

REQUEST
New South Wales
Real Property Act 1900

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PRIVACY NOTE: Section 31B of the Real Property Act 1900 (RP Act) authorises the Registrar General to collect the information required by this form for the establishment and maintenance of the Real Property Act Register. Section 96B RP Act requires that the Register is made available to any person for search upon payment of a fee, if any.

All Statutory Declarations and evidence that are lodged in support of land dealings will be treated as publicly accessible and will be disclosed to persons upon request.

(A) **STAMP DUTY**

If applicable. Revenue NSW use only

(B) **TORRENS TITLE**

80/2237, 81/2237, 82/2237 and 83/2237

(C) **REGISTERED DEALING**

Number	Torrens Title
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(D) **LODGED BY**

Document Collection Box	Name, Address or DX, Telephone, and Customer Account Number if any	CODE
	Reference: <input type="text"/>	R

(E) **APPLICANT**

Bayside Council ABN 80 690 785

(F) **NATURE OF REQUEST**

Registration of Planning Agreement pursuant to section 7.6 of the Environmental Planning and Assessment Act 1979
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(G) **TEXT OF REQUEST**

Registration of the 177 Russell Avenue, Dolls Point Planning Agreement between Bayside Council and War Widows' Guild of Australia NSW Limited dated 4 May 2018, a copy of which is annexed to this request and marked "C".

DATE

(H) I certify that I am an eligible witness and that an authorised officer of the applicant signed this dealing in my presence. [See note* below].

Certified correct for the purposes of the Real Property Act 1900 by the authorised officer named below.

Signature of witness: 


Signature of authorised officer:

Name of witness: **HEATHER JOHNSON**
Address of witness: **444 PRINCES HWY
ROCKDALE NSW 2216**

Authorised officer's name: **MEREDITH WALLACE**
Authority of officer: **GENERAL MANAGER**
Signing on behalf of: **BAYSIDE COUNCIL**

(I) This section is to be completed where a notice of sale is required and the relevant data has been forwarded through eNOS. The applicant _____ certifies that the eNOS data relevant to this dealing has been submitted and stored under eNOS ID No. _____ Full name: _____ Signature: _____

Annexure A to Request for Registration of Planning Agreement

Between:

Bayside Council ABN 80 690 785 (Applicant)

War Widows' Guild of Australia NSW Limited ACN 083 075 914 (Registered Proprietor)

Dated: 4 May 2018

(Executed by War Widows' Guild of Australia NSW Limited – registered proprietor of 80/2237, 81/2237, 82/2237, 83/2237)

**EXECUTED by War Widows' Guild of Australia)
NSW Limited in accordance with section 127(1))
of the Corporations Act 2001.)
)**


Signature of witness


Signature of authorised officer

CHRISTOPHER CUNNINGHAM-REID
Name of witness
(please print)

MARY WILSON
Name of authorised officer
(please print)

131 SAILORS BAY ROAD, NORTHBRIDGE
Address of witness

Company Secretary
Authority of authorised officer


Signature of witness


Signature of authorised officer

CHRISTOPHER CUNNINGHAM-REID
Name of witness
(please print)

Wendy Thompson
Name of authorised officer
(please print)

131 SAILORS BAY ROAD, NORTHBRIDGE
Address of witness

Director
Authority of authorised officer

Annexure B:

Executed by **Helm No. 10 Pty Limited ACN 167 002 100** (caveator under caveat AN45735):

EXECUTED by Helm No. 10 Pty Limited in
accordance with section 127(1) of the
Corporations Act 2001.


Signature of witness

)
)
)
)

Signature of authorised officer

Matthew Campbell
Name of witness
(please print)

Mark Jeffrey Monk.
Name of authorised officer
(please print)

4/80 Kurrama Road, Neutral Bay
Address of witness

Director.
Authority of authorised officer


Signature of witness


Signature of authorised officer

Matthew Campbell
Name of witness
(please print)

JEFF ILLINGWORTH
Name of authorised officer
(please print)

4/80 Kurrama Road, Neutral Bay
Address of witness

SECRETARY
Authority of authorised officer

Annexure "C"

177 Russell Av, Dolls Point VPA: Bayside Council and War Widows Guild of Australia NSW Limited

177 Russell Avenue, Dolls Point

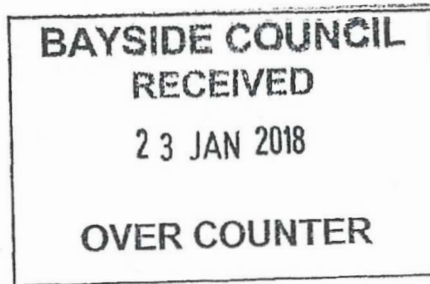
Planning Agreement

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

Bayside Council

and

War Widows' Guild of Australia NSW Limited



Executed
14 May 2018
[Signature]

[Signature]

Meredith Wallace

Mullson
OCR

[Signature]
[Signature]

