
PLANNING AGREEMENT

**BYRON SHIRE COUNCIL
(Council)**

And

**BOREAS GROUP PTY LTD & TAREEDA
DEVELOPMENTS PTY LTD THE
TRUSTEE FOR TAREEDA
DEVELOPMENTS UNIT TRUST
ABN 72 347 964 155
(Developer)**

And

**MCAULEYS NO1 PTY LTD
(Landowner)**

PLANNING AGREEMENT

Parties

BYRON SHIRE COUNCIL of 70 Station Street, Mullumbimby
NSW 2482

(Council)

And

BOREAS GROUP PTY LTD & TAREEDA DEVELOPMENTS PTY LTD THE TRUSTEE FOR TAREEDA DEVELOPMENTS UNIT TRUST

ABN 72 347 964 155 of 85 Byron Street, Bangalow NSW 2479

(Developer)

And

MCAULEYS NO1 PTY LTD (ACN 641 113 591) of 85 Byron
Street, Bangalow NSW 2479

(Landowner)

Background

- A. In December 2020, the Developer made an application to Council for the Instrument Change for the purpose of making a Development application to Council for Development Consent to carry out the Development on the Land.
- B. The Instrument Change application was accompanied by an offer by the Developer to enter into this Agreement to make the Development Contributions if Development Consent is granted to the Development Application the Developer proposes to make.
- C. The Landowner consents to this Agreement.

Operative Provisions

1. Planning agreement under the Act

- 1.1. The Parties agree that this Agreement is a planning agreement governed by Subdivision 2 of Division 6 of Part 4 of the Act.

2. Operation and Application of this Agreement

- 2.1. This Agreement:

- (a) commences when the Development Consent is issued; 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) **Cycle Contributions** means the amount of \$202,145.00 (inclusive of GST) for the purposes of Council providing cycle and pedestrian pathways, links and associated infrastructure in the Byron local government area.
- (c) **Compliance Certificate** means a compliance certificate within the meaning of section 6.4 of the Act.
- (d) **Development** means the development and subdivision of the Land for the purposes of large lot residential lots and community title lots.
- (e) **Development Application** has the same meaning as in the Act.
- (f) **Development Consent** means a development consent issued under the Act for the Development.
- (g) **Development Contributions** means the provision of the

following works at the cost of the Developer:

1. Upgrade works to the intersection of Mullumbimby Road and McAuley Lane generally in accordance with the Traffic Impact Assessment report (Revision 2) dated 20 May 2022 and prepared by Ardill Payne & Partners, being works generally consistent with the report "Recommendations" (Section 8), and the Works Plan (**Intersection Upgrade**);
 2. Safety improvements as required by the Road Safety Audit – Intersection of McAuleys Lane and Mullumbimby Road, Myocum prepared by GeoLINK 4319-1002 dated 24 June 2022;
 3. (a) Safety upgrades to accommodate pedestrian and cycle links from the Land to Mullumbimby Road ('Cycle Path Works') including integration of pedestrian and cycle links with the Intersection Upgrade, OR

(b) Council at its discretion (acting reasonably) may require the payment of the **Cycle Contributions** in lieu of the Developer carrying out the Cycle Path Works;
- (h) **Explanatory Note** means the explanatory note annexed to this Agreement at Schedule 2.
- (i) **Final Lot** means a lot intended for separate occupation and disposition not being:
1. a lot created by a subdivision of the Land that is to be dedicated or otherwise transferred to the Council, or
 2. a lot created by a subdivision of the Land which may be further subdivided as part of the Development.
- (j) **First Defects Liability Period** means the period of 180 days on and from the date on which the Developer gives the Council a Compliance Certificate under clause 10 of this Agreement.
- (k) **GST** has the same meaning as in the GST Law.
- (l) **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.

- (m) **Instrument Change** means amendments to the Byron Local Environmental Plan 2014 to give effect to the Planning Proposal.
- (n) **Land** means Lot 8 in Deposited Plan 589795, known as 53 McAuleys Lane, Myocum NSW.
- (o) **Party** means a party to this agreement, including their successors and assigns.
- (p) **Planning Proposal** means the planning proposal concerning the Land accepted by Council by resolution on 10 June 2021.
- (q) **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.
- (r) **Rectification Certificate** means a compliance certificate within the meaning of section 6.4 of the Act to the effect that work the subject of a Rectification Notice has been completed in accordance with that notice.
- (s) **Rectification Notice** means a notice in writing that identifies a defect in a work and requires rectification of the defect within a specified period of time.
- (t) **Regulation** means the *Environmental Planning and Assessment Regulation 2021*.
- (u) **Second Defects Liability Period** means the period of 180 days on and from the date on which the Developer gives the Council a Rectification Certificate pursuant to clause 11 of this Agreement relating to a Rectification Notice given in the First Defects Liability Period.
- (v) **Subdivision Certificate** means a subdivision certificate within the meaning of section 6.4 of the Act.
- (w) **Works Plan** mean the plan at Schedule 1.

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 make the Development Contributions in accordance with this Agreement.
- 4.2. The Developer is not required to make the Development Contributions until prior to the issue of a Subdivision Certificate creating a Final Lot pursuant to the Development Consent.

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 does not exclude the application of s7.11 of the Act to the Development.
- 6.2. This Agreement does not exclude the application of s7.12 of the Act to the Development.
- 6.3. The Development Contributions provided under this Agreement is to be taken into consideration in Council determining any development contributions relevant to the Development under sections 7.11 and 7.12 of the Act.
- 6.4. Without limitation to clause 6.3, where the works the subject of the Development Contribution extend beyond Mullumbimby Road into McAuley's Lane and onto the area of failed pavement on McAuley's Lane, Council must offset the cost of any pavement reconstruction carried out by the Developer against

the rural roads component of the section 7.11 development contributions.

