

ITEM 8

DRAFT PLANNING AGREEMENT: CALDERWOOD HEIGHTS PTY LTD – 347  
CALDERWOOD ROAD, CALDERWOOD

Calderwood Heights Pty Ltd has requested that Council enter into a Planning Agreement for a development located within the Shellharbour City Council Local Government Area to facilitate road upgrades at Yallah Marshall Mount in the Wollongong City Council Local Government Area. The Planning Agreement is required to address development contributions payable to Wollongong City Council in accordance with the Calderwood Urban Development Project Major Project Approval MP09\_0082.

The Draft Planning Agreement and Explanatory Note are provided as attachments to this report. It is recommended that Council exhibit these documents for community input.

### RECOMMENDATION

- 1 The Draft Planning Agreement and Explanatory Note between Wollongong City Council and Calderwood Heights Pty Ltd (Attachments 2 and 3) be exhibited for a minimum period of 28 days.
- 2 Shellharbour City Council be advised that Wollongong City Council and Calderwood Heights Pty Ltd are proposing to enter into a Planning Agreement for the provision of monetary contributions towards Wollongong City Council road upgrades as required by the Calderwood Major Project Approval, and should it determine that DA0290/2018 or any other development application for the subject land be approved, appropriate conditions of consent be included.
- 3 The General Manager be delegated authority to determine, finalise and execute the Planning Agreement, including making minor amendments, after consideration of any issues raised in the public exhibition.

### REPORT AUTHORISATIONS

Report of: David Green, Manager City Strategy (Acting)

Authorised by: Chris Stewart, Director Planning and Environment - Future City and Neighbourhoods (Acting)

### ATTACHMENTS

- 1 Site Context Plan
- 2 Draft Planning Agreement
- 3 Explanatory Note

### BACKGROUND

#### Calderwood Urban Development Project – Major Project Approval

On 8 December 2010, the Minister for Planning approved the Calderwood Urban Development Project Concept Plan for the development of approximately 4,800 dwellings, 50 hectares of mixed use land, open space and land for environmental protection (Major Project No.09\_0082). The Calderwood release area includes land in both the Shellharbour (593 hectares) and Wollongong Local Government Areas (107 hectares).

Condition C12 of the Concept Plan Approval includes general requirements for local infrastructure contributions and Statement of Commitment #5 states that “the proponent will enter into a Planning Agreement with the relevant Council... if agreed by the Council”. This means that Council needs to enter into a Planning Agreement (or adopt a contributions plan) in order to collect contributions from this development.

## Wollongong City Council Contributions

On 23 September 2013, the Stage 1 Project Application was approved by the Land and Environment Court, and in the absence of an adopted Contributions Plan or executed Planning Agreement, a condition was imposed requiring the payment of contributions toward Wollongong City Council road upgrades at the rate of \$1,320 per dwelling.

On 15 September 2014, Shellharbour City Council entered into a Planning Agreement with Lend Lease for contributions payable to Shellharbour City Council. This Planning Agreement does not cover contributions payable to Wollongong City Council.

On 31 July 2017, Council endorsed a draft cross boundary Calderwood Section 94 Plan and made a request to the Secretary of the Department of Planning and Environment to assist with its finalisation. The draft Section 94 Plan proposed a local contribution rate of \$6,996 per lot / dwelling towards road upgrades in the Wollongong Local Government Area. This Plan was not adopted by Council.

On 13 December 2017, Council entered into a Planning Agreement with Lend Lease where contributions of \$4,400 per dwelling are payable for the first 4,800 dwellings, and then \$1,000 for the next 1,200 dwellings, with the contributions being allocated to road upgrades at Yallah Marshall Mount.

The above Planning Agreements are between the relevant Council and Lend Lease. However, there are a number of land holdings within the Calderwood release area that are not owned or controlled by Lend Lease. These are referred to as 'non-core lands'.

There are currently three known 'non-core' sites subject to development proposals, including 347 Calderwood Drive, Calderwood, the subject of this report. This site is identified in the site context plan at Attachment 1.

On 6 May 2019, Council considered two similar reports proposing the exhibition of draft Planning Agreements at two other non-core sites at 81 Escarpment Drive, Calderwood and 128 North Macquarie Rd, Calderwood. Council resolved to exhibit both draft Planning Agreements. Both draft Planning Agreements have now been exhibited, finalised and executed.

### Shellharbour City Council DA0290/2018

A Development Application (DA0290/2018) has been lodged with Shellharbour City Council for a 455 lot residential subdivision on Lot 1 DP 608238, 347 Calderwood Drive, Calderwood. The site falls within the Calderwood release area and the provisions of the Major Project Approval apply and contributions are required toward roads in the Wollongong local government area.

Council has provided referral advice to Shellharbour City Council requesting that adequate local contribution arrangements are in place prior to the determination of this, or any other, application on the subject land. The appropriate mechanism to facilitate this is a Planning Agreement.

