

ITEM 1

POST EXHIBITION - FORMER CORRIMAL COKE WORKS SITE - DRAFT PLANNING AGREEMENT

On 27 June 2022, Council resolved to exhibit the draft Planning Agreement for the former Corrimal Coke Works site.

The draft Planning Agreement relates to the provision of community infrastructure items, a riparian corridor, and affordable housing to be provided on the site.

The draft Planning Agreement and Explanatory Note were exhibited from 27 July to 26 August 2022 and 214 submissions were received. It is recommended that the Planning Agreement be finalised.

### RECOMMENDATION

The General Manager be delegated authority to finalise and execute the Planning Agreement (Attachment 1) between Wollongong City Council and LegPro70 Pty Ltd, as trustee for LegPro 70 Unit Trust, and Illawarra Coke Company Pty Ltd for the former Corrimal Coke Works site.

### REPORT AUTHORISATIONS

Report of: Chris Stewart, Manager City Strategy

Authorised by: Linda Davis, Director Planning + Environment - Future City + Neighbourhoods

### ATTACHMENTS

- 1 Final draft Planning Agreement with tracked changes
- 2 Explanatory Note

### BACKGROUND

#### Planning Proposal

The former Corrimal Coke Works site is located at 27 Railway Street, Corrimal. It consists of four (4) lots and has an area of approximately 18.167 hectares. It is bounded by the main southern railway line on the east, Memorial Drive and residential buildings on the west, Railway Street to the north and Towradgi Creek and residential buildings to the south. The site is traversed by Towradgi Creek along the southern extent and North Corrimal Creek through the site.

On 1 November 2021, Council resolved to finalise the Planning Proposal for the site to permit medium density residential development. On 29 April 2022, the Wollongong Local Environment Plan (LEP) 2009 (Amendment 50) was notified by the NSW Department of Planning and Environment (DPE). The Amendment rezoned the site from IN3 Heavy Industrial and RE2 Private Recreation zoned land to RE1 Public Recreation, R3 Medium Density Residential and SP2 Infrastructure.

On 6 June 2022, Council adopted the Wollongong Development Control Plan (DCP) 2009 Chapter D19 Former Corrimal Coke Works to guide development consistent with the adopted Master Plan 2021.

#### Planning Agreement

A Planning Agreement is a voluntary arrangement between a developer and Council to be used for or applied towards the provision of public infrastructure or another public purpose.

Negotiations have been ongoing since August 2019 to deliver an affordable housing outcome and other aspects of the adopted Master Plan 2021 for the site.

The terms of the offer to enter into a Planning Agreement under Section 7.4 of the *Environmental Planning and Assessment Act 1979* will result in delivery of the following by the developer -

- Provide an embellished central village park with a minimum size of approx. 3,000sqm.
- Provide an embellished southern recreation park of approx. 7,000sqm.
- Dedicate the riparian corridor of approx. 76,000sqm.

- Provide a north-south shared path through the site generally within or adjacent to the riparian corridor.
- Provide a shared path on Railway Street, from Cross Street to the railway crossing.
- Dedicate 2,467sqm of land identified on Council's Land Reservation Acquisition Map in the north-east of the site.
- Construct a four-way roundabout at the intersection of Railway Street and Harbinger Street.
- Provide permanent public access from the development through to Corrimal Station.
- Transfer land to a registered Community Housing Provider to allow for the development of 35 affordable rental housing dwellings.

Delivery of the items have varying requirements in terms of embellishment, maintenance and dedication linked to certain stages of the development.

The draft Planning Agreement proposes to exclude the application of any further Development Contributions being levied for development on the site (see Clause 3.1(a) and 6.4(e) of the Agreement).

The Letter of Offer and draft Planning Agreement will secure the provision of infrastructure items and open space in Council's ownership. It is considered that the draft Planning Agreement will result in a positive outcome for the community.

On 27 June 2022, Council resolved to endorse the draft Planning Agreement for exhibition which occurred between Wednesday 27 July and Friday 26 August 2022.

## PROPOSAL

As a consequence of the exhibition, 214 submissions were received from the community and stakeholders. A briefing to Councillors was provided on 10 October 2022 detailing the outcomes of the exhibition process.

The issues raised in the submissions and Council staff response is detailed in the Consultation and Communication section of this report.

Additional information available since the June 2022 endorsement of the draft Planning Agreement for exhibition includes -

- Amended areas for the southern recreation park and riparian corridor, as a result of more detailed survey work.
- Updated cost estimates for the proposed land dedication and embellishment works.

The proponent has undertaken recent survey definition work and has requested minor adjustment to the area of dedicated land. New costing has been received that reflect the amended site areas and building indexation since May 2022. The amendments to the draft Planning Agreement are shown with tracked changes in Attachment 1.

Staff have commissioned a valuation company to peer review the proponent's valuation methodology for the land identified on Council's Land Reservation Acquisition Map. The proposed land dedication is nominated as a contribution offset item. Hence it entails the offsetting of contributions owed rather than a purchase of land by Council. As discussed in the Financial Implications section of this report, the combined value of contribution offset items under the draft Planning Agreement significantly exceed the 1% development levy able to be charged under the Wollongong City-wide Development Contributions Plan 2022. That exceedance will account for any variance in the land valuations should it be identified in the peer review.

It is recommended that the draft Planning Agreement with tracked changes (Attachment 1) be endorsed for finalisation by the General Manager.

## CONSULTATION AND COMMUNICATION

The draft Planning Agreement was exhibited from Wednesday 27 July to Friday 26 August 2022 via -

- Notice in the Illawarra Mercury – community update on 27 July 2022.
- Council's Our.Wollongong exhibition webpage.
- Direct mailout (28 letters and 135 emails) to surrounding residents and other stakeholders.
- The documents were available at Wollongong, Corrimal and Thirroul libraries and the Wollongong Administration Centre.

Council webpage was visited 295 times, and 129 copies of the document were downloaded.

In response to the exhibition process, Council received 214 submissions including -

- A petition with 403 signatures supported the inclusion of an off-leash dog park.
- 39 emails.
- The 14 on-line survey comments.
- 160 written submissions from residents, of which -
  - 34 of the submissions were from residents with Corrimal address, and 3 submissions indicated that the author worked in Corrimal.
  - 28 of the submissions were from residents with a Wollongong address.
  - 9 submissions from residents with a Woonona address.

The following breakdown of the submissions is provided -

- State agencies -

Agency	Comment
Water NSW	No comment
Transport for NSW	<ul style="list-style-type: none"> <li>• Notes that there has been separate correspondence between the developer and the DPE for a separate Planning Agreement to meet satisfactory arrangements for state infrastructure.</li> <li>• General support for applying developer contributions toward funding local infrastructure items, such as recreation, open space and active transport infrastructure.</li> <li>• Seeks continued correspondence with Sydney Trains/Transport Asset Holding Entity (TAHE) prior to finalising the Planning Agreement. Council continues to engage with State agencies in relation to service enhancements.</li> </ul>

- Community groups and organisations -

Community Group	Comment
National Trust of Australia (NSW) Illawarra Shoalhaven Branch	<ul style="list-style-type: none"> <li>• Support for the proposed plans for the interpretation of existing heritage structures and general history of the site, including Aboriginal heritage should be extended to ecological/natural heritage.</li> <li>• The restoration of the heritage items needs to occur regardless, and needs to occur early in the staging plan. There is no confidence in the proposed mechanism for funding the maintenance of heritage items.</li> <li>• All mature perimeter trees should be retained and are essential to the site's character. There must be a plan for succession planting implemented.</li> </ul>

Community Group	Comment
Illawarra Bicycle User Group Inc.	<ul style="list-style-type: none"> <li>• Important the site is integrated into the existing and planned cycling network.</li> <li>• Request the final Planning Agreement include the following changes -</li> </ul>
	<ul style="list-style-type: none"> <li>– Provide a footpath and separated bike path at road level per 2021 NSW design guidance on Railway St, from Cross St to the railway crossing.</li> <li>– Construct a four-way roundabout at the intersection of Railway Street and Harbinger Street designed to prioritise the safe movement of people walking, including people with vision impairment or low vision, and accommodate an on-road separated cycleway.</li> <li>• Request Council meet with stakeholder groups to provide input into the design of Railway St to ensure best outcome for the community and to meet Council's Community Strategic Plan.</li> </ul>
Corrimal Community Action Group	<ul style="list-style-type: none"> <li>• Is in disagreement with this Planning Agreement and has raised a range of concerns over the past four years about the negative public impacts of the proposed development. In summary -             <ul style="list-style-type: none"> <li>– Planning Agreement seems to be another stage in progressing this development proposal that ignores the concerns of the community and is a very sad lost opportunity for the community of Corrimal and the wider Wollongong community.</li> <li>– It fails to make any genuine attempt to deal with the traffic issues that will result from this development.</li> <li>– It fails to make any mention of the impacts of global warming or make any contribution to enable this community to meet the carbon reduction goals set by Wollongong City Council or the State and Federal governments.</li> <li>– It offers large areas of land, including a highly engineered realigned creek line, to Council which will have to be managed into the long term at the expense of rate payers.</li> <li>– It fails to make any long-term contribution to the maintenance of heritage features that require preservation.</li> <li>– It fails to offer the community an indoor meeting space or museum to preserve the soon-to-be-lost story of the coke making industry and its significance to the Illawarra.</li> <li>– It fails to offer any sort of cultural hub or indoor arts precinct which is so sorely needed in the Corrimal area.</li> </ul> </li> </ul>
WalkSydney Incorporated	<ul style="list-style-type: none"> <li>• Welcome steps to increase density in Corrimal and improve walkability but crucial to including walking links to rest of town and make streets inside the new development safe and pleasant for walking.</li> <li>• To connect the development to the rest of town for people walking we need -             <ul style="list-style-type: none"> <li>– Pedestrian crossing on Railway Street</li> <li>– Pedestrian bridge over Towradgi Creek on the southern side to link to a potential future shared path along Towradgi Creek. This would enable pedestrian access to Corrimal pool, library and shops as well as the coastal path.</li> </ul> </li> </ul>



