

ITEM 6

POST EXHIBITION - DRAFT PLANNING AGREEMENT - FORMER PORT KEMBLA PUBLIC SCHOOL

On 31 July 2023, Council resolved to exhibit the draft Planning Agreement for the former Port Kembla Public School site.

The draft Planning Agreement relates to the provision of at least 5% of affordable housing dwellings to be provided on-site consistent with the Council resolution made on 10 May 2021.

The draft Planning Agreement and Explanatory Note were exhibited from 6 September to 6 October 2023 and seven submissions were received. It is recommended that the Planning Agreement be finalised.

RECOMMENDATION

The General Manager be delegated authority to finalise and execute the Planning Agreement (Attachment 1) between Wollongong City Council and the proponent for the former Port Kembla Public School site.

REPORT AUTHORISATIONS

Report of: Chris Stewart, Manager City Strategy

Authorised by: Linda Davis, Director Planning + Environment - Future City + Neighbourhoods

ATTACHMENTS

- 1 Planning Agreement

BACKGROUND

The site (Lot 1 DP 811699 Military Road, Port Kembla) was previously occupied by the Port Kembla Public School from 1890 until 1999, although has been vacant for many years. The site is bounded by Military Road, Marne Street, Reservoir Street and Electrolytic Street, has an area of 2.195 hectares.

On 10 May 2021, Council resolved to support the preparation of a Planning Proposal to rezone the site to enable residential development. The Urban Design Analysis Report prepared by the proponent's consultant indicates that potentially 110 dwellings could be built on the site. Council resolved in part –

- g At least 5% of the proposed dwellings be made available for Affordable Rental Housing through a Planning Agreement with details of the proposed management arrangements of the dwellings and proposed housing needs sector to be targeted.*

On 31 August 2022, the proponent provided a Letter of Offer to enter into a Planning Agreement to provide 5% affordable housing dwellings as part of the future development of the site.

On 12 September 2022, Council resolved to endorse a draft site-specific Development Control Plan (DCP) Chapter for exhibition in conjunction with the Planning Proposal. The Planning Proposal, draft DCP Chapter and supporting studies were exhibited between 12 October and 11 November 2022.

On 27 February 2023, Council considered a report on submissions and resolved to finalise the Planning Proposal and adopt the site-specific DCP chapter. Council resolved in part –

- 3 A separate report be submitted to Council on the proposed draft Planning Agreement containing provision of at least 5% Affordable Rental Housing within the development.*

On 19 May 2023, the Wollongong Local Environmental Plan 2009 (Amendment No. 53) was notified which rezoned the site.

On 31 July 2023, Council considered a report on the draft Planning Agreement for the Affordable Housing contribution and resolved that:

- 1 The draft Planning Agreement and Explanatory Note between Wollongong City Council and the proponent for the former Port Kembla Public School site, be exhibited for a period of at least 28 days.*

- 2 *If there are no major issues raised in submissions, the General Manager be delegated authority to determine, finalise and execute the Planning Agreement, including making minor amendments, after consideration of any issues raised in the public exhibition.*

The draft Planning Agreement and Explanatory Note were exhibited from 6 September to 6 October 2023.

PROPOSAL

A Planning Agreement is a voluntary arrangement between a developer and Council to be used for or applied towards the provision of public infrastructure or another public purpose.

On 31 August 2022, the applicant provided a Letter of Offer to enter into a Planning Agreement under Section 7.4 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) under which, the developer has proposed to provide affordable housing dwellings to 5% of the total dwellings across the future development of the site.

There is expected to be 110 dwellings on the site therefore the provision of 6 affordable housing dwellings is appropriate ($110 \times 5\% = 5.5$, rounded up to 6).

The increasing need for affordable rental housing is well documented. On 27 February 2023, Council adopted the Wollongong Housing Strategy 2023 which includes several actions to support delivery of affordable rental housing. Whilst negotiation relating to the draft Planning Agreement commenced prior to 27 February 2023, the outcomes it seeks to deliver are aligned and consistent with the aims of the Wollongong Housing Strategy 2023.

The affordable housing dwellings will be provided in the area identified as Precinct C of the development and will need to be owned or managed by a Registered Community Housing Provider. The first development application for a building in the identified precinct must include the affordable housing dwellings.

