

Planning Agreement

Environmental Planning and Assessment Act 1979

1550 Burragorang Road Oakdale NSW 2570

Wollondilly Shire Council

and

Petton Pty Ltd (ACN 059 365 516)

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This deed is dated

Parties:

Council

Wollondilly Shire Council ABN 93 723 245 808 of 62-64
Menangle Street, Picton NSW 2571,

Developer

Petton Pty Ltd (ACN 059 365 516) of 1550 Burragorang Road,
Oakdale NSW 2570

Introduction:

- A** The Developer owns the Land and proposes to carry out the Development on the Land.
- B** The Developer has made a Development Application to the Council in respect of the Land.
- C** The Developer has offered to enter into this deed with the Council to secure the Development Contribution in connection with the proposed Development.

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.

Bank Guarantee means an irrevocable and unconditional undertaking without any expiry or end date in favour of the Council to pay an amount or amounts of money to the Council on demand issued by;

(a) one of the following trading banks;

- (i) Australia and New Zealand Banking Group Limited,
- (ii) Commonwealth Bank of Australia,
- (iii) Macquarie Bank Limited,
- (iv) National Australia Bank Limited,
- (iv) St George Bank Limited,
- (v) Westpac Banking Corporation; or

(b) any other financial institution approved by the Council in its absolute discretion.

Base CPI means the CPI number for the quarter ending 31 March 2018.

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.

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

Council means Wollondilly Shire Council

CPI means the Sydney Consumer Price Index (All Groups) published by the Australian Bureau of Statistics, or if that index no longer exists, any similar index that the Council specifies, in its sole discretion, for the purposes of this deed.

CPI Adjustment Date means 1 July 2019 and each anniversary of 1 July 2019.

Current CPI means the CPI number for the quarter ending immediately before 31 March in the year in which the relevant adjustment is made.

Developer means the Developer unless otherwise specified in this deed.

Development means the subdivision of the Land into a 122 lot subdivision and Associated Works as described in Integrated Development Consent 010.2017.00000799.001 which has been lodged with the Council and as shown on the plan annexed as "Annexure A" to this deed and for which Development Consent has been granted.

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 Schedule 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 Environmental 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.

Plan of Subdivision means a registered plan of subdivision within the meaning of section 195 of the *Conveyancing Act 1919* (NSW).

Planning Application means:

- (c) a Development Application; or
- (d) any other application required under the Act, which seeks approval for the subdivision of the Land.

Real Property Act means the *Real Property Act 1900* (NSW).

Register means the Torrens title register maintained under the Real Property Act.

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.

Residue Lot means a lot that is created for one or more of the following purposes:

- (e) to be dedicated or otherwise transferred to an Authority; or
- (f) for any public utility undertaking within the meaning of the *Standard Instrument (Local Environmental Plans) Order 2006* as at the date of this deed, but which does not include a Super Lot.

Security means a Bank Guarantee indexed annually in accordance with the annual movements in the Consumer Price Index (All Groups Sydney) published by the Australian Bureau of Statistics on and from the date of this Deed.

Subdivision Certificate has the same meaning as in the Act.

Super Lot means a lot that forms part of the Land which, following the registration of a Plan of Subdivision, is intended for further subdivision (including community title subdivision but excluding strata subdivision) for Residential Accommodation, but does not include a Residue Lot.

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.

Work means the physical result of any building, engineering or construction work in, on, over or under land.

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** and **annexures** 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 7.4 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 excluding the Super Lot; and
- (b) the Development.

3. Application of sections 7.11, 7.12 and 7.24 of the Act

The application of sections 7.11, 7.12 and 7.24 of the Act are excluded to the extent stated in Schedule 1.

4. Development Contribution

4.1 Developer to provide Development Contribution

The Developer undertakes to provide to the Council, the Development Contribution in accordance with the provisions of Schedule 4 to this deed.

4.2 Acknowledgement

The Developer acknowledges and agrees that, subject to section 7.3 of the Act, the Council 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.

5. Interest

5.1 Interest for late payment

- (a) If the Developer fails to pay a Contribution Amount (as indexed in accordance with Schedule 4) due to the Council on the due date for payment, the Developer must also pay to the Council interest at a rate of 2% above the loan reference rate charged by the Commonwealth Bank of Australia from time to time.
- (b) Interest is payable on the daily balance of amounts due from the due date for payment of those amounts until all outstanding amounts (including interest on those amounts) have been paid to the Council.

6. Enforcement

6.1 Developer to provide Security

- (a) The Developer has agreed to provide security to the Council for the performance of the Developer's obligations under this deed by providing the Security to the Council in accordance with the terms and procedures set out in Schedule 5.
- (b) If the Developer does not dedicate land required to be dedicated under this Deed at the time at which it is required to be dedicated, the Developer consents to the Council compulsorily acquiring the land for compensation in the amount of \$1.00 without having to follow the pre-acquisition procedure under the Just Terms Act.
- (c) The Council is to only acquire land pursuant to clause 6.1(b) if it considers it reasonable to do so having regard to the circumstances surrounding the failure by the Developer to dedicate the land required to be dedicated under this Deed.
- (d) Clause 6.1(b) constitutes an agreement for the purposes of s30 of the Just Terms Act.
- (e) If, as a result of the acquisition referred to in clause 6.1(b), the Council is required to pay compensation to any person other than the Developer, the Developer is to reimburse the Council that amount, upon a written request being made by the Council, or the Council can call on any Security provided under clause 6.
- (f) The Developer indemnifies and keeps indemnified the Council against all Claims made against the Council as a result of any acquisition by the Council of the whole or any part of the land concerned except if, and to the extent that, the Claim arises because of the Council's negligence or default.