Community Group	Comment
	<ul style="list-style-type: none"> <li>• The proposed design of Railway St with a shared path and roundabout will be a poor outcome for people walking particularly for elderly people, people with vision impairment and children. We advocate to include the following changes - <ul style="list-style-type: none"> <li>– Provide a footpath and separated bike path on Railway St from Cross St to the railway crossing (not a shared path).</li> <li>– Construct a four-way roundabout at the intersection of Railway St and Harbinger St designed to prioritise the safe movement of people walking, including people with vision impairment or low vision, on-road separated cycleway. The design should allow children to be able to cross the street without putting their life in danger. A well-suited design would be a Dutch-style roundabout that has raised, parallel crossings on each arm which enables pedestrians and cyclists to have priority over motorists.</li> <li>– Within the development, the speed limit should be the global best practice 30km/h.</li> <li>– Streets within the development should ideally have footpaths on both sides of the street. Designing streets for 30km/h speed along with display of 30km/h speed limit will mean significantly lower cost to provide and maintain these footpaths as they do not need to be raised. The absence of a slower speed limit, pedestrian crossings should be raised.</li> </ul> </li> </ul>
Safe Streets to School	<ul style="list-style-type: none"> <li>• Developers pay for connections to local shops, schools and places - <ul style="list-style-type: none"> <li>– Pedestrian crossing on Railway Street.</li> <li>– Pedestrian bridge over Towradgi Creek on the southern side.</li> </ul> </li> <li>• We would also like to see the below amendment to the Planning Agreement - <ul style="list-style-type: none"> <li>– Construct a four-way roundabout at the intersection of Railway Street and Harbinger St designed to prioritise the safe movement of children being able to cross the street. A well-suited design would be a Dutch-style roundabout that has parallel crossings (cycle and pedestrian zebra crossings) on each arm which enables pedestrians and cyclists to have priority over motorists.</li> </ul> </li> </ul> <p>Within the development, the speed limit should be the global best practice 30km/h.</p>
Cycling Without Age Illawarra	<ul style="list-style-type: none"> <li>• Towradgi Creek shared path is important but has limited utility without connection at the southern end to Memorial Dr or along Towradgi Creek to a street east of the Railway Corridor.</li> <li>• Paramount design of Railway Street and the intersection with Memorial Drive prioritise walking/cycling trips for people between homes, town centre, schools and train station for all Corrimal residents/visitors.</li> <li>• High standard for street design/operation not poor and unsafe conditions for people who ride bicycles.</li> <li>• Railway Street to be future proofed as importance east-west connection.</li> <li>• Best practice to provided separated cycle/footpaths along streets.</li> <li>• Shared pathway in future high activity area is an unacceptable outcome for people walking/riding.</li> </ul>

Community Group	Comment
	<ul style="list-style-type: none"> <li>Roundabout at Railway St and Harbinger St should be designed to slow cars, trucks and buses entering, moving around and exiting the roundabout. Australian tangential roundabout design does not slow down vehicles to safe speeds and, unlike standard intersections, the road rules do not require drivers to give way to people walking across the street when the driver is turning from a roundabout.</li> <li>People with vision impairment or low vision are also significantly disadvantaged at a roundabout and any new roundabout in Wollongong should be better designed.</li> <li>On-street parking should not take priority over safe/direct movement of people walking and using bicycles as called for in the Cycling Strategy.</li> </ul> <p>Railway Street should be connected east to Duff Pde, Murray Rd and Cawley St and west to the Town Centre and Underwood St. This link should be a priority in the IDP to correspond with the timing of the Corrimal Coke Works Development.</p>

- Individual submissions –

In terms of the individual submissions -

- 170 submitted a letter/email of support.
- 27 submitted an objection and raised issues.

The concerns raised in submissions are detailed in the table below. They have been grouped by issue. The number of submissions that raised the issue has also been listed.

Issue	Council response
Planning Agreement too brief; didn't include section on community concerns; no amount of contributions/infrastructure will offset impacts; specified information missing (3 submissions)	Planning Agreements are a technical document to ensure that identified infrastructure items are provided. The cost of the proposed infrastructure and contribution offset items is more than the contributions that would ordinarily be payable under the Wollongong City-wide Development Contributions Plan 2022.
Future maintenance burden for Council (3)	The Planning Agreement provides a maintenance period for the infrastructure items (see clause 2 in Schedule 3 of the Agreement) following which, the infrastructure items must be handed over to Council in a satisfactory condition. The development will result in growth in our rates revenue. A component of that revenue is budgeted to fund asset depreciation and part fund ongoing service costs.
Concerns that contributions are being offered as "in kind" works rather than monetary (2)	A Planning Agreement provides flexibility to obtain community infrastructure with delivery timed to meet the demand created by the development.

Issue	Council response
Explanatory Note lacked detail, assumption within read like motherhood statements not supported by the Planning Agreement (1)	The Explanatory Note is a requirement under the <i>Environmental Planning &amp; Assessment Regulations</i> and relevant practice note. The contents of it are related to planning objectives.
Concerns that the previous Council Business Paper understated concerns from the community and ignored respondents who felt the planning agreement offers some benefit, but has failed in other areas (1)	The Council report proposing the Planning Agreement be exhibited provided a summary of submissions received during previous exhibitions. The summary outlined issues raised.
Traffic Issues - within and around the proposed development. Incoming residents will still prefer to use private vehicles over public transport. Level railway crossing needs to be upgraded to bridge. (16 submissions)	<p>The Planning Agreement includes the dedication 2,467sqm of land in the north-east corner of the site for the future provision of a bridge over the railway line.</p> <p>The Planning Agreement does not exclude application of State Government imposed development contributions under section 7.24 of the <i>Environmental Planning &amp; Assessment Act</i> (see clause 3.1(b) of the Agreement). It is understood that a separate Planning Agreement with the State Government will also seek to make improvements to the transport network.</p>
Cycling Infrastructure – the proposed path along the creek will have limited utility without a connection at the southern end. Cycle path should be separate, not shared. Shared path widths should be 4m. (10)	<p>Proposed shared path extending to the southern bank of Towradgi Creek will be designed and constructed to Council standards.</p> <p>The land to the south of Towradgi Creek is owned by Council. A feasibility study for the Towradgi Creek shared path is scheduled to be delivered through the Supporting Documents Program in 2022-23.</p> <p>If, in the opinion of Council, the shared path through the site can not be delivered, it is likely that the Planning Agreement would have to be varied.</p>
Affordable Housing – not enough affordable housing; affordable housing should be available for purchase by local residents (8)	<p>It is agreed that more affordable housing is needed in the Local Government Area (LGA). The draft Housing Strategy outlines a range of proposals to increase the supply of Affordable Housing.</p> <p>On-site, the Planning Agreement requires the developer to facilitate the sale of land to a Community Housing Provider to allow delivery of 35 affordable rental housing dwellings as endorsed by Council.</p>
Development Design (8)	Noted. Not relevant to Planning Agreement.
Natural Environment – concerns regarding creek re-alignment; loss of remnant woods; impacts on Grey-headed Flying Fox camp (8)	The core camp for the Grey-headed Flying Fox will be retained. Identified natural areas impacted by the Creek re-alignment will be remediated as per future development plans, prior to handover to Council.

Issue	Council response
Active Transport – inadequate links; cycle path should be separate from pedestrian path; shared path should be 4m wide (7)	A shared path has been identified as being optimal through the site with a connection to roads to the south (i.e. Carr Street or Colgong Crescent). The proposed 2.5m wide shared paths will be constructed to Council requirements.
Climate Change – development does not consider impacts on climate change (7)	Noted. Not relevant to Planning Agreement.
Pedestrian Safety – roundabout proposed for Railway/Harbinger Streets should be designed to slow vehicles and provide for prioritised pedestrian crossings; 30km/h speed limit should apply within the site (7)	<p>The roundabout will be constructed to the required standard and will be considered through the merit-based development assessment process, as per standards.</p> <p>The speed limits within the site are not a planning agreement issue.</p>
Shared community space – offer from developer fails to offer an indoor meeting space, museum, cultural hub, or indoor meeting space (7)	A shared indoor community space has not been identified as part of the adopted Master Plan 2021 for the site. The proposed Station Plaza will however provide a community space with access to a limited range of commercial offerings and the railway station.
Heritage – no long term contribution toward maintenance of heritage items (5)	The site contains State and locally listed heritage items. The future conservation and maintenance of the items will be determined by the NSW Heritage Office, as part of the future development applications.
Street Design – high quality streets should be provided, not the status quo of poor, unsafe conditions for pedestrians/cyclists (4)	Noted. Not relevant to Planning Agreement. The street design and widths are consistent with the current DCP requirements for development of this density.
Ecological Sustainability - Development will lead to destruction of established flora/fauna including remnant rainforest. Woodland to be cleared. Ponds will be drained (2)	Noted. The extent of development was considered and determined as part of the draft Planning Proposal. The woodland adjacent to Railway Street is required to be removed to facilitate improved access to the site and alignment with Harbinger Street.
General concerns around flooding in the areas (2)	Noted. Not relevant to Planning Agreement. The extent of development was considered and determined as part of the draft Planning Proposal. The modelling associated with the proposed re-alignment of the creek corridor suggests an improved or neutral outcome in terms of flooding impacts upon the site and adjoining land.
Overdevelopment of the site (2)	Noted. Not relevant to Planning Agreement. The extent of development was considered and determined as part of the draft Planning Proposal.
Council should not inherit upkeep of heritage buildings/stacks (1)	Identified heritage items will be maintained under private ownership.

Issue	Council response
Loss of Aboriginal heritage (1)	The assessment of Aboriginal heritage impacts will continue in the development application phase of the project.
Public access will not be provided through the site (1)	Any public access lands will be in line with the DCP and Master Plan for the site – including roads, parks and the riparian corridor. An easement provided as part of the Planning Agreement will ensure access to the railway station across the privately managed Station Plaza.
Concern that the transport infrastructure and strategy team has not been involved in progressing the Planning Agreement (1)	All relevant Council teams have been consulted through the Planning Agreement process.

### Internal Consultation Undertaken

Item/Issues	Comments
Provision of an Off-leash dog area	The adopted DCP includes clause 5.13 requiring flexibility in the design of the southern recreation park to incorporate an off-leash dog area (if declared) outside the buffer zone for the Grey-headed Flying Fox camp. The southern recreation park has an area in the north-east corner that can accommodate an off-leash area. This will be considered in more detail through the future development assessment process.
Updated cost estimates	<p>The proponent has provided updated cost estimates for the various land dedication and embellishment works to reflect adjustments in the building index.</p> <p>The Letter of Offer includes a statement that both parties “<i>act reasonably in seeking to ensure that the embellishment works for open space do not exceed the amounts nominated in the offer</i>” (see Note 3 Schedule 1 of the Letter of Offer).</p> <p>Whilst Schedule 3 of the Planning Agreement nominates a value for the embellishment items, Council’s Legal Team has confirmed that there is no ability under the Agreement to reduce or vary the delivery items based upon the cost exceeding the nominated value.</p> <p>In these circumstances an indexation clause for the indicated values is considered unnecessary.</p> <p>The inclusion of nominated values in the Agreement serves to demonstrate that the contribution offset items exceed the income Council would ordinarily receive under the Wollongong City-wide Development Contributions Plan 2022.</p>
Delivery of the shared path through the site	<p>Delivery of a shared path through the site is a requirement of the Planning Agreement. If the outcomes of the study, design and approval process results in the shared path not able to be delivered, the Planning Agreement would likely have to be varied.</p> <p>The potential non delivery of the riparian corridor shared path is dealt with specifically in clause 6.1(b)(i)(B) of the Planning Agreement and</p>

Item/Issues	Comments
	<p>contemplates alternate embellishment work of equivalent value <i>‘either elsewhere on the land, within the vicinity of the land, or both’</i>.</p> <p>The provision of alternate embellishment work of equivalent value should reflect the cost of delivering the asset at the time contemplated in clause 1 Schedule 3 of the Agreement.</p>
Creation of a share path network to the south of the site	<p>The land to the south is owned by Council. A feasibility study for the Towradgi Creek shared path is scheduled to be delivered through the Supporting Documents Program in 2022-23.</p> <p>The draft Planning Agreement does not propose to fund shared path works beyond the southern bank of Towradgi Creek.</p>

The terms of the draft Planning Agreement have been reviewed by Council’s Legal Counsel.

