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## **Deed**

### **Gibraltar Park Planning Agreement**

Under s93F of the *Environmental Planning and Assessment Act 1979*

**Wingecarribee Shire Council**

**Old Bowral Estate Pty Ltd**

Date: 17/7/14

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## **Gibraltar Park Planning Agreement**

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## **Gibraltar Park Planning Agreement**

### **Summary Sheet**

#### **Council:**

**Name:** Wingecarribee Shire Council  
**Address:** Civic Centre, Elizabeth Street, MOSS VALE, NSW, 2577  
**Telephone:** 02 4868 0854  
**Facsimile:** 02 4869 1203  
**Email:** David.Matthews@wsc.nsw.gov.au  
**Representative:** David Matthews

#### **Developer:**

**Name:** Old Bowral Estate Pty Ltd  
**Address:** PO Box 4328 HOMEBUSH SOUTH, NSW, 2140  
**Telephone:** 0400 545 616  
**Email:** girdles1@bigpond.com  
**Representative:** Simon Bracegirdle

#### **Land:**

See definition of *Land* in clause 1.1.

#### **Development:**

See definition of *Development* in clause 1.1.

#### **Development Contributions:**

See Clause 9 and Schedule 1.



**Application of s94, s94A and s94EF of the Act:**

See clause 8.

**Registration:**

See clause 15.

**Restriction on dealings:**

See clause 16.

**Dispute Resolution:**

See Part 3.

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## **Gibraltar Park Planning Agreement**

Under s93F of the *Environmental Planning and Assessment Act 1979*

### **Parties**

**Wingecarribee Shire Council** ABN 49 546 344 354 of Civic Centre, Elizabeth Street, Moss Vale, NSW, 2577 (**Council**)

and

**Old Bowral Estate Pty Ltd** ACN 162 366 896 of PO BOX 4328, Homebush South NSW 2140 (**Developer**)

### **Background**

- A The Developer is the owner of the Land.
- B The Council granted the Consent on 26 August 2004.
- C On 3 June 2014 the Developer lodged the Modification Application to modify the Consent under s96 of the Act.
- D The Developer is prepared to make Development Contributions in connection with the carrying out of the Development, as modified by the Modification Application, if the Modification Application is approved, in accordance with this Agreement.

### **Operative provisions**

#### **Part 1 - Preliminary**

##### **1 Interpretation**

1.1 In this Deed the following definitions apply:

**Administration CP** means the *Section 94 Developer Contributions Plan for Administration 2011 – 2031*.

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

**Approval** includes approval, consent, licence, permission or the like.

**Authority** means the Commonwealth or New South Wales government, a Minister of the Crown, a government department, a public authority established by or under any Act, a council or county council constituted under



the *Local Government Act 1993*, or a person or body exercising functions under any Act including a commission, panel, court, tribunal and the like.

**Central Library Plan** means the *Section 94 Developer Contributions Plan for Central Library Facility*.

**Consent** means the Development Consent granted to DA 03/0786.

**Construction Certificate** has the same meaning as in the Act.

**Cost** means a cost, charge, expense, outgoing, payment, fee and other expenditure of any nature.

**CPI** means the Consumer Price Index (All Groups – Sydney) published by the Australian Bureau of Statistics.

**Deed** means this Deed and includes any schedules, annexures and appendices to this Deed.

**Development** means the development the subject of the Consent, as modified by the Modification Application, if approved.

**Development Application** has the same meaning as in the Act.

**Development Consent** has the same meaning as in the Act.

**Development Contribution** means a monetary contribution, the dedication of land free of cost, the carrying out of work, or the provision of any other material public benefit, or any combination of them, to be used for, or applied towards a public purpose, but does not include any Security or other benefit provided by a Party to the Council to secure the enforcement of that Party's obligations under this Deed for the purposes of s93F(3)(g) of the Act.

**Development Plan** means the plan annexed as Schedule 2.

**Dispute** means a dispute or difference between the Parties under or in relation to this Deed.

**GST** has the same meaning as in the GST Law.

**GST Law** has the same meaning as in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any other Act or regulation relating to the imposition or administration of the GST.

**Item** means specified in Column 1 of Schedule 1.

**Land** means Lot 2345 in DP 1110446.

**Modification Application** means the application made under s96 of the Act to modify the Consent on 3 June 2013.

**Monetary Development Contribution** means a monetary Development Contribution.

**New Unit** means the lower level dwellings shown in red on the Development Plan and marked with a letter 'A' after the dwelling number.

