i>	11
10 <i>Dispute Resolution</i>	12
10.1 <i>Reference to Dispute</i>	12
10.2 <i>Notice of Dispute</i>	12
10.3 <i>Representatives of Parties to Meet</i>	12
10.4 <i>Further Notice if Not Settled</i>	12
10.5 <i>Mediation</i>	12
10.6 <i>Litigation</i>	13
10.7 <i>No suspension of contractual obligations</i>	13
11 <i>Enforcement</i>	13
11.1 <i>Default</i>	13
11.2 <i>Restriction on Certificates</i>	14
11.3 <i>General Enforcement</i>	14
12 <i>Assignment and Dealings</i>	14
12.1 <i>Assignment</i>	14
12.2 <i>Transfer of Land</i>	14
12.3 <i>Dealings</i>	15

13	<i>Approvals and consents</i>	15
14	<i>No fetter</i>	15
14.1	Discretion	15
14.2	No fetter	15
15	<i>Notices</i>	15
15.1	Notices	15
16	<i>General</i>	16
16.1	Relationship between parties	16
16.2	Time for doing acts	16
16.3	Further assurances	17
16.4	Variation	17
16.5	Records	17
16.6	Counterparts	17
16.7	Legal expenses and stamp duty	17
16.8	Entire agreement	17
16.9	Representations and warranties	17
16.10	Severability	17
16.11	Invalidity	18
16.12	Waiver	18
16.13	GST	18
16.14	Governing law and jurisdiction	18
16.15	Survival	19
16.16	Trustee warranties and obligations	19
	Schedule 1 Monetary Contributions	20
	Schedule 2 Summary of requirements (section 7.4)	21
	Schedule 3 – Contribution within the Development	23
	Annexure A Plan showing Land	26
	Annexure B Draft Explanatory Note	27
	Explanatory Note	27
	Exhibition of draft Voluntary Planning Agreement	27
	Lot 100 DP 1139447, known as 9844 Pacific Highway, Bulahdelah	27
	Description of the Planning Proposal to which the Planning Agreement applies	27

Summary of Objectives, Nature and Effect of the Planning Agreement	28
Assessment of the Merits of the Planning Agreement	28

Agreement

Date

12 May 2022

Parties

First party

Name Mid-Coast Council (**Council**)
ABN 44 961 208 161
Contact General Manager
Telephone 02 7955 7777

Second party

Name Lindfield Property Nominees Pty Ltd & NGP
Investments (No 2) Pty Ltd ABN 76 811 462 481
(**Developers**)
Contact Second party contact name
Telephone Second party phone no.

Background

- A. The Developers own the Land.
- B. The Developers propose to carry out the Development.
- C. To facilitate the Development, the Developers lodged the Planning Proposal, which received altered Gateway Determination from the Department of Planning, Industry and Environment on 20 March 2020.
- D. The Developers have made an offer to enter into this agreement to provide funding to Council for the provision of additional public amenities and public services for the Bulahdelah business community.
- E. Council is to use the funding on items that will benefit the Bulahdelah community and Bulahdelah business community.

Operative part

1 Definitions

In this agreement, unless the context indicates a contrary intention:

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

Address means a party's address set out in the Notices clause of this agreement;

Approval means any certificate, licence, consent, permit, approval or other requirement of any Authority having jurisdiction in connection with the activities contemplated by this agreement;

Assign as the context requires, means any assignment, sale, transfer or disposition, of a legal and/or beneficial interest.

Authority means any government, semi-governmental, statutory, administrative, fiscal or judicial body, department, commission, authority, tribunal, public or other person;

Bank Guarantee means an irrevocable and unconditional undertaking that is not limited in time and does not expire by one of the following trading banks:

- (a) Australia and New Zealand Banking Group Limited,
- (b) Commonwealth Bank of Australia,
- (c) Macquarie Bank,
- (d) National Australia Bank,
- (e) St George Bank Limited,
- (f) Westpac Banking Corporation, or
- (g) Other financial institution approved by Council,

to pay an amount or amounts of money to Council on demand and containing terms and conditions reasonably acceptable to Council;

Business Day means a day on which banks are open for general banking business in Sydney, excluding Saturdays and Sundays;

Claim means any claim, loss, liability, damage, proceeding, order, judgment or expense arising out of the operation of this agreement;

Construction Certificate means a construction certificate as defined under section 6.4(a) of the Act;

CPI means the All Groups Consumer Price Index applicable to Sydney published by the Australian Bureau of Statistics;

Damages means all liabilities, losses, damages, costs and expenses, including legal fees and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties;

Dealing, in relation to the Land, means, without limitation, selling, transferring, assigning, mortgaging, charging, encumbering or otherwise dealing with the Land;

Developers means Lindfield Property Nominee Pty Ltd and NGP Investments (No 2) Pty Ltd;

Development means the development of the Land for a Highway Service Centre;

Development Application has the same meaning as in the Act;

Development Consent has the same meaning as in the Act;

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 of or administration of the GST;

Instrument Change means an amendment to LEP 2014 contemplated by the Planning Proposal;

Land means Lot 100 DP 1139447, known as 9844 Pacific Highway, Bulahdelah;

Law means:

- (a) any law applicable including legislation, ordinances, regulations, by-laws and other subordinate legislation;
- (b) any Approval, including any condition or requirement under it; and
- (c) any fees and charges payable in connection with the things referred to in paragraphs (a) and (b);

LEP 2014 means the *Great Lakes Local Environmental Plan 2014*;

Minister means the Minister of the NSW Department of Planning, Industry and Environment.

