

Bingara Gorge (Wilton Parklands) Development Planning Agreement

Wollondilly Shire Council

DLL Wilton Pty Limited

Lend Lease Corporation Limited

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Planning Agreement

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Date

3RD. NOVEMBER 2007

Parties

1. **Wollondilly Shire Council** of Frank McKay Building, 62-64 Menangle Street, Picton, New South Wales (the *Council*);
2. **DLL Wilton Pty Limited** (ABN 31 110 022 976) of Level 4, 30 The Bond, 30 Hickson Road, Sydney, New South Wales (*DLL Wilton*); and
3. **Lend Lease Corporation Limited** (ABN 32 000 226 228) of Level 4, 30 The Bond, 30 Hickson Road, Sydney, New South Wales (*LLC*).

Recitals

- A The Owner is the owner of the Land and has appointed DLL Wilton to carry out the Development.
- B The Land is within the Council's Local Government Area and the Council will be the consent authority for the Development under the Act.
- C The Land is subject to the LEP.
- D In recognition of:
- (a) the special circumstances relating to the provision of infrastructure and other public services and amenities required for a development of the magnitude proposed for the Land under the LEP;
 - (b) the flexibility which may be required in the provision of infrastructure and other public services and amenities required for the Development and the method of delivery of those services;
 - (c) the unique features of the proposed Development;
 - (d) the dedications, contributions and works which the Developer would be expected, as at the date of this deed, by Law (including the Act) to make to carry out the proposed Development; and
 - (e) the wish to co-ordinate the infrastructure and other services to be provided by the Council and the Developer,
- the Parties have entered into this deed.

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E This deed is a planning agreement governed by Subdivision 2 of Division 6 of Part 4 of the Act which, subject to clause 10.3, excludes the application of sections 94 and 94A (but not the application of section 94EF) of the Act to the Development.

It is agreed as follows.

PART 1 – Formal Matters

1. Definitions and interpretation

1.1 Dictionary

The following words have these meanings in this deed unless the contrary intention appears:

Act means the *Environmental Planning & Assessment Act 1979* (NSW).

Alternative Delivery Outcome is the product of the alternative delivery process described in clause 14.5.

Australian Standards means any current applicable standard published by Standards Australia International Limited trading as Standards Australia.

Authority means a government, semi government, local government, statutory, public, ministerial, civil, administrative, fiscal or judicial body or other authority or body with relevant power or authority.

Business Day means any day except for Saturday or Sunday or a day which is a public holiday in Sydney.

Bushfire Protection Monetary Contribution means the monetary contribution which the Developer must pay to the Council in accordance with Part 2 of Annexure E.

Commencement Date means the date of this deed.

Community Association means the entity established under the Community Governance Structure which will be in control of those Works referred to in clauses 13.6, 13.7(a) and 14.4.

Community Governance Structure means the title, subdivision and management structure proposed for the Development.

Community Parks has the meaning given in clause 13.6.

Companion Animal Management Monetary Contribution means the monetary contribution which the Developer must pay to the Council in accordance with Part 1 of Annexure E.

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Confidential Information means any information and all other knowledge at any time disclosed (whether in writing or orally) by the Parties to each other, or acquired by the Parties in relation to the other's activities or services which is not already in the public domain and which:

- (a) is by its nature confidential;
- (b) is designated, or marked, or stipulated by either Party as confidential (whether in writing or otherwise);
- (c) any Party knows or ought to know is confidential; or
- (d) is information which may reasonably be considered to be of a confidential nature.

Contributions has the meaning given in clause 10.1.

Contributions Plan means the *Wollondilly Development Contributions Plan 2005 - December 2005*.

CPI means the Consumer Price Index (All Groups Index) for Sydney as published by the Australian Bureau of Statistics.

Default Notice has the meaning given in clause 4.1.

Developer means DLL Wilton and, if assignment is undertaken in accordance with clause 6.3, the relevant successor or assignee.

Development means the development of the Land in accordance with the Staged Development Consent, the Entry Road Development Consent, the Golf Course Development Consent, which includes 1,165 residential lots with minimum lot sizes as shown on the Concept Plan attached to the Staged Development Application and the use of the Land for the purposes (and generally in the areas) shown on the Concept Plan attached to the Staged Development Application for:

- (a) open space;
- (b) a mixed use village centre incorporating, but not limited to, commercial and retail uses;
- (c) community facilities;
- (d) recreational facilities (such as a golf course and golf driving range);
- (e) landscaped streets and access paths;
- (f) a sewage treatment plant and treated water reuse scheme; and
- (g) utility services,

and in accordance with all other consents granted by an Authority as may be necessary to carry out the Development.

Development Application means an application for Development Consent relating to the Development or any part of the Development.

Development Consent means a development consent granted under the Act by the Council relating to the Development or any part of the Land.

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Development Cost means, in relation to an item of Work:

- (a) the construction cost of the relevant item of Work;
- (b) any costs incurred under a building contract in relation to the relevant item of Work;
- (c) the costs of any consultants engaged in relation to the relevant item of Work;
- (d) any costs or expenses payable to any Authority in relation to the relevant item of Work; and
- (e) costs incurred by the Developer in appointing the Quantity Surveyor referred to in clause 17(b)(i).

Discretion has the meaning given in clause 1.2.

Document includes agreement, deed, instrument, memorandum, note and the like.

Entry Road Development Consent means Development Consent ID 1556-04 granted by Council on 15 May 2006, a copy of which is attached in Annexure F, as amended from time to time.

Golf Course Development Consent means Development Consent ID 1558-04 granted by Council on 15 August 2005, a copy of which is attached in Annexure F, as amended from time to time.

Independent Engineer means an appropriately qualified and experienced civil engineer who is a member or is eligible to be a member of Engineers Australia and who has been approved by the Council (which approval must not be unreasonably withheld or delayed) prior to engagement by the Developer.

Index means the CPI, but if that index ceases to be published, such other index as the Council and the Developer may agree or, failing agreement, as determined under clause 5.

Land means Lots 200 to 211 in Deposited Plan 1104390 as shown on the Map.

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.

LEADR means the body known as LEADR being Lawyers Engaged in Alternative Dispute Resolution or any body which substantially replaces it.

LEP means the *Wollondilly Local Environmental Plan 1991*.

Library, Information and Community Monetary Contribution means the monetary contribution which the Developer must pay to the Council in accordance with Part 1 of Annexure C.

Library, Information and Community Works means the works and services set out in Part 2 of Annexure C.

Local Government Area means an area proclaimed under section 204(1) of the *Local Government Act 1993* (NSW).

LPI means the Office of Land and Property Information, New South Wales.

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Map means the map which is attached in Annexure A.

Minister means the Minister for the time being administering (or jointly administering) the Act.

Miscellaneous Monetary Contribution means the monetary contribution which the Developer must pay to the Council in accordance with Part 4 of Annexure E.

Monetary Contributions means any or all of the following:

- (a) the Open Space, Sporting and Recreation Monetary Contribution;
- (b) the Library, Information and Community Monetary Contribution;
- (c) the Transport and Traffic Management Monetary Contribution;
- (d) the Companion Animal Management Monetary Contribution;
- (e) the Bushfire Protection Monetary Contribution;
- (f) the Plan Management and Administration Monetary Contribution; and
- (g) the Miscellaneous Monetary Contribution.

Non-Residential Development means all development of the Land other than development for the purposes of:

- (a) a Residential Allotment;
- (b) open space;
- (c) utilities and associated facilities;
- (d) community and Community Association facilities;
- (e) golf course and golf maintenance facilities;
- (f) educational establishments and not for profit child care centres;
- (g) landscaped streets and access paths; and
- (h) medical or emergency services facility.

Open Space, Sporting and Recreation Monetary Contribution means the monetary contribution which the Developer must pay to the Council in accordance with Part 1 of Annexure B.

Open Space, Sporting and Recreation Works means the works set out in Part 2 of Annexure B.

Owner means Bradcorp Wilton Park Pty Limited (ABN 69 086 388 212) and its successors or assigns.

Part means a Part of this deed.

Party means a party to this deed. **Parties** has a corresponding meaning.

Plan Management and Administration Monetary Contribution means the monetary contribution which the Developer must pay to the Council in accordance with Part 3 of Annexure E.

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Practical Completion means in respect of each item of the Works, the completion of the relevant Works except for minor matters which have not been completed but which are capable of completion without preventing the relevant Works from being used for their intended purpose.

Quantity Surveyor means a person who:

- (a) is a member of their respective professional organisation and has been for at least 5 years;
- (b) practises as a quantity surveyor for works of the same nature as the relevant Works;
- (c) is active as a quantity surveyor at the time of his appointment;
- (d) has at least 3 years experience in valuing works of the same nature as the relevant Works; and
- (e) undertakes to act fairly and promptly in accordance with the requirements of this deed.

Register means the torrens title register maintained by the Registrar General under the *Real Property Act 1900* (NSW).

Related Body Corporate has the same meaning given to that term in the *Corporations Act 2001* (Cth).

Representatives has the meaning given to that term in clause 5.1.

Residential Allotment means a lot comprising part of the Land to be created as part of the Development that is intended to be used for the purpose of a dwelling or a dwelling house without being further subdivided and with or without further Development Consent.

RTA means Roads and Traffic Authority of New South Wales.

Staged Development Application means Development Application ID 993/05 lodged with the Council on 8 November 2005.

Staged Development Consent means Development Consent ID 993/05 granted by the Council on 15 May 2006, a copy of which is attached in Annexure F, as amended from time to time.

State means the State of New South Wales and, where the context permits, includes a public authority as defined in section 4(1) of the Act.

State Government means the government of the State, including its elected and appointed representatives.

Subdivision Certificate has the same meaning as in the Act.

Transport and Traffic Management Monetary Contribution means the monetary contribution which the Developer must pay to the Council in accordance with Part 1 of Annexure D.

Transport and Traffic Management Works means the works set out in Part 2 of Annexure D.

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Wilton Recreational Reserve means Lot 7004 in Deposited Plan 92818 and Lot 118 in Deposited Plan 751297 as shown on Annexure H.

Wilton Village means the existing village of Wilton as shown on Annexure I.

Works means any or all of the following:

- (a) the Open Space, Sporting and Recreation Works;
- (b) the Library, Information and Community Works; and
- (c) the Transport and Traffic Management Works.

Works Completion Date means the date for completion of an item of Work as set out in Part 2 of Annexures B, C and D.

