



lindsaytaylorlawyers

planning • environment • local government

Deed

600 Macleay Valley Way

Highway Service Centre Planning Agreement

Under s7.4 of the Environmental Planning and Assessment Act 1979

Kempsey Shire Council

Spectrum REIT 23 Pty Ltd atf Spectrum REIT 23 Trust

Gwenda Veronica Norton

Date:

© Lindsay Taylor Lawyers

lindsaytaylorlawyers

Level 9, Suite 3, 420 George Street, Sydney NSW 2000, Australia

T 02 8235 9700 • W www.lindsaytaylorlawyers.com.au • E mail@lindsaytaylorlawyers.com.au

LTL Pty Ltd trading as **Lindsay Taylor Lawyers** • ABN 78 607 889 887

Liability limited by a scheme approved under Professional Standards Legislation

600 Macleay Valley Way Highway Service Centre Planning Agreement

Table of Contents

Summary Sheet	4
Parties	6
Background	6
Operative provisions	6
Part 1 - Preliminary	6
1 Interpretation.....	6
2 Status of this Deed	9
3 Commencement	9
4 Application of this Deed	10
5 Warranties	10
6 Further agreements	10
7 Surrender of right of appeal, etc.	10
8 Application of s7.11, s7.12 and s7.24 of the Act to the Development.....	10
9 No impact on developer charges under LG Act and Water Management Act	10
Part 2 – Development Contributions	11
10 Provision of Development Contributions	11
11 Payment of monetary Development Contributions.....	11
Part 3 – Dispute Resolution	11
12 Dispute resolution – expert determination	11
13 Dispute Resolution - mediation.....	12
Part 4 - Enforcement.....	13
14 Security for performance of obligations	13
15 Breach of obligations	13
16 Enforcement in a court of competent jurisdiction	14
Part 5 – Registration & Restriction on Dealings.....	14
17 Registration of this Deed	14
18 Restriction on dealings	15
Part 6 – Indemnities & Insurance.....	15
19 Risk.....	15
20 Release.....	16
21 Indemnity	16

Part 7 – Other Provisions	16
22 Water Main Extension.....	16
23 Annual report by Developer	16
24 Review of Deed	16
25 Notices	17
26 Approvals and Consent	17
27 Costs.....	17
28 Entire Deed.....	18
29 Further Acts	18
30 Governing Law and Jurisdiction	18
31 Joint and Individual Liability and Benefits.....	18
32 No Fetter.....	18
33 Illegality.....	19
34 Severability	19
35 Amendment	19
36 Waiver.....	19
37 GST.....	20
38 Explanatory Note	21
Schedule 1	22
Appendix	25

600 Macleay Valley Way Highway Service Centre Planning Agreement

Summary Sheet

Council:

Name: Kempsey Shire Council

Address: PO Box 3078 WEST KEMPSEY NSW 2440

Telephone: 02 6566 3200

Email: ksc@kempsey.nsw.gov.au

Representative: Craig Milburn

Developer:

Name: Spectrum REIT 23 Pty Ltd atf Spectrum REIT 23 Trust

Address: Level 9, 16 O'Connell Street, SYDNEY NSW 2000

Telephone: 02 9046 2000

Email: julian.ackad@spectrumretail.com.au

Representative: Julian Ackad

Landowner:

Name: Gwenda Veronica Norton

Address: [REDACTED]

Telephone: [Insert Details]

Email: [Insert Details]

Representative: [Insert Details]

Land:

See definition of *Land* in clause 1.1.

Development:

See definition of *Development* in clause 1.1.

Development Contributions:

See clause 10 and Schedule 1.

Application of s7.11, s7.12 and s7.24 of the Act:

See clause 8.

Security:

See Part 4.

Registration:

See clause 17.

Restriction on dealings:

See clause 18.

Dispute Resolution:

See Part 3.

