

ITEM 6

PROPOSED VOLUNTARY PLANNING AGREEMENT WITH UNIVERSITY OF WOLLONGONG

The University of Wollongong (UoW) have requested that Council enter into a planning agreement in relation to the carrying out of public domain works over the next 10 years in Keiraville.

It is recommended that Council exhibit the draft planning agreement for community comment and grant delegation to the General Manager to determine the planning agreement after consideration of any issues raised in submissions.

### RECOMMENDATION

- 1 The draft planning agreement between UoW and Council for the carrying out of public domain works be exhibited for community comment for a minimum period of 28 days.
- 2 Delegation be granted to the General Manager to determine whether to enter into the planning agreement after consideration of any issues raised in submissions.

### REPORT AUTHORISATIONS

Authorised by: David Farmer, General Manager

### ATTACHMENTS

- 1 Draft UoW Planning Agreement (contains Schedule of Works and Dates for Delivery)

### BACKGROUND

A planning agreement is entered into by Council and a developer where both parties see greater value than would be delivered by conventional payments under Section 94. This is normally achieved by the developer being able to achieve construction efficiencies on public infrastructure in conjunction with their development and/or providing a greater level of works than would be provided by a monetary contribution. The greater level of public works are generally selected to benefit both the project and the general public and can create a win/win outcome.

UoW is a significant contributor to the culture, life and economy of the Illawarra.

Its Keiraville Campus generates extensive traffic and pedestrian movement.

Over the next 10 years, the UoW Masterplan calls for significant building and investment, particularly on the Keiraville campus and in other areas nearby owned by UoW.

Under the *Environmental Planning and Assessment Act 1979* (NSW) ("the Act"), development by the University that requires development consent under Part 4 of the Act is relevantly a Crown development application.

The Act does not permit Council to refuse consent to a Crown development application, except with the approval of the relevant NSW Government Minister, or impose a condition on its consent to a Crown development application except with the approval of the University or the Minister.

Council has adopted a Contributions Plan under the Act (the Wollongong Section 94A Development Contributions Plan 2017). That Contributions Plan provides that a full exemption from payment of a monetary contribution under the Contributions Plan will be granted to, relevantly, UoW where a proposed development relates to facilities that are "directly required by the main function of the educational facility". A partial exemption is permitted under the Contributions Plan for developments that are not directly required by the main function of the educational facility but "will provide support to its main function, such as student accommodation, car park, sports facility, playground, food court, display facility, function centre, convention hall, auditorium, community centre".

Within the confines of the Act and Council's ability to impose conditions upon development applications from UoW, the Contributions Plan provides no exemption from development that is not directly required for the main function of the educational facility and/or has potential to create additional demand for public services and amenities.

The levy payable under the Contributions Plan is 1% of the proposed cost of carrying out the development.

The University currently has before Council development application DA-2017/376, seeking development consent for a proposed car park, riparian works and demountable buildings at the Keiraville Campus.

As part of that development application, UoW have offered to enter into a Voluntary Planning Agreement ("VPA") under the Act for the carrying out of the work described in the VPA, in lieu of any monetary contribution that it may have otherwise been required to pay to Council under the Act and Contributions Plan for the next 10 years.

The land the subject of the VPA is Lot 2 DP252694, otherwise known as Kooloobong Oval, as well as public roads known as Northfields Avenue and Robsons Road, Keiraville.

## PROPOSAL

The draft VPA (attachment 3) proposes that UoW carry out the following work, at the identified estimated costs and delivery dates set out below:

	<b>Project</b>	<b>Estimated Cost for Developer</b>	<b>Description</b>	<b>Delivery Date (by end of Financial year Shown)</b>
1	Kooloobong Ovals Upgrade	\$3,265,000	Redevelop both fields for high intensity usage. Includes synthetic playing surfaces, fencing, lighting, seating and amenities upgrades.	2019/20
2	Pedestrian Crossing Upgrades	\$100,000	Convert existing pedestrian blisters into pedestrian refuge crossing facilities for safer pedestrian movement.	2021/22
3	Footpath Upgrades	\$400,000	Upgrade sections of existing footpath on northside of Northfields Avenue and install a new footpath along the southside from Botanic Gardens entrance westward to Robsons Road intersection.	2022/23
4	Retaining Wall Replacement	\$160,000	Replace existing timber retainers with quality masonry retaining wall along northside of Northfields Avenue at eastern end.	2023/24
5	Avenue Tree Plantings	\$100,000	Plant suitable trees for 'avenue' amenity along southside footpath of Northfields Avenue including tree protection.	2024/25
6	Precinct Entry Statements	\$525,000	Install 'entry statement' landscaping, sculpture and paving treatments at both ends of Northfields Avenue (Irvine Street and Robsons Road intersections).	2024/25

