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Douglas Road (Lot 21)

Planning Agreement

Under s93F of the *Environmental Planning and Assessment Act 1979*

Wingecarribee Shire Council

Ronald James Arkcoll

Ross Gordon Hales

Kevin N. Dunlop

K.N.D. Nominees Pty

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Douglas Road (Lot 21) Planning Agreement

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Wingecarribee Shire Council



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Nominees Pty**

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Wingecarribee Shire Council

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Nominees Pty**



Douglas Road (Lot 21) Planning Agreement

Summary Sheet

Council:

Name: Wingecarribee Shire Council

Address: Civic Centre, Elizabeth Street, Moss Vale.

Telephone: 02 4868 0888

Facsimile: 02 4869 1203

Email: wscmail@wsc.nsw.gov.au

Representative: David Matthews

Developer:

Name: Kevin N. Dunlop

Address: 10 Church Street, BOWRAL 2576

Telephone: (02) 4861 8383

Facsimile: (02) 4861 1951

Email: knd@kdagroup.com.au

Landowners:

Name: Ronald James Arkcoll, Ross Gordon Hales, Kevin N. Dunlop, and K.N.D.
Nominees Pty

Address: C/- Kevin N. Dunlop, 10 Church Street, BOWRAL NSW 2576.

Telephone: (02) 4861 8383

Facsimile: (02) 4861 1951

Email: knd@kdagroup.com.au

Representative: Kevin N. Dunlop

Land:

See definition of *Land* in clause 1.1.

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Development:

See definition of *Development* in clause 1.1.

Development Contributions:

See Schedule 1.

Application of s94, s94A and s94EF of the Act:

See clause 5.

Security:

See clauses 9, 10 and 11.

Registration:

This Agreement is to be registered. See clause 14.

Restriction on dealings:

See clause 15.

Dispute Resolution:

Mediation. See clause 13.

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Douglas Road (Lot 21) Planning Agreement

Under s93F of the *Environmental Planning and Assessment Act 1979*

Parties

Wingecarribee Shire Council ABN 49 546 344 354 of Civic Centre, Elizabeth Street, Moss Vale, NSW 2577 (**Council**)

and

Kevin N. Dunlop of 10 Church Street, BOWRAL NSW 2576 (**Developer**)

and

Ronald James Arkcoll of 17 Carramar Way, GOULBURN NSW 2580

Ross Gordon Hales of 9 Maismonde Place, CARLINGFORD NSW 2118

Kevin N. Dunlop of 10 Church Street, BOWRAL NSW 2576

and

K.N.D. Nominees Pty ACN 104 723 613 of 2 Walker Street BOWRAL 2576
(**Landowners**)

Background

- A The Landowner owns the Land, and the Developer intends to develop the Land on behalf of the Landowner.
- B The Council granted the Development Consents subject to conditions.
- C The Developer has made the Stage 3 Development Application.
- D The Developer has lodged with Council the Modification Applications. The Modification Applications propose to modify the Development Consents by the deletion of certain conditions requiring the payment of contributions under s94 of the Act, and conditions requiring the carrying out of works, and the addition of a condition requiring this Agreement to be entered into by the Parties.
- E The Developer is prepared to make Development Contributions in connection with the carrying out of the Development in accordance with this Agreement.

Handwritten signatures and initials in the bottom right corner of the page. There are several distinct marks, including what appears to be a signature and the initials 'RD'.



Operative provisions

Part 1 - Preliminary

1 Definitions & Interpretation

1.1 In this Agreement the following definitions apply:

2003 Development Consent means the development consent granted by the Council to Development Application DA 03/0363 on 8 July 2003.

2005 Development Consent means the development consent granted by the Council to Development Application DA 04/0266 on 20 January 2005.

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

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

Bank Guarantee means an irrevocable and unconditional undertaking without any expiry or end date by one of the following trading banks:

- (a) Australia and New Zealand Banking Group Limited;
- (b) Commonwealth Bank of Australia;
- (c) Macquarie Bank;
- (d) National Australia Bank Limited;
- (e) St George Bank Limited;
- (f) Westpac Banking Corporation; or
- (g) any other financial institution approved by the Council, in its absolute discretion, in response to a request from the Developer,

Development means the carrying out of the development described in the Development Consents, as proposed to be modified by the Modification Application and the Stage 3 Development Application.

Development Application has the same meaning as in the Act.