## PROPOSAL

A Planning Agreement is a voluntary arrangement between a developer and Council under which the developer is required to dedicate land, pay a monetary contribution or provide any other material public benefit, or a combination of these, to be used for or applied towards the provision of public infrastructure or another public purpose.

In this instance, the developer has proposed to provide a monetary contribution toward road upgrades in the Wollongong City Council Local Government Area.

On 17 October 2018, the applicant provided a Letter of Offer to enter into a Planning Agreement under Section 7.4 of the Environmental Planning and Assessment Act 1979 in connection with Shellharbour City Council DA0290/2018. The offer was based on the provisions of the existing Council and Lend Lease Planning Agreement, being a monetary contribution of \$4,400 per dwelling.

It has been agreed that the total contribution payable under the Planning Agreement will be \$2,186,798.25 (subject to indexation from September 2017 until date of payment). This has been calculated based on an anticipated dwelling yield of 497 at the rate of \$4,400 per dwelling. The

contribution will be payable on a per lot basis prior to the issue of a Subdivision Certificate for each phase in the development, at a rate of \$4,806.15 per lot (\$4,806.15 x 455 lots = \$2,186,798.25).

Council officers considered this proposal reasonable as it would secure the same contributions as would be provided under the existing Planning Agreement with Lend Lease, and overall it is considered that the Planning Agreement will result in a positive outcome for the developer, Council and the community.

## CONSULTATION AND COMMUNICATION

### *Internal:*

Development Contributions Coordination Group.

### *External:*

If Council endorses the recommendations of this report the draft Planning Agreement (Attachment 2) and Explanatory Note (Attachment 3) will be exhibited for community input for a minimum period of 28 days.

## PLANNING AND POLICY IMPACT

The draft Planning Agreement has been negotiated and prepared in accordance with Council's Planning Agreements Policy (2018), Sections 7.4 to 7.10 of the *Environmental Planning and Assessment Act 1979* and Clauses 25B – 25E of the *Environmental Planning and Assessment Regulation 2000*.

This report contributes to the delivery of Our Wollongong 2028 goal "We have affordable and accessible transport".

It specifically delivers on core business activities as detailed in the Land Use Planning and Transport Services Annual Service Plans 2019-20.

## RISK ASSESSMENT

The proposed Planning Agreement provides a formal instrument to manage and mitigate any risks associated with the development of land within the Shellharbour City Council Local Government Area for which contributions are payable to Wollongong City Council.

Should the Planning Agreement not proceed, the risk exists that the developer will obtain an approval for subdivision development of land without a mechanism for contributions to be paid to Council.