	Project	Estimated Cost for Developer	Description	Delivery Date (by end of Financial year Shown)
7	Intersection Upgrade	\$500,000 (Half Cost with Council— Total \$1M)	Improve operation of existing intersection subject to and consistent with traffic studies and analysis undertaken by Council.	2020/21
8	Robsons Road Drainage Works	\$500,000	Upgrade Robsons culvert drainage to reduce flooding impacts to the road and the western part of the campus, whilst ensuring no greater impacts downstream of the culvert.	2019/20
9	Undergrounding Power Lines	\$1,500,000	Installation of existing overhead high voltage and low voltage power lines along the northside of Northfields Avenue between the UOW Western Entry and Robsons Road. Install new LED street lighting to P2 lighting level.	2026/26
	<b>Totals</b>	<b>\$7,050,000</b>		

Once executed, the VPA would permit UoW to implement its Masterplan (as amended from time to time) for the next 10 years without any necessity to pay monetary contributions to Council.

Separate from the VPA, the existing Licence to utilise Kooloobong Ovals will be extended. That proposed licence will subsist for 20 years but, as a licence, will still enable other community groups to utilise the ovals from time to time. The surface improvements proposal will allow a greater level of use of the fields and provide a benefit to the broader community given the growing demand for access to playing fields in central areas.

The draft VPA will benefit Council and the Community, as well as provide a benefit to the presentation of the streetscape of Northfields Avenue, with consequential benefits to UoW. It is recommended that the draft VPA be exhibited for community input.

## CONSULTATION AND COMMUNICATION

If Council endorses the VPA, it will be exhibited for community input for a minimum period of 28 days.

## INTERNAL CONSULTATION

Consultation with Council Officers, Environment & Strategy, Drainage & Infrastructure and Works have occurred as part of the existing associated development application and the proposed VPA. Subject to the terms of the VPA remaining as per the draft, no concerns have been raised.

## PLANNING AND POLICY IMPACT

### *Wollongong Community Strategic Plan 2022.*

This report contributes to the Wollongong 2022 objective, the sustainability of our environment is improved under the Community Goal “we value and protect our environment”.

## FINANCIAL IMPLICATIONS

The draft VPA provides for the 9 sets of works at a total estimated cost of \$7,050,000 over the next 10 years.

By contrast a 1% levy, even if imposed upon all works carried out under the UoW Masterplan for the next 10 years, would not raise a similar amount.

Council is also continuing to invest significantly towards new assets and maintenance in the Keiraville/Gwynneville precinct. That actual program for capital and maintenance will be clearer once the Keiraville/Gwynneville Access and Movement Strategy (likely June 2018), Botanic Gardens Masterplan and Beaton Park Masterplan are finalised.

## CONCLUSION

UoW have lodged a draft Voluntary Planning Agreement with Council on public domain works. If executed, the VPA would require UoW to carry out the identified public domain works in accordance with Council’s designs and approvals within the next 10 years.

Over the next 10 years of the UoW Masterplan, no monetary contributions would be levied by Council.

It is recommended that Council endorse the VPA for exhibition to enable community comment, and then delegate to the General Manager the determination to enter into the VPA after exhibition has closed.

# VOLUNTARY PLANNING AGREEMENT

Wollongong City Council

and

University Of Wollongong



## WOLLONGONG CITY COUNCIL

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ABN: 63 139 525 939 – GST Registered



## VOLUNTARY PLANNING AGREEMENT

DATE

[DATE]

PARTIES

**WOLLONGONG CITY COUNCIL** of 41 Burelli Street,  
Wollongong in the State of New South Wales (**Council**)

**UNIVERSITY OF WOLLONGONG** of Northfields Avenue,  
Wollongong in the State of New South Wales (**Developer**)

### BACKGROUND

1. The Council is the registered proprietor of the Land.
2. The Developer has made a Development Application with Council.
3. The Developer has offered to provide the Contributions.

### 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>Authority</b>	means (as appropriate) any: <ol style="list-style-type: none"><li>(1) federal, state or local government;</li><li>(2) department of any federal, state or local government;</li><li>(3) any court or administrative tribunal; or</li><li>(4) statutory corporation or regulatory body.</li></ol>
<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 (but excludes consequential loss and special loss).
<b>Complete, Completed Completion</b>	means completed in accordance with the requirements of this document.
<b>Contribution Value</b>	means, with respect to each Item of Work, the Development Cost of that Item of Work determined in accordance with clause 6.7.