7. Registration of this Agreement

7.1. This Agreement is not required to be registered.

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 carry out and complete the Development Contribution in accordance with this Agreement.
- 10.2. If the Developer is required by this Agreement to make a Development Contribution comprising the carrying out of a work (**Work**), the Developer is to carry out and complete the Work in accordance with the Northern Rivers Design Guidelines and any other design standards and technical specifications reasonably specified by Council.
- 10.3. A Development Contribution comprising the carrying out of a Work is made for the purposes of this Agreement when the Council accepts the hand-over of the Work in accordance with this clause.
- 10.4. Subject to this Agreement, when the Developer considers that a Work is complete, the Developer is to give to the Council a Compliance Certificate relating to the Work.
- 10.5. The Council is to accept the hand-over by the Developer of a Work that is the subject of a Compliance Certificate within 28 days of the date on which the Developer provides a copy of the Compliance Certificate to Council.
- 10.6. On hand-over of the Work, the Council accepts ownership, possession and control of the Work.

11. Rectification of Defects

- 11.1. During the First Defects Liability Period and the Second Defects Liability Period, the Council may give to the Developer a Rectification Notice, which the Developer must comply with at its own cost according to the terms of the Notice.
- 11.2. When the Developer considers that rectification is complete, the Developer may give to Council a Rectification Certificate relating to the Work the subject of the relevant Rectification Notice.
- 11.3. A Rectification Certificate discharges the Developer from any further obligation to comply with a Rectification Notice.
- 11.4. If the Developer does not comply with a Rectification Notice, then Council may have the defect rectified and may recover its costs of so doing as a debt due in a court of competent jurisdiction.

12. Security and Enforcement

- 12.1. A Subdivision Certificate creating a Final Lot must not be issued for the Development until the Developer has provided the Development Contribution pursuant to clause 10.2. The parties may enter into further written agreements and/or agree on the payment of security in substitution for the issuing of an Occupation Certificate under this clause 12.1.
- 12.2. Without limiting any other remedies available to the Parties, this Agreement may be enforced by either Party in any court of competent jurisdiction.
- 12.3. 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.

13. Notices

- 13.1. 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: Tim Mundy

Address: 85 Byron Street, Bangalow NSW 2479

Email: tim@millnerproperty.com.au

- 13.2. 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.
- 13.3. 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.
- 13.4. 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.

14. Approvals and consent

- 14.1. 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.

15. Assignment

- 15.1. 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.

16. Costs

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

17. Entire agreement

- 17.1. 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.

18. Further acts

- 18.1. 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.

19. Governing law and jurisdiction

- 19.1. 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.

20. Joint and individual liability and benefits

- 20.1. 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.

21. No fetter

- 21.1. 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.

22. Approvals and Consent

- 22.1. 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.

23. Representations and warranties

23.1. 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.

24. Severability

24.1. 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.

25. Modification

25.1. 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.

26. Waiver

26.1. 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.

27. GST

27.1. 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.

28. Explanatory Note Relating to this Agreement

- 28.1. Schedule 2 contains the Explanatory Note relating to this Agreement pursuant to section 205 of the Regulation.
- 28.2. 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

EXECUTED by **MCAULEYS NO1**)
PTY LTD (ACN 641 113 591))
in)
accordance with section 127 of the
Corporations Act 2001:

.....
Signature of Director

.....
Signature of Director/Secretary

.....
Name

.....
Name

EXECUTED by **BOREAS GROUP**)
PTY LTD (ACN 601 598 305) in)
accordance with section 127 of the)
Corporations Act 2001:

.....
Signature of Timothy Mundy
Sole Director/Secretary

EXECUTED by TAREEDA)
DEVELOPMENTS PTY LTD (ACN)
101 962 029) AS TRUSTEE FOR)
TAREEDA DEVELOPMENTS UNIT
TRUST in
accordance with section 127 of the
Corporations Act 2001:

.....
Signature of John Callanan
Sole Director/Secretary

Schedule 2 – 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 BOREAS GROUP PTY LTD & TAREEDA HOLDINGS PTY LTD THE TRUSTEE FOR TAREEDA DEVELOPMENTS UNIT TRUST and Byron Shire Council.

1. *How does the proposed planning agreement promote the public interest and one or more of the objects of the Act?*

The proposed planning agreement is considered to be in the public interest because it will facilitate the provision of upgraded, safer and more accessible road and transport infrastructure to the community and road users.

2. *How does the proposed planning agreement, promote one or more of the elements of the Council's charter under section 8 of the Local Government Act 1993?*

The proposed planning agreement promotes Council's charter through the provision of public infrastructure that meets community needs (including long term needs) by the best value possible (being at the cost of the Developer) and reflects a diversity in modes of transport.

3. *Identifying a planning purpose or purposes served by the proposed planning agreement, and an assessment of whether the agreement, provides for a reasonable means of achieving that purpose.*

The planning purpose served by the proposed planning agreement is the provision of an upgraded, safe and function transport and road infrastructure for the benefit of the community and road users. The contributions will enable the provision of new cycle and pedestrian links and pathways in the Byron local government area.

4. *Identifying whether the proposed planning agreement, conforms with the planning authority's capital works*

program (if any)

Not applicable.

- 5. Statements on whether the agreement, amendment or revocation specifies that certain requirements of the agreement must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued.***

These statements are included in the body of this planning agreement.