

Dated: 6/9/2022

**Planning Agreement under section 7.4 of the
*Environmental Planning & Assessment Act 1979***

**Subject Land: 39 Dell Road, West Gosford, part
 Lot 6 DP 3944**

Central Coast Council

and

Industrial Discounts Pty Ltd

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**Planning Agreement under Section 7.4 of the
Environmental Planning & Assessment Act 1979**

Dated **6, 9, 22**

Parties :

Name	Central Coast Council
Address	2 Hely Steet, Wyong, NSW
Email	ask@centralcoast.nsw.gov.au
Contact	Chief Executive Officer
Short name	Council

Name	Industrial Discounts Pty Ltd ACN 000 100 078
Address	to be inserted <i>1280 Old Pacific Highway Sowersby</i> <i>al</i>
Email	andrew.newberry@robsoncivil.com.au
Contact	Andrew Newberry ph. 0417248651
Short name	Developer

Background

- A. The Developer is the registered proprietor of the Land.
- B. The Developer wishes for a portion of the Land referred to as the Industrial Land to be rezoned from 7(a) Conservation and Scenic Protection (Conservation) to IN1 – General Industrial by amendment to the Gosford LEP.
- C. In furtherance of this, on 3 December 2021 the Developer submitted a request to Council pursuant to which it sought Council to prepare and lodge with the Department of Environment and Planning (as it then was) the Planning Proposal. In doing so, the Developer has proposed providing to the Council certain Public Benefits.

The parties wish to enter into this Agreement, being a voluntary planning agreement under s 7.4 of the EPA Act, to record the terms and conditions on which the Public Benefits will be provided to Council.

This Deed Witnesses

1. Definitions

In this Agreement unless expressed or implied to the contrary:

Access Land means that part of the Land shown on the image in Schedule 3 within the yellow boundary.

Access Land Easement means an easement in the form of a right of access over the Access Land benefiting Council and providing access to the COSS Land on the terms set out in of Schedule 5.

Access Road Works means the works specified in Schedule 5.

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

Adverse Affectation has the same meaning as in clause 4 of Part 2 of the *Conveyancing (Sale of Land) Regulation 2010* (NSW).

Agreement means this document, including all Schedules.

Amendment to the Gosford LEP means the instrument amending the Gosford LEP consistent with the Planning Proposal pursuant to the process set out in Part 3, Division 3.4, of the Act.

Authorisation means:

- (a) an approval, consent, declaration, exemption, accreditation, notarisation, licence, permit, certificate, waiver or other authorisation, however described, required by any law (including, for the avoidance of doubt, approvals specifically defined in this Agreement); and
- (b) in relation to anything that could be prohibited or restricted by law if an Authority acts in any way within a specified period, the expiry of that period without that action being taken,

including any variation, modification, renewal or amendment with any Authority.

Authority means any:

- (a) government, government department or government agency;
- (b) governmental, semi-governmental or judicial person carrying out any statutory authority or function; or
- (c) other person (whether autonomous or not) who is charged with the administration of a Law,

including, for the avoidance of doubt, Authorities specifically defined in this Agreement and including Council when performing its regulatory functions but in that capacity only.

Bushland Management Plan means the plan prepared and approved in accordance with Schedule 5.

Business Day means Monday to Friday excluding public holidays in New South Wales.

Coastal Open Space System (COSS) means the network of bushland and other natural reserves identified by the Council as forming part of the system.

Confidential Information means:

- (a) information of a party (disclosing party) that is:
 - (i) made available by or on behalf of the disclosing party to the other party (receiving party), or is otherwise obtained by or on behalf of the receiving party; and
 - (ii) by its nature confidential or the receiving party knows, or ought reasonably to know, is confidential.

Confidential Information may be made available or obtained directly or indirectly, and before, on or after the date of this document.

Confidential Information does not include information that:

- (a) is in or enters the public domain through no fault of the receiving party or any of its officers, employees or agents;
- (b) is or was made available to the receiving party by a person (other than the disclosing party) who is not or was not then under an obligation of confidence to the disclosing party in relation to that information; or
- (c) is or was developed by the receiving party independently of the disclosing party and any of its officers, employees or agents.

Construction Certificate has the same meaning as in the Act.

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

Contamination has the meaning given to that word in the *Contaminated Land Management Act 1997* (NSW).

Corporations Act means the *Corporations Act 2001* (Cth).

COSS Land means that part of the Land marked E2 on the plan in Schedule 4.

Council's Representative means Council Staff with appropriate seniority and delegation.

Dealing means selling, transferring, assigning, novating, mortgaging, charging, or encumbering (and **Deal** has a corresponding meaning).

Developer means Industrial Discounts Pty Ltd or any person who becomes the registered proprietor of the Land or any part of the Land, but does not include the Council.

Developer's Representative means Andrew Newberry

Development means:

(a) the Subdivision of the Land; and (b)

the Access Road Works,

pursuant to the Development Consent.

Development Application means a development application under Part 4 of the Act that relates, either wholly or in part, to:

(c) the Subdivision of the Land into:

(i) the Industrial Land and Unaffected Land; and

(ii) the COSS Land; and

(d) the Access Road Works,

that is submitted to a consent authority under the Act in accordance with this Agreement.

Development Consent means a development consent within the meaning of the Act granted in relation to the Development Application.

Industrial Land means that part of the Land marked IN1 on the plan in Schedule 4.

Gosford LEP means *Gosford Local Environmental Plan 2014 or the Central Coast Local Environmental Plan when made.*

Government Agency means:

(a) a government or government department or other body,

(b) a governmental, semi governmental or judicial person; or

(c) a person (whether autonomous or not) who is charged with the administration of a Law.

GST means the same as the GST Act.

GST Act means *A New Tax System (Goods and Services Tax) Act 1999 (Cth).*

Guarantee means an irrevocable unconditional bank guarantee or documentary performance bond for the Guarantee Amount which must:

(a) be denominated in Australian dollars;

(b) be an unconditional undertaking;

- (c) be signed and issued by a bank licensed to carry on business in Australia, an Australian Prudential Regulation Authority (**APRA**) regulated authorised deposit taking institution or an insurer authorised by APRA to conduct new or renewal insurance business in Australia having at all times an investment grade security rating from an industry recognised rating agency of at least:
 - (i) BBB + (Standard & Poors and Fitch);
 - (ii) Baa 1 (Moody's); or
 - (iii) Bbb (Bests);
- (d) be issued on behalf of the Developer;
- (e) have no expiry or end date;
- (f) state the beneficiary as Council;
- (g) be irrevocable;
- (h) state the Guarantee Amount as the minimum amount required by this document to be lodged as security;
- (i) state the purpose of the security as required in accordance with this document; and
- (j) be on such other terms approved by Council.

Guarantee Amount means the amount of \$40,000.00

Guarantee Due Date means the date 30 Business Days after the date of this agreement.

IDO 122 means Interim Development Order No 122 – Gosford.

Index Number means the Consumer Price Index (Sydney all groups) published by the Australian Bureau of Statistics from time to time.