600 Macleay Valley Way Highway Service Centre Planning Agreement

Under s7.4 of the *Environmental Planning and Assessment Act 1979*

Parties

Kempsey Shire Council ABN 70 705 618 663 of PO Box 3078 WEST KEMPSEY NSW 2440 (**Council**)

and

Spectrum REIT 23 Pty Ltd ACN 643 614 475 of Level 9, 66 Hunter Street SYDNEY NSW 2000 (**Developer**)

and

Gwenda Veronica Norton of 5 Mollies Way Dondingalong NSW 2440 (**Landowner**)

Background

- A The Landowner is the registered proprietor of the Land.
- B The Developer has sought a change to the Kempsey LEP via the Planning Proposal to enable the Development to be carried out on the Land.
- C The delegate of the Minister for Planning has issued the Gateway Determination in respect of the Planning Proposal.
- D The Developer and Landowner offer to enter into this Deed and make the Development Contributions in accordance with the terms of this Deed in connection with the amendment to the Kempsey LEP and development of the Land.

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.

Bank Guarantee means an irrevocable and unconditional undertaking without any expiry or end date in favour of the Council to pay an amount or amounts of money to the Council on demand issued by:

- (a) one of the following trading banks:
 - (i) Australia and New Zealand Banking Group Limited,
 - (ii) Commonwealth Bank of Australia,
 - (iii) Macquarie Bank Limited,
 - (iv) National Australia Bank Limited,
 - (iv) St George Bank Limited,
 - (v) Westpac Banking Corporation, or
- (b) any other financial institution approved by the Council in its absolute discretion.

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

Clearance Certificate means a clearance certificate issued by the Commissioner for Taxation under paragraph 14-220 of Schedule 1 of the *Taxation Administration Act 1953* (Cth).

Construction Certificate has the same meaning as in the Act.

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

CPI means the *Consumer Price Index (All Groups – Sydney)* published by the Australian Bureau of Statistics.

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

Development means the construction and use of a Highway Service Centre on the Land, the subject of a Development Consent.

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 s7.4(3)(g) of the Act.

Development Contribution Item means an item described in Column 1 of the table in Schedule 1.

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

ELNO has the meaning given to that term in the Participation Rules.

Foreign Resident Capital Gains Withholding Amount mean the amount a purchaser is required to pay to the Commissioner for Taxation under paragraph 14-200 of the *Taxation Administration Act 1953* (Cth).

Gateway Determination means the gateway determination with reference number PP_2018_KEMPS_002_00 issued by the Delegate of the Minister for Planning on 3 August 2018 under s3.34 of the Act and includes any amendment to that gateway determination.

GST has the same meaning as in the GST Law.

GST Law has the same meaning as in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any other Act or regulation relating to the imposition or administration of the GST.

Highway Service Centre has the same meaning as in the Dictionary to the Kempsey LEP.

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

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

Land means Lot 200 DP 1177619, otherwise known as 600 Macleay Valley Way, South Kempsey, NSW.

Land Dedication Plan means the plan in Schedule 2

LEP Amendment means an amendment to the Kempsey LEP giving effect to the Planning Proposal.

LG Act means the *Local Government Act 1993* (NSW).

Occupation Certificate has the same meaning as in the Act.

Party means a party to this Deed.

Planning Proposal means the planning proposal prepared under s3.33 of the Act dated 14 January 2018, the subject of the Gateway Determination, seeking amendments to the Kempsey LEP to make development for the purposes of a Highway Service Centre permissible on the Land, and includes any amendment to that planning proposal.

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

Security means a Bank Guarantee, or a bond or other form of security to the satisfaction of the Council indexed in accordance with the CPI from the date of this Deed.

WM Act means the *Water Management Act 2000*.

1.2 In the interpretation of this Deed, the following provisions apply unless the context otherwise requires:

1.2.1 Headings are inserted for convenience only and do not affect the interpretation of this Deed.

1.2.2 A reference in this Deed to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.

1.2.3 If the day on which any act, matter or thing is to be done under this Deed is not a business day, the act, matter or thing must be done on the next business day.

