

DRAFT 07.07.2025

PLANNING AGREEMENT

BYRON SHIRE COUNCIL

AND

**NSPT PTY LIMITED
(A.C.N. 103 118 190)**



Level 8, 65 York Street
Sydney NSW 2000
Telephone (02) 9251 3999

THIS PLANNING AGREEMENT is dated on the ____ day of _____ 2025.

BETWEEN BYRON SHIRE COUNCIL of 70 Station Street, Mullumbimby, NSW, 2482 (“the Council”);

AND NSPT PTY LIMITED (A.C.N. 103 118 190) ATF THE BYRON BAY INDUSTRIAL TRUST of Suite 302, 36 James Craig Road, Rozelle, NSW, 2039 (“the Developer”).

BACKGROUND

- A. The Developer is the owner of the Land in Byron Bay.
- B. The Developer lodged a Planning Proposal to rezone the Land to facilitate a light industrial development.
- C. The Developer agreed to enter into this Planning Agreement as part of the Planning Proposal.

OPERATIVE PROVISIONS

1. PLANNING AGREEMENT UNDER THE ACT

- 1.1. The Parties agree that this Agreement is a planning agreement governed by Subdivision 2 of Division 7.1 of Part 7 of the Act.

2. OPERATION AND APPLICATION OF THIS AGREEMENT

- 2.1. This Agreement:
 - (a) commences when the Development Consent is issued; and
 - (b) applies in relation to the carrying out of the Development on the Land.

3. DEFINITIONS AND INTERPRETATION

- 3.1. In this Agreement the following definitions apply:
 - (a) “Act” means the *Environmental Planning and Assessment Act 1979* (NSW);

- (b) “Compliance Certificate” means a compliance certificate as defined in of section 6.4 of the Act;
- (c) “Defects Liability Period” means the period of 180 days on and from the date on which the Developer gives the Council a Compliance Certificate under clause 8 of this Agreement;
- (d) “Development” means the development and subdivision of the Land for the purposes of light industrial lots generally in the manner described in the Planning Proposal;
- (e) “Development Application” has the meaning as in the Act;
- (f) “Development Consent” means a development consent in respect of the Development Application issued under the Act in connection with the Development;
- (g) “Development Contribution” means the provision of the following works at the cost of the Developer:
 - (i) upgrade works in respect of Cavanbah roundabout to a two-lane configuration, generally in accordance with the concept design as set out on plan B15408-GA-01, as modified to meet current Austroads and Transport for NSW standards; as shown in the Works Plan (“Roundabout Upgrade”) contained in Schedule 1;
- (h) “Explanatory Note” means the explanatory note annexed to this Agreement at Schedule 2.
- (i) “Final Lot” means a lot intended for a separate occupation and disposition not being:
 - (i) a lot created by a subdivision of the Land that is to be dedicated or otherwise transferred to the Council, or
 - (ii) a lot created by a subdivision of the Land which may be further subdivided as part of the Development;
- (j) “GST” has the same meaning as in the GST Law;
- (k) “GST Law” has the meaning given to that term in *A New Tax System (Goods and Services) Act 1999* (Cth) and any other Act or regulation relating to the imposition or administration of the GST;
- (l) “Land” means Lot 181 in Deposited Plan 755695, known as Lot 181 Ewingsdale Road, Byron Bay, NSW;

- (m) “Planning Proposal” means the planning proposal in respect of the Land which was lodged with the Council by Planit Consulting on behalf of the Developer on 16 September 2025;
- (n) “Public Purpose” means any purpose that benefits the public or a section of the public, including but not limited a purpose specified in section 7.4(2) of the Act;
- (o) “Rectification Certificate” means a certificate referred to in Clause 8.2 of this Agreement;
- (p) “Rectification Notice” means a notice specified in Clause 8.1 of this Agreement;
- (q) “Regulation” means the *Environmental Planning and Assessment Regulation 2021*;
- (r) “Subdivision Certificate” means a subdivision certificate within the meaning of section 6.4 of the Act;
- (s) “Works” means works to be carried out by the Developer in a manner generally consistent with the Works Plan; and
- (t) “Works Plan” mean the plan at Schedule 1.

3.2. In the interpretation of this Agreement, the following provisions apply unless the context otherwise requires:

- (a) headings are inserted for convenience only and do not affect the interpretation of this Agreement;
- (b) a reference in this Agreement to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney;
- (c) 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;
- (d) a reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars;
- (e) a reference in this Agreement to any law, legislation or legislative provision includes any statutory modification, amendment or reenactment, and any subordinate legislation or regulations issued under that legislation or legislative provision;

- (f) a reference in this Agreement to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced;
- (g) a reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement;
- (h) an expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency;
- (i) 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
- (j) 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;
- (k) references to the word 'include' or 'including' are to be construed without limitation;
- (l) a reference to this Agreement includes the agreement recorded in this Agreement together with any schedules and attachments to it; and
- (m) a reference to a party to this Agreement includes a reference to the servants, agents and contractors of the party, and the party's successors and assigns.

