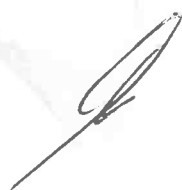


**Calderwood Voluntary Planning Agreement**  
**Environmental Planning and Assessment Act 1979**

**Shellharbour City Council**  
and  
**Sekisui House Services (NSW) Pty Limited**



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## Calderwood Voluntary Planning Agreement

Date 15 September 2023

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Parties	<b>Shellharbour City Council</b> ABN 78 392 627 134 of 76 Cygnet Ave, Shellharbour City Centre, NSW 2529  (Council)
	<b>Sekisui House Services (NSW) Pty Limited</b> ABN 42 119 550 220 of G 68 Waterloo Road, Macquarie Park NSW 2113  (Developer)

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Recitals	<p>A. On 8 December 2010, the Minister for Planning granted the Concept Plan Approval. The Concept Plan Approval was modified on 27 March 2018, 6 March 2020, 21 May 2021 and 21 December 2022,</p> <p>B. The Concept Plan Approval as modified applies to the Land.</p> <p>C. The Land must be developed so as to be generally consistent with the terms of the Concept Plan Approval.</p> <p>D. The Developer is the registered proprietor of the Land and intends to carry out the Development.</p> <p>E. From the date the Planning Agreement commences to operate (pursuant to clause 2.1(b)), this Deed constitutes an agreement between the Developer and the Council that the Developer will make the Development Contributions on the terms and conditions of this Deed.</p>
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This deed witnesses that in consideration of, among other things, the mutual promises contained in this deed the parties agree as follows:

## 1. Definitions and interpretation clauses

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### 1.1 Definitions

In this Deed, unless the context clearly indicates otherwise:

<b>Acquisition Act</b>	means the <i>Land Acquisition (Just Terms Compensation) Act 1991 (NSW)</i>
<b>Act</b>	means the <i>Environmental Planning and Assessment Act 1979 (NSW)</i> .
<b>Address for Service</b>	means the address of each party appearing in Schedule 2 or any new address notified by any party to all other parties as its new Address for Service.
<b>Albion Park Library</b>	means item C2.16 in the Contributions Plan.
<b>Albion Park Bypass</b>	means item C3.09 in the Contributions Plan.
<b>Allotment</b>	means a lot forming part of the Land identified in any Development Application for subdivision of the whole, or any part, of the Land for the purposes of the Development, which lot is intended to be developed, subject to Development Consent, by construction of one or more Dwellings and is not intended to be further subdivided prior to the construction of those Dwellings for the purposes of the Development.
<b>Anticipated Dwelling Yield</b>	means the anticipated number of Dwellings proposed to be constructed on Allotments as determined in accordance with clause 1.3 of Schedule 4.
<b>Approval</b>	means any approvals, consents, certificates, permits, endorsements, licences, conditions or requirements (and any modifications or variations to them) which may be required by Law or by adjoining owners for the commencement and carrying out of the Contributions Works or the Development generally, and includes an approval under former Part 3A of the Act.
<b>Authority</b>	means any Federal, State or local government or semi-governmental, statutory, judicial or public person, instrumentality or department.
<b>Bank Guarantee</b>	means one or more irrevocable and unconditional undertakings: (a) by an Australian bank which is an eligible financial institution for the purposes of Treasury Circular NSW TC14/01 dated 24 January 2014 as amended, supplemented or substituted from time to time; and

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

<b>Business Day</b>	means any day that is not a Saturday, Sunday, gazetted public holiday or bank holiday in Sydney, and concludes at 5pm on that day.
<b>Certifier</b>	means Council (or another person agreed between Council and the Developer).
<b>Concept Plan Approval</b>	means the concept plan that was approved by the Minister for Planning on 8 December 2010 pursuant to s75O(1) of former Part 3A of the Act (being Major Project Number 09-0082).
<b>Construction Certificate</b>	has the same meaning as in the Act.
<b>Contribution Amount(s)</b>	means the amount or amounts of a monetary contribution to be paid by the Developer to Council as described in clause 1.2 of Schedule 4 and as calculated in accordance with Schedule 4 generally.
<b>Contribution Land</b>	means the land that the Developer is required to dedicate to the Council as described in Schedule 4 and outlined on the plan that is attached at <b>Schedule 9</b> .
<b>Contributions Plan</b>	means Shellharbour City Council Local Infrastructure Contributions Plan 2019 (9 <sup>th</sup> review).
<b>Contribution Works</b>	means the works to be undertaken by the Developer as described in clause 1.1 in Schedule 4.
<b>CPI</b>	means the Sydney Consumer Price Index (All Groups) published by the Commonwealth Statistician, or if that index no longer exists, any similar index which the Council determines, acting reasonably.
<b>CUDP</b>	means the Calderwood Urban Development Project.
<b>Defects Liability Period</b>	means the period of 12 months commencing from the date of Practical Completion of the Contribution Works.
<b>Deferred Allotment</b>	has the meaning ascribed to it in clause 4(e) of <b>Schedule 4</b> .
<b>Development</b>	means the proposed development of the Land in the Shellharbour Local Government Area, including the provision of 459 Dwellings, a local park, and a district park over

	approximately 36.9 hectares of land comprising the Land as generally described in DA0290/2018.
<b>Development Application</b>	has the same meaning as in the Act.
<b>Development Consent</b>	has the same meaning as in the Act.
<b>Development Contributions</b>	means the Contribution Amounts, Contribution Land and Contribution Works described in Schedule 4 to be provided or undertaken, as applicable, by the Developer.
<b>Development Contribution Item</b>	means an individual item of Contribution Works, Contribution Land or Contribution Amounts in the Development Contribution Table.
<b>Development Contribution Table</b>	means collectively, the tables in clauses 1.1 to 1.2 of Schedule 4.
<b>Dwelling</b>	means a room, or suite of rooms, occupied or used, or so constructed or adapted, as to be capable of being occupied or used, as a separate domicile to be erected on the Land as part of the Development and is not limited to a Dwelling that is capable of being subject to a separate title and on-sold separately from other Allotments within the Development.
<b>Excluded Encumbrances</b>	means any encumbrances that would not in the Council's opinion, acting reasonably, materially impede the intended use of all or any material part of the Contribution Land to be dedicated to the Council.
<b>Explanatory Note</b>	means the explanatory note required by clause 205 of the Regulation.
<b>General Register of Deeds</b>	means the land register maintained under the <i>Conveyancing Act 1919</i> (NSW) and so titled.
<b>GST</b>	means any form of goods and services tax payable under the GST Legislation.
<b>GST Legislation</b>	means the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).
<b>Law</b>	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.
<b>Land</b>	means the land described in Schedule 3 and shown in Schedule 8.



<b>Notional Value</b>	means the notional value ascribed to a Development Contribution Item as specified in column 2 of the Development Contribution Table.
<b>Planning Agreement</b>	means this Deed as and when it becomes operative as a planning agreement under and by virtue of clause 2.1(b).
<b>Practical Completion</b>	means in relation to the Contribution Works, the point of time at which the relevant Certifier is satisfied, acting reasonably, that the Contribution Works have been completed and installed in accordance with all relevant Approvals and this Deed (except for minor defects or omissions).
<b>Real Property Act</b>	means the <i>Real Property Act 1900</i> (NSW).
<b>Register</b>	means the Torrens title register maintained under the Real Property Act.
<b>Registered Land</b>	is defined in clause 1 of Schedule 7.
<b>Regulation</b>	means <i>the Environmental Planning and Assessment Regulation 2021</i> (NSW).
<b>Relevant Lot</b>	is defined in clause 5.2.
<b>Residential Plan</b>	is defined at clause 4(b) of Schedule 4.
<b>Service Easements</b>	means easements for services and drainage which are noted on the Subdivision Plan.
<b>Subdivision Certificate</b>	has the same meaning as in the Act.
<b>Subdivision Plan</b>	means any plan of subdivision approved by the Council which creates separate lots for the Contribution Land.
<b>Transfer</b>	means a transfer in the approved form under the Real Property Act which is duly stamped, signed and otherwise in registrable form for the purpose of transferring the Contribution Land to the Council.