The offer is considered reasonable as it will secure the provision of 6 affordable housing dwellings with the future development. Consistent with Council's adopted Wollongong Housing Strategy 2023, the affordable housing dwellings will not be required to pay development contributions. It should be noted that the draft Planning Agreement does not totally exempt the development from development contributions under the Wollongong City-wide Development Contributions Plan 2023. The apportionment of contributions to be levied will be calculated with the assessment of the future development application when it is made.

CONSULTATION AND COMMUNICATION

The draft Planning Agreement was exhibited from 6 September to 6 October 2023 via -

- Notice in the Illawarra Mercury – Community Update on 6 September 2023.
- Council's Our Wollongong exhibition webpage.
- Mailout, post and electronic to nearby residents and landowners.
- Documents were available at Wollongong and Warrawong libraries and at the Wollongong Administration Centre.

The exhibition webpage was visited 89 times, and 37 copies of the document were downloaded.

In response to the exhibition process, Council received 7 submissions. The following breakdown is provided -

State Agencies

Agency	Comment	Response
EPA	Acknowledged with no comment	Noted
Endeavour Energy	Acknowledged with no concerns or comment	Noted

Agency	Comment	Response
Heritage NSW	Acknowledged with no objections	Noted
Transport for NSW	No objections or comments	Noted
Biodiversity and Conservation – DPIE	Acknowledged with nil response	Noted

Individual Submissions

Submitter	Comment	Response
Resident	Concerns that not enough detail has been provided for the future development and would like a traffic and parking study completed prior to construction commencing. Concerns relating to stormwater drainage relating to the removal of the retaining wall.	Issues such as urban design, traffic and parking, heritage, contamination, noise were considered as part of the rezoning of the site. The issues are beyond the scope of the Planning Agreement, which is dealing with the provision of Affordable Housing within the future development. This Planning Agreement, to be registered on title, provides a legal mechanism to ensure the provision of affordable housing dwellings if any development on the site proceeds. It does not provide land use or construction approvals for any development. The design issues and potential development impacts will be assessed with any future development application. The development application will be separately exhibited for community input.
Resident	Support	Noted

PLANNING AND POLICY IMPACT

The draft Planning Agreement has been negotiated and prepared in accordance with Council's Planning Agreements Policy (2018), Sections 7.4 to 7.10 of the EP&A Act and Clauses 202-206 of the *Environmental Planning and Assessment Regulation 2000*.

This report contributes to the delivery of Our Wollongong Our Future 2032 Goal 5 – 'We have a healthy community in a liveable city'. It also delivers on core business activities as detailed in the Land Use Planning Operational Plan 2022-23.

RISK MANAGEMENT

The proposed Planning Agreement provides a formal instrument to manage and mitigate any risks associated with the developer providing affordable housing. The affordable housing dwellings will need to be provided with the first development application within the identified precinct. The Planning Agreement will be registered on title to ensure the land is encumbered by the requirements. The Planning Agreement also provides the appropriate legal mechanism for the developer to fulfil the requirements from Council resolutions relating to the land rezoning.

FINANCIAL IMPLICATIONS

The Planning Agreement will ensure that the affordable housing is provided as part of the development. Development contributions are still required to be paid for the development. The funds collected will be held in a restricted asset account and invested in accordance with Council's Investment Policy.

The cost of the development of the affordable housing dwellings will not be used to calculate the development contributions for the wider development in line with s208 of the *Environmental Planning and Assessment Regulation 2000*, this will be assessed with the future development applications across the site.

CONCLUSION

The Planning Agreement is the mechanism to ensure that affordable housing is provided on the development site.

It is recommended that the Planning Agreement (Attachment 1) be endorsed for finalisation by the General Manager.

PLANNING AGREEMENT

Wollongong City Council

and

Ostoja Vujic



WOLLONGONG CITY COUNCIL
41 Burelli Street, Wollongong NSW 2500
Locked Bag 8821, Wollongong DC NSW 2500
Tel: 02 4227 7111
Fax: 02 4227 7277
Web: www.wollongong.nsw.gov.au
ABN: 63 139 525 939 – GST Registered

PLANNING AGREEMENT – FORMER PORT KEMBLA PUBLIC SCHOOL

DATE

[DATE]

PARTIES

WOLLONGONG CITY COUNCIL of 41 Burelli Street, Wollongong in the State of New South Wales (**Council**)

