

PLANNING AGREEMENT

**BYRON SHIRE COUNCIL
(Council)**

And

**DAVID JOHN STEWART &
LEONIE NANNETTE LANE
(Developer)**

PLANNING AGREEMENT

Parties

BYRON SHIRE COUNCIL of 70 Station Street, Mullumbimby
NSW 2482

(Council)

And

DAVID JOHN STEWART & LEONIE NANNETTE LANE of 114
Stewarts Road, Clunes NSW 2480

(Developer)

Background

1. In or around July 2021, the Developer made an application to Council for the Instrument Change.
2. The Instrument Change application was accompanied by an offer by the Developer to enter into this Agreement to make the Development Contributions when the Instrument Change has been made.

Operative Provisions

1. Planning agreement under the Act

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

2. Operation and Application of this Agreement

2.1. This Agreement:

- (a) commences when the Instrument Change occurs; and
- (b) applies to the carrying out of the Development on the Land.

3. Definitions and interpretation

3.1. In this Agreement the following definitions apply:

- (a) **Act** means the *Environmental Planning and Assessment Act 1979* (NSW).
- (b) **Compliance Certificate** means a compliance certificate within the meaning of section 6.4 of the Act.
- (c) **Development** means the use of an existing dwelling house on the Land.
- (d) **Development Application** has the same meaning as in the Act.
- (e) **Development Consent** means a development consent issued under the Act for the Development.
- (f) **Development Contributions** means the amount of \$20,000.00 (inclusive of GST) being for 1 Equivalent Tenement.
- (g) **Explanatory Note** means the explanatory note annexed to this Agreement at Schedule 2.
- (h) **GST** has the same meaning as in the GST Law.

- (i) **GST Law** has the meaning given to that term in *A New Tax System (Goods and Services) Act 1999* (Cth) and any other Act or regulation relating to the imposition or administration of the GST.
- (j) **Instrument Change** means amendments to the Byron Local Environmental Plan 2014 to give effect to the Planning Proposal.
- (k) **Land** means Lot 10 in Deposited Plan 586360, known as 114 Stewarts Road, Clunes NSW.
- (l) **Party** means a party to this agreement, including their successors and assigns.
- (m) **Planning Proposal** means planning proposal PP-2021-4505 concerning the Land.
- (n) **Public Purpose** means any purpose that benefits the public or a section of the public, including but not limited a purpose specified in section 7.4(2) of the Act.
- (o) **Regulation** means the *Environmental Planning and Assessment Regulation 2021*.

3.2. 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 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 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.

4. Development Contributions to be made under this Agreement

- 4.1. The Developer must pay the Development Contributions to Council within 14 days of written notification from Council to the Developer that the Instrument Change has occurred.
- 4.2. The Developer is not required to make the Development Contributions until the Instrument Change occurs.

5. Application of the Development Contributions

- 5.1. The Council must apply any Development Contributions made under this Agreement towards the Public Purpose for which it is made and at the locations, in the manner and to the standards required by or under this Agreement.
- 5.2. The Parties agree that if the Development Contributions are made in accordance with this Agreement then clause 5.1 is satisfied.

6. Application of s7.11 and s7.12 of the Act to the Development

- 6.1. This Agreement excludes the application of s7.11 of the Act to the Development.
- 6.2. This Agreement excludes the application of s7.12 of the Act to the Development.

7. Registration of this Agreement

- 7.1. This Agreement is not required to be registered over the Land.

8. Review of this Agreement

- 8.1. The Parties, acting in good faith and using their best endeavours, agree to review this Agreement if either Party is of the opinion that any change of circumstance has occurred that materially affects the operation of this Agreement.
- 8.2. For the purposes of clause 8.1, the relevant changes include (but are not limited to) any change to a law that restricts or prohibits or enables the Council or any other planning authority to restrict or prohibit any aspect of the Development.
- 8.3. A failure by a Party to agree to participate in, or to take action requested by the other Party as a consequence of, a review under clause 8.1 is taken to be a dispute for the purposes of clause 9.

9. Dispute Resolution

- 9.1. Should a dispute arise under this Agreement, the Parties shall firstly meet in an attempt to resolve the dispute.

- 9.2. If the dispute is not resolved within 28 days of the date that a Party first raises the issue about which there is a dispute, the Parties must mediate the dispute in accordance with the Mediation Rules of the Law Society of New South Wales that are current at the time the dispute is mediated, and must request the President of the Law Society, or the President's nominee, to select a mediator.
- 9.3. If the dispute is not resolved by mediation within a further 28 days, or such longer period as may be necessary to allow any mediation process which has been commenced to be completed, then the Parties may exercise their legal rights in relation to the dispute, including by the commencement of legal proceedings in a court of competent jurisdiction in New South Wales.

10. Carrying Out & Hand-over of Development Contribution

- 10.1. The Developer is to provide the Development Contribution in accordance with this Agreement.
- 10.2. The Development Contribution is made when Developer pays the Development Contribution to Council as clear funds (if paid by bank cheque, when the cheque clears in Council's account).

11. Security and Enforcement

- 11.1. On or before the date of this Agreement, the Developer must pay the amount of \$20,000.00 into the trust account of McCartney Young Lawyers (**Security**), which is to be held on trust for the parties pending the Instrument Change occurring.
- 11.2. The Developer irrevocably authorizes McCartney Young Lawyers to release the Security to Council upon direction in writing from Council to McCartney Young Lawyers after the Instrument Change has occurred.
- 11.3. The parties may enter into further written agreements and/or agree on the payment of security in substitution for the security arrangements under this clause 11.
- 11.4. Without limiting any other remedies available to the Parties, this Agreement may be enforced by either Party in any court of

competent jurisdiction.

