

HONES LA HOOD

PLANNING AGREEMENT

Wollondilly Shire Council

Council

Dorothy Margaret Spicer

Developer

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Planning Agreement is
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This Planning Agreement is made on October 2007

Parties **Wollondilly Shire Council**
of 62-64 Menangle Street, Picton
("Council")

Dorothy Margaret Spicer
of Ridgehaven Road, Silverdale NSW 2752
("Developer")

Background

- A. The Developer wishes to develop the Land by:
- (a) Consolidation of Lot 2 in DP 247113, Lot 4 in DP 720761 and Lot X in DP416392;
 - (b) Conventional torrens title subdivision of consolidated Lot 2 in DP 247113, Lot 4 in DP 720761 and Lot X in DP 416392 into 3 Residential Allotments yielding single dwelling residential allotments together with all necessary road works and ancillary services (but excluding any roadworks within the unformed Normans Road road reserve); and
 - (c) Conventional torrens title subdivision of Lots 61, 64 & 68 in DP 804634 (the Main Lot) into 11 Residential Allotments and the Residue Allotment (to be dedicated by the Developer to the Council as a Public Reserve and Drainage Reserve) together with all necessary road works and ancillary services,
- (all known as the "Proposed Development").
- B. The Developer has offered to dedicate the Residue Allotment to the Council, at no cost to the Council, in accordance with s49 of the LGA, as a Public Reserve and Drainage Reserve, with that dedication being effected upon the registration a Plan of Subdivision relating to the proposed subdivision of the Main Lot.
- C. The Developer has also proposed that the Council and the Developer enter into this Planning Agreement.

Operative provisions

1. Planning agreement under the Act

This deed constitutes a planning agreement within the meaning of section 93F of the Act.

2. Application of the planning agreement

The planning agreement constituted by this deed applies to:

- (a) the Land; and
- (b) the Proposed Development.

3. Operation of this planning agreement

- 3.1 Subject to clause 3.1(b), the Parties agree that the terms of this planning agreement will take effect and bind the parties from the Commencement Date and will remain in force and effect until either:
- (a) the Residue Allotment is dedicated by the Developer to the Council, upon registration of the Plan of Subdivision concerning the Main Lot at LPI NSW; or
 - (b) the Council determines the development application on terms that are inconsistent with this planning agreement.
- 3.2 If the circumstance contemplated in clause 3.1(b) arises, then forthwith upon the issue of that development consent the Developer will be released and discharged from all of the Developer's obligations under this planning agreement.
- 3.3 The parties agree that if the Developer:
- (a) has not lodged a Development Application for Development Consent to carry out the Proposed Development on the Land on or before the second anniversary of the Commencement Date; or
 - (b) has not obtained a Development Consent to that Development Application and the Developer has not given the Council notice of intention to commence the Proposed Development pursuant to section 81 A(g) of the Act on or before the third anniversary of the Commencement Date; or
 - (c) the Developer withdraws the development application lodged by her or on her behalf in relation to the Proposed Development,
- then this deed terminates and will be of no further force or effect.

4. Definitions and interpretation

4.1. Definitions

"Act" means the *Environmental Planning and Assessment Act 1979*.

"Application" means an application for any Approval.

"Assignment and Dealing Terms" means the obligations imposed on the relevant Parties under, and by virtue of, Schedule 10.

"Authorised Officer" means, in the case of any Party, a director or secretary or an officer whose title contains the word "manager" or a person performing the functions of any of them, or any other person appointed by that Party to act as an Authorised Officer for the purpose of this deed.

"Authority" means any governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity and includes an accredited certifier accredited under section 6 of the *Building Professionals Act 2005*.

"Business Day" means any day except for Saturday or Sunday or a day which is a public holiday in Sydney.

"Commencement Date" means the date of this deed.

"Control" or "Controlled" means in respect of an entity the possession, directly, or indirectly, of the power, whether or not having statutory, legal or equitable force, and whether or not based on statutory, legal or equitable rights, directly or indirectly, to control the membership of the board of directors of the entity or to otherwise, directly or indirectly, direct or influence the direction of the management and/ or policies of that entity, whether by means of trusts, agreements, arrangements, understandings, practices, the ownership of any interest in shares or stock or units or other interests of that entity or otherwise.

"Costs" includes reasonable costs, charges and expenses, including those incurred in connection with advisers.

"Costs Schedule" means Schedule 11 of this deed.

"Council" means Wollondilly Shire Council.

"Dedication" means the dedication of the Residue Lot, at no cost to the Council, and in accordance with s49 of the LGA, as a Public Reserve and Drainage Reserve.

"Development Application" has the meaning given to that term in the Act.

"Development Consent" has the meaning given to that term in the Act.

"Development Contribution" means the dedication of the Residue Lot by the Developer to the Council as a Public Reserve and Drainage Reserve.

"Development Contribution Schedule" means Schedule 3 of this deed.

"Development Procedures" means the terms and conditions imposed on the relevant Parties under, and by virtue of, Schedule 4.

"Development Program" means the timetable and milestones for each

Development Contribution described in Schedule 5.

"Dispute Resolution Procedures" means the procedures imposed on the relevant Parties under Schedule 8.

