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Deed

River Retreat Caravan Park Planning Agreement

Under s93F of the *Environmental Planning and Assessment Act 1979*

Tweed Shire Council

Dennien Pty Ltd

[Insert Date]

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River Retreat Caravan Park Planning Agreement

Table of Contents

Summary Sheet	4
Parties	6
Background	6
Operative provisions	6
Part 1 - Preliminary	6
1 Interpretation.....	6
2 Status of this Deed	9
3 Commencement	9
4 Application of this Deed	9
5 Warranties	9
6 Further agreements	9
7 Surrender of right of appeal, etc.	9
8 Application of s94, s94A and s94EF of the Act to the Development.....	9
Part 2 – Development Contributions and Restrictions	10
9 Provision of Development Contributions	10
10 Payment of monetary Development Contributions	10
11 Restrictions on development of the Land	10
12 Certificate of Compliance.....	11
Part 3 – Dispute Resolution	11
13 Dispute resolution – expert determination	11
14 Dispute Resolution - mediation.....	12
Part 4 - Enforcement.....	12
15 Breach of obligations	12
16 Enforcement in a court of competent jurisdiction	13
Part 5 – Registration & Restriction on Dealings.....	13
17 Registration of this Agreement	13
18 Restriction on dealings	14
Part 6 – Indemnities & Insurance.....	14
19 Risk.....	14



20	Release.....	14
21	Indemnity	15
Part 7 – Other Provisions		15
22	Review of Deed	15
23	Notices	15
24	Approvals and Consent	16
25	Costs.....	16
26	Entire Deed	16
27	Further Acts	17
28	Governing Law and Jurisdiction	17
29	Joint and Individual Liability and Benefits.....	17
30	No Fetter.....	17
31	Illegality.....	17
32	Severability	18
33	Amendment	18
34	Waiver.....	18
35	GST.....	18
36	Explanatory Note	20
Schedule 1		21
Schedule 2.....		23
Execution.....		25
Appendix		26



River Retreat Caravan Park Planning Agreement Summary Sheet

Council:

Name: **Tweed Shire Council**
Address: **PO Box 816, Murwillumbah NSW 2484**
Telephone: **(02) 6670 2400**
Facsimile: **(02) 6670 2429**
Email: **tsc@tweed.nsw.gov.au**
Representative: **Iain Lonsdale**

Developer:

Name: **Dennien Pty Ltd**
Address: **100 Dillion Road, The Gap NSW 4061**
Telephone: **(07) 3300 4258, 0419725708**
Facsimile: **(07) 3300 4258**
Email: **barry.dennien@bigpond.com**
Representative: **Barry Dennien**

Land:

See definition of *Land* in clause 1.1.

Development:

See definition of *Development* in clause 1.1.

Development Contributions and Restrictions:

See Clause 9 and Schedule 1.

Application of s94, s94A and s94EF of the Act:



See clause 8.

Registration:

See clause 17.

Restriction on dealings:

See clause 18.

Dispute Resolution:

See Part 3.



River Retreat Caravan Park Planning Agreement

Under s93F of the *Environmental Planning and Assessment Act 1979*

Parties

Tweed Shire Council ABN 90 178 732 496 of PO Box 816, Murwillumbah NSW 2484 (Council)

and

Dennien Pty Ltd ABN 81 093 144 891 of 100 Dillion Road, The Gap NSW 4061 (Developer)

Background

- A The Developer owns the Land.
- B The Developer has requested that the Council prepare a planning proposal within the meaning of the Act for the LEP Amendment to make '*camping ground*' a permissible use of the Land.
- C The Developer has agreed to make Development Contributions in connection with the carrying out of Development on the Land and has agreed to restrictions on the use of the Land.

Operative provisions

Part 1 - Preliminary

1 Interpretation

1.1 In this Deed the following definitions apply:

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

Approval includes approval, consent, licence, permission or the like.

Camper Trailer means a mobile form of tourist accommodation towed by a motor vehicle registered for use on a public road.



Camping Ground has the same meaning as in the *Standard Instrument—Principal Local Environmental Plan*.

Certificate of Compliance has the same meaning as in the *Water Management Act 2000*.

Claim includes a claim, demand, remedy, suit, injury, damage, loss, Cost, liability, action, proceeding or right of action.

Cost means a cost, charge, expense, outgoing, payment, fee and other expenditure of any nature.

