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Deed

18 Mecca Lane, Bungendore Planning Agreement

Under s7.4 of the *Environmental Planning and Assessment Act 1979*

**Paul Gerard Niven and Alice Elizabeth Niven
Queanbeyan-Palerang Regional Council**

Date:

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18 Mecca Lane, Bungendore Planning Agreement

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18 Mecca Lane, Bungendore Planning Agreement
Paul Gerard Niven and Alice Elizabeth Niven
Queanbeyan-Palerang Regional Council



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18 Mecca Lane, Bungendore Planning Agreement

Summary Sheet

Developer:

Paul Gerard Niven and Alice Elizabeth Niven

Council:

Queanbeyan-Palerang Regional Council

Land:

See definition of *Land* in clause 1.1.

Development:

See definition of *Development* in clause 1.1.

Development Contributions:

See Clause 8 and the Schedule.

Application of s7.11, s7.12 and s7.24 of the Act:

See clause 7.

Restriction on dealings:

See clause 12.

Dispute Resolution:

See Part 3.



18 Mecca Lane, Bungendore Planning Agreement

Under s7.4 of the *Environmental Planning and Assessment Act 1979*

Parties

Paul Gerard Niven and Alice Elizabeth Niven of 18 Mecca Lane,
Bungendore NSW 2621 (**Developer**)

and

Queanbeyan-Palerang Regional Council ABN 95 933 070 982 of 256
Crawford St, Queanbeyan NSW 2620 (**Council**)

Background

- A The Developer made a Development Application to the Council for Development Consent to carry out the Development on the Land.
- B Development Consent was granted for the Development on 24 March 2016 subject to condition no. 85 which requires the Developer to enter into a planning agreement in accordance with section 7.4 of the Act in the terms of the Developer's offer dated 19 March 2016.
- C The Developer is prepared to make Development Contributions in connection with the carrying out of the Development in accordance with this Deed.

Operative provisions

Part 1 - Preliminary

1 Interpretation

1.1 In this Deed the following definitions apply:

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

Authority means the Commonwealth or New South Wales government, a Minister of the Crown, a government department, a public authority established by or under any Act, a council or county council constituted under the *Local Government Act 1993*, or a person or body exercising functions under any Act including a commission, panel, court, tribunal and the like.

Construction Certificate has the same meaning as in the Act.



Cost means a cost, charge, expense, outgoing, payment, fee and other expenditure of any nature.

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

Development means the development as described in Development Application DA.2015.182, as modified from time to time, being the construction of a dwelling house comprising 5 bedrooms, a study, formal and informal living and dining areas, a wet bar, bathrooms and a laundry.

Development Application has the same meaning as in the Act.

Development Consent has the same meaning as in the Act.

Development Contribution means a monetary contribution, the dedication of land free of cost, the carrying out of work, or the provision of any other material public benefit, or any combination of them, to be used for, or applied towards a public purpose, but does not include any security or other benefit provided by a Party to the Council to secure the enforcement of that Party's obligations under this Deed for the purposes of s7.4(3)(g) of the Act.

Dispute means a dispute or difference between the Parties under or in relation to this Deed.

GST has the same meaning as in the GST Law.

GST Law has the same meaning as in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any other Act or regulation relating to the imposition or administration of the GST.

Land means Lot 2 in Deposited Plan 1079627, known as 18 Mecca Lane, Bungendore NSW 2621.

Occupation Certificate has the same meaning as in the Act.

Party means a party to this Deed.

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

Subdivision Certificate has the same meaning as in the Act.

