

NARROMINE SHIRE COUNCIL
ORDINARY MEETING BUSINESS PAPER – 10 MAY 2023
REPORTS TO COUNCIL – COMMUNITY AND ECONOMIC DEVELOPMENT

1. DEVELOPMENT APPROVALS

Author	Director Community and Economic Development
Responsible Officer	Director Community and Economic Development
Link to Strategic Plans	CSP – 3.1.6 – Encourage developers to consider energy efficiency and sustainable building design options in new developments DP – 3.1.6.1 - Ensure compliance with relevant building codes and regulations

Executive Summary

This report provides information to Council on the approved Development Applications for April 2023.

Report

The approvals for the month of April 2023 brings the total approved Development Applications for the financial year to 45, with a total value of \$11,356,188.42. At this time last year there were 75 development applications approved with a value of \$19,756,801.00.

DA No.	Location	LOT/DP	Description	Value	Assessment Time/Days
2023/07	112 Third Ave, Narromine	3/5846	Domestic Storage Shed	\$25,000	11
2023/19	155 Webbs Siding Rd, Narromine	1/833091	Domestic Storage Shed	\$75,000	8
2022/51	128 Cathundril Street, Narromine	31/755131	Residential Accommodation - Key Worker Housing	\$951,915	68
2023/6	26/28 Belgrove Street, Trangie	152/822458 & 112/755126	Urban Subdivision (2 Lots into 7 Lots)	\$230,000	35
2022/53	6 Euromedah RD, Narromine	41/752581	Boundary Adjustment	\$10,000	60

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2023/17	10 Derribong St, Trangie	A/321649	Swimming pool (Inground)	\$111,183	15
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There are currently 12 applications under assessment.

Legal and Regulatory Compliance

Environmental Planning and Assessment Act 1979
Environmental Planning and Assessment Regulation 2021

Risk Management Issues

Nil

Internal/ external Consultation

Nil

Attachments

Nil

RECOMMENDATION

That the information be noted.

2. VOLUNTARY PLANNING AGREEMENT – DA2021/87 TORRENS TITLE RESIDENTIAL SUBDIVISION TO CREATE 77 NEW LOTS

Author Director Community and Economic Development
Responsible Officer Director Community and Economic Development
Link to Strategic Plans LSPS – Priority 4 – A range of housing options for the community.
LSPS – Priority 6 – Sustain and grow our local population.

Executive Summary

The development application DA2021/87 was approved by Council on the 21st November 2022 (2022/264) for the subdivision of Lot 117 DP 1120162. The conditions of consent included a deferred commencement condition requiring a Voluntary Planning Agreement (VPA) be developed for the purpose of dedicating land free of cost to Council for proposed drainage and recreation reserve.

The draft Voluntary Planning Agreement has now been developed and is recommended for public exhibition prior to execution.