Deed means this Deed and includes any schedules, annexures and appendices to this Deed.

Development means the development of a Camping Ground on the Land.

Development Application has the same meaning as in the Act.

Development Consent has the same meaning as in the Act.

Development Contribution means a monetary contribution, the dedication of land free of cost, the carrying out of work, or the provision of any other material public benefit, or any combination of them, to be used for, or applied towards a public purpose, but does not include any Security or other benefit provided by a Party to the Council to secure the enforcement of that Party's obligations under this Deed for the purposes of s93F(3)(g) of the Act.

Dispute means a dispute or difference between the Parties under or in relation to this Deed.

Flood means a flood predicted to exceed moderate flood level (1.7m Australian Height Datum) at the Tweed River – Barneys Point gauge, or a flood event in which the NSW State Emergency Service has issued a flood evacuation warning or flood evacuation order, or other direction in relation to a flood.

GST has the same meaning as in the GST Law.

GST Law has the same meaning as in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any other Act or regulation relating to the imposition or administration of the GST.

Item means specified in Column 1 of Schedule 1.

Land means part of Lot 1 DP 100121, located at 12 Philp Parade, Tweed Heads South, marked on the map contained in Schedule 2.

LEP Amendment means an amendment to the *Tweed Local Environmental Plan 2014* to make Camping Grounds a permissible use on the Land.

Occupation Certificate has the same meaning as in the Act.

Party means a party to this Deed.

Regulation means the *Environmental Planning and Assessment Regulation 2000*.

- 1.2 In the interpretation of this Deed, the following provisions apply unless the context otherwise requires:



- 1.2.1 Headings are inserted for convenience only and do not affect the interpretation of this Deed.
- 1.2.2 A reference in this Deed to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
- 1.2.3 If the day on which any act, matter or thing is to be done under this Deed is not a business day, the act, matter or thing must be done on the next business day.
- 1.2.4 A reference in this Deed to dollars or \$ means Australian dollars and all amounts payable under this Deed are payable in Australian dollars.
- 1.2.5 A reference in this Deed to a \$ value relating to a Development Contribution is a reference to the value exclusive of GST.
- 1.2.6 A reference in this Deed 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.
- 1.2.7 A reference in this Deed to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- 1.2.8 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Deed.
- 1.2.9 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- 1.2.10 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.
- 1.2.11 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.
- 1.2.12 References to the word 'include' or 'including' are to be construed without limitation.
- 1.2.13 A reference to this Deed includes the agreement recorded in this Deed.
- 1.2.14 A reference to a Party to this Deed includes a reference to the servants, agents and contractors of the Party, the Party's successors and assigns.
- 1.2.15 A reference to 'dedicate' or 'dedication' in relation to land is a reference to dedicate or dedication free of cost.
- 1.2.16 Any schedules, appendices and attachments form part of this Deed.
- 1.2.17 Notes appearing in this Deed are operative provisions of this Deed.



2 Status of this Deed

2.1 This Deed is a planning agreement within the meaning of s93F(1) of the Act.

3 Commencement

3.1 This Deed takes effect on the date when all Parties have executed one counterpart of this Deed.

3.2 The Party who executes this Deed last is to insert on the front page the date they did so and provide a copy of the fully executed and dated Deed to any other person who is a Party.

4 Application of this Deed

4.1 This Deed applies to the Land and to the Development.

5 Warranties

5.1 The Parties warrant to each other that they:

5.1.1 have full capacity to enter into this Deed, and

5.1.2 are able to fully comply with their obligations under this Deed.

6 Further agreements

6.1 The Parties may, at any time and from time to time, enter into agreements relating to the subject-matter of this Deed that are not inconsistent with this Deed for the purpose of implementing this Deed.

7 Surrender of right of appeal, etc.

7.1 The Developer is not to commence or maintain, or to cause or procure the commencement or maintenance, of any proceedings in any court or tribunal or similar body appealing against, or questioning the validity of this Deed, or an Approval relating to the Development in so far as the subject-matter of the proceedings relates to this Deed.

