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**SCHEDULE 3**

**06\_0250**

**PROPOSED COMMUNITY TITLED RESIDENTIAL SUBDIVISION**

**STATEMENT OF COMMITMENTS**

**(SOURCE: SUBMISSIONS REPORT, DATED DECEMBER 2009)**

**DRAFT VOLUNTARY PLANNING AGREEMENT**

**~~(DATED MAY 2010)~~**

As amended October 2019

## Statement of Commitments

Table 4.1 Revised Statement of Commitments

| Item Number | Item                   | Commitment                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | Responsibility      | Timing                                                           |
|-------------|------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------|------------------------------------------------------------------|
| 1           | Scope of Development   | <p>The development of the subdivision will be carried out as outlined in the documentation and subdivision plans detailed below, except where amended by other items of this Statement of Commitments.</p> <ul style="list-style-type: none"> <li>• Environmental Assessment Report (EA), prepared by ERM, February 2009 and supporting reports;</li> <li>• Subdivision Plans prepared by Daly Smith Pty Ltd; and</li> <li>• Submission Report, prepared by ERM, November 2009 and supporting documentation and plans.</li> </ul> | Aspen Group Pty Ltd | Ongoing                                                          |
| 2           | Statutory Requirements | <p>The following licences, permits and approvals will be obtained and maintained for the subdivision and construction infrastructure:</p> <ul style="list-style-type: none"> <li>• Construction Certificates for engineering works (including earthworks, soil and water management, road works, and drainage);</li> <li>• Compliance and Subdivision Certificates for each stage;</li> <li>• Telstra Compliance certificate; and</li> <li>• Section 50 Certificates from Hunter Water Corporation.</li> </ul>                    | Aspen Group Pty Ltd | For the duration of subdivision.                                 |
| 3           | Urban Design           | <p>The Design Guidelines will be updated for Stages 4 - 20 and will consider environmental requirements, including bush fire and ecological issues.</p>                                                                                                                                                                                                                                                                                                                                                                           | Aspen Group Pty Ltd | Prior to the release of the Subdivision Certificate for Stage 4. |

| Item Number | Item                  | Commitment                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | Responsibility                                  | Timing                                                              |
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| 4           | Conveyancing          | A final community title and community management statement will be prepared for the development.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | Aspen Group Pty Ltd                             | Prior to the release of the Subdivision Certificate for Stage 4     |
| 5           |                       | Easements will be provided for utility services that encroach onto private land or common space.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | Aspen Group Pty Ltd                             | Prior to the release of the Subdivision Certificate for each stage. |
| 6           |                       | Aspen Group will prepare work as executed plans for construction work in each stage and provide such plans to the relevant authority for each stage.                                                                                                                                                                                                                                                                                                                                                                                                                                    | Aspen Group Pty Ltd and the relevant authority. | Prior to the release of the Subdivision Certificate for each stage. |
| 7           | Community Association | Any amended to the Community Management Statement (CMS) required as a result of conditions of consent will be prepared prior to the release of Subdivision Certificate for Stage 4. Draft CMS is included in Annex I                                                                                                                                                                                                                                                                                                                                                                    | Aspen Group Pty Ltd                             | Prior to the release of the Subdivision Certificate for Stage 4.    |
| 8           |                       | <p>The draft Community Lands Environmental Management Plan (CLEMP) included in Annex H, will be reviewed and amended to detail the land management requirements for community lands. The draft CLEMP will include plans for the:</p> <ul style="list-style-type: none"> <li>• Management of threatened species, including their habitat and endangered ecological communities;</li> <li>• Management of retained habitat features within the development footprint, including during the construction phase;</li> <li>• Management of specific habitat enhancement measures;</li> </ul> | Aspen Group Pty Ltd                             | Prior to the release of the Subdivision Certificate for Stage 4.    |

