

**Planning Agreement under Section 93F of the *Environmental Planning and Assessment Act 1979***

**For the provision of Public Car Parking in the Bega Valley Local Government Area**

LOT 3 DP: 39004  
60 MAIN STREET, MERIMBULA

**Parties to the Agreement:**

The parties to this agreement are:

MITCHELL NADIN OF 12 LAKEVIEW AVE, MERIMBULA  
And (THE DEVELOPER)

Bega Valley Shire Council, PO Box 492, Zingel Place Bega NSW 2550 ("the Council")

**Background**

- A. The Developer is the registered proprietor of the Land or is otherwise entitled to the benefit of the Development Consent.
- B. The Developer has applied or is in the process of applying for a Development Consent under the Act for the Development. The Development generates a need for on-site car parking.
- C. The Developer has offered to pay a Monetary Contribution for the provision of public car parking instead of providing on-site car parking spaces.

**Operative Provisions**

**1. Definitions and Interpretation**

- 1.1. In this agreement, words beginning with a capital letter that are defined in **Part 1 of Schedule 1** have the meaning ascribed to them in that schedule.
- 1.2. The interpretational rules contained in **Part 2 of Schedule 1** apply in the interpretation of this agreement.

**2. Status and Application of Agreement**

- 2.1. This agreement is a planning agreement:
  - 2.1.1. within the meaning set out in section 93F of the Act; and
  - 2.1.2. governed by Subdivision 2 of Division 6 of Part 4 of the Act.

2.2. This agreement applies to both the Land and the Development.

### **3. Date of Commencement**

This agreement operates and becomes legally binding on both parties from the date that it is signed by both parties.

### **4. Developer's Warranties**

The Developer warrants to Council that:

- 4.1. it is legally and beneficially entitled to the Land;
- 4.2. it is able to fully comply with its obligations under this agreement;
- 4.3. it has full capacity to enter into this agreement; and
- 4.4. there is no legal impediment to it entering into this agreement, or performing the obligations imposed on it under this agreement.

### **5. Developer's Obligations and Enforcement**

5.1. The Developer agrees to pay the Monetary Contribution to Council:

- 5.1.1. in the amount set out in **Schedule 2**, as indexed, if required, in accordance with the formula in clause 6 of this agreement;
- 5.1.2. prior to the issue of any Construction Certificate for the Development, or if no such certificate is required, prior to commencement of the use approved by the Development Consent.

5.2. The Developer agrees to not make an application for a construction certificate or otherwise commence the use approved by the Development Consent until the Monetary Contribution is paid to Council.

5.3. In the event of a breach of the Developer's obligations under this clause the Developer is taken to have given Council notice under section 104A of the Act and clause 97 of the *Environmental Planning and Assessment Regulation 2000* that the Developer surrenders the development consent.

### **6. Indexation of the Monetary Contribution**

If the Monetary Contribution is not paid within 12 months of the date of the Development Consent the Developer acknowledges and agrees that the Monetary Contribution increases on the first anniversary of the consent, and every 12 months after that date for as long as the Monetary Contribution remains unpaid in accordance annual movements in the Consumer Price Index (All Groups Index) for Sydney, published by the Australian Statistician.

## **7. Developer's Acknowledgement**

The Developer acknowledges and agrees that:

7.1. Council is a consent authority with statutory rights and obligations under Planning Legislation;

7.2. this agreement is not intended to operate to fetter, in any unlawful manner:

7.2.1. the power of Council to make any Law; or

7.2.2. the exercise by Council of any statutory power or discretion;

7.3. Council may, at its absolute discretion, determine where and when the Monetary Contribution is used to provide public car parking.

## **8. Application of sections 94, 94A and 94EF of the Act**

8.1. This agreement does not exclude the application of section 94, section 94A or section 94EF of the Act to the Development.

