

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

PART 93F

Planning Agreement

Made under the provisions of the Environmental Planning and Assessment Act, 1979 ('the Act') and Environmental Planning and Assessment Regulations 2000 ('the Regulations')

Parties

Mid-Coast Council of Administrative Centre, Breese Parade, Forster, New South Wales
(Council)

and

Kenneth Leigh Logan of 4 Nixon Place, Nahiack, New South Wales **(Developer)**

Background

- A. The Developer is the registered proprietor of the Land.
- B. The Land is used subject to DA339/95 which provides for five (5) car parking spaces to be provided on the Land.
- C. The Developer has submitted the Development Application together with an offer to enter into a Planning Agreement to make the Development Contributions if the Development Application is determined by the Council by the grant of Development Consent.
- D. As contemplated by section 93F of the Act, the Parties wish to enter into an agreement in connection with the Development Consent for the Development on the terms and conditions of this Agreement.

Operative provisions

1 Planning agreement under the Act

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 Agreement

This Agreement applies to the Land and the Development.

3 Operation of this Agreement

The Parties agree that this Agreement takes effect on the date all parties have signed the Agreement.

This agreement is voided and has no effect if Development Consent is not granted in respect of the Development.

If payment has been made to Council by the Developer either in part or in full in accordance with this Agreement any and all such payments shall be refunded by Council promptly and in full in the event that this Agreement is voided.

4 Definitions and interpretation

In this Agreement the following definitions apply:

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

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

Development means the deletion of on-site car parking spaces associated with the use of the Land for the purposes of a café, as sought by the Development Application.

Development Application means the development application lodged with the Council by the Developer under the Act seeking Development Consent for the Development, with reference DA534/2016.

Development Consent has the same meaning as in the Act.

Development Contribution means a monetary contribution of \$30,000.00.

Land means Lot 781 Deposited Plan 996773 known as 72 Clarkson Street Nabiac NSW 2312.

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

Public Purpose means the provision of public amenities and services to benefit the Nabiac Village.

In the interpretation of this Agreement, the following provisions apply unless the context otherwise requires:

- a. Headings are inserted for convenience only and do not affect the interpretation of this Agreement.
- b. A reference in this Agreement to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
- c. If the day on which any act, matter or thing is to be done under this Agreement is not a business day, the act, matter or thing must be done on the next business day.
- d. A reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.
- e. A reference in this Agreement to any law, legislation or legislative provision includes any statutory modification, amendment or reenactment, and any subordinate legislation or regulations issued under that legislation or legislative

provision.

- f. A reference in this Agreement to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- g. A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.
- h. An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- i. Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- j. A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
- k. References to the word 'include' or 'including' are to be construed without limitation.
- l. A reference to a party to this Agreement includes a reference to the servants, agents and contractors of the party, and the party's successors and assigns.
- m. Any schedules and attachments form part of this Agreement.

5 Development Contribution to be made under this Agreement

5.1 Within 14 days of the date of the Notice of Determination granting Development Consent for the Development, the Developer must pay to the Council the Development Contribution .

5.2 Payment is to be made in cash, bank cheque or by electronic funds transfer as directed in writing by the Council.

6 Application of the Development Contributions

6.1 The Development Contributions are to be used for or applied towards the Public Purpose.

6.2 The Development Contributions are to be used within the terms outlined in clause 6.1 at the discretion of the Council and there is no obligation to report to the Developer in relation to its expenditure.

7 Application of s94 and s94A Act to the Development

This Agreement wholly excludes the application of Section 94 and Section 94A of the Act in respect of the Development.

8 Registration of this Agreement

This Agreement is not to be registered on the title of the land as provided for in Section 93H of the Act.

9 Dispute Resolution

- 9.1 If a dispute arises out of or relates to this Agreement, a party cannot commence any court proceedings relating to this dispute unless that party has complied with the following clauses.
- 9.2 A party claiming a dispute has arisen must serve a notice on the other parties specifying the nature of the dispute.
- 9.3 On receipt of that notice by the other party, each party must endeavor in good faith to resolve the dispute expeditiously using informal dispute resolution techniques such as mediation, expert evaluation or similar techniques agreed by them.
- 9.4 If the parties do not agree within 21 days of service of the notice, or any further period agreed in writing by them, as to:
- a) the dispute resolution technique and procedures to be adopted;
 - b) the timetable for all steps in those procedures;
 - c) the selection and compensation of the independent person required for that technique,
- the parties must mediate the dispute in accordance with the Mediation Rules of the Law Society of New South Wales and must request the President of the Law Society of New South Wales or the President's nominee to select the mediator and determine the mediator's remuneration.