Monetary Contribution means the monetary contributions payable by the Developer set out in Schedule 1;

Planning Proposal means PP_2018_MCOAS_004_00 lodged with Council dated 8 November 2017, determined by Gateway Determination on 11 July 2019, and varied by Alteration of Gateway Determination on 20 March 2020 seeking the following amendments to LEP 2014:

- (a) an amendment to Schedule 1 of LEP 2014 to identify a highway service centre as permissible on the Land; and
- (b) an amendment to the Additional Permitted Uses Map (introducing Title 8A) to identify part of the Land as land to which Schedule 1 applies.

Register means the Torrens title register maintained under the *Real Property Act 1900* (NSW);

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

Related Body Corporate has the meaning given to that term in s 9 of the *Corporations Act 2001* (Cth).

2 Interpretation

In this agreement, unless the context indicates a contrary intention:

- (a) **(documents)** a reference to this agreement or another document includes any document which varies, supplements, replaces, assigns or novates this agreement or that other document;
- (b) **(references)** a reference to a party, clause, paragraph, schedule or annexure is a reference to a party, clause, paragraph, schedule or annexure to or of this agreement;
- (c) **(headings)** clause headings and the table of contents are inserted for convenience only and do not affect interpretation of this agreement;
- (d) **(person)** a reference to a person includes a natural person, corporation, statutory corporation, partnership, the Crown and any other organisation or legal entity and their personal representatives, successors, substitutes (including persons taking by novation) and permitted assigns;

- (e) **(party)** a reference to a party to a document includes that party's personal representatives, executors, administrators, successors, substitutes (including persons taking by novation) and permitted assigns;
- (f) **(president, CEO or managing director)** the president, CEO or managing director of a body or Authority means any person acting in that capacity;
- (g) **(requirements)** a requirement to do any thing includes a requirement to cause that thing to be done, and a requirement not to do any thing includes a requirement to prevent that thing being done;
- (h) **(including)** including and includes are not words of limitation, and a list of examples is not limited to those items or to items of a similar kind;
- (i) **(corresponding meanings)** a word that is derived from a defined word has a corresponding meaning;
- (j) **(singular)** the singular includes the plural and vice-versa;
- (k) **(gender)** words importing one gender include all other genders;
- (l) **(parts)** a reference to one or more things includes each part and all parts of that thing or group of things but nothing in this clause implies that part performance of an obligation constitutes performance of that obligation;
- (m) **(rules of construction)** neither this agreement nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting;
- (n) **(legislation)** a reference to any legislation or provision of legislation includes all amendments, consolidations or replacements and all regulations or instruments issued under it;
- (o) **(time and date)** a reference to a time or date in connection with the performance of an obligation by a party is a reference to the time and date in Sydney, Australia, even if the obligation is to be performed elsewhere;
- (p) **(joint and several)** an agreement, representation, covenant, right or obligation:
 - (i) in favour of two or more persons is for the benefit of them jointly and severally; and
 - (ii) on the part of two or more persons binds them jointly and severally;
- (q) **(writing)** a reference to a notice, consent, request, approval or other communication under this agreement or an agreement between the parties means a written notice, request, consent, approval or agreement;
- (r) **(replacement bodies)** a reference to a body (including an institute, association or Authority) which ceases to exist or whose powers or functions are transferred to another body is a reference to the body which replaces it or which substantially succeeds to its power or functions;
- (s) **(Australian currency)** a reference to dollars or \$ is to Australian currency;
- (t) **(month)** a reference to a month is a reference to a calendar month; and
- (u) **(year)** a reference to a year is a reference to twelve consecutive calendar months.

3 Planning Agreement under the Act

- (a) The parties agree that this agreement is a planning agreement within the meaning of section 7.4 of the Act.
- (b) Schedule 2 of this agreement summarises the requirements for planning agreements under section 7.4 of the Act and the way this agreement addresses those requirements.

4 Application of this agreement

This agreement applies to:

- (a) the Land;
- (b) the Development; and
- (c) the Instrument Change.

5 Operation of this agreement

This agreement commences on and from the later of:

- (a) the date it is executed by all parties; and
- (b) the Council or the Minister (where relevant) grants the Instrument Change.

6 Contributions to be made under this agreement

6.1 Monetary Contribution

- (a) The Developers will pay to Council the Monetary Contributions in accordance with the terms of this agreement and Schedule 1.
- (b) The amounts of the Monetary Contributions are specified in Column 3 of Schedule 1 and will be indexed in accordance with increases in the CPI from the date of this agreement to the date of payment.
- (c) Each Monetary Contribution must be paid to Council at the time specified in Column 4 of Schedule 1.
- (d) The Monetary Contribution must be paid by way of bank cheque in favour of Council or by deposit by means of electronic funds transfer into an account specified by Council.
- (e) The Monetary Contribution is made when Council receives the full amount of the contribution payable by bank cheque or by the deposit of cleared funds or electronic funds have been deposited in Council's nominated bank account.
- (f) The parties agree and acknowledge that the Monetary Contribution will be used by Council towards the public purposes and the works specified in Columns 1 and 2 of Schedule 1.

