

DATE

2021

Between

**LITHGOW CITY COUNCIL
(ABN 59 986 092 492)**

and

**VALLEY VIEW MARRANGAROO PTY LTD
(ACN 635 795 274)**

AGREEMENT FOR ACCESS AND PUBLIC ROAD DEDICATION

Lithgow City Council
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LITHGOW NSW 2790
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DRAFT

THIS AGREEMENT dated

2021

BETWEEN:

Lithgow City Council (ABN 59 986 082 492) of 180 Mort Street, Lithgow NSW 2790
(**'Council'**)

AND

Valley View Marrangaroo Pty Ltd (ACN 635 795 274) of 6/7 Avalon Parade, Avalon Beach
NSW 2107 (**'Valley View'**)

(together **'the parties'**).

RECITALS

- A. Council owns Lot 68 in DP813538 situate at Girraween Drive, Marrangaroo (**'Lot 68'**).
- B. Valley View owns Lot 702 in DP1135310 situate at Great Western Highway, Bowenfels (**'Lot 702'**).
- C. The State of NSW owns the road that runs parallel between Lot 68 and Lot 702 (**'Crown Road'**).
- D. On 2 March 2015, Council approved a modified development application for a subdivision of Lot 702 and other works, subject to conditions specified in the development consent (**'DA245/13'**).
- E. At the Ordinary meeting of Council on 2 March 2015, Council resolved as follows in respect of DA 245/13:

The applicant be advised that the granting of development consent does not provide any permission to conduct any works on Lot 68 [DP]813538 or infer any agreement for the sale, acquisition, transfer or use of any part of that land. Any proposal to seek permission to use the said land or for the sale, acquisition or transfer of part of the land shall be the subject of an entirely separate process and commercial consideration between Council and the applicant.

- F. The parties agree to enter this agreement to give effect to the commercial arrangements regarding Lot 68 and the manner of transferring Part Crown Road to Council pursuant to condition 82 of DA 245/13, subject to the terms and conditions set out herein.

The Parties agree as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this agreement, unless otherwise indicated by the context:

Bridge Works means the twin bridge and associated intersection road works specified in DA245/13.

Business Day means a day that is not a Saturday, Sunday, public holiday or bank holiday in New South Wales.

Business Hours means from 9.00 am to 5.00 pm on a Business Day.

Commencing Date means the date that is determined by clause 2.1.

Compliance Certificate means a certificate issued by Lithgow City Council to the effect that the Bridge Works or the Road Works (as applicable) authorised under the relevant construction certificate or subdivision works certificate (as applicable) have been completed as required.

Construction Certificate means a certificate issued by Lithgow City Council in relation to the Bridge Works and associated intersection road works as required under section 6.7 of the *Environmental Planning and Assessment Act 1979*.

Department means the NSW Department of Industry, which is responsible for management of the Crown Road.

Expiry Date means the date that is determined by clause 2.2.

GST means a tax in the nature of a supply of goods and services tax levied or imposed by the Commonwealth of Australia.

Part Crown Road means that part of the Crown road framed in bold on the image attached as Annexure A of this agreement. (The image shown in Annexure A is for identification purposes only and is not an indication of precise location and/or measurements)

Part Lot 68 means that part of lot 68 framed in bold on the image attached as Annexure A of this agreement. (The image shown in Annexure A is for identification purposes only and is not an indication of precise location and/or measurements)

Road Works means the construction of the road by Valley View over Part Lot 68 and Part Crown Road (as applicable).

Subdivision Certificate means a subdivision certificate in respect of DA245/13 required under section 195A of the *Conveyancing Act 1919*.

Subdivision Works Certificate means a subdivision works certificate in respect of DA245/13 required under section 6.13 of the *Environmental Planning and Assessment Act 1979*.

1.2 Interpretation

In this agreement, unless otherwise indicated by the context:

- (a) the singular includes the plural and vice versa; words importing a gender include the other genders;
- (b) other grammatical forms of defined words or phrases have corresponding meanings;
- (c) use of a term denoting subject matter which comprises more than one part or aspect includes a reference to each or any part or aspect of the subject matter;
- (d) a reference to a clause, part of a clause, schedule or annexure is a reference to that clause, part of a clause, schedule or annexure to this document and a reference to this document includes its schedules and any annexures;
- (e) a reference to writing includes typewriting, printing, lithography, photography and any other mode of representing or reproducing words, figures or symbols in a lasting and visible form;
- (f) the word 'person' includes an individual, a firm, body corporate, unincorporated association, incorporated association or a Public Authority, partnership or joint venture;
- (g) where a party comprises two or more persons an agreement or obligation binding that party binds those persons jointly and severally;
- (h) a reference to a party includes that party's successors and permitted assigns;
- (i) a reference to a group of persons is a reference to all of them collectively, to any two or more of them collectively and to each of them individually;
- (j) a reference to 'dollar', '\$', '\$A', 'A\$'; or 'AUD' is a reference to Australian currency; and
- (k) a reference to a specific time for the performance of an obligation is a reference to that time in New South Wales;

