



Deed

Barton Street Road Realignment and Causeway Planning Agreement

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

**Upper Hunter Shire Council
Scone Rise Pty Ltd**

[27 February 2025]

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Table of Contents

REGULATORY COMPLIANCE TABLES.....	5
Table 1 – Provisions of Act.....	5
Table 2 – Provisions of Regulation	7
PARTIES.....	8
BACKGROUND.....	8
OPERATIVE PROVISIONS.....	8
PART 1 - PRELIMINARY	8
1 Definitions & Interpretation.....	8
Definitions.....	8
Interpretation	11
2 Status of this Deed	12
3 Commencement	12
4 Application of this Deed	12
5 Warranties.....	12
6 Further agreements	12
7 Surrender of right of appeal, etc.....	13
8 Application of s7.11, s7.12 and Subdivision 4 of Division 7.1 of the Act to the Development	13
Section 7.11 of the Act.....	13
Section 7.12 of the Act.....	13
Subdivision 4 of Division 7.1 of the Act	13
PART 2 – DEVELOPMENT CONTRIBUTIONS	13
9 Provision of Development Contributions.....	13
Development Contributions.....	13
Application of Development Contributions.....	14
10 Payment of monetary Development Contributions.....	14
PART 3 – DISPUTE RESOLUTION	14
11 Dispute Resolution – mediation	14
Application of clause	14
When Dispute arises	14
Meeting between Parties	14
Meditation of Dispute.....	14
Exercise of legal rights.....	14
Costs	15
12 Breach of obligations.....	15

Notice of breach	15
Recovery of costs by Council as debt due	15
Exercise of Council's rights at law or in equity	15
13 Enforcement in a court of competent jurisdiction	16
PART 5 – REGISTRATION & RESTRICTION ON DEALINGS	16
14 Registration of this Deed	16
Application of clause	16
Documents for registration	16
Removing notation from title	16
15 Restriction on dealings	17
Restriction	17
Continued performance of obligations by Developer	17
Exclusion from restriction	17
PART 6 – INDEMNITIES & INSURANCE	17
16 Risk	17
17 Release	17
18 Indemnity	18
PART 7 – OTHER PROVISIONS	18
19 Review of Deed	18
Obligation to review Deed	18
Review triggers	18
Duty of Parties	18
Where change of law occurs	18
No Dispute	18
20 Notices	19
21 Approvals and Consent	19
22 Costs of this Deed	19
Costs of Deed	19
Enforcement costs	20
No dispute	20
23 Entire Deed	20
24 Further Acts	20
25 Governing Law and Jurisdiction	20
26 Joint and Individual Liability and Benefits	21
27 No Fetter	21
28 Illegality	21

29 Severability	21
30 Amendment	21
31 Waiver	21
32 GST	22
33 Explanatory Note	23
SCHEDULE 1: VPA PARTICULARS.....	24
SCHEDULE 2: DEVELOPMENT CONTRIBUTIONS TABLE	26
APPENDIX: EXPLANATORY NOTE	29

Regulatory Compliance Tables

Table 1 – Provisions of Act

Act Provision	Requirement	Compliance
S.7.4(1)	'Planning Authority'	Council
	'Developer'	Developer
	Person associated with Developer	N/A
	Development Application / Modification Application	See definitions of ' <i>Development Application</i> ' and ' <i>Modification Application</i> ' in clause 1.1 and Item 4.a and 4.b of the VPA Particulars
	Development Contributions	See Part 2 and Development Contributions Table
S.7.4(1), (2)	Public Purpose	See Column 2 of the Development Contributions Table
S.7.4(3)(a)	Land	See Definition of ' <i>Land</i> ' in clause 1.1 and Item 1 of the VPA Particulars
S.7.4(3)(b)(i)	Instrument Change	See definition of ' <i>Instrument Change</i> ' in clause 1.1 and Item 3 of the VPA Particulars
S.7.4(3)(b)(ii)	Development	See definition of ' <i>Development</i> ' in clause 1.1 and Item 2 of the VPA Particulars
S.7.4(3)(c)	Details of Developer's Provision	See Development Contributions Table
S.7.4(3)(d)	Whether s7.11, s7.12 and Subdivision 4 of Division 7.1 of the Act Apply to the Development	See clauses 8.1, 8.3 and 8.3 and Item 7.a, 7.c and 7.d of the VPA Particulars
S.7.4(3)(e)	Whether benefits under Deed are or are not to be taken into consideration in determining a Development	See clause 8.2 and Item 7.b of the VPA Particulars