[Signature]
OCR

177 Russell Avenue, Dolls Point

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OK

OK
M. Thompson
M. Thompson
M. Thompson
M. Thompson

177 Russell Avenue, Dolls Point

Contacts Sheet

Council:

Name: Bayside Council

Address: PO Box 21, ROCKDALE NSW 2216

Telephone: 1300581299

Email: council@bayside.nsw.gov.au

Representative: Manager of Strategic Planning

Developer:

Name: War Widows' Guild of Australia NSW Limited (ACN 083 075 914)

Address: c/- HELM NO 10, PO Box 99 Northbridge NSW 1560

Telephone: 02 8036 7400

Email: mmonk@helmproperties.com.au

Representative: Mark Monk

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177 Russell Avenue, Dolls Point

Parties

Bayside Council

ABN 80 690 785 Branch 003 of 444-446 Princes Highway, ROCKDALE NSW 2216
(Council)

and

War Widows' Guild of Australia NSW Limited (ACN 083075914)

of Level 14, 227 Elizabeth Street SYDNEY NSW 2000
(Developer)

Background

- A. The Developer owns the land identified in **Schedule 2**.
- B. The Developer has sought an amendment to the LEP and the Planning Proposal has been forwarded to the Minister.
- C. On 24 January 2017 the NSW Department of Planning, on behalf of the Minister, issued a Gateway Determination in respect of the Planning Proposal.
- D. Subject to the LEP Amendment being Gazetted and a Development Consent being granted in respect of the Development, the Developer has agreed to sell the Land to HELM NO. 10.
- E. The Developer has offered to enter into a Planning Agreement in accordance with section 93F of the Act in connection with the LEP Amendment providing for the payment of a monetary Development Contribution and the dedication of land to enable the future construction of a pedestrian path and cycle way adjacent to the Land, if the LEP Amendment is Gazetted.

Operative provisions

Part 1 - Preliminary

1. Definitions and interpretation

- 1.1 In this Agreement the following definitions apply:

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

Agreement means this Planning Agreement under which the Developer is required to make Development Contributions and includes any schedules, annexures and appendices to this Agreement.

Bank Guarantee means an unconditional and irrevocable undertaking issued by a major Australian trading bank in favour of Council and which is not limited in time and does not have an expiry date and is otherwise in form and substance acceptable to Council, to pay on demand to Council the amount therein expressed in Australian currency.

Construction Certificate means a construction certificate within the meaning of s109C(1)(b) of the Act.

Contribution Value means the estimated value of the Development Contribution as shown (subject to CPI) in Column 3 of **Schedule 3**.

CPI means means Consumer Price Index (Sydney – All Groups) as published by the Australian Bureau of Statistics, or if that index ceases to exist, any other index agreed between the parties.

Development means any future development of the Land after Gazettal.

Development Consent has the same meaning as in the Act.

Development Contribution means a monetary contribution and a dedication of land free of cost, by the Developer, to be used for, or applied towards, the provision of Public Amenities or another Public Purpose as set out in **Schedule 3**.

FSR means floor space ratio as set out in any environmental planning instrument applicable to the Land.

Gazettal means the publication of the LEP Amendment on the NSW Legislation website under section 34(5) of the Act by the Minister.

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.

HELM NO. 10 means the entity known as HELM NO. 10 Pty Limited ACN 167 002 100

Land means the land specified and described in **Schedule 2**.

Land Dedication means the dedication of the Public Path Land described in Schedule 3.

Land Dedication Plan means the plan at Appendix 1 showing the Public Path Land.

LEP means *Rockdale Local Environmental Plan 2011* and includes any local environmental plan applying to the Land that supersedes *Rockdale Local Environmental Plan 2011*.

LEP Amendment means the instrument to amend the LEP as explained in the Planning Proposal.

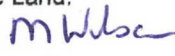

Minister means the minister administering the Act unless otherwise specified.


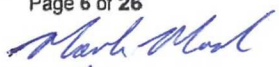
Occupation Certificate means a certificate referred to in section 109C(1)(c) of the Act.

Party means a party to this Agreement, including their successors, agents and assigns.

Planning Proposal means the planning proposal prepared in accordance with section 55 of the Act, in respect of the Land, dated November 2016, titled "Planning Proposal: Rockdale Local Environmental Plan 2011: 177 Russell Avenue, Dolls Point." which explains the proposal to amend the following controls in the LEP in respect of the Land:

X 

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- Height of Buildings Map – change the maximum building height from 14.5 to 17.75 metres;
- Floor Space Ratio Map – change the FSR standard from 1:1 metres to 1.65:1 metres.

Public Amenities has the same meaning as in the Act and includes the following:

1. Works within Peter Depena Reserve:

- Master Planning of the Beach Hut and surrounds;
- Upgrades to the Peter Depena Reserve including:
 - Amenities building;
 - Playground;
 - Signage;
 - Other infrastructure to support passive and active recreation;
 - The construction of a pedestrian path and cycle way between Russell Avenue and the Waradiel Creek footbridge.

2. Revegetation of Waradiel Creek

- Design and works associated with the revegetation of the western side of Waradiel Creek between the Russell Avenue Bridge and the Waradiel Creek footbridge.

