

DRAFT

Planning Agreement

Environmental Planning and Assessment Act 1979 (NSW)

Subdivision – 80 Minmi Road, EDGEWORTH NSW 2285 and 3
Transfield Avenue, EDGEWORTH NSW 2285

[INSERT DATE OF EXECUTION]

Council of the City of Lake Macquarie
ABN 81 065 027 868

Twin Rivers Developments Pty Limited ABN 79 065 087 292

Gregory Maurice Cahill

Brenton Jon Cahill

Table of contents

- 1. Definitions and interpretation1**
 - 1.1 Definitions..... 1
 - 1.2 Interpretation 1
- 2. Operation and application of this agreement.....2**
 - 2.1 Operation 2
 - 2.2 Planning agreement under the Act..... 2
 - 2.3 Application 2
 - 2.4 Application of sections 7.11, 7.12 and 7.24 of the Act 2
- 3. Development Contributions.....2**
 - 3.1 Requirement to provide Conservation Land Contribution 2
 - 3.2 Requirement to provide Endowment Fund Contribution 2
 - 3.3 Purpose of Development Contributions 2
- 4. Enforcement and Indemnity2**
 - 4.1 Indemnity 2
 - 4.2 Suitable means of Security 3
- 5. Registration on Title3**
 - 5.1 Interest in Land 3
 - 5.2 Registration of deed 3
 - 5.3 Right to lodge caveat..... 4
 - 5.4 Release and discharge of deed..... 5
- 6. Dispute resolution5**
 - 6.1 Parties not to commence court proceedings without complying with dispute resolution procedures..... 5
 - 6.2 Written notice of dispute 5
 - 6.3 Attempt to resolve through informal dispute resolution 5
 - 6.4 Mediation if dispute not resolved through informal dispute resolution 5
 - 6.5 When Court proceedings may be commenced 6
 - 6.6 Parties not to use dispute resolution information for other purposes 6
- 7. Assignment and Transfer6**
 - 7.1 Right to assign or novate 6
 - 7.2 Right to transfer Land 7
- 8. Capacity and relationship7**
 - 8.1 General warranties 7
 - 8.2 Power of attorney 7
 - 8.3 Assurances 7
 - 8.4 Relationship of parties 7
- 9. GST.....7**
 - 9.1 Definitions..... 7
 - 9.2 Intention of the parties..... 8
 - 9.3 Reimbursement 8
 - 9.4 Consideration GST exclusive 8
 - 9.5 Additional Amounts for GST 8
 - 9.6 No merger 8

10. Termination.....	8
10.1 Termination	8
10.2 Consequences of termination.....	8
11. General provisions.....	9
11.1 Entire deed.....	9
11.2 Notices and time for doing acts	9
11.3 Variation	9
11.4 Waiver.....	9
11.5 Preservation of existing rights	9
11.6 No merger	9
11.7 No fetter	9
11.8 Costs.....	9
11.9 Counterparts.....	10
11.10 Electronic execution and electronic exchange	10
Schedule 1 – Requirements under section 7.4 of the Act	11
Schedule 2 – Land and Development	13
Schedule 3 – Development Contributions	14
1. Development Contribution	14
1.1 Agreement to provide Conservation Land Contribution	15
1.2 Contamination.....	15
1.3 Remediation.....	15
1.4 Condition of Conservation Land on dedication.....	16
1.5 Manner of providing Land Contribution	16
1.6 Acquisition of Dedication Land	17
1.1 Agreement to provide Endowment Fund Contribution.....	18
1.2 Adjustment of Endowment Fund Contribution at payment.....	19
1.3 Interest for late payment of Endowment Fund Contribution.....	19
1.4 Payment of Endowment Fund Contribution	19
Schedule 4 – Address for service and Notices	20
Schedule 5 – Definitions	22
Schedule 6 – Interpretation	26
Execution page.....	28
Execution page.....	29
Annexure A – Development Land	1
Annexure B – Conservation Land	2

This Planning Agreement is dated

Parties

Council of the City of Lake Macquarie
ABN 81 065 027 868

Twin Rivers Developments Pty. Limited ACN 065 087 292

Gregory Maurice Cahill

Brenton Jon Cahill

Introduction

- A** The Developer owns the Conservation Land.
 - B** Gregory Maurice Cahill owns Lot 137 in DP1273014 within the Development Land and is the sole Director and Secretary of the Developer entity.
 - C** Brenton Jon Cahill owns Lot 431 in DP 1278821 within the Development Land.
 - D** The Developer has made Development Application DA/2236/2017 to the Council to carry out the Development on the Development Land.
 - E** The Development Land is mapped as 'environmentally sensitive land' under the LEP.
 - F** Consistently with clause 7.20(4) of the LEP, the Developer has offered to enter into this deed with the Council to mitigate, minimise or offset the impact of the Development on the Development Land through the dedication or transfer of the Conservation Land Contribution and the making of the Endowment Fund Contribution.
 - G** The Council, being satisfied that the Developer's offer comprises the dedication of land free of cost (in the case of the Conservation Land Contribution) and the payment of a monetary contribution (in the case of the Endowment Fund Contribution) for a public purpose, accepts the Developer's offer and enters into this deed with the Developer pursuant to s 7.4(1) of the Act.
-

1. Definitions and interpretation

1.1 Definitions

Capitalised terms in this deed have the meaning given to them in **Schedule 5**.

1.2 Interpretation

The provisions at **Schedule 6** apply in interpreting this deed.

2. Operation and application of this agreement

2.1 Operation

This deed commences on the date that this deed is signed by all the parties.

2.2 Planning agreement under the Act

- (a) This deed constitutes a planning agreement within the meaning of section 7.4 of the Act.
- (b) The parties agree on the matters set out in Schedule 1.

2.3 Application

This deed applies to:

- (a) the Development Land;
- (b) the Conservation Land; and
- (c) the Development.

2.4 Application of sections 7.11, 7.12 and 7.24 of the Act

The application of sections 7.11, 7.12 and 7.24 of the Act is excluded to the extent stated in **Schedule 1**.