	Contribution under s7.11	
S.7.4(3)(f)	Mechanism for the Resolution of Disputes	See Part 3
S.7.4(3)(g)	Enforcement of the Agreement by a Suitable Means in the Event of Breach by the Developer	See Part 4 and Items 8–9 of the VPA Particulars
S.7.4 (10)	Conformity of Agreement with Act, Environmental Planning Instruments, & Development Consents Applying to the Land	Yes
S.7.5	Public Notice & Public Inspection of Draft Agreement	Yes
S.7.6	Registration	See Part 5
S.6.15(1)(d)	If the Development involves the subdivision of land, does this Agreement impose requirements that are required to be complied with before a subdivision certificate is issued?	No, the Development Contribution is required to be made prior to the issue of any Subdivision Works Certificate See Development Contributions Table

Table 2 – Provisions of Regulation

Regulation Provision	Requirement	Compliance
Environmental Planning and Assessment Regulation 2021		
S.203(1)	Form & Subject-Matter	Yes
S.203(7)	Secretary's Practice Note	Yes
S.204	Public Notice & Public Inspection of Draft Agreement	Yes
S.205	Explanatory Note	See Appendix
Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021		
Ss.21, 34	If the Development involves building work or subdivision work, does the Agreement specify requirements that are required to be complied with before a construction certificate or subdivision works certificate for the work is issued?	Yes, see Development Contributions Table

Parties

Council	Upper Hunter Shire Council ABN 17 261 839 740 of 135 Liverpool Street Scone NSW 2337
Developer	Scone Rise Pty Ltd ABN 41 658 033 820 of Level 1, 6-10 O'Connell Street Sydney NSW 2000

Background

- A The Developer applied for and the Council granted the Applicable Development Consent.
- B The Developer has offered (by its Letter of Offer dated 27 June 2024) to make a monetary contribution toward the construction costs of a road realignment and concrete causeway on the Council owned road reserve adjacent to the frontage of the Land on Barton Street.
- C The Applicable Development Consent is conditional upon the Developer entering into a planning agreement in accordance with its Letter of Offer.

Operative provisions

Part 1 - Preliminary

1 Definitions & Interpretation

Definitions

- 1.1 In this Deed, the words and phrases appearing in Column 1 of the following table have the meaning set out in Column 2 of that table corresponding to those words or phrases except in so far as the context or subject-matter otherwise indicates or requires:

Table

Column 1	Column 2
Word or phrase	Meaning
Act	means the <i>Environmental Planning and Assessment Act 1979</i> (NSW).
Applicable Development Consent	means the development consent specified or described in Item 5 of the VPA Particulars or granted in respect of the Development.
Approval	includes approval, consent, licence, permission or the like.
Claim	includes a claim, demand, remedy, suit, injury, damage, loss, Cost, liability, action, proceeding or right of action.
Construction Certificate	has the same meaning as in the Act.
Cost	means a cost, charge, expense, outgoing, payment, fee and other expenditure of any nature.
CPI	means the ' <i>Consumer Price Index – Sydney All Groups</i> ' published by the Australian Bureau of Statistics.
Deed	means this Deed and includes any schedules, annexures and appendices to this Deed.
Development	means the development specified or described in Item 2 of the VPA Particulars.
Development Application	means the development application within the meaning of the Act specified or described in Item 4.a of the VPA Particulars.
Development Contribution	means the dedication of land free of cost, a monetary contribution, the provision of any other material public benefit including but not limited to the provision of Works, or any combination of them.
Development Contributions Table	means the table contained in Schedule 2.