7 Application of s 7.11, s 7.12 and s 7.24 of the Act to the Development

- (a) This agreement does not exclude the application of section 7.11 of the Act to the Development.
- (b) This agreement does not exclude the application of section 7.12 of the Act to the Development.

- (c) This agreement does not exclude the application of section 7.24 of the Act to the Development.
- (d) The benefits under this agreement are not to be taken into consideration in determining a development contribution under section 7.11 of the Act.

8 Registration of this agreement

8.1 *Developers Interest*

The Developers represent and warrant to Council that on the date of this agreement they are the registered proprietors of the Land.

8.2 *Registration of this agreement*

- (a) The Developers agree to procure the registration of this agreement under the *Real Property Act 1900* (NSW) in the relevant folios of the Register of the Land in accordance with section 7.6(1) of the Act.
- (b) The Developers at their own expense will, promptly after the execution of this agreement, take all practical steps, and otherwise do anything that Council reasonably requires to procure:
 - (i) the consent of each person who:
 - (A) has an estate or interest in the Land registered under the *Real Property Act 1900* (NSW); or
 - (B) is seized or possessed of an estate or interest in the Land,
 - (ii) the execution of any documents; and
 - (iii) the production of the relevant certificates of title,to enable the registration of this agreement in accordance with clause 8.2.
- (c) The Developers, at their own expense, will take all practical steps, and otherwise do anything that Council reasonably requires:
 - (i) to procure the lodgement of this agreement with the Registrar-General as soon as reasonably practicable after this agreement comes into operation, but in any event, no later than sixty (60) Business Days after that date; and
 - (ii) to procure the registration of this agreement by the Registrar-General in the relevant folios of the Register for the Land as soon as reasonably practicable after this agreement is lodged for registration.

8.3 *Removal from Register*

The parties are to do such things as are reasonably necessary to remove any notation relating to this agreement from the Register for the Land (or any part of it) on the earlier of:

- (a) Payment of the Monetary Contributions by the Developers in accordance with clause 6.1; or
- (b) This agreement is terminated or otherwise comes to an end for any other reason.

8.4 Caveat

- (a) The Developers acknowledge and agree that:
 - (i) when this agreement is executed, Council is deemed to have acquired and the Developers are deemed to have granted, an equitable estate and interest in the Land for the purposes of section 74F(1) of the *Real Property Act 1900* (NSW) and consequently Council will have a right to charge the land on account of the Monetary Contributions and will therefore have sufficient interest in the Land in respect of which to lodge a caveat over the Land notifying that interest; and
 - (ii) they will not object to Council lodging a caveat in the relevant folios of the Register for the Land nor will they seek to remove any caveat lodged by Council pursuant to this agreement.
- (b) Council must, at Developers' cost, register a withdrawal of any caveat in respect of the Land within 10 Business Days after the Developers comply with clause 8.2 and must not lodge any other caveats on the titles to any of the Land.

9 Review of this agreement

- (a) This agreement must not be varied except by a later written document executed by all parties.
- (b) This agreement may be reviewed or modified and any review or modification of this agreement will be conducted in the circumstances and in the manner determined by the parties.
- (c) In the event that either party considers that a variation or modification of this agreement is required, including because of conditions of a subsequent development consent, then the Developers and Council agree to meet and review this agreement.
- (d) During a review of the agreement under clause 9(c), the parties agree to negotiate any variation or modification to the agreement in good faith and use their best endeavours to agree on and implement appropriate amendments to this agreement in light of the matters giving rise to the review.
- (e) Any agreement reached during a review under clauses 9(c) and 9(d) will not constitute an amendment to this agreement until the amendment has been:
 - (i) confirmed in writing as a proposed amendment to this agreement;
 - (ii) where required, publicly notified in accordance with the Regulation;
 - (iii) where required, approved by Council after consideration of any public submissions on terms agreed and reasonably acceptable to the Developer in light of the outcome of the review in clause 9(d); and
 - (iv) signed by the parties.
- (f) A failure by a party to agree to participate in a review under this clause 9 is taken to be a dispute for the purposes of clause 10.

- (g) If the parties fail to meet or cannot agree to the terms of any amendment to this agreement following a review under clauses 9(c) and 9(d), either party may refer the matter to dispute resolution under clause 10.

10 Dispute Resolution

10.1 Reference to Dispute

If a dispute arises between the parties in relation to this agreement, the parties must not commence any court proceedings relating to the dispute unless the parties have complied with this clause, except where a party seeks urgent interlocutory relief.

10.2 Notice of Dispute

The party wishing to commence the dispute resolution process must give written notice (**Notice of Dispute**) to the other parties of:

- (a) the nature of the dispute;
- (b) the alleged basis of the dispute;
- (c) the steps the party believes will resolve the dispute;
- (d) the identity of its representative to negotiate the dispute; and
- (e) the position which the party issuing the Notice of Dispute believes is correct.