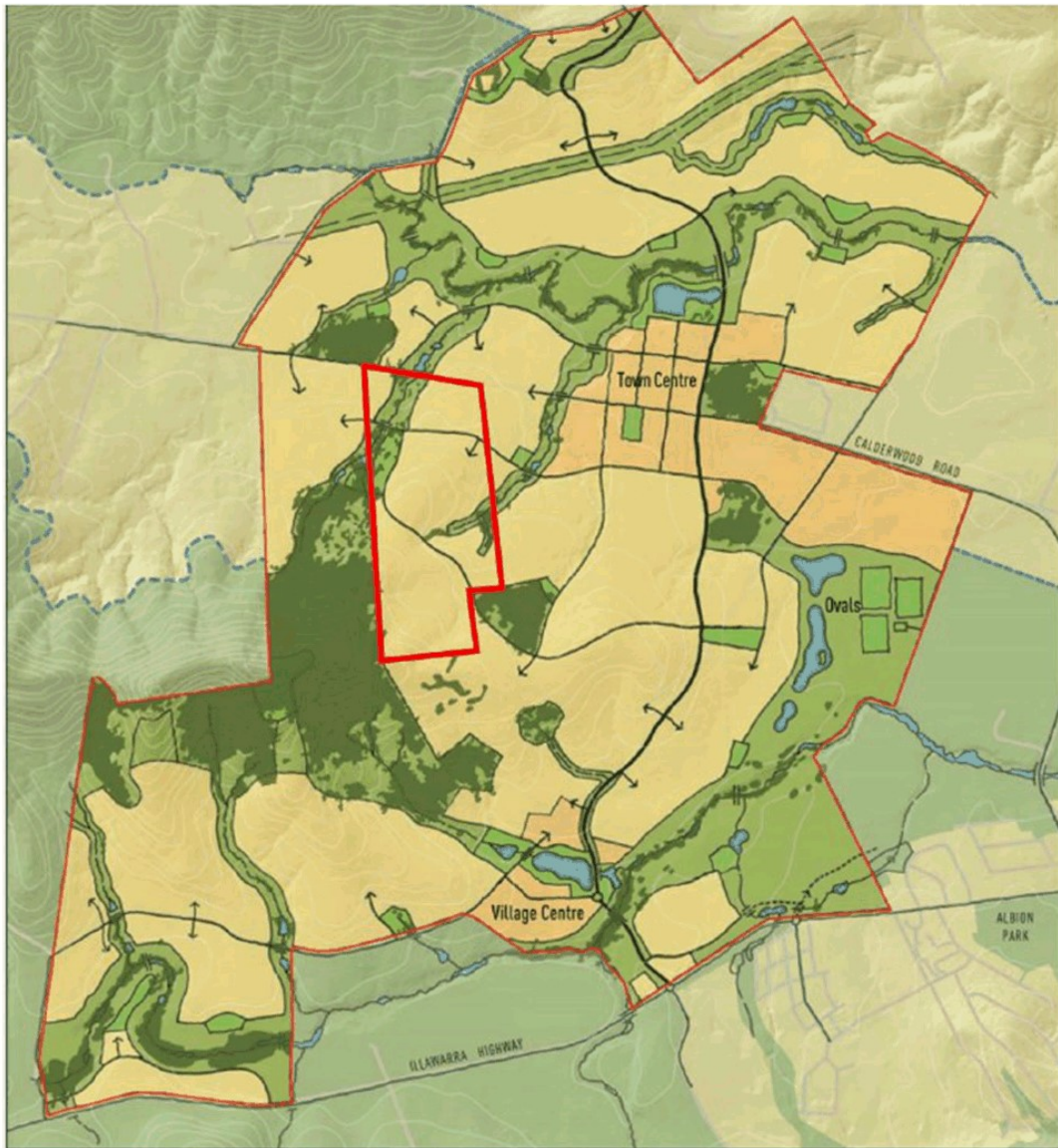
## FINANCIAL IMPLICATIONS

The Planning Agreement will enable monetary contributions to be paid to Wollongong City Council prior to the issue of a Subdivision Certificate by Shellharbour City Council. The funds collected will be held in a restricted account and allocated toward road upgrades in the Yallah Marshall Mount area.

## CONCLUSION

Calderwood Heights Pty Ltd has requested that Council enter into a Planning Agreement for the provision of monetary contributions toward road upgrades in the Wollongong City Council Local Government Area. The Planning Agreement is required to address development contributions payable to Wollongong City Council in accordance with the Major Project Approval in association with a development application currently under assessment at Shellharbour City Council.

It is recommended that Council endorse the Draft Planning Agreement for exhibition to enable community input. If there are no significant issues raised during the exhibition period, it is proposed that delegation be issued to the General Manager to determine, finalise and execute the Planning Agreement, including making minor changes.



Concept Plan

Part 3A | Calderwood Urban Development Project

# DRAFT PLANNING AGREEMENT

Wollongong City Council

and

Calderwood Heights Pty Ltd



WOLLONGONG CITY COUNCIL  
41 Burelli Street, Wollongong NSW 2500  
Locked Bag 8821, Wollongong DC NSW 2500  
Tel: 02 4227 7111  
Fax: 02 4227 7277  
Web: [www.wollongong.nsw.gov.au](http://www.wollongong.nsw.gov.au)  
ABN: 63 139 525 939 – GST Registered





## DRAFT PLANNING AGREEMENT

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DATE

PARTIES

**WOLLONGONG CITY COUNCIL (ABN 63 139 525 939)** of 41 Burelli Street, Wollongong in the State of New South Wales (**Council**)

**CALDERWOOD HEIGHTS PTY LTD (ABN: 58 623 438 844)** of Suite 4005-4006, Level 40, One International Towers, 100 Barangaroo Avenue, Barangaroo NSW 2000 (**Developer**)

### BACKGROUND

- 1 The Developer intends to carry out the Development.
- 2 The Land is situated in proximity to the local government area of Council.
- 3 The Developer has made a Development Application with Shellharbour City Council.
- 4 The Developer has offered to provide the Monetary Contributions if the Development is undertaken.

### OPERATIVE PROVISIONS

#### 1 DEFINITIONS

The following definitions apply unless the context otherwise requires:

<b>Act</b>	means the <i>Environmental Planning and Assessment Act 1979</i> (NSW).
<b>Assign</b>	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.
<b>Business Day</b>	means any day that is not a Saturday, Sunday, gazetted public holiday or bank holiday in Sydney, and concludes at 5pm on that day.
<b>Claim</b>	against any person any allegation, action, demand, cause of action, suit, proceeding, judgement, debt, damage, loss, cost, expense or liability howsoever arising and whether present or future, fixed or unascertained, actual or contingent whether at law, in equity, under statute or otherwise.
<b>Complete, Completed, Completion</b>	means completed in accordance with the requirements of this document.
<b>Council</b>	means Wollongong City Council.
<b>Developer</b>	means Calderwood Heights Pty Ltd.
<b>Development</b>	means the subdivision of the Land into approximately 455 Lots.
<b>Development Application</b>	has the same meaning as in the Act.
<b>Development Consent</b>	Has the same meaning as in the Act.
<b>GST Law</b>	means <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Commonwealth) and any other Act or regulation relating to the



