



Voluntary Planning Agreement

Under section 7.4 of the Environmental Planning and Assessment Act, 1979

Central Coast Council & Scape Properties

Draft Version

Central Coast Council

July 23



Voluntary Planning Agreement

Author: Central Coast Council

Central Coast Council & Proponent

Date: July 23

Draft Version

Approved by:

Date of Approval: date

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Voluntary Planning Agreement

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Voluntary Planning Agreement

SUMMARY SHEET

Council:

Name: Central Coast Council

Wyong Office: 2 Hely St / PO Box 20 Wyong NSW 2259 | P 02 4350 5555

Email: ask@centralcoast.nsw.gov.au

Representative: Chief Executive Officer

Proponent:

Name: Scape Properties

Address: C204/6 Pine Tree Lane, Terrigal, NSW, 2260 (PO Box 1167, Terrigal NSW 2260)

Telephone: 02-4384 4376

Email: andrew@scapeconstructions.com.au

Representative: Mark Kelly, General Manager ADW Johnson

Land:

See definition of *Land* in clause 4.1

Development:

See definition of *Development* in clause 4.1

Application of s7.11 s7.12 and s7.24 of the Act:

See clause 3

Registration:

See clause 9

Dispute Resolution:

See clause 7

DATE: **date**

Central Coast Council (ABN 73 149 644 003) of 2 Hely St, Wyong and 49 Mann Street Gosford, in the State of New South Wales (**Council**)
and

Proponent (ACN 611 255 540) of C204/6 Pine Tree Lane, Terrigal, NSW, 2260 (PO Box 1167, Terrigal NSW 2260), in the State of New South Wales (**Proponent**)

BACKGROUND

- A. Scape Properties is seeking to enter into a VPA for a local park (the proposed park) associated with the residential subdivision development approved in 2013 (DA967/2013). The location of the park was identified in the approved Concept Plan.
- B. Specific open space contributions for the park were identified in the Statement of Commitments dated October 2011, which Scape Properties is seeking to partially offset for the embellishment and land dedication associated with the local park.
- C. Concept plans of the proposed park have been prepared and are attached at **Schedule 3**. The Proponent has consulted with Council in the preparation of these plans.

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 the Development of the Land

3 OPERATION OF THIS AGREEMENT

- 3.1 This Agreement takes effect once executed by all parties.
- 3.2 This Agreement identifies that the Proponent will undertake the design, development approvals, project management and construction of a park associated with the residential subdivision development approved in 2013 (DA 267 2013).

On completion, we propose to dedicate the park and land to Council.

The inclusion and location of the park was identified in the approved Concept Plan.

A concept plan has been prepared for the park and has been discussed with Council. It is anticipated that the standard of park will be similar to the concept plan (**Refer Schedule 3**)

- 3.4 This Agreement does **not** exclude the operation of section 7.11 and section 7.12 of the Act.
- 3.5 This Agreement does **not** apply to any obligation that the Proponent may have to pay contributions, fees or charges under section 7.11 and section 7.12 of the Act or the *Water Management Act 2000* in respect to the Development of the Land.

4 DEFINITIONS AND INTERPRETATION

4.1 In this Agreement the following definitions apply:

Act means the *Environmental Planning and Assessment Act 1979*.

Amending LEP means an environmental planning instrument that has the effect of amending the *Wyang Local Environmental Plan 2013* so the Development of the Land is permissible with consent.

Consent means the consent granted to the Development Application.

Council means Central Coast Council.

Current Development Contributions Plan means the applicable plan and the Section 7.11 Contributions Plan for Central Coast Council.

Defects Liability Period. The period of twelve months which commences on the date of achieving Practical Completion of the proposed park.

Development means the development.

Development Application means a development application under Part 4 of the Act seeking consent to undertake the Development on the Land.

Instrument Change means the taking of effect of the Amending LEP.