The other parties must, within five (5) Business Days of receipt of the Notice of Dispute, provide a notice to the first party designating as its representative a person to negotiate the dispute.

10.3 Representatives of Parties to Meet

- (a) The representatives of the parties must promptly (and in any event within 20 Business Days of the Notice of Dispute, or such further period as the parties may agree to in writing) meet in good faith to attempt to resolve the notified dispute.
- (b) The parties may, without limitation:
 - (i) resolve the dispute during the course of that meeting; or
 - (ii) agree that the parties are unlikely to resolve the dispute and, in good faith, agree to a form of alternative dispute resolution (including expert determination, arbitration or mediation) which is appropriate for the resolution of the relevant dispute.

10.4 Further Notice if Not Settled

If the dispute is not resolved in accordance with clause 10.3, either party may give to the other a written notice calling for determination of the dispute (**Determination Notice**) by mediation under clause 10.5.

10.5 Mediation

If a party gives a Determination Notice calling for the dispute to be mediated:

- (a) The parties must agree to the terms of reference of the mediation within 10 Business Days of the receipt of the Determination Notice (the terms shall include a requirement that the mediation rules of the Resolution Institute apply;

- (b) The mediator will be agreed between the parties, or failing agreement within 5 Business Days of receipt of the Determination Notice, either party may request the President of the Resolution Institute to appoint a mediator;
- (c) The mediator appointed pursuant to this clause 10.5 must have:
 - (i) reasonable qualifications and practical experience in the area of the dispute; and
 - (ii) no interest or duty which conflicts or may conflict with his or her function as a mediator he or she being required to fully disclose any such interest or duty before his or her appointment;
- (d) The mediator shall be required to undertake to keep confidential all matters coming to his or her knowledge by reason of his or her appointment and performance of his or her duties;
- (e) The parties must within 15 Business Days of receipt of the Determination Notice notify each other of their representatives who will be involved in the mediation (except if a resolution of Council is required to appoint a representative, Council must advise of the representative within 5 Business Days of the resolution);
- (f) The parties agree to be bound by a mediation settlement and may only initiate judicial proceedings in respect of a dispute which is the subject of a mediation settlement for the purpose of enforcing that mediation settlement; and
- (g) In relation to costs and expenses:
 - (i) each party will bear its own professional and expert costs incurred in connection with the mediation; and
 - (ii) the costs of the mediator will be shared equally by the parties unless the mediator determines that a party has engaged in vexatious or unconscionable behaviour in which case the mediator may require the full costs of the mediation to be borne by that party.

10.6 *Litigation*

If the dispute is not *finally* resolved in accordance with this clause 10, then either party may litigate the dispute.

10.7 *No suspension of contractual obligations*

Subject to any interlocutory order obtained under clause 10.1, the referral to or undertaking of a dispute resolution process under this clause 10 does not suspend the parties' obligations under this agreement.

11 *Enforcement*

11.1 *Default*

- (a) In the event a party considers another party has failed to perform and fulfil an obligation under this agreement, it may give notice in writing to the other party (**Default Notice**) giving all particulars of the matters in respect of which it considers default has occurred and by such notice require the default to be remedied within a reasonable time not being less than 21 days.
- (b) In determining a reasonable time, regard must be had to both the nature of the default and the work or other action required to remedy it and whether or not the

continuation of the default constitutes a public nuisance or raises other circumstances of urgency or emergency.

- (c) If a party disputes the Default Notice it may refer the dispute to dispute resolution under clause 10 of this agreement.

11.2 *Restriction on Certificates*

In accordance with section 6.8 of the Act and clause 146A of the Regulation an Occupation Certificate must not be issued for the Development unless the Developers have paid the Monetary Contributions in accordance with the terms of this agreement and Schedule 1.

11.3 *General Enforcement*

- (a) Without limiting any other remedies available to the parties, this agreement may be enforced by any party in any Court of competent jurisdiction.
- (b) Nothing in this agreement prevents:
 - (i) a party from bringing proceedings in the NSW Land and Environment Court to enforce any aspect of this agreement or any matter to which this agreement relates; and
 - (ii) Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this agreement or any matter to which this agreement relates.

12 *Assignment and Dealings*

12.1 *Assignment*

- (a) A party must not Assign any right under this agreement without the prior written consent of all other parties.
- (b) Any change of ownership or control (as defined in section 50AA of the *Corporations Act 2001* (Cth)) of a party (excluding Council) shall be deemed to be an Assignment of this agreement for the purposes of this clause.
- (c) Any purported dealing in breach of this clause is of no effect.

12.2 *Transfer of Land*

- (a) The Developers may not Assign the whole or any part of its right, title or interest in the Land (present or future) or in the Development to another person (**Transferee**) unless before it Assigns that right, title or interest the Developers:
 - (i) provide a written request to Council for the consent of Council to the relevant Assignment;
 - (ii) provide Council with any evidence required by Council, acting reasonably, to satisfy Council that the proposed Transferee is financially capable of complying with the Developers obligations under this agreement;
 - (iii) obtain written consent of Council to the relevant Assignment; and
 - (iv) at no cost to Council, procure the execution by the Transferee of deed acceptable to Council, acting reasonably, where the Transferee agrees to be bound by the terms of this agreement; and

- (v) remedy any default under any provisions of this agreement, except where waived by Council, on such conditions as Council may determine, and
- (vi) and the Transferee pay Council's reasonable costs in relation to the assignment.

