

Bingara Gorge No 2 Planning Agreement

Deed of Amendment of Voluntary Planning Agreement

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

ABN 93 723 245 808

And

Bingara Development Pty Ltd as trustee for the Bingara Gorge Development Trust ("**Developer**")

ACN 650 165 763

DATE:

Index

1. Definitions and Interpretation.....	3
2. Status of this deed.....	3
3. Planning Agreement under the Act and Policy	3
4. Warranties	3
5. Amendment to Planning Agreement.....	3
6. Costs	4
Annexure A: Amendment of Schedule 1	6
Annexure B: Amendment of Schedule 3.....	12
Annexure C: Explanatory Note	22
Annexure D: Amended Planning Agreement.....	25

Parties

**Wollondilly Shire Council (“Council”)
ABN 93 723 245 808**

And

**Bingara Development Pty Ltd as trustee for the Bingara Gorge Development Trust
 (“Developer”)
ACN 650 165 763**

Background

- A. The Developer is the proponent for and has rights to carry out the Development on the Land.
- B. On 9 August 2021 the Developer and the Council entered into a Planning Agreement in respect of the Development of Bingara Gorge applying to and from the 1,166th to the 1,800th final residential allotments that will be created under the Concept Approval and includes works that may be vested in Council and works that may be vested in Community Association DP270536.
- C. Pursuant to Clause 73 of the Planning Agreement the Parties have agreed to amend the Planning Agreement in accordance with this Deed to amend the Developer’s obligations.

Operative Provisions

1. Definitions and Interpretation

- (a) In this Deed the following definitions apply:

"Council's Policy" means the Council's *Planning Agreement Policy - PLA0037*, adopted by Council on 19 October 2015.

"Deed" means this Deed of Amendment and includes annexures to this Deed.

"Planning Agreement" means the Planning Agreement under the Act entered into by the Parties in respect of the Development dated 9 August 2021.

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

- (b) All other capitalised words used in this Deed have the meanings given to those words in clause 1.1 of the Planning Agreement.

2. Status of this deed

- (a) This Deed takes effect from the date on which it has been executed by all Parties.
- (b) The last party to sign the Deed is to insert the date the Deed is made.
- (c) The Parties will use their best endeavours to execute this Deed within 35 Business Days from the end of the public notice period required by clause 204 of the Regulation.

3. Planning Agreement under the Act and Policy

- (a) The Parties agree that this Deed is an amendment to the Planning Agreement within the meaning of clause 203 of the Regulation.
- (b) The Annexure C: Explanatory Note for this Deed summarises the requirements for planning agreements under section 7.4 of the Act and the way this Deed addresses those requirements.
- (c) This Deed has been prepared in accordance with Council's Policy.

4. Warranties

The Parties warrant to each other that they:

- (a) have full capacity to enter into this Deed, and
- (b) are able to fully comply with their obligations under this Deed.

5. Amendment to Planning Agreement

- (a) The Parties have agreed to amend the Planning Agreement set out in Annexure A and Annexure B.

- (b) A consolidated version of the Planning Agreement showing the changes which the Parties have agreed to make is included at Annexure D.

6. Costs

The Developer is to pay:

- (a) All costs associated with obtaining all necessary approvals, construction and delivery of the obligations.
- (a) Its own costs and expenses (including legal fees) of and incidental to the preparation, negotiations, execution and (where applicable) the stamping and registration of this Deed, including all Stamp Duty payable; and
- (b) the Council's reasonable costs of and incidental to the preparation, negotiation, execution, stamping and registration and, where necessary, enforcement of this Deed.

Executed as a Deed on

EXECUTED for and on behalf of **Wollondilly Shire Council** by its authorised delegate, in accordance with a resolutionof the Council made on.....

.....
Signature of Authorised Delegate

.....
Signature of Witness

.....
Name of Authorised Delegate (in full)

.....
Name of Witness (in full)

EXECUTED by Bingara Development Pty Ltd as trustee for the Bingara Gorge Development Trust ("Developer")
ACN 650 165 763

.....
Signature

.....
Signature

.....
Name / Director/ Secretary

.....
Name / Director/ Secretary

.....
Date

Annexure A: Amendment of Schedule 1

Action	Item / Contribution	Public Purpose	Manner & Extent	Timing / Developer Works Completion Date
A. Monetary Contributions				
Delete	<p>5.. Bingara Gorge Homestead</p> <p>Refer to Schedule 3, Plan A</p>	<p>Payment towards local community facility infrastructure works by Council:</p> <p>Works to include the following:</p> <ul style="list-style-type: none"> • External and internal restoration works; • On-site car parking; • Boundary fence; and • Associated services, irrigation and landscaping. 	<p>Contribution Value of \$1,250,000</p>	<p>Payment to be made before the Subdivision Certificate for the 1,300th residential lot is issued.</p> <p>Works to be undertaken within 3 years (36 months) of the monetary payment, unless otherwise agreed.</p>
Amend	Total		<p>Total Monetary Contributions of</p> <p>\$7,582,580</p> <p>\$6,602,580</p>	
B. Dedication of Land to Council				
Amend	<p>2.. Bingara Gorge Condell Park Homestead Lot – Community floor space</p> <p>Refer to Schedule 3, Plan B and Plan B.2</p>	<p>Land dedication by Lendlease the Developer to Council in support of local community facility infrastructure</p>	<p>Land area of approximately 2,350 square metres.</p> <p>Notional Contribution Value of Land of \$940,000</p>	<p>Dedication to be completed before the Subdivision Certificate for the 1,300th 1800th residential allotment is issued.</p>
C.. Carrying out of Developers Works (Council)				
Amend	<p>1. New Oval Road</p> <p>Refer to Schedule 3, Plan C</p>	<p>Local roads and transport infrastructure works by Lendlease the Developer:</p> <p>Works generally as follows and to include the following:</p> <ul style="list-style-type: none"> • Preliminaries and supervision (including traffic 	<p>Notional Contribution Value of Works of \$2,100,000 \$3,400,000</p> <p>Value exclusive of vegetation offsets (\$2.6M).</p> <p>Exclusive of the \$700,000 +CPI already allocated to this item in</p>	<p>The Developer must achieve Practical Completion no later than the date that the issue of a Subdivision Certificate for the 1300th 1700th residential lot occurs.</p>

