



muswellbrook  
shire council

Muswellbrook Shire Council

# ORDINARY COUNCIL MEETING

BUSINESS PAPER

TUESDAY 26 MARCH 2024



**MUSWELLBROOK SHIRE COUNCIL**

P.O Box 122  
MUSWELLBROOK  
20 March 2024

Councillors,

You are hereby requested to attend the Ordinary Council Meeting to be held in the Training Room, Level 2, University of Newcastle - Upper Hunter Campus, 87 Hill Street, Muswellbrook, NSW 2333 Australia on **Tuesday 26 March 2024** commencing at 6:00 pm.

Derek Finnigan

**GENERAL MANAGER**



# Council Meetings

## Meeting Principles

Council and committee meetings should be:

- Transparent:* Decisions are made in a way that is open and accountable.
- Informed:* Decisions are made based on relevant, quality information.
- Inclusive:* Decisions respect the diverse needs and interests of the local community.
- Principled:* Decisions are informed by the principles prescribed under Chapter 3 of the Act.
- Trusted:* The community has confidence that councillors and staff act ethically and make decisions in the interests of the whole community.
- Respectful:* Councillors, staff and meeting attendees treat each other with respect.
- Effective:* Meetings are well organised, effectively run and skilfully chaired.
- Orderly:* Councillors, staff and meeting attendees behave in a way that contributes to the orderly conduct of the meeting.

## Public Forums

The council may hold a public forum prior to each ordinary meeting of the council for the purpose of hearing oral submissions from members of the public on items of business to be considered at the meeting. Public forums may also be held prior to extraordinary council meetings and meetings of committees of the council.

To speak at a public forum, a person must first make an application to the council in the approved form. Applications to speak at the public forum must be received by no later than 9.00 am two (2) days prior to the day of the meeting before the date on which the public forum is to be held, and must identify the item of business on the agenda of the council meeting the person wishes to speak on, and whether they wish to speak 'for' or 'against' the item.

Approved speakers at the public forum are to register with the council any written, visual or audio material to be presented in support of their address to the council at the public forum, and to identify any equipment needs no more than 3 days before the public forum. The general manager or their delegate may refuse to allow such material to be presented.

Each speaker will be allowed 2 minutes to address the council. This time is to be strictly enforced by the chairperson.



## Declarations of Interest

### **Statement of Ethical Obligations**

Councillors are reminded of their oath or affirmation of office, made under section 233A of the NSW Local Government Act 1993, to undertake the duties of the office of Councillor in the best interests of the people of Muswellbrook Shire and Muswellbrook Shire Council and to faithfully and impartially carry out the functions, powers, authorities and discretions vested in them, under the Local Government Act 1993 or any other Act, to the best of their ability and judgment. Pursuant to the provisions of the Muswellbrook Shire Council Code of Meeting Practice and the Muswellbrook Shire Council Code of Conduct, Councillors are reminded of their obligations to disclose and appropriately manage conflicts of interest.

Section 451 of the Local Government Act requires that if a Councillor or Member of a Council or committee has a pecuniary interest in any matter before the Council or Committee, he/she must disclose the nature of the interest to the meeting as soon as practicable and must not be present at, or in sight of, the meeting, when the matter is being discussed, considered or voted on.

A pecuniary interest is an interest that a person has in a matter because of a reasonable likelihood or expectation of financial gain or loss (see sections 442 and 443 of the Local Government Act).

A non-pecuniary interest can arise as a result of a private or personal interest which does not involve a financial gain or loss to the councillor or staff member (eg friendship, membership of an association, or involvement or interest in an activity). A Councillor must disclose the nature of the interest to the meeting as soon as practicable.

Council's Model Code of Conduct now recognises two forms of non-pecuniary conflict of interests:

- Significant
- Less than significant

A Councillor must make an assessment of the circumstances and determine if the conflict is significant.

If a Councillor determines that a non-pecuniary conflict of interests is less than significant and does not require further action, they must provide an explanation of why it is considered that the conflict does not require further action in the circumstances.

If the Councillor has disclosed the existence of a significant non-pecuniary conflict of interests at a meeting they must not be present at, or in sight of, the meeting, when the matter is being discussed, considered or voted on.



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- 1. Applications for Attendance via Audio Visual Link**
- 2. Acknowledgement of Country**
- 3. Civic Prayer**
- 4. Apologies and Applications for a Leave of Absence**
- 5. Confirmation of Minutes**

**Ordinary Council Meeting held in 27 February 2024**

**Extra-Ordinary Council Meeting held on 14 March 2024**

**RECOMMENDATION**

The Minutes of the Ordinary Council Meeting held on **27 February 2024** and Extra-Ordinary Council Meeting held on **14 March 2024**, a copy of which has been distributed to all members, be taken as read and confirmed as a true record.

Moved: \_\_\_\_\_ Seconded: \_\_\_\_\_

- 6. Disclosure of any Pecuniary or Non-Pecuniary Interests**
- 7. Mayoral Minute**  
  
Nil
- 8. Public Participation**
- 9. Business Arising (From Previous Meetings)**  
  
Nil



## 10. Business (Specific Reports)

### 10.1. Planning and Environment

#### 10.1.1. DA 2007/462 and DA 2008/325 Release of Covenant and Planning Agreement

<b>Attachments:</b>	1. Attachment A - Deed to Revoke Planning Agreement SIGNED BY BBT PROPERTY [10.1.1.1 - 7 pages]
	2. Attachment B - Planning Agreement - Explanatory Note [10.1.1.2 - 4 pages]
	3. Attachment C - Section 88B Instrument and Planning Agreement Detail [10.1.1.3 - 19 pages]
<b>Responsible Officer:</b>	Sharon Pope - Director - Planning & Environment
<b>Author:</b>	Hamish McTaggart (Development Co-Ordinator)
<b>Community Plan Issue:</b>	<i>Not Applicable</i>
<b>Community Plan Goal:</b>	<i>Not Applicable</i>
<b>Community Plan Strategy:</b>	<i>Not Applicable</i>
	Not applicable

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#### PURPOSE

Council Officers have received a request to release a Section 88B Instrument from the title of Lot 101 DP 793194.

As the development consents to which the 88B instrument relates have not been acted on, and have now been formally surrendered, the owner of the land is requesting Council to release the related Section 88B Instrument and revoke the defunct Planning Agreement.