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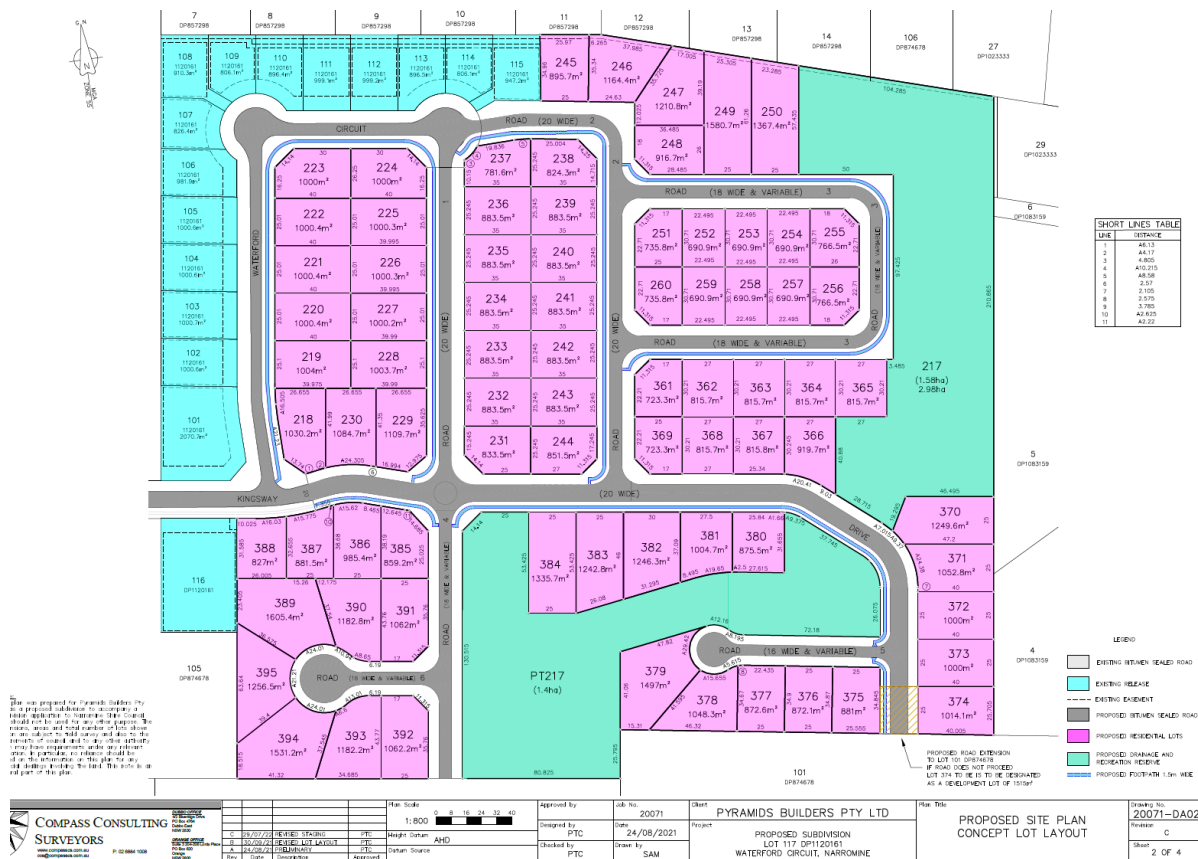
2. VOLUNTARY PLANNING AGREEMENT – DA2021/87 TORRENS TITLE RESIDENTIAL SUBDIVISION TO CREATE 77 NEW LOTS (CONT'D)

Report

Background

DA76/05 was previously approved on 16 February 2005 for the subdivision of Lot 104 in DP874678, however, only Stage 1 was constructed consisting of Lots 101 – 116 DP1120161, known as Stage 1 Macquarie Park Estate works. Stage 1 as approved is shown in Figure 1 below together with the proposed layout for the Stage 2 subdivision and the residual land to be the future Stage 3. The application was for a 78 lot residential subdivision (including one allotment for public open space) and associated roads and detention basin. Approval for DA 2021/87 was resolved on 21 November 2022 (2022/264).

Figure 1: Proposed (combined staging -Stage 2 & 3) Site Plan



Voluntary Planning Agreement

The proposed detention basin, drainage reserve and public open space is to be dedicated to Council through a voluntary planning agreement (VPA). Works associated with the drainage works within proposed Lot 217 will be undertaken as part of the approval to ensure stormwater and flood control is provided for the proposed residential lots within Stage 2 with an easement created to benefit Council, prior to the VPA being executed during what is referred to as Stage 3 (final release).

2. VOLUNTARY PLANNING AGREEMENT – DA2021/87 TORRENS TITLE RESIDENTIAL SUBDIVISION TO CREATE 77 NEW LOTS (CONT'D)

The conditions of consent specify:

A. (a) A Voluntary Planning Agreement as requested in offer by AH Investments Pty Ltd dated 12 September 2022, made for the purpose of dedication of land free of cost to Council for proposed drainage and recreation reserve (public), must be exhibited and executed.

