

Deed of Novation

“Abbotsford”

Planning Agreement

**Wollondilly Shire Council
R & F Ziems Pty Ltd, Zaxmoat Pty Ltd, Bertoli Building Pty Ltd,
Glynis Jean Thompson and Neil Leonard Arber**

The Silo's Estate Picton Pty Ltd

Date: 26 April 2023

Deed of Novation of "Abbotsford" Planning Agreement

Wollondilly Shire Council

R & F Ziems Pty Ltd, Zaxmoat Pty Ltd, Bertoli Building Pty Ltd, Glynis Jean Thompson and Neil Leonard Arber

The Silo's Estate Picton Pty Ltd

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Planning Agreement

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Neil Arber Glynis Thompson R Ziems R Ziem

[Handwritten signatures]

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Wollondilly Shire Council

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**Deed of Novation
"Abbotsford"
Planning Agreement**

Summary Sheet

Council:

Name: Wollondilly Shire Council

Address: 62-64 Menangle Street, Picton, NSW 2571

Telephone: 02 4677 1100

Email: council@wollondilly.nsw.gov.au

Representative: Chief Executive Officer

Original Developer:

Name: R and F Ziems ACN 001 747 806, Zaxmoat Pty Ltd ACN 079 492 247, Bertoli Building Pty Ltd ACN 056 658 836, Glynis Jean Thompson and Neil Leonard Arber

Address: c/- Suite 605, Level 6, 22 Market Street, Sydney NSW 2000

Telephone: 9299 2931

Email: kevin@brock.com.au

Representative: Kevin Rodgers

New Developer:

Name: The Silo's Estate Picton Pty Ltd ACN 638 104 220

Address: c/- Suite 101, Level 1/203-209 Northumberland Street, Liverpool NSW 2170

Telephone: 9602 1888

Email: joe@dagostinosolicitors.com.au

Representative: Joseph D'Agostino

*Neil Arber
Glynis Thompson*

*R. Ziems
J. D'Agostino*

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Wollondilly Shire Council

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Parties

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

and

R and F Ziems Pty Ltd ACN 001 747 806, **Zaxmoat Pty Ltd** ACN 079 492 247, **Bertoli Building Pty Ltd** ACN 056 658 836, **Glynis Jean Thompson** and **Neil Leonard Arber** of Suite 605, Level 6, 22 Market Street, Sydney NSW 2000 (**Original Developer**)

and

The Silo's Estate Picton Pty Ltd ACN 638 104 of Suite 101, Level 1/203-209 Northumberland Street, Liverpool NSW 2170 (**New Developer**)

Background

- A The Original Developer is the owner of the Developer Land, otherwise known as "Abbotsford" (known as 15 Fairleys Road, Picton).
- B In connection with Development Application DA/2019/413/1, the Original Developer entered into the Planning Agreement with the Council under the Environmental Planning and Assessment Act 1979 for staging plan set out in Schedule 5 of the Planning Agreement.
- C The Original Developer has entered into to a contract to sell the Developer Land to the New Developer. The sale is conditional on satisfaction of the requirements in clause 9 of the Planning Agreement.
- D The Original Developer wishes to novate the Planning Agreement and all of the respective rights and obligations in the Planning Agreement to the New Developer.
- E The Council consents to the transfer of the Developer Land to the New Developer and agrees to the novation of the Planning Agreement to the New Developer on the terms set out in this Deed, and pursuant to clause 9 of the Planning Agreement.

The image shows several handwritten signatures in black ink. On the left, there are two signatures, one above the other. In the center, there is a large, stylized signature that appears to be 'R. Ziems'. To the right of this, there is another signature that looks like 'R. Ziems' written in a different style. Below the large central signature, there are two more signatures: one that looks like 'Neil Arber' and another that looks like 'Glynis Thompson'. The signatures are arranged in a somewhat circular or overlapping pattern.

Deed of Novation of "Abbotsford" Planning Agreement

Wollondilly Shire Council

R & F Ziems Pty Ltd, Zaxmoat Pty Ltd, Bertoli Building Pty Ltd, Glynis Jean Thompson and Neil Leonard Arber

The Silo's Estate Picton Pty Ltd

Operative provisions

Part 1 - Preliminary

1 Definitions and Interpretation

1.1 In this Deed the following definitions apply:

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

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

Development means the development described in Development Application DA/2019/413/1 on the Developer Land for which Development Consent was granted by the Council on 1 July 2020, as modified from time to time.

Developer Land means Lot 1 DP1086066, otherwise known as 15 Fairleys Road, Picton.

Effective Date means the date of settlement of the sale of the Developer Land from the Original Developer to the New Developer.

Party means a party to this Deed.

Planning Agreement means the "Abbotsford" Planning Agreement entered into on 15th January 2021 between Council and the Original Developer.