OSTOJA VUJIC of 1 John Street, Gwynneville in the State of New South Wales (**Developer**)

BACKGROUND

- 1 The Developer is the registered proprietor of the Land.
- 2 The Developer has made a Planning Proposal with Council.
- 3 The Developer has offered to provide the Contribution as part of the Wollongong LEP Amendment No. 53 made on 19 May 2023

OPERATIVE PROVISIONS

1 DEFINITIONS

The following definitions apply unless the context otherwise requires:

Act	means the <i>Environmental Planning and Assessment Act 1979</i> (NSW).
Acquisition Act	means the <i>Land Acquisition (Just Terms Compensation) Act 1991</i> (NSW).
Affordable Housing Contribution	means the provision of six affordable housing dwellings, excluding studios.
Affordable Housing Dwelling	means a dwelling used for the purposes of affordable housing which will be owned and/or managed by a Registered Community Housing Provider.
Assign	as the context requires refers to any assignment, sale, transfer, disposition, declaration of trust over or other assignment of a legal and/or beneficial interest.
Authority	means (as appropriate) any: <ol style="list-style-type: none"> 1 federal, state or local government; 2 department of any federal, state or local government; 3 any court or administrative tribunal; or 4 statutory corporation or regulatory body.
Claim	against any person any allegation, action, demand, cause of action, suit, proceeding, judgement, debt, damage, loss, cost, expense or liability howsoever arising and whether present or future, fixed or unascertained, actual or contingent whether at law, in equity, under statute or otherwise.
Complete, Completed, Completion	means completed in accordance with the requirements of this document.
Contributions	means the provision of the Affordable Housing Dwelling(s), by the Developer in accordance with this document.
Contributions Plan	means the <i>Wollongong City-Wide Development Contributions Plan 2022</i> , or such other replacement plan adopted by Council from time to time.

PLANNING AGREEMENT – FORMER PORT KEMBLA PUBLIC SCHOOL

Council	means Wollongong City Council
Development	means the future development of the Land with approximately 110 dwellings.
Development Application	means a Development Application lodged by the Developer with Council for the Development.
Development Consent	means a development consent issued under the Act with respect to the Development.
Encumbrance	means an interest or power: <ul style="list-style-type: none"> reserved in or over an interest in any asset; created or otherwise arising in or over any interest in any asset under any mortgage, charge (whether fixed or floating), pledge, lien, hypothecation, title retention, conditional sale agreement, hire or hire purchase agreement, option, restriction as to transfer, use or possession, easement, subordination to any right of any other person and any other encumbrance or security interest, trust or bill of sale; or by way of security for the payment of a debt or other monetary obligation or the performance of any obligation.
EPA	means the NSW Environment Protection Authority.
GST Law	means <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Commonwealth) and any other Act or regulation relating to the imposition or administration of the goods and services tax.
Land	means the whole of the land contained in Lot 1 DP 811699 at Military Road, Port Kembla. The Land is shown at Schedule 2.
Law	means all legislation, regulations, by-laws, common law and other binding order made by any Authority.
LEP Amendment	Wollongong LEP Amendment No. 53 made on 19 May 2023
Occupation Certificate	means an occupation certificate as defined in section 6.4(c) of the Act.
Planning Legislation	means the Act, the <i>Local Government Act 1993</i> (NSW) and the <i>Roads Act 1993</i> (NSW).
Planning Proposal	means application PP-2016/3 made to Council seeking to amend a Local Environmental Plan.
Registered Community Housing Provider	Has the same meaning as in the <i>Community Housing Providers (Adoption of National Law) Act 2012</i> , section 13
Residential Lot	means a single lot created on the registration of a plan of subdivision as part of the Development intended to not be further subdivided and to be used for the purpose of the construction of one (1) or more residential dwellings.
Subdivision Certificate	means a subdivision certificate as defined in section 6.4(d) of the Act.