Insolvency Event means:

- (a) having a controller, receiver, manager, administrator, provisional liquidator, liquidator or analogous person appointed;
- (b) an application being made to a court for an order to appoint a controller, provisional liquidator, trustee for creditors or in bankruptcy or analogous person to the person or any of the person's property
- (c) the person being taken under section 459F (1) of the Corporations Act to have failed to comply with a statutory demand;
- (d) an application being made to a court for an order for its winding up; (e) an order being made, or the person passing a resolution, for its winding up; (f) the person:
 - (i) suspending payment of its debts, ceasing (or threatening to cease) to carry on all or a material part of its business, stating that it is unable to pay its debts or being or becoming otherwise insolvent; or

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- (ii) being unable to pay its debts or otherwise insolvent;
 - (g) the person taking any step toward entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors;
 - (h) a court or other authority enforcing any judgment or order against the person for the payment of money or the recovery of any property; or (i) any analogous event under the Laws of any applicable jurisdiction,

unless this takes place as part of a solvent reconstruction, amalgamation, merger or consolidation that has been approved by the other party.

Land means Lot 6 on Deposited Plan 3944 shown with a blue boundary on the image in Schedule 1.

Law includes any legislation or any rule, principle, duty or requirement of or under common law or equity, and for the avoidance of doubt includes any Authorisations and the lawful requirements of Authorities.

Monetary Contribution means the amount specified in Item D of Schedule 5.

Occupation Certificate has the same meaning as the Act.

Party means a party to this Agreement.

Peer Review of Geotechnical Report means the report prepared by J.K. Geotechnics Pty Ltd for Council titled Peer Review of Geotechnical Report: Proposed Industrial Rezoning 39 Dell Road, West Gosford, NSW and dated 29 January 2020.

Personnel means the Developer's officers, employees, agents, contractors, or subcontractors (of any tier).

Planning Proposal means the planning proposal (within the meaning of the Act), assigned number PP 113/2020, to rezone:

- (a) the Industrial Land from zone 7(a) Conservation and Scenic Protection (Conservation) (as defined in IDO 122) to zone IN1 – General Industrial (as defined in the Gosford LEP);
- (b) the COSS Land from zone 7(a) Conservation and Scenic Protection (Conservation) (as defined in IDO 122) to zone E2 – Environmental Conservation (as defined in the Gosford LEP),

which was the subject of a gateway determination in accordance with section 3.34 of the Act.

Prescribed Rate means the rate prescribed from time to time under the Uniform Civil Procedure Rules 2005 as the rate of interest on judgment debts plus 2%, calculated daily and compounded on the last day of each month.

Public Benefits means the public benefits to be provided by the Developer in the form and at the times specified in Schedule 5.

Regulation means the *Environmental Planning and Assessment Regulation 2021* (NSW).

Subdivision in respect of land, has the same meaning as “subdivision of land” in the Act.

Subdivision Certificate means a subdivision certificate, as defined under the Act, which subdivides the Land.

Subdivision Works means the subdivision work (as defined in the Act) in relation to the Subdivision of the Land into:

- (i) the Industrial Land and Unaffected Land; and
- (ii) the COSS Land.

Unaffected Land means that part of the Land shown on the image in Schedule 2 within the blue boundary and shaded light purple.

2. Operation and application of this Agreement

2.1 Application of this Agreement

This Agreement is a planning agreement within the meaning of s 7.4 of the Act and applies to:

- 2.1.1 the Land;
- 2.1.2 the Planning Proposal;
- 2.1.3 the Development; and
- 2.1.4 the Amendment to the Gosford LEP.

2.2 Operation

- 2.2.1 This Agreement operates on and from the date it is executed by the Parties, with the exception of clauses 3, 7 and Schedule 5 to this Agreement which commence on the date that the Amendment to the Gosford LEP is gazetted.
- 2.2.2 This Agreement will remain in force until it is terminated.
- 2.2.3 If:
 - (a) the Amendment to the Gosford LEP or the Development Consent is declared invalid by a Court of competent jurisdiction; or
 - (b) the Development Application is refused and the Developer’s rights of appeal and review are exhausted, waived or barred, then:
 - (c) the Developer may request in writing that Council consider changes to the terms of this Agreement within 28 days of the date on which:
 - (i) the Amendment to the Gosford LEP or Development Consent is declared invalid; or

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- (ii) the Development Application is refused, and the Developer's rights of appeal and review become exhausted, waived or barred;
 - (d) if the Developer makes a written request pursuant to clause 2.2.3(c), the Parties must negotiate in good faith to seek to agree to amendments to this Agreement; and
 - (e) if the Parties cannot agree on amendments within 20 Business Days after the date on which the Developer makes a written request pursuant to clause 2.2.3(c), then any Party may terminate this Agreement under clause 2.3.1(a).

2.3 Termination

2.3.1 A Party can terminate this Agreement by written notice to the other Party if the Amendment to the Gosford LEP or the Development Consent is declared to be invalid by a Court of competent jurisdiction and either:

- (a) the Developer has not made a written request in accordance with clause 2.2.3(c); or
- (b) the Developer has made a written request in accordance with clause 2.2.3(c) and the Parties have not reached agreement in accordance with clause 2.2.3(e).

2.3.2 The termination of this Agreement is without prejudice to the accrued rights of Council at the time of such termination.

2.3.3 If this Agreement is terminated then:

- (a) the rights of each party that arose before the termination or which may arise at any future time for any breach or non-observance of obligations occurring prior to the termination are not affected;
- (b) the parties must take all steps reasonably necessary to minimise any loss that each party may suffer as a result of the termination of this document;
- (a) Council will return the Guarantee to the Developer after first deducting any amounts owing to Council or costs incurred by Council by operation of this document. If in exercising its rights under this document Council expends more money than the Guarantee Amount then the amount in excess of the Guarantee Amount will be deemed to be a debt due and owing to Council by the Developer; and
- (c) Council will, at the cost of the Developer, do all things reasonably required to remove this Agreement from the title to the Land.

2.4 Application of sections 7.11, 7.12 and 7.24 of the Act

2.4.1 This Agreement does not exclude the application of section 7.11, section 7.12 and section 7.24 of the Act in respect of the Development or any future development (within the meaning of the Act) on the Industrial Land or Unaffected Land. The Parties acknowledge that either section 7.11 or section 7.12 will apply.

2.4.2 The Public Benefits provided under this Agreement are not to be taken into consideration in determining a development contribution under section 7.11 or 7.12 of the Act with respect to the Development.

2.5 No fetter

This Agreement does not fetter or restrict the power or discretion of Council to make any decision or impose any requirements or conditions in connection with:

2.5.1 the making of a change to the Gosford LEP, including a change sought by the Developer as contemplated in the Planning Proposal; and

2.5.2 the granting of any development consent (as defined in the Act) or certification of any development consent or certification of any plans of subdivision applicable to the Land relating to any use or development of the Land.

2.6 Explanatory note

The explanatory note prepared in accordance with clause 205 of the Regulation must not be used to assist in construing this document.