1.2 In this Deed unless the contrary intention appears:

1.2.1 words in the singular include the plural and vice versa;

1.2.2 any gender includes the other genders;

1.2.3 if a word or phrase is defined its other grammatical forms have corresponding meanings;

1.2.4 "includes" means includes without limitation;

1.2.5 no rule of construction will apply to a clause to the disadvantage of a Party merely because that Party put forward the clause or would otherwise benefit from it; and

1.2.6 a reference to:

(a) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;

(b) a person includes the person's legal personal representatives, successors, assigns and persons substituted by assignment;

(c) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced; and

Neil Arber Glynis Thompson.

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Wollondilly Shire Council

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- (d) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation.

1.2.7 Headings do not affect the interpretation of this Deed.

2 Novation

- 2.1 Subject to clause 3 and with effect from the Effective Date:
- 2.1.1 the New Developer is substituted for the Original Developer as a Party to the Planning Agreement;
 - 2.1.2 the New Developer is bound by the Planning Agreement to perform all of the obligations in the Planning Agreement;
 - 2.1.3 the New Developer is entitled to the benefit of the Planning Agreement as if the New Developer was a Party to the Planning Agreement; and
 - 2.1.4 the Original Developer is released and discharged from all obligations and liabilities, and from all claims (whether for costs, damages, fees, expenses or otherwise), arising under the Planning Agreement, except in relation to any breaches of the Planning Agreement which arose prior to the Effective Date.
- 2.2 With effect from the Effective Date:
- 2.2.1 all references to the Original Developer in the Planning Agreement are construed as references to the New Developer; and
 - 2.2.2 the Council must address all notices and communications given or made by it to the New Developer under the Planning Agreement to the address noted on the Summary Sheet to this Deed for the New Developer.
 - 2.2.3 Where Schedule 7 of the Planning Agreement required the Developer to provide Security at a time prior to the Effective Date and the criteria for the release of that Security in cl. 4 of Schedule 7 has not been yet met then the New Developer is to provide replacement Security to the Council within 14 days of the Effective Date.

3 Affirmation of the Original Planning Agreement

- 3.1 The Planning Agreement will be read and construed subject to this Deed, and in all other respects the provisions of the Planning Agreement are ratified and confirmed, and, subject to the variation and novation contained in this Deed, the Planning Agreement will continue in full force and effect.
- 3.2 On and from the Effective Date, the New Developer must properly and punctually observe and perform all of the Original Developer's obligations (both present, future, actual and contingent) under the Planning Agreement or which arise as a result of the Council exercising any right under the Planning Agreement and which are due to be performed on or after the Effective Date.
- 3.3 Until the Effective Date, the Original Developer must continue to properly and punctually observe and perform all of the Original Developer's obligations both future, actual and contingent under the Planning Agreement.

Neil Arber
Glynis Thompson

[Signature]

[Signature]

R3
[Signature]

Deed of Novation of "Abbotsford" Planning Agreement

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The Silo's Estate Picton Pty Ltd

4 Council Satisfaction

- 4.1 For the purposes of clause 9 of the Planning Agreement, the Council acknowledges that:
- 4.1.1 this Deed is the deed in favour of the Council referred to in clause 9 of the Planning Agreement,
 - 4.1.2 the Council is satisfied that the New Developer is reasonably capable of performing the obligations under the Planning Agreement,
 - 4.1.3 as at the date of this Deed, the Original Developer is not in breach of the Planning Agreement, and
 - 4.1.4 the Council consents to the transfer of Developer Land from the Original Developer to the New Developer.

5 Warranties and Representations

- 5.1 Each Party represents and warrants that, at the time of execution, and at the Effective Date:
- 5.1.1 it has capacity unconditionally to execute, deliver and comply with its obligations under this Deed;
 - 5.1.2 it has taken all necessary action to authorise the unconditional execution and delivery of, and the compliance with, its obligations under this Deed;
 - 5.1.3 this Deed is a valid and legally binding obligation and is enforceable against it by each other Party in accordance with its terms; and
 - 5.1.4 its unconditional execution and delivery of, and compliance with its obligations under this Deed do not contravene:
 - (a) any law or directive from a government entity;
 - (b) its constituent documents;
 - (c) any agreement or instrument to which it is a Party; or
 - (d) any obligation of it to any other person.
- 5.2 The warranties and representations in clause 5.1 survive the execution of this Deed and the novation and assignment of the Planning Agreement.