3. Development Contributions

3.1 Requirement to provide Conservation Land Contribution

The Developer agrees to provide the Conservation Land Contribution in the manner and at the times set out in **Schedule 3**.

3.2 Requirement to provide Endowment Fund Contribution

The Developer agrees to provide the Endowment Fund Contribution in the manner and at the times set out in **Schedule 3**.

3.3 Purpose of Development Contributions

The Developer agrees that the Council has no obligation:

- (a) to use the Development Contribution in whole or in part for any specific purpose; or
- (b) to repay the Endowment Fund Contribution.

4. Enforcement and Indemnity

4.1 Indemnity

The Developer indemnifies Council in respect of any Claim that may arise in connection with the performance of the Developer's obligations under this deed but only to the extent that any such Claim does not arise as a result of the negligent acts or omissions of Council.

4.2 Suitable means of Security

- (a) To ensure enforcement of this deed by suitable means in the event of a breach of this deed by the Developer, the Developer agrees to register this deed in accordance with clause 5.
- (b) The parties acknowledge and agree that the registration of this deed in accordance with clause 5 constitutes 'suitable means' of enforcement for the purposes of section 7.4(3)(g) of the Act.

5. Registration on Title

5.1 Interest in Land

The Developer represents and warrants that it is:

- (a) the owner of the Conservation Land; and
- (b) legally and beneficially entitled to obtain all consents and approvals and to compel any person referred to in or contemplated by clause 5.2(b) to assist, cooperate and to otherwise do all things necessary for the Developer to comply with its obligations under clause 5.

5.2 Registration of deed

- (a) The Developer agrees to register this deed on title to the Development Land and the Conservation Land in accordance with this clause 5.2.
- (b) Brenton Jon Cahill and Gregory Maurice Cahill, as the registered proprietors of the Development Land, acknowledge and agree that entry into the deed constitutes consent to the registration of this deed on the title of the Development Land for the purposes of section 7.6(1)(a) of the Act.
- (c) The Developer at its own cost must take all practical steps and otherwise do anything to procure items 1 to 6 in the 'Item' column of the table below, in accordance with the timing for that Item set out in the 'Timing' column in the table below:

Ref.	Item	Timing
Consent to and lodgement for registration of deed		
1.	Consent to the registration of this deed on the title to the Development Land and the Conservation Land and to the terms of this deed, from each person as required by the Registrar-General, who: <ul style="list-style-type: none"> (a) has an estate or interest in the Development Land and Conservation Land, registered under the Real Property Act, including any registered proprietor from time to time; or 	Prior to the issue of the first Subdivision Works Certificate issued in relation to the Development.

	(b) is seized or possessed of an estate or interest in the Development Land and Conservation Land.	
2.	The electronic lodgement of this deed in a registrable form through an ELNO for registration by the Registrar-General in the relevant folio of the Register for the Development Land and the Conservation Land, or in the General Register of Deeds if this deed relates to land not under the Real Property Act.	Prior to the issue of the first Subdivision Works Certificate issued in relation to the Development.
3.	The execution of any documents to effect clause 5.2(a) and clause 5.2(b) above.	Prior to the issue of the first Subdivision Works Certificate issued in relation to the Development.
Registration of deed		
4.	The registration of this deed in the relevant folio of the Register for the Development Land and the Conservation Land, including promptly responding to any requisitions made by the Registrar-General in respect of this deed and/or any ancillary documents.	Prior to the issue of the first Subdivision Works Certificate issued in relation to the Development.
Evidence of registration		
5.	Provide the Council with evidence of the lodgement of this deed pursuant to clause 5.2.	Within 10 Business Days of such lodgement.
6.	Provide the Council with a copy of the relevant folio of the Register for the Development Land and the Conservation Land and a copy of the registered dealing containing this deed.	Within 10 Business Days of registration of this deed.

5.3 Right to lodge caveat

- (a) Until this deed is registered on title in accordance with clause 5.2, the parties acknowledge and agree that this deed confers on the Council an interest in the Conservation Land and Development Land and entitles the Council to lodge and maintain a caveat on the title to the Conservation Land and Development Land to prevent any Dealing in respect of the Conservation Land and Development Land;
- (b) Council may exercise its right to lodge a caveat in accordance with clause 5.3 if the Developer does not register this deed in accordance with clause 5.2 within 10 Business Days of the deed commencing.
- (c) If Council lodges a caveat in accordance with clause 5.3(b):
 - (i) Council will do all things reasonably necessary:

- (A) to ensure that the caveat does not prevent or delay the Developer's registration of this deed in accordance with clause 5.2; and
- (B) to withdraw the caveat as soon as practicable after Council becomes aware that this deed has been registered on title in accordance with clause 5.2; and
- (ii) the Developer must pay all of Council's costs and expenses incurred in lodging and withdrawing the caveat promptly after receiving a bill of costs from Council following withdrawal of the caveat.

5.4 Release and discharge of deed

If the Developer satisfies all of its obligations under this deed in respect of the Conservation Land and Development Land, the Council agrees to do all things reasonably required to release and discharge this deed with respect to the Conservation Land and Development Land.

6. Dispute resolution

6.1 Parties not to commence court proceedings without complying with dispute resolution procedures

- (a) A party must not commence any court proceedings relating to a dispute unless it complies with this clause 6.
- (b) Clause 6.1(a) does not prevent, or prejudice the right of a party to institute, court proceedings for urgent injunctive or declaratory relief in relation to any matter arising out of or relating to this deed.

6.2 Written notice of dispute

A party claiming that a dispute has arisen under or in relation to this deed must give written notice to the other party specifying the nature of the dispute ('**Dispute Notice**').

6.3 Attempt to resolve through informal dispute resolution

After a Dispute Notice is received, the parties must endeavour in good faith:

- (a) to resolve the dispute expeditiously; and
- (b) to agree:
 - (iii) an informal dispute resolution technique;
 - (iv) an independent person required to guide the parties to resolve the matters in the Dispute Notice using the informal dispute resolution technique; and
 - (v) procedures and a timetable for the carrying out of the agreed informal dispute resolution technique.