## PLANNING AND POLICY IMPACT

The draft Planning Agreement has been negotiated and prepared in accordance with Council’s Planning Agreements Policy (2020), Sections 7.4 to 7.10 of the *Environmental Planning and Assessment Act 1979* and clauses 203 to 205 of the *Environmental Planning and Assessment Regulation 2021*.

This report contributes to the delivery of Our Wollongong 2032 Goal 1 – ‘We value and protect our natural environment. It also delivers on core business activities as detailed in the Land Use Planning Service Plan 2022-23.

## RISK MANAGEMENT

The proposed Planning Agreement provides a formal instrument to manage and mitigate any risks associated with the delivery of the various items. Land and assets are subject to a maintenance period (see clause 2 Schedule 3 of the Agreement) and must be dedicated to Council in a satisfactory condition.

Flexibility has been worked into the planning agreement with respect to the handover of infrastructure items to allow for the early handover of items subject to appropriate arrangements and additional negotiation or a monetary contribution in lieu of the maintenance periods (see column 2 in clause 1 Schedule 3 of the Agreement).

The Planning Agreement states that the shared path is to be delivered through the site. This is subject to detailed consideration of the suitability of alignment options, particularly within or adjacent to the riparian corridor. If, in the opinion of Council, the path cannot be delivered as identified, alternate embellishment works of equivalent value are to be provided either onsite or within the vicinity of the site, or both.

## FINANCIAL IMPLICATIONS

The developer is offsetting development contributions for certain items that have wider community benefit. Of the items being delivered, only the north-south shared path, the land reserved for road widening, and a portion of cost for the Railway Street/Harbinger Street roundabout are contribution offset items. The value of these works is approximately \$3.8 - \$4.2 Million.

The potential cost of development for the site is approximately \$250-270 Million, which would translate to \$2.5 - \$2.7 Million being levied under the Wollongong City-wide Development Contributions Plan 2022. Therefore, the amount for the items being offset, is greater than what Council would otherwise obtain if development contributions were to be levied.



## CONCLUSION

The draft Planning Agreement is the mechanism to allow for the listed infrastructure items to be delivered, and to ensure that affordable housing is provided on the development site.

It is recommended that the draft Planning Agreement (Attachment 1) and the associated Explanatory Note (Attachment 2) be endorsed for finalisation by the General Manager.

## Planning Agreement

**Wollongong City Council**

and

**LegPro 70 Pty Ltd as trustee for LegPro 70 Unit Trust**

and

**Illawarra Coke Company Pty Limited**



**WOLLONGONG CITY COUNCIL**

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## PLANNING AGREEMENT

### Planning Agreement

#### Date

#### Parties

**Wollongong City Council**

of 41 Burelli Street, Wollongong in the State of New South Wales

(Council)

**LegPro 70 Pty Ltd (ACN 628 315 239)** as trustee for LegPro 70 Unit Trust (ABN 85 213 629 919) of Level 45, 25 Martin Place, Sydney in the State of New South Wales.

(Developer)

**Illawarra Coke Company Pty Limited**

(ACN 000 009 807) of Suite A1, 674 Old Pacific Highway, Sutherland in the State of New South Wales

(Landowner)

#### Recitals

- A. The Landowner is the registered proprietor of the Land.
- B. The Developer has rights in respect of the Land.
- C. An LEP amendment has been finalised to permit the intended Development on the Land.
- D. The Developer proposes to carry out the Development on the Land.
- E. The Developer, by a letter of offer dated 26 May 2022 has offered to enter into this document to provide the Contributions if the Development is undertaken.

The parties agree, in consideration of, among other things, the mutual promises contained in this agreement as follows:



## PLANNING AGREEMENT

### 1. Definitions and interpretation clauses

#### 1.1 Definitions

In this agreement:

<b>Act</b>	means the <i>Environmental Planning and Assessment Act 1979</i> (NSW).
<b>Acquisition Act</b>	means the <i>Land Acquisition (Just Terms Compensation) Act 1991</i> (NSW).
<b>Address for Service</b>	means the address for each party appearing in Schedule 4 or any new address notified by any party to all other parties at its new Address for Service.
<b>Affordable Housing</b>	has the same meaning as at clause 13 of the <i>State Environmental Planning Policy (Housing) 2021</i> .
<b>Affordable Housing Contribution</b>	Means the provision of a minimum of 35 Affordable Housing Dwellings through provision of land to a registered Community Housing Provider under acceptable commercial arrangements.
<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: <ul style="list-style-type: none"> <li>(a) federal, state or local government;</li> <li>(b) department of any federal, state or local government;</li> <li>(c) any court or administrative tribunal; or</li> <li>(d) statutory corporation or regulatory body.</li> </ul>
<b>Bank Guarantee</b>	means the bank guarantee(s) from an Australian bank required to be provided to Council by the Developer under this agreement.
<b>Business Day</b>	means any day that is not a Saturday, Sunday, gazetted public holiday or bank holiday in Sydney, and concludes at 5.00pm 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.



## PLANNING AGREEMENT

<b>Complete, Completed Completion</b>	means completed in accordance with the requirements of this document.
<b>Commencement Date</b>	means the date that this document commences in accordance with clause 2.3.
<b>Community Housing Provider</b>	means a community housing provider registered by the Register of Community Housing under the National Regulatory System for Community Housing.
<b>Contribution Value</b>	means the amount specified in Column 5 of the table at clause 1 of Schedule 3.
<b>Contributions</b>	means the provision of the development contributions as set out in the table at clause 1 of Schedule 3 by the Developer in accordance with this document.
<b>Contributions Plan</b>	means the Wollongong City-Wide Development Contributions Plan 2021, or such other replacement plan adopted by Council from time to time.
<b>Defects Liability Period</b>	means one year.
<b>Designated Land</b>	means the land identified at items 1 to 4 in the table at clause 1 of Schedule 3, being the Central Village Park Land, Southern Recreation Park, Riparian Corridor, and Road Widening Land that form part of the Land
<b>Development</b>	means the residential and mixed-use redevelopment of the Land, generally in accordance with the Planning Proposal and Development Application.
<b>Development Application</b>	means a development application lodged by the Developer with Council for the Development Consent.
<b>Development Consent</b>	means a development consent issued under the Act with respect to the Development.
<b>Development Cost</b>	means in relation to an Item of Work: <ul style="list-style-type: none"> <li>(a) the construction costs of that item;</li> <li>(b) any costs incurred under a building contract in relation that item;</li> <li>(c) any costs or expenses payable to an Authority in relation that item.</li> </ul>



## PLANNING AGREEMENT

<b>Dwelling</b>	means the same as in the <i>Standard Instrument - Principal Local Environmental Plan</i> .
<b>Encumbrance</b>	means an interest or power: <ul style="list-style-type: none"> <li>(a) reserved in or over an interest in any asset;</li> <li>(b) 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>(c) by way of security for the payment of a debt or other monetary obligation or the performance of any obligation.</li> </ul>
<b>EPA</b>	means the NSW Environment Protection Authority.
<b>Event of Default</b>	means the failure to dedicate the Designated Land at the time required under this document.
<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 at items 5 to 11 of the table at clause 1 of Schedule 3.
<b>Land</b>	means the whole of the land contained in: <ul style="list-style-type: none"> <li>(a) Lot 1 in Deposited Plan 795791;</li> <li>(b) Lot 5 in Deposited Plan 749492;</li> <li>(c) Lot 11 in Deposited Plan 749492; and</li> <li>(d) Lot 126 in Deposited Plan 598190.</li> </ul>
<b>Law</b>	means all legislation, regulations, by-laws, common law and other binding order made by any Authority.
<b>LEP</b>	means the <i>Wollongong Local Environmental Plan 2009</i> .
<b>Occupation Certificate</b>	means an occupation certificate as defined in s 6.4(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).
<b>Planning Proposal</b>	means the planning proposal endorsed by Wollongong City Council on 1 November 2021.



## PLANNING AGREEMENT

<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>Regulation</b>	means the <i>Environmental Planning and Assessment Regulation 2021</i> (NSW).
<b>Residential Accommodation</b>	means the same as in the <i>Standard Instrument - Principal Local Environmental Plan</i> .
<b>Residential Lot</b>	means a single lot created on the registration of a plan of subdivision as part of the Development intended to not be further subdivided and to be used for the purpose of the construction of one (1) or more residential dwellings.
<b>Riparian Corridor Land</b>	means approximately 78,65276,000sqm of land at [Lot/DP] generally as shown on the plan at Schedule 6Annexure [A]
<b>Stage</b>	means a stage of the Development as generally shown on the plan at Schedule 5.
<b>Subdivision Certificate</b>	means a subdivision certificate as defined in s6.4(1)(d) of the Act.
<b>Works</b>	means the works specified or described in items 5 to 11 of the table at clause 1 of Schedule 3.

### 1.2 Interpretation

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

- (a) clauses, annexures and schedules: a clause, annexure or schedule is a reference to a clause in or annexure or schedule to this document.
- (b) 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.
- (c) singular includes plural: the singular includes the plural and vice versa.
- (d) 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.
- (e) executors, administrators, successors: a particular person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns.



## PLANNING AGREEMENT

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- (f) dollars: Australian dollars, dollars, \$ or A\$ is a reference to the lawful currency of Australia.
- (g) 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.
- (h) reference to a day: a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later.
- (i) 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.
- (j) 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.
- (k) next day: if an act under this document to be done by a party on or by a given day is done after 5.00pm on that day, it is taken to be done on the next day.
- (l) 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.
- (m) time of day: time is a reference to Sydney time.
- (n) headings: headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of this document.
- (o) agreement: a reference to any agreement, Agreement or instrument includes the same as varied, supplemented, novated or replaced from time to time.
- (p) gender: a reference to one gender extends and applies to the other.

## 2. Operation

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### 2.1 Planning Agreement

This document is a planning agreement:

- (a) within the meaning set out in s7.4 of the Act; and
- (b) governed by Subdivision 2 of Division 6 of Part 4 of the Act.

### 2.2 Application

This document applies to both the Land and the Development.





## PLANNING AGREEMENT

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### 2.3 Operation of document

- (a) This document operates on and from the later occurring the date on which both parties execute this document; and
- (b) Despite clause 2.3(a), clauses 6, 7 and 8 do not commence operation until a Development Consent is granted for the Development.

## 3. Application of s7.11, s7.12 And s7.24

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### 3.1 Application

- (a) This document excludes the application of s7.11 and s7.12 of the Act to the Development.
- (b) The document does not exclude the application of s7.24 of the Act.

### 3.2 Consideration of Benefits

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

## 4. Satisfaction of contribution condition

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### 4.1 Value of Contributions

The parties agree that the value of a Contribution is the amount shown in Column 5 of the table at clause 1 of Schedule 3.

