

LEGAL DOCUMENT LODGEMENT FORM

Lodgement Date 4 April 2014

Date of Legal Documents: 9 December 13

Type of Documents Planning Agreement

le: Agreements, Contracts, Easements, General, Lease, Loans (see separate forms of Bank Guarantees and Certificates of Title)

Expiry Date of Document (if applicable): _____

Parties Pelican Horizons Pty Ltd

Address PO Box 815, Lane Cove NSW 1595

Details of Document Voluntary Planning Agreement – The Entrance Key Site, Marine Parade, The Entrance

Property Description Lot 1 DP 513519 and Lot 2 DP 536168

Review Date _____

Responsible Officer Steve Ashton

Related File No RZ/1/2012

Note: This form and the original documents are to be delivered to Corporate Information.

Legal Document supersedes LDOC _____ (if applicable)

After legal document is recorded on the computer a Trim link is e-mailed to the responsible officer advising of registration.

Send Link to Sonia Witt for the Agreement Register to be updated – doesn't need occupation agreements unless its for crown land area (not holiday park sites)

Form: 11R
Release: 4-1

REQUEST
New South Wales
Real Property Act 1900



AI315409F

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.

(A) STAMP DUTY	If applicable. Office of State Revenue use only		
(B) TORRENS TITLE	1/513519, 2/536168		
(C) REGISTERED DEALING	Number	Torrens Title	
(D) LODGED BY	Document Collection Box 1089X	Name, Address or DX, Telephone, and Customer Account Number 123786S 1089X Reference: 1400068 WSC CITY LEGAL SERVICES	CODE R
(E) APPLICANT	Wyong Shire Council		
(F) NATURE OF REQUEST	Registration of Planning Agreement pursuant to s93H of the Environmental Planning and Assessment Act 1979		
(G) TEXT OF REQUEST	<p>The Applicant, as planning authority, requests the registration of the planning agreement made between the Applicant and Pelican Horizons Pty Limited, the terms of which are set out in Annexure "A", on the folio of the register for 1/513519 and 2/536168.</p> <p>Enclosed in Annexure "B" is the letter of consent from Pelican Horizons Pty Limited ACN 144 699 605 as registered proprietor of 1/513519 and 2/536168 to the registration of the planning agreement.</p>		

DATE

9/12/13

- (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].

Signature of witness:

Name of witness:

Deborah Aitchison

Address of witness:

2 HERBY ST
WYONG

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

Signature of authorised officer:

Authorised officer's name:

MICHAEL WHITTAKER

Authority of officer:

Signing on behalf of:

COUNCIL MANAGER
Wyong Shire 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:

* s117 RP Act requires that you must have known the signatory for more than 12 months or have sighted identifying documentation.

ALL HANDWRITING MUST BE IN BLOCK CAPITALS

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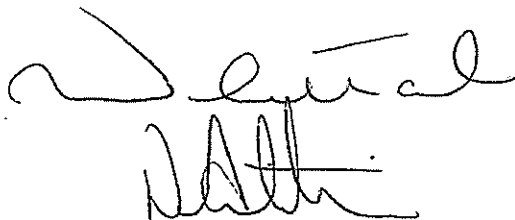
Approved 4/12 9/1/14 on PLA

Annexure "A" to REQUEST FORM IIR FOR REGISTRATION OF PLANNING AGREEMENT
PARTIES: PURSUANT TO S93H OF THE ENVIRONMENTAL PLANNING AND
ASSESSMENT ACT 1979

Planning Agreement between Wyong Shire Council and Pelican Horizons Pty Limited ACN
144 699 605

Dated: 9TH DECEMBER 2013

Planning Agreement on the following pages.





lindsaytaylorlawyers

planning • environment • local government

Marine Parade, The Entrance

Planning Agreement

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

Wyong Shire Council

Pelican Horizons Pty Ltd

Date: 9/12/13

x [Signature]
x [Signature]

lindsaytaylorlawyers

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Marine Parade, The Entrance Planning Agreement

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Marine Parade, The Entrance Planning Agreement

Summary Sheet

Council:

Name: Wyong Shire Council
Address: 2 Hely St, WYONG NSW 2259
Telephone: (02) 4350 5555
Facsimile: (02) 4351 2098
Representative: General Manager

Developer:

Name: Pelican Horizons Pty Ltd
Address: PO Box 815, LANE COVE NSW 1595
Telephone: (02) 9418 8977
Email: pelicanhorizons@hotmail.com
Representative: Pete de Gail

Land:

See definition of *Land* in clause 1.1.

Development:

See definition of *Development* in clause 1.1.