12.3 *Dealings*

The Developers must not register any Dealing against the title to the Land, unless Council consents in writing to the registration of the Dealing, which consent must not be withheld in the circumstances described in clause 12.2, or in any other case must not be unreasonably withheld by Council.

13 Approvals and consents

Except as otherwise expressly stated in this agreement, and subject to any statutory obligations, a party may give or withhold an approval or consent to be given under this agreement in that party's absolute discretion and subject to any conditions determined by the party. A party is not obligated to give its reasons for giving or withholding consent or for giving consent subject to conditions.

14 No fetter

14.1 *Discretion*

This agreement is not intended to operate to fetter, in any manner, the exercise of any statutory power or discretion of Council, including, but not limited to, any statutory power or discretion of Council relating to the Development Application or any other application for Development Consent (all referred to in this agreement as a "**Discretion**").

14.2 *No fetter*

No provision of this agreement is intended to constitute any fetter on the exercise of any Discretion. If, contrary to the operation of this clause, any provision of this agreement is held by a court of competent jurisdiction to constitute a fetter on any Discretion, the parties agree:

- (a) they will take all practical steps, including the execution of any further documents, to ensure the objective of this clause is substantially satisfied;
- (b) in the event that (a) cannot be achieved without giving rise to a fetter on the exercise of a Discretion, the relevant provision is to be severed and the remainder of this agreement has full force and effect; and
- (c) to endeavour to satisfy the common objectives of the parties in relation to the provision of this agreement which is to be held to be a fetter on the extent that is possible having regard to the relevant court judgment.

15 Notices

15.1 *Notices*

Any notice given under or in connection with this agreement (**Notice**):

- (a) must be in writing and signed by a person duly authorised by the sender;

- (b) must be addressed as follows and delivered to the intended recipient by hand, by prepaid post or by email at the address below, or at the address last notified by the intended recipient to the sender after the date of this agreement:
 - (i) to Council: 2 Biripi Way, Taree 2430
Email: council@midcoast.nsw.gov.au
Attention: General Manager
 - (ii) to Level 2, 10 Neild Ave Rushcutters Bay NSW 2011
Developers: Email: DBelmonte@wfmmtors.com.au
Attention: Domenic Belmonte
- (c) is taken to be given or made:
 - (i) in the case of hand delivery, when delivered;
 - (ii) in the case of delivery by post, four Business Days after the date of posting (if posted to an address in the same country) or seven Business Days after the date of posting (if posted to an address in another country); and
 - (iii) in the case of an email, that day. An email is not taken to have been received if the sender's computer reports that the message has not been delivered or if it is not received in full and legible form and the addressee notifies the sender of that fact within six (6) hours after the transmission ends or by 12 noon on the Business Day on which it would be otherwise treated as given or received, whichever is later.; and
- (d) if under clause 15.1(c) a Notice would be taken to be given or made on a day that is not a Business Day in the place to which the Notice is sent, or later than 4.00 pm (local time), it is taken to have been given or made at the start of business on the next Business Day in that place.

16 General

16.1 Relationship between parties

- (a) Nothing in this agreement:
 - (i) constitutes a partnership between the parties; or
 - (ii) except as expressly provided, makes a party an agent of another party for any purpose.
- (b) A party cannot in any way or for any purpose:
 - (i) bind another party; or
 - (ii) contract in the name of another party.
- (c) If a party must fulfil an obligation and that party is dependent on another party, then that other party must do each thing reasonably within its power to assist the other in the performance of that obligation.

16.2 Time for doing acts

- (a) If the time for doing any act or thing required to be done or a notice period specified in this agreement expires on a day other than a Business Day, the time

for doing that act or thing or the expiration of that notice period is extended until the following Business Day.

- (b) If any act or thing required to be done is done after 5.00 pm on the specified day, it is taken to have been done on the following Business Day.

16.3 Further assurances

Each party must promptly execute all documents and do all other things reasonably necessary or desirable to give effect to the arrangements recorded in this agreement.

16.4 Variation

A provision of this agreement can only be varied by a later written document executed by or on behalf of all parties and in accordance with the provisions of the Act.

16.5 Records

- (a) The Developers must keep and maintain financial and other relevant records to enable their compliance with this agreement to be verified, including any records required by law (**Records**).
- (b) The Records must be maintained in an accessible and secure form for a period of at least seven years from the date of their creation, or longer if required by law (**Period of Retention**).
- (c) At any time during the Period of Retention, by a written request to the Developers, Council or a representative may require the Developers to facilitate an inspection of the Records by a Council officer or auditor, and/or provide copies to them of such Records, and such inspection shall occur and/or copies must be provided within the time specified by Council in its request.

16.6 Counterparts

This agreement may be executed in any number of counterparts. All counterparts taken together constitute one and the same instrument.