3. Developer to provide Public Benefits

The Developer must, at its cost and risk, provide the Public Benefits in accordance with this Agreement.

4. Registration

4.1 Acknowledgement

The Developer acknowledges that Council intends to register this Agreement in accordance with s 7.6 of the Act at NSW Land Registry Services on the title to the Land and, upon registration by the Registrar-General, this Agreement will be binding on and enforceable against the owner of any part of the Land from time to time as if each owner for the time being had entered into this Agreement and was a Developer.

4.2 Consents to registration

The Developer:

4.2.1 consents to the registration of this Agreement at NSW Land Registry Services on the title to the Land; and

4.2.2 warrants that it has obtained all consents and approvals that are required and will do all things necessary to enable the registration of this Agreement on the title to the Land.

4.3 Developer's obligations

4.3.1 The Developer must within 10 Business Days of a written request by Council do all things necessary to enable this Agreement to be registered by Council on the title to the Land under s 7.6 of the Act, including:

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- (a) producing any documents or letters of consent required by the Registrar-General of the NSW Land and Registry Services;
 - (b) providing the production slip number when the Developer produces the certificate of title to the Land at the NSW Land and Registry Services; and
 - (c) providing Council with a cheque for registration fees payable in relation to registration of this Agreement at the NSW Land and Registry Services.
- 4.3.2 The Developer must act promptly in complying with and assisting to respond to any requisitions raised by the NSW Land and Registry Services that relate to registration of this Agreement.

4.4 Release from Registration

If Council is satisfied that the Developer has:

- 4.4.1 paid the Monetary Contribution to Council;
- 4.4.2 effected the dedication and transfer of the COSS Land to Council;
- 4.4.3 effected the registration of the Access Land Easement; and
- 4.4.4 fully complied with its other obligations under this Agreement,

Council will at the request of the Developer, execute the relevant forms to remove the registration of this Agreement from the certificates of title for the Land.

4.5 Registration Expenses

The Developer must pay Council's expenses including registration fees, reasonable legal costs and disbursements for the registration of this Agreement and the subsequent removal of registration under this clause 4.

5. Caveatable Interest

5.1 Lodgement of caveat

- 5.1.1 The Developer acknowledges and agrees that the rights under this Agreement give Council a caveatable interest in the Land.
- 5.1.2 Council may, at any time after the date of this Agreement, lodge a caveat on the relevant folios of the Register held by the NSW Land Registry Services pertaining to the Land.
- 5.1.3 A caveat lodged by Council in accordance with this clause 5 must not prevent or prohibit the lodgement of any instrument dealing or matter required for the registration of any mortgage, subdivision plan, easement, covenant, right of way, deposited plan or strata plan relating to the Development. The Developer must not

lodge a lapsing notice or take any action to obtain or seek a withdrawal or removal of the caveat, unless:

- (a) Council has confirmed in writing to the Developer that its obligations under this Agreement have been satisfied; or
- (b) this Agreement has otherwise come to an end.

5.2 Withdrawal of caveat

If Council lodges a caveat in accordance with this clause 5, Council must do all things reasonably required to remove the registration of that caveat from the title to the Land once this Agreement has been registered on the title to the Land in accordance with clause 4.

6. Default

6.1 Costs on default

The Developer must pay Council's expenses including internal management costs and legal fees and disbursements on an indemnity basis in connection with any breach of a provision of this Agreement by the Developer.

6.2 Interest on overdue payments

The Developer must pay interest on any money due to Council but not paid on the due date from the date payment was due at the Prescribed Rate.

7. Enforcement

7.1 Developer to provide Guarantee

The Developer must deliver the Guarantee for the Guarantee Amount to Council by the Guarantee Due Date.

7.2 Adjustment of Guarantee Amount

7.2.1 On each anniversary of the date of the Guarantee (the "Adjustment Date"), the Guarantee Amount is to be adjusted to a revised amount by applying the following formula:

$$\text{RGA} = \text{GA} \times (\text{A/B})$$

where:

RGA is the revised Guarantee Amount applicable from the relevant Adjustment Date

GA is the Guarantee Amount that is current on the relevant Adjustment Date

A is the Index Number most recently published before the relevant Adjustment Date

B is the Index Number most recently published:

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- (i) before the date of the Guarantee for the first Adjustment Date; and
 - (ii) before the preceding Adjustment Date for every subsequent Adjustment Date

7.2.2 If after the formula is applied under clause 7.2.1 the revised Guarantee Amount will be less than the amount held at the preceding Adjustment Date, the Guarantee Amount will not be adjusted.

7.2.3 If after the formula is applied clause 7.2.1 the revised Guarantee Amount will be greater than the amount held at the preceding Adjustment Date, the Developer must within 10 Business Days of the Adjustment Date deliver to Council's Representative a replacement Guarantee to replace the Guarantee then held by Council, in the amount calculated under this clause 7.2.

7.2.4 Any unused portion of the Guarantee that is held by Council immediately prior to the receipt by Council's Representative of the replacement Guarantee under clause 7.2.3 must be returned to the Developer upon receipt of the replacement Guarantee.

7.3 Right of Council to claim on Guarantee

7.3.1 The Developer agrees that Council may itself or through Council's Representative make an appropriation from the Guarantee (and the proceeds of the Guarantee, including any interest earned in respect of such proceeds) at any time, without notice to the Developer, in such amount as Council, acting reasonably, thinks appropriate if:

- (a) an Insolvency Event occurs in respect of the Developer;
- (b) the Development Application is refused and all appeal and review rights of the Developer are exhausted, waived, or barred;
- (c) the Development Application is set aside by a Court and all appeal and review rights of the Developer are exhausted, waived, or barred;
- (d) the Developer fails to complete the Weed Management Works;
- (e) Council incurs or reasonably expects to incur any other expense or liability in exercising its rights and powers under this document.

7.3.2 Any amount of the Guarantee appropriated by Council in accordance with clause 7.2 must be applied only towards any or all of:

- (a) the costs and expenses incurred by Council rectifying any default by the Developer under this document;
- (b) carrying out any works required to complete the Weed Management Works;
- (c) the provision of public benefits elsewhere within the locality, in the following circumstances:

- (i) the Development Application being refused and all appeal and review rights of the Developer are exhausted, waived, or barred;
- (ii) the Development Application being set aside by a Court and all appeal and review rights of the Developer are exhausted, waived, or barred; or
- (iii) the insolvency of the Developer; and
- (d) ensuring due and proper performance of the obligations of the Developer under this document.

7.3.3 The Developer is not entitled to, and must not seek, an injunction against either Council or the issuer of the Guarantee (if applicable) preventing a demand or payment under the Guarantee (whether the demand extends to the whole of the Guarantee or part thereof) or the use to which the proceeds of such a demand can be put.

7.4 Expenditure by Council to complete Road Access Works

If Council claims on the Guarantee to complete the Road Access in accordance with Schedule 5, then Council:

- 7.4.1 is not required to expend more money than the Guarantee Amount and may elect not to carry out the Road Access Works to ensure that those works can be carried out for an amount equal to or less than the Guarantee Amount;
- 7.4.2 may expend more than the Guarantee Amount. If Council expends more money than the Guarantee Amount then the amount in excess of the Guarantee Amount will be deemed to be a debt due and owing to Council by the Developer.