#### OFFICER'S RECOMMENDATION

Council delegates to the General Manager authority to:

1. Complete the public notification of the intention to revoke the Planning Agreement related to the surrendered development applications DA 2008/325 (bulky goods retail premises) and DA 2007/462 (supermarket, specialty shops and subdivision) at 8 Thompson Street, Muswellbrook, Lot 101 DP 79319.
2. Finalise the revocation of the Planning Agreement related to the surrendered development applications DA 2008/325 (bulky goods retail premises) and DA 2007/462 (supermarket, specialty shops and subdivision) at 8 Thompson Street, Lot 101 DP 79319.
3. Release of the Section 88B instrument imposed on the title of Lot 101 DP 79319.

**Moved:** \_\_\_\_\_ **Seconded:** \_\_\_\_\_



## BACKGROUND

Council has received requests to revoke a Planning Agreement related to surrendered DAs, DA 2008/325 and DA 2007/462, and to release a related easement imposed on the title of the property which references that Planning Agreement.

Neither DA 2008/325 nor DA 2007/462 were acted on within the statutory 5-year period from the date of their determination. While it is accepted that both DAs have lapsed, the landowner has formally surrendered the development consents to avoid any doubt on this issue. This conclusively means that there is no ability for either consent to be acted on in the future.

A copy of the Planning Agreement entered into in relation to these consents and the site is attached for Council's information.

The Planning Agreement required the developer to upgrade the intersection of Thompson Street and the New England Highway, with the installation of traffic lights, with Council to pay 50% of the costs incurred by the developer to a maximum of \$300,000. The signalisation of this intersection has recently been completed by Council through works carried out by Council and funded independently of the development of this site.

Given that the consents to which the Planning Agreement relates have lapsed, and that the works the Agreement involves have been completed, Council Officers accept that the Planning Agreement is now redundant and may be revoked, and the related instrument released.

## CONSULTATION

Prior to formalising the revocation of the Planning Agreement, Council is required to undertake 28 days of public consultation and to consider any submissions received through that period.

In preparing this report, Council Officers have consulted with Council's in house Legal Counsel.

## OPTIONS

Council may:

- a) Endorse the recommendation and progress the revocation of the Planning Agreement and the release of the related Section 88B Instrument; or
- b) Retain the Planning Agreement and not release the related Section 88B Instrument and provide reasoning related to its decision.

## CONCLUSION

The development applications (DA 2007/462 and DA 2008/325) were not acted upon and have been formally surrendered.

The work which the Planning Agreement sought to require (the signalisation of the Thompson Street traffic lights) has been completed by Council outside of the Planning Agreement.

Consequently, the development and works which the Planning Agreement attach to are no longer current and the Planning Agreement is functionally redundant.

Council Officers are satisfied that the Planning Agreement may be revoked, and the related instrument released.

**BBT PROPERTY PTY LTD ACN 145 010 297**

**AND**

**MUSWELLBROOK SHIRE COUNCIL**

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**DEED TO REVOKE PLANNING AGREEMENT**

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**Solari & Stock Lawyers**

Level 2, 12 Central Road, Miranda NSW 2228

Phone: (02) 8525 2700

Email: law@solariandstock.com.au

Ref: MS:VA:221254

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**THIS DEED** dated                      day of                      2024

**BETWEEN      BBT Property Pty Ltd ACN 145 010 297** of Suite 13/249 Kingsgrove Road,  
Kingsgrove, New South Wales (**BBT Property**)

**AND              Muswellbrook Shire Council** of 60-82 Bridge Street, Muswellbrook, New  
South Wales (**Muswellbrook Shire Council**)

#### **RECITALS**

- A.**    BBT Property is the registered proprietor of the Property.
- B.**    The Parties entered into the Planning Agreement requiring BBT Property to carry out certain works as required pursuant to their Development Applications.
- C.**    The Development Applications have lapsed and BBT Property did not commence any works to the Property pursuant to the Development Applications.
- D.**    The Parties have agreed to enter into this Deed to revoke the Planning Agreement and in respect to their respective rights and obligations thereof.

#### **OPERATIVE PART**

##### **1.    Interpretation**

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This deed is governed by the laws of New South Wales and the parties submit to the non-exclusive jurisdiction of the courts of that state.

In the interpretation of this deed:

- (a)    References to legislation or provisions of legislation include changes or re-enactments of the legislation and statutory instruments and regulations issued under the legislation;
- (b)    Words denoting the singular include the plural and vice versa, words denoting individuals or persons include bodies corporate and vice versa, words denoting one gender include all genders, and references to documents or agreements also mean those documents or agreements as changed, novated or replaced;
- (c)    Grammatical forms of defined words or phrases have corresponding meanings;

- 
- (d) Parties must perform their obligations on the dates and times fixed by reference to the capital city of New South Wales;
  - (e) Reference to an amount of money is a reference to the amount in the lawful currency of the Commonwealth of Australia;
  - (f) If the day on or by which anything is to be done is a Saturday, a Sunday or a public holiday in the place in which it is to be done, then it must be done on the next business day;
  - (g) References to a party are intended to bind their executors, administrators and permitted transferees; and
  - (h) Obligations under this deed affecting more than one party bind them jointly and each of them severally.

## **2. Definitions**

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**Dealing** means Request registration number AG623537, registering the Planning Agreement on the title of the Property.

**Development Applications** means Development Application 325/2008 for a Bulky Goods Retail Development dated 9 March 2009 and Development Application 462/2007 for Modifications to Supermarket and Carpark Layout dated 8 March 2008.

**Party** means a party to this Deed and Parties means all of them.

**Planning Agreement** means the Planning Agreement entered into between BBT Property and Muswellbrook Shire Council dated 20 December 2010.

**Property** means the land contained in Lot 101 in Deposited Plan 793194 in Certificate of Title Folio Identifier 101/793194 and located at 8 Thompson Street, Muswellbrook NSW 2333.

## **3. Relinquishment of Planning Agreement**

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BBT Property has requested, and Muswellbrook Shire Council has agreed to revoke the Planning Agreement on the terms and conditions contained in this Deed.

## **4. Parties Obligations**

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The Parties agree to do all acts and things and sign all necessary documents as may be reasonably required by the other Party so as to carry out and give effect to the terms and intentions of this Deed to revoke the Planning Agreement and the removal of the Dealing registered on the title to the Property.

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**5. Release**

Upon the execution of this Deed, Muswellbrook Shire Council will release BBT Property from any and all obligations under the Development Applications and Planning Agreement.