"Explanatory Note" means the explanatory note relating to this deed, as required by clause 25E of the Regulation, and attached as Exhibit A to this deed

"General Register of Deeds" means the land registry so entitled and maintained under the *Conveyancing Act 1919*.

"GST" has the meaning it has in the GST Act.

"GST Act" means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

"Land" means the land described in Schedule 2 which as at the date of this deed is subject to the reservations and registered interests which are also set out in Schedule 2.

"Law" means:

- (a) the common law including principles of equity; and
- (b) the requirements of all statutes, rules, ordinances, codes, regulations, proclamations, by-laws or consents by an Authority.

"LEP" means *Wollondilly Local Environmental Plan 1991*.

"LGA" means the Local Government Act 1993, as amended.

"LPI NSW" means Land and Property Information Service New South Wales.

"Main Lot" means Lots 61, 64 & 68 in DP 804634.

"Parent" means any person who Controls the Developer.

"Party" means a party to this deed, including their respective successors and assigns.

"Plan of Subdivision" means a plan of subdivision in respect of the whole, or part of, the Land relating to the Proposed Development which has been approved by the Council.

"Proposed Development" means the development proposed by the Developer as described in Schedule 2.

"Real Property Act" means the *Real Property Act 1900*.

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

"Related Entity" has the meaning "related entity" has in the *Corporations Act* 2001 (Cth).

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

"Release and Discharge Terms" means the obligations imposed on the relevant Parties under, and by virtue of, Schedule 6.

"Residential Allotment" means a lot forming part of the Land identified in any Development Application for subdivision of the whole, or any part, of the Land which lot is intended to be developed, subject to development consent, by construction of a single dwelling house or for any other purpose that is permissible with or without development consent, under the LEP.

"Residue Allotment" means the allotment to be created by the proposed subdivision of Lots 61 and 64, being all of the land within those lots which is zoned 6(a) Open Space Recreation A under the LEP.

"Review Procedures" means the procedures set out in Schedule 7.

"Security Arrangements" means those security arrangements set out in Schedule 9.

"Subdivision Certificate" means a certificate that authorises the registration of a Plan of Subdivision under Division 3 of Part 23 of the *Conveyancing Act, 1919*.

4.2. General

In this deed unless the contrary intention appears:

- (a) a reference to a document or another instrument includes any variation or replacement of any of them;
- (b) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (c) the singular includes the plural and vice versa;
- (d) the word "person" includes a firm, a body corporate, an unincorporated association or an authority;
- (e) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including, without limitation, persons taking by novation) and assigns;
- (f) an agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and severally;
- (g) an agreement, representation or warranty on the part of two or more

persons binds them jointly and severally;

- (h) a reference to any thing (including, without limitation, any amount) is a reference to the whole and each part of it and a reference to a group of persons is a reference to all of them collectively, to any two or more of them collectively and to each of them individually;
- (i) "include" or "including" when introducing a list of items does not limit the meaning of the words to which the list relates to those items or to items of a similar kind;
- (j) if a Party is prohibited from doing anything, it is also prohibited from:
 - (i) allowing or causing it to be done; and
 - (ii) doing or omitting to do anything which results in it happening;
- (k) a reference to a statute, ordinance, code or law includes a statute, ordinance code or law of the Commonwealth of Australia;
- (l) a reference to a body, whether statutory or not which ceases to exist or whose powers or functions are transferred to another body is a reference to the body which replaces it or which substantially succeeds to its power or functions;
- (m) no rule of construction applies to the disadvantage of a Party because that Party was responsible for the preparation of this deed;
- (n) any capitalised term used, but not defined in this deed, will have the meaning ascribed to it under, and by virtue of, the Act; and
- (o) the Schedules, Exhibits and Annexures form part of this deed.

5. Development Contribution to be made

Subject to Clause 3.1(b) the parties agree that:

- (a) The Developer will provide, or procure the provision of, the Development Contribution; and
- (b) The Council agrees with the Developer that following the dedication of the Residue Lot that lot will be used by the Council as a Public Reserve and Drainage Reserve.
- (c) Other than the dedication of the Residue Lot, as contemplated by this Deed, the Council will not require:
 - (i) any further dedication of any part of the Land by the Developer;
 - (ii) any monetary contribution by the Developer to the Council pursuant to s94 or s94A of the Act;

- (iii) performance by the Developer of any works to form or otherwise construct the road within the currently unformed road reserve known as Normans Road, Silverdale, which has a boundary with Lot 2 in DP 247113 and Lot 4 in DP 720761.

6. Application of the Development Contribution

The Developer will provide, or procure the provision of, the Development Contribution at the time or times and in accordance with and or in the manner set out in the Development Contribution Schedule, the Development Procedures, and the Development Program.

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

7.1. Exclusion of sections 94 and 94A of the Act

The application of sections 94 and 94A of the Act is excluded to the extent stated in Schedule 1.

7.2. Benefits under this deed

If this deed does not exclude the application of section 94 to the Land or the Proposed Development, then the Development Contribution to be provided by the Developer under this deed, must be taken into consideration, or must not be taken into consideration, in determining a development contribution under section 94 as set out in Schedule 1.

