
Calderwood Voluntary Planning Agreement

Environmental Planning and Assessment Act 1979

Wollongong City Council
Lendlease Communities (Australia) Limited
Lendlease Communities (Calderwood) Pty Limited



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DETAILS

Date:

Parties

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Attention Tamara Rasmussen

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Attention Tamara Rasmussen

Recitals

- A. The Developer intends to carry out the Development.
- B. On 8 December 2010, the Minister for Planning granted the Concept Plan Approval.
- C. The Concept Plan Approval includes the provision of open space and associated works to be undertaken and delivered by the Developer to the Council. This Planning Agreement does not address the provision of this open space and associated works.
- D. The Owner is the owner of the Land and has consented to the Developer taking steps to carry out the Development.

- E. The Developer has made or proposes to make Development Applications .
- F. From the date the Planning Agreement commences to operate (pursuant to clause 2.1(b)), this Deed constitutes an agreement between the Developer and the Council that the Developer will pay the Contribution Amounts on the terms and conditions of this Deed.

Operative Parts

1. Defined terms and interpretation

1.1 Defined terms

The following definitions apply unless the context requires otherwise.

Act means the Environmental Planning and Assessment Act 1979 (NSW).

Address for Service means the address of each party appearing in Schedule 2 or any new address notified by any party to all other parties as its new Address for Service.

Allotment means a lot forming part of the land identified in any Development Application for subdivision of the whole, or any part, of any land for the purposes of the Development which lot is intended to be developed, subject to Development Consent, by construction of one or more Dwellings and is not intended to be further subdivided prior to the construction of those Dwellings for the purposes of the Development.

Approval means any approvals, consents, certificates, permits, endorsements, licences, conditions or requirements (and any modifications or variations to them) which may be required by Law or by adjoining owners for the commencement and carrying out of the Development generally and includes an approval under Part 3A of the Act.

Authority means any Federal, State or local government or semi-governmental, statutory, judicial or public person, instrumentality or department.

Bank Guarantee means one or more irrevocable and unconditional undertakings:

- (a) by an Australian Bank which is an eligible financial institution for the purposes of Treasury Circular NSW TC08/01 dated 21 February 2008 as amended, supplemented or substituted from time to time; and
- (b) on terms acceptable to the Council, acting reasonably,

to pay the face value of that undertaking (being such an amount as is required under this Deed) on demand and expressed to be for the performance by the Developer for its obligations under this Deed.

Business Day means any day that is not a Saturday, Sunday, gazetted public holiday or bank holiday in Sydney, and concludes at 5pm on that day.

Certifier means such person with the appropriate qualifications as is agreed by the parties.

Concept Plan Approval means the concept plan that was approved by the Minister for Planning to Major Project No. 09_0082 on 8 December 2010, as modified from time to time, or as supplemented or replaced and results in an Approval that has substantially the same or similar effect.

Construction includes construction work, as well preliminary work, including investigations, designs and concept work, as well as exploratory work.

Contribution Amount means the amount of a monetary contribution to be paid by the Developer as described in Schedule 4.

Contribution Regime means all Laws governing the levying of contributions by the proponents of development including:

- (a) any contribution plan adopted by the Council pursuant to s 94EA of the Act (or any equivalent provision); and
- (b) any Ministerial declaration with respect to contributions pursuant to s 94EA of the Act (or any equivalent provision),

but excluding this Deed.

Council means Wollongong City Council.

CPI means the Sydney Consumer Price Index (All Groups) published by the Commonwealth Statistician, or if that index no longer exists, any similar index which the Council determines, acting reasonably.

Defects Liability Period means the period of two years commencing from the date of Practical Completion of the WIK Works.

Developer means Lendlease Communities (Australia) Limited and Lendlease Communities (Calderwood) Pty Limited, individually and collectively.

Development means the development located on the Land and other land in both the Shellharbour and Wollongong Local Government Areas, as described in, and approved by the Concept Plan Approval.

Development Application has the same meaning as in the Act.

Development Consent has the same meaning as in the Act.

Development Contribution Table means collectively, the tables in clause 1(a) of Schedule 4.

Dwelling means a room, or suite of rooms, occupied or used, or so constructed or adapted, as to be capable of being occupied or used, as a separate domicile to be erected on the Land as part of the Development.

Explanatory Note means the explanatory note required by the Regulation.

General Register of Deeds means the land register maintained under the Conveyancing Act 1919 (NSW) and so titled.

GST means any form of goods and services tax payable under the GST Legislation.

GST Legislation means the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

Land means the land described in Part 1 of Schedule 3.

Law means the relevant requirements of all statutes, rules, ordinances, codes, policies, regulations, proclamations, by-laws or consents issued by an Authority, present or future, including applicable principles of common law.

Marshall Mount Road Upgrade means the upgrade to Marshall Mount Road:

- (a) in the section from the Council's local government boundary with Shellharbour City Council's local government boundary to Yallah Road to provide for a four (4) lane collector road, in accordance with Chapter D16 in Wollongong Council's Development Control Plan 2009 (as in force 24 October 2015), Type 3; and
- (b) in the section from Yallah Road to Huntley Road to provide for a two (2) lane collector road in accordance with Chapter D16 in Wollongong Council's Development Control Plan 2009 (as in force 24 October 2015), Type 2.

NR1 – NR3 means a new four (4) lane collector road, in accordance with Chapter D16 in Wollongong Council's Development Control Plan 2009 (as in force 24 October 2015), Type 4.

Owner means the owners of the Land at the date of this Deed.

Planning Agreement means this Deed as and when it becomes operative as a planning agreement under, and by operation of, clause 2.1(b).

Planning Approval means any approval under the Act for the carrying out of the construction of the Marshall Mount Road Upgrade, the Yallah Road Upgrade and NR1-NR3.

Practical Completion means in relation to the WIK Works, the point of time at which the Certifier is satisfied, acting reasonably, that the WIK Works have been completed and installed in accordance with all relevant Approvals and this Deed (except for minor defects or omissions).

Real Property Act means the Real Property Act 1900 (NSW).

Register means the Torrens title register maintained under the Real Property Act.

Regulation means the Environmental Planning and Assessment Regulation 2000 (NSW).

Residential Plan means a plan of subdivision with respect to the Development, which when registered, would create one or more Allotments.

Road Works means the Marshall Mount Road Upgrade, the Yallah Road Upgrade and NR1-NR3.

Shellharbour Planning Agreement means the planning agreement with respect to the Development between Shellharbour City Council and the Developer executed on 15 September 2014, as amended from time to time.

Stage 1 Consent means the approval granted under the Act to Major Project Application MP 09_0083, as modified from time to time.

State Planning Agreement means the planning agreement with respect to the Development between the Minister for Planning and the Developer executed on 3 March 2011, as amended from time to time.

Subdivision Certificate has the same meaning as in the Act.

Unregistered Land is defined in clause 1 of Schedule 5.

