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## **Nattai Ponds Planning Agreement No. 1**

### **Third Deed of Variation**

Under cl 25C(3) of the *Environmental Planning and Assessment Regulation 200*

**Wingecarribee Shire Council**  
**Feldkirchen Pty Ltd**

Date: 17 / 9 / 2015

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**Summary Sheet**

**Council:**

**Name:** Wingecarribee Shire Council

**Address:** Civic Centre, Elizabeth Street, MOSS VALE NSW 2577

**Telephone:** (02) 4868 0854

**Email:** wscmail@wsc.nsw.gov.au

**Representative:** David Matthews

**Developer:**

**Name:** Feldkirchen Pty Ltd

**Address:** PO Box 2875, BOWARAL NSW 2576

**Telephone:** 0414 611 414

**Email:** jeffknox@westnet.com.au

**Representative:** Jeff Robert Knox



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## **Nattai Ponds Planning Agreement No. 1**

### **Third Deed of Variation**

Under cl 25C(3) of the *Environmental Planning and Assessment Regulation 2000*

### **Parties**

**Wingecarribee Shire Council** ABN 49 546 344 354 of Civic Centre, Elizabeth Street, MOSS VALE NSW 2577 (**Council**)

and

**Feldkirchen Pty Ltd** ACN 77 097 910 999 of PO Box 2875, BOWRAL NSW 2575 (**Developer**)

### **Background**

- A On 11 April 2013, Council and the Developer entered into the Planning Agreement.
- B The Planning Agreement was varied by the Council and the Developer under a Deed of Variation effective on and from 19 March 2014, and a Second Deed of Variation effective on and from 11 December 2014.
- C Pursuant to clause 53 of the Planning Agreement, the parties have agreed to further vary the Planning Agreement in accordance with this Deed.

### **Operative provisions**

#### **1 Definitions & Interpretation**

- 1.1 In this Deed the following definitions apply:

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

**Deed** means this Deed of Variation and includes any schedules, annexures and appendices to this Deed.

**Planning Agreement** means the Nattai Ponds Planning Agreement No. 1 entered into between the Council and the Developer on 11 April 2013 pursuant to s93F of the Act, and varied by a Deed of Variation dated 19 March 2014 and a Second Deed of Variation dated 11 December 2014.

**Regulation** means the *Environmental Planning and Assessment Regulation 2000*.

- 1.2 All other capitalised words used in this Deed have the meanings given to those words in the Planning Agreement.

## Nattai Ponds Planning Agreement No. 1

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#### Wingecarribee Shire Council

#### Feldkirchen Pty Ltd



- 1.3 Clause 1.1 of the Planning Agreement, as amended by this Deed, applies to this Deed, except that a reference in those clauses to *this Agreement* wherever occurring is to be read as a reference to *this Deed*.

## 2 Status of this Deed

- 2.1 This Deed is an amendment to the Planning Agreement within the meaning of clause 25C(3) of the Regulation.
- 2.2 This Deed is not a planning agreement within the meaning of section 94F(1) of the Act.

## 3 Commencement of this Deed

- 3.1 This Deed commences on the date on which the Parties have executed this Deed.
- 3.2 The Party who executes this Deed last is to insert on the front page the date they did so and provide a copy of the fully executed and dated Deed to the other Party.

## 4 Warranties

- 4.1 The Parties warrant to each other that they:
- 4.1.1 have full capacity to enter into this Deed, and
  - 4.1.2 are able to fully comply with their obligations under this Deed and the Planning Agreement as modified by this Deed.

## 5 Amendment of Planning Agreement

- 5.1 On and from the date of this Deed, the Planning Agreement is amended as follows:
- 5.1.1 Clause 1.1 is amended by including the following definition:  
*Eastern Portion means the eastern part of the Isedale Road Upgrade as shown on the plan in Schedule 5.*
  - 5.1.2 Clause 32.1.1 is amended by deleting the words '*and clause 12.1*'.
  - 5.1.3 New clauses 32.2, 32.3 and 32.4 are inserted as follows:
    - 32.2 *Despite any other provisions of this Agreement, the construction of the Eastern Portion must be completed before the release of the Subdivision Certificate in respect of Stage 4.*
    - 32.3 *If the Eastern Portion is required for access to the Development Implementation Land before the release of the Subdivision Certificate in respect of Stage 4, the works can be carried out by the owner of the Development Implementation Land, at its cost, subject to obtaining all necessary approvals from Council.*



32.4 *If the owner of the Development Implementation Land agrees to carry out the works for the Eastern Portion at its cost, the Developer agrees to:*

32A.3.1 *grant access to the Feldkirchen Land and grant any necessary consent to enable the Eastern Portion to be constructed by the owner of the Development Implementation Land; and*

32A.3.2 *on completion of the Eastern Portion, dedicate the land on which it is located to Council as a road free of charge.*

5.1.4 A new Schedule 5 is included in the form of the Annexure to this Deed.

## **6 Affirmation of Planning Agreement**

6.1 The Planning Agreement will be read and construed subject to this Deed, and in all other respects the provisions of the Planning Agreement are ratified and confirmed, and, subject to the variation contained in this Deed, the Planning Agreement will continue in full force and effect.

