

(Between Council and Developer)

PLANNING AGREEMENT

Parties

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

AND

The Mullum Triangle Pty Ltd ACN 611731554 ("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 the alterations and additions to existing commercial building to create a cafe and day spa.
- B. The Development Application was 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 Division 6 of Part 4 of the Act.

2. APPLICATION OF THIS AGREEMENT

- 2.1 This agreement applies to DA 10.2016.625.1 for alterations and additions to existing commercial building to create a café and day spa located at 35-37 Burringbar Street, Mullumbimby NSW

3. OPERATIONS OF THIS AGREEMENT

- 3.1 The agreement takes effect if both the DA and VPA are approved and will be a condition of the DA that the payment of the contributions will occur prior to the release of a construction certificate.

4. DEFINITIONS AND INTERPRETATION

- 4.1 In this Agreement the following definitions apply:

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

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

Development means the proposed development described in Byron Shire Council development application 10.2016.625.1

Development Application has the same meaning as in the Act.

Development Consent has the same meaning as in the Act.

Development Contribution means a monetary contribution, the dedication of land free of cost or the provision of a material public benefit.

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 B In Deposited Plan 302891, known as 35-37 Buringbar Street, Mullumbinby.

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

Regulation means the Environmental Planning and Assessment Regulation 2000.

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) References to the word 'include' or 'including' are to be construed without limitation.
- (l) A reference to this Agreement includes the agreement recorded in this Agreement.
- (m) 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.
- (n) Any schedules and attachments form part of this agreement.

5. DEVELOPMENT CONTRIBUTIONS TO BE MADE UNDER THIS AGREEMENT

- 5.1 The developer is to pay a monetary contribution of \$8,053.26 per car space or a fraction thereof for 15.3 car spaces for a total contribution of \$123,214.88.
- 5.2 This rate is valid until 30 October 2019 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.

7. APPLICATION OF S94 AND S94A OF THE ACT TO THE DEVELOPMENT

- 7.2 Section 7.12 contributions will apply to the development application.

8. REGISTRATION OF THIS AGREEMENT

- 8.1 The agreement will not need to be registered.

9. REVIEW OF THIS AGREEMENT

Intentionally Deleted

10. DISPUTE RESOLUTION

- 10.1 The developer seeks to work with council at every opportunity to resolve any differences and allow an agreement to be achieved.

11. ENFORCEMENT

- 11.1 Contributions are payable prior to the release of a construction certificate.

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 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

Developer

Attention: The Mullum Triangle Pty Ltd
Address: c/- Somerville Laundry Lomax, Level 1, 89 Jonson Street, Byron Bay NSW 2481
Telephone number: 02 6680 8525
Email: joshua.allan@sil.com.au

- 12.2 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 (brendenlawless@hotmail.com) or telephone.

- 12.3 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 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 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.

13. APPROVALS AND CONSENT

- 13.1 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.

14. ASSIGNMENT AND DEALINGS

- 14.1 There are no restrictions on the land.

15. COSTS

- 15.1 All costs of preparation of the VPA would be at the developer's expense up to a maximum of \$1500.

16. ENTIRE AGREEMENT

- 16.1 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.

17. FURTHER ACTS

- 17.1 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.

18. GOVERNING LAW AND JURISDICTION

- 18.1 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.

19. JOINT AND INDIVIDUAL LIABILITY AND BENEFITS

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

20. NO FETTER

- 20.1 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.

21. REPRESENTATIONS AND WARRANTIES

- 21.1 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.

22. SEVERABILITY

- 22.1 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.

23. MODIFICATION

- 23.1 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.

24. WAIVER

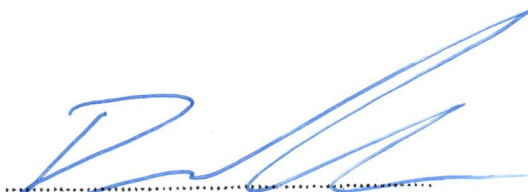
- 24.1 The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another Party. A waiver by a Party is only effective if it is in writing. A written waiver by a Party 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.

25. GST

- 25.1 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 **THE MULLUM TRIANGLE**)
PTY LTD ACN 611731554 in accordance)
with section 127(1) of the Corporations Act 2001)
(Cth) by authority of its director:)


Signature of Brenden James Lawless
who states that they are the sole director and sole
company secretary of The Mullum Triangle
Pty Ltd ACN 611731554

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

Mark Arnold
Mark Arnold

9 APRIL 2020
Date

Witness Signature

Toni Graham
[Signature]

TONI GRAHAM
[Print name]

09 APRIL 2020
Date