



LEGAL DOCUMENT LODGEMENT FORM

Lodgement Date: 5/8/14

Date of Legal Documents: 4/8/14

Type of Documents: Voluntary Planning Agreement (VPA)
le: Agreements, Contracts, Easements, General, Lease, Loans (see separate forms of Bank Guarantees and Certificates of Title)

Expiry Date of Document (if applicable): 30 June 2015

Parties: WSC & A V Jennings Properties Limited

Address: 87-113 Louisiana Rd, Hamlyn Terrace, & 600-610 Pacific Hwy, Hamlyn Terrace

Details of Document: VPA in relation to amount and payment of contributions

Property Description: Lots 1 & 2 DP 514442, Lot 2 DP 208596 & Lot A DP 381268

Review Date: N/A

Responsible Officer: Sharron Colquhoun

Folder Number: DA/745/2008/A

Note: This form and the original documents are to be delivered to Corporate Information

Legal Document supersedes LDOC: N/A (if applicable)





VOLUNTARY PLANNING AGREEMENT

WYONG SHIRE COUNCIL

AND

A V JENNINGS PROPERTIES LTD

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PLANNING AGREEMENT

DATE:

Wyong Shire Council (ABN 47 054 613 735) of Council Chambers, Hely Street Wyong in the State of New South Wales ("**Council**")

and

A V Jennings Properties Ltd (ABN 50 004 601 503) of Level 3, 11 Brookhollow Ave, Baukham Hills in the State of New South Wales ("**the Developer**")

BACKGROUND

- A. The development permitted by the Consent is the subdivision of the Land into 83 residential lots, plus 2 residue lots and associated works, in three stages.
- B. Conditions 47 of the Consent (see Attachment A) provides that the Developer is to pay development contributions to Council in accordance with a voluntary planning agreement, or in the absence of a voluntary planning agreement in accordance with the Schedule to the Consent. This Agreement is intended by the Parties to be a voluntary planning agreement for the purposes of condition 47 of the Consent so that the Developer can substitute in part or full the payment of contributions required under the consent with an arrangement for the payment of contributions under this Agreement.
- C. The Developer has submitted a Section 96 application to amend the consent that includes a proposal to substitute the contribution required to be paid under the Consent with contributions calculated in accordance with Council's adopted "temporary economic stimulus plan". The "temporary economic stimulus plan" promotes the timely development of certain land by permitting a reduction in Development contributions that would ordinarily apply under Council's adopted development contribution plans subject to allotments being part of a subdivision certificate issue prior to 30 June 2015. The aim of the "temporary economic stimulus plan" is to promote the timely development of land and so assist to stimulate the local economy and generate employment.
- D. The Parties have agreed that the Developer will pay Monetary Contributions in accordance with this Agreement.
- E. The Developer agrees to dedicate or transfer to Council the land required to be dedicated or transferred under conditions 46, 55, 72 & 73 of the consent.

OPERATIVE PROVISIONS

1 PLANNING AGREEMENT UNDER THE ACT

- 1.1 The parties agree that this Agreement is a Planning Agreement governed by Subdivision 2 of Division 6 of Part 4 of the Act.

2 APPLICATION OF THIS AGREEMENT

- 2.1 This Agreement applies to the development of the Land pursuant to the Consent.

3 OPERATION OF THIS AGREEMENT

- 3.1 Subject to clause 3.2, this Agreement takes effect once executed by all parties.
- 3.2 This Agreement identifies:
- (a) The arrangements with regards to the payment of Monetary Contributions by the Developer to Council towards the provision of infrastructure and facilities in respect to the Consent; and
 - (b) Other Contributions to be provided by the Developer to Council.
- 3.3 This Agreement does **not** exclude the operation of ss.94 and 94A of the Act.
- 3.4 This Agreement does **not** apply to any obligation that the Developer may have to pay contributions, fees or charges under the *Water Management Act 2000* in respect to the development of the Land.
- 3.5 This Agreement does **not** exclude or modify the requirement under any other existing planning agreement in existence at the time of execution.

4 DEFINITIONS AND INTERPRETATION

4.1 In this Agreement the following definitions apply:

Act means the *Environmental Planning and Assessment Act 1979* (NSW).