- 1.2.4 A reference in this Deed to dollars or \$ means Australian dollars and all amounts payable under this Deed are payable in Australian dollars.
- 1.2.5 A reference in this Deed to a \$ value relating to a Development Contribution is a reference to the value exclusive of GST.
- 1.2.6 A reference in this Deed to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- 1.2.7 A reference in this Deed to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- 1.2.8 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Deed.
- 1.2.9 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- 1.2.10 Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- 1.2.11 A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
- 1.2.12 References to the word 'include' or 'including' are to be construed without limitation.
- 1.2.13 A reference to this Deed includes the agreement recorded in this Deed.
- 1.2.14 A reference to a Party to this Deed includes a reference to the employees, 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 s7.4(1) of the Act.
- 2.2 The Developer agrees that this Deed operates as a deed poll in favour of the Council on and from the date of execution of this Deed by the Developer and the Landowner until the date on which this Deed commences.

3 Commencement

- 3.1 This Deed commences and has force and effect on and from the date the Parties have:

- 3.1.1 all 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 the Land, the LEP Amendment, and the Development.

5 Warranties

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

6 Further agreements

- 6.1 The Parties may, at any time and from time to time, enter into agreements relating to the subject-matter of this Deed that are not inconsistent with this Deed for the purpose of implementing this Deed.

7 Surrender of right of appeal, etc.

- 7.1 The Developer is not to commence or maintain, or to cause or procure the commencement or maintenance, of any proceedings in any court or tribunal or similar body appealing against, or questioning the validity of this Deed, or an Approval relating to the Development in so far as the subject-matter of the proceedings relates to this Deed.

8 Application of s7.11, s7.12 and s7.24 of the Act to the Development

- 8.1 This Deed does not exclude the application of s7.11, s7.12 and s7.24 of the Act to the Development.
- 8.2 The benefits under this Deed are not to be taken into consideration in determining Development Contribution under s7.11 of the Act.

9 No impact on developer charges under LG Act and Water Management Act

- 9.1 For the avoidance of doubt:

- 9.1.1 nothing in this Deed prevents the Council from exercising its functions under s64 of the LG Act and Division 5 of Part 2 of Chapter 6 of the WM Act, and
- 9.1.2 the Development Contributions provided under this Deed do not satisfy any requirement imposed by the Council as a precondition to the issue of a certificate of compliance under s64 of the LG Act and s306 of the WM Act to pay an amount or construct a water management work.

Part 2 – Development Contributions

10 Provision of Development Contributions

- 10.1 The Developer is to make Development Contributions to the Council in accordance with Schedule 1, any other provision of this Deed relating to the making of Development Contributions and otherwise to the satisfaction of the Council.
- 10.2 The Council is to apply each Development Contribution made by the Developer under this Deed towards the public purpose for which it is made and otherwise in accordance with this Deed.
- 10.3 Despite clause 10.2, the Council may apply a Development Contribution made under this Deed towards a public purpose other than the public purpose specified in this Deed if the Council reasonably considers that the public interest would be better served by applying the Development Contribution towards that other purpose rather than the purpose so specified.

11 Payment of monetary Development Contributions

- 11.1 A monetary Development Contribution is made for the purposes of this Deed when the Council receives the full amount of the contribution payable under this Deed in cash or by unendorsed bank cheque or by the deposit by means of electronic funds transfer of cleared funds into a bank account nominated by the Council.

Part 3 – Dispute Resolution

12 Dispute resolution – expert determination

- 12.1 This clause applies to a Dispute between any of the Parties to this Deed concerning a matter arising in connection with this Deed that can be determined by an appropriately qualified expert if:
 - 12.1.1 the Parties to the Dispute agree that it can be so determined, or
 - 12.1.2 the Chief Executive Officer of the professional body that represents persons who appear to have the relevant expertise to determine the

Dispute gives a written opinion that the Dispute can be determined by a member of that body.

- 12.2 A Dispute to which this clause applies is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 12.3 If a notice is given under clause 12.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 12.4 If the Dispute is not resolved within a further 28 days, the Dispute is to be referred to the President of the NSW Law Society to appoint an expert for expert determination.
- 12.5 The expert determination is binding on the Parties except in the case of fraud or misfeasance by the expert.
- 12.6 Each Party is to bear its own costs arising from or in connection with the appointment of the expert and the expert determination.
- 12.7 The Parties are to share equally the costs of the President, the expert, and the expert determination.