1.2 In the interpretation of this Deed, the following provisions apply unless the context otherwise requires:

- 1.2.1 Headings are inserted for convenience only and do not affect the interpretation of this Deed.
- 1.2.2 A reference in this Deed to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
- 1.2.3 If the day on which any act, matter or thing is to be done under this Deed is not a business day, the act, matter or thing must be done on the next business day.
- 1.2.4 A reference in this Deed to dollars or \$ means Australian dollars and all amounts payable under this Deed are payable in Australian dollars.
- 1.2.5 A reference in this Deed to a \$ value relating to a Development Contribution is a reference to the value exclusive of GST.
- 1.2.6 A reference in this Deed to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and



- any subordinate legislation or regulations issued under that legislation or legislative provision.
- 1.2.7 A reference in this Deed to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- 1.2.8 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Deed.
- 1.2.9 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- 1.2.10 Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- 1.2.11 A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
- 1.2.12 References to the word 'include' or 'including' are to be construed without limitation.
- 1.2.13 A reference to this Deed includes the agreement recorded in this Deed.
- 1.2.14 A reference to a Party to this Deed includes a reference to the servants, agents and contractors of the Party, the Party's successors and assigns.
- 1.2.15 A reference to 'dedicate' or 'dedication' in relation to land is a reference to dedicate or dedication free of cost.
- 1.2.16 Any schedules, appendices and attachments form part of this Deed.
- 1.2.17 Notes appearing in this Deed are operative provisions of this Deed.

2 Status of this Deed

- 2.1 This Deed is a planning agreement within the meaning of s7.4(1) of the Act.

3 Commencement

- 3.1 This Deed takes effect on the date when all Parties have executed one counterpart of 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 any other person who is a Party.
- 3.3 Within 7 days of this Deed commencing, the Parties are to exchange contact details.

4 Application of this Deed

- 4.1 This Deed applies to the Land and to the Development.



5 Warranties

- 5.1 The Parties warrant to each other that they:
- 5.1.1 have full capacity to enter into this Deed, and
 - 5.1.2 are able to fully comply with their obligations under this Deed.

6 Further agreements

- 6.1 The Parties may, at any time and from time to time, enter into agreements relating to the subject-matter of this Deed that are not inconsistent with this Deed for the purpose of implementing this Deed.

7 Application of s7.11, s7.12 and s7.24 of the Act to the Development

- 7.1 This Deed does not exclude the application of s7.11, s7.12 or s7.24 of the Act to the Development.
- 7.2 The benefits in this Deed are not to be taken into consideration in determining a Development Contribution for the Development under s7.11 of the Act.

Part 2 – Development Contributions

8 Provision of Development Contributions

- 8.1 The Developer is to make Development Contributions to the Council in accordance with the Schedule.
- 8.2 The Council is to apply each Development Contribution made by the Developer under this Deed towards the public purpose for which it is made and otherwise in accordance with this Deed.

9 Payment of monetary Development Contributions

- 9.1 A monetary Development Contribution is made for the purposes of this Deed when the Council receives the full amount of the contribution payable under this Deed in cash or by unendorsed bank cheque or by the deposit by means of electronic funds transfer of cleared funds into a bank account nominated by the Council.

Part 3 – Dispute Resolution

10 Dispute Resolution

- 10.1 This clause applies to any Dispute arising in connection with this Deed.
- 10.2 Such a Dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 10.3 If a notice is given under clause 10.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 10.4 If the Dispute is not resolved within a further 28 days, the Parties are to mediate the Dispute in accordance with the Mediation Rules of the Law Society of New South Wales published from time to time and are to request the President of the Law Society to select a mediator.
- 10.5 If the Dispute is not resolved by mediation within a further 28 days, or such longer period as may be necessary to allow any mediation process which has been commenced to be completed, then the Parties may exercise their legal rights in relation to the Dispute, including by the commencement of legal proceedings in a court of competent jurisdiction in New South Wales.
- 10.6 Each Party is to bear its own costs arising from or in connection with the appointment of a mediator and the mediation.
- 10.7 The Parties are to share equally the costs of the President, the mediator, and the mediation.

Part 4 - Enforcement

11 Enforcement in a court of competent jurisdiction

- 11.1 Without limiting any other provision of this Deed, the Parties may enforce this Deed in any court of competent jurisdiction.
- 11.2 For the avoidance of doubt, nothing in this Deed prevents:
 - 11.2.1 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
 - 11.2.2 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.