Land means the land identified in Schedule 1 of this Agreement, being Lot 194 DP 1247440 also known as Bargan Road, CRANGAN BAY NSW 2259

Parties mean the Council and the Proponent, including both their successors and assigns.

Practical Completion means the stage at which the Park Works are complete, aside from minor works that would not prevent the park from being used for its intended purposes.

Proponent means the person or entity identified in Item 1 of Schedule 2 to this Agreement.

Proponent's Representative is the person identified in Item 2 of Schedule 2 to this Agreement, appointed by the Proponent to act on behalf of the Proponent, or that person, from time to time, notified to Council in writing by the Proponent.

Proposed Park. The proposed park, as shown conceptually in Schedule 4.

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

5 PAYMENT OF MONETARY CONTRIBUTIONS

- 5.1 The Proponent must pay the Indexed Contribution Amount for each residential lot in the Residential Subdivision on or before the issue of a subdivision certificate in accordance with the Contributions Schedule set out in DA/967/2013/D (and any future modifications).

The Monetary Contribution is to be used by Council towards the works listed in the Northern Districts Contribution Plan.

- 5.2 The monetary contributions required by Clause 5.1 of this Agreement may be offset by a credit to be given to the Proponent by Council for the land and works outlined in Schedule 4 of the agreement and approved by SCC/xx/2023.
- 5.3 Works are to be completed as approved under SCC/xx/2023 and the Contribution Works Procedure outlined in Schedule 5.
- 5.4 The Parties agree that nothing that the Proponent does to meet its obligations under this Agreement will give rise to a reduction or variation or credit in any monetary contributions that might later be required by a Consent to undertake the Development on the Land.

6 PROPONENT OBLIGATIONS

- 6.1 In regard to the land and works outlined in Schedule 4, the Proponent undertakes that it will, as part of the process to seek development consent for the Development of the Land, undertake each of the following, at no cost to Council:
- (a) In consultation with Council's Open Space and Recreation unit, finalise the Concept Design drawings of the proposed park. The Concept Design will consider preferred layout of the park, play elements, park infrastructure, access requirements, landscape design and tree plantings, and maintenance considerations for Council.
 - (b) Prepare necessary reports to Council for review and to obtain approval for the proposed park.
 - (c) Prepare construction drawings for review and approval for the proposed park.
 - (d) Construct the park on Council's behalf.
 - (e) Dedicate the park and land to Council.
- 6.2 The obligations set out in Section 6.1 will be carried out at the Proponent's expense.

7 PROPONENT WARRANTIES AND INDEMNITIES

- 7.1 The Proponent warrants to Council that:
- (a) It is the registered owner of the Land;
 - (b) It is able to fully comply with its 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.

8 COUNCIL OBLIGATIONS

- 8.1 Council will review design works submitted as outlined in Clause 6 of this Agreement and promptly notify the Proponent in writing within 6 weeks of receiving the design works:
 - (a) That the Works are approved, or
 - (b) That, acting reasonably, modifications are required to the design drawings. The Proponent may:
 - i Submit to Council an amended design which incorporates Council's amendments.
 - ii Advise Council that the Proponent does not agree with the proposed modifications, and will refer the matter for dispute resolutions under Clause 11.
 - (c) On receipt of an amended design as described in 8.1(b)(i) Council will, review and advise in writing within 6 weeks the design works are approved, or, acting reasonably request further amendments as described in Clause 8.1(b).
 - (d) On submission of an amended design, if Council still requires further amendments, Council and the Proponent are to meet and resolve design jointly at an agreed location. Should an agreement not be reached the matter will be managed under the dispute resolutions under Clause 11.
- 8.2 Council is to grant the Proponent and its employees, agents and contractors licence to use to access Council land to undertake any activities associated with the works.

9 REVIEW OF THIS AGREEMENT

- 9.1 Any amendments, variation or modification to or of, or consent to any departure by any party from the terms of this Agreement shall have no force or effect unless effected by a document executed by the parties which complies with the requirements of section 7.5 of the Act.

