

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

21 Beach Street, Merimbula. Lot 52 DP 16678

Parties to the Agreement:

The parties to this agreement are:

Poly Homes Pty Ltd acn 119 878 938, of Unit 302,78 Eastern Road, South Melbourne. 3205 ('the Developer')

And

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 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.
- 10.2.3. 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:
- 10.2.4. in writing signed by both parties.
- 10.2.5. 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)

MARK RUSSELL

Name of Director/ Secretary (Print Name)

Name of Director (Print Name)

Date: 14th May, 2024.

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)

Emily Harrison, Director Community, Environment and Planning

Name of General Manager/Authorised Officer (Print Name)

Date: 31.05.2024

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 **Poly Homes Pty Ltd acn 119 878 938**

“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 **2020.164** as evidence in the notice of determination dated **21 May 2021** 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 52 DP 16678 Beach Street**

“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 **\$34,626**.

End of Agreement