Dispute	means a dispute or difference between the Parties under or in relation to this Deed.
Final Lot	means a lot created in the Development for separate residential occupation and disposition or a lot of a kind or created for a purpose that is otherwise agreed by the Parties, not being a lot created by a subdivision of the Land: <ul style="list-style-type: none">(a) that is to be dedicated or otherwise transferred to the Council, or(b) on which is situated a dwelling-house that was in existence on the date of this Deed.
GST	has the same meaning as in the GST Law.
GST Law	has the same meaning as in <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth) and any other Act or regulation relating to the imposition or administration of the GST.
Instrument Change	means the change to the environmental planning instrument specified or described in Item 3 of the VPA Particulars.
Item	means a numbered item appearing in the VPA Particulars or the Development Contributions Table.
Land	means the land specified or described in Item 1 of the VPA Particulars.
Modification Application	means the application to modify the Applicable Development Consent specified or described in Item 4.b of the VPA Particulars.
N/A	means Not Applicable
Occupation Certificate	has the same meaning as in the Act.
Party	means a party to this Deed.
Regulation	means the <i>Environmental Planning and Assessment Regulation 2021</i> (NSW).
Section 7.11 Contribution	means a monetary contribution payable to the Council under s7.11 of the Act pursuant to the Applicable Development Consent.
Stage	means a stage of the Development approved by the Applicable Development Consent or otherwise

approved in writing by the Council for the purposes of this Deed.

Subdivision Certificate has the same meaning as in the Act.

Subdivision Works Certificate has the same meaning as in the Act.

VPA Particulars means the information contained in Schedule 1.

Interpretation

- 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 or a public holiday 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 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 Deed is a planning agreement within the meaning of s7.4(1) of the Act.

3 Commencement

- 3.1 This Deed commences and has force and effect on and from the date when the Parties have:
 - 3.1.1 both executed the same copy of this Deed, or
 - 3.1.2 each executed separate counterparts of this Deed and exchanged the counterparts.
- 3.2 The Parties are to insert the date when this Deed commences on the front page and on the execution page.

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 s7.11, s7.12 and Subdivision 4 of Division 7.1 of the Act to the Development

Section 7.11 of the Act

- 8.1 Item 7.a of the VPA Particulars states whether this Deed excludes (wholly or in part) the application of section 7.11 of the Act to the Development.
- 8.2 If Item 7.a of the VPA Particulars states that this Deed does not wholly exclude the application of section 7.11 of the Act to the Development, Item 7.b of the VPA Particulars states whether the benefits provided by the Developer under this Deed are to be taken into consideration when determining a Development Contribution under section 7.11 relating to the Development.

Section 7.12 of the Act

- 8.3 Item 7.c of the VPA Particulars states whether this Deed excludes (wholly or in part) the application of section 7.11 of the Act to the Development.

Subdivision 4 of Division 7.1 of the Act

- 8.4 Item 7.d of the VPA Particulars states whether this Deed excludes (wholly or in part) the application of Subdivision 4 of Division 7.1 of the Act to the Development.

Part 2 – Development Contributions

9 Provision of Development Contributions

Development Contributions

- 9.1 The Developer is to make Development Contributions to the Council in accordance with the Development Contributions Table and any other provision of this Deed requiring the Developer to make Development Contributions.

Application of Development Contributions

- 9.2 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.

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.

Part 3 – Dispute Resolution

11 Dispute Resolution – mediation

Application of clause

- 11.1 This clause 11 applies to any Dispute arising in connection with this Deed.

When Dispute arises

- 11.2 Such a Dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.

Meeting between Parties

- 11.3 If a notice is given under clause 11.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.

Mediation of Dispute

- 11.4 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.

Exercise of legal rights

- 11.5 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.

Costs

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

12 Breach of obligations

Notice of breach

- 12.1 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:
 - 12.1.1 specifying the nature and extent of the breach,
 - 12.1.2 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,
 - 12.1.3 specifying the period within which the breach is to be rectified or compensation paid, being a period that is reasonable in the circumstances.

