

Planning Agreement

7 Munmorah Circuit, Flinders

Amgad Samaan, Ashraf Fayek Barsoum Youssef and Nader Hanna Bastawrose (**Developers**)

Shellharbour City Council (ABN 78 392 627 134) (**Council**)

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Table of Contents

Parties	1
Background	1
Operative Provisions	1
1 Agreement	1
2 Definitions and interpretation	2
2.1 Defined terms	2
2.2 Interpretation	2
3 Application and operation of this agreement	2
3.1 Planning agreement	2
3.2 Application	2
3.3 Operation	2
4 Application of sections 94 and 94A	2
4.1 Application	2
4.2 Consideration of benefits	2
5 Registration of this agreement	3
5.1 Registration	3
5.2 Obligations of the Developers	3
5.3 Removal of agreement	3
6 Monetary Contribution	3
6.1 Payment	3
6.2 Application	4
6.3 No further payment	4
7 Provision of Works	4
8 Maintenance Fee	4
8.1 Payment	4
8.2 Indexation of Ongoing Maintenance Fee	4
9 Developers warranties	5
10 Determination of this agreement	5
10.1 Determination	5
10.2 Effect of determination	5
11 Assignment	5
11.1 Prohibition	5
11.2 Assignment of the Land	5
12 Review and amendment	6
12.1 Negotiation of review	6
12.2 Amendment to be in writing	6
13 Dispute resolution	6
13.1 Notice of Dispute	6
13.2 Consultation between the Representatives	6
13.3 Exclusivity of dispute resolution procedure	6
13.4 Settlement of Dispute	7
14 Position of Council	7
14.1 Consent authority	7
14.2 Agreement does not fetter discretion	7
14.3 Severance of provisions	7
14.4 No obligations	7
15 Confidentiality	8
15.1 Agreement not Confidential	8
15.2 Other Confidential Information	8
16 GST	8
16.1 Defined GST terms	8
16.2 GST to be added to amounts payable	8
16.3 GST obligations to survive termination	9

17	Miscellaneous	9
	17.1 Obligation to act in good faith	9
18	Administrative provisions.....	9
	18.1 Notices.....	9
	18.2 Entire agreement.....	10
	18.3 Waiver.....	10
	18.4 Cooperation	10
	18.5 Counterparts	10
	18.6 Amendment.....	10
	18.7 Unenforceability	10
	18.8 Power of Attorney.....	10
	18.9 Joint parties.....	11
	18.10 Governing law	11
	Schedule 1: Defined terms and interpretation	12
	Part 1 – Definitions.....	12
	Part 2 - Interpretational Rules.....	13
	Schedule 2: Requirements under section 93F of the Act.....	15
	Annexure 1: Plan.....	16
	Execution page	17

Planning Agreement

7 Munmorah Circuit, Flinders

Parties

Developers	Name	Amgad Samaan
	Address	7 Munmorah Circuit Flinders NSW 2529
	Name	Ashraf Fayek Barsoum Youssef
	Address	7 Munmorah Circuit Flinders NSW 2529
	Name	Nader Hanna Bastawrose
	Address	7 Munmorah Circuit Flinders NSW 2529
Council	Name	Shellharbour City Council
	Address	Lamerton House, Lamerton Crescent Shellharbour City Centre NSW 2529
	ABN	78 392 627 134

Background

- A** The Developers are the registered proprietors of the Land.
- B** The Developers propose to apply for the Development Consent in order to carry out the Development.
- C** The Development will result in a deficiency of car parking spaces on the Land under the DCP.
- D** The Developers have offered to pay the Monetary Contribution to Council so as to allow Council to carry out the Works which, once completed, will result in sufficient car parking spaces being made available on the Council Land for the Development.

Operative Provisions

1 Agreement

The agreement of the parties is set out in the Operative Provisions of this agreement, in consideration of, among other things, the mutual promises contained in this agreement.

2 Definitions and interpretation

2.1 Defined terms

In this agreement, words beginning with a capital letter that are defined in Part 1 of **Schedule 1** have the meaning ascribed to them in that schedule.

2.2 Interpretation

The interpretational rules contained in Part 2 of **Schedule 1** apply in the interpretation of this agreement.

3 Application and operation of this agreement

3.1 Planning agreement

This agreement is a planning agreement:

- (1) within the meaning set out in section 93F of the Act; and
- (2) governed by Subdivision 2 of Division 6 of Part 4 of the Act.

3.2 Application

This agreement applies to both the Land and to the Development.

3.3 Operation

- (1) Subject to paragraph (2), this agreement operates from the date it is executed by both parties.
- (2) The following clauses of this agreement will only operate if and when Council grants the Development Consent:
 - (a) clause 4;
 - (b) clause 6;
 - (c) clause 7; and
 - (d) clause 8.

4 Application of sections 94 and 94A

4.1 Application

This agreement does not exclude the application of section 94 or section 94A of the Act to the Development.

4.2 Consideration of benefits

Section 94(6) of the Act does not apply to the Works that are to be carried out or provided pursuant to this agreement.

5 Registration of this agreement

5.1 Registration

This agreement will be registered on the title of the Land and the Council Land pursuant to section 93H of the Act.

5.2 Obligations of the Developers

The Developers must:

- (1) do all things necessary to allow the registration of this agreement to occur under clause 5.1; and
- (2) pay any reasonable costs incurred by Council in undertaking that registration.

5.3 Removal of agreement

- (1) The Developers may at any time request that Council consent to the removal this agreement from the title of the Land after it has been registered pursuant to clause 5.1 (**Removal Request**).
- (2) If Council consents to the Removal Request:
 - (a) Council must do all things necessary to allow for the removal of this agreement under paragraph (1); and
 - (b) simultaneously upon that removal, the Developers must do all things necessary to register either:
 - (i) a public positive covenant;
 - (ii) an easement; or
 - (iii) other such instrument that is acceptable to Council,on the title of the Land and the Council Land and pay any reasonable costs incurred by Council in undertaking that registration.

6 Monetary Contribution

6.1 Payment

Prior to the issue of an Occupation Certificate for the Development, the Developers must pay the Monetary Contribution to Council.

6.2 Application

Council must apply the Monetary Contribution to meet the cost of the Works.