		<p>management);</p> <ul style="list-style-type: none"> • Clearing of vegetation; • 8m wide pavement with roll kerbs on both sides; and • Longitude stormwater drainage. 	VPA #1 (dated November 2009)	
Amend	<p>2. Fairway Drive – Widening Line marking and Signage (between Pembroke Parade and Sterling Drive)</p> <p>Refer to Schedule 3, Plan C</p>	<p>Local roads and transport infrastructure works by Lendlease the Developer:</p> <p>Works to be generally in accordance with Concept Approval condition 10(1), namely:</p> <ul style="list-style-type: none"> • minimum 3.3m travel lanes; • 0.6m central median; • provision for 2.2m wide indented on-street parallel car spaces; • a pedestrian break on Fairway Drive at the location shown on Figure 1 (annotated NA82012043-005 SK6); and • vehicle sweep path analysis for the design bus (11m single unit bus as shown of Figure 6.5 of the RTA Guide to Traffic Generating 	<p>Notional Contribution Value of Works of \$2,200,000 \$50,000</p>	<p>The Developer must achieve Practical Completion no later than the date that the issue of a Subdivision Certificate for the 1600th residential lot occurs.</p>

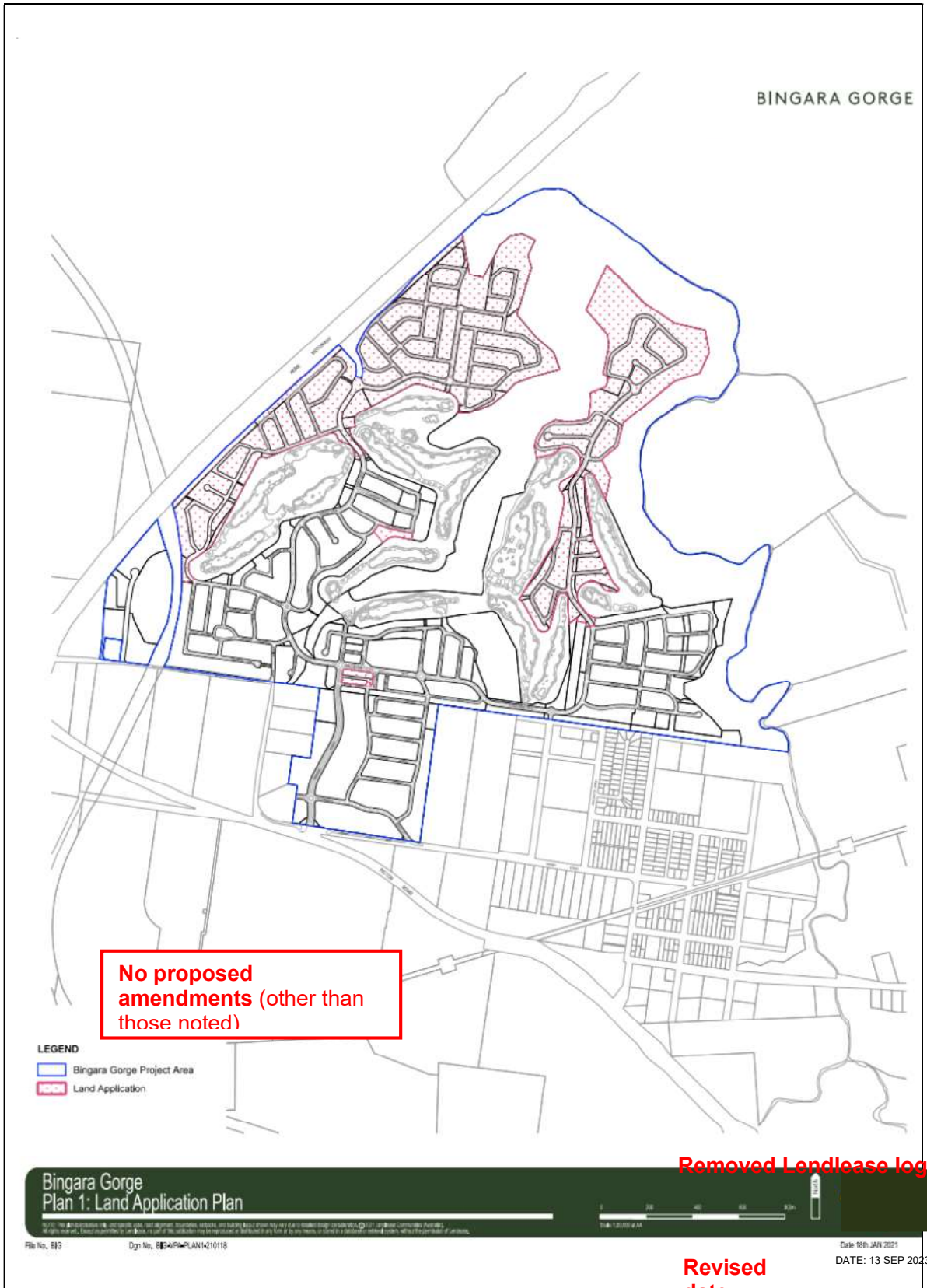
		<p>Development: 2002).</p> <p>Fairway Drive (between Pembroke Parade and Stirling Drive) shall be in accordance with the Local Traffic Committee recommendations at its meeting of 7th February 2023 and Plans NA82013043- 005-SK021; SK022; SK023; Revision 2, dated 9/02/2023 prepared by Cardno (Amended DA/2015/283/3).</p>		
Insert New	<p>3. Condell Park Homestead</p> <p>Refer to Schedule 3, Plan C</p>	<p>Local community facility infrastructure works by the Developer:</p> <p>Works to include the following: including (without limitation) all necessary works to make the Homestead cottage watertight and functional, including, without limitation; roof and guttering and downpipe works conveyed to suitable stormwater conveyance system, internal and external linings, internal fit out, wiring, plumbing; internal and external flooring; painting to all lined and</p>	<p>Contribution Value of \$2,810,000</p> <p>Exclusive of land dedication</p>	<p>The Developer must achieve Practical Completion no later than the date that the issue of a Subdivision Certificate for the 1800th residential lot occurs</p>