13 Dispute Resolution - mediation

- 13.1 This clause applies to any Dispute arising in connection with this Deed other than a Dispute to which clause 124 applies.
- 13.2 Such a Dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 13.3 If a notice is given under clause 13.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 13.4 If the Dispute is not resolved within a further 28 days, the Parties are to mediate the Dispute in accordance with the Mediation Rules of the Law Society of New South Wales published from time to time and are to request the President of the Law Society to select a mediator.
- 13.5 If the Dispute is not resolved by mediation within a further 28 days, or such longer period as may be necessary to allow any mediation process which has been commenced to be completed, then the Parties may exercise their legal rights in relation to the Dispute, including by the commencement of legal proceedings in a court of competent jurisdiction in New South Wales.
- 13.6 Each Party is to bear its own costs arising from or in connection with the appointment of a mediator and the mediation.
- 13.7 The Parties are to share equally the costs of the President, the mediator, and the mediation.

Part 4 - Enforcement

14 Security for performance of obligations

- 14.1 The Developer is to provide Security to the Council in the amount of 100% of the monetary Development Contributions to be paid under this Deed in relation to the performance of its obligations under this Deed.
- 14.2 The Developer is to provide the Security to the Council upon the commencement of this Deed.
- 14.3 The Council may call-up and apply the Security in accordance with clause 15 to remedy any breach of this Deed notwithstanding any other remedy it may have under this Deed, under any Act or otherwise at law or in equity.
- 14.4 The Council is to progressively release and return the Security or any unused part of it to the Developer within 14 days of completion of the obligation to which the Security relates, such that Council at all times holds no more than 100% of the remaining monetary Development Contributions to be paid under this Deed.
- 14.5 The Developer may at any time provide the Council with a replacement Security.
- 14.6 On receipt of a replacement Security, the Council is to release and return the Security that has been replaced to the Developer.
- 14.7 If the Council calls-up the Security or any portion of it, it may, by written notice to the Developer, require the Developer to provide a further or replacement Security to ensure that the amount of Security held by the Council equals the amount it is entitled to hold under this Deed.
- 14.8 The Developer is to ensure that the Security provided to the Council is at all times maintained to the full current indexed value.
- 14.9 The Council is to release and return any Security that it holds in the event the Development Consent to the Development lapses under the Act or is voluntarily surrendered under s4.63 of the Act.

15 Breach of obligations

- 15.1 If the Council reasonably considers that the Developer or Landowner is in breach of any obligation under this Deed, it may give a written notice to the relevant Party:
- 15.1.1 specifying the nature and extent of the breach,
- 15.1.2 requiring that Party to:
- (a) rectify the breach if it reasonably considers it is capable of rectification, or
- (b) pay compensation to the reasonable satisfaction of the Council in lieu of rectifying the breach if it reasonably considers the breach is not capable of rectification,
- 15.1.3 specifying the period within which the breach is to be rectified or compensation paid, being a period that is reasonable in the circumstances.

- 15.2 If the relevant Party fails to fully comply with a notice referred to in clause 15.1, the Council may, without further notice to the Developer, call-up the Security provided by the Developer under this Deed and apply it to remedy the relevant Party's breach.
- 15.3 Any costs incurred by the Council in remedying a breach in accordance with clause 15.2 may be recovered by the Council by either or a combination of the following means:
- 15.3.1 by calling-up and applying the Security provided under this Deed, or
- 15.3.2 as a debt due in a court of competent jurisdiction.
- 15.4 For the purpose of clause 15.3, the Council's costs of remedying a breach the subject of a notice given under clause 15.1 include, but are not limited to:
- 15.4.1 the costs of the Council's employees, agents and contractors reasonably incurred for that purpose,
- 15.4.2 all fees and charges necessarily or reasonably incurred by the Council in remedying the breach, and
- 15.4.3 all legal costs and expenses reasonably incurred by the Council, by reason of the breach.
- 15.5 Nothing in this clause 27 prevents the Council from exercising any rights it may have at law or in equity in relation to a breach of this Deed by the relevant Party, including but not limited to seeking relief in an appropriate court.

