

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

## **Second Deed of Variation**

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

**Wingecarribee Shire Council**

**Feldkirchen Pty Ltd**

Date:

11/12/14



## Nattai Ponds Planning Agreement No. 1

### Second Deed of Variation

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

### **Deed of Variation**

#### **Summary Sheet**

**Council:**

**Name:** Wingecarribee Shire Council  
**Address:** Civic Centre, Elizabeth Street, Moss Vale NSW 2577  
**Telephone:** 02 4868 0854  
**Email:** [WSC.Mail@wsc.nsw.gov.au](mailto:WSC.Mail@wsc.nsw.gov.au)  
**Representative:** David Matthews

**Developer:**

**Name:** Feldkirchen Pty Ltd  
**Address:** PO Box 2875, Bowral NSW 2576  
**Telephone:** 0414 611 414  
**Email:** [jeffknox@westnet.com.au](mailto:jeffknox@westnet.com.au)  
**Representative:** Jeff Robert Knox



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## Nattai Ponds Planning Agreement No. 1

### Second Deed of Variation

Under cl25C(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** ABN 77 097 910 999 of PO Box 2875, Bowral NSW 2575 (Developer)

#### Background

- A On 28 March 2013, the Land and Environment Court of NSW granted development consent LUA12/0380 for a residential subdivision on the site to create 252 residential allotments, roads and open space (**2013 Consent**).
- B On 11 April 2013, Council and the Developer entered into the Planning Agreement.
- C On 19 March 2014, Council and the Developer amended the Planning Agreement by Deed of Variation 1.
- D On 20 August 2014, the Land and Environment Court of New South Wales modified the 2013 Consent to alter the arrangements in respect of the Isedale Road Traffic Signals and the Old Pot Factory Access Road.
- E Pursuant to clause 53 of the Planning Agreement, the Parties have agreed to vary the Planning Agreement in accordance with this Deed to reflect the modification of the 2013 Consent on 20 August 2014.

#### Operative provisions

##### 1. Definitions & Interpretation

- 1.1 In this Deed the following definitions apply:

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

**Deed of Variation 1** means the Deed of Variation dated 19 March 2014.

**Occupation Certificate** has the same meaning as in the *Environmental Planning and Assessment Act 1979*.

**Planning Agreement** means the Nattai Ponds Planning Agreement No. 1 pursuant to s93F of the Act, entered into between the Council and the Developer on 11 April 2013.

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Wingecarribee Shire Council

Feldkirchen Pty Ltd

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- 1.2 All other capitalised words used in this Deed have the meanings given to those words in the Planning Agreement.
- 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 s93F(1) of the Act.

### 3. Commencement

- 3.1 This Deed takes effect on the date when 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 11.2.6 is amended to read:

*Complete the OHH Works in the following sequence:*

- (1) *The Isedale Road Traffic Signals and Old Pot Factory Access Road prior to the release of an Occupation Certificate for any Final Lot in Stage 1 of the Development;*
- (2) *The Badgery Street Intersection prior to release of a Subdivision Certificate for any of the Stages 2 to 4 of the Development.*

- 5.1.2 Clause 32.1 is amended to read:

*For the avoidance of doubt, the Developer is not to commence carrying out any part of Stages 2 to 4 of the Development unless and until the OHH Works are operational, and at all times:*

*32.1.1 if the Developer is the initial Developer – the Developer has complied with clause 11.2 and clause 12.1, or*

*32.1.2 if the Developer is not the Initial Developer – the Developer has complied with clause 11.3 and clause 12.2*

- 5.1.3 Clause 35.1 is amended to read

*For the purpose of this clause 35, a reference to a "Work" means*

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**Feldkirchen Pty Ltd**

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35.1.1 *an Item comprising the carrying out of a Work,*

35.1.2 *the Establishment Obligation,*

35.1.3 *the Management Obligation, and*

35.1.4 *the OHH Works,*

*but does not include the Isedale Road Upgrade.*

**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(7) 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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**Wingecarribee Shire Council**

**Feldkirchen Pty Ltd**

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**Execution**

**Executed as a Deed**

Dated: 11/12/14

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**Executed on behalf of the Council**



General Manager



Witness/Name/Position

David Matthews

CO-ORDINATOR STRATEGIC PLANNING

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

2001

JEFF KNOX



Director

Director

Witness/Name/Position

Richard Anderson

6/68-70 Station St

Bowral NSW 2576



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**Feldkirchen Pty Ltd**

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**Appendix**

(Clause 9)

*Environmental Planning and Assessment Regulation 2000*

(Clause 25E)

**Explanatory Note**

**Draft Deed**

Under s25C(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 2576 (Developer)

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

Lot 2 and 3 DP 607486 and Lots 1 to 8 DP1044854

**Description of Proposed Development/Instrument Change**

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

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

**Objective of Draft Deed**

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

**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:

- Imposes an obligation on the Developer to complete the Isedale Road Traffic Signals before the release of an occupation certificate for Stage One of the Development.





## Assessment of the Merits of the Draft Deed

### The Planning Purposes Served by the Draft Deed

The Draft Deed:

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

### How the Draft Deed Promotes the Public Interest

The Draft Deed promotes the objects of the Act as set out in s5(a)(ii) and (v).

### 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 Deed promotes the following 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, and
- 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***

The road works proposed to be carried out by the Developer are included in the schedule of works in Council's recently adopted Section 94 Plan for Roads and Traffic Facilities 2012 to 2031.

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

The Draft Deed includes a requirement that must be complied with before an occupation certificate is issued for the first stage of the development.

