

BULGARRA SCENARIOS

Scenario 1 – Costs exceed the \$56m facility and the developer cannot fund the gap.

Scenario 2 – Developer defaults and cannot complete the development.

Scenario 3 – Builder (TLC) cannot secure statutory approvals and cannot complete on-site works

Abbreviations for Documents/Terms:

DA: *Development Agreement*

LFA: *Loan Facility Agreement*

GSA: *General Security Agreement*

KD: *Karratha Development*

Minimum timeframes before further steps

Situation	Minimum cure/decision period	Source
Developer breach under DA (non-insolvency)	90 days after City breach notice	DA cl. 11.1(a)
City requires completion after missed Completion Date	“Reasonable period” you specify (e.g., 30–60 days) before termination	DA cl. 4(2)–(3)
LFA breach capable of remedy (e.g., failure to meet CP/milestone representations)	30 days after City notice	LFA cl. 9.2(1)(b)
City decision on EOT claim	10 Business Days	DA cl. 7.12(4)
Developer to lodge EOT notice and claim	Notice: within 5 Business Days; Claim: within 10 Business Days of awareness	DA cl. 7.12(2)–(3)
GSA enforcement notice (where allowed by law)	As little as 1 Business Day	GSA cl. 11.2

SCENARIO 1 — COSTS EXCEED THE \$56M FACILITY AND THE DEVELOPER CANNOT FUND THE GAP

What triggers apply

- *Developer's responsibility to fund any shortfall:*
 - DA makes Karratha Development fully responsible for all costs and expressly requires it to obtain external funding if the Loan Amount is insufficient. Failure to do so is a breach.
- *City's right to withhold funding:*
 - LFA lets the City decline further drawdowns if (i) conditions precedent/milestones are not met (e.g., *cost-to-complete confirms insufficient funds without equity*) or (ii) the City reasonably considers **cost-to-complete/viability materially inconsistent** with the approved budget. (See Schedule 2(g) and cl. 3.6(c)).

Immediate controls

1. Freeze further drawdowns under LFA cl. 3.6(c) pending evidence of funding the gap.
2. Independent QS re-check. Commission/update the Independent QS report on cost-to-complete and variance drivers (DA cl. 7.16). Use it to quantify gap and validate any re-scope options.

Notices to issue & timeframes

1. **Notice of Non-Compliance with Funding Obligations (DA)**
 - **Clauses:**
 1. DA cl. 7.3(5) (developer to obtain external funding if loan is insufficient).
 2. DA cl. 11.1(a) (Developer Default—material breach; 90-day cure).
 - **Requirements:**
 1. Provide irrevocable proof of funds (binding term sheet, equity confirmations).
 2. Submission of a revised City-approved Construction Budget (DA cl. 7.4) within 90 days.
 - **Issue of notice:**
 1. Notice signed by the City CEO (DA cl. 14.3).

2. Serve by registered post or email with return acknowledgement (DA cl. 14.1–14.2).

2. **Loan Default/Performance Notice (LFA)** – issued in parallel to step 1

- **Clauses:**

1. LFA cl. 9.2(1)(b) - failure to perform a covenant; 30-day cure after notice.
2. LFA Schedule 2(g) - cost-to-complete/evidence of equity.

- **Requirements:**

1. Produce binding funding to close the gap (and updated drawdown schedule Scheme 3) within 30 days; until then, City suspends drawdowns (LFA cl. 3.6, 9.1(b)).

- **Issue of notice:** Signed by City CEO under LFA cl. 12.3; service per LFA cl. 12.1–12.2.

The LFA cure is 30 days; the DA cure is 90 days. Running in parallel, the LFA clock preserves the City's funding and security position, while the DA clock preserves the step-in/termination path if the broader delivery obligation isn't cured.

If the Developer does not cure:

- Suspend/cancel undrawn facility and/or declare amounts due (LFA cl. 9.1).
- Terminate DA/Leases after the DA cure period (DA cl. 11.1–11.2) and retake possession of sites/works.
- Enforce security: appoint a Receiver under the GSA (cl. 12.1) over the Grantors (Developer/Lessees), take control of project assets/contracts/cash and complete the project (GSA cl. 10, 12.3).