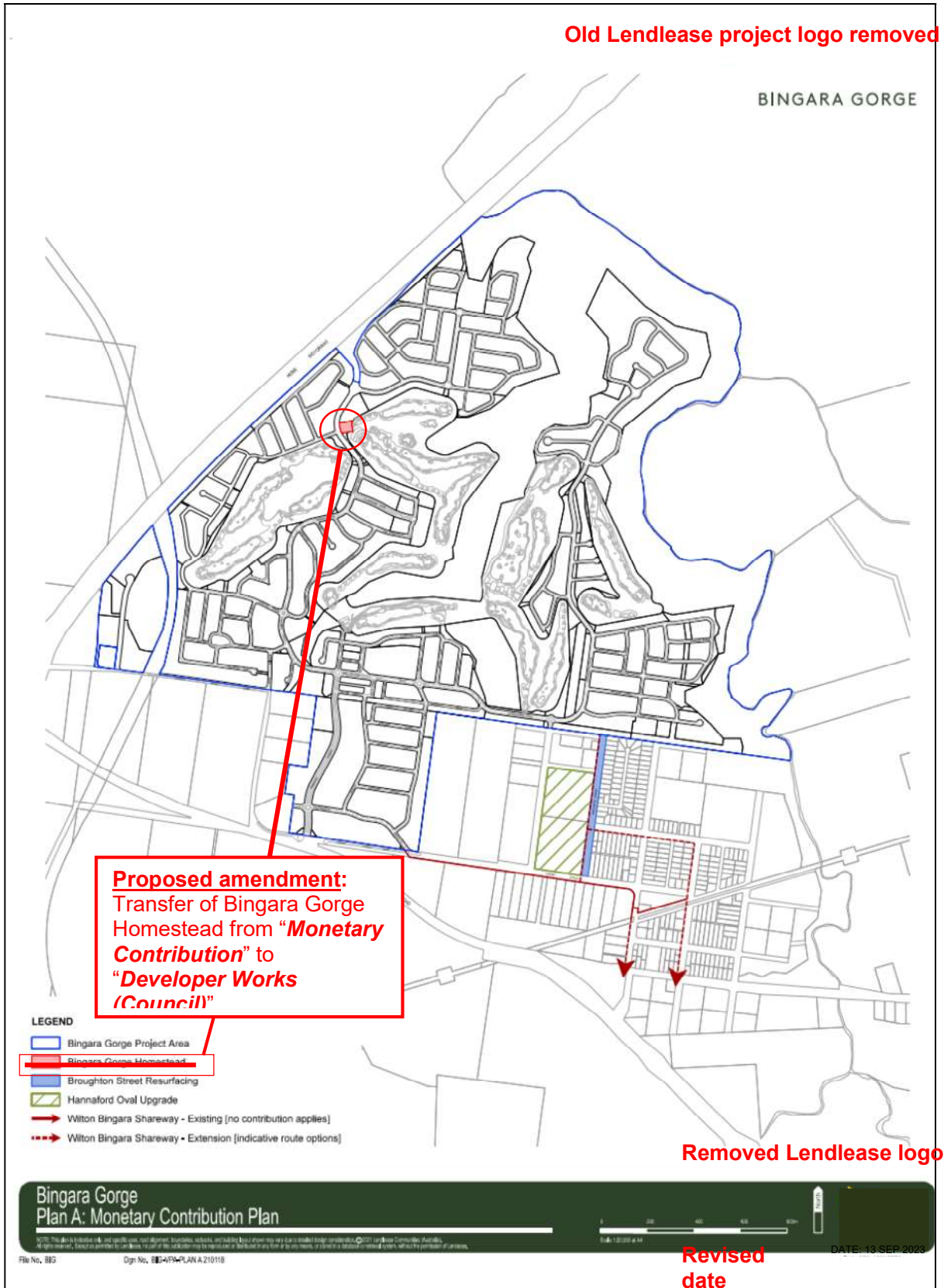
		<p>architrave surfaces; with such works to be verified by appropriate certificates of completion by licensed contractors meeting relevant AS/NZ or BCA standards;</p> <p>External and internal restoration works;</p> <p>On-site car parking;</p> <p>Boundary fence; and</p> <p>Associated services, irrigation and landscaping.</p> <p>And, in accordance with a development consent</p>		
Amend	Total		Total Value of Developer Works (Council) \$4,300,000 \$6,260,000	
D. Carrying out of Developer Works (Community Association) and Dedication of Land to Community Association				
Amend	<p>Six (6) x local parks and five (5) x linear parks – Additional open space</p> <p>Refer to Schedule 3, Plan D</p>	<p>Each local park to comprise elements from the following:</p> <ul style="list-style-type: none"> • Minimum land area • Park shelter / pergola • Playground and shade (trees) • BBQ area 	<p>Total Notional Contribution Value of Works of \$6,885,000</p> <p>Total minimum land area 90,700 133,200 square metres</p> <p>Total Notional Contribution Value of Land of \$8,885,000</p>	<p>The Developer must achieve Practical Completion no later than twelve months and one day following the issue of a Subdivision Certificate for the residential allotments immediately adjoining the local park or linear park.</p>