- (g) The Developer is to promptly do all things necessary, and consents to the Council doing all things necessary, to give effect to this clause 6, including without limitation:
- (i) signing any documents or forms,
 - (ii) giving land owner's consent for lodgement of any Development Application,
 - (iii) producing certificates of title to the Registrar-General under the Real Property Act 1900, and
 - (iv) paying the Council's costs arising under this clause 6.1

7. Registration

7.1 Registration of deed

- (a) Within 10 Business Days of receiving a copy of this deed executed by the Council, the Developer at its own expense is to take all practical steps and otherwise do anything to procure:
- (i) the consent of each person, as required by the Registrar-General, who:
 - (A) has an estate or interest in the Land registered under the Real Property Act;
 - or
 - (B) , to the registration of this deed on the title to the Land and to the terms of this deed; and
 - (ii) the execution of any documents;
 - (iii) the production of the relevant certificates of title; and
 - (iv) the lodgement of this deed in a registrable form at the Land Registry Services for registration by the Registrar-General in the relevant folio of the Register for the Land;
- (b) The Developer will take all practical steps and otherwise do anything to procure the registration of this deed in the relevant folio of the Register for the Land; including promptly responding to any requisitions made by the Registrar-General in respect of this deed and/or any ancillary documents.

7.2 Evidence of registration

- (a) The Developer must provide the Council with evidence of the lodgement of this deed pursuant to clause 7.1 immediately upon such lodgement at Land Registry Services
- (b) The Developer will provide the Council with a copy of the relevant folio of the Register for the Land and a copy of the registered dealing containing this deed within 10 Business Days of registration of this deed.

7.3 Release and discharge of deed

The Council agrees to do all things reasonably required by the Developer to release and discharge this deed with respect to any part of the Land upon the Developer satisfying all of its obligations under this deed in respect of that part of the Land.

7.4 **Interest in Land**

The Developer represents and warrants that it is:

- (a) the owner of the Land; and
- (b) legally and beneficially entitled to obtain all consents and approvals and to compel any person referred to in or contemplated by clause 7.1(a)(i) to assist, cooperate and to otherwise do all things necessary for the Developer to comply with its obligations under clause 7.

8. Dispute Resolution

8.1 **Not commence**

A party must not commence any court proceedings relating to a dispute unless it complies with this clause 8.

8.2 **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.

8.3 **Attempt to resolve**

On receipt of notice under clause 8.2, 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.

8.4 **Mediation**

If the parties do not agree within 21 Business Days of receipt of notice under clause 8.2 (or any further period agreed in writing by them) as to:

- (a) the dispute resolution technique and procedures to be adopted;
- (b) the timetable for all steps in those procedures; or
- (c) the selection and compensation of the independent person required for such technique,

the parties must mediate the dispute in accordance with the Mediation Program. The parties must request the president of the Law Society of NSW or the president's nominee to select the mediator and determine the mediator's remuneration.

8.5 **Court proceedings**

If the dispute is not resolved within 60 Business Days after notice is given under clause 8.2 then any party which has complied with the provisions of this clause 8 may in writing terminate any dispute resolution process undertaken under this clause and may then commence court proceedings in relation to the dispute.

8.6 **Not use information**

The parties acknowledge the purpose of any exchange of information or documents or the making of any offer of settlement under this clause 8 is to attempt to settle the dispute. No party may use any information or documents obtained through any dispute resolution process undertaken under this clause 8 for any purpose other than in an attempt to settle the dispute.

8.7 No prejudice

This clause 8 does not prejudice the right of a party to institute court proceedings for urgent injunctive or declaratory relief in relation to any matter arising out of or relating to this deed.

9. GST

9.1 Definitions

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

9.2 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.

9.3 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.

9.4 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 9.

9.5 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 Council as recipient of the supply, the Developer must ensure that:

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

9.6 Non-monetary consideration

Clause 9.5 applies to non-monetary consideration.

9.7 Assumptions

The Developer acknowledges and agrees that in calculating any amounts payable under clause 9.5 the Developer must assume the Council is not entitled to any input tax credit.

9.8 No merger

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

10. Assignment and transfer

10.1 Right to assign or novate

- (a) Prior to a proposed assignment or novation of its rights or obligations under this deed, the party seeking to assign its rights or novate its obligations (**Assigning Party**) must seek the consent of the Council and:
 - (i) satisfy the Council (acting reasonably) that the person to whom the Assigning Party's rights or obligations are to be assigned or novated (**Incoming Party**) has sufficient assets, resources and expertise required to perform the Assigning Party's obligations under this deed insofar as those obligations are to be novated to the Incoming Party;
 - (ii) procure the execution of an agreement by the Incoming Party with the Council on terms satisfactory to the Council (acting reasonably) under which the Incoming Party agrees to comply with the terms and conditions of this deed as though the Incoming Party were the Assigning Party; and
 - (iii) satisfy the Council, acting reasonably, that it is not in material breach of its obligations under this deed.
- (b) The Assigning Party must pay the Council's reasonable legal costs and expenses incurred under this clause 10.1.