8. Registration of this deed

8.1. Ownership of the Land

The Developer represents and warrants to the Council that the Developer:

- (a) Is the owner of the Land and will remain the owner of the Land until the date on which the dedication of the Residue Lot to the Council is effected; and
- (b) Will obtain any and all consents and approvals required to allow the Developer to comply with her obligations under clause 8.2.

8.2. Registration of deed

- (a) As contemplated by Section 93H of the Act, the Developer agrees to procure the registration of this deed under the Real Property Act in the relevant folio of the Register.
- (b) The Developer, at its own expense, will prior to the Dedication take all practical steps and otherwise do anything that the Council reasonably requires, to, and must, procure:

- (i) the consent of each person who:
 - A. has an estate or interest in the Land registered under the Real Property Act; or
 - B. is seized or possessed of an estate or interest in the Land; and
- (ii) the execution of any documents; and
- (iii) the production of the relevant duplicate certificates of title; and
- (iv) the lodgement and registration of this deed, by the Registrar-General in the relevant folio of the Register, or in the General Register of Deeds if this deed relates to land not under the Real Property Act.

8.3. Release and discharge of this deed

The Council agrees that upon the Dedication of the Residue Lot to the Council, which dedication will be effected upon the registration of the Plan of Subdivision of the Main Lot the Developer will have fully satisfied and discharged her obligations under this Deed.

8.4. Deed to bind others

This Deed will be binding upon and inure to the benefit of the parties and, unless repugnant to the sense or context, to their respective administrators, personal representatives, successors and permitted agents and assigns.

9. Review of deed

The Parties agree that this deed will be reviewed or modified in the circumstances, and in accordance with, the Review Procedures.

10. Dispute resolution

The Parties agree that any disputes under or in relation to this deed will be resolved in accordance with the Dispute Resolution Procedures.

11. Security and enforcement

11.1. Security

The Developer has agreed to provide security to the Council for performance of the Developer's obligations under this deed on the terms and conditions of the Security Arrangements.

11.2. Enforcement

This deed may be enforced by either Party in any court of competent jurisdiction.

11.3. No prevention to enforcement

For the avoidance of doubt, nothing in this deed prevents:

- (a) 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; 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 deed or any matter to which this deed relates.
-

12. Notices

12.1. Form

Any notice, consent, information, application or request that must 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:

- (a) delivered or posted to that Party at its address set out below; or
 - (b) faxed to that Party at its fax number set out below;
-

Council

Address: 62 - 64 Menangle Street, PICTON NSW 2571

Telephone: (02) 4677 1100

Fax: (02) 4677 2339

Attention: General Manager

Developer

Address: C/- McPhee Kelshaw Solicitors 170 Macquarie Road, Springwood NSW (DX 26729 Springwood)

Telephone: (02) 47 511 055

Fax: (02) 47 515 668

Attention: Trevor Cork

12.2. Change of address

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

12.3. Receipt

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, provided that if the fax transmission is sent on a day that is not a business day, or if an error free transmission report is received by the sender after 5pm on a Business Day, then the transmission will be deemed to have been given or made on the next Business Day.

13. Approvals and Consent

Except as otherwise set out in this deed, and subject to any statutory obligations, a Party may give or withhold an approval or consent to be given under this deed in the Party's absolute discretion and subject to any conditions determined by the Party. A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

14. Assignment and dealings

None of the Parties to this deed may assign or otherwise deal with its rights under this deed or allow any interest in them to arise or be varied in each case unless stated otherwise in the Assignment and Dealing Terms.

15. Costs

Each party to this Deed shall bear their own legal and other costs incurred in relation to the negotiation, preparation, execution, advertising, stamping and registration of this deed.

16. Entire agreement

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

17. Further Acts

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

This deed is governed by the law of New South Wales. The Parties submit to the nonexclusive jurisdiction of its courts and courts of appeal from them. The Parties will not object to the exercise of jurisdiction by those courts on any basis.

19. Joint and individual liability and benefits

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

20. No fetter

Nothing in this deed shall be construed as requiring the 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, specifically nothing in this deed should be construed as a warranty, representation promise of otherwise that a Development Consent will be issued for the Proposed Development. Each of the parties agree and acknowledge that:

- (a) The Council is under a statutory duty to properly consider, on its merits, the Development Application relating to the Proposed Development to be submitted to it by the Developer, or by any person on the Developer's behalf, whether in relation to some or all of the subject of this Deed or otherwise, and to otherwise exercise each and all of its statutory responsibilities according to law; and
- (b) The Council cannot fetter in advance the exercise of any of its statutory discretions, whether by way of contract, estoppel or otherwise, in relation to the Proposed Development and any Application/Development Application relating to the Proposed Development to be lodged with the Council in its capacity as the consent authority under the LEP nor pre-determine any decision in respect of any such Application; and
- (c) The Council (in the proper exercise of its statutory function) proposes to refer the Development Application for the Proposed Development (and any other Applications relating to it) to external consultants for independent assessment; and
- (d) The Council has not at any time prior to the making of this Deed, given any assurance or made any representation or statement to the Developer as to how it will or may exercise any of its statutory functions, discretions and or obligations whether in relation to the Development Application for the Proposed Development or any other Application/Development Application relating to it; and
- (e) No Party to this Deed has been induced by the another party to enter into this Deed on the basis of any such assurance, representation or statement;

and

- (f) The Council is entitled to oppose or challenge any Development Consent and or Development Application (or other Application as the case may be) by way of legal proceedings or otherwise.
-

21. Representations and warranties

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

22. Severability

- (a) 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.
 - (b) 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 the deed is not affected.
-

23. Modification

No modification of this deed will be of any force or effect unless it is in writing and signed by the Parties as a deed.