10 Notices

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

- a. Delivered or posted to that Party at its address set out below.
- b. Emailed to that Party at its email address set out below.

Council: Mid-Coast Council
Attention: Interim General Manager

Address: Administration Centre
Breese Parade
Forster NSW 2428

Email: council@midcoast.nsw.gov.au

Developer: Kenneth Leigh Logan
Address: 4 Nixon Place
Nabiac NSW 2312

Email: ncls_taree@me.com

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

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

- a. If it is delivered, when it is left at the relevant address.
- b. If it is sent by post, 5 business days after it is posted.

10.4 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, or if on a business day, after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

11 Approval and consent

11.1 Except as otherwise set out in this Agreement, and subject to any statutory obligations, a Party may give or withhold an approval or consent to be given under this Agreement in that Party's absolute discretion and subject to any conditions determined by the Party.

11.2 A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

12 Assignment and Dealings

The Developer must not deal with the Land until the Developer has fully satisfied its obligations under this Agreement.

13 Costs

All parties shall bear their own costs in relation to the negotiation, preparation, execution, review or dispute resolution of this Agreement.

14 Entire agreement

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.

15 Further acts

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

16 Governing law and jurisdiction

This Agreement is governed by the law of New South Wales. The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them. The Parties will not object to the exercise of jurisdiction by those courts on any basis.

17 No fetter

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

18 Representations and warranties

The Parties represent and warrant that they have power to enter into this Agreement and comply with their obligations under the Agreement and that entry into this Agreement will not result in the breach of any law.

19 Severability

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

20 Modifications

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

21 Waiver

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.

Execution Dated:

Executed as an Agreement:

THE COMMON SEAL OF MID-COAST COUNCIL was hereunto affixed pursuant to resolution made on 10 August 2016:

.....
INTERIM GENERAL MANAGER

.....
ADMINISTRATOR

.....
Name of Witness

.....
Signature of Witness

.....
KENNETH LEIGH LOGAN

.....
Name of Witness

.....
Signature of Witness

Explanatory Note

Environmental Planning and Assessment Regulation 2000
(Clause 25E)

Draft Planning Agreement

Under s93F of the Environmental Planning and Assessment Act 1979 The purpose of this Explanatory Note is to provide a plain English summary to support the notification of the proposed planning agreement (the 'Planning Agreement') prepared under Subdivision 2 of Division 6 of Part 4 of the Environmental Planning and Assessment Act, 1979 ('the Act').

This explanatory note has been prepared jointly by the parties as required by clause 25E of the Environmental Planning and Assessment Regulation 2000.

1 Parties

MidCoast Council	Council
Kenneth Leigh Logan	Developer

2 Description of Subject Land

Lot 781 Deposited Plan 996773 known as "The Greenhouse Café" 72 Clarkson Street, Nابیac NSW 2312.

3 Description of Proposed Development Application

This Planning Agreement applies to development proposed in the following Development Applications, which have been lodged with the Council:

DA 534/2016 being an application to delete on-site parking requirements for the café/restaurant business on the land.

This development will not be liable for Section 94 Contributions under a Section 94 Contributions Plan.

4 Summary of Objectives, Nature and Effect of the Draft Planning Agreement

The objectives of this Planning Agreement are to secure a monetary contribution to be paid to the Council for the purpose of providing public facilities and services to the Nابیac community.

The Planning Agreement requires a monetary payment of \$30,000 in Development Contributions by the Developer to Council.

5 Assessment of the Merits of the Draft Planning Agreement

The draft Planning Agreement encourages the provision of community facilities and services. The draft Planning Agreement is a reasonable means of achieving that planning purpose, as it provides for the payment of monetary contributions to Council for the provision of public facilities to benefit the Nabiac community.

6 How the Draft Planning Agreement Promotes the Objects of the Environmental Planning and Assessment Act 1979 and the Public Interest.

The draft Planning Agreement promotes the public interest by encouraging the provision and co-ordination of community services and facilities (s.5(a)(v) of the Act.

The draft Planning Agreement promotes Council's charter under section 8 of the *Local Government Act 1993* as it contributes to the Council's provision of adequate, equitable and appropriate services and facilities for the community and provides a means that allows the wider community to make submission to the Council in relation to the draft Planning Agreement.

7
8 The Impact of the Draft Planning Agreement on the Public or Any Section of the Public

The Draft Planning Agreement will have a beneficial impact on the Nabiac community by providing funds for the provision of public facilities within the Nabiac village.

9 Other Matters

This Explanatory Note is not to be used in construing the Planning Agreement, but where the objectives of the Planning Agreement are referred to within the Agreement, the objectives of the Agreement as outlined in this explanatory note may be used to assist in interpreting this term.

Signed and Dated by All Parties