
Calderwood Voluntary Planning Agreement

Environmental Planning and Assessment Act 1979

Shellharbour City Council ABN 78 392 627 134

and

RBWI Pty Ltd ACN 610 758 337

Contents

1	Definitions and Interpretation	3
1.1	Definitions	3
1.2	Interpretation	5
2	Operation and application of this Deed	6
2.1	Operation	6
2.2	Planning agreement under the Act	6
2.3	Application	6
2.4	When does this Planning Agreement cease to apply?	6
2.5	Development Contributions	7
3	Application of Sections 7.11, 7.12 and 7.24 of the Act	7
4	Requirement to Provide Development Contributions	7
5	Registration on title	7
5.1	Land ownership	7
5.2	Registration of Deed	7
5.3	Release and discharge of Deed	8
6	Security	8
6.1	Security	8
7	Dispute Resolution	8
7.1	Not commence	8
7.2	Written notice of dispute	9
7.3	Attempt to resolve	9
7.4	Mediation	9
7.5	Court proceedings	9
7.6	Not use information	9
7.7	No prejudice	9
8	GST	9
8.1	Definitions	9
8.2	Intention of the parties	9
8.3	Reimbursement	10
8.4	Consideration GST exclusive	10
8.5	Additional Amounts for GST	10
8.6	Non monetary consideration	10
8.7	No merger	10
9	Assignment	10
9.1	Consent	10
10	Warranties of Capacity	11
10.1	General warranties	11
10.2	Power of attorney	11
11	Interest	11
12	Termination	12
12.1	When this Deed terminates in full	12
13	General Provisions	12
13.1	Entire Agreement	12
13.2	Variation	12
13.3	Waiver	12

13.4	Further assurances	12
13.5	Time for doing acts	12
13.6	Governing law and jurisdiction	12
13.7	Severance	13
13.8	Preservation of existing rights	13
13.9	No merger	13
13.10	Counterparts	13
13.11	Relationship of parties	13
13.12	Good faith	13
13.13	No fetter	13
13.14	Explanatory note	13
13.15	Expenses and stamp duty	13
13.16	Notices	14
Schedule 1 Requirements under section 7.4 of the Act (clause 1.2)		16
Schedule 2 Address for Service (clause 1.1)		17
Schedule 3 Land		18
Schedule 4 Development Contributions (clause 4)		19
Schedule 5 – NOT USED		26
Schedule 6 – NOT USED		27
Schedule 7 Bank Guarantee (clause 6.1)		28
Annexure 1 Applicable Area		29

This Deed is made on

Parties

- 1 **Shellharbour City Council** (ABN 78 392 627 134) of 76 Cygnet Ave, Shellharbour City Centre NSW 2529 (the **Council**).
- 2 **RBWI Pty Ltd ACN 610 758 337** of Level 2, 128-134 Crown Street, Wollongong NSW 2500 (the **Developer**)

Recitals

- A On 8 December 2010, the Minister for Planning granted the Concept Plan Approval. The Concept Plan Approval was subsequently modified on 27 March 2018 and 6 March 2020.
- B The Concept Plan Approval as modified applies to the Land.
- C The Land must be developed so as to be generally consistent with the terms of the Concept Plan Approval, as modified.
- D The Developer is the registered proprietor of the Land and intends to carry out the Development.
- E From the date the Planning Agreement commences to operate, 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.

It is agreed as follows.

1 Definitions and Interpretation

1.1 Definitions

In this **Deed**, unless the context clearly indicates otherwise:

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

Address for Service 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.

Albion Park Library means item C2.16 in the *Shellharbour Local Infrastructure Contributions Plan 2019 (9th Review)*.

Albion Park Bypass means item C3.09 in the *Shellharbour Local Infrastructure Contributions Plan 2019 (9th Review)* .

Allotment 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.

Anticipated Dwelling Yield means the anticipated number of Dwellings proposed to be constructed on Allotments as determined in accordance with clause 1.2 of **Schedule 4**.