Development Consents means the 2003 Development Consent and the 2005 Development Consent.

Development Contribution means a monetary contribution, the dedication of land free of cost, the carrying out of work, or the provision of any other material public benefit, or any combination of them, to be used for, or applied towards, the provision of Public Infrastructure or another public purpose.

GST has the same meaning as in the GST Law.

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

Item means the object of a Development Contribution specified in Column 1 of Schedule 1.

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Land means Lot 21 DP 812725.

Modification Applications means the applications made by the Developer to the Council on 30 November 2009 in relation to the 2003 Development Consent, and on 30 November 2009 in relation to the 2005 Development Consent for approval under s96 of the Act to modify the Development Consents.

Party means a party to this Agreement, including their successors and assigns.

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

Security means a Bank Guarantee, or a bond or other form of security to the satisfaction of the Council.

Stage 3 Development Application means the development application no. LUA09/631.

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

- 1.2.1 Headings are inserted for convenience only and do not affect the interpretation of this Agreement.
- 1.2.2 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.
- 1.2.3 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.
- 1.2.4 A reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.
- 1.2.5 A reference in this Agreement to a \$ value relating to a Development Contribution is a reference to the value exclusive of GST.
- 1.2.6 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.
- 1.2.7 A reference in this Agreement to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- 1.2.8 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.
- 1.2.9 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- 1.2.10 Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- 1.2.11 A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.

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- 1.2.12 References to the word 'include' or 'including' are to be construed without limitation.
- 1.2.13 A reference to this Agreement includes the agreement recorded in this Agreement.
- 1.2.14 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.
- 1.2.15 Any schedules, appendices and attachments form part of this Agreement.
- 1.2.16 Notes appearing in this Agreement are operative provisions of this Agreement.

2 Application of this Agreement

- 2.1 This Agreement applies to the Land and to the Development.

3 Further Agreements Relating to this Agreement

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

4 Surrender of right of appeal, etc.

- 4.1 The Developer is not to commence or maintain, or cause to be commenced or maintained, any proceedings in the Land and Environment Court involving an appeal against, or questioning the validity of, any development consent, within the meaning of the Act, granted in relation to the Development or an approval under s96 of the Act to modify any such development consent to the extent that it relates to the existence of this Agreement or requires any aspect of this Agreement to be performed according to the terms of this Agreement.

5 Application of s94, s94A and s94EF of the Act to the Development

- 5.1 This Agreement excludes the application of s94 and s 94A to the Development.
- 5.2 This Agreement does not exclude the application of s94EF to the Development.



Part 2 – Development Contributions

6 Provision of Development Contributions

- 6.1 The Developer is to make Development Contributions to the Council in accordance with this Agreement and otherwise to the satisfaction of the Council.
- 6.2 Schedule 1 has effect in relation to Development Contributions to be made by the Developer under this Agreement.
- 6.3 The Developer is to make such other Development Contributions to the Council as are provided for in this Agreement to the satisfaction of the Council.
- 6.4 The Council is to apply each Development Contribution made by the Developer under this Agreement towards the public purpose for which it is made and otherwise in accordance with this Agreement.
- 6.5 Despite clause 6.4, the Council may apply a Development Contribution made under this Agreement towards a public purpose other than the public purpose specified in this Agreement if the Council considers that the public interest would be better served by applying the Development Contribution towards that other purpose rather than the purpose so specified.

7 Procedures relating to payment of monetary Development Contributions

- 7.1 A monetary Development Contribution is made for the purposes of this Agreement when the Council receives the full amount of the contribution payable under this Agreement in cash or by unendorsed bank cheque or by the deposit by means of electronic funds transfer of cleared funds into a bank account nominated by the Council.
- 7.2 The Developer is to give the Council not less than 2 business days written notice of its intention to pay a monetary Development Contribution.
- 7.3 The Developer is not required to pay a monetary Development Contribution under this Agreement unless the Council, after having received the Developer's notice under clause 7.2, has given to the Developer a tax invoice for the amount of the Development Contribution.
- 7.4 The Developer is not in breach of this Agreement if it fails to pay a monetary Development Contribution at the time required by this Agreement by reason only of the Council's failure to give to the Developer a tax invoice in relation to the amount proposed to be paid by it.