10 FURTHER AGREEMENT RELATING TO THIS AGREEMENT

- 10.1 The Parties may, at any time and from time to time, enter into agreements relating to the subject matter of this Agreement for the purpose of implementing this Agreement that are not inconsistent with this agreement.

11 DISPUTE RESOLUTION

- 11.1 If a dispute arises out of or relates to this Agreement (including any dispute as to the meaning, performance, validity, subject matter, breach or termination of this Agreement or as to any claim in tort, in equity or pursuant to any statute) (**Dispute**), any court or arbitration proceedings shall not be commenced by or against Council, the Proponent 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.
- 11.2 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 this clause 10, 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.

11.3 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.

11.4 Should mediation fail to resolve any dispute then the dispute shall be determined by arbitration pursuant to the *Commercial Arbitration Act 2010* and the General Manager of the Council shall request the President for the time being of the Law Society of New South Wales to appoint an arbitrator to carry out such arbitration in accordance with the provisions of such Act.

11.5 Despite clause 10.1, either Council or the Proponent 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.

12 COSTS

12.1 The Proponent agrees to pay or reimburse the costs of Council in connection with the:

- (a) Negotiation, preparation and execution of this planning agreement, to a maximum of \$2,500.00.
- (b) Advertising and exhibiting this planning agreement in accordance with the Act, to a maximum of \$350.00, and
- (c) All costs related to registration of this planning agreement where required, within 7 working days after receipt of a tax invoice from Council.

13 REGISTRATION OF THIS AGREEMENT

13.1 The parties agree to register this Agreement for the purposes of section 7.6(1) of the Act.

13.2 On execution, the Proponent is to provide Council with each of the following, at no cost to Council:

- 13.2.1 An instrument in registrable form requesting registration of this Agreement on the title to the Land duly executed by the Proponent, and
- 13.2.2 The written and irrevocable consent of each person to referred in section 7.6(1) of the Act to that registration; and

13.2.3 Production of the certificate of title for the Land, for the purpose of procuring the registration of this Agreement.

13.3 The Proponent is to do such other things as are reasonably necessary to remove any notation relating to this Agreement from the title to the Land once the Proponent has completed its obligations under this Agreement or this Agreement is terminated or otherwise comes to an end for any other reason.

14 NOTICES

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

- (a) Delivered or posted to that Party at its address set out in (b) below.
- (b) Faxed or emailed to that Party at the relevant details set out below.

(i) Council: Central Coast Council

Attention: Chief Executive Officer
Address: DX 7306 WYONG
Fax No: (02) 4350 2098
Email: ask@centralcoast.nsw.gov.au

(ii) Proponent: Proponent

Attention: Mark Kelly
Address: 5 Pioneer Avenue, Tuggerah NSW 2259
Email: markk@adwjohanson.com.au

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

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

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

14.4 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 it is 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.

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

17 GOVERNING LAW AND JURISDICTION

17.1 This Agreement is governed by the law of New South Wales, Australia. The parties submit to the nonexclusive 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 8 of this Agreement have first been satisfied.

18 NO FETTER

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

19 SEVERABILITY

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

20 WAIVER

20.1 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.

21 EXPLANATORY NOTE

21.1 The Appendix contains the Explanatory Note relating to this Agreement required by Clause 25E of the Regulation.

21.2 Pursuant to Clause 25E(7) of the Regulation, the Parties agree that the Explanatory Note in the Appendix is not to be used to assist in construing this Agreement.

22 EXECUTION PANEL

EXECUTED as a Voluntary Planning Agreement

Date: date

Executed pursuant to delegated authority under section 377 of the *Local Government Act, 1993*, in accordance with the resolution of the Central Coast Council dated date.

