

Deed of Variation - Planning Agreement

177 Russell Avenue, Dolls Point

Bayside Council

and

Helm No.10 Pty Limited

Ref 1031998

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Annexure 1: Agreement dated 4 May 2018

Annexure 2: Deposited Plan (DP 1263710)

Annexure 3: Title Search upon Folio: 1/1263710 dated 11 February 20

Deed of Variation - 177 Russell Avenue, Dolls Point

1. Contacts Sheet

Council

Name: Bayside Council (ABN 80 690 785 443 Branch 3)

Address: 444-446 Princes Highway, ROCKDALE NSW 2216

PO Box 21, Rockdale NSW 2216

Telephone: (02) 9562 1666

Facsimile: (02) 9562 1777

Email: council@bayside.nsw.gov.au

Representative: Meredith Wallace

General Manager

Developer

Name: Helm No.10 Pty Limited (ACN: 167 002 100 ABN: 65 167 002 100)

Address: 131 Sailors Bay Rd, Northbridge NSW 2063

PO Box 99 Northbridge NSW 1560

Telephone: 02 8036 7400

Email: mmonk@helmproperties.com.au

Representative: Mark Monk

2. Parties

Bayside Council (ABN 80 690 785 443 Branch 3) of 444-446 Princes Highway,
ROCKDALE NSW 2216 (**Council**)

And

Helm No.10 Pty Limited (ACN: 167 002 100 ABN: 65 167 002 100) of 131 Sailors Bay
Rd, Northbridge NSW 2063 (**Developer**)

3. Background

- A. On 4 May 2018, the Council and War Widows' Guild of Australia NSW Limited (ACN 083 075 914) of Level 14, 227 Elizabeth Street, SYDNEY NSW 2000 who were the former registered proprietors of 80/2237, 81/2237, 82/2237, 83/2237 executed a planning agreement (**Agreement**) in accordance with the provisions of section 93F of the *Environmental Planning and Assessment Act 1979* (**Act**) (as then in force) in the form contained in Annexure 1.
- B. Clause 26.1 of the Agreement provides that: "No modification of this Agreement will be of any force or effect unless it is in writing and signed by the Parties to this Agreement."
- C. On 20 January 2021, the Deposited Plan (DP1263710) contained in Annexure 2 was registered.
- D. A Title Search of Folio: 1/1263710 contained in Annexure 3 dated 11 February 2021 issued by Land Registry Services clearly records Helm No.10 Pty Limited as the sole entity under the First Schedule.
- E. On 15 December 2020 the Bayside Planning Panel approved DA-2020/232 for the installation of a pump and pipes in Waradiel Creek to improve water quality and for the construction of a new cycle path and revegetation on creek banks. The Developer has offered, and the Council has agreed, that these works would be carried out by the Developer.
- F. In consideration of the Development Obligations of the Developer under Item A in Schedule 3 of the Agreement and the offer to the Developer to pay for the additional works under DA-2020/232 (at recital E above), the parties have agreed to modify the Agreement on the terms set out in this Deed of Variation (**Deed**).



Operative Provisions

4. Definitions and interpretation clauses

Terms defined in the Agreement have the same meaning when used in this Deed unless otherwise defined in this document. The rules of interpretation set out in the Agreement apply to the interpretation of this Deed.

5. Modification of the Agreement

5.1 The parties agree that the Agreement is modified as at the date of this Deed as follows:

a) The Party identified as:

the War Widows' Guild of Australia NSW Limited (ACN 083 075 914) of
Level 14, 227 Elizabeth Street, SYDNEY NSW 2000 (Developer)

is replaced as the Developer in all instances within the original Agreement with:

Helm No.10 Pty Limited (ACN: 167 002 100 ABN: 65 167 002 100) of
131 Sailors Bay Rd, Northbridge NSW 2063 (Developer)

5.2 Clause 1

The parties agree that the Agreement is modified as at the date of this Deed as follows:

- a) **Works Bank Guarantee** means a Bank Guarantee in the amount of \$311,520 required to be delivered to Council as security for the carrying out of the works required by clause 7 and Item C of Schedule 3 of this Agreement.
- b) **Reserve Restoration Bond** means the bond security required by condition 22(b) of Development Consent No. DA-2020/232 approved as per Notice of Determination dated 15 December 2020 in the amount of \$60,000.

5.3 Clause 10

The parties agree that the Agreement is modified as at the date of this Deed as follows:

a) Clause 10.3 is deleted and replaced with the following:

- 10.3 Council will release the Bank Guarantee simultaneously with the payment of the monetary Development Contribution in Item A of Schedule 3 to the satisfaction of Council, provided that:

10.3.1 all Development Contributions in Item A and B of Schedule 3 have been made in accordance with clause 7 of this Agreement and the Third Schedule; and

10.3.2 the Works Bank Guarantee as referred to in clause 10.4, or as reduced under clause 10.5 by way of provision of the Reserve Restoration Bond, has been delivered to Council.

b) Clause 10.4 is inserted as follows:

10.4 Prior to the issue of any Occupation Certificate in relation to the Development the Developer must deliver to the Council the Works Bank Guarantee in the amount of \$311,520 which Council may call upon to satisfy, either wholly or partly the Developer's obligations to make the Development Contributions in accordance with Clause 7 and Item C of Schedule 3 of this Agreement, for:

10.4.1 the costs of Council carrying out the works required by Clause 7 and Item 3 of Schedule 3 in the event of breach of this Agreement by Developer;

10.4.1 the costs of rectifying any damage to Council/ public property caused by the Developer in carrying out the works required by Clause 7 and Item 3 of Schedule 3.

c) Clause 10.5 is inserted as follows:

10.5 For the purposes of cl 10.4 of this Agreement Council will accept the Works Bank Guarantee in the amount of \$251,520 if it is satisfied that the Reserve Restoration Bond required by condition 22(b) of Development Consent No. DA-2020.232 approved as per Notice of Determination dated 15 December 2020 in the amount of \$60,000 has been delivered to Council at or before the time of delivery of the Works Bank Guarantee to Council.

d) Clause 10.6 and 10.7 is inserted as follows:

10.6 Should Council use part or whole of the monies under the Works Bank Guarantee under cl 10.4, the Developer shall, on being advised in writing by Council to do so, immediately take steps to ensure that the amount of the Works Bank Guarantee of \$311,520 (or \$251,520 if reduced under cl 10.5) is replaced to the benefit of Council.

10.7 If Council uses part or the whole of the monies in accordance with clause 10.6 of this Agreement, the Council, in advising the Developer in writing, must include in that written notice:

10.7.1 details of the works undertaken by Council in accordance with clause 10.4 of this Agreement; and



10.7.2 the quantum of the costs incurred by Council in undertaking the works.

e) Clause 10.8 is inserted as follows:

10.8 Council will release the Works Bank Guarantee provided that works required by clause 7 and Item C of Schedule 3 have been carried out in accordance with Schedule 3 to Council's satisfaction and Council has received a written request for the return of the Works Bank Guarantee no less than ten (10) Business Days prior to release.

f) Clause 10.9 is inserted as follows:

10.9 If this Deed is executed after the Occupation Certificate is issued for the Development and the Developer has already paid the Development Contribution in Item A of Schedule 3 of the Agreement, the Council is to refund the Developer, within 7 days of written request being made by the Developer, the difference in the Development Contribution required under this Deed for Item A in Schedule 3 being the sum of \$40,000.

5.4 Clause 14

The parties agree that the Agreement is modified as at the date of this Deed as follows:

a) Clause 14.4 is inserted as follows:

14.4 Notwithstanding clause 14.3, the said clause 14.3 will still have effect upon the Developer having provided all of the Development Contributions in accordance with clause 7 and Items A and B of Schedule 3 of this Agreement and otherwise complying with this Agreement to the satisfaction of Council, until such time as the works set out in Item C in Schedule 3 are completed to the satisfaction of Council and the Works Bank Guarantee has been released under clause 10.8 of this Agreement.