10.2 Right to transfer Land

- (a) The Developer must not sell or transfer to another person (**Transferee**) the whole or part of any part of the Land:
 - (i) on which this deed remains registered under section 7.6 of the Act; or
 - (ii) for which the Development Contribution required under this deed remains outstanding.
- (b) Notwithstanding clause 10.2(a) the Developer may sell or transfer the whole or any part of the Land to a Transferee if prior to the proposed sale or transfer the Developer:
 - (i) satisfies the Council, acting reasonably, that the proposed Transferee has sufficient assets, resources and expertise required to perform any of the remaining obligations of the Developer under this deed or satisfies the Council, acting reasonably, that the Developer will continue to be bound by the terms of this deed after the transfer has been effected;
 - (ii) procures the execution of an agreement by the Transferee with the Council on terms satisfactory to the Council, acting reasonably, under which the Transferee agrees to comply with the terms and conditions of this deed as though the Transferee were the Developer; and
 - (iii) satisfies the Council, acting reasonably, that it is not in material breach of its obligations under this deed.

- (c) The Developer must pay the Council's reasonable legal costs and expenses incurred under this clause 10.2.

10.3 Replacement Security

Provided that:

- (a) the Developer has complied with clause 10.1 and 10.2; and
- (b) the Transferee or Incoming Party (as the case may be) has provided the Council with a replacement Security in accordance with the requirements of Schedule 5 and on terms acceptable to the Council, the Council will promptly return the Security to the Developer.

11. Capacity

11.1 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.

11.2 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.

12. Reporting requirement

- (a) By 1 September each year or as otherwise agreed with the Council, the Developer must deliver to the Council a report (in a format acceptable to the Council) for the period 1 July to 30 June of the preceding financial year which must include the following matters, as applicable:
 - (i) details of all Development Consents and Subdivision Certificates issued in relation to the Development;
 - (ii) a description of the status of the Development including a plan that identifies what parts of the Development have been completed, are under construction and are to be constructed;
 - (iii) a forecast in relation to the anticipated progression and completion of the Development;
 - (iv) a compliance schedule showing the details of all Contribution Amounts provided under this deed as at the date of the report and indicating any non-compliance with this deed and the reason for the non-compliance; and
 - (v) when the Developer expects to lodge the next Planning Application.
- (b) Upon the Council's request, the Developer must deliver to the Council all documents and other information which, in the reasonable opinion of the Council are necessary for the

Council to assess the status of the Development and the Developer's compliance with this deed.

13. Acceptance of Works

- 13.1 Acceptance by Council of any works to be constructed under a planning agreement shall be subject to the following:
- 13.1.1 the developer obtaining all necessary approvals (including development consent or complying development certificate) necessary to undertake the works;
 - 13.2 the provision by the developer of a certificate confirming that the work has been carried out and completed in accordance with the agreement and with any development consent that applies and with any relevant Australian Standards;
 - 13.3 the Council will also require the agreement to provide a defects liability period during which any defects must be rectified at the developers expense; and
 - 13.4 Where a work is proposed as a benefit under a planning agreement and a monetary value is assigned to that work and is included in this Agreement for the purpose of valuing the work, then the Developer will provide for the work to be delivered whether or not it exceeds the value of that work included in this Agreement.

14. Waiver

- 14.1 A right created by this deed cannot be waived except in writing signed by the party entitled to that right. Delay by a party in exercising a right does not constitute a waiver of that right, nor will a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.

15. Dedication of land

- 15.1 A Development Contribution comprising the dedication of land is made for the purposes of this Deed when:
- 15.1.1 a deposited plan is registered in the register of plans held with the Registrar-General that dedicates land as a public road (including a temporary public road) under the *Roads Act 1993* or creates a public reserve or drainage reserve under the *Local Government Act 1993*, or
 - 15.2 the Council is given:
 - 15.2.1 an instrument in registerable form under the *Real Property Act 1900* duly executed by the Developer as transferor that is effective to transfer the title to the land to the Council when executed by the Council as transferee and registered,
 - 15.2.2 The written consent to the consent to the registration of the transfer of any person whose consent is required to that registration, and

- 15.2.3 A written undertaking from any person holding the certificate of title to the production of the certificate of title for the purposes of registration of the transfer.
- 15.2 The developer is to do all things necessary to enable registration of the instrument of transfer to occur.
- 15.3 The Developer is to ensure that land dedicated to the Council under this Deed is free of all encumbrances and affectations (whether registered or unregistered and including without limitation any charge or liability for rates, taxes and charges) with the exception of the Permitted Encumbrances and as otherwise agreed in writing by the Council.
- 15.4 If, having used all reasonable endeavours, the Developer cannot ensure that land to be dedicated to the Council under this Deed is free from all encumbrances and affectations (except the Permitted Encumbrances), the Developer may request that Council agree to accept the land subject to those encumbrances and affectations, but the Council may withhold its agreement in its absolute discretion.
- 15.5 Despite any other provision of this Deed, if the Developer is required to dedicate land to the Council on which the Developer is also required to carry out a Work under this Deed, the Developer is to comply with clause 15.1.2 not later than 28 days after the Work is completed for the purposes of this Deed.