Public Path Land means the land to be dedicated to the Council, being:

- a) a portion located in the North Eastern corner of part of the Land (Lot 80 DP 2237) comprising approximately 19 m² shown purple on the Land Dedication Plan; and
- b) a portion located in the South Eastern corner of part of the Land (Lot 80 DP 2237) comprising approximately 13m² shown pink on the Land Dedication Plan.

Public Purpose has the same meaning as in section 93F(2) of the Act.

Registrable form means the document is properly executed and witnessed and bears an imprint from the Office of State Revenue to the effect that all necessary duties have been paid, and is otherwise capable of immediate registration by the Registrar-General on the title of the relevant piece or parcel of land.

Registrar-General means the Registrar-General under the Real Property Act.

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

1.2 In the interpretation of this Agreement, 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 Agreement.

1.2.2 A reference to a Business Day means a day other than a Saturday, Sunday or bank or public holiday in Sydney.

- 1.2.3 If the day on which any act, matter or thing is to be done under this Agreement is not a Business Day, the act, matter or thing must be done on the next Business Day.
- 1.2.4 A reference to time is local time in Sydney,
- 1.2.5 A reference to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.
- 1.2.6 A reference to a \$ value relating to a Development Contribution is a reference to the value exclusive of GST.
- 1.2.7 A reference 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.
- 1.2.8 A reference to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- 1.2.9 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.
- 1.2.10 An expression importing a natural person includes any company, corporation, trust, partnership, joint venture, association, unincorporated association, body corporate, statutory body, statutory authority or governmental agency.
- 1.2.11 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.
- 1.2.12 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.
- 1.2.13 Reference to the word "include" or "including" are to be construed without limitation.
- 1.2.14 A reference to this Agreement includes the agreement recorded in the Agreement.
- 1.2.15 A reference to a party to this Agreement includes a reference to the personal representatives, legal representatives, agents and contractors of the party, and the party's successors and assigns.
- 1.2.16 Any schedules, appendices and attachments form part of this Agreement.
- 1.2.17 Notes appearing in the Agreement are operative provisions of this Agreement.
- 1.2.18 A reference in this Agreement to the name and number of a zone under Rockdale LEP 2011 includes a reference to an equivalent zone under any local environmental plan that supersedes LEP.

2. Application of this Agreement

- 2.1 This Agreement applies to the Land and the LEP Amendment.

3. Status and operation of this Agreement

- 3.1 The Parties agree that this Agreement is a planning agreement governed by Subdivision 2 of Division 6 of Part 4 of the Act.
- 3.2 The Agreement only operates when it is entered into as required by clause 25C(1) of the Regulation however Part 2 – Development Contributions of this Agreement is of no effect unless and until the LEP Amendment is Gazetted.
- 3.3 This Agreement will remain in force until:
 - 3.3.1 It is terminated by operation of Law; or
 - 3.3.2 The Council requests the Minister to determine that the LEP Amendment not proceed in accordance with s58(4) of the Act.
 - 3.3.3 1 month after all of the Developer's obligations under this Agreement are performed or satisfied.

4. Further agreements relating to this Agreement

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

5. Surrender of right of appeal

- 5.1 The Developer is not to commence or maintain, or cause to be commenced or maintained, any proceedings in the Land and Environment Court involving an appeal against, or questioning the validity of, a Development Consent relating to the Development or an approval under section 96 of the Act to modify a Development Consent relating to the Development to the extent that it relates to the existence of this Agreement or requires any aspect of this agreement to be performed according to the terms of this Agreement.

6. Application of s94, s94A and s94EF of the Act to the Development

- 6.1 This Agreement does not exclude the application of sections 94, 94A and 94EF of the Act in respect of the Development.
- 6.2 This Agreement will not be taken into consideration when determining development contributions under section 94 of the Act in respect of any Development.

Part 2 – Development Contributions

7. Provision of Development Contributions

- 7.1 **Schedule 3** has effect in relation to Development Contributions to be made by the Developer under this Agreement.
- 7.2 The Developer is to make Development Contributions to Council in accordance with this Agreement.
- 7.3 The Council is to apply each Development Contribution made by the Developer under this Agreement towards the Public Purpose for which it is made and otherwise in accordance with this Agreement.

- 7.4 The value of the Development Contribution as set out in **Schedule 3** is to be indexed in accordance with clause 8 of this Agreement until provided or paid.
- 7.5 Despite **clause 7.3**, Council may apply a Development Contribution made under this Agreement towards a Public Purpose other than the purpose specified in this Agreement in the general vicinity of the Land if Council considers that the public interest would be better served by applying the Development Contribution towards that other purpose rather than the purpose so specified.
- 7.6 The monetary Development Contribution is made for the purposes of this Agreement when the Council receives the full amount payable in accordance with this Agreement by a bank cheque or by the deposit by means of electronic funds transfer of cleared funds into a bank account nominated by the Council.

