



Wyong Shire Council

CENTRAL COAST

LEGAL DOCUMENT LODGEMENT FORM

Lodgement Date	22 JANUARY 2016
Date of Legal Documents	21 JANUARY 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)	N/A.
Parties	1. PYOAND PTY LTD 2. WYONG SHIRE COUNCIL
Address	1. P.O BOX 5 WYONG NSW 2. 2 HELM ST WYONG NSW
Details of Document	VOLUNTARY PLANNING AGREEMENT FOR THE CONSTRUCTION AND TRANSFER OF A SEWER PUMP STATION
Property Description	Lot 8 DP 816552
Review Date	N/A.
Responsible Officer	RODNEY MORGAN
Folder Number	RZ/A/2009
Note: This form and the original documents are to be delivered to Corporate Information	
Legal Document supersedes LDOC	(if applicable)
After legal document is recorded on the computer a TRIM link is emailed to the responsible officer advising of registration	
Send Link to Meg Newington for the Agreement Register to be updated.	
Please tick if you need the Original Document to be returned to you for mailing out <input type="checkbox"/>	

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

Privacy Statement: The information being supplied in this form is required to process the bank guarantee lodgement form, and will be stored as per Council's guidelines for document management. Access to this information will be provided to appropriate members of staff and will otherwise not be publicly available. The information will be disposed of in accordance with Council's Records Disposal Schedule. Further queries in regards to this Privacy Statement can be made to Council's Public Officer.

VOLUNTARY PLANNING AGREEMENT

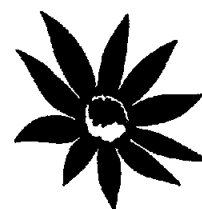
Under s. 93F of the *Environmental Planning and Assessment Act 1979*

WYONG SHIRE COUNCIL

AND

PYOAND PTY LTD

DATE: 21 JANUARY 2016



Wyong
Shire
Council

PLANNING AGREEMENT

DATE: 21 JANUARY 2016

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

and

Pyoand Pty Ltd (ABN 25 003 559 822) of PO Box 5 Wyong, NSW, 2250 ("Pyoand").

BACKGROUND

- A. The proposal is to amend Wyong LEP 2013 by zoning the Land to Residential R2 to allow residential subdivision of the Land. Vegetation retention and APZ areas are indicated to be provided through building restrictions on lot titles.
- B. Due to servicing constraints, there is inadequate Council infrastructure to provide sewer to these properties. This VPA sets out the agreement between Wyong Shire Council and Pyoand.
- C. Parties have agreed that Pyoand will pay monetary contributions in accordance with this Agreement.
- D. Parties have agreed that Pyoand agree to construct a Sewage Pump Station, and associated infrastructure including a Sewer Rising Main, to Council Requirements and dedicate the Land on which the Sewage Pump Station will be contained to Council, with the provision for appropriate ongoing access provided for.

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 Planning Proposal RZ/4/2009 and any subsequent Development Application for residential subdivision on the subject Land.

3 OPERATION OF THIS AGREEMENT

- 3.1 This Agreement takes effect once executed by all parties.
- 3.2 This Agreement identifies the arrangements with regard to:
- a The construction of the Sewage Pump Station on the Sewage Pump Station Land.
 - b Construction of a Sewer Rising Main within the Sewer Rising Main Land and the granting of appropriate easements over parts of the Sewer Rising Main Land to ensure access for maintenance of the Sewer Rising Main by Council.
 - c The transfer of the ownership of the Sewage Pump Station Land to Council.
 - c1 The transfer of the Sewer Rising Main to Council .
 - d. The payment of Monetary Contributions by the Developer to Council towards the ongoing maintenance of the Sewage Pump Station and the Sewer Rising Main.
- 3.3 This Agreement does **not** exclude the operation of s.94 and s.94A of the Act or the *Water Management Act 2000* in respect to the development of the Land.
- 3.4 This Agreement does **not** apply to any obligation that the Developer 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* (NSW).

Consent means consent granted to any Development Application.

Council means Wyong Shire Council or its representatives or assigns or successors.

CPI-A means, for the purposes of clause 5.1 of this Agreement, the most recent Consumer Price Index (All Groups and weighted average for all 8 cities) published by the Australian Bureau of Statistics at the date of this Agreement.