16.7 Legal expenses and stamp duty

The Developers must pay Council's reasonable legal costs and disbursements in connection with the negotiation, preparation, execution, carrying into effect and release and discharge of this agreement.

16.8 Entire agreement

The contents of this agreement constitute the entire agreement between the parties and supersede any prior negotiations, representations, understandings or arrangements made between the parties regarding the subject matter of this agreement, whether orally or in writing.

16.9 Representations and warranties

The parties represent and warrant that they have the power and authority 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.

16.10 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.

16.11 Invalidity

- (a) A word or provision must be read down if:
 - (i) this agreement is void, voidable, or unenforceable if it is not read down;
 - (ii) this agreement will not be void, voidable or unenforceable if it is read down; and
 - (iii) the provision is capable of being read down.
- (b) A word or provision must be severed if:
 - (i) despite the operation of clause (a), the provision is void, voidable or unenforceable if it is not severed; and
 - (ii) this agreement will be void, voidable or unenforceable if it is not severed.
- (c) The remainder of this agreement has full effect even if clause 16.11(b) applies.

16.12 Waiver

- (a) A right or remedy created by this agreement cannot be waived except in writing signed by the party entitled to that right. Delay by a party in exercising a right or remedy does not constitute a waiver of that right or remedy, nor does a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.
- (b) 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.

16.13 GST

- (a) Words and expressions which are not defined in this agreement but which have a defined meaning in GST Law have the same meaning as in the GST Law.
- (b) Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this agreement are exclusive of GST.
- (c) If GST is imposed on any supply made under or in accordance with this agreement, the Developers must pay the GST or pay to Council an amount equal to the GST payable on or for the taxable supply, whichever is appropriate in the circumstances.

16.14 Governing law and jurisdiction

- (a) The laws applicable in the State of New South Wales govern this agreement.
- (b) The parties submit to the non-exclusive jurisdiction of the courts of the State of New South Wales and any courts competent to hear appeals from those courts.

16.15 *Survival*

Any provision of this agreement which implies or contemplates performance or observance subsequent to any termination or completion of this agreement, and the representations, warranties, covenants and indemnities of or by the parties contained in this agreement, will survive the termination (howsoever arising), expiry or completion of this agreement and continue in full force and effect.

16.16 *Trustee warranties and obligations*

- (a) If the Developers enter into this agreement as trustees of any trusts (**Trusts**), the Developers enter into this agreement in their respective capacities as trustees, and represent and warrant that:
 - (i) they have been properly appointed as trustees of the Trusts and they are not in material default under the trust deeds of the Trusts;
 - (ii) the Trusts are validly constituted and have not terminated, no action has been taken to wind up, terminate or resettle the Trusts, and no date or event has occurred for the vesting of the assets of the Trusts;
 - (iii) they have in full force and effect the authorisations necessary to execute this agreement, perform all obligations under this agreement and allow this agreement to be enforced;
 - (iv) they have a right to be indemnified fully out of the assets of the Trusts concerning all of the obligations and liabilities incurred by them under this agreement, the assets of the Trusts are sufficient to satisfy that right in full, and they have not released or disposed of their equitable lien over the assets of the Trusts; and
 - (v) they have disclosed to Council full particulars of the Trusts and of any other trust or fiduciary relationship affecting the assets of the Trusts, and have given Council a complete, up to date copy of the relevant trust deeds of the Trusts.
- (b) If the Developers have entered into this agreement as trustees of Trusts, the Developers must give Council promptly upon request:
 - (i) any information concerning the financial condition (including the financial accounts), business, assets and affairs of the Trusts that Council reasonably requests; or
 - (ii) a statement from the duly appointed auditors of the Trusts attesting to the solvency and financial soundness of the Trusts and the trustee of the Trusts.

Schedule 1 Monetary Contributions

Column 1 Public Purpose	Column 2 Works	Column 3 Monetary Contribution	Column 4 Timing
Contribution to Council to assist with the promotion and improvement of local businesses in Bulahdelah and mitigation of potential adverse impacts to local businesses in Bulahdelah as a result of the Development.	Works including: <ul style="list-style-type: none"> Public domain improvements (to streets/roads, parks and foreshore areas) including lighting, landscaping, seating, signage etc. Provision of additional amenities/infrastructure to support Council's RV friendly approach e.g. designated RV parking area. General business assistance available to all Bulahdelah businesses, such as marketing, merchandising, website advice/tutorials. 	\$500,000	Monetary contribution to be made to Council: <ul style="list-style-type: none"> as to \$50,000, within 2 months after the Instrument Change is made; and as to the balance, prior to the issue of the first occupation certificate as defined under section 6.4 (c) of the Act for the Development.
	Total	Total: \$500,000	
Total cost of Monetary Contributions:		\$500,000	

Schedule 2 Summary of requirements (section 7.4)

