

Wyong Shire Council

CENTRAL COAST

LEGAL DOCUMENT LODGEMENT FORM

Lodgement Date	4 FEBRUARY 2015	
Date of Legal Documents	3 FEBRUARY 2015	
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)	That time at which the Proponent completes their obligations identified by Clause 6 of the agreement.	
Parties	Pigeon Point Pptd. David Sharpe (Proprietor)	Wyong Shire Council Greg McDonald (Acting General Manager)
Address	14A William St RAYMOND TERRACE NSW 2324	2 HELY ST WYONG NSW 2259
Details of Document	The Proponent agrees to obtain a Biobanking Statement which demonstrates the retirement of credits to offset the development of the land	
Property Description	Lot (PT) 200 DP 1181287	
Review Date	N/A	
Responsible Officer	JENNY NEWING	
Folder Number	R2/13/2012	
Note: This form and the original documents are to be delivered to Corporate Information		
Legal Document supersedes LDOC		(if applicable)
<p>After legal document is recorded on the computer a TRIM link is emailed to the responsible officer advising of registration</p> <p>Please also send to Sharron Colquhoun</p> <p>Send Link to Meg Newington for the Agreement Register to be updated.</p> <p>Please tick if you need the Original Document to be returned to you for mailing out <input type="checkbox"/></p>		

File Name: Legal Document Lodgement Form

Responsible Officer: Team Leader, Corporate Information

Approval Date: December 2013

Warning: Printed copies of this document no in an official Manual MAY NOT BE THE LATEST. The most up-to-date version is located on the WSC Intranet.

Revision No: 1

Approved by: Chief Information Officer, Information Technology

Document Review-by Date: December 2016

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Memorandum

To	Greg McDonald Acting General Manager	File no	RZ/13/2012
From	Jenny Mewing Strategic Planner	Date	29 January 2015
Subject	Voluntary Planning Agreement for RZ/13/2012 Pt Lot 200 DP 1181287 (2-10 Cams Boulevard) Summerland Point		

Dear Greg,

At the Council Meeting of 10 December 2014 with regard to the abovementioned land, it was resolved:

- 1369/14** *That Council request the General Manager to sign the Voluntary Planning Agreement (VPA) which requires the Proponent to undertake the necessary actions to offset the impacts to threatened flora and fauna for the future development of Pt Lot 200 DP 1181287 through the Bio Banking Scheme;*
- 1370/14** *That Council request the General Manager to exercise the Delegation issued by the Department of Planning and Environment (dated 7 February 2014) for RZ/13/2012 (PP_2013_Wyong_008_00) to proceed with the steps for drafting and making WLEP Amendment No. 13;*
- 1371/14** *That Council advise all those who made a submission of the decision.*

Further to this resolution, the VPA has been signed by the Proponent and resubmitted for Council's endorsement.

It would be appreciated if you could sign and date both copies of the attached VPA as indicated, in the presence of a witness. A copy will be returned to the Proponent for their records.

Following this, a request to commence drafting of Wyong Local Environmental Plan 2013 (Amendment No. 13) will be submitted to Parliamentary Counsel. A further request for your endorsement of the final instrument will be made in due course.

Yours faithfully



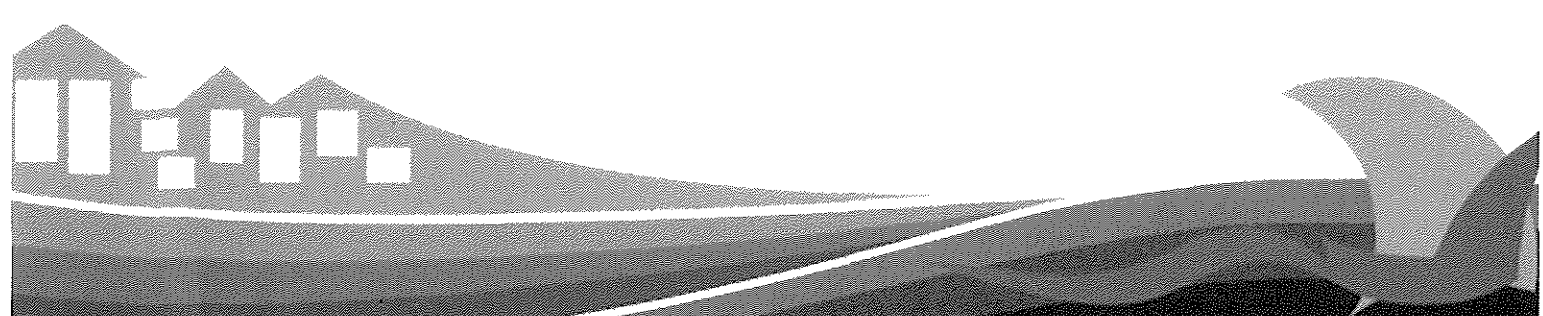
Jenny Mewing
Strategic Planner
REZONINGS



Tanya O'Brien
Manager
DEVELOPMENT AND REZONING
ENDORSED/NOT ENDORSED



Scott Cox
Director
DEVELOPMENT AND BUILDING
ENDORSED/NOT ENDORSED



VOLUNTARY PLANNING AGREEMENT

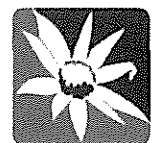
Under s. 93F of the *Environmental Planning and Assessment Act 1979*

WYONG SHIRE COUNCIL

AND

PIGEON POINT PTY LTD

DATE: 3 FEBRUARY 2015



Wyong
Shire
Council
CENTRAL COAST

Cams Boulevard, Summerland Point

Planning Agreement

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Cams Boulevard, Summerland Point

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: Pigeon Point Pty Ltd
Address: PO Box 93, LORN NSW 2320
Telephone: 02 4015 2666
Facsimile: 02 4015 2611
Representative: Chris Smith

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: 3 FEBRUARY 2015

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

and

Pigeon Point Pty Ltd (ABN 89 151 104 817; ACN 151 104 817) of 14A William Street, Raymond Terrace, in the State of New South (**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 BioBanking Scheme

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 offset the impacts to threatened flora and fauna for the future development of the Land through the BioBanking Scheme.
- 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 *Tetratheca juncea* and other native vegetation through a legally recognised methodology and 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*.

