

# Bingara Gorge (Wilton Parklands) Development

## Deed of Variation of Voluntary Planning Agreement

Wollondilly Shire Council ("**Council**")

ABN 93 723 245 808

And

LendLease Corporation Limited ("**LLC**")

ABN 32 000 226 228

And

Lendlease Communities (Wilton) Pty Limited

ABN 31 110 022 976 ("**Developer**")



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Deed made at Picton on

25 June 2021 ~~2020~~

## Parties

**Wollondilly Shire Council ("Council")**  
**ABN 93 723 245 808**

And

**Lend Lease Corporation Limited ("LLC")**  
**ABN 32 000 226 228**

And

**Lendlease Communities (Wilton) Pty Limited**  
**ABN 31 110 022 976 ("Developer")**

## Background

- A. The Developer is the proponent for and has rights to carry out the Development on the Land.
- B. On 3 November 2007 the Developer (then DLL Wilton Pty Ltd), LLC and the Council entered into a Planning Agreement in respect of the Development of Bingara Gorge under which the Developer agreed to make monetary contributions and carry out various works.
- C. Pursuant to clause 2.3 of the Planning Agreement the Parties have agreed to vary the Planning Agreement in accordance with this Deed to defer the Developer's obligation to deliver the New Oval Road at Wilton.

## Operative Provisions

### 1. Definitions and Interpretation

(a) In this Deed the following definitions apply:

**"Bank Guarantee"** means an irrevocable and unconditional undertaking by a bank or financial institution approved by the Council to pay an amount or amounts of money to the Council on demand and containing terms and conditions reasonably acceptable to the Council.

**"Council's Policy"** means the Council's *Planning Agreement Policy - PLA0037*, adopted by Council on 19 October 2015.

**"Deed"** means this Deed of Variation and includes any schedules, annexures and appendices to this Deed.

**“Planning Agreement”** means the Planning Agreement under the Act entered into by the Parties in respect of the Development dated 3 November 2007.

**“Regulation”** means the *Environmental Planning and Assessment Regulation 2000*

**“Subdivision Certificate”** means a subdivision certificate as defined in the Act.

- (b) All other capitalised words used in this Deed have the meanings given to those words in clause 1.2 of the Planning Agreement.
- (c) Clauses 1.2 – 1.12 inclusive of the Planning Agreement apply as if they form part of this Deed with any necessary changes.

## **2. Status of this deed**

- (a) This Deed takes effect from the date on which it has been executed by all Parties.
- (b) The last party to sign the Deed is to insert the date the Deed is made at the top of Page 3.
- (c) The Parties will use their best endeavours to execute this Deed within 30 Business Days from the end of the public notice period required by clause 25D of the Regulations.

## **3. Planning Agreement under the Act and Policy**

- (a) The Parties agree that this Deed is an amendment to the Planning Agreement within the meaning of clause 25C of the Regulation.
- (b) The Annexure B: **Explanatory Note** for this Deed summarises the requirements for planning agreements under section 7.4 of the Act and the way this Deed addresses those requirements.
- (c) This Deed has been prepared in accordance with Council's Policy.

## **4. Warranties**

The Parties warrant to each other that they:

- (a) have full capacity to enter into this Deed, and
- (b) are able to fully comply with their obligations under this Deed.

## **5. Change to entity name**

The Parties acknowledge and agree that:

- (a) On or about 26 August 2011 DLL Wilton Pty Ltd changed its entity name;
- (b) The entity previously known as DLL Wilton Pty Ltd with ABN 31 110 022 976 is now named Lendlease Communities (Wilton) Pty Limited; and
- (c) All references to ‘DLL Wilton’ and ‘Developer’ in the Planning Agreement are references to Lendlease Communities (Wilton) Pty Limited.

## 6. Amendment to Planning Agreement

- (a) The Parties have agreed to vary the Planning Agreement to clarify that the Developer is responsible for obtaining the necessary approvals for the Works Contributions by inserting a new subclause 12(e) in the following terms:

### **12 Works Contributions**

...