**ORCC Plan** means the *Open Space, Recreation, Community and Cultural Plan 2013 – 2036*

**Party** means a party to this Deed.

**Regulation** means the *Environmental Planning and Assessment Regulation 2000*.

**Roads & Traffic Facilities Plan** means the *Section 94 Developer Contributions Plan for Roads and Traffic Facilities 2012 – 2031*,

**RRC** means the *Section 94 Development Contributions Plan – Resource Recovery Centre 2009*.

**Sewerage (Wastewater) DSP** means the *Wingecarribee Shire Council Development Servicing Plan for Sewerage*.

**Stage** means a stage in the Development as shown on the Staging Plan.

**Staging Plan** means the plan annexed as Schedule 3.

**Stormwater DSP** means the *Wingecarribee Shire Council Stormwater Development Servicing Plan 2010*.

**Water Supply DSP** means the *Development Servicing Plan for Wingecarribee SC Water Supply* adopted in November 2006.

- 1.2 In the interpretation of this Deed, the following provisions apply unless the context otherwise requires:
- 1.2.1 Headings are inserted for convenience only and do not affect the interpretation of this Deed.
  - 1.2.2 A reference in this Deed to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
  - 1.2.3 If the day on which any act, matter or thing is to be done under this Deed is not a business day, the act, matter or thing must be done on the next business day.
  - 1.2.4 A reference in this Deed to dollars or \$ means Australian dollars and all amounts payable under this Deed are payable in Australian dollars.
  - 1.2.5 A reference in this Deed to a \$ value relating to a Development Contribution is a reference to the value exclusive of GST.
  - 1.2.6 A reference in this Deed to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
  - 1.2.7 A reference in this Deed to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
  - 1.2.8 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Deed.
  - 1.2.9 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
  - 1.2.10 Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
  - 1.2.11 A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
  - 1.2.12 References to the word 'include' or 'including' are to be construed without limitation.
  - 1.2.13 A reference to this Deed includes the agreement recorded in this Deed.



- 1.2.14 A reference to a Party to this Deed includes a reference to the servants, agents and contractors of the Party, the Party's successors and assigns.
- 1.2.15 A reference to 'dedicate' or 'dedication' in relation to land is a reference to dedicate or dedication free of cost.
- 1.2.16 Any schedules, appendices and attachments form part of this Deed.
- 1.2.17 Notes appearing in this Deed are operative provisions of this Deed.

## **2 Status of this Deed**

- 2.1 This Deed is a planning agreement within the meaning of s93F(1) of the Act.

## **3 Commencement**

- 3.1 This Deed takes effect on the date when all Parties have executed one counterpart of this Deed.
- 3.2 The Party who executes this Deed last is to insert on the front page the date they did so and provide a copy of the fully executed and dated Deed to any other person who is a Party.
- 3.3 The Developer has no obligation to make any Development Contributions under this Deed unless and until approval is granted to the Modification Application.

## **4 Application of this Deed**

- 4.1 This Deed applies to the Land and to the Development.

## **5 Warranties**

- 5.1 The Parties warrant to each other that they:
  - 5.1.1 have full capacity to enter into this Deed, and
  - 5.1.2 are able to fully comply with their obligations under this Deed.

## **6 Further agreements**

- 6.1 The Parties may, at any time and from time to time, enter into agreements relating to the subject-matter of this Deed that are not inconsistent with this Deed for the purpose of implementing this Deed.



## **7 Surrender of right of appeal, etc.**

- 7.1 The Developer is not to commence or maintain, or to cause or procure the commencement or maintenance, of any proceedings in any court or tribunal or similar body appealing against, or questioning the validity of this Deed, or an Approval relating to the Development in so far as the subject-matter of the proceedings relates to this Deed.

## **8 Application of s94, s94A and s94EF of the Act to the Development**

- 8.1 This Deed excludes the application of s94 and s94A of the Act to the Development.
- 8.2 This Deed does not exclude the application of s94EF of the Act to the Development.

## **Part 2 – Development Contributions**

### **9 Provision of the Monetary Development Contribution**

- 9.1 The Developer is to make Development Contributions to the Council in accordance with Schedule 1, any other provision of this Deed relating to the making of Development Contributions and otherwise to the satisfaction of the Council.
- 9.2 The Council is to apply each Monetary Development Contribution towards the public purposes for which it is made and otherwise in accordance with this Deed.
- 9.3 Despite clause 9.2, the Council may apply a Monetary Development Contribution made under this Deed towards a public purpose other than the public purpose specified in this Deed if the Council reasonably considers that the public interest would be better served by applying the Monetary Development Contribution towards that other purpose rather than the purpose so specified.
- 9.4 If the Modification Application is approved without conditions 87-89 of the Consent being deleted, the Developer must comply with conditions 87-89 and any Development Contributions paid pursuant to those conditions will be offset against the Monetary Development Contributions required under this Deed.
- 9.5 As the Developer has paid Development Contributions pursuant to the Consent which are equivalent to the Monetary Development Contributions required by Part C of the table to Schedule 1, the Council acknowledges that the Developer has satisfied its obligations to make the Monetary Development Contributions in Part C of the table to Schedule 1.