Consent means the consent granted to the Development Application.

Council means Wyong Shire Council.

Current Development Contributions Plan means the Northern Districts Development Contribution Plan and the Section 94 Contributions Plan for Wyong Shire No. 11 – Shire wide Infrastructure, Services and Facilities – September 2013.

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 Pt Lot 200 DP 1181287 also known as 2 – 10 Cams Boulevard, Summerland 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/10/2012 and Department of Planning and Environment reference number PP_2013_WYONG_008_00.

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

Proponent's Representative is the person identified in Item 2 of Schedule 1 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 the Instrument Change, undertake each of the following, at no cost to Council:
- (a) Undertake an assessment of the Land in accordance with the Biobanking Assessment Methodology and Credit Calculator, and
 - (b) Make the necessary arrangements and applications to obtain a Biobanking Statement to accompany any Development Application to offset the impacts to threatened species resulting from undertaking the Development on the Land.

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 one or more of 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 \$1000.*
- (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.

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.

- (i) Council: **Wyong Shire Council**
 - Attention: General Manager
 - Address: DX 7306 WYONG
 - Fax No: (02) 4350 2098
 - Email: wsc@wyong.nsw.gov.au
- (ii) Proponent: **Pigeon Point Pty Ltd**
 - Attention: Chris Smith
 - Address: C/- ADW Johnson Pty Ltd
2 Bounty Close,
Tuggerah NSW 2259

Email: chriss@adwjohnson.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 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.

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.

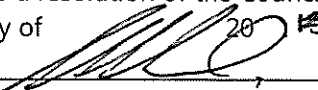
20.2 Pursuant to Clause 25E(7) of the Regulation, the Parties agree that the Explanatory Note in the Appendix is not to be used to assist in construing this Agreement.

21 EXECUTION PANEL

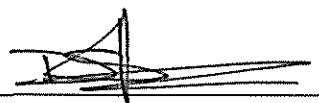
EXECUTED as a Voluntary Planning Agreement

Date: 3/1/15


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 day of 20 15


A/General Manager

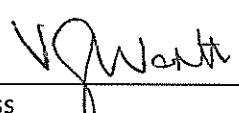
~~MICHAEL WHITTAKER~~ GREG McDONALD
Name [BLOCK LETTERS]


Director/Secretary [if not Sole Director]

David Sharpe
Name [BLOCK LETTERS]


Witness

Kaitina Curtis
Name [BLOCK LETTERS]


Witness

Vanessa WORTH
Name [BLOCK LETTERS]

SCHEDULE 1

ITEM	DEFINED TERM	PARTICULARS
1	Proponent	Pigeon Point Pty Ltd - David Murray Sharpe (Director) 14A William Street RAYMOND TERRACE NSW 2324 ABN 89 151 104 817 ACN: 151104817
2	Proponent's Representative	ADW Johnson Pty Ltd C/- Mr Chris Smith, Senior Town Planner 2 Bounty Close TUGGERAH NSW 2259

APPENDIX

(Clause 20)

Environmental Planning and Assessment Regulation 2000
(Clause 25E)

EXPLANATORY NOTE

Draft 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**)

Pigeon Point Pty Ltd (ABN 89 151 104 817; ACN 151 104 817) of 14A William Street, Raymond Terrace, in the State of New South (**Proponent**)

Description of the Land to which the Draft Planning Agreement Applies

Pt Lot 200 DP 1181287 also known as 2 – 10 Cams Boulevard, Summerland Point NSW 2259

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 Draft Planning Agreement

Objectives of the Draft Planning Agreement

The objective of the Draft Planning Agreement is to require the Proponent to obtain a Biobanking Statement as part of a Planning Proposal and to submit with a Development Application which offsets the impacts to threatened species resulting from future Development of the Land.

Nature of the Draft Planning Agreement

The Draft Planning 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 Draft Planning 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 Draft Planning Agreement

The Draft Planning 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 obtain a Biobanking Statement to submit with a Development Application which offsets 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 Draft Planning Agreement

Planning Purposes Served by the Draft Planning Agreement

The Draft Planning 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 draft 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 Draft Planning Agreement Promotes the Public Interest

The Draft Planning 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 Draft Planning Agreement Promotes its Statutory Responsibilities

Not Applicable.

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

Not Applicable.

Councils – How the Draft Planning Agreement Promotes the Council's Charter

The Draft Planning 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 Draft Planning Agreement Conforms with Council's Capital Works Program

Not Applicable.

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

Yes. The Draft Planning Proposal specifies that the obligation to obtain a Biobanking Statement must be complied with prior to lodging a Development Application for Development of the Land, therefore prior to Council issuing a Subdivision Certificate.