



PLANNING AGREEMENT

between

Clarence Valley Council
ABN 85 864 095 684
(Council)

and

Clifton Yamba Land Pty Limited ATF Yamba Land Trust
ABN 69 371 643 665
(Developer)

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SUMMARY

Council:

Name: **Clarence Valley Council**
Address: 2 Prince Street
GRAFTON NSW 2460
Telephone: +61 2 6643 0200
Facsimile: +61 2 6642 7647
Email: council@clarence.nsw.gov.au
Representative: Carmen Landers

Developer:

Name: *Clifton Yamba Land Pty Limited ATF Yamba Land Trust ABN 69 371 643 665*
Address: Suite 10, Level 1, 401-407 New South Head Road, Double Bay NSW 2028
Telephone: *0401 821 179*
Facsimile: *n/a*
Email: richard@cliftonlifestyle.com.au
Representative: *Richard Volpe*

Land:

See definition in clause 1.1.

Development:

See definition in clause 1.1.

Development Contribution:

See Schedule 1.

Application of section 7.11, section 7.12 and section 7.24 of the Act:

See clause 2.

Date

This **Agreement** is made on

2023

Parties

Clarence Valley Council ABN 85 864 095 684 of 2 Prince Street, Grafton NSW 2460 (**Council**)

Clifton Yamba Land Pty Limited ATF Yamba Land Trust ABN 69 371 643 665
of Suite 10, Level 1, 401-407 New South Head Road, Double Bay NSW 2028 (**Developer**)

Background

- A The Developer is the owner of the Land.
- B The previous owner of the Land lodged a Development Application DA2018/0373 with the Council relating to the Development. The Council determined to grant Development Consent to Development Application DA2018/0373 at its meeting of 23 April 2019.
- C The Developer purchased the Land. The sale of the Land to the Developer completed on or around 31 March 2021.
- D The Developer sought to modify the Development Consent to DA2018/0373 on two occasions. The Council determined to modify the Development Consent to DA2018/0373 on 22 December 2021 and 27 September 2022.
- E Condition 41 of the Development Consent as Modified requires:
- Pursuant to section 7.4 of the Environmental Planning and Assessment Act 1979 (EP&A Act), the developer is to execute and deliver to the Council the Planning Agreement, in accordance with Subdivision 1, Division 7.1 of Part 7 of the EP&A Act, which the developer has offered to enter into.*
- The VPA is between Council and the developer, and is for a monetary contribution from the developer for design and installation of a roundabout intersection at the corner of Carrs Drive and Yamba Road, Yamba. The contribution amount is to be 6.53% of the full cost of the intersection upgrade to a roundabout.*
- The VPA is to be finalised prior to the issue of the Approval to Operate under Section 68 for Stage 1.*
- The monetary contribution shall be based on prices current at the time of the cost analysis. The contribution is to be indexed by relevant Consumer Price Index (CPI) if payment occurs.*
- F The Developer is prepared to make Development Contributions in connection with the carrying out of the Development in accordance with this Agreement in satisfaction of Condition 41 of the Development Consent as Modified.

Agreed Terms

1 Interpretation

1.1 Definitions

In this Agreement:

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

Agreement means this planning agreement between the Parties and includes any schedules, annexures and appendices to this planning agreement.

Bank Guarantee means an irrevocable and unconditional undertaking without any expiry or end date by one of the following trading banks:

- (a) Australia and New Zealand Banking Group Limited;
- (b) Commonwealth Bank of Australia;
- (c) Macquarie Bank;
- (d) National Australia Bank Limited;
- (e) St George Bank Limited;
- (f) Westpac Banking Corporation; or
- (g) another financial institution approved by the Council, in its absolute discretion, in response to a request from the Developer.

Business Day means a day on which the banks are open for business in Sydney, New South Wales other than a Saturday, Sunday or bank or public holiday.

CPI means the Sydney Consumer Price Index (All Groups) published by the Commonwealth Statistician, or if that index no longer exists, any similar index which the Council determines, acting reasonably.

Development means the development of a 197 dwelling manufactured home estate and communal facilities as approved by the Development Consent as Modified.

Development Application has the same meaning as in the Act.