16. Carrying out of Work

- 16.1 Without limiting any other provision of this Deed, any work that is required to be carried out by the Developer under this Deed is to be carried out in accordance with any design or specification specified or approved by the Council, any relevant Approval and any other applicable law.
- 16.2 The Developer, at its own cost, is to comply with any reasonable direction given to it by the Council to prepare or modify a design or specification relating to a Work that the Developer is required to carry out under this Deed.

17. Approval of design of Work

- 17.1 The Developer is to prepare a detailed design of the Works specified in Schedule 4 which includes all such information as is required for the making of an application for a Construction Certificate for those works.
- 17.2 The Developer is not to make an application for a Construction Certificate for the Works unless;
- 17.2.1 the Developer has provided the detailed design of those works to Council for the Council's approval; and
- 17.2.2 the application is in accordance with the detailed design approved by the Council
- 17.2 If this clause requires Council to approve or certify something within a certain period of time, and the Council has not provided its approval or certification, nor advised the Developer that it will not provide its approval or certification within that period of time,

then the Council is deemed to have provided its approval or waived the requirement for the certification.

- 17.3 Prior to lodging a Development Application seeking Development Consent for a Work, the Developer is to obtain the Council's approval under this clause for the design and specifications for the Work unless otherwise agreed in writing by the Council in relation to the Work.
- 17.4 Prior to commencing a design of a Work, the Developer is to request that the Council provide the Developer with its requirements for the location (generally in accordance with the Staging Plan), design, materials and specifications for the provision of the Work.
- 17.5 When requesting Council's requirements under clause 17.4, the Developer may provide a proposal, including preliminary concept designs, to assist Council in preparing its requirements.
- 17.6 The Council is to provide the Developer with its requirements for the Work in writing within 1 month of receiving the request under clause 17.4.
- 17.7 Once the Developer receives the Council's requirements for a Work under clause 17.6, the Developer is to provide the initial design for the Work to Council for the Council's approval.
- 17.8 The initial design for a Work is to include, or be accompanied by, such information as is required for the making of a Development Application for the Work.
- 17.9 The Council is to advise the Developer in writing whether it approves of the initial design of the Work within 2 months of receiving the initial design from the Developer.
- 17.10 The Developer is to make any change to the initial design for the Work required by the Council.
- 17.11 Once the initial design for a Work is approved, the Developer must submit a full copy of the Development Application for the Work to Council in draft and seek written certification from Council that the Development Application is consistent with the approved initial design of the Work, and the Council must either provide the written certification, or advise the Developer that it will not provide the written certification, within 14 days.
- 17.12 The Developer is not to lodge any Development Application for a Work unless:
 - 17.12.1 the Council has first approved the initial design for the Work or is taken to have approved the initial design for the Work in accordance with this clause 17; and
 - 17.12.2 Council has provided its written certification under clause 17.11 for that Development Application or is taken to have waived the requirement for that certification.
- 17.13 The Developer is to bear all Costs associated with obtaining the Council's approval or certification under this clause.
- 17.14 Following Development Consent being issued for a Work, the Developer is to work with Council in the preparation of the detailed design for it and submit the detailed design to the Council for its approval.

- 17.15 The Developer is not to lodge any application for a Construction Certificate for a Work, with any Certifying Authority, unless the Council has first approved the detailed design for the Work, and provided its written certification that the application for a Construction Certificate is consistent with the approved detailed design of the Work.
- 17.16 The Council is to provide the written certification referred to in clause 17.15, or notify the Developer that it will not provide the written certification, within 14 days of being provided with a copy of the application for a Construction Certificate by the Developer.
- 17.17 Council's written certification specified in clause 17.14 shall specify any particular milestones of construction of a Work and if so, the Developer is to provide the Council with a minimum of 24 hours' notice prior to commencing a particular milestone and allow the Council access to the relevant and to inspect the Work.
- 17.18 An application for a Construction Certificate for a Work is to be accompanied by the Council's written certification when lodged with the Certifying Authority, unless the Council is deemed to have waived the requirement for certification under this clause 17.
- 17.19 For the avoidance of doubt, nothing in this clause operates to fetter the Council's discretion, as consent authority, in determining any Development Application for the Work.

18. Variation of Work

- 18.1 The design or specification of any Work that is required to be carried out by the Developer under this Deed may be varied by agreement in writing between the Parties, acting reasonably, without the necessity for an amendment to this Deed.
- 18.2 Without limiting Clause 18.1, the Developer may make a written request to the Council to approve a variation to the design or specification of a Work in order to enable it to comply with the requirements of any Authority imposed in connection with any Approval relating to the carrying out of the work.
- 18.3 The Council is not to unreasonably delay or withhold its approval to a request made by the Developer under Clause 18.2.
- 18.4 The Council, acting reasonably, may from time to time give a written direction to the Developer requiring it to vary the design or specification of a Work before the Work is carried out in a specified manner and submit the variation to the Council for approval.
- 18.5 The Developer is to comply promptly with a direction referred to in Clause 18.4.
- 18.6 If the Council gives a direction under Clause 18.4 for a Work before a Construction Certificate has been issued for the Work, the Developer is to comply with the direction at its own cost.
- 18.7 If the Council gives a direction under Clause 18.4 for a Work after a Construction Certificate has been issued for the Work, the Council is to reimburse the Developer an amount equal to the increase (if any) in the Costs of completing the Work as a result of the variation requested by the Council.

