



Attachment 1 to Item 4.3.4

Office of Local Government Low Cost Loans Initiative Agreement

Date of meeting: 20 June 2023
Location: Council Chambers
Time: 6:30 p.m.



Office of Local Government

**Low Cost Loans Initiative (“LCLI”) Funding Agreement
for Vineyard Release Area**

Between

Hawkesbury City Council

and

**The LCLI Administrator, for and on behalf of the Crown
in right of the State of NSW**



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Between:

1. **Hawkesbury City Council as described in Attachment A (Council) and;**
2. **The Executive Director, Local Government, for and on behalf of the Crown in right of the State of New South Wales (“LCLI Administrator”) ABN 34 945 244 274, Levels 1 and 2, 5 O’Keefe Avenue, Nowra NSW 2541 (LCLI Administrator).**

Background

The Low Cost Loans Initiative (“LCLI”) has been established by the NSW Government to provide interest reimbursements in order to assist local councils accelerate the delivery of infrastructure to support growing communities.

The Council has submitted an application to the Department of Planning, Industry and Environment (DPIE) for an interest reimbursement under the LCLI. The documents that comprise this application are identified in Attachment A.

The LCLI Administrator has been advised of the approval by DPIE of the Council’s application for an interest reimbursement on the terms of this Agreement.

This Agreement establishes the parameters attaching to the Government’s agreement to reimburse 50% of the costs of council’s interest payment on loans for eligible infrastructure.

The parties agree:

1 Definitions and interpretation

1.1 Definitions

Agreement means this LCLI funding agreement including the Attachments and any documents incorporated in this agreement by reference.

Application means Council’s application, including supporting documents submitted to the DPIE for an interest reimbursement under the LCLI.

Authorisation includes:

- (a) any consent, registration, filing, agreement, notarisation, certificate, licence, approval, permit, authority or exemption from by or with a governmental agency; or
- (b) any consent or authorisation regarded as given by a government agency due to the expiration of the period specified by a statute within which the government agency should have acted if it wished to proscribe or limit anything already lodged, registered or notified under that statute.

Business Day means for all other purposes, a day on which banks are open for business in Sydney excluding a Saturday, Sunday or public holiday.

Date of this Agreement means the date shown on the Execution Page or if it is not dated the date the LCLI Administrator signs this Agreement.

Dollars, A\$ and \$ means the lawful currency of the Commonwealth of Australia.

DPIE means Department of Planning, Industry and Environment.

Eligible Infrastructure means infrastructure that DPIE determines, in its absolute discretion, is needed to enable increased housing in areas experiencing population growth. This will be subject to determination by the Department of Planning, Industry and Environment as part of the assessment process.

Event of Default means any event specified as such in this Agreement.

Final Acquittal means a final acquittal of the LCLI reimbursement that meets the requirements for such listed in Attachment C.

GST means the goods and services tax levied under *A New Tax System (Goods and Services Tax) Act 1999 (GST Act)* or any successor Act.

GST Law means *A New Tax System (Goods and Services Tax) Act 1999*, or if that Act does not exist for any reason, means any Act imposing or relating to a GST and any regulation made under such Acts.

Guidelines means the *Low Cost Loans Initiative – Growing Local Housing Guidelines* issued by the NSW Government dated April 2018 (or if replaced by a later version, that later version).

Initial Report means an initial report for the Project that meets the requirement for such as listed in Attachment C.

Interim Progress Report means an interim progress report for the Project that meets the requirements for such as listed in Attachment C.

Lender means the third party provider of the Loan to Council, the interest payments in respect of which are to be subsidised by the LCLI Reimbursement under this Agreement.

LCLI means the Low Cost Loans Initiative.

LCLI Administrator means the Executive Director, Local Government or his/her delegate, for and on behalf of the Crown in right of the State of New South Wales.

LCLI Coordinator means the officer of OLG described as such in Attachment A or his/her delegate.

LCLI Evaluation Panel means the DPIE panel which assesses LCLI applications.

LCLI Reimbursement means the reimbursement amount determined once the Loan to the Council is drawn down and the interest payable on the Loan can be calculated.

LCLI Reimbursement Instalment Claim means a claim made by Council to the LCLI Administrator for payment of an instalment of the LCLI Reimbursement, in the prescribed form Attachment B.

LCLI Reimbursement Instalment Period means the six month period immediately prior to a LCLI Reimbursement Instalment Claim in respect of which Council claims an instalment of the LCLI Reimbursement.

Loan means the loan to be taken out by Council to fund the Project.

Loan Agreement means the executed loan agreement between Council and its lender in respect of the Loan, a copy of which is to be provided by Council to the LCLI Administrator in accordance with this Agreement.

Loan Schedule means the Lender's summary of the Loan provisions extracted from the Loan Agreement.