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**6. Entire agreement**

This Deed is the entire agreement and understanding between the parties on everything connected with the subject matter of this Deed, and supersedes any prior understanding, arrangement, representation or agreements between the parties as to the subject matter contained in this Deed.

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**7. Amendment**

An amendment or variation to this Deed is not effective unless it is in writing and signed by all the parties.

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**8. Severance**

If anything in this deed is unenforceable, illegal or void, it is severed and the rest of the deed remains in force.

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**9. Successors**

This Deed is binding on the Parties and their respective successors and permitted assigns, and shall be enforceable by and against the Parties or those successors and assigns.

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**10. Counterparts**

This Deed may be executed in any number of counterparts each of which will be an original but such counterparts together will constitute one and the same instrument and the date of the deed will be the date on which it is executed by the last party.

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**11. Costs**

Each party will pay their own costs in relation to this Deed.

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**12. Electronic Signatures**

Where effected in accordance with the Electronic Transactions Act, 2000 and any other applicable laws from time to time, each party consents to the use of electronic signatures and accepts that such signatures will have the same effect as a handwritten signature. In such cases the electronic format signature will be valid and binding



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**13. Governing Law**

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The construction, validity and performance of this Deed shall be governed in all respects by the law of New South Wales

**Execution page**

**EXECUTED AS A DEED**

<b>EXECUTED</b> by <b>BBT Property Pty Ltd ACN 145 010 297</b> in accordance with s127 of the Corporations Act, 2001 (Cth)	
<div>DocuSigned by:  F79622BEE133408...</div> <div>Director</div> <div>Name: Richard Geoffrey Batten 7/3/2024   6:43:47 PM AEDT</div>	<div>DocuSigned by:  3A030AFFEAD04B0...</div> <div>Director</div> <div>Name: Brendan David Tertini 8/3/2024   6:41:21 AM AEDT</div>

<b>SIGNED, SEALED &amp; DELIVERED BY</b> Muswellbrook Shire Council by its authorised officer in the presence of:	
<div>Signature of witness</div> <div></div>	<div>Signature of authorised officer</div> <div>Name: Authority:</div>
<div>Print name of witness</div> <div></div>	

## Explanatory Note to Planning Agreement between Muswellbrook Shire Council and Patarm Pty Ltd

Environmental Planning and Assessment Regulation 2000

(Clause 25E)

### 1. Background

Patarm Pty Ltd (ACN 115 080 629) (Developer) has made an offer to Muswellbrook Shire Council (Planning Authority) to enter into a Planning Agreement in connection with two separate development applications.

### 2. Description of Subject Land

The Planning Agreement relates to land identified as Lot 101 DP 793194 known as Lot 101 Thompson Street, Muswellbrook (the Land).

### 3. Description of Development Applications

On 10 March 2008, Council granted deferred commencement consent to Development Application No. 462/2007 for a supermarket, specialty shops and a two (2) lot commercial subdivision on the Land (the Development Consent).

Prior to the application being determined by Council, the Developer made an offer by letter dated 27 February 2008 to enter into a Planning Agreement to make a development contribution towards upgrading the intersection of Thompson Street and the New England Highway for the safe ingress and egress of vehicles associated with the proposed development and surrounding area by the installation of traffic lights

The Development Consent was granted subject to two deferred commencement conditions. Condition No. 1 requires the proponent to enter into a Planning Agreement with Council in accordance with:

- (a) Division 6 of Part 4 of the *Environmental Planning and Assessment Act 1979* (EP&A Act); and

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(b) The terms of the proponent's offer to Council dated 27 February 2008.

Condition No. 2 relates to the submission of stormwater engineering details.

The Development Consent does not operate until the above conditions have been satisfied and Council has issued written notice to this effect.

On 9 March 2009, Council resolved to modify the Development Consent under Section 96 of the EP&A Act in the following manner:

- Extension of timeframe to comply with Deferred Commencement conditions to 10 March 2010;
- Reconfigured building to align with northern and eastern boundaries;
- Reduced supermarket floor area from 2500m<sup>2</sup> Gross Floor Area (GFA) to 2040m<sup>2</sup> GFA;
- Reduced specialty retail (7 x retail outlets) from 540m<sup>2</sup> GFA to 355m<sup>2</sup> GFA;
- Reduced total built upon area from 3154m<sup>2</sup> to 2400m<sup>2</sup>;
- Increased car parking from 127 spaces and two disabled parking spaces to 140 parking spaces including three (3) disabled spaces;
- Reconfigured car parking area, landscaped areas and loading dock;
- Reconfigured entry courtyard/plaza area and colonnade;
- Realigned exit driveway;
- Slight repositioning of the two pylon signs;
- Realigned public amenities; and
- New signs approach; two smaller flush wall signs and one additional flush wall sign.

A separate Development Application No. 325/2008 for a bulky goods retail outlet proposed at the southern end of the site was approved by Council on 9 March 2009.

The development consent was granted to DA No. 325/2008 subject to two deferred commencement conditions. Condition No. 1 requires the proponent to enter into a Planning Agreement with Council in accordance with

(c) Division 6 of Part 4 of the Environmental Planning and Assessment Act 1979; and

DEG\DEG\DNEW\19838612\2

(d) The terms of the proponent's offer to Council dated 24 February 2009.

Condition No. 2 relates to the submission of stormwater engineering details.

The consent does not operate until the above conditions have been satisfied and Council has issued written notice to this effect.

#### 4. Summary of Objectives, Nature and Effect of the Planning Agreement

The objective of the Planning Agreement is to facilitate the payment of monetary contributions by Council towards the cost of the intersection upgrade works.

The Planning Agreement requires the Developer to upgrade the intersection of Thompson Street and the New England Highway by the installation of traffic lights to RTA standards. Council will pay 50% of the costs incurred by the Developer, including any project management fees payable to an independent project manager engaged by the Developer, in carrying out the works up to a maximum amount of \$300,000 (excluding GST).

#### 5. Key Features of the Voluntary Planning Agreement

The key features of the Planning Agreement are set out below with an explanation as necessary:

- (a) The Planning Agreement requires the upgrading of the intersection of Thompson Street and New England Highway to be completed within 12 months after the date on which a contract is entered into between the Developer and Contractor to carry out the works;
- (b) The Council will pay 50% of the costs incurred by the Developer, including any project management fees, in carrying out the works up to a maximum of \$300,000 (excluding GST);
- (c) The Planning Agreement contains provisions relating to dispute resolution, should disputes arise between the relevant parties; and
- (d) The Planning Agreement will be registered on the title to the Land.