### 4.2 Scope of Items of Works

- (a) The parties agree that the scope of works contained at column 2 of the table at clause 2 of Schedule 3 represents the agreed scope of works to be provided by the Developer for each Item of Work at the date of this document.
- (b) Despite clause 4.2(a), if the scope of works to be provided is required to change, the parties agree to work together in good faith to ensure that the scope of works for each Item of Work does not unreasonably expand beyond that contained in column 2 of the table at clause 2 of Schedule 3.



## PLANNING AGREEMENT

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### 5. Registration of this document

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#### 5.1 Registration

This document must be registered on the title of the Land pursuant to s7.6 of the Act.

#### 5.2 Obligations of the Developer and Landowner

The Developer and Landowner must:

- (a) do all things necessary to allow the registration of this document to occur, including but not limited to obtaining the consent of any mortgagee registered on the title of the Land; and
- (b) pay any reasonable costs incurred by Council in undertaking that registration.

#### 5.3 Removal from title of the Land

- (a) Council acknowledge and agree that this document is to be progressively released from the title of that part of the Land within each Stage (**Relevant Land**) subject to the Council being satisfied, acting reasonably and without delay, that the Developer has satisfied its obligations under this document in relation to that Stage (**Completed Stage**).
- (b) If through error or other reason this document is registered on the title to any lot within a Completed Stage, each party must do such things as are reasonably necessary, as requested by the other, to facilitate the lodging and grant of a request for the registration of this document to be removed from the title to that lot.
- (c) Subject to clauses 5.3(a) and 5.3(b), Council will do all things necessary to allow the Developer and the Landowner to release and discharge this document, including removing this document from the title of the Land where the Developer has provided the Contributions in accordance with the terms of this document.
- (d) The Developer must pay any reasonable costs incurred by Council in undertaking that discharge.
- (e) The Developer commits to undertake the Development in accordance with the Staging Plan at Schedule 5, unless the requirements of any Development Consent, Law, Authority or utility provider mean that the Developer is unable to comply with the Staging Plan.



## PLANNING AGREEMENT

### 6. Provision of Contributions

#### 6.1 Developer to provide Contributions

- (a) The Developer undertakes to provide, or procure the provision of the Contributions to the Council in accordance with Schedule 3 of this document and the provisions of this clause 6.
- (b) Despite clause 6.1(a), if circumstances arise whereby the Developer is not able to deliver an embellishment item for an Item of Work as set out at column 2 of the table at clause 2.1 of Schedule 3:
  - (i) the Developer and Council must work together in good faith and, acting reasonably, agree to an alternative embellishment item of equivalent value to be delivered:
    - (A) elsewhere on the Land; or
    - (B) where the Item of Work is the Riparian Corridor Shared Pedestrian/Cycle Path Works, either elsewhere on the Land, within the vicinity of the Land, or both; and
  - (ii) the Developer must deliver the alternative embellishment item, as agreed in clause 6.1(b)(i).

#### 6.2 Designated Land

- (a) The Developer and Landowner must dedicate the Designated Lands to Council:
  - (i) free of any trusts, estates, interests, covenants and Encumbrances;
  - (ii) by the times specified in Column 3 of the table at clause 1 of Schedule 3; and
  - (iii) at no cost to Council.
- (b) For the avoidance of doubt, clause 6.2(a) of this document does not apply in relation to encumbrances or affectations being statutory rights that exist or arise under Law which are of a type which the Developer or Landowner of the Designated Land could not prevent from affecting the Designated Land and in respect of which no action can be taken by the Developer or Landowner of the Designated Land.
- (c) The Developer must meet all costs associated with the dedication of the Designated Lands in accordance with clause 6.2(a), including any costs reasonably incurred by Council in relation to that dedication.
- (d) Council must do all things reasonably necessary to enable the Developer and Landowner to comply with clause 6.2(a).



## PLANNING AGREEMENT

### 6.3 Works

The Developer, at its cost, must:

- (a) if necessary, obtain any consents, approvals or permits required by a relevant Authority, for the conduct of the Works;
- (b) carry out and complete each Item of Work by the time specified in Column 3 of the table at clause 1 of Schedule 3; and
- (c) carry out and complete the Works:
  - (i) in accordance with the requirements of, or consents issued, by any Authority;
  - (ii) in accordance with the reasonable requirements of Council and any applicable Development Consent; and
  - (iii) in a proper and workmanlike manner complying with current industry practice and standards, including applicable Australian standards.

### 6.4 Affordable Housing Contribution

- (a) The parties acknowledge and agree that the Developer will provide a minimum of 35 Dwellings within the Development for the purposes of Affordable Housing.
- (b) The Developer must, as soon as reasonably practicable, following the issue of a Subdivision Certificate which creates a lot to be used for the purposes of Affordable Housing:
  - (i) register on the title of the relevant lot a restrictive covenant under s88B of the *Conveyancing Act 1919* which restricts the use of that lot for purposes of Affordable Housing.
  - (ii) enter into an agreement for the transfer of the relevant lot(s) to a Community Housing Provider; and
  - (iii) provide Council with evidence of the transfer of the relevant lot and the name of the Community Housing Provider referred to in clause 6.4(b)(ii).
- (c) Council acknowledges and agrees that the Developer has made provision for affordable housing and has satisfied its obligation to provide such housings in respect of the Development.
- (d) Nothing in this clause 6.4 requires the Developer to dedicate any land or completed dwellings to Council.
- (e) The parties agree that the Developer's delivery of Affordable Housing dwellings in accordance with this clause 6.4 represents the Developer's full and final



## PLANNING AGREEMENT

contribution toward Affordable Housing in relation to the Development and the Land.

### 7. Completion of Works

#### 7.1 Issue of Completion Notice

The Developer must serve a notice on Council, within 14 days of Completion of that Item of Work which:

- (a) is in writing; and
- (b) specifies the date on which the Developer forms the opinion that the Item of Work was Completed.

(Completion Notice)

#### 7.2 Notice by Council

Within the earlier of:

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

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

- (c) has been Completed; or
- (d) has not been Completed, in which case the notice must also detail:
  - (i) those aspects of the Item of Work which have not been Completed;
  - (ii) the work Council requires the Developer to carry out in order to rectify those deficiencies; and
  - (iii) the time in which the Developer is to rectify those deficiencies, having regard to the work required to rectify those deficiencies and being not less than 30 days from the date of the notice.

(Council Notice)

#### 7.3 Deemed Completion

If Council does not provide the Developer with notice within the time specified in clause 7.2, the Item of Work the subject of a Completion Notice will be deemed to have been Completed on the date stated in the Completion Notice.



## PLANNING AGREEMENT

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### 7.4 Effect of Council Notice

- (a) Where a Council Notice is served, the Developer must:
  - (i) rectify the deficiencies in accordance with and in the time period stated in the Council Notice; or
  - (ii) serve a notice on Council that it disputes the matters set out in the Council Notice.
- (b) Where the Developer:
  - (i) serves notice on Council in accordance with clause 7.4(a)(ii) the dispute resolution provisions of this document apply; or
  - (ii) rectifies the Works in accordance with clause 7.4(a)(ii) it must serve upon Council a new Completion Notice for the Works it has rectified,  
**(New Completion Notice).**

### 7.5 New Completion Notice

The provisions of clauses 7.1 to 7.4 (inclusive) apply to any New Completion Notice issued by the Developer.

### 7.6 Completion of an Item of Work

Completion of an Item of Work in accordance with this clause 7 is a pre-condition to meeting the obligation of the Developer to complete the Works identified at Schedule 3 to this document.

## 8. Defects Liability

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### 8.1 Defects Notice

- (a) Where any Item of Work is Complete but that item contains a defect which:
  - (i) adversely affects the ordinary use and/or enjoyment of that item; or
  - (ii) 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.

- (b) A Defects Notice must contain the following information:





## PLANNING AGREEMENT

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- (i) the nature and extent of the Defect;
- (ii) the work Council requires the Developer to carry out in order to rectify the Defect; and
- (iii) the time within which the Defect must be rectified by the Developer (which must be a reasonable time and not less than 30 days from the date of the Defects Notice).

### 8.2 Developer to rectify Defects

- (a) The Developer must rectify the Defects prior to the date specified in the Defects Notice.
- (b) The Developer must follow the procedure set out in clause 7 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.

### 8.3 Right of Council to step-in

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 seven days written notice of its intention to do so.

### 8.4 Consequence of step-in

If Council elects to exercise the step-in rights under clause 8.3 then:

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

### 8.5 Costs of Council

Where Council exercises its step-in rights under clause 8.4, it may:

- (a) call upon the Insurance Bond provided by the Developer pursuant to clause 13.4 to meet any costs for which the Developer is liable under clause 8.4; and



## PLANNING AGREEMENT

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- (b) recover as a debt due in a court of competent jurisdiction any difference between the amount of the Insurance Bond and the costs incurred by Council in rectifying the Defects.

### 9. Access to Designated Land

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If the Developer is required to access, use and occupy any part of the Designated Land for the purpose of discharging its obligations under clause 7 or clause 8 after the relevant land has been dedicated or transferred to Council, Council will grant a fee free licence to the Developer:

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

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

### 10. Warranties and indemnities

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#### 10.1 Warranties

Each party warrants to the other that:

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

#### 10.2 Indemnity

- (a) The Developer indemnifies Council in respect of any Claim made against Council as a result of the conduct of the Works.
- (b) The Developer's liability to indemnify Council under clause 10.2(a) is reduced proportionately to extent that any wilful or negligent act or omission of Council caused or contributed to such Claim.



## PLANNING AGREEMENT

### 11. Contamination

#### 11.1 Definitions

For the purpose of this clause:

**Contamination** means any material, gas, substance, liquid, chemical or biological mineral or other physical matter which would, if present on the Land:

- (a) result in an Authority issuing a notice, direction or order under an Environmental Law; or
- (b) which would constitute a violation of any Environmental Law.

**Contaminated** means subject to Contamination.

**Environmental Law** means all planning, environmental or pollution laws and any regulations, orders, directions, ordinances or requirements, permissions, permits, licences issued under those laws or instruments.

**Site Audit Statement** means a Section A1 statutory site audit statement prepared by an EPA Accredited Site Auditor in accordance with Part 4 of the *Contaminated Land Management Act 1997* that confirms the suitability of the Designated Land for the use permitted by the relevant Development Consent..

#### 11.2 Warranty and indemnity

- (a) The Developer and Landowner warrants that:
  - (i) as far as it is aware, and other than:
    - (A) as disclosed in writing to Council prior to the formation of this document; or
    - (B) as noted in any site audit statement prepared in accordance with the *Contaminated Land Management Act 1997* for the Designated Land,

the Designated Land is not Contaminated; and

  - (ii) in relation to any notices or orders issued pursuant to the *Contaminated Land Management Act 1997*, and the requirements of the EPA and any other relevant Authority, the Landowner indemnifies and must keep indemnified Council against all liability for and associated with all Contamination present in, on or under the Designated Land as at the date of dedication or transfer of the Designated Land to Council in accordance with this document.
- (b) Despite anything else in this document, if the Developer provides Council with a Site Audit Statement in relation to the Designated Land then Council releases



## PLANNING AGREEMENT

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the Developer and the Landowner from all Claims and liability arising from or in connection with any Contamination or Environmental Law in relation to the Designated Land on and from the date of that Site Audit Statement.

