



# Wyong Shire Council

CENTRAL COAST

## LEGAL DOCUMENT LODGEMENT FORM

Lodgement Date	10 MARCH 2016
Date of Legal Documents	4 MARCH 2016
Type of Documents	VOLUNTARY PLANNING AGREEMENT
ie: Agreements, Contracts, Easements, General, Lease, Loans (see separate forms of Bank Guarantees and Certificates of Title)	
Expiry Date of Document (if applicable)	NO DATE - SUBJECT TO SATISFACTION OF OBLIGATIONS.
Parties	IDA SAFE CONSTRUCTIONS PTY. LTD & WYONG SHIRE COUNCIL
Address	4/11 PATTERSON ST (PO BOX 138) DOUBLE BAY NSW 2324
Details of Document	PROPONENT TO UNDERTAKE NECESSARY ACTIONS TO OFFSET IMPACTS TO THREATENED FLORA & FAUNA ARISING FROM DEVELOPMENT OF THE LAND
Property Description	Lot 1-3, DP 21536, Lot 1 DP 1014033, Lot 1 DP 22467, DP LOTS 10-11 DP 117776
Review Date	N/A
Responsible Officer	JENNY MEWING
Folder Number	RZ/7/2009
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Responsible Officer: Team Leader, Corporate Information

Approval Date: December 2013

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**Voluntary Planning Agreement**  
*Under Section 93F of the Environmental Planning and Assessment Act, 1979*  
**Wyong Shire Council & I.D.A. Safe Constructions Pty Ltd**

**FINAL Version**  
Wyong Shire Council  
May 2015



Voluntary Planning Agreement

Author: Wyong Shire Council

Wyong Shire Council & I.D.A Safe Constructions Pty Ltd

Date: May 2015

FINAL Version

Approved by: Wyong Shire Council

Date of Approval:

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Wyong Shire Council

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# Voluntary Planning Agreement

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## Voluntary Planning Agreement

### Summary Sheet

#### Council:

**Name:** Wyong Shire Council  
**Address:** 2 Hely Street, WYONG NSW 2259  
**Telephone:** (02) 4350 5555  
**Facsimile:** (02) 4351 2098  
**Representative:** General Manager

#### Proponent:

**Name:** I.D.A. Safe Constructions Pty Ltd  
**Address:** 4/11 Patterson Street, Double Bay NSW 2028 (PO Box 138 DOUBLE BAY NSW 2324)  
**Telephone:** 0438 452292  
**Facsimile:** 02 4975 1876  
**Representative:** Ian Adams, Paradigm Planning & Development Consultants Pty Ltd

#### Land:

See definition of *Land* in clause 4.1

#### Development:

See definition of *Development* in clause 4.1

#### Application of s94, s94A and s94EF of the Act:

See clause 3

#### Registration:

See clause 9

#### Dispute Resolution:

See clause 7

**DATE:** May 2015

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

and

**I.D.A. Safe Constructions Pty Ltd** (ABN 6200763468; ACN 00763468) of 4/11 Patterson Street, Double Bay NSW 2028 (PO Box 138 DOUBLE BAY 2324), in the State of New South Wales (**Proponent**)

## **BACKGROUND**

- A. The Proponent is the registered proprietor of the Land.
- B. The Proponent has sought the Instrument Change
- C. The Proponent intends to lodge a Development Application for the Development of the Land
- D. The Proponent is prepared to undertake the necessary actions to offset the impacts to threatened flora and fauna resulting from the future development of the Land through the provision of Biodiversity Offsets.

## **OPERATIVE PROVISIONS**

### **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 and the Instrument Change

### **3 OPERATION OF THIS AGREEMENT**

- 3.1 This Agreement takes effect once executed by all parties.
- 3.2 This Agreement identifies that the Proponent will undertake the necessary actions to offset the impacts to threatened flora and fauna for the future development of the Land through the provision of Biodiversity Offsets.
- 3.3 By complying with the obligations of this Agreement, a benefit, in the form of a strategic conservation outcome, is achieved in that it provides for the conservation of significant vegetation in perpetuity whilst enabling development outcomes consistent with the methodology of a legally recognised process.
- 3.4 This Agreement does **not** exclude the operation of s.94 and s.94A of the Act.
- 3.5 This Agreement does **not** apply to any obligation that the Proponent may have to pay contributions, fees or charges under s.94 and s.94A of the Act or the *Water Management Act 2000* in respect to the Development of the Land.