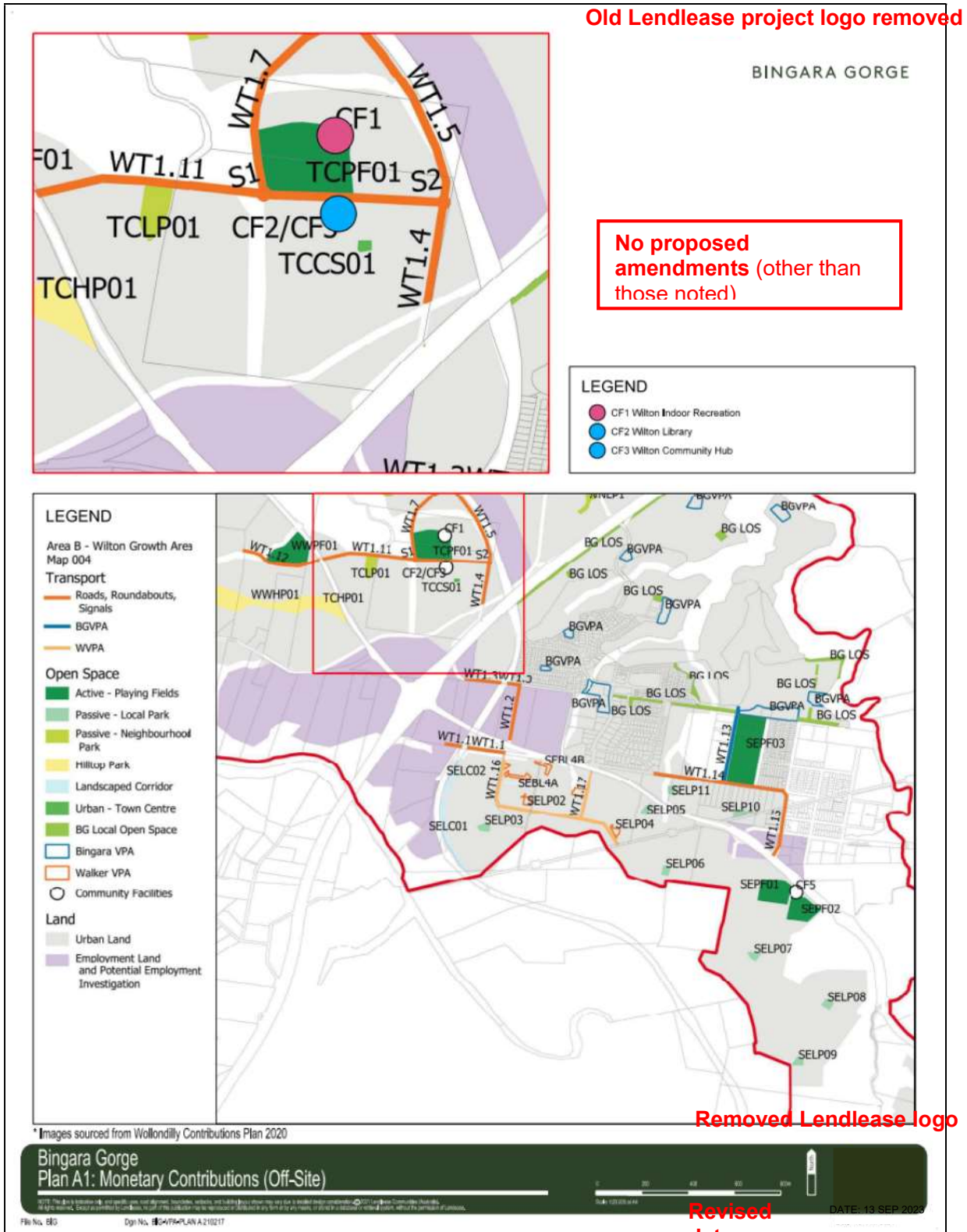
		<ul style="list-style-type: none"> • Kickabout space • Seating and lighting • Associated services, irrigation and landscaping. <p>Each linear park to comprise elements from the following:</p> <ul style="list-style-type: none"> • Minimum land area • 1.5m Footpath • 2m Shared Pedestrian / Cycleway • Seating and lighting • Associated services, irrigation and landscaping. 	\$14,332,500	
Amend	1.1 Local Park 1 (Fairways North) Refer to Schedule 3, Plan D	Local open space infrastructure works and land dedication by the Developer.	<p>Notional Contribution Value of Works of \$500,000</p> <p>Minimum land area of 3,000 50,000 square metres.</p> <p>Notional Contribution Value of Land of \$375,000 \$6,250,000</p>	The Developer must achieve Practical Completion of the additional facilities no later than the issue of a Subdivision Certificate for the 1,800th residential allotments.
Insert New	1.1A Homestead Park [VPA#1] - expansion	<p>Additional land, facilities and amenity, to include:</p> <ul style="list-style-type: none"> • Tennis courts (2) • Multi-use court 	<p>Notional [additional] Contribution Value of Works of \$1,000,000</p> <p>Additional land area of 2,500 square metres.</p> <p>Notional Contribution</p>	The Developer must achieve Practical Completion of the additional facilities no later than the issue of a Subdivision Certificate for the 1,800th residential

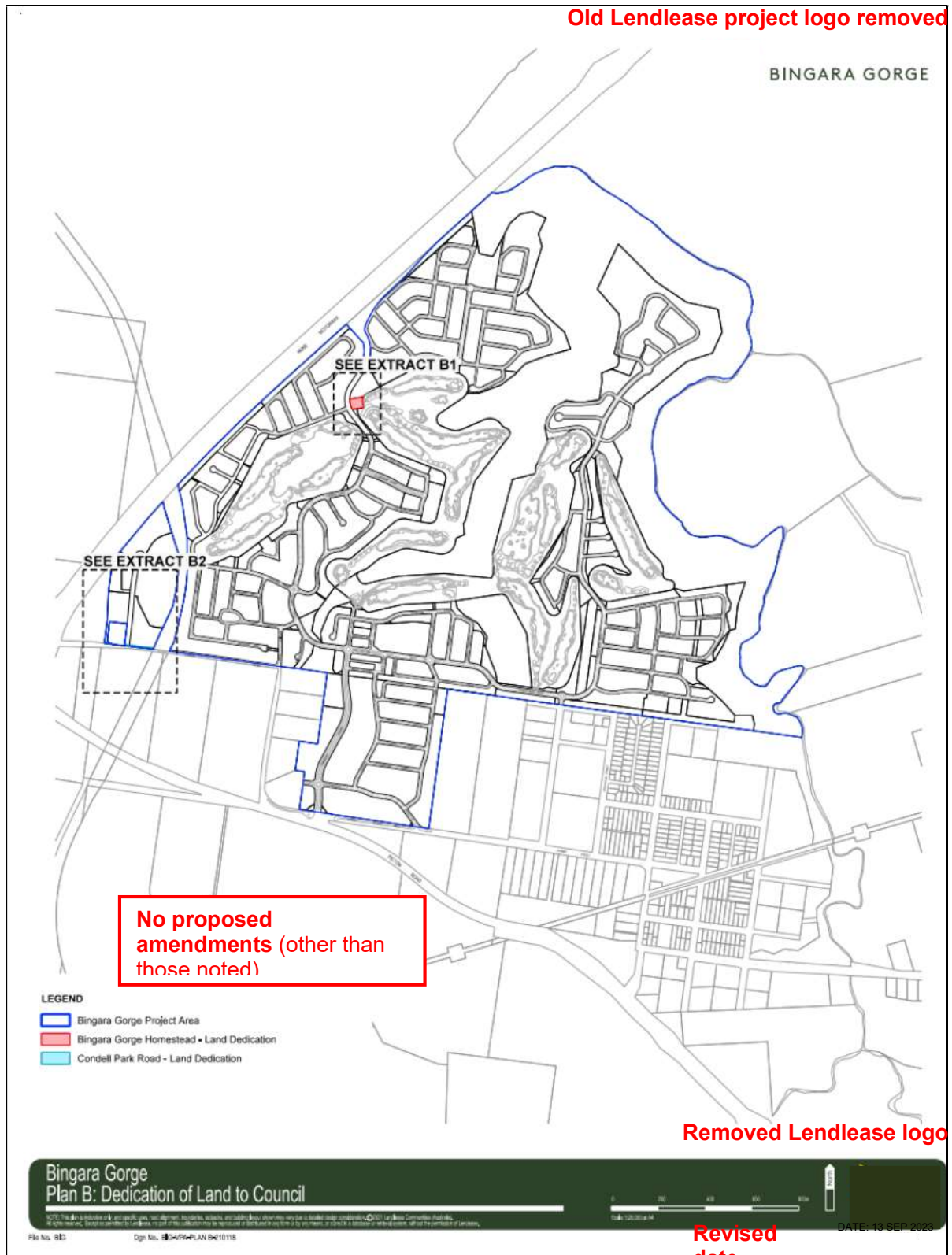
		<ul style="list-style-type: none"> • Toilet block • Parking 	Value of Land of \$312,500	allotments.
Amend	1.3 Local Park 3: (Fairways East) Refer to Schedule 3, Plan D	Local open space infrastructure works and land dedication by the Developer .	<p>Notional Contribution Value of Works of \$2,000,000 \$1,000,000</p> <p>Minimum land area of 10,000 3,000 square metres.</p> <p>Notional Contribution Value of Land of \$1,250,000 \$500,000</p>	The Developer must achieve Practical Completion no later than twelve months and one day following the issue of a Subdivision Certificate for the residential allotments immediately adjoining local park 3.
Amend	Total		<p>Total Value of Developer Works (Community Association) of \$7,185,000 and Total Value of Dedication of Land to Community Association Land \$8,885,000 \$14,322,500</p>	
Insert New	TOTAL (Tables A-E)		Total Value of \$46,599,300	