6.3 No further payment

The parties acknowledge and agree that:

- (1) the Monetary Contribution is a capped amount;
- (2) the Monetary Contribution represents the estimated value of the Works that has been agreed upon between the parties prior to entering into this agreement; and
- (3) Council cannot request that the Developers pay any amount exceeding the Monetary Contribution if the cost of the Works exceeds that amount.

7 Provision of Works

- (1) Council must carry out and complete the Works in accordance with the Specifications.
- (2) Council will ensure that the five (5) car parking spaces on the Council Land are available for use by the public for the benefit of the Land.

8 Maintenance Fee

8.1 Payment

- (1) The Developers must pay the Ongoing Maintenance Fee to Council.
- (2) Council will issue an invoice to the Developers for the Ongoing Maintenance Fee on an annual basis.

8.2 Indexation of Ongoing Maintenance Fee

The Ongoing Maintenance Fee to be increased (with the calculation to be made as from the date any such amount is due to be paid under this agreement) in accordance with the following formula:

$$A = \frac{B \times C}{D}$$

where:

- A** = the indexed amount;
- B** = the relevant amount as set out in this agreement;
- C** = the Index most recently published before the date that the relevant payment or the calculation with respect to the relevant amount is to be made; and
- D** = the Index most recently published before the commencement date of this agreement.

If **A** is less than **B**, then the amount of the Ongoing Maintenance Fee will not change.

9 Developers warranties

The Developers warrant to Council that:

- (1) they are legally and beneficially entitled to the Land;
- (2) they are able to fully comply with their obligations under this agreement;
- (3) they have full capacity to enter into this agreement; and
- (4) there is no legal impediment to them entering into this agreement, or performing the obligations imposed on them under this agreement.

10 Determination of this agreement

10.1 Determination

- (1) Subject to paragraph (2), this agreement will determine upon the Developers satisfying all of their obligations under this agreement.
- (2) This agreement will determine immediately if the Development Consent:
 - (a) is refused and the statutory time for any appeal of that refusal expires;
 - (b) lapses;
 - (c) is surrendered; or
 - (d) becomes ineffective for any reason,
under the Act.

10.2 Effect of determination

Upon the determination of this agreement, Council will do all things necessary to allow the Developers to remove this agreement from the title of the whole or any part of the Land as soon as reasonably practicably.

11 Assignment

11.1 Prohibition

Neither party may Assign their rights under this agreement without the prior written consent of the other party.

11.2 Assignment of the Land

The Developers must not Assign their interests in the Land unless:

- (1) Council consents to the Assignment, acting reasonably;
- (2) the proposed assignee enters into an agreement to the satisfaction of Council under which the assignee agrees to be bound by the terms of this agreement; and
- (3) the Developers are not in breach of any terms of this agreement.

12 Review and amendment

12.1 Negotiation of review

If either party requests a review of the whole or any part of this agreement then the parties must use their best endeavours, acting in good faith, to review this agreement in accordance with that request.

12.2 Amendment to be in writing

If the parties agree to amend this agreement as a result of a review conducted under clause 12.1 then any such amendment must be made:

- (1) in writing signed by both parties;
- (2) in accordance with the Act, or any Regulations in force under the Act.

13 Dispute resolution

13.1 Notice of Dispute

If a party believes that there is a dispute in respect of this agreement (**Dispute**) then:

- (1) that party must give notice (**Dispute Notice**) in writing to the other party stating that there is a Dispute; and
- (2) the Dispute Notice must outline:
 - (a) what the party believes the dispute to be;
 - (b) what the party wants to achieve;
 - (c) what the party believes will settle the Dispute; and
 - (d) who will be the party's representatives to negotiate the dispute.

13.2 Consultation between the Representatives

Within fifteen (15) Business Days of a notice served in accordance with clause 13.1(1) the representatives (**Representatives**) of each of the parties must meet in order to resolve the Dispute.

13.3 Exclusivity of dispute resolution procedure

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- (1) Both parties must adhere to the dispute resolution procedure set out in this agreement.
 - (2) The only time that either party may depart from the dispute resolution procedure set out in this clause is when urgent interlocutory relief is required to restrain a breach or threatened breach of this agreement.

13.4 Settlement of Dispute

If the parties cannot resolve the Dispute after adhering to the dispute resolution procedure set out in this agreement then either party may seek any other avenues available to it in order to resolve the Dispute.

14 Position of Council

14.1 Consent authority

The parties acknowledge that Council is a consent authority with statutory rights and obligations pursuant to the terms of the Planning Legislation.

14.2 Agreement does not fetter discretion

This agreement is not intended to operate to fetter, in any unlawful manner:

- (1) the power of Council to make any Law; or
- (2) the exercise by Council of any statutory power or discretion,
(Discretion).

14.3 Severance of provisions

- (1) No provision of this agreement is intended to, or does, constitute any unlawful fetter on any Discretion. If, contrary to the operation of this clause, any provision of this agreement is held by a court of competent jurisdiction to constitute an unlawful fetter on any Discretion, the parties agree:
 - (a) they will take all practical steps, including the execution of any further documents, to ensure the objective of this clause 14 is substantially satisfied;
 - (b) in the event that paragraph (1)(a) cannot be achieved without giving rise to an unlawful fetter on a Discretion, the relevant provision is to be severed and the remainder of this agreement has full force and effect; and
 - (c) to endeavour to satisfy the common objectives of the parties on relation to the provision of this agreement which is held to be an unlawful fetter to the extent that it is possible having regard to the relevant court judgment.
- (2) Where the Law permits Council to contract out of a provision of that Law or gives Council power to exercise a Discretion, then if Council has in this agreement contracted out of a provision or exercised a Discretion under this agreement, then to the extent of this agreement is not to be taken to be inconsistent with the Law.

14.4 No obligations

Nothing in this agreement will be deemed to impose any obligation on Council to exercise any of its functions under the Act in relation to the Development Consent, the Land or the Development in a certain manner.

15 Confidentiality

15.1 Agreement not Confidential

The terms of this agreement are not confidential and this agreement may be treated as a public document and exhibited or reported without restriction by any party.

