

**PLANNING AGREEMENT**

**BETWEEN**

**BYRON SHIRE COUNCIL**

**AND**

**NORMAN HUNT, ROSALIND GAIL HUNT, ERROL WILLIAM  
PEARCE, ANTHEA MARY PEARCE AND DAYGAGE PTY  
LTD (ACN 073 510 666)**

**DATED: .....**

**Hunt Partners  
Suite 1, Level 6  
114 Castlereagh Street  
SYDNEY NSW 2000  
Tel: 02 9235 2966  
Fax: 02 9283 9387**

*[Faint, illegible stamp or signature]*

## TABLE OF CONTENTS

1. PLANNING AGREEMENT UNDER THE ACT .....	3
2. APPLICATION OF THIS AGREEMENT .....	3
3. OPERATION OF THIS AGREEMENT .....	3
4. DEFINITIONS AND INTERPRETATION .....	3
5. OWNERS' DEVELOPMENT CONTRIBUTIONS .....	6
6. COUNCIL'S AGREEMENT .....	8
7. FURTHER AGREEMENTS .....	8
8. SECURITY .....	9
9. APPLICATION OF SECTS. 83B, 83D, 94 AND 94A OF THE ACT TO THE DEVELOPMENT .....	9
10. REGISTRATION OF THIS AGREEMENT .....	9
11. NOTICES .....	9
12. APPROVALS AND CONSENT .....	10
13. COSTS .....	10
14. DISPUTE RESOLUTION .....	10
15. ENTIRE AGREEMENT .....	11
16. FURTHER ACTS .....	11
17. GOVERNING LAW AND JURISDICTION .....	12
18. JOINT AND INDIVIDUAL LIABILITY AND BENEFITS .....	12
19. NO FETTER .....	12
20. REPRESENTATIONS AND WARRANTIES .....	12
21. SEVERABILITY .....	12
22. MODIFICATIONS .....	12
23. WAIVER .....	12
24. GST .....	12
25. EXPLANATORY NOTE RELATING TO THIS AGREEMENT .....	13
Appendix .....	15

**THIS PLANNING AGREEMENT** is made this                      day of                      2020

**BETWEEN        BYRON SHIRE COUNCIL** of Council Chambers, 70-90 Station Street, Mullumbimby in the State of New South Wales ("Council") of the First Part

**AND                NORMAN HUNT, ROSALIND GAIL HUNT, ERROL WILLIAM PEARCE, ANTHEA MARY PEARCE, AND DAYGAGE PTY LTD (ACN 073 510 666)** of Suite 1, Level 6, 114 Castlereagh Street, Sydney in the State of New South Wales ("the Owners") of the Second Part.

## **BACKGROUND**

- A.        The Owners have lodged the Project Development Application with Council.
- B.        The Project Development Application was accompanied by an offer by the Owners to agree to a condition of Development Consent requiring the entry into this Agreement and the making of Development Contributions to Council in accordance with this Agreement.
- C.        The Project Development Application was granted Deferred Commencement Consent by Byron Shire Council on [dd/mm/yyyy] subject to a condition requiring the Planning Agreement to be entered into.
- D.        The parties acknowledge that the Development does not comply with the development controls in the Byron Local Environmental Plan 1988 and the Byron Development Control Plan 2004.
- E.        Until the Planning Agreement operates, this Agreement constituted the Developer's offer to make the Development Contributions in connection with the Development on the terms and conditions set out in this Agreement.

## **OPERATIVE PROVISIONS**

### **1.        PLANNING AGREEMENT UNDER THE ACT**

The Parties agree that this Agreement is a planning agreement governed by Sub-division 2 of Division 7.1 of Part 7 of the Act.

### **2.        APPLICATION OF THIS AGREEMENT**

This Agreement applies to the Development.

### **3.        OPERATION OF THIS AGREEMENT**

- 3.1.        Until the Planning Agreement operates, this Agreement constitutes the Owner's offer to enter into the Planning Agreement if Development Consent is granted to the Project Development Application.
- 3.2.        Council granted Deferred Commencement Consent to the Development Application [dd/mm/yyyy] subject to a condition requiring the Planning Agreement to be entered into.