Development Contributions:

See clauses 8, 9 and 10.



Application of s94, s94A and s94EF of the Act:

See clause 7.

Registration:

See clause 17.

Restriction on dealings:

See clause 16.

Dispute Resolution:

See clauses 14 and 15.



Marine Parade, The Entrance Planning Agreement

Under s93F of the Environmental Planning and Assessment Act 1979

Parties

Wyong Shire Council ABN 47 054 613 735 of 2 Hely St, WYONG NSW 2259

(Council)

and

Pelican Horizons Pty Ltd ABN 38 144 699 605 of PO Box 815, LANE COVE,
NSW 1595 **(Developer)**

Background

- A The Developer is the owner of the Land.
- B The Developer has sought the Instrument Change.
- C The Developer intends to lodge a Development Application relating to the Development.
- D The Developer is prepared to make Development Contributions in connection with the Instrument Change and the carrying out of the Development in accordance with this Agreement.

Operative provisions

Part 1 - Preliminary

1 Definitions & Interpretation

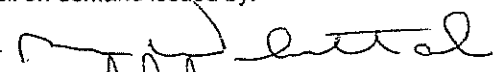
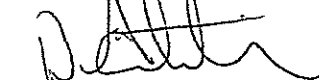
- 1.1 In this Agreement the following definitions apply:

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

Agreement means this Agreement and includes any schedules, annexures and appendices to this Agreement.

AHD means Australian Height Datum.

Bank Guarantee means an irrevocable and unconditional undertaking without any expiry or end date in favour of the Council to pay an amount or amounts of money to the Council on demand issued by:

X 
X 



- (a) one of the following trading banks:
 - (i) Australia and New Zealand Banking Group Limited,
 - (ii) Commonwealth Bank of Australia,
 - (iii) Macquarie Bank,
 - (iv) National Australia Bank Limited,
 - (iv) St George Bank Limited,
 - (v) Westpac Banking Corporation, or
- (b) any other financial institution approved by the Council in its absolute discretion.

Construction Certificate has the same meaning as in the Act.

CPI means the *Consumer Price Index – Sydney – Housing* published by the Australian Bureau of Statistics.

Development means a mixed use development on the Land including a residential flat building with a Floor space ratio up to 4.0:1, height up to RL70m AHD and a minimum of 178 on-site car spaces.

Development Application has the same meaning as in the Act.

Development Consent has the same meaning as in the Act.

Development Contribution means a monetary contribution, the dedication of land free of cost, the carrying out of work or the provision of any other material public benefit or any combination of them that is required to be provided by the Developer under this Agreement and used for, or applied towards, the provision of public infrastructure or another public purpose.

Final Lot means a lot created or proposed to be created by a subdivision of the Land for separate occupation and disposition not being:

- (a) land that is to be dedicated or otherwise transferred to the Council;
- (b) that the Council considers, acting reasonably, based on information provided by the Developer, will be further subdivided.

Floor space ratio has the same meaning as in the LEP.

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.

Instrument Change means the taking effect of the LEP.

Land means Lot 1 DP 513519 also known as 2 Ocean Parade, The Entrance and Lot 2 DP 536168 also known as 14 The Entrance Road East, The Entrance.

LEP means an environmental planning instrument which makes development including residential development on the Land having a Floor space ratio of not less than 4.0:1 and a height of not less than RL70m AHD, permissible with consent.

Off-Site-Work means work required to be carried out under a condition of Development Consent for the Development other than:

- a) work located on the Land, or



- b) water, sewer or drainage work to meet the Development.

On-site parking deficit in relation to a Development Application for the Development means any deficit between:

- (a) the number of on-site parking spaces required under *Wyong Development Control Plan 2005*, Chapter 61, less 50% of any such spaces required in respect of uses including cafes, restaurants, bars, shops and the like; and
- (b) the number of such spaces proposed to be provided.

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

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

RL in relation to AHD means a level relative to 0m on the AHD.

- 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 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.
- 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 in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.
- 1.2.5 A reference in this Agreement to a \$ value relating to a Development Contribution is a reference to the value inclusive of GST should GST be applicable.
- 1.2.6 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.
- 1.2.7 A reference in this Agreement to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- 1.2.8 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.
- 1.2.9 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- 1.2.10 Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.



- 1.2.11 A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
- 1.2.12 References to the word 'include' or 'including' are to be construed without limitation.
- 1.2.13 A reference to this Agreement includes the agreement recorded in this Agreement.
- 1.2.14 A reference to a party to this Agreement includes a reference to the servants, agents and contractors of the party.
- 1.2.15 Any schedules, appendices and attachments form part of this Agreement.
- 1.2.16 Notes appearing in this Agreement are operative provisions of this Agreement.