(e) *The Developer is responsible for preparing all documentation for, and for securing all necessary planning, environmental and other approvals required for the delivery of the works contributions as set out in this clause 12.*

- (b) Clause 10.1(a)(iii) and clause 15.3 of the Planning Agreement requires the Developer to carry out Transport and Traffic Management Works. The Parties have agreed to vary the Transport and Traffic Management Works required to be carried out by the Developer by amending the time frame in which the item in Part 2 of Annexure D to the Planning Agreement referred to as "New Oval Road" is required to be delivered, as shown in Annexure A.
- (c) The Parties have agreed to vary the Planning Agreement by inserting a new clause 15A requiring the Developer to provide security for the deferred obligation to construct New Oval Road in the following terms:

### **15A Security for New Oval Road Works**

- (a) *Prior to 30 September 2020 the Developer must provide a Bank Guarantee to the Council to the value of \$1,856,626, being equivalent to 200% of the estimated cost of the New Oval Road.*
- (b) *If the Developer does not comply with any of its obligations under this Deed in respect of New Oval Road the Council may, after giving 14 days' notice;*
- (1) *remedy any default at the expense of the Developer; and*
  - (2) *draw down on the security amount without notice to the Developer to reimburse the Council for the costs incurred in remedying the Developer's default, including to meet the costs of any associated liability, loss, costs, charges or expenses directly or indirectly incurred by the Council because of the failure of the Developer to fulfil its obligations under this Deed.*
- (c) *The Council will return the relevant part of the Bank Guarantee to the Developer:*
- (1) *If no defects are identified within the 12 month period commencing from the date New Oval Road is completed, within a further 25 Business Days from the end of that 12 month period, or*
  - (2) *Where the Council has given one or more defect notices to the Developer within 12 months from the date New Oval*

*Road is completed, within 25 Business Days after the last defect has been rectified to the satisfaction of the Council.*

- (d) *If the Council calls on a Bank Guarantee in accordance with this Deed the Council may, by notice in writing to the Developer, require the Developer to provide a further Bank Guarantee in an amount that, when added to any unused portion of any existing Bank Guarantee, does not exceed the amount of the Bank Guarantee the Council is entitled to hold under clause 15A.*
  - (e) *Nothing in this clause 15A limits the Council's right to call on LLC to perform the Guaranteed Obligations under cl.19.*
- (d) A consolidated version of the Planning Agreement showing the changes which the Parties have agreed to make is included at Annexure C.

## **7. Costs**

The Developer is to pay:

- (a) All costs associated with obtaining all necessary approvals, construction and delivery of New Oval Road to the Council.
- (b) Its own costs and expenses (including legal fees) of and incidental to the preparation, negotiations, execution and (where applicable) the stamping and registration of this Deed, including all Stamp Duty payable; and
- (c) the Council's reasonable costs of and incidental to the preparation, negotiation, execution, stamping and registration and, where necessary, enforcement of this Deed (up to \$5,000).

**Executed as a Deed Dated 25 June 2021**

**EXECUTED** for and on behalf of **Wollondilly Shire Council** by its authorised delegate, in accordance with a resolution of the Council made on 20 April 2021 number 70/2021

.....  
Signature of Authorised Delegate Mayor

.....  
Signature of Witness

.....  
Name of Authorised Delegate (in full)  
Signature of Chief Executive Officer