Yallah Road Upgrade means the upgrade to Yallah Road to provide for a four (4) lane collector road, in accordance with Chapter D16 in Wollongong Council's Development Control Plan 2009 (as in force 24 October 2015), Type 4.

1.2 Interpretation

In this Deed unless the context clearly indicates otherwise:

- (a) a reference to this Deed or another document means this Deed or that other document and any document which varies, supplements, replaces, assigns or novates this Deed or that other document;
- (b) a reference to legislation or a legislative provision includes any statutory modification, or substitution of that legislation or legislative provision and any subordinate legislation issued under that legislation or legislative provision;
- (c) a reference to a body or authority which ceases to exist is a reference to either a body or authority that the parties agree to substitute for the named body or authority or, failing agreement, to a body or authority having substantially the same objects as the named body or authority;
- (d) a reference to the introduction, a clause, schedule or annexure is a reference to the introduction, a clause, a schedule or an annexure to or of this Deed;
- (e) clause headings, the introduction and the table of contents are inserted for convenience only and do not form part of this Deed;
- (f) the schedules form part of this Deed;
- (g) a reference to a person includes a natural person, corporation, statutory corporation, partnership, the Crown or any other organisation or legal entity;
- (h) a reference to a natural person includes their personal representatives, successors and permitted assigns;
- (i) a reference to a corporation includes its successors and permitted assigns;
- (j) a reference to a right or obligation of a party is a reference to a right or obligation of that party under this Deed;
- (k) an obligation or warranty on the part of 2 or more persons binds them jointly and severally and an obligation or warranty in favour of 2 or more persons benefits them jointly and severally;
- (l) a requirement to do any thing includes a requirement to cause that thing to be done and a requirement not to do any thing includes a requirement to prevent that thing being done;
- (m) including and includes are not words of limitation;
- (n) a word that is derived from a defined word has a corresponding meaning;
- (o) monetary amounts are expressed in Australian dollars;
- (p) the singular includes the plural and vice-versa;
- (q) words importing one gender include all other genders;
- (r) a reference to a thing includes each part of that thing; and
- (s) neither this Deed nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting.

2. Operation and Application of this Deed

2.1 Operation

- (a) Until the Planning Agreement operates pursuant to clause (b), this Deed constitutes an irrevocable offer to the Council from the Developer to enter into the Planning Agreement.
- (b) The Planning Agreement operates, and becomes legally binding on both parties if:
 - (i) the Planning Agreement is entered into as required by clause 25C(1) of the Regulation; and
 - (ii) the Council executes this Deed.

2.2 Planning agreement under the Act

This Deed constitutes a planning agreement within the meaning of section 93F of the Act.

2.3 Application

This Deed applies to:

- (a) the Land; and
- (b) the Development.

2.4 Development Contributions

The Council agrees that it must only use or expend any Contribution Amounts paid by the Developer in accordance with clause 3 of Schedule 4.

3. Application of Sections 94, 94A and 94EF of the Act

The application of sections 94, 94A and 94EF of the Act are excluded to the extent stated in Schedule 1.

4. Requirement to Pay Contribution Amounts

- (a) The Developer undertakes to pay the Contribution Amounts in the manner and at the times set out in Schedule 4;
- (b) The Council agrees to use and expend the Contribution Amounts for the Construction and completion of the Road Works in the manner set out in this Deed; and
- (c) The parties agree to abide by the procedures and obligations set out in Schedule 4, Schedule 5 and Schedule 6 of this Deed.

5. Registration on title

5.1 Land ownership

The Developer represents and warrants that it is:

- (a) the owner of that part of the Land described in part 2 of Schedule 3; and

- (b) legally and beneficially entitled to obtain all consents and approvals in relation to that part of the Land described in part 3 of Schedule 3.

5.2 Registration of Deed

- (a) As contemplated by section 93H of the Act, the Developer agrees to procure the registration of this Deed under the Real Property Act in the relevant folio of the Register as soon as reasonably practicable after:

- (i) in relation to that part of the Land described in part 2 of Schedule 3, the date of this Deed; and
- (ii) in relation to that part of the Land described in part 3 of Schedule 3, the date the Developer becomes the registered proprietor of that land,
- (iii) in relation to any other part of the Land not specified in part 2 and part 3 of Schedule 3, the date the Developer enters into legally binding arrangements with any person referred to in, or contemplated by, clause 5.2(b)(i) in respect of that land which entitles the Developer to require that person to assist, cooperate and to otherwise do all things necessary for the Developer to procure the registration of this Deed under the Real Property Act in the relevant folio of the Register,

noting that registration of this Deed shall be undertaken progressively, so that this Deed is registered on each part of the Land referred to in this paragraph (a) as soon as reasonably practicable in respect of that part of the Land.

- (b) In relation to the land referred to in clause 5.2(a), the Developer, at its own expense, must take all practical steps to procure:

- (i) the consent of each person who:
 - (A) has an estate or interest in the Land registered under the Real Property Act; or
 - (B) is seized or possessed of an estate or interest in the Land;
- (ii) the execution of any documents;
- (iii) the production of the relevant certificates of title; and
- (iv) the lodgement and registration of this Deed, by the Registrar-General in the relevant folio of the Register, or in the General Register of Deeds if this Deed relates to land not under the Real Property Act.

- (c) The Council must promptly do all things reasonably required by the Developer to enable the Developer to procure registration of this Deed under the Real Property Act in the relevant folio of the Register in accordance with clause 5.2(a).

- (d) The Developer will provide the Council with a copy of the relevant folio of the Register within 10 Business Days of registration of this Deed in accordance with this clause 5.2.

- (e) For the avoidance of doubt, the Developer is not obliged to procure the registration of this Deed under the Real Property Act:

- (i) on any part of the Land specified in part 4 of Schedule 3; and

- (ii) subject to the obligations at clause 5.3(a)(iii) and 5.3(b), on any part of the Land for which the Developer is not the registered proprietor.

5.3 Release and discharge of Deed

- (a) If, in respect of an Allotment, the Developer has fully satisfied its obligations under this Deed in relation to the payment of Contribution Amounts for the Allotment and the Developer is not otherwise in default under this Deed (as determined by the Council (acting reasonably) and notified to the Developer in writing), then at the written request of the Developer (such request to contain all necessary title particulars that are relevant to the request), the Council must (at the Developer's cost) promptly:
 - (i) provide a release and discharge (in immediately registrable form) of this Planning Agreement to the extent that the Planning Agreement affects that Allotment; and
 - (ii) do all things necessary to enable the extinguishment of this Planning Agreement from the title of that Allotment,and the Council agrees to procure the outcomes referred to in paragraphs (i) and (ii) within 15 business days after receipt of the relevant request.
- (b) The land to be released and discharged from this Planning Agreement in accordance with clause 5.3(a) will also include parts of the Land which are not Allotments or which are not zoned, or intended to be subdivided further to create Allotments.