Recovery of costs by Council as debt due

- 12.2 Despite any other provision of this Deed, any costs incurred by the Council in remedying a breach of this Deed may be recovered by the Council as a debt due in a court of competent jurisdiction.
- 12.3 For the purpose of clause 12.2, the Council's costs of remedying a breach the subject of a notice given under clause 12.1 include, but are not limited to:
 - 12.3.1 the costs of the Council's employees, agents and contractors reasonably incurred for that purpose,
 - 12.3.2 all fees and charges necessarily or reasonably incurred by the Council in remedying the breach, and
 - 12.3.3 all legal costs and expenses reasonably incurred by the Council, by reason of the breach.

Exercise of Council's rights at law or in equity

- 12.4 Nothing in this clause 12 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.

13 Enforcement in a court of competent jurisdiction

- 13.1 Without limiting any other provision of this Deed, the Parties may enforce this Deed in any court of competent jurisdiction.
- 13.2 For the avoidance of doubt, nothing in this Deed prevents:
 - 13.2.1 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
 - 13.2.2 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

14 Registration of this Deed

Application of clause

- 14.1 This clause 14 applies if Item 9 of the VPA Particulars states that this Deed is to be registered for the purposes of s7.6(1) of the Act.

Documents for registration

- 14.2 Upon the commencement of this Deed, the Developer is to deliver to the Council:
 - 14.2.1 an instrument in registrable form requesting registration of this Deed on the title to the Land duly executed by the registered proprietor of the Land, and
 - 14.2.2 the written irrevocable consent of the registered proprietor and each person referred to in s7.6(1) of the Act to that registration.
- 14.3 The Developer is to do such other things as are reasonably necessary to enable lodgement and registration of this Deed to occur electronically through PEXA or another ELNO.

Removing notation from title

- 14.4 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:
 - 14.4.1 in so far as the part of the Land concerned is a Final Lot,
 - 14.4.2 in relation to any other part of the Land, once the Developer has completed its obligations under this Deed to the reasonable satisfaction of the Council or this Deed is terminated or otherwise comes to an end for any other reason.

15 Restriction on dealings

Restriction

- 15.1 The Developer is not to:
- 15.1.1 sell or transfer the Land, other than a Final Lot, or
 - 15.1.2 assign the Developer's rights or obligations under this Deed, or novate this Deed,
- to any person unless:
- 15.1.3 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
 - 15.1.4 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
 - 15.1.5 the Developer is not in breach of this Deed, and
 - 15.1.6 the Council otherwise consents to the transfer, assignment or novation, such consent not to be unreasonably withheld.

Continued performance of obligations by Developer

- 15.2 Subject to clause 15.3, 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 15.1.

Exclusion from restriction

- 15.3 Clause 15.1 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

16 Risk

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

17 Release

- 17.1 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.

18 Indemnity

- 18.1 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

19 Review of Deed

Obligation to review Deed

- 19.1 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.

Review triggers

- 19.2 For the purposes of clause 19.1, 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.

Duty of Parties

- 19.3 For the purposes of addressing any matter arising from a review of this Deed referred to in clause 19.1, the Parties are to use all reasonable endeavours to agree on and implement appropriate amendments to this Deed.

Where change of law occurs

- 19.4 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.

No Dispute

- 19.5 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 19.1 (but not 19.4) is not a Dispute for the purposes of this Deed and is not a breach of this Deed.

20 Notices

- 20.1 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:
- 20.1.1 delivered or posted to that Party at its address set out in Item 10 or 11 of the VPA Particulars, or
 - 20.1.2 emailed to that Party at its email address set out in Item 10 or 11 of the VPA Particulars.
- 20.2 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.
- 20.3 Any notice, consent, information, application or request is to be treated as given or made if it is:
- 20.3.1 delivered, when it is left at the relevant address,
 - 20.3.2 sent by post, 2 business days after it is posted, or
 - 20.3.3 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.
- 20.4 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.

21 Approvals and Consent

- 21.1 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.
- 21.2 A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

22 Costs of this Deed

Costs of Deed

- 22.1 The Developer is to pay to the Council the Council's costs not exceeding the amount specified in Item 12 of the VPA Particulars in relation to 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.

