

Wyong Shire Council

CENTRAL COAST

LEGAL DOCUMENT LODGEMENT FORM

Lodgement Date	14 AUGUST, 2017
Date of Legal Documents	2 AUGUST, 2017
Type of Documents	VOLUNTARY PLANNING AGREEMENT (S.93F, EP&A Act 1979)
ie: Agreements, Contracts, Easements, General, Lease, Loans (see separate forms of Bank Guarantees and Certificates of Title)	
Expiry Date of Document (if applicable)	22 DECEMBER 2018
Parties	CENTRAL COAST COUNCIL RIFON 2 PTY LTD
Address	DX 7306 WYONG LEVEL 25, 88 PHILLIP STREET SYDNEY, NSW. 2000
Details of Document	AGREEMENT TO PROVIDE MONIES FOR PUBLIC BENEFIT CONTRIBUTIONS TOWARDS IMPROVEMENTS TO THE PUBLIC DOMAIN AT TOUKLEY.
Property Description	Lot 32, DP 805021 No. 200 MAIN RD, TOUKLEY.
Review Date	N/A
Responsible Officer	PETER KAVANAGH / MARTIN BALL.
Folder Number	RZ/6/2015
Note: This form and the original documents are to be delivered to Corporate Information	
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File Name: Legal Document Lodgement Form

Responsible Officer: Team Leader, Corporate Information

Approval Date: December 2013

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Revision No: 1

Approved by: Chief Information Officer, Information Technology

Document Review-by Date: December 2016

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Planning Agreement

under

**Section 93F of the Environmental
Planning and Assessment Act, 1979
(NSW)**

between

Central Coast Council

and

Rifon 2 Pty Ltd ACN 094 517 067

200 Main Road, Toukley

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INTRODUCTION

DATE:

Central Coast Council (ABN 73 149 644 003 of Council Chambers, Hely Street Wyong in the State of New South Wales ("**Council**")

and

Rifon 2 Pty Limited (ACN 094 517 067) of Level 30, 88 Phillip Street, Sydney in the State of New South Wales ("**the Developer**")

1 Background

- 1.1 The Developer is the owner of the Land.
- 1.2 The Developer has sought amendments to the Instrument that will allow an increase in the size of the Development on the Land.
- 1.3 The amendments sought to the Instrument are:
 - (a) The rezoning of the Land from SP3 Tourist to B4 Mixed Use.
 - (b) An increase in the height limit to a maximum of 26 metres for part of the Land and a maximum of 36 metres for another part of the Land as shown on the Amended Height of Development Plan, but only in respect of Key Site Development on the Land.
 - (c) An increase in the Floor Space Ratio to 1.7:1 prior to any bonus.
- 1.4 The Developer intends to lodge a Development Application relating to the Land once the Instrument Amendments have been effected.
- 1.5 Subject to the terms of this Agreement, the making of the Instrument Amendments and the grant of Consent, the Developer agrees and commits under this agreement to the payment of:
 - (a) Section 94 or Section 94A contributions in accordance with Current Contributions Plans;
 - (b) An additional public benefit contribution in connection with the Instrument Amendment; and
 - (c) An additional public benefit contribution in connection with the Consent.
- 1.6 The Council agrees to use the Section 94 or s.94A contributions in accordance with law and to use the Public Benefit Contributions for public purposes which may include to enhance and improve public spaces, pedestrian & cycleway access in the vicinity of the Land and towards the development of a Community Hub in East Toukley.

OPERATIVE PROVISIONS

2 Planning Agreement

Planning Agreement under the Act

- 2.1 The parties agree that this Agreement is a Planning Agreement governed by Subdivision 2 of Division 6 of Part 4 of the Act.

Application of this Agreement

- 2.2 This Agreement applies to the Development to the extent it relates to the Land once the



Development Consent has been granted.

