

LD4069
GREAT LAKES COUNCIL

13 DEC 2012

RECEIVED RECORDS

Peter W Lean Pty Ltd

ABN 830 924 596 51

PO Box 746 Concord NSW 2137

Phone: 0418 272 110

Email: peterl@ip.net.au

Fax: 8757 3086

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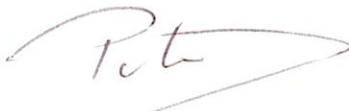
Mr Roger Busby
Great Lakes Council
PO Box 450
Forster 2428

Dear Roger

Re; Planning Agreement for Durness.

Please find enclosed one copy of the agreement duly signed by David Fuller. I will now arrange for Marsdens to progress the document through the bank for the production of title, and then to the LPI. Question – in regard to notification on title, I recall that with regard to the Durness – Borland VPA, this can be lodged and it will sit until a title is lodged. Is the Agreement in the same boat?

Yours sincerely,



Peter W Lean.

SCANNED RECORDS

Planning Agreement

North Shearwater

Great Lakes Council (ABN 60 343 393 217) (**Council**)

Wolin Investments Pty Limited (ABN 32 001 473 650) (**Developer**)

Prepared by:

Marsdens Law Group

Level 1
49 Dumaresq Street
CAMPBELLTOWN NSW 2560

Tel: (02) 4626 5077

Fax: (02) 4626 4826

DX: 5107 Campbelltown

Ref: 65 35 4842



Table of Contents

Parties	1
Background.....	1
Operative Provisions	1
1 Agreement.....	1
2 Definitions and interpretation.....	1
2.1 Defined terms.....	1
2.2 Interpretation.....	1
3 Application and operation of agreement.....	2
3.1 Planning Agreement.....	2
3.2 Application	2
3.3 Operation of document.....	2
4 Application of s94 and s94A.....	2
4.1 Application	2
4.2 Consideration of Benefits.....	2
5 Registration of this document.....	2
5.1 Registration.....	2
5.2 Obligations of the Developer	2
5.3 Staged release of this agreement from the title of the Land.....	3
6 Provision of Contributions	3
6.1 Designated Land	3
6.2 Works	3
6.3 Monetary Contribution.....	3
6.4 Indexation of Amounts payable by Developer	4
7 Completion of Works	4
7.1 Issue of Completion Notice.....	4
7.2 Notice by Council	4
7.3 Deemed Completion.....	5
7.4 Effect of Council notice.....	5
7.5 New Completion Notice.....	5
8 Access to land.....	5
8.1 Application of clause	5
8.2 Terms of licence.....	5
9 Warranties and indemnities.....	6
9.1 Warranties.....	6
9.2 Indemnity	6
10 Determination of this document.....	6
10.1 Determination.....	6
10.2 Effect of determination.....	6
11 Dispute resolution.....	6
11.1 Notice of dispute	6
11.2 Conduct pending resolution	7
11.3 Further steps required before proceedings	7
11.4 Disputes for mediation.....	7
11.5 Mediation	7
11.6 Other courses of action	7
11.7 Remedies available under the Act	7
11.8 Urgent relief	7
12 Default in performance	7
12.1 Events of default	7
12.2 Consequences of Events of default	7
12.3 No restriction on rights.....	8
13 Security & enforcement.....	8
13.1 Compulsory acquisition of the Designated Land.....	8
13.2 Security for the Works & Monetary Contributions	8
13.3 Council may call on Security.....	8
13.4 Other security.....	9
13.5 Top up of Security	9
14 Assignment	9
14.1 Restriction on Assignment.....	9

	14.2 Procedure for Assignment	9
15	Position of Council	10
	15.1 Consent authority	10
	15.2 Document does not fetter discretion	10
	15.3 Severance of provisions	10
	15.4 No obligations	10
16	Confidentiality	10
	16.1 Document not Confidential	10
	16.2 Other Confidential Information	11
17	GST	11
	17.1 Defined GST Terms	11
	17.2 GST to be added to amounts payable.....	11
	17.3 GST obligations to survive termination.....	11
18	Miscellaneous	12
	18.1 Obligation to act in good faith	12
	18.2 Legal costs.....	12
19	Administrative provisions	12
	19.1 Notices.....	12
	19.2 Entire agreement.....	13
	19.3 Waiver	13
	19.4 Cooperation	13
	19.5 Counterparts	13
	19.6 Unenforceability	13
	19.7 Power of Attorney.....	13
	19.8 Governing law.....	13
	Schedule 1: Defined terms and interpretation.....	14
	Part 1 – Definitions.....	14
	Part 2 - Interpretational Rules.....	16
	Schedule 2: Requirements under section 93F of the Act.....	18
	Schedule 3: Designated Land.....	19
	Schedule 4: Pre-development phase Works.....	20
	Schedule 5: Monetary Contribution	21
	Schedule 6 Terms of Licence	22
1	Definitions	22
2	Licence	22
	2.1 Personal rights	22
	2.2 Leasehold interest.....	22
3	Compliance with Authorities	22
	3.1 No warranty as to suitability for use	22
	3.2 Compliance with the terms of the consents	23
	3.3 Compliance with directions from Authorities.....	23
	3.4 Obtaining further consents.....	23
4	Limitation of the Licensor's liability.....	23
	4.1 Insurances	23
	4.2 Inspection of insurance.....	23
	4.3 Cancellation of insurance	24
	4.4 Risk.....	24
	4.5 Indemnity	24
	Annexure 1: Plan of Designated Land	25
	Annexure 2: Staging Plan.....	27
	Execution page	28