5.5 Schedule 3

The parties agree that the Agreement is modified as at the date of this Deed as follows:

- a) the figure '\$450,000' in column 3 of Item A is deleted and replaced with the '\$410,000';
- b) the words '2. Revegetation of Waradiel Creek - \$40,000' are deleted from Column 3 of Item A;
- c) Item C is inserted as set out below:



Works in Kind

Column 1	Column 2	Column 3	Column 4
Item	Public Purpose	Contribution Value	Timing
C	The Developer must carry out all works the subject of Development Consent No. DA-2020/232 granted as per Notice of Determination dated 15 December 2020 for 'Integrated Development - Installation of a pump and pipes in Waradiel Creek improving water quality, and construction of a new cycle path and revegetation on the creek banks'.	\$311,520 (Inc GST)	The works are to be completed on or within 6 months of Execution of this Deed or as otherwise agreed in writing between the Parties.

The Developer is to request a quote from Bayside Garden Centre for the supply of the plants for the revegetation of Waradiel Creek, as detailed in the approved documents the subject of DA-2020/238, and the Developer agrees to engage Bayside Garden Centre to supply the plants, providing the quote received is similar to a quote that the developer will obtain from Kenthurst Nurseries; and Bayside Garden Centre are able to supply the plants to suit the Developers construction program.

5.6 Agreement otherwise unchanged

- a) Other than as varied under clauses 5.1, 5.2, 5.3, 5.4 and 5.5 of this Deed, the Agreement remains unchanged.
- b) To the extent of any inconsistency between the subject matter of this Deed and the Agreement, this Deed shall prevail to the extent of any inconsistency.



6. Developer's Obligations

- 6.1 For the avoidance of doubt, notwithstanding clause 26.1 of the Agreement and any potential claim that War Widows' Guild of Australia NSW Limited (ACN 083 075 914) might be required to execute this Deed, the Developer, Helm No.10 Pty Limited (ACN: 167 002 100 ABN: 65 167 002 100), irrevocably and unconditionally undertakes to the Council that:
- a) it is bound by all of the provisions in the Agreement (as modified by this Deed);
 - b) it will perform all of the Developer's obligations in the Agreement (as modified by this Deed), including in particular providing the Development Contributions in accordance with clause 7 and Schedule 3 of the Agreement (as modified by this Deed); and
 - c) it will not take any proceedings in any Court of competent jurisdiction on the basis that, or any way related to any claim that, this Deed is invalid or unenforceable by reason of the fact that it has not been executed by War Widows' Guild of Australia NSW Limited (ACN 083 075 914) and this clause 6.1 may be pleaded as a complete defence to any such proceedings.

7. Execution

Executed as a Deed

date:

2021

Executed on behalf of Bayside Council:

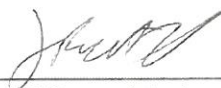
Executed by **Bayside Council** by its
authorised delegate



General Manager (sign)

Meredith Wallace

Name of General Manager



Witness (sign)

John Furestad

Witness – Name/Position (print)

Contracts Manager

6. Developer's Obligations

- 6.1 For the avoidance of doubt, notwithstanding clause 26.1 of the Agreement and any potential claim that War Widows' Guild of Australia NSW Limited (ACN 083 075 914) might be required to execute this Deed, the Developer, Helm No.10 Pty Limited (ACN: 167 002 100 ABN: 65 167 002 100), irrevocably and unconditionally undertakes to the Council that:
- a) it is bound by all of the provisions in the Agreement (as modified by this Deed);
 - b) it will perform all of the Developer's obligations in the Agreement (as modified by this Deed), including in particular providing the Development Contributions in accordance with clause 7 and Schedule 3 of the Agreement (as modified by this Deed); and
 - c) it will not take any proceedings in any Court of competent jurisdiction on the basis that, or any way related to any claim that, this Deed is invalid or unenforceable by reason of the fact that it has not been executed by War Widows' Guild of Australia NSW Limited (ACN 083 075 914) and this clause 6.1 may be pleaded as a complete defence to any such proceedings.

7. Execution

Executed as a Deed

date:

2021

Executed on behalf of Bayside Council:

Executed by **Bayside Council** by its
authorised delegate

General Manager (sign)

Witness (sign)

Meredith Wallace

Name of General Manager

Witness – Name/Position (print)

Executed on behalf of **Helm No.10 Pty Limited (Developer)** (under s 127 of the Corporations Act 2001 (Cth) by:



Director (sign)



Director/~~Secretary~~ (sign)

BRUCE W EDWARDS

Name of Director

MARK MONK.

Name of Director/Secretary

8. Annexure 1 – Agreement 4 May 2018

REQUEST

New South Wales
Real Property Act 1900

Leave this space clear. Affix additional
pages to the top left-hand corner.

PRIVACY NOTE: Section 31B of the Real Property Act 1900 (RP Act) authorises the Registrar General to collect the information required by this form for the establishment and maintenance of the Real Property Act Register. Section 96B RP Act requires that the Register is made available to any person for search upon payment of a fee, if any.

All Statutory Declarations and evidence that are lodged in support of land dealings will be treated as publicly accessible and will be disclosed to persons upon request.

(A) STAMP DUTY	If applicable. Revenue NSW use only		
(B) TORRENS TITLE	80/2237, 81/2237, 82/2237 and 83/2237		
(C) REGISTERED DEALING	Number		Torrens Title
(D) LODGED BY	Document Collection Box	Name, Address or DX, Telephone, and Customer Account Number if any Reference:	CODE R
(E) APPLICANT	Bayside Council ABN 80 690 785		
(F) NATURE OF REQUEST	Registration of Planning Agreement pursuant to section 7.6 of the Environmental Planning and Assessment Act 1979		
(G) TEXT OF REQUEST	Registration of the 177 Russell Avenue, Dolls Point Planning Agreement between Bayside Council and War Widows' Guild of Australia NSW Limited dated 4 May 2018, a copy of which is annexed to this request and marked "C".		

DATE

- (H) I certify that I am an eligible witness and that an authorised officer of the applicant signed this dealing in my presence. [See note* below].

Signature of witness:



Name of witness:

Address of witness:

HEATHER JOHNSON
444 PRINCES HWY
ROCKHURST NSW 2216

Certified correct for the purposes of the Real Property Act 1900 by the authorised officer named below.

Signature of authorised officer:



Authorised officer's name:

Authority of officer:

Signing on behalf of:

MEREDITH WALLACE
GENERAL MANAGER
BAYSIDE COUNCIL

- (I) This section is to be completed where a notice of sale is required and the relevant data has been forwarded through eNOS.

The applicant

certifies that the eNOS data relevant to this dealing has been submitted and stored under

eNOS ID No.

Full name:

Signature:

* s117 RP Act requires that you must have known the signatory for more than 12 months or have sighted identifying documentation.

ALL HANDWRITING MUST BE IN BLOCK CAPITALS

Annexure A to Request for Registration of Planning Agreement

Between:

Bayside Council ABN 80 690 785 (Applicant)

War Widows' Guild of Australia NSW Limited ACN 083 075 914 (Registered Proprietor)

Dated: 4 May 2018

(Executed by War Widows' Guild of Australia NSW Limited – registered proprietor of 80/2237, 81/2237, 82/2237, 83/2237)

**EXECUTED by War Widows' Guild of Australia)
NSW Limited in accordance with section 127(1))
of the Corporations Act 2001.)
)**



Signature of witness



Signature of authorised officer

CHRISTOPHER CUNNINGHAM-REID
Name of witness
(please print)

MARY WILSON
Name of authorised officer
(please print)

131 SAILORS BAY ROAD, NORTHBRIDGE
Address of witness

Company Secretary
Authority of authorised officer



Signature of witness



Signature of authorised officer

CHRISTOPHER CUNNINGHAM-REID
Name of witness
(please print)

Wendy Thompson
Name of authorised officer
(please print)

131 SAILORS BAY ROAD, NORTHBRIDGE
Address of witness

Director
Authority of authorised officer

Annexure B:

Executed by **Helm No. 10 Pty Limited ACN 167 002 100** (caveator under caveat AN45735):

EXECUTED by Helm No. 10 Pty Limited in
accordance with section 127(1) of the
Corporations Act 2001.