Operation of this Agreement

- 2.3 The obligations of the Developer under clause 7, clause 10 and clause 11 of this Agreement operate from the date of this Agreement. The other obligations of the Developer under this Agreement operate once the Instrument Amendments have been made under the Act.
- 2.4 This Agreement identifies the arrangements with regards to the payment of the Public Benefit Contribution by the Developer to Council towards the provision of infrastructure and facilities for public benefit in respect to the Development on the Land.
- 2.5 This Agreement does **not** exclude the operation of sections 94 and 94A of the Act and the Public benefit contributions are not to be taken into account in determining the contribution under section 94 or section 94A of the Act. Nothing in this Agreement affects the obligation of the Developer to pay the Section 94 or Section 94A Contributions in accordance with law.
- 2.6 This Agreement does **not** apply to or affect any obligation that the Developer may have to pay contributions, fees or charges under the *Water Management Act 2000* in respect to the Development of the Land or under any other legislation.

3 Definitions and Interpretation

- 3.1 In this Agreement the following definitions apply:

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

Amended Height of Development Plan means the plan in Annexure A to this Agreement.

Bank Guarantee means an unconditional and irrevocable undertaking issued by a major Australian trading bank in favour of the Council and which does not have an expiry date and is otherwise in form and substance acceptable to the Council, to pay on demand to the Council the amount therein expressed in Australian currency.

Consent means the development consent (as defined in the Act) granted by the Consent Authority in respect of the Development Application.

Consent Authority has the same meaning as that term has in the Act.

Council means Wyong Shire Council or its representatives or assigns.

CPI-A means, for the purposes of clause 4.3 of this Agreement, the Consumer Price Index (All Groups and weighted average for all 8 cities) published by the Australian Bureau of Statistics at the time Consent is issued.

CPI-B means, for the purposes of clause 4.3 of this Agreement, the most recent Consumer Price Index (All Groups and weighted average for all 8 cities) published by the Australian Bureau of Statistics at the time the Public Benefit Contribution is paid to Council.

CPI-C means the Consumer Price Index (All Groups and weighted average for all 8 cities) published by the Australian Bureau of Statistics at the date of this Agreement.

CPI-D means the Consumer Price Index (All Groups and weighted average for all 8 cities) published by the Australian Bureau of Statistics at the time the Bank Guarantee is required to be provided.

Construction certificate has the meaning given to that term in the Act.

Contributions Plan means a contributions plan prepared for the provision and funding of community facilities and infrastructure made in accordance with Section 94EA of the Act.

Current Contributions Plans means the suite of adopted Contributions Plans that are applicable to the Development that are in force at the time the Consent is issued, including any such plan under s.94 or s.94A of the Act.

Developer means Rifon 2 Pty Limited (ACN 094 517 067) and in substitution the subsequent owner of the Land.

Development means any Key Site Development which may include a mixed use residential flat building or seniors living complex and may include commercial and/or retail floorspace, below ground parking and service areas on the Land.

Development Application means a development application made to the Consent Authority pursuant to the Act that seeks consent to undertake the Development on the Land.

GST has the same meaning as in the GST Law.

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

Indexed Notional Public Benefit Contribution means the Notional Public Benefit Contribution x (CPI-D/CPI-C)

Instrument means the *Wyong Local Environmental Plan 2013*;

Instrument Amendments means the amendments that the Developer seeks to the Instrument, as described generally in Annexure B to this Agreement;

Key Site Development means development in accordance with clause 7.11 of the Instrument;

Land means land known as Lot 32 in DP 805021 at 200 Main Road, Toukley in the State of New South Wales.

Notional Public Benefit Contribution means \$263,000.

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

S.94 Contributions or s.94A Contributions means the contribution required to be paid under the Current Contributions Plans under s.94 or s.94A of the Act in respect to the Development or any similar contributions which replace those contributions following repeal or amendment of the Act in respect of development contributions, including, for the avoidance of doubt, any credits available in accordance with the Current Contributions Plans.

Section 94 Contributions Policy means Council's policy on deferred payments of Section 94 and Section 94A contributions under the Act as adopted from time to time.

Security Amount means 50% of the Indexed Notional Public Benefit Contribution.

