

## **Planning Agreement**

### **Environmental Planning and Assessment Act 1979**

**Minister for Planning** (ABN 38 755 709 681)

Robert Michael Potts



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This deed is dated 24 FEBRUARY 2017

**Parties:**

**Minister**

Minister for Planning (ABN 38 755 709 681)  
of Level 15, 52 Martin Place, Sydney, New South Wales 2000



**Developer**

Robert Michael Potts of 5 Leonard St, Thirlmere NSW 2572

**Introduction:**

- A The Developer owns the Land.
- B The Developer proposes to carry out the Development on the Land.
- C A Development Application has been made on behalf of the Developer to the Consent Authority in respect of the Land.
- D Clause 6.1 of the Wollondilly Local Environment Plan 2011 provides that the Consent Authority must not grant Development Consent to the Development unless the Secretary has certified in writing to the Consent Authority that satisfactory arrangements have been made to contribute to the provision of designated State infrastructure referred to in clause 6.1 of the LEP.
- E The Developer has offered to enter into this deed with the Minister to secure the Development Contribution in order to enable the Secretary to provide the certification required by the LEP.

**It is agreed:**

**1. Definitions and interpretation**

**1.1 Definitions**

In this deed, unless the context clearly indicates otherwise:

**Act** means the *Environmental Planning and Assessment Act 1979* (NSW).

**Address for Service** means the address of each party appearing in Schedule 2 or any new address notified by any party to all other parties as its new Address for Service.

**Authority** means any Federal, State or local government or semi-governmental, statutory, judicial or public person, instrumentality or department.

**Business Day** means any day that is not a Saturday, Sunday, public holiday or bank holiday in Sydney, and concludes at 5 pm on that day.

**Consent Authority** has the same meaning as in the Act.



**Contribution Amount** means the amount of the monetary contribution to be paid by the Developer as described in clause 4.

**Development** means the proposed residential subdivision of the land into approximately three (3) lots, generally in accordance with DA No. 10.2015.828.1.

**Development Application** has the same meaning as in the Act.

**Development Consent** has the same meaning as in the Act.

**Development Contribution** means the contributions to be provided by the Developer in accordance with clause 4.

**Explanatory Note** means the note exhibited with a copy of this deed when this deed is made available for inspection by the public pursuant to the Act, as required by the Regulation.

**GST** means any form of goods and services tax payable under the GST Legislation.

**GST Legislation** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Land** means the land described in Schedule 3.

**LEP** means Wollondilly Local Environment Plan 2011.

**Mediation Program** means the Mediation Program of the Law Society of New South Wales as published on its website and as varied from time to time.

**Minister** means the Minister for Planning and includes the Secretary.

**Regulation** means the *Environmental Planning and Assessment Regulation 2000* (NSW).

**Residential Accommodation** has the same meaning as in the *Standard Instrument (Local Environmental Plans) Order 2006* as at the date of this deed.

**Secretary** means the Secretary of the Department of Planning and Environment, or her nominee.

**Tax** means a tax, duty (including stamp duty and any other transaction duty), levy, impost, charge, fee (including a registration fee) together with all interest, penalties, fines and costs concerning them.

## 1.2 Interpretation

In this deed unless the context clearly indicates otherwise:

- (a) a reference to **this deed** or another document means this deed or that other document and any document which varies, supplements, replaces, assigns or novates this deed or that other document;
- (b) a reference to **legislation** or a **legislative provision** includes any statutory modification, or substitution of that legislation or legislative provision and any subordinate legislation issued under that legislation or legislative provision;
- (c) a reference to a **body** or **authority** which ceases to exist is a reference to either a body or authority that the parties agree to substitute for the named body or authority or, failing agreement, to a body or authority having substantially the same objects as the named body or authority;



- (d) a reference to the **introduction**, a **clause**, a **schedule** or an **annexure** is a reference to the introduction, a clause, a schedule or an annexure to or of this deed;
- (e) **clause headings**, the **introduction** and the **table of contents** are inserted for convenience only and do not form part of this deed;
- (f) the **schedules** form part of this deed;
- (g) a reference to a **person** includes a natural person, corporation, statutory corporation, partnership, the Crown or any other organisation or legal entity;
- (h) a reference to a **natural person** includes their personal representatives, successors and permitted assigns;
- (i) a reference to a **corporation** includes its successors and permitted assigns;
- (j) a reference to a right or obligation of a party is a reference to a right or obligation of that party under this deed;
- (k) an **obligation** or **warranty** on the part of 2 or more persons binds them jointly and severally and an obligation or warranty in favour of 2 or more persons benefits them jointly and severally;
- (l) a requirement to do any thing includes a requirement to cause that thing to be done and a requirement not to do any thing includes a requirement to prevent that thing being done;
- (m) **including** and **includes** are not words of limitation;
- (n) a word that is derived from a defined word has a corresponding meaning;
- (o) **monetary amounts** are expressed in Australian dollars;
- (p) the singular includes the plural and vice-versa;
- (q) words importing one gender include all other genders;
- (r) a reference to a thing includes each part of that thing; and
- (s) neither this deed nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting.