#### 6. Merits of the Planning Agreement and impact on the public

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

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The Planning Agreement provides the upgrading of the intersection of Thompson Street and the New England Highway through the installation of traffic signals and completion of associated road works. The intersection improvements will benefit both the subject development and the local area by improving the efficiency and safety of the intersection which is currently operating at a poor level of service (Level of Service F).

**How the Draft Planning Agreement Promotes the Objects of the EP&A Act**

The Planning Agreement is consistent with the objects of the EP&A Act as it promotes the orderly and economic use and development of land.

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

The Planning Agreement is in the public interest as it will facilitate the upgrading of public infrastructure (ie the intersection of Thompson Street and New England Highway) to the benefit of the local community. The proposed upgrade will improve public safety and the operational efficiency of the intersection.

**For Planning Authorities:**

**(a) Councils – How the Planning Agreement Promotes the Elements of the Council's Charter**

The contributions payable under the Planning Agreement will be used to fund the development and upgrading of a community asset in accordance with Council's obligations under the charter. The agreement considers the long term needs of the local community and promotes the effective management of the assets for which Council is responsible.

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

Council's contribution payable under the Planning Agreement is allocated in Council's approved Capital Works Budget.

**The Impact of the Draft Planning Agreement on the Public or Any Section of the Public**

The Planning Agreement will not have an adverse impact on the public or any section of the public.

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## REQUEST

New South Wales  
Real Property Act 1900



AG62537C

**PRIVACY NOTE:** Section 31B of the Real Property Act 1900 (RP Act) authorises the Registrar by this form for the establishment and maintenance of the Real Property Act Register. Section 96B RP Act requires that the Register is made available to any person for search upon payment of a fee, if any.

(A) STAMP DUTY	If applicable. Office of State Revenue use only		
(B) TORRENS TITLE	401/79194 101/793194		
(C) REGISTERED DEALING	Number	Torrens Title	
(D) LODGED BY	Document Collection Box 263P	Name, Address or DX, Telephone, and Customer Account Number if any SOLARI & STOCK 130479 M 522 KINGSWAY MIRANDA 2228 Reference (optional): MS: 15344	CODE R
(E) APPLICANT	BBT PROPERTY PTY LIMITED		
(F) NATURE OF REQUEST	Removal and registration of Planning Agreement pursuant to s93H Environmental Planning and Assessment Act 1979		
(G) TEXT OF REQUEST	It is requested that registered dealing AF365465 be withdrawn from the title and replaced with the attached Planning Agreement between the Council and BBT Property Pty Ltd as per the Planning Agreement.		

RELODGE:

10 MAR 2011

TIME: 11.15

DATE 21/2/2011

(H)

off PLA AF365465  
ON PLA.

Certified correct for the purposes of the Real Property Act 1900 by the person whose signature appears below.

Signature:

Signatory's name: ADAM TOROK  
Capacity: Solicitor for the applicant

(I) This section is to be completed where a notice of sale is required and the relevant data has been forwarded to LPMA through eNOS. The applicant's solicitor certifies that the eNOS data relevant to this dealing has been submitted and stored under eNOS ID No.  Full Name:  Signature:

All handwriting must be in block capitals.

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Number additional pages sequentially

extra fees assessed  
ACN 145 010287  
C322465

## PLANNING AGREEMENT

### Parties

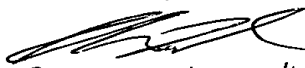
MUSWELLBROOK SHIRE COUNCIL of 157 Maitland Street, Muswellbrook, New South Wales  
(Council)

and

BBT PROPERTYPTY LTD (ACN 145 010 297) care of Solari and Stock Lawyers, Suite 5, 522  
Kingsway, Miranda, New South Wales 2228 (Developer)

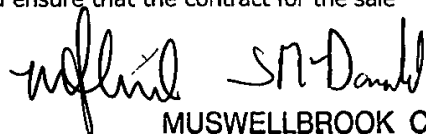
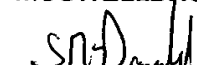
### Background

- A. On 19 December 2007, Mr Rick Bennell of Bennell & Associates on behalf of Patarm Pty Ltd (ACN 115 080 629) ("Patarm") made a Development Application (DA No. 462/2007) to Council for Development Consent to carry out the Supermarket Development on the Land.
- B. After lodging the Development Application, Bennell & Associates (on behalf of Patarm) made an offer by letter dated 27 February 2008 to enter into a planning agreement to carry out the Works if the development consent was granted to the Supermarket Development.
- C. On 10 March 2008 the Council approved the Supermarket Development with a deferred commencement condition requiring a planning agreement to be entered into between the parties in relation to the Council's acceptance of Patarm's offer referred to in paragraph B herein.
- D. On 28 November 2008, Mr Brett Cooper on behalf of Patarm made a Development Application (DA No. 325/2008) to the Council for development consent to carry out the Bulky Goods Development on the Land.
- E. Bennell & Associates (on behalf of Patarm ) made an offer by letter dated 24 February 2009 to enter into a planning agreement to carry out the Works if development consent was granted to the Bulky Goods Development and on the proviso that the planning agreement offer contained in the letter dated 27 February 2008 referred to in paragraph B herein is not proceeded with.
- F. On 13 March 2009 the Council approved the Bulky Goods Development with a deferred commencement condition requiring a planning agreement to be entered into between the parties in relation to the Council's acceptance of Patarm's offer referred to in paragraph E herein.
- G. On 27 November 2009 Council and Patarm entered into a Planning Agreement ("Original Planning Agreement").
- H. Clause 13.1 of the Original Planning Agreement provided in effect that in the event that Patarm entered into a contract for the sale of the Land whilst the Original Planning Agreement was in force Patarm would ensure that the contract for the sale

  
Solicitor for the applicant.

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MUSWELLBROOK COUNCIL  
  
.....General Manager



of the Land contained a clause that the Purchaser would enter into an agreement with the Council to the same effect as the Original Planning Agreement.

- I. The Developer has entered into a Contract for the purchase of the Land from Patarm.
- J. The Developer and the Council now enter into this agreement pursuant to the requirements of the deferred commencement conditions referred to in paragraphs C and F above.