2 DEFINITIONS

The following rules of interpretation apply unless the context requires otherwise:

PLANNING AGREEMENT – FORMER PORT KEMBLA PUBLIC SCHOOL

clauses, annexures and schedules	a clause, annexure or schedule is a reference to a clause in, or annexure or schedule to, this document.
reference to statutes	a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them.
singular includes plural	the singular includes the plural and vice versa.
person	the word 'person' includes an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association or any government agency.
executors, administrators, successors	a particular person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns.
dollars	Australian dollars, dollars, \$ or A\$ is a reference to the lawful currency of Australia.
calculation of time	if a period of time dates from a given day or the day of an act or event, it is to be calculated exclusive of that day.
reference to a day	a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later.
reference to a group of persons	a group of persons or things is a reference to any two or more of them jointly and to each of them individually.
meaning not limited	the words 'include', 'including', 'for example' or 'such as' are not used as, nor are they to be interpreted as, words of limitation, and, when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind.
next day	if an act under this document to be done by a party on or by a given day is done after 4.30pm on that day, it is taken to be done on the next day.
next Business Day	if an event must occur on a stipulated day which is not a Business Day then the stipulated day will be taken to be the next Business Day.
time of day	time is a reference to Sydney time.
headings	headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of this document.
agreement	a reference to any agreement, Agreement or instrument includes the same as varied, supplemented, novated or replaced from time to time.
Gender	a reference to one gender extends and applies to the other.

3 DEFINITIONS

3.1 Planning Agreement

This document is a planning agreement:

- i Within the meaning set out in section 7.4 of the Act; and
- ii Governed by Subdivision 2 of Division 7.1 of Part 7 of the Act.

3.2 Application

PLANNING AGREEMENT – FORMER PORT KEMBLA PUBLIC SCHOOL

This document applies to both the Land and the Development.

3.3 Operation of document

- i This document operates from the date it is executed by both parties.

4 APPLICATION OF SECTION 7.11, SECTION 7.12, AND SECTION 7.24

4.1 Application

This document does not exclude the application of section 7.11 or section 7.12 or section 7.24 of the Act to the Development.

5 REGISTRATION OF THIS DOCUMENT

5.1 Registration

This document must be registered on the title of the Land pursuant to section 7.6 of the Act within 21 days of execution of the Agreement and must occur prior to any Development Application being lodged on the Land.

5.2 Obligations of the Developer

The Developer must:

- i do all things necessary to allow the registration of this document to occur, including but not limited to obtaining the consent of any mortgagee registered on the title of the Land; and
- ii pay any reasonable costs incurred by Council in undertaking that registration.

5.3 Removal from Title of the Land

- i Council will do all things necessary to allow the Developer to remove the registration of this document from the title of the Land where the Developer has:
 - a provided the Affordable Housing Contributions in accordance with this Agreement;
- ii The Developer must pay any reasonable costs incurred by Council in undertaking that discharge.

6 PROVISION OF CONTRIBUTIONS

6.1 Affordable Housing Contribution

- (a) The Developer will provide the Affordable Housing Contribution.
- (b) The Affordable Housing Dwellings will be in the identified Precinct C (outlined in Schedule 3)
- (c) The Developer will enter into an agreement with a Registered Community Housing Provider for the ownership and/or management of the Affordable Housing Dwellings prior to the Development Application referred to in 6.1(d) below.
- (d) First Development Application for buildings in Precinct C must include six Affordable Housing Dwellings required to satisfy the Affordable Housing Contribution and detail of how and by who they will be managed.
- (e) The parties agree that the Developer's delivery of Affordable Housing Dwellings in accordance with this clause 6.1 represents the Developer's full and final contribution toward the Affordable Housing Contribution in relation to the Development and the Land

8 WARRANTIES AND INDEMNITIES

8.1 Warranties

The Developer warrants to Council that:

- i it is able to fully comply with its obligations under this document;
- ii it has full capacity to enter into this document; and

PLANNING AGREEMENT – FORMER PORT KEMBLA PUBLIC SCHOOL

- iii there is no legal impediment to it entering into this document, or performing the obligations imposed under it.

8.2 Indemnity

The Developer indemnifies Council in respect of any Claim that may arise as a result of the conduct of the Works, but only to the extent that any such Claim does not arise as a result of the negligent acts or omissions of Council.

9 DETERMINATION OF THIS DOCUMENT

9.1 Determination

This document will determine upon the Developer satisfying all of its obligations under the document.

9.2 Effect of Determination

Upon the determination of this document Council will do all things necessary to allow the Developer to remove this document from the title of the whole or any part of the Land within 28 days of determination of this document.

10 SECURITY

10.1 Prohibition

Neither party may Assign their rights under this document without the prior written consent of the other party.