18.8 The Council is to reimburse the Developer the amount referred to in Clause 18.7 after the relevant Work is complete for the purposes of this Deed, and within 28 days of receipt of:

18.8.1 a tax invoice for the amount claimed by the Developer; and

18.8.2 documentation which demonstrates to the Council's satisfaction, the increase in the Costs of completing the Work as a result of the variation requested by the Council.

19. Access to land

19.1 Subject to the Developer obtaining any necessary Approvals, the Council is to permit the Developer, upon receiving reasonable prior notice from the Developer, to enter any Council owned or controlled land in order to enable the Developer to properly perform its obligations under this Deed.

19.2 The Council is to permit the Developer, upon receiving reasonable prior notice from the Developer, to enter, occupy and use any Council owned or controlled land in order to enable the Developer to properly perform its obligations under this Deed.

19.3 Nothing in this Deed creates or gives the Developer any estate or interest in any part of the land referred to in Clause 19.2.

20. Protection of people, property & utilities

20.1 The Developer is to ensure to the fullest extent reasonably practicable in relation to the performance of its obligations under this Deed that:

20.1.1 all necessary measures are taken to protect people and property;

20.1.2 unnecessary interference with the passage of people and vehicles is avoided;
and

20.1.3 nuisances and unreasonable noise and disturbances are prevented.

20.2 Without limiting Clause 20.1, the Developer is not to obstruct, interfere with, impair or damage any public road, public footpath, public cycleway or other public thoroughfare, or any pipe, conduit, drain, watercourse or other public utility or service on any land except as authorised in writing by the Council or any relevant Authority.

21. Repair of Damage

21.1 The Developer is to maintain any work required to be carried out by the Developer under this Deed until the Work is completed for the purposes of this Deed or such later time as agreed between the Parties.

21.2 The Developer is to carry out its obligation under Clause 21.1 at its own cost and to the satisfaction of the Council.

22. Completion of Work

- 22.1 The Developer is to give the Council written notice of the date on which it will complete Work required to be carried out under this Deed or any Stage of Development.
- 22.2 The Council is to inspect the Work the subject of the notice referred to in clause 22.1 within 14 days of the date specified in the notice for completion of the Work..
- 22.3 Work required to be carried out by the Developer under this Deed, or a Stage of Development, is completed for the purposes of this Deed when the Council, acting reasonably, gives a written notice to the Developer to the effect that the work has been carried out and completed in accordance with this Deed, any relevant Development Consent, any relevant Australian Standards and otherwise to the Council's satisfaction.
- 22.4 If the Council is the owner of the land on which Work the subject of a notice referred to in clause 22.3 is issued, the Council assumes responsibility for the Work upon the issuing of the notice, but if it is not the owner at that time, it assumes that responsibility when it later becomes the owner.
- 22.5 Before the Council gives the Developer a notice referred to in clause 22.3, it may give the Developer a written direction to complete, rectify or repair any specified part of the Work to the reasonable satisfaction of the Council.
- 22.6 The Developer, at its own cost, is to promptly comply with a direction referred to in clause 22.5.

23. Rectification of defects

- 23.1 The Council may give the Developer a Rectification Notice during the Defects Liability Period.
- 23.2 The developer, at its own cost, is to comply with a Rectification Notice according to its terms and to the reasonable satisfaction of the council.
- 23.3 The Council is to do such things as are reasonably necessary to enable the Developer to comply with a Rectification Notice that has been given to it under clause 23.1.

24. Works-As-Executed-Plan

- 24.1 No later than 60 days after Work is completed for the purposes of this Deed, the Developer is to submit to the Council a full work-as-executed-plan in respect of the Work.
- 24.2 The Developer, being the copyright owner in the plan referred to in clause 24.1, gives the Council a non-exclusive licence to use the copyright in the plans for the purposes of this Deed.

25. Removal of Equipment

- 25.1 When Work on any Council owned or controlled land is completed for the purposes of this Deed, the Developer, without delay, is to:
- 25.1.1 remove any Equipment from Land and make good any damage or disturbance to the land as a result of that removal; and
 - 25.1.2 leave the land in a neat and tidy state clean and free from rubbish.

26. Acquisition of land required to be dedicated

- 26.1 If the Developer does not dedicate the land required to be dedicated under this Deed at the time at which it is required to be dedicated, the Developer consents to the Council compulsorily acquiring the land for compensation in the amount of \$1.00 without having to follow the pre-acquisition procedure under the Just Terms Act.
- 26.2 The Council is to only acquire land pursuant to Clause 26.1 if it considers it reasonable to do so having regard to the circumstances surrounding the failure by the Developer to dedicate the land required to be dedicated under this Deed.
- 26.3 Clause 26.1 constitutes an agreement for the purposes of s30 of the Just Terms Act.
- 26.4 If, as a result of the acquisition referred to in clause 26.1, the Council is required to pay compensation to any person other than the Developer, the Developer is to reimburse the Council that amount, upon a written request being made by the Council, or the Council can call on any Security provided under Clause 6.1.
- 26.5 The Developer indemnifies and keeps indemnified the Council against all Claims made against the Council as a result of any acquisition by the Council of the whole or any part of the land concerned except if, and to the extent that, the Claim arises because of the Council's negligence or default.
- 26.6 The Developer is to promptly do all things necessary, and consents to the Council doing all things necessary, to give effect to this clause 26, including without limitation:
- 26.6.1 signing any documents or forms,
 - 26.6.2 giving land owner's consent for lodgement of any Development Application,
 - 26.6.3 producing certificates of title to the Registrar-General under the Real Property Act 1900, and
 - 26.6.4 paying the Council's costs arising under this clause 26.