16 Enforcement in a court of competent jurisdiction

- 16.1 Without limiting any other provision of this Deed, the Parties may enforce this Deed in any court of competent jurisdiction.
- 16.2 For the avoidance of doubt, nothing in this Deed prevents:
- 16.2.1 a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Deed or any matter to which this Deed relates, or
- 16.2.2 the Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Deed or any matter to which this Deed relates.

Part 5 – Registration & Restriction on Dealings

17 Registration of this Deed

- 17.1 The Parties agree to register this Deed for the purposes of s7.6(1) of the Act.
- 17.2 Upon the commencement of this Deed, the Landowner is to deliver to the Council in registrable form:
- 17.2.1 an instrument requesting registration of this Deed on the title to the Land duly executed by the Landowner, and

- 17.2.2 the written irrevocable consent of each person referred to in s7.6(1) of the Act to that registration.
- 17.3 The Landowner is to do such other things as are reasonably necessary to enable registration of this Deed to occur.
- 17.4 The Parties are to do such things as are reasonably necessary to remove any notation relating to this Deed from the title to the Land once the Developer has completed its obligations under this Deed to the reasonable satisfaction of the Council or this Deed is terminated or otherwise comes to an end for any other reason.

18 Restriction on dealings

- 18.1 The:
 - 18.1.1 Landowner is not to sell or transfer the Land, and
 - 18.1.2 the Landowner and Developer are not to assign their rights or obligations under this Deed, or novate this Deed, to any person unless:
 - 18.1.3 the Developer or Landowner (as the case may be) has, at no cost to the Council, first procured the execution by the person to whom the Land or part is to be sold or transferred or the rights or obligations under this Deed are to be assigned or novated, of a deed in favour of the Council on terms reasonably satisfactory to the Council, and
 - 18.1.4 the Council has given written notice to the Developer or Landowner (as the case may be) stating that it reasonably considers that the purchaser, transferee, assignee or novatee, is reasonably capable of performing its obligations under this Deed, and
 - 18.1.5 the Developer or Landowner (as the case may be) is not in breach of this Deed, and
 - 18.1.6 the Council otherwise consents to the transfer, assignment or novation, such consent not to be unreasonably withheld.
- 18.2 Subject to clause 18.3, the Developer or Landowner (as the case may be) acknowledge and agree that it remains liable to fully perform its obligations under this Deed unless and until it has complied with its obligations under clause 18.1.
- 18.3 Clause 18.1 does not apply in relation to any sale or transfer of the Land if this Deed is registered on the title to the Land at the time of the sale.

Part 6 – Indemnities & Insurance

19 Risk

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

20 Release

- 20.1 The Developer and Landowner release the Council from any Claim they may have against the Council arising in connection with the performance of their respective obligations under this Deed except if, and to the extent that, the Claim arises because of the Council's negligence or default.

21 Indemnity

- 21.1 The Developer and Landowner indemnify the Council from and against all Claims that may be sustained, suffered, recovered or made against the Council arising in connection with the performance of their respective obligations under this Deed except if, and to the extent that, the Claim arises because of the Council's negligence or default.

Part 7 – Other Provisions

22 Water Main Extension

- 22.1 The Council will use its reasonable endeavours to construct and complete a water main extension that services the Land by 30 June 2022.

23 Annual report by Developer

- 23.1 The Developer is to provide to the Council by not later than each anniversary of the date on which this Deed is entered into a report detailing the performance of its obligations under this Deed.
- 23.2 The report referred is to be in such a form and to address such matters as required by the Council from time to time.