## 1.2 Interpretation

In this Deed unless the context clearly indicates otherwise:

- (a) a reference to **this Deed** or another document means this Deed or that other document and any document which varies, supplements, replaces, assigns or novates this Deed or that other document;

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

## 2. Operation and Application of this Deed

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### 2.1 Operation

- (a) Until the Planning Agreement operates pursuant to clause 2.1(b), this Deed constitutes an irrevocable offer to the Council from the Developer to enter into the Planning Agreement.
- (b) The Planning Agreement operates, and becomes legally binding on both parties on and from the later of:
  - (i) the date on which Development Consent is granted for the Development; and
  - (ii) the date that the Planning Agreement is entered into as required by clause 25C(1) of the Regulation.

### 2.2 Planning agreement under the Act

This Deed constitutes a planning agreement within the meaning of section 7.4 of the Act.

### 2.3 Application

This Deed applies to:

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

### 2.4 Development Contributions

The Council agrees that it may only use or expend any Development Contributions made by the Developer in accordance with clause 5 of Schedule 4.

## 3. Application of Sections 7.11, 7.12 and 7.24 of the Act

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The application of sections 7.11, 7.12 and 7.24 of the Act are excluded to the extent stated in Schedule 1

## 4. Requirement to provide development contributions

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The Developer undertakes to provide the Development Contributions in the manner and at the times set out in Schedule 4 and the parties agree to abide by the procedures and obligations set out in Schedule 4, Schedule 5, Schedule 6 and Schedule 7.

## 5. Registration on title

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### 5.1 Registration of Deed

- (a) As contemplated by section 7.6 of the Act, the Developer agrees, at its own cost, to register this Deed, or do all things necessary to allow Council to register this Deed, under the Real Property Act in the relevant folio of the Register in respect of the Land prior to the issue of a Construction Certificate or Subdivision Works Certificate with respect to the Development.
- (b) In relation to the Land, the Developer, at its own expense, must take all practical steps and otherwise do anything that the Council reasonably requires to procure:
  - (i) the consent of each person who:
    - (A) has an estate or interest in the Land registered under the Real Property Act; or
    - (B) is seized or possessed of an estate or interest in the Land;
  - (ii) the execution of any documents;
  - (iii) the production of the relevant certificates of title; and
  - (iv) the lodgement and registration of this Deed, by the Registrar-General in the relevant folio of the Register, or in the General Register of Deeds if this Deed relates to land not under the Real Property Act.
- (c) The Developer will provide the Council with a copy of the relevant folio of the Register within 10 Business Days of registration of this Deed in accordance with this clause 5.1.

### 5.2 Removal of Deed from the title of the Land

- (a) If, in respect of an Allotment on which one or more Dwellings are proposed to be constructed and which is not capable of further subdivision, or which Council, acting reasonably, is satisfied is not intended to be further subdivided as part of the Development (**Relevant Lot**), and the Developer:
  - (i) has fully satisfied its obligations under this Deed in relation to the payment of the Contribution Amounts to Council as set out in clause 1.2 of Schedule 4, in accordance with the procedure for payment set out in clause 4(d) of Schedule 4, for the Dwellings proposed for that Relevant Lot; and
  - (ii) the Developer is not otherwise in default under this Deed (as determined by the Council (acting reasonably) and notified to the Developer in writing),

at the written request of the Developer (such request to contain all necessary title particulars that are relevant to the request), the Council must (at the Developer's cost) promptly:

- (iii) provide any document necessary (in immediately registrable form) to remove this Planning Agreement from the title of that Relevant Lot; and
- (iv) do all things necessary to enable the removal of this Planning Agreement from the title of that Relevant Lot,

and the Council agrees to use best endeavours to procure the outcomes referred to in paragraphs (i) and (ii) above as soon as practicable after the relevant request.

- (b) The Parties agree that the land from which this Planning Agreement is to be removed in accordance with clause 5.2(a) will also include parts of the Land which are not Allotments or Dwellings or which are not zoned, or intended to be developed, for Allotments or Dwellings.
- (c) The Developer acknowledges and agrees that compliance by Council with this clause 5.2:
  - (i) only has the effect of releasing this Deed from the title of the Relevant Lot; and
  - (ii) subject to clause 12.2, that Relevant Lot remains subject to the provisions of this Deed, and in particular the provisions of Schedule 4.

## 6. Security

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### 6.1 Security

The Developer has agreed to provide security under this Deed:

- (a) by registering this Deed on the title to the Land; and
- (b) in accordance with Schedule 7.

## 7. Dispute resolution

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### 7.1 Not commence

A party must not commence any court proceedings relating to a dispute unless it complies with this clause 7.

## **7.2 Written notice of dispute**

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

## **7.3 Attempt to resolve**

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

## **7.4 Mediation**

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

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

the parties must mediate the dispute in accordance with the Resolution Mediation Institute Rules, effective from 8 September 2016. The parties must request Resolution Institute to select the mediator and determine the mediator's remuneration.

## **7.5 Court proceedings**

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

## **7.6 Not use information**

The parties acknowledge the purpose of any exchange of information or documents or the making of any offer of settlement under this clause 7 is to attempt to settle the dispute. No party may use any information or documents obtained through any dispute resolution process undertaken under this clause 7 for any purpose other than in an attempt to settle the dispute.

## **7.7 No prejudice**

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

## 8. GST

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### 8.1 Definitions

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

### 8.2 Intention of the parties

The parties intend that:

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

### 8.3 Reimbursement

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

### 8.4 Consideration GST exclusive

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

### 8.5 Additional Amounts for GST

If GST becomes payable on any supply made by a party (**Supplier**) under or in connection with this Deed:

- (a) any party (**Recipient**) that is required to provide consideration to the Supplier for that supply must pay an additional amount to the Supplier equal to the amount of the GST payable on that supply (the **GST Amount**), and:
  - (i) where that GST Amount is payable by the Council, the GST Amount will be limited to the amount of the input tax credit (if any) to which the Council (or the representative member of any GST group of which the Council, in any capacity, is a member) is entitled in relation to the Council's acquisition of that supply and is payable within 5 Business Days after the Council (or the representative member of any GST group of which the Council, in any capacity, is a member) has received the benefit of that input tax credit; and

- (ii) in any other case, the GST Amount is payable at the same time as any other considerations is to be first provided for that supply; and
- (b) the Supplier must provide a tax invoice to the Recipient for that supply, no later than the time at which the GST Amount for that supply is to be paid in accordance with clause 8.5(a).

#### 8.6 Non monetary consideration

Clause 8.5 applies to non-monetary consideration.

#### 8.7 No merger

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

### 9. Assignment

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#### 9.1 Consent

- (a) This Deed is personal to each party and no party may assign the rights or benefits of this Deed to any person except in the case of the Developer:
  - (i) to a related body corporate (within the meaning of section 50 of the *Corporations Act 2001*), providing that the Developer:
    - (A) must notify the Council of the name of the assignee as soon as practicable prior to the assignment occurring; and
    - (B) must guarantee the obligations of that related body corporate under or in connection with the Deed referred to in paragraph (iii) below and provide to the Council a duly executed deed (on terms reasonably acceptable to the Council) which documents that guarantee; or
  - (ii) to any other person, with the prior consent of the Council (which must not be unreasonably withheld) if the Developer is reasonably satisfied that the assignee has sufficient assets, resources and expertise to perform all of the Developer's obligations under this Deed,  
  
and, in either case prior to any such assignment:
    - (iii) the Developer delivers to the Council a deed signed by the assignee which contains provisions under which the assignee agrees to comply with all of the obligations of the Developer under this Deed as if it were joined as a party to this Deed in the place of the Developer (as the case may be) (including obligations which arose before the assignment);
    - (iv) any default by the Developer under any provision of this Deed (as determined by the Council (acting reasonably) and notified to the



Developer in writing) has been remedied by the Developer or waived by the Council on such conditions as the Council may determine in its absolute discretion in relation to that waiver;

- (v) the Developer pays the Council's reasonable costs in relation to that assignment; and
  - (vi) the Council are satisfied acting reasonably, having regard to all evidence and other supporting material provided by the Developer, that the proposed assignee has obtained, whether by way of assignment by the Developer, or otherwise, the same rights in relation to the development of the Land as the Developer had prior to that assignment, in order to enable that assignee to fulfil all obligations to be performed by that assignee under or by virtue of this Deed.
- (b) If the Developer satisfies the requirements of clause 9.1(a), the Developer will be fully released from its obligations under this Deed (subject to any guarantee obligations referred to or contemplated by clause 9.1(a)(i)(B)).