4. DEVELOPMENT CONTRIBUTIONS TO BE MADE UNDER THIS AGREEMENT

- 4.1. The Developer must make the Development Contributions in accordance with this Agreement.
- 4.2. The Developer is not required to make the Development Contributions until immediately prior to the issue of a Subdivision Certificate in respect of the plan of subdivision which creates a Final Lot pursuant to the Development Consent.

5. APPLICATION OF THE DEVELOPMENT CONTRIBUTIONS

- 5.1. The Council must apply the Development Contribution made under this Agreement towards the Public Purpose for which it is made and at the locations, in the manner and to the standards required by or under this Agreement.

- 5.2. The parties agree that if the Development Contribution is made in accordance with this Agreement then clause 5.1 is satisfied.

6. APPLICATION OF SECTIONS 7.11 AND 7.12

- 6.1. This Agreement does not exclude the application of section 7.11 of the Act to the Development.
- 6.2. This Agreement does not exclude the application of section 7.12 of the Act to the Development.
- 6.3. The Development Contribution provided under this Agreement is to be taken into consideration by Council in determining any development contributions required in connection with the Development in accordance with Sections 7.11 and 7.12 of the Act.

7. PROVISION OF DEVELOPMENT CONTRIBUTION

- 7.1. The Developer must carry out and complete the Development Contribution in accordance with this Agreement.
- 7.2. The Developer must carry out and complete all works forming part of the Development Contribution in accordance with the Works Plan (“the Works”).
- 7.3. When the Developer considers that the Works are complete, the Developer shall give to the Council a Compliance Certificate relating to the Works.
- 7.4. The Council must accept the hand-over by the Developer of the Works that is the subject of a Compliance Certificate within 28 days of the date on which the Developer gives a copy of the Compliance Certificate to Council.
- 7.5. On hand-over of the Works, the Council accepts ownership, possession, control of and responsibility for the Works.
- 7.6. The obligation of the Developer to carry out and complete the Works shall be satisfied when the Council accepts the hand-over of the Work in accordance with this clause.

8. RECTIFICATION OF DEFECTS

- 8.1. During the Defects Liability Period the Council may give to the Developer a notice in writing identifying any defects in the Works which require rectification and specifying a reasonable period within which to complete such rectification (“the Rectification Notice”). The Developer must comply with such notice at its sole cost and expense.

- 8.2. When the Developer considers that rectification is complete, the Developer shall give to the Council a notice confirming that the Works referred to in the Rectification Notice have been rectified (“the Rectification Certificate”).
- 8.3. Unless the Council disputes the Rectification Notice within 15 business days of issue of the Rectification Notice, the Rectification Certificate discharges the Developer from any further obligation in connection with a Rectification Notice.
- 8.4. If the Developer does not comply with a Rectification Notice within the time specified in the Rectification Notice, then Council may have the defect rectified and may recover its costs of so doing as a debt due by the Developer to the Council in a court of competent jurisdiction.

9. SECURITY AND ENFORCEMENT

- 9.1. A Subdivision Certificate in respect of a plan of subdivision which creates a Final Lot must not be issued for the Development until the Developer has complied with Clause 7 and the Council has accepted the hand-over of the Works.
- 9.2. The parties may enter into further written agreements and/or agree on the payment of security in substitution for the completion of the Works prior to the issue of a Subdivision Certificate under this clause 9.1.
- 9.3. Without limiting any other remedies available to the parties, this Agreement may be enforced by either party in any court of competent jurisdiction.
- 9.4. Nothing in this Agreement prevents:
- (a) a party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Agreement or any matter relating to this Agreement or the Development; or
 - (b) the 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 relating to this Agreement.

10. NO REGISTRATION

- 10.1. It is agreed that there is no requirement for the Developer to register this Agreement on the title to the Land.

11. CHANGE OF CIRCUMSTANCES

- 11.1. The parties, acting in good faith and using their best endeavours, agree to review this Agreement if either party is of the reasonable opinion that

any change of circumstance has occurred that materially and adversely affects the operation of this Agreement.

- 11.2. For the purposes of clause 11.1, 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.
- 11.3. A failure by a party to agree to participate in, or to take action requested by the other party as a consequence of, a review under clause 11.1 is taken to be a dispute for the purposes of clause 12.

12. DISPUTE RESOLUTION

- 12.1. Should a dispute arise under this Agreement, the parties shall firstly meet in an attempt to resolve the dispute.
- 12.2. If the dispute is not resolved within 20 business days of the date that a party first raises the issue in writing about which there is a dispute, the parties must mediate the dispute in accordance with the Mediation Rules of the Law Society of New South Wales that are current at the time the dispute is mediated, and must request the President of the Law Society, or the President's nominee, to select a mediator.
- 12.3. If the dispute is not resolved by mediation within a further 20 business 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.