#### 4 DEFINITIONS AND INTERPRETATION

4.1 In this Agreement the following definitions apply:

**Act** means the *Environmental Planning and Assessment Act 1979*.

**Amending LEP** means an environmental planning instrument that has the effect of amending the *Wyong Local Environmental Plan 2013* so the Development of the Land is permissible with consent.

**Biobanking Assessment Methodology** has the same meaning as in the *Threatened Species Conservation Act 1995*.

**BioBanking Scheme** has the same meaning as in the *Threatened Species Conservation Act 1995*.

**Biobanking Statement** has the same meaning as in the *Threatened Species Conservation Act 1995*.

**Biodiversity Offset** means the retirement of biodiversity credits created in accordance with the biobanking assessment methodology or alternatively a conservation outcome to the equivalent value of those credits which is accepted by the Department of Planning and Environment.

**Consent** means the consent granted to the Development Application.

**Council** means Wyong Shire Council.

**Current Development Contributions Plan** means the Southern Districts Development Contribution Plan and the Section 94 Contributions Plan for Wyong Shire No. 11 – Shire Wide Infrastructure, Services and Facilities – September 2014.

**Development** means the subdivision of the land to create residential building allotments and associated infrastructure.

**Development Application** means a development application under Part 4 of the Act seeking consent to undertake the Development on the Land.

**Instrument Change** means the taking of effect of the Amending LEP.

**Land** means the land identified in Schedule 1 of this Agreement, being Lot 1 – 3 DP21536, Lot 1 DP 1014033, Lot 1 DP22467 and Lots 10 & 11 DP1177776 also known as 19-23 Geoffrey Road and 10 Oscar Drive, Chittaway Point.

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

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

**Planning Proposal** means the document required by s.55 of the Act that explains the intended effect of the proposed Amending LEP and sets out the justification for making that Amending LEP, being Council reference number RZ/7/2009 and Department of Planning and Environment reference number PP\_2013\_WYONG\_010\_00.

**Proponent** means the person or entity identified in Item 1 of Schedule 2 to this Agreement.

**Proponent's Representative** is the person identified in Item 2 of Schedule 2 to this Agreement, appointed by the Proponent to act on behalf of the Proponent, or that person, from time to time, notified to Council in writing by the Proponent.

**Regulation** means the *Environmental Planning and Assessment Regulation 2005*.

## **5 PAYMENT OF MONETARY CONTRIBUTIONS**

- 5.1 This Agreement does not require the Proponent to pay any monetary contribution to Council.
- 5.2 The Parties agree that nothing that the Proponent does to meet its obligations under this Agreement will give rise to a reduction or variation or credit in any monetary contributions that might later be required by a Consent to undertake the Development on the Land.

## **6 PROPONENT OBLIGATIONS**

- 6.1 The Proponent undertakes that it will, as part of the process to seek development consent for the Development of the Land, undertake each of the following, at no cost to Council:
- (a) Undertake an updated assessment of the Land in accordance with the Biobanking Assessment Methodology and Credit Calculator current at that time to confirm the number and type of credits required to offset the impacts of the Development.
  - (b) Make the necessary arrangements and applications to obtain one of the following prior to the issue of Subdivision Certificate related to the Development:
    - i. a Biobanking Statement to offset the impacts to threatened species resulting from undertaking the Development on the Land; OR
    - ii. a conservation agreement on other lands in the local area that addresses each of the Office of Environment and Heritage (OEH) '*Principles for the use of Biodiversity Offsets in NSW*' to the satisfaction of Council and meets the number of credits required by the Biobanking Assessment Methodology and Credit Calculator; OR
    - iii. evidence of purchase of the number of credits required by the Biobanking Assessment Methodology and Credit Calculator and evidence of retirement of credits prior to issue of Subdivision Certificate.

## **7 PROPONENT WARRANTIES AND INDEMNITIES**

- 7.1 The Proponent warrants to Council that:
- (a) It is the registered owner of the Land;
  - (b) It is able to fully comply with its obligations under this Agreement;
  - (c) It has full capacity to enter into this Agreement; and
  - (d) There is no legal impediment to it entering into this Agreement, or performing its obligations under this Agreement.