Planning Agreement

North Shearwater

Parties

Council	Name	Great Lakes Council
	Address	Breese Parade FORSTER NSW 2428
	ABN	60 343 393 217
Developer	Name	Wolin Investments Pty Limited
	Address	23 Graham Hill Road NARELLAN NSW 2567
	ABN	32 001 473 650

Background

- A** The Developer is the registered proprietor of the Land.
- B** The Developer has sought the Instrument Change so as to make the Rezoning for the purpose of lodging the Development Application.
- C** The Developer has offered to provide the Contributions if the Rezoning is made and the Development Consent is granted.

Operative Provisions

1 Agreement

The agreement of the parties is set out in the Operative Provisions of this document, in consideration of, among other things, the mutual promises contained in this document.

2 Definitions and interpretation

2.1 Defined terms

In this document, words beginning with a capital letter that are defined in Part 1 of **Schedule 1** have the meaning ascribed to them in that schedule.

2.2 Interpretation

The interpretational rules contained in Part 2 of **Schedule 1** apply in the interpretation of this document.

3 Application and operation of agreement

3.1 Planning Agreement

This document is a planning agreement:

- (1) within the meaning set out in s93F of the Act; and
- (2) governed by Subdivision 2 of Division 6 of Part 4 of the Act.

3.2 Application

This document applies to both the Land and the Development.

3.3 Operation of document

- (1) Subject to paragraphs (2) and (3), this document operates from the date it is executed by both parties.
- (2) Clause 5 will only operate if and when the Rezoning is made.
- (3) The clauses 6 to 8 (inclusive) will only operate if and when Council grants the Development Consent.

4 Application of s94 and s94A

4.1 Application

This document does not exclude the application of section 94 or section 94A of the Act to the Development.

4.2 Consideration of Benefits

The Contributions that are carried out or provided pursuant to this document are not to be taken into consideration in determining a future development contribution imposed under section 94 of the Act.

5 Registration of this document

5.1 Registration

The Developer must do all things necessary to obtain registration of this document under section 93H of the Act by the Registrar-General such that on registration of this document, the Registrar-General will have made an entry in the relevant folio(s) of the Register kept under the Real Property Act 1900 in relation to the land.

5.2 Obligations of the Developer

The Developer must:

- (1) do all things necessary to allow the registration of this document to occur under clause 5.1, including but not limited to obtaining the consent of any mortgagee registered on the title of the Land; and
- (2) pay any reasonable costs incurred by Council in undertaking that registration.

5.3 Staged release of this agreement from the title of the Land

If requested by the Developer, Council will do all things necessary to release this document from the title of the Land upon which a Stage is being, or has been, undertaken if the Developer has complied with all of its obligations under this document concerning that Stage. For example, if the Developer has complied with all of its obligations under this document that specifically relate to Stage 1, the Council must do all things necessary to release this document from the Land comprised in Stage 1, but no other part of the Land.

6 Provision of Contributions

6.1 Designated Land

- (1) The Developer must dedicate the Designated Land to Council:
 - (a) free of any trusts, estates, interests, covenants and Encumbrances;
 - (b) by the time specified in **Schedule 3**; and
 - (c) at no cost to Council.
- (2) The Developer must meet all costs associated with the dedication of the Designated Land in accordance with paragraph (1), including any costs incurred by Council in relation to that dedication.
- (3) Council must do all things reasonably necessary to enable the Developer to comply with paragraph (1), including releasing this document from the title of the Designated Land.
- (4) Council accepts ownership, possession and control of, and risk in, the Designated Land upon the dedication of that land.

6.2 Works

The Developer at its discretion prior to the granting of the Development Consent, will:

- (1) if necessary, obtain any consents, approvals or permits required by a relevant Authority, for the conduct of the Works;
- (2) carry out and complete any Item of Work specified in **Schedule 4 – Pre-development phase works**;
- (3) carry out and complete the Works:
 - (a) in accordance with the RMP;
 - (b) in accordance with the reasonable requirements of Council; and
 - (c) in a proper and workmanlike manner complying with current industry practice and standards.