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<b>Contributions</b>	means the provision of the Works by the Developer in accordance with this document.
<b>Defects Liability Period</b>	means the period commencing on Completion of an Item of Work and expiring twenty-four (24) calendar months later.
<b>Designated Land</b>	means that part of the Land identified on the plan attached as Schedule 3.
<b>Development</b>	means the proposed development shown on the University Of Wollongong Masterplan dated August 2016 (as amended from time to time) and attached as Schedule 4 to this agreement.
<b>Development Approval</b>	means any development consent issued to the Developer subsequent to the grant of the Development Consent.
<b>Development Application</b>	means the development application lodged by the Developer with Council and assigned the designation DA-2017/376,
<b>Development Consent</b>	means a development consent issued under the Act with respect to the Development Application.
<b>Development Cost</b>	means in relation to an Item of Work: <ul style="list-style-type: none"> <li>the construction costs of that item;</li> <li>any costs incurred under a building contract in relation that item;</li> <li>any costs or expenses payable to an Authority in relation that item.</li> </ul>
<b>Encumbrance</b>	means an interest or power: <ol style="list-style-type: none"> <li>(1) reserved in or over an interest in any asset;</li> <li>(2) created or otherwise arising in or over any interest in any asset under any mortgage, charge (whether fixed or floating), pledge, lien, hypothecation, title retention, conditional sale agreement, hire or hire purchase agreement, option, restriction as to transfer, use or possession, easement, subordination to any right of any other person and any other encumbrance or security interest, trust or bill of sale; or</li> <li>(3) by way of security for the payment of a debt or other monetary obligation or the performance of any obligation.</li> </ol>
<b>EPA</b>	means the NSW Environment Protection Authority.
<b>GST Law</b>	means <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth) and any other Act or regulation relating to the imposition or administration of the goods and services tax.
<b>Item of Work</b>	means an individual item of the Works as set out in Schedule 3.
<b>Land</b>	means the whole of the land contained in Folio Identifier 2/252694 as well as public roads known as Northfields Avenue and Robsons Road Keiraville.
<b>Law</b>	means all legislation, regulations, by-laws, common law and other binding order made by any Authority.
<b>Occupation Certificate</b>	means an occupation certificate as defined in s109C(1)(c) of the Act.
<b>Planning Legislation</b>	means the Act, the <i>Local Government Act 1993</i> (NSW) and the <i>Roads Act 1993</i> (NSW).





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<b>Quantity Surveyor</b>	selected and appointed by Council from a list of Quantity Surveyors recommended by the Developer all of whom must be members of Panels for the NSW Department of Commerce or Local Government Procurement.
<b>Requirements and Objectives</b>	will generally include reference to the following documents (as amended or updated from time to time): City Centre Public Domain Technical Manual Wollongong City Council Standard Engineering Drawings Wollongong Development Control Plan 2009 Chapter E13 - Floodplain Management Chapter E14 - Stormwater Management Chapter E6 - Landscaping Chapter E17 - Preservation & Management of Trees & Vegetation
<b>Subdivision Certificate</b>	means a subdivision certificate as defined in s109C(1)(d) of the Act.
<b>Works</b>	means the works specified or described in Schedule 1.

## 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.
<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





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	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>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.
<b>Gender</b>	a reference to one gender extends and applies to the other.

### 3. OPERATION

#### 3.1 Planning Agreement

This document is a planning agreement:

- (1) Within the meaning set out in s93F of the Act; and
- (2) Governed by Subdivision 2 of Division 6 of Part 4 of the Act.

#### 3.2 Application

This document applies to both the Land and the Development.

#### 3.3 Operation of document

- (1) Subject to paragraph (2), this document operates from the date it is executed by both parties.
- (2) The following clauses of this document will only operate if and when Council grants Development Consent.

### 4. APPLICATION OF S94 AND S94A

#### 4.1 Application

This document excludes the application of section 94 and section 94A of the Act to the Development.

### 5. PROVISION OF CONTRIBUTIONS

#### 5.1 Works

The Developer, at its cost and with reasonable cooperation and assistance from Council, must:

- (1) if necessary, obtain any consents, approvals or permits required by a relevant Authority, for the conduct of the Works;
- (2) secure from Council approval for the design of the Works;
- (3) carry out and complete each Item of Work by the time specified in Schedule 3;



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- (4) carry out and complete the Works:
  - (a) in accordance with the requirements of, or consents issued, by any Authority;
  - (b) in accordance with the detailed design approved by Council and any applicable Development Consent; and
  - (c) in a proper and workmanlike manner complying with current industry practice and standards, including applicable Australian standards.

### 5.2 Securing Council Approval

- (1) In order to comply with clause 5.1(2) above, the Developer must:
  - (a) consult with Council as to its Requirements and Objectives for the Works;
  - (b) prepare and submit to Council a detailed design for the Works; and
  - (c) secure Council written agreement to that detailed design.
- (2) Where Council advises the Developer it is not satisfied with the detailed design submitted, the Developer must revise the detailed design to respond to those reasons, and re-submit the design to Council.
- (3) The process at (2) continues until the Developer has secured Council agreement to the detailed design required at clause 5.1(1).