27. Breach of Obligations

- 27.1 If the Council reasonably considers that the Developer is in breach of any obligation under this Deed, it may give written notice to the Developer:
- 27.1.1 specifying the nature and extent of the breach,
 - 27.1.2 requiring the Developer to:

- (a) rectify the breach if it reasonably considers it is capable of rectification, or
- (b) pay compensation to the reasonable satisfaction of the Council in lieu of rectifying the breach if it reasonably considers the breach is not capable of rectification,

27.1.3 specifying the period within which the breach is to be rectified or compensation paid, being a period that is reasonable in the circumstances.

27.2 If the Developer fails to fully comply with a notice referred to in clause 27.1, the Council may, without further notice to the Developer, call-up the Security provided by the Developer under this Deed and apply it to remedy the Developer's breach.

27.3 If the Developer fails to comply with a notice given under clause 27.1 relating to the carrying out of Work under this Deed, the Council may step-in and remedy the breach and may enter, occupy and use any land owned or controlled by the Developer and any Equipment on such land for that purpose.

27.4 Any costs incurred by the Council in remedying a breach in accordance with clause 27.2 or clause 27.3 may be recovered by the Council by either or a combination of the following means:

27.4.1 by calling-up and applying the Security provided by the Developer under this Deed; or

27.4.2 as a debt due in a court of competent jurisdiction.

27.5 For the purposes of Clause 27.4, the Council's costs of remedying a breach the subject of a notice given under clause 7.1 including, but are not limited to:

27.5.1 the costs of the Council's servants, agents and contractors reasonably incurred for that purpose,

27.5.2 all fees and charges necessarily or reasonably incurred by the Council in remedying the breach, and

27.5.3 all legal costs and expenses reasonably incurred by the Council, by reason of the breach.

27.6 Nothing in this clause 27 prevents the Council from exercising any rights it may have at law or in equity in relation to a breach of this Deed by the Developer, including but not limited to seeking relief in an appropriate Court.

28. Enforcement in a Court of competent jurisdiction

28.1 Without limiting any other provision of this Deed, the Parties may enforce this Deed in any court of competent jurisdiction.

28.2 For the avoidance of doubt, nothing in this Deed prevents:

28.2.1 a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Deed or any matter to which this Deed relates, or

28.2.2 the Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Deed or any matter to which this Deed relates.

29. Risk

29.1 The Developer performs this Deed at its own risk and its own cost.

30. Release

30.1 The Developer releases the Council from any Claim it may have against the Council arising in connection with the performance of the Developer's obligations under this Deed except if, and to the extent that, the claim arises because of the Council's negligence or default.

31. Indemnity

31.1 The Developer indemnifies the Council from and against all Claims that may be sustained, suffered, recovered or made against the Council arising in connection with the performance of the Developer's obligations under this Deed except if, and to the extent that, the Claim arises because of the Council's negligence or default.

32. Insurance

32.1 The Developer is to take out and keep current to the satisfaction of the Council the following insurances in relation to Work required to be carried out by the Developer under this Deed up until the Work is taken to have been completed in accordance with this Deed:

32.1.1 contract works insurance, noting the Council as an interested party, for the full replacement value of the Works (including the cost of demolition and removal of debris, consultants' fees and authorities' fees), to cover the Developer's liability in respect of damage to or destruction of the Works,

32.1.2 public liability insurance for at least \$20,000,000.00 for a single occurrence, which covers the Council, the Developer and any subcontractor of the Developer, for liability to any third party,

32.1.3 workers compensation insurance as required by law, and

32.1.4 any other insurance required by law.

32.2 If the Developer fails to comply with clause 32.1, the Council may effect and keep in force such insurances and pay such premiums as may be necessary for that purpose and the amount so paid shall be a debt due from the Developer to the Council and may be recovered by the Council as it deems appropriate including:

32.2.1 by calling upon the Security provided by the Developer to the Council under this Deed,

32.1.2 recovery as a debt due in a court of competent jurisdiction.

32.3 The Developer is not to commence to carry out any Work unless it has first provided to the Council satisfactory written evidence of all of the insurances specified in clause 32.1

33. Review of Deed

- 33.1 The Parties agree to review this Deed every year, and otherwise if either party is of the opinion that any change of circumstance has occurred, or is imminent, that materially affects the operation of this Deed.
- 33.2 For the purposes of clause 33.1, the relevant changes include (but are not limited to) any law change to a law that restricts or prohibits or enables the Council or any other planning authority to restrict or prohibit any aspect of the Development.
- 33.3 For the purposes of addressing any matter arising from a review of this Deed referred to in clause 33.1, the Parties are to use all reasonable endeavours to agree on and implement appropriate amendments to this Deed.
- 33.4 If this Deed becomes illegal, unenforceable or invalid as a result of any change to a law, the Parties agree to do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Deed is entered into.
- 33.5 A failure by a Party to agree to take action requested by the other Party as a consequence of a review referred to in clause 33.1 (but not 33.4) is not a Dispute for the purposes of this Deed and is not a breach of this Deed.

34. General Provisions

34.1 Entire Deed

This deed constitutes the entire agreement between the parties regarding the matters set out in it and supersedes any prior representations, understandings or arrangements made between the parties, whether orally or in writing.

