

262-270 Rocky Point Road, Ramsgate

Planning Agreement

Under s 7.4 of the *Environmental Planning and Assessment Act 1979*

BAYSIDE COUNCIL

and

EASTERN PACIFIC DESIGN CONSTRUCT PTY LTD

and

TASCAM PTY LTD

and

ROCKY POINT ROAD DEVELOPMENTS PTY LTD

Table of Contents

Contacts Sheet	4
Parties	5
Background	5
Operative provisions	6
Part 1 - Preliminary	6
1. Definitions and interpretation	6
2. Application of this Agreement	8
3. Status and operation of this Agreement	8
4. Further agreements relating to this Agreement	8
5. Application of s 7.11, s 7.12, s 7.24 of the Act to the Development	9
Part 2 – Development Contributions	9
6. Provision of Development Contributions	9
7. Dedication of land	9
Part 3 – Other Provisions	10
8. Enforcement in a court of competent jurisdiction	10
9. Dispute resolution – expert determination	10
10. Dispute resolution – mediation	11
11. Registration of this Agreement	11
12. Release and discharge of Agreement by Council	12
13. Assignment and transfer	12
14. Review of this Agreement	13
15. Notices	13
16. Approvals and consent	14
17. Costs	14
18. Entire Agreement	14
19. Further acts	14
20. Governing law and jurisdiction	14
21. Joint and individual liability and benefits	15
22. No fetter	15

23.	Representations and warranties	15
24.	Severability	15
25.	Modification	15
26.	Waiver	15
27.	Rights cumulative	16
28.	Duty	16
29.	Effect of Schedules	16
30.	Relationship of the Parties	16
31.	GST	16
32.	Explanatory Note relating to this Agreement	17
	Execution	18
	Schedule 1: (Section 7.4 Requirements)	20
	Schedule 2: The Land	21
	Schedule 3: Development Contribution	22
	Schedule 4: Extract of Land Reservation Acquisition Map identifying Dedicated Land	23

Contacts Sheet

Council:

Name: Bayside Council ABN 80 690 785 443 Branch 003
Address: 444 - 446 Princes Highway, ROCKDALE NSW 2216
Telephone: (02) 9562 1666
Facsimile: (02) 9562 1777
Email: council@bayside.nsw.gov.au
Representative: Meredith Wallace
General Manager

Developer:

Name: Eastern Pacific Design Construct Pty Ltd ACN 162549340
Address: Level 3, Suite 3.01, 14 - 16 Lexington Drive, BELLA VISTA NSW 2153
Telephone: 02 8854 6000
Facsimile:
Email: antonios.atia@easternpacific.com.au
Representative: Antonios Atia (Bid Development Manager)

Owner One:

Name: Tascam Pty Ltd ACN 007020233
Address: 4 Woongarra Court, ELTHAM VICTORIA 3095
Telephone:
Facsimile:
Email:
Representative: Tony Gallo (Director)

Owner Two:

Name: Rocky Point Road Development Pty Ltd ACN 612235079
Address: 1 Nipper Street, HOMEBUSH NSW 2140
Telephone:
Facsimile:
Email:
Representative: Jianqiu Zhang (Director)

262-270 Rocky Point Road, Ramsgate

This Agreement constitutes a planning agreement within the meaning of s 7.4 of the *Environmental Planning and Assessment Act 1979* and facilitates the provision of Development Contributions for the Public Benefit.

Parties

Bayside Council

ABN 80 690 785 443 Branch 003 of 444 - 446 Princes Highway, ROCKDALE NSW 2216
(Council)

and

Eastern Pacific Design Construct Pty Ltd, Level 3, Suite 3.01, 14-16 Lexington Drive,
BELLA VISTA NSW 2153
(Developer) ACN 162 549 340

and

Tascam Pty Ltd, 4 Woongarra Court, ELTHAM VICTORIA 3095
(Owner One) ACN 007 020 233

and

Rocky Point Road Developments Pty Ltd, 1 Nipper Street, HOMEBUSH NSW 2140
(Owner Two) ACN 612 235 079

Background

- A. Owner One and Owner Two (collectively referred to hereon in as "the Owners") each own two lots of the Land identified in **Schedule 2**, known as 262-270 Rocky Point Road, Ramsgate.
- B. The Developer, with the consent of the Owners, lodged a Development Application seeking approval for Development on Land which includes Land which has been identified by Council as a future Local Road on Council's Land Reservation Acquisition Map. This is the area referred to as the Dedicated Land.
- C. The Development proposes temporary access off Rocky Point Road with permanent access through the Dedicated Land when it becomes part of the future local road (rear laneway).
- D. The Development Application was subject to Land and Environment Court proceedings 2020/005057. As part of seeking to come to an agreement in those proceedings, the Developer offered to dedicate the area referred to as the Dedicated Land to Council at no cost.
- E. The Developer and Owners have offered to enter into a Planning Agreement in accordance with section 7.4 of the Act, by way of letter dated 24 September 2020
- F. The Developer and Owners are prepared to make Development Contribution in connection with carrying out of the Development in accordance with this Agreement.