Approval 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.

Authority means any Federal, State or local government or semi-governmental, statutory, judicial or public person, instrumentality or department.

Bank Guarantee 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.

Business Day means any day that is not a Saturday, Sunday, gazetted public holiday or bank holiday in Sydney, and concludes at 5pm on that day.

Certifier means a suitable person with the appropriate qualifications as is agreed by the parties.

Concept Plan Approval 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).

Construction Certificate has the same meaning as in the Act.

Contribution Amount(s) means the amount or amounts of a monetary contribution to be paid by the Developer to Council as described in clause 1.1 of Schedule 4 and as calculated in accordance with Schedule 4 generally.

Contribution Plan means *Shellharbour City Council Local Infrastructure Contributions Plan 2019 (9th review)*.

Contribution Regime means all Laws governing the levying of contributions by the proponents of development including:

- (a) any contribution plan adopted by the Council pursuant to s 7.18 of the Act (or any equivalent provision); and
- (b) any Ministerial declaration with respect to contributions pursuant to s 7.17 of the Act (or any equivalent provision),

but excluding this Deed.

CPI 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.

CUDP means the Calderwood Urban Development Precinct.

Development means the proposed development of the Land in the Shellharbour Local Government Area including the provision of approximately 141 Allotments for residential Dwellings as generally described in **DA0569/2017**.

Development Application has the same meaning as in the Act.

Development Consent has the same meaning as in the Act.

Development Contributions means the Contribution Amounts described in **Schedule 4** to be provided or undertaken, as applicable, by the Developer.

Development Contribution Item means an individual item of Contribution Works in the Development Contribution Table.

Development Contribution Table means the table in **clause 1.1** of **Schedule 4**.

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 on the Land as part of the Development. For the purpose of clarity, a Dwelling 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.

Explanatory Note means the explanatory note required by clause 25E of the Regulation.

General Register of Deeds means the land register maintained under the *Conveyancing Act 1919* (NSW) and so titled.

GST means any form of goods and services tax payable under the GST Legislation.

GST Legislation means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Law means the relevant requirements of all statutes, rules, ordinances, codes, policies, regulations, proclamations, by-laws or consents issued by an Authority, present or future, including applicable principles of common law.

Land means the land described in **Schedule 3** and shown in **Annexure 1**.

Notional Value means the notional value of ascribed to a Development Contribution Item as specified in column 2 of the Development Contribution Table.

Planning Agreement means this Deed as and when it becomes operative as a planning agreement pursuant to clause 2.1(b).

Real Property Act means the *Real Property Act 1900* (NSW).

Register means the Torrens title register maintained under the Real Property Act.

Registered Land is defined in **clause 1** of **Schedule 7**.

Regulation means the *Environmental Planning and Assessment Regulation 2000* (NSW).

Relevant Lot is defined in clause 5.3.

Relevant Occupation Certificate is defined in clause 2.4(c).

Residential Plan is defined in clause 4(b) of Schedule 4.

Service Easements means easements for services and drainage which are noted on the Subdivision Plan.

Subdivision Certificate has the same meaning as in the Act.

Subdivision Plan means any plan of subdivision approved by the Council which creates separate lots for the Contribution Land.

Transfer 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; and
- (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.

2 Operation and application of this Deed

2.1 Operation

- (a) Until the Planning Agreement operates pursuant to paragraph (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 an from the later of:
 - (i) the date on which the Development Consent is granted; 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 When does this Planning Agreement cease to apply?