Development Consent has the same meaning as in the Act.

Development Consent as Modified means DA2018/0373 lodged with Clarence Valley Council and determined on 23 April 2019 and as modified pursuant to the Council's determinations to MOD2021/0066 on 22 December 2021 and MOD2022/0050 on 27 September 2022.

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.

GST means goods and services tax or similar value added tax levied or imposed in Australia under the GST Law or otherwise on a supply.

GST Act means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

GST Law has the same meaning as in the GST Act.

Land means Lot 1 DP 568545 at 90 Carrs Drive, Yamba NSW 2464.

Monetary Contribution means the payment required pursuant to clause 1 of Schedule 1.

Party means a party to this Agreement, including their successors and assigns.

Public Purpose means any purpose that benefits the public or a section of the public, including but not limited to a purpose stated in section 7.4(2) of the Act.

Regulation means the *Environmental Planning and Assessment Regulation 2021* (NSW).

Security means a Bank Guarantee, cash bond, or an insurance bond or other form of security to the satisfaction of the Council.

Summary means the summary which forms part of this Agreement.

1.2 Construction

In this Agreement, unless the context otherwise requires:

- (a) a reference to:
 - (i) one gender includes the other;
 - (ii) the singular includes the plural and vice versa;
 - (iii) money (including '\$', 'AUD' or 'dollars') is to Australian currency;
 - (iv) time is a reference to local time in Sydney, New South Wales;
 - (v) a right includes a benefit, remedy, discretion or power;
 - (vi) 'include' or 'including' are to be taken to mean without limitation;
 - (vii) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes facsimile transmissions;
 - (viii) a \$ value relating to a Development Contribution is a reference to the value exclusive of GST;
 - (ix) a person includes an individual, a firm, a body corporate, a trust, a joint venture, an unincorporated association, partnership and a government or statutory body, authority or agency;
 - (x) a party includes the party's legal personal representatives (including executors), administrators, servants, agents, successors, permitted assigns and substitutes (including by way of novation);
 - (xi) any statute, ordinance, legislation, code or other law includes subordinate legislation (including regulations) and other instruments under it and includes consolidations, amendments, re-enactments, modifications or replacements of any of them;
 - (xii) any agreement, deed or document is a reference to that agreement, deed or document as amended, novated, supplemented or replaced; and

- (xiii) a recital, clause, part, schedule, annexure or attachment is a reference to a recital, clause, part, schedule, annexure or attachment of or to this Agreement and references to this Agreement include any recital, clause, part, schedule, annexure or attachment.
- (b) if a word or phrase is defined its other grammatical forms have a corresponding meaning;
- (c) all amounts under this Agreement are payable in Australian dollars;
- (d) a clause of this Agreement must not be construed to the disadvantage of a Party merely because that Party was responsible for the preparation of this Agreement or the inclusion of the provision of this Agreement;
- (e) all schedules, appendices, annexures and attachments form part of this Agreement;
- (f) a guidance note is not an operative term of this Agreement; and
- (g) if the day for doing an act, matter or thing under this Agreement is not a Business Day, the act, matter or thing is to be done instead on the next Business Day.

1.3 **Headings**

Headings and the table of contents are for convenience only and do not form part of this Agreement or affect its interpretation.

2 Planning agreement

2.1 **Under the Act**

This Agreement is a planning agreement within the meaning of Subdivision 2 of Division 7.1 of Part 7 of the Act and makes possible the provision of the Development Contribution for the Public Purpose.

2.2 **Application of this Agreement**

This Agreement applies to the Land and to the Development.

2.3 **Application of section 7.11, section 7.12 and section 7.24 of the Act**

This Agreement excludes the application of section 7.11 of the Act to the Development.

Other than condition 58 of the Development Consent as Modified, this Agreement excludes the application of section 7.12 of the Act to the Development.

This Agreement does not exclude the application of section 7.24 of the Act to the Development.

2.4 **Further agreements**

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

2.5 Commencement

This Agreement commences on the day on which it is executed by the Parties.

3 Surrender of appeal rights

The Developer is not to commence or maintain or cause to be commenced or maintained, any court proceedings challenging the validity of this Agreement.

