



## **Voluntary Planning Agreement**

*Under section 7.4 of the Environmental Planning and Assessment Act, 1979*

### **Central Coast Council & Proponent**

**Final Version**

Central Coast Council

October 22



Voluntary Planning Agreement

Author: Central Coast Council

Central Coast Council & Proponent

Date: October 22

Final Version

Approved by: David Farmer, CEO

Date of Approval: **7 NOVEMBER 2022**

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# Voluntary Planning Agreement

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## Voluntary Planning Agreement

### SUMMARY SHEET

#### Council:

**Name:** Central Coast Council

**Wyong Office:** 2 Hely St / PO Box 20 Wyong NSW 2259 | P 1300 463 954

**Email:** [ask@centralcoast.nsw.gov.au](mailto:ask@centralcoast.nsw.gov.au)

**Representative:** Chief Executive Officer

**Proponent: Name:** MHE Property Co Ptd Ltd ATF MHE Operator Trust 3

**Address:** Level 9, 60 Castlereagh Street Sydney NSW 2000

**Telephone:** 0460 000 773

**Email:** [info@vivacityproperty.com.au](mailto:info@vivacityproperty.com.au)

**Representative:** Vivacity Property

#### Land:

See definition of *Land* in clause 1.1

#### Development:

See definition of *Development* in clause 1.1

#### Application of s7.11 s7.12 and s7.24 of the Act:

See clause 4

#### Registration:

See clause 9

#### Dispute Resolution:

See clause 7

#### DATE:

**Central Coast Council** (ABN 73 149 644 003) of 2 Hely St, Wyong, in the State of New South Wales (**Council**)

and

**MHE Property Co Ptd Ltd ATF MHE Operator Trust 3** (ABN: 634534222; ACN 40898727940) of Level 9, 60 Castlereagh Street Sydney NSW 2000 (**Proponent**)

and

**Carol Ann Cecilia Richardson** of 45 Mulloway Road, Chain Valley Bay (**Landowner**)

## **BACKGROUND**

- A. The Landowner is the registered proprietor of the Land.
- B. The Proponent has sought the Instrument Change.
- C. The Proponent intends to lodge a Development Application for the Development of the Land.
- D. The Proponent is prepared to make the Monetary Contribution to Council in connection with the Development of the Land.

## **OPERATIVE PROVISIONS**

### **1 DEFINITIONS AND INTERPRETATION**

1.1 In this Agreement the following definitions apply:

**Act** means the *Environmental Planning and Assessment Act 1979*.

**Amending LEP** means an environmental planning instrument that has the effect of amending the *Wyong Local Environmental Plan 2013* consistent with the Planning Proposal.

**Consent** means the development consent granted to the Development Application under the Act.

**Council** means Central Coast Council.

**Development** means the future development and use of the Land substantially as contemplated by the Planning Proposal, including but not limited to a manufactured home estate and/or residential subdivision.

**Development Application** means a development application under Part 4 of the Act seeking Consent to undertake the Development on the Land.

**Dispute** has the meaning given in subclause 10.1 of this Agreement.

**Dispute Notice** has the meaning given in subclause 10.2 of this Agreement.

**GST** means any form of goods and services tax payable under the GST Act.

**GST Act** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**GST Amount** has the meaning given in subclause 23.4 of this Agreement.

**Instrument Change** means the commencement of the Amending LEP.

**Land** means the land identified in Schedule 2 of this Agreement, being Lot 5 DP 1228880 also known as 45 Mulloway Road Chain Valley Bay 2259.

**Landowner** means Carol Ann Cecilia Richardson, being the registered proprietor of the Land as at the date of this Agreement.

**Mediation Program** means the Mediation Program of the Law Society of New South Wales as published on its website and as varied from time to time.

**Monetary Contribution** means the monetary development contributions required to be paid to Council as determined in accordance with Schedule 1 and clause 6 of this Agreement.

**ND Contributions Plan Amendment** means an amendment to the Northern Districts Development Contributions Plan prepared by Central Coast Council dated April 2020 which allows Council to impose monetary contribution conditions into any Consent pursuant to section 7.11 of the Act.

**Parties** mean the Council, the Proponent and the Landowner including any successors and assigns.

**Party** means a party to this Agreement including its successors and assigns.

**Planning Proposal** means the document required by section 3.33 of the Act that explains the intended effect of the proposed Amending LEP and sets out the justification for making that Amending LEP, being Council reference number RZ/3/2019 and Department of Planning and Environment reference number PP-2021-691.