Part 3 – Other Provisions

8 Upgrade of Douglas Road and sewerage services

- 8.1 The Council is to:

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- 8.1.1 carry out works in relation to Douglas Road as follows;
- (a) survey and design approximately 2,800 metres of Douglas Road, including the entire frontage of the Land, and to provide 13m wide industrial type pavement;
 - (b) carry out geotechnical investigations and pavement design;
 - (c) carry out widening and reconstruction of Douglas Road, including provision of kerb and gutter and associated inlets and pits for drainage;
 - (d) construct kerb and gutter returns for entry road to proposed road as approved for the Development Consent, as amended by Modification Application;
 - (e) identify public utilities affected by the proposed works and undertake relocation as required; and
 - (f) design the applicable road lighting and provide applicable service connection conduits, and
- 8.1.2 carry out the following sewerage works (**Sewer Works**);
- (a) construct a sewage pumping station on Lot 4 DP 702629 approximately 150 metres north of Lot 24 in DP 817194, and an associated rising main on Lot 1 DP 1100533 to service the Land, Lot 12 in DP 1126008 and Lot 24 DP 817194, and connect this into the existing Moss Vale sewerage system;
 - (b) construct a gravity sewer from the pumping station, terminating approximately 1.5 metres inside the north eastern corner of Lot 24 in DP 817194;
 - (c) construct two sewers across Lot 23 DP 817194, terminating approximately 1.5 metres inside the north eastern and south eastern corners of the Land;
 - (d) construct a gravel access track, power supply and water supply on Lot 1 DP 1100533 to serve the pumping station in Lot 4 DP 702629, and
- 8.1.3 require the owner and developer of Lot 24 DP817194 to construct sewer connections on that property at the time required by the Developer to enable the Development to be carried out.
- 8.2 The Developer is to:
- 8.2.1 provide the Council with notice of the time by which it requires Council to provide the Sewer Works, and the owner of Lot 24 DP 817194 to construct sewerage connections on that property, to enable the carrying out of the Development;
 - 8.2.2 connect the Land to the Sewer Works; and
 - 8.2.3 construct sewers within the Land and extend those sewers from the connection on the boundary between the Land and Lot 23 in DP 817194 to terminate approximately 1.5 metres inside the boundary of Lot 12 DP 1126008 at the northeast corner (**Lot 21 Works**).
- 8.3 The Developer must connect the Land to the Sewer Works and construct the Lot 21 Works as directed by the Council.
- 8.4 The Council must complete the Sewer Works no later than 12 months after the Council receives funding approval from whatever source, for the

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completion of the Sewer Works and the works described in clause 8.1.1, and despite any other provision of this Agreement, is not required to complete the Sewer Works at any earlier time required or requested by the Developer in a notice issued under clause 8.2.1.

9 Provision of Security

- 9.1 Within ten (10) business days of the execution of this Agreement by all of the Parties, the Developer is to provide the Council with Security in the amount of \$150,000.

10 Release & return of Security

- 10.1 The Council may but is not obliged to progressively release and return the Security to the Developer as and when the Developer performs its obligations under this Agreement to the satisfaction of the Council but may only do so if:
- 10.1.1 the Council considers that the remaining amount of the Security is adequate having regard to the Developer's remaining obligations under this Agreement, and
- 10.1.2 the Developer is not in breach of this Agreement at the time the Security is to be returned.
- 10.2 The Council is to return the Security or any remaining part of it to the Developer within 28 days of the completion by the Developer of all of its obligations under this Agreement to the satisfaction of the Council.
- 10.3 At any time following the provision of the Security, the Developer may provide the Council with a replacement Security in the amount of the Security required to be provided under clause 9.1.
- 10.4 On receipt of a replacement Security, the Council is to release and return to the Developer as directed, the Security it holds which has been replaced.

11 Call-up of Security

- 11.1 The Council may call-up the Security if, in its absolute discretion and despite clause 13, it considers that the Developer has breached this Agreement.
- 11.2 If the Council calls on the Security, it may use the amount so paid to it in satisfaction of any costs incurred by it in remedying the Developer's breach being:
- 11.2.1 the reasonable costs of the Council's servants, agents and contractors reasonably incurred for that purpose,
- 11.2.2 all fees and charges necessarily or reasonably incurred by the Council in order to have the Work carried out, completed or rectified, and
- 11.2.3 without limiting clause 11.2.2, all legal costs and expenses reasonably incurred by the Council, by reason of the Developer's breach.
- 11.3 If the Council calls on the Security in accordance with this Agreement, the Council may, by notice in writing to the Developer, require the Developer to provide a further or replacement Security in an amount that, when added to

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any unused portion of any existing Security, does not exceed the amount of the Security the Council is entitled to hold under clause 9.1.