4 Development contributions

4.1 Provision of development contribution

- (a) The Developer is to make Development Contributions to the Council in accordance with Schedule 1 of this Agreement and otherwise to the satisfaction of the Council.
- (b) The Council is to apply each Development Contribution made by the Developer towards the Public Purpose for which it is made or in accordance with clause (c).
- (c) The Council may apply a Development Contribution toward a public purpose other than the Public Purpose specified in this Agreement if the Council considers that the public interest would be better served by applying the Development Contribution towards that other purpose.

4.2 Monetary development contribution

- (a) A monetary Development Contribution is made for the purposes of this Agreement when the Council receives the total amount of the contribution in cash, by bank cheque or by electronic funds transfer of cleared funds into a bank account nominated by the Council.
- (b) The Developer is to give the Council not less than two Business Days written notice of its intention to pay a monetary Development Contribution.
- (c) The Parties agree that if the Developer does not pay a monetary Development Contribution on or before the due date for payment, that monetary Development Contribution:
 - (i) is to be a debt due and payable by the Developer to the Council on demand;
 - (ii) may be recovered in a court of competent jurisdiction in New South Wales;
 - (iii) is to incur interest from the due date for payment until the amount is paid in full;
 - (iv) interest is calculated for this clause at a rate which is the aggregate of 4% per annum and the cash rate quoted by the Reserve Bank of Australia; and
 - (v) interest accrues and is charged from day to day and is calculated on the basis of days elapsed and a 365 day year.

5 Security

5.1 Provision

- (a) Upon the execution of this Agreement by the Parties, the Developer is to provide the Council with Security in the amount of \$83,017.20.
- (b) The Parties agree that sufficient Security has been provided and that suitable enforcement of this Agreement, for the purposes of section 7.4 (3)(g) of the Act, does not require the provision of further Security.
- (c) Security may be in the form of any of:
 - (i) a Bank Guarantee;
 - (ii) an insurance bond;
 - (iii) a cash bond; or
 - (iv) such other security as agreed in writing between the Parties.

5.2 Release and return

- (a) The Council may but is not obliged to progressively release and return the Security to the Developer as and when the Developer performs its obligations to the satisfaction of the Council but may only do so if:
 - (i) the Council considers that the remaining amount of the Security is adequate having regard to the Developer's remaining obligations; and
 - (ii) the Developer is not in breach of this Agreement at the time the Security is returned.
- (b) The Council is to return the Security or any remaining part of it to the Developer within 28 days of the completion by the Developer of all of its obligations to the satisfaction of the Council.
- (c) In the event that the Security is provided in the form of a cash bond, upon two days notice from the Developer, Council must apply the Security to offset the payment of the Monetary Contribution required to be paid by the Developer in clause 1 of Schedule 1.
- (d) At any time following the provision of the Security, the Developer may provide the Council with a replacement Security in the amount of the Security required to be provided under this clause.
- (e) On receipt of replacement Security, the Council is to release and return to the Developer, the Security which has been replaced.

5.3 Call up

- (a) The Council may call up the Security if it considers that the Developer has breached this Agreement. This applies in addition to any rights of enforcement and dispute resolution in clauses 6 and 7.
- (b) If the Council calls up the Security, it may use the amount so paid in satisfaction of any costs incurred by it in remedying the Developer's breach being:
 - (i) the reasonable costs of the Council's servants, agents and contractors;

- (ii) all fees and charges necessary or reasonably incurred in order to have the Work carried out, completed or rectified;
 - (iii) all legal costs and expenses reasonably incurred.
- (c) If the Council calls up the Security it may, by notice in writing, require the Developer to provide as further Security, an amount that, when added to any unused portion of the existing Security, does not exceed the amount of the Security initially provided under this Agreement.

6 Enforcement

6.1 Enforcement

- (a) Without limiting any other remedy available, the Parties may enforce this Agreement in any court of competent jurisdiction in New South Wales.
- (b) For the avoidance of doubt, nothing in this Agreement prevents:
 - (i) a party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Agreement;
 - (ii) the Council from exercising any function under the Act or any other law relating to the enforcement of any aspect of this Agreement.