**Proponent** means the person or entity identified in Item 1 of Schedule 3 to this Agreement.

**Proponent's Representative** is the person identified in Item 2 of Schedule 3 to this Agreement, appointed by the Proponent to act on behalf of the Proponent, or that person, from time to time, notified to Council in writing by the Proponent.

**Regulation** means the *Environmental Planning and Assessment Regulation 2021*.

**Section 68 Approvals** means an approval to operate a manufactured home estate under section 68 of the *Local Government Act 1993* (NSW).

## **2 PLANNING AGREEMENT UNDER THE ACT**

- 2.1 The Parties agree that this Agreement is a Planning Agreement governed by Subdivision 2 of Division 7.1 of the Act.

## **3 APPLICATION OF THIS AGREEMENT**

- 3.1 This Agreement applies to the Development of the Land and the Instrument Change

## **4 OPERATION OF THIS AGREEMENT**

- 4.1 This Agreement takes effect once executed by all parties.
- 4.2 This Agreement identifies that the Proponent will pay the Monetary Contribution in accordance with the terms of this Agreement.
- 4.3 By complying with the obligations of this Agreement, a benefit, in the form of a Monetary Contribution will be paid to Council for the funding of the construction of, or improvements to, local infrastructure in the vicinity of the Land.

- 4.4 This Agreement excludes the operation of sections 7.11 and 7.12 of the Act to the Development.
- 4.5 This Agreement does not exclude the operation of section 7.24 of the Act to the Development.
- 4.6 Clauses 4.4 and 4.5 do not merge on completion or termination of this Agreement.

## **5 TERMINATION OF THIS AGREEMENT**

- 5.1 This Agreement will terminate on the earlier of the following events:
- (a) if, prior to the grant of Consent, the ND Contributions Plan Amendment has commenced then the date upon which that ND Contributions Plan Amendment commences; or
  - (b) if the ND Contributions Plan Amendment does not commence prior to the grant of Consent, the date upon which the Proponent or Landowner, including any successors or assigns, satisfies all of its Monetary Contribution obligations under this Agreement.

## **6 PAYMENT OF MONETARY CONTRIBUTIONS**

- 6.1 The Proponent must pay the Monetary Contributions in the amount determined in accordance with **Schedule 1** and clause 6.5 of this Agreement, and at the times set out in clause 6.3 of this Agreement.
- 6.2 The parties acknowledge that the Development may be undertaken in a number of stages, with the occupation of each civil stage and individual dwellings authorised by separate Subdivision Certificates or Section 68 Approvals (as relevant).
- 6.3 The Monetary Contributions are to be paid on a pro rata basis prior to the issue of each Section 68 Approval or Subdivision Certificate (as relevant) for occupation of the dwellings comprising the Development subject of the applicable Section 68 Approval or Subdivision Certificate (as relevant).
- 6.4 The Monetary Contributions payable prior to each Section 68 Approval or Subdivision Certificate (as relevant) will be indexed in accordance with the below formula:

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

where:

**A** = the indexed amount;

**B** = the relevant amount determined at the time of the grant of the Development Consent for the building to which the Subdivision Certificate relates;

**C** = the Index most recently published before the date that the relevant payment or the calculation with respect to the relevant amount is to be made; and

**D** = the Index most recently published before the date of the Development Consent.

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

- 6.5 The Monetary Contribution is required for the funding of the construction of, or improvements to local infrastructure in the vicinity of the Land (including those specified in section 7.4(2) of the Act) as determined by the General Manager of Council from time to time and Council will apply the Monetary Contribution for those purposes. This subclause 6.5 does not merge on completion or termination of this Agreement.



## **7 PROPONENT WARRANTIES AND INDEMNITIES**

- 7.1 The Proponent and Landowner warrants to Council that:
- (a) it is able to fully comply with its obligations under this Agreement;
  - (b) it has full capacity to enter into this Agreement; and
  - (c) there is no legal impediment to it entering into this Agreement, or performing its obligations under this Agreement.

## **8 REVIEW OF THIS AGREEMENT**

- 8.1 Any amendments, variation or modification to or of, or consent to any departure by any Party from the terms of this Agreement shall have no force or effect unless effected by a document executed by the Parties which complies with the requirements of section 7.5 of the Act.