### **4.        DEFINITIONS AND INTERPRETATION**

- 4.1.        In this Agreement the following definitions apply:

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

**Boarding House**                      means each of, the buildings in the Development numbered 1 to 9 inclusive on the Site Plan which have Development Consent to operate as a boarding house.

<b>Bedroom</b>	means a bedroom in a Boarding House and includes a single or double bedroom.
<b>Capped Rent</b>	means a rent which would entitle the rented premises to be granted an exemption from the obligation to pay land tax under section 10Q of the <i>Land Tax Management Act 1956</i> , and in the event that the <i>Land Tax Management Act 1956</i> is amended to remove any exemption for the provision of low cost accommodation, the rent specified in the last guidelines approved for the purposes of section 10Q of the <i>Land Tax Management Act 1956</i> , indexed quarterly in accordance with the Consumer Price Index (All Groups- Sydney) as provided by the Australian Bureau of Statistics.
<b>Capped Rent Room</b>	means a Bedroom other than a Discounted Rental Room.
<b>Commencing Contribution</b>	means an amount equal to 10% of the value of the Boarding House or Boarding Houses to which a Development Application referred to in clause 5.3 relates, determined in accordance with clause 5.4.
<b>Commitment Period</b>	means a period of 15 years commencing on the date on which the fifth Occupation Certificate for a Boarding House is issued.
<b>Core Commitment Period</b>	means the first 8 years of the Commitment Period.
<b>Current Market Rental</b>	<p>means the average current weekly licence fee or rent at which each of the Bedrooms are offered, or let to, the general public:</p> <ul style="list-style-type: none"> <li>• in the case of an Existing Boarding House which has not had a Refurbishment, during the year preceding the date of this Agreement;</li> <li>• in the case of an Existing Boarding House which has had a Refurbishment, during the period from the date of occupation of the Boarding House after the Refurbishment until the date on which the Current Market Rental is being determined, or the date 1 year later, whichever is the earlier; and</li> <li>• in the case of a New Boarding House, during the period from the date of issue of an occupation certificate for the New Boarding House until the date on which the Current Market Rental is being determined, or the date 1 year later, whichever is the earlier, indexed annually in accordance with rental increases or decreases for Byron Bay published in the quarterly rent and sales figures issued by the New South Wales Department of Housing.</li> </ul>
<b>Development</b>	means each of the stages of the development referred to in the Project Development Application.
<b>Development Application</b>	has the same meaning as in the Act.
<b>Development Approval</b>	means the deferred Development Consent granted to the Development Application by Byron Shire Council as subsequently amended by any applications under Section 4.55 of the Act consented to by Byron Shire Council.
<b>Development Consent</b>	has the same meaning as in the Act.
<b>Development Contribution</b>	means a monetary contribution, the dedication of land free of cost, the carrying out of a work, or the provision of a material public

benefit, or any combination thereof, to be used for, or applied towards, a Public Purpose.