24. Waiver

- (a) 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 a breach of obligation by, another Party.
 - (b) A waiver by a Party is only effective if it is in writing.
 - (c) 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.
-

25. GST

25.1. Consideration does not include GST

Any consideration expressed in this deed is, unless otherwise specified, GST exclusive and does not include any amount for, or on account of, GST.

25.2. GST payable

If any supply under or in connection with this deed constitutes a taxable supply made for GST exclusive consideration, the supplier may, subject to issuing a tax invoice, recover from the recipient of the supply an amount on account of the GST

payable in respect of that taxable supply ("**GST Amount**").

The GST Amount is:

- (a) equal to the value of the supply calculated in accordance with the GST Act multiplied by the applicable GST rate; and
- (b) payable at the same time and in the same manner as any monetary consideration for the supply concerned but no later than the end of the tax period to which the GST payable on the relevant taxable supply is attributable under the GST Act.

The supplier of a taxable supply made under or in connection with this deed must issue a tax invoice for the supply in accordance with the GST Act to the recipient of the supply.

25.3. Reimbursement

Despite any other provision of this deed, any amount payable under or in connection with this deed, which is calculated by reference to a cost, expense or amount paid or incurred by a Party, will be reduced by an amount equal to any input tax credit to which that party, or the representative member of a GST Group of which the party is a member, is entitled in respect of that cost, expense or amount.

25.4. Defined GST terms

Words and expressions used in this clause 25 have the meaning given to them in the GST Act.

26. Effect of Schedulised terms and conditions

The Parties agree to comply with the terms and conditions contained in the Schedules as if those terms and conditions were expressly set out in full in the operative parts of this deed.

27. Confidentiality

The Parties agree that the terms of this deed are not confidential and this deed may be treated as a public deed and exhibited or reported without restriction by any Party.

28. Release and indemnity

- (a) The Developer agrees that the Development Contribution, the Proposed Development and all property in the Land are at the risk of the Developer. The Developer releases the Council from liability or loss arising from, and Costs incurred in connection with any matter or thing contemplated by this deed including the Development Contribution and the Proposed Development on the Land.
- (b) The Developer indemnifies the Council and the Council's employees,

agents, officers or contractors against all costs and expenses paid or payable by the Council or any liability or loss arising from, and any Costs (including legal costs and expenses on a full indemnity basis or a solicitor and own client basis whichever is the higher) incurred in connection with any matter or thing contemplated by this deed including the Development Contributions and the Proposed Development on the Land.:

- (c) The indemnity in clause 28(b) is a continuing obligation, independent of the Developer's other obligations under this deed and continues after this deed ends. It is not necessary for the Council to incur expense or make payment before enforcing a right of indemnity under this Deed.

29. Explanatory Note

The Explanatory Note must be used to assist in construing this Deed to the extent stated in Schedule 12.

Schedule 1 – Section 93F Requirements

The Parties acknowledge and agree that the table set out below provides for certain terms, conditions and procedures to ensure that the planning agreement complies with the Act.

REQUIREMENT UNDER THE ACT	THIS PLANNING AGREEMENT
<p>Planning instrument and/or development application - (Section 93F(1))</p> <p>The Developer has:</p> <p>(a) sought a change to an environmental planning instrument.</p> <p>(b) made, or proposes to make, a Development Application.</p> <p>(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.</p>	<p>(a) No</p> <p>(b) Yes</p> <p>(c) Not applicable</p>
<p>Description of land to which this deed applies - (Section 93F(3)(a))</p>	The whole of the Land.
<p>Description of change to the environmental planning instrument to which this deed applies - (Section 93F(3)(b))</p>	Not applicable.
<p>Applicability of section 94 of the Act - (Section 93F(3)(d))</p>	The application of section 94 of the Act to the Development is wholly excluded.
<p>Applicability of section 94A of the Act - (Section 93F(3)(d))</p>	The application of section 94A of the Act to the Development is wholly excluded.
<p>Consideration of benefits if under this deed section 94 applies - (Section 93F(3)(e))</p>	Not applicable.
<p>Mechanism for Dispute resolution - (Section 93F(3)(f))</p>	See clause 10 and Schedule 8.
<p>Enforcement of this deed – (Section 93F(3)(g))</p>	See clause 11 and Schedule 9.
<p>No obligation to grant consent or exercise functions – (Section 93F(9))</p>	See clauses 13 & 20.