1.2 Deed does not fetter discretion

- (a) This deed is not intended to operate to fetter, in any unlawful manner:
 - (i) the power of the Council to make any Law; or
 - (ii) the exercise by the Council of any statutory power or discretion, (all referred to in this deed as a *Discretion*).
- (b) No provision of this deed is intended to, or does, constitute any unlawful fetter on any Discretion. If, contrary to the operation of this clause, any provision of this deed 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 1.2 is substantially satisfied; and
 - (ii) in the event that clause 1.2(b)(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 deed has full force and effect; and
 - (iii) to endeavour to satisfy the common objectives of the Parties in relation to the provision of this deed which is held to be an unlawful fetter to the extent that is possible having regard to the relevant court judgement.
- (c) Where a Law permits the Council to contract out of a provision of that Law or gives the Council power to exercise a Discretion, then if the Council has in this deed contracted out of a provision or exercised a Discretion under this deed, then to that extent this deed is not to be taken to be inconsistent with that Law.
- (d) Without limiting this clause 1.2, nothing in this deed operates to limit the availability of any remedies available to the Council under sections 123, 124 and 125 of the Act.

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1.3 Interpretation Act 1987

Subject to clause 1.2 of this deed, section 3, Part 2, and sections 36, 38 and 76 of the *Interpretation Act 1987* govern the interpretation of this deed to the extent to which they are applicable as if a reference in that Act to an *Act* or *instrument* is a reference to this deed and with such other modifications or adaptations as may be necessary for that governing purpose.

1.4 Annexures, headings and textual notes

- (a) The Annexures form part of this deed.
- (b) The headings and any textual notes in this deed do not form part of the operative provisions of this deed but are provided merely for the assistance of the reader.

1.5 Subject to applicable Laws

This deed is to be read and performed subject to:

- (a) any Law or statutory rule; and
- (b) any lawful decision, direction, requirement or the like of any Authority of the State, which relates to the subject matter of this deed, and any act, matter or thing which is required or forbidden to be done by such a Law, statutory rule, decision, direction or requirement does not constitute a breach of this deed even if it is contrary to this deed.

1.6 Compliance with Laws

If a Law is changed or a new Law comes into force (both referred to as *New Law*) and the Developer is obliged by the New Law to:

- (a) do something or pay an amount which it is already contractually obliged to do or pay under this deed then, to the extent only that the relevant obligation is required under both the New Law and this deed, compliance with the New Law will constitute compliance with the relevant obligation under this deed; or
- (b) make a further contribution not contemplated by this deed, the Developer may subject to clause 1.2, require that the provisions of this deed and the contributions to be made under it be taken into account in the assessment of that further contribution.

1.7 Conflicting interpretations

If a provision of this deed is genuinely capable of different interpretations, the interpretation which:

- (a) is consistent with clause 1.2;
 - (b) best meets the purposes of this deed; and
 - (c) promotes the aims of the Act and the LEP,
- is to be preferred.

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1.8 Severance of invalid provisions

Subject to clause 1.2, if a provision of this deed is declared to be invalid by a court, the remainder of this deed will, to the fullest extent possible, be read and performed as if the invalid provision did not form part of this deed.

1.9 Joint and individual liability and benefits

Except as otherwise provided in this deed, any agreement, covenant, representation or warranty under this deed by two or more persons binds them jointly and each of them individually, and any benefit in favour of two or more persons is for the benefit of them jointly and each of them individually.

1.10 Approvals and consents

Where this deed calls for a Party to give its consent or approval, that consent or approval may be given or withheld, or given subject to conditions, in the absolute discretion of the Party, except where otherwise provided in this deed.

1.11 Indexation of amounts payable by the Parties

All amounts referred to in this deed (other than those referred to in clause 10.3) are to be increased (with the calculation to be made as from the date any such amount is due to be paid under this deed) in accordance with increases in the Index in accordance with the following formula:

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

where:

- A = the indexed amount;
- B = the relevant amount as set out in this deed;
- C = the Index most recently published before the date that the relevant payment or the calculation with respect to the relevant amount is to be made; and
- D = the Index most recently published before the Commencement Date.

For the avoidance of doubt, if A is less than B, then the relevant amount will not change.

1.12 Effect of this deed

- (a) The Parties agree that this deed is a planning agreement governed by Subdivision 2 of Division 6 of Part 4 of the Act which, subject to clause 10.3, excludes the application of sections 94 and 94A (but not the application of section 94EF) of the Act to the Development.
- (b) This deed applies to the Development of the Land.
- (c) Any explanatory note prepared in relation to this deed is not to be used to assist in construing this deed.

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1.13 Developer and the Land

- (a) DLL Wilton is the proponent for the Development of the Land.
- (b) DLL Wilton warrants in favour of the Council that it is authorised by the Owner to enter into this deed and carry out the Development of the Land.

2. Commencement, term and amendment of this deed

2.1 Commencement of this deed

This deed commences on the Commencement Date.

2.2 Term of this deed

This deed will remain in force from the Commencement Date until:

- (a) it is terminated by operation of Law; or
- (b) all obligations are performed or satisfied.

2.3 Amendment of this deed

The Parties agree that, subject to section 93G of the Act, this deed can be reviewed and amended at any time by mutual agreement.

3. Confidentiality and public announcements

3.1 This deed not confidential

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

3.2 Other information confidential

- (a) The Parties acknowledge that:
 - (i) Confidential Information may have been supplied to some or all of the Parties in the negotiations leading up to the making of this deed; and
 - (ii) the Parties may disclose to each other further Confidential Information in connection with the subject matter of this deed.
- (b) Subject to paragraphs (c) and (d), each Party agrees:
 - (i) not to disclose any Confidential Information received before or after the making of this deed to any person without the prior written consent of the Party who supplied the Confidential Information; and
 - (ii) to take all reasonable steps to ensure all Confidential Information received before or after the making of this deed is kept confidential and protected against unauthorised use and access.

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- (c) A Party may disclose Confidential Information in the following circumstances:
 - (i) in order to comply with the Law, State Government policy or local government policy or any listing rule; or
 - (ii) to any of their employees, consultants, advisers, financiers or contractors to whom it is considered necessary to disclose the information, if the employees, consultants, advisers, financiers or contractors undertake to keep the information confidential.
- (d) The obligations of confidentiality under this clause do not extend to information which is public knowledge other than as a result of a breach of this clause.

4. Default

4.1 Notice of default

In the event a Party considers another Party has failed to perform and fulfil an obligation under this deed, before it takes any action (including calling on the guarantee contained in clause 19) it must give notice in writing to that Party (**Default Notice**) giving full particulars of the matters in respect of which it considers default has occurred and by such notice require the default to be remedied within a reasonable time not being less than 20 Business Days.

4.2 Reasonable time

In determining a reasonable time, regard must be had to both the nature of the default and the work or other action required to remedy it, the weather, availability of labour, plant and/or equipment, strikes and whether or not the continuation of the default constitutes or causes a public nuisance or raises other circumstances of urgency or emergency.

4.3 Suspension of time – dispute

If a Party, as it is entitled to do, refers the Default Notice to dispute resolution, clause 5.2 will apply.

5. Dispute resolution

5.1 Notice of dispute

If a dispute or lack of certainty between the Parties arises in connection with this deed or its subject matter (a **dispute**), then either Party (the **First Party**) must give to the other (the **Second Party**) a notice of dispute in writing adequately identifying and providing details of the dispute and designating as its representative a person to negotiate the dispute. The Second Party must, within 5 Business Days of service of the notice of dispute, provide a notice to the First Party designating as its representative a person to negotiate the Dispute (the representatives designated by the Parties being together, the **Representatives**).

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5.2 Conduct pending resolution

The Parties must continue to perform their respective obligations under this deed 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 relevant 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.

5.3 Further steps required before proceedings

Subject to clauses 5.14 and 5.15 and except as otherwise expressly provided in this deed, any dispute between the Parties arising in connection with this deed or its subject matter must, as a condition precedent to the commencement of litigation, mediation under clause 5.5 or determination by an expert under clause 5.6, first be referred to the Representatives. The Representatives must endeavour to resolve the dispute within 5 Business Days.

5.4 Disputes for mediation or expert determination

If the Representatives have not been able to resolve the dispute, then the Parties must agree within 5 Business Days to either refer the matter to mediation under clause 5.5 or expert resolution under clause 5.6.

5.5 Disputes for mediation

- (a) If the Parties agree in accordance with clause 5.4 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 5 Business Days, then by a mediator appointed by LEADR.
- (b) If the mediation referred to in paragraph (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 5.6.

5.6 Choice of expert

- (a) If the Parties agree to have the matter determined by expert determination, this clause 5.6 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 5 Business Days after the date that the Parties agree to have the matter determined by expert determination, appointed by the President or other senior officer for the time being of the body administering or expert in the relevant field.
- (c) If the Parties fail to agree as to the relevant field within 5 Business Days after the Parties agree to have the matter determined by expert determination, either Party may at any time refer the matter to the President of the New South Wales Bar Association (or the President's nominee) whose decision as to the relevant field is final and binding on the Parties.

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- (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 5.6 setting out the terms of the expert's determination and the fees payable to the expert.

5.7 Directions to expert

- (a) In reaching a determination in respect of a dispute under clause 5.6, the independent expert must give effect to the intent of the Parties entering into this deed and the purposes of this deed.
- (b) The expert must:
 - (i) act as an expert and not as an arbitrator;
 - (ii) proceed in any manner as the expert thinks fit without being bound to observe the rules of natural justice or the rules of evidence;
 - (iii) not accept verbal submissions unless both Parties are present;
 - (iv) on receipt of a written submission from one Party, ensure that a copy of that submission is given promptly to the other Party;
 - (v) 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;
 - (vi) 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);
 - (vii) issue a draft certificate stating the expert's intended determination (together with written reasons), giving each Party 10 Business Days to make further submissions;
 - (viii) issue a final certificate stating the expert's determination (together with written reasons); and
 - (ix) act with expedition with a view to issuing the final certificate as soon as practicable.

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- (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.

5.8 Expert may commission reports

- (a) Subject to paragraph (b):
 - (i) the expert may commission the expert's own advisers or consultants (including lawyers, accountants, bankers, engineers, surveyors or other technical consultants) to provide information to assist the expert in making a determination; and
 - (ii) the Parties must indemnify the expert for the cost of those advisers or consultants in accordance with clause 5.6(e) of this deed.
- (b) The Parties must approve the costs of those advisers or consultants in writing prior to the expert engaging those advisers or consultants.