(Note: GSA allows short notice periods as little as 1 Business Day where law permits - cl. 11.2).

Process pathway to still get the project built

- **Funding Plan A (preferred):** Developer provides the shortfall by **equity** and/or **subordinated debt** (City consent required under LFA cl. 8(f)); City reviews and if satisfied, **re-starts drawdowns**.
- **Funding Plan B: Variation to LFA** to increase Facility Limit (LFA cl. 13.9) **only** after: updated QS, revised budget/program and provision of additional Developer security (e.g. extra guarantees).

- **Scope/Program Reset:** Value-engineering and milestone resequencing (DA Schedule 1 & DA cl. 7.12), with Independent QS certification.
- **If Developer cannot cure:**
 1. Step-in under DA cl. 12.2,
 2. novate the Building Contract to the City,
 3. procure completion; andFund completion from:
 - i. remaining LFA headroom (if any),
 - ii. enforcement of security/claims (GSA cl. 14),
 - iii. variation to Loan Facility (LFA cl. 13.9), if Council approves or
 - iv. compensation/insurance proceeds (LFA cl. 5-6; GSA cl. 7.2)

1) Costs exceed loan and KD/TLC cannot fund the gap

Step	Action	Notice to Issue (purpose)	Clause basis	Signed by / Service method	Minimum period before next step	Notes / Outcome
1	Freeze further loan drawdowns pending proof of funds and revised budget	LFA Performance/Drawdown Suspension Notice (suspension under viability/CP not met)	LFA cl. 3.6(c), 3.2–3.3; Sch. 2(g) (cost-to-complete & equity)	CEO; serve by registered post or email with acknowledgement (LFA cl. 12.1–12.3)	Immediate effect; start 30-day cure clock in Step 2	Prevents cash burn while gap is unresolved.
2	Demand evidence of funding the gap and revised Construction Budget	DA Breach Notice (failure to fund shortfall)	DA cl. 7.3(5) (KD to obtain external funding if loan insufficient); DA cl. 11.1(a) (Developer Default; cure period)	CEO; serve per DA cl. 14.1–14.3	90 days to cure (DA); 30 days under LFA if also cited (see Step 1)	Run both clocks: LFA 30-day cure preserves finance rights; DA 90-day cure preserves step-in/termination pathway.
3	Independent QS update on cost-to-complete and program reset options	– (internal direction; optional letter to KD requesting cooperation)	DA cl. 7.16 (Independent QS)	–	–	Use QS to verify shortfall and VE options before any facility change.

4A	If KD cures: approve revised budget/drawdowns and resume works	LFA consent to continue funding	LFA cl. 3.3; Sch. 3 (milestone drawdowns)	CEO	–	Resume only with binding third-party finance or equity and QS sign-off.
4B	If no cure after LFA 30 days: cancel undrawn / accelerate	LFA Event of Default & Acceleration Notice	LFA cl. 9.2(1)(b); 9.1(a)–(b)	CEO; serve per LFA cl. 12	After Day 30 from Step 1 notice	Cancels undrawn amounts; can declare Secured Money immediately due.
5	City step-in (if still uncured during DA 90-day window or earlier if urgent HSE)	DA Step-in Notice (City to cure/complete; require KD/TLC cooperation & novations)	DA cl. 12.1–12.2 (right to cure & step-in)	CEO; DA cl. 14	≥ 30 days cure period unless urgent HSE/structural risk allows immediate step-in	Use to control Building Contract and supply chain (including TLC modules).
6	Terminate DA & Leases and retake possession (last resort)	DA Termination & Re-entry Notice	DA cl. 11.1–11.2; 4(2)–(3) (if missed Completion Date path used)	CEO; DA cl. 14	After DA cure window expires (90 days, or reasonable period set under cl. 4(2))	KD may be required to remove/make safe/complete nominated items within 60 days ; else City does and recovers costs.