<b>Discounted Rental Rate</b>	means an average of nine (9) Bedrooms a year during the Core Commitment Period, and five (5) Bedrooms during each year of the remainder of the Commitment Period, at least one third of which will be double bedrooms, to be made available as follows: <ul style="list-style-type: none"><li>• during the Core Commitment Period:<ul style="list-style-type: none"><li>- for the first year, five (5) Bedrooms;</li><li>- for the second year, seven (7) Bedrooms;</li><li>- for the third year and fourth year, six (6) single and four (4) double Bedrooms;</li></ul></li><li>• for the remainder of the Core Commitment Period, ten (10) Bedrooms.</li></ul>
<b>Disputant</b>	means a party to a dispute.
<b>Dispute</b>	means a dispute arising out of this Agreement.
<b>Dwelling</b>	has the same meaning as in the Byron Local Environment Plan 1988.
<b>Eligible Person</b>	means a person who meets the financial and social eligibility criteria determined by Council in consultation with the Owners from time to time.
<b>Existing Boarding Houses</b>	means houses numbered 1, 2, 3, 4, and 5 on the Site Plan houses.
<b>Land</b>	means Lot 2 Deposited Plan 1206972 being the land contained in Certificate of Title Folio identifier 2/1206972 located on the corner of Browning Street and Bangalow Road, Byron Bay in the State of New South Wales.
<b>Resolution Institute</b>	means Resolution Institute (ACN 008 651 232), a dispute resolution membership organisation that was formed on 1 January 2015 following the amalgamation of dispute resolution service providers LEADR and IAMA.
<b>New Boarding Houses</b>	means houses numbered 6, 7, 8 and 9 of the Site Plan.
<b>Occupation Certificate</b>	means an occupation certificate within the meaning of section 6.4(c) of the Act
<b>Planning Agreement</b>	means the provisions of this Agreement under which the Owners are required to make Development Contributions in connection with the carrying out of the Development, and includes any provisions that are incidental or supplementary to those provisions.
<b>Project Development Application</b>	means Development Consent [ ] lodged with the Council on [dd/mm/yyyy] which was granted Deferred Commencement Consent by Byron Shire Council on [dd/mm/yyyy].
<b>Public Purpose</b>	has the same meaning as in section 7.4(2) of the Act.
<b>Refurbishment</b>	means the extension, renovation and/or refurbishment, other than repainting or repairs, of an Existing Boarding House, which costs in excess of the sum of \$30,000 per building.
<b>Regulation</b>	means the Environmental Planning and Assessment Regulation 2000.

**Remaining Contribution** means the value of the Commencing Contribution less 1/84<sup>th</sup> of that value for each month that has expired after the end of the Core Commitment Period.

**Site Plan** means the site plan annexed hereto and marked with the letter "A".

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

- (a) headings are inserted for convenience only and do not affect the interpretation of this Agreement,
- (b) a reference in this Agreement to a business day means a day other than Saturday, Sunday or public holiday on which banks are open for business generally in Sydney,
- (c) if the day on which any act, matter or thing is to be done under this Agreement is not a business day, the act, matter or thing must be done on the next business day,
- (d) a reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars,
- (e) a reference in this Agreement to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision,
- (f) a reference in this Agreement to any agreement, Agreement or document is to that agreement, Agreement 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 gender,
- (k) references to the word 'include' or 'including' are to be construed without limitation,
- (l) a reference to this Agreement includes the agreement recorded in this Agreement,
- (m) a reference to a Party to this Agreement includes a reference to the servants, agents and contractors of the Party, and the Party's successors and assigns,
- (n) any schedules and attachments form part of this Agreement; and
- (o) the Explanatory Note may not be used to assist in construing this Agreement.

## **5. OWNERS' DEVELOPMENT CONTRIBUTIONS**

5.1 Capped and Discounted Rent.

The Owners will ensure that:

5.1.1 The Discounted Rental Rooms will be rented or available to Eligible Persons at the Discounted Rental Rate at all times;

5.1.2 During the Core Commitment Period, the Capped Rent Rooms will be rented at the Capped Rent.

## 5.2 Default Contribution

5.2.1 In the event that the Owners cannot comply with clause 5.1.1, then with the prior written approval of the Council, the Owners may rent the Discounted Rental Rooms other than in accordance with clause 5.1.1 and the Council can require the Owners to pay a cash contribution equal to 25% of the Current Market Rental for each Discounted Rental Room for the period during which it is not rented to an Eligible Person.

5.2.2 Council must apply any funds collected pursuant to clause 5.2.1 to a Public Purpose. Contribution for a Change of Use of Boarding Houses

5.3.1 The Owners may at any time after the date on which Development Consent is granted to the Project Development Application, lodge a Development Application with Council for a change of use of any Boarding House provided that any such Development Application is accompanied by an offer to enter into a planning agreement within the meaning of section 7.4 of the Act, if Development Consent is granted to that Development Application, under which the Owners agree:

- (a) To pay an amount equal to the Commencing Contribution if the Development Application for the change of use is lodged during the Core Commitment Period;
- (b) To pay an amount equal to the. Remaining Contribution if the Development Application for the change of use is lodged in any other year of the Commitment Period, and
- (c) To continue to comply with clause 5.1 in relation to any Boarding Houses which continue to be used as Boarding Houses during the Core Commitment Period.