24 Review of Deed

- 24.1 The Parties agree to review this Deed on each anniversary of this Deed, and otherwise if either party is of the opinion that any change of circumstance has occurred, or is imminent, that materially affects the operation of this Deed.
- 24.2 For the purposes of clause 24.1, the relevant changes include (but are not limited to) any change to a law that restricts or prohibits or enables the Council or any other planning authority to restrict or prohibit any aspect of the Development.
- 24.3 For the purposes of addressing any matter arising from a review of this Deed referred to in clause 24.1, the Parties are to use all reasonable endeavours to agree on and implement appropriate amendments to this Deed.
- 24.4 If this Deed becomes illegal, unenforceable or invalid as a result of any change to a law, the Parties agree to do all things necessary to ensure that an

enforceable agreement of the same or similar effect to this Deed is entered into.

- 24.5 A failure by a Party to agree to take action requested by the other Party as a consequence of a review referred to in clause 24.1 (but not 24.4) is not a Dispute for the purposes of this Deed and is not a breach of this Deed.

25 Notices

- 25.1 Any notice, consent, information, application or request that is to or may be given or made to a Party under this Deed is only given or made if it is in writing and sent in one of the following ways:
- 25.1.1 delivered or posted to that Party at its address set out in the Summary Sheet, or
 - 25.1.2 emailed to that Party at its email address set out in the Summary Sheet.
- 25.2 If a Party gives the other Party 3 business days' notice of a change of its address or email, 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 latest address.
- 25.3 Any notice, consent, information, application or request is to be treated as given or made if it is:
- 25.3.1 delivered, when it is left at the relevant address,
 - 25.3.2 sent by post, 2 business days after it is posted, or
 - 25.3.3 sent by email and the sender does not receive a delivery failure message from the sender's internet service provider within a period of 24 hours of the email being sent.
- 25.4 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.

26 Approvals and Consent

- 26.1 Except as otherwise set out in this Deed, and subject to any statutory obligations, a Party may give or withhold an approval or consent to be given under this Deed in that Party's absolute discretion and subject to any conditions determined by the Party.
- 26.2 A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

27 Costs

- 27.1 The Developer is to pay to the Council the Council's costs of preparing, negotiating, executing and stamping this Deed, and any document related to this Deed within 7 days of a written demand by the Council for such payment.

- 27.2 The Developer is also to pay to the Council the Council's reasonable costs of enforcing this Deed within 7 days of a written demand by the Council for such payment.

28 Entire Deed

- 28.1 This Deed contains everything to which the Parties have agreed in relation to the matters it deals with.
- 28.2 No Party can rely on an earlier document, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, before this Deed was executed, except as permitted by law.

29 Further Acts

- 29.1 Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to effect, perfect or complete this Deed and all transactions incidental to it.

30 Governing Law and Jurisdiction

- 30.1 This Deed is governed by the law of New South Wales.
- 30.2 The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them.
- 30.3 The Parties are not to object to the exercise of jurisdiction by those courts on any basis.

31 Joint and Individual Liability and Benefits

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

32 No Fetter

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

33 Illegality

- 33.1 If this Deed or any part of it becomes illegal, unenforceable or invalid as a result of any change to a law, the Parties are to co-operate and do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Deed is entered into.

34 Severability

- 34.1 If a clause or part of a clause of this Deed can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way.
- 34.2 If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Deed, but the rest of this Deed is not affected.

35 Amendment

- 35.1 No amendment of this Deed will be of any force or effect unless it is in writing and signed by the Parties to this Deed in accordance with clause 25C of the Regulation.

36 Waiver

- 36.1 The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Deed, does not amount to a waiver of any obligation of, or breach of obligation by, another Party.
- 36.2 A waiver by a Party is only effective if it:
- 36.2.1 is in writing,
 - 36.2.2 is addressed to the Party whose obligation or breach of obligation is the subject of the waiver,
 - 36.2.3 specifies the obligation or breach of obligation the subject of the waiver and the conditions, if any, of the waiver,
 - 36.2.4 is signed and dated by the Party giving the waiver.
- 36.3 Without limitation, a waiver may be expressed to be conditional on the happening of an event, including the doing of a thing by the Party to whom the waiver is given.
- 36.4 A waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given, and 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.
- 36.5 For the purposes of this Deed, an obligation or breach of obligation the subject of a waiver is taken not to have been imposed on, or required to be complied with by, the Party to whom the waiver is given.

