

## PLANNING AGREEMENT

### Parties

Byron Shire Council, New South Wales ("Council")

AND

Mullumbimby Ex-Services Club Ltd ABN 61 000 994 767 ("Developer")

### BACKGROUND

- A. The Developer made a Development Application to the Council for Development Consent to carry out the Development on the Land. The application proposes additions and alterations to The Club.
- B. The Development Application is accompanied by an offer by the Developer to enter into this Agreement to make Development Contributions towards the Public Facilities for the purposes of carparking if the Development consent was granted.

### 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 Part 7.1 of Part 7 of the Act.

#### 2. APPLICATION OF THIS AGREEMENT

- 2.1 This agreement applies to Development Application 10.2021.470.1 for alterations and additions to the existing Club building located at Lot 10 DP 1138286, 58 Dalley Street, Mullumbimby NSW (Development).

#### 3. OPERATIONS OF THIS AGREEMENT

- 3.1 The Developer will make the Development Contribution:
  - (a) prior to the issue of a Construction Certificate for the Development.

#### 4. DEFINITIONS AND INTERPRETATION

- 4.1 In this Agreement the following definitions apply:

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

**Construction Certificate** has the same meaning as in the Act.

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

**Development** has the meaning in clause 2.1.

**Development Application** has the same meaning as in the Act.

**Development Consent** has the same meaning as in the Act.

**Development Contribution** means the contribution in clause 5.1.

**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 the land described in Lot 10 DP 1138286, 58 Dalley Street, Mullumbimby 2482.

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

**Regulation** means the *Environmental Planning and Assessment Regulation 2021*.

- 4.2 In the interpretation of this Agreement, the following provisions apply unless the context otherwise requires:
- (a) Headings are inserted for convenience only and do not affect the interpretation of this Agreement.
  - (b) A reference in this Agreement to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
  - (c) If the day on which any act, matter or thing is to be done under this Agreement is not a business day, the act, matter, or thing must be done on the next business day.
  - (d) A reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.
  - (e) A reference in this Agreement to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
  - (f) A reference in this Agreement to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
  - (g) A reference to a clause, part, schedule, or attachment is a reference to a clause, part, schedule, or attachment of or to this Agreement.
  - (h) An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
  - (i) Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
  - (j) A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.

- (k) A reference to this Agreement includes the agreement recorded in this Agreement.
- (l) A reference to a party to this Agreement includes a reference to the servants, agents and contractors of the party, and the party's successors and assigns.
- (m) Any schedules and attachments form part of this agreement.

## **5. DEVELOPMENT CONTRIBUTION TO BE MADE UNDER THIS AGREEMENT**

- 5.1 The Developer is to pay \$8,650.74 per car space for 6.3 car spaces for a total contribution of \$54,499.66 (Development Contribution).
- 5.2 This rate is valid until 26 October 2022 at which time the amount may be increased in accordance with the consumer price index (CPI) all groups Sydney, as published by the Australia Bureau of Statistics.

## **6. APPLICATION OF s7.11 and s7.12 OF THE ACT TO THE DEVELOPMENT**

- 6.1 This agreement does not exclude the application of s7.11 of the Act to the Development.
- 6.2 This agreement does not exclude the application of s7.12 of the Act to the Development.

## **7. REGISTRATION OF THIS AGREEMENT**

- 7.1 The Agreement will not need to be registered against the Land.

## **8. REVIEW OF THIS AGREEMENT**

Intentionally Deleted

## **9. DISPUTE RESOLUTION**

- 9.1 Should a dispute arise under this agreement, the Parties shall firstly meet in an attempt to resolve the dispute.
- 9.2 If the dispute is not resolved within 28 days of the date that a Party first raises the issue about which there is a dispute, the Parties must mediate the dispute in accordance with the Mediation Rules of the Law Society of New South Wales that are current at the time the dispute is mediated, and must request the President of the Law Society, or the President's nominees, to select a mediator.
- 9.3 If the dispute is not resolved by the mediation within a further 28 days, or such longer period as may be necessary to allow any mediation process which has been commenced to be completed, then the Parties may exercise their legal rights in relation to the dispute, including by the commencement of legal proceeding in a court of competent jurisdiction in New South Wales.

## **10. ENFORCEMENT**

- 10.1** The Development Contribution is payable prior to the issue of a Construction Certificate regarding the Development Consent.

## **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 give 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 to that Party at its fax number set out below.
- (c) Emailed to that Party at its email address set out below.

### **Council**

Attention: The General Manager

Address: 70-90 Station Street, Mullumbimby NSW 2482

Fax number: 02 6684 3018

Email: [council@byron.nsw.gov.au](mailto:council@byron.nsw.gov.au)

### **Developer**

Attention: Mullumbimby Ex Services Club ABN 61 000 994 767

Address: 58 Dalley St Mullumbimby NSW

Contact: Andrew Spice (General Manager)

Contact: 0456 777 415

- 11.2** If a Party gives the other Party 3 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 that other Party if it is delivered, posted, or faxed to the latest address or fax number.

The developers preferred method of communication is via email [gm@mullumexservices.com.au](mailto:gm@mullumexservices.com.au) or telephone.

- 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. 2 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 air 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 5pm on that day in the

place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

## **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 conditions determined by the Party. A Party is obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

## **13. ASSIGNMENT AND DEALINGS**

- 13.1. There are no restrictions on the Land.

## **14. COSTS**

- 14.1. All Council costs of preparation of this Agreement are at the Developer's expense up to a maximum of \$1,500.

## **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 affect, 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.

## **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 2 or more persons brings them jointly and each of them individually, and any benefit in favor of 2 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 the 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. MODIFICATION**

**22.1.** No modification of this Agreement will be of any force or effect unless it is in writing and signed by the Parties to this Agreement.

## **23. WAIVER**

**23.1.** 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 of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

## **24. GST**

**24.1.** 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 recipient of the supply must pay an additional amount equal to the GST on that supply.

EXECUTED AS AN AGREEMENT

EXECUTED by Mullumbimby Ex Services  
Club Ltd ABN 61 000 994 767

A handwritten signature in black ink, appearing to read 'Spice', written in a cursive style.

Signature of Andrew Spice  
who states that he is the General Manager  
of Mullumbimby Ex Services Club Ltd.

Date

Executed on behalf of Byron Shire  
Council by the General Manager Under  
delegation.

Date: 27 October 2023

A handwritten signature in blue ink, appearing to read 'Chris Larkin', with a small mark to the right.

Chris Larkin  
Manager Sustainable Development  
Byron Shire Council