## DRAFT PLANNING AGREEMENT

	imposition or administration of the goods and services tax.
<b>Land</b>	means the whole of the land contained in Lot 1 DP 608238 as shown at Appendix A.
<b>Law</b>	means all legislation, regulations, by-laws, common law and other binding order made by any Authority.
<b>Lot</b>	means a lot in the Development created on the registration of a plan of subdivision as part of the Development where the construction of one (1) or more residential dwellings is permissible.
<b>Mediation Rules</b>	means the rules for Mediation as published by the Resolution Institute and updated from time to time
<b>Monetary Contributions</b>	means the monetary contributions set out in Clause 6 and Schedule 2.
<b>Planning Legislation</b>	means the Act, the <i>Local Government Act 1993</i> (NSW) and the <i>Roads Act 1993</i> (NSW).
<b>Subdivision Certificate</b>	means a subdivision certificate as defined in section 6.4(d) of the Act.

## 2 INTERPRETATION

The following rules of interpretation apply unless the context requires otherwise:

<b>clauses, annexures and schedules</b>	a clause, annexure or schedule is a reference to a clause in, or annexure or schedule to, this document.
<b>reference to statutes</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.
<b>singular includes plural</b>	the singular includes the plural and vice versa.
<b>person</b>	the word 'person' includes an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association or any government agency.
<b>executors, administrators, successors</b>	a particular person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns.
<b>dollars</b>	Australian dollars, dollars, \$ or A\$ is a reference to the lawful currency of Australia.
<b>calculation of time</b>	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.
<b>reference to a day</b>	a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later.
<b>reference to a group of persons</b>	a group of persons or things is a reference to any two or more of them jointly and to each of them individually.



## DRAFT PLANNING AGREEMENT

<b>meaning not limited</b>	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.
<b>next day</b>	if an act under this document to be done by a party on or by a given day is done after 4.30pm on that day, it is taken to be done on the next day.
<b>next Business Day</b>	if an event must occur on a stipulated day which is not a Business Day then the stipulated day will be taken to be the next Business Day.
<b>Business Day</b>	means any day that is not a Saturday, Sunday, gazetted public holiday or bank holiday in Sydney, and concludes at 5pm on that day.
<b>time of day</b>	time is a reference to Sydney time.
<b>headings</b>	headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of this document.
<b>agreement</b>	a reference to any agreement, Agreement or instrument includes the same as varied, supplemented, novated or replaced from time to time.

### 3 OPERATION OF AGREEMENT

#### 3.1 Planning agreement

This document is a planning agreement:

- i Within the meaning set out in section 7.4 of the Act; and
- ii Governed by Subdivision 2 of Division 7.1 of Part 7 of the Act.

#### 3.2 Application

This document applies to both the Land and the Development.

#### 3.3 Operation of document

- i Subject to paragraph (ii), this document operates from the date it is executed by both parties.
- ii Clause 6 of this Agreement will only operate if and when Development Consent is granted to the Development.

### 4 APPLICATION OF SECTION 7.11, SECTION 7.12 AND SECTION 7.24

#### 4.1 Application

- a. This document excludes the application by Council of section 7.11, section 7.12 and section 7.24 of the Act to the Development.
- b. Despite Clause 4.1(a) nothing in this document excludes the application by another consent authority, the Minister, or an accredited certifier, of sections 7.11, 7.12 and 7.24 of the Act to the Development

#### 4.2 Consideration of benefits

Section 7.11(6) of the Act does not apply to the Monetary Contributions that are to be provided pursuant to this document.

### 5 REGISTRATION OF THIS DOCUMENT

#### 5.1 Registration

This document must be registered on the title of the Land pursuant to section 7.6 of the Act.





## DRAFT PLANNING AGREEMENT

### 5.2 Obligations of the Developer

The Developer must:

- i do all things necessary to facilitate the registration of this document to occur within 30 days of the execution of this document, including but not limited to obtaining the consent of any mortgagee registered on the title of the Land; and
- ii pay any reasonable costs incurred by Council in undertaking that registration; and
- iii. provide Council with a copy of the relevant folio within 10 Business Days of registration of this document.

### 5.3 Removal from title of the Land

- i Council will do all things necessary to allow the Developer to remove the registration of this document from the title of the Land, or any part of the Land, where the Developer has:
  - a provided all applicable Monetary Contributions.
- ii The Developer must pay any reasonable costs incurred by Council in undertaking that discharge.

## 6 PROVISION OF CONTRIBUTIONS

### 6.1 Monetary Contributions

- i. The Developer must make the Monetary Contributions to Council in accordance with Schedule 2.
- ii. Where Schedule 2 establishes the phasing of payment of the Monetary Contributions to Council by reference to the number of Lots to be created, the Developer agrees to make that Monetary Contribution prior to seeking or procuring the grant of any Subdivision Certificate in relation to those Lots.