- (c) Clause 11.2(b) does not merge on completion of this document.

## 12. Determination of this document

---

### 12.1 Determination

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

### 12.2 Effect of determination

Upon the determination of this document Council will do all things necessary, in accordance with clause 5.3 of this document, to allow the Landowner and the Developer to remove this document from the title of the whole or any part of the Land as quickly as possible.

## 13. Security

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### 13.1 Prohibition

- (a) No party may Assign their rights under this document without the prior written consent of the other parties, such consent must not be unreasonably withheld or delayed.

### 13.2 Assignment of Land

- (a) The Landowner or Developer must not Assign its interest in the Land, other than a Residential 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 reasonable satisfaction of Council 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.
- (b) Despite clause 13.2(a), Council's consent is not required to transfer any Land from the Landowner to the Developer.



## PLANNING AGREEMENT

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### 13.3 Compulsory acquisition of the Designated Land

- (a) The Developer and Landowner consents to the compulsory acquisition of the Designated Land:
  - (i) in accordance with the Acquisition Act; and
  - (ii) on the terms set out in this clause 13.
- (b) Council may only compulsorily acquire the Designated Land in accordance with the Acquisition Act if Council has provided written notice to the Developer and Landowner which:
  - (i) details the Event of Default;
  - (ii) identifies area of Designated Land to be compulsorily acquired; and
  - (iii) provides a reasonable period of time, being not less than 30 days to remedy the Event of Default.

#### (Acquisition Notice)

- (c) If Council acquires the Designated Land compulsorily in accordance with the Acquisition Act:
  - (i) the Developer and Landowner agrees that the compensation payable to it on account of that acquisition under the Acquisition Act is \$1.00; and
  - (ii) Council must complete that acquisition within 12 months of service of the Acquisition Notice.
- (d) The parties agree that the provisions of this clause 13 are an agreement with respect to the compulsory acquisition of the Designated Land for the purpose of s30 of the Acquisition Act.

### 13.4 Delivery to Council of Insurance Bond

Within 90 days of the operation of this document, the Developer must deliver to Council an insurance bond issued by a reputable insurer (**Insurance Bond**):

- (a) in a form acceptable to Council;
- (b) for an amount of \$745,000.00; and
- (c) without an expiry date.

### 13.5 Council May Call on Insurance Bond



## PLANNING AGREEMENT

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- (a) If the Developer does not comply with the terms of this document with respect to the provision of the Works, Council may issue the Developer with a notice requiring the Developer to rectify the relevant default within 21 days from the date of that notice (**Default Notice**).
- (b) Where the Developer receives a Default Notice and the Developer, acting reasonably, forms the opinion that given the nature and extent of the outstanding Works it will not be able to comply with that Default Notice within 21 days, then:
  - (i) the Developer may provide written notice to Council detailing the reasons it will not comply with the Default Notice within 21 days and nominating a new time for compliance with the Default Notice; and
  - (ii) Council must consider the notice provided under clause 13.5(b)(i) and, acting reasonably, confirm the time for compliance with the Default Notice, being either:
    - (A) the time nominated in the Default Notice;
    - (B) the time nominated in the notice given by the Developer under clause 13.5(b)(i); or
    - (C) another time as determined by Council having regard to the nature and extent of the outstanding Works.
- (c) If the Developer fails to comply with a notice issued under clause 13.5(a) to the reasonable satisfaction of Council, Council may, without limiting any other avenues available to it, call on the relevant Insurance Bond to the extent necessary to reimburse Council for any costs incurred by it in rectifying the relevant default of the Developer.

### 13.6 Maintenance of Insurance Bond

Until the Insurance Bond is returned in accordance with clause 13.7, the Developer must ensure that the amount secured by any Insurance Bond is the amount required by clause 13.4(b).

### 13.7 Return of Insurance Bond

Council must return the remaining Insurance Bond (if any) to the Developer within 30 days from the expiration of the Defects Liability Period for the last Item of Work that is Completed.





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### 14. Delay of Completion

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#### 14.1 Notice to Council

If the Developer forms the opinion that it will not be able to Complete one or more Items of Work in accordance with this document, then the Developer must provide written notice to Council which:

- (a) details the Item(s) of Work that will not be Completed in accordance with this document (**Incomplete Work**);
- (b) details the current status of the Works undertaken for each item of Incomplete Work; and
- (c) requests an extension of the time in which the Incomplete Work may be completed (**Request Date**).

#### 14.2 Council Notice

On receipt of a notice under clause 14.1, Council must, acting reasonably, consider the notice and confirm by way notice to the Developer that either:

- (a) the Request Date is acceptable to Council;
- (b) propose an alternative date for Completion of the Incomplete Work, having regard for the nature and extent of the work required to Complete the Incomplete Work; or
- (c) the Request Date is rejected by Council.

#### 14.3 Extension of Completion Date

- (a) Where Council provides a notice in accordance with clause 14.2(a), the parties agree that the Incomplete Work is to be Completed by the Request Date.
- (b) Where Council provides a notice in accordance with clause 14.2(b), the parties agree that the Incomplete Work is to be completed by that date nominated in that notice.
- (c) Where the dated for the Incomplete Works has been extended in accordance with clauses 14.3(a) or 14.3(b), Council must not withhold the issue of a Subdivision Certificate or Occupation Certificate (as the case may be) by reason of an Item(s) of Work not being completed.



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### 15. Dispute resolution

#### 15.1 Notice of dispute

- (a) 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:
  - (i) is in writing;
  - (ii) adequately identifies and provides details of the Dispute;
  - (iii) stipulates what the First Party believes will resolve the Dispute; and
  - (iv) designates its representative (**Representative**) with the necessary authority to negotiate and resolve the Dispute.
- (b) The Second Party must, within five 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**).
- (c) For the purpose of this clause, the Landowner and Developer are one party and Council is the other party.

#### 15.2 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.

#### 15.3 Further steps required before proceedings

Subject to clause 15.12 and except as otherwise expressly provided in this document, any Dispute must, as a condition precedent to the commencement of litigation, mediation under clause 15.5 or determination by an expert under clause 15.6, first be referred to the Representatives. The Representatives must endeavour to resolve the dispute within five Business Days of the date a notice under clause 15.1 is served.

#### 15.4 Disputes for mediation or expert determination

If the Representatives have not been able to resolve the Dispute, then the parties must agree within five Business Days to either refer the matter to mediation under clause 15.5 or expert resolution under clause 15.6.





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### 15.5 Disputes for mediation

- (a) If the parties agree in accordance with clause 15.4 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 Business Days, then by a mediator appointed by the President of the Law Society of New South Wales for the time being.
- (b) If the mediation referred to in clause 15.5(a) 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 15.6.

### 15.6 Choice of expert

- (a) If the Dispute is to be determined by expert determination, this clause 15.6 applies.
- (b) The Dispute must be determined by an independent expert in the relevant field:
  - (i) agreed between and appointed jointly by the parties; or
  - (ii) in the absence of agreement within five 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.
- (c) If the parties fail to agree as to the relevant field within five 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.
- (d) The expert appointed to determine a Dispute:
  - (i) must have a technical understanding of the issues in dispute;
  - (ii) 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
  - (iii) 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.
- (e) 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.



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### 15.7 Directions to expert

- (a) In reaching a determination in respect of a dispute under clause 15.6, the independent expert must give effect to the intent of the parties entering into this document and the purposes of this document.
- (b) The expert must:
  - (i) act as an expert and not as an arbitrator;
  - (ii) not accept verbal submissions unless both parties are present;
  - (iii) on receipt of a written submission from one party, ensure that a copy of that submission is given promptly to the other party;
  - (iv) 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;
  - (v) 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);
  - (vi) issue a draft certificate stating the expert's intended determination (together with written reasons), giving each party 10 Business Days to make further submissions;
  - (vii) issue a final certificate stating the expert's determination (together with written reasons); and
  - (viii) act with expedition with a view to issuing the final certificate as soon as practicable.
- (c) The parties must comply with all directions given by the expert in relation to the resolution of the Dispute and must within the time period specified by the expert, give the expert:
  - (i) a short statement of facts;
  - (ii) a description of the Dispute; and
  - (iii) any other documents, records or information which the expert requests.

### 15.8 Expert may convene meetings

- (a) 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.
- (b) The parties agree that a meeting under clause 15.8(a) is not a hearing and is not an arbitration.



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### 15.9 Other courses of action

If:

- (a) the parties cannot agree in accordance with clause 15.3 to refer the matter to mediation or determination by an expert; or
- (b) the mediation referred to in clause 15.5 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 Business Days after termination of the mediation,

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

### 15.10 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.

### 15.11 Costs

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

### 15.12 Remedies available under the Act

This clause 14 does not operate to limit the availability of any remedies available to Council under s9.45, s9.46, and s9.50 of the Act.

### 15.13 Urgent relief

This clause 14 does not prevent a party from seeking urgent injunctive or declaratory relief concerning any matter arising out of this document.

### 15.14 Court proceedings

If the dispute is not resolved within 60 Business Days after notice is given under clause 15.1 then any party which has complied with the provision of this clause 14 may in writing terminate any dispute resolution process undertaken under this clause and may then commencement court proceedings in relation to the Dispute.

### 15.15 Not use information

The parties acknowledge the purpose of any exchange of information or documents or the making of any offer of settlement under this clause 14 is without prejudice attempt to settle the dispute. No party may use any information or documents obtained through



## PLANNING AGREEMENT

any dispute resolution process undertaken under this clause 14 for any purpose other than in an attempt to settle the dispute.

### 16. Position of Council

#### 16.1 Consent authority

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

#### 16.2 Document does not fetter discretion

This document is not intended to operate to fetter:

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

#### 16.3 Severance of provisions

- (a) 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:
  - (i) they will take all practical steps, including the execution of any further documents, to ensure the objective of this clause 16 is substantially satisfied;
  - (ii) in the event that clause 16.3(a)(i) 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
  - (iii) 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.
- (b) 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.



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### 16.4 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.

## 17. Confidentiality

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### 17.1 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.

## 18. GST

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### 18.1 Definitions

In this clause 18 the terms 'Taxable Supply', 'GST', 'Tax Invoice' and 'Input Tax Credit' have the meaning given to them in the GST Law.

### 18.2 Non-monetary supplies

- (a) The parties agree that any non-monetary 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.
- (b) In the event that one party reasonable believes that the non-monetary supply it 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 that Taxable Supply as follows:
  - (i) 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.
  - (ii) The recipient of the Taxable Supply will pay to the other party the amount of the included GST within 15 days of receiving the Tax Invoice.
- (c) In the event that both parties reasonably believe that each make a non-monetary Taxable Supply 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.