Signature of witness

Signature of authorised officer

Matthew Campbell
Name of witness
(please print)

Mark Jeffree Monk
Name of authorised officer
(please print)

4180 Kurrawa Road, Neutral Bay
Address of witness

Director
Authority of authorised officer

Signature of witness

Signature of authorised officer

Matthew Campbell
Name of witness
(please print)

JEFF ILLINGWORTH
Name of authorised officer
(please print)

4180 Kurrawa Road, Neutral Bay
Address of witness

SECRETARY
Authority of authorised officer

Annexure "C"

177 Russell Av, Dolls Point VPA: Bayside Council and War Widows Guild of Australia NSW Limited

177 Russell Avenue, Dolls Point

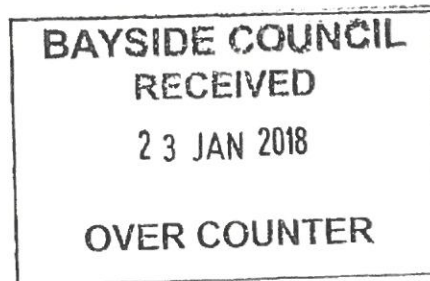
Planning Agreement

Under s93F of the *Environmental Planning and Assessment Act 1979*

Bayside Council

and

War Widows' Guild of Australia NSW Limited



Executed
14 May 2018
[Signature]

[Signature]

Meredith Wallace

M Wilson
CCR

[Signature]
[Signature]

[Signature]
CCR

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3461-8975-8469, v. 1

Meredith Wallace

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OK

OK

My long run

Fast

slow

slow

1/1

177 Russell Avenue, Dolls Point

Contacts Sheet

Council:

Name: Bayside Council

Address: PO Box 21, ROCKDALE NSW 2216

Telephone: 1300581299

Email: council@bayside.nsw.gov.au

Representative: Manager of Strategic Planning

Developer:

Name: War Widows' Guild of Australia NSW Limited (ACN 083 075 914)

Address: c/- HELM NO 10, PO Box 99 Northbridge NSW 1560

Telephone: 02 8036 7400

Email: mmonk@helmproperties.com.au

Representative: Mark Monk

177 Russell Avenue, Dolls Point

Parties

Bayside Council

ABN 80 690 785 Branch 003 of 444-446 Princes Highway, ROCKDALE NSW 2216
(Council)

and

War Widows' Guild of Australia NSW Limited (ACN 083075914)

of Level 14, 227 Elizabeth Street SYDNEY NSW 2000
(Developer)

Background

- A. The Developer owns the land identified in Schedule 2.
- B. The Developer has sought an amendment to the LEP and the Planning Proposal has been forwarded to the Minister.
- C. On 24 January 2017 the NSW Department of Planning, on behalf of the Minister, issued a Gateway Determination in respect of the Planning Proposal.
- D. Subject to the LEP Amendment being Gazetted and a Development Consent being granted in respect of the Development, the Developer has agreed to sell the Land to HELM NO. 10.
- E. The Developer has offered to enter into a Planning Agreement in accordance with section 93F of the Act in connection with the LEP Amendment providing for the payment of a monetary Development Contribution and the dedication of land to enable the future construction of a pedestrian path and cycle way adjacent to the Land, if the LEP Amendment is Gazetted.

Operative provisions

Part 1 - Preliminary

1. Definitions and interpretation

- 1.1 In this Agreement the following definitions apply:

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

Agreement means this Planning Agreement under which the Developer is required to make Development Contributions and includes any schedules, annexures and appendices to this Agreement.

Bank Guarantee means an unconditional and irrevocable undertaking issued by a major Australian trading bank in favour of Council and which is not limited in time and does not have an expiry date and is otherwise in form and substance acceptable to Council, to pay on demand to Council the amount therein expressed in Australian currency.

Construction Certificate means a construction certificate within the meaning of s109C(1)(b) of the Act.

Contribution Value means the estimated value of the Development Contribution as shown (subject to CPI) in Column 3 of **Schedule 3**.

CPI means means Consumer Price Index (Sydney – All Groups) as published by the Australian Bureau of Statistics, or if that index ceases to exist, any other index agreed between the parties.

Development means any future development of the Land after Gazettal.

Development Consent has the same meaning as in the Act.

Development Contribution means a monetary contribution and a dedication of land free of cost, by the Developer, to be used for, or applied towards, the provision of Public Amenities or another Public Purpose as set out in **Schedule 3**.

FSR means floor space ratio as set out in any environmental planning instrument applicable to the Land.

Gazettal means the publication of the LEP Amendment on the NSW Legislation website under section 34(5) of the Act by the Minister.

GST has the same meaning as in the GST Law.

GST Law has the same meaning as in A New Tax system (Goods and Services Tax) Act 1999 (Cth) and any other Act or regulation relating to the imposition or administration of the GST.

HELM NO. 10 means the entity known as HELM NO. 10 Pty Limited ACN 167 002 100

Land means the land specified and described in **Schedule 2**.

Land Dedication means the dedication of the Public Path Land described in Schedule 3.

Land Dedication Plan means the plan at Appendix 1 showing the Public Path Land.

LEP means *Rockdale Local Environmental Plan 2011* and includes any local environmental plan applying to the Land that supersedes *Rockdale Local Environmental Plan 2011*.

LEP Amendment means the instrument to amend the LEP as explained in the Planning Proposal.

Minister means the minister administering the Act unless otherwise specified.

Occupation Certificate means a certificate referred to in section 109C(1)(c) of the Act.

Party means a party to this Agreement, including their successors, agents and assigns.

Planning Proposal means the planning proposal prepared in accordance with section 55 of the Act, in respect of the Land, dated November 2016, titled "Planning Proposal: Rockdale Local Environmental Plan 2011: 177 Russell Avenue, Dolls Point." which explains the proposal to amend the following controls in the LEP in respect of the Land:

- Height of Buildings Map – change the maximum building height from 14.5 to 17.75 metres;
- Floor Space Ratio Map – change the FSR standard from 1:1 metres to 1.65:1 metres.

Public Amenities has the same meaning as in the Act and includes the following:

1. Works within Peter Depena Reserve:

- Master Planning of the Beach Hut and surrounds;
- Upgrades to the Peter Depena Reserve including:
 - Amenities building;
 - Playground;
 - Signage;
 - Other infrastructure to support passive and active recreation;
 - The construction of a pedestrian path and cycle way between Russell Avenue and the Waradiel Creek footbridge.

2. Revegetation of Waradiel Creek

- Design and works associated with the revegetation of the western side of Waradiel Creek between the Russell Avenue Bridge and the Waradiel Creek footbridge.

Public Path Land means the land to be dedicated to the Council, being:

- a) a portion located in the North Eastern corner of part of the Land (Lot 80 DP 2237) comprising approximately 19 m² shown purple on the Land Dedication Plan; and
- b) a portion located in the South Eastern corner of part of the Land (Lot 80 DP 2237) comprising approximately 13m² shown pink on the Land Dedication Plan.

Public Purpose has the same meaning as in section 93F(2) of the Act.

Registrable form means the document is properly executed and witnessed and bears an imprint from the Office of State Revenue to the effect that all necessary duties have been paid, and is otherwise capable of immediate registration by the Registrar-General on the title of the relevant piece or parcel of land.

Registrar-General means the Registrar-General under the Real Property Act.

Regulation means the *Environmental Planning & Assessment Regulation 2000*.