5.9 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 paragraph (a) is not a hearing and is not an arbitration.

5.10 Other courses of action

If:

- (a) the Parties cannot agree in accordance with clause 5.4 to refer the matter to mediation or determination by an expert; or
- (b) the mediation referred to in clause 5.5 has not resulted in settlement of the dispute and has been terminated and the Parties have not agreed to refer the matter to expert determination within 5 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.

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5.11 Confidentiality of information provided in dispute resolution process

- (a) The Parties agree, and must procure that the mediator and the expert agrees as a condition of his or her appointment:
 - (i) subject to paragraph (ii), to keep confidential all documents, information and other material disclosed to them during or in relation to the mediation or expert determination;
 - (ii) not to disclose any confidential documents, information and other material except:
 - (A) to a Party or adviser or consultant who has signed a confidentiality undertaking; or
 - (B) if required by Law to do so or State Government policy or local government policy or any listing rule; and
 - (iii) not to use confidential documents, information or other material disclosed to them during or in relation to the mediation or expert determination for a purpose other than the mediation or expert determination.
- (b) The Parties must keep confidential and must not disclose or rely upon or make the subject of a subpoena to give evidence or produce documents in any arbitral, judicial or other proceedings:
 - (i) views expressed or proposals or suggestions made by a Party or the mediator or the expert during the expert determination or mediation relating to a possible settlement of the dispute;
 - (ii) admissions or concessions made by a Party during the mediation or expert determination in relation to the dispute; and
 - (iii) information, documents or other material concerning the dispute which are disclosed by a Party during the mediation or expert determination unless such information, documents or facts would be discoverable in judicial or arbitral proceedings.

5.12 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.

5.13 Costs

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

5.14 Remedies available under the Act

This clause 5 does not operate to limit the availability of any remedies available to Council under sections 123, 124 and 125 of the Act.

5.15 Urgent relief

This clause 5 does not prevent a party from seeking urgent injunctive or declaratory relief.

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6. Dealings with this deed

6.1 Registration of this deed

- (a) The Developer and the Council agree that this deed is to be registered under section 93H of the Act on the folios of the Register pertaining to the Land.
- (b) The Developer must take all practicable steps as and when required by the Council so that this deed can be registered under section 93H of the Act on the folios of the Register pertaining to the Land, including:
 - (i) procuring the consent to the registration of this deed under section 93H of the Act on the folios of the Register pertaining to the Land of the mortgagee or any other person who has an estate or interest registered on the folios of the Register pertaining to the Land;
 - (ii) arranging for the production of the relevant duplicate certificates of title pertaining to the Land at the LPI;
 - (iii) executing such documents and doing such things as may be required to enable the registration of this deed under section 93H of the Act on the folios of the Register pertaining to the Land; and
 - (iv) promptly responding to any requisition raised by the LPI regarding any matter within the Developer's control.
- (c) The Developer must pay its own costs and all costs reasonably incurred by the Council in connection with the registration of this deed under section 93H of the Act on the folios of the Register pertaining to the Land.

6.2 Notations on title

If:

- (a) this deed is registered on the folios of the Register pertaining to the Land;
- (b) the Developer prepares and submits to the Council the documents necessary to remove this deed from the recording on the folios of the Register pertaining to specified parts of the Land; and
- (c) the Developer has satisfied all of its obligations under this deed with respect to those specified parts of the Land which are required to be satisfied up to the date of submission of those documents,

then, upon submission of those documents to the Council, the Council must:

- (d) promptly sign those documents and return them to the Developer at the same time as it issues a Subdivision Certificate relating to the specified parts of the Land;
- (e) authorises the Developer to complete those documents by inserting any information necessary to register the documents on the newly created folios of the Register pertaining to those specified parts of the Land; and

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- (f) promptly do all acts and things necessary to assist the Developer to remove this deed from the recording on the folios of the Register pertaining to those parts of the Land, including promptly responding to any requisition raised by the LPI regarding any matter within the Council's control.

6.3 Assignment

Until the completion of the Development, the Developer cannot assign, novate, charge, encumber or otherwise deal with its rights and obligations under this deed, or attempt or purport to do so unless the Developer:

- (a) gives the Council no less than 10 Business Days notice in writing of the proposed assignment, charge, encumbrance or novation of its rights or obligations under this deed;
- (b) procures that the assignee or novatee provides to the Council replacement security in favour of the Council, in a form reasonably satisfactory to the Council, in place of any such security provided by, or required to be provided by, the Developer which has not then been released; and
- (c) the Developer procures that any assignee or novatee of the Developer's rights and obligations under this deed promptly executes a deed in favour of the Council whereby:
 - (i) the assignee or novatee becomes contractually bound with the Council to perform the Developer's obligations and have the benefit of the Developer's rights under this deed; and
 - (ii) the assignor or the novator (as the case may be) is released from its obligations under this deed.

6.4 Consequences of assignment

Within 10 Business Days of the Developer complying with its obligations under clause 6.3, the Council must execute and return to the Developer the deed referred to in clause 6.3(c) so that the Developer is released from its obligations under this deed.

6.5 Related Body Corporate

Despite clause 6.3, whilst DLL Wilton or a Related Body Corporate of DLL Wilton is the Developer, the Developer may assign its rights and obligations under this deed to a Related Body Corporate of DLL Wilton without obtaining the Council's consent, but notice of the assignment must be given to the Council.

7. GST

7.1 Definitions

In this clause:

Adjustment Note has the meaning given by the GST Law.

Consideration has the meaning given by the GST Law.

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GST has the meaning given by the GST Law.

GST Amount means in relation to a Taxable Supply the amount of GST payable in respect of the Taxable Supply.

GST Group has the meaning given by the GST Law.

GST Law has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

Input Tax Credit has the meaning given by the GST Law and a reference to an Input Tax Credit entitlement of a Party includes an Input Tax Credit for an acquisition made by that Party but to which another member of the same GST Group is entitled under the GST Law.

Margin Scheme has the meaning given by the GST Law.

Taxable Supply has the meaning given by the GST Law excluding the reference to section 84-5 of the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* and (except where expressly agreed otherwise) excluding a supply in respect of which the supplier chooses to apply the Margin Scheme in working out the amount of GST on that supply.

Tax Invoice has the meaning given by the GST Law.

7.2 GST to be added to amounts payable

If GST is payable on a Taxable Supply made under, by reference to or in connection with this deed, the Party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration. This clause does not apply to the extent that the Consideration for the Taxable Supply is expressly agreed to be GST inclusive. Unless otherwise expressly stated, prices or other sums payable or Consideration to be provided under or in accordance with this deed are exclusive of GST.

7.3 Tax Invoice and Adjustment Note

No payment of any amount pursuant to this deed, and no payment of the GST Amount where the Consideration for the Taxable Supply is expressly agreed to be GST inclusive, is required until the supplier has provided a Tax Invoice or Adjustment Note (as the case may be) to the recipient.

7.4 Liability net of GST

Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to a cost, expense or other liability incurred by a Party, must exclude the amount of any Input Tax Credit entitlement of that Party in relation to the relevant cost, expense or other liability.

7.5 GST obligations to survive termination

This clause will continue to apply after expiration or termination of this deed.

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8. Miscellaneous

8.1 Choice of Law

The Laws of New South Wales as in force from time to time govern this deed.

8.2 Further assurance

Each Party to this deed must sign and execute all documents and do all things as may be reasonably required to be done by the Party to give effect to this deed.

8.3 Force Majeure

- (a) In this clause 8.3, *force majeure*, means any physical or material restraint beyond the reasonable control of the Party claiming the force majeure and includes, without limitation, fire, the discovery of threatened species on the Land or industrial disputes or the Council being delayed in obtaining the consent referred to in clause 13.4.
- (b) If a Party is unable by reason of force majeure to carry out wholly or in part its obligations under this deed (other than an obligation to transfer land or make a payment), it must:
 - (i) give to the other Party prompt notice of the force majeure with reasonably full particulars; and
 - (ii) suggest an alternative method, if any, of satisfying its obligations under this deed.
- (c) If a Party is unable to satisfy its obligations under this deed by an alternative method, the obligations of the Parties so far as they are affected by the force majeure are then suspended during continuance of the force majeure and any further period as may be reasonable in the circumstances.
- (d) The Party giving such notice under this clause must use all reasonable effort and diligence to remove the force majeure or ameliorate its effects as quickly as practicable.
- (e) The Parties agree that any costs associated in ameliorating a force majeure event will be apportioned, if necessary, in such manner as may be fair and reasonable.
- (f) The Parties agree that this force majeure provision does not apply to an obligation of a Party to transfer land or to pay money.
- (g) If the Parties are unable to agree on the existence of an event of force majeure or the period during which the obligations of the Parties are suspended during the continuance of the force majeure, that dispute must be referred for determination under clause 5.

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8.4 Notices

Any notice, request, demand, consent or other communication given or made under this deed:

- (a) must be in writing and signed by the sender or the person duly authorised by the sender;
- (b) must be addressed and delivered to the intended recipient at the address or fax number below or the address or fax number last notified by the intended recipient to the sender after the date of this deed:

- (i) to the Council Wollondilly Shire Council
Frank McKay Building
62-64 Menangle Street
Picton NSW 2571

Fax No. (02) 4677 2339

- (ii) to the Developer DLL Wilton Pty Limited
Level 4
30 The Bond
30 Hickson Road
Sydney NSW 2000

Fax No. (02) 9383 8259

- (iii) to the Guarantor Lend Lease Corporation Limited
Level 4
30 The Bond
30 Hickson Road
Sydney NSW 2000

Fax No. (02) 9383 8259

- (c) will be taken to be duly given or made when delivered, received, or left at the above address or fax number. If delivery or receipt occurs on a day that is not a Business Day in the place to which the notice is sent or is later than 4pm (local time) at that place, it will be taken to have been duly given or made at the commencement of business on the next Business Day in that place.

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PART 2 – The rights and obligations of the Council and the Developer

9. Purpose

This Part:

- (a) identifies the facilities, services and infrastructure needed to support the Development;
- (b) identifies when the facilities, services and infrastructure will be required, and who will be responsible for providing them; and
- (c) identifies when specific facilities and services or funds will be required to meet the demands created by the Development and how they will be provided.