12 Enforcement in a court of competent jurisdiction

- 12.1 Without limiting any other provision of this Agreement, the Parties may enforce this Agreement in any court of competent jurisdiction.
- 12.2 For the avoidance of doubt, nothing in this Agreement prevents:
 - 12.2.1 a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Agreement or any matter to which this Agreement relates,
 - 12.2.2 the Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Agreement or any matter to which this Agreement relates.

13 Dispute Resolution - mediation

- 13.1 This clause applies to any dispute under this Agreement.
- 13.2 Such a dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the dispute.
- 13.3 If a notice is given under clause 13.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the dispute.
- 13.4 If the dispute is not resolved within a further 28 days, the Parties must mediate the dispute in accordance with the Mediation Rules of the Law Society of New South Wales published from time to time and must request the President of the Law Society, or the President's nominee, to select a mediator.
- 13.5 If the dispute is not resolved by mediation within a further 28 days, or such longer period as may be necessary to allow any mediation process which has been commenced to be completed, then the Parties may exercise their legal rights in relation to the dispute, including by the commencement of legal proceedings in a court of competent jurisdiction in New South Wales.

14 Registration of this Agreement

- 14.1 The Parties agree to register this Agreement subject to obtaining the agreement of the persons specified in s93H(1) of the Act.

15 Assignment, Sale of Land, etc

- 15.1 Unless the matters specified in clause 15.2 are satisfied, the Developer and Landowner are not to do any of the following:
 - 15.1.1 to transfer the Land to any person, or
 - 15.1.2 assign or novate to any person their rights or obligations under this Agreement.

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- 15.2 The matters required to be satisfied for the purposes of clause 15.1 are as follows:
- 15.2.1 the Developer and Landowner have, at no cost to the Council, first procured the execution by the person to whom the Landowner's and Developer's rights or obligations under this Agreement are to be assigned or novated, of an agreement in favour of the Council on terms satisfactory to the Council, and
 - 15.2.2 the Council, by notice in writing to the Landowner and Developer, has stated that evidence satisfactory to the Council has been produced to show that the assignee or novatee, is reasonably capable of performing its obligations under the Agreement,
 - 15.2.3 the Developer and Landowner are not in breach of this Agreement, and
 - 15.2.4 the Council otherwise consents to the transfer, assignment or novation.

16 Notices

- 16.1 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:
- 16.1.1 delivered or posted to that Party at its address set out in the Summary Sheet, or
 - 16.1.2 faxed to that Party at its fax number set out in the Summary Sheet.
- 16.2 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 is only given or made by that other Party if it is delivered, posted or faxed to the latest address or fax number.
- 16.3 Any notice, consent, information, application or request is to be treated as given or made if it is:
- 16.3.1 delivered, when it is left at the relevant address,
 - 16.3.2 sent by post, 2 business days after it is posted, or
 - 16.3.3 sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number.
- 16.4 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.

17 Approvals and Consent

- 17.1 Except as otherwise set out in this Agreement, and subject to any statutory obligations, a Party may give or withhold an approval or consent to be given under this Agreement in that Party's absolute discretion and subject to any conditions determined by the Party.

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- 17.2 A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

18 Costs

- 18.1 The Developer is to pay to the Council 25% of the Council's costs, as notified by the Council in writing, of preparing, negotiating, executing and stamping this Agreement, and any document related to this Agreement within 7 days of a written demand by the Council for such payment.
- 18.2 The Developer is also to pay to the Council the Council's costs of enforcing this Agreement within 7 days of a written demand by the Council for such payment.

19 Entire Agreement

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

20 Further Acts

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

21 Notations on section 149(2) Planning Certificates

- 21.1 The Parties agree that the Council may, in its absolute discretion, make a notation under section 149(5) of the Act regarding this Agreement on any certificate issued under section 149(2) of the Act relating to the Land.

22 Governing Law and Jurisdiction

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

23 Joint and Individual Liability and Benefits

- 23.1 Except as otherwise set out in this Agreement:

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23.1.1 any agreement, covenant, representation or warranty under this Agreement by 2 or more persons binds them jointly and each of them individually, and

23.1.2 any benefit in favour of 2 or more persons is for the benefit of them jointly and each of them individually.