Chief Executive Officer	Witness [BLOCK LETTERS]
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DAVID FARMER	WITNESS NAME
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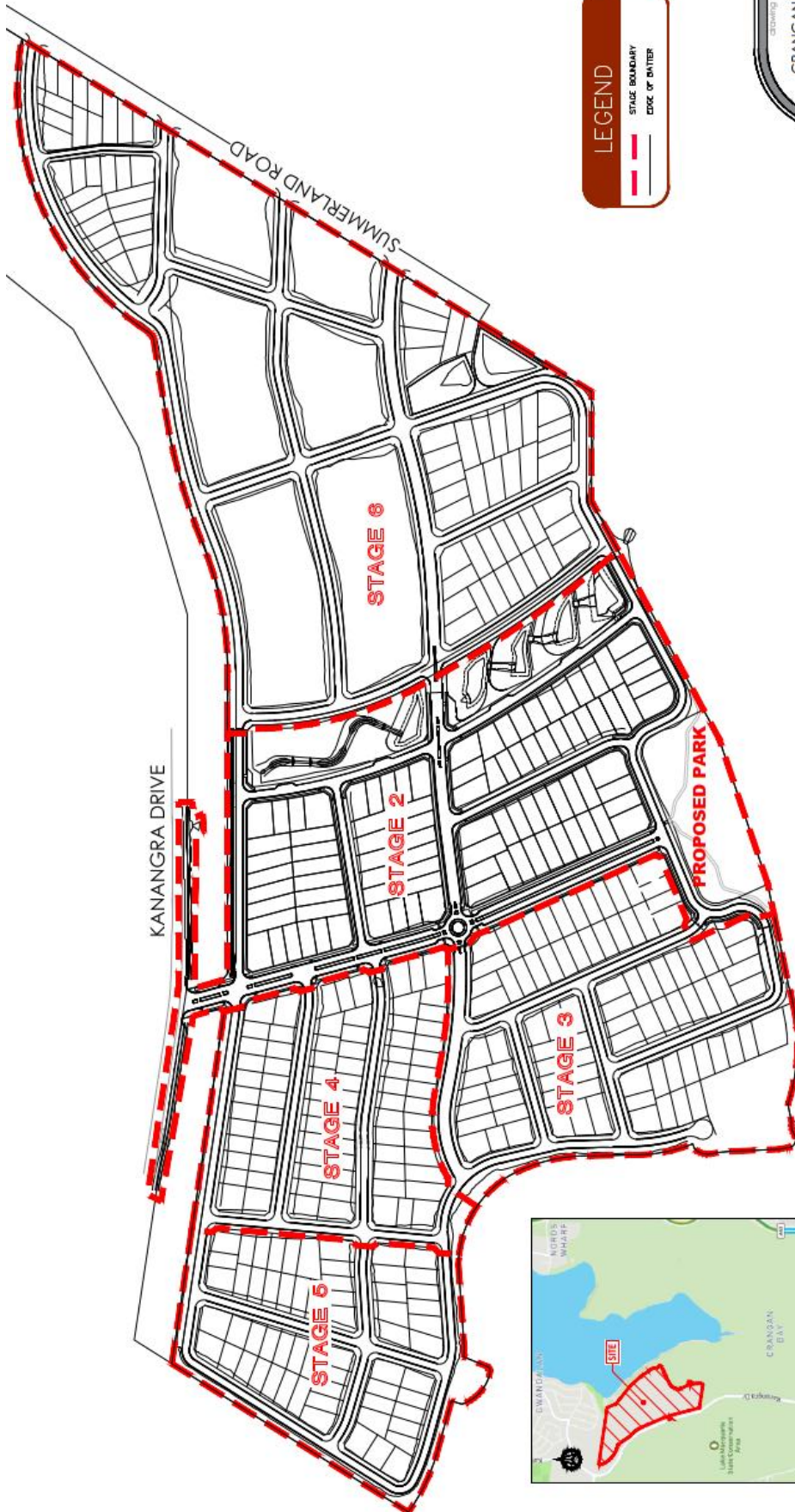
Name [BLOCK LETTERS]	Name [BLOCK LETTERS]
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Director/Secretary [if not Sole Director]	Witness [BLOCK LETTERS]
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PROPONENT NAME	WITNESS NAME
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Name [BLOCK LETTERS]	Name [BLOCK LETTERS]
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SCHEDULE 1