8. Indexation of Development Contribution

- 8.1 Where this Agreement provides that an amount is subject to CPI, then the amount will be increased in accordance the following formula:

$$A = B \times C/D$$

Where:

- A = the indexed amount at the time the payment is to be made.
- B = the contribution amount stated in the Agreement.
- C = the CPI most recently published before the date of payment.
- D = the CPI most recently published before the date of this Agreement.

For the avoidance of doubt, if A is less than B, then the relevant amount will not change.

9. Procedures relating to the dedication of land

- 9.1 The Development Contribution comprising the dedication of the Public Path Land is made for the purposes of this Agreement when Council is given an instrument in registrable form under the *Real Property Act 1900* that is effective to transfer the title to the land to Council when registered.
- 9.2 For the purposes of **clause 9.1**:
- 9.2.1 the Developer is to give Council, for execution by Council as transferee, an instrument of transfer under the *Real Property Act 1900* relating to the land to be dedicated, and
- 9.2.2 Council is to execute the instrument of transfer and return it to the Developer within 7 days of receiving it from the Developer,
- 9.2.3 the Developer is to lodge the instrument of transfer for registration at Land and Property Information within 7 days of receiving it from Council duly executed,
- 9.2.4 the Developer is to do all things reasonably necessary to enable registration of the instrument of transfer to occur.
- 9.3 The parties irrevocably agree that notwithstanding the Land Dedication, the Public Path Land shall form part of the Land for the purposes of any application for

Meredith Wallace

M Wilson

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Development Consent including that the Public Path Land shall not be excluded from the total site area of the Land for the purposes of calculating FSR in relation to any such application.

10. Bank Guarantee

- 10.1 Prior to the issue of the first Construction Certificate in respect of the Development, the Developer shall deliver to Council a Bank Guarantee in the amount of \$450,000 (or other security acceptable to Council) which Council may call upon, to satisfy, either wholly or partly:
- 10.1.1 Any rates and charges as may be owing in respect of the Public Path Land up to and including the date of dedication to Council of the Public Path Land;
- 10.1.2 Any other costs of and incidental to Council becoming registered as proprietor of the Public Path Land and/or protecting its estate or interest therein; and/or
- 10.1.3 The Developer's obligations to make Development Contributions in accordance with clause 7 and Schedule 3 of this Agreement.
- 10.2 Should Council use the part or whole of the monies under the Bank Guarantee under clause 10.1, the Developer shall, on being advised in writing by Council to do so, immediately take steps to ensure that the amount of the Bank Guarantee of \$450,000 (or other security) is replaced for the benefit of Council.
- 10.3 Council will release the Bank Guarantee simultaneously with the payment of the monetary Development Contribution to the satisfaction of the Council, provided that all Development Contributions have been made in accordance with clause 7 of this Agreement and the Third Schedule and the Council has received a written request to do so from the Developer no less than ten (10) Business Days prior to release.

11. Compulsory Acquisition

- 11.1 If the Developer does not dedicate any part of the Public Path Land to Council in accordance with clause 7 and Schedule 3, the Developer consents to Council compulsorily acquiring the Public Path Land, or part of it, in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991 (NSW)* for the amount of \$1.00.
- 11.2 The Developer and Council agree that:
- 11.2.1 this clause 11.1 of this Agreement is an agreement between them for the purposes of section 30 of the *Land Acquisition (Just Terms Compensation) Act 1991 (NSW)*; and
- 11.2.2 in this clause 11.1 of this Agreement they have agreed on all relevant matters concerning the compulsory acquisition and the compensation to be paid for the acquisition.
- 11.3 The Developer indemnifies and agrees to keep indemnified Council, and/or its nominee against all claims made against Council or its nominee as a result of any compulsory acquisition by Council of the whole or any part of the Public Path Land under clause 11.1 of this Agreement.
- 11.4 The Developer must pay Council, promptly on demand, an amount equivalent to all costs incurred by Council compulsorily acquiring the whole or any part of the Public Path Land as contemplated by this clause 11.1.

- 11.5 If Council compulsorily acquires the Public Path Land in accordance with this clause, the Council shall apply the Public Path Land towards the Public Purpose for which it was intended to be dedicated as set out in Schedule 3 and for no other purpose whatsoever.

Part 3 – Other Provisions

12. Enforcement in a court of competent jurisdiction

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

13. Dispute resolution – mediation

- 13.1 A dispute under this Agreement is taken to arise if one party gives another Party a notice in writing specifying particulars of the dispute.
- 13.2 If a notice is given under **clause 13.1**, the Parties are to meet within 14 days of the notice in an attempt to resolve the dispute.
- 13.3 If the dispute is not resolved within a further 28 days, the Parties must mediate the dispute in accordance with the Mediation rules of the Law Society of New South Wales published from time to time and must request the President of the law Society, or the President's nominee, to select a mediator.
- 13.4 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.
- 13.5 This clause survives the completion or termination of this Agreement.