6.4 Mediation if dispute not resolved through informal dispute resolution

If the parties do not agree to the matters in clause 6.3(b) within 7 Business Days of receipt of a Dispute Notice (or any further period agreed to by the parties in writing), the parties must:

- (a) mediate the dispute in accordance with the Mediation Rules of the Law Society of NSW; and
- (b) in preparing for this mediation, jointly request the president of the Law Society of NSW or the president's nominee to select the mediator and determine the mediator's remuneration.

6.5 When Court proceedings may be commenced

If the dispute is not resolved through mediation in accordance with clause 6.4, then any party which has complied with the provisions of this clause 6 may:

- (a) terminate the dispute resolution process undertaken under clause 6; and
- (b) following termination, commence court proceedings in relation to the matter set out in the Dispute Notice.

6.6 Parties not to use dispute resolution information for other purposes

- (a) The parties acknowledge the purpose of any exchange of information or documents or the making of any offer of settlement under this clause 6 is to attempt to settle the matter set out in the Dispute Notice.
- (b) No party may use any information or documents obtained through any dispute resolution process undertaken under this clause 6 for any purpose other than in an attempt to settle the matter set out in the Dispute Notice.

7. Assignment and Transfer

7.1 Right to assign or novate

- (a) The Developer must not assign this deed to any person except in accordance with this clause.
- (b) If the Developer seeks to assign its rights or benefits or novate its obligations to another party, the Development must:
 - (vi) satisfy the Council that the person to whom the Developer's rights or obligations are to be assigned or novated ('**Incoming Party**') has sufficient assets, resources and expertise required to perform the Developer's obligations under this deed insofar as those obligations are to be assigned or novated to the Incoming Party;
 - (vii) procure the execution of a deed by the Incoming Party with the Council on terms satisfactory to the Council under which the Incoming Party agrees to comply with the terms and conditions of this deed as though the Incoming Party were the Developer;
 - (viii) satisfy Council, acting reasonably, that it is not in material breach of its obligations under this deed; and
 - (ix) obtain Council's written notice that Council consents to the proposed assignment or novation.

- (c) The Assigning Party must pay the Council's reasonable legal costs and other expenses incurred under this clause 7.1 promptly after receiving a bill of costs from Council following the issue of Council's written notice under clause 7.2(b).

7.2 Right to transfer Land

The Developer must not sell or transfer to another person (**Transferee**) the whole or part of any part of the Conservation Land or the Development Land:

- (a) if this deed remains registered under section 7.6 of the Act on either the Conservation Land or the Development Land; or
- (b) if the Conservation Land Contribution required under this deed remains outstanding.

8. Capacity and relationship

8.1 General warranties

Each party warrants to each other party that:

- (a) this deed creates legal, valid and binding obligations, enforceable against the relevant party in accordance with its terms.
- (b) unless otherwise stated, it has not entered into this deed in the capacity of trustee of any trust.

8.2 Power of attorney

If an attorney executes this deed on behalf of any party, the attorney declares that it has no notice of the revocation of that power of attorney.

8.3 Assurances

Each party must promptly execute all documents and do everything necessary or desirable to give full effect to the arrangements contained in this deed.

8.4 Relationship of parties

Unless otherwise stated:

- (a) nothing in this deed creates a joint venture, partnership, or the relationship of principal and agent, or employee and employer between the parties; and
- (b) no party has the authority to bind any other party by any representation, declaration or admission, or to make any contract or commitment on behalf of any other party or to pledge any other party's credit.

9. GST

9.1 Definitions

Words used in this clause that are defined in the GST Law have the meaning given in that legislation.

9.2 Intention of the parties

The parties intend that:

- a) Divisions 81 and 82 of the GST Law apply to the supplies made under and in respect of this deed; and
- b) no additional amounts will be payable on account of GST and no tax invoices will be exchanged between the parties.

9.3 Reimbursement

Any payment or reimbursement required to be made under this deed that is calculated by reference to a cost, expense, or other amount paid or incurred will be limited to the total cost, expense or amount less the amount of any input tax credit to which any entity is entitled for the acquisition to which the cost, expense or amount relates.

9.4 Consideration GST exclusive

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this deed are GST Exclusive. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purposes of this clause 9.

9.5 Additional Amounts for GST

- (a) To the extent an amount of GST is payable on a supply made by a party under or in connection with this deed (GST Amount), the Recipient will pay to the Supplier the GST Amount at the same time and in the same manner as the consideration for the supply is to be provided. The supplier must provide a tax invoice to the recipient before the supplier will be entitled to payment of the GST Amount.
- (b) Clause 9.5 applies to non-monetary consideration.

9.6 No merger

This clause will not merge on completion or termination of this deed.

10. Termination

10.1 Termination

This deed terminates if:

- (a) the parties agree in writing to terminate the deed; or
- (b) the Developer has satisfied all of the obligations imposed on it under this deed in full; and
- (c) the Council has issued written notice to the Developer stating that Council agrees that the circumstances in above clauses 10.1(a) or 10.1(b) have been achieved.

10.2 Consequences of termination

If this deed terminates:

- (a) all future rights and obligations of the parties under this document are discharged; and
- (b) all rights and obligations of the parties existing at the time of termination including the right for Council to retain the Conservation Land Contribution provided before termination, continue.

11. General provisions

11.1 Entire deed

This deed constitutes the entire deed between the parties regarding the matters set out in it and supersedes any prior representations, understandings or arrangements made between the parties, whether orally or in writing.

11.2 Notices and time for doing acts

- (a) The provisions relating to the time for doing acts at Item 3 of Schedule 4 apply.
- (b) The notice provisions at Item 4 of Schedule 4 apply.

11.3 Variation

This deed must not be varied except by a later written document executed by all parties.

11.4 Waiver

A right created by this deed cannot be waived except in writing signed by the party entitled to that right. Delay by a party in exercising a right does not constitute a waiver of that right, nor will a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.

11.5 Preservation of existing rights

The expiration or termination of this deed does not affect any right that has accrued to a party before the expiration or termination date.

11.6 No merger

Any right or obligation of any party that is expressed to operate or have effect on or after the completion, expiration or termination of this deed for any reason, will not merge on the occurrence of that event but will remain in full force and effect.