- (a) The parties acknowledge and agree that notwithstanding any removal of this Planning Agreement from the title of an Allotment in accordance with clause 5.3:
 - (i) the Planning Agreement continues to apply to a Relevant Lot notwithstanding that the Planning Agreement has been removed from the title of that Relevant Lot in accordance with clause 5.3; and
 - (ii) the Planning Agreement ceases to apply to a Relevant Lot only as set out in this clause 2.4.
- (b) The parties acknowledge and agree that nothing in this clause 2.4 varies the liability of the Developer to pay Contribution Amounts as set out in Schedule 4.
- (c) For the purpose of this clause 2.4 a **Relevant Occupation Certificate** is the first occupation certificate issued for a Dwelling, or Dwellings, on the Relevant Lot.
- (d) The parties acknowledge and agree that the Planning Agreement ceases to apply to any Relevant Allotment when the Developer has satisfied its obligations under the Planning Agreement with respect to the Dwellings on that Allotment which are the subject of a Relevant Occupation Certificate.

- (e) 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 and 7.12 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 the VPA 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 the Planning Agreement.

2.5 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

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

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 and Schedule 7.

5 Registration on title

5.1 Land ownership

The Developer represents and warrants that it is legally and beneficially entitled to the Land and will do all things necessary to comply with its obligations under **clause 5.2**.

5.2 Registration of Deed

- (a) As contemplated by section 7.6 of the Act, the Developer agrees 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 5.2**.

5.3 Release and discharge of Deed

- (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 1.1 of Schedule 4, in accordance with the procedure for payment set out in clause 4 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 to be released and discharged from this Planning Agreement in accordance with **clause 5.3(a)** may 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 5.3:
 - (i) only has the effect of releasing this Deed from the title of the Relevant Lot; and
 - (ii) subject to clause 12.1, that Relevant Lot remains subject to the provisions of this Deed, and in particular the provisions of Schedule 4.

6 Security

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

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

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

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 his 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

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

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

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.

13 General Provisions

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

In the case of ambiguity, 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) The Developer must meet the reasonable legal costs and disbursements incurred by Council 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	
Planning instrument and/or development application - (section 7.4(1))			
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)	Yes
Description of land to which this Deed applies - (section 7.4(3)(a))		See Schedule 3	
Description of change to the environmental planning instrument to which this Deed applies - (section 7.4(3)(b)(i))		N/A	
The scope, timing and manner of delivery of contribution required by this Deed - (section 7.4(3)(c))		See Schedule 4.	
Applicability of sections 7.11 and 7.12 of the Act - (section 7.4(3)(d))		The application of section 7.11 and 7.12 of the Act is excluded in respect of the Development.	
Applicability of section 7.24 of the Act - (section 7.4 (3)(d))		The application of section 7.24 of the Act is not excluded in respect of the Development.	
Consideration of benefits under this Deed if section 7.11 applies - (section 7.4(3)(e))		Yes	
Mechanism for Dispute Resolution - (section 7.4(3)(f))		See clause 7.	
Enforcement of this Deed - (section 7.4(3)(g))		See clause 6.	
No obligation to grant consent or exercise functions - (section 7.4(9))		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 Avenue
Shellharbour City Centre NSW 2529

Facsimile No: (02) 4221 6016

Email address: council@shellharbour.nsw.gov.au

2 Developer

RBWI Pty Ltd

Contact: Paul Nichols for RBWI Pty Ltd

Address: Level 2, 128-134 Crown Street, Wollongong NSW 2500

Facsimile No: n/a

Email address paulnichols28@gmail.com

Schedule 3
Land

Lot	Deposited Plan
102	DP1249814
Lot 1	DP1276130 , being the plan contained in Annexure 1.
Lot 2	DP1276130 , being the plan contained in Annexure 1.
Lot 4	DP1276130 , being the plan contained in Annexure 1.