7 Dispute resolution

7.1 In accordance with this clause

- (a) Any dispute between the parties relating to this Agreement is to be dealt with in accordance with clause 7 of this Agreement.

7.2 Claim notice

- (a) If a Party claims that a dispute exists under this Agreement (**Claimant**), that Party is to give written notice to the other Party, or Parties, (**Respondent**) setting out the matters in dispute and nominating a person as its representative to negotiate the dispute on the Claimant's behalf (**Claim Notice**).

7.3 Response to claim notice

- (a) Within seven days of receipt of the Claim Notice, the Respondent is to notify the Claimant of its representative to negotiate the dispute on the Respondent's behalf.

7.4 Negotiation of dispute

- (a) The nominated representatives of each of the Parties are to:
 - (i) meet to negotiate the dispute in good faith within seven days after service by the Respondent of notice of its representative on the Claimant; and
 - (ii) use all reasonable endeavours in an attempt to settle or resolve the dispute with 14 days after the nominated representatives have met.

- (b) If the dispute is not resolved within 14 days after the nominated representatives have met, any Party may give written notice to the other Party calling for a determination of the dispute by:
 - (i) if the Parties agree that the dispute relates to a technical matter only which requires technical expertise to resolve, technical expert determination in accordance with clause 7.5; or
 - (ii) mediation in accordance with clause 7.6 (**Dispute Notice**).

7.5 **Technical expert determination**

- (a) If a party gives a Dispute Notice calling for the dispute to be resolved by technical expert determination:
 - (i) the dispute is to be determined by an independent technical expert in the appropriate field:
 - (A) agreed upon and jointly appointed by the Parties; or
 - (B) in the event that no agreement is reached or appointment made within 14 days, appointed on application of a Party by the then current Chair of the Institute of Arbitrators and Mediators Australia (NSW Chapter);
 - (ii) the independent technical expert is to be appointed in writing and their terms of appointment must not be inconsistent with this clause;
 - (iii) the determination of the dispute by the independent technical expert will be made as an expert and not as a arbitrator and will be in writing and contain the reasons for the determination;
 - (iv) the independent technical expert will determine the rules for the conduct of the process but must conduct the process in accordance with the rule of natural justice;
 - (v) the Parties will each bear their own costs in connection with the independent technical expert process and determination, together with an equal share of the expert's fees and costs; and
 - (vi) any determination made by an independent technical expert under this clause is final and binding upon the Parties except:
 - (A) in the case of fraud or misfeasance by the expert;
 - (B) where the determination of the expert is greater than \$50,000; or
 - (C) where the determination is in respect of or relates to termination or purported termination of this Agreement by any Party, in which event the expert is deemed to be giving a non-binding appraisal and any Party may commence legal proceedings after the expert has given their decision.

7.6 **Mediation**

- (a) If a Party gives a Dispute Notice to the other Party calling for the dispute to be mediated:

- (i) the Parties are to mediate the dispute in accordance with the Mediation Rules of the Law Society of New South Wales; and
- (ii) the Parties are to request that the President of the Law Society of New South Wales, or the President's nominee, select a mediator.

7.7 Legal proceedings

If any dispute is not resolved by mediation in accordance with clause 7.6 or by technical expert determination in accordance with clause 7.5, 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.

7.8 No merger

This clause 7 does not merge on completion or termination of this Agreement.

8 Registration of this Agreement

In the event that the Monetary Payment required to be paid pursuant to clause 1 of Schedule 1 is not paid within 3 months of the date of Commencement of this Agreement, the Parties agree to register this Agreement on title of the Land.

9 Review of this Agreement

- (a) In the event that the Monetary Payment required to be paid pursuant to clause 1 of Schedule 1 has not been paid by 20 Business Days before the anniversary of this Agreement, the Developer is to provide a report to the Council not later than each annual anniversary of this Agreement detailing the performance of its obligations under this Agreement.
- (b) Until the Monetary Payment required to be paid pursuant to clause 1 of Schedule 1 is paid, the Parties agree to use all reasonable endeavours to review this Agreement every year, and otherwise if either party is of the opinion that any change of circumstance has occurred, which materially affects the operation of this Agreement.
- (c) To address any matter arising from a review under this clause, the Parties are to use all reasonable endeavours to agree on and implement appropriate amendments to this Agreement.
- (d) A failure by a Party to participate in or take action requested by the other Party as a consequence of a review is not a dispute for the purposes of clause 7 and is not a breach of this Agreement.