| Item Number | Item         | Commitment                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | Responsibility      | Timing                                                        |
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| 9           |              | <ul style="list-style-type: none"> <li>• Regeneration and landscaping works;</li> <li>• Weed management;</li> <li>• Pest animal control;</li> <li>• Fencing;</li> <li>• Bushfire management;</li> <li>• Public access management including path maintenance; and</li> <li>• Stormwater management.</li> </ul> <p>The indicative work plan in the CLEMP will be updated post approval as timing of measures can not be updated before approval is granted.</p>                                      | Aspen Group Pty Ltd | Prior to release of the Construction Certificate for Stage 4. |
| 10          | Construction | <p>Construction of the subdivision will be generally in accordance with the Staging Plan (Sheet 1 of 17) prepared by Daly Smith Pty Ltd or as otherwise approved in Construction Certificate plans.</p>                                                                                                                                                                                                                                                                                            | Aspen Group Pty Ltd | Ongoing.                                                      |
| 11          |              | <p>A Construction Environmental Management Plan (CEMP) will be prepared and will include the following:</p> <ul style="list-style-type: none"> <li>• a description of the work program outlining relevant timeframes and activities;</li> <li>• a description of the roles and responsibilities for all relevant employees involved in the construction phase;</li> <li>• the minimisation of rubbish and debris at the site from development activities during the construction phase;</li> </ul> | Aspen Group Pty Ltd | Prior to the commencement of construction for each stage.     |

| Item Number | Item            | Commitment                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | Responsibility      | Timing                                                                                                  |
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|             |                 | <ul style="list-style-type: none"> <li>erosion and sediment control during construction;</li> <li>details of environmental management procedures, monitoring and reporting during construction and operation phases;</li> <li>details of revegetation to be undertaken following construction activities;</li> <li>details of statutory and other obligations that must be met during construction and operation, including all approvals and agreement required from authorities and other stakeholders;</li> <li>an education strategy for construction contractors; and</li> <li>the construction commitments outlined in the Community Lands Environmental Management Plan (CLEMP)</li> </ul> |                     |                                                                                                         |
| 12          |                 | Construction work shall only be carried out between 7.00am to 6.00pm Monday to Fridays and 7.00am to 12.00 midday on Saturdays.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | Aspen Group Pty Ltd | For the duration of the construction of the subdivision.                                                |
| 13          |                 | Inspections will be carried out by an accredited certifier and following each inspection, compliance certificates will be forwarded to the Principal Certifying Authority.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | Aspen Group Pty Ltd | For the duration of the construction of the subdivision.                                                |
| 14          | Flora and Fauna | Update the Community Lands Environmental Management Plan (CLEMP) prepared by ERM, February 2009 to include: <ul style="list-style-type: none"> <li>maintenance of pedestrian pathways</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | Aspen Group Pty Ltd | Completed. Reference to Maintenance of pedestrian pathways included in draft CLEMP included in Annex H. |

| Item Number | Item                | Commitment                                                                                                                                                                                                                                                                                                                                          | Responsibility                                       | Timing                                                              |
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| 15          |                     | Implement the Community Lands Environmental Management Plan (CLEMP) prepared by ERM, February 2009 as amended November 2009, Included in Annex H.                                                                                                                                                                                                   | Aspen Group Pty Ltd and Community Association        | Ongoing                                                             |
| 16          |                     | The Community Lands Environmental Management Plan (CLEMP) will form part of the Community Management Statement for implementation by the Community Association.                                                                                                                                                                                     | Aspen Group Pty Ltd and Community Association        | Ongoing                                                             |
| 17          |                     | A qualified fauna handler will be on site when clearing occurs.                                                                                                                                                                                                                                                                                     | Aspen Group Pty Ltd                                  | During clearing activities.                                         |
| 18          |                     | Suitable koala feed trees will be planted around the areas of the site.                                                                                                                                                                                                                                                                             | Aspen Group Pty Ltd                                  | At the completion of construction of each stage.                    |
| 19          |                     | All vegetation within 100m of the identified owl roost tree will be retained.                                                                                                                                                                                                                                                                       | Aspen Group Pty Ltd and Community Association        | Ongoing                                                             |
| 20          |                     | The proponent offers to enter into the Voluntary Planning Agreement (VPA) between Aspen Group Pty Ltd, Winton (No 2) Pty Ltd and DECCW publically notified in accordance with the requirements of section 93G of the EP&A Act 1979, in accordance with the terms contained in the draft planning agreement annexed to the Statement of Commitments. | Aspen Group Pty Ltd, Winton (No 2) Pty Ltd and DECCW | Ongoing                                                             |
| 21          | Bushfire Management | The measures contained in the Bush Fire Hazard Assessment, prepared by ERM, 2009 (provided in Annex L of the EA) will be implemented.                                                                                                                                                                                                               | Aspen Group Pty Ltd                                  | Prior to the release of the Subdivision Certificate for each stage. |