## 8 REVIEW OF THIS AGREEMENT

- 8.1 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.

## 9 FURTHER AGREEMENT RELATING TO THIS AGREEMENT

- 9.1 The Parties may, at any time and from time to time, enter into agreements relating to the subject matter of this Agreement for the purpose of implementing this Agreement that are not inconsistent with this agreement.

## 10 DISPUTE RESOLUTION

- 10.1 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 Proponent 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.
- 10.2 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 this clause 10, 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.
- 10.3 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.
- 10.4 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.

10.5 Despite clause 10.1, either Council or the Proponent 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.

## **11 COSTS**

11.1 The Proponent 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 \$2,500.00.
- (b) Advertising and exhibiting this planning agreement in accordance with the Act, to a maximum of \$350.00, and
- (c) All costs related to registration of this planning agreement where required, within 7 working days after receipt of a tax invoice from Council.

## **12 REGISTRATION OF THIS AGREEMENT**

12.1 The parties agree to register this Agreement for the purposes of s. 93H(1) of the Act.

12.2 On execution, the Proponent is to provide Council with each of the following, at no cost to Council:

- 12.2.1 An instrument in registrable form requesting registration of this Agreement on the title to the Land duly executed by the Proponent, and
- 12.2.2 The written and irrevocable consent of each person to referred in s. 93H(1) of the Act to that registration; and
- 12.2.3 Production of the certificate of title for the Land, for the purpose of procuring the registration of this Agreement.

12.3 The Proponent is to do such other things as are reasonably necessary to remove any notation relating to this Agreement from the title to the Land once the Proponent has completed its obligations under this Agreement or this Agreement is terminated or otherwise comes to an end for any other reason.

## **13 NOTICES**

13.1 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.

<b>(i)</b>	<b>Council:</b>	<b>Wyong Shire Council</b>
	Attention:	General Manager
	Address:	DX 7306 WYONG
	Fax No:	(02) 4350 2098
	Email:	<a href="mailto:wsc@wyong.nsw.gov.au">wsc@wyong.nsw.gov.au</a>

**(ii) Proponent: I.D.A. Safe Constructions Pty Ltd**

Attention: Ian Adams  
Address: C/- Paradigm Planning  
PO Box 4034,  
Rathmines NSW 2283  
Email: [paradigm@exemail.com.au](mailto:paradigm@exemail.com.au)

- 13.2 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.
- 13.3 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.
- 13.4 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.

**14 ENTIRE AGREEMENT**

- 14.1 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.

**15 FURTHER ACTS**

- 15.1 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.

**16 GOVERNING LAW AND JURISDICTION**

- 16.1 This Agreement is governed by the law of New South Wales, Australia. The parties submit to the nonexclusive 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.

**17 NO FETTER**

17.1 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.

**18 SEVERABILITY**

18.1 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.

**19 WAIVER**

19.1 The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Agreement, 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.

**20 EXPLANATORY NOTE**

20.1 The Appendix contains the Explanatory Note relating to this Agreement required by Clause 25E of the Regulation.

20.2 Pursuant to Clause 25E(7) of the Regulation, the Parties agree that the Explanatory Note in the Appendix is not to be used to assist in construing this Agreement.

**21 EXECUTION PANEL**

**EXECUTED** as a Voluntary Planning Agreement

Date:

~~The Common Seal of WYONG SHIRE COUNCIL was hereunto affixed on the \_\_\_\_\_ day of \_\_\_\_\_ 2015 pursuant to a resolution of the Council made on the \_\_\_\_\_ day of \_\_\_\_\_ 2015:~~

*EXECUTED PURSUANT TO DELEGATED AUTHORITY UNDER SECTION 377 OF THE LOCAL GOVERNMENT ACT, 1993.*



~~General Manager~~ *ACTING CHIEF EXECUTIVE OFFICER*

Witness [BLOCK LETTERS]

~~MICHAEL WHITTAKER~~ *R NOBLE*

*TANYA O'BRIEN*

Name [BLOCK LETTERS]

Name [BLOCK LETTERS]

Director/Secretary [if not Sole Director]

Witness [BLOCK LETTERS]