Approved Plan means version A of the plan dated 6 January 2011 that forms part of the Consent, a copy of which is attached to this Agreement and marked "B" or any subsequent approved amendment.

Consent means the modified consent granted to the development application.

Council means Wyong Shire Council or its representatives or assigns.

CPI-A means, for the purposes of clause 5.2 of this Agreement, the most recent Consumer Price Index (All Groups and weighted average for all 8 capital cities) published by the Australian Bureau of Statistics at the time of this Agreement.

CPI-B means, for the purposes of clause 5.2 of this Agreement, the most recent Consumer Price Index (All Groups and weighted average for all 8 capital cities) published by the Australian Bureau of Statistics at the time a Developer contribution is paid to Council.

Current Development Contributions Plan means Section 94 Contributions Plan No. 7A - Drainage, Water Quality, Open Space, Community Facilities and Roads Warnervale District - dated September 2005.

Developer means AV Jennings Properties Ltd (ABN 50 004 601 503) of Level 3, 11 Brookhollow Ave, Baulkham Hills, NSW and the parties that have the rights to act under the consent.

Development Application means development application DA/745/2008/A that relates to the development of the Land.

Future Development Contributions Plan means any Section 94 Contributions Plan adopted to replace and supersede the Current Contributions Plan referred to above.

Land means the land the subject of the Consent, which is described as:

Lot 1 in Deposited Plan 514442,
Lot 2 in Deposited Plan 514442,
Lot 2 in Deposited Plan 208596 &
Lot A Deposited Plan 381268,

in the State of New South Wales.

Monetary Contributions means the Monetary Contributions specified in clause 5 of this Agreement, which may also be referred to as development contributions.

Parties mean the Council and the Developer, including both their successors and assigns.

Party means a party to this Agreement including its successors and assigns.

5 PAYMENT OF MONETARY CONTRIBUTIONS

- 5.1 The Parties agree that the Monetary Contributions shall be determined under the Consent, unless otherwise provided under this clause.
- 5.2 Notwithstanding clause 5.1 the Parties agree that the Monetary Contributions that the Developer is required to pay to Council for residential allotments permitted by the Consent where they are part of subdivision plan for which a subdivision certificate has been issued prior to 30 June 2015 is as calculated by the following formula:

$$\text{Monetary Contribution} = \$25,000 \times \text{number of lots (CPI-B/CPI-A)}$$

- 5.3 Where there remains outstanding residential allotments that are permitted under the Consent for which the contribution rate under clause 5.2 can no longer be applied, the monetary contributions shall be calculated and paid in accordance with the Consent (including indexing) on a pro rata basis unless otherwise provided under this agreement.
- 5.4 The Developer agrees to pay the total Monetary Contributions required under this agreement to Council:
- (a) Prior to the release of the subdivision certificate for any residential allotment; or
 - (b) As otherwise approved by Council, in its absolute discretion, under its deferred payment of Section 94 Contributions Policy
- 5.5 The Developer agrees that where Monetary Contributions have been paid under this Agreement or the Consent, and a Future Development Contributions Plan has been adopted after the time of payment, the Developer agrees those Monetary Contributions paid will not be revised or refunded, even if the Future Contributions Plan allows or permits a lesser amount per residential allotment.
- 5.6 Council agrees that, where there are any unpaid Monetary Contributions under this Agreement or the Consent, and a Future Development Contributions Plan is adopted that causes the contributions rate required by that plan and any other applicable adopted contributions plans to be a lesser contribution per residential allotment than is required under this agreement or the Consent, then the Developer is permitted to pay the lower amount.
- 5.7 For the purpose of clarity, the Parties agree The Monetary Contributions to be paid by the Developer to Council under this Agreement in respect to development permitted by the Consent excludes any amount that the Developer may be required to pay under the *Water Management Act 2000*
- 5.8 The Parties agree that any credits for land dedications and subdivision works shall be determined in accordance with:
- (a) The Wadalba, Woongarra and Hamlyn Terrace Development Contributions Plan 2013, or
 - (b) In respect of subdivision works, as otherwise agreed to by Council.
- 5.9 The Developer agrees to dedicate land required to be dedicated under the consent, as part of, or prior to the release of the subdivision certificate for the corresponding stage.