Subject and subsection of the Act	Planning Agreement
Planning instrument and/or Development Application – Section 7.4(1) The Developers have: <ul style="list-style-type: none"> (a) Sought a change to an environmental planning instrument <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No (b) Made, or propose to make a Development Application <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No (c) Entered into an agreement with, or are otherwise associated with, a person to whom paragraph (a) or (b) applies <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No 	
Description of the land to which the planning Agreement applies – Section 7.4(3)(a)	Lot 100 DP 1139447, also known as 9844 Pacific Highway Bulahdelah.
Description of the change to the environmental planning instrument to which the agreement applies or the development to which the agreement applies – Section 7.4(3)(b)	See definitions of “Development” and “Planning Proposal” in clause 1.
The scope, timing and manner of delivery of contribution required by the Planning Agreement – Section 7.4(3)(c)	See clause 6.1.
Applicability of section 7.11 of the Act – Section 7.4(3)(d)	The application of section 7.11 of the Act is not excluded in respect of the Development.
Applicability of section 7.12 of the Act – Section 7.4(3)(d)	The application of section 7.12 of the Act is not excluded in respect of the Development.
Applicability of section 7.24 of the Act – Section 7.4(3)(d)	The application of section 7.24 of the Act is not excluded in respect of the Development.
Whether benefits under the Planning Agreement are or are not to be taken into consideration in determining a development contribution under section 7.11 – Section 7.4(e)	The benefits under the agreement are not to be taken into consideration in determining a development contribution under section 7.11 of the Act.
Mechanism for dispute resolution – Section 7.4(3)(f)	See clause 10.
Enforcement of the Planning Agreement – Section 7.4(3)(g)	See clause 11.

Registration of the Planning Agreement – Section 7.4(3)(g)	See clause 8.2.
No obligation to grant consent or exercise functions – Section 7.4(9)	See clause 14.

Schedule 3 – Contribution within the Development

Local promotions within the Highway Service Centre, either in the form of an area for advertising/brochures or via digital means.

Executed as an agreement

Executed for and on behalf of **Mid-Coast**
Council ABN 44 961 208 161 by its
authorised delegate in accordance with a
resolution of Council dated 27 April 2022

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Signature of Witness



Signature of Authorised Delegate

Danielle Johnston

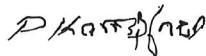
Print name

Adrian Panuccio, GENERAL MANAGER

Print name and position

Executed by **Lindfield Property**
Nominee Pty Ltd (ACN 602 225 061)
pursuant to s 127(1) of the Corporations
Act 2001

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Sole Director/Secretary

Peter Kampfner

Print name

Executed by **NGP Investments (No 2)**)
Pty Ltd (ACN 001 495 343) pursuant to)
s127(1) of the Corporations Act 2001)
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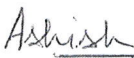
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Director

Daniel Ryan

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Print name



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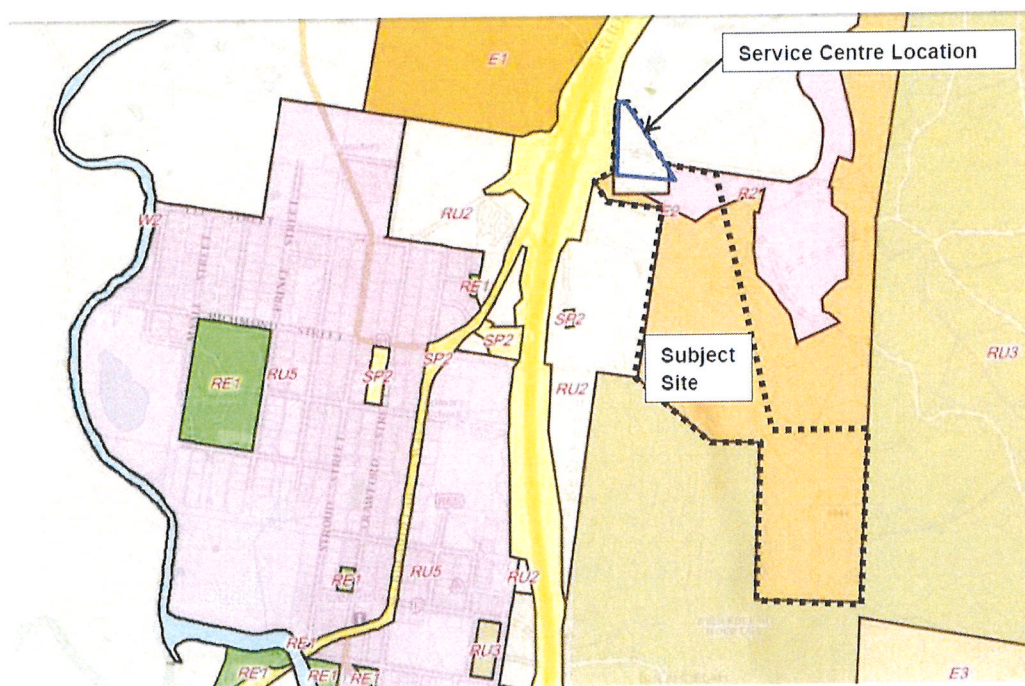
Secretary

Ashish Mohan Tirthankar

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Print name

Annexure A Plan showing Land



Annexure B

Draft Explanatory Note

Explanatory Note

Exhibition of draft Voluntary Planning Agreement

**Lot 100 DP 1139447, known as 9844 Pacific Highway,
Bulahdelah**

Environmental Planning & Assessment Regulation 2000 (clause 25E)

Planning Agreement

The purpose of this Explanatory Note is to provide a plain English summary to support the notification of a draft voluntary Planning Agreement offered in connection with a planning proposal applying to the subject land (**the Planning Agreement**) in accordance with Section 7.4 of the *Environmental Planning and Assessment Act 1979 (the Act)*.