CPI-B means, for the purposes of clause 5.1 of this Agreement, the most recent Consumer Price Index (All Groups and weighted average for all 8 cities) published by the Australian Bureau of Statistics at the time the contribution is paid to Council.

Current Development Contributions Plan means Section 94 Contributions Plan

Developer means the owner of the Land, the parties to this agreement excluding Wyong Shire Council and the parties that have the rights to act under the Consent.

Development Application means a development application seeking the grant of consent under Part 4 of the Act that seeks to subdivide the whole or any part of the Land for residential purposes.

Land means the land known as Lot 8 DP 816552 in the State of New South Wales.

Monetary Contributions means the Monetary Contributions specified in clause 5 of this Agreement.

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.

Rezoning Application means RZ/4/2009, which was submitted to Council and relates to the Land.

Sewage Pump Station means the construction of a sewage pump station, and works that provide for all weather access between that sewer pump station and the nearest public road, on the Sewage Pump Station Land in accordance the criteria set out in the Sewage Pump Station Criteria.

Sewage Pump Station Criteria means the criteria set out in Appendix 2 to this Agreement.

Sewage Pump Station Land means the land owned by the Developer on which the Sewage Pump Station is constructed.

Sewer Rising Main means a rising main in accordance with the Sewage Pump Station Criteria to connect the Sewage Pump Station to the sewage system operated by Council.

Sewer Rising Main Easements means the granting of easements that burden those parts of the Sewer Rising Main Land that are 2.5 metres either side of the centerline of the Sewer Rising Main installed within the Sewer Rising Main Land, such easements to benefit Council and to be in terms prescribed by Part 6 of Schedule 4A to the *Conveyancing Act 1919*.

Sewer Rising Main Land means the land within which the Sewer Rising Main is constructed.

5 PAYMENT OF MONETARY CONTRIBUTIONS

- 5.1 The table at Appendix 1 sets out the Opinion of Probable Cost for the proposed ongoing operating costs of the Sewer Pumping Station. The total cost payable is \$80,967. This monetary contribution, adjusted in accordance with the following formula to the date of payment, is to be paid to Council by the Developer prior to the issuing of any subdivision certificate pertaining to the Land.

Monetary contribution to be paid = \$80,976 x CPI-B/CPI-A

- 5.2 In addition to the payment to be paid pursuant to clause 5.1, the Developer must do all acts and things to do each of the following, at no cost to Council, prior to the issue of any subdivision certificate in respect to the Land:
- (a) Design and construct the Sewage Pump Station on the Sewer Pump Station Land; and
 - (b) Design and construct the Sewer Rising Main within the Sewer Rising Main Land; and
 - (c) Transfer to Council all right title and interest in the Sewage Pump Station Land; and
 - (d) The effective burdening of the Sewer Rising Main Land with the Sewer Rising Main Easements for the benefit of Council.

6 DEVELOPER WARRANTIES AND INDEMNITIES

6.1 The Developer 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.

6.2 The Developer guarantees to Council the due and punctual payment of all moneys 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 The Developer agrees that this Agreement will run with the Land and will bind all future owners.

6.6 The Developer agrees that it will inform all persons that intend to take an interest in this Land (excluding developed and approved residential units) 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 \$3000.
 - (b) Advertising and exhibiting this planning agreement in accordance with the Act, to a maximum of \$250 for each occasion, and
 - (c) Registration of this planning agreement where required.

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: Pyoand Pty Ltd
Address: PO Box 5 Wyong NSW 2259
Email: andrew.neil@thedesignpartnership.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, 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

Date:

Executed by WYONG SHIRE COUNCIL on the
day of 21 February 2016 pursuant to
delegations issued under s. 377 of the *Local
Government Act 1993*:

Monica Redmond
Witness

Ad Noble
Delegate

21/1/16

[Signature]
Director/Secretary [if not Sole Director]

[Signature]
Director/Sole Director

RONEY PHILIP WICKS
Name [BLOCK LETTERS]

JOHN BUTLICK
Name [BLOCK LETTERS]