6 DEVELOPER WARRANTIES AND INDEMNITIES

- 6.1 The Developer warrants to Council that:
- (a) It is the registered owner of part of the Land and that for that part of the Land there is no legal impediment to the Developer meeting its obligations under this Agreement, those obligations including but not limited to the obligations imposed by cl. 5.9 and 6.4 of this Agreement;
 - (b) For those parts of the Land that it is not the owner, that the Developer has in place with each owner of those parts of the Land binding and enforceable agreements with each of those owners of those parts of the Land that enable the Developer to compel each such owner to do all acts and things necessary for the Developer to comply with the Developer's obligations under this Agreement, where those obligations include but are not limited to the obligations imposed by cl. 5.9 and 6.4 of this Agreement;
 - (c) It is able to fully comply with the obligations under this Agreement;
 - (d) It has full capacity to enter into this Agreement; and
 - (e) There is no legal impediment to it entering into this Agreement, or performing its obligations under this Agreement.
- 6.2 The Developer guarantees to Council the due and punctual payment of all monies due and payable or from time to time due and payable to Council by the Developer pursuant to or in connection with this agreement.
- 6.3 The Developer agrees that Council is not required to proceed against the Developer or exhaust any remedies it may have in relation to the Developer or enforce any security it may hold with respect to the Developer's obligations but is entitled to demand and receive payment when any payment is due under this Agreement.
- 6.4 The Developer agrees that where all or part of the contributions required to be paid under this agreement are not paid at the time required for any reason, the Developer agrees that Council shall have the right to:
- (a) Record the outstanding contribution as a debt against all or any part of the Land pursuant to Section 603 of the *Local Government Act 1993*; and
 - (b) Place a caveat on all or any part of the Land for the recovery of the outstanding Monetary Contributions pursuant to the *Conveyancing Act 1919*.
- 6.5 Council agrees that it will promptly remove any record of debt against and any caveat placed on part of the Land under clause 6.4 upon payment of the contributions relating to those parts of the Land.
- 6.6 The Developer agrees that this Agreement will run with the Land and the Consent and will bind all future owners.
- 6.7 The Developer agrees that it will inform all persons that intend to take an ownership interest in the Land (excluding any subsequent developed and approved residential allotment that are part of a subdivision certificate for which contributions have been paid) of this agreement prior to binding commitments being concluded and will obtain and forward to Council a legally enforceable undertaking from those persons that they intend to be bound by this Agreement.

7 REVIEW OF THIS AGREEMENT

- 7.1 Any amendments, variation or modification to or of, or consent to any departure by any party from the terms of this Agreement shall have no force or effect unless effected by a document executed by the parties which complies with the requirements of Section 93G of the Act.

8 DISPUTE RESOLUTION

- 8.1 If a dispute arises out of or relates to this Agreement (including any dispute as to the meaning, performance, validity, subject matter, breach or termination of this Agreement or as to any claim in tort, in equity or pursuant to any statute) (**Dispute**), any court or arbitration proceedings shall not be commenced by or against Council, the Developers or their successors or assigns, relating to the Dispute unless the parties to the Dispute (**Parties**) have complied with this clause, except where a party seeks urgent interlocutory relief.
- 8.2 A party claiming that a Dispute has arisen under or in relation to this Agreement is to give written notice to the other parties to the Dispute, specifying the nature of the Dispute.
- (a) The Parties agree to mediate the Dispute in accordance with the Mediation Rules of the Law Society of New South Wales and to take action to have the Dispute mediated within 7 working days of the receipt of written notice of the Dispute.
 - (b) The Parties agree that the President of the Law Society of New South Wales or the President's nominee will select the mediator and determine the mediator's remuneration.
 - (c) The Parties to the mediation will be jointly responsible for the fees of the mediation and each party shall bear its own costs.
 - (d) The Parties may, but are not required, to enter into a written agreement before mediating a Dispute.
 - (e) If any procedural aspects are not specified sufficiently in the rules under Clause 13, the Parties agree to conduct the mediation regarding those aspects in accordance with the determination of the mediator whose decision regarding those aspects is final and binding on the Parties.
 - (f) A legal representative acting for either of the Parties may participate in the mediation.
- 8.3 From the time when a notice of Dispute is served, neither party shall take action to terminate this Agreement, until after the conclusion of the mediation.
- 8.4 Should mediation fail to resolve any dispute then the dispute shall be determined by arbitration pursuant to the *Commercial Arbitration Act 1984* and the General Manager of the Council shall request the President for the time being of The Law Society of New South Wales to appoint an arbitrator to carry out such arbitration in accordance with the provisions of such Act.
- 8.5 Despite clauses 8.1, 8.2, 8.3 and 8.4, either Council or one or more of the Developers may institute court proceedings to seek urgent equitable relief in relation to a dispute or difference arising out of or in connection with this Agreement.