13. NOTICES

- 13.1. 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:
 - (a) delivered or posted to that party at its address set out below; and
 - (b) emailed to that party at its email address set out below:

Council

Attention: The General Manager
Address: PO Box 219, Mullumbimby NSW 2482
Email: council@byron.nsw.gov.au

Developer

Attention: Anthony Aiossa

Address: Suite 302, 36 James Craig Road, Rozelle, NSW, 2039
Email: aaiossa@towerholdings.com.au

- 13.2. If a party gives the other party 3 business days' notice of a change of its address or email address, 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 or email address.
- 13.3. Any notice, consent, information, application or request is to be treated as given or made at the following time:
- (a) if it is delivered, when it is left at the relevant address;
 - (b) if it is sent by post, 2 business days after it is posted;
 - (c) if it is sent by email, at the time the email is sent provided that the sender does not subsequently receive a mail delivery error message; and
 - (d) at the earliest time it is served, if it is served more than once.
- 13.4. 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.

14. NO RESTRICTION ON APPROVALS

- 14.1. 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. A party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.
- 14.2. 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.

15. ASSIGNMENT

- 15.1. Subject to Clause 15.2 the Developer shall not assign, transfer or otherwise encumber this Agreement without the prior written consent of Council, which may not be unreasonably withheld or delayed.

- 15.2. The Developer shall be entitled to transfer and assign this Agreement to any purchaser or transferee of the Land provided that the purchaser or transferee signs an agreement with the Council under which such purchaser or transferee agrees to observe and perform all obligations of the Developer contained in this Agreement.

16. COSTS

- 16.1. The costs of negotiating, preparing and executing this Agreement are to be borne by the Developer.
- 16.2. The Council has agreed that the costs referred to in Clause 16.1 shall be capped at \$1,500.00 (including GST).

17. GENERAL PROVISIONS

- 17.1. This Agreement contains everything to which the parties have agreed in relation to the matters it deals with. 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.
- 17.2. Each party must promptly execute all documents and do all things that another party from time to time reasonably requests to affect, perfect or complete this Agreement and all transactions incidental to it.
- 17.3. This Agreement is governed by the law of New South Wales. The parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them. The parties will not object to the exercise of jurisdiction by those courts on any basis.
- 17.4. Except as otherwise set out in this Agreement, any agreement, covenant, representation or warranty under this Agreement by two or more persons binds them jointly and each of them individually, and any benefit in favour of two or more persons is for the benefit of them jointly and each of them individually.
- 17.5. The parties represent and warrant that they have power to enter into this Agreement and comply with their obligations under the Agreement and that entry into this Agreement will not result in the breach of any law.
- 17.6. 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. 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.

- 17.7. 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.
- 17.8. 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. 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. 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.
- 17.9. If any party reasonably decides that it is liable to pay GST on a supply made to the other party under this Agreement and the supply was not priced to include GST, then recipient of the supply must pay an additional amount equal to the GST on that supply.

18. EXPLANATORY NOTE

- 18.1. Schedule 2 contains the Explanatory Note relating to this Agreement pursuant to section 205 of the Regulation.
- 18.2. Pursuant to section 205(5) of the Regulation, the parties agree that the Explanatory Note is not to be used to assist in construing this Agreement.

SCHEDULE 1 – WORKS PLAN

The roundabout shall be generally in accordance with the concept design shown below (plan B15408-GA-01), as modified to meet current Austroads and Transport for NSW standards.

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SCHEDULE 2 – EXPLANATORY NOTE

Pursuant to section 205 of the Environmental Planning and Assessment Regulation 2021

In accordance with the provisions of section 205 of the Environmental Planning and Assessment Regulation 2021, the following explanatory notes are provided in relation to the proposed planning agreement between NSPT PTY LIMITED and Byron Shire Council.

1. *How does the proposed planning agreement promote the public interest and one or more of the objects of the Act?*

The proposed planning agreement is considered to be in the public interest because it will facilitate the provision of upgraded, safer and more accessible road and transport infrastructure to the community and road users.

2. *How does the proposed planning agreement, promote one or more of the elements of the Council's charter under section 8 of the Local Government Act 1993?*

The proposed planning agreement promotes Council's charter through the provision of public infrastructure that meets community needs (including long term needs) by the best value possible (being at the cost of the Developer) and reflects a diversity in modes of transport.

3. *Identifying a planning purpose or purposes served by the proposed planning agreement, and an assessment of whether the agreement, provides for a reasonable means of achieving that purpose.*

The planning purpose served by the proposed planning agreement is the provision of an upgraded, safe and functioning transport and road infrastructure for the benefit of the community and road users.

4. *Identifying whether the proposed planning agreement, conforms with the planning authority's capital works program (if any)*

Not applicable.

5. *Statements on whether the agreement, amendment or revocation specifies that certain requirements of the agreement must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued.*

These statements are included in the body of this planning agreement

EXECUTED AS AN AGREEMENT

EXECUTED for and on behalf of
BYRON SHIRE COUNCIL by its
authorised delegate:

.....
Signature of Witness

.....
Signature of Delegate

.....
Name of Witness

.....
Name of Delegate

EXECUTED by **NSPT PTY LIMITED**
in accordance with Section 127 of the
Corporations Act 2001:

.....
Sole Director & Secretary
Terrence John Agnew