5.3.2 The Core Commitment Period and the Commitment Period shall terminate with respect to any Boarding House on the date that Development Consent is granted to the change of use of that Boarding House and the number of Bedrooms to be rented to Eligible Persons at the Discounted Rental Rate pursuant to clause 5.1.1 will be reduced by one (1) for each Boarding House that is granted Development Consent for a change of use pursuant to clause 5.3.

5.3.3 Nothing herein shall preclude the Owners and Council from agreeing that the whole or part of a monetary Development Contribution payable pursuant to clause 5.3.1 shall be met wholly or in part by the transfer of any Dwelling or Dwellings in or comprising a Boarding House free of cost to Council.

5.3.4 Council must apply any funds collected pursuant to clause 5.3 to a Public Purpose.

## 5.4 Valuation

5.4.1 The value of a Boarding House will be determined:

- (a) at the time that any Development Application for a change of use of that Boarding House is lodged, and

- (b) at an agreed value prepared by a registered valuer or failing such agreement by a nominee of the Institute of Valuers of Australia.

5.4.2 A valuation referred to in Clause 5.4.1 shall be based upon the assumption that Development Consent is granted to the Development Application for the change of use of that Boarding House referred to in clause 5.3.1.

5.4.3 Council and the Owners will bear the costs of all valuations pursuant to this clause equally.

## **6 COUNCIL'S AGREEMENT**

In further consideration of the Owners agreeing to provide Affordable Housing during the Commitment Period, Council agrees to:

- (a) waive the Development Application fees with respect to the Project Development Application, and
- (b) subject to the existing 11 ET credits which are acknowledged by Council, assess section 64 contribution for the Development based on:
  - (i) the Boarding Houses at the rate of 0.125ET per person or 1.5 ET for 12 persons ordinarily resident in each Boarding House;
- (c) subject to the existing 11 SDU (standard Dwelling unit) credits which are acknowledged by Council, assess the Section 94 contributions for:
  - (i) the Boarding Houses at 1.5 times the current standard residential rate in the Council Planning Instruments for Dwellings with 3 or more bedrooms;

## **7. FURTHER AGREEMENTS**

7.1. The Parties may, at any time, enter into such other agreements relating to the subject-matter of this Agreement that they consider are necessary or desirable in order to give effect to this Agreement.

7.2. An agreement referred to in clause 7.1 is not to be inconsistent with:

- (a) this Agreement, or
- (b) any Development Consent for the Development, as modified from time to time, or
- (c) any other applicable law.

7.3. An agreement referred to in clause 7.1 does not have effect to the extent that it contravenes clause 7.2.

7.4. Without limiting clause 7.17 an agreement or arrangements referred to in those clauses may make provision for:

- (a) the management of the Boarding Houses, including the appointment of a manager, and preparation of a management plan for the Boarding Houses;
- (b) the process of selection of Eligible Persons and referral of Eligible Persons to the Owners or any manager of the Boarding Houses; and
- (c) the role of any non-profit organisation in the referral of Eligible Persons to the Owners or any manager of the Boarding Houses.



## **8. SECURITY**

- 8.1 At the date of this Agreement, the Owners, or any one or more of them, are to provide the Council with an unconditional bank guarantee in the amount of fifty thousand dollars.
- 8.2 The Council is not to call upon a bank guarantee provided under this clause unless the Owners are in material or substantial breach of this Agreement and have failed to rectify the breach after having been given reasonable notice (which must not be less than 30 days) in writing to do so.
- 8.3 The Council is to return the bank guarantee at the end of the Commitment Period.
- 8.4 The Council may apply the bank guarantee in satisfaction of:
- (a) any obligation on the Owners under this Agreement to make monetary Development Contributions, and
  - (b) any liability, loss, cost, charge or expense directly or indirectly incurred by the Council because of the failure by the Developer to comply with this Agreement.