## 10. Warranties of Capacity

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### 10.1 General warranties

Each party warrants to each other party that:

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

### 10.2 Power of attorney

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

## 11. Interest

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

## 12. Termination

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### 12.1 When this Deed terminates in full

This Deed will terminate on the parties carrying out all obligations under this Deed.

- (a) On the termination of this Deed, Council must promptly:
  - (i) return any bank guarantee provided as security in accordance with Schedule 7 of this Deed;
  - (ii) do all things reasonably required by the Developer to remove the Deed from the title of any part of the Land.
- (b) Despite clause 12.1(a), this Deed will not terminate whilst the parties are in dispute, pending an outcome under clause 7.

### 12.2 When this Deed ceases to apply to an Allotment

- (a) For the purpose of this clause 12.2 a **Relevant Occupation Certificate** is the first occupation certificate issued for a Dwelling, or Dwellings, on an Allotment (**Relevant Allotment**).
- (b) The parties acknowledge and agree that this Deed ceases to apply to any Relevant Allotment when the Developer has satisfied its obligations under this Deed with respect to the Dwellings on that Allotment which are the subject of a Relevant Occupation Certificate.
- (c) For the purpose of clarity, if an application is lodged seeking consent for the development of Dwellings on an Allotment after the issue of a Relevant Occupation Certificate, then:
  - (i) ss7.11, 7.12 and 7.24 of the Act apply to any development undertaken in accordance with an approval issued with respect to that application;
  - (ii) the Developer is not liable under this Deed for the payment of Monetary Contributions with respect to the development of any Dwellings undertaken in accordance with an approval issued to any such application; and
  - (iii) any Dwellings undertaken in accordance with an approval issued to any such application are not "*Development*" for the purpose of this Deed.

## 13. General Provisions

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### 13.1 Entire agreement

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

### 13.2 Variation

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

### 13.3 Waiver

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

### 13.4 Further assurances

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

### 13.5 Time for doing acts

- (a) If:
- (i) the time for doing any act or thing required to be done; or
  - (ii) a notice period specified in this Deed,

expires on a day other than a Business Day, the time for doing that act or thing or the expiration of that notice period is extended until the following Business Day.

- (b) If any act or thing required to be done is done after 5pm on the specified day, it is taken to have been done on the following Business Day.

### 13.6 Governing law and jurisdiction

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

### 13.7 Severance

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

### 13.8 Preservation of existing rights

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

### 13.9 No merger

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

### 13.10 Counterparts

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

### 13.11 Relationship of parties

Unless otherwise stated:

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

### 13.12 Good faith

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

### 13.13 No fetter

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

#### 13.14 Explanatory note

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

#### 13.15 Expenses and stamp duty

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

#### 13.16 Notices

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

Schedule 1 Requirements under section 7.4 of the Act  
(clause 1.2)

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

REQUIREMENT UNDER THE ACT		THIS DEED	
<b>Planning instrument and/or development application - (section 7.4(1))</b>			
The Developer has:			
(a)	sought a change to an environmental planning instrument	(a)	No
(b)	made, or proposes to make, a Development Application	(b)	Yes
(c)	entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies	(c)	No
<b>Description of land to which this Deed applies - (section 7.4(3)(a))</b>		See Schedule 3	
<b>Description of change to the environmental planning instrument to which this Deed applies - (section 7.4(3)(b)(i))</b>		N/A	
<b>The scope, timing and manner of delivery of contribution required by this Deed - (section 7.4(3)(c))</b>		See Schedule 4.	
<b>Applicability of sections 7.11 and 7.12 of the Act - (section 7.4(3)(d))</b>		The application of section 7.11 and 7.12 of the Act is excluded in respect of the Development.	
<b>Applicability of section 7.24 of the Act - (section 7.4 (3)(d))</b>		The application of section 7.24 of the Act is not excluded in respect of the Development.	
<b>Consideration of benefits under this Deed if section 7.11 applies - (section 7.4(3)(e))</b>		Yes	
<b>Mechanism for Dispute Resolution - (section 7.4(3)(f))</b>		See clause 7.	
<b>Enforcement of this Deed - (section 7.4(3)(g))</b>		See clause 6.	

<b>REQUIREMENT UNDER THE ACT</b>	<b>THIS DEED</b>
<b>No obligation to grant consent or exercise functions - (section 7.4(9))</b>	See clause 13.13.

## Schedule 2 Address for Service (clause 1.1)

### 1. The Council

**Contact:** The Chief Executive Officer, Shellharbour City Council

**Address:** 76 Cygnet Ave , Shellharbour City Centre, NSW 2529

**Email address:** [council@shellharbour.nsw.gov.au](mailto:council@shellharbour.nsw.gov.au)

### 2. Developer

**Contact:** **Sekisui House Services (NSW) Pty Ltd**

**Address:** **Ground Floor, 68 Waterloo Road**

**Macquarie Park NSW 2113**

**Email address:** [gerard.alves@sekisuihouse.com.au](mailto:gerard.alves@sekisuihouse.com.au)



Schedule 3 Land

Lot	Deposited Plan
1	608238

## Schedule 4 Development Contributions (clause 4)

### 1. Development Contribution Table

#### 1.1 Table 1: Contribution Land and Contribution Works by the Developer

1. Development Contribution Item	2. Manner of Delivery	3. Timing
The location of each Development Contribution Item by the Developer is shown at Schedule 9		
<p><b>Local Park L7</b></p> <p>Embellishment and dedication of a minimum of 0.2 Ha of land (in R1 &amp;/or C3 zoned land).</p> <p>Local Park embellishment and community facilities to be considered include:</p> <ul style="list-style-type: none"> <li>• retention of existing vegetation where appropriate;</li> <li>• integrated cycle/pedestrian pathways;</li> <li>• integrated fitness trail nodes and equipment; identity, directional and/or interpretive signage;</li> <li>• informal kick about space;</li> <li>• informal playground/play space with shade provision;</li> <li>• fencing, post and rail barrier and /or bollards;</li> <li>• lighting balances with the street network;</li> <li>• picnic shelter, tables, bins, seating;</li> <li>• landscaping including turf or turf seeding, garden beds, tree planting; and</li> <li>• other associated works, services and embellishments.</li> </ul>	<p><b>Contribution Works by the Developer:</b> Developer to design and construct item (Notional Value \$316,602).</p> <p>Developer to maintain item for three years following Practical Completion of item (Notional Value \$3,212).</p> <p><b>Contribution Land by the Developer:</b> Notional Value \$1,365,000.</p> <p><b>Total value of Development Contribution Item:</b> \$1,684,814.</p>	<p>The Developer must create the lot that will comprise Local Park L7 in a plan of subdivision that creates an Allotment that adjoins Local Park L7, or which is only separated from Local Park L7 by a public road (LP7 Plan).</p> <p>The Developer must dedicate the lot that will comprise Local Park L7 to Council upon the registration of the LP7 Plan.</p> <p>The Developer must achieve Practical Completion of this item no later than twelve (12) months and one day following the issue of the Subdivision Certificate for the LP7 Plan.</p>

1. Development Contribution Item	2. Manner of Delivery	3. Timing
<p>District Park D2 1 Ha District Park</p> <p>Embellishment and dedication of a minimum of 1 Ha of land in R1 &amp;/or C3 zoned land.</p> <p>District Park embellishment and community facilities to be considered include:</p> <ul style="list-style-type: none"> <li>• dedicated car parking for parklands (approximately 10 spaces);</li> <li>• irrigation;</li> <li>• retention of existing vegetation where appropriate;</li> <li>• integrated cycle/pedestrian pathways with Australian Standard lighting;</li> <li>• identity, directional and/or interpretive signage;</li> <li>• public artworks;</li> <li>• informal kickabout space;</li> <li>• fitness nodes and equipment;</li> <li>• formal playground/ playspace with shade provision through trees and/or structures;</li> <li>• fencing/bollards and/or post and rail;</li> <li>• picnic shelters with lighting;</li> <li>• barbecues, tables, bins, seating;</li> <li>• landscaping including turf or turf seeding, garden beds;</li> <li>• feature tree planting; and</li> </ul>	<p><i>Contribution Works by the Developer.</i> Developer to design and construct item (notional value \$1,164,657).</p> <p>Developer to maintain item for three years following Practical Completion of item (Notional Value \$9,237).</p> <p><i>Contribution Land by the Developer.</i> Notional value \$6,000,000.</p> <p><b>Total value of Development Contribution Item: \$7,173,894</b></p>	<p>The Developer must achieve Practical Completion no later than the date on which District Park D2 is dedicated to Council (see clause 2 of this Schedule 4).</p>