10. Contributions

10.1 Contributions by the Developer

- (a) In accordance with this deed and subject to clauses 11 and 12, the Parties agree that the Developer must:
 - (i) pay the Open Space, Sporting and Recreation Monetary Contribution and undertake the Open Space, Sporting and Recreation Works in accordance with clause 13;
 - (ii) pay the Library, Information and Community Monetary Contribution and undertake the Library, Information and Community Works in accordance with clause 14;
 - (iii) pay the Transport and Traffic Management Monetary Contribution and undertake the Transport and Traffic Management Works in accordance with clause 15; and
 - (iv) pay the Companion Animal Management Monetary Contribution, the Bushfire Protection Monetary Contribution, the Plan Management and Administration Monetary Contribution and the Miscellaneous Monetary Contribution in accordance with clause 16,

(together, the *Contributions*).
- (b) If the Developer has, prior to the Commencement Date, made any monetary contributions under sections 94 or 94A in accordance with a condition of any Development Consent (the *Prior Monetary Contributions*), then the Monetary Contributions will be reduced by the amount of the Prior Monetary Contributions in accordance with the written direction of the Developer.
- (c) Subject to clause 10.3, the Contributions and obligations imposed on the Developer in this deed are in place of and exclude the application of sections 94 and 94A (but not the application of section 94EF) of the Act to the Development.

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10.2 Contribution Alternatives

- (a) At the request of either the Council or the Developer and provided that the Council and the Developer agree, the Developer may make any of the Contributions relating to the Works by payment to the Council of money.
- (b) If the Developer and the Council agree that the Developer will pay a monetary amount under clause 10.2(a), the provisions of clause 11 apply.
- (c) At the request of either the Council or the Developer and provided that the Council and the Developer agree, the Developer may make any of the Monetary Contributions by the carrying out of works or the provision of services.
- (d) If the Developer and the Council agree that the Developer will carry out the works or provide the services under clause 10.2(c), the provisions of clause 12 apply.
- (e) Clause 5 does not apply to any disputes under this clause 10.2 and the Developer and the Council may withhold their agreement under this clause 10.2 in their absolute discretion.
- (f) If in the opinion of the Council or the Developer (both acting reasonably) any agreement reached under this clause 10.2 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.

10.3 Section 94A Contributions

Where a Development Consent:

- (a) is issued in relation to the Development; and
- (b) relates to Non-Residential Development that has a proposed cost of development of \$50,000 or more,

the Council may under section 94A of the Act impose as a condition of the Development Consent a requirement that the Developer pay a levy to the Council of the proposed cost of carrying out the Non-Residential Development, at an amount equivalent to 1% of the proposed cost of carrying out that Non-Residential Development.

10.4 Staged Development Consent

The Council agrees that the requirements of:

- (a) conditions 4.18 and 15 of the Staged Development Consent will be satisfied on the date of execution of this deed by the Parties;
- (b) condition 16.7 of the Staged Development Consent will be satisfied when the relevant entity forming part of the Community Governance Structure enters into an agreement with Council where that entity agrees to maintain the acoustic walls and associated landscaping constructed under the Entry Road Development Consent in accordance with clause 13.8;
- (c) condition 20.16 of the Staged Development Consent will be satisfied when the Community Association is in control of the Library, Information and Community Works in accordance with clause 14.4; and

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- (d) condition 20.17 of the Staged Development Consent will be satisfied on payment by the Developer to the Council of the \$350,000 amount that forms part of the Miscellaneous Monetary Contribution.

11. Monetary Contributions

- (a) If the Council and the Developer agree that the Developer may make any of the Contributions relating to the Works by payment to the Council of money in accordance with clause 10.2(a), then the Council and the Developer agree that the amount of the monetary contribution will be the amount shown as the value of the relevant Works in the Annexures varied in accordance with clause 1.11.
- (b) The Council agrees that if the Developer performs its obligations in this deed by making a monetary contribution, the Council must hold the monetary contribution paid by the Developer for the purpose of the relevant Works and apply the money towards that purpose within a reasonable time.
- (c) Where it is impractical (in reasonable circumstances) for the Council to comply with clause 11(b) and the Developer (acting reasonably) gives its written consent to the Council not complying with clause 11(b), the Council must spend the contribution on services, infrastructure or facilities to be delivered, in order of precedence:
 - (i) on the Land;
 - (ii) within Wilton Village;
 - (iii) within Precinct 4 (as that term is used in the Contributions Plan); or
 - (iv) at a location outside the boundary of the Land but within the Council's Local Government Area in the manner consented to in writing by the Developer (acting reasonably),within a reasonable time of receipt of the relevant monetary contribution.
- (d) The Developer must give, or procure, access to the Council to that part of the Land upon which works are to be carried out by the Council for the purposes of carrying out the works contemplated by this clause 11 provided that the Council executes a licence agreement substantially in the form of Annexure G.
- (e) The Monetary Contributions paid pursuant to this deed may be pooled by the Council with other monetary contributions paid under Division 6 of Part 4 of the Act in accordance with the conditions of a development consent or planning agreement and applied progressively for the purpose for which the payment was required under this deed.

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- (f) If the Monetary Contributions paid pursuant to this deed exceed the amount required to carry out the purpose for which the payments were required as identified in Part 1 of Annexures B, C and D and Parts 1, 2, 3 and 4 of Annexure E, the surplus may be used and applied by the Council towards the provision of services, infrastructure or facilities:
- (i) within Wilton Village;
 - (ii) within Precinct 4 (as that term is used in the Contributions Plan); or
 - (iii) at a location outside the boundary of the Land but within the Council's Local Government Area in the manner consented to in writing by the Developer (acting reasonably).

12. Works Contributions

- (a) If the Council and the Developer agree that the Developer may make any of the Monetary Contributions by the carrying out of works or the provision of services in accordance with clause 10.2(c), then the Developer agrees that the works or services must be those identified in Part 1 of Annexures B, C, D and E, as appropriate.
- (b) The Developer must comply with its obligations under clause 12(a) within a reasonable time of agreement being reached by the Council and the Developer under clause 10.2(c).
- (c) The works or services must be carried out by a person with the necessary expertise, competence and skills and in accordance with the design approved by and to the standards of the Council, which standards are to be reasonably determined but which are no greater than those which apply to similar works or services carried out by or on behalf of the Council. Prior to the works or services commencing, they must be approved by the Council (acting reasonably) in accordance with the Council's usual requirements, to the extent relevant.
- (d) The Council must give, or procure, access to the Developer to all land upon which the works are to be carried out or the services are to be provided by the Developer for the purposes of carrying out the works or providing the services contemplated by this clause 12 provided that the Developer executes a licence agreement substantially in the form of Annexure G.

13. Open Space, Sporting and Recreation

13.1 Open Space, Sporting and Recreation Contribution

The Developer must:

- (a) pay the Open Space, Sporting and Recreation Monetary Contribution to the Council within the timeframes set out in Part 1 of Annexure B; and
- (b) undertake the Open Space, Sporting and Recreation Works.

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13.2 Payment of Open Space and Recreation Monetary Contribution

The Council must hold the Open Space Sporting and Recreation Monetary Contribution paid by the Developer for the purpose identified in Part 1 of Annexure B and apply the money towards that purpose within a reasonable time.

13.3 Open Space, Sporting and Recreation Works

The Developer must procure the design and construction of the Open Space, Sporting and Recreation Work in accordance with the Act within the timeframes set out in Part 2 of Annexure B.

13.4 Access for Works

Subject to the Council obtaining the consent of the Minister administering the *Crown Lands Act 1989* (if necessary), and the parties complying with the relevant provisions of the *Crown Lands Act 1989*, the Council must grant the Developer or any of its servants, agents or contractors access to the Wilton Recreational Reserve to enable the Developer to comply with its obligations under this clause 13 provided that the Developer executes a licence agreement substantially in the form of Annexure G.

13.5 Irrigation of Wilton Recreational Reserve

The Council must permit the Developer and the Community Association to irrigate the Wilton Recreational Reserve from water recycled by the sewage treatment plant to be constructed as part of the Development provided that:

- (a) the recycled water to be used for irrigation is in accordance with the requirements of any Authority applying to water produced by the sewage treatment plant;
- (b) subject to paragraph (c), the volume, frequency and duration of the irrigation will be determined and agreed between the Council, the Developer and/or the Community Association (each acting reasonably and in good faith), having regard to all relevant considerations, including seasonal issues, the use of Wilton Recreational Reserve and the available capacity of water recycled by the sewage treatment plant to be constructed as part of the Development; and
- (c) if the Council gives prior written notice to the Developer and the Community Association (as applicable) of the use of the Wilton Recreational Reserve by members of the community and the date and time on which that use will take place, the Developer and the Community Association must not irrigate the Wilton Recreational Reserve during the time of that event or for a reasonable period beforehand, having regard to the nature of the use.

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13.6 Community Association Control

The Developer must do all things necessary to procure that the Community Association is in control of those works identified in Part 2 of Annexure B as a "Level Two Park" (the *Community Parks*) so that the Community Association will be responsible for maintaining or procuring the maintenance of the Community Parks. The Community Parks must be subject to an encumbrance, public positive covenant or other effective form of control which ensures that the Community Parks are made available for public use, subject to the by-laws and rules of the Community Association from time to time.

13.7 Stormwater Detention Ponds

- (a) The Developer must construct all stormwater detention ponds within the Development in accordance with the LEP and as and when required for the Development. The Developer must do all things necessary to procure that the Community Association is in control of the stormwater detention ponds so that the Community Association will be responsible for maintaining or procuring the maintenance of those works.
- (b) The Council will be responsible for maintaining or procuring the maintenance of the pipe infrastructure from the road reserve to the headwall at the stormwater detention ponds.

13.8 Additional maintenance obligation

The Developer must do all things necessary to procure that the relevant entity forming part of the Community Governance Structure enters into an agreement with Council on terms and conditions acceptable to the parties to that agreement where that entity agrees to maintain the acoustic walls and associated landscaping constructed under the Entry Road Development Consent in accordance with condition 16.7 of the Staged Development Consent. The agreement must be entered into on or prior to practical completion of those acoustic walls and associated landscaping.