7	Enforce security & appoint Receiver to complete and realise assets	GSA Receiver Appointment Notice	GSA cl. 12.1, 10; short notice tolerances per cl. 11.2	CEO; GSA cl. 30	As little as 1 Business Day where law permits	Receiver controls contracts, cash, IP, modules; proceeds applied per GSA cl. 14.2.
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SCENARIO 2 — DEVELOPER DEFAULTS AND CANNOT COMPLETE THE DEVELOPMENT

What triggers apply

- *DA performance failure:*
 - missed Completion Date 31 Dec 2026 or other material breach: City may issue a notice requiring remedy within a reasonable period and can terminate if not remedied; and
 - Developer Default (DA cl. 4(2)–(3), 11.1).
- *Loan default:*
 - LFA treats non-completion by the:
 - Completion Date,
 - DA termination, or
 - Lease terminationas Events of Default (LFA cl. 9.2(1)(d)–(f)).

Immediate controls

1. Secure the site (health/safety/environment risks) using DA cl. 7.17 suspension if required.
2. Freeze drawdowns (LFA cl. 3.6, 9.1(b)).
3. Collect project records (design docs, approvals, warranties) and preserve insurances (DA cl. 7.19, 8).

Notices to issue & timeframes

1. **Notice of Developer Default (DA)**
 - **Clauses:**
 1. DA cl. 11.1(a) - material breach with 90-day cure; or
 2. DA cl. 11.1(b) - immediate if Insolvency.
 - **Requirements:**
 1. Remedy plan to achieve Completion;
 2. maintain insurances;
 3. continue to protect property; and

4. provide access for City inspections.

(DA cl. 7.9, 7.15).

○ **Issue of Notice:**

1. Notice signed by the City CEO (DA cl. 14.3).

2. Serve by registered post or email with return acknowledgement (DA cl. 14.1–14.2).

2. **Loan Event of Default Notice (LFA)**

○ **Clause basis:** LFA cl. 9.2(1)(d)–(f); 30-day cure where capable under cl. 9.2(1)(b); reserve City’s right to accelerate/cancel undrawn.

○ **Outcome after 30 days:** City may declare all Secured Money immediately due, cancel undrawn facility and exercise attorney powers (LFA cl. 9.1, 11).

3. **Step-in Intent Notice (DA)** (*optional but recommended to indicate control transfer*)

○ **Clause basis:** DA cl. 12.1–12.2 (right to cure & step-in). Provide at least **30 days** to cure unless urgent HSE/structural risk—then City may step-in immediately.

4. **Receiver Appointment Notice (GSA)** (*if default persists or insolvency*)

○ **Clause basis:** GSA cl. 12.1 (appoint Receiver); short notice permissible, 1 Business Day minimum where law permits (GSA cl. 11.2).

If not cured the next steps are:

- **Terminate DA & Leases** (DA cl. 11.2(a)) and re-enter/take possession. City may require KD to remove/make safe/complete nominated items within 60 days; otherwise City does so and recovers costs as a debt (DA cl. 11.2(c)–(d)).
- **Exercise step-in/novations:** City steps into the Building Contract and related approvals to complete works (DA cl. 12.2(1)–(6)).
- **Enforce Securities:** Under GSA, City (as Secured Party) can control cash/receivables, collect debts, sell or complete works via the Receiver’s broad powers (GSA cl. 9–12). Apply proceeds per GSA cl. 14.2.

Process pathway to still get the project built

- Completion Plan led by City:
 - Appoint project specific team comprising:

- superintendent; and
- project admin

to audit design, QA & defects lists against DA cl. 7.10/7.20 deliverables.

- Fund completion from:
 - v. remaining LFA headroom (if any),
 - vi. recovered security/claims,
 - vii. variation to Loan Facility (LFA cl. 13.9), if Council approves.

Process pathway if default occurs post-completion of construction

- Operational Plan led by City:
 - Appoint operational specific team comprising:
 - Housing representative; and
 - Commercial property manager

to ensure warranties transferred and facility is tenanted and managed appropriately.
 - Fund operational costs/maintenance and any capital refurbishment from income received from the facility.