24 No Fetter

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

25 Representations and Warranties

25.1 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.

26 Severability

26.1 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.

26.2 If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Agreement, but the rest of this Agreement is not affected.

27 Modification

27.1 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.

28 Waiver

28.1 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.

28.2 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.

28.3 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.

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29 GST

29.1 In this clause:

Adjustment Note, Consideration, GST, GST Group, Margin Scheme, Money, Supply and Tax Invoice have the meaning given by the GST Law.

GST Amount means in relation to a Taxable Supply the amount of GST payable in respect of the Taxable Supply.

GST Law has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Input Tax Credit has the meaning given by the GST Law and a reference to an Input Tax Credit entitlement of a party includes an Input Tax Credit for an acquisition made by that party but to which another member of the same GST Group is entitled under the GST Law.

Taxable Supply has the meaning given by the GST Law excluding (except where expressly agreed otherwise) a supply in respect of which the supplier chooses to apply the Margin Scheme in working out the amount of GST on that supply.

29.2 Subject to clause 29.4, if GST is payable on a Taxable Supply made under, by reference to or in connection with this Agreement, the Party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.

29.3 Clause 29.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Agreement to be GST inclusive.

29.4 No additional amount shall be payable by the Council under clause 29.2 unless, and only to the extent that, the Council (acting reasonably and in accordance with the GST Law) determines that it is entitled to an Input Tax Credit for its acquisition of the Taxable Supply giving rise to the liability to pay GST.

29.5 If there are Supplies for Consideration which is not Consideration expressed as an amount of Money under this Agreement by one Party to the other Party that are not subject to Division 82 of the *A New Tax System (Goods and Services Tax) Act 1999*, the Parties agree:

29.5.1 to negotiate in good faith to agree the GST inclusive market value of those Supplies prior to issuing Tax Invoices in respect of those Supplies;

29.5.2 that any amounts payable by the Parties in accordance with clause 29.2 (as limited by clause 29.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.

29.6 No payment of any amount pursuant to this clause 29, and no payment of the GST Amount where the Consideration for the Taxable Supply is expressly agreed to be GST inclusive, is required until the supplier has provided a Tax Invoice or Adjustment Note as the case may be to the recipient.

29.7 Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to a cost, expense or other liability incurred by a party, must exclude the amount of any Input Tax Credit entitlement of that party in relation to the relevant cost, expense or other liability.

29.8 This clause continues to apply after expiration or termination of this Agreement.

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30 Explanatory Note Relating to this Agreement

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

[Handwritten signatures and initials]
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Schedule 1

(Clause 6)

Development Contributions

Column 1	Column 2	Column 3	Column 4
Item	Public Purpose	Manner & Extent	Timing

Monetary Contributions

Public road and
sewerage contribution

Public roads and
sewerage services

\$ 450,000.00

Payable in three equal
instalments on 30
June 2010, 30 June
2011 and 30 June
2012.

[Handwritten signatures and initials]
19
[Handwritten initials]

Douglas Road (Lot 21) Planning Agreement

Wingecarribee Shire Council



**Ronald James Arkcoll, Ross Gordon Hales, Kevin N. Dunlop, and K.N.D.
Nominees Pty**

Execution

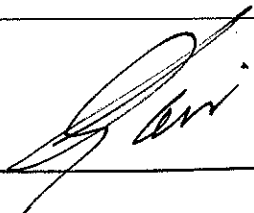
Executed as an Agreement

Dated: 23/3/2010


Executed on behalf of the Council



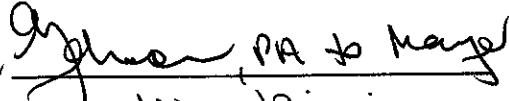
General Manager



Mayor

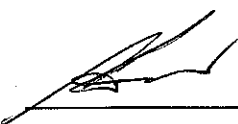


Witness/Name/Position

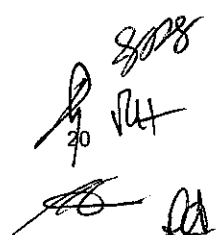


Witness/Name/Position

Executed on behalf of the Developer



Kevin N. Dunlop


2008
70
RH

Douglas Road (Lot 21) Planning Agreement

Wingecarribee Shire Council



Ronald James Arkcoll, Ross Gordon Hales, Kevin N. Dunlop, and K.N.D. Nominees Pty