## **9. APPLICATION OF SECTS. 4.22, 4.24, 7.11, 7.12 AND 7.24 OF THE ACT TO THE DEVELOPMENT**

Sections 4.22, 4.24, 7.11, 7.12, and 7.24 of the Act apply to the Development.

## **10. REGISTRATION OF THIS AGREEMENT**

The Planning Agreement is to be registered as provided for in Section 7.6 of the Act by the Registrar General making an entry on the relevant folios of the land to which the Boarding Houses are to be built (being Lot 2 of the Site Plan) in accord with the Development Approval provided for in Section 7.6 of the Act.

## **11. NOTICES**

- 11.1 Any notice, consent, information, application or request that must or may be given or made to a Party under this Agreement is only given or made if it is in writing and sent in one of the following ways:
- (a) delivered or posted to that Party at its address set out below,
  - (b) faxed to that Party at its fax number set out below, or
  - (c) emailed to that Party at its email address set out below.

### **Council**

Attention: General Manager

Address: Council Chambers  
70-90 Station Street, Mullumbimby 2482

Facsimile 02 6684 3018

Email: [council@byron.nsw.gov.au](mailto:council@byron.nsw.gov.au)

### **Owners**

Attention: Norman Hunt

Address: Level 6, 114 Castlereagh Street, Sydney 2000

Email: [huntpartners@bigpond.com](mailto:huntpartners@bigpond.com)

- 11.2 If a Party gives the other Party three (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.
- 11.3 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, two (2) business days after it is posted, or
  - (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.
- 11.4 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.

## **12. APPROVALS AND CONSENT**

Except as otherwise set out in this Agreement, and subject to any statutory obligations, a Party may give or withhold an approval or consent to be given under this Agreement in that Party's absolute discretion and subject to any conditions determined by the Party. A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

## **13. COSTS**

- 13.1 The Owners shall pay:
- (a) all stamp duty and any registration fees under Section 7.6 of the Act payable in respect to this Agreement,
  - (b) their own legal costs in connection with the preparation and execution of this Agreement and any documentation pursuant thereto.
- 13.2 Council will pay its own legal costs with respect to the preparation and execution of this Agreement and any documentation pursuant thereto.
- 13.3 The Owners shall reimburse Council to a maximum of Three Thousand Dollars (\$3,000.00) with respect to any costs incurred by Council pursuant clause 13.2.

## **14. DISPUTE RESOLUTION**

- 14.1 A Party to this Agreement shall not start arbitration or court proceedings (except proceeding seeking interlocutory relief) in respect of a Dispute unless it has complied with this clause.
- 14.2 A Party, claiming that a Dispute has arisen must notify other Parties, giving details of

the Dispute.

- 14.3 During the 21 day period after giving notice under clause 14.2 (or longer period agreed in writing by the Disputants) ("initial period") each Disputant must use its best efforts to resolve the Dispute.
- 14.4 If the Disputants are unable to resolve the Dispute within the initial period, each Disputant agrees that the Dispute must be referred for mediation in accordance with the Mediation rules of the Law Society of New South Wales, at the request of any Disputant to:
- (a) a mediator agreed on by the Disputants; or
  - (b) if the Disputants are unable to agree on a mediator within seven (7) days after the initial period, a mediator nominated by the current chairman of Resolution Institute or the chairman's nominee.
- 14.5 The role of any mediator is to assist in negotiating a resolution of the Dispute. A mediator may not make a decision that is binding on the Disputant unless that Disputant has so agreed in writing.
- 14.6 Any information or documents disclosed by a Disputant under this Clause:
- (a) must be kept confidential; and
  - (b) may not be used except to attempt to resolve the Dispute
- 14.7 Each Disputant must bear its own costs of complying with this clause and the Disputants must bear equally in the costs of any mediator engaged.
- 14.8 After the initial period, a Disputant that has complied with Clauses 14.1, 14.2 and 14.3 may terminate the Dispute resolution process by giving notice to each other Disputant.
- 14.9 If in relation to a Dispute a Disputant breaches any provision of Clause 14.1 to 14.6 each other Disputant need not comply with Clauses 14.1 to 14.6 in relation to that Dispute.
- 14.10 If the Dispute resolution process has been terminated pursuant to the provisions of Clause 14.8, then any Dispute relating to Current Market Rental shall be determined by a nominee of the President for the time being of the Real Estate Institute of Australia who shall act as an expert and whose determination shall be binding on the Parties.