1.2 In the interpretation of this Agreement, the following provisions apply unless the context otherwise requires:

1.2.1 Headings are inserted for convenience only and do not affect the interpretation of this Agreement.

1.2.2 A reference to a Business Day means a day other than a Saturday, Sunday or bank or public holiday in Sydney.

- 1.2.3 If the day on which any act, matter or thing is to be done under this Agreement is not a Business Day, the act, matter or thing must be done on the next Business Day.
- 1.2.4 A reference to time is local time in Sydney,
- 1.2.5 A reference to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.
- 1.2.6 A reference to a \$ value relating to a Development Contribution is a reference to the value exclusive of GST.
- 1.2.7 A reference to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- 1.2.8 A reference to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- 1.2.9 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.
- 1.2.10 An expression importing a natural person includes any company, corporation, trust, partnership, joint venture, association, unincorporated association, body corporate, statutory body, statutory authority or governmental agency.
- 1.2.11 Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- 1.2.12 A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
- 1.2.13 Reference to the word "include" or "including" are to be construed without limitation.
- 1.2.14 A reference to this Agreement includes the agreement recorded in the Agreement.
- 1.2.15 A reference to a party to this Agreement includes a reference to the personal representatives, legal representatives, agents and contractors of the party, and the party's successors and assigns.
- 1.2.16 Any schedules, appendices and attachments form part of this Agreement.
- 1.2.17 Notes appearing in the Agreement are operative provisions of this Agreement.
- 1.2.18 A reference in this Agreement to the name and number of a zone under Rockdale LEP 2011 includes a reference to an equivalent zone under any local environmental plan that supersedes LEP.

2. Application of this Agreement

- 2.1 This Agreement applies to the Land and the LEP Amendment.

3. Status and operation of this Agreement

- 3.1 The Parties agree that this Agreement is a planning agreement governed by Subdivision 2 of Division 6 of Part 4 of the Act.
- 3.2 The Agreement only operates when it is entered into as required by clause 25C(1) of the Regulation however Part 2 – Development Contributions of this Agreement is of no effect unless and until the LEP Amendment is Gazetted.
- 3.3 This Agreement will remain in force until:
 - 3.3.1 It is terminated by operation of Law; or
 - 3.3.2 The Council requests the Minister to determine that the LEP Amendment not proceed in accordance with s58(4) of the Act.
 - 3.3.3 1 month after all of the Developer's obligations under this Agreement are performed or satisfied.

4. Further agreements relating to this Agreement

- 4.1 The Parties may, at any time and from time to time, enter into agreements relating to the subject-matter of this Agreement that are not inconsistent with this Agreement for the purpose of implementing this Agreement.

5. Surrender of right of appeal

- 5.1 The Developer is not to commence or maintain, or cause to be commenced or maintained, any proceedings in the Land and Environment Court involving an appeal against, or questioning the validity of, a Development Consent relating to the Development or an approval under section 96 of the Act to modify a Development Consent relating to the Development to the extent that it relates to the existence of this Agreement or requires any aspect of this agreement to be performed according to the terms of this Agreement.

6. Application of s94, s94A and s94EF of the Act to the Development

- 6.1 This Agreement does not exclude the application of sections 94, 94A and 94EF of the Act in respect of the Development.
- 6.2 This Agreement will not be taken into consideration when determining development contributions under section 94 of the Act in respect of any Development.

Part 2 – Development Contributions

7. Provision of Development Contributions

- 7.1 Schedule 3 has effect in relation to Development Contributions to be made by the Developer under this Agreement.
- 7.2 The Developer is to make Development Contributions to Council in accordance with this Agreement.
- 7.3 The Council is to apply each Development Contribution made by the Developer under this Agreement towards the Public Purpose for which it is made and otherwise in accordance with this Agreement.

- 7.4 The value of the Development Contribution as set out in **Schedule 3** is to be indexed in accordance with clause 8 of this Agreement until provided or paid.
- 7.5 Despite **clause 7.3**, Council may apply a Development Contribution made under this Agreement towards a Public Purpose other than the purpose specified in this Agreement in the general vicinity of the Land if Council considers that the public interest would be better served by applying the Development Contribution towards that other purpose rather than the purpose so specified.
- 7.6 The monetary Development Contribution is made for the purposes of this Agreement when the Council receives the full amount payable in accordance with this Agreement by a bank cheque or by the deposit by means of electronic funds transfer of cleared funds into a bank account nominated by the Council.

8. Indexation of Development Contribution

- 8.1 Where this Agreement provides that an amount is subject to CPI, then the amount will be increased in accordance the following formula:

$$A = B \times C/D$$

Where:

- A = the indexed amount at the time the payment is to be made
- B = the contribution amount stated in the Agreement.
- C = the CPI most recently published before the date of payment.
- D = the CPI most recently published before the date of this Agreement.

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

9. Procedures relating to the dedication of land

- 9.1 The Development Contribution comprising the dedication of the Public Path Land is made for the purposes of this Agreement when Council is given an instrument in registrable form under the *Real Property Act 1900* that is effective to transfer the title to the land to Council when registered.
- 9.2 For the purposes of **clause 9.1**:
- 9.2.1 the Developer is to give Council, for execution by Council as transferee, an instrument of transfer under the *Real Property Act 1900* relating to the land to be dedicated, and
- 9.2.2 Council is to execute the instrument of transfer and return it to the Developer within 7 days of receiving it from the Developer,
- 9.2.3 the Developer is to lodge the instrument of transfer for registration at Land and Property Information within 7 days of receiving it from Council duly executed,
- 9.2.4 the Developer is to do all things reasonably necessary to enable registration of the instrument of transfer to occur.
- 9.3 The parties irrevocably agree that notwithstanding the Land Dedication, the Public Path Land shall form part of the Land for the purposes of any application for

Development Consent including that the Public Path Land shall not be excluded from the total site area of the Land for the purposes of calculating FSR in relation to any such application.

10. Bank Guarantee

- 10.1 Prior to the issue of the first Construction Certificate in respect of the Development, the Developer shall deliver to Council a Bank Guarantee in the amount of \$450,000 (or other security acceptable to Council) which Council may call upon, to satisfy, either wholly or partly:
- 10.1.1 Any rates and charges as may be owing in respect of the Public Path Land up to and including the date of dedication to Council of the Public Path Land;
- 10.1.2 Any other costs of and incidental to Council becoming registered as proprietor of the Public Path Land and/or protecting its estate or interest therein; and/or
- 10.1.3 The Developer's obligations to make Development Contributions in accordance with clause 7 and Schedule 3 of this Agreement.
- 10.2 Should Council use the part or whole of the monies under the Bank Guarantee under clause 10.1, the Developer shall, on being advised in writing by Council to do so, immediately take steps to ensure that the amount of the Bank Guarantee of \$450,000 (or other security) is replaced for the benefit of Council.
- 10.3 Council will release the Bank Guarantee simultaneously with the payment of the monetary Development Contribution to the satisfaction of the Council, provided that all Development Contributions have been made in accordance with clause 7 of this Agreement and the Third Schedule and the Council has received a written request to do so from the Developer no less than ten (10) Business Days prior to release.

11. Compulsory Acquisition

- 11.1 If the Developer does not dedicate any part of the Public Path Land to Council in accordance with clause 7 and Schedule 3, the Developer consents to Council compulsorily acquiring the Public Path Land, or part of it, in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW) for the amount of \$1.00.
- 11.2 The Developer and Council agree that:
- 11.2.1 this clause 11.1 of this Agreement is an agreement between them for the purposes of section 30 of the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW); and
- 11.2.2 in this clause 11.1 of this Agreement they have agreed on all relevant matters concerning the compulsory acquisition and the compensation to be paid for the acquisition.
- 11.3 The Developer indemnifies and agrees to keep indemnified Council, and/or its nominee against all claims made against Council or its nominee as a result of any compulsory acquisition by Council of the whole or any part of the Public Path Land under clause 11.1 of this Agreement.
- 11.4 The Developer must pay Council, promptly on demand, an amount equivalent to all costs incurred by Council compulsorily acquiring the whole or any part of the Public Path Land as contemplated by this clause 11.1.

- 11.5 If Council compulsorily acquires the Public Path Land in accordance with this clause, the Council shall apply the Public Path Land towards the Public Purpose for which it was intended to be dedicated as set out in Schedule 3 and for no other purpose whatsoever.