15.2 Other Confidential Information

- (1) The parties acknowledge that:
 - (a) Confidential Information may have been supplied to some or all of the parties in the negotiations leading up to the making of this agreement; and
 - (b) The parties may disclose to each other further Confidential Information in connection with the subject matter of this agreement.
 - (c) Subject to paragraphs (2) and (3), each party agrees:
 - (i) not to disclose any Confidential Information received before or after the making of this agreement to any person without the prior written consent of the party who supplied the Confidential Information; or
 - (ii) to take all reasonable steps to ensure all Confidential Information received before or after the making of this agreement is kept confidential and protected against unauthorised use and access.
- (2) A party may disclose Confidential Information in the following circumstances:
 - (a) in order to comply with the Law, or the requirements of any Authority; or
 - (b) to any of their employees, consultants, advisers, financiers or contractors to whom it is considered necessary to disclose the information, if the employees, consultants, advisers, financiers or contractors undertake to keep the information confidential.
- (3) The obligations of confidentiality under this clause do not extend to information which is public knowledge other than as a result of a breach of this clause.

16 GST

16.1 Defined GST terms

Defined terms used in this clause 16 have the meaning ascribed to them in the GST Law.

16.2 GST to be added to amounts payable

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- (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.
 - (2) This clause does not apply to the extent that the Consideration for the Taxable Supply is expressly agreed to be GST inclusive.
 - (3) Unless otherwise expressly stated, prices or other sums payable or Consideration to be provided under or in accordance with this agreement are exclusive of GST.

16.3 GST obligations to survive termination

This clause 16 will continue to apply after the expiration or earlier termination of this agreement.

17 Miscellaneous

17.1 Obligation to act in good faith

The parties must at all times:

- (1) cooperate and use their best endeavours to profitably and professionally give effect to their rights and obligations set out in this agreement;
- (2) not unreasonably delay any action, approval, direction, determination or decision which is required of them;
- (3) make approvals or decisions that are required of them in good faith and in a manner consistent with the completion of the transactions set out in this agreement; and
- (4) be just and faithful in their activities and dealings with the other parties.

18 Administrative provisions

18.1 Notices

- (1) Any notice, consent or other communication under this agreement must be in writing and signed by or on behalf of the person giving it, addressed to the person to whom it is to be given and:
 - (a) delivered to that person's address;
 - (b) sent by pre-paid mail to that person's address; or
 - (c) transmitted by facsimile or other electronic means to that person's address.
- (2) A notice given to a person in accordance with this clause is treated as having been given and received:
 - (a) if delivered to a person's address, on the day of delivery if a Business Day, otherwise on the next Business Day;
 - (b) if sent by pre-paid mail, on the third Business Day after posting; and

-
- (c) if transmitted by facsimile or other electronic means to a person's address and a correct and complete transmission report is received, on the day of transmission if a Business Day, otherwise on the next Business Day.
- (3) For the purpose of this clause the address of a person is the address set out in this agreement or another address of which that person may from time to time give notice to each other person.

18.2 Entire agreement

This agreement is the entire agreement of the parties on the subject matter. All representations, communications and prior agreements in relation to the subject matter are merged in and superseded by this agreement.

18.3 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 parties to be bound by the waiver.

18.4 Cooperation

Each party must sign, execute and deliver all agreements, documents, instruments and act reasonably and effectively to carry out and give full effect to this agreement and the rights and obligations of the parties under it.

18.5 Counterparts

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

18.6 Amendment

This agreement may only be amended or supplemented in writing signed by the parties.

18.7 Unenforceability

Any provision of this agreement which is invalid or unenforceable in any jurisdiction is to be read down for the purposes of that jurisdiction, if possible, so as to be valid or enforceable, and is otherwise capable of being severed to the extent of the invalidity or enforceability, without affecting the remaining provisions of this agreement or affecting the validity or enforceability of that provision in any other jurisdiction.

18.8 Power of Attorney

Each attorney who executes this agreement on behalf of a party declares that the attorney has no notice of:

- (1) the revocation or suspension of the power of attorney by the grantor; or
- (2) the death of the grantor.

18.9 Joint parties

If two (2) or more parties are included within the same defined term in this agreement:

- (1) a liability of those parties under this document is a joint liability of all of them and a several liability of each of them;
- (2) a right given to those parties under this document is a right given severally to each of them; and
- (3) a representation, warranty or undertaking made by those parties is made by each of them.

18.10 Governing law

The law in force in the State of New South Wales governs this agreement. The parties:

- (1) submit to the exclusive jurisdiction of the courts of New South Wales and any courts that may hear appeal from those courts in respect of any proceedings in connection with this agreement; and
 - (2) may not seek to have any proceedings removed from the jurisdiction of New South Wales on the grounds of *forum non conveniens*.
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Schedule 1: Defined terms and interpretation

Part 1 – Definitions

Act	means the <i>Environmental Planning and Assessment Act 1979</i> (NSW).
Assign or Assignment	as the context requires refers to any assignment, sale, transfer, disposition, declaration of trust over or other assignment of a legal and/or beneficial interest.
Authority	means (as appropriate) any: <ol style="list-style-type: none">(1) federal, state or local government;(2) department of any federal, state or local government;(3) any court or administrative tribunal; or(4) statutory corporation or regulatory body.
Confidential Information	means any information and all other knowledge at any time disclosed (whether in writing and orally) by the parties to each other, or acquired by the parties in relation to the other's activities or services which is not already in the public domain and which: <ol style="list-style-type: none">(1) is by its nature confidential;(2) is designated, or marked, or stipulated by either party as confidential (whether in writing or otherwise);(3) any party knows or ought to know is confidential; or(4) is information which may be reasonably considered to be of a confidential nature.
Council Land	means the land contained in certificate of title folio identifier 1808/1022549 and known as 12-18 Adam Murray Way, Flinders.
DCP	means the 'Shellharbour Development Control Plan 2013'.
Development	means the development of the Land to use part of the ground floor of the building located on the Land as a medical centre (including associated fit-out).
Development Consent	means a consent issued under the Act for the Development.
GST Law	means <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth) and any other Act or regulation relating to the imposition or administration of the GST.
Index	means the Consumer Price Index (All Groups - Sydney) as

	published by the Australian Bureau of Statistics from time to time.
Land	means the land contained in certificates of title folio identifiers 1/SP83626 and 2/SP83626 and known as 1 and 2/7 Munmorah Circuit, Flinders.
Law	means all legislation, regulations, by-laws, common law and other binding order made by any Authority.
Monetary Contribution	means the amount of \$33,000.00.
Occupation Certificate	means a certificate issued under s109C(1)(c) of the EPA Act.
Ongoing Maintenance Fee	means the amount of \$450.00 per annum.
Planning Legislation	means the Act, the <i>Local Government Act 1993</i> (NSW) and the <i>Roads Act 1993</i> (NSW).
Specifications	means the specifications contained in the plan attached as Annexure 1 .
Works	means the construction of five (5) car parking spaces.

