

Planning Proposal Attachment 14

Lot 514 DP 729979, Bateau Bay

Deed of Variation to Deed of Agreement between Wyong Shire Council and the State of New
South Wales

**Deed of Variation: Deed of Agreement for
Potential Rezoning and Transfer of Land
being parts of Lot 514 in DP 729979 located at
2-8 Bay Village Road, Bateau Bay**

The State of New South Wales

and

Wyong Shire Council

Table of Contents

1. Variation of Deed of Agreement.....1

2. Other Provisions.....3

Attachment: Annexure C

Deed of Variation: Deed of Agreement for Potential Rezoning and Transfer of Land being parts of Lot 514 in DP729979 located at 2-8 Bay Village Road, Bateau Bay

Date	2009
Parties	
	The State of New South Wales
	Wyong Shire Council ACN
Background	
	The parties have agreed to vary the Deed of Agreement made on 16 October 2008 between the parties (Deed of Agreement) upon the terms and conditions of this Deed.

Deed

The parties agree as follows:

1. Variation of Deed of Agreement

1.1 The parties vary the Deed of Agreement as at the date of this Deed as follows:

- (a) insert "upon the terms provided in Annexure C" after "covenant" where first appearing in clause 2.1.2;
- (b) delete "at no cost to the Council" in clause 2.1.2;
- (c) insert the following additional clause:
 - "2.4 (a) Notwithstanding clause 2.1.2, the Owner may with the written agreement by the Council, provide an alternative area for car parking and associated infrastructure on other land owned by the Owner (as assessed by the Council during the consent process referred to in clause 2.1.2) which other land must be in close proximity and accessible to Area 2 and is designed to avoid pedestrian/vehicular conflicts.
 - (b) If there is written agreement between the Owner and the Council in accordance with clause 2.4(a):

- (i) the Owner must promptly register at the Owner's expense, on the title of the land comprising the alternative area, a public positive covenant upon the terms of Annexure C in favour of the Council with the land comprising the alternative area being substituted as the Lot Burdened in the Positive Covenant;
- (ii) clause 9 shall apply to such other land whereby the Council may lodge and maintain a caveat against the title of such other land to record the Council's interest under this Deed; and
- (iii) following registration in accordance with clause 2.4(b)(i), the Council must release the Positive Covenant then registered on the title of Area 2.;

(d) insert the following additional clause:

"2.5 The cost of any development of the required car parking and associated infrastructure or works within Area 2 in accordance with clause 2.1.2 or within any alternative area in accordance with any agreement in accordance with clause 2.4(a) to cater for the Council's development of Area 1 (as assessed by the Council during the consent process referred to in clause 2.1.2) must be borne by the Owner unless such car parking and associated infrastructure or works have already been developed as part of an approved development of Area 1."; and

(e) the document attached to this Deed is attached to the Deed of Agreement as Annexure C."

1.2 The parties each ratify and affirm the Deed of Agreement as varied by this Deed.

2. Other Provisions

- 2.1 The parties each agree that Clauses 7 and 8 of the Deed of Agreement also apply to this Deed.

Executed as a Deed

Signed on behalf of **The State of New South Wales** by the Manager, Crown Land Strategic Development and Marketing, Crown Lands Division under delegated authority pursuant to Section 180 of the *Crown Lands Act 1989* in the presence of:



Witness

Greg Foster
Manager, Crown Land
Strategic Development & Marketing



Greg Foster

Signed on behalf of **Wyong Shire Council** by the General Manager under delegated authority in accordance of the resolutions of Wyong Shire Council dated 14 December 2005 and 14 November 2007 in the presence of:

Witness

Kerry Yates
General Manager

ANNEXURE C

INSTRUMENT SETTING OUT TERMS OF POSITIVE COVENANT INTENDED TO BE CREATED PURSUANT TO SECTION 88B OF THE CONVEYANCING ACT, 1919

Lengths are in metres

(Sheet 1 of 2 Sheets)