OLG means the NSW Office of Local Government.

Progress Report means a progress report that meets the requirements for such as listed in Attachment C.

Project means Council's project(s), detailed in its Application, which was approved by the Minister for Planning.

Project Commencement means:

- (a) When Council completes the contract for sale of land in respect to the acquisition of the land parcel; or
- (b) When Council has completed all pre-construction engineering and design, has received all necessary licences and permits, has engaged all contractors and ordered all equipment and supplies reasonably necessary so that physical construction of the Project can proceed.

Project Completion means all regulatory certificates required for the occupation and/or use of the infrastructure that comprises the Project have issued and the Project is ready for use (except for unknown defects).

Project Completion Report means a progress report that meets the requirements for such as listed in Attachment C.

Project Delivery Schedule means the delivery schedule set out in the Council's Initial Report which must include, as a minimum, details of the project milestones, and the anticipated completion date for the Project.

Public Milestone Event means an event connected with the Project to which the Council intends to invite members of the public and/or media to attend.

Special Conditions means any additional conditions applicable to this Agreement as stipulated in Attachment A.

Specified Date means a milestone date that the parties have specified as a date for performance of an obligation under this Agreement.

Tax means:

- (a) any tax, including the GST, levy, charge, impost, duty, fee, deduction, compulsory loan or withholding; or
- (b) any income, stamp or transaction duty, tax or charge;

which is assessed, levied, imposed or collected by any governmental agency and includes, but is not limited to, any interest, fine, penalty, charge, fee or other amount imposed on or in respect of any of the above.

Tax Invoice means an invoice that complies with the requirements for a tax invoice under the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Term means the term of the Loan.

1.2 Interpretation

In this Agreement, headings and boldings are for convenience only and do not affect the interpretation of this Agreement and, unless the context otherwise requires:

- (a) words importing the singular include the plural and vice versa;
- (b) words importing a gender include any gender;

- (c) other parts of speech and grammatical forms of a word or phrase defined in this Agreement have a corresponding meaning;
- (d) an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and any Governmental Agency;
- (e) a reference to any thing (including, but not limited to, any right) includes a part of that thing but nothing in this clause 1.2(e) implies that performance of part of an obligation constitutes performance of the obligation;
- (f) a reference to a clause, party, attachment, or schedule is a reference to a clause of, and a party, attachment and schedule to, this Agreement and a reference to this Agreement includes any attachment and schedule;
- (g) a reference to a document includes all amendments or supplements to, or replacements or novations of, that document;
- (h) a reference to a party to any document includes that party's successors and permitted assigns;
- (i) a reference to liquidation includes official management, appointment of an administrator, compromise, arrangement, merger, amalgamation, reconstruction, winding-up, dissolution, assignment for the benefit of creditors, scheme, composition or arrangement with creditors, insolvency, bankruptcy, or any similar procedure or, where applicable, changes in the constitution of any partnership or person, or death;
- (j) a reference to legislation (including subordinate legislation) is a reference to that legislation as amended, re-enacted or replaced and includes any subordinate legislation issued under it;
- (k) a term or expression starting with a capital letter which is defined in:
 - (1) this clause 1 (Definitions and Interpretation) has the meaning given to it in this clause 1.
 - (2) the GST Law but is not defined in this Agreement has the same meaning as in the GST Law.

1.3 Business Day

Unless otherwise specified in this Agreement, where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the preceding Business Day.

2 Term

Unless earlier terminated in accordance with its terms, this Agreement is for the Term.

3 General obligations of Council

3.1 Loan Agreement

- (a) The Loan must be for a minimum of \$1,000,000.00 and for a maximum term of 10 years calculated from 17 September 2021.

- (b) The Council acknowledges by its entry into this Agreement that neither DPIE, OLG, LCLI Administrator or the State of New South Wales are liable for, and nor do they guarantee, any part of Council's obligations under or in relation to the Loan or the Loan Agreement.

3.2 Use of Loan

- (a) Proceeds of the interest reimbursement may be applied to offset the Loan or any other council costs.

3.3 Conduct of Project

- (a) Subject to this clause, unless otherwise agreed, Council must achieve Project Commencement within 12 months of the date of this Agreement.
- (b) If Council is unable to achieve Project Commencement within 12 months of the date of this Agreement, Council must, at least five (5) Business Days before the expiry of that period, notify the LCLI Administrator of that fact and provide documentation to:
 - (i) demonstrate due cause for the delay;
 - (ii) provide evidence that Council is taking specific measures to remedy the delay and details of such measures; and
 - (iii) submit an amended detailed project delivery schedule to the satisfaction of the LCLI Administrator.
- (c) Any agreed extension by the LCLI Administrator of the period to achieve Project Commencement will be for a maximum further period of 6 months.
- (d) In no case will a Council be permitted to delay Project Commencement for longer than 18 months after the date of this Agreement.
- (e) Unless otherwise agreed, Council must carry out the Project substantially in accordance with the Guidelines, its Application and the projected Project Delivery Schedule described therein.
- (f) Council must promptly advise the LCLI Administrator of any significant change (including any delay that exceeds three (3) months) in the projected Project delivery schedule as supplied with its Application.