### 6.2 Indexation

- i The base contribution rate will be indexed in accordance with the following formula:

$$\text{Indexed base contribution rate} = \$C \times (\text{CP2}/\text{CP1})$$

Where:

**\$C** is the base contribution rate as set out in Schedule 2 of this document

**CP1** is the Consumer Price Index; All Groups CPI; Sydney at September 2017

**CP2** is the Consumer Price Index; All Groups CPI; Sydney at the time of payment

- ii For the purposes of paragraph (i):
  - a each component of the Monetary Contribution is indexed as at the date it is paid; and
  - b the Index means the *Consumer Price Index (All Groups) for Sydney* or such other index which replaces it from time to time.

## 7 WARRANTIES AND INDEMNITIES

### 7.1 Warranties

The Developer warrants to Council that:

- i it is able to fully comply with its obligations under this document;
- ii it has full capacity to enter into this document; and
- iii there is no legal impediment to it entering into this document, or performing the obligations imposed under it.

### 7.2 Indemnity



## DRAFT PLANNING AGREEMENT

The Developer indemnifies Council in respect of any Claim that may arise as a result of the conduct of the Works, but only to the extent that any such Claim does not arise as a result of the negligent acts or omissions of Council.

### 8 DETERMINATION OF THIS DOCUMENT

#### 8.1 Determination

This document will determine upon the Developer satisfying all of its obligations under the document.

#### 8.2 Effect of determination

Upon the determination of this document Council will do all things necessary to allow the Developer to remove this document from the title of the whole or any part of the Land as quickly as possible.

### 9 ASSIGNMENT

#### 9.1 Prohibition

Neither party may Assign their rights under this document without the prior written consent of the other party, acting reasonably.

#### 9.2 Assignment of Land

The Developer must not Assign its interest in the Land, other than a single Lot approved pursuant to a Development Consent and created by the registration of a plan of subdivision, unless:

- i Council consents to the Assignment, such consent must not be reasonably withheld or delayed; and
- ii the proposed assignee enters into an agreement to the satisfaction of Council, acting reasonably, under which the assignee agrees to be bound by the terms of this document with respect to the relevant part of the Land being Assigned.

### 10 DISPUTE RESOLUTION

#### 10.1 Notice of dispute

- i If a dispute between the parties arises in connection with this document or its subject matter (**Dispute**), then either party (**First Party**) must give to the other (**Second Party**) a notice which:
  - a is in writing;
  - b adequately identifies and provides details of the Dispute;
  - c stipulates what the First Party believes will resolve the Dispute; and
  - d designates its representative (**Representative**) with the necessary authority to negotiate and resolve the Dispute.
- ii The Second Party must, within five (5) Business Days of service of the notice of dispute, provide a notice to the First Party designating as its representative a person with the necessary authority to negotiate and settle the Dispute (the representatives designated by the parties being together, the **Representatives**).

#### 10.2 Conduct pending resolution

The parties must continue to perform their respective obligations under this document if there is a Dispute but will not be required to complete the matter the subject of the Dispute, unless the appropriate party indemnifies the other parties against costs, damages and all losses suffered in completing the disputed matter if the Dispute is not resolved in favour of the indemnifying party.

#### 10.3 Further steps required before proceedings

Subject to clause 10.7 and except as otherwise expressly provided in this document, any Dispute must, as a condition precedent to the commencement of litigation or mediation under clause



## DRAFT PLANNING AGREEMENT

10.5, first be referred to the Representatives. The Representatives must endeavour to resolve the dispute within ten (10) Business Days of the date a notice under clause 10.1(ii) is served.

### 10.4 Disputes for mediation

If the Representatives have not been able to resolve the Dispute, then the parties must agree within five (5) Business Days to refer the matter to mediation under clause 10.5.

### 10.5 Disputes for mediation

- i If the parties agree in accordance with clause 10.4 to refer the Dispute to mediation:
  - a. the mediation must be conducted by a mediator agreed by the parties;
  - b. in accordance with the Mediation Rules of the Resolution Institution
- ii if the parties cannot agree within five (5) Business Days, then by a mediator appointed by the President of the Law Society of New South Wales for the time being.
- iii If the mediation referred to in paragraph (i) has not resulted in settlement of the Dispute and has been terminated, the parties may agree to have the matter determined by expert determination under clause 10.6.

### 10.6 Other courses of action

If the mediation referred to in clause 10.5 has not resulted in settlement of the dispute and the mediation has been terminated then either party may take whatever course of action it deems appropriate for the purpose of resolving the Dispute.

### 10.7 Remedies available under the Act

This clause 10 does not operate to limit the availability of any remedies available to Council under sections 9.45 and 9.46 and Division 9.6 of the Act.