## **10 Payment of Monetary Development Contributions**

- 10.1 A Monetary Development Contribution is made for the purposes of this Deed when the Council receives the full amount of the contribution payable under this Deed in cash or by unendorsed bank cheque..

## **11 Indexation of Monetary Development Contributions**

- 11.1 The Monetary Development Contributions are to be indexed between the date of this Deed and the date of payment as follows:
- 11.1.1 Items 10 to 16 in Part B of the table to Schedule 1 are to be indexed in accordance with CPI;
  - 11.1.2 Items 17 and 18 in Part B of the table to Schedule 1 are not to be indexed;
  - 11.1.3 Items in Part C are not to be indexed; and
  - 11.1.4 All other Items (1 to 9 – in Part A) are to be indexed in accordance with the indexation provisions contained in the development servicing plan or development contributions plan referred to in Column 1 of the table in Schedule 1 for that Item.

## **Part 3 – Dispute Resolution**

### **12 Dispute resolution – expert determination**

- 12.1 This clause applies to a Dispute between any of the Parties to this Deed concerning a matter arising in connection with this Deed that can be determined by an appropriately qualified expert if:
- 12.1.1 the Parties to the Dispute agree that it can be so determined, or
  - 12.1.2 the Chief Executive Officer of the professional body that represents persons who appear to have the relevant expertise to determine the Dispute gives a written opinion that the Dispute can be determined by a member of that body.
- 12.2 A Dispute to which this clause applies is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 12.3 If a notice is given under clause 12.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 12.4 If the Dispute is not resolved within a further 28 days, the Dispute is to be referred to the President of the NSW Law Society to appoint an expert for expert determination.
- 12.5 The expert determination is binding on the Parties except in the case of fraud or misfeasance by the expert.
- 12.6 Each Party is to bear its own costs arising from or in connection with the appointment of the expert and the expert determination.



- 12.7 The Parties are to share equally the costs of the President, the expert, and the expert determination.

### **13 Dispute Resolution - mediation**

- 13.1 This clause applies to any Dispute arising in connection with this Deed other than a Dispute to which clause 12 applies.
- 13.2 Such a Dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 13.3 If a notice is given under clause 13.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 13.4 If the Dispute is not resolved within a further 28 days, the Parties are to mediate the Dispute in accordance with the Mediation Rules of the Law Society of New South Wales published from time to time and are to request the President of the Law Society to select a mediator.
- 13.5 If the Dispute is not resolved by mediation within a further 28 days, or such longer period as may be necessary to allow any mediation process which has been commenced to be completed, then the Parties may exercise their legal rights in relation to the Dispute, including by the commencement of legal proceedings in a court of competent jurisdiction in New South Wales.
- 13.6 Each Party is to bear its own costs arising from or in connection with the appointment of a mediator and the mediation.
- 13.7 The Parties are to share equally the costs of the President, the mediator, and the mediation.

## **Part 4 - Enforcement**

### **14 Enforcement in a court of competent jurisdiction**

- 14.1 Without limiting any other provision of this Deed, the Parties may enforce this Deed in any court of competent jurisdiction.
- 14.2 For the avoidance of doubt, nothing in this Deed prevents:
- 14.2.1 a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Deed or any matter to which this Deed relates, or
- 14.2.2 the Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Deed or any matter to which this Deed relates.



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## **Part 5 – Registration & Restriction on Dealings**

### **15 Registration of this Agreement**

- 15.1 The Parties agree to register this Deed for the purposes of s93H(1) of the Act.
- 15.2 Not later than 10 days after the commencement of this Deed , the Developer is to deliver to the Council in registrable form:
  - 15.2.1 an instrument requesting registration of this Deed on the title to the Land duly executed by the Developer, and
  - 15.2.2 the written irrevocable consent of each person referred to in s93H(1) of the Act to that registration.
- 15.3 The Developer is to do such other things as are reasonably necessary to enable registration of this Deed to occur.
- 15.4 The Parties are to do such things as are reasonably necessary to remove any notation relating to this Deed from the title to the Land once the Developer has completed its obligations under this Deed to the reasonable satisfaction of the Council or this Deed is terminated or otherwise comes to an end for any other reason.

### **16 Restriction on dealings**

- 16.1 The Developer is not to:
  - 16.1.1 sell or transfer the Land or any part thereof, or
  - 16.1.2 assign the Developer's rights or obligations under this Deed, or novate this Deed,to any person unless:
  - 16.1.3 the Developer has, at no cost to the Council, first procured the execution by the person to whom the Land or part is to be sold or transferred or the Developer's rights or obligations under this Deed are to be assigned or novated, of a deed in favour of the Council on terms reasonably satisfactory to the Council, and
  - 16.1.4 the Council has given written notice to the Developer stating that it reasonably considers that the purchaser, transferee, assignee or novatee, is reasonably capable of performing its obligations under this Deed, and
  - 16.1.5 the Developer is not in breach of this Deed, and
  - 16.1.6 the Council otherwise consents to the transfer, assignment or novation, such consent not to be unreasonably withheld.
- 16.2 Clause 16.1 does not apply in relation to any sale or transfer of the Land if this Deed is registered on the title to the Land at the time of the sale.