Part 5 – Restriction on Dealings

12 Restriction on dealings

- 12.1 The Developer is not to:
- 12.1.1 sell or transfer the Land, or
 - 12.1.2 assign the Developer's rights or obligations under this Deed, or novate this Deed,
- to any person unless:
- 12.1.3 the Developer has, at no cost to the Council, first procured the execution by the person to whom the Land or part is to be sold or transferred or the Developer's rights or obligations under this Deed are to be assigned or novated, of a deed in favour of the Council on terms reasonably satisfactory to the Council, and
 - 12.1.4 the Council has given written notice to the Developer stating that it reasonably considers that the purchaser, transferee, assignee or novatee, is reasonably capable of performing its obligations under this Deed, and
 - 12.1.5 the Developer is not in breach of this Deed, and
 - 12.1.6 the Council otherwise consents to the transfer, assignment or novation, such consent not to be unreasonably withheld.

Part 6 – Risk

13 Risk

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

Part 7 – Other Provisions

14 Notices

- 14.1 Any notice, consent, information, application or request that is to or may be given or made to a Party under this Deed is only given or made if it is in writing and sent in one of the following ways:
- 14.1.1 delivered or posted to that Party at its address set out in the Summary Sheet,
 - 14.1.2 faxed to that Party at its fax number set out in the Summary Sheet, or
 - 14.1.3 emailed to that Party at its email address set out in the Summary Sheet.



- 14.2 If a Party gives the other Party 3 business days' notice of a change of its address, fax number or email, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted, faxed or emailed to the latest address or fax number.
- 14.3 Any notice, consent, information, application or request is to be treated as given or made if it is:
 - 14.3.1 delivered, when it is left at the relevant address,
 - 14.3.2 sent by post, 2 business days after it is posted,
 - 14.3.3 sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number, or
 - 14.3.4 sent by email and the sender does not receive a delivery failure message from the sender's internet service provider within a period of 24 hours of the email being sent.
- 14.4 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, or if on a business day, after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

15 Costs

- 15.1 Each Party is to bear its own costs relating to this Deed.

16 Entire Deed

- 16.1 This Deed contains everything to which the Parties have agreed in relation to the matters it deals with.
- 16.2 No Party can rely on an earlier document, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, before this Deed was executed, except as permitted by law.

17 Further Acts

- 17.1 Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to effect, perfect or complete this Deed and all transactions incidental to it.

18 Governing Law and Jurisdiction

- 18.1 This Deed is governed by the law of New South Wales.
- 18.2 The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them.
- 18.3 The Parties are not to object to the exercise of jurisdiction by those courts on any basis.



19 Joint and Individual Liability and Benefits

- 19.1 Except as otherwise set out in this Deed:
- 19.1.1 any agreement, covenant, representation or warranty under this Deed by 2 or more persons binds them jointly and each of them individually, and
 - 19.1.2 any benefit in favour of 2 or more persons is for the benefit of them jointly and each of them individually.

20 No Fetter

- 20.1 Nothing in this Deed shall be construed as requiring Council to do anything that would cause it to be in breach of any of its obligations at law, and without limitation, nothing shall be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

21 Illegality

- 21.1 If this Deed or any part of it becomes illegal, unenforceable or invalid as a result of any change to a law, the Parties are to co-operate and do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Deed is entered into.

22 Severability

- 22.1 If a clause or part of a clause of this Deed can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way.
- 22.2 If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Deed, but the rest of this Deed is not affected.

23 Amendment

- 23.1 No amendment of this Deed will be of any force or effect unless it is in writing and signed by the Parties to this Deed in accordance with clause 25D of the Regulation.