6.3 Monetary Contribution

- (1) If the Developer notifies Council in writing on or before the lodgement of any application for the Development Consent that it does not intend to undertake any Item of Work:
 - (a) the Developer is not required to Complete that Item of Work;

-
- (b) the Developer must make a Monetary Contribution to Council in the sum of the Contribution Value of that Item of Work in accordance with **Schedule 4 – Pre-development phase works**; and
 - (c) Council must use the relevant Monetary Contribution to carry out that Item of Work and in this regard paragraphs (3) and (4) apply to that work.
- (2) Subject to clause 6.4, the Developer must pay the Monetary Contribution described in, and by the time specified in, **Schedule 5**.
 - (3) The parties acknowledge and agree that the Monetary Contribution must be used by Council to carry out the restoration and maintenance works:
 - (a) within the lands specified in the RMP;
 - (b) in accordance with the RMP; and
 - (c) in a proper and workmanlike manner.
 - (4) The parties acknowledge and agree that Council may undertake the works referred to in paragraph (2) prior to the dedication of the Designated Land.

6.4 Indexation of Amounts payable by Developer

The Monetary Contribution is to be increased (with the calculation to be made as from the date any such amount is due to be paid under this document) in accordance with the following formula:

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

where:

- A** = the indexed amount;
- B** = the relevant amount as set out in this document;
- C** = the Index most recently published before the date that the relevant payment or the calculation with respect to the relevant amount is to be made; and
- D** = the Index most recently published before the commencement date of this document.

If **A** is less than **B**, then the amount of the relevant Monetary Contribution will not change.

7 Completion of Works

7.1 Issue of Completion Notice

If the Developer considers that an Item of Work carried out by it is complete it must serve a notice on Council within twenty-eight (28) days of completion of that item which:

- (1) is in writing; and
- (2) specifies the date on which the Developer believes the Works were Completed.

7.2 Notice by Council

Within twenty eight (28) days of the earlier of:

-
- (1) Council inspecting the Item of Work set out in a Completion Notice; and
 - (2) the receipt of the Completion Notice,

Council must provide notice in writing to the Developer that the relevant Item of Work:

- (3) has been Completed; or
- (4) has not been Completed, in which case the notice must also detail:
 - (a) those aspects of the Item of Work which have not been Completed; and
 - (b) the work Council requires the Developer to carry out in order to rectify those deficiencies.

7.3 Deemed Completion

If Council does not provide the Developer with notice within the time specified in clause 7.2, the Item of Work subject of a Completion Notice will be deemed to have been Completed on the date nominated in the Completion Notice.

7.4 Effect of Council notice

- (1) Where Council serves notice on the Developer pursuant to clause 7.2(4), the Developer must:
 - (a) rectify the deficiencies in that item in accordance with that notice within a reasonable time (not being less than fourteen (14) days from the date it is issued by Council); or
 - (b) serve a notice on Council that it disputes the matters set out in the notice.
- (2) Where the Developer:
 - (a) serves notice on Council in accordance with paragraph (1)(b) the dispute resolution provisions of this document apply; or
 - (b) rectifies the Works in accordance with paragraph (1)(a) it must serve upon Council a new Completion Notice for the Works it has rectified (**New Completion Notice**).

7.5 New Completion Notice

The provisions of clauses 7.1 to 7.4 (inclusive) apply to any New Completion Notice issued by the Developer.

8 Access to land

8.1 Application of clause

This clause 8 applies if a party accesses, uses and/or occupies any land owned by the other party in performing the obligations or exercising the rights of the first party under this document (**Necessary Access**).

8.2 Terms of licence

The terms of **Schedule 6** apply to any Necessary Access.

9 Warranties and indemnities

9.1 Warranties

The Developer warrants to Council that:

- (1) it is the legal and beneficial owner of the Land;
- (2) it is able to fully comply with its obligations under this document;
- (3) it has full capacity to enter into this document; and
- (4) there is no legal impediment to it entering into this document, or performing the obligations imposed under it.

9.2 Indemnity

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

10 Determination of this document

10.1 Determination

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

10.2 Effect of determination

Upon the determination of this document Council must:

- (1) do all things necessary to allow the Developer to remove this document from the title of the whole or any part of the Land as quickly as possible; and
- (2) immediately release any remaining Security held by it to the Developer.

11 Dispute resolution

11.1 Notice of dispute

- (1) 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.
- (2) 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 clauses 11.7 and 11.8 and except as otherwise expressly provided in this document, any Dispute, as a condition precedent to the commencement of litigation or mediation under clause 11.5, must first be referred to the Representatives. The Representatives must endeavour to resolve the dispute within five (5) Business Days of the date a notice under clause 11.1(2) is served.

11.4 Disputes for mediation

If the Representatives have not been able to resolve the Dispute, then the Dispute must be referred to mediation under clause 11.5.

11.5 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.

11.6 Other courses of action

If the mediation referred to in clause 11.5 has not resulted in settlement of the dispute, then either party may take whatever course of action it deems appropriate for the purpose of resolving the Dispute.

11.7 Remedies available under the Act

This clause 11 does not operate to limit the availability of any remedies available to Council under sections 123, 124 and 125 of the Act.

11.8 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 Default in performance

12.1 Events of default

The Developer commits an **Event of Default** if it breaches a term of this document.