3.4 Compliance with law

Council must comply with all legislative and regulatory requirements that may apply in relation to the Project, including obtaining all necessary approvals, licences and permissions.

3.5 Monitoring of Agreement

- (a) Council acknowledges that the LCLI Administrator may maintain regular contact with Council to monitor the performance of this Agreement, the Loan Agreement and the Project and agrees to co-operate with the LCLI Administrator in the performance of this role.
- (b) The LCLI Administrator may at any time request information from Council in connection with this Agreement, the Loan Agreement or the Project and Council must supply any such information promptly upon request.

- (c) Nothing in this Agreement displaces obligations on the Council under the *Local Government Act 1993* or precludes the LCLI Administrator from exercising functions and powers available to it under that Act.

3.6 Reports

Council must prepare and submit to the LCLI Administrator:

- (1) An Initial Report, Progress Reports and Interim Progress Report at the times stated and otherwise in accordance with the requirements specified in Attachment C;
- (2) A Project Completion Report to be submitted in accordance with the requirements specified in Attachment C;
- (3) Final Acquittal Report to be submitted in accordance with the requirements specified in Attachment C;
- (4) If requested, copies of any published reports, promotional material, media publicity, pamphlets or other documentation relevant to the Project; and
- (5) Any other written reports as may be reasonably required by the LCLI Administrator from time to time by written notice to Council.

3.7 Independent verification of LCLI financial outcomes in any given application round

Council must promptly, at its own cost, provide all assistance documents, and information reasonably required by the LCLI Administrator or its auditor for the purpose of enabling the LCLI Administrator to compile and have audited an aggregate statement of expenditure which pertains to aggregate financial outcomes for all Councils funded by the LCLI.

3.8 Records

- (a) Council must ensure that all legally required financial and operational records and registers (including all reports generated under this Agreement) are kept and maintained while carrying out the Project.
- (b) Council must retain the records, registers and reports referred to throughout the Term and for seven (7) years after the expiry or termination, of this Agreement.

3.9 Inspection

Council agrees that the LCLI Administrator or its appointed nominee may visit the site of the Project at any reasonable time, upon giving Council reasonable notice.

3.10 Audit

- (a) An audit of any aspect of the Project or Council's compliance with this Agreement may be conducted at any time by the LCLI Administrator.
- (b) Council must co-operate fully with an audit, including:
 - (i) Granting the person conducting the audit reasonable access to the site of the Project, Council's premises, Council's records and materials relevant to the Project and the performance of this Agreement;
 - (ii) Permitting the person conducting the audit to inspect and make copies of Council's records and all materials relevant to the Project and the performance of this Agreement;

- (iii) Making available on request, at no additional cost to the person conducting the audit, reasonable facilities to enable a legible reproduction to be created of Council's records and materials stored on a medium other than in writing;
- (iv) The LCLI Administrator must give Council reasonable notice of its requirements in relation to an audit and use its reasonable endeavours to minimise disruption and interference to Council's performance of its obligation under this Agreement arising from an audit;
- (v) Except where otherwise determined by the LCLI Administrator, Council is responsible for its own costs of participating in an audit;
- (vi) Council must promptly take any reasonable action required by the Loan Administrator to rectify any error, non-compliance or inaccuracy identified in an audit in relation to the Project of Council's performance of this Agreement;
- (vii) Council is not entitled to any delay costs or other costs or expenses of whatever nature relating in any way to an audit.

3.11 Promotion of LCLI and communication of outcomes

- (a) Council must acknowledge support from the LCLI in promotional materials or any public statements about the Project.
- (b) Council agrees to publicly communicate the outcomes of the Project in accordance with the Funding Acknowledgement Guidelines for recipients of NSW Government Grants (the Funding Acknowledgment Guidelines (available at <https://www.advertising.nsw.gov.au/resources/branding>)).
- (c) Council authorises the LCLI Administrator and the State of New South Wales to use information Council supplies to the LCLI Administrator in its Application or pursuant to this Agreement for promotional purposes, including:
 - (1) Council's Name;
 - (2) the aggregate amount of the Loan, Project cost and LCLI Reimbursement;
 - (3) the title and description of the Project;
 - (4) any photographs of the Project supplied by Council;
 subject to any confidentiality restriction which has been requested by Council and agreed to by the LCLI Administrator.
- (d) Council will ensure that all public statements relating to the Project acknowledge the provision of the reimbursement by the NSW Government and specifically mention both the Minister for Planning and Public Spaces and the Minister for Local Government.
- (e) Council will use the NSW Government logo in accordance with the Funding Acknowledgement Guidelines in any publicity provisions of any kind (including but not limited to any brochures, signage, advertising and invitations).
- (f) Council is to advise the Minister for Planning and Public Spaces, the Secretary, Department of Planning, Industry and Environment, the Executive Director, Office of Local Government and the Minister for Local Government of any public milestone events and consents to representatives of the State of New South Wales attending such events.