## 2. Operation and application of this deed

### 2.1 Operation

This deed commences on the date that this deed is signed by all the parties.

### 2.2 Planning agreement under the Act

This deed constitutes a planning agreement within the meaning of section 93F of the Act and the parties agree on the matters set out in Schedule 1.

### 2.3 Application

This deed applies to:

- (a) the Land; and

- (b) the Development.

### **3. Application of sections 94, 94A and 94EF of the Act**

The application of sections 94, 94A and 94EF of the Act are excluded to the extent stated in Schedule 1.

### **4. Development Contribution**

#### **4.1 Developer to provide Development Contribution**

- (a) The Developer undertakes to provide to the Minister, or the Minister's nominee, the Development Contribution being an amount of \$18,528.00 on the commencement of this deed.
- (b) The Minister and the Developer acknowledge and agree that the amount of \$18,528.00 is the Development Contribution for the purposes of this deed and has been calculated on the basis that a contribution is payable for two of the proposed lots comprising the Development at a rate of \$9,264.00 per lot.
- (c) The Minister and the Developer agree that no Contribution Amount will be payable in relation to any lot created for the purpose of Residential Accommodation that contains a lawfully constructed dwelling which was located on the Land on the date of commencement of this deed.
- (d) The Minister and the Developer acknowledge and agree that there is one existing dwelling located on the Land, for which the contribution exemption pursuant to clause 4.1(c) applies.

#### **4.2 Acknowledgement**

The Developer acknowledges and agrees that, subject to section 93E of the Act, the Minister:

- (a) has no obligation to use or expend the Development Contribution for a particular purpose despite any provision of this deed to the contrary and has no obligation to repay the Development Contribution; and
- (b) in circumstances where the Development Contribution is transferred to any Authority, has not made any representation or warranty that the Development Contribution will or must be used for a particular purpose by that Authority.

### **5. Dispute Resolution**

#### **5.1 Written notice of dispute**

A party claiming that a dispute has arisen under or in relation to this deed must give written notice to the other party specifying the nature of the dispute.

#### **5.2 Attempt to resolve**

On receipt of notice under clause 5.1, the parties must endeavour in good faith to resolve the dispute expeditiously using informal dispute resolution processes such as mediation, expert evaluation or other methods agreed by them.



### 5.3 Referral to the Secretary

Should the matter not be resolved under clause 5.2, the matter shall be referred to the Secretary whose determination of the disagreement shall be final and binding on the parties.

## 6. GST

### 6.1 Definitions

Words used in this clause that are defined in the GST Legislation have the meaning given in that legislation.

### 6.2 Intention of the parties

The parties intend that:

- (a) Divisions 81 and 82 of the GST Legislation apply to the supplies made under and in respect of this deed; and
- (b) no additional amounts will be payable on account of GST and no tax invoices will be exchanged between the parties.

### 6.3 Reimbursement

Any payment or reimbursement required to be made under this deed that is calculated by reference to a cost, expense, or other amount paid or incurred must be limited to the total cost, expense or amount less the amount of any input tax credit to which any entity is entitled for the acquisition to which the cost, expense or amount relates.

### 6.4 Consideration GST exclusive

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this deed are exclusive of GST. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purposes of this clause 6.

### 6.5 Additional Amounts for GST

To the extent an amount of GST is payable on a supply made by a party (**Supplier**) under or in connection with this deed (the **GST Amount**), the recipient must pay to the Supplier the GST Amount. However, where a GST Amount is payable by the Minister as recipient of the supply, the Developer must ensure that:

- (a) the Developer makes payment of the GST Amount on behalf of the Minister, including any gross up that may be required; and
- (b) the Developer provides a tax invoice to the Minister.

### 6.6 Non monetary consideration

Clause 6.5 applies to non-monetary consideration.

### 6.7 Assumptions

The Developer acknowledges and agrees that in calculating any amounts payable under clause 6.5 the Developer must assume the Minister is not entitled to any input tax credit.



## **6.8 No merger**

This clause does not merge on completion or termination of this deed.

## **7. Capacity**

### **7.1 General warranties**

Each party warrants to each other party that:

- (a) this deed creates legal, valid and binding obligations, enforceable against the relevant party in accordance with its terms; and
- (b) unless otherwise stated, it has not entered into this deed in the capacity of trustee of any trust.