### 5.3 Kooloobong Oval Upgrade

In relation to the Item of Work No. 1 in Schedule 1, the detailed design (and construction) of the upgrade must also include:

- (a) All works to be design and constructed in accordance with relevant legislation, the BCA, Australian Standards, applicable guides, IFAB Laws of the Game, Football NSW Stadium Technical Requirements, Football NSW Competition Regulations and Football South Coast Competition Rules and Regulations as appropriate.
- (b) The pitch shall achieve the FIFA Quality accreditation (Formerly 1 Star) to the FIFA Quality Manual (Current Edition). The pitch shall be certified by an independent test team.
- (c) The field of play, technical area, lighting, player and other facilities (including dugouts) shall be in accordance with the Football NSW Stadium Technical Requirements.
- (d) The sub-base and pavement shall be designed by suitably qualified and experienced civil engineer and shall incorporate the requirements and advice from the geotechnical engineer.
- (e) Pitch and site drainage shall be considered in the design. The pitch shall be designed for a 1 in 10 year rain event of 20 minute duration.
- (f) Sprinkling systems as required to cool synthetic fields.
- (g) The sub-base and pavement shall be designed to satisfy in excess of 20 years play and must have the ability to withstand the daily use of pedestrians, motorised vehicles (ambulances, maintenance plant, cherry pickers etc) on a regular basis.
- (h) An Electrical Engineering Consultant shall be engaged to assess the adequacy of the electrical supply to the site for the proposed and future upgrades. If upgrades are required, the designer shall liaise with and seek design certification from the Electrical Authority.
- (i) Lighting shall be to semi-professional level – 200lux to all pitches. All lighting is to comply with AS2560.1, AS2560.2.3, AS4282, AS1158.3.1 and Football NSW – Football Lighting Guide.
- (j) The lighting structures and footings are to be design by suitably qualified structural and geotechnical engineers. The lighting is to be design by a suitably qualified and experienced lighting designer.
- (k) Lighting control gear shall be housed separately to distribution boards. On fields requiring multiple Lux levels, the switching shall allow selection of the required level, e.g. For a field requiring 50, 100 and 200 Lux lighting levels, switching shall allow selection of either 50, 100 or 200 Lux.



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- (l) All distribution boards shall be constructed in accordance with Council's Standard Distribution Board Specification.
- (m) The pitches shall be surrounded by a 1.2m high spectator fence in accordance with AS1725.5, AS2423, AS1163, AS4792 as appropriate.
- (n) Goalposts are to be in accordance with:
  - FIFA Rules of the Game
  - AS 4866.1 – 2007 Playing Field Equipment – Soccer Goals
  - NSW Goalposts Safety Guide
  - NSW Office of Fair Trading Act 1987

## 6 COMPLETION OF WORKS

### 6.1 Issue of Completion Notice

If the Developer considers that an Item of Work is Complete it must serve a notice (**Completion Notice**) on Council within fourteen (14) days of Completion of that item which:

- (1) is in writing; and
- (2) specifies the date on which the Developer believes the Works were Completed.

### 6.2 Notice by Council

Within the earlier of:

- (1) seven (7) days of inspecting the Item of Work set out in a Completion Notice; and
- (2) fourteen (14) days from the receipt of the Completion Notice,

Council must provide notice in writing to the Developer that the relevant Item of Work:

- (3) has been Completed; or
- (4) has not been Completed, in which case the notice must also detail:
  - (a) those aspects of the Item of Work which have not been Completed; and
  - (b) the work Council requires the Developer to carry out in order to rectify those deficiencies.

Council must act reasonably in exercising the functions under this clause 6.2.

### 6.3 Deemed Completion

If Council does not provide the Developer with notice within the time specified in clause 6.2, the Item of Work subject of a Completion Notice will be deemed to have been Completed on the date nominated in the Completion Notice.

### 6.4 Effect of Council notice

- (1) Where Council serves notice on the Developer pursuant to clause 6.2(4), the Developer must:
  - (a) rectify the deficiencies in that item in accordance with that notice within a reasonable time (not being less than twenty-eight (28) days from the date it is issued by Council); or
  - (b) serve a notice on Council that it disputes the matters set out in the notice.
- (2) Where the Developer:
  - (a) serves notice on Council in accordance with paragraph 6.4(1)(b) the dispute resolution provisions of this document apply; or
  - (b) rectifies the Works in accordance with paragraph 6.4(1)(a) it must serve upon Council a new Completion Notice for the Works it has rectified (**New Completion Notice**).

### 6.5 New Completion Notice



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The provisions of clauses 6.1 to 6.4 (inclusive) apply to any New Completion Notice issued by the Developer.

### 6.6 Works as Executed

Where an Item of Work is Completed, the Developer must provide Council, within 14 days, plans that reflect the works as executed on the Land.

### 6.7 Value of Works

- (1) Upon Completion of any Item of Work the Developer must provide Council with a certificate from a Quantity Surveyor in favour of both Council and the Developer as to the Development Cost of the relevant Item of Work.
- (2) The determination of the Quantity Surveyor as to the Development Cost of an Item of Work is conclusive and binding on the parties except in the case of manifest error.