6. Security

6.1 Security

- (a) The Developer has agreed to provide security under this Deed:
 - (i) by registering this Deed on the title to the Land in accordance with clause 5.2; and
 - (ii) where:
 - (A) the Subdivision Certificate is to be issued by a person other than the Council; or
 - (B) a condition has not been imposed on the relevant Development Consent to the effect that prior to the issue of the Subdivision Certificate, the Developer is to comply with all necessary requirements of this Deed,the Developer agrees not to make an application for a Subdivision Certificate that when would trigger a payment to be made in accordance in Schedule 4 of this Deed, unless and until the Developer has paid the relevant Contribution Amount in accordance with Schedule 4 of this Deed.
- (b) For the avoidance of doubt, nothing in this clause prevents:
 - (i) the Developer from applying to an Accredited Certifier for a Subdivision Certificate; or

- (ii) the Developer from applying for a Subdivision Certificate to be issued prior to the Developer paying the relevant Contribution Amount in accordance with Schedule 4 of this Deed where:
 - (A) the Subdivision Certificate is to be issued by the Council; or
 - (B) a condition has been imposed on the relevant Development Consent to the effect that prior to the issue of the Subdivision Certificate, the Developer is to comply with all necessary requirements of this Deed.

7. Dispute Resolution

7.1 Not commence

Subject to clauses 6(c) and 7 of Schedule 4, a party must not commence any court proceedings relating to a dispute unless it complies with this clause 7.

7.2 Written notice of dispute

A party claiming that a dispute has arisen under or in relation to this Deed must give written notice to the other party specifying the nature of the dispute.

7.3 Attempt to resolve

On receipt of notice under clause 7.2, the parties must endeavour in good faith to resolve the dispute expeditiously using informal dispute resolution techniques such as mediation, expert evaluation or other techniques agreed by them.

7.4 Mediation

If the parties do not agree within 21 Business Days of receipt of notice under clause 7.2 (or any further period agreed in writing by them) as to:

- (a) the dispute resolution technique and procedures to be adopted;
- (b) the timetable for all steps in those procedures; or
- (c) the selection and compensation of the independent person required for such technique,

the parties must mediate the dispute in accordance with the Mediation Rules of the Law Society of NSW. The parties must request the president of the Law Society of NSW or the president's nominee to select the mediator and determine the mediator's remuneration.

7.5 Court proceedings

If the dispute is not resolved within 60 Business Days after notice is given under clause 7.2, then any party which has complied with the provisions of this clause 7 may in writing terminate any dispute resolution process undertaken under this clause and may then commence court proceedings in relation to the dispute.

7.6 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 7 is to attempt to settle the dispute. No party may use any information or documents obtained through any dispute resolution

process undertaken under this clause 7 for any purpose other than in an attempt to settle the dispute.

7.7 No prejudice

This clause 7 does not prejudice the right of a party to institute court proceedings for urgent injunctive or declaratory relief in relation to any matter arising out of or relating to this Deed.

8. GST

8.1 Definitions

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

8.2 Intention of the parties

Without limiting any other provision of this clause 8, the parties intend that:

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

8.3 Reimbursement

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

8.4 Consideration GST exclusive

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this Deed are GST Exclusive. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purposes of this clause 8.

8.5 Additional Amounts for GST

Subject to clause 8.7, if GST becomes payable on any supply made by a party (Supplier) under or in connection with this Deed:

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

8.6 Variation

- (a) If the GST Amount properly payable in relation to a supply (as determined in accordance with clauses 8.5 and 8.7), varies from the additional amount paid by

the Recipient under clause 8.5, then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient. Any payment, credit or refund under this clause 8.6(a) is deemed to be a payment, credit or refund of the GST Amount payable under clause 8.5.

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

8.7 Non monetary consideration

- (a) To the extent that the consideration provided for the Supplier's taxable supply to which clause 8.5 applies is a taxable supply made by the Recipient (the Recipient Supply), the GST Amount that would otherwise be payable by the Recipient to the Supplier in accordance with clause 8.5 shall be reduced by the amount of GST payable by the Recipient on the Recipient Supply.
- (b) The Recipient must issue to the Supplier an invoice for any Recipient Supply on or before the time at which the Recipient must pay the GST Amount in accordance with clause 8.5 (or the time at which such GST Amount would have been payable in accordance with clause 8.5 but for the operation of clause 8.7(a)).

8.8 No merger

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

9. Assignment

- 9.1 If the Developer enters into an agreement with a third party (**Incoming Party**) to sell, transfer, assign or novate or similarly deal with its right, title or interest in the Land (if any) or rights or obligations under the terms of this Deed (**Transaction**), the Developer may not complete that Transaction, unless before completion of the Transaction, the Developer, other than:

- (a) at no cost to the Council, has first procured the execution by the Incoming Party of an agreement in favour of the Council on the same terms as this Deed as if the Incoming Party were a party to this Deed; and
- (b) satisfies Council that the Developer is not in breach of its obligations under this Deed at the time of completion of the Transaction.

- 9.2 The parties agree that clause 9.1 9.1of this Deed does not operate in the following circumstances:

- (a) where the Transaction is:
 - (i) to a related body corporate (within the meaning of section 50 of the Corporations Act 2001) (**Related Body Corporate**) other than a party to this Deed; or
 - (ii) to Shellharbour City Council, pursuant to the Shellharbour Planning Agreement; or
 - (iii) to the Minister for Planning, pursuant to the State Planning Agreement; or,
 - (iv) by way of a mortgage or charge; and

- (b) if the Incoming Party (as that term is defined in clause 9.1 above) is acquiring an interest in the Land or part of the Land as a purchaser of one of more Allotments; in which case the Developer may create and transfer that interest without requiring the Incoming Party to enter into an agreement with the Council, and the interest so created and transferred will not be in breach of this Deed; or
 - (c) where the Developer's obligations under this Deed have been released and discharged in accordance with this Deed.
- 9.3 In the case of a Transaction to a Related Body Corporate, the Developer must notify the Council of the name of the assignee as soon as practicable prior to the assignment occurring.
- 9.4 If the Developer satisfies the requirements of clauses 9.1 and 9.3, the Developer will be fully released from its obligations under this Deed.

10. Warranties of Capacity

10.1 General warranties

Each party warrants to each other party that:

- (a) this Deed creates legal, valid and binding obligations, enforceable against the relevant party in accordance with its terms; and
- (b) unless otherwise stated, it has not entered into this Deed in the capacity of trustee of any trust.

10.2 Power of attorney

If an attorney executes this Deed on behalf of any party, the attorney declares that it has no notice of the revocation of that power of attorney.

11. Interest

If the Developer fails to pay any Contribution Amount due to the Council on the due date for payment, the Developer must also pay to the Council interest at a rate of 2% above the loan reference rate charged by the Commonwealth Bank of Australia from time to time. That interest will be payable on the daily balance of amounts due from the due date for payment of those amounts until all outstanding amounts (including interest on those amounts) have been paid to the Council.

12. General Provisions

12.1 Entire Deed

This Deed constitutes the entire agreement between the parties regarding the matters set out in it and supersedes any prior representations, understandings or arrangements made between the parties, whether orally or in writing.