- (g) Council consents to allowing representatives of the State of New South Wales to use any promotional material it either obtains through its own processes or those provided by council in any media platform for the promotion of the Project and LCLI overall.
- (h) Council will issue an invitation to the Minister for Planning and Public Spaces (or nominee), the Minister for Local Government (or nominee) and any other relevant New South Wales Member of Parliament to any launch or public event associated with the Project and further where they are able to attend, they or their nominee are acknowledged as official guests. Where practicable, they should be afforded the courtesy of publicly addressing the event and opening any facility.

4 LCLI Reimbursement

4.1 Amount

- (a) Subject to clause 9 (GST), the LCLI Reimbursement is the maximum amount of funding available under this Agreement and will not be increased for any reason.
- (b) Subject to paragraph (a), each instalment of the LCLI Reimbursement the subject of a LCLI Reimbursement Instalment Claim is to be calculated as an amount that represents 50% of the costs of Council's total interest payments on the Loan.
- (c) The failure to submit a claim supported by all required documentation within the time specified releases the LCLI Administrator from having to pay the claim.

4.2 When paid

- (a) Subject to this Agreement, the LCLI Administrator agrees to pay the LCLI Reimbursement to Council in six monthly instalments, to be claimed in February and August and to be paid in March and August each year following receipt of the required documentation and invoice, until the total LCLI Reimbursement is paid but no later than March 2031.
- (b) The LCLI Administrator will pay each instalment of the LCLI Reimbursement to Council subject to the submission to the LCLI Administrator of the following by Council:
 - (i) a LCLI Reimbursement Instalment Claim for the applicable LCLI Reimbursement Instalment Period.
 - (ii) a Tax Invoice for the instalment of LCLI Reimbursement claimed.
 - (iii) Bank statements for the applicable LCLI Reimbursement Instalment Period evidencing all interest paid by Council on the Loan during that period.
 - (iv) a Progress Report (if applicable) for the applicable LCLI Reimbursement Instalment Period.
 - (v) Any other information reasonably required by the LCLI Administrator.
- (c) The LCLI Administrator may delay the payment of any instalments to align with any batch of payments due to other councils under the scheme.

4.3 Prepayment of interest on Loan

- (a) Unless otherwise agreed by the LCLI Administrator, prepayment of interest by Council on its Loan will not entitle it to make an early LCLI Reimbursement Instalment Claim.

- (b) Any variation to the times for payment of instalments of the LCLI Reimbursement as stated in this clause is at the sole discretion of the LCLI Administrator.

5 Representations and warranties

5.1 Representations and warranties

Council represents and warrants that:

- (a) **registration:** it is a local council established under *Local Government Act 1993 (NSW)*;
- (b) **authority:** it has full power and authority to enter into and perform its obligations under this Agreement;
- (c) **authorisations:** it has taken all necessary action to authorise the execution, delivery and performance of this Agreement in accordance with its terms;
- (d) **binding obligations:** this Agreement constitutes its legal, valid and binding obligations;
- (e) **other sources of funding:**
 - (1) as at the date of this Agreement, Council has disclosed to the LCLI Administrator all other sources of funding provided and to be provided from third parties for the Project;
 - (2) if Council secures additional sources of funding for the Project after the date of this Agreement, it will notify this in writing to the LCLI Administrator.

6 Events of Default and Termination

6.1 Notices to the LCLI Administrator

Council must give notice to the LCLI Administrator as soon as it becomes aware of any Event of Default occurring.

6.2 Events of Default

It is an Event of Default if, whether or not it is within the control of Council:

- (a) **Project does not commence by the Project Commencement date:** Council fails to achieve Project Commencement by the due date specified in this Agreement or by any extended date otherwise agreed in accordance with this Agreement.
- (b) **Major Project delay:** the Project, or any major milestone in the Project, is delayed for a period in excess of three (3) years beyond the date for Project Completion or for achievement of the relevant Project milestone, as stated in the Project Delivery Schedule.
- (c) **Default under Loan Agreement:** Council fails to pay when due any amount due under the Loan Agreement or otherwise defaults under the Loan Agreement.
- (d) **Default under other loan agreement:** Council fails to pay when due any amount due under another loan agreement entered into by Council to fund the Project or otherwise defaults under any such loan agreement.