(b) The Voluntary Planning Agreement, as executed, must be registered on the title of the land.

(c) The payment of the monetary contribution must be provided to Council in accordance with the Voluntary Planning Agreement.

(d) The guarantee must be provided to Council in accordance with the Voluntary Planning Agreement.

B. Evidence that will sufficiently enable Council to be satisfied as to those matters identified in deferred commencement conditions, as indicated above, must be submitted to Council within 24 months of the date of the determination of this deferred commencement consent, failing which, this deferred development consent will lapse pursuant to section 4.53(6) of the Environmental Planning and Assessment Act 1979.

C. The consent will not operate until such time that the Council notifies in writing that deferred commencement conditions, as indicated above, have been satisfied.

D. Upon Council giving written notification that the deferred commencement conditions have been satisfied, the consent will become operative from the date of that written notification, subject to the conditions of consent, as detailed in Schedule B Conditions of Consent.

NOTE: Planning Agreement means a voluntary agreement referred to in section 7.4 of the *Environmental Planning and Assessment Act 1979*. Council will only consider a reduction of Section 7.12 Contributions where it can be demonstrated by the developer that works in kind and other material benefits have been provided for the public benefit above what is required to service the development.

Draft Agreement

The draft agreement is now provided to Council for consideration. The Planning Agreement is prepared by AH Investments Pty Ltd under section 7.4 of the Environmental Planning and Assessment Act 1979.

Part 2 of the agreement outlines that the dedication land identified as drainage/recreation must only be used for public drainage purposes. It must be classified by Council as community land in accordance with the requirements under the Local Government Act.

The Agreement also specifies that this deed does not exclude the application of s7.11, s7.12, s.24 and sewer and water developer services charges. (These are specified in the notice of determination).

2. VOLUNTARY PLANNING AGREEMENT – DA2021/87 TORRENS TITLE RESIDENTIAL SUBDIVISION TO CREATE 77 NEW LOTS (CONT'D)

Legal and Regulatory Compliance

Environmental Planning and Assessment Act 1979
Environmental Planning and Assessment Regulation 2021

Risk Management Issues

Allows for the further development of residential land within the Shire.

Voluntary Planning Agreement makes clear that development contributions are required and that Council will accept the land as outlined in the development approval to be dedicated to Council.

It does mean that Council will be required to maintain the new roads created and the reserve once the subdivision is complete and additional resources will be required for this.

Internal/ external Consultation

Executive Leadership Team
Developer Representative
A period of community exhibition will commence if resolved

Attachments

- Draft Voluntary Planning Agreement (**Attachment No. 1**)

As this is a planning decision made in the exercise of a function of a Council under the Environmental Planning and Assessment Act 1979, including a decision relating to a development contribution plan under that Act, a division is required to be called.

RECOMMENDATION

1. That Council place the Draft Voluntary Planning Agreement on Public Exhibition for a period of 28 days in accordance with the requirements of the Environmental Planning and Environment Act.
2. That following the exhibition of the Draft Voluntary Planning Agreement, if there are no submissions received in relation to the Agreement then the General Manager and the Mayor be endorsed to sign the Agreement and affix the common seal.

Phil Johnston
Director Community and Economic Development

Planning Agreement
For exhibition
Waterford Circuit Narromine
Planning Agreement

Under s7.4 of the *Environmental Planning and Assessment Act 1979*

Narromine Shire Council
AH Investments Pty Ltd

Date: [insert date when signing]

Waterford Circuit Narromine Planning Agreement

Summary Sheet

Council	Narromine Shire Council 124 Dandaloo Street, Narromine NSW 2821 Telephone: (02) 6889 9998 Email: mail@narromine.nsw.gov.au Representative: Jane Redden
Developer	AH Investments Pty Ltd Address: 2/2-8 South Street, Rydalmere NSW 2116 Telephone: 0499 282 248 Email: amir@pyramidsbuilders.com.au Representative: Amir Abdelbadie
Land	See definition of <i>Land</i> in clause 1.1
Development	See definition of <i>Development</i> in clause 1.1.
Development Contributions	See clause 8 and Schedule 1
Application of s7.11, s7.12 and s7.24 of the Act	See clause 7.
Enforcement	See Part 4
Registration	See clause 20
Restriction on dealings	See clause 21
Dispute Resolution	See Part 3.