13.9 Timing of delivery Community Parks

- (a) The Developer and the Council acknowledge that the timing for delivery of the Community Parks set out in Part 2 of Annexure B has been determined by reference to the Developer's proposed programme for the sale and development of Residential Allotments within the Development as at the date of execution of this Deed by the parties so that the Community Parks will be delivered at the same time as Residential Allotments surrounding the relevant Community Park are sold.
- (b) If the Developer proposes to amend its programme for the sale and development of Residential Allotments within the Development, the Developer may, with the Council's prior written consent (which must not be unreasonably withheld or delayed), amend the timing for delivery of the Community Parks set out in Part 2 of Annexure B so that the Community Parks will be delivered at the same time as Residential Allotments surrounding the relevant Community Park are sold.

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14. Library, Information and Community

14.1 Library, Information and Community Contribution

The Developer must:

- (a) pay the Library, Information and Community Monetary Contribution to the Council within the timeframes set out in Part 1 of Annexure C; and
- (b) undertake the Library, Information and Community Works.

14.2 Payment of Library, Information and Community Monetary Contribution

The Council must hold the Library, Information and Community Monetary Contribution paid by the Developer for the purpose identified in Part 1 of Annexure C and apply the money towards that purpose within a reasonable time.

14.3 Library, Information and Community Works

The Developer must procure the design and construction of the Library, Information and Community Works in accordance with the Act within the timeframes set out in Part 2 of Annexure C.

14.4 Community Association Control

The Developer must do all things necessary to procure that the Community Association is in control of the Library, Information and Community Works identified in Part 2 of Annexure C so that the Community Association will be responsible for the management and for maintaining or procuring the maintenance of the Library, Information and Community Works. The Library, Information and Community Works must be subject to an encumbrance, public positive covenant or other effective form of control which ensures that the Library, Information and Community Works are made available for public use at affordable and reasonable rates referable to the facility when not in use by the Community Association, subject to the by-laws and rules of the Community Association from time to time.

14.5 Alternative Delivery

- (a) Despite clauses 10.2 and 14.1, the Parties agree that, if the Council and the Developer agree, the Developer may satisfy the requirement to provide the Library, Information and Community Works by providing an Alternative Delivery Outcome as described in the following clauses.
- (b) The Developer and the Council must, in good faith, endeavour to agree the Alternative Delivery Outcome for any item of the Library, Information and Community Works proposed by the Developer or the Council.
- (c) The Developer and the Council agree that the Alternative Delivery Outcome may include:
 - (i) shared use;
 - (ii) integrated service delivery;

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- (iii) flexibility in design;
 - (iv) co-location or separation of facilities;
 - (v) contributions being allocated to a mix of capital and recurrent costs; and
 - (vi) the transfer of management responsibility to a commercial entity, subject to rights of access to the residents of the Development and the public.
- (d) The Parties must:
- (i) consult in relation to, and, in good faith, endeavour to agree on, a management plan for any Alternative Delivery Outcome for any item of the Library, Information and Community Works; and
 - (ii) in good faith, endeavour to agree on the Alternative Delivery Outcome for any item of the Library, Information and Community Works proposed by the Developer or the Council, including agreeing on the following:
 - (A) the concept for the particular item of the Library, Information and Community Works;
 - (B) the user brief and alternative delivery method for the particular item of the Library, Information and Community Works; and
 - (C) that the particular item of the Library, Information and Community Works satisfies the Developer's obligations under this deed in relation to that item of the Library, Information and Community Works.
- (e) The parties agree that the following matters must be taken into account when considering an Alternative Delivery Outcome:
- (i) whether the alternative works and services meet demand that will be generated by the Development;
 - (ii) whether the alternative works and services are of the same standard or better than the works and services which they will replace;
 - (iii) whether the alternative works and services will result in the more efficient, effective and flexible provision of works or services;
 - (iv) whether the alternative works and services will be provided by the same date or time as the works and services which they are replacing;
 - (v) whether future service delivery is likely to be compromised by the alternative works and services; and
 - (vi) whether any third parties need to be consulted for the alternative works and services to be provided.
- (f) The agreed Alternative Delivery Outcome for the particular item of the Library, Information and Community Works must comply with the LEP.
- (g) Clause 5 does not apply to any disputes under this clause 14.5 and the Developer and the Council may withhold their agreement under this clause 14.5 in their absolute discretion.

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- (h) If in the opinion of the Council or the Developer (both acting reasonably) any agreement reached under this clause 14.5 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.

15. Transport and Traffic Management

15.1 Transport and Traffic Management Contribution

The Developer will:

- (a) pay the Transport and Traffic Management Monetary Contribution to the Council within the timeframes set out in Part 1 of Annexure D; and
- (b) undertake the Transport and Traffic Management Works.

15.2 Payment of Transport and Traffic Management Contribution

The Council must hold the Transport and Traffic Management Contribution paid by the Developer for the purpose identified in Part 1 of Annexure D and apply the money towards that purpose within a reasonable time.

15.3 Transport and Traffic Management Works

The Developer will procure the design and construction of the Transport and Traffic Management Works in accordance with the Act and the *Roads Act 1993* (NSW) within the timeframes set out in Part 2 of Annexure D.

15.4 Access to Roads

The Council must, if necessary, seek the concurrence of the RTA and give access to each public road over which the Council has control to the Developer and its contractors, agents and servants for the purpose of constructing the Transport and Traffic Management Works.

16. Other Monetary Contributions

16.1 Other Monetary Contributions

The Developer will pay to the Council within the relevant timeframes set out in Annexure E:

- (a) the Companion Animal Management Monetary Contribution;
- (b) the Bushfire Protection Monetary Contribution;
- (c) the Plan Management and Administration Monetary Contribution; and
- (d) the Miscellaneous Monetary Contribution.

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16.2 Payment of Other Monetary Contributions

- (a) The Council must hold the Companion Animal Management Monetary Contribution paid by the Developer for the purpose identified in Part 1 of Annexure E and apply the money towards that purpose within a reasonable time.
- (b) The Council must hold the Bushfire Protection Monetary Contribution paid by the Developer for the purpose identified in Part 2 of Annexure E and apply the money towards that purpose within a reasonable time.
- (c) The Council must hold the Plan Management and Administration Monetary Contribution paid by the Developer for the purpose identified in Part 3 of Annexure E and apply the money towards that purpose within a reasonable time.

The Council must hold the Miscellaneous Monetary Contribution paid by the Developer for the purpose identified in Part 4 of Annexure E and apply the money towards that purpose within a reasonable time. The Council agrees that upon payment by the Developer to the Council of the \$350,000 amount that forms part of the Miscellaneous Monetary Contribution, the Developer will be released from any obligation to make any further monetary contribution in respect of the Development to the upgrade of the intersection of Almond Street and Picton Road to a full seagull standard.

- (d) The Council must undertake all reasonable endeavours to complete the upgrade of the intersection of Almond Street and Picton Road to a full seagull standard on or before issue of the Subdivision Certificate for the last Residential Allotment in the Development. If the Council does not do so it must pay \$350,000 to the Developer as a refund of the monetary contribution made by the Developer to this item of work.

17. Practical Completion of Works

- (a) The Developer must give the Council 10 Business Days notice of the anticipated date of Practical Completion of an item of the Works.
- (b) Within 5 Business Days after service of the Developer's notice under paragraph (a):
 - (i) the Developer must procure the Quantity Surveyor to provide a certificate in favour of the Council and the Developer as to the Development Cost of the relevant Works; and
 - (ii) the Developer and the Council must jointly inspect the relevant Works and note any defect in or unsatisfactory work forming part of the Works requiring attention before Practical Completion of the relevant Works can be achieved (*Further Work*).
- (c) Once either:
 - (i) the Council and the Developer agree during the joint inspection referred to in paragraph (b) that there is no Further Work; or

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- (ii) the completion of the Further Work has occurred in the reasonable opinion of the Developer,

then the Developer must procure the Independent Engineer to issue a certificate stating that Practical Completion of the relevant Works has been reached and specifying the date on which it was reached. The certificate issued by the Independent Engineer must contain an acknowledgement from the Independent Engineer that it is recognised that Council will rely upon the certificate.

- (d) This clause 17 does not apply to the Works listed in the item headed "Community Liaison Officer" in Annexure C.

18. General Obligations

18.1 Compliance with Requirements

Despite any other provision of this deed, the Developer must carry out the Works in accordance with the following:

- (a) having due regard to the safety and rights of the public;
- (b) having due regard to the requirements of each Authority which has a right to impose a requirement or whose consent or approval is required with respect to the carrying out of any works;
- (c) without interrupting or otherwise disturbing the traffic flow on any road without first obtaining the written consent of the Council;
- (d) by first obtaining the approval of the Council to any arrangements to modify traffic flow, divert or control traffic for the purposes of any construction work;
- (e) signposting any works to ensure the safety of vehicular traffic and pedestrian movement and guidance. Signposting must not contain advertising material;
- (f) permitting the Council or any person authorised by the Council to enter and inspect any construction work carried out or being carried out;
- (g) providing all reasonable information and material relevant to the performance of its obligations under this clause if requested in writing by the Council, including information relating to traffic control, records and tests and services results for any construction works and any other relevant information held or received from time to time;
- (h) ensuring that the Development Cost of the Works as certified by the Quantity Surveyor in accordance with clause 17(b)(i) is equal to or greater than the value of the relevant item of the Works set out in the Annexures; and
- (i) in accordance with the following and in the event of an inconsistency in the following order of priority:
 - (i) all relevant Development Consents;
 - (ii) all Australian Standards applicable to works of the same nature as the Works; and

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- (iii) in a proper and workmanlike manner and in accordance with current industry practice and standards relating works of the same nature as the Works.

18.2 Remedial Protective and Urgent Repair

The Developer must, while carrying out Works and immediately on receipt of a notice from the Council, carry out such reasonable remedial protective repair or other urgent work as may be necessary to prevent loss or damage to those construction works or adjacent property, or to prevent personal injury or death by or as a result of construction by the Developer or its contractors.

18.3 Failure to Perform Urgent Work

If the Developer is unwilling or unable to perform the urgent work required in the notice issued under clause 18.2, then the Council may do the urgent work and the reasonable cost of that work will be a debt due to the Council.

18.4 Failure to perform obligations

If the Developer fails to complete the Works by the relevant Works Completion Date then:

- (a) the Council may call on the guarantee contained in clause 19, to enable the Council to complete and/or rectify the Works; and
- (b) should the guarantee contained in clause 19 be insufficient to complete and/or rectify the Works, then the Council may claim the reasonable cost of completing the Works (acting reasonably and having regard to the status and condition of the works completed) as a debt in any court of competent jurisdiction. The cost shall be assessed as at the time the Works are carried out.