- (l) references to legislation or provisions of legislation include changes or re-enactments of the legislation and statutory instruments and regulations issued under the legislation;
- (m) a reference to a body,
 - (i) whether statutory or not;
 - (A) which ceases to exist; or
 - (B) whose powers or functions are transferred to another body,is a reference to the body which replaces it or which substantially takes over its powers or functions.

2. TERM OF AGREEMENT

- 2.1 This agreement commences on the date that it is signed by both parties.
- 2.2 This agreement ends on the earlier of:
 - (a) a valid termination under clause 8 of this agreement;
 - (b) the date that Council receives notice that the plan of subdivision in respect of DA245/13 has been registered with NSW Land Registry Services;
 - (c) that date that is 24 months from the Commencing Date, if the second temporary access licence referred to in clause 3.3 has not commenced.
- 2.3 A process flowchart setting out steps to be followed under this agreement is included as Annexure B to this agreement.

3. PART LOT 68 - TEMPORARY ACCESS LICENCES

- 3.1 Council agrees to grant two temporary access licences to Valley View over Part Lot 68 to enable access to Lot 702, subject to the provisions and purposes outlined in this clause 3.
- 3.2 **First temporary access licence**
 - (a) The first temporary access licence will commence on the date that Valley View commences the Bridge Works.
 - (b) The first temporary access licence will automatically cease on the earlier of the date that Council issues a Subdivision Works Certificate and the Expiry Date.
 - (c) During the first temporary access licence, Valley View and its officers, contractors, employees, servants and agents may traverse over Part Lot 68 to

gain access to Lot 702 for the sole purpose of undertaking necessary work to prepare an application for a Subdivision Works Certificate relating to the land subdivision in respect of DA245/13.

3.3 The second temporary access licence

- (a) The second temporary access licence will commence on the later of:
 - (i) the date that Council issues a Subdivision Works Certificate relating to the land subdivision in respect of DA245/13; and
 - (ii) the date that Council issues a Compliance Certificate in respect of the Bridge Works.
- (b) The second temporary access licence will automatically cease on the Expiry Date.
- (c) During the second temporary access licence, Valley View and its officers, contractors, employees, servants and agents may traverse over Part Lot 68 to gain access to Lot 702 for the purpose of undertaking the works authorised under the Subdivision Works Certificate.

3.4 During the temporary access licence periods set out in this clause 3, Valley View:

- (a) must maintain a trafficable surface over Part Lot 68 at its cost;
- (b) cause as little inconvenience and disturbance as possible to Part Lot 68, adjoining land and property, Council, owners and occupiers of adjoining land;
- (c) must hold public liability insurance cover for at least \$20,000,000 (for each event or occurrence) against any loss or damage to person or property caused by Valley View's access and use of Part Lot 68;
- (d) must make good at its own cost any damage caused by Valley View to Lot 68 or land or property adjoining Lot 68.

3.5 Valley View indemnifies Council, without limitation, from and against all actions, claims, costs and demands in respect of injury or death to persons or damage to property arising out of or in connection with the use and enjoyment by Valley View, its officers, contractors, employees, servants and agents of Part Lot 68 under this temporary access licence.

4. PART LOT 68 – PUBLIC ROAD DEDICATION

4.1 Relinquishment and dedication

Subject to clause 4.2, Council agrees to relinquish Part Lot 68 and to dedicate it as public road.

4.2 Consideration and costs

As consideration for Council relinquishing and dedicating Part Lot 68 as public road, Valley View agrees to:

- (a) complete the Road Works at its cost, in a manner consistent with the Subdivision Works Certificate, prior to lodging an application for a Subdivision Certificate with Council; and
- (b) pay to Council the sum of \$60,000 plus GST on or before lodging the application for a Subdivision Certificate with Council; and
- (c) pay all reasonable legal and other costs directly related to the relinquishment and dedication of Part Lot 68 as public road.