37 GST

37.1 In this clause:

Adjustment Note, Consideration, GST, GST Group, Margin Scheme, Money, Supply and Tax Invoice have the meaning given by the GST Law.

GST Amount means in relation to a Taxable Supply the amount of GST payable in respect of the Taxable Supply.

GST Law has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Input Tax Credit has the meaning given by the GST Law and a reference to an Input Tax Credit entitlement of a party includes an Input Tax Credit for an acquisition made by that party but to which another member of the same GST Group is entitled under the GST Law.

Taxable Supply has the meaning given by the GST Law excluding (except where expressly agreed otherwise) a supply in respect of which the supplier chooses to apply the Margin Scheme in working out the amount of GST on that supply.

37.2 Subject to clause 37.4, if GST is payable on a Taxable Supply made under, by reference to or in connection with this Deed, the Party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.

37.3 Clause 37.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Deed to be GST inclusive.

37.4 No additional amount shall be payable by the Council under clause 37.2 unless, and only to the extent that, the Council (acting reasonably and in accordance with the GST Law) determines that it is entitled to an Input Tax Credit for its acquisition of the Taxable Supply giving rise to the liability to pay GST.

37.5 If there are Supplies for Consideration which is not Consideration expressed as an amount of Money under this Deed by one Party to the other Party that are not subject to Division 82 of the *A New Tax System (Goods and Services Tax) Act 1999*, the Parties agree:

37.5.1 to negotiate in good faith to agree the GST inclusive market value of those Supplies prior to issuing Tax Invoices in respect of those Supplies;

37.5.2 that any amounts payable by the Parties in accordance with clause 37.2 (as limited by clause 37.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.

37.6 No payment of any amount pursuant to this clause 49, and no payment of the GST Amount where the Consideration for the Taxable Supply is expressly agreed to be GST inclusive, is required until the supplier has provided a Tax Invoice or Adjustment Note as the case may be to the recipient.

37.7 Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to a cost, expense or other liability incurred by a party, must exclude the amount of any Input Tax Credit entitlement of that party in relation to the relevant cost, expense or other liability.

37.8 This clause continues to apply after expiration or termination of this Deed.

38 Explanatory Note

- 38.1 The Appendix contains the Explanatory Note relating to this Deed required by clause 25E of the Regulation.
- 38.2 Pursuant to clause 25E(7) of the Regulation, the Parties agree that the Explanatory Note is not to be used to assist in construing this Planning Deed.

DRAFT

Schedule 1

(Clause 10)

Development Contributions

Column 1 Item/ Contribution	Column 2 Public Purpose	Column 3 Manner & Extent	Column 4 Timing
A. Monetary Contributions			
1. \$40,000.00	Sewerage infrastructure	\$40,000 to be paid to the Council in accordance with this Deed.	To be paid in 3 instalments as follows: <ul style="list-style-type: none">• 50% within 150 days of the commencement of this Deed, and• 25% prior to the issuing of the first Construction Certificate for any part of the Development, and• 25% prior to the issuing of the first Occupation Certificate for any part of the Development.
2. \$105,872.67	Water supply infrastructure	\$105,872.67 to be paid to the Council in accordance with this Deed.	To be paid in 3 instalments as follows: <ul style="list-style-type: none">• 50% within 150 days of the commencement of this Deed, and• 25% prior to the issuing of the first Construction Certificate for any part of the Development, and• 25% prior to the issuing of the first Occupation Certificate for any part of the Development.