Parties mean the Council and the Developer.

Party means a party to this Agreement including its successors and assigns.

Public Benefit Contribution – means an amount which is 50% of the s.94 Contributions or s.94A Contributions (whichever is applicable).

working day means a day that is not a Saturday, Sunday or public holiday in New South Wales

4 Payment of Public Benefit Contribution

4.1 The Developer agrees that

- (a) subject to the Instrument Amendments being made, the Developer will provide the Bank Guarantee for the Security Amount which can be called in by the Council if the Development does not proceed as a public benefit contribution for the Instrument Amendments, in accordance with clause 5;
- (b) subject to the Instrument Amendments being made and the Consent being granted, the Developer agrees to pay the Public Benefit Contribution to the Council.

4.2 The Public Benefit Contribution shall be indexed in relation to the part of the contribution to



be paid in accordance with the following formula:

(CPI-B/CPI-A)

- 4.3 The Developer agrees to pay the total indexed Public Benefit Contribution required under this agreement to Council:
- (a) Prior to the release of the first Construction certificate for the Development; or
 - (b) As otherwise approved by Council, in its absolute discretion, under its Section 94 Contributions Policy
- 4.4 Council agrees that it will expend the Public Benefit Contribution monies for public purposes in the vicinity of the Land, which may include to enhance and improve the public spaces, community facilities and the pedestrian and cycleway access and towards the development of a Community Hub in East Toukley. The Developer acknowledges that the nature, location and timing of such works are at the discretion of the Council. For the purpose of clarity, the Parties agree the Public Benefit Contribution to be paid by the Developer to Council in respect to the Development is exclusive of any amount that the Developer may be required to pay under the *Water Management Act 2000* or other legislation, in connection with the Development.
- 4.5 Following payment of the Public Benefit Contribution in full, Council will promptly on request, execute any form and supply any information reasonably required by the Developer to enable the removal of the registration of this agreement from title to the Land.
- 4.6 For avoidance of doubt, the Developer agrees that the Public Benefit Contribution payable under this Agreement in the event s.94 Contributions (and not s.94A Contributions) are payable in respect of the Development is the amount calculated in accordance with the definition of Public Benefit Contribution on the basis of the s.94 Contributions calculated in accordance with the Current Contributions Plans, and irrespective of whether the s.94 Contributions are reduced or extinguished on appeal.
- 4.7 Nothing in this clause affects the Developer's obligation to pay s.94 Contributions or s.94A Contributions in accordance with the conditions of any Consent.

5 Security

- 5.1 The Developer agrees to provide the Bank Guarantee for the Security Amount to the Council within 10 business days of the making of the Instrument Amendments.
- 5.2 If the Developer fails to comply with clause 5.1 the Security Amount is charged on the Land and the Council shall have the right to take any one or more of the following steps as it considers appropriate, in its absolute discretion:
- (a) Commence proceedings in a court of competent jurisdiction for specific performance of clause 5.1;
 - (b) Record the Security Amount as a debt against all or any part of the Land pursuant to Section 603 of the *Local Government Act 1993*;
 - (c) Lodge a caveat over all or any part of the Land pursuant to the *Real Property Act 1900*.
- 5.3 The Developer agrees that where all or part of the Public Benefit Contribution required to be paid under this agreement is not paid at the time required for any reason but providing written demand for payment has been made by Council and such amount remains outstanding for 14 days after such demand is given, the Developer agrees that Public Benefit Contribution the Council shall have the right to take any one or more of the

A handwritten signature in black ink, appearing to be 'MK' followed by a flourish.

following steps as it considers appropriate, in its absolute discretion:

- (a) Call on the Bank Guarantee;
- (b) Commence proceedings in a court of competent jurisdiction to recover the outstanding Public Benefit Contribution as a debt due;
- (c) Record the outstanding Public Benefit Contribution as a debt against all or any part of the Land pursuant to Section 603 of the *Local Government Act 1993*;
- (d) Lodge a caveat over all or any part of the Land pursuant to the *Real Property Act 1900*.