8 Application of s94, s94A and s94EF of the Act to the Development

8.1 This Deed excludes the application of s94 and s94A to the Development.

8.2 This Deed does not exclude the application of s94EF to the Development.



Part 2 – Development Contributions and Restrictions

9 Provision of Development Contributions

- 9.1 The Developer is to make Development Contributions to the Council in accordance with Schedule 1, any other provision of this Deed relating to the making of Development Contributions and otherwise to the satisfaction of the Council.
- 9.2 The Development Contributions in Schedule 1 are calculated based on the Development involving 10 camping sites on the Land. If Development Consent is granted to less than 10 camping sites, then the Development Contributions will be appropriately reduced based on the number of 'ETs' (as defined in Council's s94 contributions plans and development servicing plans) for the Development the subject of the Development Consent.
- 9.3 The Council may in its absolute discretion, by notice in writing to the Developer in respect of:
- 9.3.1 Items 1 and 2, permit payment of the monetary Development Contribution over a period of time determined by Council, and
- 9.3.2 Items 3 to 9, permit a reduction of the extent of the payment as specified in Column 3 of Schedule 1.
- 9.4 The Development Contributions in Schedule 1 are to be indexed in accordance with Column 4 of Schedule 1.
- 9.5 The Council is to apply each Development Contribution made by the Developer under this Deed towards the public purpose for which it is made and otherwise in accordance with this Deed.
- 9.6 Despite clause 9.5, the Council may apply a Development Contribution made under this Deed towards a public purpose other than the public purpose specified in this Deed if the Council reasonably considers that the public interest would be better served by applying the Development Contribution towards that other purpose rather than the purpose so specified.

10 Payment of monetary Development Contributions

- 10.1 A monetary Development Contribution is made for the purposes of this Deed when the Council receives the full amount of the contribution payable under this Deed in cash or by unendorsed bank cheque or by the deposit by means of electronic funds transfer of cleared funds into a bank account nominated by the Council.

11 Restrictions on development of the Land

- 11.1 Any Development Application which the Developer lodges in respect of the Development must:



- 11.1.1 restrict the type of accommodation or temporary shelter proposed as part of the Development to recreational camper vans and Camper Trailers only,
- 11.1.2 only propose a maximum of 10 individual sites on the Land for recreational camper vans or Camper Trailers,
- 11.1.3 restrict the use of any one individual site on the Land by any one person to 60 days in any 12 month period,
- 11.1.4 ensure that the towing motor vehicle that brings a Camper Trailer onto the Land is kept on the Land with the Camper Trailer in a manner that ensures the Camper Trailer can be towed or moved at short notice.
- 11.1.5 be accompanied by an evacuation plan prepared for the Land, which will include measures and procedures that demonstrate that in the event of a Flood, the site will be evacuated within 30 minutes, and
- 11.2 The evacuation plan prepared in accordance with clause 11.1.5 is to be prominently displayed on or around the Land, at all times.
- 11.3 The Developer will not object to any conditions being imposed on any Development Consent granted to the Development to give effect to the requirements of clause 11.1 and 11.2.
- 11.4 The Developer will not operate the Development unless an Occupation Certificate applicable to the Development has been issued.

12 Certificate of Compliance

- 12.1 If Development Consent is granted in respect of the Development, the Developer is to obtain a Certificate of Compliance in respect of the Development in accordance with any condition of the Development Consent, unless otherwise advised by the Council in writing.

Part 3 – Dispute Resolution

13 Dispute resolution – expert determination

- 13.1 This clause applies to a Dispute between any of the Parties to this Deed concerning a matter arising in connection with this Deed that can be determined by an appropriately qualified expert if:
 - 13.1.1 the Parties to the Dispute agree that it can be so determined, or
 - 13.1.2 the Chief Executive Officer of the professional body that represents persons who appear to have the relevant expertise to determine the Dispute gives a written opinion that the Dispute can be determined by a member of that body.
- 13.2 A Dispute to which this clause applies is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.



- 13.3 If a notice is given under clause 13.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 13.4 If the Dispute is not resolved within a further 28 days, the Dispute is to be referred to the President of the NSW Law Society to appoint an expert for expert determination.
- 13.5 The expert determination is binding on the Parties except in the case of fraud or misfeasance by the expert.
- 13.6 Each Party is to bear its own costs arising from or in connection with the appointment of the expert and the expert determination.
- 13.7 The Parties are to share equally the costs of the President, the expert, and the expert determination.