8.2. Section 94(6) of the Act does not apply to the Monetary Contribution.

## **9. Assignment**

9.1. Neither party may assign its rights under this agreement without the prior written consent of the other party.

9.2. The Developer must not assign its interest in the Land unless:

9.2.1. Council consents to the assignment, acting reasonably;

9.2.2. the proposed assignee enters into an agreement to the satisfaction of Council under which the assignee agrees to be bound by the terms of this agreement; and

9.2.3. the Developer is not in breach of any terms of this agreement.

## **10. Amendments**

10.1. If either party requests a review of the whole or any part of this agreement then the parties agree to use their best endeavours, acting in good faith, to review this agreement in accordance with that request.

10.2. If the Developer proposes to seek approval to modify the Development Consent and the proposed modification materially affects the terms of this agreement, the Developer:

- 10.2.1. agrees to prepare an amended agreement proposing such amendments to the Monetary Contribution that are commensurate with the changes to car parking demand (if any) brought about by the modification to the Development Consent, and submit the amended agreement to Council with the modification application;
- 10.2.2. acknowledges and agrees that Council may impose a condition on the modification approval under section 93I(3) of the Act requiring a further agreement to be entered into taking into account the modification.
- 10.3. If the parties agree to amend this agreement or if an amendment is required as a result of a modification to the Development Consent, then any such amendment must be made:
  - 10.3.1. in writing signed by both parties;
  - 10.3.2. in accordance with the Act, or any Regulations in force under the Act.

## **11. Dispute Resolution**

- 11.1.1. If a Party believes that there is a dispute in respect of this agreement then that party must give notice in writing to the other party particularising the dispute.
- 11.1.2. If a notice is given under clause 11.1.1, the Parties are to use their best endeavours to meet within 14 days of the notice in an attempt to resolve the dispute.
- 11.1.3. 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.
- 11.1.4. 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.

**12. Execution page**

Executed as an agreement.

Executed by the Developer in accordance with section 127(1) of the *Corporations Act* by authority of its directors.



Director/Secretary (Signature) ~~Director~~ (Signature)

MITCHELL NADIN

Name of Director/ Secretary (Print Name)

Name of Director (Print Name)

Date: 15/12/2015

Executed by Bega Valley Shire Council in accordance with the Planning Agreements Policy adopted by Council resolution on 4 February 2015.



General Manager/Authorised Officer (Signature)

Andrew Woodley  
Group Manager Planning & Environment

Name of General Manager/Authorised Officer (Print Name)

Date: 17 December 2015

## Schedule 1 Definitions and Interpretation

### Part 1 - Definitions

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

"Assign" or "Assignment" as the context requires refers to any assignment, sale, transfer, disposition, declaration of trust over or other assignment of a legal and/or beneficial interest.

"Authority" means (as appropriate) any federal, state or local government; department of any federal, state or local government; any court or administrative tribunal; or statutory corporation or regulatory body.

"Construction certificate" means a certificate as defined in section 109C(1)(b) of the Act

"Council" means Bega Valley Shire Council

"Developer" means MITCHELL NADIN

"Development" means the building works, uses and activities as the case may be as described in the Development Consent.

"Development Consent" means Council's determination of DA 2014.320 as evidence in the notice of determination dated 27.11.2014 and such other documents expressly or by necessary implication referred to in that notice.

"Index" means the Consumer Price Index (All Groups - Sydney) as published by the Australian Bureau of Statistics from time to time.

"Land" means the land contained in certificate of title LOT 3 DP 39004

"Law" means all legislation, regulations, delegated legislation, by-laws, common law, an environmental planning instrument, a development control plan and other binding order made by any Authority.

"Monetary Contribution" means the contributions required to be provided to Council by the Developer in accordance with this agreement and as set out in **Schedule 2**.

"Planning Legislation" means the Act, the *Local Government Act 1993* (NSW) and the *Roads Act 1993* (NSW).

