

Voluntary Planning Agreement

Greater Taree City Council (***Council***)

AND

Duncan's Holding Limited (***Developer***)

Relating to rezoning of land bounded by Lambert,
Murray, Richardson & Mortimer Streets Wingham

Prepared under Section 93F of the Environmental
Planning & Assessment Act 1979

Dated

Parties

Council	Name	Greater Taree City Council
	ABN	45 851 497 602
	Address	2 Pulteney Street, Taree New South Wales 2430
	Facsimile	(02) 6597 5311
	Attention	General Manager
Developer	Name	Duncan's Holding Limited
	ABN	97 000 080 704
	Address	Level 3, 40 Mount Street, North Sydney, NSW 2060
	Facsimile	(02) 9233 6605
	Attention	Company Secretary

Background

- A. The Developer owns the Land.
- B. The Developer has lodged the Planning Proposal to rezone the Site for residential development purposes. The Planning Proposal includes the creation of a central drainage corridor of Environmental Conservation (E2) zoned land in the Site.
- C. The Developer has offered to carry out Works and dedicate the Contribution Land to Council on the terms of this agreement with the purpose of conserving and enhancing the natural environment in the Greater Taree local government area.

Operative Terms

1. Definitions and Interpretation

- 1.1. In this agreement, unless the context clearly indicates otherwise:

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

Business Day means a day on which banks are open for general banking business in New South Wales (not being a Saturday, Sunday or public holiday in that place).

Contribution Land means the land identified and described in Schedule 3.

Development means the development of the Land proposed to be carried out or procured by the Developer in accordance with the Planning Proposal.

Developer means Duncan's Holding Limited.

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).

Land means the land the subject of this planning agreement identified by folio reference in Schedule 2.

LPI means the Land and Property Information New South Wales or its successor body.

PCA means a principal certifying authority under Part 4A of the Act appointed for the purpose, inter alia, of issuing Subdivision Certificates relating to the Development.

Planning Proposal means the planning proposal for the Site prepared by King and Campbell dated 15 October 2015.

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

Real Property Act means the *Real Property Act 1900* (NSW) as amended.

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

Site means the land the subject of the Planning Proposal which includes the Land and Lots 246 and 270 DP754454.

Subdivision Certificate means a subdivision certificate under Part 4A of the Act.

Works means the works to be carried out and completed by the Developer on the Contribution Land in accordance with the Vegetation Management Plan.

Vegetation Management Plan means a vegetation management plan for the Contribution Land prepared in accordance with the requirements of Schedule 4 and approved by Council in accordance with clause 5 of this agreement.

1.2. In this agreement unless the context clearly indicates otherwise:

- (a) a reference to this agreement or another document means this agreement or that other document and any document which varies, supplements, replaces, assigns or novates this agreement or that other document;
- (b) a reference to legislation or a legislative provision includes any statutory modification, or substitution of that legislation or legislative provision and any subordinate legislation issued under that legislation or legislative provision;
- (c) a reference to a body or authority which ceases to exist is a reference to either a body or authority that the parties agree to substitute for the named body or authority or, failing agreement, to a body or authority having substantially the same objects as the named body or authority;
- (d) a reference to the introduction, a clause, schedule or annexure is a reference to the introduction, a clause, a schedule or an annexure to or of this agreement;
- (e) clause headings, the introduction and the table of contents are inserted for convenience only and do not form part of this agreement;
- (f) the schedules form part of this agreement;
- (g) a reference to a person includes a natural person, corporation, statutory corporation, partnership, the Crown or any other organisation or legal entity;
- (h) a reference to a natural person includes their personal representatives, successors and permitted assigns;
- (i) a reference to a corporation includes its successors and permitted assignees;

- (j) a reference to a right or obligation of a party is a reference to a right or obligation of that party under this agreement;
- (k) 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;
- (l) including and includes are not words of limitation;
- (m) a word that is derived from a defined word has a corresponding meaning;
- (n) monetary amounts are expressed in Australian dollars;
- (o) the singular includes the plural and vice-versa;
- (p) a reference to a thing includes each part of that thing; and
- (q) 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.

