

**LEGAL DOCUMENT LODGEMENT
FORM**



Lodgement Date	11 DECEMBER 2017
Date of Legal Documents	20 NOVEMBER 2017
Type of Documents	VOLUNTARY PLANNING AGREEMENT
ie: Agreements, Contracts, Easements, General, Lease, Loans (see separate forms of Bank Guarantees and Certificates of Title)	
Expiry Date of Document (if applicable)	N/A
Parties	CENTRAL COAST COUNCIL, AND THRESHOLD DEVELOPMENTS PTY LTD
Address	ATT: MR IAN EVERITT PO BOX 198, WYONG, NSW 2259
Details of Document	VPA to dedicate land for road and intersection works + conservation + Embellishment
Property Description	Lot 51 DP 1195704, No 165 LOUISIANA RD, WADALBA
Review Date	
Responsible Officer	PETER HAVANAGH
Folder Number	RZ/2/2016

Note: This form and the original documents are to be delivered to Corporate Information

Legal Document supersedes LDOC (if applicable)

After legal document is recorded on the computer a TRIM link is emailed to the responsible officer advising of registration

Send Link to Meg Newington for the Agreement Register to be updated.

Please tick if you need the Original Document to be returned to you for mailing out

VALUE. CREATE. LEAD.

Some of the information you provide on this form is your personal information, including for example your name, date of birth and contact information. This information is being collected by Council for the purpose. The information will be accessible by Council staff. It is voluntary for you to provide your personal information on this form. You may apply to access or amend the personal information provided on this form at any time.

PLANNING AGREEMENT

Threshold Developments Pty Ltd

and

Central Coast Council

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Planning Agreement

DATE _____

PARTIES

Threshold Developments Pty Ltd (ACN 096 211 933) of PO Box 198, Wyong NSW, 2259 ("*the Developer*");

and

Central Coast Council (ABN 73 149 644 003) of 2 Hely Street, Wyong, NSW 2259 ("*the Council*").

BACKGROUND

- A. The Developer has lodged a Planning Proposal with the Council for the rezoning of Lot 51 DP 1195704, 165 Louisiana Road, Wadalba (the land) to permit the subdivision of part of the land into residential allotments.
- B. The Council agrees to support and process the Planning Proposal in exchange for the dedication of land and the payment of contributions towards various facilities and infrastructure.
- C. The Developer agrees that it will make the following contributions in connection with either residential subdivision of the land as contemplated by the Planning Proposal or in connection with other residential development on the land, whether subdivided or not:
 - a. it will dedicate a 16 m wide road reserve across the land for the extension of Van Stappen Road to Louisiana Road, to the Council free of cost, being the land shown green on the Lands to be Dedicated Plan.
 - b. it will dedicate the land zoned E2 Environmental Conservation to the Council as full payment of monies owing on the clearing fee of \$166,658.14 applicable to part of Lot 311, DP 808521, Louisiana Road Wadalba, as set out in the Wadalba Wildlife Corridor Multi Party Deed of Agreement, dated August 2005.
 - c. it will undertake at its cost the Environmental Restoration Works over the part of the land which is zoned E2 Environmental Conservation which is to be dedicated to the Council as per Clause C(b).
 - d. it will undertake the Environmental Restoration Works at no cost to Council within the Wadalba Wildlife Corridor, which also include the filling of an existing quarry and removal of dams.
 - e. it will dedicate the Additional Road Widening to the Council for the widening of the proposed Van Stappen Road extension to a collector road standard.

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- f. it will pay Council contributions as set out in the Contributions Table in accordance with this agreement towards open space, community facilities, roads, drainage and water quality infrastructure in lieu of paying Section 94 contributions under Council's adopted development contributions plans for the subdivision of land.

D. The Council agrees

- a. to use its reasonable endeavours to allow a temporary access from the Wadalba Sports Fields to the land for use of emergency services only until such time as the extension of Van Stappen Way is constructed and opened as a public road;
- b. to give its approval as the land owner to undertake the Environmental Restoration Works in the Wadalba Wildlife Corridor to the south of the land on the terms of the Works Licence.
- c. to allow a credit on completion of the part of the Environmental Restoration Works which must be completed prior to dedication, that can be offset against development contributions payable under this agreement.
- d. to allow a credit upon dedication of the Additional Road Widening that can be offset against development contributions payable under this agreement.
- e. to allow the developer to use the road corridor land that is for the future extension of Van Stappen Way (shown coloured green and pink on Attachment 2) for the operation of chipping vegetation and storage of same for a period of 6 months after registration of the subdivision plan. Should the stockpiles still be present after the 6 months period the developer is to remove same at its own cost within a period of one (1) month after receiving written notice from Council.

OPERATIVE PROVISIONS

1. Planning Agreement under the Act

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

2 Application of this Agreement

This Agreement applies to the Land.

3 Operation of this Agreement

- 3.1 This agreement shall not take effect unless or until the eastern part of the land has been rezoned for residential development substantially in accordance with the Planning Proposal.
- 3.2 This agreement **excludes** the operation of S94 and S94A of the Act in connection with residential subdivision of the land as contemplated by the Planning Proposal. For avoidance of doubt this agreement does not exclude the operation of S94 and S94A of the Act in connection with any other development of the land.