11.5. For the avoidance of doubt, nothing in this Agreement prevents:

- (a) a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Agreement or any matter to which this Agreement relates,
- (b) the Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Agreement or any matter to which this Agreement relates.

12. Notices

12.1. 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; and
- (b) Emailed to that Party at its email address set out below.

Council

Attention: The General Manager

Address: PO Box 219, Mullumbimby NSW 2482

Email: council@byron.nsw.gov.au

Developer

Attention: Leonie Lane & John Stewart

Address: 114 Stewarts Road, Clunes NSW 2480

Email: museums@newitaly.org.au

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

12.3. 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, 2 business days after it is posted;
- (c) if it is sent by email, at the time the email is sent provided that the sender does not subsequently receive a mail delivery error message; and
- (d) at the earliest time it is served, if it is served more than once.

12.4. 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.

13. Approvals and consent

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

14. Assignment

14.1. The Developer cannot assign, transfer or otherwise encumber this Agreement without the prior written consent of Council, which may not be unreasonably withheld or delayed.

15. Costs

15.1. The costs of negotiating, preparing and executing this Agreement are to be borne by the Developer.

16. Entire agreement

16.1. This Agreement contains everything to which the Parties have agreed in relation to the matters it deals with. No Party can rely on an earlier document, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, before this Agreement was executed, except as permitted bylaw.

17. Further acts

17.1. 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.

18. Governing law and jurisdiction

18.1. 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.

19. Joint and individual liability and benefits

19.1. Except as otherwise set out in this Agreement, any agreement, covenant, representation or warranty under this Agreement by 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.

20. No fetter

20.1. 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.

21. Representations and warranties

21.1. 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.

22. Severability

22.1. 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.

23. Modification

23.1. 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.

24. Waiver

24.1. The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another Party. A waiver by a Party is only effective if it is in writing. A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

25. GST

25.1. If any Party reasonably decides that it is liable to pay GST on a supply made to the other Party under this Agreement and the supply was not priced to include GST, then recipient of the supply must pay an additional amount equal to the GST on that supply.

26. Explanatory Note Relating to this Agreement

26.1. Schedule 1 contains the Explanatory Note relating to this Agreement pursuant to section 205 of the Regulation.

26.2. Pursuant to section 205 of the Regulation, the Parties agree that the Explanatory Note in the Appendix is not to be used to assist in construing this Agreement.

Execution

Dated:

Executed as an Agreement:

EXECUTED for and on behalf of)
BYRON SHIRE COUNCIL)
by its authorised delegate:)

.....
Signature of witness

.....
Signature of delegate

.....
Name of witness

.....
Name and Position of Delegate

SIGNED by **LEONIE**)
NANNETTE LANE in the)
presence of:)

.....
Signature of Witness

.....
Signature of Leonie Nannette Lane

.....
Name of Witness

SIGNED by **DAVID JOHN**)
STEWART in the presence of:)
)

.....
Signature of Witness

.....
Signature of David John Stewart

.....
Name of Witness

Schedule 1 – Explanatory Note

Pursuant to section 205 of the Environmental Planning and Assessment Regulation 2021

In accordance with the provisions of section 205 of the *Environmental Planning and Assessment Regulation 2021*, the following explanatory notes are provided in relation to the proposed planning agreement between **Leonie Nannette Lane & David John Stewart** and **Byron Shire Council**.

1. Introduction

The purpose of this explanatory note is to provide a plain English summary to support the notification of the draft planning agreement (the planning agreement).

This explanatory note explains what the planning agreement is proposing, how it delivers public benefit and whether it is an acceptable means of achieving the proposed planning outcomes.

2. The parties to this planning agreement are:

Byron Shire Council; and

Leonie Nannette Lane & David John Stewart as the Developer.

3. The land subject to the planning agreement is:

Lot 10 in Deposited Plan 586360, being 114 Stewarts Road, Clunes NSW.

4. Description of the proposed CHANGE TO THE ENVIRONMENTAL PLANNING INSTRUMENT

The developer is seeking an amendment to the Byron Local Environmental Plan 2014 for the subject land in accordance with Planning Proposal (PP) 2021-4505 and has made an offer to enter into a planning agreement in connection with the planning proposal. The amendments outlined in the related planning proposal are:

To include an additional local provision in Part 6 of Byron LEP 2014 to permit a dwelling house on Lot 10 DP 586360 with development consent

5. Description of the planning agreement

The effect of the planning agreement will be the payment of monetary contributions to Council.

The contributions required by the planning agreement will be provided in the form of a monetary contribution paid to Council in the amount of \$20,000.00, being the amount equal to 1 Equivalent Tenement.

The contributions required by the planning agreement will be provided to Council within 14 days after Council notifies the Developer of the finalization of the planning proposal.

6. Assessment of the merits of the planning agreement

The proposed planning agreement is considered to be in the public interest because it will increasing housing stock in the Byron LGA and promote the orderly and economic use and development of the land, being an object of the Act.

The proposed planning agreement promotes Council's charter through the contribution to public infrastructure that meets community needs (including long term needs) by the best value possible (being at the cost of the Developer).

The Developer is required to pay an amount equivalent to the Development Contributions into their solicitor's trust account with an authority to pay that amount to Council once the planning proposal is finalized.