

**Deed of Variation  
of Planning Agreement**

**Parties**

**Wollondilly Shire Council ("Council")**

**And**

**River Road Developments Pty Ltd**

**(ACN 615 853 346) as Trustee of the River**

**Road Developments Unit Trust ("Developer")**

Development Land

165-195 River Road, Tahmoor, New South Wales

4 January 2019

Two blue ink signatures are present at the bottom right of the page. The first signature is a stylized, cursive 'G' shape. The second signature is a more complex, circular scribble.

**THIS NOVATION AND VARIATION AGREEMENT**

IS MADE ON the day of 4 January 201~~8~~<sup>9</sup>

**BETWEEN**

**Wollondilly Shire Council** of 62-64 Menangle Street, Picton NSW 2571, New South Wales ("**Council**")

**AND**

**River Road Developments Pty Ltd** (ACN 615 853 346) of Unit 5.14/5 Celebration Drive, Bella Vista NSW 2153, New South Wales 2666 as Trustee of the River Road Developments Unit Trust ("**Developer**")

**BACKGROUND**

- A The Developer and the Council are parties to the Planning Agreement dated 12 August 2013 relating to Lots A and B in DP 369710 and Lots 85 and 86 in DP 751270 and known as 165-185 River Road, Tahmoor NSW 2573 and registered under Request Numbered AI8690A (the "**Planning Agreement**").
- B The Parties have agreed to vary the Planning Agreement and this Agreement is entered into in accordance with the terms of clause 12 of the Planning Agreement.

**OPERATIVE PROVISIONS**

**1. Definitions**

Unless the context otherwise requires, any capitalised term which is defined in the Planning Agreement and which is not defined in this Agreement, has the same meaning as defined in the Planning Agreement.

In this Agreement:

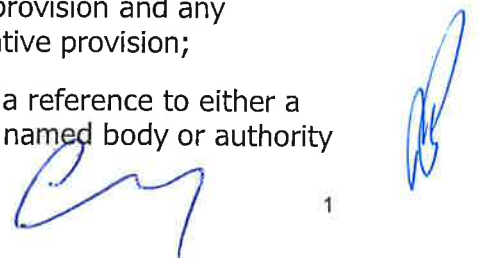
**Effective Date** means the date on which the exhibition of the proposed variations to the Planning Agreement has ended.

**Developer** means **River Road Developments Pty Ltd ACN 615 853 346** as Trustee of the River Road Developments Unit Trust and includes its permitted successors and assigns.

**2. Interpretation**

In this Agreement, headings are for convenience only and do not affect interpretation and, unless the contrary intention appears:

- (a) a reference to **this Agreement** or another document means this Agreement or that other document and any document which varies, supplements, replaces, assigns or novates this Agreement or that other document;
- (b) a reference to **legislation** or a **legislative provision** includes any statutory modification, or substitution of that legislation or legislative provision and any subordinate legislation issued under that legislation or legislative provision;
- (c) a reference to a **body** or **authority** which ceases to exist is a reference to either a body or authority that the parties agree to substitute for the named body or authority



or, failing agreement, to a body or authority having substantially the same objects as the named body or authority;

- (d) a reference to the **introduction**, a **clause**, **schedule** or **annexure** is a reference to the introduction, a clause, a schedule or an annexure to or of this Agreement;
- (e) **clause headings**, the **introduction** and the **table of contents** are inserted for convenience only and do not form part of this Agreement;
- (f) any **schedule** forms part of this Agreement;
- (g) a reference to a **person** includes a natural person, corporation, statutory corporation, partnership, the Crown or any other organisation or legal entity;
- (h) a reference to a **natural person** includes their personal representatives, successors and permitted assigns;
- (i) a reference to a **corporation** includes its successors and permitted assigns;
- (j) a reference to a right or obligation of a party is a reference to a right or obligation of that party under this Agreement and the Planning Agreement;
- (k) an **obligation** or **warranty** on the part of 2 or more persons binds them jointly and severally and an obligation or warranty in favour of 2 or more persons benefits them jointly and severally;
- (l) a requirement to do any thing includes a requirement to cause that thing to be done and a requirement not to do any thing includes a requirement to prevent that thing being done;
- (m) **including** and **includes** are not words of limitation;
- (n) a word that is derived from a defined word has a corresponding meaning;
- (o) **monetary amounts** are expressed in Australian dollars;
- (p) the singular number includes the plural and vice-versa;
- (q) words importing one gender include all other genders;
- (r) a reference to a thing includes each part of that thing; and
- (s) neither this Agreement nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting.

### 3. Variation

On and from the Effective Date, the Parties have agreed to vary the Planning Agreement in accordance with the amendments which are acceptable to the Council and are set out in the Schedule to this Agreement.