## 7 DEFECTS LIABILITY

### 7.1 Defects Notice

- (1) Where any Item of Work is Complete but that item contains a defect which:
  - (a) adversely affects the ordinary use and/or enjoyment of that item; or
  - (b) will require maintenance or rectification works to be performed on it at some time in the future as a result of the existence of the defect,

(Defect) Council may issue a notice to the Developer (**Defects Notice**) concerning that Item of Work but only during the Defects Liability Period.
- (2) A Defects Notice must contain the following information:
  - (a) the nature and extent of the Defect;
  - (b) the work Council reasonably requires the Developer to carry out in order to rectify the Defect; and
  - (c) the time within which the Defect must be rectified by the Developer (which must be a reasonable time and not less than twenty-eight (28) days).
- (3) Despite anything in this document express or implied to the contrary, Council may only serve a total of two (2) Defects Notices on each Item of Work.

### 7.2 Developer to rectify Defects

- (1) The Developer must rectify the Defects contained within a Defects Notice prior to the date specified in that notice.
- (2) The Developer must follow the procedure set out in clause 6 in respect of the completion of the rectification of any Defect as if a reference in that clause to an Item of Work is a reference to the relevant Defect.

### 7.3 Access to Designated Land

If the Developer is required to access, use and occupy any part of the Designated Land for the purpose of discharging its obligations under this clause 7, Council will grant a fee free licence to the Developer:

- (1) with respect to so much of the relevant Designated Land; and
- (2) for such period,

that is reasonably necessary to allow the Developer to properly discharge those obligations.

### 7.4 Right of Council to step-in



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Council may, at its absolute discretion, enter upon the Land for the purpose of rectifying a Defect set out in the Defects Notice where the Developer has failed to comply with a Defects Notice, but only after giving the Developer twenty-eight (28) days written notice of its intention to do so.

### 7.5 Consequence of step-in

If Council elects to exercise the step-in rights granted to it under clause 7.4 then:

- (1) Council may:
  - (a) enter upon any part of the Land reasonably required to exercise those step-in rights; and
  - (b) rectify the relevant Defects in accordance with the Defects Notice,
- (2) the Developer must not impede or interfere with Council in exercising those rights; and
- (3) Council may claim any costs reasonably incurred by it in doing so from the Developer as a liquidated debt.

### 7.6 Costs of Council

Where Council exercises its step-in rights under clause 7.5, it may:

- (1) after giving the Developer at least fourteen (14) days prior written notice of its intention to do so, call upon the Developer to meet any costs for which the Developer is liable under clause 7.57.5(3); and
- (2) recover as a debt due in a court of competent jurisdiction the costs reasonably incurred by Council in rectifying the Defects.

## 8 WARRANTIES AND INDEMNITIES

### 8.1 Warranties

The Developer warrants to Council that:

- (1) it is able to fully comply with its obligations under this document;
- (2) it has full capacity to enter into this document; and
- (3) there is no legal impediment to it entering into this document, or performing the obligations imposed under it.

### 8.2 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.

## 9 TERMINATION OF THIS AGREEMENT

### 9.1 Termination

This agreement will terminate ten (10) years from the date it is executed, unless terminated by agreement of the parties or by operation of law.

## 10 DISPUTE RESOLUTION

### 10.1 Notice of dispute

- (1) 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:





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- (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.
- (2) 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 10.13 and except as otherwise expressly provided in this document, any Dispute must, as a condition precedent to the commencement of litigation, mediation under clause 10.5 or determination by an expert under clause 10.6, first be referred to the Representatives. The Representatives must endeavour to resolve the dispute within five (5) Business Days of the date a notice under clause 10.1 is served.

### 10.4 Disputes for mediation or expert determination

If the Representatives have not been able to resolve the Dispute, then the parties must agree within five (5) Business Days to either refer the matter to mediation under clause 10.5 or expert resolution under clause 10.6.

### 10.5 Disputes for mediation

- (1) If the parties agree in accordance with clause 10.4 to refer the Dispute to mediation, the mediation must be conducted by a mediator agreed by the parties and, 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.
- (2) If the mediation referred to in paragraph (1) 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 Choice of expert

- (1) If the Dispute is to be determined by expert determination, this clause 10.6 applies.
- (2) The Dispute must be determined by an independent expert in the relevant field:
  - (a) agreed between and appointed jointly by the parties; or
  - (b) in the absence of agreement within five (5) Business Days after the date that the matter is required to be determined by expert determination, appointed by the President of the Law Society of New South Wales for the time being.
- (3) If the parties fail to agree as to the relevant field within five (5) Business Days after the date that the matter is required to be determined by expert determination, either party may refer the matter to the President of the Law Society of New South Wales for the time being whose decision as to the relevant field is final and binding on the parties.
- (4) The expert appointed to determine a Dispute:
  - (a) must have a technical understanding of the issues in dispute;



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- (b) must not have a significantly greater understanding of one party's business, functions or operations which might allow the other side to construe this greater understanding as a bias; and
- (c) must inform the parties before being appointed of the extent of the expert's understanding of each party's business or operations and, if that information indicates a possible bias, then that expert must not be appointed except with the written approval of the parties.
- (5) The parties must promptly enter into an agreement with the expert appointed under this clause setting out the terms of the expert's determination and the fees payable to the expert.

