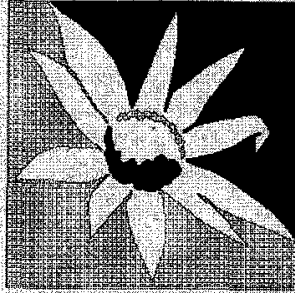


Planning Proposal Attachment 13

Lot 514 DP 729979, Bateau Bay

Deed of Agreement between Wyong Shire Council and the State of New South Wales
dated 16 October 2008



**DEED of AGREEMENT FOR POTENTIAL REZONING
(Area 1 and Area 2 Annexure 'B') AND TRANSFER OF
LAND (Area 1 Annexure 'B') BEING PARTS OF LOT 514 IN
DP 729979 LOCATED AT 2-8 BAY VILLAGE ROAD,
BATEAU BAY**

BETWEEN

The State of New South Wales (The Owner)

and

Wyong Shire Council (The Council)

Background

- A. The State of New South Wales is the registered proprietor of the land known as Lot 514 in Deposited Plan 729979 located at 2-8 Bay Village Road, Bateau Bay ("**Lot 514**").
- B. Studies undertaken to date have identified part of Lot 514 (being Area 1 and Area 2 as shown in Annexure B ("**Area 1**" and "**Area 2**" respectively)) as being suitable for rezoning to a Zone No. 3(b) Centre Support Zone with the remaining part of Lot 514 being Area 3 as shown in Annexure B ("**Area 3**"), (which is environmentally constrained) to retain its current (Zone No. 6(a) Open Space and Recreation Zone) zoning.
- C. This Deed of Agreement is in accordance with the Council's resolutions made on 14 December 2005 and 14 November 2007 (as set out in Annexure A) whereby part of Lot 514 (being Area 1 and Area 2) is to be considered for rezoning to Zone No 3(b) Centre Support.
- D. The proposed amendment to Wyong Local Environmental Plan 1991 will reflect the appropriate zoning for Area 1 and Area 2, thereby removing the existing Zone No. 5(a) Special Uses (Clubs and Community Purposes) zoning for Area 1 and Area 2, .

Operative provisions

1 Application of this Deed

- 1.1. This Deed applies to Lot 514 being Area 1, Area 2 and Area 3 as shown in Annexure "B".
- 1.2. The Council has resolved (as provided in Annexure A) to prepare a draft Local Environmental Plan to facilitate the proposed rezoning of Area 1 and Area 2 to Zone No. 3(b) Centre Support under Wyong Local Environmental Plan, 1991 ("**Draft LEP**").

2 Operation of this Deed

- 2.1 The Owner must:
 - 2.1.1 as soon as practicable after the date of this Deed, undertake at the Owner's expense, subdivision of Lot 514 as provided in Annexure B and register with Land and Property Information NSW a plan of subdivision of Lot 514 with separate title for Area 1 and one title for Area 2 and Area 3 (**Plan of Subdivision**);
 - 2.1.2 prior to any sale or transfer of Lot 514 by the Owner and when obtaining registration of the Plan of Subdivision, register on the title of Area 2 a public positive covenant in favour of the Council whereby the registered proprietor of Area 2 from time to time must provide within Area 2, car parking as assessed by 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 to cater for the Council's development of Area 1 at no cost to the Council ("**Positive Covenant**");
 - 2.1.3 transfer to the Council unencumbered title for Area 1 at no cost to the Council by the earlier of:
 - (a) within 6 weeks after the date of gazettal of the Draft LEP under s70 of the Environmental Planning and Assessment Act, 1979 (**the Act**);

whereby Area 1 and Area 2 are rezoned to a Zone No. 3(b) Centre Support ("**Gazettal**") or

- (b) the date of exchange of contracts for the sale or transfer of Area 2 by the Owner

provided that the Contracts referred to in this clause 2.1.3(b) does not include an option agreement entered into before the Gazettal whereby the Owner agrees to contract to sell Area 2:

- (i) after the date of the Gazettal; and
- (ii) after or simultaneously with the transfer of Area 1 to the Council in accordance with clause 2.1.3; and

2.1.4 pay all costs associated with stamping and registering the Plan of Subdivision and the Positive Covenant in accordance with this Deed.