### 10.8 Urgent relief

This clause 10 does not prevent a party from seeking urgent injunctive or declaratory relief concerning any matter arising out of this document.

## 11 POSITION OF COUNCIL

### 11.1 Consent authority

The parties acknowledge that Council is a consent authority with statutory rights and obligations pursuant to the terms of the Planning Legislation.

### 11.2 Document does not fetter discretion

This document is not intended to operate to fetter:

- i the power of Council to make any Law; or
- ii the exercise by Council of any statutory power or discretion (**Discretion**).

### 11.3 Severance of provisions

- i No provision of this document is intended to, or does, constitute any unlawful fetter on any Discretion. If, contrary to the operation of this clause, any provision of this document is held by a court of competent jurisdiction to constitute an unlawful fetter on any Discretion, the parties agree:
  - a they will take all practical steps, including the execution of any further documents, to ensure the objective of this clause 11 is substantially satisfied;
  - b in the event that paragraph (a) cannot be achieved without giving rise to an unlawful fetter on a Discretion, the relevant provision is to be severed and the remainder of this document has full force and effect; and
  - c to endeavour to satisfy the common objectives of the parties on relation to the provision of this document which is held to be an unlawful fetter to the extent that it is possible having regard to the relevant court judgment.



## DRAFT PLANNING AGREEMENT

- ii Where the Law permits Council to contract out of a provision of that Law or gives Council power to exercise a Discretion, then if Council has in this document contracted out of a provision or exercised a Discretion under this document, then to the extent of this document is not to be taken to be inconsistent with the Law.

### 11.4 No obligations

Nothing in this document will be deemed to impose any obligation on Council to exercise any of its functions under the Act in relation to the Development Consent, the Land or the Development in a certain manner.

## 12 CONFIDENTIALITY

### 12.1 Document not confidential

The terms of this document are not confidential and this document may be treated as a public document and exhibited or reported without restriction by any party.

## 13 GST

### 13.1 Definitions

Words used in this clause that are defined in the GST Legislation have the meaning given in that legislation.

### 13.2 Intention of the parties

Without limiting any other provision of this clause 13, the parties intend that:

- i Divisions 81 and 82 of the GST Legislation apply to the supplies made under and in respect of this document; and
- ii no additional amounts will be payable on account of GST and no tax invoices will be exchanged between the parties.

### 13.3 Reimbursement

Any payment or reimbursement required to be made under this document that is calculated by reference to a cost, expense, or other amount paid or incurred will be limited to the total cost, expense or amount less the amount of any input tax credit to which any entity is entitled for the acquisition to which the cost, expense or amount relates.

### 13.4 Consideration GST exclusive

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this document are GST Exclusive. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purposes of this clause 13.

### 13.5 Additional amounts for GST

Subject to clause 13.7, if GST becomes payable on any supply made by a party (Supplier) under or in connection with this document:

- i any party (Recipient) that is required to provide consideration to the Supplier for that supply must pay an additional amount to the Supplier equal to the amount of the GST payable on that supply (GST Amount);
- ii the GST Amount is payable at the same time as any other consideration is to be first provided for that supply; and
- iii the Supplier must provide a tax invoice to the Recipient for that supply, no later than the time at which the GST Amount for that supply is to be paid.

### 13.6 Variation

- i If the GST Amount properly payable in relation to a supply (as determined in accordance with clauses 13.5 and 13.7), varies from the additional amount paid by the Recipient under



## DRAFT PLANNING AGREEMENT

clause 13.5, then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient. Any payment, credit or refund under this clause 13.6 is deemed to be a payment, credit or refund of the GST Amount payable under clause 13.5.

- ii The Supplier must issue an adjustment note to the Recipient in respect of any adjustment event occurring in relation to a supply made under or in connection with this document as soon as reasonably practicable after the Supplier becomes aware of the adjustment event.

### 13.7 Non-monetary consideration

- iii To the extent that the consideration provided for the Supplier's taxable supply to which clause 13.5 applies is a taxable supply made by the Recipient (the Recipient Supply), the GST Amount that would otherwise be payable by the Recipient to the Supplier in accordance with clause 13.5 shall be reduced by the amount of GST payable by the Recipient on the Recipient Supply.
- iv The Recipient must issue to the Supplier an invoice for any Recipient Supply on or before the time at which the Recipient must pay the GST Amount in accordance with clause 13.5 (or the time at which such GST Amount would have been payable in accordance with clause 13.5 but for the operation of clause 13.7(i)).

### 13.8 No merger

This clause will not merge on completion or termination of this document.

## 14 LEGAL COSTS

Each party must pay their own legal costs and disbursements with respect to the preparation, negotiation, formation and implementation of this document.