2 Status & application of this Agreement

- 2.1 This Agreement:
 - 2.1.1 is a planning agreement for the purposes of s93F of the Act,
 - 2.1.2 applies to the Development on the Land and the Instrument Change.

3 Commencement of this Agreement

- 3.1 This Agreement commences when it has been executed by all of the Parties.
- 3.2 The Party who executes this Agreement last is to notify the other Party once it has done so and promptly provide it with a copy of the fully executed version of this Agreement.

4 Commencement of Development Contributions obligations

- 4.1 The Developer is under no obligation to make the Development Contributions to the Council in accordance with this Agreement unless and until:
 - 4.1.1 Instrument Change, and
 - 4.1.2 Development Consent is granted to the Development or any part of it subject to a condition that this Agreement be entered into.

5 Further Agreements Relating to this Agreement

- 5.1 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.



6 Surrender of right of appeal, etc.

- 6.1 The Developer is not to commence or maintain or cause to be commenced or maintained any proceedings involving an appeal against, or questioning the validity of:
- 6.1.1 any Development Consent relating to the Development, or
 - 6.1.2 any approval under s96 of the Act to modify a Development Consent relating to the Development,
- to the extent that the proceedings relate to the existence or content of this Agreement.

7 Application of s94, s94A and s94EF of the Act to the Development

- 7.1 This Agreement excludes the application of s94A of the Act to the Development.
- 7.2 This Agreement excludes the application of s94 of the Act to the Development except as regards contributions in respect of any On-site parking deficit in relation to a Development Application for the Development.
- 7.3 In so far as s94 is not excluded by this Agreement, benefits under this Agreement are or are not to be taken into consideration in determining a development contribution under section 94 of any on-site parking deficit.
- 7.4 This Agreement does not exclude the application of s94EF to the Development.
- 7.5 To avoid doubt, this Agreement makes no provision concerning, and does not exclude Development Contributions that may be required in relation to the Development under s306 of the *Water Management Act 2000*.

Part 2 - Development Contributions

8 Monetary Development Contributions

- 8.1 Prior to the issue of the first Construction Certificate for the Development and subject to this Agreement, the Developer is to make the following monetary Development Contribution to the Council:

$$DC = \$1,559,267.60 \times \text{CPI-A/CPI-B}$$

Where:

DC= the amount of the monetary Development Contribution

CPI –A means the most recent Consumer Price Index (All Groups and weighted average for all 8 cities) published by the Australian Bureau of Statistics at the time the monetary development contribution is paid to the Council.



CPI –B means the most recent Consumer Price Index (All Groups and weighted average for all 8 cities) published by the Australian Bureau of Statistics at the date of this Agreement.

9 Works in lieu of certain monetary Development Contributions

- 9.1 Subject to this clause, the Parties may agree in writing that the Developer carry out works instead of making the monetary Development Contribution referred to in clause 8.1.
- 9.2 Such an agreement may be entered into at any time before twelve (12) months after the issuing of the first Construction Certificate for the Development.
- 9.3 If the Parties enter into such an agreement:
 - 9.3.1 before making the monetary Development Contribution referred to in clause 8.1, the Developer is not required to pay the monetary Development Contributions required under clause 8.1 to the extent agreed;
 - 9.3.2 if the Developer has already paid the monetary Development Contribution referred to in clause 8.1, the Council is to refund an amount equivalent to the contribution to the extent agreed..

10 Payment of costs for Off-Site Works required by a Development Consent

- 10.1 The Parties acknowledge that any Development Consent for the Development may contain a condition requiring Off-Site Work to be carried out.

11 Application of Monetary Development Contributions

- 11.1 The Council is to apply monetary Development Contributions referred to in clause 8.1 towards works to enhance the public domain and environment within the area identified as Waterfront Precinct West in *The Entrance Town Centre Masterplan December 2011* (as shown in Schedule 1) and that land opposite the Land in The Entrance Road and Ocean Parade, including:
 - 11.1.1 general upgrade in finishes to the pedestrian areas,
 - 11.1.2 provision of street furniture,
 - 11.1.3 provision of street lighting,
 - 11.1.4 provision of public art,
 - 11.1.5 provision of street landscaping, and
 - 11.1.6 provision of a shared vehicle and pedestrian area at the corner of The Entrance Road and Marine Parade, The Entrance.