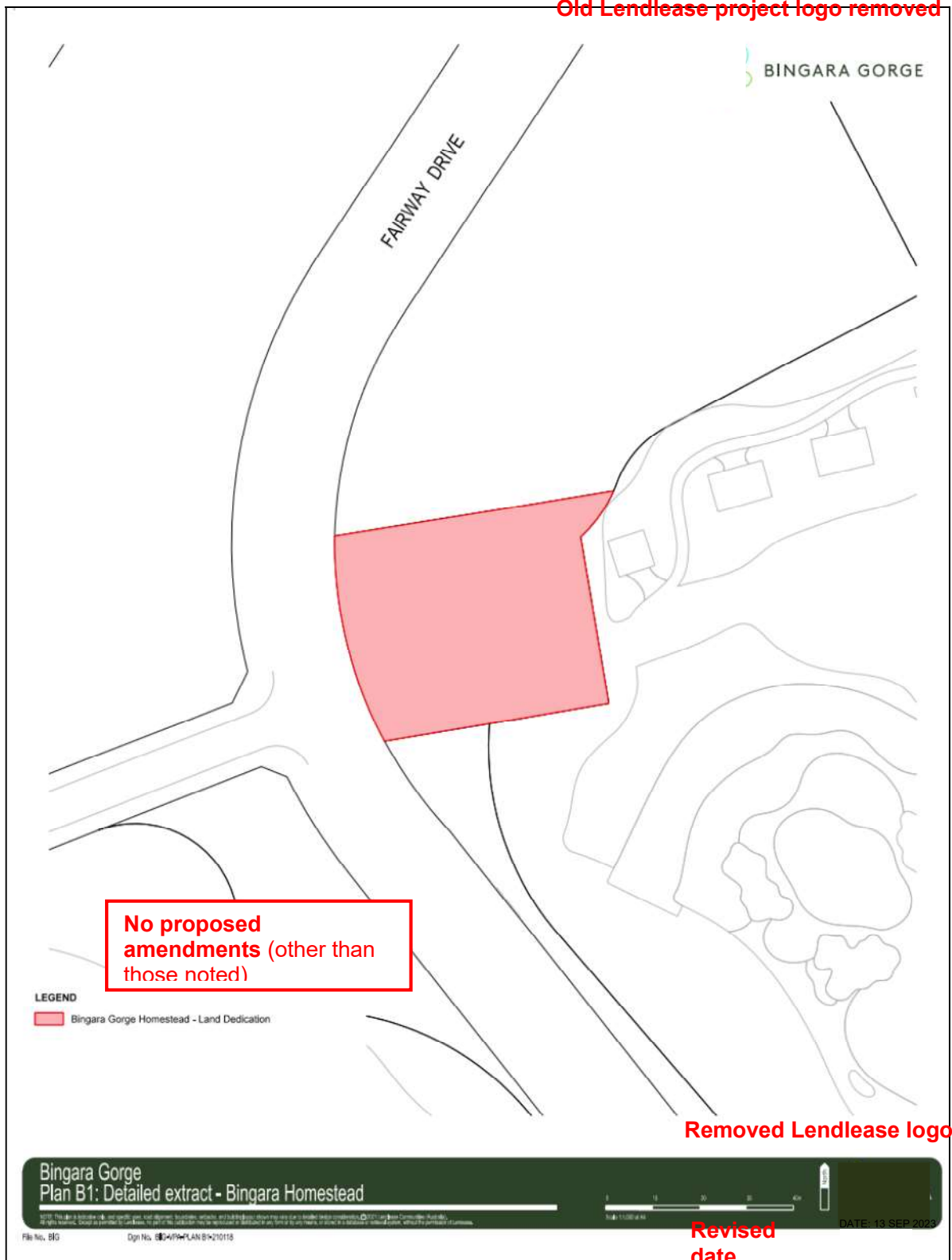
Annexure B: Amendment of Schedule 3



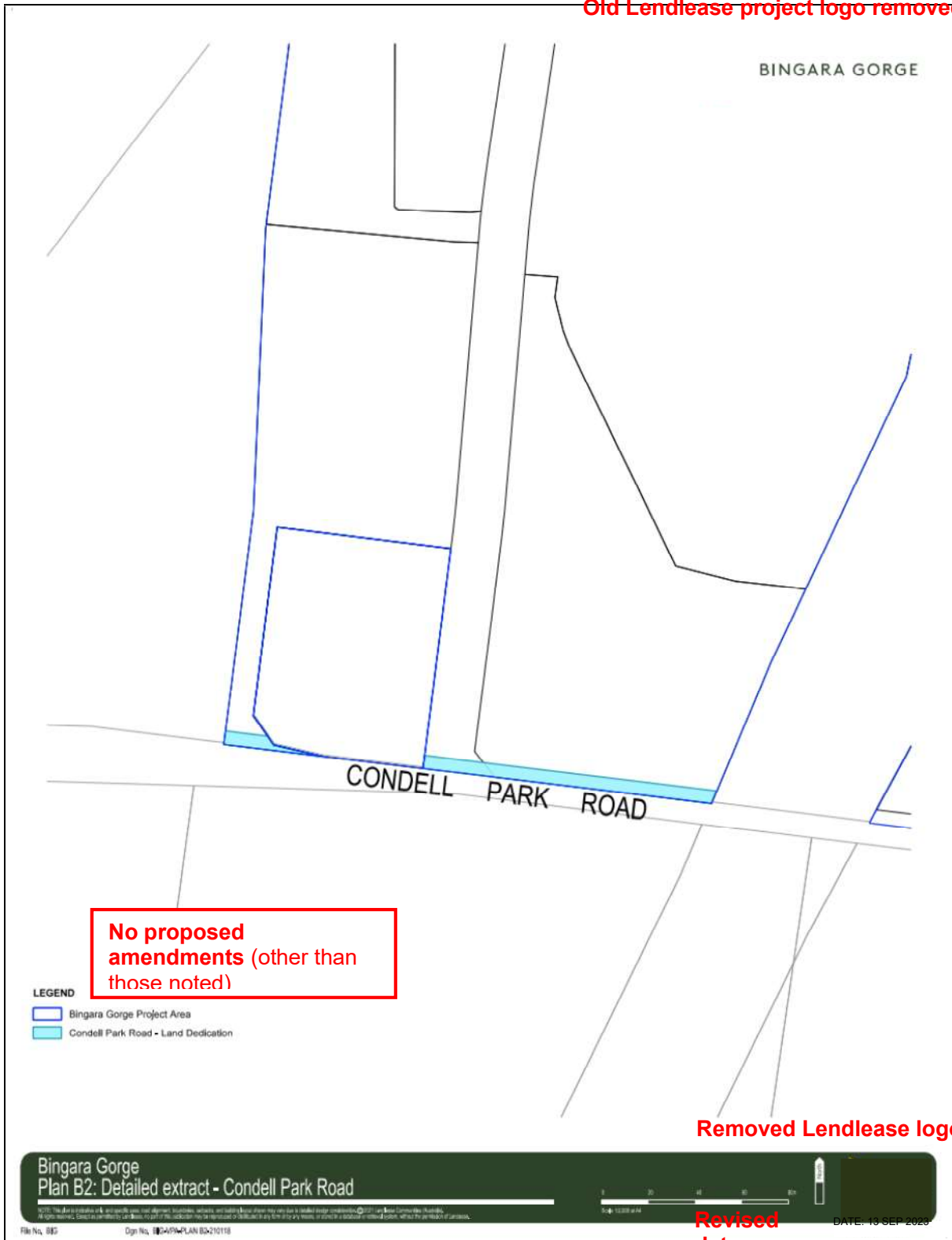