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## **Part 6 – Other Provisions**

### **17 Notices**

- 17.1 Any notice, consent, information, application or request that is to or may be given or made to a Party under this Deed is only given or made if it is in writing and sent in one of the following ways:
- 17.1.1 delivered or posted to that Party at its address set out in the Summary Sheet,
  - 17.1.2 faxed to that Party at its fax number set out in the Summary Sheet, or
  - 17.1.3 emailed to that Party at its email address set out in the Summary Sheet.
- 17.2 If a Party gives the other Party 3 business days notice of a change of its address, fax number or email, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted, faxed or emailed to the latest address or fax number.
- 17.3 Any notice, consent, information, application or request is to be treated as given or made if it is:
- 17.3.1 delivered, when it is left at the relevant address,
  - 17.3.2 sent by post, 2 business days after it is posted,
  - 17.3.3 sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number, or
  - 17.3.4 sent by email and the sender does not receive a delivery failure message from the sender's internet service provider within a period of 24 hours of the email being sent.
- 17.4 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, 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.

### **18 Approvals and Consent**

- 18.1 Except as otherwise set out in this Deed, and subject to any statutory obligations, a Party may give or withhold an approval or consent to be given under this Deed in that Party's absolute discretion and subject to any conditions determined by the Party.
- 18.2 A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

### **19 Costs**

- 19.1 The Parties agree to each pay 50% of the costs of preparing, negotiating, executing and stamping this Deed, and any document related to this Deed.

- 19.2 For the purposes of clause 19.1, the Developer is to pay its share of the costs within 7 days of a written demand by the Council for such payment.
- 19.3 The Developer is also to pay to the Council the Council's reasonable costs of enforcing this Deed within 7 days of a written demand by the Council for such payment.

## **20 Entire Deed**

- 20.1 This Deed contains everything to which the Parties have agreed in relation to the matters it deals with.
- 20.2 No Party can rely on an earlier document, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, before this Deed was executed, except as permitted by law.

## **21 Further Acts**

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

## **22 Governing Law and Jurisdiction**

- 22.1 This Deed is governed by the law of New South Wales.
- 22.2 The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them.
- 22.3 The Parties are not to object to the exercise of jurisdiction by those courts on any basis.

## **23 Joint and Individual Liability and Benefits**

- 23.1 Except as otherwise set out in this Deed:
- 23.1.1 any agreement, covenant, representation or warranty under this Deed by 2 or more persons binds them jointly and each of them individually, and
- 23.1.2 any benefit in favour of 2 or more persons is for the benefit of them jointly and each of them individually.

## **24 No Fetter**

- 24.1 Nothing in this Deed 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.

## **25 Illegality**

- 25.1 If this Deed or any part of it becomes illegal, unenforceable or invalid as a result of any change to a law, the Parties are to co-operate and do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Deed is entered into.

## **26 Severability**

- 26.1 If a clause or part of a clause of this Deed 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.
- 26.2 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 Deed, but the rest of this Deed is not affected.

## **27 Amendment**

- 27.1 No amendment of this Deed will be of any force or effect unless it is in writing and signed by the Parties to this Deed in accordance with clause 25D of the Regulation.

## **28 Waiver**

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

## **29 GST**

- 29.1 In this clause:

**Adjustment Note, Consideration, GST, GST Group, Margin Scheme, Money, Supply and Tax Invoice** have the meaning given by the GST Law.

**GST Amount** means in relation to a Taxable Supply the amount of GST payable in respect of the Taxable Supply.

**GST Law** has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Input Tax Credit** has the meaning given by the GST Law and a reference to an Input Tax Credit entitlement of a party includes an Input Tax Credit for an acquisition made by that party but to which another member of the same GST Group is entitled under the GST Law.



**Taxable Supply** has the meaning given by the GST Law excluding (except where expressly agreed otherwise) a supply in respect of which the supplier chooses to apply the Margin Scheme in working out the amount of GST on that supply.