1. Development Contribution Item	2. Manner of Delivery	3. Timing
• other associated works, services and embellishments.		

1.2 Table 2: Contribution Amounts to Council

1. Development Contribution Item	2. Manner of Delivery	3. Timing
<b>Albion Park Library Upgrade</b>	<p><b>Contribution Amount:</b> Monetary contributions are to be made towards one or more of the following: Buildings; fit out; landscaping; car parking; public art; site works; library resources, equipment and technology</p> <p><b>Contribution Amount to be paid by the Developer to Council:</b> Contribution calculated and paid in accordance with clause 4 of this Schedule 4.</p>	<p>Contribution Amount to be paid prior to the issue of the relevant Subdivision Certificate in accordance with clause 4 of this Schedule 4.</p> <p>The Council will endeavour to ensure that the upgrade of existing Albion Park library facility is operational by:</p> <ol style="list-style-type: none"> <li>1. the time specified in the Contributions Plan as amended from time to time; or</li> <li>2. such time as the needs generated by the Development are likely to require the provision of the Albion Park Library Upgrade,</li> </ol> <p>whichever occurs first.</p>
<p><b>Local Roads</b> Albion Park Bypass [TMAP 14; 15; 16 &amp; 30]</p>	<p><b>Contribution Amount to be paid by the Developer to Council:</b> Contribution calculated and paid in accordance with clause 4 of this Schedule 4.</p>	<p>Contribution Amount to be paid prior to the issue of the Subdivision Certificate in accordance with clause 4 of this Schedule 4.</p> <p>The Council will endeavour to ensure that the Albion</p>

1. Development Contribution Item	2. Manner of Delivery	3. Timing
		Park By-Pass is operational by: <ol style="list-style-type: none"> <li>1. the time specified in the Contributions Plan from time to time; or</li> <li>2. such time as the needs generated by the Development are likely to require the provision of the Albion Park Bypass,</li> </ol> whichever occurs first.
<b>City Wide Community Infrastructure</b> Including but not limited to: Shellharbour City Performance Theatre; Council Administration Offices; City Library; and Civic Auditorium	<b><i>Contribution Amount to be paid by the Developer to Council:</i></b> Contribution calculated and paid in accordance with clause 4 of this Schedule 4.	Contribution Amount to be paid prior to the issue of the relevant Subdivision Certificate in accordance with the process outlined in clause 4 of this Schedule 4.
<b>City Wide Open Space and Recreation Infrastructure</b> Including but not limited to: Beach Foreshore; and Shellharbour City Stadium	<b><i>Contribution Amount to be paid by the Developer to Council:</i></b> Contribution calculated and paid in accordance with clause 4 of this Schedule 4.	Contribution Amount to be paid prior to the issue of the relevant Subdivision Certificate in accordance with the process outlined in clause 4 of this Schedule 4.
<b>Administration of Planning Agreement</b>	<b><i>Contribution Amount to be paid by the Developer to Council:</i></b> Contribution calculated and paid in accordance with clause 4 of this Schedule 4.	Contribution Amount to be paid prior to the issue of the relevant Subdivision Certificate in clause 4 of this Schedule 4.

1.3 Determination of anticipated number of Dwellings

- (a) For the purposes of this Schedule 4, the Anticipated Dwelling Yield with respect to a Residential Plan is to be determined by Council, acting reasonably, and

having regard to any information provided by the Developer, including without limitation any information as required under this clause 1.3 of Schedule 4.

- (b) Within ten (10) Business Days of receiving the relevant Residential Plan, Council must:
  - (i) determine the relevant Anticipated Dwelling Yield with respect to that Residential Plan; or
  - (ii) acting reasonably, provide notice to the Developer of the further information it requires to make that determination.
- (c) If the Council does not, within ten (10) Business Days of receiving the Residential Plan, make a determination in accordance with paragraph (b)(i) or issue a notice under paragraph (b)(ii), the Anticipated Dwelling Yield will be the number of Dwellings indicated in the information provided by the Developer referred to in paragraph (a).
- (d) The Developer must respond to any request for information in a notice provide by Council under paragraph (b) as soon as practicable.
- (e) If the Council does not make a determination within 10 Business Days of receiving the information provided under paragraph (d), the Anticipated Dwelling Yield will be the number of Dwellings indicated in the information provided by the Developer referred to in paragraph (a).

## 2. Dedication of District Park

### 2.1 Acknowledgement

The Developer acknowledges that:

- (a) prior to the formation of this Deed, Council had entered into a Planning Agreement with Lendlease Communities (Australia) Limited (ABN 88 000 966 085) (**Lendlease**) with respect to the CUDP (**Lendlease VPA**);
- (b) the Lendlease VPA obliges Lendlease to deliver District Park D2 to Council, along with three (3) other District Parks within the CUDP;
- (c) while Lendlease will deliver two (2) of those District Parks, and District Park D2 will be delivered under this Deed, the other District Park within the CUDP may not be delivered by Lendlease under the Lendlease VPA and instead may be delivered by a third party that owns the land on which that District Park is required to be located (**Third Party Developer**); and
- (d) the Lendlease VPA required those District Parks to be delivered and dedicated to Council in an orderly manner at different stages of the development of the CUDP, but not in a specific order (i.e. Lendlease had a discretion as to which District Parks were delivered at which stages of the development of the CUDP).

### 2.2 Orderly development of the District Park

The Developer further acknowledges and agrees that Council requires the District Parks across the CUDP to be delivered in an orderly manner, generally in accordance with the timing specified in the Lendlease VPA.

### 2.3 Anticipated Timing of the dedication of District Park

(a) For the purpose of this clause 2, the **Anticipated Timing** is the timing set out below which is intended to reflect the timing that District Park D2 would have been dedicated under the Lendlease VPA:

(i) In circumstances where:

(A) a Subdivision Certificate has been issued for a plan within the CUDP which, when registered, would create the Allotment on which the 1,000th CUDP Dwelling is proposed to be constructed; and

(B) on the date that is twelve (12) months and one (1) day following the issue of the Subdivision Certificate referred to in paragraph (A) there is one (1) District Park identified in the Lendlease VPA that has been Practically Completed and dedicated to Council,

the Anticipated Timing is twelve (12) months and one (1) day following the issue of a Subdivision Certificate in respect of the Allotment on which the 1,000th CUDP Dwelling is proposed to be constructed.

(ii) In circumstances where:

(A) a Subdivision Certificate has been issued for a plan within the CUDP which, when registered, would create the Allotment on which the 2,000th CUDP Dwelling is proposed to be constructed; and

(B) on the date that is twelve (12) months and one (1) day following the issue of the Subdivision Certificate referred to in paragraph (A) there are two (2) District Parks identified in the Lendlease VPA that have been Practically Completed and dedicated to Council,

the Anticipated Timing is twelve (12) months and one (1) day following the issue of a Subdivision Certificate in respect of the Allotment on which the 2,000th CUDP Dwelling is proposed to be constructed.

(iii) In circumstances where

(A) a Subdivision Certificate has been issued for a plan within the CUDP which, when registered, would create the Allotment on which the 3,750th CUDP Dwelling is proposed to be constructed; and

(B) on the date that is twelve (12) months and one (1) day following the issue of the Subdivision Certificate referred to in paragraph

(A) there are three (3) District Parks identified in the Lendlease VPA that have been Practically Completed and dedicated to Council,

the Anticipated Timing is twelve (12) months and one (1) day following the issue of a Subdivision Certificate in respect of the Allotment on which the 3,750th CUDP Dwelling is proposed to be constructed.