Schedule 4

Development Contributions (clause 4)

1 Development Contribution Table

1.1 Development Contributions Table

1. Development Contribution Item	2. Manner of Delivery	3. Timing
Albion Park Library Upgrade	<p>Contribution Amount:</p> <p>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>Contribution Amount to be paid by the Developer to Council:</p> <p>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> <p>2 the time specified in the Contributions Plan from time to time; or</p> <p>3 such time as the needs generated by the Development are likely to require the provision of the Albion Park Library Upgrade,</p> <p>whichever occurs first.</p>
<p>Local Roads</p> <p>Albion Park Bypass [TMAP 14; 15; 16 & 30]</p>	<p>Contribution Amount to be paid by the Developer to Council:</p> <p>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 Park By-Pass is operational by:</p>

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

1.2 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 the information provided by the Developer.
- (b) If the Council does not make a determination within 10 Business Days of receipt of the relevant information from the Developer, the Anticipated Dwelling Yield will be the number of Dwellings indicated in the information provided by the Developer referred to in paragraph (a).

2 Register of Allotments and Dwellings

Council may:

- (a) maintain a register of the number of Allotments for which it has issued a Subdivision Certificate in the CUDP; and/or
- (b) maintain a register of the number of Dwellings for which a first Occupation Certificate has been issued in the CUDP,

and may provide information from that register to the Developer for the purpose of the administration of this Planning Agreement within a reasonable time of a request being made by the Developer.

The Developer acknowledges and agrees that Council does not provide any warranty as to the accuracy of any information provided to the Developer under this clause 3 or that any such information will be provided within the time required by the Developer.

3 Increase in Contribution Amount

- (a) Any amount:
specified as a Contribution per Dwelling Amount in clause 4 of 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 the CPI published for the June 2014 quarter.

4 Payment of Contribution Amounts identified in clause 1 of Schedule 4

- (a) The Developer must pay the Contribution Amounts identified in clause 1.1 of this Schedule 4 in accordance with this **clause 4 of Schedule 4**.
- (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, and may be compromised of a number of stages.
- (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 a Subdivision Certificate in respect of a Residential Plan, the Developer must pay:
- (i) any Contribution Amount due and payable under the Planning Agreement that has not been paid at that time; and
 - (ii) a Contribution Amount being the relevant cumulative "Contributions per CUDP Dwelling" for the Anticipated Dwelling Yield for the relevant Residential Plan as determined in accordance with the table set out below:

Number of CUDP Dwellings	Contribution per Dwelling
Where the relevant Dwelling is within the first 1,000 CUDP Dwellings (0-1,000 CUDP Dwellings)	\$3,310
Where the relevant Dwelling is within the 1,001 st CUDP Dwelling and the 2,000 th CUDP Dwelling (1,001 – 2,000 CUDP Dwellings)	\$3,710
Where the relevant Dwelling is within the 2,001 st CUDP Dwelling and the 3,000 th CUDP Dwelling (2,001 – 3,000 CUDP Dwellings)	\$4,110
Where the relevant Dwelling is within the 3,001 st CUDP Dwelling and the 4,000 th CUDP Dwelling (3,001 – 4,000 CUDP Dwellings)	\$4,510
Where the relevant Dwelling is the 4,001 st CUDP Dwelling or greater	\$4,810

- (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 each of the following events:
- (i) every six (6) months following the issue of the first subdivision certification in relation to the Land; and

- (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 the number of Dwellings on the Land that have been completed and occupied at the relevant 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(c) 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 for each Dwelling on the Land that has been completed at the relevant time.
- (h) For the avoidance of doubt, compliance with this **clause 4** of this **Schedule 4** will satisfy the Developer's obligations to make all Development Contributions identified in clause 1.1 of **Schedule 4** with respect to the first Occupancy Certificate for any allotment created on the Land, and not for any further Occupancy Certificates that may be issued subsequent to the first Occupancy Certificate

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; or
 - (ii) within the CUDP in a manner consented to in writing by the Developer; 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**.
- (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** 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 7** 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.

Schedule 5 – NOT USED

Schedule 6 – NOT USED

Schedule 7

Bank Guarantee (clause 6.1)

1 Bank Guarantee

Prior to the issue of a 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 2 of this Schedule 7 as security for the payment of the Contribution Amount payable to Council after the issue of that Subdivision Certificate.