Part 2 - Interpretational Rules

clauses, annexures and schedules	a clause, annexure or schedule is a reference to a clause in or annexure or schedule to this agreement.
reference to statutes	a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them.
singular includes plural	the singular includes the plural and vice versa.
person	the word "person" includes an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association or any government agency.
executors, administrators, successors	a particular person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns.
dollars	Australian dollars, dollars, \$ or A\$ is a reference to the lawful currency of Australia.
calculation of time	if a period of time dates from a given day or the day of an act or event, it is to be calculated exclusive of that day.
reference to a day	a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later.
accounting terms	an accounting term is a reference to that term as it is used in accounting standards under the Corporations Act or, if not inconsistent with those standards, in accounting principles and

**Schedule 2:
Requirements under section 93F of the Act**

Requirement under the Act	This Planning Agreement
<p>Planning instrument and/or development application – (Section 93F(1) of the Act)</p> <p>The Developers have:</p> <p>(a) sought a change to an environmental planning instrument.</p> <p>(b) made, or proposes to make, a Development Application.</p> <p>(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.</p>	<p>(a) No</p> <p>(b) Yes</p> <p>(c) Not applicable</p>
<p>Description of land to which this agreement applies – (Section 93F(3)(a) of the Act)</p>	<p>The land contained in certificate of title folio identifier:</p> <p>(1) 1/SP83626 and 2/SP83626 and known as 1 and 2/7 Munmorah Circuit, Flinders; and</p> <p>(2) 1808/1022549 and known as 12-18 Adam Murray Way, Flinders.</p>
<p>Description of change to the environmental planning instrument to which this agreement applies – (Section 93F(3)(b) of the Act)</p>	<p>Not applicable.</p>
<p>Application of section 94 of the Act – (Section 93F(3)(d) of the Act)</p>	<p>Refer to clause 4 of the Planning Agreement.</p>
<p>Applicability of section 94A of the Act – (Section 93F(3)(d) of the Act)</p>	<p>Refer to clause 4 of the Planning Agreement.</p>
<p>Consideration of benefits under this agreement if section 94 applies – (Section 93F(3)(e) of the Act)</p>	<p>Refer to clause 4 of the Planning Agreement.</p>
<p>Mechanism for Dispute resolution – (Section 93F(3)(f) of the Act)</p>	<p>Refer to clause 13 of the Planning Agreement.</p>
<p>Enforcement of this agreement (Section 93F(3)(g))</p>	<p>Refer to clause 6 of the Planning Agreement.</p>
<p>No obligation to grant consent or exercise functions – (Section 93F(3)(9))</p>	<p>Refer to clause 14 of the Planning Agreement.</p>

Annexure 1:
Plan

GENERAL

1. ALL WORKMANSHIP AND MATERIALS SHALL BE IN ACCORDANCE WITH THE REQUIREMENTS OF CURRENT S.A.S CODES AND THE RULES, REGULATIONS OR OTHER REQUIREMENTS OF THE RELEVANT BUILDING AUTHORITY.
2. DO NOT OBTAIN DIMENSIONS BY SKIPPING THESE DRAWINGS. ONLY PRINCIPAL STRUCTURAL DIMENSIONS ARE SHOWN. ALL DIMENSIONS ARE IN MILLIMETERS.
3. READ THESE DRAWINGS IN CONNECTION WITH ALL OTHER CONTRACT DOCUMENTS AND THE REQUIREMENTS OF THE RELEVANT BUILDING AUTHORITY.
4. BEFORE PROCEEDING WITH WORK CLARIFY ANY DISCREPANCIES, Omissions OR SETTING OUT DIMENSIONS. CONSTRUCTION FROM THESE DRAWINGS AND ASSOCIATED CONSULTANCY DRAWINGS.
5. SHALL NOT COMMENCE UNTIL APPROVED BY THE LOCAL AUTHORITY.
6. CALCULATED CONSTRUCTION STRUCTURES SHALL BE MAINTAINED AT A STABLE CONDITION. DO NOT EXCEED THE DESIGN LIVE LOADS SHOWN OR CAUSE ANY ELEMENT TO BE OVERSTRESSED. TEMPORARY BRACING SHALL BE PROVIDED BY THE BUILDER TO KEEP THE ROOFS AND ELEVATIONS STRAIGHT AT ALL TIMES.
7. THE BUILDER SHALL OBTAIN 48 HOURS NOTICE FOR ALL ENGINEERING INSTRUCTIONS.
8. ALL SITE REGARDING AREAS SHALL BE FINALLY GRANTED TO THE SATISFACTION OF THE ENGINEER.
9. SURPLUS EXCAVATED MATERIAL SHALL BE PLACED WHERE DIRECTED OR REMOVED FROM SITE.

10. ALL DIMENSIONS THROUGH ADJACENT LOTS SHALL BE CONTAINED WITHIN EASEMENTS CONFORMING TO COUNCIL'S STANDARDS.
11. THE METHOD OF CONSTRUCTION AND THE MAINTENANCE OF SAFETY DURING CONSTRUCTION ARE THE RESPONSIBILITY OF THE BUILDER. IF ANY STRUCTURAL ELEMENT PRESENTS DIFFICULTY IN RESPECT OF CONTRACTORS' INSTRUCTIONS, THE BUILDER SHALL BE REFERRED TO THE STRUCTURAL ENGINEER FOR RESOLUTION BEFORE PROCEEDING WITH THE WORK.
12. IF THERE IS A DISCREPANCY IN MEASUREMENTS, CONSIDERABLE CARE SHALL BE TAKEN TO VERIFY THE DIMENSIONS. THE BUILDER SHALL BE RESPONSIBLE FOR OBTAINING THE DIMENSIONS FROM THE CONSTRUCTION DRAWINGS. THE ENGINEER'S RESPONSIBILITY IS LIMITED TO THE DIMENSIONS SHOWN ON THE DRAWINGS.