14. Registration of this Agreement

- 14.1 As contemplated by section 93H of the Act, the Developer must, within twenty one (21) Business Days of the operation of this Agreement under **clause 3.2**, at the Developer's expense, procure the registration of this Agreement under the *Real Property Act 1900* (NSW) in the relevant folios of the Register for the Land.
- 14.2 The Developer, at its own expense, will take all practical steps, and otherwise do anything that the Council reasonably requires, to procure:
- 14.2.1 the consent of each person who:

- (a) has an estate or interest in the Land registered under the *Real Property Act 1900* (NSW); or

M Wilson
DSCG

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(b) is seized or possessed of an estate or interest in the Land; and

14.2.2 the execution of any documents; and

14.2.3 the production of the relevant duplicate certificates of title,

to enable the registration of this Agreement under the Real Property Act 1900 (NSW) in the relevant folios of the Register for the Land in accordance with section 93H of the Act.

14.2.4 The Developer will, within 10 Business Days of registration of this Agreement on the relevant folios of the Register for the Land in accordance with clause 14.1 and 14.2 above, provide the Council with a copy of the relevant folios of the Register for the Land.

14.3 Release and discharge of deed by Council

The Council must use all its best endeavours and do all things reasonably required to cause the release and discharge of this Agreement with respect to any part of the Land (such that the Agreement is no longer registered by the Registrar-General under section 93H of the Act in relation to that part of the Land) within 14 Business Days after receiving a written request to do so by the Developer, upon the Developer having provided all of the Development Contributions in accordance with this Agreement and otherwise complying with this Agreement to the satisfaction of the Council.

15. Assignment and transfer

15.1 Unless the matters specified in **clause 15.2** are satisfied, the Developer is not to do any of the following:

15.1.1 if the Developer is the owner of the Land, to transfer the Land, or any part of it, to any person, or

15.1.2 assign, transfer, dispose or novate to any person the Developer's rights or obligations under this Agreement.

15.2 The matters required to be satisfied for the purposes of **clause 15.1** are as follows:

15.2.1 the Developer has, at no cost to Council, first procured the execution by the person to whom the Developer's rights or obligations under this Agreement are to be assigned or novated, of an agreement in favour of the Council on terms satisfactory to Council acting reasonable, and

15.2.2 Council, by notice in writing to the Developer, has stated that evidence satisfactory to Council has been produced to show that the assignee or novatee, is reasonably capable of performing its obligations under the Agreement,

15.2.3 the Developer is not in breach of this Agreement, and

15.2.4 Any purported dealing in breach of this **clause 15.2** is of no effect.

15.3 Clauses 15.1 and 15.2 have effect subject to clause 15.4.

15.4 Clauses 15.1 and 15.2 do not apply to, and shall have no effect whatsoever in relation to, a transfer, assignment, disposal or novation to HELM NO.10, provided that this Agreement is registered in accordance with clause 14 of this Agreement and the Developer is not in breach of this Agreement.

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16. Notices

- 16.1 Any notice, consent, information, application or request that must or may be given or made to a Party under this Agreement is only given or made if it is in writing and sent in one of the following ways:
 - 16.1.1 delivered or posted to that Party at its address set out in the Contacts Sheet,
 - 16.1.2 emailed to that Party at its email address set out in the Contacts Sheet.
- 16.2 If a Party gives the other Party 3 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 emailed to the latest address or email address.
- 16.3 Any notice, consent, information, application or request is to be treated as given or made if it is;
 - 16.3.1 delivered, when it is left at the relevant address.
 - 16.3.2 sent by post, 2 Business Days after it is posted.
 - 16.3.3 sent by email, as soon as the sender receives a 'delivery receipt' from the recipient'.
- 16.4 If any notice, consent, consent, information, application or request is delivered, or a delivery receipt 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.

17. Approvals and consent

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

18. Costs

- 18.1 The Developer is required to pay to Council the Council's reasonable costs of preparing, negotiating, executing and stamping this Agreement, and any document related to this Agreement within 20 business days of a written demand by Council for such payment.
- 18.2 The Developer is also required to pay to Council a contribution of \$500 towards Council's costs of preparing the template document on which this Agreement is based within 7 days of a written demand by Council for such payment.
- 18.3 The Developer is also required to pay to Council the Council's reasonable costs of compulsorily acquiring the Public Path Land in accordance with this Agreement or enforcing this Agreement, within 20 business days of a written demand by Council for such payment except in the case of a dispute that is the subject of court proceedings, in which case any costs will be paid in accordance with orders of the court only.

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M Wilson [Signature]

[Signature]

X [Signature]

19. Entire Agreement

- 19.1 This Agreement contains everything to which the Parties have agreed in relation to the matters it deals with.
- 19.2 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 Agreement was executed, except as permitted by law.

20. Further acts

- 20.1 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 Agreement and all transactions incidental to it.

21. Governing law and jurisdiction

- 21.1 This Agreement is governed by the law of New South Wales.
- 21.2 Each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of its courts and courts of appeal from them.
- 21.3 Each party waives any right to object to the exercise of jurisdiction by those courts on any basis.

22. Joint and individual liability and benefits

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

23. No fetter

- 23.1 Nothing in this Agreement 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.