14 Dispute Resolution - mediation

- 14.1 This clause applies to any Dispute arising in connection with this Deed other than a Dispute to which clause 13 applies.
- 14.2 Such a Dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 14.3 If a notice is given under clause 14.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 14.4 If the Dispute is not resolved within a further 28 days, the Parties are to mediate the Dispute in accordance with the Mediation Rules of the Law Society of New South Wales published from time to time and are to request the President of the Law Society to select a mediator.
- 14.5 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.
- 14.6 Each Party is to bear its own costs arising from or in connection with the appointment of a mediator and the mediation.
- 14.7 The Parties are to share equally the costs of the President, the mediator, and the mediation.

Part 4 - Enforcement

15 Breach of obligations

- 15.1 If the Council reasonably considers that the Developer is in breach of any obligation under this Deed, it may give a written notice to the Developer:
 - 15.1.1 specifying the nature and extent of the breach,



15.1.2 requiring the Developer to:

- (a) rectify the breach if it reasonably considers it is capable of rectification, or
- (b) pay compensation to the reasonable satisfaction of the Council in lieu of rectifying the breach if it reasonably considers the breach is not capable of rectification,

15.1.3 specifying the period within which the breach is to be rectified or compensation paid, being a period that is reasonable in the circumstances.

15.2 Nothing in this clause 15 prevents the Council from exercising any rights it may have at law or in equity in relation to a breach of this Deed by the Developer, including but not limited to seeking relief in an appropriate court.

16 Enforcement in a court of competent jurisdiction

16.1 Without limiting any other provision of this Deed, the Parties may enforce this Deed in any court of competent jurisdiction.

16.2 For the avoidance of doubt, nothing in this Deed prevents:

16.2.1 a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Deed or any matter to which this Deed relates, or

16.2.2 the Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Deed or any matter to which this Deed relates.

Part 5 – Registration & Restriction on Dealings

17 Registration of this Agreement

17.1 The Parties agree to register this Deed for the purposes of s93H(1) of the Act.

17.2 Not later than 10 days after the commencement of this Deed, the Developer is to deliver to the Council in registrable form:

17.2.1 an instrument requesting registration of this Deed on the title to the Land duly executed by the Developer, and

17.2.2 the written irrevocable consent of each person referred to in s93H(1) of the Act to that registration.

17.3 The Developer is to do such other things as are reasonably necessary to enable registration of this Deed to occur.

17.4 The Council may in its discretion agree to remove any notation relating to this Deed from the title to any part of the Land, once the Developer has completed its obligations to make Development Contributions under this Deed to the



reasonable satisfaction of the Council but only if other instruments are registered on the title to the Land which Council considers satisfactorily give effect to clause 11.1 and 11.2 of this Deed.

18 Restriction on dealings

18.1 The Developer is not to:

18.1.1 sell or transfer the Land, or

18.1.2 assign the Developer's rights or obligations under this Deed, or novate this Deed,

to any person unless:

18.1.3 the Developer has, at no cost to the Council, first procured the execution by the person to whom the Land or part is to be sold or transferred or the Developer's rights or obligations under this Deed are to be assigned or novated, of a deed in favour of the Council on terms reasonably satisfactory to the Council, and

18.1.4 the Council has given written notice to the Developer stating that it reasonably considers that the purchaser, transferee, assignee or novatee, is reasonably capable of performing its obligations under this Deed, and

18.1.5 the Developer is not in breach of this Deed, and

18.1.6 the Council otherwise consents to the transfer, assignment or novation, such consent not to be unreasonably withheld.

18.2 Clause 18.1 does not apply in relation to any sale or transfer of the Land if this Deed is registered on the title to the Land at the time of the sale.

Part 6 – Indemnities & Insurance

19 Risk

19.1 The Developer performs this Deed at its own risk and its own cost.

20 Release

20.1 The Developer releases the Council from any Claim it may have against the Council arising in connection with the performance of the Developer's obligations under this Deed except if, and to the extent that, the Claim arises because of the Council's negligence or default.



21 Indemnity

- 21.1 The Developer indemnifies the Council from and against all Claims that may be sustained, suffered, recovered or made against the Council arising in connection with the performance of the Developer's obligations under this Deed except if, and to the extent that, the Claim arises because of the Council's negligence or default.