12.2 Variation

This Deed must not be varied except by a later written document executed by all parties.

12.3 Waiver

A right created by this Deed cannot be waived except in writing signed by the party entitled to that right. Delay by a party in exercising a right does not constitute a waiver of that right, nor will a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.

12.4 Further assurances

Each party must promptly execute all documents and do everything necessary or desirable to give full effect to the arrangements contained in this Deed.

12.5 Time for doing acts

- (a) If:
 - (i) the time for doing any act or thing required to be done; or
 - (ii) a notice period specified in this Deed,expires on a day other than a Business Day, the time for doing that act or thing or the expiration of that notice period is extended until the following Business Day.
- (b) If any act or thing required to be done is done after 5pm on the specified day, it is taken to have been done on the following Business Day.

12.6 Governing law and jurisdiction

- (a) The laws applicable in New South Wales govern this Deed.
- (b) The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts competent to hear appeals from those courts.

12.7 Severance

If any clause or part of any clause is in any way unenforceable, invalid or illegal, it is to be read down so as to be enforceable, valid and legal. If this is not possible, the clause (or where possible, the offending part) is to be severed from this Deed without affecting the enforceability, validity or legality of the remaining clauses (or parts of those clauses) which will continue in full force and effect.

12.8 Preservation of existing rights

The expiration or termination of this Deed does not affect any right that has accrued to a party before the expiration or termination date.

12.9 No merger

Any right or obligation of any party that is expressed to operate or have effect on or after the completion, expiration or termination of this Deed for any reason, will not merge on the occurrence of that event but will remain in full force and effect.

12.10 Counterparts

This Deed may be executed in any number of counterparts. All counterparts taken together constitute one instrument.

12.11 Relationship of parties

Unless otherwise stated:

- (a) nothing in this Deed creates a joint venture, partnership, or the relationship of principal and agent, or employee and employer between the parties; and
- (b) no party has the authority to bind any other party by any representation, declaration or admission, or to make any contract or commitment on behalf of any other party or to pledge any other party's credit.

12.12 **Good faith**

Each party must act in good faith towards all other parties and use its best endeavours to comply with the spirit and intention of this Deed.

12.13 **No fetter**

Nothing in this Deed shall be construed as requiring either the Council to do anything that would cause the Council to breach any of the Council's obligations at law and without limitation, nothing in this Deed shall be construed as limiting or fettering in any way the discretion of the Council in exercising any of the Council's statutory functions, powers, authorities or duties.

12.14 **Explanatory note**

The Explanatory Note must not be used to assist in construing this Deed.

12.15 **Expenses and stamp duty**

- (a) The Developer is to pay the Council's reasonable legal costs and disbursements in connection with the negotiation, preparation, execution and carrying into effect of this Deed.
- (b) The Developer must pay for all reasonable costs and expenses associated with the giving of public notice of this Deed and the Explanatory Note in accordance with the Regulation.
- (c) The Developer must pay all stamp duty assessed on or in respect of this Deed and any instrument or transaction required by or necessary to give effect to this Deed.

12.16 **Notices**

- (a) Any notice, demand, consent, approval, request or other communication (notice) to be given under this Deed must be in writing and must be given to the recipient at its Address for Service by being:
 - (i) hand delivered; or
 - (ii) sent by facsimile transmission.
- (b) A notice is given if:
 - (i) hand delivered, on the date of delivery; or
 - (ii) sent by facsimile transmission during any Business Day, on the date that the sending party's facsimile machine records that the facsimile has been successfully transmitted.

Schedule 1 - Requirements under section 93F of the Act (clause 1.2)

The parties acknowledge and agree that the table set out below provides for certain terms, conditions and procedures for the purpose of the Deed complying with the Act.

REQUIREMENT UNDER THE ACT		THIS DEED	
Planning instrument and/or development application - (section 93F(2))			
The Developer has:			
(a)	sought a change to an environmental planning instrument	(a)	No
(b)	Made, or proposes to make, a Development Application	(b)	Yes
(c)	Entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies	(c)	No
Description of land to which this Deed applies - (section 93F(3)(a))		See Schedule 3.	
Description of change to the environmental planning instrument to which this Deed applies - (section 93F(b))		N/A	
The scope, timing and manner of delivery of contribution required by this Deed - (section 93F(c))		See Schedule 4.	
Applicability of sections 94 and 94A of the Act - (section 93F(3)(d))		The application of section 94 and 94A of the Act is excluded in respect of the Development, subject only to clause 2(b) of Schedule 5.	
Applicability of section 94EF of the Act - (section 93F(3)(d))		The application of section 94EF of the Act is not excluded in respect of the Development.	
Consideration of benefits under this Deed if section 94 applies - (section 93F(5))		Yes.	
Mechanism for Dispute Resolution - (section 93F(3)(f))		See clause 7.	
Enforcement of this Deed - (section 93F(3)(g))		See clause 6.	
No obligation to grant consent or exercise functions - (section 93F(10))		See clause 12.13.	

Schedule 2 - Address for Service (clause 1.1)

1	The Council:	
	Contact:	The General Manager, Wollongong City Council
	Address:	41 Burelli Street, Wollongong NSW 2500
	Facsimile No:	(02) 4225 9964
2	Developer	
	Contact:	The Company Secretary
	Address:	Level 14, Tower Three International Towers Sydney, Exchange Place 300 Barangaroo Avenue Barangaroo NSW 2000
	Facsimile No:	(02) 9673 8888

Schedule 3 - Land (clause 1.1)

Part 1

Lot	Deposited Plan	Lot	Deposited Plan
2	2534	2	158988
1	259137	2	259137
3	259137	2	608238
112	851153	1	1044038
21	1224293	22	1224293
23	1224293	1	998349
22	809156		
1	195342	8	259137
1	558196	1	608238
10	619547	21	809156
42	878122		
1177	1202087	1182	1202087
1201	1206166	1222	1206166
1223	1206166	1224	1206166
1225	1206166	1227	1206166
1233	1206166	1234	1206166
1379	1206167	1380	1206167
1382	1206167	1414	1206168
1383	1206167	21	1224588
1101 - 1175	1202087	1202 - 1221	1206166
1301 - 1377	1206167	1401 - 1413	1206168
1415 - 1450	1206168		

Part 2

Lot	Deposited Plan	Lot	Deposited Plan
1177	1202087	1182	1202087
1201	1206166	1222	1206166
1223	1206166	1224	1206166
1225	1206166	1227	1206166
1233	1206166	1234	1206166
1379	1206167	1380	1206167
1382	1206167	1414	1206168
1383	1206167	21	1224588

Part 3

Lot	Deposited Plan	Lot	Deposited Plan
2	2534	2	158988
1	259137	2	259137
3	259137	2	608238
112	851153	1	1044038
21	1224293	22	1224293
23	1224293	1	998349
22	809156		

Part 4

Lot	Deposited Plan	Lot	Deposited Plan
1101 - 1175	1202087	1202 - 1221	1206166
1301 - 1377	1206167	1401 - 1413	1206168
1415 - 1450	1206168		