2. Planning agreement under the Act

- 2.1. The parties agree that this agreement is a planning agreement:
 - (a) within the meaning of section 93F of the Act; and
 - (b) governed by Subdivision 2 of Division 6 of Part 4 of the Act.

3. Application of this Agreement

- 3.1. This agreement applies to:
 - (a) the Land; and
 - (b) the Development.

4. Operation of this Agreement

- 4.1. This agreement operates from the date of execution by both parties except for clauses 5 to 10 which operate from the date that the amendment to the *Greater Taree Local Environmental Plan 2010* is made .

5. Vegetation Management Plan

- 5.1. The Developer must submit a draft Vegetation Management Plan to Council before the lodgement of any development application relating to the proposed Development on the Land.
- 5.2. The Council, acting reasonably and within a reasonable time frame, must give the Developer written notice of whether it approves the draft Vegetation Management Plan or if changes are required to the draft Vegetation Management Plan before the lodgement of any development application relating to the proposed Development on the Land. If changes are required:
 - (a) the Council will specify the nature of the changes and the reasons for the changes; and
 - (b) the Developer will amend the draft Vegetation Management Plan accordingly.

6. Works

- 6.1. The Developer must, at its own cost, carry out and complete the Works on the Contribution Land in accordance with the Vegetation Management Plan to the Council's reasonable satisfaction.

7. Dedication of Land

- 7.1. The Developer must dedicate or transfer the Contribution Land to Council:

- (a) in accordance with Council's *Dedication of Land to Council* policy; and
- (b) after the completion of the Works; and
- (c) before the issue of the final Subdivision Certificate for the Development unless the final Subdivision Certificate also notes the dedication of the Contribution Land to Council; and
- (d) at no cost to Council; and
- (e) free of any trusts, estates, interests, covenants and encumbrances (other than those specified in this agreement).

- 7.2. The Developer agrees that:

- (a) it will not seek a final Subdivision Certificate relating to any part of the Land unless it has dedicated the Contribution Land in accordance with clause 7.1;
- (b) the Council or PCA must refuse to issue a final Subdivision Certificate unless the Developer has dedicated the Contribution Land in accordance with clause 7.1;
- (c) it will provide the PCA with a copy of this agreement as soon as the PCA is appointed in relation to the Development;
- (d) with any application for the final Subdivision Certificate relating to the Land, it will provide to the PCA evidence that the Contribution Land has been dedicated/transferred in the form of (or a combination of) the following:
 - (i) copies of title searches and registered Plans of Subdivision demonstrating the dedication of required Contribution Land;
 - (ii) written notification from Council certifying that the Contribution Land has been dedicated in accordance with clause 7.1; and
 - (iii) inclusion in the Plan of Subdivision to which the relevant application for a Subdivision Certificate relates of the relevant parcel of Contribution Land for dedication.

8. Application of s94, s94A and s94EF of the Act

- 8.1. Sections 94, 94A and 94EF of the Act apply to the Development.
- 8.2. Benefits under this agreement are excluded from being taken into consideration under section 94 of the Act in its application to the Development.

9. Registration of this Agreement

- 9.1. The Developer represents and warrants that it is the owner of the Land.
- 9.2. As contemplated by section 93H of the Act, the Developer agrees to lodge this agreement with the LPI for registration under the Real Property Act in the relevant folio of the Register no

later than 10 Business Days after Council provides an executed copy of this agreement to the Developer.

- 9.3. The Developer, at its own expense, will take all practical steps and otherwise do anything to procure:
- (a) the consent of each person who:
 - (i) has an estate or interest in the Land registered under the Real Property Act;
or
 - (ii) is seized or possessed or an estate or interest in the Land; and
 - (b) the execution of any documents; and
 - (c) the production of the relevant certificates of title; and
 - (d) the lodgement and registration of this agreement, by the Registrar-General in the relevant folio of the Register.
- 9.4. The Developer will provide Council with a copy of the relevant folios of the Register and a copy of the registered dealing referable to this agreement within 10 Business Days, or other agreed time, of registration of this agreement in accordance with this clause 9.
- 9.5. The Council agrees to do all things reasonably required by the Developer to release and discharge this agreement with respect to any part of the Land upon the Developer satisfying all of its obligations under this agreement in respect of that part of the Land.