- (e) **Termination of other LCLI funding agreement in respect of joint Project:** another LCLI funding agreement in place in respect of the Project (if the Project is jointly conducted with another council that receives an interest reimbursement under such agreement for the Project) is terminated for default by the council that is party to that agreement.
- (f) **Non-remediable breach of Agreement:** Council fails to perform or observe any other undertaking or obligation in this Agreement and that failure is not, in the opinion of the LCLI Administrator, capable of remedy.
- (g) **Failure to fix remediable breach of Agreement:** Council fails to perform or observe any other obligation in this Agreement and that failure is, in the opinion of the LCLI Administrator, capable of remedy but Council does not remedy the failure within the period specified, after receipt by Council of a notice from the LCLI Administrator specifying the failure and requiring its remedy within the period specified in the notice.
- (h) **Authorisations:** Council fails to obtain any Authorisation necessary to enable Council to comply with its obligations under this Agreement or any such Authorisation ceases to be in full force and effect.
- (i) **Misrepresentation:** any warranty, representation or statement by Council is or becomes false, misleading or incorrect when made or regarded as made by Council under this Agreement.
- (j) **Insolvency:** Council becomes insolvent.

6.3 Consequences of Event of Default

- (a) Upon the occurrence of an Event of Default the LCLI Administrator may, at its sole discretion, by written notice to Council:
 - (i) suspend this Agreement, including payments of the LCLI Reimbursement, until the default giving rise to the suspension is resolved to the satisfaction of the LCLI Administrator or the LCLI Administrator elects to terminate this Agreement, whichever occurs sooner; or
 - (ii) terminate this Agreement.
- (b) To avoid doubt, the exercise by the LCLI Administrator of any right to suspend this Agreement is without prejudice to the LCLI Administrator's right to terminate this Agreement in accordance with its terms.

6.4 Consequences of Termination for Default

- (a) If this Agreement is terminated, Council must repay the amount of the LCLI Reimbursement that has been paid to it prior to termination.
- (b) The LCLI Administrator, on behalf of the State, may recover any outstanding reimbursement.
- (c) The LCLI Administrator may make a determination of the amount of the reimbursement referred to in subsection 6.4(a) and may serve a notice on the council requiring the amount so determined be paid in recovery of the reimbursement.
- (d) An amount equal to the reimbursement as so determined, unless the LCLI Administrator otherwise decides, is payable to the LCLI Administrator as a debt by the Council.

- (e) The LCLI Administrator may certify the amount due under the notice and that certificate is sufficient evidence of the amount due, unless the contrary is proved.

6.5 Termination by Agreement

The parties may agree to terminate this Agreement at any time on such terms as may be agreed.

7 Indemnity

- (a) Council indemnifies the Crown in right of the State of New South Wales, including the LCLI Administrator and its officers, employees and agents (those indemnified), against any claim, action, damage, loss, liability, cost, charge, expense, outgoing or payment which those indemnified pay, suffer, incur or are liable for, in respect of any of the following:
 - (i) the occurrence of any Event of Default;
 - (ii) the LCLI Administrator exercising its powers consequent upon or arising out of the occurrence of any Event of Default.
- (b) Any amount payable to those indemnified under this indemnity is payable on demand.
- (c) The indemnities contained in this Agreement are continuing obligations of Council, separate and independent from the other obligations of Council and survive the termination of this Agreement.
- (d) It is not necessary for those indemnified to incur or make payment before enforcing a right of indemnity conferred by this Agreement.

8 Insurance

- (a) Council must (at its expense) during the continuance of this Agreement and for a period of three (3) years after its expiration or termination, take out and maintain with a reputable insurance company the following insurance policies:
 - (i) broad form public liability insurance (that includes public liability and product liability insurance) in the amount not less than \$20 million dollars in respect of each and every occurrence and unlimited in the aggregate;
 - (ii) workers' compensation insurance in accordance with applicable legislation in respect of the employees of Council; and
 - (iii) if applicable, a professional liability policy of insurance in the amount not less than \$10 million dollars.
- (b) Council must, on request, produce satisfactory evidence to the LCLI Administrator that the insurance requirements of this clause have been effected and are current.

9 GST

- (a) Unless otherwise stated, any consideration in this Agreement (including any consideration given by the Council for the LCLI Reimbursement) is exclusive of GST.