### 4. Obligations and liabilities arising before the Effective Date

Nothing in this deed releases the Developer or the Council from any obligation or liability under the Planning Agreement arising before the Effective Date.



## 5. Variation and Confirmation of Planning Agreement

The Council and the Developer hereby confirm the terms of the Planning Agreement as varied by this Agreement as from the Effective Date, noting that such variation has resulted from the review procedures set out in in Clause 12 of the Planning Agreement.

## 6. Notices

Any notice or communication to or by a party to this Agreement or the Planning Agreement must be:

- (a) sent to the Council or to the Developer in the manner required by clause 13 of the Planning Agreement;
- (b) sent to the Developer in the manner set out in clause 13 of the Planning Agreement, except that the address for service of notices to the Developer , is substituted with:-

The Developer

Address : Unit 5.14/ 5 Celebration Drive, BELLA VISTA NSW 2153

Telephone: (02) 9672 6055 and 0411 172 000

Fax: (02) 9672 6099

Email: c.lowry@ulh.com.au

Attention: Mr. Christopher Lowry

## 7. Counterparts

This Agreement may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the Agreement of each party who has executed and delivered that counterpart.

## 8. Costs

The Developer shall reimburse the Council for the costs and disbursements of the Council in connection with:-

- (a) the preparation, negotiation or execution of this Agreement;
- (b) the placing of any document on notification relating to this Agreement.

## 9. Stamp Duty

The Transferee must pay any stamp, transaction, registration, financial institutions, bank account debit and other duties and taxes (including fines and penalties) which may be payable or determined to be payable in relation to the execution, delivery, performance or enforcement of this deed or any payment or receipt or other transaction contemplation by this instrument of novation.

## 10. Entire Agreement

The Agreement contains everything the parties have agreed on in relation to the matters it deals with. No party can rely on an earlier document or on anything said or done by another party (or by a director, officer, agent or employee of that party) before this instrument of novation and variation was executed.



## 11 . Governing Law and jurisdiction

This Agreement is governed by and must be construed according to the law applying in New South Wales.

### SCHEDULE

The proposed variations to the Planning Agreement are as follows: -

**1. By inserting the following definitions in replacement of the corresponding definitions set out in the Planning Agreement as at the date of this Deed**

**:-**

**Development Approval** means the approval of Development Application 010.2014.00000588.001 for a 125 lots subdivision with associated works at Lots A and B DP 369710, Lots 1 & 2 DP 1210433 and Lots 85 and 86 DP 751270 Nos 165, 175, 185 and 195 River Road, Tahmoor contained in the orders made by the Land and Environment Court of New South Wales on 14 December, 2016 in Case Number 2016/00161100 on the Conditions set out in Annexure A to those orders.

**Development Land** means the land comprising Lots A and B in DP 369710, Lots 85 and 86 in DP 751270 and Lots 1 and 2 in DP 1210433 and known as 165-195 River Road, Tahmoor NSW 2573.

**Proposed Development** means the subdivision of the Development Land into 125 Rural Residential Allotments and 1 open space lot together with all necessary road works, community facilities and ancillary services in accordance with the Development Approval.

**Works** means the works set out in Schedule 1.

**2. By amending any reference to "works" throughout the agreement to "Works".**

**3. By inserting the following new clauses after clause 4.4:**

4.5 The Developer must:

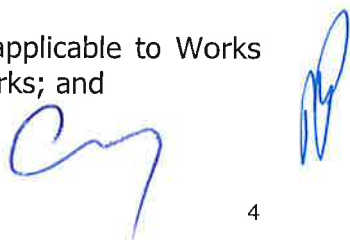
4.5.1 obtain development consent, and any other form of consent required by a relevant Authority, for the construction and use of the Works;

4.5.2 carry out and complete the Works:

4.5.2.1 to the satisfaction of Council by the time specified, and in accordance with the requirements set out, in Schedule 1;

4.5.2.2 in accordance with the requirements of, or consents issued by, any Authority;

4.5.2.3 in accordance with any Australian Standards applicable to Works of the same nature as each aspect of those Works; and