Part 3 – Other Provisions

12. Enforcement in a court of competent jurisdiction

- 12.1 Without limiting any other provision of this Agreement, the Parties may enforce this Agreement in any court of competent jurisdiction.
- 12.2 For the avoidance of doubt, nothing in this Agreement prevents:
- 12.2.1 a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Agreement or any matter to which this Agreement relates,
- 12.2.2 Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Agreement or any matter to which this Agreement relates

13. Dispute resolution – mediation

- 13.1 A dispute under this Agreement is taken to arise if one party gives another Party a notice in writing specifying particulars of the dispute.
- 13.2 If a notice is given under **clause 13.1**, the Parties are to meet within 14 days of the notice in an attempt to resolve the dispute.
- 13.3 If the dispute is not resolved within a further 28 days, the Parties must mediate the dispute in accordance with the Mediation rules of the Law Society of New South Wales published from time to time and must request the President of the law Society, or the President's nominee, to select a mediator.
- 13.4 If the dispute is not resolved by mediation within a further 28 days, or such longer period as may be necessary to allow any mediation process which has been commenced to be completed, then the Parties may exercise their legal rights in relation to the dispute, including by the commencement of legal proceedings in a court of competent jurisdiction in New South Wales.
- 13.5 This clause survives the completion or termination of this Agreement.

14. Registration of this Agreement

- 14.1 As contemplated by section 93H of the Act, the Developer must, within twenty one (21) Business Days of the operation of this Agreement under **clause 3.2**, at the Developer's expense, procure the registration of this Agreement under the *Real Property Act 1900* (NSW) in the relevant folios of the Register for the Land.
- 14.2 The Developer, at its own expense, will take all practical steps, and otherwise do anything that the Council reasonably requires, to procure:
- 14.2.1 the consent of each person who:

- (a) has an estate or interest in the Land registered under the *Real Property Act 1900* (NSW); or

(b) is seized or possessed of an estate or interest in the Land; and

14.2.2 the execution of any documents; and

14.2.3 the production of the relevant duplicate certificates of title,

to enable the registration of this Agreement under the Real Property Act 1900 (NSW) in the relevant folios of the Register for the Land in accordance with section 93H of the Act.

14.2.4 The Developer will, within 10 Business Days of registration of this Agreement on the relevant folios of the Register for the Land in accordance with clause 14.1 and 14.2 above, provide the Council with a copy of the relevant folios of the Register for the Land.

14.3 Release and discharge of deed by Council

The Council must use all its best endeavours and do all things reasonably required to cause the release and discharge of this Agreement with respect to any part of the Land (such that the Agreement is no longer registered by the Registrar-General under section 93H of the Act in relation to that part of the Land) within 14 Business Days after receiving a written request to do so by the Developer, upon the Developer having provided all of the Development Contributions in accordance with this Agreement and otherwise complying with this Agreement to the satisfaction of the Council.

15. Assignment and transfer

15.1 Unless the matters specified in **clause 15.2** are satisfied, the Developer is not to do any of the following:

15.1.1 if the Developer is the owner of the Land, to transfer the Land, or any part of it, to any person, or

15.1.2 assign, transfer, dispose or novate to any person the Developer's rights or obligations under this Agreement.

15.2 The matters required to be satisfied for the purposes of **clause 15.1** are as follows:

15.2.1 the Developer has, at no cost to Council, first procured the execution by the person to whom the Developer's rights or obligations under this Agreement are to be assigned or novated, of an agreement in favour of the Council on terms satisfactory to Council acting reasonable, and

15.2.2 Council, by notice in writing to the Developer, has stated that evidence satisfactory to Council has been produced to show that the assignee or novatee, is reasonably capable of performing its obligations under the Agreement,

15.2.3 the Developer is not in breach of this Agreement, and

15.2.4 Any purported dealing in breach of this **clause 15.2** is of no effect.

15.3 Clauses 15.1 and 15.2 have effect subject to clause 15.4.

15.4 Clauses 15.1 and 15.2 do not apply to, and shall have no effect whatsoever in relation to, a transfer, assignment, disposal or novation to HELM NO.10, provided that this Agreement is registered in accordance with clause 14 of this Agreement and the Developer is not in breach of this Agreement.

16. Notices

- 16.1 Any notice, consent, information, application or request that must or may be given or made to a Party under this Agreement is only given or made if it is in writing and sent in one of the following ways:
- 16.1.1 delivered or posted to that Party at its address set out in the Contacts Sheet,
- 16.1.2 emailed to that Party at its email address set out in the Contacts Sheet.
- 16.2 If a Party gives the other Party 3 Business Days notice of a change of its address or email address, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or emailed to the latest address or email address.
- 16.3 Any notice, consent, information, application or request is to be treated as given or made if it is;
- 16.3.1 delivered, when it is left at the relevant address.
- 16.3.2 sent by post, 2 Business Days after it is posted
- 16.3.3 sent by email, as soon as the sender receives a 'delivery receipt' from the recipient'.
- 16.4 If any notice, consent, consent, information, application or request is delivered, or a delivery receipt in relation to it is received, on a day that is not a Business Day, or if on a Business Day, after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next Business Day.

17. Approvals and consent

- 17.1 Except as otherwise set out in this Agreement, and subject to any statutory obligations, a Party may give or withhold an approval or consent to be given under this Agreement in that Party's absolute discretion and subject to any conditions determined by the Party.
- 17.2 A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

18. Costs

- 18.1 The Developer is required to pay to Council the Council's reasonable costs of preparing, negotiating, executing and stamping this Agreement, and any document related to this Agreement within 20 business days of a written demand by Council for such payment.
- 18.2 The Developer is also required to pay to Council a contribution of \$500 towards Council's costs of preparing the template document on which this Agreement is based within 7 days of a written demand by Council for such payment.
- 18.3 The Developer is also required to pay to Council the Council's reasonable costs of compulsorily acquiring the Public Path Land in accordance with this Agreement or enforcing this Agreement, within 20 business days of a written demand by Council for such payment except in the case of a dispute that is the subject of court proceedings, in which case any costs will be paid in accordance with orders of the court only.

19. Entire Agreement

- 19.1 This Agreement contains everything to which the Parties have agreed in relation to the matters it deals with.
- 19.2 No Party can rely on an earlier document, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, before this Agreement was executed, except as permitted by law.

20. Further acts

- 20.1 Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to effect, perfect or complete this Agreement and all transactions incidental to it.

21. Governing law and jurisdiction

- 21.1 This Agreement is governed by the law of New South Wales.
- 21.2 Each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of its courts and courts of appeal from them.
- 21.3 Each party waives any right to object to the exercise of jurisdiction by those courts on any basis.

22. Joint and individual liability and benefits

- 22.1 Except as otherwise set out in this Agreement:
- 22.1.1 any agreement, covenant, representation or warranty under this Agreement by 2 or more persons binds them jointly and each of them individually, and
- 22.1.2 any benefit in favour of 2 or more persons is for the benefit of them jointly and each of them individually.

23. No fetter

- 23.1 Nothing in this Agreement shall be construed as requiring Council to do anything that would cause it to be in breach of any of its obligations at law, and without limitation, nothing shall be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

24. Representations and warranties

- 24.1 Each Party represent and warrant to each other Party that they have power to enter into this Agreement and comply with their obligations under the Agreement and that entry into this Agreement will not result in the breach of any law.

25. Severability

- 25.1 If a clause or part of a clause of this Agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way.

- 25.2 If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Agreement, but the rest of this Agreement is not affected.

26. Modification

- 26.1 No modification of this Agreement will be of any force or effect unless it is in writing and signed by the Parties to this Agreement.

27. Waiver

- 27.1 The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another Party.
- 27.2 A waiver by a Party is only effective if it is in writing. A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given.
- 27.3 It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

28. Rights cumulative

- 28.1 Except as expressly stated otherwise in this Agreement, the rights to a Party under this Agreement are cumulative and are in addition to any other rights of that Party.

29. Duty

- 29.1 The Developer as between the Parties is liable for and must pay all duty (including any fine or penalty except where it arises from default by another Party) on or relating to this Agreement, any document executed under it or any dutiable transaction evidenced or effected by it.
- 29.2 If a Party other than the Developer pays any duty (including any fine or penalty) on or relating to this Agreement, any document executed under it or any dutiable transaction evidenced or effected by it as a result of the Developer first failing to pay such duty, the Developer must pay that amount to the paying Party on demand.

30. Effect of Schedules

- 30.1 Each Party agree to comply with any terms contained in the Schedules to this Agreement as if those terms were included in the operative part of the Agreement.