### Operative Provisions

- 1 Planning agreement under the Act
  - 1.1 The Parties agree that this Agreement is a planning agreement governed by Subdivision 2 of Division 6 of Part 4 of the Act.
- 2 Application of this Agreement
  - 2.1 This Agreement relates to the Land and the Development.
3. Operation of this Agreement
  - 3.1 This Agreement shall take effect upon the date hereof.
4. Definitions and Interpretation
  - 4.1 In this Agreement the following definitions apply;  
**Act** means the *Environmental Planning and Assessment Act 1979(NSW)*  
**Bulky Goods Development** means the bulky goods retail development that is the subject of Development Application 325/2008.  
**Contractor** means the Suitably Qualified Contractor selected by the Parties pursuant to Clause 5.2.4 to carry out the Works.  
**Date for Completion** means the date twelve (12) months after the date on which the contract is entered into with the Contractor to carry out the Works  
**Dealing**, in relation to the Land, means, without limitation, selling, transferring, assigning, mortgaging, charging, encumbering or otherwise dealing with the Land.  
**Development Application** has the same meaning as in the Act.  
**Development Consent** has the same meaning as in the Act.  
**GST** has the same meaning as in the GST Law.  
**GST Law** has the meaning given to that term 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 101 DP 793194 known as Lot 101 Thompson Street, Muswellbrook.  
**Party** means a party to this agreement, including their successors and assigns.  
**Public Facilities** means the upgrade of the intersection of Thompson Street and New England Highway by the installation of Traffic Lights to RTA standards.

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**Register** means the Torrens tile register maintained under the *Real Property Act 1900 (NSW)*.

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

**RTA** means the Roads and Traffic Authority, NSW.

**Suitably Qualified Contractor** means a contractor who is prequalified to carry out the Works under the RTA's Prequalification Scheme for Construction Industry Contractors.

**Supermarket Development** means supermarket, specialty shops and two (2) lot commercial subdivision, that is the subject of Development Application 462/2007.

**Works** means the design and construction of the Public Facilities.

**Works Authorisation Deed** means the formally executed agreement between the RTA and the Developer, authorising the Developer to implement the Public Facilities.

4.2 In the interpretation of this Agreement, the following provisions apply unless the context otherwise requires:

- (a) Headings are inserted for convenience only and do not affect the interpretation of this Agreement.
- (b) A reference in this Agreement to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
- (c) If the day on which any act, matter or thing is to be done under this Agreement is not a business day, the act, matter or thing must be done on the next business day.
- (d) A reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.
- (e) A reference in this Agreement 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.
- (f) A reference in this Agreement to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- (g) A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.
- (h) An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.

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- (i) 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.
- (j) 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.
- (k) Reference to the word 'include' or 'including' are to be construed without limitation.
- (l) A reference to this Agreement includes the agreement recorded in this Agreement.
- (m) A reference to a party to this Agreement includes a reference to the servants, agents and contractors of the party, and the party's successors and assigns.
- (n) Any scheduled and attachments form part of this Agreement.

## 5. The Works

- 5.1 The Developer agrees to carry out the Works in accordance with and subject to the terms of this Agreement.
- 5.2 For the avoidance of doubt entry into this Agreement constitutes satisfaction of the deferred commencement condition requiring entry into a planning agreement contained in the Development Consent for the Bulky Goods Development and the Supermarket Development.
- 5.3 The Works shall be undertaken by the Developer in the following stages:
  - 5.3.1 Within sixty (60) days of the date of this Agreement, the Developer is to contact the RTA in relation to the concept design for the Works.
  - 5.3.2 Within twelve (12) months of the date of this Agreement, the Developer must enter into a Works Authorisation Deed with the RTA with respect to the Works. A copy of the executed Works Authorisation Deed is to be provided to the Council within two days of it being entered into.
  - 5.3.3 Within ninety (90) days of the Works Authorisation Deed being executed, the Developer is to obtain at least two (2), but no more than three(3), lump sum quotations from Suitably Qualified Contractors to carry out the Works in accordance with the requirements of the Works Authorisation Deed.
  - 5.3.4 Within 28 days of receiving quotations from the Suitably Qualified Contractors, the Developer is to attend a meeting with the Council to discuss the quotations. If all of the quotations exceed \$600,000 (excluding GST) then this Agreement may be terminated by either Party by notice given in writing and within 14 days of the meeting

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held by the Parties to discuss the quotations. If all of the quotations do not exceed \$600,000 (excluding GST) then the Parties will jointly evaluate the quotes in good faith and select a Contractor to carry out the Works.

- 5.3.5 The Developer must, within ninety (90) days of selecting the Contractor, enter into a written contract with the Contractor to carry out the Works.
- 5.3.6 The Works are to be completed by the Developer in accordance with the Works Authorisation Deed and by the Date for Completion.
- 5.3.7 Should the performance of the Works be delayed by reason of:
  - 5.3.7.1 any instructions of any of the Council or the RTA;
  - 5.3.7.2 any alterations to the Works required by the Council or the RTA;
  - 5.3.7.3 any act of God, fire explosion, earthquake, civil commotion, act of war, inclement weather affecting directly or indirectly the Developer and sub-contractors of the Developer or the suppliers of materials for the Works;
  - 5.3.7.4 the period known as "Industry Shutdown" during the two (2) week period commencing on or about 22 December in each year;
  - 5.3.7.5 the failure by any of the Council or RTA to do any act or sign any document required pursuant to the terms of this Agreement;
  - 5.3.7.6 strikes, lockouts or other industrial action and disputation affecting directly or indirectly the Developer, his sub-contractors or suppliers,

**THEN** in every such case the Developer shall be entitled to a fair and reasonable extension of the Date for Completion.

- 5.3.8 The Developer shall within fourteen (14) days of the completion of each of any of the events referred to in clause 5.2.7 notify the Council in writing of:
  - 5.3.8.1 the reason for the delay;
  - 5.3.8.2 the extension of time claimed by the Developer for that event.
- 5.3.9 In the event that the Council does not, by notice in writing within twenty eight (28) days of the date of any notice given pursuant to clause 5.2.8 herein dispute the extension of time claimed by the Developer then such extension of time shall be granted.

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5.3.10 Within twenty eight (28) days of any notice given to the Council pursuant to clause 5.2.8, the Council must give the Developer a written notice which shall specify:

5.3.10.1 whether the reason for the extension of time is accepted or otherwise; and

5.3.10.2 whether the length of the extension of time claimed is accepted or not.

