
Voluntary Planning Agreement

Entry Point Housing – [address]

Wagga Wagga City Council

[Developer]

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Parties

- 1 **Wagga Wagga City Council** ABN 56 044 159 537 of 243 Baylis Street, Wagga Wagga, NSW 2650 (**Council**)
- 2 **[Developer]** ABN **[insert]** of **[address]** (**Developer**)

Background

- A The Developer offers to enter into this document with Council for the provision of Entry Point Housing in connection with the Development of the Land, a material public benefit in accordance with section 7.4 of the Act.
- B To facilitate the Development and satisfy the requirements of clause **[XX]** of the LEP, the Parties have agreed to enter into this document to specify the arrangements for Entry Point Housing.

Agreed terms

1 Definitions and interpretation

1.1 Definitions

Terms used in this document have the following meanings:

Act	The <i>Environmental Planning and Assessment Act 1979</i> (NSW).
Business Day	A day on which banks are open for business generally in Sydney, and which is not a Saturday, Sunday or bank or public holiday in Sydney and specifically excluding 27, 28, 29, 30 and 31 December.
CPI	The Consumer Price Index (All Groups – Sydney) published by the Australian Bureau of Statistics.
Development	The development of the Land for including Entry Point Housing [, as described in Development Application [insert DA reference] – To be included if a DA has been lodged].
Development Application	Has the meaning given to that expression in the Act and means, for the purpose of this document, an application for Development Consent to carry out the Development.
Development Consent	Has the meaning given to that expression in the Act.
Dwelling	Has the meaning given to that expression in the Act.
Eligible Purchaser	A person or persons, being an individual and not any company or corporation (incorporated or otherwise), who intends to purchase a Dwelling the subject of this document and provides evidence by way of Statutory Declaration to the Developer that they:

	(a) live, work, and/or intend to live and/or work in the Wagga Wagga Local Government Area; (b) intend to use the Dwelling as their principal place of residence; and (c) do not own either individually or with another person any real property in NSW.
Entry Point Housing	Has the meaning given to that expression in the LEP and means, for the purpose of this document, each Dwelling in the Development.
Entry Point Price	A purchase price for a Dwelling the subject of this document that is not greater than \$[insert], being an amount that Council agrees is suitable for an Eligible Purchaser. [If there is more than one Dwelling in the Development and they are to be sold at different prices, this definition can be adjusted to list the agreed price for each Dwelling]
Entry Point Purchaser	Has the meaning given to that expression in clause 5(c) .
Land	[insert folio identifier(s) of all land to which the Development relates].
Lease	(a) A residential tenancy agreement within the meaning given to that expression in the <i>Residential Tenancies Act 2010</i> (NSW); (b) a short-term rental accommodation arrangement within the meaning given to that expression in the <i>Fair Trading Act 1987</i> (NSW); and (c) any arrangement, including an informal dealing, that is similar to the arrangements in (a) and (b).
LEP	The <i>Wagga Wagga Local Environmental Plan 2010</i> (NSW).
Occupation Certificate	Has the meaning given to that expression in the Act.
Party	A party to this document, including their successors and assigns.
Prescribed Period	A period commencing on the date of this document which ends 10 years after the issue of an Occupation Certificate for an Entry Point Housing Dwelling.
Regulation	The <i>Environmental Planning and Assessment Regulation 2021</i> (NSW).
Restricted Sale Period	A period commencing on the date of this document which ends 2 years after the issue of an Occupation Certificate for an Entry Point Housing Dwelling.
Statutory Declaration	A declaration in the form at Schedule 2 given in the presence of an authorised witness and signed by that witness in accordance with the <i>Oaths Act 1900</i> (NSW).

1.2 Interpretation

In this document, unless the context clearly indicates otherwise:

- (a) a reference to 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;
- (b) the singular includes the plural and vice versa;
- (c) the word “person” includes a firm, a body corporate, an unincorporated association or an authority;
- (d) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including, without limitation, persons taking by novation) and assigns;
- (e) a reference to anything (including, without limitation, any amount) is a reference to the whole and each part of it and a reference to a group of persons is a reference to all of them collectively, to any two or more of them collectively and to each of them individually;
- (f) “include” or “including” when introducing a list of items does not limit the meaning of the words to which the list relates to those items or to items of a similar kind;
- (g) a reference to a body, whether statutory or not which ceases to exist or whose powers or functions are transferred to another body is a reference to the body which replaces it or which substantially succeeds to its powers or functions;
- (h) no rule of construction applies to the disadvantage of a Party because that Party was responsible for the preparation of this document;
- (i) any capitalised term used, but not defined in this document, will have the meaning ascribed to it under, and by virtue of, the Act;
- (j) headings are inserted for convenience only and do not affect the interpretation of this document;
- (k) if the day on which any act, matter or thing is to be done under this document is not a Business Day, the act, matter or thing must be done on the next Business Day;
- (l) a reference in this document to dollars or \$ means Australian dollars and all amounts payable under this document are payable in Australian dollars;
- (m) a reference in this document to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced; and
- (n) a reference to a clause, part schedule or attachment is a reference to a clause, part, schedule or attachment of or to this document.

2 Planning agreement under the Act

- (a) The Parties agree that this document is a planning agreement within the meaning of section 7.4 of the Act.
- (b) **Schedule 1** of this document summarises the requirements for planning agreements under section 7.4 of the Act and the ways in which this document addresses those requirements.

3 Application of this document

This document applies to the Land and the Development.

4 Commencement

This document operates and is effective and binding on the Parties on the later of:

- (a) the date the Parties execute the document; and
- (b) Development Consent is granted for the Development.

5 Delivery of Entry Point Housing

- (a) Prior to the issue of an Occupation Certificate for the Development, the Developer must construct, finish and fit out the Entry Point Housing in accordance with this agreement and any applicable Development Consent.
- (b) The Developer must not sell a Dwelling in the Development:
 - (i) to any person other than an Eligible Purchaser; and
 - (ii) for an amount that is greater than the Entry Point Price, during the Prescribed Period.
- (c) **Clause 6** restricts the ability of an Eligible Purchaser that purchases a Dwelling the subject of this document (Entry Point Purchaser) to deal with that Dwelling.

6 Restrictions that apply to an Entry Point Purchaser

- (a) An Entry Point Purchaser may not Lease the Dwelling during the Prescribed Period.
- (b) An Entry Point Purchaser must not sell or otherwise dispose of the Dwelling during the Prescribed Period to any person other than an Eligible Purchaser.
- (c) An Entry Point Purchaser must not sell or otherwise dispose of the Dwelling to any person other than an Eligible Purchaser during the Restricted Sale Period unless:
 - (i) Dwelling is sold for an amount that is less than or equal to the Entry Point Price plus CPI, indexed from the date that the Dwelling was purchased by the Entry Point Purchaser; or
 - (ii) Entry Point Purchaser obtains the prior written consent of Council, which must not be unreasonably withheld where the Entry Point Purchaser demonstrates financial hardship.

7 Application of s7.11, s7.12 and Division 7.1, Subdivision 4 of the Act

- (a) This document does not exclude the application of sections 7.11 and 7.12 of the Act to the Land or the Development.

- (b) This document does not exclude the application of Division 7.1, Subdivision 4 of the Act to the Land or the Development.

8 Registration

- (a) The Parties agree to register this document for the purposes of section 7.6(1) of the Act.
- (b) Within 20 Business Days of the document commencing, the Developer must deliver to Council in registrable form:
 - (i) an instrument requesting registration of this document on the title to the Land duly signed by the Developer or, if the Developer is not the registered proprietor of the Land, the registered proprietor; and
 - (ii) the written irrevocable consent of each person referred to in section 7.6(1) of the Act to that registration.
- (c) Upon receipt of the instrument referred to in **clause 8(b)(i)** signed by Council, the Developer must do all things as are reasonably necessary to enable registration of this document to occur as soon as practicable.
- (d) The Parties are to do such things as are reasonably necessary to remove any notation relating to this document from the title to the Land (or part thereof) following the expiration of the Prescribed Period for a Dwelling.

9 Caveat

- (a) The Developer acknowledges and agrees that:
 - (i) when this document is executed, the Council is deemed to have acquired an equitable estate and interest in the Land for the purposes of section 74F(1) of the *Real Property Act 1900* (NSW) and consequently the Council will have a sufficient interest in the Land in respect of which to lodge a caveat over the Land notifying that interest; and
 - (ii) it will not object and, if the Developer is not the registered proprietor of the Land, will procure that the registered proprietor does not object, to the Council lodging a caveat in the relevant folios of the Register for the Land nor will it seek to remove any caveat lodged by the Council provided the caveat does not prevent registration of any dealing or plan other than a transfer.
- (b) The Council must lodge for registration a withdrawal of any caveat in respect of the Land (or part thereof) as soon as practicable after it is notified, and provided with evidence to confirm, that the Prescribed Period has expired for a Dwelling.