- (b) If a supply made under or in connection with this Agreement is a Taxable Supply the party making that supply (in this cl. 9, Supplier) may, subject to issuing a Tax Invoice, recover from the recipient of that supply (in this cl. 9, Recipient) an amount equal to the GST payable by the Supplier in respect of that supply (in this cl. 9, GST Amount).
- (c) The GST Amount is payable at the same time and in the same manner as any monetary consideration for the Supply to which the GST Amount relates but no later than the end of the tax period to which the relevant taxable supply is attributable under the GST Law.
- (d) Subject to this clause, Council warrants that at the time any supply is made under this Agreement on which GST is imposed, that Council is or will be registered under the GST Law.
- (e) Subject to this clause, any invoice rendered by Council in connection with a supply under this Agreement which seeks to recover an amount of GST payable must conform to the requirements for a Tax Invoice.
- (f) If an Adjustment Event occurs in relation to a Taxable Supply under or in connection with this Agreement that gives rise to an Adjustment, then:
 - (1) the Supplier must give an Adjustment Note to the Recipient immediately upon becoming aware of the Adjustment; and
 - (2) the GST amount payable in respect of that supply will be adjusted accordingly and the Supplier (in the case of a decreased GST Amount) will provide a corresponding refund of the GST Amount to, or (in the case of an increased GST Amount) will be entitled to receive the amount of that variation from, the Recipient, as appropriate.
- (g) If an Adjustment Event occurs in relation to a Taxable Supply under or in connection with this Agreement that does not give rise to an Adjustment, for example because it occurs in the same tax period in respect of which the GST on the Taxable Supply or the input tax credit on the acquisition is attributable, the Supplier must:
 - (1) cancel any incorrect invoice issued to the Recipient and issue a correct one; and
 - (2) if the Recipient has already paid the incorrect invoice, the Supplier (in the case of a decreased GST Amount) will provide a corresponding refund of the GST Amount to, or (in the case of an increased GST Amount) will be entitled to receive the amount of that variation in the GST Amount from, the Recipient, as appropriate.
- (h) Notwithstanding any other provision of this Agreement:
 - (1) any GST Amount payable by the Recipient to the Supplier under this clause 9 will be limited to the amount of an input tax credit to which the Recipient is entitled in respect of the relevant supply which the Recipient acquires; and
 - (2) if the Commissioner of Taxation or a court determines that a supply made under or in connection with this Agreement in respect of which the Recipient has paid the Supplier a GST Amount is not a Taxable Supply then the Supplier will refund the Recipient that amount.

10 General

10.1 LCLI Coordinator

- (a) Subject to paragraph (b), the LCLI Administrator may authorise the LCLI Coordinator to perform any of the LCLI Administrator's functions under this Agreement.
- (b) The LCLI Coordinator is not authorised to agree variations to this Agreement that relate to the amount of the LCLI Reimbursement or events of default.

10.2 Assignment by Council

Council must not transfer or assign any of its rights or obligations under this Agreement without the prior written consent of the LCLI Administrator.

10.3 Assignment by LCLI Administrator

The LCLI Administrator may at any time assign any of its rights or transfer by novation any of its rights and obligations under this Agreement to any other NSW government agency without consent of Council.

10.4 Notices

- (a) Any notice or other communication between the parties under this Agreement must be addressed to the recipient party at the address stated for that party in Attachment A, unless otherwise specified by notice in writing from the recipient party.
- (b) Any notice or other communication under this Agreement:
 - (i) where Council is the sender, must be signed by a duly authorised officer of Council;
 - (ii) is regarded as being given by the sender and received by the addressee:
 - (A) if by delivery in person, when delivered to the addressee;
 - (B) if by post, on delivery to the address; or
 - (C) if by facsimile transmission, whether or not legibly received, when received by the addressee,but if the delivery or receipt is on a day which is not a Business Day or is after 4.00pm (addressee's time) it is regarded as received at 9.00 am on the following Business Day; and
 - (iii) can be relied upon by the addressee and the addressee is not liable to any other person for any consequences of that reliance if the addressee believes it to be genuine, correct and authorised by the sender.
- (c) In this clause, a reference to an addressee includes a reference to an addressee's officers, agents or employees or any person reasonably believed by the sender to be an officer, agent, or employee of the addressee.

10.5 Governing law and jurisdiction

This Agreement is governed by the laws in force in the State of New South Wales and each party submits to the exclusive jurisdiction of the courts exercising jurisdiction in the State of New South Wales, and the courts of appeal from those courts.

10.6 Prohibition and enforceability

- (a) Any provision of, or the application of any provision of, this Agreement or any power which is prohibited by any law is ineffective only to the extent of that prohibition.
- (b) Any provision of, or the application of any provision of, this Agreement which is void, illegal or unenforceable does not affect the validity, legality or enforceability of the remaining provisions of this Agreement.