5.3.11 The Developer agrees to make no monetary claim for delays, interferences or hindrances of any kind in the performance of the Works and agrees that any such claim shall be fully compensated for by an extension of time claimed under clause 5.2.8 or granted under clause 5.2.9 and 5.2.10, except where such increase in costs has occurred as a result of any act of the Council, RTA or any of their agents.

5.3.12 Any works in Thompson Street required to complete the Works must be the subject of a section 138 approval obtained by the Developer pursuant to section 138 of the *Roads Act 1993 (NSW)*.

#### 6. Costs of the Works

- 6.1 The Council will pay 50% of the costs incurred by the Developer, including any project management fees payable to an independent project manager engaged by the Developer, in carrying out the Works up to a maximum amount of \$300,000 (excluding GST).
- 6.2 The Developer shall claim payment for the Works by notice given in writing to the Council on the 10<sup>th</sup> and 24<sup>th</sup> of each month.
- 6.3 Each progress claim must be given in writing to the Council and must include details for the value of the Works carried out. Claims for payments will contain sufficient details to justify costs.
- 6.4 The Council must pay the payment required by this clause to be made within 14 days of the claim for payment being made by the Developer. If the Council does not pay the amount claimed in the Developer's progress claim, the Council shall with the payment, give the Developer reasons for any difference.
- 6.5 Within twenty eight (28) days after a Final Certificate and acceptance of the Works by the RTA has been served upon the Developer by the RTA, the Developer shall give the Council a written final payment claim endorsed "Final Payment Claim" being a progress claim together with all other claims whatsoever in connection with the subject matter of this Agreement. Those monies shall be paid by the Council to the Developer within 14 days after the Council receives the final payment claim.
- 6.6 If the Council defaults in making payment in accordance with clause 6.4 and 6.5, the Council must pay interest on the outstanding amount at the rate

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prescribed by section 101(7) of the *Civil Procedure Act 2005*. Interest will only be payable for payments which are more than 30 days overdue.

7 Application of s94 and s94A of the Act to the Development

- 7.1 The application of section 94 and 94A of the Act to the Development are excluded by this Agreement.

8 Registration of this Agreement

- 8.1 The Developer agrees to procure registration of this Agreement on the relevant folio of the Register pertaining to the Land upon commencement of this Agreement

9. Dispute Resolution

9.1 Scope of clause

This clause applies in respect of any dispute, disagreement or difference between the Parties relating to the interpretation of the purpose, and implementation of, this agreement ("the Dispute").

9.2 Dispute Resolution

If the Parties are unable to resolve a Dispute then this clause 9 will apply.

9.3 Dispute handling procedure

A Party to this Agreement who has a Dispute with any other Party may start the dispute procedure provided for in this clause 9.

9.4 Dispute Procedure

The Complainant must give the Respondent a Notice setting out the following;

- (a) the nature of the Dispute;
- (b) the outcome the Complainant wants; and
- (c) what action the Complainant thinks will settle the Dispute.

9.5 Failure to resolve dispute

As soon as is reasonably practicable after a Respondent receives a Notice from a Complainant pursuant to clause 9.4, the Respondent and Complainant must try to agree about how to resolve the Dispute. If within 21 days after the service of the Complainant's Notice on the Respondent pursuant to clause 9.4 the Complainant and the Respondent have either not met and resolved the Dispute or, alternatively, have met but not resolved the Dispute, then the Dispute must be submitted to determination in accordance with clause 9.6.

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## 9.6 Determination

A determination, in accordance with clause 9.5, will be obtained in accordance with the following provisions:

- (a) the Complainant must send a Notice to the Respondent requiring a determination of the matter;
- (b) the determination will be made by:
  - (i) a Person agreed upon by the interested parties; or
  - (ii) if such agreement cannot be reached, a Person nominated by the President of the New South Wales Law Society and if so determined by the President or Acting President of the New South Wales Law Society, an appropriate expert with at least 5 years experience dealing with similar Disputes;
- (c) the determination will be made in the form of a written option, expressing conclusions as to:
  - (i) the outcome of the Dispute; and
  - (ii) which Party should bear the Costs of the determination, or the proportions in which the Costs of the determination should be borne amongst the Parties;
- (d) for the purpose of making the termination, each Party will be at liberty to furnish to the Person making the determination ("Referee"):
  - (i) a written submission; and
  - (ii) documents which the Party regards as relevant to the making of the determination;
- (e) either Party may request that the Referee meet with the Parties in conference, in which event:
  - (i) the conference will be held at a time and place nominated by the Referee;
  - (ii) the conference will be conducted informally;
  - (iii) the Parties will be entitled, but not obliged, to attend the conference;
  - (iv) the Parties will be entitled, but not obliged, to have legal representation at the conference;
  - (v) the Parties will be entitled, but not obliged, to make oral submissions at the conference;
  - (vi) the Parties will be entitled, but not obliged, to make statements of fact in course of the conference, either under oath or in such other way as the Referee thinks fit;

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- (vii) in the event that statements of fact are made at the conference by or on behalf of any of the Parties, the Person making such statement will be subject to cross-questioning by or on behalf of the other Party, in the discretion of the Referee;
- (viii) no formal rules of evidence will apply to such conference, and
- (ix) the conference will be conducted in private;
- (f) the Referee may give directions to the relevant Parties of a procedural nature;
- (g) the Referee will be entitled to inform himself or herself of any matter, in whatever manner the Referee thinks fit;
- (h) the Referee will make the determination in accordance with his or her understanding of the law, including his or her understanding of the true construction of this Agreement and evidence of the negotiations leading up to the execution of this Agreement can be submitted by either Party as evidence of the true construction of this Agreement;
- (i) subject to applying his or her understanding of the law, including his or her understanding of the true construction of this Agreement, the Referee will make the determination in accordance with equity and good conscience;
- (j) the Referee's fees will be payable by the Parties jointly and severally, but, amongst the relevant Parties, will be borne in accordance with the determination;
- (k) if the Referee thinks fit, he or she may determine that a Party recover from another Party their own Costs for and incidental to the determination, in which event:
  - (I) such Costs will be assessed in accordance with the determination by a legal cost assessor practicing in New South Wales; and
  - (ii) the amount so assessed will be debt due and payable between the parties in accordance with the determination.