2.4 The time by which the Developer must dedicate District Park D2 to Council

- (a) For the purpose of this document, the time by which the Developer must dedicate District Park D2 to Council is as determined in accordance with this clause 2.4.
- (b) If a Subdivision Certificate is issued to the Developer as part of its Development for a plan within the CUDP which, when registered, would create the Allotment on which the 2,000th CUDP Dwelling is proposed to be constructed, then the Developer must dedicate District Park D2 to Council no later than twelve (12) months and one (1) day following the issue of a Subdivision Certificate in respect of the Allotment on which the 2,000th CUDP Dwelling is proposed to be constructed.
- (c) Unless the Developer has delivered District Park D2 in accordance with clause 2.4(b), if a Subdivision Certificate is issued to the Developer as part of its Development for a plan within the CUDP which, when registered, would create the Allotment on which the 3,750th CUDP Dwelling is proposed to be constructed, then the Developer must dedicate District Park D2 to Council no later than twelve (12) months and one (1) day following the issue of a Subdivision Certificate in respect of the Allotment on which the 3,750th CUDP Dwelling is proposed to be constructed.
- (d) If a Subdivision Certificate is issued to someone other than the Developer for a plan within the CUDP which, when registered, would create the Allotment on which the 2,000th CUDP Dwelling is proposed to be constructed, then Council will notify the Developer when that Subdivision Certificate is issued (**2,000<sup>th</sup> Dwelling Notification**).
- (e) If a Subdivision Certificate is issued to someone other than the Developer for a plan within the CUDP which, when registered, would create the Allotment on which the 3,750th CUDP Dwelling is proposed to be constructed, then Council will notify the Developer when that Subdivision Certificate is issued (**3,750<sup>th</sup> Dwelling Notification**).
- (f) If, when the 2,000<sup>th</sup> Dwelling Notification is issued by Council to the Developer:
  - (i) a Construction Certificate has been issued with respect to the Development, but a Construction Certificate has not been issued to the Third Party Developer with respect to its development within the CUDP (**Third Party Development**); or



- (ii) a Construction Certificate has been issued with respect to the Development and was issued before any Construction Certificate was issued with respect to the Third Party Development, then

the Developer must dedicate District Park D2 to Council no later than twelve (12) months and one (1) day following the issue of the 2,000th Dwelling Notification.

- (g) If, when the 2,000<sup>th</sup> Dwelling Notification is issued by Council to the Developer no Construction Certificate had been issued with respect to either the Development or the Third Party Development and a Construction Certificate is subsequently issued with respect to the Development before any Construction Certificate is issued with respect to the Third Party Development, then the Developer must dedicate District Park D2 to Council no later than the last to occur of:
  - (i) twelve (12) months and one (1) day following the issue of the 2,000th Dwelling Notification; and
  - (ii) twelve (12) months and one (1) day following the issue to the Developer of a Subdivision Certificate for the Development to which the relevant Construction Certificate relates.
- (h) If, when the 2,000<sup>th</sup> Dwelling Notification is issued by Council to the Developer no Construction Certificate had been issued with respect to either the Development or the Third Party Development and a Construction Certificate is issued with respect to the Development after any Construction Certificate is issued with respect to the Third Party Development, then the Developer must dedicate District Park D2 to Council no later than the last to occur of:
  - (i) twelve (12) months and one (1) day following the issue of the 3,750th Dwelling Notification; and
  - (ii) twelve (12) months and one (1) day following the issue to the Developer of a Subdivision Certificate for the Development to which the relevant Construction Certificate relates.

## 2.5 Request for deferral of District Park D2

- (a) Notwithstanding any other provision of this Deed, if the Developer forms the view at any time, that it is unable to dedicate District Park D2 by the time required under this Schedule 4 (**Deferred Work**), then the Developer may seek Council's approval to defer the dedication of District Park D2 by providing written notice to Council:
  - (i) specifying the reason for the request to defer the dedication of District Park D2; and
  - (ii) identifying the anticipated time for dedication of District Park D2.

- (b) Council, acting reasonably, must give the Developer a written notice within thirty (30) business days of the date upon which the Developer serves written notice upon Council in accordance with paragraph (a) stating:
- (i) whether or not it consents to the deferral of the dedication of District Park D2;
  - (ii) the revised date for dedication required by Council; and
  - (iii) any reasonable conditions Council requires with respect to the deferral (including any requirement for additional security on account of that deferral, but only to the extent necessary to ensure that Council holds adequate security based on the then estimated cost to complete District Park D2).
- (c) If Council consents to the deferral of dedication of District Park D2, then the following applies:
- (i) The Developer must comply with any conditions required by Council under paragraph (b)(iii) above.
  - (ii) Provided the Developer satisfies those conditions, the Developer will not be considered to be in breach of this Deed to the extent of the dedication of District Park D2 as a result of a failure to dedicate District Park D2 by the time specified in this Schedule 4.
  - (iii) The time for dedication of District Park D2 under this Deed is the revised date for dedication approved by Council.
- (d) Notwithstanding anything to the contrary, the dedication of District Park D2 cannot be deferred beyond the first to occur of:
- (i) the issue of a Subdivision Certificate for Stage 2 of the Development;
  - (ii) if under this Schedule 4 the Developer must dedicate District Park D2 to Council no later than twelve (12) months and one (1) day following the issue of a Subdivision Certificate in respect of the Allotment on which the 2,000th CUDP Dwelling is proposed to be constructed, no later than twelve (12) months and one (1) day following the issue of a Subdivision Certificate in respect of the Allotment on which the 3,750th CUDP Dwelling is proposed to be constructed; and
  - (iii) if under this Schedule 4 the Developer must dedicate District Park D2 to Council no later than twelve (12) months and one (1) day following the issue of a Subdivision Certificate in respect of the Allotment on which the 3,750th CUDP Dwelling is proposed to be constructed, no later than twelve (12) months and one (1) day following the issue of a Subdivision Certificate in respect of the Allotment on which the 4,000th CUDP Dwelling is proposed to be constructed.

2.6 If the Developer dedicates District Park D2 prior to the Anticipated Timing

The Developer may elect to dedicate the District Park D2 prior to the Anticipated Timing subject to the Developer either (at its election):

- (a) agreeing to undertake the maintenance of District Park D2 at its cost from the time that it is dedicated to Council until the Anticipated Timing; or
- (b) paying to Council a monetary contribution in an amount of \$45,898 for the purpose of allowing Council to meet the cost of maintaining District Park D2 from the time that it is dedicated to Council until the Anticipated Timing.

## 2.7 Creation of the lot comprising District Park D2

Notwithstanding anything to the contrary in this Deed, the Developer must ensure that the lot that will comprise District Park D2 is created as a separate and distinct lot in the plan which contains the first Subdivision Certificate to be issued for the Development.

## 3. Increase in Contribution Amount

- (a) Any amount:
  - (i) specified in clause 1.1 and 1.2 of Schedule 4;
  - (ii) specified as a Contribution per Dwelling Amount in clause 4 of Schedule 4;
  - (iii) specified as a Notional Value for an item of Contribution Works in the Development Contribution Table; or
  - (iv) specified in Clause 2.6(b) of this Schedule 4,

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

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

Where:

**A** is the indexed amount;

**B** is the monetary amount specified in this Deed and referred to above;

**C** is the most recent June quarter CPI published as at the date of calculation;  
and

**D** is:

- (iii) in relation to clause 2.6(b) and 3(a)(i) of this Schedule 4, the most recent CPI published following the date of this Deed; and
- (iv) in relation to clause 3(a)(ii) of this Schedule 4, the CPI published for the June 2022 quarter.

- (b) For the avoidance of doubt, clause 3(a) of this Schedule 4 does not apply to any Notional Value assigned to an item of Contribution Land listed in the Development Contribution Table.
- (c) Any amount specified as the Notional Value for an item of Contribution Land in the Development Contribution Table must be increased as follows:
  - (i) At five year intervals from the date of this Deed the Developer must appoint an independent registered valuer who has the required experience and is acceptable to the Council (acting reasonably) to undertake a determination of the market value of all items of Contribution Land not then dedicated to the Council.
  - (ii) Any such valuation must be provided to the Council within one month of the date that the relevant five year interval ends.
  - (iii) The Developer must ensure that any determination made by the valuer for the purposes of clause 4(c)(i) of this Schedule 4 is expressed to be for the benefit of both the Council and the Developer.
  - (iv) The market value determined by the valuer for an item of Contribution Land will be taken to be the Notional Value of that Contribution Land.