12 Procedures relating to payment of monetary Development Contributions

- 12.1 A monetary Development Contribution is made for the purposes of this Agreement when the Council receives the full amount of the contribution in cash or by unendorsed bank cheque, or by the deposit by means of electronic funds transfer of cleared funds into a bank account nominated by the Council.
- 12.2 The Developer is to give the Council not less than 2 business days written notice of its intention to pay a monetary Development Contribution.
- 12.3 The Developer is not required to pay a monetary Development Contribution under this Agreement unless the Council, after having received the Developer's notice under clause 12.2, has given to the Developer a tax invoice for the amount of the Development Contribution.
- 12.4 The Developer is not in breach of this Agreement if it fails to pay a monetary Development Contribution at the time required by this Agreement by reason only of the Council's failure to give to the Developer a tax invoice in relation to the amount proposed to be paid by it.

Part 3 – Other Provisions

13 Enforcement in a court of competent jurisdiction

- 13.1 Without limiting any other provision of this Agreement, the Parties may enforce this Agreement in any court of competent jurisdiction.
- 13.2 For the avoidance of doubt, nothing in this Agreement prevents:
 - 13.2.1 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,
 - 13.2.2 the Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Agreement or any matter to which this Agreement relates.

14 Dispute Resolution – expert determination

- 14.1 This clause applies to a dispute under this Agreement which relates to a matter that can be determined by an appropriately qualified expert.
- 14.2 Any dispute between the Parties as to whether a dispute, to which this clause applies, can be determined by an appropriately qualified expert is to be referred to the Chief Executive Officer of the professional body that represents persons with the relevant expertise for determination, which is to be final and binding on the Parties.
- 14.3 Such a dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the dispute.
- 14.4 If a notice is given under clause 14.3, the Parties are to meet within 14 days of the notice in an attempt to resolve the dispute.



- 14.5 If the dispute is not resolved within a further 28 days, the dispute must be referred to the President of the NSW Law Society to appoint an expert for expert determination.
- 14.6 The expert determination is binding on the Parties except in the case of fraud or misfeasance by the expert.
- 14.7 Each Party must bear its own costs arising from or in connection with the appointment of the expert and the expert determination and must share equally the costs of the expert and hearing.

15 Dispute Resolution - mediation

- 15.1 This clause applies to any dispute under this Agreement other than a dispute to which clause 14 applies.
- 15.2 Such a dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the dispute.
- 15.3 If a notice is given under clause 15.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the dispute.
- 15.4 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.
- 15.5 If the dispute is not resolved by mediation within a further 28 days, or such longer period as may be necessary to allow any mediation process which has been commenced to be completed, then the Parties may exercise their legal rights in relation to the dispute, including by the commencement of legal proceedings in a court of competent jurisdiction in New South Wales.

16 Assignment, Sale of Land, etc

- 16.1 Unless the matters specified in clause 16.2 are satisfied, the Developer is not to do any of the following:
 - 16.1.1 sell or transfer the Land (other than a Final Lot) to any person, or
 - 16.1.2 assign the Developer's rights or obligations under this Agreement, or novate this Agreement, to any person.
- 16.2 The matters required to be satisfied for the purposes of clause 16.1 are as follows:
 - 16.2.1 the Developer has, at no cost to the Council, first procured the execution by the person to whom the land or part is to be sold or transferred, or the Developer's rights or obligations are to be assigned or this Agreement is to be novated, of a deed generally in accordance with the Novation Deed satisfactory to the Council, and
 - 16.2.2 the Council, by notice in writing to the Developer, has stated that evidence satisfactory to the Council has been produced to show that the purchaser, transferee, assignee or novatee, is reasonably capable of performing its obligations under that deed,
 - 16.2.3 the Developer is not in breach of this Agreement, and



- 16.2.4 the Council otherwise consents to the sale, transfer, assignment or novation.
- 16.3 If the Developer has sold or transferred land in accordance with this clause is thereafter no longer bound by this Agreement in respect of the land sold or transferred and is released from all future obligations imposed by this Agreement that arise after the sale or transfer of the land.
- 16.4 Clause 16.1 does not apply in relation to any sale or transfer of the Land if this Agreement is registered on the title to the Land at the time of the sale.

17 Registration of this Agreement

- 17.1 The Parties agree to register this Agreement for the purposes of s93H(1) of the Act.
- 17.2 On execution, the Developer is to provide to the Council in registrable form:
 - 17.2.1 an instrument requesting registration of this Agreement on the title to the Land duly executed by the Developer, and
 - 17.2.2 the written irrevocable consent of each person referred to in s93H(1) of the Act to that registration.
- 17.3 The Developer is to do such other things as are reasonably necessary to enable registration of this Agreement to occur.
- 17.4 The Parties are to do such things as are reasonably necessary to remove any notation relating to this Agreement from the title to the Land:
 - 17.4.1 in so far as the part of the Land concerned is a Final Lot,
 - 17.4.2 in relation to any other part of the Land, once the Developer has completed its obligations under this Deed or this Deed is terminated or otherwise comes to an end for any other reason.