24. Representations and warranties

- 24.1 Each Party represent and warrant to each other Party that they have power to enter into this Agreement and comply with their obligations under the Agreement and that entry into this Agreement will not result in the breach of any law.

25. Severability

- 25.1 If a clause or part of a clause of this Agreement 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.

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25.2 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 Agreement, but the rest of this Agreement is not affected.

26. Modification

26.1 No modification of this Agreement will be of any force or effect unless it is in writing and signed by the Parties to this Agreement.

27. Waiver

27.1 The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another Party.

27.2 A waiver by a Party is only effective if it is in writing. A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given.

27.3 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.

28. Rights cumulative

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

29. Duty

29.1 The Developer as between the Parties is liable for and must pay all duty (including any fine or penalty except where it arises from default by another Party) on or relating to this Agreement, any document executed under it or any dutiable transaction evidenced or effected by it.

29.2 If a Party other than the Developer pays any duty (including any fine or penalty) on or relating to this Agreement, any document executed under it or any dutiable transaction evidenced or effected by it as a result of the Developer first failing to pay such duty, the Developer must pay that amount to the paying Party on demand.

30. Effect of Schedules

30.1 Each Party agree to comply with any terms contained in the Schedules to this Agreement as if those terms were included in the operative part of the Agreement.

31. Relationship of the Parties

31.1 This Agreement is not intended to create a partnership, joint venture or agency relationship between the Parties.

32. GST

32.1 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 on GST on that Supply.

- 32.2 Subject to **clause 32.4**, if GST is payable on a Taxable Supply made under, by reference to or in connection with this Agreement, the Party providing the consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.
- 32.3 **Clause 32.2** does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Agreement to be GST inclusive.
- 32.4 No additional amount shall be payable by Council under **clause 32.2** unless, and only to the extent that, 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.
- 32.5 If there are Supplies for Consideration which is not Consideration expressed as an amount of Money under this Agreement by one Party to the other Party that are not subject to division 81 of the *A New Tax System (Goods and Services Tax) Act 1999*, each Party agrees:
- 32.6 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;
- 32.7 that any amounts payable by each Party in accordance with **clause 32.2** (as limited by **clause 32.4**) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 32.8 No payment of any amount pursuant to this **clause 32**, 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.
- 32.9 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.
- 32.10 This clause continues to apply after expiration or termination of this Agreement.

33. Explanatory Note relating to this Agreement

- 33.1 The **Appendix 2** contains the Explanatory Note relating to this Agreement required by clause 25E of the Regulation.
- 33.2 Pursuant to clause 25E(7) of the Regulation, each Party agrees that the Explanatory Note in the **Appendix 2** is not to be used to assist in construing this Planning Agreement.

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3461-8975-8469, v. 1

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Meredith Wallace

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~~Meredith Wallace~~
~~Meredith Wallace~~

Execution

Executed as a Deed

Date: 4 May 2018

Executed on behalf of Council:

Executed by Bayside Council by its authorised delegate.

Meredith Wallace

General Manager

HEATHER JOHNSON

Name of Witness in full

[Signature]

Signature of Witness

Executed on behalf of WAR WIDOWS' GUILD OF AUSTRALIA NSW LIMITED (the Developer) under s 127 of the Corporations Act 2001:

[Signature]

Director (sign)

M Wilson

Director/Secretary (sign)

Jenny Wheatley

Name of Director (print)

MARY WILSON

Name of Director/Secretary (print)

[Signature]

Meredith Wallace

M Wilson
[Signature]

[Signatures]

Schedule 1 (Section 93F Requirements)

Provision of the Act	This Agreement
Under section 93F(1), the Developer has:	
(a) sought a change to an environmental planning instrument	Yes
(b) made, or proposes to make, a Development Application.	Yes
(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies	No
Description of the land to which this Agreement applies – Section 93F(3)(a))	The Land described in Schedule 2 to this agreement
Description of the change to the environmental planning instrument to which this Agreement applies – (Section 93F(3)(b)(i))	Definition of Planning Proposal
The scope, timing and manner of delivery of Development Contributions required by this Agreement – (Section 93F(3)(c))	See Schedule 3 to this Agreement
Applicability of Sections 94, 94A and 94EF of the Act – (Sections 93F(3)(d))	See clause 6.
Benefits under the Agreement considered for Section 94 purposes – (Section 93F(3)(e)),	See clause 6.
Dispute Resolution – (Section 93F(3)(f))	See clause 14
Enforcement of this Agreement – (Section 93F(3)(g))	See clause 10-12
Registration of the Agreement – (Section 93H)	Yes, see clause 14
No obligation to grant consent or exercise functions – (Section 93F(9))	See clause 23

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Schedule 2 (The Land)

(Clause 1)

The Land

The Land is:

Lot 80 DP 2237

Lot 81 DP 2237

Lot 82 DP 2237; and

Lot 83 DP 2237

known as 177 Russell Avenue, Dolls Point NSW 2219.