Waterford Circuit Narromine Planning Agreement

Under s7.4 of the *Environmental Planning and Assessment Act 1979*

Parties

Narromine Shire Council ABN 99 352 328 405 of 124 Dandaloo Street Narromine NSW 2821
(Council)

and

AH Investments Pty Ltd ACN 625 969 735 of 2/2-8 South Street, Rydalmere NSW 2116 (Developer)

Background

- A The **Development** to which this Deed applies is a subdivision of Lot 117 DP 1120161 into 78 lots with new roads, approved by Council in Development Consent to DA 2021/87.
- B In conjunction with the development application for the Development, AH Investments Pty Ltd provided a letter to Council with an offer to enter into a planning agreement, dated 12 September 2022. The letter of offer sets out the specified terms of the offer to enter into a planning agreement, being the dedication of land for the purpose of a drainage/recreation reserve and roads.
- C Council granted consent to DA 2021/87 on 21 November 2022 subject to a deferred commencement condition. The deferred commencement condition requires a planning agreement to be entered into in accordance with the offer made by AH Investments Pty Ltd, dated 12 September 2022, for the purpose of dedication of land free of cost to Council for proposed drainage and public recreation reserve.
- D Council and the Developer agree to enter into this Agreement for the dedication of land free of cost by the Developer to Council.

Part 1 - Preliminary

The Parties agree as follows.

1 Interpretation

- 1.1 In this Deed the following definitions apply:

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

Approval means any approvals, consents, certificates, permits, endorsements, licences, conditions, or requirements, (and any modifications or variations to them) which may be required by Law or by adjoining owners for the commencement and carrying out of the Development.

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.

Council means Narromine Shire Council

CPI means the *Consumer Price Index (All Groups – Sydney)* published by the Australian Bureau of Statistics.

Dedication Land means the proposed drainage and recreation reserve land shown on the approved plan at **Schedule 1 as Lot 217**, and the roads shown on the plan at Schedule 1, which are to be dedicated to Council by the Developer under this Deed.

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

Development means development, within the meaning in the Act, the subject of the Development Consent as modified from time to time.

Development Application means a development application within the meaning of the Act or an application for an approval to carry out a project under the repealed Part 3A of the Act as continued under Schedule 2 of the Savings and Transitional Regulation.

Development Consent means a development consent to DA 2021/87 for subdivision Lot 117 DP 1120161 into 78 lots with new roads, as modified from time to time.

Development Contribution means the dedication of the Dedication Land free of cost by the Developer to Council which is to be used for, or applied towards roads and drainage/recreation reserve (as specified on the Subdivision Plan), being both public purposes, 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 s7.4(3)(g) of the Act.

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

Final Lot means a lot created in the Development for separate residential occupation and disposition which is not intended for further subdivision.

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.

Insolvency Event means any of the following events:

- a) the Party ceases to (or is unable to) pay its creditors (or any class of them) in the ordinary course of business, or announces its intention to do so;
- b) a receiver, manager, receiver and manager, administrative receiver or similar officer is appointed with respect to that Party or any of its assets;
- c) such Party enters into, or resolves to enter into, a scheme of arrangement, compromise or composition with any class of creditors;
- d) a resolution is passed or an application to a court is taken for the winding up, dissolution, official management or administration of that Party; or
- e) anything having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction.

Land means land comprised in Lot 117 DP 1120161 otherwise known as Waterford Circuit Narromine, NSW 2821 and includes any lot created by subdivision or strata subdivision of that lot.