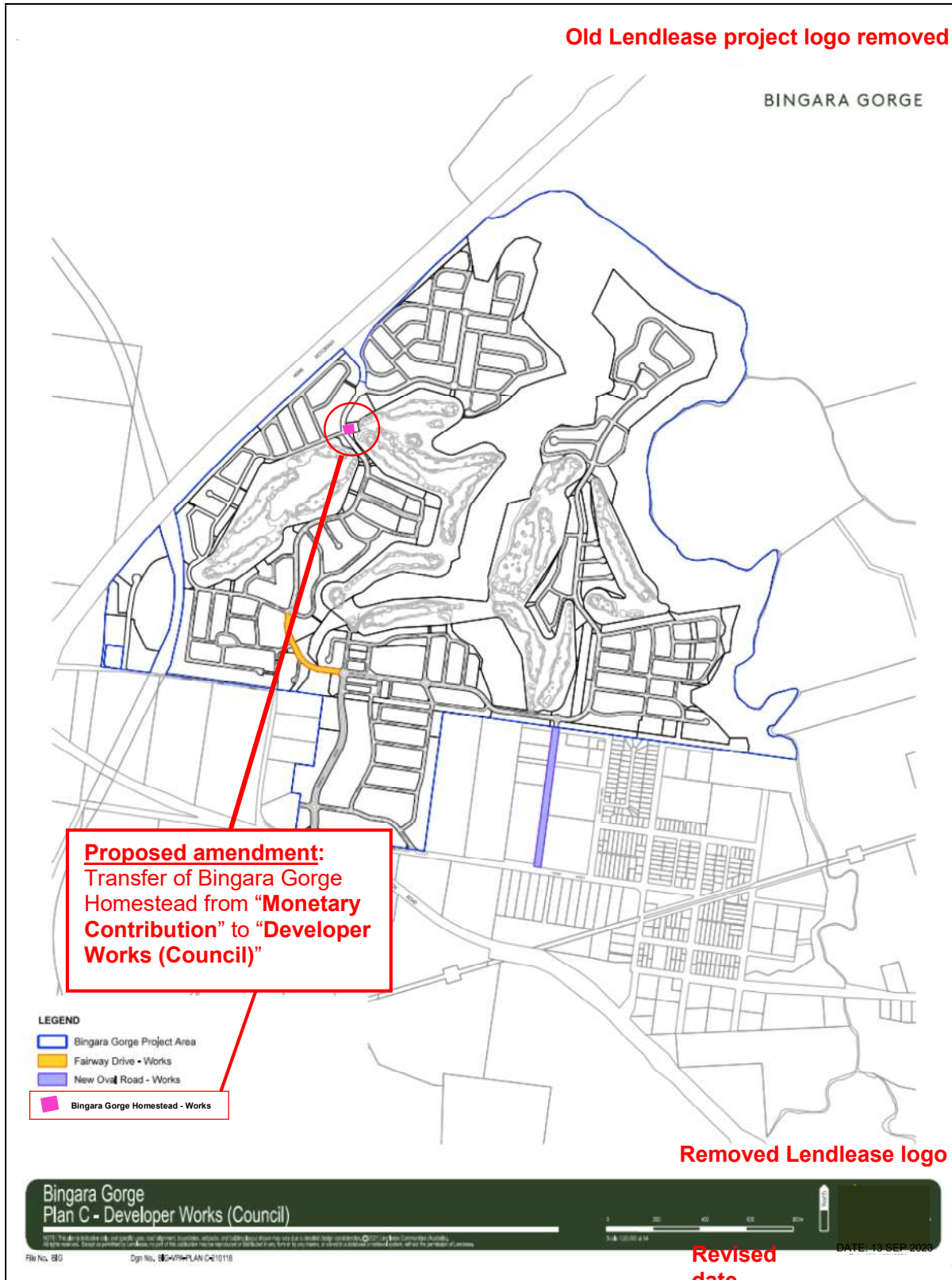


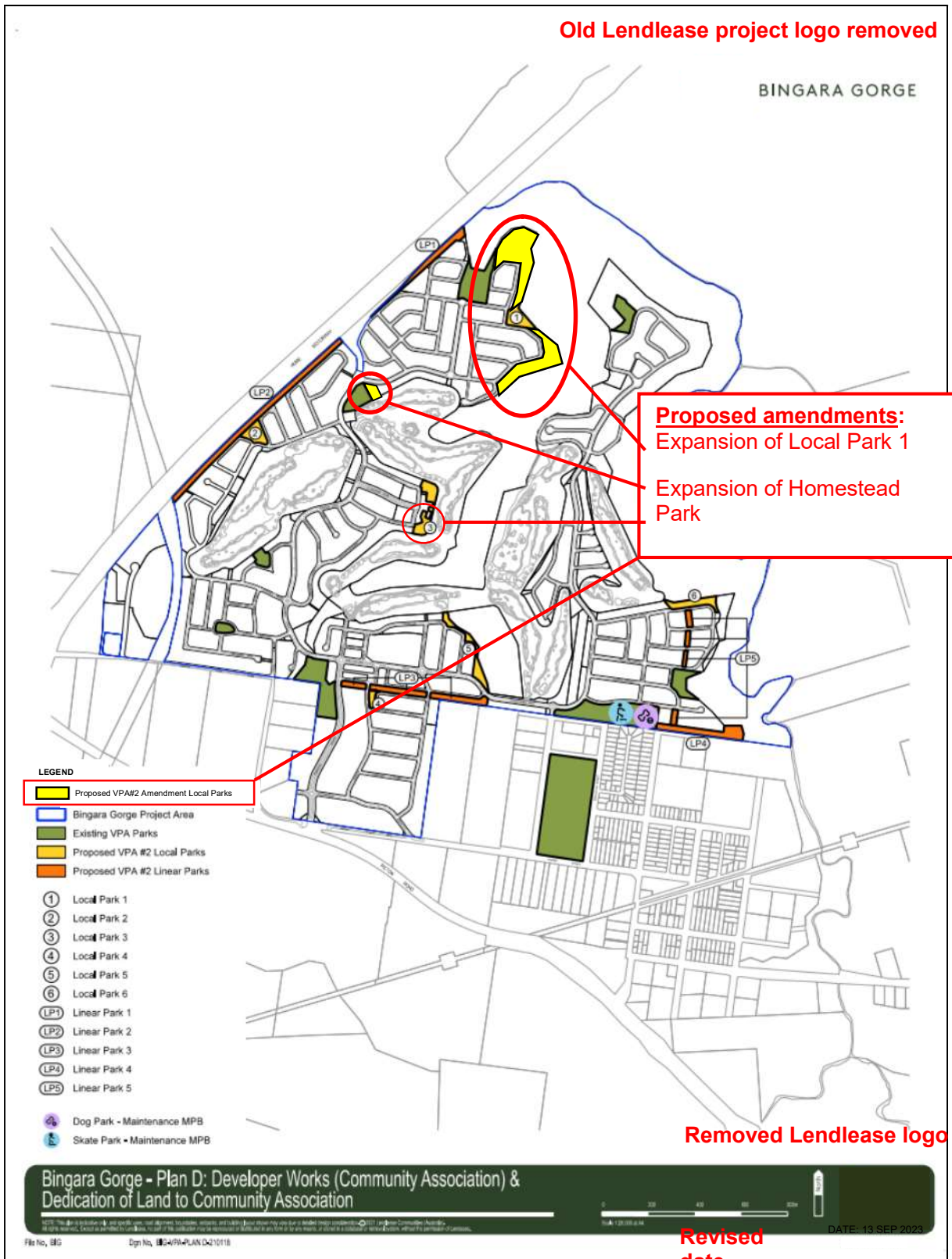


