
PLANNING AGREEMENT

**Michael Stevens & Kelli Stevens
(Developer)**

And

**Byron Shire Council
(Council)**

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PLANNING AGREEMENT

Parties

Michael Stevens & Kelli Stevens of
Lot 6 DP 8385, 83 Yagers Lane Skinners Shoot

(Developers)

and

BYRON SHIRE COUNCIL of (ABN 14 472 131 473)
70 – 90 Station Street Mullumbimby NSW

(Council)

Background

- A. The Developers became the registered proprietors of Lot 6 DP 8385 with the street address 83 Yagers Lane Skinners Shoot (the Land) on or about 11 October 2013.
- B. The Land was subsequently improved through the construction of a farm building.
- C. The Developers wish to use the farm building as a dwelling.
- D. The planning instruments that apply to the Land prohibit the use of the farm building as a dwelling.
- E. On [insert date] the Developers made an application to the Council for the Instrument Change for the purpose of making a Development Application to the Council for Development Consent to use the farm building for the purposes of a dwelling.
- F. The Instrument Change application was accompanied by an offer by the Developers to enter into this Agreement to make the Development Contribution towards the Public Facilities.

- G. The Parties have agreed to enter into this Agreement so that the Instrument Change might proceed and the Land might be used for the purposes of a dwelling house.

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:

- 2.1.1. commences when the Instrument Change commences; and
- 2.1.2. applies to the Land.

3. Definitions and interpretation

- 3.1. In this Agreement the following definitions apply:

- 3.1.1. **Authorisations** means a consent, approval, licence, permit, certificate or other form of statutory authorisation, and includes that authorisation as modified, varied or amended from time to time.
- 3.1.2. **Act** means the *Environmental Planning and Assessment Act 1979* (NSW).
- 3.1.3. **Development** means the development of the Land in accordance with the Instrument as amended by the Planning Proposal, and includes without limitation the use of the Land for the purposes of a dwelling house.
- 3.1.4. **Development Application** has the same meaning as in the Act.
- 3.1.5. **Development Consent** has the same meaning as in the Act.

- 3.1.6. **Development Contribution** means the payment of the sum of \$18,511.01 to the Council as provided for in Schedule 2.
- 3.1.7. **Explanatory Note** means the explanatory note annexed to this Agreement at Schedule 1.
- 3.1.8. **GST** has the same meaning as in the GST Law.
- 3.1.9. **Instrument** means the Byron Local Environmental Plan 2014.
- 3.1.10. **Instrument Change** means the proposed change to the Instrument as foreshadowed by the Planning Proposal.
- 3.1.11. **Land** means the Land legally described as Lot 6 DP 8385 with the street address 83 Yagers Lane Skinners Shoot.
- 3.1.12. **Party** means a party to this agreement, including their successors and assigns.
- 3.1.13. **Planning Proposal** means the proposal as outlined in the document titled "Planning Proposal for Amendment of Byron Local Environmental Plan 2014 - Lot 6 DP 8385, Yagers Lane, Skinners Shoot" annexed to this Agreement at Schedule 3.
- 3.1.14. **Public Purpose** means any purpose that benefits the public or a section of the public, including but not limited a purpose specified in s.7.4(2) of the Act.
- 3.1.15. **Register** means the Torrens title register maintained under the *Real Property Act 1900* (NSW).
- 3.1.16. **Regulation** means the Environmental Planning and Assessment Regulation 2000.
- 3.2. In the interpretation of this Agreement, the following provisions apply unless the context otherwise requires:
- 3.2.1. Headings are inserted for convenience only and do not affect the interpretation of this Agreement.
- 3.2.2. 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.

- 3.2.3. 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.
- 3.2.4. A reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.
- 3.2.5. 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.
- 3.2.6. A reference in this Agreement to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- 3.2.7. A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.
- 3.2.8. An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- 3.2.9. 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.
- 3.2.10. 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.
- 3.2.11. References to the word 'include' or 'including' are to be construed without limitation.
- 3.2.12. A reference to this Agreement includes the agreement recorded in this Agreement.
- 3.2.13. 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.

3.2.14. Any schedules and attachments form part of this Agreement.

4. Development Contributions to be made under this Agreement

- 4.1. The Developers must make the Development Contribution in accordance with this Agreement.
- 4.2. The Developers are not required to make the Development Contribution until the Instrument Change has been made.

5. Application of the Development Contributions

- 5.1. The Council must apply the Development Contribution 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 Contribution is made in accordance with this Agreement then clause 5.1 is satisfied.

6. Application of s.7.11 and s.7.12 of the Act to the Development

- 6.1. This Agreement excludes the application of s.7.11 of the Act to the Development.
- 6.2. This Agreement excludes the application of s.7.12 of the Act to the Development.

7. Registration of this Agreement

- 7.1. The Developer and Landowner must take all practicable steps to enable this Agreement to be registered by the NSW Registry Services on the title to the Land, including:
 - 7.1.1 the execution of any documents;
 - 7.1.2 produce any certificates of title in relation to the Land;
 - 7.1.3 procure the consent of each person, as required by the Registrar-General, who:
 - a) has an estate or interest in the Land registered under the *Real Property Act 1900* (NSW); or

b) is seized or possessed of an estate or interest in the Land,

to the registration of this Agreement on the title to the Land and in accordance with the terms of this Agreement;

- 7.1.4 the lodgment of this Agreement in a registrable form at the NSW Land Registry Services for registration by the Registrar-General in the relevant folio of the Register for the Land.
- 7.2. The Council must at its cost provide reasonable assistance to the Developer, where requested to do so, in order for the Developer to comply with its obligations under this clause.
- 7.3. The parties agree that if the Development Contribution is made within 21 days of the Instrument Change this Agreement does not need to be registered.