Party means a party to this agreement.

Regulation means the *Environmental Planning and Assessment Regulation 2021*.

- 1.2 In the interpretation of this Agreement, 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 inclusive of GST if GST is payable.
- 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 employees, 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 Agreement is a planning agreement within the meaning of s7.4 of the Act and governed by Part 7, Division 7.1, Subdivision 2, sections 7.4-7.10 inclusive of the Act.

3 Application of this Deed

- 3.1 This Deed applies to the Development on the Land.

4 Commencement

- 4.1 This Deed takes effect on and from the date when the following occurs:
- 4.1.1 The Parties have
- (a) all executed the same copy of this Deed, or
 - (b) each executed separate counterparts of this Deed and exchanged the counterparts;
- and
- 4.1.2 Council notifies the Applicant that the deferred commencement condition of the Development Consent is satisfied such that the Development Consent becomes operational.
- 4.2 The Parties are to insert the date of execution on the execution page; and when this Deed commences on the front page and.
- 4.3 This Deed operates, and the requirements under this Deed operate when the Development Consent is acted upon. If the Development Consent is not acted upon, or the Development is not physically commenced, the requirements under this Deed are not required to be undertaken.

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 Application of s7.11, s7.12 and s7.24 of the Act to the Development

- 7.1 This Deed does not exclude the application of s7.11, 7.12 and 7.24 of the Act to the Development.
- 7.2 This Deed does not exclude the application of Development Servicing Plans (DSPs) made under the provisions of Section 64 of the *Local Government Act 1993* and Sections 305 to 307 of the *Water Management Act 2000*

Part 2 – Development Contributions

8 Provision of Development Contributions

- 8.1 The Developer is to make the Development Contributions to the Council at the time of registration of the plan of subdivision for the Development, by indicating on the plan of subdivision that the drainage land is dedicated to Council and the roads are dedicated as roads.
- 8.2 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.

- 8.3 Specifically the Dedication Land identified as 'road' must be used only for public roads purposes.
- 8.4 The Dedication Land identified as drainage/recreation must only be used for public drainage purposes. It must be classified by Council as community land in accordance with the requirements under the Local Government Act.
- 8.5 The Development Contribution is made for the purposes of this Deed when the plan of subdivision is registered.

Part 3 – Dispute Resolution

9 Dispute resolution – expert determination

- 9.1 This clause applies to a Dispute between any of the Parties to this Deed which has not been resolved after first following the procedures in clause 17, and which concerns a matter arising in connection with this Deed or its subject matter that can be determined by an appropriately qualified expert if:
 - 9.1.1 the Parties to the Dispute agree that it can be so determined, or
 - 9.1.2 where the Parties to the Dispute disagree on whether it can be so determined, 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.
- 9.2 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.
- 9.3 If a notice is given under clause 9.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 9.4 If the Dispute is not resolved within a further 28 days, the Dispute is to be referred to the President of the Resolution Institute (NSW) to appoint an expert for expert determination.
- 9.5 The expert determination is binding on the Parties except in the case of fraud or misfeasance by the expert.
- 9.6 Each Party is to bear its own costs arising from or in connection with the appointment of the expert and the expert determination.
- 9.7 The Parties are to share equally the costs of the President, the expert, and the expert determination.

10 Dispute Resolution - mediation

- 10.1 This clause applies to any Dispute arising in connection with this Deed or its subject matter.
- 10.2 Such a Dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 10.3 If a notice is given under clause 10.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 10.4 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.
- 10.5 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.

- 10.6 Each Party is to bear its own costs arising from or in connection with the appointment of a mediator and the mediation.
- 10.7 The Parties are to share equally the costs of the President, the mediator, and the mediation.