Part 7 – Other Provisions

22 Review of Deed

- 22.1 The Parties agree to review this Deed if either party is of the opinion that any change of circumstance has occurred, or is imminent, that materially affects the operation of this Deed.
- 22.2 For the purposes of clause 22.1, 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.
- 22.3 For the purposes of addressing any matter arising from a review of this Deed referred to in clause 22.1, the Parties are to use all reasonable endeavours to agree on and implement appropriate amendments to this Deed.
- 22.4 If this Deed becomes illegal, unenforceable or invalid as a result of any change to a law, the Parties agree to do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Deed is entered into.
- 22.5 A failure by a Party to agree to take action requested by the other Party as a consequence of a review referred to in clause 22.1 (but not 22.4) is not a Dispute for the purposes of this Deed and is not a breach of this Deed.

23 Notices

- 23.1 Any notice, consent, information, application or request that is to 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:
- 23.1.1 delivered or posted to that Party at its address set out in the Summary Sheet,
- 23.1.2 faxed to that Party at its fax number set out in the Summary Sheet, or
- 23.1.3 emailed to that Party at its email address set out in the Summary Sheet.
- 23.2 If a Party gives the other Party 3 business days notice of a change of its address, fax number or email, 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.

- 23.3 Any notice, consent, information, application or request is to be treated as given or made if it is:
- 23.3.1 delivered, when it is left at the relevant address,
 - 23.3.2 sent by post, 2 business days after it is posted,
 - 23.3.3 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, or
 - 23.3.4 sent by email and the sender does not receive a delivery failure message from the sender's internet service provider within a period of 24 hours of the email being sent.
- 23.4 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.

24 Approvals and Consent

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

25 Costs

- 25.1 The Developer is to pay to the Council the Council's reasonable legal costs of preparing, negotiating, executing and stamping this Deed, and any document related to this Deed within 7 days of a written demand by the Council for such payment.
- 25.2 The Developer is also to pay to the Council the Council's reasonable costs of enforcing this Deed within 7 days of a written demand by the Council for such payment.

26 Entire Deed

- 26.1 This Deed contains everything to which the Parties have agreed in relation to the matters it deals with.



- 26.2 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 Deed was executed, except as permitted by law.

27 Further Acts

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

28 Governing Law and Jurisdiction

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

29 Joint and Individual Liability and Benefits

- 29.1 Except as otherwise set out in this Deed:
- 29.1.1 any agreement, covenant, representation or warranty under this Deed by 2 or more persons binds them jointly and each of them individually, and
- 29.1.2 any benefit in favour of 2 or more persons is for the benefit of them jointly and each of them individually.

30 No Fetter

- 30.1 Nothing in this Deed 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.

31 Illegality

- 31.1 If this Deed or any part of it becomes illegal, unenforceable or invalid as a result of any change to a law, the Parties are to co-operate and do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Deed is entered into.



32 Severability

- 32.1 If a clause or part of a clause of this Deed 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.
- 32.2 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 Deed, but the rest of this Deed is not affected.

33 Amendment

- 33.1 No amendment of this Deed will be of any force or effect unless it is in writing and signed by the Parties to this Deed in accordance with clause 25D of the Regulation.

34 Waiver

- 34.1 The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Deed, does not amount to a waiver of any obligation of, or breach of obligation by, another Party.
- 34.2 A waiver by a Party is only effective if it:
- 34.2.1 is in writing,
 - 34.2.2 is addressed to the Party whose obligation or breach of obligation is the subject of the waiver,
 - 34.2.3 specifies the obligation or breach of obligation the subject of the waiver and the conditions, if any, of the waiver,
 - 34.2.4 is signed and dated by the Party giving the waiver.
- 34.3 Without limitation, a waiver may be expressed to be conditional on the happening of an event, including the doing of a thing by the Party to whom the waiver is given.
- 34.4 A waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given, and 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.
- 34.5 For the purposes of this Deed, an obligation or breach of obligation the subject of a waiver is taken not to have been imposed on, or required to be complied with by, the Party to whom the waiver is given.

35 GST

- 35.1 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.

- 35.2 Subject to clause 35.4, if GST is payable on a Taxable Supply made under, by reference to or in connection with this Deed, the Party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.
- 35.3 Clause 35.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Deed to be GST inclusive.
- 35.4 No additional amount shall be payable by the Council under clause 35.2 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.
- 35.5 If there are Supplies for Consideration which is not Consideration expressed as an amount of Money under this Deed 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:
- 35.5.1 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;
- 35.5.2 that any amounts payable by the Parties in accordance with clause 35.2 (as limited by clause 35.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 35.6 No payment of any amount pursuant to this clause 35, 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.
- 35.7 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.
- 35.8 This clause continues to apply after expiration or termination of this Deed.