7.5 Top-up and return of Guarantee

- 7.5.1 If Council calls upon the Guarantee in accordance with this clause 7 then the Developer must immediately provide to Council a replacement Guarantee to ensure that, at all times until the Guarantee is released in accordance with

paragraph 7.5.2, Council is in possession of a Guarantee for a face value equivalent to the Guarantee Amount.

- 7.5.2 If the monies secured by the Guarantee have not been expended and the Public Benefits have been provided in accordance with this Agreement, then Council will promptly return the Guarantee to the Developer.

7.6 Trusts and interest

If Council has called up the Guarantee and holds surplus funds after the Developer's default has been remedied, Council:

- 7.6.1 may hold that surplus as a security deposit until the Developer replaces the Guarantee for the full Guarantee Amount; and
- 7.6.2 must provide the surplus to the Developer promptly after it receives the replacement Guarantee

7.7 Compulsory acquisition

If the Developer fails to transfer or dedicate the COSS Land or register the Access Land Easement as required by clause 2 of Schedule 5 by the date that is seven weeks following the applicable due date specified in Column 3 in the table in clause 1 of Schedule 5, then Council may compulsorily acquire that land for the amount of \$1.00 in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991 (NSW)*. Council and the Developer agree that:

- 7.1 this clause 7 is an agreement between the Developer and Council for the purposes of section 30 of the *Land Acquisition (Just Terms Compensation) Act 1991 (NSW)*;
- 7.2 in this clause 7 the Developer and Council have agreed on all relevant matters concerning the compulsory acquisition and the compensation to be paid for the acquisition; and
- 7.3 the Developer must pay Council, promptly on demand, an amount equivalent to all costs incurred by Council in acquiring the whole or any part of the COSS Land or the Access Land as contemplated by this clause 7.

8. Dispute resolution

8.1 Disputes

Any dispute between the Parties which arises out of or in connection with this Agreement (**Dispute**) must be resolved under this clause 8.

8.2 Notice of Dispute

If any Dispute arises, a Party to the Dispute may deliver by hand or send by certified mail to the other Party to the Dispute, a notice of dispute (**Notice of Dispute**) which must:

- 8.2.1 identify and provide adequate details of the dispute so as to enable the other Party to the Dispute to fully understand the nature of the dispute; and
- 8.2.2 designate as a Party's representative in negotiations a person with authority to settle the Dispute.

8.3 Reply to Notice

Within 5 Business Days after a Party (**Recipient Party**) receives a Notice of Dispute under clause 8.2 it must give a notice to the Party that issued the Notice of Dispute designating the Recipient Party's representative who must have authority to settle the Dispute.

8.4 Designated Representative

The designated representatives under clauses 8.2.2 and 8.3 must meet and use their best endeavours to settle the Dispute by negotiation within 20 Business Days from the date of the Notice of Dispute.

8.5 Submission to mediation

In the event that the persons negotiating pursuant to clause 8.4 cannot resolve the dispute within the 20 Business Days from the date of the Notice of Dispute, a Party to the Dispute may give a written notice to the other Party to refer the Dispute for mediation (**Mediation Notice**).

8.6 Mediation

8.6.1 The Parties to the Dispute must, within 5 Business Days after service of the Mediation Notice, use their best endeavours to agree on a mediator for the purposes of this clause.

8.6.2 If the Parties cannot agree on a mediator within 5 Business Days after service of the Mediation Notice, the mediator must be nominated by the President of the Institute of Arbitrators and Mediators Australia, or any other person authorised by the President to make the appointment, on the application of either Party.

8.6.3 Within 15 Business Days (or such other period agreed in writing between the Parties) after the agreement or nomination of the mediator under clause 8.6.1 or 8.6.2, the Parties must:

- (a) arrange for the appointment of the mediator (on terms satisfactory to the mediator) for the purposes of this clause; and
- (b) attend in person a preliminary conference before the mediator.

8.6.4 The Parties acknowledge and agree that:

- (a) the mediator must conduct a mediation in relation to the Dispute in accordance with The Institute of Arbitrators & Mediators Australia Mediation Rules (**Rules**);
- (b) they must abide by the Rules;
- (c) they may be represented by legal counsel at the mediation; and
- (d) they must use their reasonable endeavours to achieve the resolution of the Dispute at the mediation.

8.6.5 Each Party must:

- (a) bear its own costs in respect of the mediation; and
- (b) share equally the costs of the mediator (including the cost of any expert assistance retained by the mediator).

8.6.6 Any mediation under this clause 8.6 will be conducted on a without prejudice basis.

8.7 Termination of Mediation

A Party may terminate a mediation under clause 8.6, by giving written notice to the other Party and to the Mediator if the Dispute has not been resolved within 30 Business Days after the date that the Mediation Notice was given.

8.8 Subsequent proceedings

Each Party must not appoint the Mediator as its arbitrator, advocate or adviser in any arbitral or judicial proceedings relating to the Dispute or any part of it, except with the other Party's written consent.

8.9 Continuing obligations

Despite the existence of a Dispute under this clause 8 each Party must continue to perform its obligations under this Agreement.

8.10 Urgent relief

Nothing in clause 8 prejudices the right of a Party to seek urgent injunctive or declaratory relief for any matter in connection with this Agreement.

9. Dealings

9.1 Dealings by a Developer

9.1.1 The Developer must not Deal with any interest in this Agreement or the Land without:

- (a) the prior written consent of Council; and
- (b) without limiting clause 9.1.1(a), if this Agreement is not registered on the title to the part of the Land that is the subject of the proposed Deal, Council, the Developer and each other party that is the subject of the Dealing entering into a deed on terms that are satisfactory to Council.

9.1.2 The Developer must pay, whether or not consent is granted, Council's costs and expenses (including legal fees) incurred in connection with the proposed Dealing, including any costs incurred by Council to investigate or assess the any other party to the Dealing.

9.2 Dealings by Council

9.2.1 Council may Deal with its interest in this Agreement without the consent of the Developer if the Dealing is with an Authority. Council must give the Developer notice of the Dealing within five Business Days of the date of the Dealing.

9.2.2 Council may not otherwise Deal with its interest in this Agreement without the consent of the Developers.

9.3 Extinguishment or creation of interests on COSS Land and Access Land

9.3.1 Prior to the dedication or transfer of the COSS Land and the registration of the Land Access Easement in accordance with Schedule 5, the Developer must:

- (a) extinguish all leases and licences over the COSS Land and Access Land; and
 - (b) use its best endeavours to extinguish all redundant encumbrances and those that, in Council's opinion, would unreasonably impede the intended use of all or any part of the COSS Land and Access Land.
- 9.3.2 The Council acknowledges that the Easement for Electricity Transmission currently on title and traversing the COSS Land will remain on title.
- 9.3.3 The Developer must comply with any directions by Council relating to the COSS Land and the Access Land, including the creation of any encumbrances over the COSS Land and the Access Land.