5.4 The Council will release the Bank Guarantee, or such part of the Bank Guarantee as has not been called in, promptly following payment of the Public Benefit Contribution in full.

5.5 If:

- (a) the Consent has not been granted on or before the date on which is 4 years after the date of this agreement; or
- (b) a Construction Certificate for the Development has not been issued on or before the date on which is 6 years after the date of this agreement,

the Council is entitled to call on the Bank Guarantee and retain the Security Amount as a public benefit contribution offered and made by the Developer in connection with the Instrument Amendments, and must apply the funds received to enhance and improve the public spaces, community facilities and the pedestrian and cycleway access in the vicinity of the Land. The Developer acknowledges that the nature, location and timing of such works are at the discretion of the Council.

5.6 If the Council calls in the Bank Guarantee under cl 5.5, and thereafter:

- (a) the Consent is granted; and
- (b) a Construction Certificate is issued for the Development;

the amount received by the Council will be deemed to have been paid by the Developer as part of the Public Benefit Contribution under this Agreement, such that the Developer is not required to pay that amount twice. Nothing in this clause affects the obligation of the Developer to pay the balance of the Public Benefit Contribution.

6 Enforcement

6.1 For the purposes of section 109F of the Act and clause 146A of the Regulation, the Public Benefit Contribution must be paid in full in accordance with this agreement prior to the issue of a Construction Certificate for the Development.

7 Developer Warranties and obligations

7.1 The Developer warrants to Council so far as it is aware, that:

- (a) It is the registered owner of the Land Owned;
- (b) It is able to fully comply with the obligations under this Agreement;
- (c) It has full capacity to enter into this Agreement; and
- (d) There is no legal impediment to it entering into this Agreement, or performing its obligations under this Agreement.

7.2 The Developer agrees to procure, at no cost to Council, the registration of this Agreement

pursuant to section 93H of the Act on the relevant folios of the Register pertaining to the Land as soon as practicable following the execution of this Agreement in respect of the Land. This obligation includes the Developer procuring, at no cost to Council, the written consent of any mortgagee or other person holding an interest in the Land that is necessary to effect the registration required by this clause. The Developer must notify the Council when this agreement has been registered on title to the Land.

- 7.3 The Developer agrees that this Agreement will run with the Land and the Consent and until rescinded, terminated, or extinguished by full payment of the Public Benefit Contribution will bind all future owners of the Land.
- 7.4 The Developer agrees that until this agreement is registered on title to the Land, it will inform all persons that intend to take an interest in the Land while ever the Public Benefit Contribution is outstanding, prior to binding commitments being concluded, the amount of Public Benefit Contribution which is outstanding, and will obtain and forward to Council an undertaking (which may be by deed poll) from those persons that they intend to be bound by this Agreement.
- 7.5 The Developer agrees to lodge the Development Application on or before:
- (a) the date which is 18 months after the date on which the Instrument Amendments are made; or
 - (b) 22 December 2018, whichever is earlier.

8 Review of this Agreement

- 8.1 Any amendments, variation or modification to or of, or consent to any departure by any party from the terms of this Agreement shall have no force or effect unless effected by a document executed by the parties which complies with the requirements of Section 93G of the Act.

9 Dispute Resolution

- 9.1 If a dispute arises out of or relates to this Agreement (including any dispute as to the meaning, performance, validity, subject matter, breach or termination of this Agreement or as to any claim in tort, in equity or pursuant to any statute) (Dispute), any court or arbitration proceedings shall not be commenced by or against Council, the Developers or their successors or assigns, relating to the Dispute unless the parties to the Dispute (Parties) have complied with this clause, except where a party seeks urgent interlocutory relief.
- 9.2 A party claiming that a Dispute has arisen under or in relation to this Agreement is to give written notice to the other parties to the Dispute, specifying the nature of the Dispute.
- (a) The Parties agree to mediate the Dispute in accordance with the Mediation Rules of the Law Society of New South Wales and to take action to have the Dispute mediated within 7 working days of the receipt of written notice of the Dispute.
 - (b) The Parties agree that the President of the Law Society of New South Wales or the President's nominee will select the mediator and determine the mediator's remuneration.
 - (c) The Parties to the mediation will be jointly responsible for the fees of the mediation and each party shall bear its own costs.
 - (d) The Parties may, but are not required, to enter into a written agreement before mediating a Dispute.




