

AMENDED PLANNING AGREEMENT

Dated this _____ day of _____ 2024

Parties

Lithgow City Council ([ABN 59 986 092 492](#)) of 180 Mort Street Lithgow, New South Wales (**Council**)
and

Strathlone Estates ~~P/L~~Pty Ltd ([ACN 050 676 447](#)) of P O Box 329, Lithgow, New South Wales
(**Developer**).

Background

(For Development Applications)

- A. On 23 February 2005, the Developer made a Development Application (DA66/05) to the Council for Development Consent to carry out the Development on the Land.
- B. That Development Application was accompanied by an offer by the Developer to enter into an Agreement to make Development Contributions towards the Public Facilities if that Development consent was granted.
- ~~C.~~ On 28 April 2006, Council granted Development Consent to DA66/05 for a 47 lot residential subdivision of the Land.
- ~~D.~~ In or about September 2006, following a public exhibition period and Council resolution dated 18 September 2006, the Parties entered into the Planning Agreement on terms offered by the Developer and accepted by Council.
- ~~E.~~ Pursuant to clause 203(5) of the *Environmental Planning and Assessment Regulation 2021*, the parties agree to amend the Planning Agreement entered in September 2006 by replacing it with the terms of this Amended Planning Agreement.
- ~~E.F.~~ The parties agree that the Planning Agreement entered in September 2006 will be automatically revoked and cease to have effect upon the signing by both parties of this Amended Planning Agreement.

Operative provisions

1 Planning agreement under the Act

The Parties agree that this Agreement is a planning agreement governed by [Subdivision 2 of Part 7 \(previously Subdivision 2 of Division 6 of Part 4\)](#) of the Act.

2 Application of this Agreement

The applicationThis agreement applies to Lot 199 in DP1179748 located at Great Western Highway, South Bowenfels (being prior Lots 10 & 11 DP1074721, being Great Western Highway, South Bowenfels), for a subdivision of 47 lots granted under DA66/05 as modified.

3 Operation of this Agreement

This Agreement takes effect on the date of execution. All contributions must be paid prior to the release of a subdivision certificate for the development.

4 Definitions and interpretation

4.1 In this Agreement the following definitions apply:

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

Dealing, in relation to the Land, means, without limitation, selling, transferring, assigning, mortgaging, charging, encumbering or otherwise dealing with the Land.

Development means subdivision into 47 lots granted under DA66/05 as modified.

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 or the provision of a material public benefit.

GST has the same meaning as in the GST Law.

GST Law has the meaning given to that term 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.

Land means Lot 199 DP1179748 located at Great Western Highway, South Bowenfels (being prior Lot 11 DP 1074721, known as Lot 11 Great Western Highway, South Bowenfels).

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

Regulation means the *Environmental Planning and Assessment Regulation 2021 (previously the Environmental Planning and Assessment Regulation 2000)*.

4.2 In the interpretation of this Agreement, the following provisions apply unless the context otherwise requires:

(a) Headings are inserted for convenience only and do not affect the interpretation of this Agreement.

- (b) A reference in this Agreement to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
- (c) 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.
- (d) A reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.
- (e) A reference in this Agreement 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.
- (f) A reference in this Agreement to any agreement, deed or document is to that agreement, deed or document as amended, notated, supplemented or replaced.
- (g) A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.
- (h) An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- (i) 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.
- (j) 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.
- (k) References to the word 'include' or 'including' are to be construed without limitation.
- (l) A reference to this Agreement includes the agreement recorded in this Agreement.
- (m) A reference to a party to this Agreement includes a reference to the servants, agents and contractors of the party, and the party's successors and assigns.

(n) Any schedules and attachments form part of this Agreement.

5 Development Contributions to be made under this Agreement

5.1 The Developer shall pay to Council an amount of \$2500 plus GST per allotment created for residential purposes toward the provision of community facilities in the Lithgow Local Government Area.

5.2 The Developer shall pay to Council an amount of \$1000 plus GST per allotment created for residential purposes in respect of active open space required as a result of the development. As an alternative to this monetary contribution the developer may choose to provide as part of the lands the subject of the development application an allotment of land for active open space purposes and embellish the land prior to the issue of a subdivision certificate with at least the following:

- A mixture of (to Council's satisfaction) new playground equipment, green space, skateboard and/or bicycle "ramp" facilities, basketball/netball practice facilities (eg part of a court area and hoop)
- Seating & Tables
- The area is to be suitably signposted, landscaped and turfed and is to be sited having regard to the South Bowenfels Development Control Plan.

6 Application of Development Contributions

6.1 Payments or provision of material public benefits must be made prior to the issue of a subdivision certificate.

7 Application of s7.11 and s7.12 (previously s94 and s94A) of the Act to the Development

Sections 7.11 and 7.12 (previously s94 and s94A) of the Act do not otherwise apply to the ~~d~~development.