5. PART CROWN ROAD – TRANSFER AND PUBLIC ROAD DEDICATION

5.1 Application and dedication

- (a) Within 14 days of the date that Council issues a Construction Certificate in respect of the Bridge Works, Council will lodge an application with the Department to request a transfer of Part Crown Road to Council.
- (b) If the Department agrees to transfer Part Crown Road to Council, Council will do all things reasonably necessary to facilitate the transfer, and agrees to the dedication of Part Crown Road as public road.
- (c) Notwithstanding any other provision of this agreement, Council is under no obligation to accept a transfer of any part of the Crown Road other than Part Crown Road and Council may withdraw its application if the Department does not agree to transfer Part Crown Road only.

5.2 Consideration and costs

In relation to the transfer of Part Crown Road to Council, Valley View agrees to:

- (a) pay any reasonable cost sought by the Department, plus any purchase price (if applicable), by the date specified by the Department; and

- (b) complete the Road Works over Part Crown Road at its cost, in a manner consistent with the Subdivision Works Certificate, prior to lodging an application for a Subdivision Certificate with Council; and
- (c) pay all reasonable legal and other costs of Council and the Department directly associated with the transfer of Part Crown Road to Council.

6. METHOD OF ROAD DEDICATION

- 6.1 The parties agree that the public road to be created over Part Lot 68 and Part Crown Road under this agreement will be created pursuant to section 9 of the *Roads Act 1993*.
- 6.2 The plan of subdivision to be prepared by Valley View, at its cost, must incorporate the public road and include a statement of intention dedicating Part Lot 68 and Part Crown Road as public road.

7. NO ASSIGNMENT WITHOUT CONSENT

- 7.1 Valley View must not assign or novate any of its rights or obligations under this agreement without the consent in writing of Council.
- 7.2 The consent of Council will not be unreasonably withheld if:
 - (a) the proposed assignment is subject to any necessary conditions imposed by the Council in good faith; and
 - (b) the proposed assignee has the financial resources to perform all obligations under this agreement; and
 - (c) the parties enter a deed of covenant in a form acceptable to Council, which provides that the assignee covenants to perform all obligations of the assignor under this agreement and the deed of covenant is executed by the assignor, assignee and the Council prior to the assignment taking effect.

8. DEFAULT

- 8.1 Valley View will be in default under this agreement if it fails to comply with a provision of this agreement and does not remedy that failure within 14 days of receiving a written notice from Council.
- 8.2 If Valley View is in default under this agreement, then Council may:
 - (a) terminate this agreement by giving 7 days' notice in writing to Valley View; and
 - (b) recover from Valley View any loss suffered by Council as a result of the default; and

(c) exercise any legal right available to it.

9. GOODS AND SERVICES TAX

- 9.1 Any supply under this agreement is a taxable supply under A New Tax System (Goods and Services Tax) Act 1999.
- 9.2 In addition to the consideration payable under this agreement, Valley View must pay the applicable GST amount to Council, which at the commencing date is 10% of the consideration.
- 9.3 Council must provide Valley View with a tax invoice in respect of any payments under this clause.
- 9.4 If GST applies to any other supply made under this agreement or any other rights granted pursuant to this agreement then Council will be entitled to recover from Valley View an additional amount on account of GST, calculated in accordance with the relevant GST legislation.

10. GENERAL PROVISIONS

10.1 Entire agreement

This agreement constitutes the entire agreement between the parties regarding the matters set out in it and supersedes any prior representations, understandings or arrangements made between the parties, whether orally or in writing.

10.2 Variation

A variation or waiver of a provision of this agreement will be ineffective unless it is:

- (a) in writing; and
- (b) executed by all parties.

10.3 Waiver

A right created by this agreement cannot be waived except in writing signed by the party entitled to that right. Delay by a party in exercising a right does not constitute a waiver of that right, nor will a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.

10.4 Further assurances

Each party must promptly execute all documents and do everything necessary or desirable to give full effect to the arrangements contained in this agreement.

10.5 Time for doing acts

- (a) If:
 - (i) The time for doing any act or thing required to be done; or
 - (ii) A notice period specified in this agreement,

expires on a day other than a Business Day, the time for doing that act or thing or the expiration of that notice period is extended until the following Business Day.
- (b) If any act or thing required to be done is done after 5pm on the specified day, it is taken to have been done on the following Business Day.

10.6 Governing law and jurisdiction

- (a) This agreement is governed by the laws of New South Wales.
- (b) The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts competent to hear appeals from those courts.

10.7 Legal and other costs

- (a) Valley View must pay all of Council's reasonable legal and other costs directly associated with the preparation, and finalisation of this agreement and all reasonable costs, fees and charges arising from it.
- (b) Valley View must pay for any applicable stamp duty and registration fees in respect of this agreement.