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m.wilson
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[Signatures]

Schedule 3 (Development Contributions)

(Clause 7)

Development Contributions

Monetary Contribution

Column 1	Column 2	Column 3	Column 4
Item	Public Purpose	Contribution Value	Timing
A	The Developer must pay to the Council a monetary contribution towards the Public Amenities.	<p>\$450,000 (subject to CPI) calculated as follows:</p> <ol style="list-style-type: none"> 1. Works within Peter Depena Reserve - \$410,000 <ul style="list-style-type: none"> • Master Planning of the Beach Hut & Surrounds - \$70,000 • Upgrades to Peter Depena Reserve - \$340,000 2. Revegetation of Waradiel Creek - \$40,000 	Prior to the issue of the first Occupation Certificate in respect of the Development.

Land Dedication

Column 1	Column 2	Column 3	Column 4
Item	Public Purpose	Contribution Value	Timing
B	The Developer must dedicate the Public Path Land to the Council for purpose of a public path / cycleway.		Prior to the issue of the first Occupation Certificate in respect of the Development.

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for

OR

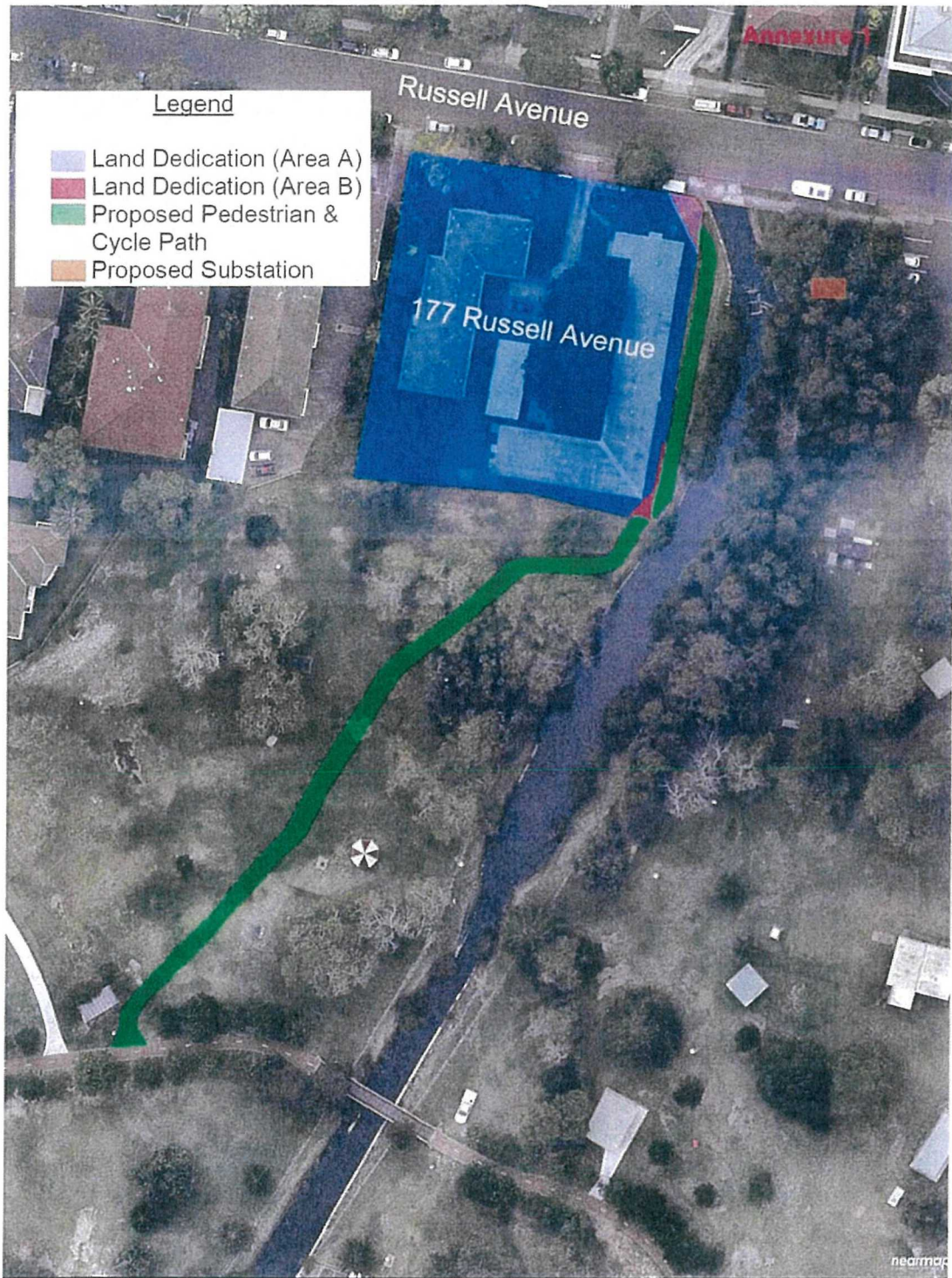
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Appendix 1 (Land Dedication Plan)



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Appendix 2 (Explanatory Note)

(Clause 49)

Environmental Planning and Assessment Regulation 2000

(Clause 25E)

Explanatory Note: Proposed Planning Agreement

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

1. Parties

Bayside Council ABN 80 690 785 443 Branch 003 of 444-446 Princes Highway, ROCKDALE NSW 2216 (Council)

and

War Widows' Guild of Australia NSW Limited ACN.083 075 914 of Level 14 227 Elizabeth Street SYDNEY, NSW 2000

(Developer)

2. Description of the Land to which the proposed Planning Agreement applies

2.1 Lots 80, 81, 82 and 83, DP 2237, 177 Russell Avenue, Dolls Point NSW 2219, as described in **Schedule 2** to the Agreement.