## 15 ADMINISTRATIVE PROVISIONS

### 15.1 Notices

- i Any notice, consent or other communication under this document must be in writing and signed by or on behalf of the person giving it, addressed to the person to whom it is to be given and:
  - a delivered to that person's address;
  - b sent by pre-paid mail to that person's address; or
  - c sent by email to that person's email address.
- ii A notice given to a person in accordance with this clause is treated as having been given and received:
  - a if delivered to a person's address, on the day of delivery if a Business Day, otherwise on the next Business Day;
  - b if sent by pre-paid mail, on the third Business Day after posting; and
  - c if sent by email to a person's email address and a confirmation of receipt can be retrieved, on the day it was sent if a Business Day, otherwise on the next Business Day.
- iii For the purpose of this clause the address of a person is the address set out in this document or another address of which that person may from time to time give notice to each other person.

### 15.2 Entire agreement

This document is the entire agreement of the parties on the subject matter. All representations, communications and prior agreements in relation to the subject matter are merged in and superseded by this document.

### 15.3 Waiver





## DRAFT PLANNING AGREEMENT

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The non-exercise of or delay in exercising any power or right of a party does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other or further exercise of it or the exercise of any other power or right. A power or right may only be waived in writing, signed by the parties to be bound by the waiver.

### 15.4 Counterparts

This document may be executed in any number of counterparts and all of those counterparts taken together constitute one and the same instrument.

### 15.5 Unenforceability

Any provision of this document which is invalid or unenforceable in any jurisdiction is to be read down for the purposes of that jurisdiction, if possible, so as to be valid or enforceable, and is otherwise capable of being severed to the extent of the invalidity or enforceability, without affecting the remaining provisions of this document or affecting the validity or enforceability of that provision in any other jurisdiction.

### 15.6 Power of attorney

Each attorney who executes this document on behalf of a party declares that the attorney has no notice of:

- i the revocation or suspension of the power of attorney by the grantor; or
- ii the death of the grantor.

### 15.7 Governing law

The law in force in the State of New South Wales governs this document. The parties:

- i submit to the exclusive jurisdiction of the courts of New South Wales and any courts that may hear appeal from those courts in respect of any proceedings in connection with this document; and
- ii may not seek to have any proceedings removed from the jurisdiction of New South Wales on the grounds of *forum non conveniens*.



**DRAFT PLANNING AGREEMENT**

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**EXECUTED AS AN AGREEMENT**

**EXECUTED** by and on behalf of **WOLLONGONG CITY COUNCIL (ABN 63 139 525 939)** by its Authorised Officer:

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**Signature of Authorised Person**

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**Signature of Witness**

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**[Print] Name of Authorised Officer**

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**[Print] Name of Witness**

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**Office Held**

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**Date**

---

**Date**

**EXECUTED** by **Calderwood Heights Pty Ltd (ABN: 58 623 438 844)** in accordance with section 127(1) of the Corporations Act 2001 by authority of its directors.

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**Director Signature**

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**Director / Secretary Signature**

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**[Print] Name of Director**

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**[Print] Name of Director/Secretary**

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**Date**

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**Date**



## DRAFT PLANNING AGREEMENT

### SCHEDULE 1: REQUIREMENTS UNDER SECTION 7.4 OF THE ACT

REQUIREMENT UNDER THE ACT	THIS PLANNING AGREEMENT
<p><b>Planning instrument and/or Development Application</b> – (Section 7.4(1))</p> <p>The Developer has:</p> <p>(a) sought a change to an environmental planning instrument.</p> <p>(b) made, or proposes to make, a Development Application.</p> <p>(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.</p>	<p>(a) No.</p> <p>(b) Yes.</p> <p>(c) No.</p>
<p><b>Description of land to which this agreement applies</b> – (Section 7.4(3)(a))</p>	<p>Lot 1 DP608238 known as 347 Calderwood Road, Calderwood</p>
<p><b>Description of development to which this agreement applies</b> – (Section 7.4(3)(b))</p>	<p>the subdivision of the Land into approximately 455 Lots.</p>
<p><b>Application of section 7.11 of the Act</b> – (Section 7.4(3)(d))</p>	<p>Refer to clause 4.1 of the Planning Agreement.</p>
<p><b>Applicability of section 7.12 of the Act</b> – (Section 7.4(3)(d))</p>	<p>Refer to clause 4.1 of the Planning Agreement.</p>
<p><b>Applicability of section 7.24 of the Act</b> – (Section 7.4(3)(d))</p>	<p>Refer to clause 4.1 of the Planning Agreement.</p>
<p><b>Consideration of benefits under this agreement if section 7.11 applies</b> – (Section 7.4(3)(e))</p>	<p>Refer to clause 4.2 of the Planning Agreement.</p>
<p><b>Mechanism for dispute resolution</b> – (Section 7.4(3)(f))</p>	<p>Refer to clause 11 of the Planning Agreement.</p>
<p><b>Enforcement of this agreement</b> (Section 7.4(3)(g))</p>	<p>Refer to clause 5 of the Planning Agreement.</p>
<p><b>No obligation to grant consent or exercise functions</b> – (Section 7.4(3)(9))</p>	<p>Refer to clause 11 of the Planning Agreement.</p>



## DRAFT PLANNING AGREEMENT

### SCHEDULE 2: MONETARY CONTRIBUTIONS

**Table 1 Monetary Contributions**

The Developer must pay the Monetary Contribution in accordance with this clause.