- (e) If any procedural aspects are not specified sufficiently in the Mediation Rules, the Parties agree to conduct the mediation regarding those aspects in accordance with the determination of the mediator whose decision regarding those aspects is final and binding on the Parties.
 - (f) A legal representative acting for either of the Parties may participate in the mediation.
- 9.3 From the time when a notice of Dispute is served, neither party shall take action to terminate this Agreement, until after the conclusion of the mediation.
- 9.4 Should mediation fail to resolve any dispute then the parties may commence legal proceedings.
- 9.5 Despite clauses 9.1, 9.2, 9.3 and 9.4, either Council or the Developer may institute court proceedings to seek urgent equitable relief in relation to a dispute or difference arising out of or in connection with this Agreement.

10 Assignment and dealings

- 10.1 The Developer must not:
- (a) deal with Land or any part of it or suffer any dealing to occur in respect of it or any part of it; and/or
 - (b) assign or novate its obligations and/or rights under this agreement, unless prior to same,
 - (c) this agreement has been registered on the titles to the Land pursuant to section 93H of the Act;
 - (d) the Developer satisfies the Council, acting reasonably, that the proposed transferee is financially capable of complying with the Developer's obligations under this agreement;
 - (e) if applicable, the Developer procures the provision of a replacement Bank Guarantee for the Security Amount by the transferee;
 - (f) the rights of the Council are not diminished or fettered in any way;
 - (g) the transferee delivers to the Council a novation deed signed by the transferee in a form and of such substance as is acceptable to the Council, acting reasonably, containing provisions under which the transferee agrees to comply with all the outstanding obligations of the Developer under this agreement;
 - (h) any default by the Developer under any provisions of this agreement has been remedied by the Developer or waived by the Council on such conditions as the Council may determine, acting reasonably; and
 - (i) the Developer and the transferee pay the Council's reasonable costs in relation to the assignment.

11 Costs

- 11.1 The Developer agrees to pay or reimburse the costs of Council within 7 working days after receipt of a tax invoice from Council in connection with the:
- (a) *Negotiation, preparation and execution of this planning agreement, to a maximum of \$3,000 plus GST, and*



- (b) Advertising and exhibiting this planning agreement in accordance with the Act, to a maximum of \$250 for each occasion, and
- (c) Registration of this planning agreement where required.

12 Notices

12.1 Any notice, consent, information, application or request that must or may be given or made to a Party under this Agreement is only given or made if it is in writing and sent in one of the following ways:

- (a) Delivered or posted to that Party at its address set out in (b) below.
- (b) Faxed ^{AND EMAILED} to that Party at the relevant details set out below.

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(i) Council: **Central Coast Council**

Attention: Chief Executive Officer

Address: DX 7306 WYONG

Fax No: (02) 4350 2098

(ii) Developer: **Rifon 2 Pty Ltd**

Attention: David Kingston *C/- K CAPITAL PTY LTD*

Address: Level ~~30~~ ²⁵, 88 Phillip Street, Sydney NSW 2000

Fax No: TBC ²⁵ 02 8211 0542

EMAIL david.kingston@kcapital.com.au

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12.2 If a party gives the other party 3 working days' notice of a change of its address or fax number, any notice, consent, information, application or request is only given or made by that other party if it is delivered, posted or faxed to the latest address or fax number.

12.3 Any notice, consent, information, application or request is to be treated or given or made at the following time:

- (a) If it is delivered, when it is left at the relevant address.
- (b) If it is sent by post, 2 working days after it is posted.
- (c) If it is sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number.