12.2 Consequences of Events of default

- (1) Where the Developer commits an Event of Default, Council may serve a notice on the Developer requiring the relevant breach to be rectified within a reasonable time but in any event not less than twenty one (21) days of the date of the notice.
- (2) If the Developer fails to comply with paragraph (1), Council may exercise any of the rights or powers conferred on it under clause 13.

12.3 No restriction on rights

The rights vested in Council pursuant to clause 12.2 do not prevent Council from exercising any other rights that it may possess at law.

13 Security & enforcement

13.1 Compulsory acquisition of the Designated Land

- (1) The Developer consents to the compulsory acquisition of the Designated Land:
 - (a) in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW) (**Acquisition Act**); and
 - (b) on the terms set out in this clause 13.1.
- (2) Council may only acquire the Designated Land compulsorily in accordance with the Acquisition Act if the Developer has committed an Event of Default with respect the dedication of that land under this agreement.
- (3) If Council acquires the Designated Land compulsorily in accordance with the Acquisition Act:
 - (a) the Developer agrees that the compensation payable to it on account of that acquisition under the Acquisition Act is \$1.00; and
 - (b) Council must complete that acquisition within twelve (12) months of the relevant Event of Default; and
- (4) The parties agree that the provisions of this clause 13.1 are an agreement with respect to the compulsory acquisition of the Designated Land for the purpose of s30 of the Acquisition Act.

13.2 Security for the Works & Monetary Contributions

- (1) On or before the date of this agreement, the Developer must provide Council with a Bank Guarantee in favour of Council in an amount equal to the aggregate of the Contribution Values for each Item of Work not Completed at that time.
- (2) On or before the issue of the Development Consent, the Developer must provide Council with a Bank Guarantee in favour of Council in an amount equal to the aggregate of the Monetary Contributions.
- (3) Council must return any Security held by it under this clause 13.2 upon the Developer:
 - (a) Completing all Items of Work it is required to Complete under this agreement; and
 - (b) paying all Monetary Contributions to Council.

13.3 Council may call on Security

If:

- (1) the Developer breaches this agreement, including failing to Complete any Item of Work or make any Monetary Contribution by the time or times required under this agreement; and

-
- (2) Council has given the Developer twenty (20) business days notice of its intention to do so,

Council may, without limiting any other remedies available to it, call on the Security provided by the Developer in order to meet the costs incurred by Council in rectifying the relevant default.

13.4 Other security

In addition to the Security required to be provided under clause 13.2, on the date of this agreement the Developer must provide to the Council a Bank Guarantee in an amount of \$20,000.00 as security for the following:

- (1) outstanding rates and charges which may be owing in respect of the Designated Land as at the date of the dedication of that land to Council,
- (2) any costs of and incidental to the Council having to compulsorily acquire the Designated Land in accordance with clause 13.1, and
- (3) any costs incurred by Council in enforcing the provisions of this agreement.

13.5 Top up of Security

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

14 Assignment

14.1 Restriction on Assignment

Other than in accordance with this clause 14 the Developer may not Assign its rights or obligations under this document.

14.2 Procedure for Assignment

- (1) If the Developer wishes to Assign its rights or obligations under this document, then it must:
 - (a) provide a written request to Council for the consent of Council, acting reasonably, to the Assignment;
 - (b) provide Council with any evidence required by Council, acting reasonably, to satisfy Council that the third party in whose favour the Assignment is to be made (**Assignee**) is reasonably capable of performing the obligations under this document that are to be Assigned to it;
 - (c) obtain written notice from Council that it consents to the relevant Assignment; and
 - (d) once Council has consented to the proposed Assignment and at no cost to Council, procure the execution by the Assignee of, a Deed of Assignment.
- (2) Council is under no obligation to consent to any request made by a Developer under paragraph (1)(a) if, at the time the request is made, the relevant Developer is in breach of this document.

-
- (3) Council is deemed to have granted its consent to any request for an Assignment made by a Developer under paragraph (1)(a) if Council fails to provide a written response to that request (either by way of consent to the request or request for further information) within ten (10) business days of the request having been made.

15 Position of Council

15.1 Consent authority

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

15.2 Document does not fetter discretion

This document is not intended to operate to fetter, in any unlawful manner:

- (1) the power of Council to make any Law; or
- (2) the exercise by Council of any statutory power or discretion,
(Discretion).

15.3 Severance of provisions

- (1) 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 15 is substantially satisfied;
 - (b) in the event that paragraph (1)(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.
- (2) 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.

15.4 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.

16 Confidentiality

16.1 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.

16.2 Other Confidential Information

- (1) The parties acknowledge that:
 - (a) Confidential Information may have been supplied to some or all of the parties in the negotiations leading up to the making of this document;
 - (b) the parties may disclose to each other further Confidential Information in connection with the subject matter of this document; and
 - (c) subject to paragraphs (2) and (3), each party agrees:
 - (i) not to disclose any Confidential Information received before or after the making of this document to any person without the prior written consent of the party who supplied the Confidential Information; or
 - (ii) to take all reasonable steps to ensure all Confidential Information received before or after the making of this document is kept confidential and protected against unauthorised use and access.
- (2) A party may disclose Confidential Information in the following circumstances:
 - (a) in order to comply with the Law, or the requirements of any Authority; or
 - (b) to any of their employees, consultants, advisers, financiers or contractors to whom it is considered necessary to disclose the information, if the employees, consultants, advisers, financiers or contractors undertake to keep the information confidential.
- (3) The obligations of confidentiality under this clause do not extend to information which is public knowledge other than as a result of a breach of this clause.