The Monetary Contributions payable are based on the following provisions:

Base contribution rate*	Unit	Timing
\$4,806.15	Each Lot to be created	Prior to the issue of a Subdivision Certificate for that part of the Development that when registered will create that Lot.

\* The base contribution rate must be indexed in accordance with clause 6.2.

The Monetary Contribution payable is to be calculated as follows:

$$\text{Monetary Contribution payable} = \text{Rate} \times \text{Units}$$

Where:

**Rate** is the indexed base contribution rate calculated in accordance with clause 6.2

**Units** is the number of Lots to be created

**Table 2 Indicative phasing schedule**

Phase	Indicative number of Lots to be created	Base contribution rate per Lot	Indicative Monetary Contribution payable per phase
1	183	\$4,806.15	\$879,525.45
2	272	\$4,806.15	\$1,307,272.80
<b>Total</b>	<b>455</b>		<b>\$2,186,798.25</b>

For the avoidance of doubt, prior to the issue of a Subdivision Certificate that will create the last Lot in the Development the Developer must ensure that the total Monetary Contribution of \$2,186,798.25 (plus indexation) has been paid to Council.



## DRAFT PLANNING AGREEMENT

### APPENDIX A - LAND







## DRAFT PLANNING AGREEMENT

### APPENDIX B – INDICATIVE PHASING PLAN





## EXPLANATORY NOTE

### **Explanatory Note - Draft Planning Agreement: 347 Calderwood Road, Calderwood**

#### **Introduction**

The purpose of this explanatory note is to provide a plain English written summary to support the notification of the draft planning agreement (the **Planning Agreement**) prepared under Subdivision 2 of Division 7.1 of Part 7 of the *Environmental Planning and Assessment Act 1979* (the **Act**). This explanatory note has been prepared jointly by the parties in accordance with clause 25E of the *Environmental Planning and Assessment Regulation 2000* (the **Regulation**). This explanatory note is not to be used to assist in construing the agreement.

#### **Parties to the Planning Agreement**

The parties to the Planning Agreement are:

1. Wollongong City Council ABN 38 755 709 681 (the **Council**); and
2. Calderwood Heights Pty Ltd ABN 58 623 438 844 (the **Developer**).

#### **Description of the Subject Land**

The Planning Agreement applies to:

- Lot 1 DP 608238 known as Calderwood Road, Calderwood NSW 2527 (**Subject Land**).

It should be noted that the Subject Land is located within the Shellharbour Local Government Area.

#### **Description of Proposed Development**

The Developer is seeking to subdivide the Subject Land into 455 residential lots and has lodged Development Application DA0290/2018 with Shellharbour City Council (**Proposed Development**).

#### **Summary of objectives, nature and effect of the proposed Planning Agreement**

The Subject Land is included within the area of Concept Approval MP09\_0082 granted by the Minister for Planning under the former section 75W of the Act.

The Concept Approval requires the Developer to make contributions towards the provision of local infrastructure in both the Shellharbour and Wollongong Local Government Areas. Accordingly, the Developer has made an offer to Wollongong City Council to enter into the Planning Agreement in connection with the Proposed Development.

The Planning Agreement provides that the Developer will make a monetary contribution of \$4,806.15 for each lot to be created on the Subject Land, prior to the issue of a subdivision certificate for each phase.

#### **Assessment of the Merits of the Draft Planning Agreement**

Wollongong City Council and the Developer have assessed the Planning Agreement, and both hold the view that the provisions of the Planning Agreement provide a reasonable means of achieving the public purpose set out above.

The Developer's offer to contribute towards the provision of local infrastructure will have a positive public impact as funds from the Developer will be available towards the provision of infrastructure in Wollongong.

#### **The Planning Purpose of the Draft Planning Agreement**

In accordance with section 7.4(2) of the Act, the Planning Agreement has the following public purpose:

- the provision of transport or other infrastructure relating to land.

The Planning Agreement will enable monetary contributions to be paid to Wollongong City Council prior to the issue of a Subdivision Certificate by Shellharbour City Council. The funds collected will be held in a restricted account and allocated toward road upgrades in the Wollongong City Council local government area.

#### **How the Planning Agreement promotes the public interest and objects of the Act**

The Planning Agreement promotes the objects of the Act by encouraging:

- the promotion of the orderly and economic use and development of land (section 1.3(c)).

The Planning Agreement promotes the public interest by ensuring that an appropriate contribution is made towards the provision of infrastructure required to meet the needs that arise from development of the Land.