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Deed

South West Rocks – Gilbert Cory Street

Planning Agreement

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

Kempsey Shire Council

Hunterwatt Projects Pty Limited

[Insert Date]

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Summary Sheet

Council:

Name: Kempsey Shire Council

Address: 22 Tozer Street, West Kempsey, New South Wales 2240

Telephone: 6566 3200

Facsimile: 6566 3205

Email: ksc@kempsey.nsw.gov.au

Representative: General Manager

Developer:

Name: Hunterwatt Projects Pty Limited

Address: Unit 33, 215 Darby Street, Newcastle, New South Wales 2300

Telephone: 4942 5441

Facsimile: 4942 5301

Email: matthew.d@dewittconsulting.com.au

Representative: Matthew DeWitt

Land:

See definition of *Land* in clause 1.1.

Development:

See definition of *Development* in clause 1.1.

Development Contributions:

See Clause 9, clause 10 and Schedule 2.



Application of s94, s94A and s94EF of the Act:

See clause 8.

Registration:

See clause 15.

Restriction on dealings:

See clause 16.

Dispute Resolution:

See Part 3.

DRAFT



South West Rocks – Gilbert Cory Street Planning Agreement

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

Parties

Kempsey Shire Council ABN 70 705 618 663 of 22 Tozer Street, West Kempsey, New South Wales 2240 (**Council**)

and

Hunterwatt Projects Pty Limited ACN 102 634 284 of Unit 33, 215 Darby Street, Newcastle, New South Wales 2300 (**Developer**)

Background

- A The Developer is the registered proprietor of the Land as set out in Schedule 1.
- B The Land is located in the local government area of Kempsey Shire Council.
- C The Developer has sought a change to the Kempsey LEP via the Planning Proposal to enable the Development to be carried out.
- D The delegate of the Minister for Planning and Infrastructure issued the Gateway Determination in response to the Planning Proposal.
- E The Developer offers to enter into this Deed and make the Development Contributions in accordance with the terms of this Deed.



Operative provisions

Part 1 - Preliminary

1 Interpretation

1.1 In this Deed the following definitions apply:

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

Approval includes approval, consent, licence, permission or the like.

Authority means the Commonwealth or New South Wales government, a Minister of the Crown, a government department, a public authority established by or under any Act, a council or county council constituted under the *Local Government Act 1993*, or a person or body exercising functions under any Act including a commission, panel, court, tribunal and the like.

Biodiversity Certification means biodiversity certification of land under Part 8 of the Biodiversity Conservation Act.

Biodiversity Conservation Act means the *Biodiversity Conservation Act 2016* (NSW).

Biodiversity Stewardship Agreement means a biodiversity stewardship agreement made under Part 5 of the Biodiversity Conservation Act in relation to that part of the Land shown as the Environmental Conservation Land.

Biodiversity Stewardship Site means the Environmental Conservation Land subject to the Biodiversity Stewardship Agreement.

Clearing means any clearing as defined in section 60C of the *Local Land Services Act 2013* of any vegetation (whether native or otherwise) on the Land. For the avoidance of doubt, this extends to any clearing that does not require any authorisation or approval under the *Local Land Services Act 2013*, or the *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017*.

Complying Development Certificate has the same meaning as in the Act.

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

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

Development means any development on the Residential Land for subdivision of the Residential Land into residential lots.

Development Application has the same meaning as in the Act.

Development Consent has the same meaning as in the Act.

Development Contribution means a monetary contribution, the dedication of land free of cost, the carrying out of work, or the provision of any other material public benefit, or any combination of them, to be used for, or applied towards a public purpose, but does not include any Security or other benefit provided by a Party to the Council to secure the enforcement of that Party's obligations under this Deed for the purposes of s93F(3)(g) of the Act.

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Hunterwatt Projects Pty Limited



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

Environmental Conservation Land means the part of the Land classified as E2 Environmental Conservation as shown on the Map.

Final Lot means a lot created in the Development for separate residential occupation and disposition or a lot of a kind or created for a purpose that is otherwise agreed by the Parties, not being a lot created by a subdivision of the Land:

- (a) that is to be dedicated or otherwise transferred to the Council, or
- (b) on which is situated a dwelling-house that was in existence on the date of this Deed.

Gateway Determination means the Gateway Determination for the Planning Proposal seeking the Instrument Change issued by the Delegate of the Minister for Planning and Infrastructure dated 8 October 2012, and as amended by:

- (a) the Alteration of the Gateway Determination issued by the Delegate of the Minister for Planning dated 27 August 2014, and
- (b) the Alteration of the Gateway Determination issued by the Delegate of the Minister for Planning dated 1 May 2017.