| Item Number | Item     | Commitment                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | Responsibility      | Timing                                                              |
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| 22          |          | A restriction to the land use pursuant to Section 88B of the Conveyancing Act 1919 will be placed on all lots which provide and manage an asset protection zone within their boundaries.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | Aspen Group Pty Ltd | Prior to the release of the Subdivision Certificate for each stage. |
| 23          | Heritage | <p>The development shall adhere to the recommendations of the Aboriginal Heritage Assessment Report, prepared by ERM, April 2005 (and the addendum report dated May 2008) (provided in Annex I of the EA), including the following site specific recommendations:</p> <ul style="list-style-type: none"> <li>• provision for representatives of the Aboriginal community to recover Aboriginal objects during excavation work. Local Aboriginal community representatives will be invited to monitor ground disturbing works within the project area;</li> <li>• consultation with the Aboriginal community regarding interpretation of archaeological information that could be presented in the form of public display, such as interpretive signage. The endorsement of the Aboriginal stakeholder groups will be sought on the style and content of the signage / displays;</li> <li>• maintain liaisons with the Aboriginal community throughout the development process;</li> <li>• exclusion of the ridgeline marked blue on Figure 3.2 of the Aboriginal Heritage Assessment Report (Annex I of EA) from development and conservation within the proposed Cultural Heritage Reserve; and</li> <li>• follow the procedure identified in the Aboriginal Heritage Assessment Report and associated Addendum (Annex I of the EA) if human skeletal remains are identified during construction works.</li> </ul> | Aspen Group Pty Ltd | For the duration of the construction of the subdivision.            |

| Item Number | Item | Commitment                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | Responsibility        | Timing                                                                                          |
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| 24          |      | <p>The draft Aboriginal Reserve Cultural Heritage Management Plan (ERM, 2006) will be updated and finalised in consultation with the local Aboriginal community. The plan will identify the management requirements of the existing Aboriginal Cultural Heritage Reserve, as well as the additional Aboriginal Cultural Reserve as requested by the Aboriginal community. The Management Plan will form part of the Community Management Statement and will be implemented by the Community Association in consultation with the Aboriginal Community and will include:</p> <ul style="list-style-type: none"> <li>• A clause relating to the amendment of the Cultural Heritage Management Plan, in consultation with the Aboriginal Community, to include specific reference to the additional cultural heritage reserves;</li> <li>• A commitment confirming that management of the above areas by the Community Association will be approved by the Aboriginal Community; and</li> <li>• Inclusion of a clause relating to the education and induction of construction workers in relation to cultural heritage.</li> </ul> | Aspen Group Pty Ltd   | Updating of the plan to occur prior to the release of the Construction Certificate for Stage 4. |
| 25          |      | <p>The final Fern Bay Estate Aboriginal Heritage Reserve - Cultural Heritage Management Plan will be implemented by the Community Association through the Community Management Statement.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | Community Association | Ongoing                                                                                         |

| Item Number | Item                   | Commitment                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | Responsibility      | Timing                                                                                         |
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| 26          |                        | An Aboriginal Cultural Heritage Reserve shall be created within the Fern Bay Seaside Village in order to retain an area that represents the key aspects of the Aboriginal archaeological record at Fern Bay. A second reserve, as requested by the local Aboriginal community, will also be created at one of the two possible locations identified in Figure 7.5 of the EA. The site selected will be subject to consultation with the local Aboriginal community.                                                                                                                                                                                                                                                                                                                                                                                                            | Aspen Group Pty Ltd | Prior to the release of the Construction Certificate for the respective stage of construction. |
| 27          | Water Cycle Management | <p>All works will be carried out in accordance with the Stormwater Assessment and Stormwater Management Plan and will reflect the recommendations of the Amended Water Cycle Management Strategy prepared by Martens Consulting Engineers and dated December 2009 for the proposed residential development at Fern Bay, including the following treatment devices to ensure pollutants leaving the site are minimised:</p> <ul style="list-style-type: none"> <li>• runoff from all catchments would be directed through bio-retention swales that have been designed to treat flows up to and including those with a three month Average recurrence Interval (ARI);</li> <li>• flows up to and greater than three months ARI would overtop the bio-retention swales and pass through vegetated filter zones prior to being discharged into natural drainage lines.</li> </ul> | Aspen Group Pty Ltd | Ongoing                                                                                        |
| 28          |                        | Pumping stations will be located to minimise clearing of vegetation in the Community Conservation Lands. In particular pumping stations P3, P5, P6 and P7 will be located in the field to avoid clearance of mature and/or hollow bearing trees. Following construction, the sites will be revegetated and                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | Aspen Group Pty Ltd | Ongoing                                                                                        |