SITE PREPARATION
S.P1. STRIP OFF ALL VEGETATION, RUBBISH AND TOPSOIL UP TO CONTAINING ORGANIC OR ROOTY MATTER FROM THE AREA OF THE CONSTRUCTION.
S.P2. REMOVE SURFACE OBSTACLES AND RUBBISH. EXCAVATE IN CONJUNCTION WITH OR SUBSEQUENT TO THE WORKS AND RELOCATE TO SITE. TO REMOVED DELETED OR WASTED ADJACENT TO OR REMOVED FROM THE BUILDING.
S.P3. FILL SHALL CONSIST OF MATERIAL COMPACTED TO THE MAXIMUM DRY DENSITY UNLESS NOTED OTHERWISE IN MATTERS OF REPAIRS INCLUDING WITH PROPRIETARY CONSTRUCTION PLANT. ALL RELIEFS TO BE LAID ON 150mm HAZARD LAYERS.
S.P4. THE GEOTECHNICAL ENGINEER IS TO APPROVE THE MATERIAL USED FOR FILLING AND TO SUPERVISE PLACING OF COMPACTED FILL. FILLING IS TO BE OF THE TYPE RUBBISH, PLASTIC CLAY OR LARGE PIECES OF ROCK. BOLLERS WHICH WOULD INHIBIT COMPACTION.
S.P5. FOR ON-GROUND CONCRETE SLABS - FINISH WITH SAND DREGS. SURFACE ROOF EXCAVATION BARRELS, VERTICAL BARRIERS SHALL BE POLYETHYLENE SHEETING OF MIN. 0.2mm THICKNESS. LAPPING SHALL BE NOT LESS THAN 100mm AT JOINTS. PENETRATIONS BY PIPES SHALL BE TAPERED.
S.P6. BACKFILLING AND CONNECTION OF FILL SHALL BE CARRIED OUT SMALL UNLESS NOTED OTHERWISE IN MATTERS OF REPAIRS.
S.P7. ALL FINISHED SURFACE LEVELS OF CARPARKS ARE TO GRADE AWAY FROM THE BUILDING & SLOPE AWAY INTO THE DRAINAGE DRAINAGE SYSTEM IN ACCORDANCE WITH THE RELEVANT CONTRACT DRAWINGS.
S.P8. ALL DRAINAGE EXCAVATIONS ARE TO BE BACKFILLED UP TO FINISHED SURFACE LEVEL.
ENVIRONMENT
THE BUILDER IS CALLED TO OBSERVE ANY COUNCIL, EPA, OTHER AUTHORITY OR CONTRACT CONDITIONS IN CONJUNCTION WITH MANAGEMENT OF EXCAVATION, WORK, WORKMENT, SEGMENT CONCRETE AND DUST SUPPRESSION.

PAVEMENT FLEXIBLE
F.1. IT SHALL BE RECOGNIZED THAT THE CONTRACTOR HAS RECOGNIZED THE SITE AND HAS FULLY ACCOMMODATED HERSELF WITH THE NATURE OF THE GROUND, THE SUFFICIENCY OF THE GROUND TO SUPPORT CONSTRUCTION EQUIPMENT AND THE NECESSARY PREPARATION OF THE GROUND AND SHAPING OF THE SURFACE.
F.2. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION OF THE GROUND AND THE NECESSARY PREPARATION OF THE GROUND AND SHAPING OF THE SURFACE.
F.3. THE ASSUMED VALUE OF THE FLEXIBILITY OF THE GROUND SHALL BE DETERMINED BY THE CONTRACTOR TO UNDERTAKE SUFFICIENT CAR TESTING TO CONFIRM THE ASSUMED VALUE. WHERE A TEST VALUE HAS BEEN DETERMINED THE PAYMENT TO BE MADE FOR THE WORK SHALL BE AS FOLLOWS:
F.4. SURFACE COURSE - DRY WEIGHT GRADED SAND
F.5. SUB-BASE - DRY WEIGHT GRADED SAND
F.6. SUB-BASE - DRY WEIGHT GRADED SAND
F.7. THE FILL SHOULD BE PROUD FILLING WITH MIN. 100mm BOLLER OR EQUIVALENT TEST WITH 100mm GRADED SAND. SHOULD ANY SOFT SPOTS BE IDENTIFIED THEY SHOULD BE REMOVED AND REPLACED WITH THE SAME MATERIAL AS THE SURROUNDING AREA. ALL SUPERVISOR INSTRUCTIONS AND REQUIREMENTS TO BE COMPLIED WITH.
F.8. SURFACES SHALL BE FINISHED TO SUFFICIENT LEVEL AND GRADATION TO OBTAIN THE SATISFACTORY APPROVAL PRIOR TO PROCEEDING WITH THE PLACEMENT OF THE ASPHALT MATERIAL.
F.9. THE APPROVED SUB-BASE MATERIAL SHALL BE CERTIFIED OGRA 4 WHICH SHALL BE IN A MINIMAL 150mm THICK LAYER COMPACTED TO 95% BOLD.
F.10. THE APPROVED SURFACE COURSE SHALL BE CERTIFIED OGRA 4 WHICH SHALL BE IN A MINIMAL 150mm THICK LAYER COMPACTED TO 95% BOLD.
F.11. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING THE SUPERVISOR'S APPROVAL PRIOR TO PROCEEDING WITH THE PLACEMENT OF THE BASE COURSE. THE BASE COURSE SHALL BE EXTENDED MINIMUM 150mm FROM THE EDGE OF ROAD.
F.12. THE APPROVED BASE COURSE SHALL BE CERTIFIED OGRA 4 WHICH SHALL BE IN A MINIMAL 150mm THICK LAYER COMPACTED TO 95% BOLD.
F.13. PRIOR TO PLACEMENT OF THE PRIMEGRAV AND WITH THE REQUIRED APPROVAL FROM THE SUPERVISOR THE CONTRACTOR SHALL BE REQUIRED TO OBTAIN THE APPROVAL OF THE SUPERVISOR.
F.14. THE APPROVED BASE COURSE SHALL BE TO SHELLHURBAUGH CITY COUNCIL'S STANDARD PATTERN AND SPECIFICATION.
F.15. ALL JOINTS SHOULD BE REPLACED WITH SELECTED GRANULAR MATERIAL. IN JOINTS IN SOFT SPOTS. MINIMUM 150mm LAYERS AND SHOULD BE BACKFILLED WITH SELECTED GRANULAR MATERIAL. THE JOINTS SHOULD BE TRACKED OR WHEELED CONSTRUCTION VEHICLES THAT HAVE LOW CONTACT PRESSURE WITH THE GROUND ARE NOT SUITABLE FOR COMPACTING FILL.
F.16. CONSTRUCTION TESTS ARE TO BE UNDERTAKEN FOR ALL PAVEMENT LAYERS INCLUDING SUB-GRADE AT A RATE TO BE DETERMINED BY THE LOCAL AUTHORITY PRIOR TO COMMENCEMENT OF WORK. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING THE APPROVAL OF THE SUPERVISOR PRIOR TO PLACEMENT OF THE NEXT PAVEMENT LAYERS.