10 Assignment

- (a) A Party must not assign or deal with any right under this Agreement without the prior written consent of the other Party.
- (b) Any purported dealing in breach of this clause is of no effect.
- (c) The Developer may not transfer, assign or dispose of its obligations under this Agreement to a transferee unless:

- (i) the transferee delivers to the Council a deed signed by the transferee under which it agrees to comply with all the obligations of the Developer under this Agreement as if it were joined as a party to this Agreement in the place of the Developer (including obligations which arose before the transfer, assignment or disposition);
- (ii) any default by the Developer under any provision of this Agreement has been remedied by the Developer or waived by the Council on such conditions as the Council may determine; and
- (iii) the Council consents to the transfer, assignment or disposition.

11 GST

11.1 Definitions

- (a) In this clause:
 - (i) capitalised words and expressions which are not defined in this Agreement but which have a defined meaning in GST Law have the same meaning as in the GST Law; and
 - (ii) unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this Agreement are exclusive of GST.

11.2 GST

- (a) Subject to clause 11.2(c) if GST is payable on a Taxable Supply made under, by reference to, or in connection with this Agreement, the Party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.
- (b) Clause 11.2(a) does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Agreement to be GST inclusive.
- (c) No additional amount shall be payable by the Council under clause (a) 11.2(a) 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.
- (d) If there are Supplies for Consideration which are not amounts of Money under this Agreement by one Party to the other Party that are not subject to Division 82 of the GST Law, the Parties agree:
 - (i) 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; and
 - (ii) that any amounts payable by the Parties in accordance with this clause to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- (e) Within seven days of a Supply being made under this Agreement, the Supplier must provide to the Recipient a Tax Invoice or other documentation that complies with the requirements for a valid Tax Invoice under the GST Law.

- (f) No payment of any amount pursuant to this clause 11, 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 of Adjustment Note as the case may be to the recipient.
- (g) 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.
- (h) This clause 11 continues to apply after expiration or termination of this Agreement.

12 Notices

- (a) Any notice, consent, information, application, request or communication relating to this Agreement is given or made only if it is in writing and sent in one of the following ways:
 - (i) personally delivered at the Party's address in the Summary;
 - (ii) posted to the Party at its address in the Summary;
 - (iii) faxed to that Party at its fax number in the Summary; or
 - (iv) emailed to the email address in the Summary.
- (b) Any notice, consent, information, application, request or communication is given if it is:
 - (i) delivered, when it is left at the relevant address;
 - (ii) sent by post, two Business Days after it is posted;
 - (iii) sent by fax when the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number; or
 - (iv) emailed when it has left the sender's server and there is no failure notification to the sender.
- (c) A Party must give the other Party three Business Days notice of a change of its address, fax number or email.
- (d) If a Party gives the other Party notice of a change of address, fax number or email, any notice, consent, information, application, request or communication relating to this Agreement is given or made only if it is made in accordance with clause 12(a) and delivered, posted or faxed to the newest address, fax number or email.

13 Approvals and consent

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

14 Costs

- (a) The Developer is to pay to the Council a contribution of \$590.70 towards the Council's costs of preparing a template planning agreement upon which this Agreement is based within 7 days of a written request by the Council for such payment.
- (b) The Developer is also to pay, the Council's reasonable costs of preparing, negotiating, executing, stamping and entering into this Agreement within 7 days of a written request by the Council for such payment.
- (c) The Developer is to pay to the Council the Council's costs of monitoring, reviewing and enforcing this Agreement within 7 days of a written request by the Council for such payment.

15 Entire agreement

- (a) This Agreement contains the entire understanding between the parties as to the subject matter of this Agreement.
- (b) No Party can rely on an earlier document or anything said or done by another Party, or by a director, officer, agents or employee of that Party, before this Agreement was executed, except as permitted by law.