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### 18.3 Supply expressed in terms of money

If any party reasonably believes that it is liable to pay GST on a supply expressed in terms of money (or where the consideration for the supply is expressed in terms of money) and made to the other party under this document and the supply was not expressed to include GST, then:

- (a) the recipient of the supply must pay an amount equal to the GST on that supply to the other party;
- (b) the party making the supply will issue a Tax Invoice to the other party; and
- (c) the recipient of the supply will pay the amount of the GST to the supplier within 15 days of receiving the Tax Invoice.

### 18.4 Expenses and costs incurred

If any expenses or costs incurred by one party are required to be reimbursed by the other party under this document, then the amount of the reimbursement will be calculated as follows:

- (a) The amount of the cost or expense incurred by the party seeking reimbursement will be initially calculated excluding any Input Tax Credit to which that party is entitled to claim.
- (b) This amount initially calculated will be increased by the applicable rate of GST to equal a GST inclusive reimbursement amount and this amount will be paid by the party liable to make the reimbursement.
- (c) The party being reimbursed will issue a Tax Invoice to the other at the GST inclusive reimbursement amount prior to being reimbursed.

### 18.5 Survival of clause

This clause 18 continues to apply after the expiration or termination of this agreement.

## 19. Access to land

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### 19.1 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**).

### 19.2 Terms of Licence

The terms of Schedule 2 apply to any Necessary Access.



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### 20. Legal costs

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

### 21. Administrative provisions

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#### 21.1 Notices

- (a) Any notice, demand, consent or other communication (**Notice**) 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 at its Address for Service and:
  - (i) delivered to that person's address;
  - (ii) sent by pre-paid mail to that person's address; or
  - (iii) sent by email to that person's email address.
- (b) A Notice given to a person in accordance with this clause is treated as having been given and received:
  - (i) if delivered to a person's address, on the day of delivery if a Business Day, otherwise on the next Business Day;
  - (ii) if sent by pre-paid mail, on the third Business Day after posting; and
  - (iii) if sent by email to a person's email address on the day it was sent if a Business Day, otherwise on the next Business Day, unless the sender receives an automated notification that the email was not delivered.
- (c) For the purpose of this clause the address of a person is the Address for Service set out in this document or another address of which that person may from time to time give notice to each other person.

#### 21.2 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.

#### 21.3 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



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right. A power or right may only be waived in writing, signed by the parties to be bound by the waiver.

### 21.4 Counterparts

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

### 21.5 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.

### 21.6 Power of Attorney

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

- (a) the revocation or suspension of the power of attorney by the grantor; or
- (b) the death of the grantor.

### 21.7 Governing law

The parties:

- (a) agree that the Laws of the State of New South Wales govern this document; and
- (b) 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.

### 21.8 Developer's limitation of liability

- (a) Definitions

In this clause:

- (i) Trust means the LegPro 70 Unit Trust (ABN insert); and
- (ii) Trust Deed means the trust deed establishing the Trust.

- (b) Limitation of Liability

- (i) The Developer warrants that:





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- (A) it enters into this deed in its capacity as trustee of the Trust and in no other capacity; and
  - (B) it is empowered by the terms of the Trust Deed or any other instrument constituting the Trust to enter into this deed in accordance with its provisions; and
  - (C) it is entitled to be indemnified out of the assets of the Trust in respect of the obligations and liabilities assumed by it under the terms of this deed.
- (ii) The Council acknowledges and agrees that, despite any other provision of this deed, any liability or obligation of the Developer arising under or in connection with this deed can only be enforced to the extent to which they are entitled to be, and are in fact, indemnified for that liability or obligation out of the assets of the Trust. This includes without limitation any representation, warranty or conduct by the Developer.
- (iii) Clause 21.8(b) does not apply to any liability or obligation of the Developer to the extent there is a reduction in their ability to be indemnified for that liability or obligation out of the assets of the Trust as a result of the Developer's fraud, negligence or breach of trust.



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### Schedule 1 REQUIREMENTS UNDER S7.4 OF THE ACT

**Table 1 – Requirements under section 7.4 of the Act**

Requirement under the Act	This Planning Agreement
<b>Planning instrument and/or development application – (Section 7.4(1))</b> 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) Yes (b) Yes (c) No
<b>Description of land to which this agreement applies – (Section 7.4(3)(a))</b>	See Schedule 6 <b>Schedule #</b> <b>[Insert]</b> <b>#.</b>
<b>Description of development to which this agreement applies – (Section 7.4(3)(b))</b>	See definition of Development in clause 1.1.
<b>Description of change to the environmental planning instrument to which this agreement applies – (Section 7.4(3)(b))</b>	Amendment to the LEP in accordance with the Planning Proposal.
<b>Application of section 7.11 of the Act – (Section 7.4(3)(d))</b>	Refer to clause 3.1 of the Planning Agreement.
<b>Applicability of section 7.12 of the Act – (Section 7.4(3)(d))</b>	Refer to clause 3.1 of the Planning Agreement.
<b>Consideration of benefits under this agreement if section 7.11 applies – (Section 7.4(3)(e))</b>	Refer to clause 3.2 of the Planning Agreement.



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Requirement under the Act	This Planning Agreement
<b>Mechanism for Dispute resolution –</b> (Section 7.4(3)(f))	Refer to clause 14 of the Planning Agreement.
<b>Enforcement of this agreement</b> (Section 7.4(3)(g))	Refer to clauses 5 and 13 of the Planning Agreement.
<b>No obligation to grant consent or exercise functions –</b> (Section 7.4(3)(9))	Refer to clause 16 of the Planning Agreement.



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Table 2 - Other matters

Requirement under the Act	This Planning Agreement
<b>Registration of the Planning Agreement – (Section 7.6)</b>	Yes, see clause 5.1 of the Planning Agreement.
<b>Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a construction certificate is issued – (Clause 205 of the Regulation)</b>	No
<b>Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before an occupation certificate is issued – (Clause 205 of the Regulation)</b>	<u>Yes, see</u> Schedule 3 <del>No</del>
<b>Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a subdivision certificate is issued – (Clause 205 of the Regulation)</b>	<u>Yes, see</u> Schedule 3



## PLANNING AGREEMENT

### Schedule 2 Terms of Licence

#### 1. Definitions

For the purposes of this Schedule 2:

- (a) the **Licensed Area** is the land being accessed under the Licence;
- (b) the **Licence** means the licence of the Land to which this Schedule applies;
- (c) the **Licensee** is the party accessing the Land; and
- (d) the **Licensor** is the owner of the Land.

#### 2. Licence

##### 2.1 Personal Rights

- (a) The Licence is personal to the Licensee.
- (b) The Licensee may not encumber, assign or transfer (either directly or indirectly) the Licence without the prior written consent of the Licensor.
- (c) The Licensor may refuse the granting of consent under clause 2.1(b) without reason and at its absolute discretion.

##### 2.2 Leasehold interest

- (a) This Licence does not grant to the Licensee a leasehold interest in the Licensed Area. The parties agree that:
  - (i) the Licence does not confer exclusive possession of the Licensed Area on the Licensee;
  - (ii) the Licensee may not exclude the Licensor, its officers, employees and invitees from:
    - (A) entry onto the Licensed Area; and/or
    - (B) the performance of any works on the Licensed Area;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 Licensed Area by the Licensee.
- (b) The Licensee does not have any right to quiet enjoyment of the Licensed Area.



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- (c) The Licensee will not at any time seek to enforce an interest in the Licensed Area in competition with the interest held by the Licensor.

### 3. Compliance with Authorities

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#### 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 Licensed Area 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 Licensed Area 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 Licensed Area by the Licensee.

#### 3.4 Obtaining further consents

- (a) If the Licensee requires further consents to conduct activities on the Licensed Area it must:
- (i) make such applications itself; and
  - (ii) bear all costs incurred by it in relation to obtaining the relevant consent.
- (b) 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

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#### 4.1 Insurances

The Licensee must effect and keep current and in force the following policies of insurance:

- (a) Broadform Public Liability Insurance policy with a reputable insurance company in an amount of \$20 million for any one occurrence in respect of any liability for:
- (i) personal injury or death of any person; and



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- (ii) loss or damage to property.
- (b) Workers compensation 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 Licensed Area by the Licensee;
- (c) A contractor's risk policy of insurance in respect of all plant and equipment (including unregistered motor vehicles) used in the conduct of the activities on the Licensed Area by the Licensee.

### 4.2 Inspection of insurance

- (a) The Licensee must, on request of the Licensor and not more than once annually, produce for each policy a certificate of currency issued by the insurer establishing that the policy is valid.
- (b) The licensor may carry out, but not more than once annually, random audits to verify insurances held by the Licensee. The Licensee will assist in any audit and provide evidence of the terms and currency of the insurance policies wherever requested by the Licensor.

### 4.3 Cancellation of insurance

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

### 4.4 Risk

The Licensee uses and occupies the Licensed Area at its own risk.

### 4.5 Indemnity

- (a) The Licensee indemnifies the Licensor against any Claim (of whatever nature) made in respect of the Licensee's use and/or occupation of the Licensed Area.
- (b) The Licensee's liability to indemnify Licensor under clause 4.5(a) is reduced proportionately to extent that any wilful or negligent act or omission of Licensor caused or contributed to such Claim.





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### Schedule 3 Contributions


#### 1. Contributions

- 1.1 The developer undertakes to provide the Contribution to the Council or their nominee in the manner set out in the table below:

Column 1	Column 2	Column 3	Column 4	Column 5
Contribution	Description	Timing	By Whom	Value
<b>Designated Lands</b>				
1. Dedication of Central Village Park Land	Dedication of the Central Village Park land being approximately 3,000sqm of <del>land at [Lot/DP]</del> generally as shown on the plan at Schedule 6 <del>Annexure [1]</del>	Dedication to occur <del>prior to a</del> with a Subdivision Certificate for <del>any residential flat building in</del> Stage 2, unless otherwise agreed to in writing by Council.	Developer	\$2,250,000
2. Dedication of Southern Recreation Park	Dedication of the Southern Recreation Park Land being approximately 7,000 <del>988664</del> sqm of land at <del>[Lot/DP]</del> generally as shown on the plan at Schedule 6 <del>Annexure [1]</del>	Dedication to occur <del>prior to a</del> with a Subdivision Certificate for <del>any residential flat building in</del> Stage 3, unless otherwise agreed to in writing by Council.	Developer	\$5,316 <del>250</del> ,000
3. Dedication of Riparian Corridor	Dedication Riparian Corridor land being approximately <del>778,997</del> 76,000652sqm of land at <del>[Lot/DP]</del> generally as shown on the plan at Schedule 6 <del>Annexure [1]</del> .	<del>Dedication to occur prior to an Occupation Certificate for any residential flat building in Stage 3.</del> Dedication followingat completion of the maintenance period or earlier <del>on by</del> agreement with Council.	Landowner	\$13,876,620 <del>13,285,850</del>