Operative provisions

Part 1 - Preliminary

1. Definitions and interpretation

1.1 In this Agreement the following definitions apply:

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

Agreement means this Planning Agreement under which the Developer and Owners agree to make the Development Contributions.

Business Day means any day in New South Wales which is not a Saturday, Sunday or any proclaimed public holiday.

Certifying Authority has the same meaning as in the Act.

Construction Certificate means a construction certificate within the meaning of s 6.4(a) of the Act.

Council means Bayside Council, its successors and assigns.

Council's Lawyer means HWL Ebsworth.

CPI means the Consumer Price Index (All Groups Sydney) or any other index which supersedes the Consumer Price Index (All Groups Sydney).

Dedicated Land means the land to be dedicated to the Council in accordance with this Agreement as designated as 'Lot 2' on a plan being part of Schedule 3.

Developer means Eastern Pacific Design & Construct Pty Ltd ACN 162 549 340 and its successors and permitted assigns.

Developer's Obligations means all of the Developer's obligations under this Agreement.

Development means a staged mixed use development on the Land, the subject of the Development Application 2019/398, comprising demolition of existing structures and construction of a five storey mixed use development. Stage 2 of which requires removal of vehicular access to Rocky Point Road and all vehicular access including waste removal to be carried out from the rear laneway once it is opened as 'public road'.

Development Application means development application DA-2019/398 lodged with Council.

Development Consent when used generically (as distinct from 'the Consent') has the same meaning as in the Act.

Development Contribution means the contribution set out in Schedule 3 of this Agreement, to be used for, or applied towards, the provision of a Public Purpose as set out in **Schedule 3**.

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.

Just Terms Act means the Land Acquisition (Just Terms Compensation) Act 1991.

Land means the land specified and described in **Schedule 2**.

LRS means New South Wales Land Registry Services

Occupation Certificate has the same meaning as in the Act.

Owners means Tascam Pty Ltd and Rocky Point Road Development Pty Ltd and its successors and permitted assigns.

Owners' obligations means the Owners' obligations under this Agreement.

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

Public Purpose has the same meaning as in s 7.4 of the Act.

Registrable form means the document is properly executed and witnessed and bears an imprint from Revenue New South Wales to the effect that all necessary duties have been paid, and is otherwise capable of immediate registration by the Registrar-General on the title of the relevant piece or parcel of land.

Regulation means the Environmental Planning and Assessment Regulation 2000.

Subdivision Plan means a plan of subdivision of the Land whereby the Dedicated Land is created as a separate legal Torrens title lot.

- 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 Agreement.
 - 1.2.2 A reference to a Business Day means a day other than a Saturday, Sunday or public holiday in Sydney.
 - 1.2.3 If the day on which any act, matter or thing is to be done under this Agreement is not a Business Day, the act, matter or thing must be done on the next business day.
 - 1.2.4 A reference to time is local time in Sydney,
 - 1.2.5 A reference to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.
 - 1.2.6 A reference to a \$ value relating to a Development Contribution is a reference to the value exclusive of GST.
 - 1.2.7 A reference 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.
 - 1.2.8 A reference to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
 - 1.2.9 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.

- 1.2.10 An expression importing a natural person includes any company, corporation, trust, partnership, joint venture, association, unincorporated association, body corporate, statutory body, statutory authority or governmental agency.
- 1.2.11 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.
- 1.2.12 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.
- 1.2.13 Reference to the word "include" or "including" are to be construed without limitation.
- 1.2.14 A reference to this Agreement includes the agreement recorded in the Agreement.
- 1.2.15 A reference to a party to this Agreement includes a reference to the personal representatives, legal representatives, agents and contractors of the party, and the party's successors and assigns substituted by novation.
- 1.2.16 Any schedules, appendices and attachments form part of this Agreement.
- 1.2.17 Notes appearing in the Agreement are operative provisions of this Agreement.

2. Application of this Agreement

- 2.1 This Agreement applies to the Land and to the Development and may be registered on the titles thereof.