36 Explanatory Note

- 36.1 The Appendix contains the Explanatory Note relating to this Deed required by clause 25E of the Regulation.
- 36.2 Pursuant to clause 25E(7) of the Regulation, the Parties agree that the Explanatory Note is not to be used to assist in construing this Planning Deed.



Schedule 1

(Clause 9)

Development Contributions

Column 1 Item/ Contribution	Column 2 Public Purpose	Column 3 Manner & Extent	Column 4 Indexation	Column 5 Timing
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A. Monetary Contributions

1. Water North East DSP4	Water supply	\$65,640.00 (\$13,128 per ET x 5 ET)	Indexed annually on 1 July each year using the Consumer Price Index (CPI) in the preceding 12 months to December (commencing 1 July 2016)	Subject to clause 9.5 in accordance with the preconditions to the issue of a Certificate of Compliance in respect of the Development
2. Sewer Banora Pt	Sewer	\$37,842.00 (\$6,307 per ET x 6 ET)	Indexed annually on 1 July each year using the Consumer Price Index (CPI) in the preceding 12 months to December (commencing 1 July 2016)	Subject to clause 9.5 in accordance with the preconditions to the issue of a Certificate of Compliance in respect of the Development
3. Sector 2_4	Roads	\$34,398.00 (\$1,387 per trip ends x 24.8 trips)	Indexed in accordance with the Tweed Shire Council s94 Plan - CP04 Tweed Road	Prior to the issue of an Occupation Certificate for the Development



4. Casual OS_5	Open space	\$2,990.00 (\$552 per ET x 5.417 ET)	Indexed in accordance with the Tweed Shire Council s94 Plan - CP05 Local Open Space	Prior to the issue of an Occupation Certificate for the Development
5. ResDev11	Library facilities	\$4,610.00 (\$851 per ET x 5.417 ET)	Indexed in accordance with the Tweed Shire Council s94 Plan - CP11 Tweed Shire Library Facilities	Prior to the issue of an Occupation Certificate for the Development
6.ComFac15	Community Facilities	\$7,643 (\$1,411 per ET x 5.417 ET)	Indexed in accordance with the Tweed Shire Council s94 Plan - CP15 Developer Contributions for Community Facilities	Prior to the issue of an Occupation Certificate for the Development
7. Shirewide	Council Administration	\$10,231 (\$1,889 per ET x 5.417 ET)	Indexed in accordance with the Tweed Shire Council s94 Plan – CP18 Council Administration Offices and Technical Support Facilities	Prior to the issue of an Occupation Certificate for the Development
8. Shirewide22	Cycleways	\$2,600 (\$480 per ET x 5.417 ET)	Indexed in accordance with the Tweed Shire Council s94 Plan – CP22 Cycleways	Prior to the issue of an Occupation Certificate for the Development
9. CasOS_26	Open Space	\$6,002 (\$1,108 per ET x 5.417 ET)	Indexed in accordance with the Tweed Shire Council s94 Plan – CP26 Shirewide Regional Open Space	Prior to the issue of an Occupation Certificate for the Development



Schedule 2

(Clause 1)

Land

See following page



AERIAL PHOTO - April 2015

Lot 1 DP 100121
 No. 12 Philp Parade, Tweed Heads South

<p>SOURCE: Aerial imagery was captured April 2015 © AAM Pty Ltd and NSW LPI</p>	<p>Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no representations or warranties expressed or otherwise, about its accuracy, reliability, completeness or suitability for any particular purpose and disclaims all responsibility and all liability (including without limitation, liability in negligence) for all expenses, losses, damages (including indirect or consequential damage) and costs which may be incurred as a result of data being inaccurate in any way and for any reason. This information is supplied for the general guidance and is to be considered indicative and diagrammatic only. It should not be used for survey or construction purposes and prior to any excavations a 'Dig before You Dig' enquiry must be made by calling 1100. The information contained on this document remains valid for 30 days only from the date of supply.</p>	<p>Cadastrre: 13 October, 2015 © Land and Property Information (LPI) & Tweed Shire Council. Boundaries shown should be considered approximate only.</p>	<p>0 10 20 M 1:1,000 @ A4 Portrait DO NOT SCALE COPY ONLY - NOT CLIPPED</p>	<p>Civic and Cultural Centre 3 Tamburlugh Road Murwillumbah NSW 2484 PO Box 816 Murwillumbah NSW 2484 T (02) 6670 2400 1300 292 871 F (02) 6670 2429 W www.tweedshire.gov.au E planning@tweedshire.gov.au</p>
<p>Map Projection: Universal Transverse Mercator Geoid: Geoid of Australia 2011 Grid: Map Grid of Australia, Zone 56</p>		<p>TWEED SHIRE COUNCIL</p>		<p>GDA</p>