24 Waiver

- 24.1 The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Deed, does not amount to a waiver of any obligation of, or breach of obligation by, another Party.
- 24.2 A waiver by a Party is only effective if it:
- 24.2.1 is in writing,



- 24.2.2 is addressed to the Party whose obligation or breach of obligation is the subject of the waiver,
- 24.2.3 specifies the obligation or breach of obligation the subject of the waiver and the conditions, if any, of the waiver,
- 24.2.4 is signed and dated by the Party giving the waiver.
- 24.3 Without limitation, a waiver may be expressed to be conditional on the happening of an event, including the doing of a thing by the Party to whom the waiver is given.
- 24.4 A waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given, and is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.
- 24.5 For the purposes of this Deed, an obligation or breach of obligation the subject of a waiver is taken not to have been imposed on, or required to be complied with by, the Party to whom the waiver is given.

25 GST

- 25.1 In this clause:
 - Adjustment Note, Consideration, GST, GST Group, Margin Scheme, Money, Supply and Tax Invoice** have the meaning given by the GST Law.
 - GST Amount** means in relation to a Taxable Supply the amount of GST payable in respect of the Taxable Supply.
 - GST Law** has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
 - Input Tax Credit** has the meaning given by the GST Law and a reference to an Input Tax Credit entitlement of a party includes an Input Tax Credit for an acquisition made by that party but to which another member of the same GST Group is entitled under the GST Law.
 - Taxable Supply** has the meaning given by the GST Law excluding (except where expressly agreed otherwise) a supply in respect of which the supplier chooses to apply the Margin Scheme in working out the amount of GST on that supply.
- 25.2 Subject to clause 25.4, if GST is payable on a Taxable Supply made under, by reference to or in connection with this Deed, the Party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.
- 25.3 Clause 25.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Deed to be GST inclusive.
- 25.4 No additional amount shall be payable by the Council under clause 25.2 unless, and only to the extent that, the Council (acting reasonably and in accordance with the GST Law) determines that it is entitled to an Input Tax Credit for its acquisition of the Taxable Supply giving rise to the liability to pay GST.
- 25.5 If there are Supplies for Consideration which is not Consideration expressed as an amount of Money under this Deed by one Party to the other Party that



are not subject to Division 82 of the *A New Tax System (Goods and Services Tax) Act 1999*, the Parties agree:

- 25.5.1 to negotiate in good faith to agree the GST inclusive market value of those Supplies prior to issuing Tax Invoices in respect of those Supplies;
- 25.5.2 that any amounts payable by the Parties in accordance with clause 25.2 (as limited by clause 25.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 25.6 No payment of any amount pursuant to this clause 25, and no payment of the GST Amount where the Consideration for the Taxable Supply is expressly agreed to be GST inclusive, is required until the supplier has provided a Tax Invoice or Adjustment Note as the case may be to the recipient.
- 25.7 Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to a cost, expense or other liability incurred by a party, must exclude the amount of any Input Tax Credit entitlement of that party in relation to the relevant cost, expense or other liability.
- 25.8 This clause continues to apply after expiration or termination of this Deed.

26 Explanatory Note

- 26.1 The Appendix contains the Explanatory Note relating to this Deed required by clause 25E of the Regulation.
- 26.2 Pursuant to clause 25E(7) of the Regulation, the Parties agree that the Explanatory Note is not to be used to assist in construing this Planning Deed.



Execution

Executed as a Deed

Dated:

Executed by the Developer


Paul Gerard Niven

4th September 2019


Alice Elizabeth Niven

31st July 2019

Executed on behalf of the Council


Chief Executive Officer / General Manager


Witness


Mayor


Witness



Schedule

(Clause 8)

Development Contributions

Column 1	Column 2	Column 3	Column 4
Item/ Contribution	Public Purpose	Manner & Extent	Timing
A. Monetary Contributions			
1. Water Supply Contribution	Water supply headworks	Payment of fixed amount of \$10,324.60	Prior to the issuing of an Occupation Certificate for the Development
2. Sewer Supply Contribution	Sewer supply headworks	Payment of fixed amount of \$12,390.30	Prior to the issuing of an Occupation Certificate for the Development



Appendix

(Clause 26)

Environmental Planning and Assessment Regulation 2000

(Clause 25E)

Explanatory Note

Draft Planning Agreement

Under s7.4 of the *Environmental Planning and Assessment Act 1979*

Parties

Paul Gerard Niven and Alice Elizabeth Niven of 18 Mecca Lane, Bungendore NSW 2621 (**Developer**)

Queanbeyan-Palerang Regional Council ABN 95 933 070 982 of 256 Crawford Street, Queanbeyan NSW 2620 (**Council**)

Description of the Land to which the Draft Planning Agreement Applies

Lot 2 in Deposited Plan 1079627, known as 18 Mecca Lane, Bungendore NSW 2621.