Schedule 4 - Contribution Amounts (clause 4)

1. Payment of Contribution Amounts

- (a) The Developer must pay the Contribution Amounts in accordance with this clause.
- (b) Subject to clause 6.1 of this Deed, prior to the issue of any Subdivision Certificate in respect of a Residential Plan, that when registered would create the last Allotment for the relevant payment stage set out in the table below, the Developer must pay the Contribution Amount as specified in the table set out below:

Column 1 Payment Stage	Column 2 Timing	Column 3 Contribution Amount
1	The earlier of 30 June 2026, or the date of registration of a plan of subdivision that when registered will create the 2,500th Allotment of the Development, or such other time as agreed by the parties in writing (Initial Payment).	\$4,400 per Allotment. If the Initial Payment becomes payable on 30 June 2026, the Contribution Amount is to be calculated on a pro-rata basis for the number of lots registered as at 30 June 2026, excluding any Allotments created pursuant to the Stage 1 Consent. If the Initial Payment becomes payable before 30 June 2026, the Contribution Amount is \$4,400 per Allotment for the first Allotment created by a Residential Plan up to the 2,500th Allotment excluding any Allotments created pursuant to the Stage 1 Consent.
2	The date of registration of a plan of subdivision that when registered would create the 3,000th Allotment, or such other time as agreed by the parties in writing.	\$4,400 per Allotment for Allotments 2,501 to 3,000 (and any balance of the Allotments not the subject of payment when the Initial Payment was made if the date of that payment was 30 June 2026).
3	The date of registration of a plan of subdivision that when registered would create the	\$4,400 per Allotments for Allotments 3,001 to 3,500

	3,500 th Allotment, or such other time as agreed by the parties in writing.	
4	The date of registration of a plan of subdivision that when registered would create the 4,000 th Allotment or such other time as agreed by the parties in writing.	\$4,400 per Allotment for Allotments 3,501 to 4,000
5	The date of registration of a plan of subdivision that when registered would create the 4,800 th Allotment, or such other time as agreed by the parties in writing.	\$4,400 per Allotment for Allotments 4,001 to 4800
6	The date of registration of each plan of subdivision that when registered would create Allotments 4,801 to 6,000.	\$1,000 per Allotment from 4801 to 6000 created by each Residential Plan
7	The date of registration of a plan of subdivision that when registered would create the Allotments 6001 and onwards.	Nil

- (c) The Developer must pay the Contribution Amounts identified above either by cheque made payable to the Council or by electronic transfer into a bank account, the details of which are to be provided by the Council to the Developer.
- (d) The Developer must provide the Council with a report stating (to the best of the Developer's knowledge) the number of Allotments that have been created, at the relevant time, on the occurrence of each of the following events:
- (i) the fifth anniversary of this Deed;
 - (ii) thereafter, every twelve (12) months; and
 - (iii) prior to the granting of a Subdivision Certificate that will create the final Allotment within the Development.

2. Increase in Development Contributions

- (a) Any amount:

- (i) specified in clause 1(b) of Schedule 4; or
- (ii) specified as a Contribution Amount in the Development Contribution Table;

must be increased annually on the date of publication of the June quarterly CPI by the Commonwealth Statistician in accordance with the following formula:

$$A = B \times \frac{C}{D}$$

Where:

A is the indexed amount;

B in relation to the first payment required to be made in accordance with this Deed, the monetary amount specified in this Deed, and thereafter the further payment stages, is the amount to be paid for the relevant payment stage;

C is the most recent June quarter CPI published as at the date that payment is due to be made; and

D is the most recent CPI published before the date of the commencement of this Deed in accordance with clause 2.1.

3. Use of Contribution Amounts by the Council for the Road Works

- (a) The Council agrees that in respect of the Contribution Amounts that the Developer is required to pay in accordance with this Schedule 4, the Council must only use or expend the Contribution Amounts in respect of the construction and completion of the Road Works;
- (b) The Council further agrees that it will use all reasonable endeavours to ensure that the Road Works are undertaken by the earlier of:
 - (i) The time specified in Council's West Dapto Section 94 Development Contributions Plan, which is updated biennially; or
 - (ii) Such time as the needs generated by the Development or West Dapto are likely to require the provision of the Road Works as determined by the Council (acting reasonably).

4. Step in

- (a) For the purposes of this clause, 1 December 2026 is the **Completion Date**.
- (b) The Council agrees to provide written notice to the Developer no later than 1 December 2022, or such other time as agreed in writing by the parties, having regard to the matters in clause 3(b) of this Schedule 4, notifying the Developer whether the Council will complete the Road Works by 1 December 2026 (**Road Works Notice**);
- (c) If the Road Works Notice states that the Road Works will not be completed by the Completion Date, Council agrees to promptly assess the need for interim road works, having regard to the Developer's information and projections concerning the then present and likely traffic volumes emanating from the Development, and notify the Developer in writing whether Council determines, acting reasonably, that interim road works are required to Marshall Mount Road and Yallah Road to

ensure that sufficient access is provided to the Development by the Completion Date, such that access is not an impediment to the grant of future Development Consents for subdivision pursuant to the Concept Plan Approval (**Interim Road Works**), it shall notify the Developer in writing, as soon as practicable and no later than 30 Business Days of the Roads Works Notice;

- (d) Any dispute between the parties concerning the need for the Interim Road Works (**Interim Road Works Dispute**) is to be resolved in accordance with clause 7 of this Schedule 4;
- (e) The detailed design of the Interim Road Works shall thereafter be agreed between Council and the Developer within a period of 3 months of the written notice, provided by the Council under clause 4(c) of this Schedule 4, having regard to Council and the Developer's reasonable requirements and will comprise works to Marshall Mount Road and Yallah Road by constructing either:
 - (i) a two lane rural road with shoulders and table drains that will allow for future widening to four lane urban road reserve; bridges along the route to be built to the ultimate width and length and intersections to be designed, to allow for future widening; or
 - (ii) a two lane half-width urban road with kerb and gutter on one side with shoulder and table drain on the other side that will allow for future widening to a four lane urban road reserve; bridges along the route to be built to the ultimate width and length and intersections to be designed, to allow for future widening; or
 - (iii) such other road works as agreed in writing between the Developer and the Council.
- (f) Following the completion of the detailed design of the Interim Road Works, Council agrees to provide a notice to the Developer informing it of the projected date for completion of the Interim Road Works (**Interim Road Works Completion Notice**), being a date no later than the Completion Date (**Interim Road Works Completion Date**);
- (g) If Council commences the Road Works or Interim Road Works but at any time forms the view that it will not complete the Road Works or Interim Road Works by the Completion Date, the Council must advise the Developer in writing as soon as practicable after it forms the view that it will not carry out the Road Works or Interim Road Works by the Completion Date (**Failure to Complete Notice**).
- (h) If the Developer forms the view that the Road Works or Interim Road Works being undertaken by Council will not be completed by the Completion Date, or the Interim Road Works Completion Date, as the case may be; the Developer may issue the Council with a notice requiring Council to demonstrate that the Road Works or Interim Road Works will be completed by the Completion Date, or the Interim Road Works Completion Date, as the case may be (**Look Forward Notice**). Council must respond within 30 Business Days of receiving the Look Forward Notice by providing documentary evidence that demonstrates to the Developer's reasonable satisfaction that the Road Works or Interim Road Works will be completed by the Completion Date, or the Interim Road Works Completion Date, as the case may be (**Look Forward Response**).
 - (i) If:
 - (i) the Look Forward Response states that the Interim Road Works will not be completed by Council by the Interim Road Works Completion Date; or