Neil Arber Glynis Thompson

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6 GST

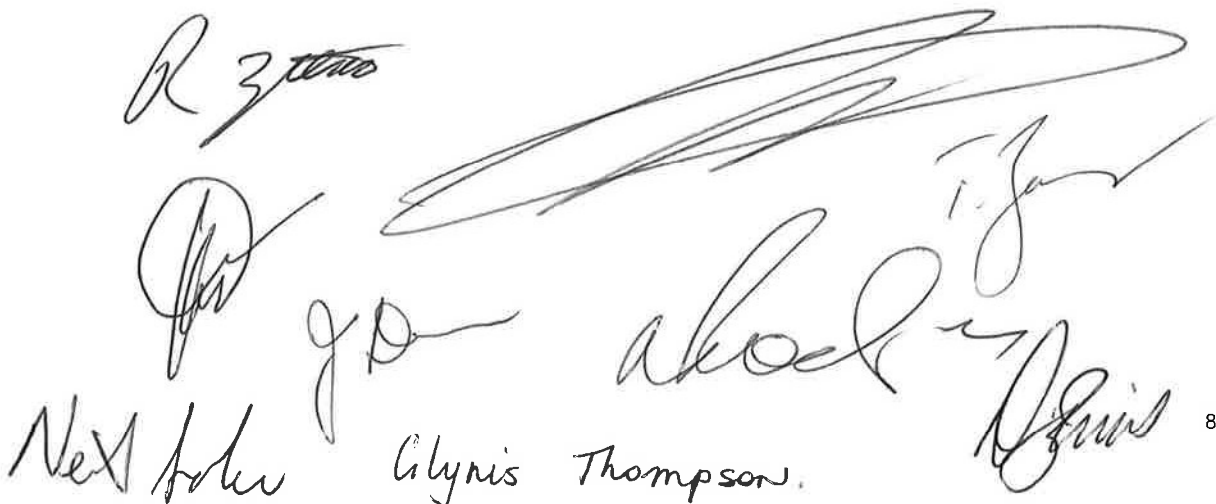
- 6.1 Where a supply made under this Deed gives rise to a liability for GST, the consideration to be provided for that supply (other than under this clause) shall be increased by an additional amount equal to the GST payable on the supply. The additional amount must be paid, and the supplier must provide a tax invoice, at the same time as the other consideration for that supply is to be provided under this Deed.
- 6.2 Terms used in this clause have the meanings in the *A New Tax System (Goods and Services Tax) Act 1999*.

7 Stamp duty and costs

- 7.1 The Original Developer is responsible for the Council's legal costs incidental to the negotiation, preparation and execution of this Deed.
- 7.2 The New Developer must pay all stamp duty (if any) arising directly or indirectly from this Deed.
- 7.3 This clause continues to apply after termination of this Deed.

8 Further acts

- 8.1 Immediately upon settlement of the sale of the Developer Land to the New Developer, the Original Developer is to notify the Council in writing of the Effective Date.
- 8.2 Each Party will take all steps, execute all deeds and do everything reasonably required by any other Party to give effect to any of the actions contemplated by this Deed.
- 8.3 This Deed binds each Party which signs it even if other parties do not, or if the execution by other parties is defective, void or voidable.


Neil Leonard Arber Glynis Thompson Bertoli Building Zaxmoat R Ziems

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9 Entire Deed

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

10 Amendment

- 10.1 This Deed may only be varied or replaced by a document executed by the Parties.

11 Governing law

- 11.1 This Deed is governed by the law in force in New South Wales and the Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them.

The image shows several handwritten signatures in black ink. At the top is a large, stylized signature. Below it are several smaller signatures, including one that appears to be 'Neil Arber' and another that appears to be 'Glynis Thompson'. There are also some initials and other less legible signatures.

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Wollondilly Shire Council

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The Silo's Estate Picton Pty Ltd

Execution

Executed as a Deed

Dated: 26 APRIL 2023



Executed on behalf of Wollondilly Shire Council ABN 93 723 245 808 in
the presence of

BENJAMIN TAYLOR, CEO

Name / Position

Alison Ferguson Alison Ferguson

Witness

Alison Ferguson - 62-64 Menangle Street, Picton

Name and address of Witness

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Wollondilly Shire Council

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The Silo's Estate Picton Pty Ltd

Executed on behalf of R & F Ziems Pty Ltd ACN 001 747 806 in accordance with section 127(1) of the Corporations Act 2001 (Cth) by:

DANIEL ZIEMS DIRECTOR.
Name/Position
Daniel Ziems

Robert Ziems Director
Robert Ziems

Executed on behalf of Zaxmoat Pty Ltd ACN 079 492 247 in accordance with section 127(1) of the Corporations Act 2001 (Cth) by:

[Signature] Director
Name/Position
Henry Dunn

[Signature] Director/Secretary
Sill Dunn

Executed on behalf of Bertoli Building Pty Ltd ACN 056 658 836 in accordance with section 127(1) of the Corporations Act 2001 (Cth) by:

[Signature]
Name/Position
Kevin Rodger

KEVIN RODGER SOLE DIRECTOR/SECRETARY