10 Assignment and dealings

- (a) The Developer may not sell, transfer, assign or novate or similarly deal with its right, title or interest in the Land (if any), or rights or obligations under the terms of this document, or allow any interest in them to arise or be varied, in each case, without Council's consent and unless, prior to any such sale, transfer, assignment, charge, encumbrance or novation, the Developer:

- (i) at no cost to Council, first procures the execution by that person of an agreement in favour of Council by which that person agrees to be bound by this document as if they were a party to the original document;
 - (ii) satisfies Council that the purchaser, transferee, assignee or novatee, is reasonably capable of performing its obligations under this document; and
 - (iii) satisfies Council that the Developer is not in material breach of this document.
- (b) **Clause** □10(a) does not apply to:
- (i) a sale to an Eligible Purchaser in accordance with this document; or
 - (ii) an Entry Point Purchaser (to whom **clause 6** applies).

11 Dispute Resolution

11.1 Dispute

- (a) If any dispute arises out of this document (Dispute), the Parties must resolve the Dispute in accordance with this **clause** □11.
- (b) A Party to this document must not commence any court or arbitration proceedings, except where a Party seeks urgent interlocutory relief, without having first complied with this **clause** □11.
- (c) Any referral or undertaking of the dispute resolution process in this **clause** □11 does not suspend any other obligations of the Parties under this document.

11.2 Notice of Dispute

A Party claiming that a Dispute has arisen must give notice to the other Party specifying the nature of the Dispute.

11.3 Representatives to meet

- (a) Representatives of the Parties must meet promptly (and in any event within 10 Business Days of receipt of a notice) and attempt in good faith to resolve the Dispute.
- (b) The Parties may, without limitation:
 - (i) resolve the Dispute during the course of that meeting;
 - (ii) agree that further material or consideration is needed to effectively resolve the Dispute (in which event the Parties will, in good faith, agree to a timetable for resolution); or
 - (iii) agree that the Parties are unlikely to resolve the Dispute and, in good faith, agree to a form of alternative dispute resolution (including expert determination, arbitration or mediation) which is appropriate for the resolution of the Dispute.

12 Notices

12.1 Delivery

Any notice, consent, information, application or request that must or may be given or made to a Party under this document is only given or made if it is in writing and sent in one of the following ways:

- (a) delivered or posted to that Party at its address set out below; or
- (b) emailed to that Party at its email address set out below.

Wagga Wagga City Council

Attention: General Manager
Address: Wagga Wagga City Council
243 Baylis Street
Wagga Wagga NSW 2650
Phone Number: 1300 292 442
Email Address: council@wagga.nsw.gov.au

Developer

Attention: [insert]
Address: [insert]
Phone Number: [insert]
Email Address: [insert]

12.2 Change of details

If a Party gives the other Party 10 Business Days' notice of a change of its address or email address, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or electronically sent to the latest address or email address.

12.3 Giving of notice

Subject to **clause** ☐ **12.4**, any notice, consent, invoice, information, application or request is to be treated as given or made at the following time:

- (a) if it is delivered by process server, when it is served at the relevant address; or
- (b) if it is sent by registered post, seven Business Days after it is posted; or
- (c) if it is sent by email, as soon as the email has been sent to the correct email address and the recipient has received the email without error.

12.4 Delivery outside of business hours

If any notice, consent, information, application or request is delivered on a day that is not a Business Day, or if on a Business Day, after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next Business Day.

13 General

13.1 Legal Costs

The Developer agrees to pay Council's reasonable costs associated with reviewing, preparing, negotiating, amending, executing and stamping this document and any document related to this document.

13.2 Entire Agreement

This document constitutes the entire agreement of the Parties about its subject matter and supersedes all previous agreements, understandings and negotiations on that subject matter.

13.3 Further Acts

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

13.4 Governing law and jurisdiction

This document is governed by the law of New South Wales. The Parties submit to the non-exclusive jurisdiction of its Courts and Courts of appeal. The Parties will not object to the exercise of jurisdiction by those Courts on any basis.

13.5 No Fetter

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

13.6 Representations and warranties

The Parties represent and warrant that they have power to enter into this document and comply with their obligations under this document and that entry into this document will not result in the breach of any law.