18 Notices

- 18.1 Any notice, consent, information, application or request that is to 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:
 - 18.1.1 delivered or posted to that Party at its address set out in the Summary Sheet,
 - 18.1.2 faxed to that Party at its fax number set out in the Summary Sheet, or
 - 18.1.3 emailed to that Party at its email address set out in the Summary Sheet.
- 18.2 If a Party gives the other Party 3 business days notice of a change of its address, fax number or email address, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted, faxed or emailed to the latest address or fax number.
- 18.3 Any notice, consent, information, application or request is to be treated as given or made if it is:
 - 18.3.1 delivered, when it is left at the relevant address,



- 18.3.2 sent by post, 2 business days after it is posted,
 - 18.3.3 sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number, or
 - 18.3.4 sent by email and the sender does not receive a delivery failure message from the sender's internet service provider within a period of 24 hours of the email being sent.
- 18.4 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, or the period referred to in clause 18.3.4 expires on a day that is not a business day, or if on a business day, after 5pm on that day at the place of the Party to whom it is sent, it is to be treated as having been given or made at 9am on the next business day.

19 Approvals and Consent

- 19.1 In this clause, a reference to an approval or consent does not include a reference to a Development Consent.
- 19.2 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.
- 19.3 A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

20 Costs

- 20.1 The Developer is to pay to the Council the Council's costs not exceeding \$3,000, of preparing, negotiating and executing this Agreement and any document related to this Agreement within 30 days of a written demand by the Council for such payment.

21 Entire Agreement

- 21.1 This Agreement contains everything to which the Parties have agreed in relation to the matters it deals with.
- 21.2 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.

22 Further Acts

- 22.1 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.



23 Governing Law and Jurisdiction

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

24 No Fetter

- 24.1 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.

25 Representations and Warranties

- 25.1 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.

26 Severability

- 26.1 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.
- 26.2 If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Agreement, but the rest of this Agreement is not affected.

27 Modification

- 27.1 No modification of this Agreement has any force or effect unless it is in writing and signed by the Parties to this Agreement and has been made in accordance with the Act.

28 Waiver

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

29 GST

29.1 In this clause:

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

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

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

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

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

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



- 29.8 This clause continues to apply after expiration or termination of this Agreement.

30 Explanatory Note Relating to this Agreement

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

(Clause 11.1)

“The waterfront precinct will become the tourism hub of The Harbour. It is a lively, exciting place with a vibrant atmosphere that is alive day, night and at all times.”



Schedule 2

(Clause 16)

Novation Deed

[Novation/Assignment] Deed

Wyong Shire Council

and

[Drafting Note: Insert name of Original Developer]

and

[Drafting Note: Insert name of New Developer]

Novation/Assignment Deed

DATE

Parties

Wyong Shire Council ABN 47 054 613 735 of 2 Hely St, WYONG NSW 2259

and

[Drafting Note: Insert name, ABN & address of Developer] (Original Developer)

and

[Drafting Note. Insert name, ABN & address of Developer] (New Developer)

Background

- A The Council and the Original Developer are parties to the Original Agreement.
- B The Original Agreement relates to the whole of the Land.
- C The Original Developer wishes to transfer [the whole of] [part or parts of] the Land comprising Lot [insert Lot number] in DP (Transferred Land) [insert Deposited Plan number] to the New Developer. [Drafting Note: to be included where all or part of the land is to be transferred to the New Developer and the Original Agreement is to be novated in relation to the Transferred Land].

OR

The Original Developer wishes to novate all of its rights and obligations under the Original Agreement to the New Developer. [Drafting Note: to be included where there is no transfer of the Land to the New Developer, but the Original Developer has entered into a separate arrangement with the New Developer that requires a novation of all the Original Developer's rights and obligations under the Original Agreement to the New Developer].

OR

The Original Developer wishes to assign its rights and interests under the Original Agreement to the New Developer. [Drafting Note: to be included where the Original Developer has entered into a separate arrangement with the New Developer and the Original Developer's rights and interests in the Original Agreement are to be assigned].

Agreed terms

1 Interpretation

1.1 Definitions

1.1.1 In this document:

Effective Date means [insert].

Council means Wyong Shire Council [Drafting Note: Only to be included where the Original Agreement is assigned to the New Developer].

Land has the meaning given to that term in the Original Agreement.