11.7 No fetter

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

11.8 Costs

The Developer must pay the Council's reasonable Costs incurred in preparing and executing this deed promptly after receiving a bill of costs from Council.

11.9 Counterparts

This deed may be executed in any number of counterparts. All counterparts taken together constitute one instrument. Delivery of this deed by email constitutes an effective mode of delivery.

11.10 Electronic execution and electronic exchange

- (a) Each party consents to this deed being executed by a party by way of Electronic Signature using an Approved Signing Method.
- (b) Where this deed is Electronically Signed by a party, the party warrants and agrees that the Electronic Signature has been used to identify the person signing and to indicate that the party intends to be bound by the Electronic Signature.

Schedule 1 – Requirements under section 7.4 of the Act

The parties acknowledge and agree that the table set out below provides for certain terms, conditions and procedures for the purpose of the deed complying with the Act.

Requirement under the Act	This deed
<p>Planning instrument and/or development application – (section 7.4(1))</p> <p>The Developer has:</p> <p>(c) sought a change to an environmental planning instrument.</p> <p>(d) made, or proposes to make, a Development Application.</p> <p>(e) entered into a deed 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) No.</p>
<p>Description of land to which this deed applies – (section 7.4(3)(a))</p>	<p>See description at Item 2 and Item 3 of Schedule 2.</p>
<p>Description of development to which this deed applies – (section 7.4 (3)(b))</p>	<p>See description at Item 4 of Schedule 2.</p>
<p>Description of change to the environmental planning instrument to which this deed applies – (section 7.4 (3)(b))</p>	<p>NA</p>
<p>The scope, timing and manner of delivery of contribution required by this deed – (section 7.4 (3)(c))</p>	<p>See Schedule 3.</p>
<p>Applicability of sections 7.11 of the Act – (section 7.4 (3)(d))</p>	<p>This deed does not exclude the application of section 7.11 of the Act in respect of the Development.</p>
<p>Consideration of benefits under this deed if section 7.11 applies – (section 7.4 (3)(e))</p>	<p>No.</p>
<p>Applicability of section 7.12 of the Act – (section 7.4 (3)(d))</p>	<p>This deed does not exclude the application of section 7.12 of the Act in respect of the Development.</p>
<p>Applicability of Subdivision 4 of Division 7.1 of the Act – (section 7.4 (3)(d))</p>	<p>NA</p>
<p>Mechanism for Dispute Resolution – (section 7.4(3)(f))</p>	<p>See clause 6.</p>
<p>Enforcement of this deed – (section 7.4(3)(g))</p>	<p>See clause 4.</p>

Requirement under the Act	This deed
No obligation to grant consent or exercise functions – (section 7.4(10))	See clause 11.7.
Registration of the Planning Agreement – (section 7.6 of the Act)	Yes (see clause 5).
Whether the Planning Agreement specifies that certain requirements of the deed must be complied with before a construction certificate is issued – (section 21 of Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021)	No
Whether the Planning Agreement specifies that certain requirements of the deed must be complied with before an occupation certificate is issued – (section 48 of Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021)	No
Whether the Planning Agreement specifies that certain requirements of the deed must be complied with before a subdivision certificate is issued – (section 6.15(1)(d) of the Act)	Yes

Schedule 2 – Land and Development

Item 1 Development Land

Folio identifier	Area	Landowner
Lot 431 in DP1278821, identified as 80 Minmi Road, Edgeworth	Being the parcel of land denoted as Lot 431 on the deposited plan extract at Annexure A	Brenton Jon Cahill
Lot 137 in DP1273014, identified as 3 Transfield Avenue, Edgeworth	Being the parcel of land denoted as Lot 137 in DP1278821 on the deposited plan extract at Annexure A	Gregory Maurice Cahill

Item 2 Conservation Land

Folio	Area	Landowner
Lot 2 in DP1297923, identified as 5 Caravel Street, Teralba	Being the parcel of land denoted as Lot 2 on the deposited plan extract at Annexure B	Twin Rivers Developments Pty. Limited ACN 065 087 292

Item 3 Development

The development which the Developer proposes to carry out on the Development Land in accordance with any relevant Development Consents, Complying Development Certificates or as exempt development or an Activity, following the approval of the Development Application, being DA/2236/2017.

Item 4 Change to environmental planning instrument

NA

Schedule 3 – Development Contributions

1. Development Contribution

- (a) The Development Contributions which the Developer agrees to provide comprises the:
 - (i) Conservation Land Contribution; and
 - (ii) Endowment Fund Contribution.
- (b) The Items in this **Schedule 3** set out:
 - (i) a description of;
 - (ii) the value of;
 - (iii) the timing within which the Developer must provide; and
 - (iv) other commitments of the Developer relating to,
the relevant Development Contribution to which the Item relates.

Item 1 – Conservation Land Contribution

1.1 Agreement to provide Conservation Land Contribution

The Developer agrees to provide the Conservation Land Contribution to Council in accordance with the timing set out in the table below:

Contribution	Timing for completion
Conservation Land Contribution	Before the earlier of: <ul style="list-style-type: none"> (a) the clearing of any vegetation on the Development Land; (b) the issue of the first Subdivision Works Certificate issued in relation to the Development; or (c) 2 years from the issue of any Development Consent in relation to the Development.

1.2 Contamination

The Developer:

- (a) warrants that as far as it is aware, and other than as disclosed to Council, the Conservation Land is free from Contamination; and
- (b) indemnifies and must keep indemnified Council against all liability for and associated with all Contamination present in, on and under the Conservation Land including full responsibility for compliance with and any liability in respect of such Contamination under the *Contaminated Lands Management Act 1997* (NSW) and all other relevant legislation and the requirements of relevant Authorities.

1.3 Remediation

- (a) If Council becomes aware or reasonably suspects that any part of the Conservation Land was not free from Contamination before the date of this deed, Council may notify the Developer.
- (b) Upon receipt of a notice under clause 1.3(a) of Item 1 of this Schedule 3, the Developer must procure an investigation report to enable the parties to be informed of the nature and extent of the Contamination in, on, under, entering, or leaving the Conservation Land (**'Investigation Report'**) and provide the investigation report to Council.
- (c) After receipt by Council of the Investigation Reports the parties must meet:
 - (i) to discuss in good faith the method by which the relevant part of the Conservation Land might be dealt with so that it will be free from Contamination; and
 - (ii) to agree a standard to which the Developer must remediate the relevant part of the Conservation Land.