NOTES FOR SUBSOIL DRAINS

1. SUBSOIL DRAINAGE DESIGN SHALL BE BASED ON THE DESIGN METHOD IN THE RELEVANT S.A.S CODES. THE DESIGN SHALL BE BASED ON THE SUBSOIL SURFACE DRAINAGE OF ROAD STRUCTURES - REPORT NO. 31.
2. THE LOCATION AND EXTENT OF SUBSOIL DRAINAGE SHALL BE AFTER DISCUSSING ON PAYMENT MATERIALS TO BE USED AND NOTIFIED CONDITIONS. OWNER APPROVAL SHOULD BE OBTAINED FROM THE GEOTECHNICAL CONSULTANT.
3. A MINIMAL 10% SLOPE (MINIMUM MAXIMUM) MUST BE MAINTAINED FOR THE ENTIRE LENGTH OF THE SUBSOIL DRAINAGE. THE SUBSOIL DRAINAGE SHALL BE TRACKED OR WHEELED CONSTRUCTION VEHICLES THAT HAVE LOW CONTACT PRESSURE WITH THE GROUND ARE NOT SUITABLE FOR COMPACTING FILL.
4. SUB-SOIL DRAINAGE TO BE PROVIDED ALONG THE UPSLOPE, PERIMETER OF THE EXCAVATION AND ALONG THE DRAINAGE LINE. THE SUBSOIL DRAINAGE SHALL BE TRACKED OR WHEELED CONSTRUCTION VEHICLES THAT HAVE LOW CONTACT PRESSURE WITH THE GROUND ARE NOT SUITABLE FOR COMPACTING FILL.
5. SUB-SOIL DRAINAGE TO BE PROVIDED ALONG THE UPSLOPE, PERIMETER OF THE EXCAVATION AND ALONG THE DRAINAGE LINE. THE SUBSOIL DRAINAGE SHALL BE TRACKED OR WHEELED CONSTRUCTION VEHICLES THAT HAVE LOW CONTACT PRESSURE WITH THE GROUND ARE NOT SUITABLE FOR COMPACTING FILL.
6. PAYMENT'S ADDRESSING OPEN GROUND OR UNDER OTHER CONSTRUCTION IN HAND. DRAINAGE TRAP SHALL BE LOCATED WITH A CONCEALED, FALL TO APPROXIMATE DRAINAGE POINTS TO REDUCE THE RISK OF WATER BACKFLOW AND TO PROVIDE SUFFICIENT CLEARANCE TO AVOID WATER FLOW OR EXHAUSTION TOWARDS THE SUBSOIL DRAINS.
7. ALL DISTRIBUTION DRAINS ARE TO BE INSTALLED TO AS NEARLY AS POSSIBLE TO THE CONSTRUCTION FOOTING.

REINFORCEMENT

1. REINFORCEMENT SHOULD BE PLACED IN ACCORDANCE WITH THE RELEVANT S.A.S CODES AND THE RULES, REGULATIONS OR OTHER REQUIREMENTS OF THE RELEVANT BUILDING AUTHORITY.
2. REINFORCEMENT SHALL BE INSTALLED TO THE SPECIFICATION OF THE SHELLHURBAUGH CITY COUNCIL.
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TYPE	MIN. COVER	MAX. COVER	MIN. COVER	MAX. COVER
CONCRETE	15	15	15	15
STEEL	15	15	15	15
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CONCRETE