- 29.2 Subject to clause 29.4, if GST is payable on a Taxable Supply made under, by reference to or in connection with this Deed, the Party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.
- 29.3 Clause 29.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Deed to be GST inclusive.
- 29.4 No additional amount shall be payable by the Council under clause 29.2 unless, and only to the extent that, the Council (acting reasonably and in accordance with the GST Law) determines that it is entitled to an Input Tax Credit for its acquisition of the Taxable Supply giving rise to the liability to pay GST.
- 29.5 If there are Supplies for Consideration which is not Consideration expressed as an amount of Money under this Deed by one Party to the other Party that are not subject to Division 82 of the *A New Tax System (Goods and Services Tax) Act 1999*, the Parties agree:
- 29.5.1 to negotiate in good faith to agree the GST inclusive market value of those Supplies prior to issuing Tax Invoices in respect of those Supplies;
- 29.5.2 that any amounts payable by the Parties in accordance with clause 29.2 (as limited by clause 29.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 29.6 No payment of any amount pursuant to this clause 29, and no payment of the GST Amount where the Consideration for the Taxable Supply is expressly agreed to be GST inclusive, is required until the supplier has provided a Tax Invoice or Adjustment Note as the case may be to the recipient.
- 29.7 Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to a cost, expense or other liability incurred by a party, must exclude the amount of any Input Tax Credit entitlement of that party in relation to the relevant cost, expense or other liability.
- 29.8 This clause continues to apply after expiration or termination of this Deed.

### **30 Explanatory Note**

- 30.1 The Appendix contains the Explanatory Note relating to this Deed required by clause 25E of the Regulation.
- 30.2 Pursuant to clause 25E(7) of the Regulation, the Parties agree that the Explanatory Note is not to be used to assist in construing this Planning Deed.



**Schedule 1**

(Clause 9)

**Development Contributions**

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>	<b>Column 4</b>
<b>Item/ Relevant Contributions Plan or Development Servicing Plan</b>	<b>Amount</b>	<b>Public Purpose</b>	<b>Timing</b>
<b>Part A – Monetary Development Contributions for New Units (S96 Consent)</b>			
1. Administration CP – Shirewide	\$443.03 per New Unit, being \$17,278.17 for 39 New Units	S94 plan administration	Prior to the issue of the Construction Certificate for the New Unit
2. RRC -Shirewide – Precinct 4	\$232.30 per New Unit being \$9,059.70 for 39 New Units	Resource recovery centres	Prior to the issue of the Construction Certificate for the New Unit
3. ORCC Plan - Shirewide	\$2,011.79 per New Unit being \$78,459.81 for 39 New Units	Open space, recreation and community facilities	Prior to the issue of the Construction Certificate for the New Unit
4. Roads & Traffic Facilities Plan - Mittagong	\$589.62 per New Unit being \$22,995.18 for 39 New Units	Roads and traffic	Prior to the issue of the Construction Certificate for the New Unit
5. Central Library Plan – Precinct 4	\$392 per New Unit being \$15,288.00 for 39 New Units	Library	Prior to the issue of the Construction Certificate for the New Unit
6. Roads & Traffic Facilities Plan - Shirewide	\$2,494.26 per New Unit being \$97,276.14 for 39 New Units	Roads and traffic	Prior to the issue of the Construction Certificate for the New Unit
7. Water Supply DSP – Precinct 4	\$6,242.50 per New Unit being \$243,547.50 for 39 New Units	Water supply	Prior to the issue of the Construction Certificate for the New Unit

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8. Stormwater DSP - Agglomerated Area A	\$2,598.69 per New Unit being \$101,348.91 for 39 New Units	Stormwater	Prior to the issue of the Construction Certificate for the New Unit
9. Sewerage (Wastewater) DSP – Precinct 4	\$7945.00 per New Unit being \$309,855.00 for 39 New Units	Wastewater	Prior to the issue of the Construction Certificate for the New Unit
<b>Part B – Monetary Development Contributions (Original Consent)</b>			
10. S94 Plan Administration – Precinct 4 (Repealed 2011)	\$3,289.79 per Stage being \$19,738.74 for Stages 2 to 7.	Plan administration	Prior to the issue of the first Construction Certificate for each Stage
11. S94 Plan Animal Shelter– Precinct 4 (Repealed 2009)	\$122.98 per Stage being \$737.88 for Stages 2 to 7	Animal shelters	Prior to the issue of the first Construction Certificate for each Stage
12. Central Library Plan – Precinct 4	\$2,804.96 per Stage being \$16,829.76 for Stages 2 to 7	Library	Prior to the issue of the first Construction Certificate for each Stage
13. S94 Plan Open Spaces – Precinct 4 (Repealed 2007)	\$11,371.06 per Stage being \$68,226.36 for Stages 2 to 7	Open space	Prior to the issue of the first Construction Certificate for each Stage
14. S94 Roads and Traffic Sub Plan 1 – Precinct 4 (Repealed 2012)	\$7,583.84 per Stage being \$45,503.04 for Stages 2 to 7	Roads and traffic	Prior to the issue of the first Construction Certificate for each Stage
15. S94 Roads and Traffic Facilities Sub Plan 2 Residential – Precinct 4 (Repealed 2012)	\$4,545.10 per Stage being \$27,270.60 for Stages 2 to 7	Roads and traffic	Prior to the issue of the first Construction Certificate for each Stage
16. S94 Plan Resource Recovery Centres – Precinct 4 (Repealed 2009)	\$738.06 per Stage being \$4,428.36 for Stages 2 to 7	Resource recovery Centres	Prior to the issue of the first Construction Certificate for each Stage
17. S64 DSP Sewerage - Precinct 4 (Repealed 1 Jan)	\$30,759.33 per Stage being \$184,555.98 for Stages 2 to 7	Wastewater	Prior to the issue of the first Construction Certificate for each Stage