- (d) The Developer must at its own cost undertake all reasonable measures to ensure that the relevant part of the Conservation Land is remediated to the standard agreed under clause 1.3(d) of this Item 1 of Schedule 3.

1.4 Condition of Conservation Land on dedication

- (a) Prior to the dedication or transfer of the Conservation Land in accordance with Item 1 of Schedule 3, the Developer must:
 - (i) remove from the Conservation Land:
 - (A) any rubbish;
 - (B) any temporary works; and
 - (C) any construction plant and equipment;
 - (ii) ensure that the Land is free from any noxious weeds, as defined under section 32 of the *Biosecurity Act 2015* (NSW); and
 - (iii) install and/or affix any nesting boxes on the Conservation Land to ensure that the nesting boxes are fit for purpose, to the satisfaction of the Council.
- (b) Any works carried out by the Developer under this clause 1.4 of Item 1 of Schedule 3, must be carried out in such a manner that the Developer:
 - (i) takes all necessary measures to protect people, property, and the environment;
 - (ii) avoids unnecessary interference with the passage of people and vehicles;
 - (iii) prevents nuisances and unreasonable noise and disturbances; and
 - (iv) complies with all relevant laws and regulations; and
 - (v) complies with current industry practice and standards.
- (c) If, on dedication or transfer of the Conservation Land, Council considers that the Developer has failed to comply with its obligations under this clause 1.4 of Item 1 of Schedule 3:
 - (i) Council may request that the Developer carry out any works which Council considers are reasonably necessary to ensure compliance with this clause 1.4 of Item 1 of Schedule 3; and
 - (ii) as soon as reasonably practicable after receiving a request from Council, the Developer must do all things reasonably necessary to ensure compliance with this clause 1.4 of Item 1 of Schedule 3, as requested by Council.

1.5 Manner of providing Land Contribution

- (a) The Developer must dedicate the Conservation Land to Council free of any trusts, estates, interests, covenants and Encumbrances by the time specified in Schedule 3.

- (b) The Developer must meet all costs associated with the dedication required for the Conservation Land Contribution including any administrative and legal costs incurred by Council in relation to that dedication.
- (c) The Conservation Land is taken to be dedicated to Council under this deed:
 - (i) if the relevant land is dedicated in a plan registered at the NSW Land Registry Services when that plan is registered; or
 - (ii) otherwise when the Developer delivers to Council:
 - (A) a transfer of the relevant land in registrable form;
 - (B) the original Certificate of Title for the relevant land; and
 - (C) any document in registrable which, when registered, will remove any Encumbrances registered on the title of that land, excluding encumbrances that would not in the Council's opinion, acting reasonably, impede the intended use of all or any part of the Conservation Land to be dedicated to the Council including but not limited to easements and covenants for services and drainage.

1.6 Acquisition of Dedication Land

- (a) The Developer must act in good faith to provide the Conservation Land Contribution as required under this Item.
- (b) If the Developer does not provide the Conservation Land Contribution by the time required, the Council in its discretion may acquire, and the Developer consents to the Council acquiring, the Conservation Land compulsorily for the amount of \$1 without having to follow the pre-acquisition procedure under the *Land Acquisition (Just Terms) Compensation Act 1991*.
- (c) Clause 1.6(b) of Item 1 of Schedule 3 constitutes an agreement for the purposes of s 30 of the *Land Acquisition (Just Terms) Compensation Act 1991* and the Parties acknowledge and agree that they have agreed on all relevant matters concerning the compulsory acquisition.
- (d) If, as a result of the acquisition referred to in clause 1.6(b) of Item 1 of Schedule 3, the Council is required to pay compensation to any person other than the Developer, the Developer must reimburse the Council that amount within 10 Business Days of receiving that written request.
- (e) The Developer indemnifies and keeps indemnified the Council against all Claims made against the Council as a result of any acquisition by the Council of the whole or any part of the Conservation Land or any interest in the Conservation Land in accordance with the terms of this clause.
- (f) The Developer must promptly do all things necessary, and consents to the Council doing all things necessary, to give effect to this clause, without limitation.

Item 2 – Endowment Fund Contribution

1.1 Agreement to provide Endowment Fund Contribution

- (g) The Council and Developer acknowledge and agree that the Endowment Fund Contribution comprises the sum of the Portion 1 Contribution, Portion 2 Contribution and Portion 3 Contribution under this deed.
- (h) The Developer agrees to provide the Endowment Fund Contribution to the Council in accordance with the timing set out in the table below:

Contribution	Value	Timing for completion
Portion 1 Contribution	The greater of: (a) one third (1/3) of \$761,000; and (b) one third (1/3) of the present value of \$761,000, calculated in accordance with clause 1.2 of Item 2 of this Schedule 3, at the time in which the Portion 1 Contribution is required to be made under this Schedule 3.	Before the earlier of: (a) the issue of a Subdivision Certificate for the 40 th lot in the Development; and (b) 12 months from the dedication or transfer of the Conservation Land in accordance with clause 1.5 of Item 2 of this Schedule 3.
Portion 2 Contribution	The greater of: (a) an amount equal to one third (1/3) of \$761,000; and (b) one third (1/3) of the present value of \$761,000, calculated in accordance with clause 1.2 of Item 2 of this Schedule 3, at the time in which the Portion 2 Contribution is required to be made under this Schedule 3.	Before the earlier of: (a) the issue of a Subdivision Certificate for the 80 th lot in the Development; and (b) 2 years from the dedication or transfer of the Conservation Land in accordance with clause 1.5 of Item 2 of this Schedule 3.
Portion 3 Contribution	The greater of: (a) an amount equal to one third (1/3) of \$761,000; and	Before the earlier of: (a) the issue of a Subdivision Certificate for the