3. Status and operation of this Agreement

- 3.1 This Agreement takes effect from the date this Agreement is executed by the Parties.
- 3.2 The Parties each agree that this Agreement is a Planning Agreement within the meaning of Section 7.4 of the Act and is governed by Part 7, Division 7.1, Subdivision 2 of the Act.
- 3.3 This Agreement will remain in force until:
 - 3.3.1 It is terminated by operation of law; or
 - 3.3.2 One month after all of the Developer and Owners' Obligations under this Agreement are performed to Council's satisfaction.

4. Further agreements relating to this Agreement

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

5. Application of s 7.11, s 7.12, s 7.24 of the Act to the Development

- 5.1 The parties each agree that this Agreement does not exclude the application of sections 7.11, 7.12, 7.24 of the Act in respect of the Development.
- 5.2 The Developer and the Owners agree that the Development Contribution is not to be taken into account in determining a development contribution under Section 7.11 of the Act.

Part 2 – Development Contributions

6. Provision of Development Contributions

- 6.1 **Schedule 3** has effect in relation to the Development Contribution to be made by the Developer and the Owners under this Agreement.
- 6.2 The Developer and the Owners must make the Development Contribution (as set out in **Schedule 3**) to Council in accordance with this Agreement.

7. Dedication of land

- 7.1 The Development Contribution comprising the dedication of the Dedicated Land to the Council is made for the purposes of this Agreement when an instrument in registrable form under the *Real Property Act 1900* that is effective to transfer the title to the land to Council is registered at the LRS.
- 7.2 The Owners must at no cost to the Council, carry out all steps required to create the Torrens title lot and dedicate the Dedicated Land to the Council free from encumbrances in accordance with this Agreement prior to any construction certificate being granted for above ground works.
- 7.3 The Council will however provide a licence back to the Developer to allow occupation of the Dedicated Land during the period of construction and agrees that prior to the issue of any Occupation Certificate for the Development the Dedicated Land shall be clear from all waste, debris, rubble, machinery and the like and turfed to Council's satisfaction and in a condition suitable for the future construction and use of the land as a laneway.
- 7.4 The Parties acknowledge and agree that as of the date of this Agreement, the Dedicated Land is not contained in a separate lot and cannot be transferred to the Council until the Land is subdivided to create the Dedicated Land as a separate legal lot capable of transfer.
- 7.5 The Developer and Owners must at their expense:
 - 7.5.1 promptly lodge the Subdivision Plan and the Subdivision Certificate application with the Council for approval (as consent authority and certifying authority) and use all reasonable endeavours to obtain such approval and the registration of the lot as soon as practicable;
 - 7.5.2 following approval by the Council of the Subdivision Plan, promptly:
 - (A) lodge the approved Subdivision Plan at the LRS for registration;
 - (B) notify Council's Lawyers in writing of such lodgement; and
 - (C) thereafter, use all reasonable endeavours to obtain registration of the Subdivision Plan at the LRS as soon as practicable.

- 7.6 The Developer and Owners must at their expense:
- 7.6.1 within fourteen (14) days after of the Subdivision Plan at LRS:
- (A) notify the Council's Lawyers in writing of registration of the Subdivision Plan; and
 - (B) take all steps required of the Owners to transfer the Dedicated Land to the Council free from encumbrances.
- 7.7 The Developer, Owners and the Council agree and warrant that they will at their own expense, do all things necessary and sign all documents required to facilitate the subdivision of the Land and the subsequent transfer of the Dedicated Land to Council other than if council is required to take action under clause 7.8 to compulsorily acquire the Land in which case the Developer and Owner bear the costs associated with that clause.
- 7.8 If the Developer and Owners do not transfer the Dedicated Land as required by this Agreement in accordance with **clauses 7.1 to 7.6**, the Developer and the Owners consent to the Council compulsorily acquiring the Dedicated Land for compensation of \$1.00 without having to follow the pre-acquisition procedure under the Just Terms Act and agrees to notify any purchaser of the land and include a similar provision in the contract of sale.
- 7.9 Clause 7.8 constitutes an agreement for the purposes of section 30 of the Just Terms Act.
- 7.10 The Developer and the Owners must promptly do all things necessary, and consent to the Council doing all things necessary, to give effect to **clause 7.8** including (without limitation):
- 7.10.1 signing any documents or forms;
 - 7.10.2 producing certificates of title to the LRS under the Real Property Act 1900;
 - 7.10.3 Each party pay their own costs arising under **clauses 7.8 to 7.10**.

