

PLANNING AGREEMENT

Wollongong City Council

and

Carel and Muriel Leussink – 347 Calderwood Road,
Calderwood



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
ABN: 63 139 525 939 – GST Registered

A handwritten signature in black ink, likely belonging to a council representative, written over a horizontal line.

Muriel Leussink
C. Leussink

DATE

3/11/20

PARTIES

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

CAREL AND MURIEL LEUSSINK of 347 Calderwood Road, Calderwood (**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:

Act	means the <i>Environmental Planning and Assessment Act 1979</i> (NSW).
Assign	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.
Business Day	means any day that is not a Saturday, Sunday, gazetted public holiday or bank holiday in Sydney, and concludes at 5pm on that day.
Claim	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.
Complete, Completed, Completion	means completed in accordance with the requirements of this document.
Council	means Wollongong City Council.
Developer	means Carel and Muriel Leussink.
Development	means the subdivision of the Land into approximately 455 Lots.
Development Application	has the same meaning as in the Act.
Development Consent	Has the same meaning as in the Act.
GST Law	means <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Commonwealth) and any other Act or regulation relating to the imposition or administration of the goods and services tax.

Land	means the whole of the land contained in Lot 1 DP 608238 as shown at Appendix A.
Law	means all legislation, regulations, by-laws, common law and other binding order made by any Authority.
Lot	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.
Mediation Rules	means the rules for Mediation as published by the Resolution Institute and updated from time to time
Monetary Contributions	means the monetary contributions set out in Clause 6 and Schedule 2.
Planning Legislation	means the Act, the <i>Local Government Act 1993</i> (NSW) and the <i>Roads Act 1993</i> (NSW).
Subdivision Certificate	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:

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

meaning not limited	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.
next day	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.
next Business Day	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.
Business Day	means any day that is not a Saturday, Sunday, gazetted public holiday or bank holiday in Sydney, and concludes at 5pm on that day.
time of day	time is a reference to Sydney time.
headings	headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of this document.
agreement	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 or 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.

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

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 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 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.
- 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 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

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*.

EXECUTED AS AN AGREEMENT

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



Signature of Authorised Person



Signature of Witness

CAREL DOYLE

[Print] Name of Authorised Officer

ELIZABETH BORST

[Print] Name of Witness

GENERAL MANAGER

Office Held

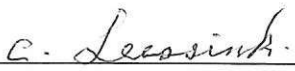
3/11/20

Date

3/11/20

Date

EXECUTED by Carel and Muriel Leussink



Signature



Signature

CAREL LEUSSINK

Name

MURIEL LEUSSINK

Name

22-10-20

Date

22-10-20

Date

SCHEDULE 1: REQUIREMENTS UNDER SECTION 7.4 OF THE ACT

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

Monetary Contribution payable = Rate x Units

Where:

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

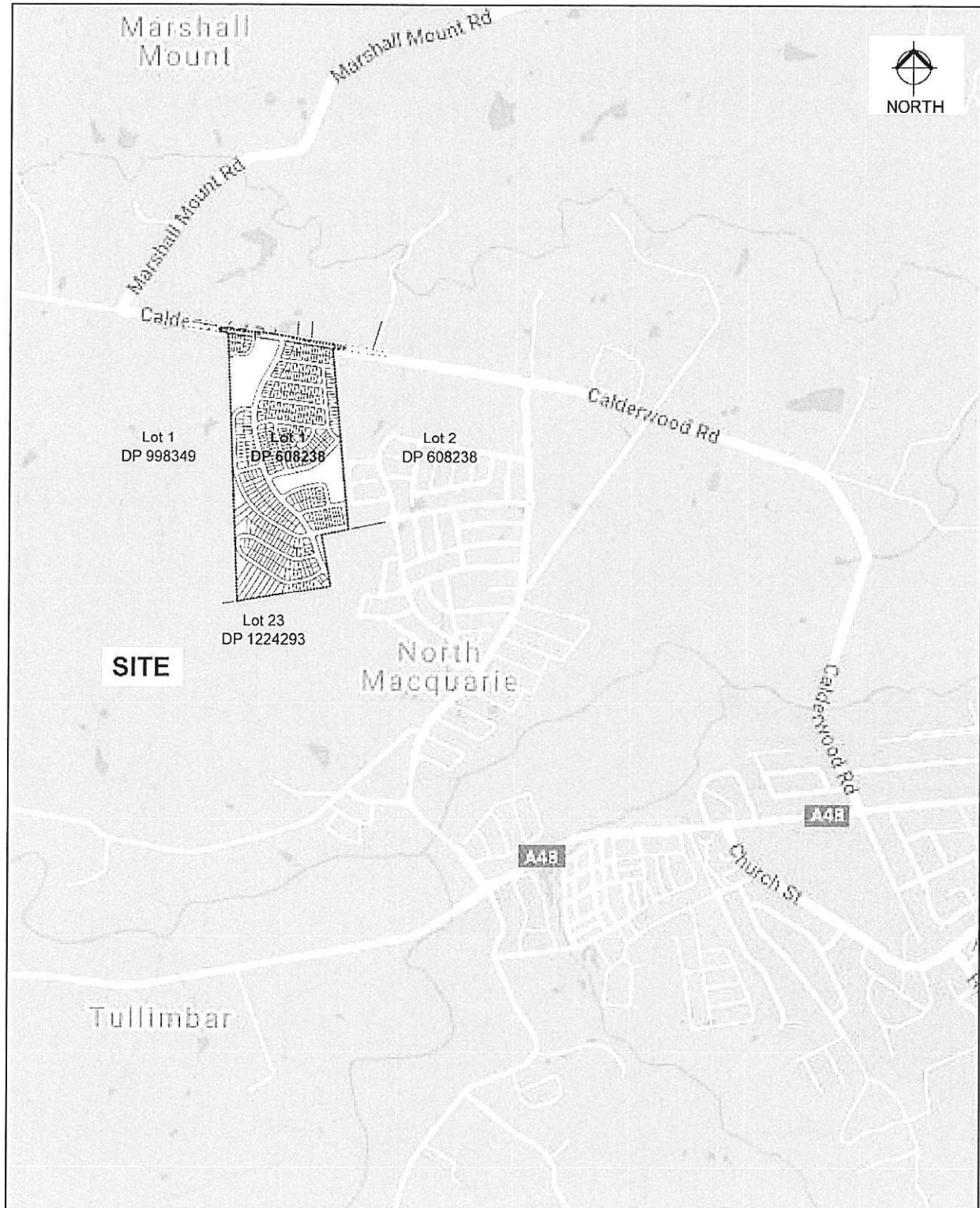
Units is the number of Lots to be created

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
Total	455		\$2,186,798.25

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.

APPENDIX A - LAND



APPENDIX B – INDICATIVE PHASING PLAN


GREG DOYLE
GENERAL MANAGER