Schedule 4 – Address for service and Notices

Item 1 Address for service

Council	
Contact:	Developer Contributions Coordinator
Address:	126-138 Main Rd, Speers Point NSW 2284
Email:	council@lakemac.nsw.gov.au
Developer	
Contact:	The Company Directors and Secretary
Address:	90 Scott Street Newcastle NSW 2300
Email:	trdmail@bigpond.com
Gregory Maurice Cahill	
Contact:	Gregory Cahill
Address:	90 Scott Street Newcastle NSW 2300
Email:	trdmail@bigpond.com
Brenton Jon Cahill	
Contact:	Brenton Cahill
Address:	90 Scott Street Newcastle NSW 2300
Email:	trdmail@bigpond.com

Item 2 Time for doing acts

2. If:
 - (a) the time for doing any act or thing required to be done; or
 - (b) a notice period specified in this deed,

expires on a day other than a Business Day, the time for doing that act or thing or the expiration of that notice period is extended until the following Business Day.
3. If any act or thing required to be done is done after 5 pm on the specified day, it is taken to have been done on the following Business Day.

Item 3 Notice provisions

1. Any notice, demand, consent, approval, request or other communication (**Notice**) to be given under this deed must be in writing and must be given to the recipient at its Address for Service by being:
 - (a) hand delivered;
 - (b) sent by prepaid ordinary mail within Australia; or
 - (c) sent by email.

2. A Notice is taken to have been given at the time stated in column 4, in relation to the method of giving the Notice stated in column 2 below, depending on the timing of delivery if relevant as set out in column 3 of the table below:

Ref.	Method of giving notice	Timing of delivery	When the notice is taken to be given
1	Hand delivery	If delivery occurs after 5pm New South Wales time or a day that is not a Business Day,	The next Business Day.
		If delivery occurs before 5pm New South Wales time on a Business Day,	On the date of delivery.
2	Prepaid ordinary mail within Australia	NA	On the date that is 7 Business Days after the date of posting.
3	Email	If the email is sent before 5 pm on a Business Day, and the sender does not receive a delivery failure notice,	On the date of sending.
		If the email is sent after 5 pm on a Business Day or on a day that is not a Business Day	On the next Business Day after the email is sent.

Schedule 5 – Definitions

(clause 1.1)

In this deed, unless the context clearly indicates otherwise:

Act	means the <i>Environmental Planning and Assessment Act 1979</i> (NSW).
Address for Service	means the address of each party appearing in Item 2 of Schedule 4 to this deed or any new address notified by any party to all other parties as its new Address for Service.
Approved Signing Method	means signing electronically by: (a) the person including a statement on the Deed near or above their electronic signature to the following effect: Electronic signature of me, [insert full name], affixed by me, or at my direction, on [insert date]; or (b) using a digital platform that indicates on the Deed that a digital signature was applied, and the date and time that this occurred;
Authority	means the Commonwealth or New South Wales government, a Minister of the Crown, a government department, a public authority established by or under any Act, a council constituted under the <i>Local Government Act 1993</i> (NSW), or a person or body exercising functions under any Act including a commission, panel, court, tribunal and the like.
Base CPI	means the CPI number for the quarter ending 30 September 2022 .
Business Day	means any day that is not a Saturday, Sunday, gazetted public holiday or bank holiday in Sydney, and concludes at 5 pm on that day.
Claim	includes any claim, demand, remedy, suit, injury, damage, loss, cost, liability, action, proceeding or right of action howsoever arising and whether present or future, fixed or unascertained, actual or contingent whether at law, in equity, under statute or otherwise.
Commencement Date	means the date that this deed comes into operation in accordance with clause 2.1.
Conservation Land	means the parcel(s) of land identified at Item 3 of Schedule 2 .
Conservation Land Contribution	means the dedication or transfer of the Conservation Land to Council, as specified in Schedule 3 , in accordance with the provisions of this deed.
Cost	means any cost, charge, expense, outgoing, payment, fee and other expenditure.
Contamination	means any material, gas, substance, liquid, chemical or biological mineral or other physical matter which would, if present on the Land: (a) result in an Authority issuing a notice, direction or order under an Environmental Law; or (b) which would constitute a violation of contribution of contravention of any Environmental Law.

(c) by way of security for the payment of a debt or other monetary obligation or the performance of any obligation.

Endowment Fund Contribution	means the monetary amount comprising the Portion 1 Endowment Fund Contribution, Portion 2 Endowment Fund Contribution and Portion 3 Endowment Fund Contribution to be paid by the Developer to Council in accordance with the requirements of the table at Item 2 of Schedule 3.
Environmental Law	means all planning, environmental or pollution laws and any regulations, orders, directions, ordinances or requirements, permissions, permits, licences issued under those laws or instruments.
Explanatory Note	means the note exhibited with a copy of this deed when this deed is made available for inspection by the public pursuant to the Act.
General Register of Deeds	means the land register maintained under the <i>Conveyancing Act 1919</i> (NSW).
GST	means any form of goods and services tax payable under the GST Law.
GST Law	means the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).
Late Payment Interest	means a rate of interest that is 2% above the loan reference rate charged by the Commonwealth Bank of Australia from time to time.
LEP	means the <i>Lake Macquarie Local Environmental Plan 2014</i> (NSW), as amended from time to time.
Mediation Rules of the Law Society of NSW	means the mediation rules published by the Law Society of NSW, from time to time.
Plan of Subdivision	means a registered plan of subdivision within the meaning of section 195 of the <i>Conveyancing Act 1919</i> (NSW).
Portion 1 Contribution	The monetary amount, being one third (1/3) of the Endowment Fund Contribution, paid by the Developer to Council at the time required by the table at Item 2 of Schedule 3.
Portion 2 Contribution	The monetary amount, being one third (1/3) of the Endowment Fund Contribution, paid by the Developer to Council at the time required by the table at Item 2 of Schedule 3.
Portion 3 Contribution	The monetary amount, being one third (1/3) of the Endowment Fund Contribution, paid by the Developer to Council at the time required by the table at Item 2 of Schedule 3.
Real Property Act	means the <i>Real Property Act 1900</i> (NSW).
Register	means the Torrens Title register maintained under the Real Property Act.
Subdivision Certificate	has the same meaning as in the Act.

