

TEMORA SHIRE COUNCIL

AND

[DEVELOPER]

**AGREEMENT FOR DEVELOPER INFRASTRUCTURE
DEFERRED PAYMENT**

Granleese & Co Pty Ltd

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THIS AGREEMENT dated day of 2021

BETWEEN **Temora Shire Council** of 105 Loftus Street, Temora, New South Wales
(**Temora Shire Council**)

AND **[Developer]** of [Address of Developer] (**Developer**)

RECITALS

- A.** The purpose of this Agreement is to formalise the arrangements made between Temora Shire Council and the Developer for the repayment of the deferred payment arrangement in relation to Developer Infrastructure charges.
- B.** The Temora Shire Council has enacted a Development Infrastructure Deferred Payment Policy in an endeavour to support the provision of sufficient supply of development ready land to meet the ongoing demand.
- C.** The object of the said policy is to assist with the progression of large-scale subdivision development that may not occur without financial assistance, and to ensure that new subdivision development is appropriately designed to respond to reasonably expected future infrastructure needs and to avoid future adverse impacts upon other development.
- D.** The Developer acknowledges that the Temora Shire Council is providing a service as defined under the Local Government Act 1993.
- E.** The Developer is making an application for assistance with the funding of the costs associated with the Temora Shire Council owned infrastructure (specifically, new roads, sewer and stormwater infrastructure).
- F.** The Developer acknowledges that the infrastructure costs which are due and payable have been deferred by Temora Shire Council and such deferment gives Council a registerable security interest in the land which is being developed.
- G.** The Developer agrees to be bound by the terms and conditions of this Agreement.

OPERATIVE PART

1. Interpretation

This agreement is governed by the laws of New South Wales and the parties submit to the non-exclusive jurisdiction of the courts of that State.

In the interpretation of this agreement:

- (a) References to legislation or provisions of legislation include changes or re-enactments of the legislation and statutory instruments and regulations issued under the legislation;

- (b) Words denoting the singular include the plural and vice versa, words denoting individuals or persons include bodies corporate and vice versa, words denoting one gender include all genders and references to documents or agreements also mean those documents or agreements as changed, novated or replaced;
- (c) Grammatical forms of defined words or phrases have corresponding meanings;
- (d) Parties must perform their obligations on the dates and times fixed by reference to the capital city of New South Wales;
- (e) Reference to an amount of money is a reference to the amount in the lawful currency of the Commonwealth of Australia;
- (f) If the day on or by which anything is to be done is a Saturday, a Sunday or a public holiday in the place in which it is to be done, then it must be done on the next business day;
- (g) References to a party are intended to bind their heirs, executors, administrators, successors and assigns; and
- (h) Obligations under this agreement affecting more than one party bind them jointly and each of them severally.

2. Operative provisions

To assist with the high cost of servicing new development and removing some of the constraints to opening up vacant urban zoned land to new subdivision, Temora Shire Council agrees and acknowledges to defer the requirement for the Development Infrastructure payments up front, on the following terms:

- (a) The individual subdivision to which the Development Infrastructure Deferred Payment applies is three (3) or more lots.
- (b) The total amount under the Deferred Payment constitutes a debt owed to the Temora Shire Council.
- (c) The Developer is responsible for an initial payment of \$50,000.00 or 10% of the infrastructure value (whichever is greater) of the infrastructure costs (road, kerb and guttering, sewer and stormwater infrastructure).
- (d) The maximum amount available to be deferred is <<insert value agreed by Council>>. Any amount above that is due and payable immediately and does not form part of the Deferred payment Scheme.
- (e) The term of this agreement is up to the sale of the individual lots or in accordance with 2 (f) below, whichever is sooner.
- (f) In the event the lots have not sold within ten (10) years then the debt becomes due and payable on the 10th anniversary of the date of this Agreement
- (g) The Developer acknowledges and agrees that Temora Shire Council will have a registerable interest in the land and will agree and accept to a Caveat being registered on title. The Developer will also ensure to obtain all consents necessary

to ensure a Caveat in favour of Temora Shire Council is registered upon the land prior to any subdivision taking place. A plan and title particulars of the land are noted in the Schedule attached to this Agreement.

3. Confidentiality

The parties must keep the terms of this agreement confidential, save for any necessary disclosure to their respective legal and financial advisers, or otherwise as required by law.

4. Entire agreement

This agreement is the entire agreement and understanding between the parties on everything connected with the subject matter of this agreement, and supersedes any prior understanding, arrangement, representation or agreements between the parties as to the subject matter contained in this agreement.

5. Amendment

An amendment or variation to this agreement is not effective unless it is in writing and signed by all the parties.

6. Dispute resolution

If a dispute arises between the parties, the complainant must not commence any court or arbitration proceedings, except where that party seeks urgent interlocutory relief, unless it has first complied with this clause:

(a) **Notification**

The complainant must inform the respondent in writing of the following:

- (i) The nature of the dispute;
- (ii) The outcome the complainant desires, and
- (iii) The action the complainant believes will settle the dispute.

(b) **Endeavour to resolve dispute**

On receipt of the complaint by the respondent, both parties will make every effort to resolve the dispute by mutual negotiation within 14 business days.

(c) **Mediation**

Any unresolved dispute or difference whatsoever arising out of or in connection with this contract shall be submitted to mediation under the Mediation Rules of the Resolution Institute.

(d) **Survival of this clause**

This clause survives termination of this agreement.

7. Waiver

Any waiver by any party to a breach of this agreement shall not be deemed to be a waiver of a subsequent breach of the same or of a different kind.

8. Events beyond control

Neither party shall be liable to the other party for any loss caused by any failure to observe the terms and conditions of this agreement, where such failure is occasioned by causes beyond its reasonable control including but not limited to by fire, flood, riot, strike, war, restrictions and prohibitions or any other actions by any government or semi government authorities.

9. Severance

If anything in this agreement is unenforceable, illegal or void, it is severed and the rest of the agreement remains in force.

10. Notices

A notice or other communication to a party must be in writing and delivered to that party or that party's practitioner in one of the following ways:

- (a) Delivered personally; or
- (b) Posted to their address when it will be treated as having been received on the second business day after posting; or
- (c) Sent by email to their email address, when it will be treated as received when it enters the recipient's information system.

11. Counterparts

This agreement may be executed in any number of counterparts each of which will be an original but such counterparts together will constitute one and the same instrument and the date of the agreement will be the date on which it is executed by the last party.

12. Costs

Each party must pay its own legal costs and disbursements in relation to the negotiation, preparation and completion of this Agreement and other documents referred to in it, unless expressly stated otherwise.

The Developer must pay all duty and registration charges (including all fines, interest and penalties except those arising from the default of another party) in respect of this Agreement and any transactions contemplated under this Agreement or otherwise arising out of, or incidental to, this Agreement including but not limited to registration of Caveat, Withdrawal of Caveat and Caveators Consent whenever such charges and payments arise.

SCHEDULE

Plan of the Land for

Title Particulars

SAMPLE

Execution page

SIGNED AS AN AGREEMENT

SAMPLE