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- 3.3 This agreement does **not** apply to 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. For avoidance of doubt the Developer acknowledges and agrees that the obligation to pay such amounts is unaffected by this agreement.

4 Definitions and Interpretations

In this Agreement, the following definitions apply:

Act means the Environmental Planning and Assessment Act 1979.

Additional Road Widening means the land shown pink on the Lands to be Dedicated Plan in Attachment 2.

ARW Amount means the amount calculated in accordance with Schedule 1.

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.

Contributions Table means the Table of Contributions in Attachment 4.

Council means Central Coast Council.

Dealing in relation to the Land, means, without limitation, selling, transferring, assigning, mortgaging, charging, encumbering or otherwise dealing with the Land.

the Developer means Threshold Developments Pty Ltd.

the Development means the residential subdivision generally as shown on the plan in Attachment 3.

Environmental Restoration Works means the works specified in the Vegetation Management Plan for the part of the land zoned E2 and for the Wadalba Wildlife Corridor.

ERW Amount means the amount calculated in accordance with Schedule 2.

Development Consent has the same meaning as in the Act, referred to as "Consent" in this Agreement.

Development Contributions means the contribution towards open space, community facilities, road, drainage and water quality infrastructure required under clause 5.1(g) of this agreement.

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.

Land means Lot 51 DP1195704 being 165 Louisiana Rd, Wadalba.

Lands to be Dedicated Plan means the plan in **Attachment 2**.

Outstanding Works Amount means the cost of Council completing the outstanding works under the Vegetation Management Plan (including maintenance work) as agreed in writing between the Council and the Developer, or, failing such agreement within 21 days of the application for a subdivision certificate, determined in accordance with **Schedule 3**.

Outstanding Works Bond means a Bank Guarantee or other security reasonably acceptable to the Council for the Outstanding Works Amount.

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

Planning Proposal means (RZ/2/2016) seeking to amend Wyong Local Environmental Plan 2013 to rezone part of the Land to R2 Low Density Residential generally as shown on the plan in **Attachment 1**.

Regulation means the Environmental Planning and Assessment Regulation 2000.

Vegetation Management Plan means the "Vegetation Management Plan for Proposed Rezoning of Part Lot 51 DP 1195704, 165 Louisiana Road, Wadalba" prepared by Everitt Ecology and submitted as part of the Planning Proposal or as subsequently amended and approved in writing by the Council.

Wadalba Wildlife Corridor means for the purpose of this agreement the land immediately to the south of the land, being Lot 1 DP 1154872.

Works Licence means the licence agreement in **Attachment 5**.

5 Undertakings by the Parties

5.1 The Developer agrees:

- a) To dedicate to the Council free of cost a 16 m wide road reserve over the land for the extension of Van Stappen Road to Louisiana Road being the area shown coloured green on the Lands to be Dedicated Plan in **Attachment 2**. This dedication is to be effected when required under clause 5.1(i).
- b) To dedicate to the Council free of cost the part of the land currently and to be zoned E2 Environmental Conservation shown cross hatched on the Lands to be Dedicated Plan in **Attachment 2**. This dedication is to be effected when required under clause 5.1(i)

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- c) To dedicate to the Council additional land for the widening of the proposed Van Stappen Road extension to a collector road standard being the area shown coloured pink on the Lands to be Dedicated Plan in **Attachment 2**, having an area of approximately 789m². This dedication is to be effected when required under clause 5.1(i).
 - d) To carry out at its cost all of the Environmental Restoration Works.
 - e) To enter into the Works Licence with Council for the purposes of carrying out the Environmental Restoration Works in the Wadalba Wildlife Corridor or on other land in Council's ownership.
 - f) That if the Environmental Restoration Works have not been completed to the reasonable satisfaction of the Council at the time of the dedication of the land zoned E2 Environmental Conservation, the Developer will provide the Outstanding Works Bond to the Council at the time such dedication is effected, but the Developer's obligations to complete the Environmental Restoration Works are not affected by the provision of the bond except to the extent (if any) the Council calls on the bond and carries out any such work.
 - g) To pay to Council the sum of \$30,306 per residential allotment in development contributions towards the provision of open space, community facilities, roads, drainage and water quality facilities, when required to make such payment under clause 5.1(j) as per **Attachment 4**, and subject to clause 5.2 and clause 8.
 - h) To implement all the year one establishment works in the Vegetation Management Plan prior to the issue of a subdivision certificate for the subdivision of the land and that the Council is not required to issue any subdivision certificate unless and until the Council is satisfied the Developer has complied with this clause.
 - i) To dedicate the land referred to in clause 5.1 (a), (b) and (c) at the time of the issue of any subdivision certificate for the subdivision of the land, and to cause the registration at NSW Land & Property Information (LPI) of a plan effecting such dedication within [2] months of the issue of such subdivision certificate.
 - j) To make the payment of the development contributions specified in clause 5.1(g) in respect to each residential lot prior to the release of the subdivision certificate that includes that lot.
 - k) That the Council may refuse to issue a subdivision certificate for the land if the Environmental Restoration Works have not been completed in accordance with this agreement and the developer has not provided the Outstanding Works Bond.
 - l) That the Council may call on the Outstanding Works Bond if the Developer has not completed the Environmental Restoration Works to the reasonable satisfaction of the Council in accordance with the Vegetation Management Plan, and have the uncompleted works completed using the funds received from calling on the Outstanding Works Bond. The Council may make more than one call on the Outstanding Works Bond.