Part 3 – Other Provisions

8. Enforcement in a court of competent jurisdiction

- 8.1 Without limiting any other provision of this Agreement, the Parties may enforce this Agreement in any court of competent jurisdiction.
- 8.2 For the avoidance of doubt, nothing in this Agreement prevents:
- 8.2.1 a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Agreement or any matter to which this Agreement relates,
 - 8.2.2 Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Agreement or any matter to which this Agreement relates.

9. Dispute resolution – expert determination

- 9.1 This clause applies to any dispute under this Agreement other than a dispute to which **clause 9.5** applies.
- 9.2 Such a dispute 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 Parties must mediate the dispute in accordance with the Mediation rules of the Law Society of New South Wales published from time to time and must request the President of the law Society, or the President's nominee, to select a mediator.
- 9.5 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.
- 9.6 This clause survives the completion or termination of this Agreement.

10. Dispute resolution – mediation

- 10.1 This clause applies to a dispute under this Agreement which relates to a matter that can be determined by an appropriately qualified expert and following the failure of mediation under clause 10.
- 10.2 Any dispute between the parties as to whether a dispute to which this clause applies can be determined by an appropriately qualified expert is to be referred to the Chief Executive Officer of the professional body that represents persons with the relevant expertise for determination, which is to be final and binding on the Parties.
- 10.3 Such a dispute is taken to arise if one Party gives another party a notice in writing specifying particulars of the dispute.
- 10.4 If a notice is given under **clause 10.3**, the Parties are to meet within 14 days of the notice in an attempt to resolve the dispute.
- 10.5 If the dispute is not resolved within a further 28 days, the dispute must be referred to the President of the NSW Law Society to appoint an Expert for Expert Determination.
- 10.6 The Expert Determination is binding on the parties except in the case of fraud or misfeasance by the Expert.
- 10.7 Each Party must bear its own costs arising from or in connection with the appointment of the Expert and the Expert Determination.
- 10.8 This clause survives the completion or termination of this Agreement.

11. Registration of this Agreement

- 11.1 The Parties agree that this Agreement is to be registered for the purposes of section 7.6 of the Act.
- 11.2 The Developer and the Owners must lodge this Agreement for registration on the Register pertaining to the Land no later than 28 days after the date of this Agreement including obtaining the consent of any mortgagee or other person who has an interest in the Land.
- 11.3 The Developer and the Owners must use all reasonable endeavours to obtain such registration as soon as practicable and promptly after registration, deliver to the Council a title search of the Land confirming registration of this Agreement.

- 11.4 The Parties will take all practical steps to procure:
- 11.4.1 the consent of each person who:
- A. has an estate or interest in the Land registered under the Real Property Act 1900 (NSW) or
- B. is seized or possessed of an estate or interest in the Land, and
- 11.4.2 the execution of any documents, and
- 11.4.3 the production of the relevant duplicate certificates of title,
- to enable the registration of this Agreement under the Real Property Act 1900 (NSW) in the relevant folios of the register for the Developer's Land in accordance with section 7.6 of the Act.
- 11.5 The Developer and the Owners further covenants and agrees with the Council that pending registration of this Agreement the Council shall be entitled to register a caveat at LRS over the titles comprising the Land to protect its interest therein pursuant to this Agreement.
- 11.6 The Council agrees that, as soon as this Agreement is registered, the Council will immediately withdraw its caveat over the Land.

12. Release and discharge of Agreement by Council

- 12.1 The Council must use all reasonable endeavours and do all things reasonably required to cause the release and discharge of this Agreement with respect to any part of the Land (such that the Agreement is no longer registered by the Registrar-General under section 7.6 of the Act in relation to that part of the Land) within 14 Business Days after receiving a written request to do so by the Developer, upon the Developer and Owners having provided the Development Contribution in accordance with this Agreement and otherwise complying with this Agreement to the satisfaction of the Council. Council's satisfaction must not be unreasonably withheld.

13. Assignment and transfer

- 13.1 Unless the matters specified in **clause 13.2** are satisfied, the Developer and Owners are not to do any of the following:
- 13.1.1 to transfer the Land to any person, or
- 13.1.2 assign, transfer dispose or novate to any person the Developer's or Owners' rights or obligations under this Agreement
- 13.2 The matters required to be satisfied for the purposes of **clause 13.1** are as follows:
- 13.2.1 the Developer and Owners have, at no cost to Council, first procured the execution by the person to whom the Developer's and Owners rights or obligations under this Agreement are to be assigned or novated, of an agreement in favour of the Council on terms satisfactory to Council acting reasonable, and
- 13.2.2 Council, by notice in writing to the Developer and Owners, has stated that evidence satisfactory to Council has been produced to show that the assignee or novatee, is reasonably capable of performing its obligations under the Agreement,

13.2.3 the Developer and Owners are not in breach of this Agreement, and

13.2.4 Council otherwise consents to the transfer, assignment or novation in writing.

13.3 Any purported dealing in breach of this **clause 13.2** is of no effect.

13.4

14. Review of this Agreement

14.1 The Developer and Owners are to provide to Council, by not later than each anniversary of the date on which this Agreement is entered into, a written report detailing the performance of its obligations under this Agreement.