- 4.5.2.4 in a proper and workmanlike manner complying with current industry practice and standards relating to each aspect of the Works.
- 4.6 If the Developer's actual cost of carrying out the Works, including any costs incurred pursuant to this agreement, determined at the date on which the Works are completed, differs from the contribution value specified for the Works in Schedule 1, then subject to the Works having been sufficiently completed in accordance with this agreement, neither party will be entitled to claim credit or reimbursement, as the case may be, for the difference.
- 4.7 Increase in the number of residential allotments
- 4.7.1 The amount of Financial Contributions in cash set out in Part 1 of Schedule 1 has been increased by \$600,000 to take into account the increase in the number of residential allotments from 110 to 125 as set out in the approval of Development Application No. 010.2014.00000588.001 granted on 16 December 2016 ("the Development Approval") and such sum of \$40,000 per residential allotment includes the Developer Contribution of \$22,855.45 and Section 94 Contribution of \$17,144.55.
- 4.7.2 Accordingly the amount of Developer Contributions and Section 94 Contributions shall remain at \$40,000 per residential allotment created up to a total of \$5,000,000 for 125 residential allotments and such amount shall be paid progressively to the Council for the number of residential allotments to be created under the relevant Subdivision Certificate for each stage of the development referred to in the Development Approval.
- 4.8 With respect to the Public Reserve Works set out in section 2 of Schedule 1:
- 4.8.1 prior to commencement of those works, the Developer must submit a detailed design in respect of those works to Council for approval;
- 4.8.2 Council may either approve or refuse the design submitted under clause 4.8.1; and
- 4.8.3 where Council refuses the design submitted under clause 4.8.1, it must:
- 4.8.3.1 provide the Developer with its proposed variations to the design (acting reasonably); and
- 4.8.3.2 the Developer must amend and submit the amended design to Council for approval, in which case the same process set out in this clause 4.8 will apply to the amended design until approved by Council.
- 4.9 The Developer must:
- 4.9.1 at no cost to Council; and
- 4.9.2 unless otherwise specified in the timing section of Schedule 1, on completion of the relevant works to the satisfaction of Council under clause 4.10,

dedicate any land upon which the Works are undertaken to Council (including the Public Reserve being 'Lot 119' as identified in the plan attached to this agreement as Annexure B) free of any trusts, estates, interests, covenants and encumbrances and in accordance with Council's dedication of land policy (PLA0036).

4.10 If the Developer considers that any particular item of the Works is complete it must, within fourteen (14) days of completion of that item, serve a notice on Council which:

4.10.1 is in writing;

4.10.2 identifies the particular item of the Works to which it relates; and

4.10.3 specifies the date on which, the Developer believes the relevant item of the Works was completed.

**(Completion Notice).**

4.11 Council must inspect the Works set out in a Completion Notice within fourteen (14) days of the receipt of that notice.

4.12 Within twenty eight (28) days of inspecting the Works set out in a Completion Notice Council must provide notice in writing (**Rectification Notice**) to the Developer that the Works set out in the Completion Notice:

4.12.1 have been Completed; or

4.12.2 have not been Completed, in which case the notice must also detail:

4.12.2.1 those aspects of the Works which have not been Completed; and

4.12.2.2 the work the Council requires the Developer to carry out in order to rectify the deficiencies in those Works.

4.13 If Council does not provide the Developer with a Rectification Notice in accordance with clause 4.12.2, the Works set out in the Completion Notice will be deemed to have been Completed.

4.14 Where Council serves a Rectification Notice on the Developer the Developer must:

4.14.1 rectify the Works in accordance with that notice within one (1) month from the date it is issued by the Council; or

4.14.2 serve a notice on the Council that it disputes the matters set out in the notice.



4.15 Where the Developer:

4.15.1 serves notice on Council in accordance with clause 4.14.2, the dispute resolution provisions of this document apply; or

- 4.15.2 rectifies the Works in accordance with paragraph 4.14.1, it must serve upon the Council a new Completion Notice for the Works it has rectified.
- 4.16 For a period of two (2) years after completion of any of the Works set out in section 2 and 3 of the Tables in Schedule 1 (**Maintenance Period**), the Developer must maintain those Works in accordance with the reasonable requirements of Council (**Maintenance Works**).
- 4.17 Prior to the commencement of the Maintenance Period, and as security for the provision of the Maintenance Works, the Developer must provide Council with a bank guarantee:
- 4.17.1 without any expiry or end date; and
- 4.17.2 from a financial institution approved by Council,  
for an amount of \$10,000.00 (**Maintenance Bank Guarantee**).
- 4.18 A Subdivision Certificate for the creation of the first lot in Stage 4 of the Development may not be issued prior to the provision of the Maintenance Bank Guarantee.
- 4.19 If the Developer does not comply with the terms of clause 4.16, Council may issue the Developer with a notice requiring the Developer to rectify the relevant default within twenty (20) business days from the date of that notice.
- 4.20 If the Developer fails to comply with a notice issued under clause 4.19:
- 4.20.1 Council may, without limiting any other avenues available to it, call on the Maintenance Bank Guarantee to the extent necessary to reimburse Council for any costs incurred by it in rectifying the relevant default of the Developer; and
- 4.20.2 fourteen (14) days after Council calls the Maintenance Bank Guarantee under clause 4.20.1, the Developer must top up the Maintenance Bank Guarantee to the value of the reimbursement.
- 4.21 Council must return the Maintenance Bank Guarantee provided under clause 4.16 to the Developer at the expiration of the Maintenance Period for the last item of Work.