Original Agreement means the voluntary planning agreement dated [insert] and made between the Council the Original Developer and other parties.

1.2 Construction

1.2.1 Unless expressed to the contrary, in this document:



- (a) words in the singular include the plural and vice versa;
- (b) any gender includes the other genders;
- (c) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (d) "includes" means includes without limitation;
- (e) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it; and
- (f) a reference to:
 - (i) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;
 - (ii) a person includes the person's legal personal representatives, successors, assigns and persons substituted by novation;
 - (iii) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced; and
 - (iv) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation.

1.3 Headings

1.3.1 Headings do not affect the interpretation of this document.

2 **Novation in respect of Transferred Land** [Drafting Note - Delete clauses 2, 3 and 4 if novation is not applicable]

2.1 Original Agreement

2.1.1 Subject to clause 3 and with effect from the Effective Date:

- (a) the New Developer is substituted for the Original Developer as a party to the Original Agreement;
- (b) the New Developer will be bound by the Original Agreement, and will be entitled to the benefit of the Original Agreement, as if the New Developer was a party to the Original Agreement instead of the Original Developer in relation to the Transferred Land; and
- (c) the Original Developer is released and discharged from all obligations and liabilities, and from all claims (whether for costs, damages, fees, expenses or otherwise), arising under the Original Agreement in relation to the Transferred Land.

2.2 Reference in Original Agreement

2.2.1 All references to the Original Developer in the Original Agreement are to be construed as references to the New Developer in relation to the Transferred Land.

2.3 Address for notices

2.3.1 The Council must address all notices and communications to be given or made by it in relation to the Transferred Land to the New Developer under the Original Agreement to the following address:

New Developer: [Insert details]

Address: [Insert details]

Fax: [Insert details]

Contact Person: [Insert details]

Email: [Insert details]

3 Novation [Drafting Note - Delete clauses 2, 3 and 4 if novation is not applicable]

3.1 Original Agreement

3.1.1 Subject to clause 3 and with effect from the Effective Date:

- (a) the New Developer is substituted for the Original Developer as a party to the Original Agreement;
- (b) the New Developer will be bound by the Original Agreement, and will be entitled to the benefit of the Original Agreement, as if the New Developer was a party to the Original Agreement instead of the Original Developer; and
- (c) the Original Developer is released and discharged from all obligations and liabilities, and from all claims (whether for costs, damages, fees, expenses or otherwise), arising under the Original Agreement.

3.2 Reference in Original Agreement

3.2.1 All references to the Original Developer in the Original Agreement are to be construed as references to the New Developer.

3.3 Address for notices

3.3.1 The Council must address all notices and communications to be given or made by it to the New Developer under the Original Agreement to the following address:

New Developer: [Insert details]

Address: [Insert details]

Fax: [Insert details]

Contact Person: [Insert details]

Email: [Insert details]



4 Affirmation of the Original Agreement

- 4.1 *The Original Agreement will be read and construed subject to this deed, and in all other respects the provisions of the Original Agreement are ratified and confirmed, and, subject to the variation and novation contained in this deed, the Original Agreement will continue in full force and effect.*

5 Assignment [Drafting Note - Delete if assignment is not applicable]

5.1 Assignment of Rights

- 5.1.1 *The Original Developer assigns to the New Developer absolutely all of the Original Developer's rights (both present, future, actual and contingent) under the Original Agreement or which arise as a result of the Original Developer exercising any right under the Original Agreement.*
- 5.1.2 *The New Developer accepts the assignment of the Original Developer's rights (both present, future, actual and contingent) under the Original Agreement on the terms of this deed.*

5.2 Assumption of obligations

- 5.2.1 *On and from the Effective Date, the New Developer must properly and punctually observe and perform all of the Original Developer's obligations (both present, future, actual and contingent) under the Original Agreement or which arise as a result of the Council exercising any right under the Original Agreement and which are due to be performed on or after the Effective Date.*

6 Indemnities

- 6.1 *The New Developer indemnifies the Original Developer on demand against all liabilities, claims, damages and loss which the Original Developer suffers or incurs in relation to the Original Agreement including those which arise or relate to acts or omissions occurring on or after the Effective Date.*

7 Warranties and representations

7.1 Warranties

- 7.1.1 *Each party represents and warrants that, at the time of execution, and at the Effective Date:*
- (a) *it has capacity unconditionally to execute, deliver and comply with its obligations under this document;*
 - (b) *it has taken all necessary action to authorise the unconditional execution and delivery of, and the compliance with, its obligations under this document;*