14.2 The report referred to in **clause 14.1** is to be in such a form to address such matters as may be notified by Council to the Developer and Owners from time to time.

14.3 The Parties agree to review this Agreement every 2 years, and otherwise if either Party is of the opinion that any change of circumstance has occurred, or is imminent, that materially affects the operation of this Agreement.

14.4 For the purposes of **clause 14.3**, the relevant changes include (but are not limited to) any change to a law that restricts or prohibits or enables Council or any other planning authority to restrict or prohibit any aspect of the Development.

14.5 For the purposes of addressing any matter arising from a review of this Agreement referred to in **clause 14.3**, the Parties are to use all reasonable endeavours to agree on and implement appropriate amendments to this Agreement.

14.6 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.

14.7 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 14.3** is not a dispute for the purposes of **clauses 9 and 10** and is not a breach of this Agreement.

15. Notices

15.1 Any notice, consent, information, application or request that must or may be given or made to a Party under this Agreement is only given or made if it is in writing and sent in one of the following ways:

15.1.1 delivered or posted to that Party at its address set out in the Contacts Sheet.

15.1.2 faxed to that Party at its fax number set out in the Contacts Sheet.

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

15.3 Any notice, consent, information, application or request is to be treated as given or made if it is;

- 15.3.1 delivered, when it is left at the relevant address.
- 15.3.2 sent by post, 2 Business Days after it is posted.
- 15.3.3 sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number.
- 15.3.4 sent via email (unless the sender receives notification to the effect that the email has failed to send).
- 31.4 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a Business Day, or if on a Business Day, after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next Business Day.

16. Approvals and consent

- 16.1 Except as otherwise set out in this Agreement, and subject to any statutory obligations, a Party may give or withhold an approval or consent to be given under this Agreement in that Party's absolute discretion and subject to any conditions determined by the Party.

17. Costs

- 17.1 The Developer and Owner is required to pay Council's reasonable legal costs and disbursements of preparing, negotiating, executing and stamping this Agreement, and any document related to this Agreement in the amount of \$2,500.00
- 17.2 The Developer and Owner is also required to pay Council's reasonable legal costs and disbursements of enforcing this Agreement except in the case of a dispute that is the subject of court proceedings, in which case any costs will be paid in accordance with orders of the court only.

18. Entire Agreement

- 18.1 This Agreement contains everything to which the Parties have agreed in relation to the matters it deals with.
- 18.2 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 Agreement was executed, except as permitted by law.

19. Further acts

- 19.1 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 Agreement and all transactions incidental to it.

20. Governing law and jurisdiction

- 20.1 This Agreement is governed by the law of New South Wales.
- 20.2 Each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of its courts and courts of appeal from them.

- 20.3 Each party waives any right to object to the exercise of jurisdiction by those courts on any basis.

21. Joint and individual liability and benefits

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

22. No fetter

- 22.1 Nothing in this Agreement shall be construed as requiring Council to do anything that would cause it to be in breach of any of its obligations at law, and without limitation, nothing shall be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

23. Representations and warranties

- 23.1 Each Party represent and warrant to each other Party 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.

24. Severability

- 24.1 If a clause or part of a clause of this Agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way.
- 24.2 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 Agreement, but the rest of this Agreement is not affected.

25. Modification

- 25.1 No modification of this Agreement will be of any force or effect unless it is in writing and signed by the Parties to this Agreement.

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 Agreement, 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 is in writing. A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given.
- 26.3 It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

27. Rights cumulative

- 27.1 Except as expressly stated otherwise in this Agreement, the rights to a Party under this Agreement are cumulative and are in addition to any other rights of that Party.

28. Duty

- 28.1 The Developer as between the Parties is liable for and must pay all duty (including any fine or penalty except where it arises from default by another Party) on or relating to this Agreement, any document executed under it or any dutiable transaction evidenced or effected by it. If a Party other than the Developer pays any duty (including any fine or penalty) on or relating to this Agreement, any document executed under it or any dutiable transaction evidenced or effected by it as a result of the Developer first failing to pay such, the Developer must pay that amount to the paying Party on demand.