10. Release

Council agrees to provide the Developer with a release and discharge of its obligations under this Agreement where Council is satisfied that the Developer has:

- 10.1.1 paid Council the Monetary Contribution that it is required to pay Council under this Agreement;
- 10.1.2 effected both the registration of the Access Land Easement and the dedication of the COSS Land to Council; and
- 10.1.3 otherwise discharged its obligations under this Agreement.

11. Indemnity

The Developer must indemnify and keep indemnified Council against any:

- 11.1.1 loss or damage;
- 11.1.2 cost or expense;
- 11.1.3 claim or proceedings;
- 11.1.4 order or regulatory action; and
- 11.1.5 liability,

of any nature suffered or incurred by Council arising from any act or omission by the Developer (or any Personnel) in connection with the performance of or the failure to perform the Developer's obligations under this document. The liability of the Developer to indemnify Council shall be reduced to the extent that the Developer demonstrates that the circumstances from which the loss, damage, cost, expense, claim, proceedings, order, regulatory action or liability arose were attributable to a wilful or negligent act or omission of Council (or any person engaged by Council other than the Developer or Personnel).

12. Warranties

The Developer warrants and represents to Council that:

- 12.1.1 it is the registered proprietor of the Land;
- 12.1.2 it is legally entitled to obtain all consents and approvals that are required by this document and do all things necessary to give effect to this document;
- 12.1.3 it has full legal capacity to own its property and to carry on its business and enter into this Agreement and carry out the obligations contemplated by this Agreement;
- 12.1.4 it has taken all corporate action that is necessary or desirable to authorise its entry into this Agreement and to carry out the obligations it contemplates;
- 12.1.5 it is the intention of the Developer to expeditiously commence and complete the Development, if Development Consent is granted; and
- 12.1.6 it holds each Authorisation that is necessary or desirable to:
 - (a) enable it to properly execute this Agreement and to carry out the transactions that this Agreement contemplates;
 - (b) ensure that this Agreement is legal, valid, binding and admissible in evidence; and
 - (c) enable it to properly carry on its business,and it is complying with any conditions to which any of these Authorisations is subject; and
- 12.1.7 prior to commencing delivery of the Public Benefits it will have obtained all Authorisations and insurances required under any Law to carry out its obligations under this document;
- 12.1.8 all work performed by the Developer and the Personnel under this document will be performed with due care and skill and to a standard which is equal to or better than that which a well experienced person in the industry would expect to be provided by an organisation of the Developer's size and experience; and
- 12.1.9 it is not aware of any matter which may materially affect the Developer's ability to perform its obligations under this Agreement;
- 12.1.10 neither its execution of this Agreement, nor the carrying out by it of the transactions that it contemplates, does or will:
 - (a) contravene any Law to which it or any of its property is subject or any order of any Authority that is binding on it or any of its property;
 - (b) contravene any Authorisation.

13. Confidentiality and disclosures

13.1 Use and disclosure of Confidential Information

A party (receiving party) which acquires Confidential Information of another party (disclosing party) must not:

13.1.1 use any of the Confidential Information except to the extent necessary to exercise its rights and perform its obligations under this document; or

13.1.2 disclose any of the Confidential Information except in accordance with clauses 13.2 or 13.3.

13.2 Disclosures to personnel and advisers

13.2.1 The receiving party may disclose Confidential Information to an officer, employee, agent, contractor, or legal, financial or other professional adviser if:

(a) the disclosure is necessary to enable the receiving party to perform its obligations or to exercise its rights under this document; and

(b) prior to disclosure, the receiving party informs the person of the receiving party's obligations in relation to the Confidential Information under this document and obtains an undertaking from the person to comply with those obligations.

13.2.2 The receiving party:

(a) must ensure that any person to whom Confidential Information is disclosed under clause 13.2.1 keeps the Confidential Information confidential and does not use it for any purpose other than as permitted under clause 13.2.1; and

(b) is liable for the actions of any officer, employee, agent, contractor or legal, financial or other professional adviser that causes a breach of the obligations set out in clause 13.2.2(a).

13.3 Disclosures required by Law

13.3.1 Subject to clause 13.3.2, the receiving party may disclose Confidential Information that the receiving party is required to disclose:

(a) by Law or by order of any court or tribunal of competent jurisdiction; or (b) by any Government Agency, stock exchange or other regulatory body.

13.3.2 If the receiving party is required to make a disclosure under clause 13.3.1, the receiving party must:

(a) to the extent possible, notify the disclosing party immediately it anticipates that it may be required to disclose any of the Confidential Information;

(b) consult with and follow any reasonable directions from the disclosing party to minimise disclosure; and

(c) if disclosure cannot be avoided:

(i) only disclose Confidential Information to the extent necessary to comply; and

(ii) use reasonable efforts to ensure that any Confidential Information disclosed is kept confidential.

13.4 Receiving party's return or destruction of documents

On termination of this document the receiving party must immediately:

- 13.4.1 deliver to the disclosing party all documents and other materials containing, recording or referring to Confidential Information; and
- 13.4.2 erase or destroy in another way all electronic and other intangible records containing, recording or referring to Confidential Information,

which are in the possession, power or control of the receiving party or of any person to whom the receiving party has given access.

13.5 Security and control

The receiving party must:

- 13.5.1 keep effective control of the Confidential Information; and
- 13.5.2 ensure that the Confidential Information is kept secure from theft, loss, damage or unauthorised access or alteration.

13.6 Media releases

The Developer must not issue any information, publication, document or article for publication in any media concerning this document or the Public Benefits without Council's prior written consent.

14. GST

14.1 Definitions

In this clause:

- 14.1.1 words and expressions that are not defined in this Agreement but which have a defined meaning in the GST Law have the same meaning as in the GST Law; and
- 14.1.2 **GST Law** has the meaning given to that term in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

14.2 GST exclusive

Except as otherwise provided in this Agreement, all consideration payable under this Agreement in relation to any supply is exclusive of GST.

14.3 Division 81 and 82 of GST Law

To the extent that Divisions 81 and 82 of the GST Law apply to a supply made under this Agreement:

- 14.3.1 no additional amount will be payable by a Party on account of GST; and
- 14.3.2 no tax invoices will be exchanged between the Parties.

14.4 Increase in consideration

Subject to clause 14.3, if GST is payable in respect of any supply made by a supplier under this Agreement (**GST Amount**), the recipient must pay to the supplier an amount equal to the GST payable on the supply. Subject to clause 14.5, the recipient must pay the GST Amount at the same time and in the same manner as the consideration for the supply is to be provided under this Agreement.

14.5 Tax invoice

The supplier must provide a tax invoice to the recipient before the supplier will be entitled to payment of the GST Amount under clause 14.3.

14.6 Reimbursements

If this Agreement requires a Party to pay, reimburse or contribute to any expense, loss or outgoing suffered or incurred by another Party, the amount which the first Party must pay, reimburse or contribute is the sum of:

14.6.1 the amount of the payment, reimbursement or contribution, less any input tax credit in respect of the payment, reimbursement or contribution to which the other Party is entitled; and

14.6.2 if the payment, reimbursement or contribution is subject to GST, an amount equal to that GST.