.....  
Name of Witness (in full)  
Signature

.....  
Date

**EXECUTED** by **Lend Lease Corporation Limited**  
**ABN 32 000 226 228**

.....  
Signature

.....  
Signature

**Sonya Louise Harris**

**Matthew Alan Mears**

.....  
Name / ~~Director/Secretary~~ Attorney

.....  
Name / ~~Director/Secretary~~ Attorney

.....  
21 JUNE 2021  
Date

**EXECUTED** by **Lend Lease Communities (Wilton) Pty Ltd**  
**ABN 311 110 022 976**

.....  
Signature

.....  
Signature

.....  
**PAUL MARTIN**  
Name / ~~Director/Secretary~~ Attorney

.....  
**JEHEON SON**  
Name / ~~Director/Secretary~~ Attorney

.....  
22 JUNE 2021  
Date

## Annexure A: Amendment of Annexure D

Item	Proposed scope of works	Value of Works	Timing of Works
<p>New Oval Road (Wollondilly Street)</p> <p>Shown coloured red on attached plan I in Annexure K</p>	<p>New Oval Road (Wollondilly Street) comprising:</p> <ul style="list-style-type: none"> <li>• <u>Securing all planning and environmental approvals and all associated costs</u></li> <li>• Clearing, grubbing, chipping of vegetation</li> <li>• Preliminaries and supervision (including traffic management)</li> <li>• Type C full width pavement</li> <li>• Longitudinal stormwater drainage</li> </ul>	<p>Estimated at \$928,313 (indexed to June 2020) 700,000</p>	<p>By issue of the Subdivision Certificate for the 800<sup>th</sup> 1300<sup>th</sup> Residential Allotment</p>



## **Annexure B: Explanatory Note**

### **Introduction**

The purpose of this Explanatory Note is to provide a plain English summary to support the notification of the proposed Variation to the Planning Agreement (the "**Planning Agreement**") prepared clause 25C of the *Environmental Planning & Assessment Regulation 2000* ("**the Regulation**"). This Explanatory Note has been prepared jointly by the Parties as required by clause 25E of the Regulation.

This explanatory note is not to be used to assist in construing the Planning Agreement.

### **Parties to the Deed of Variation**

The Parties to the Planning Agreement are the Wollondilly Shire Council ("Council"), Lendlease Communities (Wilton) Pty Limited ABN 31 110 022 976 ("Developer") and Lend Lease Corporation Limited ABN 32 000 226 228 ("LLC")

### **Description of Proposed Development**

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.

### **Summary of the objectives, nature and effect of the draft Deed of Variation**

#### *Objective*

The objective of the Deed of Variation of the Planning Agreement is to modify the Planning Agreement to defer the date by which the Developer is required to deliver New Oval Road from a date prior to the release of a Subdivision Certificate for the 800<sup>th</sup> Residential Allotment to a date prior to the release of a Subdivision Certificate for the 1300<sup>th</sup> Residential Allotment and to facilitate the provision of security for that contribution.

#### *Nature*

The Deed of variation is an amendment to the Planning Agreement but is not itself a Planning Agreement as defined by the *Environmental Planning and Assessment Act 1979*.

#### *Effect*

The Deed of Variation of the Planning Agreement defers the date by which the Developer is required to deliver New Oval Road from a date prior to the release of a Subdivision Certificate for the 800<sup>th</sup> Residential Allotment to a date prior to the release of a Subdivision Certificate for the 1300<sup>th</sup> Residential Allotment.

## **Assessment of the Merits of the Deed of Variation**

### ***Planning Purpose served by the Deed of Variation***

The Deed of Variation continues to serve the planning purpose of providing public road infrastructure to benefit the community and to address the demands of the Development and continues to be a reasonable means of achieving that purpose.

### ***Identification of how the Deed of Variation promotes the public interest and the objects of the Act***

The Deed of Variation continues to promote the public interest and the objects of the Act by providing land for public purposes (in the form of a road constructed to Council's specifications).

### ***Identification of how the Deed of Variation promotes elements of the Council's Charter under the Local Government Act 1993***

The Deed of Variation is consistent with the guiding principles for Councils in section 8A of the *Local Government Act 1993* (which have replaced the Council Charter). It provides for the effective, affordable and timely delivery of infrastructure to meet the needs of the current and future community and facilitates the delivery of assets in an affordable and collaborative manner, thereby providing value for ratepayers and residents. The Deed of Variation reflects collaboration between the Council, LLC and the Developer to ensure that development of Bingara Gorge and construction of associated infrastructure progress in a co-ordinated and transparent manner.

### ***Identify whether the Deed of Variation conforms with the planning authority's capital works program (if any)***

The planning agreement conforms with the Council's capital works program.

### ***Whether the Draft Deed of Variation specifies that certain requirements must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued***

The Deed of Variation specifies that New Oval Road must be delivered before a subdivision certificate facilitating the creation of the 1300<sup>th</sup> residential allotment can be issued.