17 GST

17.1 Defined GST Terms

Defined terms used in this clause 17 have the meaning ascribed to them in the GST Law.

17.2 GST to be added to amounts payable

- (1) If GST is payable on a Taxable Supply made under, by reference to or in connection with this document, the party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.
- (2) This clause does not apply to the extent that the Consideration for the Taxable Supply is expressly agreed to be GST inclusive.
- (3) Unless otherwise expressly stated, prices or other sums payable or Consideration to be provided under or in accordance with this document are exclusive of GST.

17.3 GST obligations to survive termination

This clause 17 will continue to apply after expiration of termination of this document.

18 Miscellaneous

18.1 Obligation to act in good faith

The parties must at all times:

- (1) cooperate and use their best endeavours to give effect to their rights and obligations set out in this document;
- (2) not unreasonably delay any action, approval, direction, determination or decision which is required of them;
- (3) make approvals or decisions that are required of them in good faith and in a manner consistent with the completion of the transactions set out in this document; and
- (4) be just and faithful in their activities and dealings with the other parties.

18.2 Legal costs

The Developer agrees to:

- (1) pay or reimburse the legal costs and disbursements of Council of the preparation, negotiation and execution of this document, capped at an amount of \$5,000.00; and
- (2) pay the reasonable legal costs and disbursements referred to in paragraph (1) within fourteen (14) days of receipt of a tax invoice from Council.

19 Administrative provisions

19.1 Notices

- (1) 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) transmitted by facsimile to that person's address.
- (2) 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 transmitted by facsimile to a person's address and a correct and complete transmission report is received, on the day of transmission if a Business Day, otherwise on the next Business Day.
- (3) 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.

19.2 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.

19.3 Waiver

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.

19.4 Cooperation

Each party must sign, execute and deliver all agreements, documents, instruments and act reasonably and effectively to carry out and give full effect to this document and the rights and obligations of the parties under it.

19.5 Counterparts

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

19.6 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.

19.7 Power of Attorney

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

- (1) the revocation or suspension of the power of attorney by the grantor; or
- (2) the death of the grantor.

19.8 Governing law

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

- (1) 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
- (2) may not seek to have any proceedings removed from the jurisdiction of New South Wales on the grounds of *forum non conveniens*.

Schedule 1: Defined terms and interpretation

Part 1 – Definitions

Act	means the <i>Environmental Planning and Assessment Act 1979</i> (NSW).
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: (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.
Bank Guarantee	means an irrevocable and unconditional undertaking without any expiry or end date by one of the following trading banks: (1) Australia and New Zealand Banking Group Limited; (2) Commonwealth Bank of Australia; (3) Macquarie Bank; (4) National Australia Bank Limited; (5) St George Bank Limited; (6) Westpac Banking Corporation; or (7) any other financial institution approved by Council, in its absolute discretion, in response to a request from the Developer.
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.
Completed	means completed in accordance with the requirements of this document.
Confidential Information	means any information and all other knowledge at any time disclosed (whether in writing and orally) by the parties to each other, or acquired by the parties in relation to the other's activities or services which is not already in the public domain and which: (1) is by its nature confidential;

	(2) is designated, or marked, or stipulated by either party as confidential (whether in writing or otherwise); (3) any party knows or ought to know is confidential; and (4) is information which may be reasonably considered to be of a confidential nature.
Contributions	means the provision of the Works, the payment of the Monetary Contribution and the dedication of the Designated Land by the Developer.
Contribution Value	means the amount specified in Schedules 3, 4 and 5 in the column headed "contribution value" for each item of the Contributions.
Construction Certificate	means a certificate referred to in s109C(1)(b) of the <i>Environmental Planning & Assessment Act 1979</i> (NSW).
Designated Land	means that part of the Land zoned 7(a1) as a result of the Rezoning, and generally being the areas shaded green on the plan attached as Annexure 1 .
Development	means the residential development proposed to be carried out on that part of the Land zoned 2(a) after the Rezoning is made, as set out in the Staging Plan attached as Annexure 2 .
Development Application	means an application for the Development Consent.
Development Consent	means the first development consent issued under the Act for the Development.
Draft LEP	means the Draft Great Lakes Local Environmental Plan 1996 (Amendment No. 70) or such other draft local environmental plan which effects the Rezoning.
Dwelling House Lot	means a lot in a plan of subdivision of the Land, or any part of the Land, upon which Dwellings (as defined in GLEP 1996) are permitted to be erected in accordance with that LEP.
Encumbrance	means an interest or power: (1) reserved in or over an interest in any asset; (2) 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 (3) by way of security for the payment of a debt or other monetary obligation or the performance of any obligation.
GST Law	means <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth) and any other Act or regulation relating to the