12.4 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 working day, or if it is on a working day, after 5.00pm on that day in the place of the party is to receive it, it is to be treated as having been given or made at the beginning of the next working day.

13 General Provisions

13.1 This Agreement contains everything to which the parties have agreed in relation to the matters it deals with. 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 Agreement was executed, except as permitted by law.

13.2 Each Party agrees to promptly execute all documents and do all such things that another Party from time to time reasonably requests to affect, perfect or complete this Agreement and all transactions incidental to it.

13.3 This Agreement is governed by the law of New South Wales, Australia. The parties submit to the non-exclusive jurisdiction of its Courts and Courts of appeal from them. The parties will not object to the exercise of jurisdiction by those Courts on any basis provided that the

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dispute resolution provisions in clause 8 of this Agreement have first been satisfied.

- 13.4 Nothing in this Agreement is to 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 is to be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.
- 13.5 If a clause or part of a clause in this Agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Agreement, but the rest of the Agreement is not affected.
- 13.6 The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Agreement it, does not amount to a waiver of any obligation of, or breach of obligation by, another Party. A waiver by a Party is only effective if it is in writing. A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

14 GST

- 14.1 If GST is payable on a taxable supply made under, by reference to or in connection with this Agreement, the Party providing the consideration for that taxable supply must also pay the GST amount as additional consideration. This clause does not apply to the extent that the consideration for the taxable supply is expressly stated in this agreement to be GST inclusive.
- 14.2 No additional amount will be payable by the Council under 14.1 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.
- 14.3 No payment of any amount pursuant to clause 14 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.
- 14.4 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.
- 14.5 This clause continues to apply after expiration or termination of this agreement.

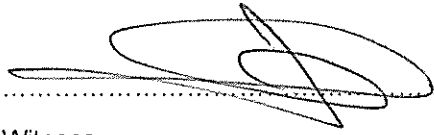
15 Explanatory Note Relating To This Agreement

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

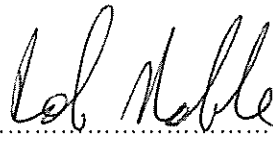
EXECUTION PANEL

Executed by Central Coast Council pursuant to delegated

Authority under s.377 Local Government Act 1993



Witness



Chief Executive Officer

2/8/17

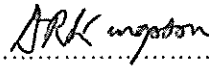
Executed by Rifon No. 2 Pty Ltd pursuant

to s.127 Corporations Act

.....

Director

SOLE



Director / Secretary


(Extract from draft WLEP 2013 Amendment No 26 Key Sites Map, showing the Land)