Schedule 2 – Land

1. Title

The whole of the land comprised in:

- (a) Lot 2 in DP 247113;
 - (b) Lot 4 in DP 720761;
 - (c) Lot X in DP 416392; and
 - (d) Lots 61, 64 and 68 in DP 804634
-

2. Encumbrances

The Land is subject to:

- (a) in relation to Lot 2 in DP 247113:
 - (i) the reservations and conditions in the Crown Grant.
- (b) in relation to Lot 4 in DP 720761:
 - (i) the land excludes minerals and is subject to the reservations and conditions in favour of the Crown under memorandum S700000A;
- (c) in relation to Lot X in DP 416392:
 - (i) the reservations and conditions in the Crown Grant.
- (d) in relation to 61 in DP 804634:
 - (i) the reservations and conditions in the Crown Grant; and
 - (ii) Restriction(s) on the use of land created by DP733700 and varied by dealing X773464; and
 - (iii) Restriction(s) on the use of land created by DP771082 and varied by dealing X773464; and
 - (iv) Easement to drain water variable width created by DP772109; and
 - (v) Easement to drain water 1 wide created by DP804634; and
 - (vi) Easement to drain water 3 wide created by DP785116; and
 - (vii) Restriction(s) on the use of land created by DP804634.

- (e) in relation to 64 in DP 804634:
 - (ii) the reservations and conditions in the Crown Grant; and
 - (iii) Restriction(s) on the use of land created by DP733700 and varied by dealing X773464; and
 - (iv) Restriction(s) on the use of land created by DP771082 and varied by dealing X773464; and
 - (v) Easement to drain water variable width created by DP772109; and
 - (vi) Easement to drain water 3 wide created by DP785116; and
 - (vii) Restriction(s) on the use of land created by DP804634.
 - (f) in relation to Lot 68 in DP 804634:
 - (i) the reservations and conditions in the Crown Grant; and
 - (ii) Restriction(s) on the use of land created by DP733700 and varied by dealing X773464; and
 - (iii) Restriction(s) on the use of land created by DP771082 and varied by dealing X773464; and
 - (iv) Easement to drain created by DP733700; and
 - (v) Easement to drain water 1 wide created by DP804634; and
 - (vi) Easement to drain water 3 wide created by DP785116; and
 - (vii) Restriction(s) on the use of land created by DP804634.
-

3. Proposed Development

The re-development of the Land by way of:

- (a) Consolidation of Lot 2 in DP 247113, Lot 4 in DP 720761 and Lot X in DP416392;
- (b) Conventional torrens title subdivision of consolidated Lot 2 in DP 247113, Lot 4 in DP 720761 and Lot X in DP416392 into 3 Residential Allotments yielding single dwelling residential allotments together with all necessary road works and ancillary services (but excluding any roadworks within the unformed Normans Road road reserve); and
- (c) Conventional torrens title subdivision of Lots 61, 64 & 68 in DP 804634 into 11 Allotments and the Residue Allotment (to be dedicated by the

Developer to the Council as a Public Reserve and as a Drainage Reserve) together with all necessary road works and ancillary services.

(all known as the "Proposed Development").

Schedule 3 – Development Contribution Schedule

1. Development Contributions

The Developer undertakes to make the following Development Contribution:

Column 1	Column 2
Development Contribution	Intended use
Dedication to the Council, at no cost to the Council, of the Residue Allotment.	Open space recreation pursuant to the provisions of Clause 10(2) of the LEP and for drainage purposes.

Schedule 4 – Development Procedures

The Developer (or some other person on the Developer's behalf) shall lodge a Development Application for the Proposed Development on or before the second anniversary of the Commencement Date.

The Council must assess and determine the Development Application for the Proposed Development within nine months of the date on which the development application is lodged with the Council, as required under the Act, in accordance with its obligations as a local government authority and this Deed paying specific regard to Clauses 13 & 20.

Should Development Consent be granted for the Proposed Development, on terms that are consistent with the provisions of this Deed, the Council shall impose, and the Developer will not object to, a condition of consent requiring the surrender of development consent no.ID1547-04.

The Developer must take all steps necessary to procure the registration of a Plan of Subdivision, effecting the Dedication of the Residual Allotment as a Public Reserve and Drainage Reserve, as soon as practicable following the grant of a Development Consent (on terms consistent with this Deed and acceptable to the Developer).

Schedule 5 – Development Program

The Developer shall effect the Development Contribution by the registration of a Plan of Subdivision effecting the Dedication of the Residue Allotment to the Council as a Public Reserve and as a Drainage Reserve.

Schedule 6 – Release and Discharge Terms

The Council agrees:

- (a) that upon the registration of a Plan of Subdivision consistent with this Deed, and providing for the Dedication of the Residue Allotment to the Council, at no cost to the Council, the Developer would have fully satisfied and discharged her obligations under this deed; and
- (b) if so requested by the Developer, the Council will take all action as is required to secure the withdrawal or deletion of the registration of this planning agreement from the individual titles of the Residential Allotments created upon the registration of the Plan of Subdivision that also effected the Dedication of the Residue Allotment by the Developer to the Council; and
- (c) if so requested by the Developer, to provide to the Developer (or to any other person authorised to act on her behalf) a letter, prepared on the Council's letterhead, confirming the Council's assessment that the Developer has fully discharged her obligations under this Deed.

Schedule 7 – Review Procedures

The Parties may agree to review this deed.

Any review or modification will be conducted in the circumstances and in the manner determined by the Parties.

Any agreed amendment of this Deed will:

- (a) be evidenced in writing; and
- (b) accurately record the agreement of the parties.