2 Determining Bank Guarantee amount

For the purposes of this Schedule 7, the amount of the Bank Guarantee required to be provided under clause 1 of Schedule 7 will be determined by Council acting reasonably but in any event will not be more than 50% of the Contribution Amount required to be paid in accordance with clause 4 of Schedule 4 for the final stage of the Development.

3 Council may call on Bank Guarantee

(a) If the Developer:

(i) does not pay a Contribution Amount payable by it under the Planning Agreement;
or

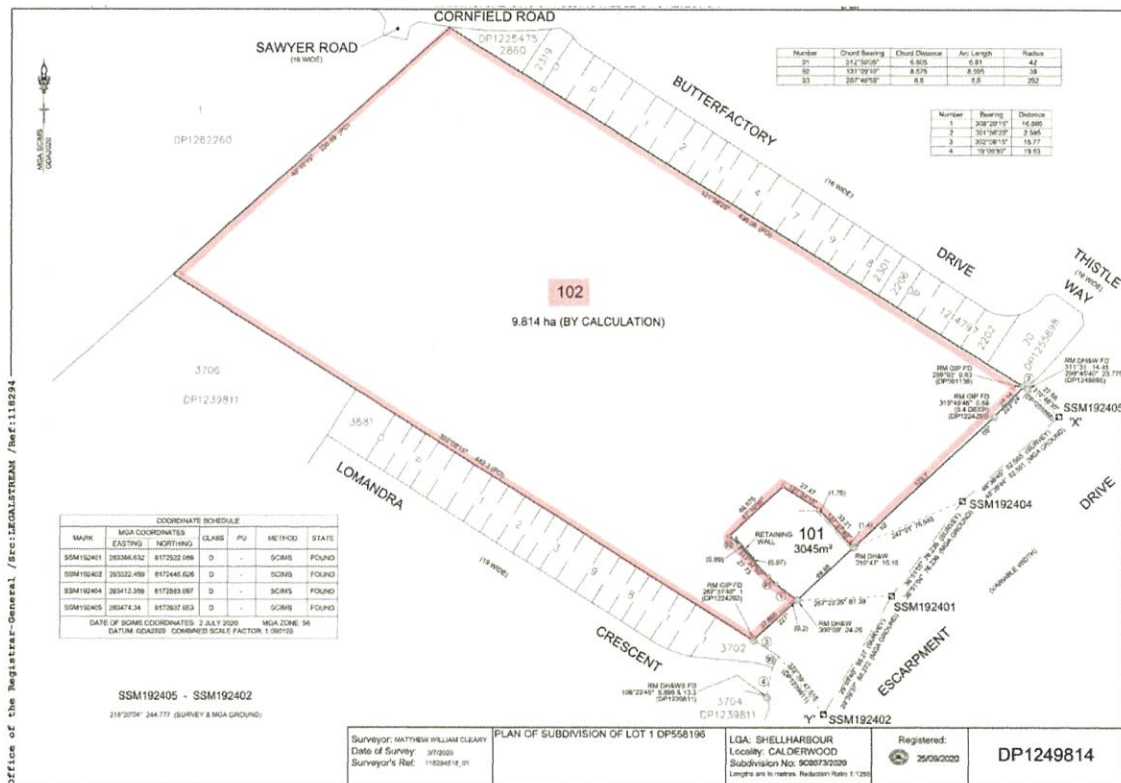
(ii) otherwise breaches the Planning Agreement.

then without limiting any other remedies available to it, Council may call on the Bank Guarantee provided by the Developer to meet any such requirement.