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Column 1	Column 2	Column 3	Column 4	Column 5
4. Dedication of Road Widening Land	Dedication of approximately 2,467sqm of land at Lot 126 DP598190 for road widening as generally shown on the plan at Schedule 6 <a href="#">Annexure</a>  .	Dedication to occur prior to issue of an Occupation Certificate for any residential flat building in Stage 1, unless otherwise agreed to in writing by Council	Landowner	\$1,850,250
<b>Items of Work</b>				
5. Central Village Park Works	Central Village Park Works means the carrying out of embellishment works on the Central Village Park Land.	Completion prior to an Occupation Certificate for any residential flat building in Stage 2, unless otherwise agreed to in writing by Council.	Developer	<a href="#">\$1,268,9191,357,743</a>
6. Southern Recreation Park Works	Southern Recreation Park Works means the carrying out of embellishment works on the Southern Recreation Park Land.	Completion prior to an Occupation Certificate for any residential flat building in Stage 3, unless otherwise agreed to in writing by Council.	Developer	<a href="#">\$1,967,1032,104,800</a>
7. Riparian Corridor Works	Riparian Corridor Works means the carrying out of embellishment works on the Riparian Corridor Land.	Completion prior to an Occupation Certificate for any residential flat building in Stage 3, unless otherwise agreed to in writing by Council.	Developer	<a href="#">\$6,076,1446,501,474</a>
8. Riparian Corridor Shared Pedestrian / Cycle Path Works	Riparian Corridor Shared Pedestrian / Cycle Path Works means the carrying out of embellishment works on the Riparian Corridor Land.	Completion prior to the issue of an Occupation Certificate for any residential flat building in Stage 3, unless otherwise	Developer	<a href="#">\$1,485,2751,589,244</a>



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Column 1	Column 2	Column 3	Column 4	Column 5
		agreed to in writing by Council.		
9. Railway Street Shared Pedestrian / Cycle Path Works	Railway Street Shared Pedestrian / Cycle Path Works means the construction of a 2.5m shared path along the Railway Street frontage of the Land, from Cross Street to the railway crossing as shown in the plan at Schedule 6Annexure [1].	Completion to occur prior to issue of an Occupation Certificate for any residential flat building in Stage 1, unless otherwise agreed to in writing by Council.	Developer	\$187,500537,500
10. Railway Street/ Harbinger Street Roundabout Works	Railway Street/ Harbinger Street Roundabout Works means the construction of new 4 way roundabout at intersection of Railway Street and Harbinger Street	Completion to occur prior to issue of an Occupation Certificate for any residential flat building in Stage 1, unless otherwise agreed to in writing by Council.	Developer	\$950,9431,405,000
<b>Other Contributions</b>				
11. Station Plaza Public Access Contribution	Station Plaza Contribution means the creation and registration of a public easement/right of way across Station Plaza at [Lot/DP] providing public access to the railway station, generally as shown on the plan at Schedule 6Annexure [1].	Completion to occur prior to issue of an Occupation Certificate for the final residential flat building in Stage 1, unless otherwise agreed to in writing by Council.	Developer	\$2,961,7213,169,042
12. Affordable Housing Contribution	Affordable Housing Contribution means the Sale of land to a registered Community Housing Provider to allow delivery of a	Prior to the issue of an Occupation Certificate for any residential flat building within Stage 2, unless	Developer	N/A



## PLANNING AGREEMENT

Column 1	Column 2	Column 3	Column 4	Column 5
		minimum of 35 Affordable Housing dwellings, subject to satisfactory commercial arrangements	otherwise agreed to in writing by Council.	

## 2. Scope of Items of Works

- 2.1 The Developer undertakes to provide the following embellishment work to those Items of Works at clause 1 of this Schedule 3, in accordance with the table below.

	Column 1	Column 2
	Item of Work	Scope of Embellishment Work
1.	Central Village Park Works	<ul style="list-style-type: none"> <li>(a) Site preparation and earthworks.</li> <li>(b) Hard works - 1.2m concrete path, paving and soft fall.</li> <li>(c) Soft works - turf zone, native grasses and shrubs (6/sqm), 48 advanced trees.</li> <li>(d) Play equipment.</li> <li>(e) Furniture and fixtures - shade structure for play equipment, seating bollards, tactile indicators.</li> <li>(f) Services - lighting, one water point, signage.</li> <li>(g) Maintenance - planting establishment and maintenance for 3 years.</li> </ul>
2.	Southern Recreation Park Works	<ul style="list-style-type: none"> <li>(a) Site preparation and earthworks.</li> <li>(b) Hard works - 1.2m concrete path, paving and soft fall.</li> <li>(c) Soft works - turf zone, native grasses and shrubs (6/sqm), 25 advanced trees.</li> <li>(d) Furniture and fixtures - pergola, seating bollards, tactile indicators.</li> <li>(e) Services - lighting, two water points, signage.</li> <li>(f) Play Area/Equipment - nature based play area with provision of inclusive elements.</li> <li>(g) Community Garden - raised planting beds, one water point, storage shed.</li> <li>(h) Off-leash dog park - fencing and gate access.</li> </ul>



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		(i) Maintenance - planting establishment and maintenance for 3 years.
3.	Riparian Corridor Works	<p>(a) Site preparation and earthworks.</p> <p>(b) Hard works - concrete footpaths varying widths 1.2m, concrete stage area, sandstone logs as seating to amphitheatre, amphitheatre stairs and handrail, stacked sandstone block to rip rap zone, drop structure.</p> <p>(c) Walls - creek edge wall, gabion retaining wall to northwest corner (max 1.5m high), retaining wall to footpath edge.</p> <p>(d) Soft works - native grasses, shrubs and small trees (9/sqm), turf zones, mass planting of shrubs (6/sqm), wetlands planting, 50 tree plantings (45 litre) , jute mesh to creek.</p> <p>(e) Furniture and fixtures - seating, balustrades, bollards, tactile indicators.</p> <p>(f) Services - lighting as required, power to stage area, four water points, signage.</p> <p>(g) Vegetation restoration and management - in accordance with a future vegetation management plan for the retained endangered ecological community area.</p> <p>(h) Maintenance - planting establishment and maintenance for 5 years.</p>
4.	Riparian Corridor Shared Pedestrian / Cycle Path Works	<p>(a) Site preparation and earthworks.</p> <p>(b) Hard works - 2.5m concrete footpaths.</p> <p>(c) Bridges - two 2.5m wide by 20m long timber and steel bridge over creek.</p> <p>(d) Services - lighting as required.</p> <p>(e) Other - signage and line marking (terminates Southern bank Towradgi Creek).</p> <p>As generally shown in the plan at Schedule 6 <a href="#">Annexure [1]</a>.</p>
5.	Railway Street Shared Pedestrian / Cycle Path Works	(a) The construction of a 2.5m shared path along the Railway Street frontage of the Land as shown in the plan at Schedule 6 <a href="#">Annexure [1]</a> .
6.	Railway Street/Harbinger Street Roundabout Works	(a) The construction of new 4 way roundabout at the intersection of Railway Street and Harbinger Street.



## PLANNING AGREEMENT

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### 3. Additional Public Benefits

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- 3.1 Council acknowledges that the Development of the Land will provide a broad range of additional public benefits, which include:
- (a) preservation and restoration of various items of heritage significance;
  - (b) interpretation of existing heritage structures and general history of the Land, including Aboriginal heritage;
  - (c) substantial retention of existing mature vegetation along Railway Street;
  - (d) reduction of flood levels in selected locations upstream of and adjacent to the Land;
  - (e) increased accessibility and permeability for the Corrimal community;
  - (f) new housing opportunities;
  - (g) significant restoration of environmental and biodiversity values; and
  - (h) provision of neighbourhood retail services at Corrimal Station.
- 3.2 The Developer acknowledges and agrees that the additional public benefits referenced at clause 3.1 of this Schedule 3 are not able to be monetised to:
- (a) permit such value to be offset against any contributions under s7.11 or s7.12 of the Act: or
  - (b) be used as Contributions under this agreement.





## PLANNING AGREEMENT

### Schedule 4 Address for Service

<b>Council</b>	<b>Wollongong City Council</b>
Contact:	#[Insert]#
Address:	Wollongong City Council Locked Bag 8821 WOLLONGONG DC NSW 2500
Facsimile No:	#[Insert]#
Email:	council@wollongong.nsw.gov.au
<b>Developer</b>	<b>LegPro 70 Pty Ltd (ACN <a href="#">628 315 239</a>) as trustee for LegPro 70 Unit Trust (ABN <a href="#">85 213 629 919</a>)</b>
Contact:	#[Insert]# <a href="#">Tim Turpin</a>
Address:	#[Insert]# <a href="#">Level 45, 25 Martin Place</a> <a href="#">SYDNEY NSW 2000</a>
Email:	#[Insert]# <a href="#">tturpin@legacyproperty.com.au</a> <a href="#">CC: info@legacyproperty.com.au</a>
<b>Landowner</b>	<b>Illawarra Coke Company Pty Limited (ACN 000 009 807)</b>
Contact:	<a href="#">Kate Strahorn</a> #[Insert]#
Address:	<a href="#">Suite A1, 674 Old Pacific Highway,</a> <a href="#">SUTHERLAND NSW 2232</a> #[Insert]#
Email:	#[Insert]#