2.2 This Developer is the owner of the Land.

3. Description of the LEP Amendment

3.1 The Developer has sought to make the following amendments to the controls in the Rockdale Local Environmental Plan 2011 (LEP) in respect of the Land:

(a) Height of Buildings Map – change the maximum building height from 14.5 to 17.75 metres;

(b) Floor Space Ratio Map – change the FSR standard from 1:1 metres to 1.65:1 metres.

4. Summary of objectives, nature and effect of the proposed Planning Agreement

4.1 Objectives of proposed Planning Agreement

4.1.1 The objectives of the proposed Planning agreement are to:

- provide Development Contributions for the benefit of the public in the form of the dedication of land free of cost and the payment of a monetary Development Contribution, as outlined below; and
- achieve the provision of these Development Contributions with greater certainty and at less risk and less cost to Council than would be possible

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through the outright purchase of the land or the use of section 94 development contributions alone.

4.2 Nature of proposed Planning Agreement

4.2.1 The Planning Agreement is a planning agreement under s93F of the *Environmental Planning and Assessment Act 1979* (Act). The Planning Agreement is a voluntary agreement under which Development Contributions (as defined in clause 1.1 of the Draft Planning Agreement) are made by the Developer for various public purposes (as defined in s93F(2) of the Act).

4.3 Effect of proposed Planning Agreement

The Planning Agreement:

- (a) imposes an obligation on the Developer to make monetary Development Contributions in the amount of \$450,000, if the LEP is amended, prior to the first Occupation Certificate being issued.
- (b) Imposes an obligation on the Developer to dedicate a small part of the Land to the Council so as to enable the future development of a public path and cycleway.
- (c) Obliges the Council to expend the Development Contribution on Public Amenities or other public purposes including works within Peter Depena Reserve and the revegetation of Waradieel Creek.
- (d) Does not exclude the application of s94 and s94A of the Act to the future development of the Land.
- (e) imposes restrictions on the Developer selling or otherwise dealing with the Land.
- (f) provides for dispute resolution, as agreed between the parties, or in failing to agree, mediation.
- (g) requires registration of the planning agreement on the title of the land and the provision of a Bank Guarantee prior to the issue of the first Construction Certificate.

5. Assessment of the merits of the proposed Planning Agreement

5.1 The Public Purposes served by the proposed Planning Agreement

The proposed Planning Agreement promotes the provision of and recoument of the cost of providing public and amenities and public services.

The Planning Deed is a reasonable means for achieving that planning purpose, as it provides for the payment of a monetary development contribution to be expended on achieving that planning purpose.

5.2 How the proposed Planning Agreement promotes the Public Interest and the objects of the Environmental Planning and Assessment Act 1979

The Planning Deed promotes the public interest and the objects of the Act as set out in s5(a) of the Act that is, to encourage:

- (ii) the promotion and co-ordination of the orderly and economic use and development of land, and
- (v) the provision and co-ordination of community services and facilities.

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Meredith Wallace

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5.1 How the proposed Planning Agreement promotes the Elements of the Council's Charter

The proposed Planning Agreement promotes the elements of the Council's Charter by providing appropriate services and facilities for the local community enables the Council to carry out its functions in a way that facilitates local communities that are strong, healthy and prosperous

5.2 How the proposed Planning Agreement promotes the objects (if any) of the Local Government Act 1993

The proposed Planning Agreement promotes the objects of the Local Government Act 1993 by allowing Council to provide facilities appropriate to the current and future needs of the local community and the wider public and to improve and develop the resources of the area.

5.3 Whether the proposed Planning Agreement specifies that certain requirements must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued

The proposed Planning Agreement specifies that the Developer must have paid the monetary Development Contribution before any Construction Certificate is issued in respect of any future Development on the Land.

5.4 Whether the proposed Planning Agreement conforms with the authority's capital works program

The proposed Planning Agreement conforms with Council's capital works program and, furthermore, will enable the program to be advanced with greater timeliness and certainty while reducing the financial risks to Council in its implementation.

6. Further Information

6.1 Interpretation

Note: this explanatory note is a summary only of the proposed Planning Agreement, is not to be relied upon as a complete description of the proposed Planning Agreement, and is not to be used as an aid in construing the proposed Planning Agreement.

6.2 Further Information

Copies of the proposed Planning Agreement are available on the Bayside Council website, and at the offices of Bayside Council.

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