2007)			
18. S64 DSP Water Supply - Precinct 4 (Repealed 1 Jan 2007)	\$21,528.74 per Stage being \$129,172.44	Water supply	Prior to the issue of the first Construction Certificate for each Stage
<b>Part C – Monetary Development Contributions for Stage 1 (Original Consent)</b>			
19. S94 Plan Administration – Precinct 4 (repealed 2011)	\$5,744.00	Plan administration	See clause 9.5
20. S94 Animal Shelters – Precinct 4 (Repealed 2009)	\$208.00	Animal shelters	See clause 9.5
21. Central Library Plan – Precinct 4	\$5,184.00	Library	See clause 9.5
22. S94 Plan Open Space – Precinct 4 (Repealed 2007)	\$20,976.00	Open space	See clause 9.5
23. S94 Roads and Traffic Sub Plan 1 – Precinct 4 (Repealed 2012)	\$14,016.00	Roads and traffic	See clause 9.5
24. S94 Roads and Traffic Facilities Sub Plan 2 Residential – Precinct 4 (Repealed 2012)	\$8,400.00	S94 Roads and Traffic Facilities Sub Plan 2 (Repealed 2012)	See clause 9.5
25. S94 Plan Resource Recovery Centres – Precinct 4 (Repealed 2009)	\$1,248.00	Resource Recovery Centres	See clause 9.5
26. S64 DSP Sewerage – Precinct 4 (Repealed 1 January 2007)	\$88,000.00	Wastewater	See clause 9.5
27. S64 DSP Water Supply – Precinct 4 (Repealed 1	\$64,000.00	Water supply	See clause 9.5

**Gibraltar Park Planning Agreement  
Wingecarribee Shire Council  
Old Bowral Estate Pty Ltd**



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January 2007)			
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*Y.D*