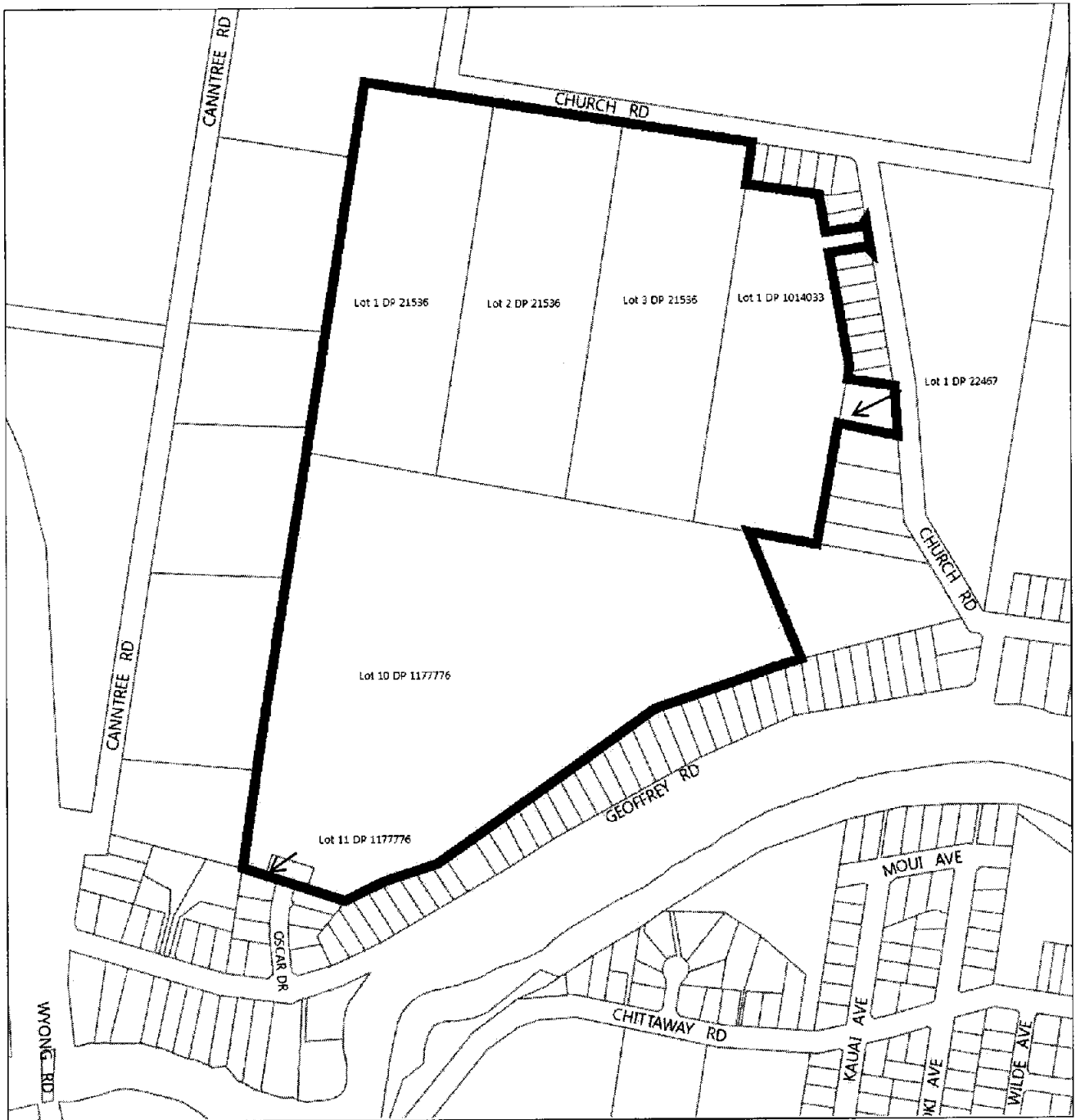
~~IVAN ALEX HOLLAND~~

*SOPHIE SION S. Sion*

Name [BLOCK LETTERS]

Name [BLOCK LETTERS]