8 Registration of this Agreement

~~This Agreement will not be registered as provided for in s93H of the Act as its provisions are to be finalised prior to the issue of separate titles.~~

8.1 This agreement shall run with the land in accordance with section 7.6 (previously s93H) of the Act.

8.2 The Developer authorises Council to lodge a Request form 11R together with a copy of this agreement for registration on the title of the Land in the Register maintained by the Registrar General under the *Real Property Act 1900*.

8.3 The Developer agrees to do all thing necessary, including signing a Request form 11R and obtaining the consent of any other person with an estate or interest in the Land, to facilitate the registration of this agreement on the title of the Land.

9 Review of this Agreement

This agreement shall not be reviewed except with the approval of both parties.

10 Dispute Resolution

Should a dispute arise as part of this agreement that cannot be resolved between the parties then the parties may engage an independent mediator to be funded by the parties to assist in resolving the dispute. If the dispute is not resolved by mediation then before either party has recourse to litigation, the party must submit the dispute to expert appraisal. If the parties do not agree upon an independent expert, either may request the Secretary General of the Australian Commercial Disputes Centre to nominate an expert.

11 Enforcement

If this agreement is not honoured prior to any request for the issue of a subdivision certificate then the parties agree that enforcement shall mean the subdivision certificate will not be released.

12 Notices

12.1 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:

- (a) Delivered or posted to that Party at its address set out below.
- (b) Faxed to that Party at its fax number set out below.
- (c) Emailed to that Party at its email address set out below.

Council

Attention: Andrew Muir The General Manager

Address: 180 Mort Street, Lithgow, 2790

Fax Number: 02 63512927

Email: Council@lithgow.nsw.gov.au

Developer

Attention: Strathlone Estates P/L
Address: P O Box 329, Lithgow, 2790
Fax Number: -
Email: -

12.2 If a Party gives the other Party 3 business days notice of a change of its address or fax number, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or faxed to the latest address or fax number.

12.3 Any notice, consent, information, application or request is to be treated as given or made at the following time:

- (a) If it is delivered, when it is left at the relevant address.
- (b) If it is sent by post, 2 business days after it is posted.
- (c) If it is 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.

12.4 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 4.30pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

13 Approvals and consent

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. A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

14 Assignment and Dealings

~~The parties agree that this agreement shall not be assigned to any other party. Should the developer intend to sell, transfer or otherwise dispose of the property the subject of the agreement then the developer hereby agrees to honour the terms of the agreement prior to such sale, transfer or disposition.~~

14.1 The Developer agrees not to:

14.1.1 sell or transfer the Land or any part of the Land; or

14.1.2 assign the Developer's rights or obligations under this agreement to any person unless:

(a) the Developer has at no cost to the Council, first procured the incoming purchaser or assignee to enter into a deed of assignment on terms reasonably satisfactory to the Council under which the incoming purchaser or assignee agrees to perform the Developer's obligations under this agreement; and

(b) the Developer is not in breach of this agreement, and

(c) the Council otherwise consents to the transfer or assignment, such consent not to be unreasonably withheld.

14.2 The Developer indemnifies Council for any loss suffered by Council as a result of a breach by the Developer of this clause 14.

15 Costs

Any incidental costs associated with this agreement shall be borne by the ~~d~~Developer.

16 Entire agreement

This Agreement contains everything to which the Parties have agreed in relation to the matters it deals with. 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.

17 Further acts

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

18 Governing law and jurisdiction

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

19 Joint and individual liability and benefits

Except as otherwise set out in this Agreement, any agreement, covenant, representation or warranty under this Agreement by 2 or more persons binds them jointly and each of them

individually, and any benefit in favour of 2 or more persons is for the benefit of them jointly and each of them individually.

20 No fetter

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.

21 Representations and warranties

The Parties represent and warrant 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.

22 Severability

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. 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.

23 Modification

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.

24 Waiver

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. 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. 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.

25 GST

If any Party reasonably decides that it is liable to pay GST on a supply made to the other Party under this Agreement and the supply was not priced to include GST, then recipient of the supply must pay an additional amount equal to the GST on that supply.

Executed by the parties as an agreement.

Executed by Lithgow City Council (ABN 59 986 092 492) by its authorised delegate pursuant to s. 377 [or s. 378] of the *Local Government Act 1993* in the presence of:

.....
Witness signature

.....
Authorised delegate signature

.....
Witness name

.....
Name

.....
Witness address

Executed by Strathlone Estates Pty Ltd (ACN 050 676 447) pursuant to section 127(1) of the *Corporations Act 2001*

.....
Name:

Director

.....
Name:

Director