16 Further acts

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

17 Governing law and jurisdiction

- (a) This Agreement is governed by the law of New South Wales.
- (b) The Parties submit to the non-exclusive jurisdiction of the courts of New South Wales.
- (c) The Parties are not to object to the exercise of jurisdiction by the courts of New South Wales.

18 Change of Law

If this Agreement 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 Agreement is entered into.

19 Joint and individual liability and benefits

Except as otherwise set out in this Agreement:

- (a) any agreement, covenant, representation or warranty under this Agreement by two or more persons binds them jointly and each of them individually; and

- (b) any benefit in favour of two or more persons is for the benefit of them jointly and each of them individually.

20 No fetter

Nothing in this Agreement shall be construed as requiring the 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

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

- (a) 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.
- (b) 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 to be affected.

23 Modification

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

- (a) A Party does not waive a right or remedy under this Agreement if it:
 - (i) fails to exercise the right or remedy;
 - (ii) only partially exercises the right or remedy; or
 - (iii) delays in exercising the right or remedy.
- (b) A Party which exercises a single right or remedy or partially exercises a right or remedy maintains its right to:
 - (i) further exercise the right or remedy; or
 - (ii) exercise another right or remedy.
- (c) A waiver is effective only if in writing and signed by the Party to be bound and to the extent that is expressly stated in writing.

25 Confidentiality

The Parties agree that the terms of this Agreement are not confidential and this Agreement may be treated as a public document and exhibited or reported without restriction by any Party.

26 Counterparts

This Agreement may consist of a number of counterparts and, if so, then the counterparts taken together constitute this Agreement.

27 Explanatory note relating to this agreement

- (a) The Annexure A contains the Explanatory Note relating to this Agreement required by clause 205 of the Regulation.
- (b) Pursuant to clause 205(5) of the Regulation, the Parties agree that the Explanatory Note in the Annexure A is not to be used to assist in construing this Agreement.

Schedule 1

Development Contributions

(Clause 4)

1. Development Contribution Table

The Developer undertakes to make the following Development Contributions:

| Column 1 Contribution Item | Column 2 Public Purpose | Column 3 Nature, Value and Manner of the Contribution | Column 4 Specific Timing of the Contribution |
|--|----------------------------|---|---|
| Monetary Contributions | | | |
| The design and installation of a roundabout intersection at the corner of Carrs Drive and Yamba Road, Yamba. | Road infrastructure works | <p>Payment of \$83,017.20 being 6.53% of \$1,271,320 pursuant to Table E-1 of the Clarence Valley Council West Yamba Urban Release Area Road Infrastructure Developer Contributions Plan August 2020.</p> <p>The payment amount is to be adjusted for CPI from the date of the Clarence Valley Council West Yamba Urban Release Area Road Infrastructure Developer Contributions Plan being August 2020 pursuant to clause 2 of Schedule 1.</p> | The payment of the Monetary Contribution is to be made prior to the issue of the Approval to Operate under section 68 of the <i>Local Government Act 1993 (NSW)</i> for Stage 1 of the Development. |

2. CPI Adjustment of Monetary Contribution

The Monetary Contribution to be paid in clause 1 of this Schedule must be increased or decreased annually on the date of publication of the June quarterly CPI by the Commonwealth Statistician in accordance with the following formula:

$$A = B \times \frac{C}{D}$$

Where:

A is the indexed amount;

B is the monetary amount specified in this Agreement;

C is the most recent June quarter CPI published as at the date that payment is due to be made; and

D is the most recent CPI published before the date of the Clarence Valley Council West Yamba Urban Release Area Road Infrastructure Developer Contributions Plan being August 2020.