## **15. 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.

## **16. 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

## **17. 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.

## **18. JOINT AND INDIVIDUAL LIABILITY AND BENEFITS**

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

## **19. 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.

## **20. 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.

## **21. 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.

## **22. 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.

## **23. 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 nor does it amount to a waiver of any rights arising under this Agreement. 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 right in respect of which it is given. It is not to be taken as an implied waiver of any other obligation, breach or right or as an implied waiver of that obligation, breach or right in relation to any other occasion.

## **24. GST**

24.1 In this clause:

**Adjustment Note, Consideration, GST, GST Group, Margin Scheme, Money, Supply and Tax Invoice** have the meaning given by the GST Law.

**GST Amount** means in relation to a Taxable Supply the amount of GST payable in respect of the Taxable Supply.

**GST Law** has the meaning given by the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

**Input Tax Credit** has the meaning given by the GST Law and a reference to an Input Tax Credit entitlement of a party includes an Input Tax Credit for an acquisition made by that party but to which another member of the same GST Group is entitled under the GST Law

**Taxable Supply** has the meaning given by the GST Law excluding (except where expressly agreed otherwise) a supply in respect of which the supplier chooses to apply the Margin Scheme in working out the amount of GST on that supply.

- 24.2 Subject to clause 24.5, if GST is payable on a Taxable Supply made under, by reference to or in connection with this Agreement, the Party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.
- 24.3 Clause 24.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Agreement to be GST inclusive.
- 24.4 No additional amount shall be payable by the Council under clause 24.2 unless, and only to the extent that, the Council (acting reasonably and in accordance with the GST Law) determines that it is entitled to an Input Tax Credit for its acquisition of the Taxable Supply giving rise to the liability to pay GST.
- 24.5 If there are Supplies for Consideration which is not Consideration expressed as an amount of Money under this Agreement by one Party to the other Party that are not subject to Division 82 of the A New Tax System (Goods and Services Tax) Act 1999, the Parties agree:
- (a) to negotiate in good faith to agree the GST inclusive market value of those Supplies prior to issuing Tax Invoices in respect of those Supplies;
  - (b) that any amounts payable by the Parties in accordance with clause 24.2 (as limited by clause 24.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 24.6 No payment of any amount pursuant to this clause 24, and no payment of the GST Amount where the Consideration for the Taxable Supply is expressly agreed to be GST inclusive, is required until the supplier has provided a Tax Invoice or Adjustment Note as the case may be to the recipient.
- 24.7 Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to a cost, expense or other liability incurred by a party, must exclude the amount of any Input Tax Credit entitlement of that party in relation to the relevant cost, expense or other liability.
- 24.8 This clause continues to apply after expiration or termination of this Agreement.

## **25. EXPLANATORY NOTE RELATING TO THIS AGREEMENT**

- 25.1 The Appendix contains the explanatory note relating to this Agreement required by clause 25E of the Regulation.
- 25.2 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 Planning Agreement.

**EXECUTED AS AN AGREEMENT:**

**THE COMMON SEAL OF BYRON SHITE** )  
**COUNCIL** was hereunto affixed pursuant to )  
delegated authority provided by a resolution of )  
Council passed on       day of )  
)

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Name of Witness

Signed by Norman Hunt )  
in the presence of" )

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Norman Hunt

\_\_\_\_\_  
Name of Witness

Signed by Rosalind Gail Hunt )  
in the presence of" )

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Rosalind Gail Hunt

\_\_\_\_\_  
Name of Witness

Signed by Errol William Pearce )  
in the presence of" )

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Errol William Pearce

\_\_\_\_\_  
Name of Witness

Signed by Anthea Mary Pearce )  
in the presence of" )