Part 4 - Enforcement

11 Breach of obligations

- 11.1 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:
 - 11.1.1 specifying the nature and extent of the breach,
 - 11.1.2 requiring the Developer **to** rectify the breach if it reasonably considers it is capable of rectification,
 - 11.1.3 specifying the period within which the breach is to be rectified being a period that is reasonable in the circumstances.
- 11.2 If the Developer receives a notice from Council under clause 18.1 and considers, (acting reasonably) it to be unreasonably issued or that there is no breach as alleged, the Developer may notify Council of its response within 14 days of receiving the notice. During this 14 day period Council must not take any further action with respect to the alleged breach.
- 11.3 If Council does not agree with the Developer's notice under clause 18.2 within 14 days of receiving the Developer's notice under clause 18.2 the parties must apply the dispute resolution procedures under this Deed.
- 11.4 Any costs incurred by the Council in remedying a breach in accordance with clause 11.1 may be recovered by the Council as a debt due in a court of competent jurisdiction, subject to any contrary order of a Court of competent jurisdiction.
- 11.5 For the purpose of clause 18.3, the Council's costs of remedying a breach the subject of a notice given under clause 11.1 include, but are not limited to:
 - 11.5.1 the costs of the Council's employees, agents and contractors reasonably incurred for that purpose,
 - 11.5.2 all fees and charges necessarily or reasonably incurred by the Council in remedying the breach, and
 - 11.5.3 all legal costs and expenses reasonably incurred by the Council, by reason of the breach.
- 11.6 Nothing in this clause 18 , except clause 18.2 (and then only to the extent provided in clause 18.2), 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.

12 Enforcement in a court of competent jurisdiction

- 12.1 Without limiting any other provision of this Deed, the Parties may enforce this Deed in any court of competent jurisdiction.
- 12.2 For the avoidance of doubt, nothing in this Deed prevents:
 - 12.2.1 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

- 12.2.2 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

13 Registration of this Deed

- 13.1 The Parties agree to register this Deed for the purposes of s7.6(1) of the Act on the title to the Land, other than a Final Lot.
- 13.2 Not later than 20 days after the commencement of this Deed, the Developer is to deliver to the Council in registrable form:
 - 13.2.1 an instrument requesting registration of this Deed on the title to the Land duly executed by the Developer and Landowners, and
 - 13.2.2 the written irrevocable consent of each person referred to in s7.6(1) of the Act to that registration.
- 13.3 The Developer warrants that all persons whose consent is required under s7.6(1) of the Act consent to registration of the Deed.
- 13.4 The Developer is to do such other things as are reasonably necessary to enable registration of this Deed to occur.
- 13.5 The Parties are to do such things as are reasonably necessary to remove any notation relating to this Deed from the title to the Land or a part of the Land, and to ensure that the Deed is not registered on any Final Lot:
 - 13.5.1 in so far as the part of the Land concerned is a Final Lot; and
 - 13.5.2 in relation to any other part of the Land, once the Developer has completed all of its obligations under this Deed in accordance with this Deed or this Deed is terminated or otherwise comes to an end for any other reason.
 - 13.5.3 In doing so the parties must act promptly.
- 13.6 The Parties agree that if the subdivision works are complete the Deed will not apply to or be registered on the title of any Final Lot. The Developer may rely on this clause, including when the subdivision certificate for the Development is being registered. The Council agrees to act promptly in response to any queries during the plan registration process, to ensure that the plan is registered without the planning agreement on title in the circumstances in this clause.
- 13.7 Notwithstanding any other provision of this Deed, the Developer is to pay all registration fees associated with the registration of this Deed on the title to the Land and removal of any notation in respect of the Deed from the title to the Land and is to reimburse Council for any fees Council incurs, excluding any legal fees, in connection with the registration of the Deed within 20 days of a written demand by Council.