10.2 Assignment of Land

The Developer must not Assign its interest in the Land, other than single residential lots approved pursuant to a Development Consent and created by the registration of a plan of subdivision, unless:

- i Council consents to the Assignment; and
- ii the proposed assignee enters into an agreement to the satisfaction of Council under which the assignee agrees to be bound by the terms of this document with respect to the relevant part of the Land being Assigned.

11 DISPUTE RESOLUTION

11.1 Notice of Dispute

- i If a dispute between the parties arises in connection with this document or its subject matter (**Dispute**), then either party (**First Party**) must give to the other (**Second Party**) a notice which:
 - a is in writing;
 - b adequately identifies and provides details of the Dispute;
 - c stipulates what the First Party believes will resolve the Dispute; and
 - d designates its representative (**Representative**) with the necessary authority to negotiate and resolve the Dispute.
- ii The Second Party must, within five (5) Business Days of service of the notice of dispute, provide a notice to the First Party designating as its representative a person with the necessary authority to negotiate and settle the Dispute (the representatives designated by the parties being together, the **Representatives**).

11.2 Conduct Pending Resolution

The parties must continue to perform their respective obligations under this document if there is a Dispute but will not be required to complete the matter the subject of the Dispute, unless the appropriate party indemnifies the other parties against costs, damages and all losses suffered in completing the disputed matter if the Dispute is not resolved in favour of the indemnifying party.

11.3 Further Steps Required before Proceedings

Subject to clause 11.12 and except as otherwise expressly provided in this document, any Dispute must, as a condition precedent to the commencement of litigation, mediation under clause 11.5 or determination by an expert under clause 11.6, first be referred to the Representatives. The Representatives must

PLANNING AGREEMENT – FORMER PORT KEMBLA PUBLIC SCHOOL

endeavour to resolve the dispute within five (5) Business Days of the date a notice under clause 11.1 is served.

11.4 Disputes for Mediation or Expert Determination

If the Representatives have not been able to resolve the Dispute, then the parties must agree within five (5) Business Days to either refer the matter to mediation under clause 11.5 or, expert resolution under clause 11.6.

11.5 Disputes for Mediation

- i If the parties agree in accordance with clause 11.4 to refer the Dispute to mediation, the mediation must be conducted by a mediator agreed by the parties and, if the parties cannot agree within five (5) Business Days, then by a mediator appointed by the President of the Law Society of New South Wales for the time being.
- ii If the mediation referred to in paragraph (i) has not resulted in settlement of the Dispute and has been terminated, the parties may agree to have the matter determined by expert determination under clause 11.6.

11.6 Choice of Expert

- i If the Dispute is to be determined by expert determination, this clause 11.6 applies.
- ii The Dispute must be determined by an independent expert in the relevant field:
 - a agreed between and appointed jointly by the parties; or
 - b in the absence of agreement within five (5) Business Days after the date that the matter is required to be determined by expert determination, appointed by the President of the Law Society of New South Wales for the time being.
- iii If the parties fail to agree as to the relevant field within five (5) Business Days after the date that the matter is required to be determined by expert determination, either party may refer the matter to the President of the Law Society of New South Wales for the time being whose decision as to the relevant field is final and binding on the parties.
- iv The expert appointed to determine a Dispute:
 - a must have a technical understanding of the issues in dispute;
 - b must not have a significantly greater understanding of one party's business, functions or operations which might allow the other side to construe this greater understanding as a bias; and
 - c must inform the parties before being appointed of the extent of the expert's understanding of each party's business or operations and, if that information indicates a possible bias, then that expert must not be appointed except with the written approval of the parties.
- v The parties must promptly enter into an agreement with the expert appointed under this clause setting out the terms of the expert's determination and the fees payable to the expert.