5.2 Council agrees it will:

- a) Accept the Development Contributions in accordance with clause 5.1 (g) in lieu of contributions that would but for this agreement be payable under s94 and s94A of the Act in connection with the Development.
- b) Allow the Developer to offset the ARW Amount against the Development Contributions.
- c) Allow the Developer to offset the ERW Amount against the Development Contributions.
- d) Have sole responsibility for the construction of the road, at a time determined in the Council's absolute discretion within the land required to be dedicated under this agreement across the frontages of proposed lots 14 and 15 on the plan in **Attachment 3**.
- e) Use its reasonable endeavours to permit the Developer to provide a temporary emergency access point on the boundary of the land and Council's Wadalba Sporting Complex for use by the Rural Fire Services, until such time as Van Stappen Road is extended to its intersection with Louisiana Road.
- f) Give its approval as the land owner for the Developer to undertake the Environmental Restoration Works within the Wadalba Wildlife Corridor subject to the Developer executing the Works Licence.
- g) Release the Outstanding Works Bond, or such part of it as has not been called on, when the Environmental Restoration Works have been completed to the reasonable satisfaction of the Council.

5.3 For the purpose of clarity, the Parties agree the Development Contributions to be paid by the Developer to Council under this agreement do not exclude or limit the obligation of the Developer to pay any amount that the Developer may be required to pay under the Water Management Act 2000 in connection with the Development.

6 Developer Warranties

6.1 The Developer warrants to Council that:

- a) It is the registered owner of the land;
- b) It is able to fully comply with the Developer's 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

6.2 The Developer agrees that Council is not required to proceed against the Developer or exhaust any remedies it may have in relation to the Developer or enforce any security it may hold with respect to the Developer's obligations but is entitled to demand and receive payment when any payment is due under this agreement.

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- 6.3 The Developer agrees that where all or part of the Development Contributions required to be paid under this agreement are not paid at the time required for any reason, the Developer agrees that Council shall have the right to:
- a) Record the outstanding contribution as a debt against all or any part of the land pursuant to Section 603 of the Local Government Act 1993; and
 - b) Place a caveat on all or any part of the land for the recovery of the outstanding Development Contributions pursuant to the Conveyancing Act 1919.
- 6.4 Council agrees that it will promptly remove any record of debt against and any caveat placed on part of the land under clause 6.3 upon payment of the contributions relating to those parts of the land.
- 6.5 The Developer agrees that this agreement will run with the Land and will bind all future owners.
- 6.6 The Developer agrees that it will inform all persons that intend to take an interest in the land (excluding any subsequent developed and approved residential allotments) of this agreement prior to binding commitments being concluded and will obtain and forward to Council a legally enforceable undertaking from those persons that they intend to be bound by this agreement.
- 6.7 The Developer releases the Council from any claim in connection with the construction of the road or the timing thereof on the land coloured pink and green as shown in the Lands to be Dedicated Plan in **Attachment 2**.

7 Registration of this Agreement

The Developer agrees:

- a) That it will register this agreement under Section 93H of the Act on the title to the land promptly after the execution of this agreement, and if registration does not occur within 1 month after the execution of this agreement the Developer authorises Council to lodge a caveat that prevents any dealings with the land until the agreement is registered.
- b) To authorise Council to withhold the issue of development consents for any development application for the subdivision or development of the land until such time as the agreement is registered.
- c) To pay all costs incurred by Council associated with the registration of this agreement or the lodgement of caveats agreed to under subclause 7a).

8 Indexation of monetary contributions and material public benefit

- 8.1 Development Contributions shall be indexed at the time of payment of the Development Contribution in accordance with following formula:

$$IC = OC \times \frac{CPI-A}{CPI-B}$$

Where:

- IC The indexed amount of the Development Contribution
- OC The (Original) Development Contribution at the date of this Agreement
- CPI-A The most recent Consumer Price Index Number (Sydney – All Groups) last published by the Australian Bureau of Statistics at the time of payment
- CPI-B The most recent Consumer Price Index Number (Sydney – All Groups) last published by the Australian Bureau of Statistics at the date of this agreement.

8.2 The ARW Amount shall be indexed at the time of dedication of the Additional Road Widening Land in accordance with following formula:

$$IC = OC \times \frac{CPI-A}{CPI-B}$$

Where:

- IC The indexed value of the Additional Road Widening Land
- OC The (Original) value of the Additional Road Widening Land at the date of this Agreement
- CPI-A The most recent Consumer Price Index Number (Sydney – All Groups) last published by the Australian Bureau of Statistics at the time of dedication
- CPI-B The most recent Consumer Price Index Number (Sydney – All Groups) last published by the Australian Bureau of Statistics at the date of this agreement.