29. Effect of Schedules

- 29.1 Each Party agree to comply with any terms contained in the Schedules to this Agreement as if those terms were included in the operative part of the Agreement.

30. Relationship of the Parties

- 30.1 This Agreement is not intended to create a partnership, joint venture or agency relationship between the Parties.

31. GST

- 31.1 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 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 GST Law.

Taxable Supply has the meaning given by 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 on GST on that Supply.

- 31.2 Subject to **clause 31.4**, 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.
- 31.3 **Clause 31.2** does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Agreement to be GST inclusive.
- 31.4 No additional amount shall be payable by Council under **clause 31.2** unless, and only to the extent that, Council (acting reasonably and in accordance with 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.

- 31.5 If there are Supplies for Consideration which is not Consideration expressed as an amount of Money under this Agreement by one Party to the other Party that are not subject to division 81 of the *A New Tax System (Goods and Services Tax) Act 1999*, each Party agrees:
- 31.6 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;
- 31.7 That any amounts payable by each Party in accordance with **clause 31.2** (as limited by **clause 31.4**) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 31.8 No payment of any amount pursuant to this **clause 31**, 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.
- 31.9 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.
- 31.10 This clause continues to apply after expiration or termination of this Agreement.

32. Explanatory Note relating to this Agreement

- 32.1 The **Appendix** contains the Explanatory Note relating to this Agreement required by clause 25E of the Regulation.
- 32.2 Pursuant to clause 25E(7) of the Regulation, each Party agrees that the Explanatory Note in **Appendix** is not to be used to assist in construing this Planning Agreement.

Execution

Executed as an Agreement

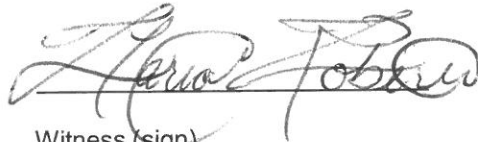
date:

2021

Executed on behalf of Bayside Council ABN 80 690 785 443 Branch 003:



General Manager (sign)



Witness (sign)

Meredith Wallace

Name of General Manager (print)

Mariah Roberts, Admin Assistant

Witness – Name/Position (print)

Executed by Eastern Pacific Design &
Construct Pty Ltd ACN 162549340 in
accordance with section 127(1) of the
Corporations Act 2001 (Cth) by:

Signature of sole Director and sole Company
Secretary

Full name (print)

Executed by Tacsam Pty Ltd ACN 007 020 233 in accordance with section 127(1) of the *Corporations Act 2001* (Cth) by:

Signature of sole Director and sole Company Secretary

Full name (print)

Executed by Rocky Point Road Developments Pty Ltd ACN 612 235 079 in accordance with section 127(1) of the *Corporations Act 2001* (Cth) by:

Signature of sole Director and sole Company Secretary

Full name (print)

Schedule 1: (Section 7.4 Requirements)

Provision of the Act	This Agreement
Under section 7.4(1), the Developer has:	
(a) Sought a change to an environmental planning instrument	No
(b) Made, or proposes to make, a Development Application	Yes
(c) Entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies	No
Description of the land to which this Agreement applies	The Land described in Schedule 2 to this agreement
The scope, timing and manner of delivery of Development Contributions required by this Agreement – (Section 7.43)(c))	See Schedule 3
Applicability of Sections 7.11, 7.12 and 7.24 of the Act	See clause 5
Benefits under the Agreement considered for Section 7.11 purposes – (Section 7.4(3)(e)),	See clause 5
Dispute Resolution – (Section 7.4(3)(f))	See clauses 23 and 24
Enforcement of this Agreement – (Section 7.4(3)(g))	See clauses 19 - 22
Registration of the Agreement – (Section 7.6)	Yes, see clause 25