	imposition or administration of the goods and services tax.
Index	means the Consumer Price Index (All Groups – Sydney) as provided by the Australian Bureau of Statistics
Instrument Change	means the making of the Draft LEP.
Item of Work	means an individual item of the Works as set out in Schedule 4 .
Land	means the whole of the land contained in certificate of title folio identifier 40/1099070 and known as 90 Viney Creek Road, Tea Gardens.
Law	means all legislation, regulations, by-laws, common law and other binding order made by any Authority.
Monetary Contribution	means a monetary contribution specified in Schedule 5 (as adjusted in accordance with this document).
Planning Legislation	means the Act and the <i>Local Government Act 1993</i> (NSW).
Rezoning	means gazettal of the Draft LEP whereby the Land is rezoned so as allow the Development to proceed.
RMP	means the document entitled “ <i>Restoration Management Plan – North Shearwater Release Area</i> ” dated June 2011 and prepared by Ecobiological or such other plan approved by Council with the consent of the Developer from time to time.
Security	means the security required to be provided by the Developer to Council under clauses 13.2 and 13.3.
Stage	means a stage of the Development, generally as set out on the Staging Plan attached as Annexure 2 .
Subdivision Certificate	means a subdivision certificate as defined in s109C(1)(d) of the Act.
Works	means the works specified or described in Schedule 4 .

Part 2 - Interpretational Rules

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.
accounting terms	an accounting term is a reference to that term as it is used in accounting standards under the Corporations Act or, if not inconsistent with those standards, in accounting principles and practices generally accepted in Australia.
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 and neuter gender.

Schedule 2:
Requirements under section 93F of the Act

REQUIREMENT UNDER THE ACT	THIS PLANNING AGREEMENT
Planning instrument and/or development application – (Section 93F(1)) The Developer has: (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.	(a) Yes (b) Yes (c) No
Description of land to which this agreement applies – (Section 93F(3)(a))	The land contained in certificate of title folio identifier 40/1099070 and known as 90 Viney Creek Road, Tea Gardens.
Description of change to the environmental planning instrument to which this agreement applies – (Section 93F(3)(b))	The amendments to be made by the Draft LEP.
Application of section 94 of the Act – (Section 93F(3)(d))	Refer to clause 4.1 of the Planning Agreement.
Applicability of section 94A of the Act – (Section 93F(3)(d))	Refer to clause 4.1 of the Planning Agreement.
Consideration of benefits under this agreement if section 94 applies – (Section 93F(3)(e))	Refer to clause 4.2 of the Planning Agreement.
Mechanism for Dispute resolution – (Section 93F(3)(f))	Refer to clause 11 of the Planning Agreement.
Enforcement of this agreement (Section 93F(3)(g))	Refer to clauses 5 and 13 of the Planning Agreement.
No obligation to grant consent or exercise functions – (Section 93F(3)(9))	Refer to clause 15 of the Planning Agreement.

**Schedule 3:
Designated Land**

Item	Time for Dedication	Contribution Value
Designated Land.	Before a Subdivision Certificate is issued for a plan that when registered would create a Dwelling House Lot within Stage 3 of the Development.	\$(TBA)

Schedule 4:
Pre-development phase Works

Item of Works	Contribution Value
Install fencing around all environmental protection areas (Areas 1-3) as identified in the RMP or ensure that existing fencing is in good condition. Install gates and stock crossings as required.	\$21,120
Utilise open space area (Area 4 as identified in the RMP) outside of fenced environmental protection areas for grazing (including slashing for pasture management as required).	\$0
Primary control of priority weeds in all environmental protection and open space areas (Areas 1 – 4) as identified in the RMP.	\$11,250
Year 2 and 3 (being the second and third year after the Development Consent is granted) follow-up control of priority weeds in all fenced environmental protection and open space areas (Areas 1 – 4) as identified in the RMP.	\$7,500
Spot control of pasture grass and weeds around naturally regenerating trees and shrubs in the environmental protection areas (brush-cutter or herbicide) (Areas 1 – 3) as identified in the RMP.	\$7,500
Allow natural regeneration of fenced environmental protection areas (Areas 1 – 3) as identified in the RMP.	\$0
Undertake seed collection activities on the subject land, "Durness" and the wider locality. Store collected seed at GLC Tuncurry Depot Nursery.	\$11,250
Supervision and contract management.	\$6,930

**Schedule 5:
Monetary Contribution**

Item	Time for Payment	Contribution Value
Pre-DA phase works as set out in Schedule 4	Before a Construction Certificate is issued for the Development.	The aggregate of the Contribution Values specified in Schedule 4 for each Item of Work not Completed by the Developer at the time that the Developer applies for a Construction Certificate for the Development
Environmental Restoration Works.	Before a Construction Certificate is issued for the Development.	\$174,970.00
Maintenance contribution	Upon the dedication of the Designated Land.	\$91,250.00

Schedule 6

Terms of Licence

1 Definitions

For the purpose of this **Schedule 6**:

- (1) the **Land** is the land being accessed under the Licence;
- (2) the **Licence** means the licence of the Land to which this **Schedule 6** applies;
- (3) the **Licensee** is the party accessing the Land; and
- (4) the **Licensor** is the owner of the Land.