8.3 The ERW Amount shall be indexed at the time of payment of the Development Contributions in accordance with following formula:

$$IC = OC \times \frac{CPI-A}{CPI-B}$$

Where:

- IC The indexed value of the Environmental Restoration Works Amount
- OC The (Original) value of the Environmental Restoration Works Amount at the date of this Agreement
- CPI-A The most recent Consumer Price Index Number (Sydney – All Groups) last published by the Australian Bureau of Statistics at the time of payment
- CPI-B The most recent Consumer Price Index Number (Sydney – All Groups) last published by the Australian Bureau of Statistics at the date of this agreement.

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), 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 rules under Clause 17, 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 or not have done so within 4 weeks of the written notice under clause 9.2 then the Parties will be free to commence litigation in respect of the Dispute.
- 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 Enforcement

- 10.1 This agreement may be enforced by the issuance of notices by Council pursuant to Clause 17 and/or by the commencement of proceedings in the Courts of New South Wales.

11 Notices

11.1 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 below.
- b) Faxed or emailed to that Party at its email address set out below.

Council Central Coast Council
Attention: The Chief Executive Officer
Address: 2 Hely Street, Wyong, NSW 2259
Fax No: (02) 4350 2098
Email: WSC@wyong.nsw.gov.au

Developer Threshold Developments Pty Ltd
Attention: Mr Ian G Everitt
Address: PO Box 198, Wyong, NSW 2259
Fax No: (02) 43512437
Email: ianeveritt@gmail.com

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

11.3 Any notice, consent, information, application or request is to be treated as 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, five business 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.

11.4 If any notice, consent, information, application or request is delivered, or an error-free transmission report in relation to it is received, on a day that is not a business day, or if on a business day, after 5.00pm on that day in the place of the party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

12 Approvals and Consent

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

13 Assignment and Dealings

- 13.1 The Developer agrees that it will not deal with, transfer or mortgage its interest in the land prior to the registration of this agreement as agreed at Clause 7.
- 13.2 The Developer agrees that it will not lodge any caveat or other instrument upon the title of the land which may prohibit or hinder registration of this agreement.

14 Costs

- 14.1 The Developer agrees to pay or reimburse the costs of the Council, as follows:
- a) Negotiation, preparation and execution of this agreement, up to a maximum of \$2,000.00.
 - b) Advertising and exhibition of this agreement in accordance with the Act, to a maximum of \$285.00
 - c) All costs associated with the Registration of the agreement;
- within 14 working days after receipt of a tax invoice from the Council.

15 Entire Agreement

- 15.1 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.

16 Further Acts

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

17 Governing Law and Jurisdiction

- 17.1 This agreement is governed by the law of New South Wales. 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 dispute resolution provisions in Clause 9 of this agreement have first been satisfied.

18 Joint and Individual Liability and Benefits

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

19 No Fetter

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

20 Representations and warranties

- 20.1 The Parties represent and warrant that they have power to enter into this Agreement and comply with their obligations under this Agreement and that entry into this Agreement will not result in the breach of any law.

21 Severability

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

22 Waiver

- 22.1 The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this agreement, does not amount to a waiver of any obligation of, or 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 or any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

23 GST

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

24 Review of this Agreement

24.1 Any modification or variation to of this agreement will be of no force or effect unless it is in writing and signed by the Parties to this agreement, in accordance with Section 93G of the Act.

**SCHEDULE 1
CALCULATION OF ARW AMOUNT**

\$45.50 per m² (indexed in accordance with clause 8) of the Additional Road Widening Land (including GST if any).

**SCHEDULE 2
CALCULATION OF ERW AMOUNT**

\$75,100 (indexed in accordance with clause 8) x area of the land zoned E2 (expressed in hectares or part hectares) which is dedicated.

For avoidance of doubt the ERW Amount is not to be calculated by including any land in the Wadalba Wildlife Corridor.

**SCHEDULE 3
CALCULATION OF OUTSTANDING WORKS AMOUNT**

The amount determined by a bushland regeneration expert engaged jointly by the Developer and the Council at the Developer's sole cost, as the cost of completing the Environmental Restoration Works (including the 3 year maintenance period for such works) plus a 50% contingency.

EXECUTION OF AGREEMENT


EXECUTED as an agreement in accordance with Section 93F of the NSW Environmental Planning and Assessment Act 1979:

Executed for and on behalf of

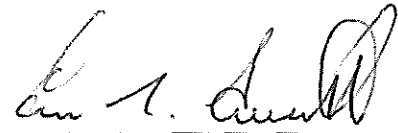
THRESHOLD DEVELOPMENTS PTY LTD:



Director/company secretary



Director/company secretary



Director/company secretary

TERRY S MORAN
Name (BLOCK LETTERS)

PAUL J. LEVICK
Name (BLOCK LETTERS)

IAN G. EVERITT
Name (BLOCK LETTERS)


27/10/2017
Date of Signing

27/10/2017
Date of Signing


27/10/2017
Date of Signing

Executed for and on behalf of

CENTRAL COAST COUNCIL:



Signature of Chief Executive Officer, Central Coast Council



Signature of Witness

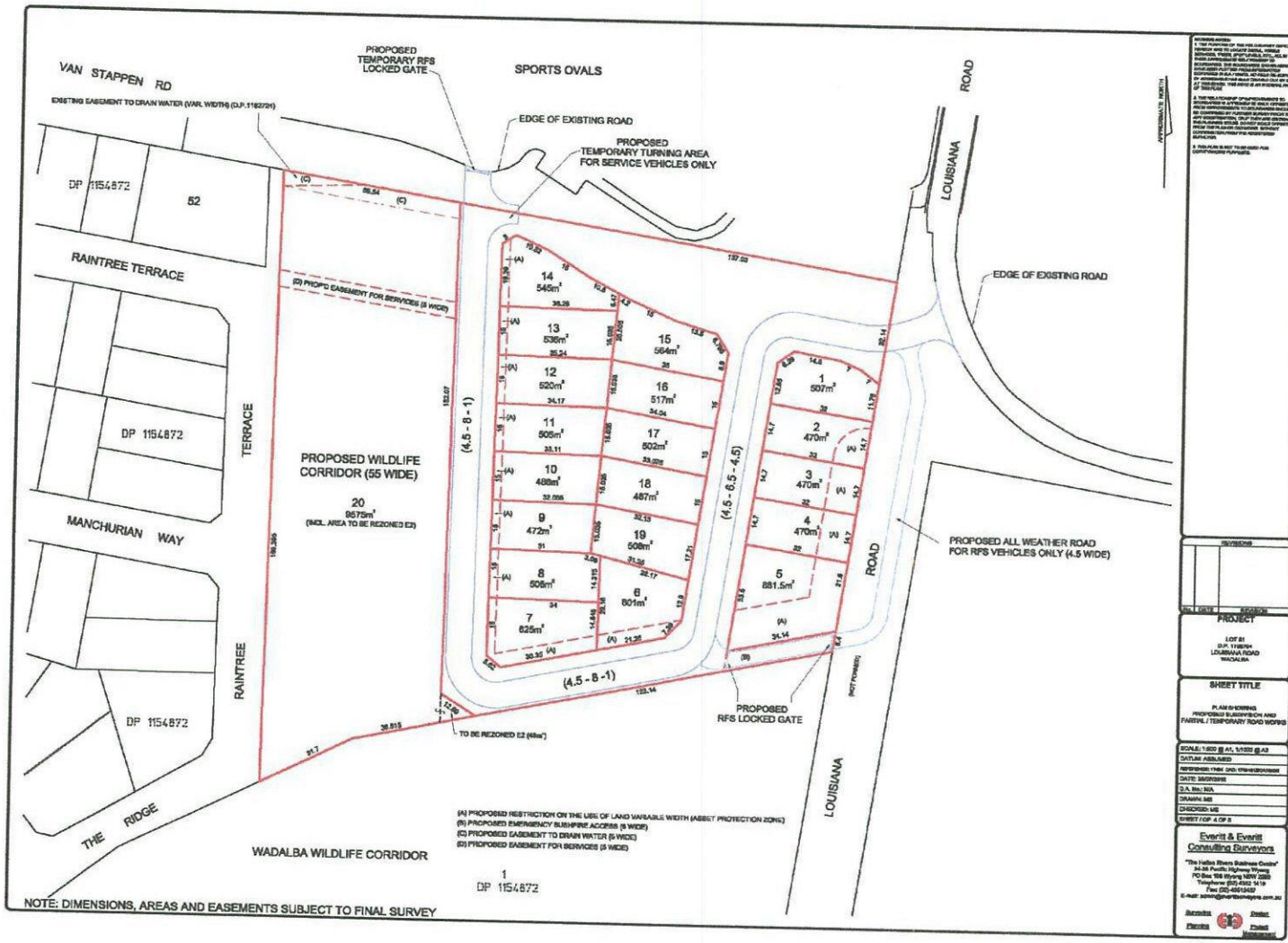
BRIAN BEU
Name (BLOCK LETTERS)

AMANDA KEEN
Name (BLOCK LETTERS)

20 NOVEMBER 2017
Date of Signing

20 NOVEMBER 2017
Date of Signing

Attachment 3 - Envisaged Lot Layout



Attachment 4 – Table of Contributions

	Per Residential Allotment
	December - 2016
Shire Wide Administration	\$81.89
Shire Wide Cycleway	\$378.07
Shire Wide Open Space	\$184.29
Shire Wide Arts	\$426.59
Local Open Space Land	\$1,378
Local Open Space Works	\$1,772
Playing Field Land	\$1,678
Playing Field Embellishment	\$3,568
Community Facilities Land	\$196
Community Facilities Works	\$2,325
Roadworks	\$9,547
Drainage Land	\$1,482
Drainage Works	\$2,545
Water Quality Land	n/a
Water Quality Works	\$1,133
Wadalba Corridor land	\$1,829
Wadalba Corridor works	\$1,078
Addition to Wadalba Corridor	n/a
Studies	\$188
Administration	\$517
TOTAL Contributions per Residential Allotment	\$30,306