9 COSTS

- 9.1 The Developer agrees to pay or reimburse the costs of Council in connection with the:
- (a) Negotiation, preparation and execution of this planning agreement, to a maximum of \$2,000.
 - (b) Advertising and exhibiting this planning agreement in accordance with the Act, to a maximum of \$250, and
 - (c) Registration of this planning agreement where required,
within 7 working days after receipt of a tax invoice from Council.

10 NOTICES

10.1 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:

- (a) Delivered or posted to that Party at its address set out in (b) below.
- (b) Faxed or emailed to that Party at the relevant details set out below.

(i) Council: **Wyong Shire Council**
Attention: General Manager
Address: DX 7306 WYONG
Fax No: (02) 4350 2098
Email: wsc@wyong.nsw.gov.au

(ii) Developer: **A V Jennings Properties Limited**
Attention: Nick Birring
Address: Level 3, 11 Brookhollow Ave, Baulkham Hills, BC, NSW 2153
Email: nbirring@avjennings.com.au

10.2 If a party gives the other party 3 working 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.

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

- (a) If it is delivered, when it is left at the relevant address.
- (b) If it is sent by post, 2 working days after it is posted.
- (c) 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 number.

10.4 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 if it is on a business day, after 5.00pm 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.

11 ENTIRE AGREEMENT

- 11.1 This Agreement contains everything to which the parties have agreed in relation to the matters it deals with. No party can rely on an earlier document, or anything said or done by another party, or by a director, officer, agent or employee of that party before this Agreement was executed, except as permitted by law.

12 FURTHER ACTS

- 12.1 Each Party agrees to promptly execute all documents and do all such things that another Party from time to time reasonably requests to affect, perfect or complete this Agreement and all transactions incidental to it.

13 GOVERNING LAW AND JURISDICTION

- 13.1 This Agreement is governed by the law of New South Wales, Australia. The parties submit to the non-exclusive jurisdiction of its Courts and Courts of appeal from them. The parties will not object to the exercise of jurisdiction by those Courts on any basis provided that the dispute resolution provisions in clause 8 of this Agreement have first been satisfied.

14 NO FETTER

- 14.1 Nothing in this Agreement is to be construed as requiring Council to do anything that would cause it to be in breach of any of its obligations at law, and without limitation, nothing is to be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

15 SEVERABILITY

- 15.1 If a clause or part of a clause in this Agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Agreement, but the rest of the Agreement is not affected.

16 WAIVER

- 16.1 The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Agreement, it does not amount to a waiver of any obligation of, or breach of obligation by, another Party. A waiver by a Party is only effective if it is in writing. A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

17 EXECUTION PANEL

EXECUTED as a Voluntary Planning Agreement

The Common Seal of WYONG SHIRE COUNCIL was hereunto affixed on the day of 20 pursuant to a resolution of the Council made on the 4TH day of AUGUST 2014 :

[Handwritten signature]

General Manager

Date: 4/8/14

Signed sealed and delivered for A V Jennings Properties Limited under power of attorney in the presents :

[Handwritten signature]

Signature of Attorney

[Handwritten signature]

Signature of Witness

THOMAS ALAN FERGUSON SOUTAR
Name [BLOCK LETTERS]

SHARMAE HERBISON
Name [BLOCK LETTERS]