8. Interest in Land

8.1. The Developers represent and warrant that they are:

- 8.1.1 the owners of the Land; and
- 8.1.2 legally and beneficially entitled to obtain all consents, access rights and Authorisations and to compel any person referred to in or contemplated by this Agreement to assist, cooperate and to otherwise do all things necessary for the Developer to comply with its obligations under this Agreement.

9. No sale of Land

9.1. The Developers must not sell the Land before they have fully complied with all of their obligations under this Agreement unless the Developers:

- 9.1.2 give the Council 20 business days' notice of the sale date;
- 9.1.3 at the Developers' cost, enter into a deed of novation signed by the Developers and the proposed purchaser of the Land;
- 9.1.4 have provided to the Council evidence to show that the purchaser is at least as capable in

performing its obligations under the deed as the Developers are in performing their obligations under this Agreement; and

9.1.5 is not in breach of this Agreement.

10. Review of this Agreement

10.1. 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.

10.2. For the purposes of clause 10.1, 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.

10.3. 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 10.1 is taken to be a dispute for the purposes of clause 12.

11. Costs and Outlays

11.1 The Developer must pay all stamp duty and other government imposts payable in connection with this Agreement and all other documents and matters referred to in this Agreement when due or earlier if requested in writing by the Council.

11.2 Otherwise all parties are to bear their own costs of the Agreement.

12. Dispute Resolution

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

12.2. 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.

12.3. 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.

13. Provision of Development Contribution

13.1. The Developer must make the Development Contribution in accordance with Schedule 2.

13.2. The Development Contribution is made for the purposes of this Agreement when the payment is made to Council.

13.3. The Council is to accept the Development Contribution in accordance with this Agreement.

14. Security and Enforcement

14.1. On or before the Agreement commences under clause 2.1, the Developer must deliver to the Council a Bank Guarantee securing the performance of the obligations of the Developer under this Agreement.

14.2. If the Developer fails to pay the Development Contribution in accordance with this Agreement, the Council may, without prior notice to the Developer, demand payment under the Bank Guarantee.

14.3. The Developer must at all times ensure that any Bank Guarantee is kept current and enforceable.

14.4. Subject to clause 14.2, the Council must return the Bank Guarantee to the Developer promptly following the Development Contribution being paid.

14.5. For the purpose of this clause, Bank Guarantee means an irrevocable and unconditional undertaking (which does not contain an expiry date) issued by a trading bank or other financial institution approved by the Council in its absolute discretion to pay the Development Contribution on demand.

15. Notices

15.1. 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:

15.1.1. Delivered or posted to that Party at its address set out below.

15.1.2. Faxed to that Party at its fax number set out below.

15.1.3. Emailed to that Party at its email address set out below.

Council

Attention: The General Manager

Address: PO Box 219, Mullumbimby NSW 2482

Fax Number: (02) 6684 3018

Email: council@byron.nsw.gov.au

Developers

Attention: Michael Stevens and Kelli Stevens

Address: Lot 6 Yagers Lane Skinners Shoot

Fax Number: not applicable

Email: mk.stevens2481@gmail.com

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

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

15.3.1. If it is delivered, when it is left at the relevant address.

15.3.2. If it is sent by post, 2 business days after it is posted.

- 15.3.3. 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.
- 15.3.4. If it is sent by email, as soon as the sender receives an acknowledgment from the recipient that the email has been received.

15.4. 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.

16. Approvals and consent

16.1. 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.

17. Assignment

17.1. 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.

18. Costs

18.1. Except as otherwise provided in this Agreement, each party is to bear their own costs of negotiating, preparing and executing this Agreement.

19. Entire agreement

19.1. 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 by law.

20. Further acts

20.1. 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.

21. Governing law and jurisdiction

21.1. 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.

22. Authorisation of servants, agents and contractors

22.1. The Developers are not to suffer or permit their servants, agents or contractors to do or refrain from doing anything which this Agreement prohibits the Developers from doing or requires the Developers to do (as the case may be).

23. Joint and individual liability and benefits

23.1. 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.

24. No fetter

24.1. 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.

25. Representations and warranties

25.1. 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.

26. Severability

26.1. 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.

27. Modification

27.1. 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.

28. Waiver

28.1. 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.

29. GST

29.1. 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.

30. Explanatory Note Relating to this Agreement

30.1. Schedule 1 contains the Explanatory Note relating to this Agreement pursuant to clause 25E of the Regulation.

30.2. 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 Agreement.

Execution

Dated:

Executed as an Agreement:

..... Signature of authorised person))) Signature of authorised person
..... Name of authorised person	 Name of authorised person
..... Office held	 Office held

EXECUTED by Michael Stevens:)
)
)
.....
Signature of Michael Stevens

EXECUTED by Kelli Stevens)
)
)
.....
Signature of Kelli Stevens

Schedule 1 – Explanatory Note

Pursuant to clause 25E of the Environmental Planning and Assessment Regulation 2000

[See separate draft document]

Schedule 2 – Development Contribution

The Development Contribution is the payment of \$18,577.51 by bank transfer to Byron Shire Council. This amount is valid until 24 April 2021. After this date this amount will be indexed in accordance with movements in the Consumer Price Index (All Groups Index) for Sydney issued by the Australian Statistician.

The Development Contribution is to be paid within 30 days of the instrument change.

If the Development Contribution is not paid within 30 days of the instrument change the amount may be recovered by Council in a court of competent jurisdiction.

The Bank Details for Byron Shire Council are as follows:

[insert]

Schedule 3 – Planning Proposal

[The planning proposal is that which was attached to the Agenda of the Council Meeting on 18 June 2020. It has been given the "Authority ref: 26.2019.11.1" and dated May 2020.

This is the document that parties will attach to the draft Agreement]