Enforcement costs

- 22.2 The Council may serve a notice in writing on the Developer (**'Enforcement Cost Notice'**) requiring the Developer to pay all or any reasonable costs and expenses incurred by the Council in connection with:
- 22.2.1 investigating a non-compliance by the Developer with this Deed, and
 - 22.2.2 enforcing compliance by the Developer with this Deed.
- 22.3 For the avoidance of doubt, the costs and expenses referred to in clause 22.2 may include the costs or expenses incurred by the Council relating to the preparation or serving of the Enforcement Cost Notice.
- 22.4 An Enforcement Cost Notice is to specify the amount required to be paid to the Council by the Developer and the date by which the amount is to be paid.
- 22.5 The Council may recover any unpaid costs and expenses specified in an Enforcement Cost Notice as a debt in a court of competent jurisdiction.

No dispute

- 22.6 Part 3 of this Deed does not apply anything done by the Council and any requirement imposed on the Developer by the Council in accordance with this clause 22.

23 Entire Deed

- 23.1 This Deed contains everything to which the Parties have agreed in relation to the matters it deals with.
- 23.2 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.

24 Further Acts

- 24.1 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.

25 Governing Law and Jurisdiction

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

26 Joint and Individual Liability and Benefits

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

27 No Fetter

- 27.1 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.

28 Illegality

- 28.1 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.

29 Severability

- 29.1 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.
- 29.2 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.

30 Amendment

- 30.1 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 section 203 of the Regulation.

31 Waiver

- 31.1 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.
- 31.2 A waiver by a Party is only effective if it:

- 31.2.1 is in writing,
- 31.2.2 is addressed to the Party whose obligation or breach of obligation is the subject of the waiver,
- 31.2.3 specifies the obligation or breach of obligation the subject of the waiver and the conditions, if any, of the waiver,
- 31.2.4 is signed and dated by the Party giving the waiver.
- 31.3 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.
- 31.4 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.
- 31.5 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.

32 GST

- 32.1 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.
- 32.2 Subject to clause 32.4, 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.
- 32.3 Clause 32.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Deed to be GST inclusive.
- 32.4 No additional amount shall be payable by the Council under clause 32.2 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.

- 32.5 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:
- 32.5.1 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;
- 32.5.2 that any amounts payable by the Parties in accordance with clause 32.2 (as limited by clause 32.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 32.6 No payment of any amount pursuant to this clause 32, 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.
- 32.7 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.
- 32.8 This clause continues to apply after expiration or termination of this Deed.

33 Explanatory Note

- 33.1 The Appendix contains the Explanatory Note relating to this Deed required by section 205 of the Regulation.
- 33.2 Pursuant to section 205 of the Regulation, the Parties agree that the Explanatory Note is not to be used to assist in construing this Deed.

Schedule 1: VPA Particulars

(Clause 1.1)

Item	Details
1. Land	Lot 30 DP 1280096
2. Development	The development approved by the Applicable Development Consent being a 1 into 92 lot subdivision
3. Instrument Change	N/A
4. Application: a. Development Application b. Modification Application	DA 230/2022 N/A
5. Applicable Development Consent	Development Consent granted to the Development Application DA 230/2022 by the Council on 29 July 2024
6. Applicable Plan: a. Applicable Contributions Plan b. Applicable DSP	N/A N/A
7. Application of the following provisions of the Act to the Development: a. Section 7.11 b. Consideration of benefits c. Section 7.12 d. Subdivision 4 of Division 7.1	Does not exclude Not to be considered Does not exclude Not excluded
8. Charge Land	Lot 30 DP 1280096
9. Registration of this Deed	Yes

10. Council Contact for Notices	Postal Address: [135 Liverpool Street Scone. PO Box 208] Email: [Council@upperhunter.nsw.gov.au] Telephone: [65401100] Representative: [Paul Smith]
11. Developer Contact for Notices	Postal Address: [Insert] Email: [nperks@findalproperty.com.au] Telephone: [0408280085] Representative: [Nick Perks]
12. Costs of Deed	\$289,528

Schedule 2: Development Contributions Table

COLUMN 1 Item No / Details	COLUMN 2 Public Purpose	COLUMN 3 Timing
1. Monetary Contribution of \$289,528	Barton Road realignment and concrete causeway and/or appropriate road/crossing infrastructure	Prior to a Subdivision Works Certificate for Stage 1 of the Subdivision

Execution

Executed as a Deed

Dated:

*[Drafting Note. Delete execution clauses below not required.]