2a) KD default and cannot complete construction of the development

Step	Action	Notice to Issue (purpose)	Clause basis	Signed by / Service method	Minimum period before next step	Notes / Outcome
1	Secure site & public safety (if needed)	DA Suspension Direction (temporary stop for HSE/regulatory risk)	DA cl. 7.17	CEO; DA cl. 14	Immediate	Stabilises while you set formal default path.
2	Freeze loan drawdowns	LFA Suspension/Default Notice	LFA cl. 3.6; 9.2(1)(d)–(f) (e.g., missed Completion, DA/Lease termination triggers)	CEO; LFA cl. 12	Immediate; start 30-day cure	Protects City’s finance position.
3	Issue Developer Default notice with cure plan requirement	DA Developer Default Notice	DA cl. 11.1(a) (90-day cure for material breach) or immediate if Insolvency (11.1(b))	CEO; DA cl. 14	90 days (or immediate for insolvency)	Requires remedy plan to achieve Completion, maintain insurances, provide access.
4	Collect project records & insurances	Letter requiring deliverables and access	DA cl. 7.19 (warranties), 8 (insurances), 7.15 (inspections)	CEO; DA cl. 14	In parallel	Preserve ability to complete/claim.

5A	If cured: agree recovery program and resume	Variation letter / milestone reset	DA cl. 7.12 (EOT/time only), Sch. 1; LFA Sch. 3	CEO	–	Require Independent QS certification before reinstating funding.
5B	If not cured after 30 days under LFA: accelerate/cancel	LFA Acceleration Notice	LFA cl. 9.1–9.2	CEO; LFA cl. 12	After Day 30	Tightens City's recovery leverage.
6A	Step-in to Building Contract (and critical subcontracts)	DA Step-in Notice to KD (and inform TLC)	DA cl. 12.2(1)–(6) (City assumes KD rights; Builder must cooperate)	CEO; DA cl. 14	≥ 30 days cure allowed unless urgent HSE/structural risk	City can direct TLC, pay suppliers, and progress completion.
6B	Appoint internal City led completion team	-	-	-	-	Appoint Superintendent, Admin, ensuring completion is in accordance with contractual requirements.
7	Terminate DA/Leases & re-enter (if still not cured)	DA Termination	DA cl. 11.2(a)–(d)	CEO; DA cl. 14	After DA cure window	KD must remove/make safe/complete nominated items within 60 days, else City does and recovers costs.

8	Appoint Receiver / enforce security	GSA Receiver Appointment	GSA cl. 12.1, 10 (enforcement), 9 (collect/transfer), 14 (apply proceeds)	CEO; GSA cl. 30	1 Business Day possible (GSA cl. 11.2)	Receiver completes/sells, controls cash/approvals/IP; apply proceeds per cl. 14.2.
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2b) KD default post-construction completion and cannot operate the facilities

Scenario 2B – Table: Action Plan for Developer Default *After Completion Only*

Step	Action	Notice to Issue	Clause Basis	Sign & Serve	Minimum Period Before Next Step	Notes
1	Identify nature of post-Completion breach (e.g., failure to fund operations, failure to enforce warranties, insolvency, Lease breach, failure to pay loan instalments)	–	DA 11.1 (Developer Default); LFA 9.2 (Events of Default)	–	–	Establish if breach is curable
2	Issue Developer Default Notice	DA Developer Default Notice	DA 11.1(a) – 90-day cure / immediate if insolvency 11.1(b)	CEO; DA 14	90 days (unless insolvency)	Ensures KD attempts to rectify operational failure
3	Review Completion Report & Warranties delivered	Written Direction requiring missing items	DA 7.20; DA 7.19 (warranties must be assignable)	CEO	Parallel	Ensures City has enforceable warranties