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Anthea Mary Hunt

\_\_\_\_\_  
Name of Witness

Signed by Daygag Pty Ltd (ACN 073 510 666) in accordance with  
Section 127 of the *Corporations Act 2001 (Cth)* by:

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of Director/Secretary

# Appendix

*Environmental Planning and Assessment Regulation 2000*  
(Clause 25E)

## EXPLANATORY NOTE

**This Explanatory Note is required under Clause 25E of the NSW Environmental Planning and Assessment Regulation 2000 to be exhibited with the exhibited Planning Agreement and to have been prepared jointly by all parties to the Planning Agreement**

**This Explanatory Note relates to a Planning Agreement under s7.4 of the Environmental Planning and Assessment Act 1979**

BETWEEN BYRON SHIRE COUNCIL of Council Chambers, 70-90 Station Street, Mullumbimby  
in the State of New South Wales ("Council") of the First Part

AND **NORMAN HUNT, ROSALIND GAIL HUNT, ERROL WILLIAM PEARCE, ANTHEA  
MARY PEARCE AND DAYGAGE PTY LTD (ACN 073 510 666)** of Level 11, 139  
Macquarie Street, Sydney in the State of New South Wales ("the Owners") of the  
Second Part

### 1 Description of Subject Land

Lot 2 Deposited Plan 1206972 being the land contained in Certificate of Title Folio Identifier 2/1206972 located on the corner of Browning Street and Bangalow Road, Byron Bay in the State of New South Wales.

### 2 Summary of Objectives, Nature and Effect of the Draft Planning Agreement

The objective of the Planning Agreement is to increase the provision of affordable housing in Byron Bay through the supply of boarding-houses with accommodation to be rented out at specified rentals.

This will be achieved by the approval to that part of development application 10.2007.406.1 that involves the use of 5 existing houses as boarding-houses and the erection of 4 new houses for use as boarding-houses in conjunction with the Planning Agreement that specifies mechanisms for the determination of the rental cost of the boarding-house accommodation and for penalties incurred if such accommodation does not for any reason eventuate.

Approval to that development application and to the Planning Agreement will effect a significant increase in the provision of affordable housing in Byron Bay

### 3. Assessment of the Merits of the Draft Planning. Agreement

#### 3.1 The Planning Purposes Served by the Draft Planning Agreement

The planning purpose that is served by the Planning Agreement is that of the provision of a range of housing types in the community such that low income workers and others are able to remain resident in the community

### **3.2 How the Draft Planning Agreement Promotes the Public Interest and one or more objects of the NSW Environmental Planning and Assessment Act 1979**

The Planning Agreement will promote the public interest by assisting the extension of the provision of housing to all members of the community, including low income persons, in the circumstance that, but for the Planning Agreement, such accommodation may not be otherwise available.

Objective 1.3(d) of the Act is "to promote the delivery and maintenance of affordable housing". This Planning Agreement is intended to attain that specific objective

### **3.3 Councils - How the Draft Planning Agreement Promotes the Elements of the Council's Charter under Section 8 of the NSW Local Government Act 1993**

Section 8 and 8A of the NSW Local Government Act 1993 provides the following guiding principles for councils:

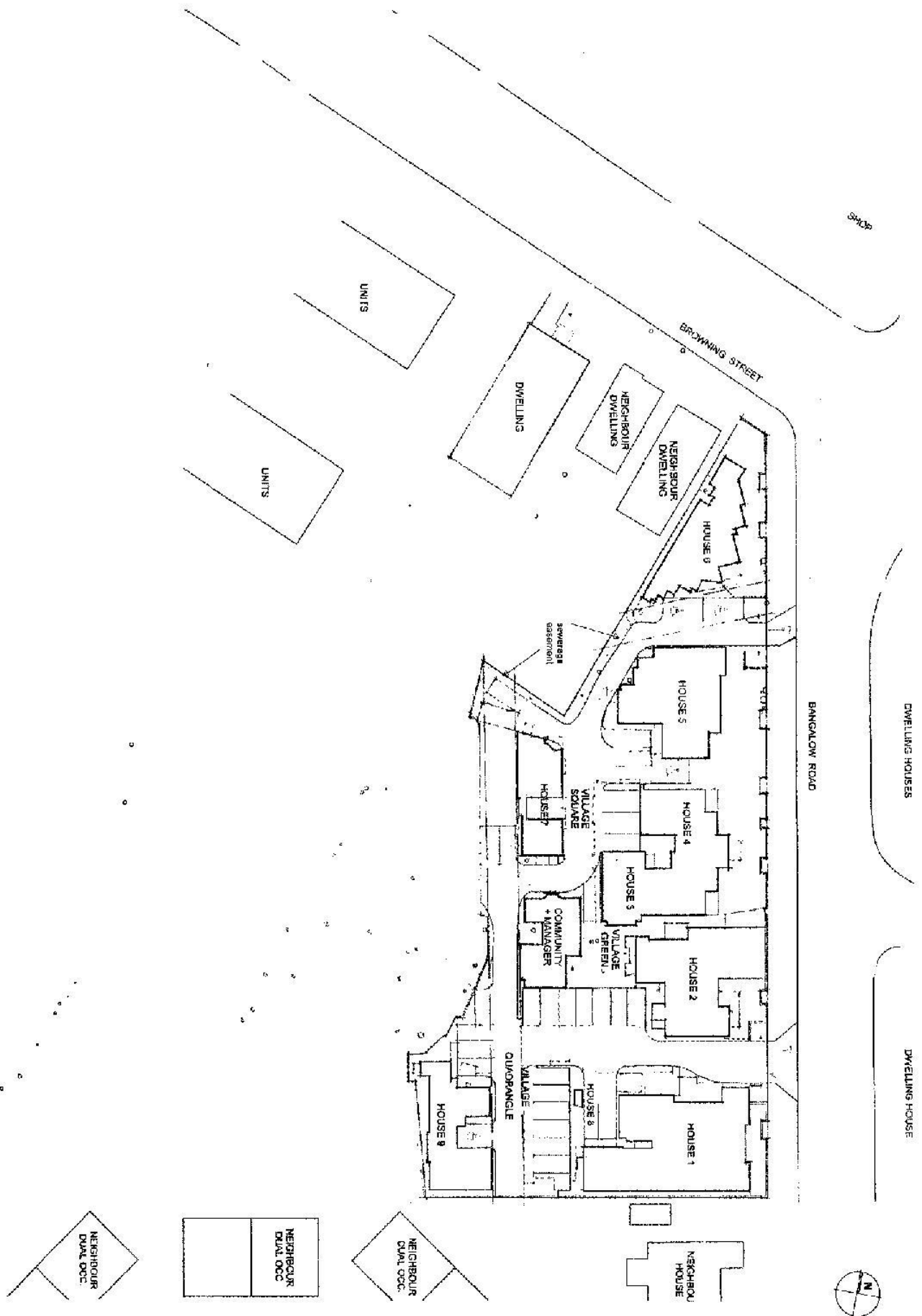
- councils should provide strong and effective representation, leadership, planning and decision-making,
  - councils should work with others to secure appropriate services for local community needs,
  - councils should manage lands and other assets so that current and future local community needs can be met in an affordable way,
  - councils should act fairly, ethically and without bias in the interests of the local community,
- The Planning Agreement will promote all of these elements of the Council's charter as it demonstrates a leadership role for Council to work with others to secure appropriate services with respect to the equitable provision of affordable housing to meet the needs of the local community. The equitable provision of housing will facilitate a local community that is strong, healthy and prosperous.

### **3.4 Whether the Draft Planning Agreement Conforms with the Council's Capital Works Program**

The implementation of the Planning Agreement will not affect Council's capital works program.



# "Annexure A"



drawing: **SITE PLAN**  
 details: **LAYOUT**  
 number: **0441-03-00/01**  
 date: **5**

Issue: **E**  
 date: **6-5-18**  
 1:500 @ A3

**RUNNING DOG**

*design*



**RESIDENTIAL DEVELOPMENT**  
 cnr Bangalow rd + Browning st  
 BYRON BAY