LEGEND

STAGE BOUNDARY
CODE OF MATTER



LOCALITY PLAN

PLAN
SCALE 1:1,2000

drawing title:
CRANGAN BAY STAGING PLAN

location:
KANANGRA ROAD
GWANDALAN

authority:
CENTRAL COAST COUNCIL

project:
190454-ESK-065

client:
 scape
LANDSCAPE ARCHITECTS

SCHEDULE 2

ITEM	DEFINED TERM	PARTICULARS
1	Proponent	Scape Properties ACN: 611 255 540 C204/6 Pine Tree Lane, Terrigal, NSW, 2260 (PO Box 1167, Terrigal NSW 2260)
2	Proponent's Representative	Mark Kelly 5 Pioneer Avenue, Tuggerah 2259

SCHEDULE 3

Concept Plans - Refer Separate attachment.

SCHEDULE 4 – Works and Land Dedication Offsets

Work Item	Work Item	Description	Determination of Contribution Value
1	Playspace	Provision of a playspace and open space located at Bargan Way as shown on Schedule 3	<p>For the purposes of this Agreement, the Parties acknowledge that the Value in relation to the Works is the value of the Works specified in the tender construction costs ,design costs, and project management costs and agreed between the Parties.</p> <p>If the Applicant's actual cost of carrying out the Works, including any costs incurred pursuant to this Agreement, determined at the date on which the Works is Handed-Over to the Council:</p> <ul style="list-style-type: none"> • Exceeds the agreed Works Value, the Applicant is not entitled to claim credit or reimbursement, as the case may be, for the difference, or an increase to the Work Value; • Is less than the agreed work Value, then for the purposes of this Agreement the agreed work Value is taken to be the actual cost of carrying out the Works.
2	Dedication of Land	Land size and legal description to be added (once subdivision complete(Valuation provided by a registered valuer, valuation is to be at the applicants cost.

SCHEDULE 5 – CONTRIBUTION WORKS PROCEDURE

1. Obligation to Carry Out Works

- 1.1 The Applicant is to carry out and complete the Works on the Land at the location shown on the Location Plan in Schedule 1.
- 1.2 The Applicant's obligation under clause 1.1 exists irrespective of whether the Applicant:
 - 1.2.1 Carries out the Works itself, or
 - 1.2.2 Enters into an agreement with another person under which the other person carries, out the Works on the Applicant's behalf.
- 1.3 The Applicant is to carry out and complete the Works in a good and workmanlike manner having regard to the intended purpose of the Works and otherwise to the satisfaction of Council in accordance with:
 - 1.3.1 The Development Consent, and
 - 1.3.2 The Construction Certificate with reference number SCC/XX/2023, and all applicable laws, including those relating to occupational health and safety, and
 - 1.3.3 This Agreement to the extent that it is not inconsistent with the Development Consent or an applicable law.
- 1.4 In the event of an inconsistency between the Planning Agreement and the Development Consent or any applicable law, the Development Consent or the law prevails to the extent of the inconsistency.
- 1.5 It is the Applicant's responsibility to ensure that everything necessary for the proper performance of its obligations under the Planning Agreement is supplied or made available.
- 1.6 The Works is to be Handed-Over to the Council in accordance with Schedule 4 of the Planning Agreement.

2. Ownership of Works, etc

- 2.1 Nothing in, or done under, this Agreement gives the Applicant:
 - 2.1.1 any right, title or interest in the Works, or
 - 2.1.2 any estate or interest in the Land, whether at law or in equity.