- (ii) Council issues a Failure to Complete Notice to the Developer; or
- (iii) the Developer forms the view, acting reasonably, that the Look Forward Response does not demonstrate that the Road Works or Interim Road Works will be completed by the Completion Date or the Interim Road Works Completion Date, as the case may be,

the Developer may elect to step-in, but is not bound to step-in, and deliver the Interim Road Works or part thereof as 'works-in-kind' (**WIK Works**). The WIK Works must be delivered in accordance with Schedule 6 of this Deed.

- (j) The Developer must notify the Council in writing if it elects to step-in to undertake the WIK Works (**WIK Works Notice**).
- (k) The Developer must include in the WIK Works Notice details of the nominated Certifier for the purposes of Practical Completion;
- (l) Within 20 Business Days of the WIK Works Notice, the parties are to agree on the appointment of a Certifier and in the event that the parties cannot agree, then the Certifier is to be nominated by the Association of Accredited Certifiers;
- (m) The Developer is to retain the Certifier and the cost of the Certifier is to be borne by the Developer;
- (n) Promptly after receiving a WIK Works Notice, the Council must then:
 - (i) Subject to the extent necessary for any land acquisition contemplated in clause 4 of Schedule 6, provide the Developer access to all land upon which the WIK Works to be carried out for the purposes of enabling the Developer to carry out the WIK Works; provide the Developer with all information and documents it holds in relation to the design and construction of the Interim Road Works or Road Works; and
 - (ii) provide all reasonable assistance to the Developer in carrying out the WIK Works.
- (o) Where the Developer elects to carry out the WIK Works and undertakes the WIK Works, the Developer is to provide the Council with documentary evidence of the actual cost of carrying out the WIK Works, or part thereof, within 20 Business Days of Practical Completion of the WIK Works, or part thereof.
- (p) The Council must reimburse the Developer for the actual cost of carrying out the WIK Works (**WIK Costs**) by way of an offset against any future monetary contributions that the Developer is required to make under the planning agreement (**Offset**);
- (q) Within 15 Business Days of provision of the documentary evidence from the Developer to the Council, the Council is to notify the Developer:
 - (i) of the amount of the Offset; or
 - (ii) if it disputes the WIK Costs (**WIK Refund Dispute**).
- (r) Notwithstanding any provision in this Deed requiring the Developer to pay monetary contributions under this Deed, from the date on which the Developer receives the notice referred to in clause 4(q)(i) above, the Developer may apply for and obtain Subdivision Certificates for plans of subdivision creating Allotments without paying the monetary contribution that would otherwise be required to be

paid under this Deed provided that the amount of any monetary contributions that are not paid does not exceed the total Offset specified in the notice from the Council referred to in clause 4(q)(i) above.

- (s) The Developer is not required at any time to pay any monetary contributions that are not paid by reason of clause 4(q)(i) above;
- (t) If a WIK Refund Dispute arises, the procedures in clause 7 of this Schedule 4 will apply.

5. **Cap on Cost of WIK Works**

- (a) Within 30 Business Days of the date of the WIK Works Notice or such other time as agreed by the parties in writing (**WIK Works Costing Date**), Council and the Developer must jointly engage a quantity surveyor to cost the WIK Works to be carried out by the Developer (**WIK Works Cost**).
- (b) Within 30 Business Days of the WIK Works Costing Date, the Developer must issue a notice (**WIK Works Cap Notice**) to the Council which notifies the Council of the Developer's calculation of the total amount payable under this Deed pursuant to rows 1-5 of the table at clause 1 of this Schedule 4 including by adjusting the Contribution Amounts payable for CPI up to the WIK Works Costing Date (**WIK Works Cap**).
- (c) If the WIK Works Cost exceeds the WIK Works Cap, the Council and the Developer agree to meet in good faith within 30 Business Days of the Council receiving the WIK Works Cap Notice to discuss either:
 - (i) the Council funding a component of the WIK Works which exceed the WIK Works Cap; and/or
 - (ii) to agree to reduce the scope of the WIK Works so that components of the Interim Road Works are omitted or reduced in scale.
- (d) For the avoidance of doubt, the Council agrees that the Developer is not required to carry out WIK Works to the extent that the cost of the WIK Works exceeds the WIK Works Cap.

6. **Contributions Refund**

- (a) The Council agrees to refund to the Developer the applicable Contributions Amount (or part thereof) for the Road Works or Interim Road Works if:
 - (i) The Road Works, Interim Road Works or any part thereof, are constructed by, or are funded either wholly or in part by, another Authority, such that the Contribution Amounts (or part thereof, as then paid) are no longer required; and/or
 - (ii) The Council is directed by the Minister for Planning to impose a condition on any Development Consent relating to the Land, or part thereof, for the payment of a special infrastructure contribution pursuant to section 94EF of the Act, such that the Contribution Amounts (or part thereof, as then paid) are no longer required.
- (b) If the Council is required to refund to the Developer any applicable Contribution Amounts in accordance with clause 6(a) of this Schedule 4 (**Contributions Refund**), the Council must notify the Developer in writing within 10 Business Days of the Council becoming aware of its obligation to pay the Contributions Refund.

- (c) The parties agree that:
- (i) A representative of each of the parties with the authority to bind the relevant party must meet within 20 Business Days of receipt by the Developer of the written notice referred to in clause 6(b) of this Schedule 4, and endeavour in good faith to agree on the amount of the Contributions Refund;
 - (ii) The amount of the Contributions Refund is to be based on the relevant industry rates applicable as at the date that the Developer receives the written notice referred to in clause 6(b) of this Schedule 4;
 - (iii) If the parties do not agree on, or resolve, the amount of the Contributions Refund within 20 Business Days of the date of the meeting of the nominated representatives of the parties referred to in clause 6(c)(i) (**Contribution Refund Dispute**), the procedure in clause 7 will apply.