31. Relationship of the Parties

- 31.1 This Agreement is not intended to create a partnership, joint venture or agency relationship between the Parties.

32. GST

- 32.1 In this clause:

Adjustment Note, Consideration, GST, GST Group, Margin Scheme, Money, supply and Tax Invoice have 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 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.

Taxable Supply has the meaning given by the GST Law excluding (except where expressly agreed otherwise) a Supply in respect of which the supplier chooses to apply the Margin Scheme in working out the amount on GST on that Supply.

- 32.2 Subject to **clause 32.4**, if GST is payable on a Taxable Supply made under, by reference to or in connection with this Agreement, the Party providing the consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.
- 32.3 **Clause 32.2** does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Agreement to be GST inclusive
- 32.4 No additional amount shall be payable by Council under **clause 32.2** unless, and only to the extent that, Council (acting reasonably and in accordance with the GST Law) determines that it is entitled to an Input Tax Credit for its acquisition of the Taxable Supply giving rise to the liability to pay GST.
- 32.5 If there are Supplies for Consideration which is not Consideration expressed as an amount of Money under this Agreement by one Party to the other Party that are not subject to division 81 of the *A New Tax System (Goods and Services Tax) Act 1999*, each Party agrees:
- 32.6 to negotiate in good faith to agree the GST inclusive market value of those Supplies prior to issuing Tax Invoices in respect of those Supplies;
- 32.7 that any amounts payable by each Party in accordance with **clause 32.2** (as limited by **clause 32.4**) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 32.8 No payment of any amount pursuant to this **clause 32**, 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.
- 32.9 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.
- 32.10 This clause continues to apply after expiration or termination of this Agreement.

33. Explanatory Note relating to this Agreement

- 33.1 The **Appendix 2** contains the Explanatory Note relating to this Agreement required by clause 25E of the Regulation.
- 33.2 Pursuant to clause 25E(7) of the Regulation, each Party agrees that the Explanatory Note in the **Appendix 2** is not to be used to assist in construing this Planning Agreement.

X

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3461-8975-8469, v. 1

Meredith Wallace

MWlsen

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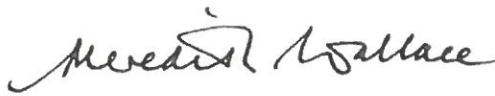
Execution

Executed as a Deed

Date: 4 May 2018

Executed on behalf of Council:

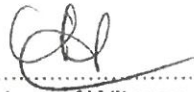
Executed by Bayside Council by its authorised delegate.



General Manager

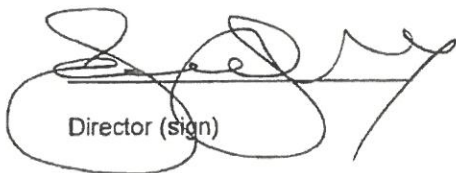
HEATHER JOHNSON

Name of Witness in full



Signature of Witness

Executed on behalf of WAR WIDOWS' GUILD OF AUSTRALIA NSW LIMITED (the Developer) under s 127 of the Corporations Act 2001:



Director (sign)

Jenny Wheatley

Name of Director (print)

M Wilson

~~Director~~/Secretary (sign)

MARY WILSON

Name of ~~Director~~/Secretary (print)

Schedule 1 (Section 93F Requirements)

Provision of the Act	This Agreement
Under section 93F(1), the Developer has:	
(a) sought a change to an environmental planning instrument	Yes
(b) made, or proposes to make, a Development Application.	Yes
(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies	No
Description of the land to which this Agreement applies – Section 93F(3)(a))	The Land described in Schedule 2 to this agreement
Description of the change to the environmental planning instrument to which this Agreement applies – (Section 93F(3)(b)(i))	Definition of Planning Proposal
The scope, timing and manner of delivery of Development Contributions required by this Agreement – (Section 93F(3)(c))	See Schedule 3 to this Agreement
Applicability of Sections 94, 94A and 94EF of the Act – (Sections 93F(3)(d))	See clause 6.
Benefits under the Agreement considered for Section 94 purposes – (Section 93F(3)(e)),	See clause 6.
Dispute Resolution – (Section 93F(3)(f))	See clause 14
Enforcement of this Agreement – (Section 93F(3)(g))	See clause 10-12
Registration of the Agreement – (Section 93H)	Yes, see clause 14
No obligation to grant consent or exercise functions – (Section 93F(9))	See clause 23

177 Russell Av, Dolls Point VPA: Bayside Council and War Widows Guild of Australia NSW Limited

Schedule 2 (The Land)

(Clause 1)

The Land

The Land is:

Lot 80 DP 2237

Lot 81 DP 2237

Lot 82 DP 2237; and

Lot 83 DP 2237

known as 177 Russell Avenue, Dolls Point NSW 2219.

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m.w.l.
[Handwritten signature]

QOR

[Handwritten signature]

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3461-8975-8469, v. 1

Meredith Wallace

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Schedule 3 (Development Contributions)

(Clause 7)

Development Contributions

Monetary Contribution

Column 1	Column 2	Column 3	Column 4
Item	Public Purpose	Contribution Value	Timing
A	The Developer must pay to the Council a monetary contribution towards the Public Amenities.	\$450,000 (subject to CPI) calculated as follows: - Works within Peter Depena Reserve - \$410,000 - Master Planning of the Beach Hut & Surrounds - \$70,000 - Upgrades to Peter Depena Reserve - \$340,000 - Revegetation of Waradiel Creek - \$40,000	Prior to the issue of the first Occupation Certificate in respect of the Development.