3. Effect of Applicant's Compliance with this Agreement

- 3.1 For the purposes of condition 8 of the Development Consent (DA/976/2013 – as amended) and s7.4 of the Act:
 - 3.1.1 the Hand-Over of the Works under this Agreement by the Applicant satisfies the Applicant's obligation under the Planning Agreement to make the Monetary Contributions to the extent of the sum of all Contribution Values, and

3.1.2 the Applicant is not required to pay the Monetary Contributions to that extent.

4. Determination of Value

4.1 For the purposes of this Agreement, the Parties acknowledge that the Value in relation to the Works is the value of the Works specified in the tender costs, design and project management costs and agreed between the Parties.

4.2 If the Applicant's actual cost of carrying out the Works, including any costs incurred pursuant to this Agreement, determined at the date on which the Works is Handed-Over to the Council:

4.2.1 Exceeds the agreed Works Value, the Applicant is not entitled to claim credit or reimbursement, as the case may be, for the difference, or an increase to the Work Value,

4.2.2 Is less than the agreed work Value, then for the purposes of this Agreement the agreed work Value is taken to be the actual cost of carrying out the Works.

5. Access to the Land

5.1 Subject to any applicable law, the Party that owns the Land authorises the other Party to enter the Land for the purposes of this Agreement.

6. Protection of People and Property

6.1 The Applicant is to ensure in relation to the carrying out of the Works that:

6.1.1 Necessary measures are taken to protect people and property, and

6.1.2 Unnecessary interference with the passage of people and vehicles is avoided, and

6.1.3 Nuisances and unreasonable noise and disturbances are prevented.

7. Damage and Repairs to the Works

7.1 The Applicant, at its own cost, is to repair and make good to the satisfaction of the Council any loss or damage to the Works from any cause whatsoever which occurs prior to the date on which the Works is Handed-Over to the Council.

8. Hand-Over of Works

8.1 The Applicant is to give the Council not less than 20 calendar days written notice of the date on which it proposes to Hand-Over the Works to the Council, which is not to be later than the Hand-Over Date.

8.2 The Council may, at any time before the date specified in the notice referred to in clause 8.1, direct the Applicant in writing:

8.2.1 To carry out work specified in the notice to complete the Works in accordance with clause 1.3 before it is Handed-Over to the Council, and

8.2.2 To Hand-Over the Works completed in accordance with the Council's direction to the Council by a specified date, irrespective of whether that date is later than the Hand-Over Date.

- 8.3 The Applicant is to comply with a direction referred to in clause 8.2 according to its terms and at the Applicants own cost.
- 8.4 Before the Works are handed-over to the Council, the Applicant is to remove from the Land:
- 8.4.1 Any rubbish or surplus material, and
 - 8.4.2 Any temporary works, and
 - 8.4.3 Any construction plant and equipment;
- relating to the carrying out of the Works as the case requires.
- 8.5 The Works is taken, to be Handed-Over to the Council when all of the following have occurred:
- 8.5.1 The Council gives the Applicant written notice that the Works, including any direction given under clause 8.2 have been completed to the Council's satisfaction, and
 - 8.5.2 The Council issues the Subdivision Certificate for the Development, and
 - 8.5.3 The Council gives the Applicant written notice that Works-As-Executed-Plan satisfactory to the Council have been provided to the Council, and
 - 8.5.4 The Applicant has given the Council Security under clause 13.

9. Works-As-Executed-Plan

- 9.1 Works As Executed Plans are to be submitted to Council prior to the issue of the Subdivision Certificate for the Development.