## PLANNING AGREEMENT

### Schedule 5 Indicative Staging Plan





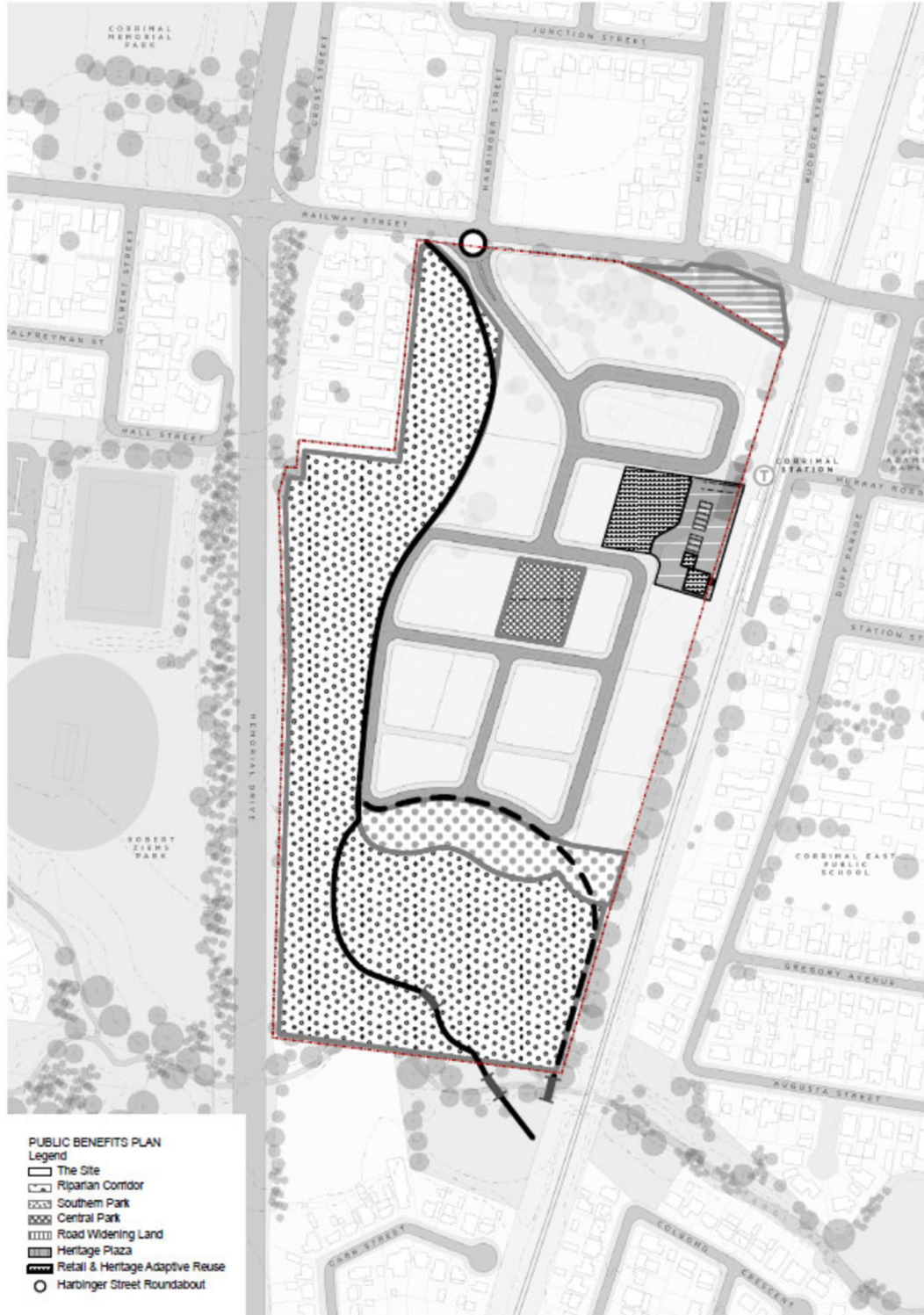
# PLANNING AGREEMENT

## Schedule 6 Indicative Plans





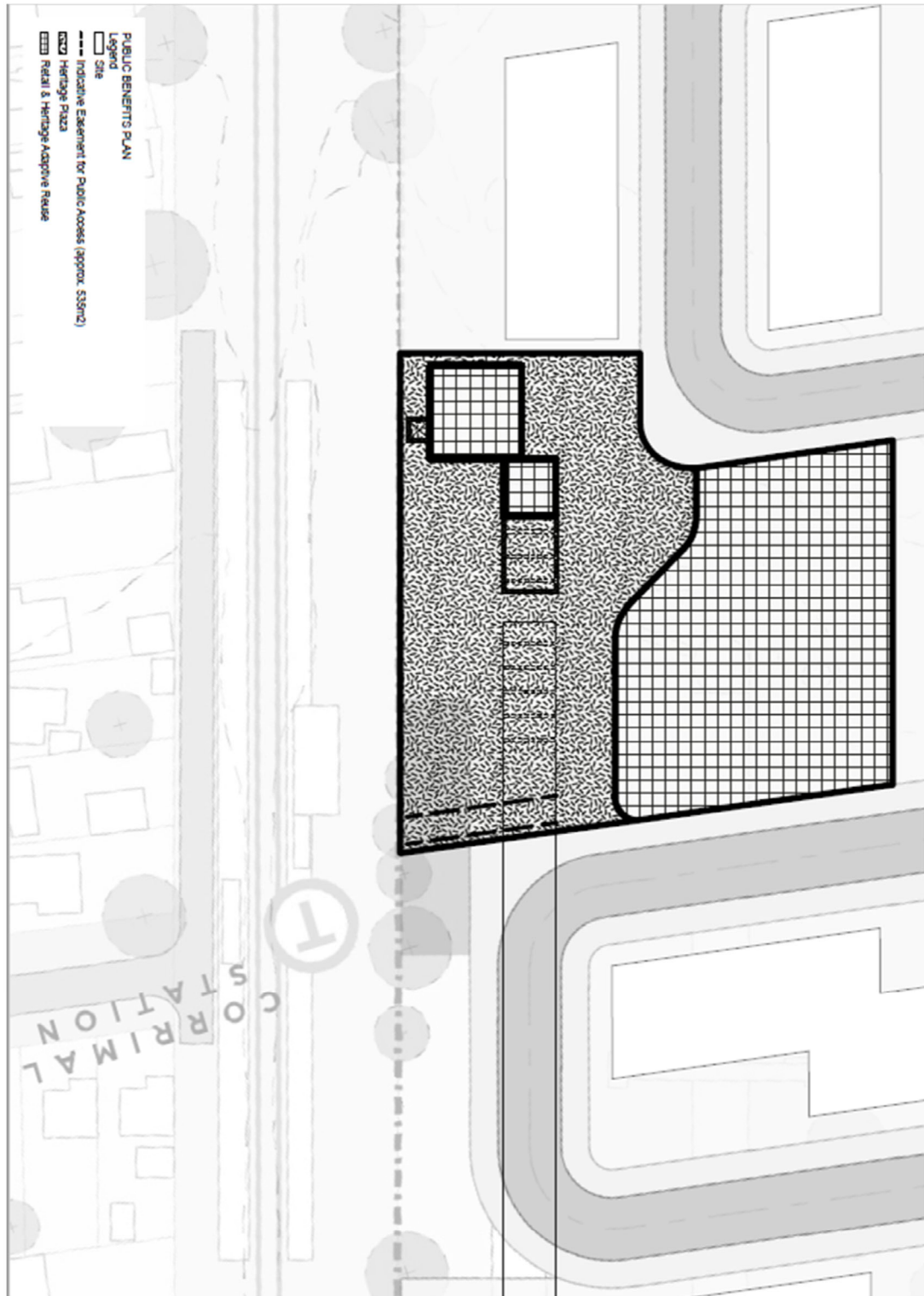
## PLANNING AGREEMENT







## PLANNING AGREEMENT





## PLANNING AGREEMENT





## PLANNING AGREEMENT

### Signing page

#### Executed as an agreement

**Executed** for and on behalf of **Wollongong City Council** by its representative in the presence of:

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Signature of representative

\_\_\_\_\_  
Full name of witness (print)

\_\_\_\_\_  
Full name of representative (print)

\_\_\_\_\_  
Address of witness (print)

\_\_\_\_\_  
Date

**Executed by LegPro 70 Pty Ltd (ACN 628 315 239) as trustee for LegPro 70 Unit Trust (ABN 85 213 629 919)** in accordance with section 127(1) of the *Corporations Act 2001* (Cth) by:

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of Director/Company Secretary

\_\_\_\_\_  
Full name (print)

\_\_\_\_\_  
Full name (print)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date



## PLANNING AGREEMENT

**Executed by Illawarra Coke Company Pty  
Limited ACN 000 009 807** in accordance  
with section 127(1) of the *Corporations Act  
2001* (Cth) by:

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of Director/Company Secretary

\_\_\_\_\_  
Full name (print)

\_\_\_\_\_  
Full name (print)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date



## Explanatory Note - Planning Agreement - Former Corrimal Coke Works

### Introduction

The purpose of this explanatory note is to provide a plain English summary that helps the community understand how the proposed planning agreement (the **Planning Agreement**) will be of public benefit, and why it is acceptable and in the planning interest. The explanatory note is made available as part of the public exhibition, where the public can read the Planning Agreement and make comments on it. It is not a plain English version of the Planning Agreement.

Clause 205 of the *Environmental Planning and Assessment Regulation 2021* (the **Regulation**) is a guideline for how explanatory notes must be written. It requires all those wanting to enter into the planning agreement to prepare the explanatory note together. Council and the Developer prepared this explanatory note together.

The *Environmental Planning and Assessment Act 1979* (the **Act**) is the NSW law that must be followed when preparing a Planning Agreement. The sections of the Act that relate to planning agreements are sections 7.4 to 7.10. This Planning Agreement was prepared in line with the Act and the Regulation.

### Parties to the Planning Agreement

The parties (people and organisations) to this Planning Agreement are -

- 1 Wollongong City Council ABN 38 755 709 681 (the **Council**); and
- 2 LegPro 70 Pty Ltd ACN 628 315 239 as trustee for LegPro 70 Unit Trust ABN 85 213 629 919 (the **Developer**); and
- 3 Illawarra Coke Company Pty Ltd ACN 000 009 807 (the **Landowner**).

### Description of the Subject Land

The Planning Agreement applies to this land –

- Lot 1 DP795791, Lot 5 DP749492, Lot 126 DP598190 and Lot 11 DP749492 known as the Corrimal Coke Works site (**Subject Land**).

### Description of Proposed Development

The Developer has rezoned the Subject Land and will seek to develop the Subject Land to build residential dwellings, public open space and related infrastructure. The land is zoned RE1 Public Recreation, R3 Medium Density Residential, and SP2 Infrastructure. The Developer has not lodged any Development Applications with Council yet (**Proposed Development**).

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

The Planning Agreement will require either the Developer or the Landowner to -

- Provide an embellished central village park with a minimum size of approx. 3,000sqm.
- Provide an embellished southern recreation park of approx. 7,088sqm.
- Dedicate the riparian corridor of approx. 77,997sqm.
- Provide a north-south shared path through the site generally within or adjacent to the riparian corridor.
- Provide a shared path on Railway Street, from Cross Street to the railway crossing
- Dedicate land identified on Council's Land Reservation Acquisition Map in the north-east of the site.

- Construct a four-way roundabout at the intersection of Railway Street and Harbinger Street.
- Provide permanent public access from the development through to Corrimal Station.
- Transfer land to a registered Community Housing Provider to allow for the development of 35 affordable rental housing dwellings.

The total value of these items comes to about \$38 million. Of this, about \$3.6 million is proposed as an offset of development contributions that would be payable under Council's relevant s7.11 Contributions Plan. The items proposed as the offset are the shared path through the riparian corridor, the land dedication for the road widening, and part of the cost of the roundabout.

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

The Council, Landowner and the Developer both agree the land and works will have a positive public impact in the area.

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

The Planning Agreement has the following public purpose -

- The provision of (or the recoupment of the cost of providing) public amenities or public services
- The provision of (or the recoupment of the cost of providing) affordable housing
- The provision of (or the recoupment of the cost of providing) transport or other infrastructure relating to land
- The conservation or enhancement of the natural environment.

This refers to section 7.4(2) of the Act. The Planning Agreement will enable land and infrastructure to be dedicated to Council before a relevant occupation certificate is issued.

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

The Planning Agreement promotes the objects (aims) of the Act which are –

- To promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources.
- To facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment
- To promote the orderly and economic use and development of land,
- To promote the delivery and maintenance of affordable housing,
- To protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,
- To promote good design and amenity of the built environment,

This refers to section 1.3 of the Act. It means the Proposed Development will happen in an appropriate location and the Subject Land will be developed in a way that fits with other development in the area, community infrastructure and open space will be provided.