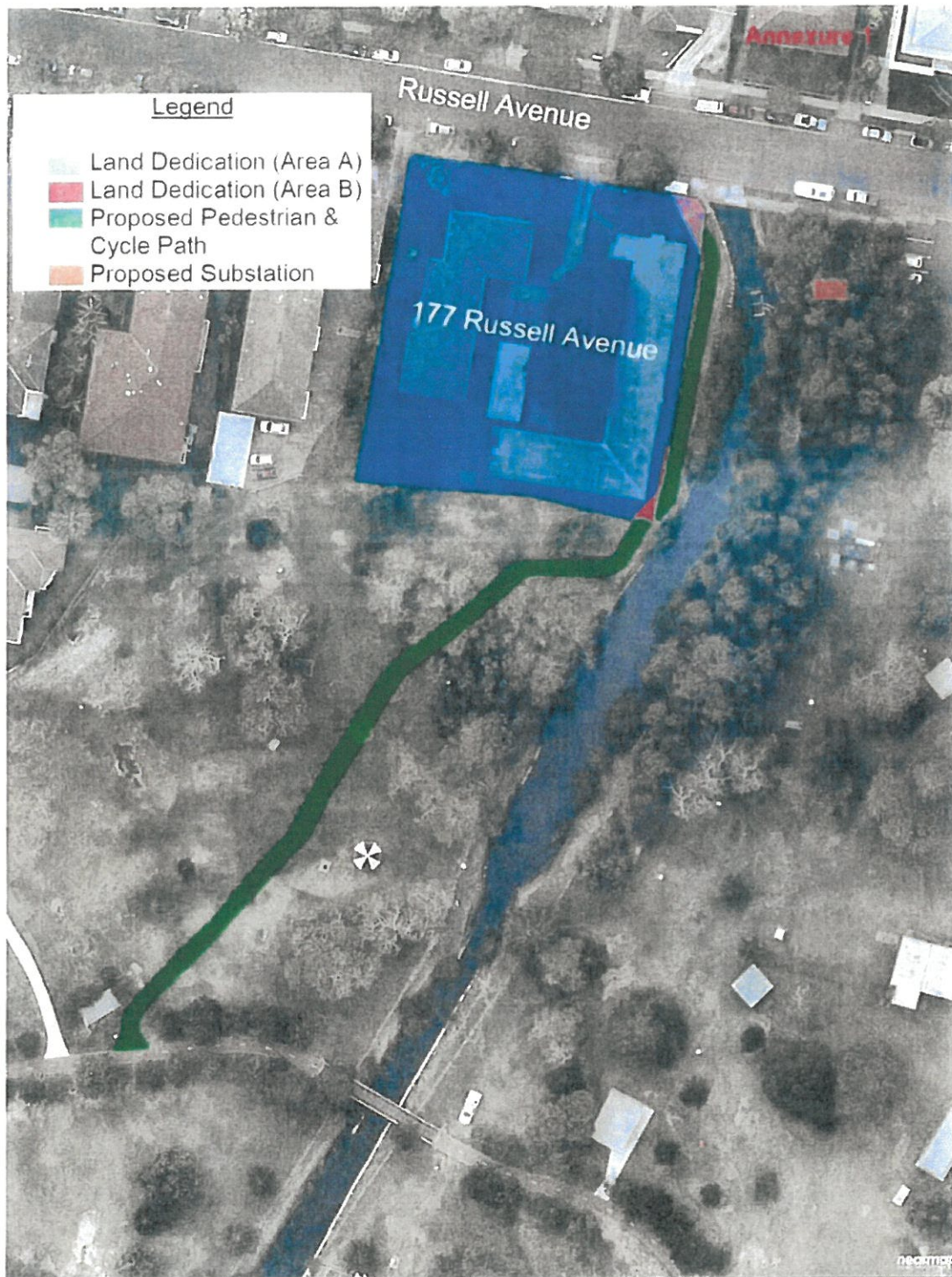
Land Dedication

Column 1	Column 2	Column 3	Column 4
Item	Public Purpose	Contribution Value	Timing
B	The Developer must dedicate the Public Path Land to the Council for purpose of a public path / cycleway.		Prior to the issue of the first Occupation Certificate in respect of the Development.

Meredith Wallace

Mark Wood

Appendix 1 (Land Dedication Plan)



3461-8975-8469 v 1

Michael Wallace

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Michael Wallace
D. Thompson
M. Wilson
D. Thompson
M. Wilson
D. Thompson

Appendix 2 (Explanatory Note)

(Clause 49)

Environmental Planning and Assessment Regulation 2000

(Clause 25E)

Explanatory Note: Proposed Planning Agreement

Under s93F of the *Environmental Planning and Assessment Act 1979*

1. Parties

Bayside Council ABN 80 690 785 443 Branch 003 of 444-446 Princes Highway,
ROCKDALE NSW 2216 (Council)

and

War Widows' Guild of Australia NSW Limited ACN 083 075 914 of Level 14 227
Elizabeth Street SYDNEY, NSW 2000

(Developer)

2. Description of the Land to which the proposed Planning Agreement applies

2.1 Lots 80, 81, 82 and 83, DP 2237, 177 Russell Avenue, Dolls Point NSW 2219, as described in **Schedule 2** to the Agreement.

2.2 This Developer is the owner of the Land.

3. Description of the LEP Amendment

3.1 The Developer has sought to make the following amendments to the controls in the Rockdale Local Environmental Plan 2011 (LEP) in respect of the Land:

(a) Height of Buildings Map – change the maximum building height from 14.5 to 17.75 metres;

(b) Floor Space Ratio Map – change the FSR standard from 1:1 metres to 1.65:1 metres.

4. Summary of objectives, nature and effect of the proposed Planning Agreement

4.1 Objectives of proposed Planning Agreement

4.1.1 The objectives of the proposed Planning agreement are to:

- provide Development Contributions for the benefit of the public in the form of the dedication of land free of cost and the payment of a monetary Development Contribution, as outlined below; and
- achieve the provision of these Development Contributions with greater certainty and at less risk and less cost to Council than would be possible

through the outright purchase of the land or the use of section 94 development contributions alone.

4.2 Nature of proposed Planning Agreement

4.2.1 The Planning Agreement is a planning agreement under s93F of the *Environmental Planning and Assessment Act 1979* (Act). The Planning Agreement is a voluntary agreement under which Development Contributions (as defined in clause 1.1 of the Draft Planning Agreement) are made by the Developer for various public purposes (as defined in s93F(2) of the Act).

4.3 Effect of proposed Planning Agreement

The Planning Agreement:

- (a) imposes an obligation on the Developer to make monetary Development Contributions in the amount of \$450,000, if the LEP is amended, prior to the first Occupation Certificate being issued.
- (b) Imposes an obligation on the Developer to dedicate a small part of the Land to the Council so as to enable the future development of a public path and cycleway.
- (c) Obliges the Council to expend the Development Contribution on Public Amenities or other public purposes including works within Peter Depena Reserve and the revegetation of Waradiel Creek.
- (d) Does not exclude the application of s94 and s94A of the Act to the future development of the Land.
- (e) imposes restrictions on the Developer selling or otherwise dealing with the Land.
- (f) provides for dispute resolution, as agreed between the parties, or in failing to agree, mediation.
- (g) requires registration of the planning agreement on the title of the land and the provision of a Bank Guarantee prior to the issue of the first Construction Certificate.

5. Assessment of the merits of the proposed Planning Agreement

5.1 The Public Purposes served by the proposed Planning Agreement

The proposed Planning Agreement promotes the provision of and recoupment of the cost of providing public and amenities and public services.

The Planning Deed is a reasonable means for achieving that planning purpose, as it provides for the payment of a monetary development contribution to be expended on achieving that planning purpose.

5.2 How the proposed Planning Agreement promotes the Public Interest and the objects of the Environmental Planning and Assessment Act 1979

The Planning Deed promotes the public interest and the objects of the Act as set out in s5(a) of the Act that is, to encourage:

- (ii) the promotion and co-ordination of the orderly and economic use and development of land, and
- (v) the provision and co-ordination of community services and facilities.

5.1 How the proposed Planning Agreement promotes the Elements of the Council's Charter

The proposed Planning Agreement promotes the elements of the Council's Charter by providing appropriate services and facilities for the local community enables the Council to carry out its functions in a way that facilitates local communities that are strong, healthy and prosperous

5.2 How the proposed Planning Agreement promotes the objects (if any) of the Local Government Act 1993

The proposed Planning Agreement promotes the objects of the Local Government Act 1993 by allowing Council to provide facilities appropriate to the current and future needs of the local community and the wider public and to improve and develop the resources of the area.

5.3 Whether the proposed Planning Agreement specifies that certain requirements must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued

The proposed Planning Agreement specifies that the Developer must have paid the monetary Development Contribution before any Construction Certificate is issued in respect of any future Development on the Land

5.4 Whether the proposed Planning Agreement conforms with the authority's capital works program

The proposed Planning Agreement conforms with Council's capital works program and, furthermore, will enable the program to be advanced with greater timeliness and certainty while reducing the financial risks to Council in its implementation.

6. Further Information

6.1 Interpretation

Note: this explanatory note is a summary only of the proposed Planning Agreement, is not to be relied upon as a complete description of the proposed Planning Agreement, and is not to be used as an aid in construing the proposed Planning Agreement.

6.2 Further Information

Copies of the proposed Planning Agreement are available on the Bayside Council website, and at the offices of Bayside Council.