34.2 Variation

This deed must not be varied except by a later written document executed by all parties.

34.3 Waiver

A right created by this deed cannot be waived except in writing signed by the party entitled to that right. Delay by a party in exercising a right does not constitute a waiver of that right, nor will a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.

34.4 Further assurances

Each party must promptly execute all documents and do everything necessary or desirable to give full effect to the arrangements contained in this deed.

34.5 Time for doing acts

34.5.1 If:

- (i) the time for doing any act or thing required to be done; or
- (ii) a notice period specified in this deed,

expires on a day other than a Business Day, the time for doing that act or thing or the expiration of that notice period is extended until the following Business Day.

34.5.2 If any act or thing required to be done is done after 5 pm on the specified day, it is taken to have been done on the following Business Day.

34.6 **Governing law and jurisdiction**

34.6.1 The laws applicable in New South Wales govern this deed.

34.6.2 The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts competent to hear appeals from those courts.

Schedule 1

Table 1 - Requirements under section 7.4 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.

Requirement under the Act	This deed
<p>Planning instrument and/or development application – (section 7.4(2))</p> <p>The Developer has:</p> <p>(a) sought a change to an environmental planning instrument.</p> <p>(b) made, or proposes to make, a Development Application.</p> <p>(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.</p>	<p>(a) No</p> <p>(b) Yes</p> <p>(c) No</p>
Description of land to which this deed applies – (section 7.4(3)(a))	See Schedule 3
Description of development to which this deed applies – (section 7.4(3)(b))	See definition of Development in clause 1.1
Description of change to the environmental planning instrument to which this deed applies – (section 7.4(3)(b))	Not Applicable
The scope, timing and manner of delivery of contribution required by this deed – (section 7.4(3)(c))	See Schedule 4
Applicability of sections 7.11 and 7.12 of the Act – (section 7.4(3)(d))	The application of sections 7.11 and 7.12 of the Act is not excluded in respect of the Development.
Applicability of section 7.24 of the Act – (section 7.4(3)(d))	The application of section 7.24 of the Act is not excluded in respect of the Development.
Consideration of benefits under this deed if section 7.11 applies – (section 7.4(3)(e))	No
Mechanism for Dispute Resolution – (section 7.4(3)(f))	See clause 8
Enforcement of this deed – (section 7.4(3)(g))	See clause 6
No obligation to grant consent or exercise functions – (section 7.4(10))	See clause 13.13

Table 2 – Other matters

Requirement under the Act	This deed
Registration of the Planning Agreement – (section 7.6 of the Act)	Yes (see clause 7)
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a construction certificate is issued – (clause 25E(2)(g) of the Regulation)	No
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before an occupation certificate is issued – (clause 25E(2)(g) of the Regulation)	No
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a subdivision certificate is issued – (clause 25E(2)(g) of the Regulation)	Yes (see clause 3 of Schedule 4)

Schedule 2

Address for Service (clause 1.1)

Council

Contact: The Chief Executive Officer

Address: 62-64 Menangle Street
Picton 2571

Email: council@wollondilly.nsw.gov.au

Developer

Contact: Petton Pty Ltd

Address: 1550 Burraborang Road Oakdale

Email: peter@rainsaverwatersystems.com.au

Schedule 3**Land (clause 1.1)****1. Lots proposed for development**

Lot	Deposited Plan	Folio Identifier
1	835288	1/835288

Schedule 4

Development Contributions (clause 4)

1. Development Contributions

- (a) The Developer is to provide to the Council the Development Contribution in the manner set out in the table below:

Development Contribution	Value	Timing
1.The construction of the bio-retention and on site detention (OSD) facility to be constructed by the developer on the site in accordance with the submitted amended Stormwater Concept Plan (82016085-01 C1019) submitted on 14/06/2016 shown in the Schedule , and as approved by Council. The works referred to in this paragraph are to be dedicated to Council	N/a	The bio-retention and OSD facility will be completed prior to issuing of the first subdivision certificate for the Development.
2. The carrying out of post construction maintenance of the bio-retention and on site detention (OSD) facility in accordance with any approval granted by Wollondilly Council for a period of 5 years in accordance with the Dedication of Land Policy – PLA0036, commencing from the completion of the works	\$48,440.00	The maintenance period is a period of 5 years commencing on the date the bio-retention and OSD facility is completed for the purposes of this deed
Contribution Amount – 3. Monetary contribution towards maintenance for the stormwater management land, bio retention and OSD facility	\$603,541.00	Pursuant to clause 3 of this Schedule 4
Contribution Amount – 4. Monetary contribution for the purpose of maintaining the bushland and riparian area included in the land dedication and to carry out minor embellishment works on the land for a period of Five (5) years following dedication.	\$92,521.00	Pursuant to clause 3 of this Schedule 4

Cash Contribution – 5. The embellishment works to be constructed on Lot 227, adjacent to the stormwater management land shall include signage, informal track and seating as determined by Council	\$35,000.00	Pursuant to clause 3 of this Schedule 4
Dedication to Council 6. Road corridors and associated road and drainage infrastructure (see Clause 10 of Development Consent dated 19 th April, 2018 and Drawings C1004 to C1007 Version B of the Development Application Drawing Set (DA 010.2016.412.001)		On registration of the plan of subdivision as a deposited plan
7. Lot 227 containing the on site detention and floating wetland facility is to be dedicated to Council		As part of Stage 1 subdivision release

2. Calculation of the value of a Contribution Amount

- (a) Each Contribution Amount has been determined by agreement between the Developer and Council.
- (b) On the CPI Adjustment Date, each Contribution Amount is to be adjusted by multiplying the Contribution Amount payable (as previously adjusted in accordance with this clause, where relevant) by an amount equal to the Current CPI divided by the Base CPI.