Execution

Executed as a Deed

Dated:

Executed on behalf of the Council

General Manager

Witness

Executed on behalf of the Developer in accordance with s127(1) of the Corporations Act (Cth) 2001

BARRY DENNIEN / DIRECTOR

Name/Position

Name/Position:



Appendix

(Clause 36)

Environmental Planning and Assessment Regulation 2000

(Clause 25E)

Explanatory Note

Draft Planning Agreement

Under s93F of the *Environmental Planning and Assessment Act 1979*

Parties

Tweed Shire Council ABN 90 178 732 496 of PO Box 816, Murwillumbah NSW 2484
(Council)

Dennien Pty Ltd ABN 81 093 144 891 of 100 Dillion Road, The Gap NSW 4061
(Developer)

Description of the Land to which the Draft Planning Agreement Applies

Part of Lot 1 DP 100121, located at 12 Philp Parade, Tweed Heads South.

Description of Proposed Development

An amendment to the *Tweed Local Environmental Plan 2014* which makes a “camping ground” a permissible use on the Land (**LEP Amendment**).

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



Objectives of Draft Planning Agreement

The objectives of the Draft Planning Agreement are to provide suitable Development Contributions (within the meaning of the Act) towards the provision of community infrastructure to meet the needs of residents within the locality and to ensure safety in the event of flooding.

Nature of Draft Planning Agreement

The Draft Planning Agreement is a planning agreement under s93F of the *Environmental Planning and Assessment Act 1979 (Act)*. It is a voluntary agreement under which the Developer makes Development Contributions (as defined in clause 1.1 of the Draft Planning Agreement) for various public purposes (as defined in s93F(3) of the Act).

Effect of the Draft Planning Agreement

The Draft Planning Agreement:

- relates to the LEP Amendment,
- excludes the application of ss94 and 94A of the Act to the Development,
- requires the Developer to make monetary Development Contributions to the Council,
- restricts the type of camping ground development which can be accommodated on the Land
- is to be registered on the title to the Land,
- imposes restrictions on the Developer transferring the Land or part of the Land or assigning an interest under the Agreement,
- provides two dispute resolution methods for a dispute under the Agreement, being expert determination and mediation, and
- provides that the Agreement is governed by the law of New South Wales, and provides that the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* applies to the Agreement.

Assessment of the Merits of the Draft Planning Agreement

The Planning Purposes Served by the Draft Planning Agreement

- promotes and co-ordinates of the orderly and economic use and development of the Land to which the Deed applies,
- provides land for public purposes in connection with the Development, and
- provides increased opportunity for public involvement and participation in environmental planning and assessment of the Development.

How the Draft Planning Agreement Promotes the Public Interest



The Draft Planning Agreement promotes the public interest by promoting the objects of the Act as set out in s5(a)(ii)-(v) and 5(c) of the Act.

For Planning Authorities:

Development Corporations - How the Draft Planning Agreement Promotes its Statutory Responsibilities

N/A

Other Public Authorities – How the Draft Planning Agreement Promotes the Objects (if any) of the Act under which it is Constituted

N/A

*Councils – How the Draft Planning Agreement Promotes the Elements of the **Council's Charter***

The Draft Planning Agreement promotes the elements of the Council's charter by:

- by providing a means for the private funding of public facilities for the benefit of the Development and the wider community, and
- providing a means that allows the wider community to make submissions to the Council in relation to the Agreement.

*All Planning Authorities – Whether the Draft Planning Agreement **Conforms with the Authority's Capital Works Program***

The Draft Planning Agreement does not specify Work to be carried out by the Developer. The use of the Land for the prescribed purpose will not impact on the Council's Capital Works Program.

All Planning Authorities – Whether the Draft Planning Agreement specifies that certain requirements must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued

The Planning Agreement specifies that certain obligations must be complied with before the issuing of an occupation certificate.