## **9 FURTHER AGREEMENT RELATING TO THIS AGREEMENT**

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

## **10 DISPUTE RESOLUTION**

- 10.1 If a dispute arises out of or relates to this Agreement (including any dispute as to the meaning, performance, validity, subject matter, breach or termination of this Agreement or as to any claim in tort, in equity or pursuant to any statute) (**Dispute**), any court or arbitration proceedings shall not be commenced by or against Council, the Proponent or their successors or assigns, relating to the Dispute unless the Parties to the Dispute have complied with this clause, except where a Party seeks urgent injunctive or declaratory relief.
- 10.2 A Party claiming that a Dispute has arisen under or in relation to this Agreement is to give written notice to the other Parties to the Dispute, specifying the nature of the Dispute (**Dispute Notice**).
- (a) The Parties agree to mediate the Dispute in accordance with the Mediation Program of the Law Society of New South Wales and to take action to have the Dispute mediated within 7 working days of the receipt of written notice of the Dispute.
  - (b) The Parties agree that the President of the Law Society of New South Wales or the President's nominee will select the mediator and determine the mediator's remuneration.
  - (c) The Parties to the mediation will be jointly responsible for the fees of the mediation and each Party shall bear its own costs.
  - (d) The Parties may, but are not required, to enter into a written agreement before mediating a Dispute.
  - (e) If any procedural aspects are not specified sufficiently in the rules under this clause 10, the Parties agree to conduct the mediation regarding those aspects in accordance with the determination of the mediator whose decision regarding those aspects is final and binding on the Parties.
  - (f) A legal representative acting for either of the Parties may participate in the mediation.

- 10.3 From the time when a Dispute Notice is served, neither Party shall take action to terminate this Agreement, until after the conclusion of the mediation.
- 10.4 Should mediation fail to resolve any Dispute then the Dispute shall be determined by arbitration pursuant to the *Commercial Arbitration Act 2010* and the Parties shall request the President for the time being of the Law Society of New South Wales to appoint an arbitrator to carry out such arbitration in accordance with the provisions of such Act.
- 10.5 Despite clause 10.1, either Council, the Proponent or the Landowner may institute court proceedings to seek urgent injunctive or declaratory relief in relation to a Dispute or difference arising out of or in connection with this Agreement.

## **11 COSTS**

- 11.1 The Proponent agrees to pay or reimburse the costs of Council in connection with the:
- (a) negotiation, preparation and execution of this Agreement, to a maximum of \$2,500.00.
  - (b) advertising and exhibiting this Agreement in accordance with the Act, to a maximum of \$350.00, and
  - (c) all reasonable costs related to registration of this Agreement where required, within 7 working days after receipt of a tax invoice from Council.

## **12 REGISTRATION OF THIS AGREEMENT**

- 12.1 The Parties agree to register this Agreement for the purposes of section 7.6(1) of the Act.
- 12.2 On execution, the Proponent is to provide Council with each of the following, at no cost to Council:
- (a) an instrument in registrable form requesting registration of this Agreement on the title to the Land duly executed by the Landowner;
  - (b) the written and irrevocable consent of each person referred in section 7.6(1) of the Act to that registration; and
  - (c) production of the certificate of title for the Land, for the purpose of procuring the registration of this Agreement.
- 12.3 Once the Proponent has completed its obligations under this Agreement (in relation to the whole or any part of the Land) or this Agreement is terminated or otherwise comes to an end for any other reason:
- (a) the Proponent and Landowner is to do such other things as are reasonably necessary to remove any notation relating to this Agreement from the title to the Land or any part of the Land as applicable; and
  - (b) Council will do all things reasonably necessary to allow the Proponent and Landowner to remove this Agreement from the title of the whole or any part of the Land (as applicable) as soon as reasonably practicable.
- 12.4 Subclause 12.3 does not merge on completion or termination of this Agreement.

## 13 NOTICES

13.1 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 in (b) below.
- (b) Faxed or emailed to that Party at the relevant details set out below.

**(i) Council: Central Coast Council**

Attention: Chief Executive Officer

Address: DX 7306 WYONG

Fax No: (02) 4350 2098

Email: [ask@centralcoast.nsw.gov.au](mailto:ask@centralcoast.nsw.gov.au)

**(ii) Proponent: Proponent**

Attention: MHE Property Co Ptd Ltd ATF MHE Operator Trust 3

Address: Level 9, 60 Castlereagh Street Sydney NSW 2000

Email: [info@vivacityproperty.com.au](mailto:info@vivacityproperty.com.au)

13.2 If a Party gives the other Party 3 working 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.

13.3 Any notice, consent, information, application or request is to be treated or given or made at the following time if it is:

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

13.4 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 it is on a business day, after 5.00pm 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.

## 14 ENTIRE AGREEMENT

14.1 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.

## **15 FURTHER ACTS**

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

## **16 GOVERNING LAW AND JURISDICTION**

- 16.1 This Agreement is governed by the law of New South Wales, Australia. The Parties submit to the non-exclusive jurisdiction of the courts of New South Wales and courts of appeal from them. The Parties will not object to the exercise of jurisdiction by those Courts on any basis provided that the dispute resolution provisions in clause 8 of this Agreement have first been satisfied.