| Item Number | Item                          | Commitment                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | Responsibility      | Timing                                                   |
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| 29          | Erosion and Sediment Control  | <p>ongoing maintenance of the areas will be undertaken consistent with the CLEMP.</p> <p>The following management approaches will be taken to limit potential for wind and soil erosion:</p> <ul style="list-style-type: none"> <li>construction activities shall be phased to minimise erosion and minimise impacts on stormwater management measures that rely on infiltration processes;</li> <li>clearing of vegetation shall be minimised;</li> <li>sediment basins, silt fences and perimeter banks shall be used during construction to minimise erosion and sediment transport to receiving waters;</li> <li>sediment traps and GPTs shall be installed in stormwater drainage systems; and</li> <li>vegetated ground cover shall be maintained or restored.</li> </ul> | Aspen Group Pty Ltd | For the duration of the construction of the subdivision. |
| 30          | Traffic Management and Access | <p>The design of the internal roads will be generally in accordance with Port Stephens Council Subdivision Development Control Plan. Pedestrian laneways will be included in relevant stages to ensure compliance with Port Stephens Council DCP 2007 B1.C11 that a new block in a residential zone must be no more than 80m deep and 160m long.</p> <p>The design and upgrade of the northern intersection with Nelson Bay Road will be undertaken at the developer's expense and will be constructed in accordance with RTA requirements and approvals.</p>                                                                                                                                                                                                                   | Aspen Group Pty Ltd | For the duration of the construction of the subdivision. |
| 31          |                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | Aspen Group Pty Ltd | <del>During Stage 14</del><br>(Deleted - Oct 2019)       |

| Item Number | Item                     | Commitment                                                                                                                                                                                                                              | Responsibility      | Timing                                                              |
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| 32          |                          | Footpaths will be provided consistent with Port Stephens Council Policy requirements.                                                                                                                                                   | Aspen Group Pty Ltd | Prior to the release of the Subdivision Certificate for each stage. |
| 33          |                          | Shared Footpath/Cycleway from existing roundabout at the intersection of Nelson Bay Road and Fullerton Cove Road to the bus shelter at Bay Way Village to the south will be constructed during Stage 4 of the Fern Bay Seaside Village. | Aspen Group Pty Ltd | During Stage 4                                                      |
| 34          |                          | Interim bus stop locations will be discussed with Port Stephens Council on a stage by stage basis with the final bus route outlined in Figure 4.1 of the Traffic Impact Assessment (Annex M of the EA)                                  | Aspen Group Pty Ltd | Prior to the release of the Subdivision Certificate for each stage. |
| 35          |                          | Access to existing Four- Wheel- Drive Track from Seaside Boulevard will be formalised through an easement.                                                                                                                              | Aspen Group Pty Ltd | Prior to release of the Subdivision Certificate for Stage 4.        |
| 36          | Infrastructure Provision | Each residential lot will be provided with reticulated water supply, sewerage and underground electricity.                                                                                                                              | Aspen Group Pty Ltd | Prior to the release of the Subdivision Certificate for each stage. |
| 37          |                          | The subdivision will make satisfactory arrangements with Telstra for the provision of telecommunication facilities to each residential lot.                                                                                             | Aspen Group Pty Ltd | Prior to the release of the Subdivision Certificate for each stage. |
| 38          | Developer Contributions  | Section 94 contributions will be paid consistent with Port Stephens S94A Development Contributions Plan 2006 as modified September 5 2009.                                                                                              | Aspen Group Pty Ltd | Prior to the release of the Subdivision Certificate for each stage. |

| Item Number | Item                  | Commitment                                                                                                                                                                                                                                                                           | Responsibility      | Timing                                                                       |
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| 39          | Landscaping           | A Landscape Plan will be submitted to Port Stephens Council detailing the proposed landscaping works (including species, location and establishment procedures).                                                                                                                     | Aspen Group Pty Ltd | Prior to the release of the Construction Certificate for each stage.         |
| 40          | Community Facilities  | Details regarding the proposed children's play equipment will be submitted to Port Stephens Council.                                                                                                                                                                                 | Aspen Group Pty Ltd | Prior to the release of the Construction Certificate for the relevant stage. |
| 41          | Commercial facilities | An action plan to facilitate the establishment of commercial facilities on lots identified as commercial developed, including staging information, will be developed and implemented. Staging of Commercial lots will be as per the Staging plan included in the Submissions Report. | Aspen Group Pty Ltd | Prior to the release of the Construction Certificate for the relevant stage. |