## **7 Explanatory Note**

7.1 The Appendix contains the Explanatory Note relating to this Deed required by clause 25E of the Regulation.

7.2 Pursuant to clause 25E of the Regulation, the parties agree that the Explanatory Note in the Appendix is not to be used to assist in construing this Deed.



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**Execution**

**Executed as an Deed**

**Dated:** 17/9/2015

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**Executed on behalf of the Council**

**General Manager**

**Witness/Name/Position**

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**Executed on behalf of the Developer** in accordance with s127(1) of the  
Corporations Act (Cth) 2001

**Name/Position**

JEFF KNOX

Director/  
Secretary

WITNESS  
Richard Anderson  
6/68-70 Station St  
Bowral NSW 2576.



**Annexure**

(clause 5.1.4)

**Schedule 5**

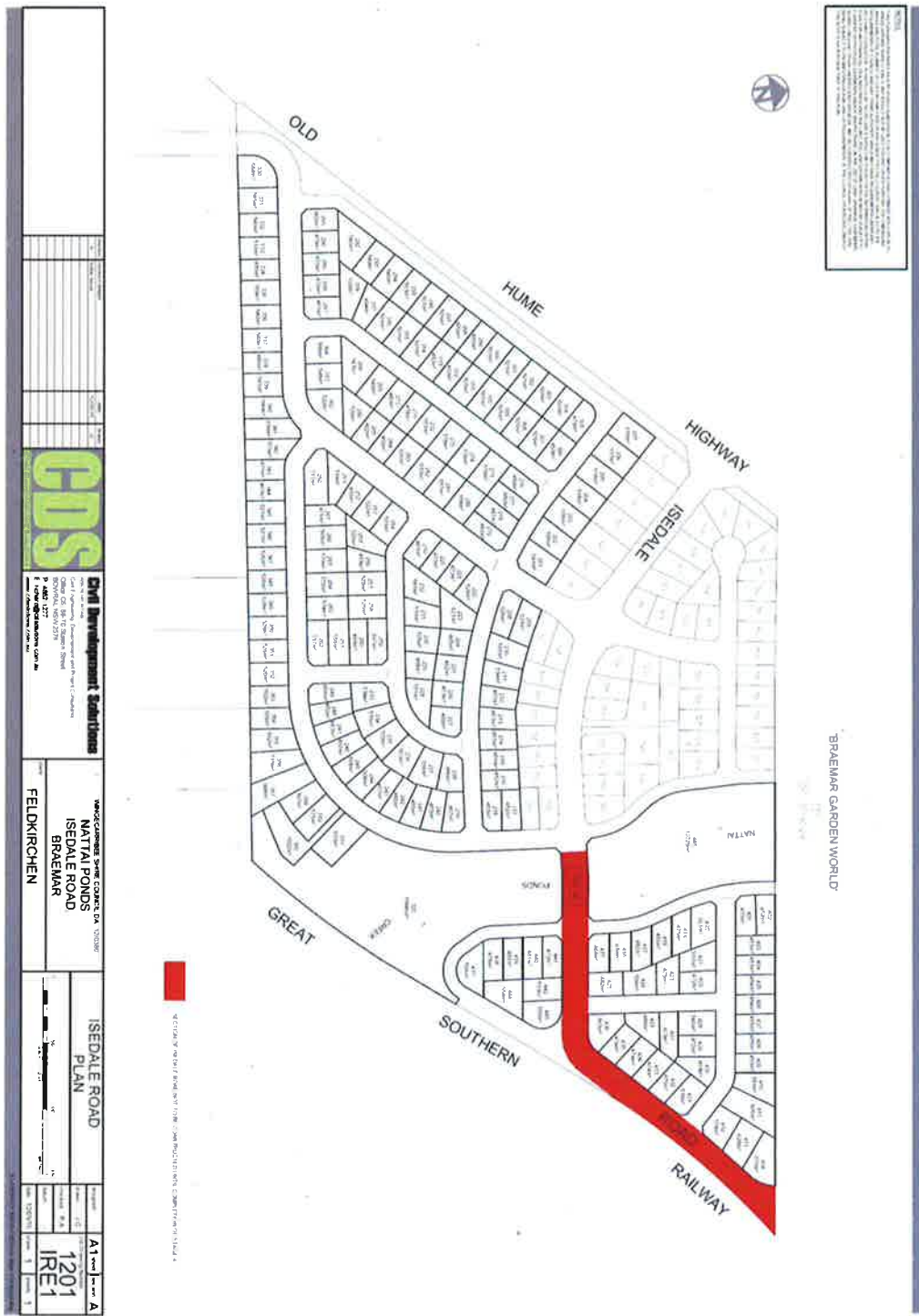
(clause 1.1)