PLAN:

DP

Plan of Subdivision of Lot 514 in
DP 729979

Full Name and Address of
Proprietors of the Land

THE STATE OF NEW SOUTH WALES
C/- The Department of Lands
P.O. Box 3935
PARRAMATTA NSW 2124

PART 1

1. Identity of covenant firstly
referred to in abovementioned plan.

Positive Covenant

Schedule Of Lots Affected

Lot Burdened

Lot Benefited

52

51

PART 2

Terms of Positive Covenant firstly referred to in abovementioned plan:

1. The registered proprietor from time to time of the Lot burdened shall as and when requested by the registered proprietor of the Lot benefited provide within the Lot burdened any area as may be required for car parking and associated infrastructure to meet the parking requirements [as assessed by Wyong Shire Council (**the Council**) during the consent process under the Environmental Planning and Assessment Act, 1979 in accordance with the provisions of the Council's DCP 2005: Chapter 61 Car Parking] ("**Consent Process**") to cater for the development of the Lot benefited subject to the following provisions -
 - (a) No compensation for the use of the area will be payable to the registered proprietor of the Lot burdened.
 - (b) The location and dimensions of the area to be provided for car parking and associated infrastructure within the Lot burdened is to be determined by written agreement between the registered proprietor of the Lot burdened and the registered proprietor of the Lot benefited before any development application is determined on the affected Lots;

INSTRUMENT SETTING OUT TERMS OF POSITIVE COVENANT
INTENDED TO BE CREATED PURSUANT TO SECTION 88B
OF THE CONVEYANCING ACT, 1919

Lengths are in metres

(Sheet 2 of 2 Sheets)

PLAN:

DP

Plan of Subdivision of Lot 514 in

DP 729979

- (c) The cost of any development of the required car parking and associated infrastructure or works within the area of the Lot burdened to cater for the Council's development of the Lot benefitted (as assessed by the Council during the Consent Process) is to be borne by the registered proprietor of the Lot burdened unless such car parking and associated infrastructure or works has already been developed as part of an approved development of the Lot benefitted;
- (d) The registered proprietor of the Lot burdened may with the written agreement by the registered proprietor of the Lot benefitted provide an alternative area for car parking and associated infrastructure on other land owned by the registered proprietor of the Lot burdened (as assessed by the Council during the Consent Process) which other land must be in close proximity and accessible to the Lot benefitted and is designed to avoid pedestrian/vehicular conflicts.
- (e) If there is written agreement between the registered proprietor of the Lot burdened and the registered proprietor of the Lot benefitted in accordance with Item 1(d):
- (i) the registered proprietor of the Lot burdened must promptly register at its expense, on the title of the land comprising the alternative area a public positive covenant upon the terms of Annexure C in favour of the registered proprietor of the Lot benefitted with the land comprising the alternative area being substituted as the Lot Burdened in such public positive covenant;
 - (ii) the registered proprietor of the Lot benefitted may lodge and maintain a caveat against the title of such other land to record the interest of the registered proprietor of the Lot benefitted in such other land; and
 - (iii) following registration in accordance with Item 1(e)(i), the registered proprietor of the Lot benefitted must release this Positive Covenant and any caveat registered in accordance with Item 1(e)(ii) of this Positive Covenant.

Name of Authority or Person
empowered to Release Vary or Modify
the Positive Covenant referred to in the
above mentioned Plan:

The Registered Proprietor of the Lot
benefitted.

PART 3

Signed byby
authority pursuant to section 13L of the
Real Property Act 1900 from the Minister
for Lands on behalf of The State of New
South Wales in the presence of:

.....
Registered Proprietor

.....
Signature of Witness

.....
Name of Witness (BLOCK LETTERS)

c/- NSW Department Of Lands,
10 Valentine Avenue,
PARRAMATTA NSW 2150

.....
Land Development Officer

.....
Address of Witness

.....
Occupation of Witness