10. Registration of Caveat

- 10.1. The Developer acknowledges and agrees that:
- (a) when this agreement comes into operation, Council is deemed to have acquired, and the Developer is deemed to have granted, an equitable estate and interest in the Land for the purposes of section 74F(1) of the Real Property Act and consequently Council has a sufficient interest in the Land respect of which to lodge with the LPI a caveat notifying that interest;
 - (b) it will not object to Council lodging a caveat in the relevant folio of the Register for the Land nor will it seek to remove any caveat lodged by Council provided the caveat does not prevent registration of any dealing or plan (including a Plan of Subdivision) other than a transfer; and
 - (c) it will obtain the consent to the lodgement of the caveat of each person who has an estate or interest in the Land registered under the Real Property Act.
- 10.2. Council must, at the Developer's cost (with any such cost to be reimbursed to Council promptly on demand), register at the LPI a withdrawal of caveat in respect of all the Land within 5 Business Days after the Developer complies with clause 9.2 and Council must not lodge any other caveats on the titles to any of the Land, providing the withdrawal of the caveat will only apply in respect of such parts of the Land in respect of which registration of the agreement has been procured in accordance with clause 9.2.

11. Dispute Resolution

- 11.1. If a dispute between any of the parties arises in connection with this agreement or its subject matter, then the process and procedures set out in Schedule 5 (Dispute Resolution) will apply.

12. Notices

12.1. Unless expressly stated otherwise in this agreement, all notices, certificates, consents, approvals, waivers and other communications in connection with this agreement must be in writing, signed by an authorised officer of the sender and marked for the attention of the person identified in the parties details or, if the recipient has notified otherwise, then marked for the attention in the way last notified.

12.2. A notice must be:

- (a) left at the address set out or referred to in the parties details;
- (b) sent by prepaid ordinary post to the address set out or referred to in the parties details;
- (c) sent by fax to the fax number set out or referred to in the parties details; or
- (d) given in any other way permitted by law.

However, if the intended recipient has notified a changed postal address or changed fax number, then the communication must be to that address or number.

12.3. A notice takes effect from the time it is delivered unless a later time is specified.

12.4. If sent by post, a notice is taken to be received three days after posting.

12.5. If sent by fax, a notice is taken to be received at the time shown in the transmission report as the time that the whole fax was sent.

13. Approvals and consents

13.1. Except as otherwise set out in this agreement, and subject to any statutory obligations, a party may not unreasonably refuse to give its approval or consent and if consent is to be given can be subject to any conditions determined by that party acting reasonably.

14. Assignment and dealings

14.1. The Developer may not sell, transfer, assign or novate or similarly deal with (**Dealing**) its right, title or interest in the Land or its rights or obligations under this agreement without the Council's consent and unless:

- (a) the Developer gives the Council no less than 10 Business Days notice in writing of the proposed Dealing; and
- (b) the Council gives the Developer notice in writing that it is satisfied (acting reasonably) that the person with whom the Developer wishes to deal (**Transferee**) is financially capable of complying with the terms of this agreement; and
- (c) a right of the Council is not diminished or fettered in any way; and
- (d) the Developer and Transferee execute a deed of novation of this agreement prepared by the Council in which the Transferee becomes contractually bound to fulfil the terms of this agreement.

15. Costs

15.1. The Developer agrees to pay or reimburse the reasonable external costs of the Council in connection with the negotiation, preparation and execution of this agreement within 10 Business Days after receipt of a tax invoice from the Council.

16. Entire Agreement

- 16.1. This agreement constitutes the entire agreement between the parties about its subject matter and supersedes all previous agreements, understandings and negotiations on the subject matter.

17. Governing law and jurisdiction

- 17.1. This agreement is governed by the law in force in New South Wales. Each party submits to the non-exclusive jurisdiction of the courts of that place.

18. No fetter

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

19. Representations and warranties

- 19.1. The parties represent and warrant that they have the 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.

20. Severability

- 20.1. 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 the agreement is not affected.