Executed on behalf of Ronald James Arkcoll

Ron J Arkcoll

Executed on behalf of Ross Gordon Hales

Ross Gordon Hales

Executed on behalf of K.N.D. Nominees Pty in accordance with s127(1) of the Corporations Act (Cth) 2001

Name/Position



Name/Position

Douglas Road (Lot 21) Planning Agreement

Wingecarribee Shire Council

**Ronald James Arkcoll, Ross Gordon Hales, Kevin N. Dunlop, and K.N.D.
Nominees Pty**



Appendix

(Clause 30)

Environmental Planning and Assessment Regulation 2000

(Clause 25E)

Explanatory Note

Draft Planning Agreement

Under s93F of the *Environmental Planning and Assessment Act 1979*

Parties

Wingecarribee Shire Council ABN 49 546 344 354 of Elizabeth Street, Moss Vale
NSW 2577 (Council)

Kevin N. Dunlop of 10 Church Street, BOWRAL NSW 2576 (Developer)

Ronald James Arkcoll, Ross Gordon Hales, , and K.N.D. Nominees Pty cl-
Kevin N Dunlop of 10 Church Street BOWRAL NSW 2576 (Landowner)

**Description of the Land to which the Draft Planning
Agreement Applies**

Lot 21 in deposited plan 812725.

Description of Proposed Development

A three-stage industrial subdivision, involving the creation of six (6) industrial lots plus residue for Stage 2 in accordance with development consent LUA04/0266 granted by Council on 20 January 2005, the creation of six (6) industrial lots plus residue for Stage 1 in accordance with the development consent LUA03/0363 granted by Council on 8 July 2003, and the creation of six (6) industrial lots from a residue lot for Stage 3 which is the subject of undetermined application LUA09/0631.

Douglas Road (Lot 21) Planning Agreement

Wingecarribee Shire Council

**Ronald James Arkcoll, Ross Gordon Hales, Kevin N. Dunlop, and K.N.D.
Nominees Pty**



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

Objectives of Draft Planning Agreement

The objective of the Draft Planning Agreement is to provide suitable funding for the provision of public road and sewerage infrastructure services to meet the Development.

Nature of Draft Planning Agreement

The Draft Planning Agreement is a planning agreement under s93F of the Act. The Draft Planning Agreement is a voluntary agreement under which Development Contributions (as defined in clause 1.1 of the Draft Planning Agreement) are made by the Developer for a public purpose (as defined in s93F(3) of the Act).

Effect of the Draft Planning Agreement

The Draft Planning Agreement:

- relates to the carrying out by the Developer of the Development on the Land,
- does not exclude the application of s94 and s94A of the Act to the Development,
- requires monetary Development Contributions,
- requires the Council to apply monetary Development Contributions made under the agreement towards the specified purpose for which they were made,
- is to be registered on the title to the Land,
- provides a dispute resolution method for a dispute under the agreement, being mediation,
- provides that the agreement is governed by the law of New South Wales, and
- provides that the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) applies to the agreement.

Assessment of the Merits of the Draft Planning Agreement

The Planning Purposes Served by the Draft Planning Agreement

The Draft Planning Agreement:

- provides and co-ordinates public facilities in connection with the Development, and
- provides increased opportunity for public involvement and participation in environmental planning and assessment of the Development.

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Douglas Road (Lot 21) Planning Agreement

Wingecarribee Shire Council

Ronald James Arkcoll, Ross Gordon Hales, Kevin N. Dunlop, and K.N.D.
Nominees Pty



How the Draft Planning Agreement Promotes the Public Interest

The Draft Planning Agreement promotes the public interests by promoting the objects of the Act as set out in s5(a)(ii) – (v) and 5 (c) of the Act

For Planning Authorities:

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

N/A

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

N/A

Councils – How the Draft Planning Agreement Promotes the Elements of the Council's Charter

The Draft Planning Agreement promotes the elements of the Council's charter by:

- providing public facilities for the community,
- by providing a means for the private funding of public facilities for the benefit of the Development, and
- providing a means that allows the wider community to make submissions to the Council in relation to the agreement.

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

The Draft Planning Agreement requires monetary Development Contributions to be paid by the Developer for public roads and sewerage services. The Planning Agreement conforms with Council's Capital Works Program.

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