- (c) *this document is a valid and legally binding obligation and is enforceable against it by each other party in accordance with its terms; and*
- (d) *its unconditional execution and delivery of, and compliance with its obligations under, this document do not contravene:*
 - (i) *any law or directive from a government entity;*
 - (ii) *its constituent documents;*
 - (iii) *any agreement or instrument to which it is a party; or*
 - (iv) *any obligation of it to any other person.*

7.2 Survival of warranties

- 7.2.1 *The warranties and representations in clause 7.1 survive the execution of this document and the [novation/assignment] of the Original Agreement.*

8 GST

- 8.1 *Where a supply made under this deed gives rise to a liability for GST, the consideration to be provided for that supply (other than under this clause) shall be increased by an additional amount equal to the GST payable on the supply. The additional amount must be paid, and the supplier must provide a tax invoice, at the same time as the other consideration for that supply is to be provided under this deed. Terms used in this clause have the meanings in the A New Tax System (Goods and Services Tax) Act 1999.*

9 Stamp duty and costs

- 9.1 *The Original Developer and the New Developer are jointly and severally responsible for the Council's legal costs incidental to the negotiation, preparation and execution of this deed. [Drafting Note: To be included where the Original Agreement is being assigned.]*
- 9.2 *The New Developer will pay all stamp duty arising directly or indirectly from this deed.*

10 Further acts

- 10.1 *Each party will take all steps, execute all deeds and do everything reasonably required by any other party to give effect to any of the actions contemplated by this deed.*
- 10.2 *This deed binds each party which signs it even if other parties do not, or if the execution by other parties is defective, void or voidable.*

11 Amendment



- 11.1 This document may only be varied or replaced by a document executed by the parties.

12 Governing law

- 12.1 This deed is governed by the law in force in the place specified in the New South Wales and the parties submit to the non-exclusive jurisdiction of the courts of that place.

13 Counterparts

- 13.1 This deed may consist of a number of counterparts and the counterparts taken together constitute one and the same instrument.

Execution

Executed as a Deed

Dated:

Executed on behalf of the Council by affixing the SEAL in accordance with a resolution passed at a duly convened meeting held on:

General Manager

Mayor

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

Name/Position



Name/Position

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

Name/Position

Name/Position





Execution

Executed as an Agreement

Dated: 9/12/13

in accordance with Section 377 of the local
Executed on behalf of the Council ~~by affixing the SEAL in accordance~~
with a resolution passed at a duly convened meeting held on: 25th September 2013.
and


MICHAEL WHITTAKER
General Manager


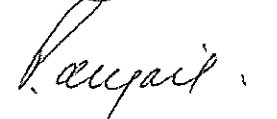
X 
WITNESS, DEBORAH HITCHISON
Mayor
2 MELB ST, WYONG

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

X DANIEL HORBAUER DIRECTOR 
Name/Position X

X CATHERINE MAGENNIS
Name/Position X

PHILIPPE JOHN DE GAIL
DIRECTOR

X 




Appendix

(Clause 30)

Environmental Planning and Assessment Regulation 2000

(Clause 25E)

Explanatory Note

Draft Planning Agreement

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

Parties

Wyong Shire Council ABN 47 054 613 735 of 2 Hely St, WYONG NSW 2259 (Council)

Pelican Horizons Pty Ltd ABN 38 144 699 605 of PO Box 815, LANE COVE NSW 1595 (Developer)

Description of the Land to which the Draft Planning Agreement Applies

Lot 1 DP 513519 also known as 2 Ocean Parade, The Entrance NSW 2261

Lot 2 DP 536 168 also known as 14 The Entrance Road East, The Entrance NSW 2261.

Description of Proposed Development

Development means a mixed use development on the Land which includes a residential flat building with an FSR of up to 4.0:1 and height of RL70m AHD and a minimum of 178 on-site car spaces.

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

Objectives of Draft Planning Agreement

The objective of the Draft Planning Agreement is to provide suitable funding for works to enhance the public environment within the Waterfront West Precinct of The Entrance Masterplan and opposite the Land in The Entrance Road and Ocean Parade.



Nature of Draft Planning Agreement

The Draft Planning Agreement is a planning agreement under s93F of the *Environmental Planning and Assessment Act 1979 (Act)*. It is an agreement between the Council and the Developer. The Draft 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 public purposes (as defined in s93F(3) of the Act).