2 Licence

2.1 Personal rights

- (1) The Licence is personal to the Licensee.
- (2) The Licensee may not encumber, assign or transfer (either directly or indirectly) the Licence without the prior written consent of the Licensor.
- (3) The Licensor may refuse the granting of consent under paragraph (2) without reason and at its absolute discretion.

2.2 Leasehold interest

- (1) This deed does not grant to the Licensee a leasehold interest in the Land. The parties agree that:
 - (a) subject to any contrary terms of this licence, the Licence does not confer exclusive possession of the Land on the Licensee;
 - (b) the Licensee may not exclude the Licensor, its officers, employees and invitees from:
 - (i) entry onto the Land; and/or
 - (ii) the performance of any works on the Land;

provided that such entry onto and/or performance of work on the Land does not unreasonably interfere with the activities being carried out on the Land by the Licensee,
- (2) the Licensee does not have any right to quiet enjoyment of the Land; and
- (3) the Licensee will not at any time seek to enforce an interest in the Land in competition with the interest held by the Licensor.

3 Compliance with Authorities

3.1 No warranty as to suitability for use

The Licensee acknowledges and agrees that the Licensor has not made any representation or warranty to the Licensee regarding the suitability of the Land for the purposes of the Licensee.

3.2 Compliance with the terms of the consents

The Licensee must comply with the requirements of all Authorities in relation to its access to the Land and the conduct of any activities on it by the Licensee.

3.3 Compliance with directions from Authorities

The Licensee must comply with all notices, directions, orders or other requests served upon itself or the Licensor and which arise from the conduct of any activities on the Land by the Licensee.

3.4 Obtaining further consents

- (1) If the Licensee requires further consents to conduct activities on the Land it must:
 - (a) make such applications itself; and
 - (b) bear all costs incurred by it in relation to obtaining the relevant consent.
- (2) The Licensor agrees that it will, where required, sign all authorities reasonably required by the Licensee to make any application for consent to any Authority.

4 Limitation of the Licensor's liability

4.1 Insurances

- (1) The Licensee must effect and keep current and in force the following policies of insurance:
 - (a) a Broadform Public Liability Insurance policy with a reputable insurance company approved by the Licensor in an amount of \$20,000,000 for any one occurrence in respect of any liability for:
 - (i) personal injury or death of any person; and
 - (ii) loss of or damage to property,
 - (b) workers compensation insurance under the *Workers Compensation Act 1987* (NSW) covering all persons employed or deemed to be employed by the Licensee in connection with the conduct of the activities on the Land by the Licensee;
 - (c) a comprehensive policy of motor vehicle insurance or an unlimited third party property insurance policy in respect of all motor vehicles used in the performance of the activities on the Land by the Licensee; and
 - (d) a contractor's risk policy of insurance in respect of all plant and equipment (including unregistered motor vehicles) used in the conduct of the activities on the Land by the Licensee.
- (2) The policies referred to in paragraphs (1)(a), (1)(c) and (1)(d) must note the interest of the Licensor as principal.

4.2 Inspection of insurance

- (1) The Licensee must produce at the renewal of each policy a certificate of currency issued by the insurer establishing that the policy is valid.

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- (2) The Licensor may carry out random audits to verify insurances held by the Licensee. The Licensee will assist in any audit and provide evidence of the terms and currency of the insurance policies whenever requested by the Licensor.

4.3 Cancellation of insurance

If any policy is cancelled either by the Licensee or the insurer the Licensee must notify the Licensor immediately.