7. Schedule 4 Dispute

- (a) The parties agree that if an Interim Roads Work Dispute, a WIK Refund Dispute or a Contributions Refund Dispute arises (**Schedule 4 Dispute**), the Schedule 4 Dispute is to be resolved by expert determination and the parties are to refer the Schedule 4 Dispute to an expert, in which event:
- (i) The Schedule 4 Dispute must be determined by an independent expert in the relevant field:
 - (A) agreed upon and appointed jointly by Council and the Developer; or
 - (B) if no agreement is reached or no appointment is made within 20 Business Days of the referral of the Schedule 4 Dispute for expert determination, an expert appointed, on application of a party, by the then President of Engineers Australia, Sydney Division;
 - (ii) The expert must be appointed in writing;
 - (iii) In the case of a WIK Refund Dispute and a Contributions Refund Dispute the amount of the Contributions Refund or WIK Refund is to be based on the relevant industry rates applicable;
 - (iv) The determination of the Schedule 4 Dispute by such an expert will be made as an expert and not as an arbitrator and will be in writing and contain the reasons for the determination;
 - (v) The expert will determine the rules for the conduct of the process but must conduct the process in accordance with the rules of natural justice;
 - (vi) Each party will bear its own costs in connection with the process and the determination by the expert and will share equally the expert's fees and costs;
 - (vii) Any determination made by an expert pursuant to this clause 7 of Schedule 4 is final and binding upon the Parties except unless within 20 Business Days of receiving the determination, a party gives written notice to the other party that it does not agree with the determination and commences litigation; and.

- (viii) For the avoidance of doubt, clause 7 of this Deed does not apply to a Schedule 4 Dispute.

8. Change to Contributions Regime

- (a) This clause will apply where:
- (i) a change to the Contribution Regime occurs such that a specific Development Contribution required to be made by the Developer under this Deed (in the whole or in part) is required to be provided to the Council by a person other than the Developer; and
 - (ii) upon the date of the change to the Contribution Regime, the Developer has not paid or provided the relevant Development Contribution.
- (b) If this clause applies, then:
- (i) the Developer will be entitled to propose amendments to this Deed that reflect the changes to the Contribution Regime; and
 - (ii) the Council will consider these amendments in good faith.

9. Amendment to Deed

- (a) If in the joint opinion of the Council and the Developer (both acting reasonably) any agreement reached under clause 8 of this Schedule 4 constitutes a variation or amendment to this Deed to which section 93G of the Act applies, then the Parties must comply with section 93G of the Act in relation to that variation or amendment.
- (b) For the avoidance of doubt, any variation agreed in writing by the Parties to the timing in column 2 of clause 1 of this Schedule 4 for the payment of Development Contributions does not constitute a variation or amendment to this Deed to which section 93G of the Act applies.

Schedule 5 - Bank Guarantee (clause 6.1)

Unregistered Land

1. Bank Guarantee

If prior to the issue of a Subdivision Certificate that creates one or more Allotments on any part of the Land, this Deed has not been registered on title to any part of the land which is the subject of the Subdivision Certificate (**Unregistered Land**), then prior to the grant of any such certificate, the Developer must either:

- (a) provide security to the Council in the form of a Bank Guarantee for the face value equivalent to the sum of the Contribution Amounts that the Developer will be required to pay in relation to the granting of the Subdivision Certificate over the Unregistered Land; or
- (b) in lieu of a Bank Guarantee, procure registration of this Planning Agreement on that Unregistered Land in accordance with clause 5.2 of this Deed,

and the terms and conditions of this Schedule 5 apply in relation to those arrangements.

2. Development of Unregistered Land

- (a) Where the Developer applies for a Subdivision Certificate over Unregistered Land and has not complied with clause 1 of this Schedule 5, the Council may refuse to issue the Subdivision Certificate until the Developer complies with clause 1 of this Schedule 5.
- (b) Where a person who is not a party to this Deed applies for Development Consent for the subdivision of Unregistered Land (**Relevant Development Application**) and clause 1 of this Schedule 5 has not been complied with in respect to all subdivision contemplated by the Relevant Development Application, the Council may:
 - (i) notify the Developer in writing that a Relevant Development Application has been made; and
 - (ii) if, after 20 Business Days following the notice given to the Developer pursuant to clause 2(a)(i) of this Schedule 5, clause 1 of this Schedule 5 has not been complied with for all subdivision contemplated by the Relevant Development Application, the Council must exclude the Relevant Development Application from the operation of this Deed so that sections 94 and 94A of the Act apply to the Relevant Development Application.

- (c) For the avoidance of doubt, the provisions of this clause 2 only apply where the subdivision relates to land within the Wollongong local government area.

3. Claims under Bank Guarantee

- (a) The Developer agrees that the Council may make claims under any Bank Guarantee (in full or in part) provided by it in accordance with clause 1(b) of this Schedule 5 if the Developer has not paid any Contribution Amount in relation to an Allotment on Unregistered Land on or before the time for payment under this Deed.

- (b) The Council agrees not to make any claim under a Bank Guarantee without providing at least 10 Business Days' prior written notice to the Developer of its intention to do so.

4. Release of Bank Guarantee

- (a) If the Developer has:
 - (i) registered this Planning Agreement on the relevant parcel of Unregistered Land; or
 - (ii) satisfied all of its obligations under this Deed with respect to the Unregistered Land which were secured by any Bank Guarantee provided to the Council in accordance with clause 1 of this Schedule 5, and
 - (iii) the whole of the monies secured by the Bank Guarantee have not been expended and the monies accounted for in accordance with clause 3 of this Schedule 5,

then the Council will promptly return the Bank Guarantee to the Developer (less any reasonable costs, charges, duties and taxes payable), or the remainder of the monies secured by the Bank Guarantee (as the case may be).

- (b) If the Council is unable to return the Bank Guarantee to the Developer in accordance with clause 4(a) of this Schedule 5, because the Council has lost, or is otherwise unable to locate the Bank Guarantee, then the Council must promptly provide to the Developer a letter to that effect and state the amount that is to be released to the Developer (less any reasonable costs, charges, duties and taxes payable), or the remainder of the monies secured by the Bank Guarantee (as the case may be).

Schedule 6 - WIK Works Procedures

1. Approvals and Design responsibility

- (a) As soon as reasonably practicable after the Developer gives the WIK Works Notice, the Council must take steps obtain approval to carry out the WIK Works pursuant to the Act (**WIK Approval**).
- (b) If the Council does not obtain the WIK Approval within 3 months of receiving the WIK Works Notice or such other time as agreed between the parties in writing, the Developer may step-in to apply for the WIK Approval on behalf of the Council or may otherwise seek an Approval for the WIK Works.
- (c) The Developer must comply with all conditions of any Approval for the WIK Works.

2. Insurance

- (a) The Developer must effect and maintain all necessary insurance policies in respect to the WIK Works including, but not limited to physical loss, damage or destruction of the WIK Works, third party liability, contractors and professional indemnity insurance with an insurer approved by the Council and on terms reasonably acceptable to the Council.
- (b) All insurances which the Developer is required by this Deed to effect and maintain must note the rights and interests of the Council.
- (c) All insurances which the Developer is required by this Deed to effect must be maintained until the expiration of the Defects Liability Period.
- (d) The insurance cover in relation to works insurance must be for an amount not less than the full insurable value of the WIK Works on a full reinstatement and replacement basis (including extra costs of reinstatement, costs of demolition and removal of debris, and professional fees).
- (e) Whenever reasonably requested in writing by the Council, the Developer must give the Council certificates of currency for the insurance policies which the Developer is required by this Deed to effect and maintain.