### 10.7 Directions to expert

- (1) In reaching a determination in respect of a dispute under clause 10.6, the independent expert must give effect to the intent of the parties entering into this document and the purposes of this document.
- (2) The expert must:
  - (a) act as an expert and not as an arbitrator;
  - (b) not accept verbal submissions unless both parties are present;
  - (c) on receipt of a written submission from one party, ensure that a copy of that submission is given promptly to the other party;
  - (d) take into consideration all documents, information and other material which the parties give the expert which the expert in its absolute discretion considers relevant to the determination of the Dispute;
  - (e) not be expected or required to obtain or refer to any other documents, information or material (but may do so if the expert so wishes);
  - (f) issue a draft certificate stating the expert's intended determination (together with written reasons), giving each party ten (10) Business Days to make further submissions;
  - (g) issue a final certificate stating the expert's determination (together with written reasons); and
  - (h) act with expedition with a view to issuing the final certificate as soon as practicable.
- (3) The parties must comply with all reasonable directions given by the expert in relation to the resolution of the Dispute and must within the time reasonably period specified by the expert, give the expert:
  - (a) a short statement of facts;
  - (b) a description of the Dispute; and
  - (c) any other documents, records or information which the expert requests.

### 10.8 Expert may convene meetings

- (1) The expert must hold a meeting with all of the parties present to discuss the Dispute. The meeting must be conducted in a manner which the expert considers appropriate. The meeting may be adjourned to, and resumed at, a later time in the expert's discretion.
- (2) The parties agree that a meeting under paragraph (1) is not a hearing and is not an arbitration.

### 10.9 Other courses of action

- If:
- (1) the parties cannot agree in accordance with clause 10.4 to refer the matter to mediation or determination by an expert; or
  - (2) the mediation referred to in clause 10.5 has not resulted in settlement of the dispute, the mediation has been terminated and the parties have not agreed to refer the matter to expert determination within five (5) Business Days after termination of the mediation,





## VOLUNTARY PLANNING AGREEMENT

then either party may take whatever course of action it deems appropriate for the purpose of resolving the Dispute.

### 10.10 Final determination of expert

The parties agree that the final determination by an expert will be final and binding upon them except in the case of fraud or misfeasance by the expert.

### 10.11 Costs

If any independent expert does not award costs, each party must contribute equally to the expert's costs in making the determination.

### 10.12 Remedies available under the Act

This clause 100 does not operate to limit the availability of any remedies available to Council under sections 123, 124 and 125 of the Act.

### 10.13 Urgent relief

This clause 100 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:

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

### 11.3 Severance of provisions

- (1) 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 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.
- (2) 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.



## VOLUNTARY PLANNING AGREEMENT

### 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

In this clause 13 the terms "Taxable Supply", "GST", "Tax Invoice" and "Input Tax Credit" have the meaning given to them in the GST Law.

#### 13.2 Non-monetary supplies

- (1) The parties agree that any supplies made by one party to the other pursuant to this agreement (including Works and the dedication of land) will be exempt from GST pursuant to Division 82 of the GST Law.
- (2) In the event that the Australian Taxation Office determines that a supply for non-monetary consideration that a party makes to the other is a Taxable Supply then the parties agree to negotiate in good faith to agree to the GST inclusive market value of the consideration for that Taxable Supply as follows:
  - (a) The party making the Taxable Supply will issue a Tax Invoice to the other as soon as practicable after agreeing to the GST inclusive market value and will disclose the amount of GST included in the GST inclusive market value.
  - (b) The recipient of the Taxable Supply will pay to the other party the amount of the included GST within fifteen (15) days of receiving the Tax Invoice.
- (3) In the event that the Australian Taxation Office determines that each make a Taxable Supply for non-monetary consideration to the other, any GST payable by one party to the other will be off-set against each other and any net difference will be paid by the party with the greater obligation under this clause 18.
- (4) Any disagreement between the parties concerning the GST inclusive market value of any consideration will be determined under clause 10.

#### 13.3 Survival of clause

This clause 13 continues to apply after the expiration or termination of this agreement.

### 14 ACCESS TO LAND

#### 14.1 Application of clause

This clause applies if the Developer accesses, uses and/or occupies any land owned by Council in performing its obligations or exercising its rights under this document (Necessary Access).

#### 14.2 Terms of Licence

The terms of Schedule 2 apply to any Necessary Access.

### 15 LEGAL COSTS

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

### 16 ADMINISTRATIVE PROVISIONS



## VOLUNTARY PLANNING AGREEMENT

### 16.1 Notices

- (1) 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.
- (2) 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 conformation of receipt can be retrieved, on the day it was sent if a Business Day, otherwise on the next Business Day.
- (3) 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.