4.4 Risk

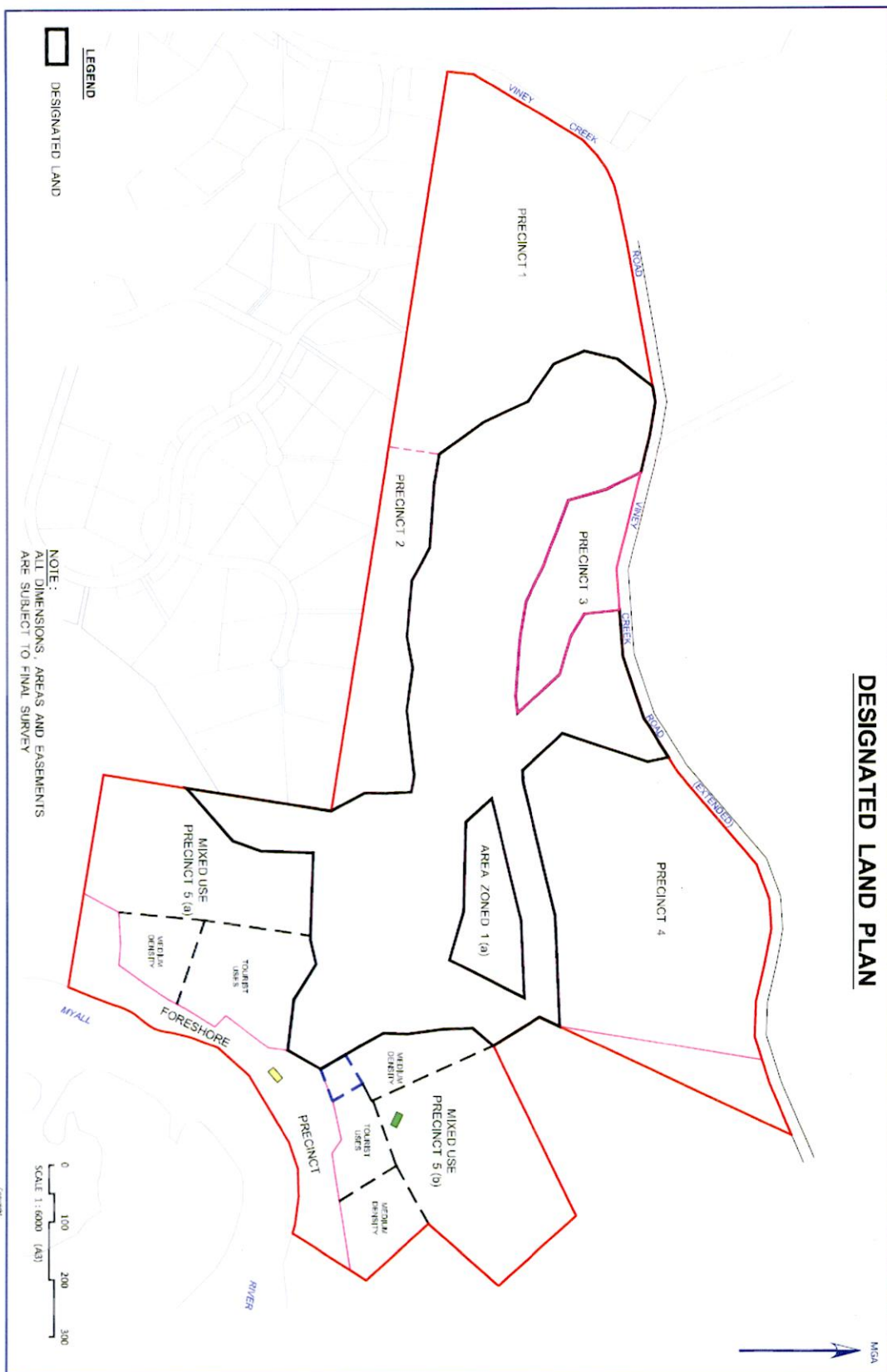
The Licensee uses and occupies the Land at its own risk.

4.5 Indemnity

The Licensee indemnifies the Licensor against any Claim (of whatever nature) made in respect of the Licensee's use and occupation of the Land.

Annexure 1:
Plan of Designated Land

DESIGNATED LAND PLAN



CLIENT GREAT LAKES COUNCIL 24085	PROJECT NORTH SHEARWATER URBAN RELEASE AREA	DATE 9TH MAY 2012	PROJECT N/A MICA ZONE 56(GDA 94)	DATE 9TH MAY 2012	PROJECT DCP	DATE 24085 - 20 ZONING	PROJECT DESIGNATED LAND
RPS AUSTRALIA EAST PTY LTD 241 DENISON STREET - BROOKELAND - PO BOX 428 HAMILTON - NSW 2303 T: 02 4940 4200 F: 02 4661 0794 www.rpsgroup.com.au				RPS AUSTRALIA EAST PTY LTD (ABN 44 140 293 762) PO BOX 428 HAMILTON - NSW 2303 T: 02 4940 4200 F: 02 4661 0794 www.rpsgroup.com.au			

Annexure 2: Staging Plan

STAGING PLAN

NOTE:
ALL DIMENSIONS, AREAS AND EASEMENTS
ARE SUBJECT TO FINAL SURVEY

STAGE 1

STAGE 2

STAGE 3

STAGE 4

STAGE 5 (a)

STAGE 5 (b)

AREA ZONED 1 (a)

PRECINCT

FORESHORE

VINEY CREEK

MYALL RIVER

0 100 200 300
SCALE 1:6000 (A3)

MGA

Execution page

Executed as an agreement

Dated:

Executed by **Wolin Investments Pty Limited** in accordance with section 127(1) of the Corporations Act by authority of its directors.

Director/Secretary (Signature)

Director (Signature)

Name of Director/ Secretary (Print Name)

Name of Director (Print Name)

Executed by **Great Lakes Council** by its General Manager and Mayor by the affixing of the Common Seal of Council in accordance with resolution dated

General Manager (Signature)

Mayor (Signature)

Glenn Handford

Name of General Manager (Print Name)

Ian McWilliams

Name of Mayor (Print Name)

The Common Seal of the Council)
of Great Lakes was hereunto)
affixed pursuant to the resolution)
made on 13 November 21012)