4	Freeze any remaining redraw rights under the LFA	LFA Default Notice (post-construction repayment breach or insolvency or DA termination trigger)	LFA 5.2 (payments after construction); 9.2(1)(a)-(f)	CEO; LFA 12	30 days cure	Protects City from financial exposure
5	Require KD to assign building warranties & certificates	Warranty Enforcement Direction	DA 7.19(1)-(4) (assignable warranties enforceable by City)	CEO	Reasonable period (10–20 days)	Critical for defects period & lifecycle management
6	If non-financial breach continues, step-in to operate or enforce warranties	Step-in Notice	DA 12.1–12.2 (City may cure post-Completion breach)	CEO; DA 14	≥30 days unless urgent safety/environmental risk	City can manage warranty claims or rectify defects
7	If loan payments default: accelerate facility	LFA Acceleration Notice	LFA 9.1–9.2 (loan becomes immediately payable)	CEO; LFA 12	After 30 days	Protects City's debt position
8	Terminate DA & Leases if breach persists	Termination Notice	DA 11.2(a)-(d)	CEO; DA 14	After 90-day cure (or immediate if insolvency)	City retakes operational control of all Lots

9	Trigger GSA enforcement for financial remedy	Receiver Appointment	GSA 12.1; 10; 14 (application of remedy proceeds)	CEO; GSA 30	As little as 1 Business Day	Receiver may collect rents, enforce warranties, or restructure operations
10	City assumes full operational control of completed assets	Entry & Control under termination and security	DA 11.2; GSA enforcement	–	–	City ensures continuity of tenancy, maintenance, defects rectification

SCENARIO 3 — BUILDER (TLC) CANNOT SECURE STATUTORY APPROVALS AND CANNOT COMPLETE ON-SITE WORKS

Contractually, approvals and completion obligations sit with Karratha Development (KD), not the Builder; so the City's levers therefore run through KD.

What triggers apply

- *Approvals are KD's obligation:*
 - KD must procure all Development Approvals/Building Permits and complete the Development by the Completion Date (DA cl. 7.2, definitions of Completion/Occupancy Permit; DA cl. 4(1)).
- *EOT:*
 - may apply only if KD properly claims and proves a Qualifying Cause of Delay (e.g., Authority delays not caused by KD).
 - Strict notice:
 - i. within 5 Business Days of awareness;
 - ii. formal claim within 10 Business Days;
 - iii. City decides within 10 Business Days (DA cl. 7.12(2)–(6)).
- *Funding controls:*
 - LFA conditions precedent to drawdowns include proof that planning/Building approvals are in place (Schedule 2(c)–(d)); City can decline drawdowns until satisfied (LFA cl. 3.2–3.3, 3.6).

Immediate controls

1. Check EOT compliance: If KD failed to lodge compliant delay notices/claims under DA cl. 7.12, treat delay as non-excusable.
2. Suspend drawdowns pending evidence of approvals (LFA cl. 3.6(c), Schedule 2(c)–(d)).
3. Convene Project Steering Group (PSG) to clear approval issues (DA cl. 6.1–6.5).

Notices to issue & timeframes

1. Notice of Delay Determination (DA)

- **Clauses:** DA cl. 7.12(4)–(7) - City's decision on EOT claim; confirm whether time is granted (time-only) or rejected for non-compliance.

- **Effect:** If EOT rejected, KD remains bound to Milestones/Completion Date; failure becomes breach/default.

2. Notice to Remedy for Failure to Obtain Approvals (DA)

- **Clauses:**
 1. DA cl. 11.1(a) - material breach; 90-day cure;
 2. DA cl. 4(2) - specific non-completion mechanism, require remedy within a reasonable period you nominate, e.g., 30–60 days, to obtain the outstanding approvals and achieve practical completion.
- **Issue of Notice:**
 1. Notice signed by the City CEO (DA cl. 14.3).
 2. Serve by registered post or email with return acknowledgement (DA cl. 14.1–14.2).

3. Loan Performance Notice (LFA)

- **Clause basis:**
 1. LFA cl. 3.3 & Schedule 2(c)–(d), 3.6(c)- if KD can't produce approvals, treat as breach of conditions; and
 2. issue 30-day cure notice under LFA cl. 9.2(1)(b).

If not cured

- City step-in to secure approvals and complete works (DA cl. 12.2). KD must cooperate in assignments/novations; Builder must accept City's step-in (DA cl. 12.2(5)–(6)).
- Terminate DA/Leases as last resort and enforce security/appoint Receiver (GSA cl. 12.1) to complete works and preserve value.