### 16.2 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.

### 16.3 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.

### 16.4 Counterparts

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

### 16.5 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.

### 16.6 Power of Attorney

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

- (1) the revocation or suspension of the power of attorney by the grantor; or
- (2) the death of the grantor.

### 16.7 Governing law

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

- (1) 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
- (2) may not seek to have any proceedings removed from the jurisdiction of New South Wales on the grounds of forum non conveniens.



## VOLUNTARY PLANNING AGREEMENT

### EXECUTED AS AN AGREEMENT

**EXECUTED** by and on behalf of **WOLLONGONG CITY COUNCIL** by its Authorised Officer:

\_\_\_\_\_  
**Signature of Authorised Person**

\_\_\_\_\_  
**Signature of Witness**

\_\_\_\_\_  
**[Print] Name of Authorised Officer**

\_\_\_\_\_  
**[Print] Name of Witness**

\_\_\_\_\_  
**Office Held**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Date**

**EXECUTED** by and on behalf of **UNIVERSITY OF WOLLONGONG** by its delegated authority:

\_\_\_\_\_  
**Signature of Authorised Person**

\_\_\_\_\_  
**Signature of Witness**

\_\_\_\_\_  
**[Print] Name of Authorised Person**

\_\_\_\_\_  
**[Print] Name of Witness**

\_\_\_\_\_  
**Date**



## VOLUNTARY PLANNING AGREEMENT

### SCHEDULE 1: REQUIREMENTS UNDER SECTION 93F OF THE ACT

REQUIREMENT UNDER THE ACT	THIS PLANNING AGREEMENT
<b>Planning instrument and/or development application – (Section 93F(1))</b> The Developer has: <ul style="list-style-type: none"> <li>(a) sought a change to an environmental planning instrument.</li> <li>(b) made, or proposes to make, a Development Application.</li> <li>(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.</li> </ul>	<ul style="list-style-type: none"> <li>(a) No</li> <li>(b) Yes</li> <li>(c) No</li> </ul>
<b>Description of land to which this agreement applies – (Section 93F(3)(a))</b>	Refer to clause 1 of the Planning Agreement.
<b>Description of change to the environmental planning instrument to which this agreement applies – (Section 93F(3)(b))</b>	N/A
<b>Application of section 94 of the Act – (Section 93F(3)(d))</b>	Refer to clause 4.1 of the Planning Agreement.
<b>Applicability of section 94A of the Act – (Section 93F(3)(d))</b>	Refer to clause 4.1 of the Planning Agreement.
<b>Consideration of benefits under this agreement if section 94 applies – (Section 93F(3)(e))</b>	N/A.
<b>Mechanism for Dispute resolution – (Section 93F(3)(f))</b>	Refer to clause 10 of the Planning Agreement.
<b>Enforcement of this agreement (Section 93F(3)(g))</b>	Refer to clause 9 of the Planning Agreement.
<b>No obligation to grant consent or exercise functions – (Section 93F(3)(9))</b>	Refer to clause 11 of the Planning Agreement.





## VOLUNTARY PLANNING AGREEMENT

### SCHEDULE 2: TERMS OF LICENCE

#### 1. DEFINITIONS

For the purposes of this Schedule 2:

- (1) the **Land** is the land being accessed under the Licence;
- (2) the **Licence** means the licence of the Land to which this Schedule applies;
- (3) the **Licensee** is the party accessing the Land; and
- (4) the **Licensor** is the owner of the Land.

#### 2. LICENCE

##### 2.1 Personal Rights

- (1) The Licence is personal to the Licensee.
- (2) The Licensee may not encumber, assign or transfer (either directly or indirectly) the Licence without the prior written consent of the Licensor.
- (3) The Licensor may refuse the granting of consent under paragraph (2) without reason and at its absolute discretion.

##### 2.2 Leasehold interest

- (1) This deed does not grant to the Licensee a leasehold interest in the Land. The parties agree that:
  - (a) the Licence does not confer exclusive possession of the Land on the Licensee;
  - (b) the Licensee may not exclude the Licensor, its officers, employees and invitees from:
    - (i) entry onto the Land; and/or
    - (ii) the performance of any works on the Land;provided that such entry onto and/or performance of work on the Land does not unreasonably interfere with the activities being carried out on the Land by the Licensee,
- (2) the Licensee does not have any right to quiet enjoyment of the Land; and
- (3) the Licensee will not at any time seek to enforce an interest in the Land in competition with the interest held by the Licensor.

#### 3. COMPLIANCE WITH AUTHORITIES

##### 3.1 No warranty as to suitability for use

The Licensee acknowledges and agrees that the Licensor has not made any representation or warranty to the Licensee regarding the suitability of the Land for the purposes of the Licensee.

##### 3.2 Compliance with the terms of the consents

The Licensee must comply with the requirements of all Authorities in relation to its access to the Land and the conduct of any activities on it by the Licensee.