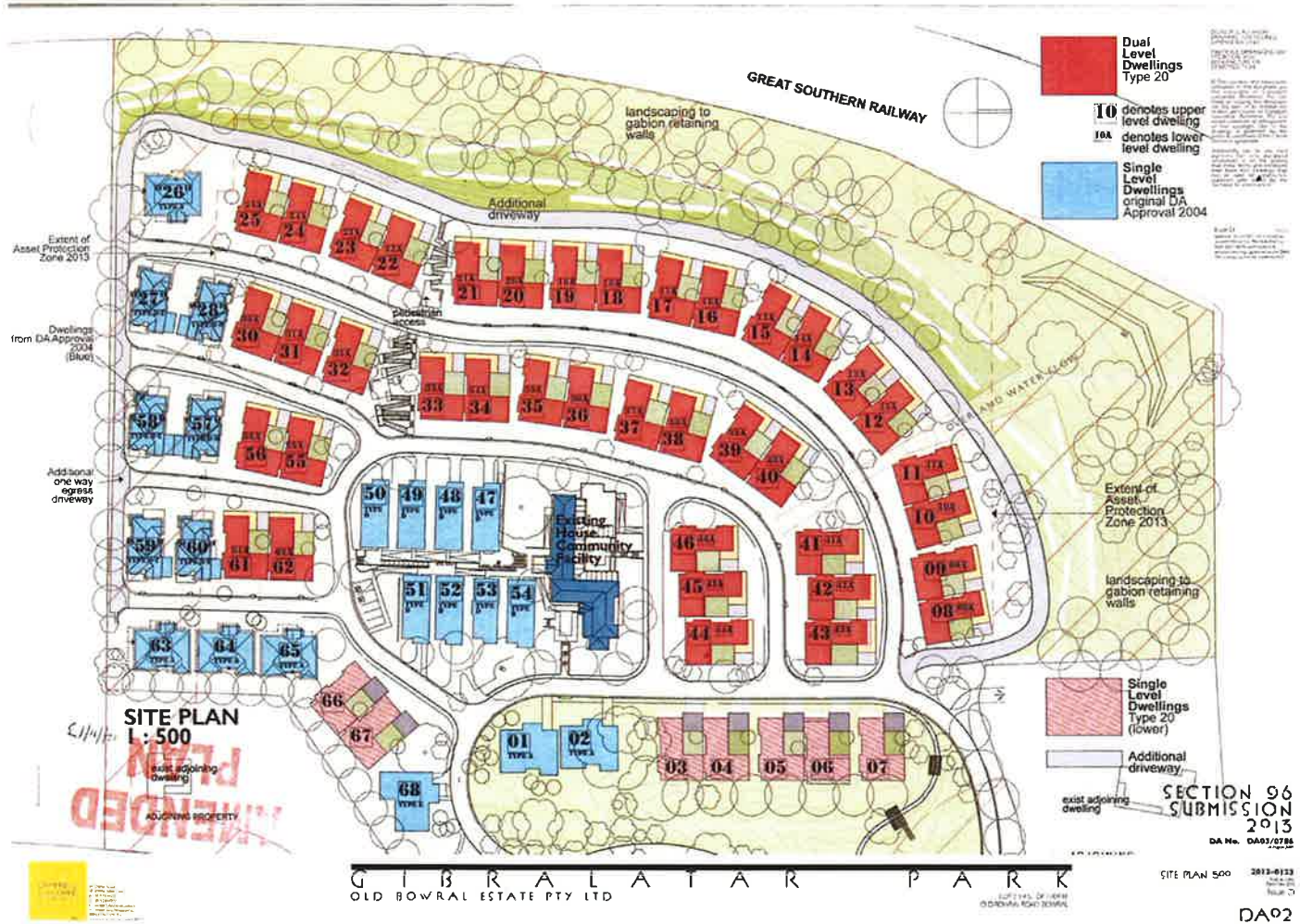
## **Schedule 2**

(Clause 1.1)

## **Development Plan**



2/17





**Schedule 3**

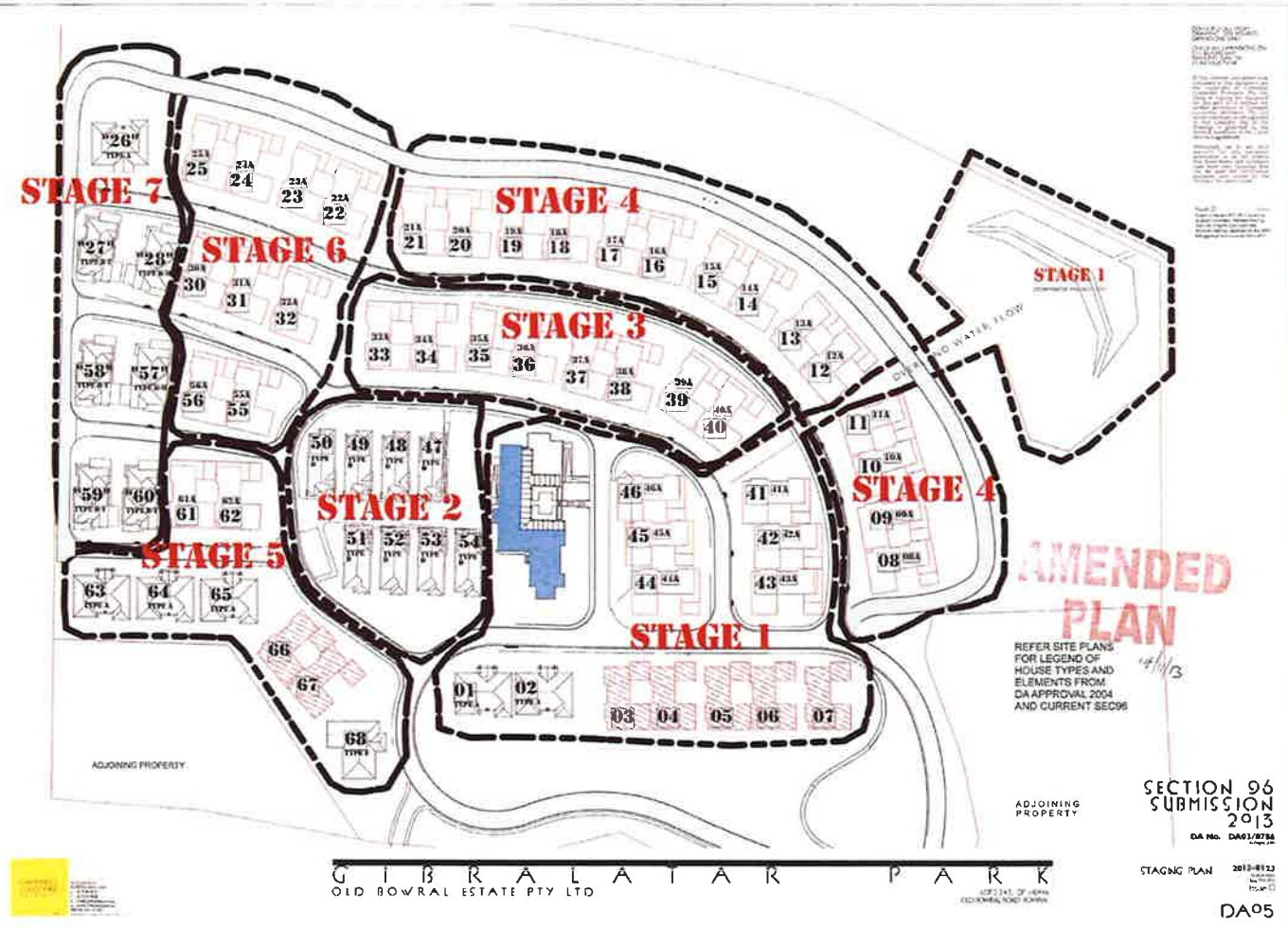
(Clause 1.1)