10. Rectification. of Defects

- 10.1 During the Defects Liability Period the Council may give to the Applicant a Rectification Notice in relation to the Works specifying:
- 10.1.1 the Works requiring rectification,
 - 10.1.2 the action required to be undertaken by the Applicant to rectify those Works, and
 - 10.1.3 the date on which those Works are to be rectified.
- 10.2 The Applicant must comply with a Rectification Notice at its own cost according to the terms of the Notice whether or not the cost of doing so exceeds the amount of Security provided under clause 13.
- 10.3 When the Applicant considers that rectification is complete, the Applicant may give to the Council a Rectification Certificate relating to the Works the subject of the relevant Rectification Notice.
- 10.4 A Rectification Certificate discharges the Applicant from any further obligation to comply with the relevant Rectification Notice.
- 10.5 If the Applicant does not comply with a Rectification Notice, the Council may do such things as are necessary to rectify the defect and may:

- 10.5.1 Call upon the Security to meet its costs in rectifying the defect, and
- 10.5.2 Recover, as a debt due in a court of competent jurisdiction, any difference between the amount of the Security and the costs incurred by the Council in rectifying the defect.

11. Cost of Works carried out by the Council

- 11.1 The Parties acknowledge and agree that where, in accordance with this Agreement, the Council incurs a cost in carrying out, completing or rectifying a defect in the Works, the Council may recover from the Applicant in a court of competent jurisdiction its full costs, including costs determined in accordance with clause 11.2.1-11.2.3.
- 11.2 The Council's costs of carrying out, completing or rectifying the Works in accordance with this Agreement include, but are not limited to:
 - 11.2.1 The reasonable costs of the Council's servants, agents and contractors reasonably incurred for that purpose
 - 11.2.2 All fees and charges necessarily or reasonably incurred by the Council in order to have the Works carried out, completed or rectified,
 - 11.2.3 Without limiting the generality of the preceding sub-clause, all legal costs and expenses reasonably incurred by the Council, by reason of the Applicant's failure to comply with this Agreement.

12. Indemnity and Insurance

- 12.1 The Applicant indemnifies the Council, its employees, officers, agents, contractors and workmen from and against all losses, damages, costs (including legal costs on a full indemnity basis), charges, expenses, actions, claims and demands whatsoever which may be sustained, suffered, recovered or made arising in connection with the carrying out by the Applicant of the Works and any other obligation under this Agreement.
- 12.2 The Applicant is to take out and keep current to the satisfaction of the Council the following insurances in relation to the Works up until the relevant date of Hand-Over to Council:
 - 12.2.1 Contract works insurance, noting the Council as an interested party, for the full replacement value of the Works (including the cost of demolition and removal of debris, consultants' fees and authorities' fees), to cover the Applicant's liability in respect of damage to or destruction of the Works,
 - 12.2.2 Public liability insurance for at least \$20,000,000 for a single occurrence, which covers the Council, the Applicant and any subcontractor of the Applicant, for liability to any third party,
 - 12.2.3 Workers compensation insurance as required by law, and
 - 12.2.4 Any other insurance required by law.
- 12.3 If the Applicant fails to comply with clause 12.2, the Council may effect and keep in force such insurances and pay such premiums as may be necessary for that purpose and the amount

so paid shall be a debt due from the Applicant to the Council and may be recovered by the Council as it deems appropriate including:

12.3.1 By calling upon the Security provided by the Applicant to the Council under this Agreement, or

12.3.2 Recovery as a debt due in a court of competent jurisdiction.

12.4 The Applicant is not to commence to carry out the Works unless it has first provided to the Council satisfactory written evidence of all the insurances specified in clause 12.2.

13. Provision of Security

13.1 Prior to the works being Handed Over to the Council and the Council giving notice under Clause 8.5 the Applicant must provide the Council with Security in the amount of 5 percent (5%) of the cost of works.

13.2 The Council may call upon the Security if the Council considers that the Applicant has failed to comply with a Rectification Notice issued under clause 11 or any, notice referred to in clause 13.1 in respect of a Rectification Notice.

13.3 If the Council calls on the Security, the Council may, by notice in writing to the Applicant require the Applicant to provide a further Security in an amount which, together with any unused portion of any existing Security does not exceed the amount specified in clause 13.1.

13.4 The Council may apply the Security in satisfaction of:

13.4.1 The carrying out of the Works, and

13.4.2 Any liability, loss, cost, charge or expense directly or indirectly incurred by the Council because of the failure by the Applicant to comply with this Agreement.