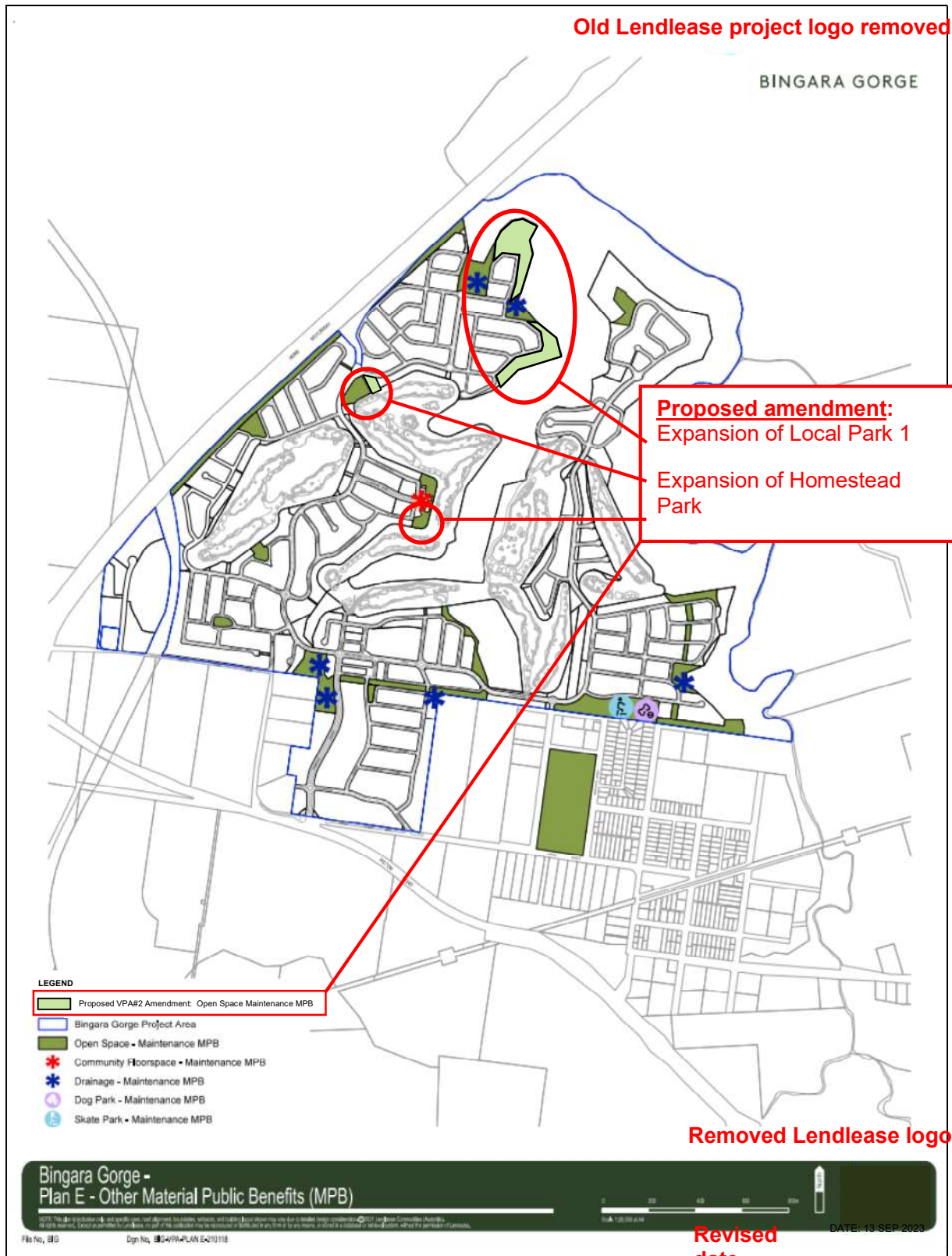


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Annexure C: Explanatory Note