**Eastern Portion**

see following page



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**Wingecarribee Shire Council**  
**Feldkirchen Pty Ltd**



		<b>Civil Development Solutions</b> Civil Engineering, Surveying and Site Construction 10/11-13/15 WINGECARRIBEE STREET BRUCEMANSVILLE NSW 2870 P 4882 1277 www.civildevelopment.com.au		<b>WINGECARRIBEE SHIRE COUNCIL</b> NATTAI PONDS ISEDALE ROAD BRAEMAR FELDKIRCHEN		<b>ISEDALE ROAD</b> PLAN 1201 IRE1		A1 road - part A 1201 IRE1	
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## **Appendix**

(Clause 7)

*Environmental Planning and Assessment Regulation 2000*

(Clause 25E)

## **Explanatory Note**

### **Draft Deed**

Under cl25C(3) of the *Environmental Planning and Assessment Regulation 2000*

### **Parties**

**Wingecarribee Shire Council** ABN 49 546 344 354 of Civil Centre, Elizabeth Street  
MOSS VALE NSW 2577 (Council)

**Feldkirchen Pty Ltd** ACN 77 097 910 999 of PO BOX 2875, BOWRAL NSW 2576  
(Developer)

### **Description of the Land to which the Draft Deed Applies**

Lots 2 and 3 DP607486 and Lots 1 to 8 DP1044854.

### **Description of Proposed Development**

Development the subject of Development Application LUA12/0380 lodged with the Council on 14 May 2012, being subdivision of the Feldkirchen Land into approximately 252 Final Lots.

### **Summary of Objectives, Nature and Effect of the Draft Deed**

#### **Objectives of Draft Deed**

The objective of the Draft Deed is to vary the Planning Agreement.

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**Feldkirchen Pty Ltd**



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#### **Nature of Draft Deed**

The Draft Deed is a deed of variation to the Planning Agreement under cl25C(3) of the *Environmental Planning and Assessment Regulation 2000*.

#### **Effect of the Draft Deed**

The Draft Deed:

- Postpones the timing for the construction of Isedale Road by requiring that roads works beyond the Nattai Ponds Creek bridge and to the boundary of the Development Implementation Land do not need to be completed by Stage 2. Instead, this Deed imposes an obligation on the Developer to complete the upgrading and extension of the Isedale Road to the boundary of the Development Implementation land before the subdivision certificates in respect of Stage 4 have been released.

#### **Assessment of the Merits of the Draft Deed**

##### **The Planning Purposes Served by the Draft Deed**

The Draft Deed:

- Promotes and co-ordinates community services in connection with the Development.

##### **How the Draft Deed Promotes the Public Interest**

The Draft Deed promotes the public interest by promoting the objects of the Act as set out in s5(a)(ii) and (iv) of the Act.

##### **For Planning Authorities:**

###### ***Development Corporations - How the Draft Deed Promotes its Statutory Responsibilities***

N/A

###### ***Other Public Authorities – How the Draft Deed Promotes the Objects (if any) of the Act under which it is Constituted***

N/A

###### ***Councils – How the Draft Deed Promotes the Elements of the Council's Charter***

The Draft Planning Agreement promotes the elements of the Council's Charter by:

- providing a means to properly manage, develop, protect, restore, enhance and conserve 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,

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**Feldkirchen Pty Ltd**



- 
- providing a means for the private funding of traffic management facilities for the benefit of the Development and the wider community, and
  - providing a means that allows the wider community to make submissions to the Council in relation to the Agreement.

***All Planning Authorities – Whether the Draft Deed Conforms with the Authority’s Capital Works Program***

Some of the road works both proposed and already carried out by the Developer are included in the schedule of works in the Council’s *Section 94 Plan for Roads and Traffic Facilities 2012 to 2013*.

***All Planning Authorities - Whether the Draft Deed specifies that certain requirements must be complied with before issuing a construction certificate, subdivision certificate or occupation certificate***

Yes. The Draft Deed specifies that certain requirements must be complied with before a subdivision certificate is issued in relation to the Development to be undertaken at Stage 4.