Attachment 5 – Works Licence

DEED OF LICENCE

BETWEEN

CENTRAL COAST COUNCIL

AND

THRESHOLD DEVELOPMENTS PTY LTD

DEED OF LICENCE dated

PARTIES

- 1 CENTRAL COAST COUNCIL (ABN 73149644003) of 2 Hely Street, Wyong ("Licensor");**
and
- 2 THRESHOLD DEVELOPMENTS PTY LIMITED (ACN 096 211 933) of PO Box 198, Wyong, NSW 2259 ("Licensee")**

RECITALS

- A** The Licensor is the owner of the Land at Wadalba ("Land").
- B** The Licensee proposes to occupy part of the Land for the purpose of carrying out certain environmental restoration works, and more specifically as follows: 1. Remove the vegetation from the existing quarry and surrounds as required, 2. Fill and compact (not geotechnically tested) the quarry with spoil (including rocks and boulders) from the adjoining development and/or Van Stappen Way extension land prior to dedication, 3. Restore as per the VMP prepared by Everitt Ecology, 4. Remove ponds, fill and compact same, erect stone block/boulder retaining walls as required within the wildlife corridor and restore as per the VMP prepared by Everitt Ecology. All works being in connection with the development of adjoining land owned by the Licensee, and for that purpose to enter a month to month license for the Licensed Area.
- C** The Licensor has agreed to grant the Licensee a non-exclusive licence to occupy the Licensed Area on a month to month basis until terminated to carry out the environmental restoration works and the Licensee has agreed to give the Licensor the indemnities and releases with respect to its use and occupation of the Land.
- D** The terms and conditions of the licence and the Licensee's indemnity and release are set out in this Deed.

OPERATIVE PROVISIONS

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Deed:

Authority means any federal, state or local government, semi-government, quasi-government, administrative, fiscal or judicial department, or any entity agency, or other body, statutory or otherwise, and any court or tribunal having jurisdiction or power in relation to the Licensed Area or activities on or use made of the Licensed Area.

Business Day means between 9:00 am and 5:00 pm on a day (not being a Saturday, Sunday or public holiday) on which banks are open for general banking business in Sydney.

Claim means any allegation, action, demand, cause of action, suit, proceeding, judgement, debt, damage, loss, cost, expense or liability howsoever arising and whether present or future, fixed or unascertained, actual or contingent whether at law, in equity, under statute or otherwise.

Contamination means the presence in, on or under the Licensed Area (including soil and groundwater) of a substance at a concentration that presents a risk of harm to human health or any other aspect of the Environment and **Contaminate**, **Contaminant** and **Contaminated** each have a corresponding meaning.

Damage means any damage to the Licensed Area, including:

- (a) structural or non-structural damage;
- (b) material or non-material damage;
- (c) the complete or partial destruction of the Licensed Area;
- (d) the complete or partial destruction of or malfunctioning of any services; and
- (e) the Contamination of the Licensed Area or any part of the Licensed Area,

and includes, without limitation, damage caused by civil commotion, riot, explosion, fire flood, lightning, storm, tempest, earthquake, aircraft, act of God or war.

Environment means the components of the earth, including:

- (a) land, air and water;
- (b) any layer of the atmosphere;
- (c) any organic or inorganic matter and any living organism; and
- (d) human-made or modified structures and areas,

and includes interacting natural ecosystems that include components referred to in paragraphs (a) - (c).

Environmental Restoration Works means the works on the Land specified in the VMP.

GST means any form of goods and services tax or similar value added tax.

GST Legislation means legislation or regulation which imposes, levies, implements or varies a GST including but not limited to, *A New Tax System (Goods and Services Tax) Act 1999*.

Improvements means all structures, buildings, reclamations and piles (including free standing piles) permanently affixed or erected at any time on the Licensed Area.

Land means Lot 1 DP 1154872 at Wadalba and known as the Wadalba Wildlife Corridor

Law means the common law and all statutes, rules, regulations, proclamations, ordinances, by-laws, instruments, orders consents, approvals, permits and licences made or issued under any statute or by any Authority.

Licensed Area means all that area of the Land shown coloured on the Licensed Area Plan.

Licensed Area Plan means the plan attached to this Licence.

Licensee includes in the case of a corporation its successors in title and assigns and in the case of a natural person includes, where relevant, that person's heirs, executors, administrators, officers, agents, employees, representatives, contractors, invitees and assigns.

Licensee's Covenants means the covenants expressed or implied under or in respect of the Licensee's occupation of the Licensed Area to be observed and performed by the Licensee.

Permitted Activities means the occupation and use of the Licensed Area for the purpose of carrying out the Environmental Restoration Works.

VMP means the "Vegetation Management Plan for Proposed Rezoning of Part Lot 51 DP 1195704, 165 Louisiana Road, Wadalba" prepared by Everitt Ecology including as subsequently amended and approved in writing by the Licensor.