14 Restriction on dealings

- 14.1 The Developer is not to assign its rights or obligations under this Deed, or novate this Deed to any person unless:
 - 14.1.1 the Developer has, at no cost to the Council, first procured the execution by the person to whom the Land or part thereof is to be sold or transferred or the Developer's rights or obligations under this Deed are to be assigned or novated (as the case may be), of a deed between that person, the Council and the Developer in favour of the Council binding the person to the Developer's obligations under this Deed,
 - 14.1.2 the Council has been given notice by the Developer of its intent to sell,

- 14.1.3 the Developer is not in breach of this Deed.
- 14.2 Subject to clause 14.3, the Developer acknowledges and agrees that it remains liable to fully perform its obligations under this Deed unless and until it has complied with its obligations under clause 14.1.
- 14.3 Clause 14.1 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 7 – Other Provisions

15 Review of Deed

- 15.1 The Parties agree that they may review this Deed from time to time, should a party consider on reasonable grounds that there are circumstances that materially affect the operation of this Deed.
- 15.2 For the purposes of addressing any matter arising from a review of this Deed referred to in clause 15.1, the Parties are to use all reasonable endeavours to agree on and implement appropriate amendments to this Deed.
- 15.3 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.
- 15.4 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 15.1 (but not 15.3) is not a Dispute for the purposes of this Deed and is not a breach of this Deed.

16 Notices

- 16.1 Any notice, consent, information, application or request that is to or may be given or made to a Party under this Deed is only given or made if it is in writing and sent in one of the following ways:
 - 16.1.1 delivered or posted to that Party at its address set out in the Summary Sheet,
or
 - 16.1.2 emailed to that Party at its email address set out in the Summary Sheet.
- 16.2 If a Party gives the other Party 3 business days' notice of a change of its address or email, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or emailed to the latest address.
- 16.3 Any notice, consent, information, application or request is to be treated as given or made if it is:
 - 16.3.1 delivered, when it is left at the relevant address,
 - 16.3.2 sent by post, 2 business days after it is posted, or
 - 16.3.3 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.
- 16.4 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.

17 Approvals and Consent

- 17.1 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.
- 17.2 A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

18 Costs

- 18.1 Each party is to pay its own costs of preparing, negotiating, executing and stamping this Deed, and any document related to this Deed, or any other costs associated with this Deed.

19 Entire Deed

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

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 effect, perfect or complete this Deed and all transactions incidental to it.

21 Governing Law and Jurisdiction

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

22 Joint and Individual Liability and Benefits

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

23 No Fetter

- 23.1 Nothing in this Deed shall be construed as requiring any Party 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.

24 Illegality

- 24.1 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.

25 Severability

- 25.1 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.
- 25.2 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.

26 Waiver

- 26.1 The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Deed, does not amount to a waiver of any obligation of, or breach of obligation by, another Party.
- 26.2 A waiver by a Party is only effective if it:
- 26.2.1 is in writing,
 - 26.2.2 is addressed to the Party whose obligation or breach of obligation is the subject of the waiver,
 - 26.2.3 specifies the obligation or breach of obligation the subject of the waiver and the conditions, if any, of the waiver,
 - 26.2.4 is signed and dated by the Party giving the waiver.
- 26.3 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.
- 26.4 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.
- 26.5 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.

27 GST

- 27.1 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.
- 27.2 The value of the Land Dedication contributions offered in the Deed are to be calculated inclusive of GST. Subject to clause 38.4, 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.

- 27.3 Clause 27.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Deed to be GST inclusive.
- 27.4 No additional amount shall be payable by the Council under clause 38.4 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.
- 27.5 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:
- 27.5.1 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;
- 27.5.2 that any amounts payable by the Parties in accordance with clause 38.2 (as limited by clause 27.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 27.6 No payment of any amount pursuant to this clause 38, 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.
- 27.7 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.
- 27.8 This clause 38 continues to apply after expiration or termination of this Deed.

28 Explanatory Note

- 28.1 The Appendix contains the Explanatory Note relating to this Deed required by clause 25E of the Regulation.
- 28.2 The Parties agree that the Explanatory Note is not to be used to assist in construing this Planning Deed.