3. Payment of Contribution Amounts

- (a) The Developer must pay to the Council in cash or by unendorsed bank cheque or by deposit by means of electronic funds transfer of cleared funds into a bank account nominated by the Council each Contribution Amount prior to the issue of the first Subdivision Certificate for the Development
- (b) The Developer must provide the Council with not less than 10 Business Days' written notice of its intention to lodge an application for the relevant Subdivision Certificate.
- (c) The parties agree that the requirement to make a payment under this clause is a restriction on the issue of the relevant Subdivision Certificate within the meaning of section 6.15(1)(d) of the Act.

Schedule 5

Security terms (clause 6)

1. Developer to provide Security

- (a) In order to secure the payment or performance of the Development Contribution the Developer has agreed to provide the Security.
- (b) The Security must:
 - (i) name the "Wollondilly Shire Council" as the relevant beneficiary; and
 - (ii) not have an expiry date.

2. Security

- (a) At the time the Developer signs this deed, the Developer must provide the Security to the Council for the value of the works to be undertaken for the Development as determined by the Council acting reasonably and the amount of monetary contributions to be paid under this deed (**Security Amount**) in order to secure the Developer's obligations in relation to works and monetary contributions under this deed.
- (b) From the date of execution of this deed until the date that the Developer has provided the Development Contribution, the Council is entitled to retain the Security. The Developer is to ensure that the Security provided to the Council is at all times maintained to the full current indexed value.

3. Claims under Bank Guarantees

- (a) The Council may:
 - (i) call upon the Security where the Developer has failed to pay a Contribution Amount for the Development on or after the date for payment under this deed; and
 - (ii) retain and apply such monies towards the Contribution Amount and any costs and expenses incurred by the Council in rectifying any default by the Developer under this deed.
- (b) Prior to calling upon the Security the Council must give the Developer not less than 10 Business Days written notice of his or her intention to call upon the Security.
- (c) If:
 - (i) the Council calls upon the Security; and
 - (ii) applies all or part of such monies towards the Contribution Amount and any costs and expenses incurred by the Council in rectifying any default by the Developer under this deed; and
 - (iii) has notified the Developer of the call upon the Security in accordance with clause (b) of this Schedule 5,

then the Developer must provide to the Council a replacement Security to ensure that at all times until the date that the Security is released in accordance with clause 4 of this

Schedule, the Council is in possession of Security for a face value equivalent to the Security Amount.

4. Release of Security

If:

- (a) the Developer has satisfied all of its obligations under this deed secured by the Bank Guarantee; and
- (b) the whole of the monies secured by the Bank Guarantee has not been expended and the monies accounted for in accordance with clause 2 of this Schedule 5,

then the Council will promptly return the Bank Guarantee (less any costs, charges, duties and taxes payable), or the remainder of the monies secured by the Bank Guarantee (as the case may be), to the Developer.

5. Acquisition of land required to be dedicated

(a) If the Developer does not dedicate land required to be dedicated under this Deed at the time at which it is required to be dedicated, the Developer consents to the Council compulsorily acquiring the land for compensation in the amount of \$1.00 without having to follow the pre-acquisition procedure under the Just Terms Act.

(b) The Council is to only acquire land pursuant to clause 5(a) if it considers it reasonable to do so having regard to the circumstances surrounding the failure by the Developer to dedicate the land required to be dedicated under this Deed.

(c) Clause 5(a) constitutes an agreement for the purposes of s30 of the Just Terms Act.

(d) If as a result of the acquisition referred to in clause 5(a), the Council is required to pay compensation to any person other than the Developer, the Developer is to reimburse the Council that amount, upon a written request being made by the Council, or the Council can call on any Security provided under this Schedule 5.

(e) The Developer indemnifies and keeps indemnified the Council against all Claims made against the Council as a result of any acquisition by the Council of the whole or any part of the land concerned except if, and to the extent that, the Claim arises because of the Council's negligence or default.

(f) The Developer is to promptly do all things necessary, and consents to the Council doing all things necessary, to give effect to this clause 5, including without limitation;

- (i) signing any documents or forms,
- (ii) giving land owner's consent for lodgement of any Development Application,
- (iii) producing certificates of title to the Registrar-General under the Real Property Act 1900, and
- (iv) paying the Council's costs arising under this clause 5.

Attachment 1 – Plan of Works

Attachment 2 – Land to be dedicated

Execution page

Executed as a deed

Signed, sealed and delivered for and on behalf of the **Wollondilly Shire Council** in the presence of:

.....
Signature of witness

.....
Signature of the Wollondilly Shire Council or delegate

.....
Name of witness in full

.....
[Name of Wollondilly Shire Council or delegate]

.....
Address of witness

Executed by **Petton Pty Ltd** (ACN 059 365 516) in accordance with section 127 of the Corporations Act 2001:

.....
Signature of Director

.....
Signature of Director/Secretary

.....
Name of Director in full

.....
Name of Director/Secretary in full