1.2 Interpretation

In this Deed unless the contrary intention appears:

- (a) a reference to a party includes, as the context requires, the party's respective executors, administrators, successors and permitted assigns;
- (b) a reference to a person includes any other entity recognised by law and vice versa;
- (c) headings, underlining's, marginal notes and indexes are only included for ease of reference and do not affect interpretation;
- (d) a reference to any legislation or legislative provision includes any modifying, consolidating or replacing legislation or legislative provisions from time to time, and includes all regulations, rules and other statutory instruments issued under the legislation;

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- (e) a reference to a document (including this Deed) are to that document as varied, novated, ratified or replaced from time to time;
 - (f) references to parties, clauses, schedules, annexures or exhibits are references to parties, clauses, schedules, annexures or exhibits to this Deed unless otherwise stated;
 - (g) references to months and years means calendar months and years;
 - (h) words denoting the singular number include the plural, and vice versa;
 - (i) words denoting one gender include the other gender or neuter, as the context requires;
 - (j) where any word or phrase is given a defined meaning any other grammatical form of that word or phrase will have a corresponding meaning;
 - (k) delivery of this Deed will be taken to have been given on the date it bears;
 - (l) a reference to "\$" or "dollar" is to Australian currency; and
 - (m) if the day on which any act, matter or thing is to be done under or pursuant to this Deed is not a Business Day, that act, matter or thing may be done on the next Business Day.

1.3 Headings

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

2 LICENSEE'S RIGHTS AND OBLIGATIONS

2.1 Licence to occupy

The Licensor grants the Licensee all necessary rights in connection with the Licensed Area for the purposes of carrying out the Permitted Activities.

2.2 Term of This License

The term of this License is from the date of this Deed and continuing month to month until terminated or unless terminated earlier in accordance with this Deed of License.

2.3 Payment

Upon entry into this Deed and prior to commencing any Licensee's monitoring the Licensee must make payment to the Licensor a license fee in the amount of \$1.00 if demanded.

2.4 Make Good

The Licensee must promptly repair and make good any Damage that is caused in or about the Licensed Area by any act done or omitted to be done by or on behalf of the Licensee by its contractors or any other person in connection with the Permitted Activities.

2.5 Contamination

The Licensee must not contaminate the Land and must at its own cost promptly remediate any Contamination of the Land caused by the Licensee or its contractors.

2.6 Insurance policies

- (a) The Licensee must effect and maintain, from the date of this Deed and for the duration of its occupation of the Licensed Area policies of insurance against all risks relating to the Licensed Area or the occupation or use of the Licensed Area as required by Law, including, without limitation;
 - (i) public liability insurance cover in respect of the Licensee's monitoring:
 - A) for an amount of not less than \$20 million for any one occurrence;
 - B) noting the interests of the Licensor; and
 - (ii) any other insurance policy or level of coverage that the Licensor reasonably requires from time to time.
- (b) Upon entry into this Deed and prior to commencing any Licensee's monitoring, and at any other time reasonably required by the Licensor, the Licensee will provide to the Licensor certificates of currency showing that:
 - (i) the Licensee; and
 - (ii) any contractor engaged by the Licensee;have affected each of the relevant policies of insurance set out in Clause 2.5 or as required by Law, or that in the opinion of the Licensor a prudent tenant or building contractor would affect.
- (c) The insurance policies obtained by a contractor to the Licensee must be affected with reputable insurers (approved by the Licensor, acting reasonably).

2.7 Licensee's obligations in relation to insurance policies

In respect of the insurances required to be effected and maintained by the Licensee pursuant to Clause 2.6 (Insurance policies), the Licensee must:

- (a) ensure that the insurances are maintained in force from the date of this Deed until the date on which the Licensee vacates the Licensed Area in accordance with this Deed and provide a copy of the insurances and the certificates of currency to the Licensor;
- (b) not do or permit anything to be done or omit to do anything that could potentially prejudice any insurance or render any insurance void or voidable;
- (c) at all times comply with the terms and conditions of any insurance;
- (d) immediately notify the Licensor and in any event within 48 hours, of:
 - (i) any occurrence or event that gives rise or may give rise to a Claim under or which could prejudice any policy of insurance or may result in any insurance policy lapsing or being cancelled; or
 - (ii) the cancellation of any policy of insurance.

3 RELEASE & INDEMNITY

3.1 Release

The Licensee acknowledges and agrees to:

- (a) use and occupy the Licensed Area at its own risk; and
- (b) release and forever discharge the Licensor to the full extent permitted by Law from any Claim directly or indirectly arising under or in respect of the Licensee's use and occupation of the Licensed Area.

3.2 Indemnity

The Licensee indemnifies and agrees to keep indemnified and hold harmless the Licensor from and against any Claim directly or indirectly arising under or in respect to the Licensee's use and occupation of the Licensed Area.

3.3 Continuing Obligations

The obligations of the Licensee pursuant to Clauses 3.1 and 3.2 of this Deed are continuing obligations, separate and independent from the other obligations of the Licensee and survive the cessation of the Licensee's use and occupation of the Licensed Area. It is not necessary for the Licensor to incur expense or make any payment before enforcing a right of indemnity conferred by this Deed.

4 GENERAL

4.1 Law and Jurisdiction

This Deed is governed by the law in force in New South Wales. The Parties irrevocably and unconditionally submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts that may hear appeals from those courts in respect of any proceedings in connection with this Deed.

4.2 Liability

Every covenant or provision in this Deed applying to or binding, or a right conferred on, more than one person will bind or benefit each of them jointly and severally.