**4. By inserting new clauses 5.1A and 5.1B after clause 5.1 as follows:**

- 5.1A As security for any defects that may arise in respect of the Works during the Defects Liability Period, prior to the issue of a Subdivision Certificate in respect of the Development, the Developer must provide Council with an irrevocable and unconditional undertaking without any expiry or end date by a bank approved by Council for an amount equivalent to 10% of the total Estimated Contribution for all the works set out in Schedule 1 (**Defects Security**).
- 5.1B If the Developer fails to rectify a defect notified by Council under clause 5.1, Council may, at its absolute discretion:





5.1B.1 enter upon the relevant land for the purpose of rectifying the defect;

5.1B.2 call upon the Defects Security to the extent necessary to cover its costs in rectifying the relevant defect itself; and

5.1B.3 recover as a debt due in a court of competent jurisdiction any difference between the amount of the Defects Security and the costs incurred by the Council in rectifying the relevant defect under this clause.

**5. By deleting Schedule 1 and replacing it with the following:**

**Schedule 1 – Developer Contributions**

| Project  | Estimated Contribution | Type of Contribution | Timing of Contribution  |
|--|------------------------|----------------------|---|
| <b>1. Roadworks and Improvements</b>   |                        |                      |   |
|  |                        |                      |   |
| Financial contribution towards future roadworks and improvements along Remembrance Drive and intersections in Tahmoor. These works will be decided by Council and may include road widening, intersection improvements and measures to improve safety. | \$1,019,800            | Cash                 | Prior to the issue of the Subdivision Certificate for Stage 1 of the Development Approval |
| Construction of Road 2 as detailed on the Sketch of Proposed Road Widening in the Plan attached as Annexure A of this Agreement.   | \$637,597.60           | Works                | Prior to the issue of the Subdivision Certificate for Stage 1 of the Development Approval |
| Construction of Road 1 (including footpath to Remembrance Drive) as detailed on the Sketch of Proposed Road Widening in the Plan attached as Annexure A of this Agreement.   | \$528,202.40           | Works                | Prior to the issue of the Subdivision Certificate for Stage 1 of the Development Approval |
|  | <b>\$2,185,600</b>     |                      |   |

| <b>2. Public Reserve (Lot 119) Embellishment</b>                             |                          |       |   |
|--|--------------------------|-------|---|
| Phase 1 – Terracing / Retaining Walls  | \$123,500.00             | Works | Prior to the issue of the Subdivision Certificate for Stage 2 of the Development Approval |
| Phase 2 – Park Facilities and Landscaping                                    |                          |       |   |
| Shared pathway   | \$360,000.00             | Works | Prior to the issue of the Subdivision Certificate for Stage 4 of the Development.         |
| One full size multi-purpose court (interchangeable basketball/netball hoops) | \$80,000.00              | Works |   |
| Park furniture   | \$100,000.00             | Works |   |
| Landscaping and pathway works  | \$ 90,000.00             | Works |   |
| One playground   | \$110,000.00             | Works |   |
| Outdoor exercise equipment   | \$ 65,000.00             | Works |   |
|  | <b>\$928,500.00</b>      |       |   |
| <b>3. Public Reserve (Lot 119) Dedication</b>                                |                          |       |   |
| Public Reserve (Lot 119)   | Nil (no cost to Council) | Land  | Prior to the issue of the Subdivision Certificate for Stage 4 of the Development.         |
| <b>Developer Contributions Total</b>   | <b>\$3,114,100</b>       |       |   |

**6. By inserting the plan below as 'Annexure A' before the execution page of the agreement:**

Annexure A



**7. By inserting the plan below as 'Annexure ' after Annexure referred to above:**


Annexure B





**EXECUTION**

I, MICHAEL MALONE General Manager of Wollondilly Shire Council, execute this Agreement on behalf of the Council under the authority delegated to me pursuant to Section 377(1) of the Local Government Act, 1993 in the presence of:-

 Signature of General Manager  
Full Name Michael Malone

 Signature of Witness

Full Name of Witness Tracy Paul

**EXECUTED by RIVER ROAD DEVELOPMENTS )**

**PTY LTD ACN 615 853 346 as Trustee of )**

River Road Developments Unit Trust in )

accordance with Section 127 of )

the Corporations Act 2001 )

 Signature of Sole Director/Secretary

**Christopher Charles Alexander Lowry**

Name of Sole Director/Secretary