Execution

Executed as an agreement on

2023

Executed by the **Clarence Valley Council** ABN 85 864 095 684 by its duly appointed officer in the presence of:

Witness

General Manager

Name/Position of Witness
(BLOCK LETTERS)

Name of General Manger
(BLOCK LETTERS)

EXECUTED by **Clifton Yamba Land Pty Limited ATF Yamba Land Trust** ABN 69 371 643 665 in accordance with section 127 of the *Corporations Act 2001* (Cth):

*Director/*Company Secretary

Director

Name of *Director/*Company Secretary
(BLOCK LETTERS)
*please delete as appropriate

Name of Director
(BLOCK LETTERS)

Annexure A

(Clause 27)

Explanatory Note (Clause 205 of the Regulation)

Agreement

Under Subdivision 2, Division 7.1 of Part 7 of the *Environmental Planning and Assessment Act 1979* (NSW) (Act)

Parties

Clarence Valley Council ABN 85 864 095 684 of 2 Prince Street, Grafton NSW 2460 (Council)

Clifton Yamba Land Pty Limited ATF Yamba Land Trust ABN 69 371 643 665 of Suite 10, Level 1, 401-407 New South Head Road, Double Bay NSW 2028 (Developer)

Description of the Land to which the Agreement applies

The Agreement applies to Lot 1 DP 568545 at 90 Carrs Drive, Yamba NSW 2464 (Land).

Description of the proposed Development

The proposed development is a 197 dwelling manufactured home estate and communal facilities as approved pursuant to DA2018/0373 lodged with Clarence Valley Council and determined on 23 April 2019 and as modified pursuant to the Council's determinations to MOD2021/0066 on 22 December 2021 and MOD2022/0050 on 27 September 2022.

Summary of objectives, nature and effect of the Agreement [clause 205(1)(a)]

- **Objectives:**

The objectives of the Agreement are to facilitate the payment of a monetary contribution for the Carrs Drive-Yamba Road intersection upgrade to a roundabout.

- **Nature:**

The nature of the Agreement is a planning agreement which facilitates the payment of a monetary contribution.

- **Effect:**

The effect of the Agreement is that it requires the Developer to pay the monetary contribution to Council prior to the issue of the Approval to Operate under section 68 of the *Local Government Act 1993* (NSW) for Stage 1 of the Development.

Assessment of the merits of the Agreement [clause 25E(b)]

- **Assessment of the merits:**

The Agreement facilitates the payment of a monetary contribution to be used for necessary road infrastructure as identified by Council in the Clarence Valley Council West Yamba Urban Release Area Road Infrastructure Developer Contributions Plan August 2020. Therefore the Agreement has merit to Council and the public.

- **How the Agreement promotes the 'Public Interest' and one or more of the objects of the Act:**

The Agreement promotes the Public Interest by delivering funding for necessary road infrastructure. The Agreement also promotes several objects of the Act in section 1.3 including:

- to promote the orderly and economic use and development of land.
- to promote good design and amenity of the built environment.
- **How the Agreement promotes elements of the Council's Charter under section 8 of the Local Government Act 1993 (NSW):**

The Agreement promotes Council's Charter in that by delivering funds for the road infrastructure works it promotes Council's ability:

- to provide directly or on behalf of other levels of government, after due consultation, adequate, equitable and appropriate services and facilities for the community and to ensure that those services and facilities are managed effectively and efficiently.
- to properly manage, develop, protect, restore, enhance and conserve the environment of the area for which it is responsible, in a manner that is consistent with and promotes the principles of ecologically sustainable development.
- to raise funds for local purposes by the fair imposition of rates, charges and fees, by income earned from investments and, when appropriate, by borrowings and grants.
- **The planning purposes served by the Agreement, and how the purpose or purposes are reasonably achieved:**

The Agreement serves following planning purposes:

- the provision of (or the recoupment of the cost of providing) public amenities or public services.
- the provision of (or the recoupment of the cost of providing) transport or other infrastructure relating to land.
- the funding of recurrent expenditure relating to the provision of public amenities or public services, affordable housing or transport or other infrastructure.
- **Whether the Agreement conforms with the Council's Capital Works Program (if any):**

The Agreement conforms with Council's Capital Works Program in that it provides a Monetary Contribution towards road infrastructure works which have been undertaken by Council pursuant to the Clarence Valley Council Operational Plan 2021 – 2022.

- **Whether certain requirements of the Agreement must be complied with before a construction certificate, occupation certificate or subdivision certificate is to be issued (if any):**

The payment of the Monetary Contribution must occur before the issue of the Approval to Operate under section 68 of the Local Government Act 1993 (NSW) for Stage 1 of the Development.