2.2 The Council agrees to the following:-

2.2.1 without unreasonable delay to place the Draft LEP on public exhibition and subsequently furnish the Director General or the Minister of the Department of Planning with a report, documentation and a request for the making of the Draft LEP under Sec 68(4) or Sec 69(1) of the Act;

2.2.2 subject to gazettal of the Draft LEP, provide the Owner with draft amendments of any relevant Development Control Plan ("**DCP**") applying to Lot 514 for comment prior to amending the DCP's to reflect any development concession granted by the Council as referred to in clause 2.3; and

2.2.3 to pay all stamp duties that may be applicable to the transfer of Area 1 to the Council in accordance with this Deed.

2.3 At some time after gazettal, the then owner of Area 2 may lodge a development application proposing development of up to 6,800m² of bulky goods retail floor space on Area 2 for assessment by the Council as an appropriate development in accordance with the Act.

3 Application of s94 and s94A of the Environmental Planning and Assessment Act, 1979 to the Development

3.1 Development of the part of Lot 514 to be zoned 3(b) Centre Support under Wyong Local Environmental Plan, 1991 may be subject to further contributions under s94 and s94A of the Environmental Planning and Assessment Act, 1979 and charges under any relevant Development Servicing Plan which will apply irrespective of this Deed.

3.2 Those contributions referred to in clause 3.1 exclude the application of contributions for the provision of local community infrastructure land or facilities.

4 Dispute Resolution

4.1 If a dispute arises in connection with this Deed, then a party shall give written notice to the other parties setting out the matter in dispute.

- 4.2 The parties shall use their best endeavours to settle the dispute within 10 business days after the date of notification of the dispute, or such further period as the parties may agree to in writing.
- 4.3 Any dispute not resolved in accordance with clause 4.2, shall be referred to an expert agreed between the parties, (and failing agreement, the President for the time being of the Institute of Arbitrators and Mediators Australia), for determination by the expert at such time and place, and in accordance with such procedures as the expert may determine appropriate.
- 4.4 The expert will act as an expert and not as an arbitrator and the expert's decision shall be final and binding on the parties, except as to matters of law.
- 4.5 The cost of any referral and determination under this clause will be paid as determined by the expert.
- 4.6 Neither party is entitled to commence or maintain any action, whether by way of legal proceedings or arbitration, relating to any dispute until it has first been referred and determined to expert determination as provided in this clause.

5 Enforcement

- 5.1 This Deed will expire:
- 5.1.1 at 4:00pm on June 30th 2011 if by then Council has not submitted to the Director General or the Minister of the Department of Planning its report, documentation and request for the making of the LEP under Sec 68(4) or Sec 69(1) of the Act; or
- 5.1.2 twenty eight (28) days after Council receives notice from the Minister for Planning that the Minister has decided not to proceed with the draft LEP under Sec 70(1)(c) of the Act
- whichever occurs first.
- 5.2 Any time or other indulgence granted by one party to another party or any variation of the terms and conditions of this Deed or any judgment or order obtained by one party against another party will not in any way amount to a wavier of any of the rights or remedies of a party in relation to the terms of this Deed.

6 Notices

- 6.1 Any notice, consent, information, application or request that must or may be given or made to a Party under this Deed 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 below.
 - (b) Faxed to that Party at its fax number set out below.
 - (c) Emailed to that Party at its email address set out below.

Council

Attention: Director, Shire Planning

Address: PO Box 20, Wyong NSW 2259

Fax Number: (02) 4350 5407

Email: wsc@wyong.nsw.gov.au

The Owner

Attention: Manager, Crown Land Strategic Development & Marketing,
Department of Lands

Address: PO Box 3935
PARRAMATTA NSW 2124

Fax Number: (02) 8836 5365

Email: greg.foster@lands.nsw.gov.au

- 6.2 If a Party gives the other Party three (3) business 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.

7 Legal Costs

- 7.1 Each party must pay its own legal costs in connection with negotiating, preparing and executing of this Deed.

8 No fetter

- 8.1 It is acknowledged and agreed that this Deed does not fetter or restrict the power or discretion of the Council to resolve or otherwise agree to rezone part of Lot 514 or to determine any future applications in relation to Lot 514.
- 8.2 Nothing in this Deed shall be construed as requiring the Council, the Owner or the Minister administering the Crown Lands Act 1989 to do anything that would cause the any party to be in breach of any of their respective obligations at law, and without limitation, nothing shall be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

9 Caveat

- 9.1 The Owner irrevocably:
- (a) acknowledges that the Council has a caveatable interest in Lot 514 in accordance with this Deed; and
 - (b) consents to the Council lodging and maintaining a caveat against the title of Lot 514 to record the Council's interest under this Deed.
- 9.2 The Council must withdraw any such caveat following:
- (a) transfer to the Council of unencumbered title to Area 1; and
 - (b) registration of the Positive Covenant
- in accordance with this Deed or any other deed contemplated by this Deed.