14.7 Adjustment events

If an adjustment event occurs in relation to a taxable supply under this Agreement:

14.7.1 the supplier must issue an adjustment note to the recipient within 7 days after becoming aware of the adjustment; and

14.7.2 any payment necessary to give effect to that adjustment must be made within 7 days after the date of receipt of the adjustment note.

15. Notices

15.1 Service of Notice

15.1.1 A notice or other communication required or permitted to be given to a Party under this Agreement must be in writing and may be delivered:

(a) personally to the Party;

(b) by leaving it at the Party's address;

(c) by posting it by regular prepaid post, priority prepaid post, registered post, priority registered post or express post addressed to the Party at the Party's address; or

(d) by electronic mail to the Party's email address, in each case, as specified in

the notice details of that Party.

- 15.1.2 If the person to be served is a company, the notice or other communication may be served on it at the company's registered office.

15.2 Particulars for Service

- 15.2.1 The notice details of each Party are as follows (or as notified by a Party to the other parties in accordance with this clause):

- (a) the notice details for **Council** are:

Attention: Chief Executive Officer

DX Address: DX 7306 WYONG

Postal Address: 2 Hely Street, Wyong NSW 2259

Fax No: (02) 43502098

Email: ask@centralcoast.nsw.gov.au

- (b) the notice details for the **Developer** are:

Attention: Andrew Newberry

Postal Address:

Email: andrew.newberry@robsoncivil.com.au

- 15.2.2 Any Party may change its notice details by giving notice to the other party.

- 15.2.3 All communications, notices, documents or instruments served by Council under this Agreement to the person specified in clause 15.2.1(b), is taken to have been served on the person comprising the Developer.

15.3 Time of Service

A notice or other communication is deemed delivered:

- 15.3.1 if delivered personally or left at the person's address, upon delivery;

- 15.3.2 if posted within Australia to an Australian address:

- (a) using regular prepaid post or registered post, 6 Business Days after posting;
- (b) using priority prepaid post or priority registered post, 4 Business Days after posting; and
- (c) using express post, 2 Business Days after posting;

- 15.3.3 if posted from a place to an address in a different country, 10 Business Days after posting;

- 15.3.4 if delivered by electronic mail, subject to clause 15.3.5, at the time the email containing the notice left the sender's email system, unless the sender receives notification that the email containing the notice was not received by the recipient; and

15.3.5 if received after 5.00pm in the place it is received, or on a day which is not a business day in the place it is received, at 9.00am on the next business day.

16. General

16.1 Amendment

This Agreement may only be varied or replaced by a document duly executed by the Parties.

16.2 Entire Understanding

This Agreement contains the entire understanding between the Parties as to the subject matter contained in it. All previous agreements, representations, warranties, explanations and commitments, expressed or implied, affecting this subject matter are superseded by this Agreement and have no effect.

16.3 Further Assurance

Each Party must promptly execute and deliver all documents and take all other action necessary or desirable to effect, perfect or complete the transactions contemplated by this Agreement.

16.4 Legal Costs and Expenses

16.4.1 The Developer must pay its own legal costs and expenses in relation to the negotiation, preparation and execution of this Agreement and other documents referred to in it, unless expressly stated otherwise.

16.4.2 Within 20 Business Days of a written request of Council, the Developer must pay the Council's legal costs and expenses in relation to the negotiation, preparation and execution of this Agreement and other documents referred to in it, unless expressly stated otherwise, in an amount not exceeding \$10,000.00 plus GST

16.5 Waiver and Exercise of Rights

16.5.1 A single or partial exercise or waiver of a right relating to this Agreement does not prevent any other exercise of that right or the exercise of any other right.

16.5.2 No Party will be liable for any loss or expenses incurred by another Party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

16.6 Rule of Construction

In the interpretation of this Agreement, no rule of construction applies to the disadvantage of the Party preparing the Agreement on the basis that it put forward this Agreement or any part of it.

17. Interpretation

17.1 Governing Law and Jurisdiction

This Agreement is governed by and is to be construed in accordance with the laws of New South Wales. Each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales and waives any right to object to proceedings being brought in those courts.

17.2 Joint and Several

17.2.1 If the Developer consists of more than one person, this Agreement binds each such person jointly and each of them severally.

17.2.2 If a Party to this Agreement consists of more than one person, this Agreement binds each such person jointly and each of them severally.

17.3 Legislation

In this Agreement, a reference to a statute includes regulations under it and consolidations, amendments, re-enactments or replacements of any of them.

17.4 General interpretation

In this Agreement:

17.4.1 a reference to:

- (a) this or other document includes the document as varied or replaced regardless of any change in the identity of the Parties;
- (b) a clause, schedule, appendix or annexure is a reference to a clause, schedule, appendix or annexure in or to this Agreement all of which are deemed part of this Agreement;
- (c) writing includes all modes of representing or reproducing words in a legible, permanent and visible form;
- (d) a person includes a firm, partnership, joint venture, association, corporation or other corporate body;
- (e) a person includes the legal personal representatives, successors and permitted assigns of that person;
- (f) the singular includes the plural and vice versa;
- (g) a gender includes the other genders; and
- (h) any body which no longer exists or has been reconstituted, renamed, replaced or whose powers or functions have been removed or transferred to another body or agency, is a reference to the body which most closely serves the purposes or objects of the first-mentioned body.

17.4.2 headings and sub-headings are inserted for ease of reference only and do not affect the interpretation of this Agreement;

17.4.3 where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning; and

17.4.4 where the expression including or includes is used it means 'including but not limited to' or 'including without limitation'.

17.5 Severance

17.5.1 If a provision in this Agreement is held to be illegal, invalid, void, voidable or unenforceable, that provision must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable.

17.5.2 If it is not possible to read down a provision as required in this clause, that provision is severable without affecting the validity or enforceability of the remaining part of that provision or the other provisions in this Agreement.

17.6 Counterparts

This Agreement may be executed in any number of counterparts all of which taken together constitute one instrument.

17.7 Business Day

If a payment or other act is required by this Agreement to be made or done on a day which is not a Business Day, the payment or act must be made or done on the next following Business Day.


17.8 Zone Identifiers

A reference to Environmental Protection Zone E2 Environmental Conservation in this Agreement is taken to be a reference to Conservation Zone C2 Environmental Conservation at all times on and after 3 November 2021 consequent on the making of the *Standard Instrument (Local Environmental Plans) Amendment (Land Use Zones) Order 2021*.