11.7 Directions to Expert

- i In reaching a determination in respect of a dispute under clause 11.6, the independent expert must give effect to the intent of the parties entering into this document and the purposes of this document.
- ii The expert must:
 - a act as an expert and not as an arbitrator;
 - b not accept verbal submissions unless both parties are present;
 - c on receipt of a written submission from one party, ensure that a copy of that submission is given promptly to the other party;
 - d take into consideration all documents, information and other material which the parties give the expert which the expert in its absolute discretion considers relevant to the determination of the Dispute;
 - e not be expected or required to obtain or refer to any other documents, information or material (but may do so if the expert so wishes);

PLANNING AGREEMENT – FORMER PORT KEMBLA PUBLIC SCHOOL

- f issue a draft certificate stating the expert's intended determination (together with written reasons), giving each party ten (10) Business Days to make further submissions;
- g issue a final certificate stating the expert's determination (together with written reasons); and
- h act with expedition with a view to issuing the final certificate as soon as practicable.
- iii The parties must comply with all directions given by the expert in relation to the resolution of the Dispute and must within the time period specified by the expert, give the expert:
 - a a short statement of facts;
 - b a description of the Dispute; and
 - c any other documents, records or information which the expert requests.

11.8 Expert May Convene Meetings

- i The expert must hold a meeting with all of the parties present to discuss the Dispute. The meeting must be conducted in a manner which the expert considers appropriate. The meeting may be adjourned to, and resumed at, a later time in the expert's discretion.
- ii The parties agree that a meeting under paragraph (i) is not a hearing and is not an arbitration.

11.9 Other Courses of Action

If:

- i the parties cannot agree in accordance with clause 11.3 to refer the matter to mediation or determination by an expert; or
- ii the mediation referred to in clause 11.5 has not resulted in settlement of the dispute, the mediation has been terminated and the parties have not agreed to refer the matter to expert determination within five (5) Business Days after termination of the mediation;

then either party may take whatever course of action it deems appropriate for the purpose of resolving the Dispute.

11.10 Final Determination of Expert

The parties agree that the final determination by an expert will be final and binding upon them except in the case of fraud or misfeasance by the expert.

11.11 Costs

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

11.12 Remedies Available under the Act

This clause 11 does not operate to limit the availability of any remedies available to Council under sections 9.45 and 9.46 and Division 9.6 of the Act.

11.13 Urgent Relief

This clause 11 does not prevent a party from seeking urgent injunctive or declaratory relief concerning any matter arising out of this document.

12 POSITION OF COUNCIL

12.1 Consent Authority

The parties acknowledge that Council is a consent authority with statutory rights and obligations pursuant to the terms of the Planning Legislation.

12.2 Document does not Fetter Discretion

This document is not intended to operate to fetter:

- i the power of Council to make any Law; or
- ii the exercise by Council of any statutory power or discretion (**Discretion**).

12.3 Severance of Provisions

PLANNING AGREEMENT – FORMER PORT KEMBLA PUBLIC SCHOOL

- i No provision of this document is intended to, or does, constitute any unlawful fetter on any Discretion. If, contrary to the operation of this clause, any provision of this document is held by a court of competent jurisdiction to constitute an unlawful fetter on any Discretion, the parties agree:
 - a they will take all practical steps, including the execution of any further documents, to ensure the objective of this clause 12 is substantially satisfied;
 - b in the event that paragraph (a) cannot be achieved without giving rise to an unlawful fetter on a Discretion, the relevant provision is to be severed and the remainder of this document has full force and effect; and
 - c to endeavour to satisfy the common objectives of the parties on relation to the provision of this document which is held to be an unlawful fetter to the extent that it is possible having regard to the relevant court judgment.
- ii Where the Law permits Council to contract out of a provision of that Law or gives Council power to exercise a Discretion, then if Council has in this document contracted out of a provision or exercised a Discretion under this document, then to the extent of this document is not to be taken to be inconsistent with the Law.

12.4 No Obligations

Nothing in this document will be deemed to impose any obligation on Council to exercise any of its functions under the Act in relation to the Development Consent, the Land or the Development in a certain manner.

13 CONFIDENTIALITY

13.1 Document not Confidential

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

14 LEGAL COSTS

Each party must pay their own legal costs and disbursements with respect to the preparation, negotiation, formation and implementation of this document.

15 ADMINISTRATIVE PROVISIONS

15.1 Notices

- i Any notice, consent or other communication under this document must be in writing and signed by or on behalf of the person giving it, addressed to the person to whom it is to be given and:
 - a delivered to that person's address;
 - b sent by pre-paid mail to that person's address; or
 - c sent by email to that person's email address.
- ii A notice given to a person in accordance with this clause is treated as having been given and received:
 - a if delivered to a person's address, on the day of delivery if a Business Day, otherwise on the next Business Day;
 - b if sent by pre-paid mail, on the third Business Day after posting; and
 - c if sent by email to a person's email address and a confirmation of receipt can be retrieved, on the day it was sent if a Business Day, otherwise on the next Business Day.
- iii For the purpose of this clause the address of a person is the address set out in this document or another address of which that person may from time to time give notice to each other person.