10.7 Waivers

- (a) Waiver of any right arising from a breach of this Agreement or of any power arising upon default under this Agreement or upon the occurrence of an Event of Default must be in writing and signed by the party granting the waiver.
- (b) A failure or delay in exercise, or partial exercise, of:
 - (1) a right arising from a breach of this Agreement or the occurrence of an Event of Default; or
 - (2) a power created or arising upon default under this Agreement or upon the occurrence of an Event of Default;does not result in a waiver of that right or power.
- (c) A party is not entitled to rely on a delay in the exercise or non-exercise of a right or power arising from a breach of this Agreement or on a default under this Agreement or on the occurrence of an Event of Default as constituting a waiver of that right or power.
- (d) A party may not rely on any conduct of another party as a defence to exercise of a right or power by that other party.
- (e) This clause may not itself be waived except by writing.

10.8 Dispute Resolution

The parties agree that any dispute arising under this Agreement will be dealt with as follows:

- (a) A party claiming that a dispute has arisen must give written notice of the dispute to the other party;
- (b) The parties will seek to resolve the dispute;
- (c) If the dispute is unresolved within a fourteen (14) day period (or within such further period as the parties agree in writing) then the dispute will be referred to the Australian Commercial Dispute Centre (ACDC) for mediation;
- (d) The mediation is to be conducted in accordance with the ACDC Mediation Guidelines which set out the procedures to be adopted, the process of selection of the mediator and the costs involved;
- (e) If the dispute isn't settled within 28 days (or such longer period as agreed to in writing between the parties) after appointment of the mediator, or if no mediator is appointed

within 28 days of the referral of the dispute to mediation, the parties may pursue any other procedure available at law for resolution of the dispute;

- (f) The parties must continue performing their obligations under this Agreement while the dispute is being resolved, to the extent practicable to do so;
- (g) A party must attempt to settle any dispute in relation to this Agreement in accordance with this clause (Dispute Resolution) before resorting to court proceedings or other dispute resolution process;
- (h) Nothing in this clause (Dispute Resolution) prevents either party from seeking interlocutory relief or the LCLI Administrator exercising its rights to suspend or terminate this Agreement.

10.9 Relationship

- (a) Nothing in this Agreement is intended to create a partnership, joint venture or agency relationship between the parties.
- (b) All work performed by Council and all contracts made by Council to secure the Loan and to carry out the Project must be performed and made by Council as principal and not as agent for the LCLI Administrator. In all dealings in relation to the Project and the Loan Agreement Council must act solely on Council's own account.

10.10 Variation

A variation of any term of this Agreement must be in writing and signed by the parties.

10.11 Taxes, duties and charges

Other than as specified in this Agreement, taxes, duties and charges imposed or levied in connection with this Agreement will be borne by Council.

10.12 Counterparts

- (a) This Agreement may be executed in any number of counterparts.
- (b) All counterparts, taken together, constitute one instrument.
- (c) A party may execute this Agreement by signing any counterpart.

10.13 Survival

Any clause of this Agreement that by its nature should survive termination or expiry of this Agreement shall survive such termination or expiry including, without limitation, the following:

- (a) clause 3 (General obligations of Council);
- (b) clause 5 (Representations and warranties);
- (c) clause 6.4 (Consequences of Termination);
- (d) clause 7 (Indemnity); and
- (e) clause 8 (Insurance).

EXECUTION PAGE

Date of this Agreement: _____ 2022

Executed as an agreement by LCLI Administrator:

Signed by _____)
Ally Dench, _____)
Executive Director, Local Government, for and _____)
on behalf of the Crown in right of the State of _____)
New South Wales on _____)
_____ 2022)

in the presence of: _____)

Signature of witness

Signature of Ally Dench

Name of witness (please print)

Executed as an agreement by the Council

The seal of **Hawkesbury City Council** was _____)
affixed in our presence _____)
on _____ 2022 _____)
in pursuance of a resolution of the Council _____)
authorising the seal to be affixed passed on 2022 _____)

Mayor/Councillor

Name of signatory (please print)

General Manager/Councillor

Name of signatory (please print)

Attachment A: Agreement Details

LCLI Administrator: Postal Address: Attention: Facsimile:	Ally Dench Locked Bag 3015, Nowra NSW 2541 LCLI Coordinator (02) 4428 4199
LCLI Coordinator: Telephone: Email:	Stephen Walker (02) 4428 4166 olg@olg.nsw.gov.au
Council: Postal Address: Attention: Email:	Hawkesbury City Council PO Box 146 WINDSOR NSW 2756 General Manager council@hawkesbury.nsw.gov.au
Approved Projects	Project Name: Vineyard Release Area Description – Stormwater infrastructure, roads and drainage
Loan Amount	\$16,500,000
Loan Schedule	Attachment D
Total LCLI Reimbursement (upper limit over the term of the loan)	\$666,052.56 (GST exclusive)
Special Conditions:	

Attachment B: Form of 6-monthly LCLI Reimbursement Instalment Claim

To: The LCLI Coordinator, Office of Local Government

Dear Sir/Madam

LCLI Funding Agreement dated [insert date] (“the Agreement”)

Council gives notice pursuant to clause 4 of the Agreement that Council wishes to claim an instalment of the LCLI Reimbursement.