Schedule 2: The Land

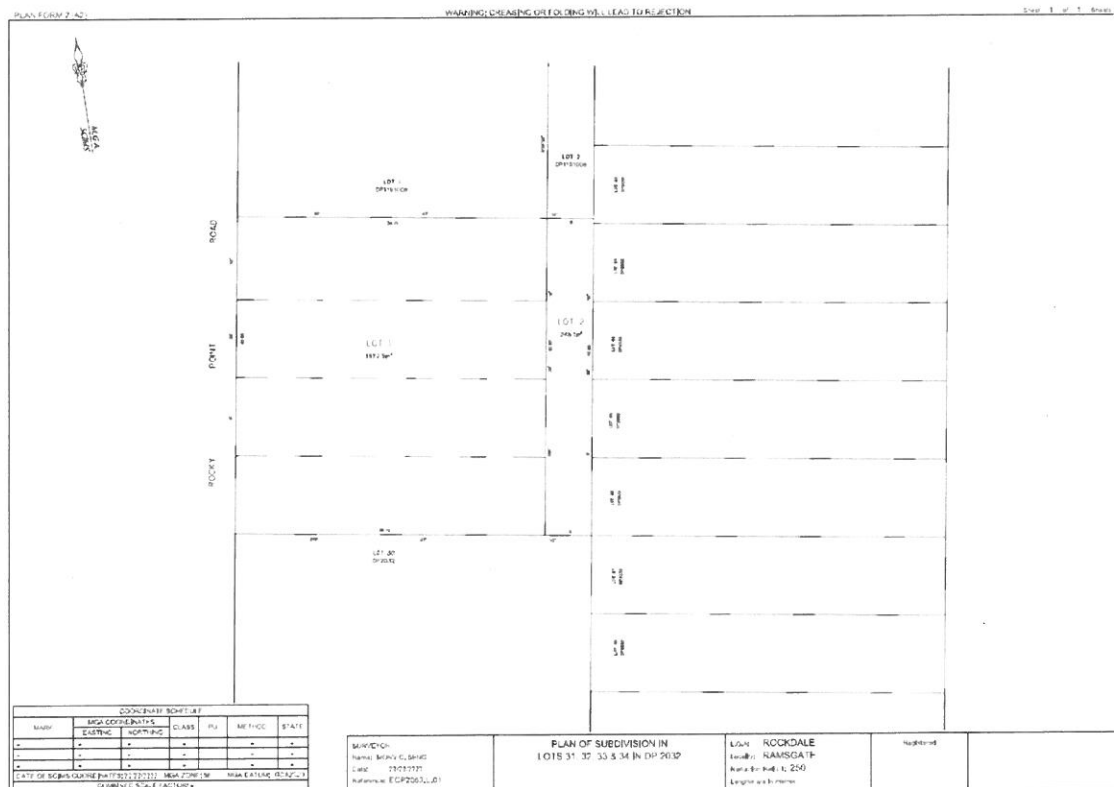
The Land

Lot 31, 32, 33 and 34 in DP 2032 (known as 262-270 Rocky Point Road, Ramsgate).

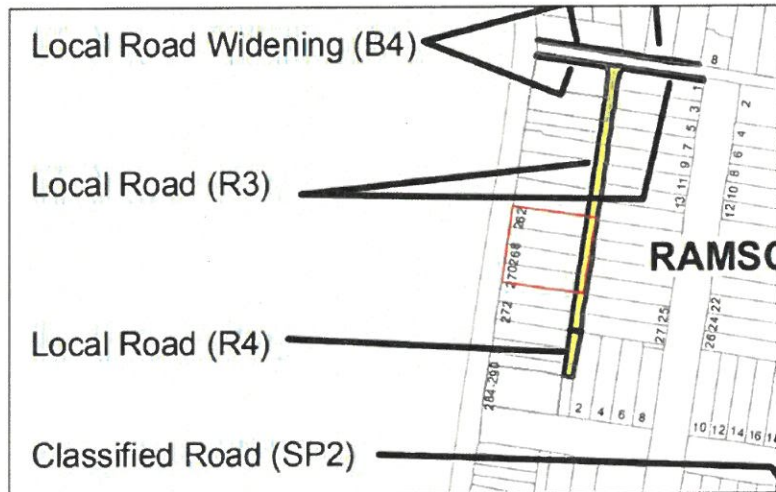
Schedule 3: Development Contribution

Part A: Land Dedication

Column 1	Column 2	Column 3	Column 4
Item	Public Benefit	Contribution Value ⁽¹⁾	Timing
A			
A1	Dedication of land to the Council free of cost of the Dedicated Land comprising a Torrens title lot in the area shown in yellow on Council's Land Reservation Acquisition Map (Sheet LRA_005) from the Rockdale Local Environment Plan 2011 as extracted in Schedule 4 and designated as 'Lot 2' on plan below.	N/A	Prior to the issue of any Construction Certificate in relation to above ground works for the Development Consent.