4. **Payment of Contribution Amounts identified in Clause 1.2 of Schedule 4**

- (a) The Developer must pay the Contribution Amounts identified in clause 1.2 of Schedule 4 in accordance with this clause.
- (b) For the purpose of this clause 4 of Schedule 4 a **Residential Plan** is a plan of subdivision with respect to the Development which when registered would create one or more Allotments.
- (c) For the purpose of this clause 4 of Schedule 4, a **CUDP Dwelling** means a room, or suite of rooms, occupied or used, or so constructed or adapted, as to be capable of being occupied or used, as a separate domicile to be erected within the CUDP and is not limited to a dwelling that is capable of being subject to a separate title and on-sold separately from other Allotments within the CUDP.
- (d) Prior to the issue of any Subdivision Certificate in respect of a Residential Plan, the Developer must pay a Contribution Amount being the relevant cumulative "Contribution per Dwelling" for the Anticipated Dwelling Yield for the relevant Residential Plan and determined in accordance with the table below:

Number of CUDP Dwelling	Contribution per Dwelling
Where the relevant Dwelling is within the first 1,000 CUDP Dwellings (0 - 1,000 CUDP Dwellings)	\$3,925.16
Where the relevant Dwelling is between the 1,001 <sup>st</sup> CUDP Dwelling and the 2,000 <sup>th</sup> CUDP Dwelling (1,001 - 2,000 CUDP Dwellings)	\$4,399.50

Where the relevant Dwelling is between the 2,001 <sup>st</sup> CUDP Dwelling and the 3,000 <sup>th</sup> CUDP Dwelling (2,001 - 3000 CUDP Dwellings)	\$4,873.84
Where the relevant Dwelling is between the 3,001 <sup>st</sup> CUDP Dwelling and the 4000 <sup>th</sup> CUDP Dwelling (3,001 - 4000 CUDP Dwellings)	\$5,348.18
Where the relevant Dwelling is the 4,001 <sup>st</sup> CUDP Dwelling or greater	\$5,703.93

- (e) If the Developer and Council agree (such agreement may not be unreasonably withheld or delayed) that there are Allotments within a Residential Plan which the Developer does not intend to transfer to an end user with respect to which it is unlikely that a Construction Certificate for those Dwellings identified will be issued within two years following the issue of a Subdivision Certificate (**Deferred Allotment**):
- (i) any such Deferred Allotment is not included in the Contribution Amount payable under clause 4 of Schedule 4 in relation to the relevant Residential Plan; and
  - (ii) the Developer will be required to pay a Contribution Amount being an amount calculated in accordance with clause 4 of this Schedule 4 for all Deferred Allotments permitted to be constructed in accordance with any Construction Certificate lodged with respect to that Deferred Allotment as determined in accordance with the table at clause 4(d).
- (f) The Developer must pay any Contribution Amount payable under clause 4(e)(ii) of this Schedule 4 prior to the issue of relevant Construction Certificate referred to in clause 4(e).
- (g) On the occurrence of the following events:
- (i) every six months following the issue of the first subdivision certification in relation to the Land;
  - (ii) prior to the issue of a Subdivision Certificate that will create the final Allotment within the Development; and
  - (iii) prior to the issue of a Construction Certificate for the Final Deferred Allotment,
- the following must occur:
- (iv) the Developer must provide the Council with a report stating (to the best of the Developer's knowledge) the number of Dwellings on the Land that have been completed and occupied at the time of the relevant report; and
  - (v) if number of Dwellings on the Land that have been completed and occupied at that time exceeds the number of Dwellings for which the

Developer has paid a Contribution Amount, then the Developer must pay Council in accordance with the clause 4(d) of this Schedule 4, the applicable cumulative "Contribution per Dwelling" amount for the number of Dwellings required to ensure that Council has received a Contribution Amount in accordance with clause 4(d) of this Schedule 4 for all Dwellings with respect to which the Developer is required to pay such Contribution Amount in accordance with this Planning Agreement.

- (h) For the avoidance of doubt, compliance with clause 4 of this Schedule 4 will satisfy the Developer's obligations to make all Development Contributions identified in clause 1.2 of Schedule 4.

## **5. Use of Contribution Amounts by the Council**

- (a) In respect of any Contribution Amounts that the Developer is required to pay in relation to the Albion Park Library and the Albion Park Bypass, the Council must only use or expend any Contribution Amounts for their identified purpose.
- (b) Subject to Council's compliance with clause 5(a) of this Schedule 4, any such Contribution Amount paid by the Developer to the Council may be pooled by the Council with any other Contribution Amounts paid by the Developer pursuant to this Deed and used or expended for any purpose within the Shellharbour Local Government Area.

## **6. Contributions Alternatives**

### **6.1 Better Outcomes**

Without limiting clauses 6.2 or 6.3 of this Schedule 4, at the request of either the Council or the Developer and provided that the Council and the Developer agree, the Developer may satisfy any of its obligations to provide Contribution Works listed in this Schedule 4 by providing contributions works of a different nature or at a different time to that specified in the Development Contribution Table, but which serve the same or similar purpose as those specified in the Development Contribution Table.

### **6.2 Alternatives to Contribution Works**

- (a) At the request of either the Council or the Developer and provided that the Council and the Developer agree, the Developer may satisfy any of its obligations to provide Contribution Works by paying the Notional Value assigned to the respective Contribution Works as a Contribution Amount.
- (b) The Council agrees that if the Developer performs its obligations in this Deed by paying a Contribution Amount in lieu of providing Contribution Works, the Council must hold the Contribution Amount paid by the Developer for the purpose of the relevant Contribution Works and apply the money towards that purpose within a reasonable time of receipt of the relevant monetary contribution.
- (c) Where it is impractical (in reasonable circumstances) for the Council to comply with clause 6.2(b) of this Schedule 4 and the Developer (acting reasonably) gives its written consent to the Council not complying with clause 6.2(b) of this

Schedule 4 , the Council must spend the Contribution Amount on services, infrastructure or facilities to be delivered, in order of precedence:

- (i) on the Land;
- (ii) within the CUDP in a manner consented to in writing by the Developer; and/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),

within a reasonable time of receipt of the relevant monetary contribution.

- (d) The Developer must give, or procure, reasonable 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 6.2 of this Schedule 4 .
- (e) For the avoidance of doubt, if the Developer, pursuant to this clause 6.2 of this Schedule 4 , pays the Notional Value of an item of Contribution Works in lieu of providing the Contribution Works, the Developer is not also required to pay the Notional Value assigned to any Contribution Land that must be provided to the Council in connection with the Contribution Works.

### **6.3 Alternatives to Payment of Contribution Amounts**

- (a) At the request of either the Council or the Developer and provided that the Council and the Developer agree, the Developer may satisfy any of its obligations to pay a Contribution Amount by providing the works or services associated with the Contribution Amount as Contribution Works (or contribution works of a different nature to those specified in the Development Contribution Table, but which serve the same or similar purpose as those specified in the Development Contribution Table).
- (b) Any agreement contemplated by clause 6.3(a) of this Schedule 4 must include agreement as to the time in which the Developer is to complete the relevant item of Contribution Works.
- (c) The Developer must carry out the Contribution Works contemplated by clause 6.3(a) of this Schedule 4 in accordance with Schedule 6.
- (d) The Council must give, or procure, access to the Developer to all land upon which works are to be carried out or services are to be provided by the Developer for the purposes of the Developer providing the Contribution Works contemplated by this clause 6.3(a) of this Schedule 4 .

### **6.4 Amendment to Deed**

If in the opinion of the Council or the Developer (both acting reasonably) any agreement reached under clause 6 of this Schedule 4 constitutes a variation or amendment to this

Deed to which section 7.5 of the Act applies, then the Parties must comply with section 7.5 of the Act in relation to that variation or amendment.

**7. Location of Contribution Works and Contribution Land**

The location of all items of Contribution Works or Contribution Land must be generally in accordance with Schedule 9.