9.7 Effect of determination

A determination made in accordance with clause 9.6 will be final and binding on the Parties, such that:

- (a) any amount found to be due and payable by one of the Parties to another Party may be enforced as a debt;
- (b) any other Obligation owed by a Party to another Party under the determination will have effect and be enforceable as a contractual

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Obligation, whether by way of specific performance or injunctive relief, or an action for damages; and

- (c) the determination may be pleaded as a bar to, and will constitute a lawful accord in respect of, any Claim in respect of the same matter;
- (d) no Party will commence proceedings in any court in respect of a Dispute to which this clause relates, unless and until a determination has been obtained in accordance with clause 9.6;
- (e) all Rights existing between the Parties prior to the making of a determination in accordance with clause 9.6 will be merged in determination, to the intent that in any subsequent proceedings the relevant Parties' Rights and Obligations will be fixed by the determination rather than by their Rights and Obligations antecedent to the determination.
- (f) neither Party will challenge a determination under clause 9.6 except on the grounds of;
  - (i) non-compliance with the provisions of this clause;
  - (ii) want of, or excess of, jurisdiction;
  - (iii) non-compliance with the applicable rules of natural justice; or
  - (iv) fraud or misrepresentation.

#### 9.8 Continuity

This clause 9 will continue in full force and effect between the Parties to this Agreement notwithstanding the termination or rescission (or purported termination or rescission) of this Agreement, whether before or after a matter has arisen to which this clause relates, and notwithstanding that the matter concerns the termination or rescission (or purported termination or rescission) of this Agreement.

#### 10. Enforcement

10.1 Without limiting any other remedies available to the Parties, this Agreement may be enforced by either Party in any court of competent jurisdiction.

10.2 For the avoidance of doubt, nothing in this Agreement prevents:

- (a) a Party from bringing proceedings in the Land & Environment Court to enforce any aspect of this Agreement or any matter to which this Agreement relates; and
- (b) the Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Agreement or any matter to which this Agreement relates.

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## 11. Notices

11.1 Any notice, consent, information, application or request that must or may be given or made to a Party under this Agreement is only given or made if it is in writing and sent in one of the following ways:

- (a) Delivered or posted to that Party at its address set out below.
- (b) Faxed to that Party at its fax number set out below.
- (c) Emailed to that Party at its email address set out below.

### **Council**

Attention: The General Manager  
Address: P O Box 122, Muswellbrook NSW 2333  
Fax No: 02 65 49 3701  
Email: [council@muswellbrook.nsw.gov.au](mailto:council@muswellbrook.nsw.gov.au)

### **Developer**

Attention: Brett Cooper  
Address: PO Box 2833, Taren Point NSW 2229  
Fax No: 9524 5559  
Email: [brett@cooperwilson.com.au](mailto:brett@cooperwilson.com.au)

11.2 If a Party gives the other Party 3 business days notice of a change of its address or fax number, any notice, consent, information, application or request only given or made by that other Party if it is delivered, posted or faxed to the latest address or fax number.

11.3 Any notice, consent, information, application or request is to be treated as given or made at the following time:

- (a) If it is delivered, when it is left at the relevant address.
- (b) If it is sent by post, 2 business days after it is posted.
- (c) If it is 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.

11.4 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.

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12. Approvals and consent

12.1 Except as otherwise set out in this Agreement, and subject to any statutory obligations, a Party may not unreasonably refuse to give its approval or consent and if consent is to be given can be subject to any conditions determined by that party acting reasonably..

13. Assignment and Dealings

13.1 In the event that the Developer shall enter into a contract of sale of the Land whilstever this Agreement is in force then the Developer shall include in such contract for sale a clause requiring any Purchaser of the Land to enter into an Agreement with the Council on the same terms as this Agreement.

14. Costs

14.1 Each party is to be responsible for their own legal costs in relation to the negotiation and entering into of this Agreement.

15. Entire agreement

15.1 This Agreement contains everything to which the Parties have agreed in relation to the matters it deals with. 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 Agreement was executed, except as permitted by law.

16. Further acts

16.1 Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to affect, perfect or complete this Agreement and all transactions incidental to it.

17. Governing law and jurisdiction

17.1 This Agreement is governed by the law of New South Wales. The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them. The Parties will not object to the exercise of jurisdiction by these courts on any basis.

18. Joint and individual liability and benefits

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

19. No fetter

19.1 Nothing in this Agreement shall be construed as requiring Council to do anything that would cause it to be in breach of any obligations at law, and

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without limitation, nothing shall be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

20 Representations and warranties

- 20.1 The Parties represent and warrant that they have power to enter into this Agreement and comply with their obligations under the Agreement and that entry into this Agreement will not result in the breach of any law.

21 Severability

- 21.1 If a clause or part of a clause of this Agreement 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. 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 Agreement, but the rest of the Agreement is not affected.

22. Modification

- 22.1 No modification of this Agreement will be of any force or effect unless it is in writing and signed by the Parties to this Agreement.

23 Waiver

- 23.1 The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another Party. A waiver by a Party is only effective if it is in writing. A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given. It 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. GST

- 24.1 If any Party reasonably decides that it is liable to pay GST on a supply made to the other Party under this Agreement and the supply was not priced to include GST, then recipient of the supply must pay an additional amount equal to the GST on that supply.

25. Termination

- 25.1 Subject to clause 5.2.4, this Agreement is terminated on the date the Developer is released and discharged in accordance with clause 25.2.
- 25.2 The Council agrees to provide a release and discharge of this Agreement upon the acceptance of the Works by the RTA and to do all things necessary to have such release and discharge registered by the Register-General in the relevant folio of the Register.

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26 Explanatory Memorandum

- 26.1 The Explanatory Memorandum relating to this Agreement must not be used to assist in construing this Agreement.

Execution

Executed as an Agreement this 20 day of DECEMBER 2010.