**Staging Plan**





*Handwritten initials 'R' and 'D' in the top right corner.*





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**Execution**

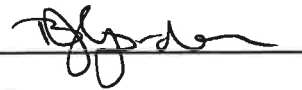
**Executed as a Deed**

**Dated:** 17/7/2014

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**Executed on behalf of the Council**

  
\_\_\_\_\_  
Acting General Manager


  
\_\_\_\_\_  
Witness

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**Executed on behalf of the Developer** in accordance with s127(1) of the  
Corporations Act (Cth) 2001

YING CHEN DOU  
\_\_\_\_\_

Name/Position

  
\_\_\_\_\_  
Name/Position



## **Appendix**

(Clause 54)

*Environmental Planning and Assessment Regulation 2000*

(Clause 25E)

## **Explanatory Note**

### **Draft Planning Agreement**

Under s93F of the *Environmental Planning and Assessment Act 1979*

### **Parties**

**Wingecarribee Shire Council** ABN 49 546 344 354 of Civic Centre, Elizabeth Street,  
Moss Vale, NSW 2577 (**Council**)

**Old Bowral Estate Pty Ltd** ACN 162 366 896 of PO Box 4328, Homebush South, NSW,  
2140 (**Developer**)

### **Description of the Land to which the Draft Planning Agreement Applies**

Lot 2345 in DP 1110446.

### **Description of Proposed Development**

Development the subject of the Consent as modified by the Modification Application, being the erection of 115 self-care retirement units and associated facilities.

### **Summary of Objectives, Nature and Effect of the Draft Planning Agreement**



### **Objectives of Draft Planning Agreement**

The objective of the Draft Planning Agreement is to secure funding in conjunction with the development on the Land for public amenities and services.

### **Nature of Draft Planning Agreement**

The Draft Planning Agreement is a planning agreement under s93F of the Environmental Planning and Assessment Act 1979 (**Act**). The Draft Planning Agreement is a voluntary agreement under which the Monetary Development Contribution (as defined in clause 1.1 of the Draft Planning Agreement) is made by the Developer for various public purposes (as defined in s93F(3) of the Act).

### **Effect of the Draft Planning Agreement**

The Draft Planning Agreement:

- relates to the carrying out by the Developer of Development on the Land,
- excludes the application of s94 and s94A of the Act,
- requires the payment of monetary development contributions for various public purposes in accordance with Council's current contributions plans and developer servicing plans,
- is to be registered on the title to the Land,
- imposes restrictions on the Developer transferring the Land or assigning an interest under the agreement,
- provides two dispute resolution methods for a dispute under the agreement, being expert determination and mediation,
- provides that the agreement is governed by the law of New South Wales, and
- provides that the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) applies to the agreement.

### **Assessment of the Merits of the Draft Planning Agreement**

### **The Planning Purposes Served by the Draft Planning Agreement**

The Draft Planning Agreement:

- promotes and co-ordinates of the orderly and economic use and development of the Land to which the agreement applies,
- provides and co-ordinates community services and facilities in connection with the Development, and
- provides increased opportunity for public involvement and participation in environmental planning and assessment of the Development.

### **How the Draft Planning Agreement Promotes the Public Interest**

The draft Planning Agreement promotes the public interest by promoting the objects of the Act as set out in s5(a)(ii), (iv), (v) and 5(c) of the Act.

### **For Planning Authorities:**



***Development Corporations - How the Draft Planning Agreement Promotes its Statutory Responsibilities***

N/A

***Other Public Authorities – How the Draft Planning Agreement Promotes the Objects (if any) of the Act under which it is Constituted***

N/A

***Councils – How the Draft Planning Agreement Promotes the Elements of the Council's Charter***

The Draft Planning Agreement promotes the elements of the Council's charter by setting an agreement with the Developer on the timing of payment of certain monetary S94 and S64 Contributions.

***All Planning Authorities – Whether the Draft Planning Agreement Conforms with the Authority's Capital Works Program***

The Planning Agreement conforms with Council's Capital Works Program (CWP) as contributions payable will be used to part fund the CPW as per current S94 Developer Contributions Plans and S64 Developer Servicing Plans.

***All Planning Authorities – Whether the Draft Planning Agreement specifies that certain requirements must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued***

The Planning Agreement requires the payment of certain monetary contributions prior to release of staged Construction Certificates.