

# PJ DONNELLAN & CO

SOLICITORS AND ATTORNEYS

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Our ref: PJD.AL 2008081  
Your ref: Mr Alan Ford  
Int. Ref 2345053

9 July 2008

The General Manager  
Gosford City Council  
GOSFORD NSW 2250

**Attention Mr Alan Ford**

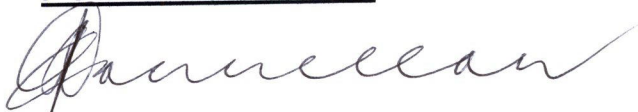
Dear Sir

**Re: Gosford City Council and Websdale  
Ppty: 48 Singleton Road, Point Clare**

We refer to the above and enclose herewith original Deed of Agreement and it would be in order to advertise the agreement.

Yours faithfully

**P J DONNELLAN & CO**



**Patrick Donnellan**



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PJ Donnellan & Co Pty Limited  
An incorporated legal practice under the Legal Profession Act 2004

THIS DEED OF AGREEMENT is made the 4<sup>th</sup> day of July 2008

PARTIES TO THIS AGREEMENT are:

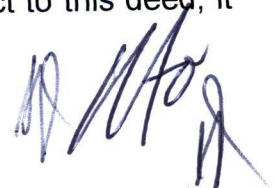
1. **THE COUNCIL OF THE CITY OF GOSFORD** of 49 Mann Street, Gosford in the State of New South Wales (hereinafter referred to as the 'Council') of the one part

**AND**

2. **WALTER SYDNEY WEBSDALE** of 48 Singleton Road, Point Clare in the said State (hereinafter referred to as the 'Applicant') of the second part.

### **RECITALS**

- A. This is a planning agreement as defined in Section 93C of the *Environmental Planning and Assessment Act* and is made pursuant to Section 93F of that Act.
- B. Walter Sydney Websdale is the owner of Lot 263 in Deposited Plan 856708 (hereinafter referred to as "the Land").
- C. The Applicant has made application to the Council for the Council to exercise its powers pursuant to the *Environmental Planning and Assessment Act, 1979* to prepare a Draft Local Environmental Plan (the "DLEP") and in due course to forward that DLEP to the Regional Manager of the Department of Planning with a request that the Minister make the plan.
- D.
  - (i) The Land is presently zoned predominantly 7(a) Conservation and Scenic Protection (Conservation) under Interim Development Order No. 122 – Gosford ("the Environmental Plan") and the "battle-axe handle" is zoned 2(a) Residential under the Gosford Planning Scheme Ordinance.
  - (ii) The purpose of the DLEP is to seek to change the Environmental Plan as it relates to the Land in the manner depicted in the DLEP, a copy of which is annexed hereto and marked "A" which, subject to this deed, it



proposes to forward to the Department of Planning with the request that the Minister make the plan.

E. The Applicant has proposed to the Council that he dedicate the land indicated in the DLEP as proposed to be zoned 6(a) ("the 6(a) land") free of cost upon a plan of subdivision being prepared having the effect of dividing the 6(a) land from the 9(c) land indicated in the DLEP.

F. At its meeting of 12 December, 2006 the Council resolved as follows:

"A Council, based upon its considerations and opinions expressed in this report relating to the provisions of the Environmental Planning and Assessment Act, 1979 (State), Threatened Species Conservation Act, 1996 (State), Environment Protection and Biodiversity Conservation Act 1999 (Cmth) and Local Government Amendment (Ecologically Sustainable Development) Act 1997 (State), resolve that in Council's opinion this DLEP will not affect critical habitat or threatened species, populations or ecological communities or their habitats, therefore no consultation under S34A of the EP&A Act is required.

B. Council resolve, pursuant to Section 54 of the EP&A Act, to prepare a Draft Local Environmental Plan in respect of Lot 263 DP 856708 Singleton Road, Point Clare **to enable the 7(a) zoned land to be subdivided into five lots (four lots each able to be developed with one dwelling and the residue lot be dedicated to Council)** and forward it to the Department of Planning seeking a "Written Authorisation to Exercise Delegation" from the Minister's LEP Review Panel.



- C. *Upon receipt of the "Written Authorisation to Exercise Delegation" Council process the DLEP as required under the EP&A Act and Regulations.*
- D. *The applicant supply the following information prior to consultation under Section 62:*
- *Bushfire Hazard Assessment*
  - *Soil Contamination Report*
  - *Section 5A (EP&A Act) Assessment*
  - *Assessment under NSW Industrial Noise Policy*
  - *Land Hazard Assessment for that part of the site to be dedicated to Council.*
- E. *The applicant be advised of Council's resolution."*

In response to Council's Section 54(4) Notification Advice, the Department of Planning advised "any land for residential development should be appropriately zoned with appropriate density controls rather than use an enabling clause." Consequently the Applicant changed the form of the DLEP as it related to the land to be subdivided. Instead of an enabling clause it is proposed to rezone these lots 9(c) Restricted Development (Steep Land) as per Annexure "A". Such a zone limits the size of each of the proposed residential lots to a minimum of 1850 square metres which achieves the lot sizes approved by Council.