##### 3.3 Compliance with directions from Authorities

The Licensee must comply with all notices, directions, orders or other requests served upon itself or the Licensor and which arise from the conduct of any activities on the Land by the Licensee.



## VOLUNTARY PLANNING AGREEMENT

### 3.4 Obtaining further consents

- (1) If the Licensee requires further consents to conduct activities on the Land it must:
  - (a) make such applications itself; and
  - (b) bear all costs incurred by it in relation to obtaining the relevant consent.
- (2) The Licensor agrees that it will, where required, sign all authorities reasonably required by the Licensee to make any application to any Authority.

## 4. LIMITATION OF THE LICENSOR'S LIABILITY

### 4.1 Insurances and equivalent protections

- (1) The Licensee must effect and keep current and in force the following policies of insurance or equivalent protections:
  - (a) Broadform Public Liability cover with a reputable insurance company or ASIC-regulated mutual fund in an amount of \$20,000,000 for any one occurrence in respect of any liability for:
    - (i) personal injury or death of any person; and
    - (ii) loss or damage to property.
  - (b) Workers compensation insurance or self-insurance under the *Workers Compensation Act 1987* covering all persons employed or deemed to be employed by the Licensee in connection with the conduct of the activities on the Land by the Licensee;
  - (c) A comprehensive policy of motor vehicle insurance or equivalent protections or an unlimited third party property insurance or equivalent protections policy in respect of all motor vehicles used in the performance of the activities on the Land by the Licensee; and
  - (d) A contractor's risk policy of insurance or equivalent protections in respect of all plant and equipment (including unregistered motor vehicles) used in the conduct of the activities on the Land by the Licensee.

### 4.2 Inspection of insurance or equivalent protections

- (1) The Licensee must produce at the renewal of each policy a certificate of currency issued by the provider establishing that the policy is valid.
- (2) The Licensor may carry out random audits to verify insurances or equivalent protections held by the Licensee. The Licensee will assist in any audit and provide evidence of the terms and currency of the insurance or equivalent protections policies wherever requested by the Licensor.

### 4.3 Cancellation of insurance or equivalent protections

If any policy is cancelled either by the Licensee or the provider, the Licensee must notify the Licensor immediately.

### 4.4 Risk

The Licensee uses and occupies the Land at its own risk.

### 4.5 Indemnity

The Licensee indemnifies the Licensor against any Claim (of whatever nature) made arising from the Licensee's use and/or occupation of the Land, but only to the extent that any such Claim does not arise as a result of the negligent or deliberate acts or omissions of Council or its employees, agents or contractors.





## VOLUNTARY PLANNING AGREEMENT

### SCHEDULE 3: ITEMS OF WORK

	Project	Estimated Cost for Developer	Description	Delivery Date (by end of Financial Year shown)
1	Kooloobong Ovals Upgrade	\$3,265,000	Redevelop both fields for high intensity usage. Includes synthetic playing surfaces, fencing, lighting, seating and amenities upgrades.	2019/20
2	Pedestrian Crossing Upgrades	\$100,000	Convert existing pedestrian blisters into pedestrian refuge crossing facilities for safer pedestrian movement.	2021/22
3	Footpath Upgrades	\$400,000	Upgrade sections of existing footpath on northside of Northfields Avenue and install a new footpath along the southside from Botanic Gardens entrance westward to Robsons Road intersection.	2022/23
4	Retaining Wall Replacement	\$160,000	Replace existing timber retainers with quality masonry retaining wall along northside of Northfields Avenue at eastern end.	2023/24
5	Avenue Tree Plantings	\$100,000	Plant suitable trees for 'avenue' amenity along southside footpath of Northfields Avenue including tree protection.	2024/25
6	Precinct Entry Statements	\$525,000	Install 'entry statement' landscaping, sculpture and paving treatments at both ends of Northfields Avenue (Irvine Street and Robsons Road intersections).	2024/25
7	Intersection Upgrade	\$500,000 (Half Cost with Council- Total \$1M)	Improve operation of existing intersection subject to and consistent with traffic studies and analysis undertaken by Council.	2020/21
8	Robsons Road Drainage Works	\$500,000	Upgrade Robsons culvert drainage to reduce flooding impacts to the road and the western part of the campus, whilst ensuring no greater impacts downstream of the culvert	2019/20
9	Undergrounding Power Lines	\$1,500,000	Installation of existing overhead high voltage and low voltage power lines along the northside of Northfields Avenue between the UOW Western Entry and Robsons Road. Install new LED street lighting to P2 lighting level.	2025/26
	<b>Total</b>	<b>\$7,050,000</b>		



## SCHEDULE 4: MASTERPLAN



SCHEDULE 4 – UOW Wollongong Campus Master Plan 2016-2036 Overview (Excerpt from UOW Wollongong Campus Master Plan 2016-2036, p.12)