The instalment of the LCLI Reimbursement now claimed is: [identify if first, second, third etc instalment as well as whether it is the February or August claim for (.....).year].

The total amount of the LCLI Reimbursement claimed to date (inclusive of this claim) is:	[insert amount] excl. GST
Amount for this claim is:	[insert amount] excl. GST

Council certifies that:

- (a) all Loan payments have been made in accordance with the Loan Agreement to the date of this claim.
- (b) this claim is accompanied by the supporting documentation required by clause 4 of the Agreement.

Terms defined in the Agreement have the same meaning when used in this LCLI Reimbursement Instalment Claim.

Signed for and on behalf of

[insert name of Council] Council

By its General Manager

.....
Signature of General Manager

.....
Name of General Manager (please print)

.....
Date

Attachment C: Reports

Report Type	Report Content and supporting documents	Report due date
Initial Report	<ol style="list-style-type: none"> 1. Project identification details: Council name: Project ID Number: Total Project cost: Total value of Loan: Total LCLI Reimbursement: 2. Detailed Project Delivery Schedule with key milestones both major and minor specified and identifying the anticipated project completion date. 3. Project Cost Estimates per milestone. 	An initial report to be submitted to the LCLI Administrator for first instalment.
Progress Report	<p>Each Progress Report to be signed by Council's General Manager and to include the following:</p> <ol style="list-style-type: none"> 1. Project identification details: Council name: Project ID Number: Total Project cost: Total value of Loan: Total LCLI Reimbursement: 2. Project status: [One paragraph summary] 3. Confirmation that the Loan has not been renegotiated or paid out. 4. Tick box: On Track/Minor Delays/Major Delays (3 months plus)/Minor Change in Scope/Major Change in Scope/Completed. [NB. Above categories are to be measured referable to the Project scope and timetable advised with Council's Application.] 5. If Major Delays/Major Change in Scope, give reasons and outline potential impact on timing and payments of LCLI Reimbursement. 6. Project expenditure to date: (\$) 7. Project construction to date (%) 8. Number of new dwellings delivered directly relating to the Project. 	Each progress report to be submitted to the LCLI Administrator with each claim for an instalment of the LCLI Reimbursement, commencing with the claim for the 2nd instalment, for the term of the Agreement.

	<p>9. Comments</p> <p>10. Any further information requested by LCLI Administrator.</p> <p>Each Progress Report to be accompanied by:</p> <ol style="list-style-type: none"> 1. Bank statements showing relevant Loan repayments made to date (principal and/or interest). 2. A LCLI Reimbursement Instalment Claim Form. 	
Interim Progress Report	<ol style="list-style-type: none"> 1. Project status 2. Tick box: On Track/Minor Delays/Major Delays (3 months plus)/Minor Change in Scope/Major Change in Scope/Completed. [NB. Above categories are to be measured referable to the Project scope and timetable advised with Council's Application.] 3. If Major Delays/Major Change in Scope, give reasons and outline potential impact on timing and payments of LCLI Reimbursement. 4. Project expenditure to date: (\$) 5. Project construction to date (%) 6. Number of new dwellings delivered directly relating to the Project. 7. Comments 8. Any further information requested by LCLI Administrator 	This report is to be submitted to the LCLI Administrator three months after each instalment of the LCLI reimbursement.
Project Completion report	<p>This report to be signed by Council's General Manager and to include the following:</p> <ol style="list-style-type: none"> 1. Satisfactory evidence of Project Completion. 2. Commencement date of operation of the infrastructure/asset. 3. Any further information requested by LCLI Administrator. 	This report is to be submitted to the LCLI Administrator within 10 Business Days of Project Completion.
Final acquittal	<p>Final acquittal of LCLI Reimbursement being:</p> <ol style="list-style-type: none"> 1. A Final Statement of Expenditure that includes: <ol style="list-style-type: none"> a) the total amount spent on the Project; b) the total amount of borrowing incurred in respect of the Project; c) the total interest expense paid by Council, and 	A final acquittal to be submitted to the LCLI Administrator within 10 Business Days of the final Loan repayment.

	<p>d) the total amount of the LCLI Reimbursement received by Council.</p> <p>2. An acquittal certificate signed by the General Manager, the responsible accounting officer and an independent auditor that:</p> <p>a) The auditor has audited the Final Statement of Expenditure and confirms that it is in accordance with the relevant proper accounts and records.</p> <p>b) The LCLI Reimbursement has been expended for the Approved Purpose.</p> <p>c) The Loan has been expended for the purpose of the Project.</p> <p>d) All Loan payments have been made by Council in accordance with the Loan Agreement and the Loan is fully discharged.</p> <p>e) Project Completion has been reached.</p>	
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