The Planning Agreement will require the provision of monetary contributions in connection with a proposed amendment to provisions of the Great Lakes Local Environmental Plan 2014 (**LEP**).

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

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

Parties

Lindfield Property Nominees Pty Ltd & NGP Investments (No2) Pty Ltd (**the Developers**) made an offer to Mid-Coast Council (**Council**) to enter into a voluntary Planning Agreement, in connection with a Planning Proposal relating to the subject land.

Description of subject land

The land to which the Planning Agreement applies is described as Lot 100 DP 1139447, known as 9844 Pacific Highway Bulahdelah (**the Land**).

Description of the Planning Proposal to which the Planning Agreement applies

The Developers have proposed an amendment of the Great Lakes Local Environmental Plan 2014 (**LEP**) in response to planning proposal (PP_2018_MCOAS_004_00) seeking the following:

- (a) an amendment to Schedule 1 of LEP 2014 to identify a highway service centre as permissible on the Land; and
- (b) an amendment to the Additional Permitted Uses Map (introducing Title 8A) to identify part of the Land as the land to which Schedule 1 applies.

The proposed amendment to the LEP is sought to facilitate the development of the Land for purposes which include a highway service centre (**Development**).

Summary of Objectives, Nature and Effect of the Planning Agreement

Monetary Contribution

The Planning Agreement requires monetary contributions totalling \$500,000.00 to be paid towards:

- (a) public domain improvements, to items such as streets/roads, parks and foreshore areas (eg, lighting, landscaping, seating, signage);
- (b) general business assistance available to all Bulahdelah businesses (eg, marketing, merchandising, website advice/tutorials);
- (c) RV-friendly town improvements (eg, a designated RV parking area); and
- (d) local promotions within the highway service centre, either in the form of an area for advertising/brochures or via digital means.

Assessment of the Merits of the Planning Agreement

How the Planning Agreement Promotes the public interest and objects of the Act

In accordance with section 1.3 of the Act, the Planning Agreement promotes the public interest and objects of the Act and specifically achieves the objectives stated in section 1.3 because it:

- (a) promotes the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources (s 1.3(a));
- (b) promotes the orderly and economic use and development of land (s 1.3(c)); and
- (c) promotes good design and amenity of the built environment (s 1.3(g)).

through the payment of contributions which will result in the delivery of a number of public benefits, including enhancement of the public domain areas and improvement of public amenity near the Land, the enhancement of community infrastructure near the Land.

The proposed contributions under the Planning Agreement are consistent with Council's strategic plans and policy documents.

The Planning Purposes served by the Planning Agreement

In accordance with section 7.4(2) of the Act, the Planning Agreement will require monetary contributions towards public purposes, including the provision of public amenities or public services, community infrastructure and the conservation or enhancement of the natural environment.

The Planning Agreement provides a reasonable means for achieving the abovementioned public purposes on the basis that the Planning Agreement:

- stipulates the timing for the monetary contributions; and
- restricts the progression of the Development unless the obligations are met.

How the Planning Agreement promotes the objectives of the *Local Government Act 1993* and the elements of Council's Charter (now section 8A)

The Planning Agreement and the exhibition of the agreement and the planning proposal are consistent with the following purposes set out in section 7 of the *Local Government Act 1993*:

- to facilitate engagement with the local community by councils, councillors and other persons and bodies that constitute the system of local government; and
- to provide for a system of local government that is accountable to the community and that is sustainable, flexible and effective.

By enabling Council to provide public amenities to serve the needs of the general public and assist with the conservation of the environment, the Planning Agreement is consistent with the following guiding principles for councils set out in section 8A of the *Local Government Act 1993* (replacing Council's Charter):

- Councils should provide strong and effective representation, leadership, planning and decision-making.
- Councils should carry out functions in a way that provides the best possible value for residents and ratepayers.
- Councils should plan strategically, using the integrated planning and reporting framework, for the provision of effective and efficient services and regulation to meet the diverse needs of the local community.
- Councils should manage lands and other assets so that current and future local community needs can be met in an affordable way.
- Councils should consider the long term and cumulative effects of actions on future generations.
- Councils should recognise diverse local community needs and interests.
- Councils should consider the long term and cumulative effects of actions on future generations.
- Councils should consider the principles of ecologically sustainable development.
- Councils should actively engage with their local communities, through the use of the integrated planning and reporting framework and other measures.

Whether the Planning Agreement Conforms with the Council's Capital Works Program

The Planning Agreement will not affect Council's Capital Works Program and is not inconsistent with that program. The contributions under the Planning Agreement will be paid towards works that are not subject to Council's Capital Works Program.

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

The Planning Agreement requires all monetary contributions to be made to Council prior to the issue of an occupation certificate as defined under section 6.4(c) of the Act for the Development.