APPENDIX 1 – OPERATION AND MAINTENANCE COSTS – SEWER PUMP STATION

	SCHEME :	Operation & Maintenance of SPS				
		Anderson Rd, Glenning Valley				
	BASE YEAR OF CALCULATION			2,014		
	Discount Rate			5%		
	Asset	Year of O&M	Capacity Consumed	Cost (\$)	Cumulative PV (\$)	Annual NPV (\$)
Year	Item					
1	O&M of SPS	2014	2092	4,800	4,571	4,571
2	O&M of SPS	2015	2092	4,800	8,925	4,354
3	O&M of SPS	2016	2092	4,800	13,072	4,146
4	O&M of SPS	2017	2092	4,800	17,021	3,949
5	O&M of SPS	2018	2092	4,800	20,781	3,761
6	O&M of SPS	2019	2092	4,800	24,363	3,582
7	O&M of SPS	2020	2092	4,800	27,775	3,411
8	O&M of SPS	2021	2092	4,800	31,023	3,249
9	O&M of SPS	2022	2092	4,800	34,118	3,094
10	O&M of SPS	2023	2092	4,800	37,064	2,947
11	O&M of SPS	2024	2092	4,800	39,871	2,806
12	O&M of SPS	2025	2092	4,800	42,544	2,673
13	O&M of SPS	2026	2092	4,800	45,089	2,546
14	O&M of SPS	2027	2092	4,800	47,513	2,424
15	O&M of SPS	2028	2092	4,800	49,822	2,309
16	O&M of SPS	2029	2092	4,800	52,021	2,199
17	O&M of SPS	2030	2092	4,800	54,116	2,094
18	O&M of SPS	2031	2092	4,800	56,110	1,994
19	O&M of SPS	2032	2092	4,800	58,010	1,900
20	O&M of SPS	2033	2092	4,800	59,819	1,809
21	O&M of SPS+ Replace E&M Works	2034	2092	24,800	68,720	8,802
22	O&M of SPS	2035	2092	4,800	70,361	1,641
23	O&M of SPS	2036	2092	4,800	71,924	1,563
24	O&M of SPS	2037	2092	4,800	73,412	1,488
25	O&M of SPS	2038	2092	4,800	74,830	1,417
26	O&M of SPS	2039	2092	4,800	76,180	1,350
27	O&M of SPS	2040	2092	4,800	77,465	1,286
28	O&M of SPS	2041	2092	4,800	78,690	1,224
29	O&M of SPS	2042	2092	4,800	79,856	1,166
30	O&M of SPS	2043	2092	4,800	80,967	1,111
	Total				\$80,967	

APPENDIX 2 - SEWAGE PUMP STATION CRITERIA

Appropriate Standard(s)

- Design to generally follow the WSAA Sewerage Pumping Station Code of Australia (SWC Edition).
- Pump sizing in accordance with the PWWF calculation method detailed in the WSAA Sewerage Pumping Station Code of Australia (HWC Edition) which is based on the traditional NSW Public Works method.
- Four hour hold time required between Top Water Level and Overflow Level. Otherwise provision of permanent standby diesel pump is required.
- Council's existing functional description for operational setpoints/alarms
- "Temporary" stations cannot be guaranteed to be temporary and are to be designed as per a permanent station. Future refurbishment of temporary stations should not become a burden on the rest of the community.
- Septicity control required where detention time exceeds four hours. Average dry weather flow used in calculation to be 240L/EP/day @ 2.4EP/ET.
- Pump arrangement and rising main selection to be based on a Net Present Value basis with regard given to septicity, slime control and water hammer considerations.
- Valves (Stop valves and Reflux Valves, Bypass Tee) to be located in external valve pit.
- Council to provide existing specifications for use by the designer.
- The access road and site general arrangement must allow Council's design vehicle (fitter's crane truck) to legally enter the site and access the pumps/valves using the truck mounted crane. Turning templates and crane details will be provided by Council.
- Provision of emergency flow relief structure and discharge manhole venting in accordance with the above mentioned WSAA code.

Electrical Design

- Design in accordance with Council's Standard Specifications for New Electrical Assets (ES-01)
- Council has a standard switchboard design for all sites up to 45kW.
- Instrumentation required as described in SPS functional description and ES-01.

Access Covers

- WSC Standard aluminium lid design and locking arrangement to be modified to suit proposed opening size.

Internal Ladders/Platforms

- Generally single stainless steel vertical ladder to be provided with no internal platforms or ladder cages.