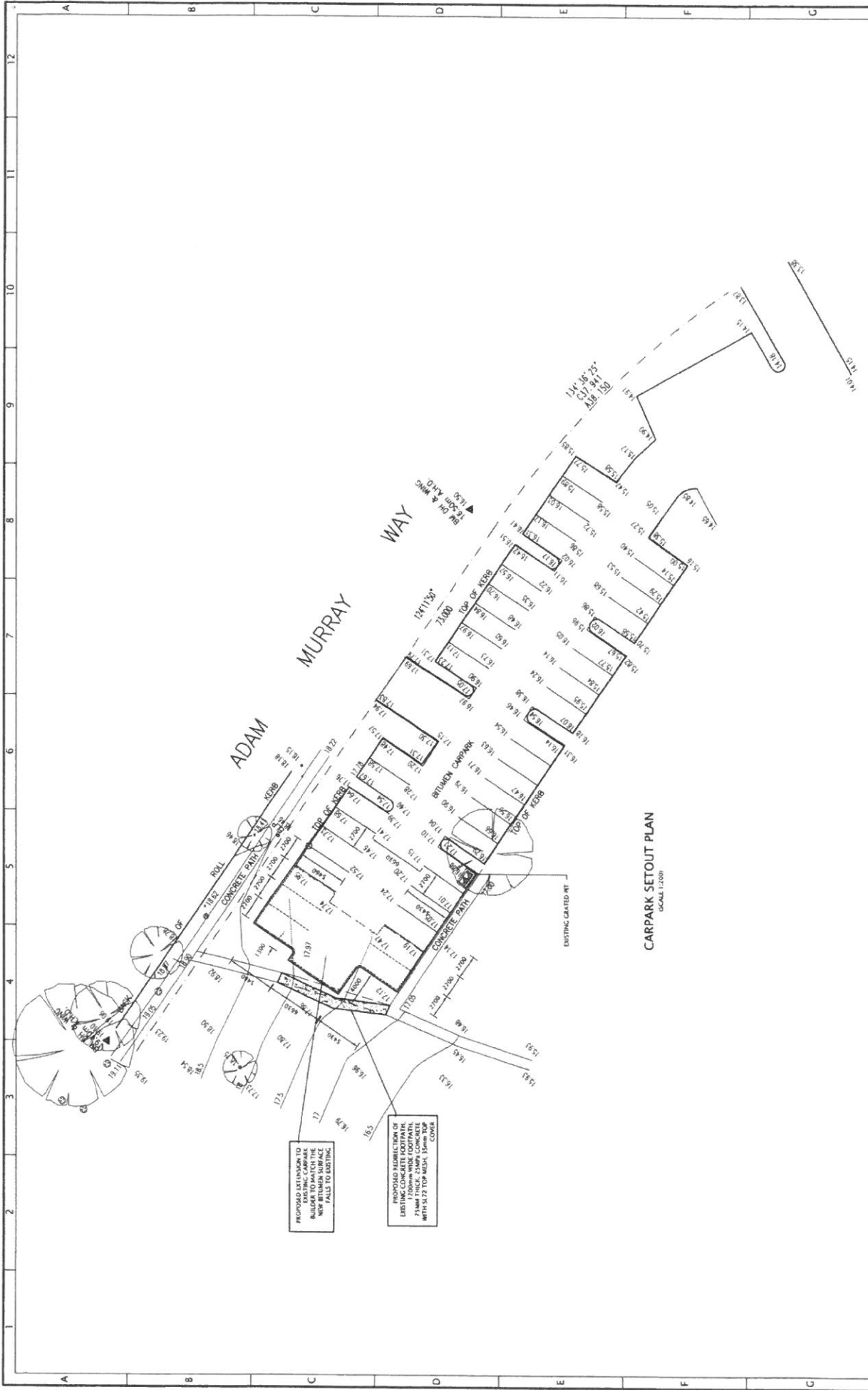
1. ALL WORKMANSHIP AND MATERIALS SHALL BE IN ACCORDANCE WITH THE REQUIREMENTS OF CURRENT S.A.S CODES AND THE RULES, REGULATIONS OR OTHER REQUIREMENTS OF THE RELEVANT BUILDING AUTHORITY.
2. CLEAR CONCRETE SHALL BE INSTALLED TO THE SPECIFICATION OF THE SHELLHURBAUGH CITY COUNCIL.
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11 Victoria Street
Washington NSW 2100
Telephone: 02 42 26 822
Facsimile: 02 42 26 827
Mobile: 0414 822 844
Email: info@atub.com.au
ATUB CONSULTING ENGINEERS
AUSTRALIAN ENGINEERING COUNCIL

ISSUE	DATE	REVISION	BY
A	28/11/13		

FILE	SPECIFICATION	SCALE	DATE PLOTTED
EXTENSION TO EX. CARPARK, 3 PARKING SPOTS	ADAM MURRAY WAY	AS SHOWN	28/11/13
FLINDERS	FLINDERS	UNSCALED	
CLIENT	DESIGN WORKSHOP AUSTRALIA		

PROJECT NO. 12136 CT



PROPOSED ADJUNCTION OF EXISTING CONCRETE FOOTPATH, 75mm THICK, 200mm CONCRETE WITH 50 TOP MESH, 150mm TOP COVER.

PROPOSED ADJUNCTION OF EXISTING CONCRETE FOOTPATH, 75mm THICK, 200mm CONCRETE WITH 50 TOP MESH, 150mm TOP COVER.

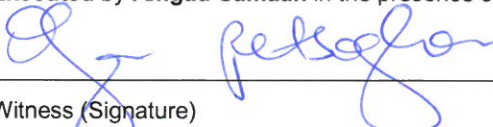
ISSUE FOR APPROVAL	AUTHOR	DATE	28/11/13
SCALE 1:100 @ A1	SCALE 1:200	DATE PLOTTED	28/11/13
THIS DRAWING SHALL BE READ IN CONJUNCTION WITH SPECIFICATIONS	THIS DRAWING SHALL BE READ IN CONJUNCTION WITH SPECIFICATIONS	SCALE	A5, D50mm
PROJECT	ADAM MURRAY WAY	PROJECT NO.	12136C2
CLIENT	DESIGN WORKSHOP AUSTRALIA	DATE	28/11/13
11 Victoria Street Telephone: 02 42 26 8827 Facsimile: 02 42 26 8827 Email: info@designworkshop.com.au 410 CONSULTING UNIT 11/13 VICTORIA ST SYDNEY NSW 1570 AU		PROJECT NO. 12136C2 DRAWING NO. A	

Execution page

Executed as an agreement.

Dated: ~~15/8/14~~ 19/09/14

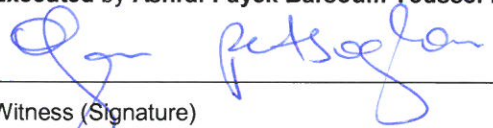
Executed by Amgad Samaan in the presence of:


Witness (Signature)


Olga Petsoglou.
Name of Witness (Print Name)


Amgad Samaan (Signature)

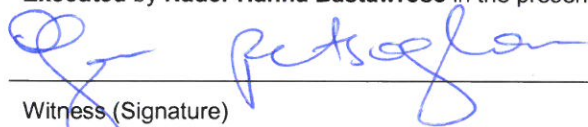
Executed by Ashraf Fayek Barsoum Youssef in the presence of:


Witness (Signature)


Olga Petsoglou.
Name of Witness (Print Name)


Ashraf Fayek Barsoum Youssef (Signature)