EXECUTION

Executed by the Parties as a deed

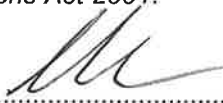
SIGNED SEALED AND DELIVERED for and on)
behalf of **CENTRAL COAST COUNCIL ABN 88 651 380 372**)

by ....., but not so as to)
incur any personal liability in the presence of:

HAYLEY SMITH
.....
Witness Name


.....
Witness Signature

Executed by **INDUSTRIAL DISCOUNTS PTY LTD**)
ACN 000 100 078 in accordance with s 127(1) of the)
Corporations Act 2001:)


.....
Signature of Director

Grant Neilson
.....
Print full name


.....
Signature of Director/Company Secretary

David Jelic
.....
Print full name

Schedule 1 The Land



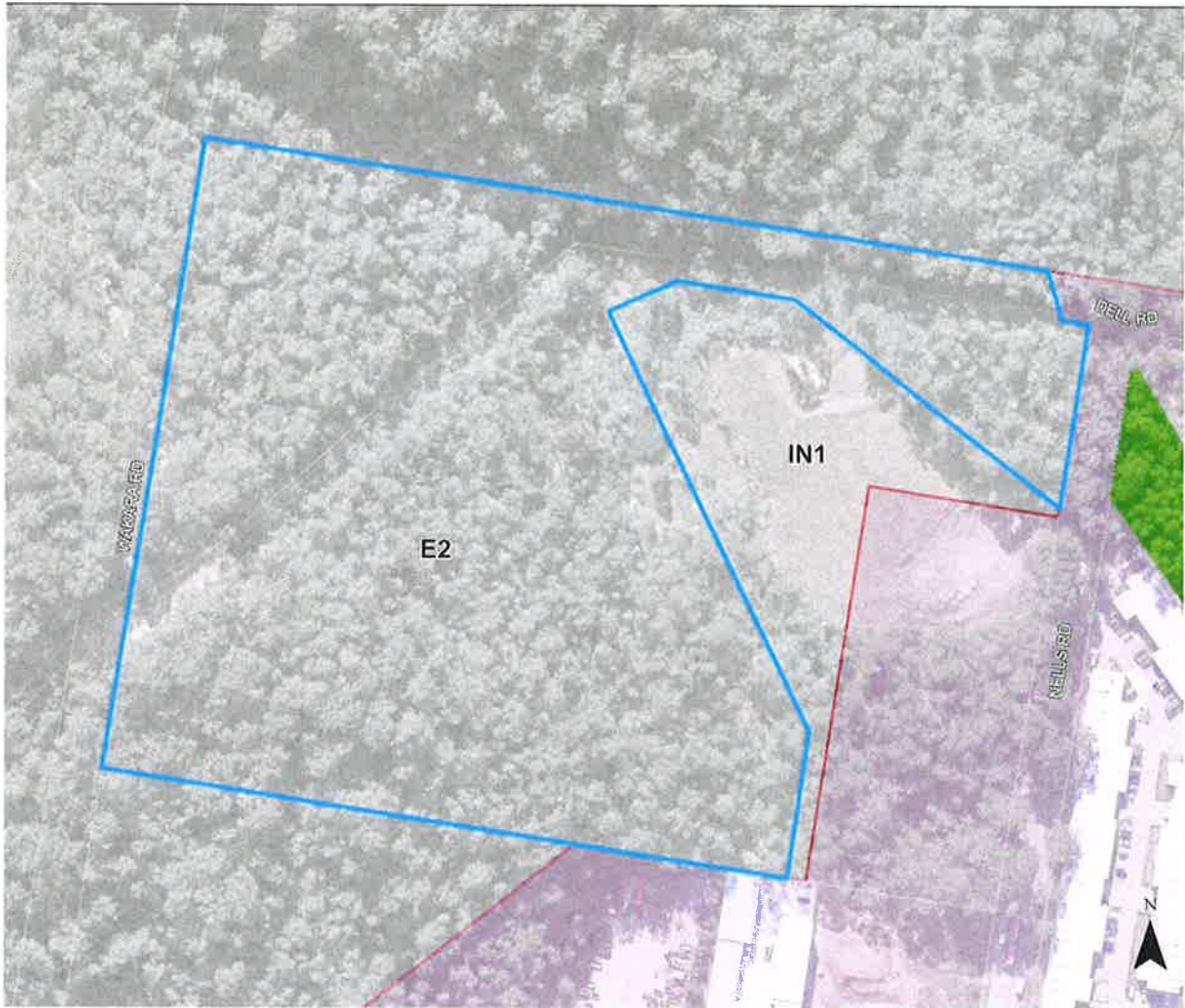
Schedule 2 The Unaffected Land



Schedule 3 The Access Land



Schedule 4 The COSS Land and the Industrial Land



Schedule 5 Public Benefits (clause 3)

1. Public Benefits – Overview

The Developer must, at its cost and risk, provide each Public Benefit identified in Column 1 of the table below, by the due date corresponding to that Public Benefit in Column 3 of the table below, in accordance with this Schedule 5 and this Agreement and any additional specifications identified for that Public Benefit in Column 4 of the table below.

	Column 1	Column 2	Column 3	Column 4
	Public Benefit	Attributed Value	Due date	Additional specifications
A.	Dedication of the COSS Land	N/A	Immediately upon registration of the subdivision plan to create the COSS Land as a separate lot.	An area of approximately 7.03 hectares of land within the Land. A plan showing the indicative location of the COSS Land is contained in Schedule 4 to this document.
B.	Dedication of the Access Land Easement	N/A	Immediately upon registration of the subdivision plan to create the COSS Land as a separate lot.	An area of approximately 475m ² of land within the Land, which provide access to the COSS Land from Nells Road. The width of the Access Land Easement is to be at least 6m, with the ability to accommodate 4m wide, 120 metres long, with a turning head at its end. trafficable surface required for category 1 firefighting vehicles plus any associated drainage works required. A plan showing the indicative location of the Access Land Easement is contained in Schedule 3 to this document.
C.	Road Access Works	\$40,000	Prior to the issue of the Subdivision Certificate.	As specified in clause 2.7 of this Schedule.

D.	Monetary Contribution	\$60,000 plus GST	Within 10 Business Days after the gazettal of the Amendment to the Gosford LEP.	As specified in the Bushland Management Plan described in clause 3.1 of this Schedule.
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2. Dedication of COSS Land and the Access Land Easement

2.1 Development Application

- 2.1.1 The Developer must, within 20 Business Days of the gazettal of the Amendment to the Gosford LEP, lodge the Development Application pursuant to the requirements of this Agreement and the Act.
- 2.1.2 The Development Application must only seek approval for:
- (a) the Subdivision of the Land to create the COSS Land as a separate lot; and
 - (b) the Access Road Works as described in clause 2.7 of this Schedule 5.
- 2.1.3 The Developer must promptly comply with any requirements of the Consent Authority in order to facilitate the approval of the Development Application.

2.2 Access Road Works

If the Development Consent is granted the developer must undertake and complete the Access Road Works in accordance with clause 2.7 prior to issue of the subdivision certificate.

2.3 Obligations on dedication and registration

The requirement for the Developer to dedicate the COSS Land and to register the Access Land Easement is satisfied where:

- 2.3.1 for the COSS Land: the COSS Land is created as a separate lot and the registered proprietor is the Council; and
- 2.3.2 for the Access Land Easement: a s88B instrument is registered that creates the Access Land Easement in favour of the Council at NSW Land Registry Services.