## **17 NO FETTER**

- 17.1 Nothing in this Agreement is to 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 is to be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

## **18 SEVERABILITY**

- 18.1 If a clause or part of a clause in 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 the Agreement is not affected.

## **19 WAIVER**

- 19.1 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. 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.

## **20 PRESERVATION OF EXISTING RIGHTS**

- 20.1 The expiration or termination of this Agreement does not affect any right that has accrued to a Party before the expiration or termination date.

## **21 COUNTERPARTS**

- 21.1 This agreement may be executed in any number of counterparts. All counterparts taken together constitute one instrument.

## **22 GOOD FAITH**

- 22.1 Each Party must act in good faith towards all other Parties and use its best endeavours to comply with the spirit and intention of this Agreement.

## **23 GST**

- 23.1 The Parties acknowledge and agree that Division 81 of the GST Act applies to the supplies made under and in respect of this Agreement such that subclause 23.4 does not apply to the Monetary Contribution.
- 23.2 Any payment or reimbursement required to be made under this Agreement that is calculated by reference to a cost, expense, or other amount paid or incurred must be limited to the total cost, expense or amount less the amount of any input tax credit to which any entity is entitled for the acquisition to which the cost, expense or amount relates.
- 23.3 Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this Agreement are exclusive of GST.
- 23.4 Subject to subclause 23.1, to the extent an amount of GST is payable on a supply made by a party (Supplier) under or in connection with this Agreement (**GST Amount**), subject to the receipt of a tax invoice, the recipient must pay to the Supplier the GST Amount.
- 23.5 Subclause 23.4 applies to taxable supplies made for either monetary or non-monetary consideration.
- 23.6 This clause does not merge on completion or termination of this Agreement.

## **24 EXPLANATORY NOTE**


- 24.1 The Appendix contains the Explanatory Note relating to this Agreement required by Clause 205 of the Regulation.
- 24.2 Pursuant to Clause 205(5) of the Regulation, the Parties agree that the Explanatory Note in the Appendix is not to be used to assist in construing this Agreement.

**25 EXECUTION PANEL**


**EXECUTED** as a Voluntary Planning Agreement

Date: 7 NOVEMBER 2022

Executed by the Chief Executive Officer on behalf of **Central Coast Council** pursuant to delegated authority under section 377 of the *Local Government Act 1993*, in accordance with the resolution of the Central Coast Council dated

  
\_\_\_\_\_  
Chief Executive Officer

DAVID FARMER  
Name of Chief Executive Officer [BLOCK LETTERS]

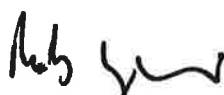
  
\_\_\_\_\_  
Signature of witness

HAYLEY SMITH.  
Name of witness [BLOCK LETTERS]

Executed by **MHE Property Co Ptd Ltd ATF MHE Operator Trust 3** in accordance with section 127 of the *Corporations Act 2001* (Cth) by:

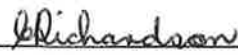
  
\_\_\_\_\_  
Signature of director

JONATHON STEGGLES MENDEZ  
Name of director [BLOCK LETTERS]

  
\_\_\_\_\_  
Signature of director/secretary

ROBERT JOHN ~~RAYMOND~~ RAYNER  
Name of director/secretary [BLOCK LETTERS]

Signed by **Carol Ann Cecilia Richardson** in the presence of:

  
\_\_\_\_\_  
Signature of Carol Ann Cecilia Richardson

  
\_\_\_\_\_  
Signature of witness

THOMAS COPPING  
Name of witness [BLOCK LETTERS]

## **SCHEDULE 1      MONETARY CONTRIBUTION**

- (a) If the ND Plan Contributions Plan Amendment has not commenced prior to the applicable time for payment of the Monetary Contributions pursuant to clause 6.3 of this Agreement, then the amount of the Monetary Contribution is:
  - (i) \$8,220.86 per manufactured home; and
  - (ii) \$17,205.22 per residential lot.
- (b) If the ND Plan Contributions Plan Amendment has commenced prior to the applicable time for payment of the Monetary Contributions pursuant to clause 6.3 of this Agreement, then the Proponent is to pay the amount of the Monetary Contribution per manufactured home and residential lot determined in accordance with the ND Plan Contributions Amendment.
- (c) The Monetary Contributions specified in Scheduled 1(a) and (b) above are to be indexed in accordance with clause 6.