13.5 The Council is to release and return the Security to the Applicant, less any amount of the Security called upon by the Council, in accordance with clause 13.2, on the later of:

13.5.1 60 days after the expiry of the Defects Liability Period, and

13.5.2 All Rectification Certificates relating to Works the subject of all Rectification Notices having been given to the Council under clause 11.

14. Failure to Carry out Works

14.1 Subject to clause 14, if the Council considers the Applicant is in breach of any obligation under this Agreement relating to the carrying out of the Works, the Council may but is not obliged to give the Applicant a notice requiring:

14.1.1 The breach to be rectified to the Council's satisfaction, or

14.1.2 The carrying out of the Works immediately cease and the breach to be rectified to the Council's satisfaction.

- 14.2 A notice given under clause 14.1 is to allow the Applicant a period of not less than 28 days to rectify the breach
- 14.3 Without limiting any other rights Council has to enforce this Agreement, the Council may, if the Applicant does not comply with a notice given under clause 14.1:
- 14.3.1 Call upon the Security in accordance with clause 14, and
 - 14.3.2 Carryout and complete the Works.
- 14.4 For the purposes of clause 14.3, any difference between the amount of the Security called upon by the Council and the costs incurred by the Council in completing the Works may be recovered by the Council from the Applicant as a debt due in a court of competent jurisdiction.

APPENDIX

Environmental Planning and Assessment Regulation 2000

(Clause 25E)

EXPLANATORY NOTE

Voluntary Planning Agreement

Under section 7.4 of the *Environmental Planning and Assessment Act, 1979*

Parties

Central Coast Council (ABN 73 149 644 003) of Council Chambers, Hely Street, Wyong, and 49 Mann Street Gosford, in the State of New South Wales (**Council**)

and

Scap Properties (ACN 611 255 540) of C204/6 Pine Tree Lane, Terrigal, NSW, 2260 (PO Box 1167, Terrigal NSW 2260), in the State of New South Wales (**Proponent**)

Description of the Land to which the Planning Agreement Applies

Lot 194 DP 1247440 also known as Bargan Road, CRANGAN BAY NSW 2259

Description of Proposed Development

Development means the development as approved – DA/967/2013

Summary of Objectives, Nature and Effect of the Planning Agreement

Objectives of the Agreement

The objective of the Agreement is to facilitate the construction of a park

Nature of the Planning Agreement

The Agreement is a planning agreement under section 7.4 of the *Environmental Planning and Assessment Act 1979* (Act). It is an agreement between the Council and the Proponent. The Agreement is a voluntary agreement under which provisions are made by the Proponent for the conservation or enhancement of the natural environment section 7.4(2)(f).

Effect of the Agreement

The Agreement:

- relates to the carrying out by the Proponent of the Development on the Land,
- does not exclude the application of section 7.11, section 7.12 or section 7.24 to the Development,

- requires the Proponent to obligations (construction of a park and dedication of land to Council)
- 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 Agreement

Planning Purposes Served by the Agreement

The Agreement:

- The Planning Agreement will facilitate the construction of a park and playspace at Bargan Road, Crangan Bay. Following completion of the work, the land will be dedicated to Council

How the Agreement Promotes the Public Interest

The Agreement promotes the public interest by providing public amenities to the local community through the delivery of a new playground and park.

For Planning Authorities:

Councils – How the Agreement Promotes the Council’s Charter

The Planning Agreement promotes the Council’s Charter under Section 8A of the Local Government Act 1993 by working with others to secure appropriate services for the local community.

Whether the Agreement Conforms with Council’s Capital Works Program

The draft Planning Agreement is consistent with Council’s adopted Capital Works Program

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

Yes, the draft Planning Agreement requires dedication of the land and infrastructure to Council consistent with the requirements of the relevant Subdivision Certificate.