**NOW THIS DEED WITNESSETH THAT:**

In pursuance of the Council's resolution of 12 December, 2006 and in consideration of these presents the parties to this Deed agree as follows:

The Council agrees:

1. Pursuant to Section 68 of the *Environmental Planning and Assessment Act, 1979* to forward the Draft Local Environmental Plan to the Regional Manager, Department of Planning requesting that the Minister make the plan pursuant to Section 70 of the *Environmental Planning and Assessment Act, 1979* and to advise the Regional Manager that all environmental planning instruments and Section 117 directions have been taken into consideration and that the Council finds no inconsistencies therewith.

The Applicant agrees:

2. (a) If the Minister, the Council or the Land and Environment Court or any other court or person having jurisdiction to do so, whether at first instance or on appeal grants a consent for the carrying out of any development permitted by the Environmental Plan as amended by the DLEP, then prior to the issue of a construction certificate or a linen plan of subdivision for that developer the Applicant will dedicate to the Council without compensation and free of all mortgages, charges or other encumbrances the 6(a) land.
- (b) Prior to the release of the construction certificate or linen plan of subdivision referred to in (a) above to pay all rates and taxes outstanding on the 6(a) land (calculated on a proportional area basis as to rates if no separate assessment has issued).
3. (a) In accordance with Section 93H(1)(a) of the *Environmental Planning and Assessment Act, 1979* to the registration of this Agreement under that section and to procure the consent of any other person who has an interest in the Land necessary to permit registration.
- (b) That he will not assign, transfer, convey, mortgage or otherwise alienate or dispose of its interests in the Land or any part thereof without first procuring from the assignee, transferee, conveyee, mortgagee, alienee

or disponent at his cost the execution of an agreement containing covenants and undertakings the same mutatis mutandis as those contained herein. Upon the obtaining of an executed agreement pursuant to this Clause the liabilities of the Applicant contained in this agreement shall cease.

4. The dedication referred to in 2(a) above may be effected by the Applicant by prior delivery to the Council of a registrable Transfer of the 6(a) land with an authority to add to the Transfer the reference to title of the 6(a) land or by indicating on the plan of subdivision for which development consent has been given and release of which is sought an intention to dedicate the 6(a) land together with an executed and registrable discharge of any mortgage of the 6(a) land.
5. Drainage works mentioned in section 7.2.2 on page 5 of the *Land Hazard Assessment 2007* by Douglas Partners are to be completed prior to the 6(a) land coming into Council's ownership.
6. Council will consent to the release of the registration of this Agreement and, at the request of the Applicant, execute the relevant forms and provide such other assistance as may be reasonably requested to effect the release where:
  - (i) the 6(a) land has been dedicated in accordance with this Agreement; and
  - (ii) this Agreement has been terminated under Clause 7.
7. This agreement excludes the application of Section 94 and Section 94A of the *Environmental Planning and Assessment Act* to any development permitted by the Environmental Plan as amended by the DLEP in part, in that a condition of development consent under those sections may not be imposed so as to require dedication of the land or payment of money for the purposes



of acquiring land for open space purposes pursuant to <sup>2</sup>the contributions plan applying to the land presently or in the future.

#### Generally

8. Should the Draft Local Environmental Plan not be gazetted within 3 years of the date of this agreement either party may give notice in writing to the other party that it terminates this agreement and all obligations of the Council and the Applicant shall from the date of the notice of termination be at an end and each party releases the other party on and from that date from all their obligations under this agreement to the other.
9. Any notice, consent, information, application or request that must or may be given or made to a party under this Agreement is only given or made if it is in writing and sent in one of the following ways:
  - Delivered or posted to that party at its address set out below.
  - Faxed to that party at its fax number set out below.
  - Emailed to that party at its email address set out below:

#### **Council**

Attention: The General Manager  
 Address: 49 Mann Street, Gosford NSW 2250  
 Fax number: (02) 4323 2477  
 Email: [goscity@gosford.nsw.gov.au](mailto:goscity@gosford.nsw.gov.au)

#### **Applicant:**

Attention: Ronald Alan Websdale as attorney for  
 Walter Sydney Websdale  
 Address: 48 Singleton Road, Point Clare NSW 2250  
 Fax number:  
 Email:

If a party gives the other party 3 business days notice of a change of its address or fax number, any notice, consent, information, application or request is only given or made by that other party if it is delivered, posted or faxed to the latest address or fax number.

Any notice, consent, information, application or request is to be treated as given or made at the following time:

- If it is delivered, when it is left at the relevant address.
- If it is sent by post, 2 business days after it is posted.
- If it is sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax machine.