3. Construction of the WIK Works

- (a) The Developer must procure the execution and completion of the WIK Works in accordance with the Approvals (including the WIK Approval) and the detailed design agreed between the Developer and Council pursuant to clause 4(b) of Schedule 4.
- (b) The Developer must carry out or procure the WIK Works to be carried out:
 - (i) in a good and workmanlike manner, using good quality materials, so that they are structurally sound and fit for the purpose for which they are required; and
 - (ii) in compliance with all appropriate standards and codes.

4. Acquisition of and Access to Land

- (a) As soon as reasonably practicable after receiving the WIK Works Notice, Council must take all reasonable steps to acquire, by private agreement or compulsory process, the land on which the WIK Works will be carried out.

- (b) The Council must provide the Developer with reasonable access to all necessary land in order to enable the Developer to allow the Developer to Practically Complete the WIK Works.
- (c) Council agrees to register a right of carriageway over the land on which the WIK Works are carried out to permit the Developer, its invitees and assigns to use the roads constructed as WIK Works until the roads are opened as a public road pursuant to the *Roads Act 1993 (NSW)*.

5. Completion of the WIK Works

- (a) When the Developer is of the opinion that an item of WIK Works has reached Practical Completion, the Developer must:
 - (i) request the Certifier to issue a certificate confirming Practical Completion (**Certificate of Practical Completion**); and
 - (ii) at the same time give the Council a copy of that request.
- (b) Within 10 Business Days after the receipt of the Developer's request, the Certifier must carry out a joint inspection of the WIK Works with the Council and the Developer and either:
 - (i) give the Developer (with a copy to the Council at the same time) a Certificate of Practical Completion certifying that the WIK Works have reached Practical Completion; or
 - (ii) give the Developer (with a copy to the Council at the same time) the reasons for not issuing that certificate and provide a detailed list of work required to be completed in order for that certificate to be issued.
- (c) On receipt of the detailed list referred to in clause 5(b)(ii), the Developer must carry out the work referred to in that list and, on completion of that work, request the Certifier to issue a Certificate of Practical Completion. If the Certifier is satisfied that all such work has been completed in accordance with this Deed, then the Certifier must issue the Certificate of Practical Completion within 10 Business Days after receipt of the Developer's request. Otherwise the provisions of clauses 5(a) to 5(c) in this Schedule 6 inclusive re-apply.
- (d) If the Council reasonably requires, the Developer must use all reasonable endeavours to procure the issue and delivery to the Council of copies of the following items (as may be relevant) in relation to WIK Works:
 - (i) a copy of as built drawings; and
 - (ii) a copy of all certificates issued by any Authority in relation to any part of the WIK Works which have not previously been delivered to the Council,

promptly, and in any event within 90 Business Days, after Practical Completion.

6. Indemnity

The Developer indemnifies and releases the Council against all damage, expense, loss or liability of any nature which may be sustained, suffered, recovered or incurred by the Council arising from any wilful or negligent act or omission by the Developer (or any person engaged by it or any subcontractor) in the carrying out of the WIK Works, except to the extent that any such damage, expense, loss or liability arising from the negligent act or

omission of Council, its servants or agents until the WIK Works are handed over pursuant to clause 8 of this Schedule 6.

7. Defects Liability Period

- (a) At any time during the Defects Liability Period, the Council may inspect the WIK Works for the purpose of ascertaining what defects and omissions (if any) in the WIK Works are required to be made good by the Developer.
- (b) The Council may give notice to the Developer that:
 - (i) states that part of the WIK Works is defective, giving details;
 - (ii) specifies the works which the Council considers are required to rectify the defect;
 - (iii) provides a reasonable estimate of the costs to rectify such works, including particulars of how those costs were calculated; and
 - (iv) allows the Developer a reasonable period to rectify such works.
- (c) The Developer must rectify any defects or omissions in the WIK Works which are identified in a notice issued in accordance with clause 7(b) of this Schedule 6.
- (d) If the Developer fails to complete or rectify such works within the period required by a notice issued under clause 7(b) of this Schedule 6, then the Council may have such works completed or rectified and the Developer must reimburse the Council promptly following any demand by the Council for all costs incurred by the Council in completing or rectifying such works.
- (e) The Developer indemnifies the Council for all monies payable by the Developer to the Council pursuant to clause 7(d) of this Schedule 6.
- (f) The Developer must pay on demand any amount it must pay under the indemnity in clause 7(e) of this Schedule 6.
- (g) Council must provide the Developer with reasonable access to all necessary land in order to carry out any defect rectification works required under this clause 8 of this Schedule 6.

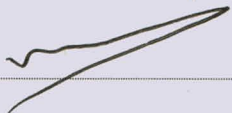
8. Handover of WIK Works

- (a) the Developer must notify the Council at least one year prior to the date it intends to hand over maintenance of an item of WIK Works to the Council.
- (b) At least six months before the date it intends to hand over maintenance of the WIK Works to the Council, the Developer must submit to the Council an appropriate plan of management relating to the WIK Works.
- (c) Prior to the hand over of the maintenance of an item of WIK Works, the Council and the Developer must carry out a final inspection of the item of WIK Works.
- (d) Within 5 Business Days of the final inspection, the Council must identify by notice in writing to the Developer any remaining defects in the WIK Works.
- (e) The Developer must rectify, or procure the rectification of, those remaining defects (excluding any defects arising out of the ordinary use of the WIK Works) within

20 Business Days after the day on which the Developer received the Council's notification.

Executed as a deed

Executed by **Wollongong City Council**)
ABN 63 139 525 939 on 13th)
day of December 2017)
pursuant to resolution no 101 made on)
21st day of JULY 2017:



General Manager

DAVID FARMER

Print Name
(BLOCK LETTERS)



Susie Cairns

Executed by **Lendlease Communities**)
(Australia) Limited ABN 88 000 966 085 in)
accordance with Section 127 of the)
Corporations Act 2001 (Cth)



Signature of authorised person

Katrina Beth Smith

Office held

SECRETARY

Name of authorised person
(BLOCK LETTERS)



Signature of authorised person

MATTHEW JAMES WALLACE

Office held

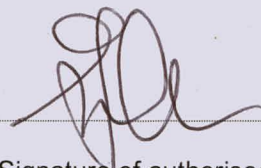
DIRECTOR

Name of authorised person
(BLOCK LETTERS)

Executed by **Lendlease Communities**)
(Calderwood) Pty Limited (Developer))
ABN 079 989 674 in accordance with)
Section 127 of the Corporations Act 2001)
(Cth)



Signature of authorised person



Signature of authorised person

SECRETARY

Office held

Katrina Beth Smith

Name of authorised person
(BLOCK LETTERS)

DIRECTOR

Office held

MATTHEW JAMES WALLACE

Name of authorised person
(BLOCK LETTERS)