21. Modification

- 21.1. No modification of this agreement will be of any force or effect unless it is in writing and signed by the parties.

22. Waiver

- 22.1. 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 a breach of obligation by, another party.
- 22.2. A waiver by a party is only effective if is in writing.
- 22.3. 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.

23. GST

- 23.1. If any party reasonably decides that it is liable to pay GST on a supply made to the other party under this agreement and the supply was not priced to include GST, then recipient of the supply must pay an additional amount equal to the GST on that supply.

24. Confidentiality

- 24.1. The parties agree that the terms of this agreement are not confidential and this agreement may be treated as a public document and exhibited or reported without restriction by any party.

25. Termination

25.1. This agreement is terminated on the date the Developer is released and discharged in accordance with clause 25.2.

25.2. The Council agrees to:

- (a) provide a release and discharge of this agreement upon the dedication of the Contribution Land in accordance with this agreement; and
- (b) do all things necessary to enable the Developer to arrange for the release and discharge to be registered by the Register-General in the relevant folio of the Register.

26. Explanatory Note

26.1. The explanatory note prepared for this agreement in accordance with the *Environmental Planning and Assessment Regulation 2000* (NSW) must not be used to assist in construing this agreement.

Executed as an Agreement this day of

2015.

The seal of **Greater Taree City**)
Council was affixed in accordance)
with the resolution dated:)

.....
General Manager

.....
Mayor

.....
(print name)

.....
(print name)

Executed by **Duncan's Holding**)
Limited (ABN 97 000 080 704))
in accordance with Section 127 of)
the Corporations Act 2001 by:)

.....
Director

.....
Director

.....
(print name)

.....
(print name)

Schedule 1
S93F Requirements

Sub-section of Act	Subject	Planning Agreement
Section 93F(1)	<p>Planning instrument and/or development application –</p> <p>The Developer has:</p> <p>(a) sought a change to an environmental planning instrument.</p> <p>(b) made, or proposes to make, a development application.</p> <p>(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.</p>	<p>(a) Yes</p> <p>(b) Yes</p> <p>(c) Not applicable</p>
Section 93F(3)(a)	The Land affected by this planning agreement	The land described in Schedule 2.
Section 93F(3)(b)	The environmental planning instrument or the development affected by this planning agreement	Greater Taree City Council Local Environmental Plan 2010
Section 93F(3)(c)	The scope, timing and manner of delivery of contribution required by this Agreement	See clauses 5, 6 and 7.
Section 93F(3)(d)	Applicability of sections 94, 94A and 94EF of the Act	This agreement does not exclude the operation of sections 94, 94 and 94EF. See clause 8.1.
Section 93F(3)(e)	Consideration of benefits under this Agreement if section 94 applies	The benefits under this agreement are not to be taken into consideration in determining a development contribution under section 94. See clause 8.2.
Section 93F(3)(f)	Dispute resolution	See clause 11 and Schedule 5.
Section 93F(3)(g)	Enforcement and security	See clauses 9 and 10.
Section 93H	Registration	See clause 9.
Section 109J(1)(c1)	Requirements relating to the issue of subdivision certificates	See clauses 6 and 7.

Schedule 2

The Land

Land means the land comprising the following folio identifiers:

Lot 265 DP754454

Lot 266 DP754454

Lot 267 DP754454

Lot 268 DP754454

Lot 269 DP754454

Lot 310 DP754454

Lot 4 DP114687

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Schedule 3

Contribution Land

Contribution Land means the land of approximately 0.8 hectares which is shown in the below plan to be zoned Environmental Conservation (E2) and must be dedicated or transferred by the Developer in accordance with this agreement.

INSERT REZONING MAP

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Schedule 4

Vegetation Management Plan

The vegetation management plan for the Contribution Land is to be prepared in accordance with the recommendations of the ecological impact assessment report prepared on behalf of the Developer by Flora Fauna Consulting (dated 8 January 2014) as set out below:

Scope of Vegetation Management Plan

The vegetation management plan will apply to the Contribution Land for the purposes of restoring the habitat within the Contribution Land. It will adopt a three-pronged approach including;

- natural regeneration;
- supplementary re-planting to offset trees that are removed from other parts of the Site; and
- integrated weed management.