18.5 Indemnity

- (a) The Developer must indemnify the Council from and against all actions, claims, costs, expenses and damages (including the cost of defending or settling any action or claim) in respect of loss of or damage to property (including the Council's property) or personal injury (including death) to any person to the extent that the actions, claims, costs, expenses and damages arise out of or by reason of anything done or omitted intentionally or negligently by the Developer and in respect of or flowing from any breach of this Part 2.
- (b) For the avoidance of doubt, the Developer's liability under paragraph (a) is reduced to the extent that the actions, claims, costs, expenses and damages arise out of or by reason of anything done or omitted intentionally or negligently by a person other than the Developer.

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18.6 Provision of proceedings

- (a) If the Council receives or is served with any communication, notice, summons, complaint or any legal process from any person or entity in respect of which an indemnity is provided to the Council by the Developer under clause 18.4, then the Council must promptly provide to the Developer a copy of any such communication, notice, summons, complaint or legal process and all particulars of the same and full details of all the relevant circumstances and events.
- (b) The Council must not consent to any matter or thing contained or referred to in any such document or communication nor take any related action, where the matter or thing affects the Developer, without first obtaining the written consent of the Developer.

18.7 Appearance in proceedings

The Developer, by its solicitors or counsel, may at its cost appear in and have the conduct of every such matter and proceedings referred to in clause 18.6 notwithstanding that the Council may also appear in any such matter or proceedings. The Developer may at its cost defend or prosecute and appeal against any decision of any court or other Authority in such manner as the Developer in its discretion may think fit.

18.8 Council's legal costs

Within 20 Business Days after receipt of a Tax Invoice issued to the Developer after the Commencement Date, the Developer must make a contribution to the Council's reasonable legal costs in relation to the preparation of this deed up to the agreed maximum amount of \$20,000 (exclusive of GST).

18.9 Community Association

The parties acknowledge that:

- (a) the Corporate Governance Structure involves the use of a 2 tier subdivision, one by community plan which creates community development lots and community property and one by precinct plan which creates precinct development lots and precinct property; and
- (b) the Community Association will be in control of all community property and also all precinct property.

19. Guarantee and Indemnity by LLC

19.1 Definitions

In this clause 19:

Guaranteed Obligations means all agreements, conditions, covenants, provisions, obligations and liabilities expressed or implied on the part of DLL Wilton to be performed, observed or complied with under this deed in favour of the Council whilst DLL Wilton is the Developer.

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19.2 Guarantee

LLC guarantees to the Council the performance, observance or compliance of the Guaranteed Obligations by DLL Wilton provided that the Guaranteed Obligations are not invalid, void, voidable or irrecoverable and are fully enforceable and on the basis that the Council mitigates damages to the extent (if any) that it has such a duty to mitigate damages to DLL Wilton.

19.3 Payment

- (a) If DLL Wilton defaults in the payment of any monetary amount forming part of the Guaranteed Obligations, LLC must pay that amount to the Council.
- (b) Any amount which LLC is liable to pay the Council must be paid within 20 Business Days of a demand which must:
 - (i) be in writing;
 - (ii) state that it is made under clause 19.3;
 - (iii) state and provide details of the amount being demanded and confirm that:
 - (A) a written demand for payment of the amount has been made on DLL Wilton by the Council;
 - (B) at least 20 Business Days have passed since the demand on DLL Wilton was made; and
 - (C) the demand on DLL Wilton remains unsatisfied; and
 - (iv) be signed by or on behalf of the Council.

19.4 Liability unaffected by other events

The liability of LLC is not affected by anything which, but for this provision, might release, prejudicially affect or discharge that liability or in any way relieve LLC from any obligation, including any of the following (whether with or without the consent of LLC);

- (a) the grant to DLL Wilton or any other person or both of any time, waiver or other indulgence, or the discharge or release of DLL Wilton or any other person or both;
- (b) any transaction or arrangement that may take place between the Council and DLL Wilton or any other person or both;
- (c) the liquidation of DLL Wilton or any other person or both;
- (d) the Council becoming a party to or bound by any compromise, moratorium, assignment of property, scheme of arrangement, composition of debts or scheme of reconstruction by or relating to DLL Wilton or any other person or both;
- (e) the Council exercising or delaying or refraining from exercising any right, power or remedy given to the Council by Law or by this deed;

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- (f) the amendment, variation, novation, replacement, rescission, invalidity, extinguishment, repudiation, avoidance, unenforceability, frustration, failure, expiry, determination, loss, release, discharge, abandonment, assignment or transfer, in whole or in part and either with or without consideration, of this deed at any time or of any right, obligation, power or remedy;
- (g) the failure by DLL Wilton or any other person or both to notify LLC of any default by DLL Wilton or any other person or both under this deed;
- (h) the Council obtaining a judgment against DLL Wilton or any other person or both for the payment of money payable under this deed;
- (i) any legal limitation, disability, incapacity or other circumstances relating to DLL Wilton, LLC or any other person or both; and
- (j) any change in circumstance (including of a person or in the members or constitution of a partnership),

provided that this deed is not invalid, voidable or irrecoverable and is fully enforceable with respect to the Guaranteed Obligations.

19.5 Principal and independent obligation

This guarantee is a principal and independent obligation. Except for stamp duty purposes, it is not ancillary or secondary to another right or obligation.

19.6 Continuing guarantee

This is a continuing guarantee despite any settlement of account, intervening payment or anything else until all Guaranteed Obligations have been performed, observed and complied with by DLL Wilton.

19.7 Variation

This guarantee covers this deed as amended, varied or replaced from time to time, with the consent of LLC.

19.8 Limitation on Guarantee

All obligations of LLC under this guarantee in relation to the Guaranteed Obligations shall be released in respect of any claim made by the Council under this guarantee after the date on which the Guaranteed Obligations are performed or satisfied.

19.9 Release of Guarantee

If the Council consents to the assignment or novation of the obligations of the Developer under clause 6.3 of this deed, then LLC shall have no liability to the Council in respect of the Guaranteed Obligations as from the date such assignment or novation becomes effective other than for those Guaranteed Obligations which arise before the date of such assignment or novation.

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19.10 Limitation on Guarantee and Indemnity

Despite any other provision in this deed the aggregate maximum liability of LLC under this clause 19 in relation to the Guaranteed Obligations is the lesser of:

- (a) subject to clause 1.11, \$19,660,000; and
- (b) the total value of all Works that have not reached Practical Completion or Monetary Contributions that have not been made.

Planning Agreement

EXECUTED and delivered as a deed

The Common Seal of Wollondilly Shire Council was hereto affixed on 3rd day of November 2007 pursuant to resolution no. 243 / 2007 made on 15th day of October : 2007



General Manager

LES MCMAHON

Print Name



Mayor

JUDITH HANNAN

Print Name

Executed as a deed in accordance with section 127 of the Corporations Act 2001 by DLL Wilton Pty Limited:



Director Signature

Simon Dennis Basheer

Print Name



Director/Secretary Signature

Kenneth Leslie James

Print Name

Signed Sealed and Delivered for Lend Lease Corporation Limited by its attorney under power of attorney registered book 4530 No 196 in the presence of:



Witness Signature

R BENNETT

Print Name



Attorney Signature

L Blundell

Print Name

Planning Agreement

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Annexure A

Map

Key Plan:



LEGEND

Development Site Boundary

Issue	Date	Amendment
A	02-08-07	Issue to Council

Scale: 1:15,000 @ A3

Drawn: TM

Checked: RB

Job No: P1

Drawing No: O-UD-VPA-08



Issue: A

Development Team:



Project:

Bingara Gorge

Drawing Title:

**Voluntary Planning Agreement
Annexure A
The Development Site**

Planning Agreement

Annexure B

Open Space, Sporting and Recreation

Part 1: Open Space, Sporting and Recreation Monetary Contribution

Item	Amount of Monetary Contribution and timing of payment	Purpose for which payment is required	Payment
Open space, sporting and recreational facilities within the Council's Local Government Area	Subject to clause 1.11, \$240,000. Payment is to be made as follows:		
	<ul style="list-style-type: none"> 25% on issue of the Subdivision Certificate for the 200th Residential Allotment; 	Recoupment for completed Wollondilly Community Leisure Centre – 434 Argyle Street, Picton.	\$60,000
	<ul style="list-style-type: none"> 25% on issue of the Subdivision Certificate for the 500th Residential Allotment; 	Recoupment for completed Wollondilly Community Leisure Centre – 434 Argyle Street, Picton.	\$60,000
	<ul style="list-style-type: none"> 25% on issue of the Subdivision Certificate for the 750th Residential Allotment; and 	Recoupment for completed Wollondilly Community Leisure Centre – 434 Argyle Street, Picton.	\$60,000
	<ul style="list-style-type: none"> 25% on issue of the Subdivision Certificate for the 1,000th Residential Allotment. 	Recoupment for completed Wollondilly Community Leisure Centre – 434 Argyle Street, Picton.	\$60,000
TOTAL			\$240,000

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Part 2: Open Space, Sporting and Recreation Works by the Developer

Item	Proposed Scope of Works	Value of Works	Timing of Works
<p>Level One Park – Wilton Recreational Reserve</p> <p>"A" on attached plan in Annexure H</p>	<p>Active sporting facilities comprising:</p> <ul style="list-style-type: none"> • 2.8 hectares of land (within an overall area of 8.8 hectares occupied by Wilton Recreational Reserve); • 2 x winter sports fields and cricket pitch between; • 4 x multi-purpose hardcourts; • 1 x picnic and BBQ area; • 1 x playground upgrade; • associated seating; • associated services; • associated permanent, in-ground irrigation system; and • associated landscaping (with tree planting), turfing, fencing and vehicle control barrier or bollards. 	<p>\$1,200,000</p>	<p>By issue of the Subdivision Certificate for the 500th Residential Allotment</p>

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Item	Proposed Scope of Works	Value of Works	Timing of Works
<p>Level Two Park – Western North Park "1" on attached plan in Annexure H</p>	<ul style="list-style-type: none"> • 1.9 hectares of land • 1 x half width road frontage • 1 x park shelter • 1 x playground and shade • 1 x BBQ area • 2 x viewing towers • associated seating, lighting and services, irrigation and landscaping 	<p>\$2,190,000</p>	<p>By issue of the Subdivision Certificate for the 750th Residential Allotment</p>
<p>Level Two Park – Homestead Park "2" on attached plan in Annexure H</p>	<ul style="list-style-type: none"> • 0.84 hectares of land • 1 x half width road frontage • 1 x park shelter • 1 x playground and shade • 1 x BBQ area • associated seating, lighting and services, irrigation and landscaping 	<p>\$1,050,000</p>	<p>By issue of the Subdivision Certificate for the 650th Residential Allotment</p>