10.8 Notices

Any notice, demand, consent, approval, request or other communication (**notice**) to be given under this agreement must be in writing and must be given to the recipient at its Address for Service by being:

- (a) hand delivered; or
- (b) sent by prepaid ordinary mail within Australia; or
- (c) sent by email.

A notice is given if:

- (a) hand delivered, on the date of delivery but if delivery occurs after 5pm New South Wales time or a day that is not a Business Day, is taken to be given on the next Business Day;
- (b) sent by prepaid ordinary mail within Australia, on the date that is 2 Business Days after the date of posting; or
- (c) sent by email (and the sender does not receive a delivery failure notice):
 - (i) before 5pm on a Business Day, on that Day;
 - (ii) after 5pm on a Business Day, on the next Business Day after it is sent; or
 - (iii) on a day that it is not a Business Day, on the next Business Day after it is sent.

For the purpose of this clause 10.8 the Address for Service of the parties is:

Valley View: Mr Heinz Beckers
Valley View Marrangaroo Pty Ltd
6/7 Avalon Parade
Avalon Beach NSW 2107
Email address: hb.mailbox1@gmail.com

Council: The General Manager
Lithgow City Council
180 Mort Street
Lithgow NSW 2790
Email address: council@lithgow.nsw.gov.au

A party may at any time change its postal address or email address by giving notice to the other party.

10.9 Severance

If any clause or part of any clause is in any way unenforceable, invalid or illegal, is to be read down so as to be enforceable, valid and legal. If this is not possible, the clause or where possible, the offending part is to be severed from this agreement without affecting the enforceability, validity or legality of the remaining clauses (or parts of those clauses) which will continue in full force and effect.

10.10 Preservation of existing rights

The expiration or termination of this agreement does not affect any right that has accrued to a party before the expiration or termination date.

10.11 **Survival and merger**

- (a) The terms of this agreement survive its termination to the extent permitted by law.
- (b) Nothing in this agreement merges, extinguishes, postpones, lessens or otherwise prejudicially affects any right, power or remedy that a party may have against it.

EXECUTED by the parties as an agreement.

EXECUTED by **Lithgow City Council (ABN 59 986 092 492)** by its duly Authorised Officer in the presence of:

.....
Witness signature

.....
Craig Butler
General Manager

.....
Witness name

.....
Witness address

EXECUTED by **Valley View Marangaroo Pty Ltd (ACN 635 795 274)** pursuant to section 127(1) of the Corporations Act 2001

.....
Director/Sole Director

.....
Director/Secretary

ANNEXURE A
PLAN IDENTIFYING PART LOT 68 AND PART CROWN ROAD
(image is for identification purposes only)



**ANNEXURE B
PROCESS FLOWCHART**

1.	Valley View will obtain all necessary approvals to commence Bridge Works.
2.	Within 14 days of the date that Council issues a construction certificate in respect of the Bridge Works, Council will lodge an application with the Department in respect of transfer of Part Crown Road.
3.	Valley View to commence Bridge Works.
4.	The first temporary access licence over Part Lot 68 commences on the date that Valley View commences the Bridge Works. The purpose of the first temporary access licence is to enable Valley view to undertake works necessary to prepare an application for a Subdivision Works Certificate.
5.	Upon completion of the Bridge Works, Valley View will apply for a Compliance Certificate in respect of the Bridge Works.
6.	Valley View to lodge application for a Subdivision Works Certificate. The first temporary access licence ceases on issue of the Subdivision Works Certificate by Council.
7.	From the later of the date that Council issues the Subdivision Works Certificate and the Compliance Certificate in respect of the Bridge Works, the second temporary access licence will commence. The purpose of the second temporary access licence is to enable Valley View to undertake works in accordance with the Subdivision Works Certificate.
8.	Completion of transfer to Council of Part Crown Road.
9.	From the date of the transfer of Part Crown Road to Council, Valley View may commence Road Works in respect of Part Crown Road.
10.	Valley View to apply to Council for Compliance Certificate in respect of the works completed under the Subdivision Works Certificate, including the Road Works.
11.	Council issues Compliance Certificate in respect of works completed under the Subdivision Works Certificate, if everything is in order.

12.	Valley View to lodge application for Subdivision Certificate with Council and pay the consideration under this agreement plus any applicable fees and charges, if not previously paid. (The plan of subdivision is to show Part Lot 68 and Part Crown Road as 'public road' and must bear a statement of intention to dedicate them as public road).
13.	Council to issue Subdivision Certificate, if everything is in order
14.	Valley View to lodge the plan of subdivision with NSW Land Registry Services
15.	NSW Land Registry Services to notify once plan of subdivision has been registered