Schedule 4: Extract of Land Reservation Acquisition Map identifying Dedicated Land



Appendix (Explanatory Note)

Environmental Planning and Assessment Regulation 2000

(Clause 25E)

Explanatory Note: Proposed Planning Agreement

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

1. Parties

Bayside Council

ABN 80 690 785 443 Branch 003 of 444 - 446 Princes Highway, ROCKDALE NSW 2216

(Council)

and

Eastern Pacific Design Construct Pty Ltd

ACN 162 549 340 of Level 3, Suite 3.01, 14 - 16 Lexington Drive, BELLA VISTA NSW 2153

(Developer)

and

Tascam Pty Ltd

4 Woongarra Court, ELTHAM VICTORIA 3095

ACN 007020233

(Owner One)

and

Rocky Point Road Developments Pty Ltd

1 Nipper Street, HOMEBUSH NSW 2140

ACN 612235079

(Owner Two)

2. Description of the Land to which the proposed Planning Agreement applies

(a) Lot 31, 32, 33 and 34 DP 2032, known as 262-270 Rocky Point Road, Ramsgate (Land).

(b) The Owners are the owners of the Land.

3. Description of the Development

(a) A mixed use development comprising (Development).

4. Summary of objectives, nature and effect of the proposed Planning Agreement

4.1 Objectives of proposed Planning Agreement

- (a) The objectives of the proposed Planning agreement are to:
- To provide for the removal of vehicular access from and to the development from Rocky Point Road and facilitate this access from the rear lane to be created in the future.
 - Provide Development Contributions for the benefit of the public in the form of the dedication of land free of cost for the purpose of creating a new public road.
 - Achieve the provision of these Development Contributions with greater certainty and at less risk and less cost to Council.

4.2 Nature of proposed Planning Agreement

- (a) The Planning Agreement is a planning agreement under s7.4 of the *Environmental Planning and Assessment Act 1979 (Act)*. The Planning Agreement is a voluntary agreement under which Development Contribution (as defined in clause 1.1 of the Planning Agreement) are made by the Developer for various public purposes (as defined in s7.4(2) of the Act).

4.3 Effect of proposed Planning Agreement

The Planning Agreement:

- (a) Provides for the creation of a Torrens title lot at the east of the Land in the area identified for future road / rear laneway. The lot is to be dedicated to Council free of cost. The stratum lot will provide for road works to be undertaken in accordance with Council's Local Environmental Plan.

5. Assessment of the merits of the proposed Planning Agreement

5.1 The Public Purposes served by the proposed Planning Agreement

- (a) The proposed Planning Agreement promotes the provision of and recoupment of the cost of providing public and amenities and public services.
- (b) The Planning Deed is a reasonable means for achieving that planning purpose, as it provides for the payment of a monetary development contribution to be expended on achieving that planning purpose.

5.2 How the proposed Planning Agreement promotes the Public Interest and the objects of the Environmental Planning and Assessment Act 1979

- (a) The Planning promotes the public interest and the objects of the Act as set out in s 1.3 the Act that is, including:
- (i) Removal of vehicular access and waste pick up from the classified road - Rocky Point Road - in the interests of road users.
 - (ii) To facilitate separation of the proposed development from the adjoining R2 residential dwellings to the east.
 - (iii) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,

(iv) to promote the orderly and economic use and development of land,

(v) to promote good design and amenity of the built environment,

5.3 How the proposed Planning Agreement promotes the Elements of the Council's Charter

The proposed Planning Agreement promotes the elements of the Council's Charter by providing for the ultimate delivery of appropriate services and facilities for the local community enables the Council to carry out its functions in a way that facilitates local communities that are strong, healthy and prosperous.

5.4 How the proposed Planning Agreement promotes the objects (if any) of the Local Government Act 1993

The proposed Planning Agreement promotes the objects of the Local Government Act 1993 by allowing Council to provide facilities appropriate to the current and future needs of the local community and the wider public and to improve and develop the resources of the area.

5.5 Whether the proposed Planning Agreement specifies that certain requirements must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued

The proposed Planning Agreement specifies that the Developer must make the Development Contributions prior to the issue of any Construction Certificate in relation to any above ground works for the Development.

5.6 Whether the proposed Planning Agreement conforms with the authority's capital works program

The proposed Planning Agreement conforms to Council's capital works program and, furthermore, will enable the program to be advanced with greater timeliness and certainty while reducing the financial risks to Council in its implementation.

6. Further Information

6.1 Interpretation

Note: This explanatory note is a summary only of the proposed Planning Agreement, is not to be relied upon as a complete description of the proposed Planning Agreement, and is not to be used as an aid in construing the proposed Planning Agreement.

6.2 Further Information

Copies of the proposed Planning Agreement are available on the Bayside Council website, and at the offices of Bayside Council.