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Item	Proposed Scope of Works	Value of Works	Timing of Works
Level Two Park – Eastern North Park "3" on attached plan in Annexure H	<ul style="list-style-type: none"> • 0.86 hectares of land • 1 x half width road frontage • 1 x park shelter • 1 x playground and shade • 1 x BBQ area • 1 x viewing tower • 1 x kickabout area • 1 x cycle circuit • associated seating, lighting and services, irrigation and landscaping 	\$1,120,000	By issue of the Subdivision Certificate for the 950 th Residential Allotment
Level Two Park – Eastern East Park "4" on attached plan in Annexure H	<ul style="list-style-type: none"> • 0.8 hectares of land • 1 x half width road frontage • 1 x park shelter • 1 x playground and shade • 1 x BBQ area • associated seating, lighting and services, irrigation and landscaping 	\$820,000	By issue of the Subdivision Certificate for the 950 th Residential Allotment

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Item	Proposed Scope of Works	Value of Works	Timing of Works
<p>Level Two Park – Eastern South Park "5" on attached plan in Annexure H</p>	<ul style="list-style-type: none"> • 1.4 hectares of land • 1 x half width road frontage • 1 x park shelter • 1 x playground and shade • 1 x BBQ area • 1 x hardcourt • associated seating, lighting and services, irrigation and landscaping 	<p>\$1,535,000</p>	<p>By issue of the Subdivision Certificate for the 1,050th Residential Allotment</p>
<p>Level Two Park – Western Golf Park "6" on attached plan in Annexure H</p>	<ul style="list-style-type: none"> • 0.42 hectares of land • 1 x half width road frontage • 1 x park shelter • 1 x playground and shade • 1 x BBQ area • associated seating, lighting and services, irrigation and landscaping 	<p>\$580,000</p>	<p>By issue of the Subdivision Certificate for the 250th Residential Allotment</p>

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Item	Proposed Scope of Works	Value of Works	Timing of Works
Level Two Park -- South West Park "7" on attached plan in Annexure H	<ul style="list-style-type: none"> • 0.3 hectares of land • 1 x half width road frontage • 1 x playground and shade • 1 x BBQ area • 1 x kickabout area • associated seating, lighting and services, irrigation and landscaping 	\$400,000	By issue of the Subdivision Certificate for the 400 th Residential Allotment
Level Two Park -- Sales and Information Centre Park "8" on attached plan in Annexure H	<ul style="list-style-type: none"> • 1.6 hectares of land • 1 x half width road frontage • 1 x park shelter • 1 x playground and shade • 1 x BBQ area • 2 x lakes • 1 x amphitheatre & outdoor stage • associated seating, lighting and services, irrigation and landscaping 	\$1,715,000	By issue of the Subdivision Certificate for the 250 th Residential Allotment
TOTAL		\$10,610,000	

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Annexure C

Library Information and Community

Part 1: Library, Information and Community Monetary Contribution

Item	Amount of Monetary Contribution and timing of payment	Purpose for which payment is required	Payment
<p>Council-provided library information and community facilities within the Council's Local Government Area</p>	<p>Subject to clause 1.11, \$1,900,000. Payment is to be made as follows:</p> <ul style="list-style-type: none"> • 25% on issue of the Subdivision Certificate for the 200th Residential Allotment; 	<p>(a) Provision of a freestanding public internet access e-kiosk or alternative internet provision (\$1,152); and/or</p> <p>(b) New library resource material; and/or</p> <p>(c) Provision of Central Library special services areas (L2) and/or towards the construction of a Central Library (L1) (\$198,848); and</p> <p>(d) Towards Civic Administration and Customer Service Centre (IA5) and/or Works Depot (IA6) (\$275,000).</p>	<p>\$475,000</p>

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Planning Agreement

Item	Amount of Monetary Contribution and timing of payment	Purpose for which payment is required	Payment
	<ul style="list-style-type: none"> 25% on issue of the Subdivision Certificate for the 500th Residential Allotment; 	<p>(a) New library resource material; and/or (b) Mobile Library Vehicle (L4) [IMPORTANT NOTE: Mobile Library to visit the Development on a regular basis]; and/or (c) Provision of Central Library special services areas (L2) and/or towards the construction of a Central Library (L1) (\$200,000); and (d) Towards Civic Administration and Customer Service Centre (IA5) and / or Works Depot (IA6) (\$275,000).</p>	\$475,000
	<ul style="list-style-type: none"> 25% on issue of the Subdivision Certificate for the 750th Residential Allotment; and 	<p>(a) New library resource material; and/or (b) Provision of Central Library special services areas (L2) and / or towards the construction of a Central Library (L1) (\$200,000); and (c) Towards Civic Administration and Customer Service Centre (IA5) and / or Works Depot (IA6) (\$275,000).</p>	\$475,000

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Item	Amount of Monetary Contribution and timing of payment	Purpose for which payment is required	Payment
	<ul style="list-style-type: none"> 25% on issue of the Subdivision Certificate for the 1,000th Residential Allotment. 	(a) New library resource material; and/or (b) Provision of Central Library special services areas (L2), and / or towards the construction of a Central Library (L1) (\$200,000); and (c) Towards Civic Administration and Customer Service Centre (IA5), and / or Works Depot (IA6) (\$275,000).	\$475,000
TOTAL			\$1,900,000.00

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Part 2: Library, Information and Community Works by the Developer

Item	Proposed Scope of Works	Value of Works	Timing of Works
<p>Community function and meeting space</p> <p>"A" on attached plan in Annexure J</p>	<ul style="list-style-type: none"> Land on which the facilities are provided Community Association building(s) with a minimum gross floor area of 577sqm, provided on a staged basis, in one or more locations, comprising: <ul style="list-style-type: none"> a multi purpose function floorspace, suitable for large gatherings, functions and entertainment uses; amenities; circulation spaces; storage of Community Association equipment (eg. tables, chairs, IT and communication equipment); meeting rooms; and administration and office space for a Community Liaison Officer; consultants and Authority fees (ie: design documentation, administration and approvals) associated landscaping and irrigation 	<p>\$1,510,000</p>	<p>By issue of the Subdivision Certificate for the 800th Residential Allotment</p>

Planning Agreement

Item	Proposed Scope of Works	Value of Works	Timing of Works
	<p>IMPORTANT NOTES:</p> <ol style="list-style-type: none"> 1. The above space(s) will be used by the Bingara Community for: <ul style="list-style-type: none"> • community meetings and interest group gatherings / meetings; • entertainment and social functions; and • educational, cultural, social and arts programmes run by the Community Liaison Officer. 2. Uses such as the golf pro-shop, changing rooms, cafés, restaurants and bars are not included as community facilities to be provided under this deed. 3. The architectural solution for the above space(s) shall be guided by the following: <ul style="list-style-type: none"> • the Community Function and Meeting Space shall have an individual identity and character as a building or structure to help identification and promote sense of community ownership; 		

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Item	Proposed Scope of Works	Value of Works	Timing of Works
<p>"B" on attached plan in Annexure J</p>	<ul style="list-style-type: none"> • the Community Function and Meeting Space shall have more than one point of physical access (entry / exit) to help facilitate community functions with different needs (eg "public" functions and "private" functions); and • physical access to the Community Function and Meeting Space shall be managed so as to avoid direct visual and physical connection with the private leisure club and associated facilities (eg bar and gaming machines), or equivalent. 		
<p>4. Temporary community floor space shall be provided at the Delfin Lend Lease Sales and Information Centre.</p> <p>5. The Sales and Information Centre shall provide a venue for the Community Liaison Officer and activities for the community until provision of the Community Function and Meeting Space at location "A" on attached plan in Annexure J.</p>			<p>By issue of the Occupation Certificate for the 1st Residential Allotment.</p>

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Item	Proposed Scope of Works	Value of Works	Timing of Works
<p>Community Liaison Officer</p>	<p>This item comprises the employment of a Community Development and Cultural Programmes Officer (<i>Community Liaison Officer</i>) by the Developer for a four (4) year period.</p> <p>The item includes salary and on-costs. The Community Liaison Officer will have appropriate qualifications or experience in community development commensurate with other community liaison officers employed by the Developer in NSW.</p> <p>The role will involve:</p> <ul style="list-style-type: none"> • the development and implementation of: <ul style="list-style-type: none"> • new Development resident welcome programmes (including residents information kit and community learning initiatives to educate residents of the Development on the understanding of community title, and on the roles, responsibilities and structures involved in the Community Association and its various entities); • programmes to inform the residents of the Development of mine subsidence and gas drainage infrastructure from coal seams; • community empowerment strategies and 	<p>\$200,000</p>	<p>By issue of the Subdivision Certificate for the 1st Residential Allotment</p>

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Item	Proposed Scope of Works	Value of Works	Timing of Works
	<p>programmes, including community intranet:</p> <ul style="list-style-type: none"> • not for profit interest groups and their ongoing facilitation; • social and cultural programmes for residents of the Development, including public art programmes; • youth orientated programmes; • educational programs; • employment / business support strategies and programmes; • programmes to facilitate the integration of the residents of the Development with the existing residents of Wilton Village; • advocating the needs and requirements of the residents of the Development with relevant government and non-government agencies in identifying areas for the provision of quality social infrastructure; • encouraging residents to participate in and join local volunteer groups including, but not limited to, bushland management groups, the NSW State Emergency Service, the NSW Rural Fire Service etc 		



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Item	Proposed Scope of Works	Value of Works	Timing of Works
	and		

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Item	Proposed Scope of Works	Value of Works	Timing of Works
	<ul style="list-style-type: none"> provision of appropriate and accessible human and community services. <p>Annual reporting of the above activities will be provided to the Council.</p>		
	<p>IMPORTANT NOTES:</p> <ol style="list-style-type: none"> The Community Liaison Officer shall be appointed for at least 2 days per week and will remain engaged for a minimum of 4 years. The Community Liaison Officer shall be accountable to the Developer and shall be expected to work in the best interests of the residents of the Development. The Community Liaison Officer shall act as a resource for residents of the Development (and, where deemed appropriate and relevant, the residents of Wilton Village). 		
TOTAL		\$1,710,000.00	