Effect of the Draft Planning Agreement

The Draft Planning Agreement:

- relates to the Instrument Change
- relates to the carrying out by the Developer of the Development on the Land,
- does exclude the application of s94A of the Act to the Development,
- excludes the application of s94 of the Act to the Development except as regards contributions in respect of any on-site parking deficit,
- does not exclude the application of s94EF to the Development,
- requires monetary Development Contributions of a specified amount for the purpose of works to enhance the public environment within the Waterfront West Precinct of The Entrance Masterplan and opposite the Land in The Entrance Road and Ocean Parade,
- requires the Council to apply monetary Development Contributions made under the Agreement towards the specified purpose for which they were made,
- makes provision for works in lieu of payment of certain monetary contributions if the parties so agree,
- is to be registered on the title to the Land,
- imposes restrictions on the Developer transferring the Land or part of the Land (other than a Final Lot) - if the Agreement is not registered on the title of the Land at the time of the sale or transfer -or assigning an interest under or novating the Agreement,
- provides two dispute resolution methods for a dispute under the Agreement, being expert determination and mediation,
- provides that the Agreement is governed by the law of New South Wales, and
- provides that the A New Tax System (Goods and Services Tax) Act 1999 (Cth) applies to the Agreement..

Assessment of the Merits of the Draft Planning Agreement

The Planning Purposes Served by the Draft Planning Agreement



The Draft Planning Agreement:

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

The draft Agreement provides a reasonable means of achieving the above planning purposes because it appropriately balances the interests of the parties while promoting the public interest.

In particular, the draft Agreement is expected to secure development contributions significantly in excess of the contributions that could be secured by condition imposed under s94 of the Act on the basis of the following possible scenario of development.

Table 1:

Section 94 Contributions (not including on-site parking deficit) being the normal development contributions that would apply		VPA Offer	
Purpose	Amount	Purpose	Amount
Open Space Works	\$171,133.70	Works to enhance the public domain and the environment within the Waterfront West Precinct of The Entrance Masterplan and opposite the site in The Entrance Road and Ocean Parade	\$1,559,267.60 (excluding s94 contributions for any on-site parking deficit)
Open Space Land	\$28,078.08		
Community Facilities Works	\$176,393.23		
Community Facilities Land	\$132,127.84		
Roads	\$539,415.44		
Performing Arts Centre	\$29,003.05		
Regional Open Space	\$12,529.84		
Administration	\$5,567.36		
Total	\$1,094,248.54		\$1,559,267.60

NB: Contributions based on rates calculated on 21 May 2011.

The above s.94 contributions are based on the Land being developed with the following parameters:

Table 2:

Item	Number/Floor Space
1 bedroom units	8
2 bedroom units	52



3 bedroom units	33
Commercial Floor Space	690m ²
Retail Floor Space	979m ²
Restaurant	586m ²

NB: Assumes all units are for permanent residents and incorporates a credit for two (2) existing lots.

Please note that the Land could be developed under another scenario/configuration and the figures shown in table 1 & 2 could therefore change accordingly.

How the Draft Planning Agreement Promotes the Public Interest

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

For Planning Authorities:

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

N/A

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

N/A

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

The Draft Planning Agreement promotes the elements of the Council's charter by:

- by providing a means for the private funding of public facilities for the benefit of the Development and the wider community, and
- providing a means that allows the wider community to make submissions to the Council in relation to the Agreement.

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

The Draft Planning Agreement conforms with the Council's Capital Works Program as it seeks to partially fund the implementation of The Entrance Town Centre Masterplan.

All Planning Authorities - Whether the Draft Planning Agreement specifies that certain requirements must be complied with before



***issuing a construction certificate, subdivision certificate or
occupation certificate***

Yes. The Draft Planning Agreement specifies that the obligation to make monetary Development Contributions under the Agreement must be complied with before the issuing of the first Construction Certificate for the Development.

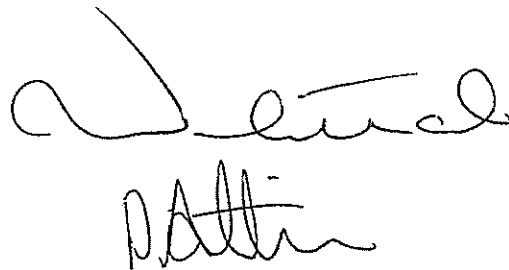
x *[Signature]*
x *[Signature]*

Annexure "B" to REQUEST FORM 11R FOR REGISTRATION OF PLANNING AGREEMENT
PARTIES: PURSUANT TO 893H OF THE ENVIRONMENTAL PLANNING AND
ASSESSMENT ACT 1979

Planning Agreement between Wyong Shire Council and Pelican Horizons Pty Limited ACN
144 699 605

Dated: 9 DECEMBER 2013

Letter of consent from Pelican Horizons Pty Limited on following pages.


David
Patton

A.C.N. 38 144 699 605