Schedule 5    Not used

## Schedule 6 Contributions Works and Contributions Land Procedures

1. **Approvals and Design responsibility**
  - (a) The Developer must at its risk and expense:
    - (i) obtain all Approvals necessary to carry out the Contribution Works; and
    - (ii) comply with all conditions of all such Approvals.
  - (b) The Developer agrees to design or procure the design of the Contribution Works (so as to enable the achievement of Practical Completion of the Contribution Works) in accordance with the Landscape Design Statement referred to in clause 2.1(a) of this Schedule 6.
  - (c) Before commencing the Contribution Works, the Developer must give to the Council copies of all Approvals for the Contribution Works.
2. **District Park D2 and Local Park L7**
  - 2.1 **Landscape Design Statement**
    - (a) Prior to lodgement of a Development Application for the construction of District Park D2, the Developer must submit a Landscape Design Statement (which must include a layout plan with respect to the proposed embellishments) for Council's approval which details the proposed embellishments for the Contributions Works to be included in District Park D2.
    - (b) Prior to lodgement of a Development Application for the construction of Local Park L7, the Developer must submit a Landscape Design Statement (which must include a layout plan with respect to the proposed embellishments) for Council's approval which details the proposed embellishments for the Contributions Works to be included in Local Park L7.
  - 2.2 **Valuation of Contributions Works**
    - (a) Following Council's approval of each Landscape Design Statement referred to in clause 2.1 the Developer must appoint a quantity surveyor, approved by Council, to prepare a Quantity Surveyor's Report which estimates the:
      - (i) cost of the embellishment works detailed in the relevant Landscape Design Statement; and
      - (ii) the maintenance works required for District Park D2 under clause 1.1 of Schedule 4.
    - (b) The parties agree that the values for the Contributions Works and maintenance works contained in the Quantity Surveyor's Report described in clause 2.2(a) of

this Schedule 6 will be inserted into column 2 of clause 1.1 of Schedule 4 in relation to either Local Park L7 or District Park D2, as the case may be.

**3. Insurance**

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

**4. Construction of the Contribution Works**

- (a) The Developer must procure the execution and completion of the Contribution Works in accordance with:
  - (i) the Approvals;
  - (ii) subject to any agreement under clause 2 of Schedule 4, the timetable set out in Column 3 of Table 1 of the Development Contribution Table; and
  - (iii) its other obligations under this Deed.
- (b) The Developer must carry out or procure the Contribution Works to be carried out:
  - (i) in a good and workmanlike manner, using good quality materials, so that they are structurally sound and fit for the purpose for which they are required under this Deed; and
  - (ii) in compliance with relevant standards determined by Australian Standards Limited, the Building Code of Australia and any relevant manufacturers' standards.
- (c) The Developer must promptly advise the Council of any significant delays which it experiences in completing the Contribution Works.

5. **Access to Land**

If the Developer is required to achieve Practical Completion or maintain an item of Contribution Works on Contribution Land that has been transferred to the Council pursuant to Schedule 5, the Council must provide the Developer with reasonable access to the Contribution Land in order to enable the Developer to satisfy its obligations to achieve Practical Completion and maintain the item of Contribution Works, provided that, at all times, the Developer complies with Council's reasonable written directions, as well as Council's policies and procedures from time to time of which written notice has been given to the Developer by Council, as they relate to this right of access.

6. **Completion of the Contribution Works**

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

- (ii) a copy of all certificates issued by any Authority in relation to any part of the Contribution Works which have not previously been delivered to the Council; and
- (iii) a copy of a building certificate under Part 6 of the Act in respect of the Contribution Works,

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

- (e) If the Development Contribution Table requires the Developer to maintain an item of Contribution Works for a period of time, that period of time commences when the Certifier issues a Certificate of Practical Completion.

#### **7. Indemnity**

The Developer indemnifies and releases the Council against all damage, expense, loss or liability of any nature, suffered or incurred by the Council arising from any act or omission by the Developer (or any person engaged by it) in connection with the performance of the Contribution Works.

#### **8. Defects Liability Period**

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

- (f) The Developer must pay on demand any amount it must pay under the indemnity in clause 7(e) of this Schedule 6.
- (g) If the Contribution Works have been transferred to the Council as Contribution Land or otherwise, the Council must provide the Developer with access to the Contribution Land in order to carry out any defect rectification works required under this clause 7 of this Schedule 6.

9. **Handover of Construction Works**

- (a) The Developer must notify the Council at least one year prior to the date it intends to hand over maintenance of an item of Contribution Works to the Council.
- (b) At least six months before the date it intends to hand over maintenance of an item of Contribution Works to the Council, the Developer must submit to the Council an appropriate plan of management relating to the Contribution Works.
- (c) Prior to the handover of the maintenance of an item of Contribution Works, the Council and the Developer must carry out a final inspection of the item of Contribution Works.
- (d) Within 5 Business Days of the final inspection, the Council must identify by notice in writing to the Developer any remaining defects in the Contribution Works.
- (e) The Developer must rectify, or procure the rectification of, those remaining defects (excluding any defects arising out of the ordinary use of the Contribution Works) within 20 Business Days after the day on which the Developer received the Council's notification.

10. **Dedication of Contribution Land**

- (a) The Developer must dedicate the Contribution Land to Council free of any trusts, estates, interests, covenants and encumbrances, apart from any Excluded Encumbrances, by the time specified in **Schedule 4**.
- (b) The Developer must meet all costs (including legal and registration costs) associated with the dedication of the Contribution Land in accordance with paragraph (a).
- (c) For the purpose of this document, the Contribution Land is dedicated to Council:
  - (i) if the relevant land is dedicated in a plan registered at NSW Land Registry Services, when that plan is so registered; or
  - (ii) otherwise when the Developer delivers to Council:
    - (A) a transfer of the relevant land in registrable form;
    - (B) any consent required by an interested party in the relevant land; and

- (C) any document in registrable which, when registered, will remove any encumbrances registered on the title of that land, apart from any Excluded Encumbrances.

## Schedule 7 Bank Guarantee (clause 6.1)

### Part A Bank Guarantee for Contribution Works

#### 1. Bank Guarantee

If this Deed has been registered on title to any part of the Land which is the subject of a Subdivision Certificate application that creates one or more Allotments (**Registered Land**), then prior to the grant of any such certificate by the Council, the Developer must provide security to the Council in the form of a Bank Guarantee for the face value equivalent to the sum of the Notional Values of any Contribution Works that the Developer will be required to provide on the Registered Land (and has not already provided) and the terms and conditions of this Schedule 7 apply in relation to that arrangement.

#### 2. Claims under Bank Guarantee

The Developer agrees that the Council may make claims under any Bank Guarantee provided by it in accordance with clause 1 of this Schedule 7 on the following basis:

- (a) The Council may call upon a Bank Guarantee (in full or in part) if the Developer:
  - (i) has not Practically Completed an item of Contribution Works on the Registered Land before the time specified under this Deed;
  - (ii) has not carried out any defect rectification required under clause 7 of Schedule 6 in relation to an item of Contribution Works on the Registered Land; or
  - (iii) has not maintained an item of Contribution Works on the Registered Land for the period required by the Development Contribution Table.

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

#### 3. Release of Bank Guarantee

##### 3.1 Following Practical Completion

If:

- (a) the Developer has satisfied an obligation to achieve Practical Completion of an item of Contribution Works which was secured by any Bank Guarantee provided to the Council in accordance with clause 1 of this Schedule 7;
- (b) the whole of the monies secured by the Bank Guarantee have not been expended and the monies accounted for in accordance with clause 2 of this Schedule 7; and



- (c) the Council is satisfied, acting reasonably, that there are no actual or contingent liabilities arising as a result of the making of the Development Contributions,

then the Council, upon a written request being made by the Developer, will promptly return the Bank Guarantee to the Developer (less any reasonable costs, charges, duties and taxes payable) or the remainder of the monies secured by the Bank Guarantee (as the case may be) in exchange for a Bank Guarantee for the face value equivalent to the Notional Value of any maintenance period the Developer is required to carry out following Practical Completion of the Contribution Works secured by the Bank Guarantee.

### **3.2 Following Maintenance Period**

If:

- (a) the Developer has satisfied an obligation to maintain an item of Contribution Works which was secured by any Bank Guarantee provided to the Council in accordance with clause 3.1 of this Schedule 7;
- (b) the whole of the monies secured by the Bank Guarantee have not been expended and the monies accounted for in accordance with clause 2 of this Schedule 7; and
- (c) the Council is satisfied, acting reasonably, that there are no actual or contingent liabilities arising as a result of the making of the Development Contributions,

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

## **Part B Bank Guarantee for Contribution Amounts**

### **4. Bank guarantee**

Prior to the issue of any Subdivision Certificate that will create the final Allotment within the Development, the Developer must deliver a Bank Guarantee to Council in an amount determined in accordance with clause 5 of Part B of this Schedule 7 as security for the payment of the Contribution Amounts payable to Council after the issue of that Subdivision Certificate.