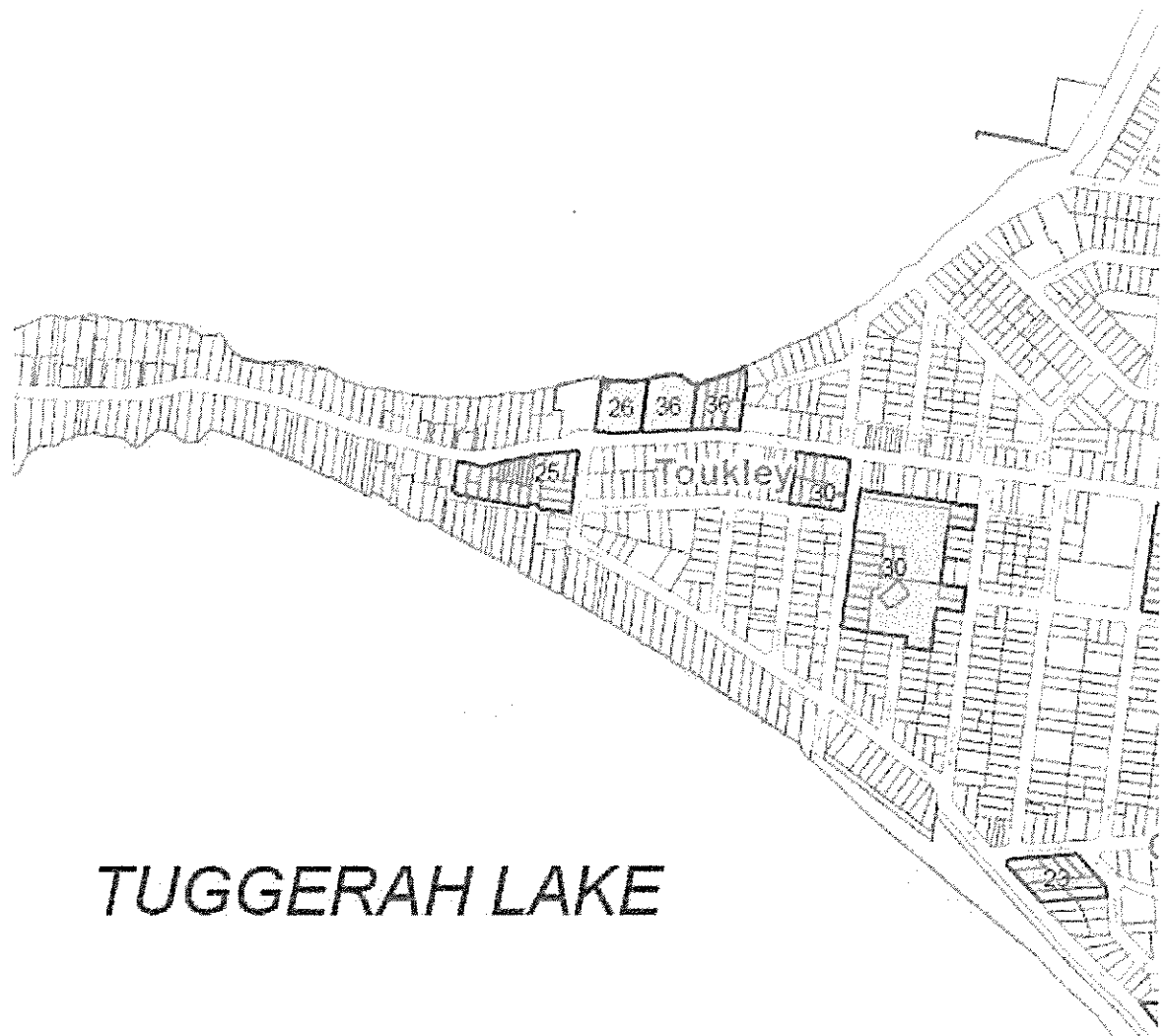


Wyong Local Environmental Plan 2013

Key Sites Map - Sheet KYS_019

Key Sites - Maximum Building Height (m)

 Key Site - refer to clause 7.11



TUGGERAH LAKE

01/12/13

Annexure B

Instrument Amendments

- (a) The rezoning of the Land from SP3 Tourist to B4 Mixed Use.
- (b) An increase in the height limit to a maximum of 26 metres for part of the Land and a maximum of 36 metres for another part of the Land as shown on the Amended Height of Development Plan, but only in respect of Key Site Development on the Land.
- (c) An increase in the maximum Floor Space Ratio to 1.7:1 prior to any bonus.

DMC

Annexure C Explanatory Note

(Clause 15)

Environmental Planning and Assessment Regulation 2000

(Clause 25E)

EXPLANATORY NOTE

Draft Planning Agreement

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

Parties

Central Coast Council (ABN 47 054 613 735) of Council Chambers, Hely Street, Wyong, in the State of New South Wales (**Council**)

Rifon 2 Pty Limited (ACN 094 517 067) of Level 30, 88 Phillip Street, Sydney in the State of New South Wales ("**the Developer**")

Description of the Land to which the Draft Planning Agreement Applies

Lot 32 in DP 805021 at 200 Main Road, Toukley in the State of New South Wales.

Description of Proposed Development

Development means any Key Site Development which may include a mixed use residential flat building or seniors living complex and may include commercial and/or retail floorspace, below ground parking and service areas on the Land.