**SCHEDULE 2 LAND**

Lot 5 DP 1228880 also known as 45 Mulloway Road Chain Valley Bay 2259





**SCHEDULE 3      PROPONENT DETAILS**

<b>ITEM</b>	<b>DEFINED TERM</b>	<b>PARTICULARS</b>
1	Proponent	Name: MHE Property Co Ptd Ltd ATF MHE Operator Trust 3 ABN: 634534222 ACN: 40898727940 Street Address: Level 9, 60 Castlereagh Street Sydney NSW 2000
2	Proponent's Representative	Name: Vivacity Property Street Address: Level 9, 60 Castlereagh Street Sydney NSW 2000 Email: <a href="mailto:info@vivacityproperty.com.au">info@vivacityproperty.com.au</a>

## APPENDIX

*Environmental Planning and Assessment Regulation 2021*

*(Clause 205)*

### EXPLANATORY NOTE

#### Voluntary Planning Agreement

Under section 7.4 of the *Environmental Planning and Assessment Act, 1979*

#### Parties

**Central Coast Council** (ABN 73 149 644 003) of Council Chambers, Hely Street, Wyong, and 49 Mann Street Gosford, in the State of New South Wales (**Council**)

and

MHE Property Co Ptd Ltd ATF MHE Operator Trust 3 (ABN 634534222; ACN 40898727940 of Level 9, 60 Castlereagh Street Sydney NSW 2000 (**Proponent**))

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

Lot 5 DP 1228880 also known as 45 Mullooy Road, Chain Valley Bay 2259.

#### Description of Proposed Development

Development means the future development and use of the Land substantially as contemplated by the planning proposal (Department of Planning and Environment reference number PP-2021-691), including but not limited to a manufactured home estate and/or residential subdivision.

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

##### **Objectives of the Agreement**

The objective of the Agreement is to require the provision of a Monetary Contribution by the Developer to the Council for the public purpose of funding the construction of, or improvements to, local infrastructure in the vicinity of the Land in connection with the Development of the Land.

##### **Nature of the Planning Agreement**

The Agreement is a planning agreement under section 7.4 of the *Environmental Planning and Assessment Act 1979 (Act)*. It is an agreement between the Council and the Proponent. The Agreement is a voluntary agreement under which provisions are made by the Proponent for the recoupment of costs of Council providing the construction of, or improvements to local infrastructure in the vicinity of the Land. .

##### **Effect of the Agreement**

The Agreement:

- relates to the Instrument Change and Development on the Land;

- excludes the application of sections 7.11 and 7.12 of the Act to the Development
- does not exclude the application of section 7.24 of the Act to the Development,
- requires the Proponent to pay Monetary Contributions to Council,
- commences once executed by all parties and once development consent has been granted for the Development,
- is to be registered on the title to the Land,
- provides dispute resolution methods for a dispute under the Agreement, being mediation and arbitration, and
- provides that the Agreement is governed by the law of New South Wales.

## **Assessment of the Merits of the Agreement**

### **Public Purposes Served by the Agreement**

The Agreement:

- promotes and co-ordinates the orderly and economic use and Development of the Land to which it applies,
- provides increased opportunity for public involvement and participation in environmental planning and assessment of the Development,
- requires monetary contributions for the public purpose of providing Council with funding necessary for the construction of, or improvements to, local infrastructure in the vicinity of the Land.

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

The Agreement promotes the public interest by achieving the objectives of the Act by promoting:

- the social and economic welfare of the community by requiring monetary contributions to be paid to the Council to be used towards local infrastructure as determined by the General Manager of Council from time to time;
- the orderly and economic use and development of land and good design and amenity of the built environment by ensuring improved infrastructure;
- increased opportunity for community participation in environmental planning assessment through public notification of this agreement and opportunity for the public to make submissions in response to it.

### **For Planning Authorities:**

#### ***Development Corporations – How the Agreement Promotes its Statutory Responsibilities***

Not Applicable.

#### ***Other Public Authorities – How the Agreement Promotes the Objects of the Act under which it is Constituted***

Not Applicable.

**Councils – How the Agreement Promotes the Council's Charter**

The Agreement promotes the elements of the Council's Charter by:

- keeping the local and wider community informed about its activities,
- provides value for residents and ratepayers by requiring the developer to contribute to community infrastructure.

**Whether the Agreement Conforms with Council's Capital Works Program**

Yes

**Whether the Agreement specifies that certain requirements be complied with before issuing a Construction Certificate, Subdivision Certificate or Occupation Certificate**

Yes.

The Agreement specifies that the monetary contribution is required to be paid in stages, prior to the issue of an approval given under section 68 of the *Local Government Act 1993* (NSW) , or a subdivision certificate given under the Act (as relevant) for occupation of the dwellings comprising the Development.