177 Russell Av, Dolls Point VPA: Bayside Council and War Widows Guild of Australia NSW Limited

177 Russell Avenue, Dolls Point

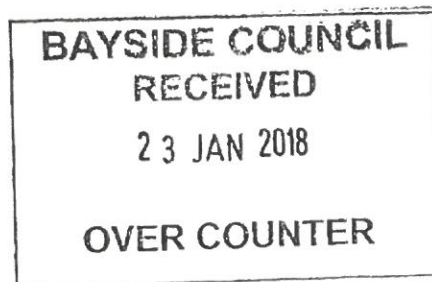
Planning Agreement

Under s93F of the *Environmental Planning and Assessment Act 1979*

Bayside Council

and

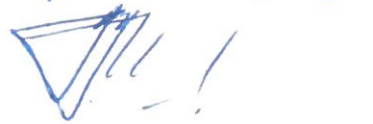
War Widows' Guild of Australia NSW Limited



Executed
14 May 2018




M Wilson


Mark Monk


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Meredith Wallace

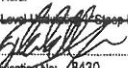
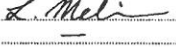
9. Annexure 2 - Deposited Plan (DP1263710)



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PLAN FORM 6 (2017)		DEPOSITED PLAN ADMINISTRATION SHEET		Sheet 1 of 3 sheet(s)	
Registered:  20/01/2021		Office Use Only			
Title System: TORRENS		Office Use Only			
PLAN OF SUBDIVISION OF LOT 1 IN DP1245454		LGA: BAYSIDE Locality: DOLLS POINT Parish: ST GEORGE County: CUMBERLAND			
Survey Certificate I, JOHN WALTON Of DAW & WALTON PTY LTD PO Box 3222, REDFERN NSW 2016 survey@daw-walton.com.au a surveyor registered under the Surveying and Spatial Information Act 2002, certify that: (a) The land shown in the plan was surveyed in accordance with the Surveying and Spatial Information Regulation 2017, is accurate and the survey was completed on 23-04-2020, or (b) The part of the land shown in the plan ("being Parceling") was surveyed in accordance with the Surveying and Spatial Information Regulation 2017, the part surveyed is accurate and the survey was completed on the part not surveyed was compiled in accordance with that Regulation, or (c) The land shown in this plan was compiled in accordance with the Surveying and Spatial Information Regulation 2017. Datum Line: "A"-B" Type: "Urban/Rural" The terrain is "Level/Hilly/Steep/Mountainous" Signature:  Dated: 01-05-2020 Surveyor Identification No: 8430 Surveyor registered under the Surveying and Spatial Information Act 2002 *Strike out inappropriate words. **Specify the land actually surveyed or specify any land shown in the plan that is not the subject of the survey.		Crown Lands NSW/Western Lands Office Approval I, _____ (Authorised Officer) in approving this plan certify that all necessary approvals in regard to the allocation of the land shown herein have been given. Signature: _____ Date: _____ File Number: _____ Office: _____			
Plans used in the preparation of survey/compilation. DP2237 DP80219 DP1070722 DP1170355 DP1245454 SP4908 SP33808		Subdivision Certificate I, Luis Melin "Authorised Person" General Manager Accredited Certifier, certify that the provisions of s. 6.15 of the Environmental Planning and Assessment Act 1979 have been satisfied in relation to the proposed subdivision, new road or reserve set out herein. Signature:  Accreditation number: _____ Consent Authority: BAYSIDE COUNCIL Date of endorsement: 4-12-2020 Subdivision Certificate number: SC 2020/71 File number: PA 2017/606 *Strike through if inapplicable.			
Statements of intention to dedicate public roads, create public reserves and drainage reserves, acquire/resume land. IT IS INTENDED TO DEDICATE THE AREA SHOWN AS ROAD WIDENING "R" TO THE PUBLIC AS PUBLIC ROAD		Surveyor's Reference: 3063-16DP2			
Signatures, Seals and Section 88B Statements should appear on PLAN FORM 6A					

PLAN FORM 6A (2017) DEPOSITED PLAN ADMINISTRATION SHEET		Sheet 2 of 3 sheet(s)												
Registered: 20/01/2021 Office Use Only	DP1263710													
PLAN OF SUBDIVISION OF LOT 1 IN DP1245454	This sheet is for the provision of the following information as required: • A schedule of lots and addresses - See 60(c) SS/ Regulation 2017 • Statements of intention to create and release affecting interests in accordance with section 88B Conveyancing Act 1919 • Signatures and seals- see 195D Conveyancing Act 1919 • Any information which cannot fit in the appropriate panel of sheet 1 of the administration sheets.													
Subdivision Certificate number: <u>2020/71</u> Date of Endorsement: <u>4-12-2020</u>														
<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 5%;">Lot</th> <th style="width: 15%;">Sub-Address Number</th> <th style="width: 15%;">Address Number</th> <th style="width: 20%;">Road Name</th> <th style="width: 15%;">Road Type</th> <th style="width: 20%;">Locality</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">1</td> <td style="text-align: center;">-</td> <td style="text-align: center;">177</td> <td style="text-align: center;">RUSSELL</td> <td style="text-align: center;">AVENUE</td> <td style="text-align: center;">DOLLS POINT</td> </tr> </tbody> </table>			Lot	Sub-Address Number	Address Number	Road Name	Road Type	Locality	1	-	177	RUSSELL	AVENUE	DOLLS POINT
Lot	Sub-Address Number	Address Number	Road Name	Road Type	Locality									
1	-	177	RUSSELL	AVENUE	DOLLS POINT									
EXECUTED by HELM NO. 10 PTY LTD, ACN 167 002 100 In accordance with section 127 of the Corporations Act: Name <u>Mark Mark</u> Authority <u>Director</u> Name <u>Matthew William Suttar</u> Authority <u>Director</u>														
If space is insufficient use additional annexure sheet														
Surveyor's Reference: 3063-16DP2														

PLAN FORM 6A (2017) DEPOSITED PLAN ADMINISTRATION SHEET Sheet 3 of 3 sheet(s)	
Registered:  20/01/2021	Office Use Only
DP1263710	
PLAN OF SUBDIVISION OF LOT 1 IN DP1245454	Office Use Only
Subdivision Certificate number: <u>SC 200/71</u>	This sheet is for the provision of the following information as required: • A schedule of lots and addresses - See 60(c) SSI Regulation 2017 • Statements of intention to create and release affecting interests in accordance with section 88B Conveyancing Act 1919 • Signatures and seals - see 195D Conveyancing Act 1919 • Any information which cannot fit in the appropriate panel of sheet 1 of the administration sheets.
Date of Endorsement: <u>4-12-2020</u>	

EXECUTED by **COMMONWEALTH BANK OF AUSTRALIA, ACN 123 123 124**
Mortgagee VIDE AP393602

**Land and Property Information
NEW SOUTH WALES**

I certify the person(s) signing opposite, with whom I am personally acquainted or as to whose identity I am otherwise satisfied, signed this instrument in my presence.

Certified correct for the purposes of the Real Property Act 1900 by the person(s) named below who signed this instrument pursuant to the power of attorney specified.

Signature of witness: <u>Kate Bealey</u>	Signature of attorney: <u>[Signature]</u>
Name of witness: <u>KATE BEALEY</u>	Attorney's name: <u>BRADLEY MORRIS</u>
Address of witness: <u>201 SURREY ST.</u>	Attorney's position: <u>RELATIONSHIP MANAGER</u>
<u>SYDNEY, NSW 2000</u>	Signing on behalf of: COMMONWEALTH BANK OF AUSTRALIA ABN 48 123 123 124
Power of attorney - Book: 4543 No. 999	

If space is insufficient use additional annexure sheet

Surveyor's Reference: 3063-16DP2

10. Annexure 3 – Title Search FOLIO: 1/1263710

Title Search

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NEW SOUTH WALES LAND REGISTRY SERVICES - TITLE SEARCH

FOLIO: 1/1263710

SEARCH DATE	TIME	EDITION NO	DATE
11/2/2021	4:46 PM	1	20/1/2021

NO CERTIFICATE OF TITLE HAS ISSUED FOR THE CURRENT EDITION OF THIS FOLIO.
CONTROL OF THE RIGHT TO DEAL IS HELD BY COMMONWEALTH BANK OF AUSTRALIA.

LAND

LOT 1 IN DEPOSITED PLAN 1263710
AT DOLLS POINT
LOCAL GOVERNMENT AREA BAYSIDE
PARISH OF ST GEORGE COUNTY OF CUMBERLAND
TITLE DIAGRAM DP1263710

FIRST SCHEDULE

HELM NO. 10 PTY LTD

SECOND SCHEDULE (3 NOTIFICATIONS)

- 1 RESERVATIONS AND CONDITIONS IN THE CROWN GRANT(S)
- 2 AN416385 PLANNING AGREEMENT PURSUANT TO SECTION 7.6
ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979
- 3 AP393602 MORTGAGE TO COMMONWEALTH BANK OF AUSTRALIA

NOTATIONS

UNREGISTERED DEALINGS: PP SP98086.

*** END OF SEARCH ***



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* Any entries preceded by an asterisk do not appear on the current edition of the Certificate of Title. Warning: the information appearing under notations has not been formally recorded in the Register.

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