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

Objectives of the Draft Planning Agreement

The objective of this agreement is to identify the arrangements with regards to the payment of the Public Benefit Contribution by the Developer to Council towards the provision of infrastructure and facilities for public benefit in respect to the Development on the Land.

The Agreement does not exclude the operation of sections 94 and 94A of the Act and the Public benefit contributions are not to be taken into account in determining the contribution under section 94 or section 94A of the Act. Nothing in the Agreement affects the obligation of the Developer to pay the Section 94 or Section 94A Contributions in accordance with law.

Further, the Agreement does not affect any obligation that the Developer may have to pay contributions, fees or charges under the Water Management Act 2000 in respect to the Development of the Land or under any other legislation.

Nature of the Draft Planning Agreement

The Draft Planning Agreement is a planning agreement under s93F of the *Environmental Planning and Assessment Act 1979* (Act). It is an agreement between the Council and the Proponent. The Draft Planning Agreement is a voluntary agreement under which provisions are made by the Proponent for the provision of infrastructure and facilities for public benefit s93F(2)(f).

Effect of the Draft Planning Agreement

The Draft Planning Agreement:

- provides for an amendment to the Wyong Local Environmental Plan 2013 to allow increased building heights for Key Site development on the land,
- relates to the Instrument Change including the amended Maps,
- relates to the carrying out by the Proponent of the Development on the Land,
- does not exclude the application of s94A, s94 or s94EF to the Development,
- requires the Proponent to agree and commit under this Agreement to the payment of:
 - An additional public benefit contribution in connection with the Instrument Amendment; and
 - An additional public benefit contribution in connection with any Consent.
- requires the Council to use the Public Benefit Contributions for public purposes which may include to enhance and improve public spaces, pedestrian & cycleway access in the vicinity of the Land and towards the development of a Community Hub in East Toukley.
- is to be registered on the title to the Land,
- provides dispute resolution methods for a dispute under the Agreement, being mediation and arbitration, and
- provides that the Agreement is governed by the law of New South Wales.

Assessment of the Merits of the Draft Planning Agreement

Planning Purposes Served by the Draft Planning Agreement

In accordance with Section 93F(2) of the Act, the Draft Planning Agreement has the following public purpose:

- public purposes which may include to enhance and improve public spaces, pedestrian & cycleway access in the vicinity of the Land and towards the development of a Community Hub in East Toukley.

The Council and the Proponent have assessed the Planning Agreement and both hold the view that the provisions of the Planning Agreement provide a reasonable means of achieving the public purpose set out above.

How the Draft Planning Agreement Promotes the Public Interest

The Draft Planning Agreement promotes the public interest by ensuring that contributions are received and utilised to improve public access to facilities and for the upgrading of public facilities.

How the Draft Planning Agreement Promotes the Objects of the Act

The Draft Planning Agreement promotes the objects of the Act by:

- encouraging the proper management, development and conservation of natural and artificial resources to promote the social and economic welfare of the community, and
- promoting the co-ordination of the orderly and economic use and development of land, and
- *the provision and co-ordination of community services and facilities.*

The Draft Planning Agreement promotes the object of the Act set out above by improving public access and facilities infrastructure, and enabling the protection and enhancement of Council and private assets.

How the Draft Planning Agreement Promotes the Council's Charter

The Draft Planning Agreement promotes the elements of the Council's Charter by:

- enabling the proper management, development, protection, restoration, enhancement and conservation the environment of the area for which it is responsible, in a manner that is consistent with and promotes the principles of ecologically sustainable development,
- enabling the effective planning, accounting and management of the assets for which it is responsible; and
- providing a means that allows the wider community to make submissions to the Council in relation to the Agreement.

How the Draft Planning Agreement Conforms with Council's Capital Works Program

Not Applicable.

Whether the Draft Planning Agreement specifies that certain requirements be complied with before issuing a Construction Certificate, Subdivision Certificate or Occupation Certificate

Yes. The Draft Voluntary Planning Agreement specifies that the Proponent's obligations must be met prior to the issue of any Construction Certificate related to any consent for Development of the Land.