Executed by Nader Hanna Bastawrose in the presence of:


Witness (Signature)

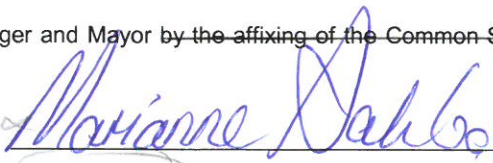
Olga Petsoglou.
Name of Witness (Print Name)


Nader Hanna Bastawrose (Signature)

Executed by Shellharbour City Council by its General Manager and Mayor by the affixing of the Common Seal of Council in accordance with resolution dated


General Manager (Signature)

CAREY MCINTYRE
Acting
Name of General Manager (Print Name)


Marianne Saliba
Mayor (Signature)

Marianne Saliba
Name of Mayor (Print Name)

Planning Agreement

Explanatory Note

7 Munmorah Circuit, Flinders

Marsdens Law Group

Level 1
49 Dumaresq Street
CAMPBELLTOWN NSW 2560

Tel: 02 4626 5077

Fax: 02 4626 4826

DX: 5107 Campbelltown

Ref: 65 36 6783



Planning Agreement

Explanatory Note

7 Munmorah Circuit, Flinders

1 Introduction

This Explanatory Note has been prepared in accordance with clause 25E of the *Environmental Planning & Assessment Regulation 2000* (NSW).

The purpose of this Explanatory Note is to provide a plain English summary to support the notification of a draft planning agreement (**Planning Agreement**) between the parties under s93F of the *Environmental Planning & Assessment Act 1979* (NSW) (**EPA Act**).

2 Parties to the Planning Agreement

The parties to the Planning Agreement are:

- (1) Shellharbour City Council (**Council**); and
- (2) the **Developers**, being collectively:
 - (a) Amgad Samaan;
 - (b) Ashraf Fayek Barsoum Youssef; and
 - (c) Nader Hanna Bastawrose.

3 Description of the Subject Land

The land to which the Planning Agreement relates is set out in the table below (**Land**).

Folio Identifier	Location
1/SP83626	1/7 Munmorah Circuit, Flinders (Developers' Land)
2/SP83626	2/7 Munmorah Circuit, Flinders (Developers' Land)
1808/1022549	12-18 Adam Murray Way, Flinders (Council Land)

4 Summary of Development

The Developers propose to apply for Development Consent in order to use part of the ground floor of the building located on the Developers' Land as a medical centre (including associated fit-out) (**Development**).

5 Summary of objects, nature and effect of the Planning Agreement

The offer made by the Developers as set out in the Planning Agreement is largely based on the needs identified by the Shellharbour Development Control Plan 2013 (**DCP**).

In that regard, the Development will result in a deficiency of car parking spaces on the Council Land under the DCP.

The objective of the Planning Agreement is to facilitate the delivery of the Contributions (set out below) (**Contributions**) and to ensure that sufficient car parking spaces are provided on the Council Land under the DCP for the benefit of the public.

The nature of the Planning Agreement is a contractual relationship between the Council and the Developers for the provision of the Contributions to support the Development.

The effect of the Planning Agreement is that the Developers will provide the Contributions in the manner provided for by the Planning Agreement.

The Contributions to be provided by the Developers under the Planning Agreement will allow Council to construct and maintain the required car parking spaces on the Council Land in the future and are summarised in the table below.

Description of Contributions	
(1)	Monetary Contribution of \$33,000.00 (to be paid to Council prior to the issue of an Occupation Certificate for the Development).
(2)	Ongoing Maintenance Fee payable to Council for the amount of \$450.00 per annum, which is to be increased annually in accordance with the Consumer Price Index as set out in clause 8 of the Planning Agreement.

6 Assessment of the merits of the Planning Agreement

The Planning Agreement satisfies the objective of making provision for sufficient car parking spaces to be constructed on the Council Land so as to comply with the DCP and to ensure that the public does not bear those costs.

Arising from the Planning Agreement, the public will gain the benefit of being able to use the car parking spaces on the Council Land, when not in use by the customers of the commercial development.

7 The planning purposes served by the Planning Agreement

In accordance with section 93F(2) of the EPA Act, the Planning Agreement promotes the following public purpose:

- (1) Provision of public amenities and public services.
- (2) The monitoring of the planning impacts of development of the Land.

The Council and the Developers have assessed the Planning Agreement and hold the view that the provisions of the Planning Agreement provide a reasonable means of achieving the public purposes set out above. This is because the Contributions will contribute to the provision of the car parking spaces which will result in sufficient car parking spaces being made available to the public on the Council Land in accordance with the DCP.

8 How the Planning Agreement promotes the public interest

The Planning Agreement promotes the public interest by committing the Developers to make the Contributions which will result in sufficient car parking spaces being made available to the public on the Council Land.

9 How the Planning Agreement Promotes the Objects of the Act

The Planning Agreement promotes the following objects of the EPA Act:

-
- (1) The proper management, development and conservation of land.
 - (2) The promotion and co-ordination of the orderly and economic use and development of land.
 - (3) The Planning Agreement will not preclude the public being provided with the opportunity for involvement and participation in development assessment. The public have been provided the opportunity to be involved with the development assessment and are invited to make comment on the Planning Agreement, particularly with regard to the public interest.

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

Upon payment of the Monetary Contribution by the Developers, Council will include the works (being construction of the car parking spaces on the Council Land) in its Capital Works Program.

11 How the Planning Agreement promotes the elements of Council's charter

The Planning Agreement promotes a number of elements of Council's Charter under section 8 of the *Local Government Act 1993* (NSW), as follows:

- (1) The exhibition of the Planning Agreement facilitates the involvement of members of the public, while council staff were involved in the development of the Planning Agreement.
 - (2) this explanatory note is prepared for the purposes of keeping the local community and the State government (and through it, the wider community) informed about its activities.
 - (3) the Planning Agreement makes it clear that Council has a statutory role as consent authority for development and that the Planning Agreement is not intended to unlawfully influence the exercise of its regulatory functions, ensuring that Council will act consistently and without bias, particularly where an activity of the Council is affected.
 - (4) to have regard to the effects of its planning decisions by ensuring that the layout and design of car parks function efficiently and safely.
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