Date: 8TH APRIL 2014

Date: 8TH APRIL 2014

FOR AND ON BEHALF OF
AVJENNINGS PROPERTIES LIMITED BY ITS
ATTORNEY THOMAS ALAN FERGUSON SOUTAR
PURSUANT TO POWER OF ATTORNEY BOOK
4636 NO.233 AND DECLARE THAT WE HAVE
NO NOTICE OF REVOCATION

Attachment "A" – Extracts from Consent DA/745/2008/A – Section 94 Contribution Conditions & Other Contributions (Council Reference D04454796)

Development Application No:	DA/745/2008/A
Property Address:	Lot 1 DP 514442, Lot 2 DP 514442, Lot 2 DP 208596, Lot A DP 381268, 87-113 Louisiana Road & 600-610 Pacific Highway, HAMLYN TERRACE NSW 2259
Description of Development:	83 Lot Residential Subdivision in three stages plus two residue lots. Stage 1 of 14 Lots, Stage 2 of 31 Lots and Stage 3 of 38 Lots (Amended application)
Modified On:	19 November 2013
Determination:	Approved
Determination Date:	6 January 2011
Consent to Operate From:	6 January 2011
Consent to Lapse On: (if not commenced before)	6 January 2016

Consolidation/Transfer

- 46 Prior to the issue of Subdivision Certificate, the transfer to Council in fee simple at the time of issue of a Subdivision Certificate, and at no transfer cost to Council, of the land identified as being required for road widening, or drainage, in accordance with the provisions of Development Control Plan 2005, Chapter 49. It will be necessary to submit a transfer in registrable form for execution by Council, together with the deeds to that property.

Contributions

- 47 Pursuant to Section 80(A(1) of the Environmental Planning and assessment Act 1979, the voluntary planning agreement for developer contributions that relates to the development application the subject of this consent must carry to effect before the issue of the Subdivision Certificate for the development or at a time agreed to by Council or alternatively, the following requirement may apply:
- In the event that the Voluntary Planning Agreement relating to this property(s) does not come into effect, alternatively the development will be subject to the payment to Council prior to the issue of the Construction Certificate or at a time agreed to by Council of contributions (as contained in the attached Schedule) under Section 94 of the Environmental Planning and Assessment Act 1979 and Council's Contribution Plan or as directed in accordance with Council resolution or State Direction. Council's contributions are adjusted on the first day of February, May, August and November. The amount of the contributions will be adjusted to the amount applicable at the date of payment.
- 55 All roads are to be constructed and dedicated up to the boundaries of all adjoining properties prior to the issue of a Subdivision Certificate for each stage. Details are to be incorporated in the plan of subdivision.

- 72 In accordance with the requirements of Chapter 49 of Development Control Plan 2005, the transfer to Council in fee simple proposed Lots 84 as "operational land" and 85 as "community Land", the land identified as the drainage reserve.
- 73 The provision of road widening for Louisiana Road for a 22.00 metre wide reserve in accordance with Chapter 49 of Development Control Plan 2005.

SCHEDULE OF CONTRIBUTIONS

Warnervale/Wadalba Roads Precinct 8B - Wadalba NE	\$558,924.80
Shire Wide Regional Open Space	\$13,181.50
Shire Wide Cycleway Network	\$27,041.15
Shire Wide Performing Arts Centre & Public Art	\$30,513.00
Shire Wide Administration	\$5,856.45
Warnervale/Wadalba Studies & Co-ordinator	\$6,047.00
Warnervale/Wadalba Open Space Land	\$595,598.95
Warnervale/Wadalba Open Space Works	\$547,719.80
Warnervale/Wadalba Community Facilities Land	\$88,571.00
Warnervale/Wadalba Community Facilities Works	\$748,184.40
Warnervale/Wadalba Water NW DSP	\$201,755.82
Warnervale/Wadalba Water Quality Land (D)	\$105,849.70
Warnervale/Wadalba Drainage Land (D)	\$51,307.90
Warnervale/Wadalba Water Quality Works (D)	\$130,219.75
Warnervale/Wadalba Drainage Works (D)	\$142,564.10
Warnervale/Wadalba Area 2 Sewer DSP	\$195,798.66

Attachment "B" – Proposed Plan (Council reference D02491684)