Schedule 8 – Dispute Resolution

1. Notice of Dispute

If a dispute between any of the Parties arises in connection with this deed or its subject matter, then any Party may give to the other Parties a notice of dispute in writing adequately identifying and providing details of the dispute.

The Parties must continue to perform their respective obligations under this deed if there is a dispute but will not be required to complete the matter, the subject of the dispute, unless each Party indemnifies the other Parties against cost, damages and all losses suffered in completing the disputed matter if the dispute is not resolved in favour of the indemnifying Party.

2. Further steps required before proceedings

Any dispute between the Parties arising in connection with this deed or its subject matter must as a condition precedent to the commencement of litigation first be the subject of mediation between a person appointed from time to time by each (under written notice to the other Parties) to represent that Party.

3. Disputes for expert determination

If the mediation referred to in paragraph 2 has not resulted in settlement of the dispute, the Developer or any one Party may, with the prior written consent of each other Party, refer the matter to expert determination in accordance with paragraph 4, such expert to act in accordance with paragraph 6.

4. Choice of expert

A dispute to be referred to an expert in accordance with paragraph 3 must be determined by an independent expert in the relevant field:

- (a) agreed between and appointed jointly by the Parties; or
- (b) in the absence of agreement within 5 Business Days of the agreement of the Parties to refer the matter to expert determination under paragraph 3, appointed by the President or other senior officer for the time being of the body administering the relevant field.

If the Parties cannot agree as to the relevant field, any one Party may refer the matter to the President of the New South Wales Bar Association (or the President's nominee) whose decision as to the relevant field is final and binding on the Parties.

5. Requirements for expert

The expert appointed to determine a dispute:

- (a) must have a technical understanding of the issues in contest;
- (b) must not have a significantly greater understanding of one Party's business or operations which might allow the other side to construe this greater understanding as a bias or a conflict of interest;
- (c) must inform the Parties before being appointed the extent of the expert's understanding of each Party's business or operations and, if that information indicates a possible bias, then that expert must not be appointed except with the written approval of the Parties.

The Parties must enter into an agreement with the expert appointed under this Schedule 8 setting out the terms of the expert's determination and the fees and expenses payable to the expert.

6. Directions to expert

In reaching a determination in respect of a dispute under paragraph 3, the independent expert must give effect to the intent of the Parties entering into this deed.

7. Expert not arbitrator

The expert must:

- (a) act as an expert and not as an arbitrator; and
- (b) proceed in any manner as the expert thinks fit but must observe the rules of natural justice but not the rules of evidence, not accept verbal submission unless both Parties are present and on receipt of written submissions from one Party ensure that a copy of such submission is given promptly to the other Party; and
- (c) take into consideration all documents, information and other material which the Parties give the expert which the expert in its absolute discretion considers relevant to the determination of the dispute; and
- (d) not be expected or required to obtain or refer to any other documents, information or material (but may do so if the expert so wishes); and
- (e) issue a draft certificate stating the expert's intended determination giving each Party 15 Business Days to make further submissions; and

- (f) issue a final certificate stating the expert's determination; and
- (g) act with expedition with a view to issuing the final certificate as soon as practicable.

8. Compliance with directions

The Parties must comply with all directions given by the expert in relation to the resolution of the dispute and must within a time period specified by the expert, give the expert:

- (a) a short statement of facts; and
- (b) a description of the dispute; and
- (c) any other documents, records or information the expert requests.

9. Expert may commission reports

The expert may commission the expert's own advisers or consultants (including lawyers, accountants, bankers, engineers, surveyors or other technical consultants) to provide information to assist the expert in making a determination. The Parties must indemnify the expert for the cost of those advisers or consultants.

10. Expert may convene meetings

- (a) The expert will hold a meeting with all the Parties present to discuss the dispute. The meeting must be conducted in a manner which the expert considers appropriate. The meeting may be adjourned to, and resumed at, a later time in the expert's discretion.
- (b) The Parties agree that a meeting under this paragraph is not a hearing and is not an arbitration.

11. Final determination of expert

- (a) The Parties agree that the final determination by an expert will be final and binding upon them.
- (b) The expert or mediator will not be liable in respect of the expert determination or mediation, except in the case of fraud or misfeasance by the expert or mediator.
- (c) The Parties agree to release and indemnify the expert from and against all

claims, except in the case of fraud or misfeasance by the expert, which may be made against the expert by any person in respect of the expert's appointment to determine the dispute.

12. Other courses of action

If the mediation referred to in paragraph 2 or the expert determination required or agreed under paragraph 3 has not resulted in resolution of the dispute, any one Party may take whatever course of action it deems appropriate for the purpose of resolving the dispute.

13. Confidentiality of information

The Parties agree, and must procure that, the mediator and expert agrees as a condition of his or her appointment:

- (a) subject to paragraph (b) below, to keep confidential all documents, information and other material, disclosed to them during or in relation to the expert determination or mediation; and
- (b) not to disclose any confidential documents, information and other material except:
 - (i) to a Party or adviser who has signed a confidentiality undertaking to the same effect as this paragraph 13; or
 - (ii) if required by Law or the ASX Listing Rules to do so; or
- (c) not to use confidential documents, information or other material disclosed to them during or in relation to the expert determination for a purpose other than the expert determination or mediation.