### **7.2 Power of attorney**

If an attorney executes this deed on behalf of any party, the attorney declares that it has no notice of the revocation of that power of attorney.

## **8. General Provisions**

### **8.1 No fetter**

Nothing in this deed is to be construed as requiring the Minister to do anything that would cause the Minister to breach any of the Minister's obligations at law and without limitation, nothing in this deed shall be construed as limiting or fettering in any way the discretion of the Minister in exercising any of the Minister's statutory functions, powers, authorities or duties.

### **8.2 Explanatory note**

The Explanatory Note must not be used to assist in construing this deed.

### **8.3 Expenses and stamp duty**

- (a) The Developer must pay its own and the Minister's reasonable legal costs and disbursements in connection with the negotiation, preparation, execution and carrying into effect of this deed.
- (b) The Developer must pay for all costs and expenses associated with the giving of public notice of this deed and the Explanatory Note in accordance with the Regulation.
- (c) The Developer must pay all Taxes assessed on or in respect of this deed and any instrument or transaction required or contemplated by or necessary to give effect to this deed (including stamp duty and registration fees, if applicable).
- (d) The Developer must provide the Minister with bank cheques, or an alternative method of payment if agreed with the Minister, in respect of the Minister's costs pursuant to clauses 8.3(a) and (b):
  - (i) where the Minister has provided the Developer with written notice of the sum of such costs prior to execution, on the date of execution of this deed; or





- (ii) where the Minister has not provided the Developer with prior written notice of the sum of such costs prior to execution, within 30 Business Days of demand by the Minister for payment.

#### 8.4 Notices

- (a) Any notice, demand, consent, approval, request or other communication (**Notice**) to be given under this deed must be in writing and must be given to the recipient at its Address for Service by being:
  - (i) hand delivered; or
  - (ii) sent by facsimile transmission; or
  - (iii) sent by prepaid ordinary mail within Australia; or
  - (iv) in the case of a Notice to be given by the Minister or Secretary, sent by email.
- (b) A Notice is given if:
  - (i) hand delivered, on the date of delivery but if delivery occurs after 5pm New South Wales time or a day that is not a Business Day, is taken to be given on the next Business Day;
  - (ii) sent by facsimile and the sending party's facsimile machine reports that the facsimile has been successfully transmitted;
    - (A) before 5 pm on a Business Day, on that day;
    - (B) after 5 pm on a Business Day, on the next Business Day after it is sent; or
    - (C) on a day that is not a Business Day, on the next Business Day after it is sent; or
  - (iii) sent by prepaid ordinary mail within Australia, on the date that is 2 Business Days after the date of posting; or
  - (iv) sent by email:
    - (A) before 5 pm on a Business Day, on that Day;
    - (B) after 5 pm on a Business Day, on the next Business Day after it is sent; or
    - (C) on a day that it is not a Business Day, on the next Business Day after it is sent, and the sender does not receive a delivery failure notice.



## Schedule 1

**Table 1 - Requirements under section 93F of the Act (clause 2.2)**

The parties acknowledge and agree that the table set out below provides for certain terms, conditions and procedures for the purpose of the deed complying with the Act.

<b>Requirement under the Act</b>	<b>This deed</b>
<b>Planning instrument and/or development application – (section 93F(2))</b>  The Developer has: <ul style="list-style-type: none"> <li>(a) sought a change to an environmental planning instrument.</li> <li>(b) made, or proposes to make, a Development Application.</li> <li>(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.</li> </ul>	(a) No  (b) No  (c) Yes
<b>Description of land to which this deed applies – (section 93F(3)(a))</b>	See Schedule 3
<b>Description of development to which this deed applies – (section 93F(3)(b))</b>	See definition of Development in clause 1.1
<b>Description of change to the environmental planning instrument to which this deed applies – (section 93F(3)(b))</b>	N/A
<b>The scope, timing and manner of delivery of contribution required by this deed – (section 93F(3)(c))</b>	See clause 4
<b>Applicability of sections 94 and 94A of the Act – (section 93F(3)(d))</b>	The application of sections 94 and 94A of the Act is not excluded in respect of the Development.
<b>Applicability of section 94EF of the Act – (section 93F(3)(d))</b>	The application of section 94EF of the Act is excluded in respect of the Development.
<b>Consideration of benefits under this deed if section 94 applies – (section 93F(5))</b>	No
<b>Mechanism for Dispute Resolution – (section 93F(3)(f))</b>	See clause 5
<b>Enforcement of this deed – (section 93F(3)(g))</b>	Not required
<b>No obligation to grant consent or exercise functions – (section 93F(10))</b>	See clause 8.1