Process pathway to still get the project built

- **City-led approvals:** Engage a specialist Building Surveyor/Planning consultant and seek legal advice to close out permit conditions.
- **Contractual lever with Builder:**
 1. Use DA cl. 5.1–5.3 to require variations or replace Builder (in whole with City consent) if the approval pathway is the bottleneck. KD must ensure the Building Contract contains City step-in and milestones.

2. Use DA cl. 5.1–5.3 to replace Builder (in part with City consent) to ensure on-site sub-contractor can procure approvals in replacement. KD must ensure any new Building Contract or subcontractor arrangement contains City step-in and milestones.
- **Milestone re-set:** Grant EOT only to the extent proven under DA cl. 7.12 (time-only) and update in the LFA Drawdown Schedule after Independent QS review.

3) TLC (builder/fabricator) cannot secure statutory approvals > KD cannot complete on-site works

Contractually, approvals and Completion sit with KD. TLC's inability is treated as KD's failure unless a properly claimed Qualifying Cause of Delay (Authority delay, Force Majeure, etc.) is established. Strict timing applies to delay notifications.

Step	Action	Notice to Issue (purpose)	Clause basis	Signed by / Service method	Minimum period before next step	Notes / Outcome
1	Check EOT compliance (did KD notify within time?)	EOT Decision Notice (approve time-only or reject)	DA cl. 7.12(2)–(7): KD notice within 5 BD of awareness; claim within 10 BD ; City decides within 10 BD	CEO; DA cl. 14	10 Business Days to issue decision from claim	If non-compliant or not qualifying, reject EOT (no costs) and keep Completion/Milestones.
2	Suspend drawdowns until approvals are produced	LFA Suspension/CP Not Satisfied Notice	LFA Sch. 2(c)–(d) (planning & building approvals CPs); LFA cl. 3.6(c)	CEO; LFA cl. 12	Immediate ; start 30-day cure (if framed as breach)	Withholds funding leverage tied to missing approvals.
3	Require KD to obtain approvals (or City will step-in)	DA Breach/Remedy Notice (failure to obtain approvals/achieve Completion)	DA cl. 7.2 (KD to complete per approvals/permits); 4(2)–(3) (require remedy in reasonable period);	CEO; DA cl. 14	Reasonable period you set (e.g., 30–60 days) before termination under	Choose the pathway that best matches the status and risk.

			11.1(a) (90-day cure if treated as default)		cl. 4(3); 90 days if using cl. 11.1(a)	
4	Authorisations discussions via Steering Group	Meeting/letters to Authorities; require KD/TLC attendance	DA cl. 6.1–6.5 (Steering Group)	–	–	Weekly clinic with Building Surveyor/Planner to close conditions.
5A	If approvals obtained within period: reset milestones and resume	EOT approval (time-only) and LFA drawdown re-activation	DA cl. 7.12; LFA cl. 3.3, Sch. 3	CEO	–	Mirror any time extension in Drawdown Schedule after QS review.
5B	If not obtained: Step-in to secure approvals & complete	DA Step-in Notice (City assumes KD rights and directs TLC)	DA cl. 12.2(1)–(6)	CEO; DA cl. 14	≥ 30 days cure unless urgent HSE/structural risk	City can directly engage/replace consultants, submit revisions, or vary Builder.
6	Terminate & re-enter if approvals/Completion still not achieved	DA Termination & Re-entry	DA cl. 11.2 or cl. 4(3) (post “reasonable period”)	CEO; DA cl. 14	After your set “reasonable period” (or after 90 days if cl. 11.1(a) path)	City controls site; may compel KD to remove/make safe/complete items within 60 days .
7	Appoint Receiver / enforce security to finish and protect value	GSA Receiver Appointment	GSA cl. 12.1; 10; 9; 14	CEO; GSA cl. 30	1 Business Day possible (GSA cl. 11.2)	Receiver can novate approvals, contracts, IP; continue factory/module

						logistics; apply proceeds per cl. 14.2.
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