15.2 Entire Agreement

This document is the entire agreement of the parties on the subject matter. All representations, communications and prior agreements in relation to the subject matter are merged in and superseded by this document.

15.3 Waiver

PLANNING AGREEMENT – FORMER PORT KEMBLA PUBLIC SCHOOL

The non-exercise of or delay in exercising any power or right of a party does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other or further exercise of it or the exercise of any other power or right. A power or right may only be waived in writing, signed by the parties to be bound by the waiver.

15.4 Counterparts

This document may be executed in any number of counterparts and all of those counterparts taken together constitute one and the same instrument.

15.5 Unenforceability

Any provision of this document which is invalid or unenforceable in any jurisdiction is to be read down for the purposes of that jurisdiction, if possible, so as to be valid or enforceable, and is otherwise capable of being severed to the extent of the invalidity or enforceability, without affecting the remaining provisions of this document or affecting the validity or enforceability of that provision in any other jurisdiction.

15.6 Power of Attorney

Each attorney who executes this document on behalf of a party declares that the attorney has no notice of:

- i the revocation or suspension of the power of attorney by the grantor; or
- ii the death of the grantor.

15.7 Governing Law

The law in force in the State of New South Wales governs this document. The parties:

- i submit to the exclusive jurisdiction of the courts of New South Wales and any courts that may hear appeal from those courts in respect of any proceedings in connection with this document; and
- ii may not seek to have any proceedings removed from the jurisdiction of New South Wales on the grounds of *forum non conveniens*.

PLANNING AGREEMENT – FORMER PORT KEMBLA PUBLIC SCHOOL

EXECUTED AS AN AGREEMENT

EXECUTED by and on behalf of **WOLLONGONG CITY COUNCIL** by its Authorised Officer:

Signature of Authorised Person

Signature of Witness

[Print] Name of Authorised Officer

[Print] Name of Witness

Office Held

Date

Date

EXECUTED by Ostoja Vujic (Developer)

Signature of Developer

Signature of Witness

[Print] Name of Developer

[Print] Name of Witness

Date

Date

PLANNING AGREEMENT – FORMER PORT KEMBLA PUBLIC SCHOOL

SCHEDULE 1: REQUIREMENTS UNDER SECTION 7.4 OF THE ACT

REQUIREMENT UNDER THE ACT	THIS PLANNING AGREEMENT
Planning instrument and/or Development Application – (Section 7.4(1)) The Developer has: <ul style="list-style-type: none"> (a) sought a change to an environmental planning instrument. (b) made, or proposes to make, a Development Application. (c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies. 	<ul style="list-style-type: none"> (a) Yes (b) No (c) No
Description of land to which this agreement applies – (Section 7.4(3)(a))	Lot 1 DP 811699, Military Road, Port Kembla
Description of change to the environmental planning instrument to which this agreement applies – (Section 7.4(3)(b))	Rezone land from B4 Mixed Use to R3 Medium Density Residential and RE2 Private Recreation and increase height limit to 11m and 9m on the proposed R3 Medium Density Residential land.
Application of section 7.11 of the Act – (Section 7.4(3)(d))	Refer to clause 4.1 of the Planning Agreement.
Applicability of section 7.12 of the Act – (Section 7.4(3)(d))	Refer to clause 4.1 of the Planning Agreement.
Consideration of benefits under this agreement if section 7.11 applies – (Section 7.4(3)(e))	Refer to clause 4.2 of the Planning Agreement.
Mechanism for Dispute resolution – (Section 7.4(3)(f))	Refer to clause 11 of the Planning Agreement.
Enforcement of this agreement (Section 7.4(3)(g))	Refer to clauses 10 and 11 of the Planning Agreement.
No obligation to grant consent or exercise functions – (Section 7.4(3)(9))	Refer to clause 12.4 of the Planning Agreement.

PLANNING AGREEMENT – FORMER PORT KEMBLA PUBLIC SCHOOL

SCHEDULE 2: LAND



PLANNING AGREEMENT – FORMER PORT KEMBLA PUBLIC SCHOOL

SCHEDULE 3: STAGING