The Parties must keep confidential and must not disclose or rely upon or make the subject of a subpoena to give evidence or produce documents in any arbitral, judicial or other proceedings:

- (d) views expressed or proposals or suggestions made by a Party or the expert during the expert determination or mediation relating to a possible settlement of the dispute; and
- (e) admissions or concessions made by Party during the expert determination or mediation in relation to the dispute; and
- (f) information, documents or other material concerning the dispute which are disclosed by a Party during the expert determination or mediation unless such information, documents or facts will have been otherwise discoverable in judicial or arbitral proceedings.

Schedule 9 – Council to Control Registration of Plan of Subdivision

- 1.1 Following the grant of Development Consent for the Proposed Development, and immediately prior to the release by the Council of the Subdivision Certificate in relation to it, the Council may give notice to the Developer that the Subdivision Certificate will only be delivered by the Council to the Developer at the registration section of LPI NSW, immediately prior to the registration of the Plan of Subdivision. Thereupon the Developer shall make arrangements with the Council for the signed Plan of Subdivision, and the required copies of that Plan, to be left in the charge of the Council. The Council shall then promptly work with the Developer to procure the registration of the Plan of Subdivision.

Schedule 10 – Assignment and Dealing Terms

1.1 Developer's right to sell Land

The Developer must not sell, transfer or dispose of the whole or any part of the Land (other than a Residential Allotment) otherwise than in circumstances where paragraph 1.2 applies, unless before it sells, transfers or disposes of any such part of the Land to another person ("**Transferee**"):

- (a) it satisfies the Council acting reasonably that the proposed Transferee is no less financial than the Developer and is respectable and financially capable of complying with such of the Developer's obligations under this deed (including, without limitation, by providing financial statements for the proposed transferee and credit standing) as the Council acting reasonably shall ("**Required Obligations**"); and
- (b) the rights of the Council under this deed are not diminished or fettered in any way; and
- (c) the Transferee signs a deed in form and substance acceptable to the Council acting reasonably and containing provisions under which the Transferee agrees to comply with the Required Obligations as if it were the Developer (including obligations which arose before the transfer or assignment) with respect to the land being sold, transferred or disposed of; and
- (d) any default by the Developer has been remedied by the Developer or waived by the Council; and
- (e) the Developer and the Transferee pay the Council's reasonable Costs in relation to that assignment.

1.2 Release

If the Developer sells, transfers or disposes of the whole or any part of the Land and fully satisfies the requirements of paragraph 1.1 of this Schedule 10, the Developer will be released from its obligations under this deed with respect to the land being sold, transferred or disposed of.

1.3 Council's and Corporation's right to assign

The Council may not assign its rights under this deed without the Developer's prior consent, such consent not to be unreasonably withheld.

1.4 No change in control

A person may only become or cease to be a Parent of the Developer with the Council's consent provided that before that event occurs:

- (a) the Developer satisfies the Council acting reasonably that the Developer, as Controlled by the new Parent ("**New Parent**"), will have the capability, experience and expertise to carry out the Proposed Development and to satisfy the Developer's obligations under this deed ("**Required Obligations**");
- (b) the New Parent signs a deed in form and substance acceptable to the Council containing provisions under which:
 - (i) the New Parent agrees to comply with the Required Obligations as if it were the Developer (including obligations which arose before the transfer or assignment) with respect to the land being sold, transferred or disposed of; and
 - (ii) the New Parent acknowledges and agrees that the rights of the Council under this deed are not diminished or fettered in any way;
- (c) any default by the Developer has been remedied by the Developer or waived by the Council; and
- (d) the Developer and the New Parent pay the Council's reasonable Costs in relation to that consent.

For the avoidance of doubt a change in effective control of the Developer constitutes an assignment under this Deed and shall require the consent of the Council.

Schedule 11 – Costs

In relation to the preparation of this deed each party shall pay its own costs.

Schedule 12– Explanatory Note

The Explanatory Note relating to this deed must not be used to assist in construing this deed.

Execution Page

Executed as a Deed.

The seal of Wollondilly Shire Council)
Has been affixed by authority of the)
Mayor and General Manager)

Mayor – Councillor Judy Hannan

General Manager – Les McMahon

Signed sealed and delivered)
By the said Dorothy Margaret Spicer)
This October 2007)

Dorothy Margaret Spicer

Solicitor /Justice of the Peace

Name of Witness

EXPLANATORY NOTE

SUBDIVISION OF LAND AT RITCHIE ROAD, SILVERDALE Planning Agreement

Between

Wollondilly Shire Council

&

Dorothy Margaret Spicer

Exhibit A - Explanatory Note

Planning Agreement – Subdivision of Land at Ritchie Road, Silverdale

The purpose of this Explanatory Note is to provide a plain English summary to support the notification of a draft Planning Agreement ("the Planning Agreement"), under Section 93F of the *Environmental Planning and Assessment Act 1979* (the "EPA Act"), for the re-development of certain land by way of:

- (a) Consolidation of Lot 2 in DP 247113, Lot 4 in DP 720761 and Lot X in DP416392;
- (b) Conventional torrens title subdivision of consolidated Lot 2 in DP 247113, Lot 4 in DP 720761 and Lot X in DP416392 into 3 Residential Allotments yielding single dwelling residential allotments together with all necessary road works and ancillary services (but excluding any roadworks within the unformed Normans Road road reserve); and
- (c) Conventional torrens title subdivision of Lots 61, 64 & 68 in DP 804634 into 11 Allotments and the Residue Allotment (to be dedicated by the Developer to the Council as a Public Reserve and Drainage Reserve) together with all necessary road works and ancillary services,

(all known as the "Proposed Development").