Introduction

The purpose of this Explanatory Note is to provide a plain English summary to support the notification of the proposed Bingara Gorge No 2 VPA Amendment prepared under Subdivision 2 of Division 6 of Part 4 of the Environmental Planning and Assessment Act 1979 (Act).

This Explanatory Note has been prepared jointly by the parties as required by clause 205 of the Environmental Planning and Assessment Regulation 2021 (Regulation) and considers any relevant practice note prepared by the Planning Secretary under clause 203(6) of the Regulation.

Words appearing with initial capital letters in this note have the meanings given to them in this note or (if not defined in this note) in the Bingara Gorge No 2 VPA Amendment.

Parties to the Bingara Gorge No 2 VPA Amendment

The parties to the Bingara Gorge No 2 VPA Amendment are Bingara Development and the Council.

Purpose of Bingara Gorge No 2 VPA Amendment

The purpose of the Bingara Gorge No 2 VPA Amendment Deed is to ensure that Bingara Development makes appropriate contributions towards the provision of Council infrastructure and services.

Description of the Subject Land

The Bingara Gorge No 2 VPA Amendment will apply to Lots 36, 39 and 40 DP270536, Lots 210 and 211 in DP1104390, Lot 5 in DP280045, Lot 23 in DP280028 and part Lot 81 in DP280044 (Land).

Description of the Proposed Development

The Proposed Development is described as subdivision of land into 635 residential allotments, residue lots, community association lot, public roads, associated utility provisions and landscaping and associated works and infrastructure at Bingara Gorge, Wilton, NSW 2571.

Summary of objectives, nature and effect of Bingara Gorge No 2 VPA Amendment

The objective of the Bingara Gorge No 2 VPA Amendment is to facilitate the delivery of appropriate contributions by Bingara Development and to make provision for Council infrastructure to meet certain demands created by the Proposed Development of an additional 635 residential dwelling allotments.

Assessment of the merits of Bingara Gorge No 2 VPA Amendment

The public purpose of the Bingara Gorge No 2 VPA Amendment

In accordance with section 7.4(2) of the Act, the Bingara Gorge No 2 VPA Amendment has the following public purpose:

- the provision of (or the recoupment of the cost of providing) public amenities or public services.

The Council and Bingara Development have assessed the Bingara Gorge No 2 VPA Amendment and both hold the view that the provisions of the Bingara Gorge No 2 VPA Amendment provide a reasonable means of achieving the public purpose set out above. This is because it will ensure that Bingara Development makes appropriate contributions towards the provision of Council and community infrastructure and services.

How the Bingara No 2 VPA Amendment promotes the public interest

The Bingara Gorge No 2 VPA Amendment promotes the public interest by ensuring that an appropriate contribution is made towards the provision of Council and community infrastructure and services to satisfy needs that arise from the development of the Land.

How the Bingara Gorge No 2 VPA Amendment promotes the objects of the Act

The Bingara Gorge No 2 VPA Amendment promotes the objects of the Act by encouraging:

- the promotion and co-ordination of the orderly and economic use and development of land; and
- the provision of land for public purposes.

The Bingara Gorge No 2 VPA Amendment promotes the objects of the Act set out above by requiring Bingara Development to make a contribution towards the provision of Council and community infrastructure and services.

This purpose represents an important public benefit, and Bingara Development's offer to contribute towards this purpose will provide an important positive impact on the public who use the infrastructure and services to which these purposes relate.

Requirements relating to construction certificates, occupation certificates and subdivision certificates.

The Bingara Gorge No 2 VPA Amendment does not specify requirements that must be complied with prior to the issue of a construction certificate or an occupation certificate.

The Bingara Gorge No 2 VPA Amendment requires payment of contributions in relation to the issuing of Subdivision Certificates as set out below under the heading of "Timing of delivery". Accordingly, the Bingara Gorge No 2 VPA Amendment contains a restriction on the issue of a subdivision certificate within the meaning of section 6.15(1)(d) of the Act.

Council's capital works program

The Planning Agreement is consistent with Council's Capital Works Program.

Timing of delivery

The Bingara Gorge No 2 VPA Amendment sets out the following requirements in relation to timing of delivery:

1. Monetary contributions – Pro-rata and lump-sum payments to be paid with the relevant Subdivision Certificate for a residential allotment.
2. Dedication of land to Council:

(a) Condell Park Road widening – to be completed before the issue of a Subdivision Certificate for the 1,300th residential allotment.

(b) Condell Park Homestead lot – to be completed before the issue of a Subdivision Certificate for the 1,800th residential allotment.

3. Carrying out of Developer works (to be dedicated to the Council):

(a) New Oval Road – Practical Completion to be achieved before the issue of a Subdivision Certificate for the 1,700th residential allotment.

(b) Fairway Drive Line marking and Signage - Practical Completion to be achieved before the issue of a Subdivision Certificate for the 1,600th residential allotment.

(c) Condell Park Homestead works - Practical Completion to be achieved before the issue of a Subdivision Certificate for the 1,800th residential allotment.

4. Carrying out of Developer works (to be dedicated to the Community Association):

(a) Local and linear parks - Practical Completion to be achieved no later than 12 months and one day following the issue of a Subdivision Certificate for the residential allotments adjoining the relevant park, or the 1,800th final lot for Homestead Park.

(b) Small and large dog parks – Practical Completion to be achieved before the issue of a Subdivision Certificate for the 1,500th residential allotment.

(c) Skate park - Practical Completion to be achieved before the issue of a Subdivision Certificate for the 1,500th residential allotment.

Interpretation of the Bingara Gorge No 2 VPA Amendment

This Explanatory Note is not to be used to assist in construing the Bingara Gorge No 2 VPA Amendment.

Annexure D: Amended Planning Agreement
Attached when amendment is executed.