### Part 2 - Interpretation

In this agreement:

- a) a clause, annexure or schedule is a reference to a clause in or annexure or schedule to this agreement;
- b) a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- c) the singular includes the plural and vice versa;
- d) the word "person" includes an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association or any government agency;

- e) a particular person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- f) Australian dollars, dollars, \$ or A\$ is a reference to the lawful currency of Australia;
- g) if a period of time dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- h) a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- i) a group of persons or things is a reference to any two or more of them jointly and to each of them individually;
- j) the words "include", "including", "for example" or "such as" are not used as, nor are they to be interpreted as, words of limitation, and, when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind;
- k) headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of this agreement;
- l) a reference to any agreement, Agreement or instrument includes the same as varied, supplemented, novated or replaced from time to time.

#### **Schedule 2 - Calculation of Monetary Contributions**

The Monetary Contribution under this agreement is: **\$45,696**

End of Agreement

**Planning Agreement under Section 93F of the *Environmental Planning and Assessment Act 1979*  
For the provision of Public Car Parking in the Bega Valley Local Government Area**

**EXPLANATORY NOTE**

**60 Main Street, Merimbula – Lot 3 DP 39004**

**Introduction:**

This Explanatory Note has been prepared in accordance with clause 25E of the *Environmental Planning and Assessment regulation 2000*.

The purpose of this Explanatory Note is to provide a plain English summary to support the notification of a draft planning agreement between the parties under Section 93F of the *Environmental Planning and Assessment Act 1979*.

**Parties to the Planning Agreement:**

The parties to this planning agreement are:

**Mitchell Nadin, of 12 Lakeview Avenue, Merimbula** (“the Developer”)

And

Bega Valley Shire Council, PO Box 492, Zingel Place Bega NSW 2550 (“the Council”)

**Subject Land:**

The land to which the planning agreement relates is **60 Main Street, Merimbula – Lot 3 DP 39004**

**Objectives, Nature and Effect of the Planning Agreement:**

The objective of the planning agreement is to ensure that the car parking needs of the Bega Valley Local Government Area’s population relating to commercial and retail activities are met.

The nature of the planning agreement is a monetary contribution to be provided by the Developer on the following basis:

- The total car parking spaces required by this development is **3**. The development currently proposes **0** car spaces on the site with a shortfall of **3** to be addressed by a planning agreement.

The contribution per parking space as determined by Council is **\$15,232** (indexed to the CPI) in accordance with the Bega Valley Shire Council Planning Policy 2015.

The effect of the planning agreement is a monetary contribution towards the provision of public car parking in the Bega Valley Local Government Area.

**Merits of the Planning Agreement**

**1. Public Interest**

The planning agreement will have a positive impact on the public as identified in Section 93F of the *Environmental Planning and Assessment Act 1979* by:

- facilitating the provision of (or the recoupment of the cost of providing) public amenities or public services.

**2. Environmental Planning and Assessment Act 1979**

The planning agreement promotes the following objects of the *Environmental Planning and Assessment Act 1979* to:

- encourage the proper management and development of towns and villages for the purpose of promoting the social and economic welfare of the community,
- encourage the promotion and co-ordination of the orderly and economic use and development of land,
- encourage the provision of land for public purposes,
- encourage the provision and co-ordination of community services and facilities, and
- provide increased opportunity for public involvement and participation in environmental planning and assessment.

### **3. Council's Charter**

The planning agreement promotes the following elements of Council's Charter under Section 8 of the *Local Government Act 1993* to:

- provide, after due consultation, adequate, equitable and appropriate services and facilities for the community,
- bear in mind that it is the custodian and trustee of public assets and to effectively plan for, account for and manage the assets for which it is responsible, and
- keep the local community and the State government (and through it, the wider community) informed about its activities.

### **4. Planning Purpose**

The planning purpose served by the planning agreement is to fund the provision of public car parking in the Bega Valley Local Government Area. The planning agreement provides for a reasonable means of achieving the planning purpose.

### **5. Council's Capital Works Program**

The planning agreement conforms to Council's capital works program as the monetary contribution to be provided by the Developer will be used to fund works identified in Council's Operational Plan, Delivery Plan or Long Term Financial Plan.

### **6. Compliance**

The planning agreement specifies that certain requirements of the planning agreement must be complied with before a construction certificate is issued.