Executed by the COUNCIL pursuant to a resolution passed at a duly convened meeting held on [Drafting Note. Insert Date]:

Mayor

General Manager

Executed by the COUNCIL:

General Manager

Witness

Name



Executed by the COUNCIL by its attorney, [Drafting Note. Insert Name], pursuant to Power of Attorney Registered Book [Drafting Note. Insert number] No. [Drafting Note. Insert number]:

Attorney

Witness

Name

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

Director

Director / Secretary

Name

Name

Appendix: Explanatory Note

(Clause 33)

Environmental Planning and Assessment Regulation 2021

(Section 205)

Draft Planning Agreement

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

Parties

Council **Upper Hunter Shire Council** ABN 17 261 839 740 of
135 Liverpool Street Scone NSW 2337

Developer **Scone Rise Pty Ltd** ABN 41 658 033 820 of Level 1, 6-10
O'Connell Street Sydney NSW 2000

Description of the Land to which the Draft Planning Agreement Applies

The Draft Planning Agreement applies to the Land, being Lot 30 in DP 1280096 known as 38 Barton Street, Scone.

Description of Proposed Development/Instrument Change

The Development approved by Development Consent DA 230/2022 granted by the Council on 29 July 2024, being a 1 into 92 lot subdivision of Lot 30 DP 1280096, 38 Barton Street, Scone.

Description of Development Contributions

A monetary contribution of \$289,528 toward the construction costs of a road realignment and concrete causeway on the Council owned road reserve on Barton Street adjacent to the frontage of Lot 30 DP 1280096.

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

Objectives of Draft Planning Agreement

The objective of the Planning Agreement is to record the terms of the offer made by the Developer to provide the Development Contributions in relation to the Development.

Nature and Effect of the of Draft Planning Agreement

The Draft Planning Agreement does not exclude the application of section 7.11 of the Act to the Development.

The Draft Planning Agreement does not exclude section 7.12 (local infrastructure contributions) or Division 7.1, Subdivision 4 of the Act to the Development.

The benefits under the Draft Planning Agreement are not to be taken into consideration when determining a development contribution under section 7.11 of the Act in relation to the Development.

The Draft Planning Agreement provides for registration of the agreement on title to the Land.

The Draft Planning Agreement also includes provisions regarding:

- the resolution of disputes arising under the agreement through independent mediation, and
- the Developer paying Council's reasonable legal costs associated with the agreement.

Assessment of the Merits of the Draft Planning Agreement

The Planning Purposes Served by the Draft Planning Agreement

The Development will result in increased traffic volumes on Barton Street.

The proposed works to the road reserve adjacent to the Land on Barton Street are not included in the Work Schedules of the Council's *Section 94 Development Contributions Plan 2017* which applies to the Development.

The Draft Planning Agreement provides a mechanism for the Developer to contribute to the construction costs of the works.

How the Draft Planning Agreement Promotes the Public Interest

The Draft Planning Agreement promotes the public interest by ensuring that appropriate contributions are made towards providing road infrastructure to satisfy needs arising from the Development.

The Development Contribution will fund upgrades to the Barton Street road reserve.

Assessment of the positive or negative impact of the Draft Planning Agreement on the public or relevant section of the public

The Draft Planning Agreement does not cause any negative impacts on the community and is not adverse to the public interest.

Whether the Draft Planning Agreement Conforms with the Planning Authority's Capital Works Program

The planning agreement conforms to Council's capital works program involving the upgrade of the Barton Street/Figtree Gully causeway.

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 Draft Planning Agreement provides that the Development Contribution must be made prior to the issue of any Subdivision Works Certificate which is required for the carrying out of subdivision works under DA 230/2022.