### **5. Determining Bank Guarantee amount**

For the purpose of Part B of this Schedule 7, the amount of the Bank Guarantee required to be provided under clause 4 of Schedule 7 will be determined by Council acting reasonably, but in any event will not be more than fifty percent (50%) of the Contribution Amount required to be paid in accordance with clause 4(d) of Schedule 4 for the final stage of the Development.

### **6. Claims under Bank Guarantee**

The Developer agrees that the Council may make claims under the Bank Guarantee provided by it in accordance with clause 4 of this Schedule 7 on the following basis:

- (a) The Council may call upon the Bank Guarantee (in full or in part) if the Developer fails to pay a Contribution Amount when it is due under clause 4 of Schedule 4.
- (b) The Council agrees not to make any claim under a Bank Guarantee without providing at least 10 Business Days' prior written notice to the Developer of its intention to do so.

7. **Release of Bank Guarantee**

After the later of:

- (a) a Construction Certificate issuing in respect of the Final Deferred Allotment within the Development; and
- (b) all Contribution Amounts (if any) payable under clause 4(g)(v) of Schedule 4 having been paid,

the Council, upon written request being made by the Developer, will promptly return the Bank Guarantee to the Developer (less any reasonable costs, charges, duties and taxes payable).

## Part C General

8. **Rolling Bank Guarantee**

The Council agrees that the Developer may satisfy its obligations under Parts A and B of this Schedule 7 by providing one Bank Guarantee with a face value, which varies over time so that it is equal to or greater than the total amount that the Developer is required to secure under Parts A and B of this Schedule 7 at the relevant time.

## Part D Compulsory Acquisition

9. **Compulsory Acquisition**

- (a) This clause 9 of this Schedule 7 only applies to the extent that the Developer either becomes the registered proprietor of any Contribution Land or otherwise has contractual rights with the registered proprietor of any Contribution Land which is consistent with this clause 9 of this Schedule 7 (***Applicable Contribution Land***).
- (b) If the Developer does not transfer any Applicable Contribution Land as required by this Deed, the Developer agrees to the Council, after providing 30 days'

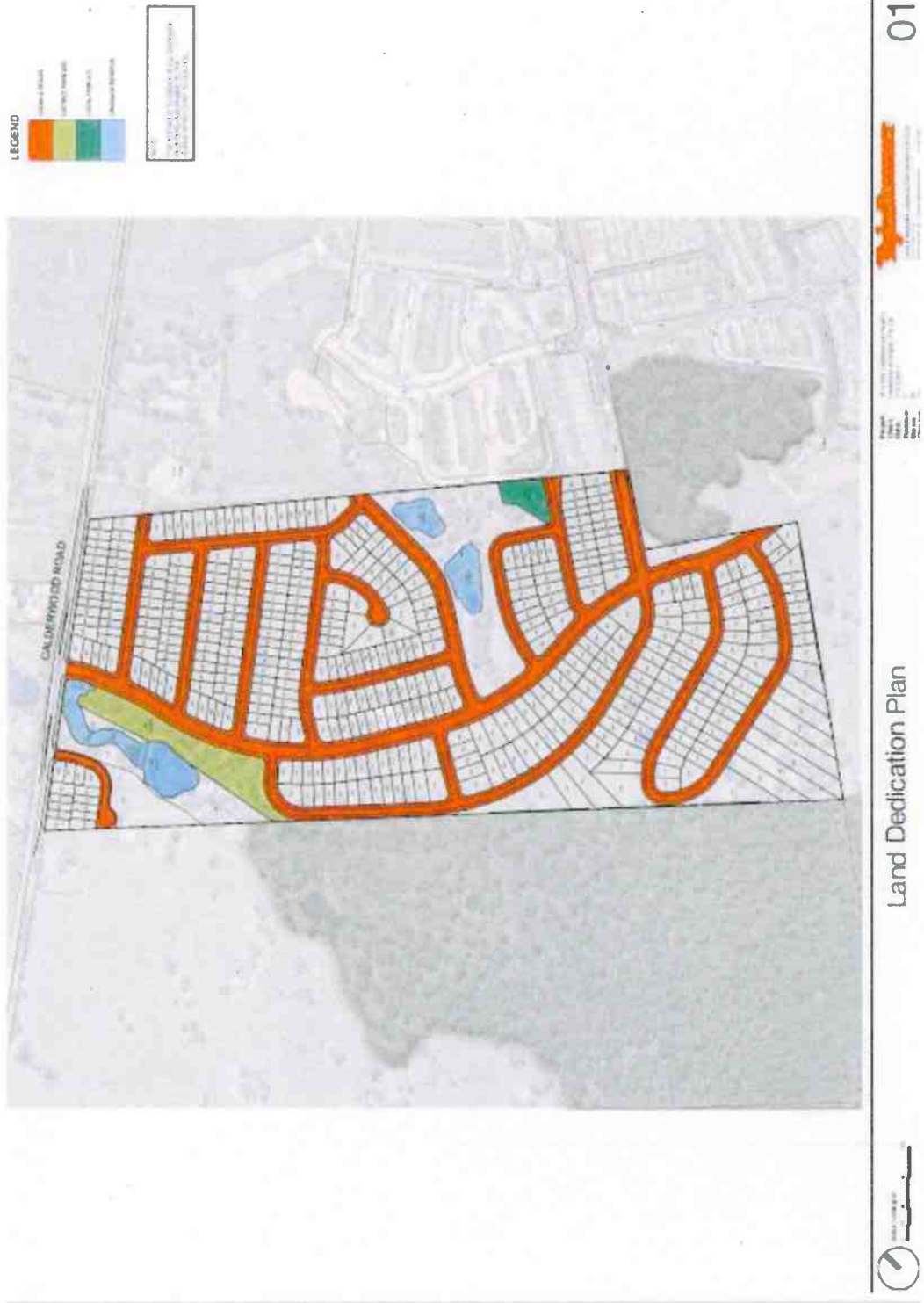
notice, compulsorily acquiring that Applicable Contribution Land in accordance with the Acquisition Act, for the amount of \$1.00.

- (c) The Developer and the Council agree that:
  - (i) this clause 9 of this Schedule 7 is an agreement between the Council and the Developer for the purposes of section 30 of the Acquisition Act; and
  - (ii) in this clause 9 of this Schedule 7 the Council and the Developer have agreed on all relevant matters concerning the compulsory acquisition and the compensation to be paid for the acquisition.
  
- (d) Except as otherwise agreed between the Developer and the Council, the Developer must ensure that the relevant Applicable Contribution Land is free of all encumbrances and affectations (including, any charge or liability for rates, taxes and charges) except for Service Easements and those reservations, easements and other affectations (but not including any mortgage or charge) as registered as at the date of this Deed or easements or covenants which have been agreed by the Council, on both the date that the Developer is liable to procure the transfer of the relevant Applicable Contribution Land to the Council in accordance with this clause 9 of this Schedule 7 and the date on which the Council compulsorily acquires the relevant Contribution Land in accordance with the Acquisition Act.

Schedule 8    Applicable Area



Schedule 9 Location of Contribution Land and Contribution Works



01

Land Dedication Plan

Signing page

Executed as a deed

Signed, sealed and delivered by The Council of the City of Shellharbour by its Chief Executive Officer and Mayor pursuant to delegation from Council.

The Common Seal of the Council of Shellharbour City was hereto affixed on \_\_\_\_\_ day of \_\_\_\_\_ 2023 pursuant to resolution no \_\_\_\_\_ made on \_\_\_\_\_ day of \_\_\_\_\_ 2023:

  
\_\_\_\_\_  
Chief Executive Officer

  
\_\_\_\_\_  
Mayor

MICHAEL STEPHEN LEE ARCHER  
CHIEF EXECUTIVE OFFICER  
Full name (print)  
SHELLHARBOUR CITY COUNCIL

Christopher Calcutt  
Full name (print)

Signed by Sekisui House Services (NSW) Pty Limited ACN 119 550 220 under s.127(1) of the Corporations Act 2001

  
\_\_\_\_\_  
sign  
Director  
\_\_\_\_\_  
office (director or secretary)  
SHUNICHI OSAWA  
\_\_\_\_\_  
full name

  
\_\_\_\_\_  
sign  
Secretary  
\_\_\_\_\_  
office (director or secretary)  
KAZUYA SAKAMOTO  
\_\_\_\_\_  
full name



Scale: 1:20000

**Lot 1 in DP 608238 347 Calderwood  
Road CALDERWOOD NSW 2527**

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