4.3 Amendment

This Deed may be amended or supplemented by notice in writing signed by the Parties.

4.4 Counterparts

This Deed may be executed in any number of counterparts and all of those counterparts taken together constitute one and the same instrument.

4.5 Assignment

A Party may not assign or novate any right or obligation under this Deed without the other Party's prior written consent.

4.6 Waiver

The non-exercise of or delay in exercising any power or right of a Party does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other or further exercise of it or the exercise of any other power or right. A power or right may only be waived in writing, signed by the Party to be bound by the waiver.

4.7 Further Assurance

Each Party will do, sign, execute and deliver and will procure that each of its employees, successors, agents or other relevant party does, signs, executes and delivers, all Deeds, documents, instruments and acts reasonably as required of it by notice from another Party to effectively carry out and give full effect to this Deed and the rights and obligations of the Parties under it.

4.8 Entire Agreement

This Deed and any annexures is the entire agreement of the Parties on the subject matter. The only enforceable obligations and liabilities of the Parties in relation to the subject matter are those that arise out of this Deed. All representations, communications and prior agreements regarding the subject matter are merged in and superseded by this Deed.

4.9 Severability

If any part of this Deed is void or unenforceable and does not go to the essence of the Deed, that part will be severed from this Deed and the rest of this Deed will continue to have full force and effect.

4.10 Contra Proferentem

In the interpretation of this Deed, no rules of construction will apply to the disadvantage of one party on the basis that the party put forward the Deed or any part of it.

4.11 GST

In respect of any liability of the Licensor for GST under this Deed pursuant to the GST Legislation, the Licensee must pay to the Licensor, at the same time as any payment is made involving the Licensor incurring a GST liability, the additional amount of GST, together with the payment to which it relates. This clause does not merge on completion.

EXECUTION PAGE

EXECUTED AS A DEED IN NEW SOUTH WALES

EXECUTED by a delegate of **Central Coast Council** who hereby certifies that he or she has no notification as to the revocation of such delegation, in the presence of:

Amanda Keen
Signature of Witness

Brian Beel
Signature of Delegate

Amanda Keen
Name of Witness (print)

BRIAN BEEL
Name of Delegate (print)

2 Hely Street, Wyong
Address of Witness (print)

CHIEF EXECUTIVE OFFICER
Title of Delegate (print)

Executed by **THRESHOLD DEVELOPMENTS PTY LIMITED (ACN 096 211 933)**

By its authorised officers in accordance with Section 127 of the *Corporations Act 2001* (Cth)

[Signature]
[name] TERRY S MORAN
[title] DIRECTOR / SECRETARY

[Signature]
[name] IAN G. EVERITT
[title] DIRECTOR

Attachment 6 – 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 (“**the Council**”);

Threshold Developments Pty Ltd (ACN 096 211 933) of PO Box 198, Wyong NSW, 2259 (“**the Developer**”).

Description of the Land to which the Draft Planning Agreement Applies

Lot 51 DP 1195704, 165 Louisiana Road, Wadalba, in the State of New South Wales.

Description of Proposed Development

Development means the subdivision of part of the Land into residential allotments.

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 dedication of parts of the land and the payment of contributions towards various facilities and infrastructure in respect to the Development on the Land.

The Agreement excludes the operation of S94 and S94A of the Act in connection with residential subdivision of the land as contemplated by the Planning Proposal, however does not exclude the application of s94EF to the Development. For avoidance of doubt the agreement does not exclude the operation of S94 and S94A of the Act in connection with any other development of the land.

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 dedication of land, the environmental restoration of land and the provision of infrastructure and facilities, 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 amend the Zoning, Lot Size and Urban Release Area Maps,
- relates to the carrying out by the Proponent of the Development on the Land, subject to development consent,
- acknowledges certain credits for land dedication and the payment of contributions, and excludes the application of s94A and s94 to the Development. However, the Agreement does not exclude the application of s94EF to the Development,
- requires the Proponent to:
 - agree and commit under this Agreement to the dedication of certain land for road and environmental protection purposes,
 - pay Council contributions as set out in the Contributions Table in accordance with the agreement towards open space, community facilities, roads, drainage and water quality infrastructure in lieu of paying Section 94 contributions under Council's adopted development contributions plans for the subdivision of land,
 - undertake at its cost the Environmental Restoration Works over the part of the land which is zoned E2 Environmental Conservation which is to be dedicated to the Council,
 - undertake the Environmental Restoration Works at no cost to Council within the Wadalba Wildlife Corridor, which also include the filling of an existing quarry and the removal of dams,
- 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 purposes:

- the provision of (or the recoupment of the cost of providing) public amenities or public services,
- the provision of (or the recoupment of the cost of providing) affordable housing,
- the provision of (or the recoupment of the cost of providing) transport or other infrastructure relating to land,
- the funding of recurrent expenditure relating to the provision of public amenities or public services, affordable housing or transport or other infrastructure,
- the monitoring of the planning impacts of development,
- the conservation or enhancement of the natural environment.

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 purposes set out above.

How the Draft Planning Agreement Promotes the Public Interest

The Draft Planning Agreement promotes the public interest by ensuring that land and 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 the natural environment, as well as 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.