Subdivision Works Certificate has the same meaning as in the Act.

Schedule 6 – Interpretation

- (a) Neither this deed nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting.
- (b) The Explanatory Note must not be used to assist in construing this deed.
- (c) If any clause or part of any clause in this deed is in any way unenforceable, invalid or illegal, it is to be read down so as to be enforceable, valid and legal. If this is not possible, the clause (or where possible, the offending part) is to be severed from this deed without affecting the enforceability, validity or legality of the remaining clauses (or parts of those clauses) which will continue in full force and effect.
- (d) In this deed unless the context clearly indicates otherwise:
 - (i) a reference to **this deed** or another document means this deed or that other document and any document which varies, supplements, replaces, assigns or novates this deed or that other document;
 - (ii) a reference to **legislation** or a **legislative provision** includes any statutory modification or substitution of that legislation or legislative provision and any subordinate legislation issued under that legislation or legislative provision;
 - (iii) a reference to a **body** or **authority** which ceases to exist is a reference to either a body or authority that the parties agree to substitute for the named body or authority or, failing agreement, to a body or authority having substantially the same objects as the named body or authority;
 - (iv) a reference to the **introduction**, a **clause**, **schedule** or **annexure** is a reference to the introduction, a clause, a schedule or an annexure to or of this deed;
 - (v) **clause headings** and the **table of contents** are inserted for convenience only and do not form part of this deed;
 - (vi) the **introduction**, **schedules** (if any) and **annexures** (if any) form part of this deed;
 - (vii) the **introduction** accurately sets out the circumstances in which the parties have entered into this deed;
 - (viii) a reference to a **person** includes a natural person, corporation, statutory corporation, partnership, the Crown or any other organisation or legal entity;
 - (ix) a reference to a **natural person** includes their personal representatives, successors and permitted assigns;
 - (x) a reference to a **corporation** includes its successors and permitted assigns;
 - (xi) **related** or **subsidiary** in respect of a corporation has the same meaning given to that term in the Corporations Act;
 - (xii) a reference to a right or obligation of a party is a reference to a right or obligation of that party under this agreement;

- (xiii) an **obligation** or **warranty** on the part of 2 or more persons binds them jointly and severally and an obligation or warranty in favour of 2 or more persons benefits them jointly and severally;
- (xiv) a reference to a **breach of warranty** includes that warranty not being complete, true or accurate;
- (xv) a requirement to do any thing includes a requirement to cause that thing to be done and a requirement not to do any thing includes a requirement to prevent that thing being done;
- (xvi) **including** and **includes** are not words of limitation;
- (xvii) the words **at any time** mean at any time and from time to time;
- (xviii) a reference to a time is to that time in New South Wales;
- (xix) a word that is derived from a defined word has a corresponding meaning;
- (xx) **monetary amounts** are expressed in Australian dollars;
- (xxi) the singular includes the plural and vice-versa;
- (xxii) words importing one gender include all other genders; and
- (xxiii) a reference to a thing includes each part of that thing.

Execution page

Executed as a deed

Signed, sealed and delivered

by Lake Macquarie City Council by its authorised delegate pursuant to s 377 of the *Local Government Act 1993* (NSW), in the presence of:

.....
Signature of Witness

.....
Signature of

.....
Name of Witness

.....
Name of delegate

Signed, sealed and delivered on behalf of the Developer, Twin Rivers Developments Pty. Limited ACN 065 087 292 in accordance with section 127 of the *Corporations Act 2001* (Cth):

.....
Signature of

.....
Signature of

.....
Name of Director/Secretary

.....
Name of Director

Execution page

Signed sealed and delivered

by **Gregory Maurice Cahill** in the presence of:

.....
Signature of witness

.....
Signature of **Gregory Maurice Cahill**

.....
Name of witness in full

.....
Address of witness

Signed sealed and delivered

by **Brenton Jon Cahill** in the presence of:

.....
Signature of witness

.....
Signature of **Brenton Jon Cahill**

.....
Name of witness in full

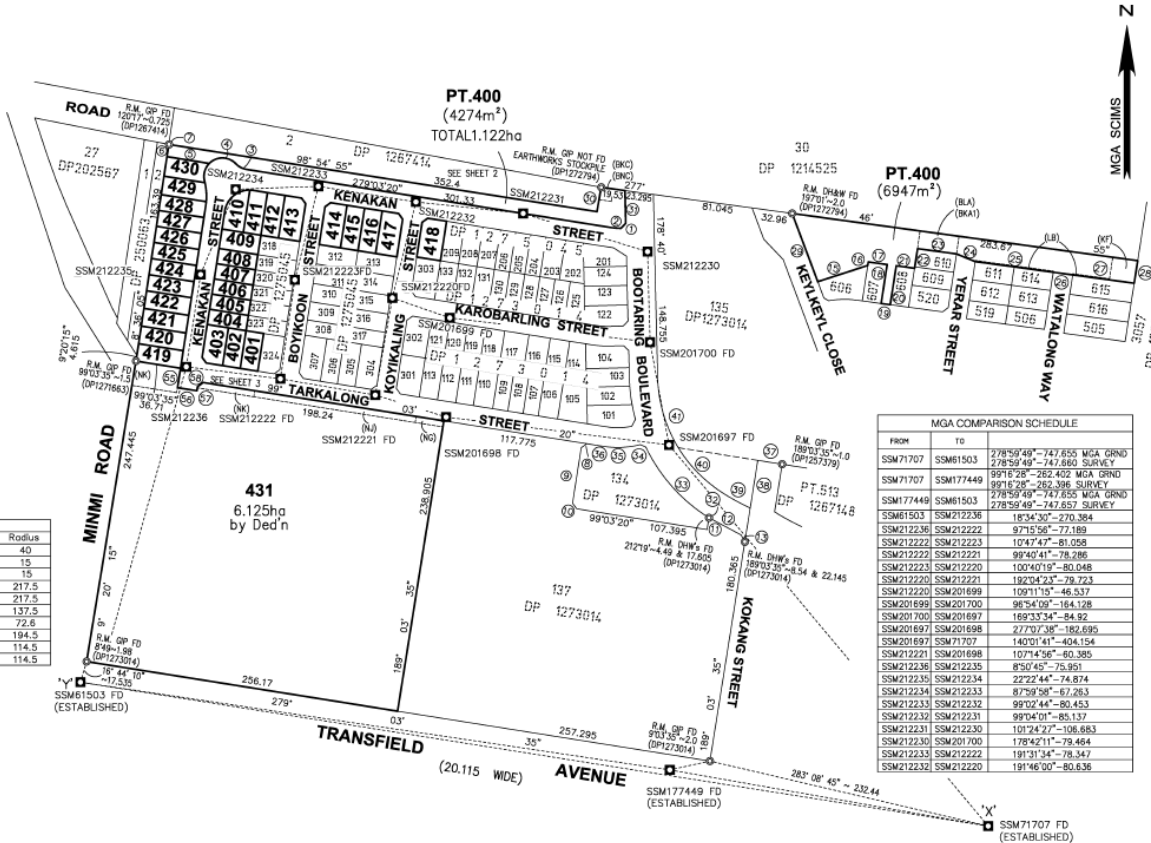
.....
Address of witness

Annexure A – Development Land

Extract of DP1278821

Short Line Table		
Number	Bearing	Distance
1	22°40'05"	5.855
5	279°03'20"	34.885
6	8°36'05"	10.05
7	101°11'40"	0.205
8	233°57'05"	5.845
9	188°50'40"	45.56
10	143°57'	5.665
11	9°03'20"	9.735
13	151°23'29"	6.33
15	72°01'10"	42.715
16	8°49'35"	2.815
17	97°42'55"	15.505
18	188°49'35"	32.005
19	97°42'55"	7.5
20	8°49'35"	32.005
21	97°42'55"	15.505
22	8°49'35"	16.15
23	97°42'55"	32.005
24	112°18'40"	16.455
25	97°42'55"	64.01
26	97°44'10"	16.005
27	97°42'55"	50.415
28	8°51'35"	18.485
29	159°24'50"	59.22
30	9°50'55"	20.115
31	178°40'	26.595
34	294°40'20"	4.88
36	99°03'20"	13.95
37	279°03'35"	20.115
38	189°03'35"	39.285
55	8°50'40"	18.045
56	278°50'40"	16
57	188°50'40"	3.44
58	53°59'	5.645

Arc Table					
Number	Bearing	Ch.Distance	Arc Length	Radius	
2	273°56'	7.145	7.15	40	
3	297°26'25"	9.71	9.89	15	
4	270°42'	21.825	24.15	15	
12	118°09'45"	29.69	29.715	217.5	
32	302°11'50"	0.915	0.915	217.5	
33	318°24'10"	76.195	77.205	137.5	
35	267°2'50"	29.795	30.01	72.8	
39	299°35'40"	25.135	25.15	184.5	
40	315°26'45"	52.015	52.47	114.5	
41	343°37'15"	59.45	60.14	114.5	



MGA COMPARISON SCHEDULE		
FROM	TO	
SSM71707	SSM61503	278°59'49"-747.655 MGA GRID
SSM71707	SSM177449	278°59'49"-747.660 SURVEY
SSM177449	SSM177449	891°6'28"-282.402 MGA GRID
SSM177449	SSM61503	891°6'28"-282.396 SURVEY
SSM61503	SSM212236	278°59'49"-747.655 MGA GRID
SSM212236	SSM212236	183°4'30"-270.384
SSM212236	SSM212222	97°15'58"-77.189
SSM212222	SSM212223	107°47'47"-81.058
SSM212223	SSM212221	99°40'41"-78.286
SSM212221	SSM212220	100°40'19"-80.048
SSM212220	SSM212221	182°04'23"-79.723
SSM212221	SSM201699	109°11'15"-48.537
SSM201699	SSM201700	98°54'09"-164.128
SSM201700	SSM201697	169°33'34"-84.82
SSM201697	SSM201698	277°03'38"-182.695
SSM201698	SSM71707	140°01'41"-404.154
SSM212221	SSM201698	107°44'56"-80.385
SSM212236	SSM212235	8°50'45"-75.951
SSM212235	SSM212234	222°24'44"-74.874
SSM212234	SSM212233	87°39'58"-67.263
SSM212233	SSM212232	99°02'44"-80.453
SSM212232	SSM212231	99°04'01"-85.137
SSM212231	SSM212230	101°24'27"-108.683
SSM212230	SSM201700	178°42'11"-79.464
SSM212233	SSM212222	191°31'34"-78.347
SSM212232	SSM212220	191°46'00"-80.638

(NK) POSITIVE COVENANT 5 & 20 WIDE
 (NJ) POSITIVE COVENANT 5 WIDE (DP1275045)
 (NG) POSITIVE COVENANT 5 WIDE (DP127614)
 (BK) AREA BENEFITTED BY EASEMENT FOR SIGNAGE 1.5 WIDE AND EASEMENT FOR PUBLIC ART 2.5 WIDE (DP1271663)
 (BN) AREA BENEFITTED BY EASEMENT FOR SIGNAGE 1.5 WIDE (DP1273014)
 (PF) POSITIVE COVENANT (DP1271663)
 (LB) RESTRICTION ON THE USE OF LAND 0.9 WIDE (DP1272784) NO. 2 (SITE)
 (BLA) AREA BENEFITTED BY EASEMENT TO DRAIN WATER 2 WIDE (DP1272794)
 (BKA1) AREA BENEFITTED BY EASEMENT TO DRAIN WATER 2 WIDE (DP1271663)

SURVEYOR
 Name: ERIC JAMES MILLER
 Date: 14/06/2022
 Reference: PRN19031_NEWC

PLAN OF SUBDIVISION OF
 LOT 200 IN DP127115 &
 LOT 325 IN DP1275045

LGA: LAKE MACQUARIE
 Locality: EDGEWORTH
 Reduction Ratio: 1: 2000

REGISTERED
 13/07/2022

DP1278821

Annexure B – Conservation Land

Extract of DP1297923