**SCHEDULE 1**



**SCHEDULE 2**

ITEM	DEFINED TERM	PARTICULARS
1	Proponent	I.D.A. Safe Constructions Pty Ltd – Ivan Alex Holland (Director) ABN: 62000763468 ACN: 000763468 4/11 Patterson Street, Double Bay NSW 2028 (PO Box 138 DOUBLE BAY NSW 2324)
2	Proponent's Representative	Mr Ian Adams Paradigm Planning & Development Consultants Pty Ltd PO Box 4034 RATHMINES NSW 2283

## **APPENDIX**

(Clause 20)

*Environmental Planning and Assessment Regulation 2000*

(Clause 25E)

## **EXPLANATORY NOTE**

### **Voluntary Planning Agreement**

Under s93F of the *Environmental Planning and Assessment Act, 1979*

#### **Parties**

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

**I.D.A. Safe Constructions Pty Ltd** (ABN 6200763468; ACN 00763468) of 4/11 Patterson Street, Double Bay NSW 2028 (PO Box 138 DOUBLE BAY 2324), in the State of New South Wales (**Proponent**)

#### **Description of the Land to which the Planning Agreement Applies**

Lot 1 – 3 DP21536, Lot 1 DP 1014033, Lot 1 DP22467 and Lots 10 & 11 DP1177776, also known as 10 Oscar Drive (formerly 19-23 Geoffrey Road), Chittaway Point

#### **Description of Proposed Development**

Development means the subdivision of the land to create residential building allotments and associated infrastructure

#### **Summary of Objectives, Nature and Effect of the Planning Agreement**

##### **Objectives of the Agreement**

The objective of the Agreement is to require the Proponent to undertake actions prior to submitting a Development Application in relation to the Land which offsets the impacts to threatened species resulting from future Development of the Land.

##### **Nature of the Planning Agreement**

The Agreement is a planning agreement under s93F of the *Environmental Planning and Assessment Act 1979* (Act). It is an agreement between the Council and the Proponent. The Agreement is a voluntary agreement under which provisions are made by the Proponent for the conservation or enhancement of the natural environment s93F(2)(f).



## **Effect of the Agreement**

The Agreement:

- relates to the Instrument Change,
- relates to the carrying out by the Proponent of the Development on the Land,
- does not exclude the application of s94A, s94 or s94EF to the Development,
- requires the Proponent to offset the impacts to threatened species resulting from future Development of the Land,
- is to be registered on the title to the Land,
- provides dispute resolution methods for a dispute under the Agreement, being mediation and arbitration, and
- provides that the Agreement is governed by the law of New South Wales.

## **Assessment of the Merits of the Agreement**

### **Planning Purposes Served by the Agreement**

The Agreement:

- encourages the protection of the environment, including the protection and conservation of native animals and plants, including threatened species, populations and ecological communities, and their habitats,
- promotes the co-ordination of the orderly and economic use of land,
- promotes ecological sustainable development, and
- promotes the sharing of responsibility for environmental planning between the different levels of government in the State.

The Agreement provides a reasonable means of achieving the above planning purposes as it balances the interests of both parties, and achieves a conservation outcome, consistent with the standardised methodology of the New South Wales State Government and is in the public interest.

### **How the Agreement Promotes the Public Interest**

The Agreement promotes the public interest by promoting the objects of the Act as set out in s5(a)(ii),(vi) and (vii) and s5(b).

**For Planning Authorities:**

***Development Corporations – How the Agreement Promotes its Statutory Responsibilities***

Not Applicable.

***Other Public Authorities – How the Agreement Promotes the Objects of the Act under which it is Constituted***

Not Applicable.

***Councils – How the Agreement Promotes the Council's Charter***

The Agreement promotes the elements of the Council's Charter by:

- enabling the proper management, development, protection, restoration, enhancement and conservation the environment of the area for which it is responsible, in a manner that is consistent with and promotes the principles of ecologically sustainable development, and
- providing a means that allows the wider community to make submissions to the Council in relation to the Agreement.

***Whether the Agreement Conforms with Council's Capital Works Program***

Not Applicable.

***Whether the Agreement specifies that certain requirements be complied with before issuing a Construction Certificate, Subdivision Certificate or Occupation Certificate***

Yes. The Agreement specifies an obligation for the Proponent to demonstrate that offsets for the impacts to threatened species resulting from future Development of the Land are available and have been arranged, prior to lodging a Development Application for Development of the Land, therefore prior to Council issuing a Subdivision Certificate.