If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, or on a business day, after 5.00 p.m. on that day, in the place of the party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

#### 10. Dispute resolution

- .1 A party to this agreement at any time may notify the other party of a dispute concerning any matter relating to or arising out of this agreement and require that it be resolved in accordance with this clause.
- .2 The notice pursuant to 10.1 must:
  - (a) be in writing;
  - (b) identify the subject matter of the dispute;
  - (c) set out in detail the facts upon which the dispute is based;
  - (d) identify the provisions of this agreement relevant to the dispute;



- (e) have annexed to it copies of all correspondence and background information relevant to the dispute; and
- (f) contain particulars of the quantification of any claim in relation to the dispute.

## 11. Mediation

- .1 The parties must use their best endeavours to settle the dispute within 14 days of the date of issue of the notice of dispute or such further period as the parties agree.
- .2 If a dispute is not resolved under Clause 10.1 then the parties agree to mediate the dispute in accordance with the 1995 Australian Commercial Dispute Centre (ACDC) Guidelines.
- .3 The mediator must be appointed by agreement between the parties but failing agreement must be appointed by the Chairman of the ACDC or by the Chairman's authorised representative.
- .4 In the event that the dispute has not settled within twenty eight (28) days or such other period as agreed to in writing between the parties after the appointment of the mediator the dispute must be submitted to expert determination in accordance with Clause 10.

## 12. Nomination of consultant.

- .1 Within ten (10) business days of the dispute not being resolved in accordance with Clause 9 the Council must nominate and notify the Applicant in writing of a panel of three independent consultants reasonably considered by the Council to be expert in the area of dispute.
- .2 Within five (5) business days of notification of the three consultants by the Council, the Applicant must nominate one of them to resolve the dispute.

- .3 If the Applicant fails to nominate one of them to resolve the dispute the Council may nominate one of the consultants and that person shall resolve the dispute.

### 13. Conduct of Referral

- .1 The independent consultant will act as an expert and not as an arbitrator.
- .2 The independent consultant may (and must if so required by either party) appoint such other consultants as he or she thinks necessary to advise on any aspect of the dispute.
- .3 The decision of the independent consultant will be final and bind on the parties, except as to matters of law.
- .4 The Council and the Applicant may make written submissions to the independent consultant relating to the questions to be determined and costs. Such submissions must be made within ten (10) business days of the appointment of the independent consultant. The party making the submission must provide the other party with a copy of its submission within 24 hours of submission to the independent consultant.
- .5 The parties agree to co-operate with the independent consultant and promptly to provide the independent consultant with such information as requested by the independent consultant as is in the possession of that party and is relevant to the matter to be determined, except where such information would be subject to a claim for privilege if the matter were the subject of legal proceedings.
- .6 Within twenty (20) business days of his or her appointment the independent consultant must determine the matters in dispute having regard to the parties written submissions, the provisions of this agreement and the independent consultant's own enquiries.

14. Costs of referral

The cost of any referral and determination as provided in this part must be paid as determined by the independent consultant or mediator and if no determination is made each pays 50% of the total cost.

15. No legal proceedings

Neither party is entitled to commence or maintain any action, whether by way of legal proceedings or arbitration, relating to any dispute until it has been referred and determined as provided in this agreement.

16. Any legal proceedings shall be determined by a Court of competent jurisdiction in the State of New South Wales.

17. Key Considerations

1. The parties acknowledge that the following matters have been considered by each of them prior to entering into this agreement:
  - 1.1 whether the public infrastructure that is proposed to be funded by the Contributions will be provided within a reasonable time;
  - 1.2 the impact of the proposed Contributions on the affordability of the Development;
  - 1.3 the extent to which the proposed Contributions are based on a reasonable apportionment between existing demand and new demand for public infrastructure to be created by the proposed Development to which to contribution relates;
  - 1.4 whether the proposed contributions are based on a reasonable estimate of the cost of proposed public infrastructure;



1.5 whether the estimates of demand for each item of public infrastructure to which the proposed development contribution relates reasonable and that they consider each of these matters has been properly and adequately taken into account under this agreement.

2. The parties acknowledge that the facilities provided pursuant to this agreement will directly serve the needs of the residents of the completed Development.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals on the day and year first hereinbefore written.

SIGNED BY THE PARTIES

Executed for and on behalf of Gosford City Council by:

Executed by Alan John Ford  
on behalf of Gosford City Council  
pursuant to Power of Attorney  
Book No. 4150 No. 130

*[Signature of Alan John Ford]*

*Susan Lee Hubbard  
Gosford City Council*

*[Signature]*

SIGNED SEALED and DELIVERED by )  
~~WALTER SYDNEY WEBSDALE~~ in the )  
presence of: *RONALD ALAN WEBSDALE* )

*AS ATTORNEY FOR WALTER  
SYDNEY WEBSDALE*

*[Signature]*

*David Nixon  
Solicitor  
Gosford*