Instrument Change means the amendment to the Kempsey LEP in accordance with the Planning Proposal.

Kempsey LEP means the *Kempsey Local Environmental Plan 2013*.

Land means Lot 10, DP 754 396 as set out in the Map.

Map means the map titled Proposed Zone Amendment Lot 10 DP 754396 prepared by de Witt Consulting, found at Schedule 1.

Minister means the Minister for the Environment (NSW).

Party means a party to this Deed.

Planning Proposal means the amended planning proposal dated April 2017, the subject of the Gateway Determination under section 56 of the Act, seeking to:

- (a) amend Kempsey LEP to rezone the Land from RU2 Rural Landscape to R1 General Residential and E2 Environmental Conservation,
- (b) amend the Height of Building Map to designate a 8.5m maximum building height for the portion of the Land proposed to be zoned Residential Land, and
- (c) amend the Lot Size map to designate a 500m² minimum lot size for the portion of the Land proposed to be zoned Residential Land, and includes Appendix 1 and Appendix 2 to the Planning Proposal,

and as varied from time to time.

Rectification Notice means a notice in writing:

- (a) identifying the nature and extent of a Defect,
- (b) specifying the works or actions that are required to Rectify the Defect,
- (c) specifying the date by which or the period within which the Defect is to be rectified.



Rectify means rectify, remedy or correct.

Registrable S88B Instrument means an instrument in a form suitable for registration as an instrument under s88B of the *Conveyancing Act 1919* (NSW) that incorporates in its provisions the criteria required for the vegetation management plan set out in Schedule 3.

Registrable S88B Plan means a plan in a form suitable for registration as a deposited plan which, when registered creates a positive covenant on the Environmental Conservation Land in favour of the Council.

Registrar-General has the same meaning as in the *Real Property Act 1900*.

Regulation means the *Environmental Planning and Assessment Regulation 2000*.

Residential Land means the part of the Land classified as R1 General Residential Land as shown on the Map.

Stage means a stage of the Development approved by a Development Consent or otherwise approved in writing by the Council for the purposes of this Deed.

- 1.2 In the interpretation of this Deed, the following provisions apply unless the context otherwise requires:
- 1.2.1 Headings are inserted for convenience only and do not affect the interpretation of this Deed.
 - 1.2.2 A reference in this Deed to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
 - 1.2.3 If the day on which any act, matter or thing is to be done under this Deed is not a business day, the act, matter or thing must be done on the next business day.
 - 1.2.4 A reference in this Deed to dollars or \$ means Australian dollars and all amounts payable under this Deed are payable in Australian dollars.
 - 1.2.5 A reference in this Deed to a \$ value relating to a Development Contribution is a reference to the value exclusive of GST.
 - 1.2.6 A reference in this Deed to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
 - 1.2.7 A reference in this Deed to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
 - 1.2.8 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Deed.
 - 1.2.9 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
 - 1.2.10 Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.



- 1.2.11 A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
- 1.2.12 References to the word 'include' or 'including' are to be construed without limitation.
- 1.2.13 A reference to this Deed includes the agreement recorded in this Deed.
- 1.2.14 A reference to a Party to this Deed includes a reference to the servants, agents and contractors of the Party, the Party's successors and assigns.
- 1.2.15 A reference to 'dedicate' or 'dedication' in relation to land is a reference to dedicate or dedication free of cost.
- 1.2.16 Any schedules, appendices and attachments form part of this Deed.
- 1.2.17 Notes appearing in this Deed are operative provisions of this Deed.

2 Status of this Deed

- 2.1 This Deed is a planning agreement within the meaning of s93F(1) of the Act.

3 Commencement

- 3.1 This Deed commences and has force and effect on and from date of the Instrument Change and the date when the Parties have:
 - 3.1.1 both executed the same copy of this Deed, or
 - 3.1.2 each executed separate counterparts of this Deed and exchanged the counterparts.
- 3.2 The Parties are to insert the date when this Deed commences on the front page and on the execution page.

4 Application of this Deed

- 4.1 This Deed applies to:
 - 4.1.1 the Land,
 - 4.1.2 the Instrument Change, and
 - 4.1.3 the Development.

5 Warranties

- 5.1 The Parties warrant to each other that they:
 - 5.1.1 have full capacity to enter into this Deed, and
 - 5.1.2 are able to fully comply with their obligations under this Deed.