The Seal of  
Muswellbrook Shire Council  
was affixed in accordance  
with the resolution dated: 8 November 2010

.....  
General Manager

.....  
(print name)

.....  
Mayor

.....  
(print name)

Executed by **BBT PROPERTY PTY LTD**  
(ACN 145 010 297) in accordance with  
Section 127 of the Corporations Act 2001  
by:

.....  
Signature - Director

.....  
Name

.....  
Signature - Director

.....  
Name

**Explanatory Note to Planning Agreement**  
**Between Muswellbrook Shire Council and BBT Property Pty Ltd**  
Environmental Planning and Assessment Regulation 2000  
(clause 25E)

**1. Background**

- 1.1 On 27 November 2009 Patarm Pty Ltd (ACN115 080 629) ("Patarm") entered into a Planning Agreement with Muswellbrook Shire Council (Planning Authority) in connection with two separate development applications.
- 1.2 Patarm proposes to enter into a Contract for the sale of Lot 101 DP 793194 known as Lot 101 Thompson Street, Muswellbrook (the Land) to BBT Property Pty Ltd (ACN 145 010 297) (Developer).
- 1.3 It is a condition of the Planning Agreement between Patarm and the Planning Authority that in the event Patarm sells the Property it is to ensure that BBT enters into a new Planning Agreement with the Planning Authority in connection with the two separate development applications.

**2. Description of Subject Land**

The Planning Agreement relates to the Land.

**3. Description of Development Applications**

On 10 March 2008, Council granted deferred commencement consent to Development Application No. 462/2007 for a supermarket, specialty shops and a two (2) lot commercial subdivision on the Land (the Development Consent).

Prior to the application being determined by Council, Patarm made an offer by letter dated 27 February 2008 to enter into a Planning Agreement to make a development contribution towards upgrading the intersection of Thompson Street and the New England Highway for the safe ingress and egress of vehicles associated with the proposed development and surrounding area by the installation of traffic lights.

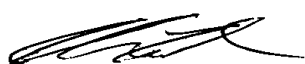
The Development Consent was granted subject to two deferred commencement conditions. Condition No. 1 requires the proponent to enter into a Planning Agreement with Council in accordance with:

- (a) Division 6 of Part 4 of the *Environmental Planning and Assessment Act 1979* (EP&A Act); and
- (b) The terms of the proponent's offer to Council dated 27 February 2008.

Condition No. 2 relates to the submission of stormwater engineering details.

The Development Consent does not operate until the above conditions have been satisfied and Council has issued written notice to this effect.

On 9 March 2009, Council resolved to modify the Development Consent under Section 96 of the EP&A Act in the following manner:

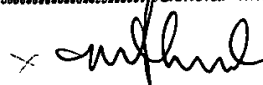


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MUSWELLBROOK COUNCIL

 General Manager



- Extension of timeframe to comply with Deferred Commencement conditions to 10 March 2010;
- Reconfigured building to align with northern and eastern boundaries;
- Reduced supermarket floor area from 2500m<sup>2</sup> Gross Floor Area (GFA) to 2040m<sup>2</sup> GFA;
- Reduced specialty retail (7x retail outlets) from 540m<sup>2</sup> GFA to 355m<sup>2</sup> GFA;
- Reduced total built upon area from 3154m<sup>2</sup> to 2400m<sup>2</sup>;
- Increased car parking spaces from 127 spaces and 2 disabled parking spaces to 140 parking spaces and 3 disabled spaces;
- Reconfigured car parking area, landscaped areas and loading dock;
- Reconfigured entry courtyard/plaza area and colonnade;
- Realigned exit driveway;
- Slight repositioning of the two pylon signs;
- Realigned public amenities; and
- New signs approach; two smaller flush wall signs and one additional flush wall sign.

A separate Development Application No. 325/2008 for a bulky goods retail outlet proposed at the southern end of the site was approved by Council on 9 March 2009. The development consent was granted to DA No. 325/2008 subject to two deferred commencement conditions. Condition No. 1 requires the proponent to enter into a Planning Agreement with Council in accordance with

- (a) Division 6 of Part 4 of the Environmental Planning and Assessment Act 1979; and
- (b) The terms of the proponent's offer to Council dated 24 February 2009.

Condition No. 2 relates to the submission of stormwater engineering details.

The consent does not operate until the above conditions have been satisfied and Council has issued written notice to this effect.

#### **4. Summary of Objectives, Nature and Effect of the Planning Agreement**

The objective of the Planning Agreement is to facilitate the payment of monetary contributions by Council towards the cost of the intersection upgrade works.

The Planning Agreement requires the Developer to upgrade the intersection of Thompson Street and the New England Highway by the installation of traffic lights to RTA standards. Council will pay 50% of the costs incurred by the Developer, including any project management fees payable to an independent project manager

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engaged by the Developer, in carrying out the works up to a maximum amount of \$300,000 (excluding GST).

#### **5. Key Features of the Voluntary Planning Agreement**

The key features of the Planning Agreement are set out below with an explanation as necessary:

- (a) The Planning Agreement requires the upgrading of the intersection of Thompson Street and New England Highway to be completed within 12 months after the date on which a contract is entered into between the developer and Contractor to carry out the works;
- (b) The Council will pay 50% of the costs incurred by the Developer, including any project management fees, in carrying out the works up to a maximum of \$300,000.00 (excluding GST);
- (c) The Planning Agreement contains provisions relating to dispute resolution, should disputes arise between the relevant parties; and
- (d) The Planning Agreement will be registered on the title to the Land.

#### **6. Merits of the Planning Agreement and impact on the public**

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

The Planning Agreement provides the upgrading of the intersection of Thompson Street and the New England Highway through the installation of traffic signals and completion of associated road works. The intersection improvements will benefit both the subject development and the local area by improving the efficiency and safety of the intersection which is currently operating at a poor level of service (Level of Service F).

##### **How the Draft Planning Agreement Promoted the Objects of the EP&A Act**

The Planning Agreement is consistent with the objects of the EP&A Act as it promotes the orderly and economic use and development of land.

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

The Planning Agreement is in the public interest as it will facilitate the upgrading of public infrastructure (i.e. the intersection of Thompson Street and New England Highway) to the benefit of the local community. The proposed upgrade will improve public safety and the operational efficiency of the intersection.

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

##### **(a) Councils – How the Planning Agreement Promotes the Elements of the Council's Charter**

The contributions payable under the Planning Agreement will be used to fund the development and upgrading of a community asset in accordance with Council's obligations under the charter. The agreement considers the long term needs of the

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local community and promotes the effective management of the assets for which Council is responsible.

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

Council's contribution payable under the Planning Agreement is allocated in Council's approved Capital Works Budget.

**The Impact of the Draft Planning Agreement on the Public or Any Section of the Public**

The Planning Agreement will not have an adverse impact on the public or any section of the public

Signed and Dated by All Parties

MUSWELLBROOK COUNCIL



  
.....General Manager

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