This explanatory note has been prepared jointly between the parties as required by clause 25E of the *Environmental Planning and Assessment Regulation 2000*.

1. Parties to the Planning Agreement

Dorothy Margaret Spicer ("the Developer") has made an offer to Wollondilly Shire Council (the "Council") to enter into a Voluntary Planning Agreement, for the dedication of land zoned 6(a) Open Space Recreation A, being located at the rear part of lots 61 & 64 in DP 804634, in consideration of the Council waiving all s.94 and or 94A contributions in respect of the Proposed Development.

2. Description of the Subject Land

The subject lands to which this Planning Agreement applies are described as follows:

Lots 61, 64 and 68 in DP 804634 being 4-6, 12 and 18 Ritchie Road, Silverdale NSW 2752; and

Lot 2 in DP 247113, Lot 4 in DP 720761 and Lot X in DP416392 being Normans Road, Silverdale NSW 2752.

3. Description of Proposed Change to Environmental Planning Instrument

There is no change proposed to the Wollondilly Local Environmental Plan.

4. Summary of Objectives, Nature and Effect of this Planning Agreement

The objective of the Planning Agreement is to ensure the continuation of the public reserve adjacent and adjoining lots 61 and 64 for public purpose needs and so as to ensure that that area remains under the care and control of Council such that the riparian corridor is maintained, the natural environment is protected and public access to the bushland reserve is preserved for future generations.

Further, the Developer has also offered the contribution toward facilities (the dedication of land) that otherwise would not normally have been provided under Council's Development Contributions Plan. The intent of this offer is to ensure it meets the needs of the incoming population into the area, as well as the Shire of Wollondilly.

The offer made by the Developer, is described in the Table below as follows;

TABLE

Development Contribution	Intended use
Dedication of land at no cost to Council	Public open space and Drainage Reserve valued at \$150,000.00

5. Assessment of the Merits of this Planning Agreement

The Planning Purposes Served by this Planning Agreement

In accordance with Section 93F(2) of the EPA Act 1979, this Planning Agreement promotes the following public purpose;

- *The conservation and enhancement of the natural environment.*

The parties have assessed this Planning Agreement and state that the provisions of this Planning Agreement provide a reasonable means of achieving the public purposes set out above by reason that the bushland reserve will remain under the care and control of the Council which will ensure that the riparian corridor is not destroyed and maintenance of the bushland setting is ensured.

How this Planning Agreement Promotes the Objects of the Environmental Planning and Assessment Act 1979

In accordance with the EPA Act 1979, this Planning Agreement promotes its intent to encourage;

- (i) *the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment;*
- (ii) *the promotion and co-ordination of the orderly and economic use and development of the Land;*
- (v) *the provision and co-ordination of community services and facilities; and*
- (vi) *the protection of the environment, including the protection and conservation of native animals and plants, including threatened species, populations and ecological communities, and their habitats.*

The Planning Agreement achieves these Objects by requiring the Developer to make the contribution set out in the Table which will enable the open space bushland reserve to be provided and the Drainage Reserve to be maintained.

By providing the dedication of land the Planning Agreement will result in:

- promotion of the social and economic welfare of the community and a better environment;
- promotion and co-ordination of the orderly and economic use and development of the Land;
- provision and co-ordination of community services and facilities (being public open space areas); and
- the protection of the environment.

How this Planning Agreement Promotes the Public Interest

This Planning Agreement's intent is to promote the Public Interest through the acquisition of land for public purposes at no cost to the Council. This in turn promotes further Public Interest by ensuring that the scarce and valuable resources of the Council are maintained and preserved for the betterment and enjoyment of the community at large.

How this Planning Agreement Promotes one or more of the elements of Council's Charter under section 8 of the *Local Government Act 1993*

This Planning Agreement promotes the following elements of the Councils Charter:

- to provide directly or on behalf of other levels of government, after due consultation, adequate, equitable and appropriate services and facilities for the

- community and to ensure that those services and facilities are managed efficiently and effectively; and
- to properly manage, develop, protect, restore, enhance and conserve the environment of the area for which it is responsible, in a manner that is consistent with and promotes the principles of ecologically sustainable development

This Planning Agreement promotes the above elements of the Councils Charter by providing recreation space to members of the public in accordance with a plan of management adopted by the Council for that purpose and by maintaining the floristic and structural integrity of bushland in the Local Government area of Wollondilly.

The Impact of this Planning Agreement on the Public or any Section of the Public

The growing population of the Wollondilly Shire requires public recreation space. This planning agreement provides Council will the ability to acquire land for this purpose which results in a positive impact on the Public or any section of the Public.