Objectives of the Vegetation Management Plan

The objectives of the vegetation management plan will be to:

- protect existing remnant native vegetation;
- encourage regeneration of existing vegetation;
- control invasive weeds;
- minimise the impact of the Development on the native vegetation;
- perform monitoring and maintenance activities to ensure that implementation of the mitigation measures are adequate and a satisfactory restoration outcome is achieved.

Natural Regeneration

The regeneration of the habitat should be undertaken by promoting natural ecological processes under an assisted natural regeneration regime with the aim being to accelerate, rather than replace, natural successional processes by removing or reducing barriers to natural forest regeneration such as soil degradation, competition with weedy species, and recurring disturbances (e.g., fire, grazing, and timber harvesting).

For the purposes of assisted natural regeneration of the habitat within the Contribution Land the following measures should be adopted by the Developer (the Works):

- further unnecessary disturbance of the remnant plant communities within the Contribution Land should be avoided;
- undertake appropriate weed control measures as per methods described below;
- allow natural regeneration of plants within the regeneration area from all strata including groundcover, understorey and canopy;
- install temporary or permanent fencing around the proposed drainage to control access during regeneration;
- no mulching is to be carried out within the Contribution Land regeneration area; and

Vegetation Removal and Planting

In relation to the vegetation within the Land for the purposes of future residential development it is recommended that the following measures should be adopted:

- where possible Koala feed tree species should be retained;
- a 1:1 tree re-planting strategy should be applied for each native tree that is removed;
- each replacement native tree shall be of the same species as the native tree it is replacing;
- the re-planting should be undertaken on the Contribution Land;
- if there is insufficient land area within Contribution Land to accommodate all of the re-planting some may also be provided as street trees within the Land;
- plantings should be placed irregularly within the Contribution Land to simulate a natural plant community; and
- removal of trees within the Land should be undertaken selectively with preference given to retaining trees of good growth form, Koala feed tree species and trees with potential to form hollows.

Integrated Weed Management

An on-going integrated weed management program must be implemented on the Contribution Land. This would involve an approach that incorporates weed management techniques such as:

- physical control such as hand removal, mulching, tilling and mowing;
- chemical control through the use of appropriate herbicides;
- biological control where available; and
- cultural control by encouraging the competitiveness of desired species that helps to suppress weed growth by reducing access to available sunlight, nutrients and moisture.

Schedule 5

Dispute Resolution

1.1 Dispute

Before court proceedings (other than for urgent interlocutory relief) may be commenced, the following steps must be taken to attempt to resolve any dispute that arises out of or in connection with this agreement.

1.2 Notice of Dispute

Notice (the notice of dispute) must be given in writing by the party claiming that a dispute has arisen to the other party (or parties) to this agreement specifying the nature of the dispute.

1.3 Negotiation

Within 10 Business Days of receipt of notice of dispute, the parties must meet to discuss the matter in good faith and use reasonable endeavours to settle or resolve the dispute (including attempting to agree upon an appropriate procedure for resolving the dispute).

1.4 Resolution Institute

If within 10 Business Days of the parties meeting to discuss the dispute:

- (a) the dispute is not resolved; or
- (b) an appropriate alternative dispute resolution process is not agreed,

then the parties will refer the dispute to the:

Resolution Institute
Level 1, 13-15 Bridge Street
Sydney NSW 2000
Telephone: (61-2) 9251 3366
Fax (61-2) 9251 3733

for facilitation of a mediation in accordance with Resolution Institute's Mediation Rules.

1.5 Mediator

The mediator appointed under this process must have reasonable qualifications and practical experience in the area of the dispute. If within 10 Business Days after referral of the dispute to the Resolution Institute the parties have not agreed upon the mediator or other relevant particular, the mediator and any other particular will be determined in accordance with the Resolution Institute's Mediation Rules.

1.6 Litigation

If the dispute is not finally resolved in accordance with this process, either party is at liberty to litigate the dispute.

1.7 Continue to perform obligations

Each party must continue to perform its obligations under this agreement despite the existence of a dispute.