Description of Proposed Development

Development as described in Development Application DA.2015.182, as modified from time to time, being the construction of a dwelling house comprising 5 bedrooms, a study, formal and informal living and dining areas, a wet bar, bathrooms and a laundry.



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

Objectives of Draft Planning Agreement

The objective of the Draft Planning Agreement is to require the Developer to make Development Contributions in conjunction with the carrying out of the Development.

Nature of Draft Planning Agreement

The Draft Planning Agreement is a planning agreement within the meaning of s7.4 of the *Environmental Planning and Assessment Act 1979 (Act)*. It is an agreement between the Council and the Developer. The Draft Planning Agreement is a voluntary agreement under which Development Contributions (as defined in clause 1.1 of the Draft Planning Agreement) are to be made by the Developer for various public purposes (as defined in s7.4(2) of the Act).

Effect of the Draft Planning Agreement

In summary the Draft Planning Agreement:

- requires the Developer to make monetary Development Contributions in conjunction with the carrying out of the Development comprising monetary contributions towards water supply works and sewer supply works,
- does not exclude that application of s7.11, s7.12 or s7.24 of the Act to the Development,
- provides for the resolution of disputes under the Deed by mediation,
- restricts the Developer from selling or transferring the land to which the Draft Planning Agreement relates, or assigning the Developer's rights and obligations under the Draft Planning Agreement or novating the Draft Planning Agreement in certain circumstances,
- makes provision in relation to GST payable under *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

Assessment of the Merits of the Draft Planning Agreement

The Planning Purposes Served by the Draft Planning Agreement

The Draft Planning Agreement provides funding towards the provision of water supply and sewerage infrastructure.

The Council and the Developer have assessed the Draft Planning Agreement and both hold the view that the provisions of the Draft Planning Agreement provide a reasonable means of achieving the public purpose set out above.

How the Draft Planning Agreement Promotes the Public Interest

The Draft Planning Agreement requires the Developer to make monetary contributions that meet the need for water supply and sewerage supply infrastructure arising from the Development. This enables the subject land to be developed in a

timely and efficient manner to promote residential housing development, which in turn promotes the following objectives of the Act:

- promotes and co-ordinates the orderly and economic use and development of the land,
- provides increased opportunity for public involvement and participation in environmental planning and assessment.

For Planning Authorities:

Development Corporations - How the Draft Planning Agreement Promotes its Statutory Responsibilities

N/A

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

N/A

Councils – How the Draft Planning Agreement Promotes elements of the Principles for Local Government (formerly the Council's Charter) in the Local Government Act 1993

The Draft Planning Agreement promotes the Principles for Local Government by:

- enabling the Council to carry out its functions in a way that provides the best possible value for residents and ratepayers,
- enabling Council to manage lands and other assets so that current and future local community needs can be met in an affordable way.

These elements of the Principles for Local Government are promoted by the collection of monetary Development Contributions towards the water supply works and sewer supply works, the need for which arises from the Development.

All Planning Authorities – Whether the Draft Planning Agreement Conforms with the Authority's Capital Works Program

The payment of the monetary contribution will ensure funds are available to Council to undertake ongoing maintenance on the existing water and sewer infrastructure. There is no specific work in the Council's capital works program that is relevant to the Draft Planning Agreement.



All Planning Authorities – Whether the Draft Planning Agreement specifies that certain requirements must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued

The Draft Planning Agreement requires monetary Development Contributions to be paid prior to the issuing of an occupation certificate for the Development.