Table 2 – Other matters


Requirement under the Act	This deed
<b>Registration of the Planning Agreement –</b> (section 93H of the Act)	No
<b>Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a construction certificate is issued –</b> (clause 25E(2)(g) of the Regulation)	No
<b>Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before an occupation certificate is issued –</b> (clause 25E(2)(g) of the Regulation)	No
<b>Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a subdivision certificate is issued –</b> (clause 25E(2)(g) of the Regulation)	No



Execution page

**Executed as a deed**

**Signed, sealed and delivered** for and on behalf  
of the **Minister for Planning**, in the presence of:

  
Signature of witness

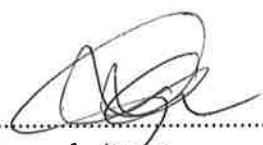
  
Signature of the Minister for Planning or  
delegate

MARY-ROSE CAUNOE  
Name of witness in full

320 PITT ST, SYD  
Address of witness

BRENDAN NELSON  
Name of Minister for Planning or delegate

**Signed sealed and delivered**  
by **Robert Michael Potts** in the presence of:

  
Signature of witness

  
Signature of **Robert Michael Potts**

RANU NARAYAN  
Name of witness in full

**Explanatory Note**  
**Minister for Planning ABN 38 755 709 681**  
**and**  
**Robert Michael Potts**  
**Draft Planning Agreement**

**Introduction**

The purpose of this explanatory note is to provide a plain English summary to support the notification of the draft planning agreement (the **Planning Agreement**) prepared under Subdivision 2 of Division 6 of Part 4 of the *Environmental Planning and Assessment Act 1979* (the **Act**).

This explanatory note has been prepared jointly by the parties as required by clause 25E of the *Environmental Planning and Assessment Regulation 2000* (the **Regulation**).

**Parties to the Planning Agreement**

The parties to the Planning Agreement are the Minister for Planning ABN 38 755 709 681 (the **Minister**) and Robert Michael Potts (the **Developer**).

**Description of the Subject Land**

The Planning Agreement applies to:

- Lot 170 of Deposited Plan 751270 known as 5 Leonard Street, Thirlmere (**Subject Land**).

**Description of the Proposed Development**

The Developer is seeking to subdivide the Subject Land into approximately 3 residential lots generally in accordance with Development Application 10.2015.828.1 which has been lodged with Wollondilly Shire Council (**Proposed Development**). The Developer has made an offer to the Minister to enter into the Planning Agreement in connection with the Proposed Development.

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

The Planning Agreement provides that the Developer will make a monetary contribution of \$9,264.00 per residential lot (subject to indexation in accordance with the Planning Agreement) for the purposes of the provision of designated State public infrastructure within the meaning of clause 6.1 of the *Wollondilly Local Environmental Plan 2011* (**LEP**).

The monetary contribution for each lot will be payable upon execution of the Planning Agreement.

The Developer is not required to provide a bank guarantee.

The objective of the Planning Agreement is to facilitate the delivery of the Developer's contributions towards the provision of infrastructure, facilities and services referred to in clause 6.1 of the LEP.



No relevant capital works program by the Minister is associated with the Planning Agreement.

## **Assessment of Merits of Planning Agreement**

### **The Planning Purpose of the Planning Agreement**

In accordance with section 93F(2) of the Act, the Planning Agreement has the following public purpose:

- the provision of (or the recoupment of the cost of providing) public amenities or public services.

The Minister and the Developer have assessed the Planning Agreement and both hold the view that the provisions of the Planning Agreement provide a reasonable means of achieving the public purpose set out above. This is because it will ensure that the Developer makes appropriate contributions towards the provision of infrastructure, facilities and services referred to in clause 6.1 of the LEP.

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

The Planning Agreement promotes the public interest by ensuring that an appropriate contribution is made towards the provision of infrastructure, facilities and services to satisfy needs that arise from development of the Subject Land.

### **How the Planning Agreement Promotes the Objects of the Act**

The Planning Agreement promotes the objects of the Act by encouraging:

- the promotion and co-ordination of the orderly and economic use and development of land.

The Planning Agreement promotes the objects of the Act set out above by requiring the Developer to make a contribution towards the provision of infrastructure, facilities and services referred to in clause 6.1 of the LEP.

The Developer's offer to contribute towards the provision of State infrastructure will have a positive public impact as funds from the Developer will be available towards the provision of infrastructure, facilities and services referred to in clause 6.1 of the LEP.

### **Requirements relating to Construction, Occupation and Subdivision Certificates**

The Planning Agreement does not specify requirements that must be complied with prior to the issue of a construction certificate, an occupation certificate or subdivision certificate.



Robert Potts.



RENU NARAYAN