13.7 Severability

- (a) If a clause or part of a clause of this document can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way.
- (b) If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this document, but the rest of this document is not affected.

13.8 Modification

No modification of this document will be of any force or effect unless it is in writing and signed by the Parties to this document and is in accordance with the provisions of the Act.

13.9 Waiver

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

- (d) A single or partial exercise or waiver by a Party of a right relating to this document does not prevent any other exercise of that right or the exercise of any other right.
- (e) A Party is not liable for any loss, cost or expense of any other Party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

13.10 Relationship of Parties

This document is not intended to create a partnership, joint venture or agency relationship between Council and the Developer.

13.11 Further Steps

Each Party must promptly do whatever any other Party reasonably requires of it to give effect to this document and to perform its obligations under it.

13.12 Explanatory Note

The explanatory note prepared in connection with this document pursuant to the Regulation is not to be used to interpret this document. ***[To be prepared by Council prior to public exhibition of this document.]***

13.13 Counterparts

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

13.14 Rights cumulative

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

Schedule 1 - Section 7.4 Requirements

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

Table 1 – Requirements under section 7.4 of the Act

Requirement under the Act	This document
Planning instrument and/or development application – (section 7.4(1)) The Developer has:	
(a) sought a change to an environmental planning instrument.	No
(b) made, or proposes to make, a Development Application.	[Yes/No]
(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.	[Yes/No]
Description of land to which this document applies – (section 7.4(3)(a))	The Land as defined in clause 1.1 .
Description of development to which this document applies – (section 7.4(3)(b))	The Development as defined in clause 1.1 .
The scope, timing and manner of delivery of the provision required by this document – (section 7.4(3)(c))	See clause □5 .
Applicability of sections 7.11 and 7.12 of the Act – (section 7.4(3)(d))	Not excluded.
Applicability of Division 7.1, Subdivision 4 of the Act – (section 7.4(3)(d))	Not excluded.
Consideration of benefits under this document if section 7.11 applies – (section 7.4(3)(e))	Not applicable.
Mechanism for dispute resolution – (section 7.4(3)(f))	See clause □10 .
Enforcement of this document – (section 7.4(3)(g))	See clauses □8 and □9 .
No obligation to grant consent or exercise functions – (section 7.4(10))	See clause □13.5 .

Schedule 2 - Statutory Declaration

DRAFT

Statutory Declaration

OATHS ACT 1900, NSW, EIGHTH SCHEDULE

I, _____, do solemnly and sincerely declare that
[name of declarant]

I am eligible to purchase an Entry Point Housing dwelling, based on the information set out in this declaration. Notably, I declare that I: [* please cross out any text that does not apply]

- live at [insert residential address, being a location in the Wagga Wagga Local Government Area]
- work at [insert company name and address, being a location in the Wagga Wagga Local Government Area]
- intend to live and/or work at [insert residential and/or company address, being a location(s) in the Wagga Wagga Local Government Area].

I declare further that, upon the purchase of an Entry Point Housing dwelling, I intend to reside at that dwelling as my principal place of residence.

I declare further that, I do not own, either individually or with another person, any real property in the State of NSW, and I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the *Oaths Act 1900*.

Declared at: _____ on _____
[place] [date]

[signature of declarant]

in the presence of an authorised witness, who states:

I, _____, a _____
[name of authorised witness] [qualification of authorised witness]

certify the following matters concerning the making of this statutory declaration by the person who made it: [* please cross out any text that does not apply]

1. *I saw the face of the person OR *I did not see the face of the person because the person was wearing a face covering, but I am satisfied that the person had a special justification¹ for not removing the covering, and

2. *I have known the person for at least 12 months OR *I have confirmed the person's identity using an identification document and the document I relied on was

[describe identification document relied on]

[signature of authorised witness]

[date]

¹ The only "special justification" for not removing a face covering is a legitimate medical reason (at September 2018)

Execution

Executed as a deed.

The Common Seal of **Wagga Wagga City Council** was affixed on [insert date] pursuant to clause 400 of the *Local Government (General) Regulation 2021* (NSW):

.....
Mayor

.....
General Manager

.....
Name of Mayor (print)

.....
Name of General Manager (print)

Executed by [Developer] ABN [insert] in accordance with section 127(1) of the *Corporations Act 2001* (Cth):

.....
Company Secretary/Director

.....
Director

.....
Name of Company Secretary/Director (print)

.....
Name of Director (print)