2.4 Obligations on transfer

- 2.4.1 The Developer must ensure that the COSS Land, at the date that the COSS Land is dedicated to Council, is free of all encumbrances and affectations (whether registered or unregistered and including any charge or liability for rates, taxes and charges) except for any encumbrances required by this document or agreed in writing by Council, acting reasonably.
- 2.4.2 The Developer warrants that as at the date of this Agreement that it is not aware of any Adverse Affection on the COSS Land and warrants as to those matters in Schedule 3 of the *Conveyancing (Sale of Land) Regulation 2010* (NSW), unless otherwise notified to Council.

2.5 Terms of the Easement

The terms of the Access Land Easement must include the following:

- 1 The owner of the lot benefited may—
 - (a) by any reasonable means pass across each lot burdened, but only within the site of this easement, to get to or from the COSS Land, and
 - (b) do anything reasonably necessary for that purpose, including—
 - entering the lot burdened, and
 - taking anything on to the lot burdened, and
 - carrying out work within the site of this easement, such as constructing, placing, repairing, or maintaining trafficable surfaces, driveways or structures.
2. In exercising those powers, the Council must—
 - (a) ensure all work is done properly, and
 - (b) cause as little inconvenience as is practicable to the owner and any occupier of the lot burdened, and
 - (c) cause as little damage as is practicable to the lot burdened and any improvement on it, and
 - (d) restore the lot burdened as nearly as is practicable to its former condition, and
 - (e) make good any collateral damage.

2.6 Width of the Easement

The Access Land Easement must be a minimum of 6 metres wide to accommodate a 4 metre width of trafficable surface required for Category 1 firefighting vehicles plus any drainage and associated works.

2.7 Access Road Works

- 2.7.1 The Access Road Works to be constructed on the Access Land include the following works:
 - (a) a fire trail consistent with the NSW Rural Fire Services documents, *Planning for Bush Fire Protection* and *Rural Fire Standards*;
 - (b) any drainage works required to maintain the fire trail; and
 - (c) a gate that prevents unauthorised vehicle access, while allowing for pedestrian access. The gate should be located as close to Nells Road as is achievable to minimise the risk of rubbish dumping at the site. The gate is to include a component that provides for pedestrian access when the gate is closed.
- 2.7.2 The specifications for the Access Road Works are to be determined by the Council and provided by the Council to the Developer prior to the submission of the Development Application.

3. Monetary Contribution

- 3.1 The purpose of **the** Monetary Contribution is to contribute towards the cost of implementing the Bushland management Plan for a period of five (5) years after dedication of
- 3.2 Council:
- (a) retains sole discretion as to the priority, timing and standard of the works described at 3.2 above; and
 - (b) has no obligation to repay all or any part of the Monetary Contribution to the Developer on Termination or otherwise.
- 3.3 The Developer has no obligation to make any further payment to Council should the costs of the works in clause 3.1 exceed the Monetary Contribution.

4. Step in Rights

- 4.1 If the Developer fails to perform any obligation in this Schedule 5 (including without limitation the obligations under clause 2 to lodge the Development Application, to register the Subdivision, to dedicate the COSS land, to register the Access Land Easement, or to carry out the Access Road Works) then the Council may do all things required to perform that obligation on the part of the Developer at the Developer's cost, including without limitation:
- (a) signing documents on behalf of the Developer;
 - (b) submitting applications on behalf of the Developer;
 - (c) lodging documents and dealings and NSW LRS physically or in PEXA;
 - (d) carrying out works;
 - (e) dealing with any mortgagee or other person with an interest in the Developer's land.
- 4.2 The Developer irrevocably appoints the Council as the Developer's attorney for the purpose of enabling the Council to exercise its rights under this clause 4.
- 4.3 The Council may recover all costs associated with the exercise of its rights under this clause 4 from the Developer by calling on the Guarantee or as a liquidated debt.

Schedule 6 Requirements under the Act and Regulation (clause 2)

The below table summarises how this document complies with the Act and Regulation.

Item	Section of Act or Regulation	Provision/clause of this Agreement
1.	<p>Planning instrument and/or development application (section 7.4 of the Act)</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; or</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 (but this Agreement is limited only to the Development Application insofar as it relates to the Subdivision of the Land to create the Industrial Land and the COSS Land and the Access Road Works. Any other development or use contemplated in the Development Application or any other development application relating to the Land is not the subject of this Agreement)</p> <p>(c) No</p> <p>(Refer to clause 2.1)</p>
2.	<p>Description of land to which this document applies (section 7.4(3)(a) of the Act)</p>	<p>The Land</p> <p>(Refer to clause 2.1).</p>
3.	<p>Description of change to the environmental planning instrument to which this document applies and/or the development to which this document applies (section 7.4 (3)(b) of the Act)</p>	<p>The development to which this document applies is the Development.</p> <p>The changes to the Gosford LEP to which this document applies are as set out in the Planning Proposal.</p> <p>(Refer to clause 2.2)</p>
4.	<p>The scope, timing and manner of delivery of Public Benefits required by this document (section 7.4(3)(c) of the Act)</p>	<p>Clauses 3 and Schedule 5 to this Agreement.</p>
5.	<p>Applicability of sections 7.11 or 7.12 of the Act (section 7.4(3)(d) of the Act)</p>	<p>Clause 2.4 of this Agreement.</p> <p>The application of sections 7.11 or 7.12 of the Act is not excluded in respect of the Development and for the avoidance of doubt, contributions (if any) under sections 7.11, 7.12 or 7.24 will be required to be paid.</p>

6.	Applicability of section 7.24 of the Act (section 7.4(3)(d) of the Act)	Clause 2.4 of this Agreement. The application of section 7.24 of the Act is not excluded in respect of the Development and for the avoidance of doubt, contributions (if any) under section 7.24 will be required to be paid.
7.	Consideration of benefits under this document if section 7.11 applies (section 7.4(3)(e) of the Act)	Clause 2.4.2 of this Agreement. The Public Benefits are not to be taken into consideration in determining a development contribution under section 7.11 of the Act.
8.	Mechanism for Dispute Resolution (section 7.4(3)(f) of the Act)	Clause 8
9.	Enforcement of this document (section 7.4(3)(g) of the Act)	Clause 7
10.	No obligation to grant consent or exercise functions (section 7.4(9) of the Act)	Clause 2.5
11.	Registration of this document (section 7.6 of the Act)	Clause 4
12.	Whether certain requirements of this document must be complied with before a construction certificate is issued (clause 205(2) of the Regulation)	Refer to the explanatory note
13.	Whether certain requirements of this document must be complied with before a subdivision certificate is issued (clause 205(2) of the Regulation)	Refer to the explanatory note
14.	Whether certain requirements of this document must be complied with before an occupation certificate is issued (clause 205(2) of the Regulation)	Refer to the explanatory note
15.	Whether the explanatory note that accompanied exhibition of this document may be used to assist in construing this document (clause 205(5) of the Regulation)	Clause 2.6