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Annexure D

Transport and Traffic Management

Part 1: Transport and Traffic Management Monetary Contribution

Item	Amount of Monetary Contribution and timing of payment	Purpose for which payment is required	Payment
<p>New or augmented traffic facilities, upgrading of intersections and sections of road, traffic minimisation and speed regulation facilities within residential neighbourhoods and provisions of shared cycleways and other alternate transport facilities, within the Council's Local Government Area</p>	<p>Subject to clause 1.11, \$1,610,000. Payment is to be made as follows:</p>	<ul style="list-style-type: none"> Upgrade of the intersection of Almond Street and Picton Road to full seagull treatment for safety and amenity; and/or 	<p>\$402,500</p>
	<ul style="list-style-type: none"> 25% on issue of the Subdivision Certificate for the 200th Residential Allotment; 		
	<ul style="list-style-type: none"> 25% on issue of the Subdivision Certificate for the 500th Residential Allotment; 	<ul style="list-style-type: none"> Road improvements on Main Roads within Picton, as required (ie: Argyle/Menangle Street intersection upgrade (T7); and/or Argyle/Prince Street junction and widening works (T3); and/or Argyle/Prince Street to Wood Street) upgrade to 	<p>\$402,500</p>
	<ul style="list-style-type: none"> 25% on issue of the Subdivision Certificate for the 750th Residential Allotment; and 		
	<ul style="list-style-type: none"> 25% on the earlier of: <ul style="list-style-type: none"> (a) issue of the Subdivision Certificate for the 1,000th Residential Allotment; or (b) completion of construction of the Almond Street/Picton Road junction, where the final 25% is used to reimburse Council for the cost to Council of the Almond Street/Picton Road junction. 	<p>\$402,500</p>	

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Item	Amount of Monetary Contribution and timing of payment	Purpose for which payment is required	Payment
		4 lanes (T5); and/or transport and traffic facilities as identified in the Contributions Plan as may be amended from time to time).	
SUB TOTAL			\$1,610,000
SUB TOTAL	Payments to be made at the same time and in the same percentages as set out above, resulting in four equal payments of \$100,000.	Traffic & Transport Management From Part 4 of Annexure E	\$400,000
TOTAL			\$2,010,000

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Planning Agreement

Part 2: Transport and Traffic Management Works by the Developer

Item	Proposed Scope of Works	Value of Works	Timing of Works
Hornby Street Upgrade Shown coloured blue on attached plan 1 in Annexure K	Hornby Street upgrade between the Development and Broughton St comprising: <ul style="list-style-type: none"> • reconstruction of existing pavement; • stormwater table drains (no piped SW works); • preliminaries and supervision (including traffic management); and • excludes kerb, verge and footpaths. 	Estimated at \$800,000	By issue of the Subdivision Certificate for the 450 th Residential Allotment
New Oval Road (Wollondilly Street) Shown coloured red on attached plan 1 in Annexure K	New Oval Road (Wollondilly Street) comprising: <ul style="list-style-type: none"> • clearing, grubbing, chipping of vegetation; • preliminaries and supervision (including traffic management); • type C full width pavement; • longitudinal stormwater drainage. 	Estimated at \$700,000	By issue of the Subdivision Certificate for the 800 th Residential Allotment
SUB TOTAL		\$1,500,000	
Offsite Shareway Shown coloured blue on attached plan 2 in Annexure K	2m wide concrete shareway located on the road verge (off carriageway) between the new Entry Road and Broughton Street with necessary road crossing(s)	\$320,000	By issue of the Subdivision Certificate for the 450 th Residential Allotment

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Item	Proposed Scope of Works	Value of Works	Timing of Works
Other Offsite Shareway Shown coloured red on attached plan 2 in Annexure K (Alternative Route) or preferred route via Camden Street	2m wide concrete shareway located on the road verge (off carriageway) between the junction of Hornby Street and Broughton Street and the junction of Argyle Street and Camden Street in Wilton Village with necessary road crossing(s). Preferred route via Camden Street, alternative route via Almond Street	Any monies left over following the construction of the above shareway plus \$150,000 from Part 1 of Annexure D amount due on issue of the Subdivision Certificate for the 500 th Residential Allotment	By issue of the Subdivision Certificate for the 450 th Residential Allotment
SUB TOTAL		\$320,000	
TOTAL		\$1,820,000	

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Annexure E

Other Monetary Contributions

Part 1: Companion Animal Management Monetary Contribution

Item	Amount of Monetary Contribution and timing of payment	Purpose for which payment is required	Payment
<p>Companion animal management facilities within the Council's Local Government Area</p>	<p>Subject to clause 1.11, \$50,000. Payment is to be made as follows:</p> <ul style="list-style-type: none"> 25% on issue of the Subdivision Certificate for the 200th Residential Allotment; 	<p>(a) Purchase of dog transport trailer (A6) (\$5,500); and / or</p> <p>(b) Expansion of office space, facilities, car parking, storage and service areas of the Wollondilly Animal Shelter at Wonga Road, Picton (\$7,000)</p>	<p>\$12,500</p>
	<ul style="list-style-type: none"> 25% on issue of the Subdivision Certificate for the 500th Residential Allotment; 	<p>Contributions towards the following:</p> <p>(a) Provision of dog off leash areas (A10) (\$28,422); and / or</p> <p>(b) Stockyard relocation and expansion, including development approval / land reclassification costs of the Wollondilly Animal Shelter at Wonga Road, Picton (A3) (\$11,369); or</p>	<p>\$12,500</p>

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Item	Amount of Monetary Contribution and timing of payment	Purpose for which payment is required	Payment
	<ul style="list-style-type: none"> 25% on issue of the Subdivision Certificate for the 750th Residential Allotment; and 	<p>(c) Other facilities as required.</p> <p>Contributions towards the following:</p> <p>(a) Provision of dog off leash areas (A10) (\$28,422); and / or</p> <p>(b) Stockyard relocation and expansion, including development approval / land reclassification costs of the Wollondilly Animal Shelter at Wonga Road, Picton (A3) (\$11,369); or</p> <p>(c) Other facilities as required.</p>	\$12,500
	<ul style="list-style-type: none"> 25% on issue of the Subdivision Certificate for the 1,000th Residential Allotment. 	<p>Contributions towards the following:</p> <p>(a) Provision of dog off leash areas (A10) (\$28,422); and / or</p> <p>(b) Stockyard relocation and expansion, including development approval / land reclassification costs of the Wollondilly Animal Shelter at Wonga Road, Picton (A3) (\$11,369); or</p> <p>(c) Other facilities as required.</p>	\$12,500
TOTAL			\$50,000

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Part 2: Bushfire Protection Monetary Contribution

Item	Amount of Monetary Contribution and timing of payment	Purpose for which payment is required	Payment
<p>New/augmented capital works within the Council's Local Government Area for bushfire protection purposes</p>	<p>Subject to clause 1.11, \$170,000. Payment is to be made as follows:</p>	<p>Contributions towards the following:</p>	
	<ul style="list-style-type: none"> 25% on issue of the Subdivision Certificate for the 200th Residential Allotment; 	<p>(a) Recoupment of costs of communications centre at Bridge Street, Picton; or (b) Vehicle and equipment as required.</p>	<p>\$42,500</p>
	<ul style="list-style-type: none"> 25% on issue of the Subdivision Certificate for the 500th Residential Allotment; 	<p>(a) Recoupment of costs of communications centre at Bridge Street, Picton; or (b) Vehicle and equipment as required.</p>	<p>\$42,500</p>
	<ul style="list-style-type: none"> 25% on issue of the Subdivision Certificate for the 750th Residential Allotment; and 	<p>(a) Recoupment of costs of communications centre at Bridge Street, Picton; or (b) Vehicle and equipment as required.</p>	<p>\$42,500</p>
	<ul style="list-style-type: none"> 25% on issue of the Subdivision Certificate for the 1,000th Residential Allotment. 	<p>(a) Recoupment of costs of communications centre at Bridge Street, Picton; or (b) Vehicle and equipment as required.</p>	<p>\$42,500</p>
	<p>TOTAL</p>		

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Part 3: Plan Management and Administration Monetary Contribution

Item	Amount of Monetary Contribution and timing of payment	Purpose for which payment is required	Payment
Management and administration of the Contributions Plan	Subject to clause 1.11, \$200,000. Payment is to be made as follows:	Contributions towards the following:	
	<ul style="list-style-type: none"> 25% on issue of the Subdivision Certificate for the 200th Residential Allotment; 	Plan Management and Administration	\$50,000
	<ul style="list-style-type: none"> 25% on issue of the Subdivision Certificate for the 500th Residential Allotment; 	Plan Management and Administration	\$50,000
	<ul style="list-style-type: none"> 25% on issue of the Subdivision Certificate for the 750th Residential Allotment; 	Plan Management and Administration	\$50,000
	<ul style="list-style-type: none"> 25% on issue of the Subdivision Certificate for the 1,000th Residential Allotment. 	Plan Management and Administration	\$50,000
SUB TOTAL			\$200,000
SUB TOTAL	Payments to be made at the same time and in the same percentages as set out above, resulting in four equal payments of \$150,000.	Plan Management and Administration From Part 4 of Annexure E	\$600,000
TOTAL			\$800,000

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Part 4: Miscellaneous Monetary Contribution

Item	Amount of Monetary Contribution and timing of payment	Purpose for which payment is required	Timing of Payment
Public amenities and services within the Council's Local Government Area	Subject to clause 1.11, \$1,350,000. Payment is to be made as follows:		
	<ul style="list-style-type: none"> \$600,000; 	Plan Management and Administration	Refer to Part 3 of Annexure E
	<ul style="list-style-type: none"> \$400,000; and 	Traffic and Transport Management	Refer to Part 1 of Annexure D
	<ul style="list-style-type: none"> \$350,000. 	Transport and Traffic Management – specifically the full seagull treatment at the junction of Picton Road and Almond Street which must be constructed in accordance with RTA standards	The commencement of construction of the proposed seagull treatment at the junction of Picton Road and Almond Street or alternative date if agreed in writing by both parties
SUB TOTAL	\$1,350,000	(a) \$600,000; and (b) \$400,000 have been transferred to Part 3 of Annexure E and Part 1 of Annexure D respectively	
MINUS	\$1,000,000		
TOTAL	\$350,000		

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