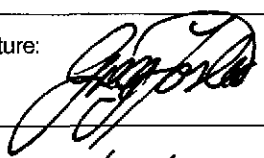
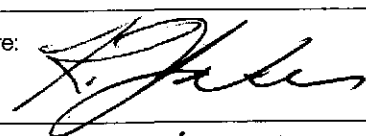
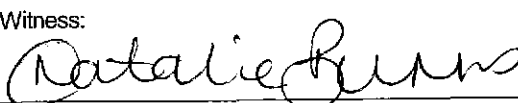
Execution

Executed as a deed

Dated: *16 October,* 2008

This Deed is signed on behalf of the State of New South Wales by the Manager, Crown Land Strategic Development & Marketing, Crown Lands Division under delegated authority pursuant to Sec 180 of the Crown Lands Act, 1989.

This Deed is signed on behalf of Wyong Shire Council by the General Manager under delegated authority in accordance with the resolutions of Wyong Shire Council dated 14 December 2005 and 14 November 2007.

Owner	Council
State of New South Wales	Wyong Shire Council
Position: Manager, Crown Land Strategic Development & Marketing, Crown Lands Division <i>[By delegation pursuant to section 180 of the Crown Lands Act 1989 from the Minister administering the Crown Lands Act 1989 on behalf of the State of New South Wales].</i>	Position: General Manager
Name: Greg Foster	Name: Kerry Yates
Signature: 	Signature: 
Date: <i>16/10/08</i>	Date: <i>2/10/08</i>
Witness: 	Witness: 

ANNEXURE A

RECOMMENDATION resolved on 14 December 2005:

- 1 That a draft Local Environmental Plan be prepared to rezone part Lot 514 DP 729979, Bateau Bay from Zone No 5(a) Special Uses (Clubs and Community Purposes) to Zone No. 3(b) Centre Support under Wyong Local Environmental Plan, 1991.
- 2 That the Department of Planning be advised of the decision within 28 days.
- 3 That the Department of Planning be further advised that Council's delegate proposes to exercise the delegations under Section 65 and if appropriate, under Section 69 of the Environmental Planning and Assessment Act 1979.
- 4 That upon issue of the Section 65 Certificate, the draft Local Environmental Plan be advertised for 28 days in accordance with the NSW Department of Planning's "LEPs and Council Land: Best Practise Guidelines, January 1997" and referred to the appropriate authorities for comment.
- 5 That should no significant objections be received as a result of the exhibition, the Minister for Planning be requested to create the Local Environmental Plan.
- 6 That a Deed of Agreement be prepared between the NSW Department of Lands (The Crown) and Wyong Shire Council that transfers in fee simple part of Lot 514 to Council, at no cost, for the development of an Integrated Library and Customer Service centre.
- 7 That the land to be transferred in fee simple as part of the Deed of Agreement between The NSW Department of Lands (The Crown) and Council be transferred into Council ownership prior to the rezoning being referred to the Minister for Gazettal under s.69 of the Environmental Planning and Assessment Act 1979 or the site being sold, whichever happens first.
- 8 That Council authorise the Mayor and the General Manager to execute all documents relating to the Deed of Agreement between Wyong Shire Council and the NSW Department of Lands (The Crown).
- 9 That Development Control Plan 2005 be amended and exhibited to guide future development on Lot 514 DP 729979, Bateau Bay.
- 10 That the applicant be requested to submit a detailed traffic report prior to the draft Local Environmental Plan and Development Control Plan being placed on public exhibition.
- 11 That Council's Section 149 Certificates be noted.

RECOMMENDATION resolved on 14 November 2007:

- 1 That Council rescind item 7 of resolution 615 of 14 December 2005 for preparation of Draft LEP Amendment No. 172 to Wyong Local Environmental Plan (WLEP) 1991 as follows:
 - 7 That the land to be transferred in fee simple as part of the Deed of Agreement between The NSW Department of Lands (The Crown) and Council be transferred into Council ownership prior to the rezoning being referred to the Minister for Gazettal under s.69 of the Environmental Planning and Assessment Act 1979 or the site being sold, whichever happens first.
- 2 That the land to be transferred from the Department of Lands to Council be transferred in fee simple (as part of the Deed of Agreement between The NSW Department of Lands and Wyong Shire Council) and be transferred into Council ownership after Gazettal of dLEP Amendment No. 172, or the site being sold (being the date of exchange of contracts), whichever occurs first.

ANNEXURE B