Schedule 1 Development Plan



Execution

Executed as a Deed

Dated:

Executed on behalf of the Council

General Manager

Witness

Mayor

Witness

Executed on behalf of AH Investments Pty Ltd in accordance with s127(1) of the Corporations Act (Cth) 2001

Name/Position

Name/Position

Appendix

(Clause 205)

*Environmental Planning and Assessment Regulation 2021***Explanatory Note****Planning Agreement**Under s7.4 of the *Environmental Planning and Assessment Act 1979*

Parties

Council	Narromine Shire Council 124 Dandaloo Street, Narromine NSW 2821 Telephone: (02) 6889 9998 Email: mail@narromine.nsw.gov.au Representative: Jane Redden
Developer	AH Investments Pty Ltd Address: 2/2-8 South Street, Rydalmere NSW 2116 Telephone: 0499 282 248 Email: amir@pyramidsbuilders.com.au Representative: Amir Abdelbadie

Description of the Land to which the Planning Agreement Applies

This Planning Agreement applies to the land comprised in Lot 117 DP 1120161 otherwise known as Waterford Circuit Narromine, NSW 2821.

Description of Proposed Development

This Planning Agreement applies to development for subdivision of Lot 117 DP 1120161 into 78 lots with new roads, which was approved by development consent granted by Council to DA 2021/87 on 21 November 2022.

Description of Development Contributions

This Planning Agreement requires the Developer to provide land for drainage and road purposes to Council in connection with the development.

Summary of Objectives, Nature and Effect of the Planning Agreement

Objectives, Nature and Effect of Draft Planning Agreement

The Planning Agreement is a planning agreement under s7.4 of the EPA Act. It is a voluntary agreement, under which the Developer makes Development Contributions (as defined in clause 1.1 of the Planning Agreement) for various public purposes (as defined in s 7.4(2) of the EPA Act).

The objective of the Planning Agreement is to require the Developer to provide land for drainage and road purposes.

The Planning Agreement:

- requires the Developer to dedicate the land to Council free of cost,
- relates to the carrying out by the Developer of the Development on Lot 117 DP 1120161,
- does not exclude the application of s 7.11 of the EPA Act to the Development,
- does not exclude the application of s7.12 of the EPA Act to the Development,
- does not exclude the application of s 7.24 of the EPA Act to the Development,
- is to be registered on the title of the Land, but not on the lots resulting from the subdivision (because it will be complied with by dedication of the land on registration of the plan of subdivision)
- provides a dispute resolution method where a dispute arises under the agreement, being mediation and expert determination,
- provides that the agreement is governed by the law of New South Wales,
- provides that the A New Tax System (Goods and Services Tax) Act 1999 (Cth) applies to the agreement.

Assessment of the Merits of the Planning Agreement

How the Planning Agreement Promotes the Public Interest

The Planning Agreement requires the Developer to provide roads and land for drainage and recreation to Council as part of the approved Development of the Land.

The roads will be dedicated to Council, and will form essential community infrastructure.

The drainage land will be dedicated to Council, for drainage and recreation purposes, for essential community infrastructure, consistent with Council's planning instruments.

The Planning Agreement:

- promotes and co-ordinates the orderly and economic use and development of the land to which the Planning Agreement applies by enabling community facilities, public spaces and roads that serve the development and the wider community to be provided,
- promotes good design and amenity of the built environment by providing public land, and
- provides increased opportunity for public involvement and participation in the form of public notification of the Planning Agreement.

The Planning Agreement promotes the objects of the EPA Act set out in sections 1.3(a), (c), (g) and (j);

The Planning Agreement also promotes the following guiding principles for local councils as set out in s8A of the *Local Government Act 1993*:

- the management of lands and other assets so that current and future local community needs can be met in an affordable way,
- working with others to secure appropriate services for local community needs,
- promoting Council's long-term strategic planning on behalf of the local community.

This Planning Agreement contains requirements that must be complied with before the final subdivision certificate is issued for the Development.