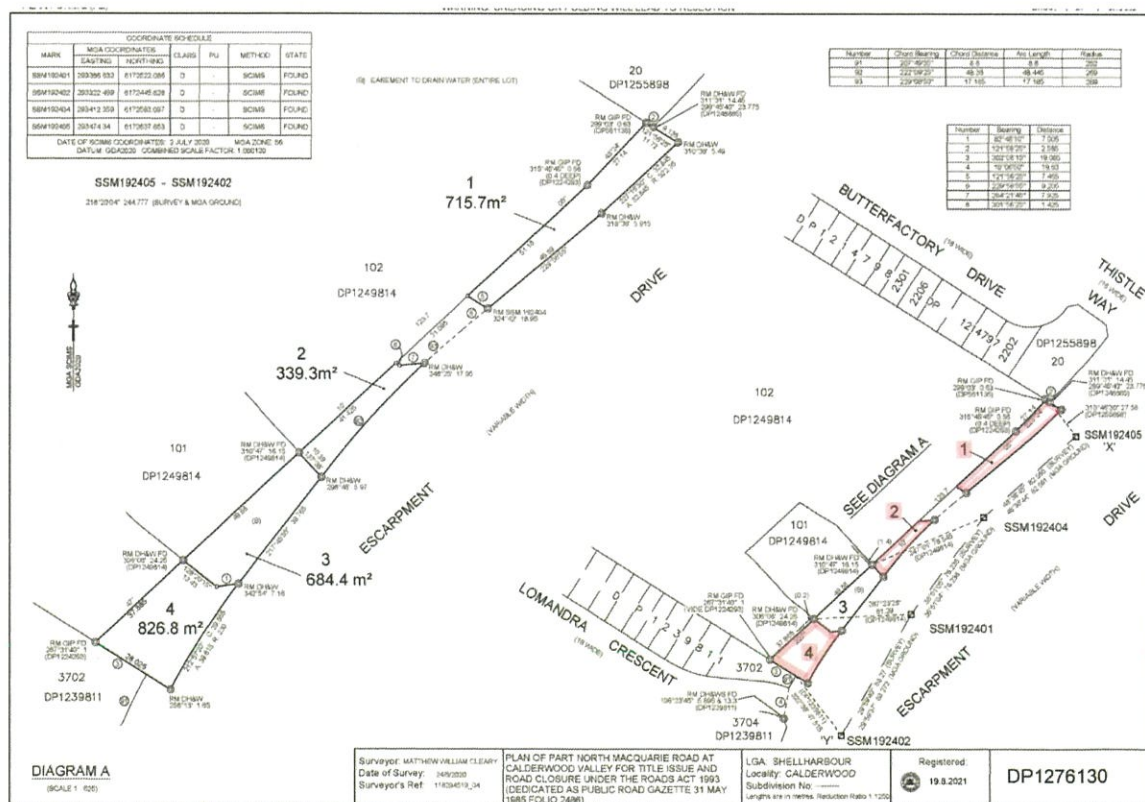
(b) If Council calls on the Bank Guarantee, Council, by notice in writing to the Developer, may require the Developer to provide a further or replacement Bank Guarantee in an amount that, when added to any unused portion of any Bank Guarantee then held by Council, does not exceed the amount of the Bank Guarantee Council is entitled to hold at that time under this **Schedule 7**.

Annexure 1 Applicable Area

Lot 102 DP1249814



and Proposed Lots 1, 2 and 4 in Draft Road Closure Plan:



EXECUTED as a Deed

~~The Common Seal of the Council of~~
Shellharbour City was hereto affixed on
day of 2021
pursuant to resolution no made on
day of 2021:

SHELLHARBOUR COUNCIL


Flora Lepouras
Chief Executive Officer


Mayor

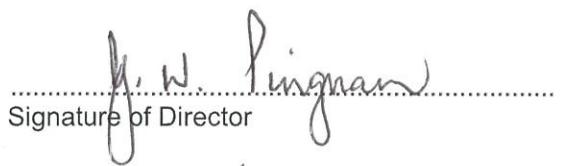
Print Name

Print Name

Signed, sealed and delivered as a deed in
accordance with section 127 of the
Corporations Act by **RBWI Pty Ltd ACN 610
758 337**

Signature of Director

Name of Director


GERARD WILLIAM PING-NAN

Signature of Director/Secretary

Name of Director/Secretary


SCOTT ANDREW BAODIE