Execution

Executed as a Deed

Dated:

Executed on behalf of the Council

General Manager

Name of General Manager:

Witness

Name of Witness:

Mayor

Name of Mayor:

Witness

Name of Witness:

Executed on behalf of the Developer in accordance with s127(1) of the Corporations Act (Cth) 2001

Director

Name of Director:

Director/Secretary

Name of Director/Secretary:

600 Macleay Valley Way Highway Service Centre Planning Agreement



Kempsey Shire Council

Spectrum REIT 23 Pty Ltd atf Spectrum REIT 23 Trust

Gwenda Veronica Norton

Executed by the Landowner

Gwenda Veronica Norton

Witness

DRAFT

Appendix

(Clause 50)

Environmental Planning and Assessment Regulation 2000

(Clause 25E)

Explanatory Note

Draft Planning Agreement

Under s7.4 of the *Environmental Planning and Assessment Act 1979*

Parties

Kempsey Shire Council ABN 70 705 618 663 of PO Box 3078 WEST KEMPSEY NSW 2440 (**Council**)

Spectrum Retail Group Pty Ltd ACN 616 460 112 of Level 9, 66 Hunter Street SYDNEY NSW 2000 (**Developer**)

Gwenda Veronica Norton of 5 Mollies Way Dondingalong NSW 2440 (**Landowner**)

Description of the Land to which the Draft Planning Agreement Applies

The Land to which the draft planning agreement applies is Lot 200 DP 1177619.

Description of Proposed LEP Amendment and Development

This draft Planning Agreement applies to the proposed amendment to the Kempsey LEP to make development for the purposes of a Highway Service Centre permissible on the Land. The draft Planning Agreement also applies to the proposed development of the Land for a Highway Service Centre.

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

Objectives of Draft Planning Agreement

The objectives of the Draft Planning Agreement are to facilitate the payment of monetary contributions for the purposes of sewerage infrastructure and water supply infrastructure.

Nature of Draft Planning Agreement

The Draft Planning Agreement is a planning agreement under s7.4 of the EPA Act. It is a voluntary agreement, under which the Developer and Landowner makes Development Contributions (as defined in clause 1.1 of the Draft Planning Agreement) for various public purposes (as defined in s 7.4(2) of the EPA Act).

Effect of the Draft Planning Agreement

The Draft Planning Agreement:

- requires the Developer to pay a monetary contribution to Council, in the amount of \$40,000 for the purposes of sewerage infrastructure and \$105,872.67 for the purposes of water supply infrastructure.
- does not exclude the application of s7.11, s7.12 and s7.24 of the Act to the Development,
- is not to be taken into consideration when the Council imposes a condition under s7.11 of the Act to the Development,
- is to be registered on the title to the Land,
- imposes restrictions on the Developer transferring the Land or part of the Land or assigning an interest under the agreement unless the agreement is registered on the Land,
- provides two dispute resolution methods for a dispute under the agreement, being expert determination and mediation,
- provides that the agreement is governed by the law of New South Wales,
- provides that the A New Tax System (Goods and Services Tax) Act 1999 (Cth) applies to the agreement, and
- provides for other matters of detail.

Assessment of the Merits of the Draft Planning Agreement

The Planning Purposes Served by the Draft Planning Agreement

The Draft Planning Agreement:

- promotes and co-ordinates the orderly and economic use and development of the land to which the Planning Agreement applies,

- captures the shared uplift value of land through the delivery of public services and public amenities,
- provides and co-ordinates community services and facilities.

The Draft Planning Agreement provides a reasonable means of achieving these planning purposes by requiring the Developer to make monetary contributions to Council.

How the Draft Planning Agreement Promotes the Public Interest

The Draft Planning Agreement promotes the public interest by:

- promoting the objects of the Act as set out in s1.3(b), (c), (h) and (j),
- delivering funding for public infrastructure.

For Planning Authorities:

Development Corporations - How the Draft Planning Agreement Promotes its Statutory Responsibilities

N/A

Other Public Authorities – How the Draft Planning Agreement Promotes the Objects (if any) of the Act under which it is Constituted

N/A

Councils – How the Draft Planning Agreement Promotes the Principles for local government (formerly the Council’s charter) in the Local Government Act 1993

The Draft Planning Agreement promotes the principles for local government of the Council’s charter by:

- working with others to secure appropriate services for local community needs,
- promoting Council’s long-term strategic planning on behalf of the local community.

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

The Draft Planning Agreement conforms with the Council’s Capital Works Program.

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

The Draft Planning Agreement requires the payment of part of the monetary contributions before any construction certificate and occupation certificate is issued for the Development.