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**Deed of Variation to  
Douglas Road (Lot 24) Planning Agreement**

Under s93G of the *Environmental Planning and Assessment Act 1979*

**Wingecarribee Shire Council  
Maloney Nominees Pty Ltd  
Wilma Adele Maloney**

Date:

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W.A.M.



**Deed of Variation**  
**Douglas Road (Lot 24) Planning Agreement**

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**Deed of Variation**  
**Douglas Road (Lot 24) Planning Agreement**

**Summary Sheet**

**Council:**

**Name:** Wingecarribee Shire Council  
**Address:** Civic Centre, Elizabeth Street, MOSS VALE NSW 2577  
**Telephone:** (02) 4868 0888  
**Facsimile:** (02) 4869 1203  
**Email:** [wscmail@wsc.nsw.gov.au](mailto:wscmail@wsc.nsw.gov.au)  
**Representative:** David Matthews

**Developer:**

**Name:** Maloney Nominees Pty Ltd  
**Address:** c/- Campbell & Anderson Consulting Surveyors P/L, 351 Bong Bong Street, Bowral NSW 2576  
**Telephone:** (02) 4887 1361  
**Facsimile:** N/A  
**Email:** [deljim61@hotmail.com](mailto:deljim61@hotmail.com)  
**Representative:** James Maloney

**Landowner:**

**Name:** Wilma Adele Maloney  
**Address:** "Ballyclare" 944 Kangaloon Road, Glenquarry NSW 2576  
**Telephone:** (02) 4887 1361  
**Facsimile:** N/A  
**Email:** [deljim61@hotmail.com](mailto:deljim61@hotmail.com)  
**Representative:** James Maloney

A handwritten signature in black ink, appearing to be 'J. Maloney'.

W.A.M.



## **Deed of Variation**

### **Douglas Road (Lot 24) Planning Agreement**

Under s93G 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

**Maloney Nominees Pty Ltd** ACN 001 982 574 c/- Campbell & Anderson Consulting Surveyors P/L, 357 Bong Bong Street, Bowral, NSW 2576 (**Developer**)

and

**Wilma Adele Maloney** of "Ballyclare" 944 Kangaloon Road, Glenquarry NSW 2576 (**Landowner**)

## **Background**

- A The Parties have entered into the Planning Agreement.
- B Pursuant to clause 27 of the Planning Agreement, the Parties agree to modify the Planning Agreement in accordance with this Deed.

## **Operative provisions**

### **Part 1 - Preliminary**

#### **1 Definitions & Interpretation**

- 1.1 In this Deed the following definitions apply:

**Deed** means this deed of variation and includes any schedules, annexures and appendices to this Deed.



**Planning Agreement** means the Douglas Road (Lot 24) Planning Agreement entered into between the Parties on 23 March 2010.

- 1.2 All other capitalised words used in this Deed have the meanings given to those words in the Planning Agreement.
- 1.3 Clause 1.2 of the Planning Agreement applies to the interpretation of this Deed, with references in clause 1.2 of the Planning Agreement to *this Agreement*, being read as references to *this Deed*

## **2 Variation and confirmation of Planning Agreement**

- 2.1 The Parties agree that on the date of this Deed, the Planning Agreement is varied in accordance with Schedule 1.
- 2.2 Except as otherwise provided for in this Deed, the Planning Agreement is unchanged and remains in full force and effect.

## **3 Registration of this Deed**

- 3.1 The Parties agree to register this Deed for the purposes of s93H of the Act.

## **4 Costs**

- 4.1 The Parties are to pay their own costs in relation to preparing, negotiating, and executing this Deed.

## **5 Notices**

- 5.1 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:
  - 5.1.1 delivered or posted to that Party at its address set out in the Summary Sheet, or
  - 5.1.2 faxed to that Party at its fax number set out in the Summary Sheet.
- 5.2 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.
- 5.3 Any notice, consent, information, application or request is to be treated as given or made if it is:
  - 5.3.1 delivered, when it is left at the relevant address,
  - 5.3.2 sent by post, 2 business days after it is posted, or
  - 5.3.3 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.



- 5.4 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.

## **6 Application of provisions of Planning Agreement**

- 6.1 Clauses 19-29 of the Planning Agreement apply to this Deed, with references to *this Agreement*, being read as *this Deed*.

## **7 Explanatory Note**

- 7.1 The Appendix contains the Explanatory Note relating to this Deed required by clause 25E of the Regulation.
- 7.2 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 Deed.

*J.M.* *W.A.M.*



## **Schedule 1**

(Clause 2)

### **Variation of Planning Agreement**

- 1 Clause 1.1 is amended to include the following definition in alphabetical order:  
**Site Plan** means the plan contained in Schedule 2.
- 2 Clause 8.1.1 of the Planning Agreement is deleted and replaced with:  
8.1.1 carry out works in relation to Douglas Road as follows;
  - (a) survey and design Douglas Road from the railway crossing opposite the frontage of the Land to Douglas Road to the railway crossing to the west of Land as shown in the Site Plan (**Specified Length**), and to provide an 11.5m wide road (from kerb to kerb) for the remainder of that part of Douglas Road which fronts the Land;
  - (b) carry out geotechnical investigations and pavement design for the Specified Length of Douglas Road;
  - (c) carry out widening and reconstruction of the Specified Length 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) treat the high-voltage power poles and power lines along the part of Douglas Road which fronts the Land, by doing one or more of the following:
    - (i) leaving the power lines in their current overhead position, but only if adequate clearance is allowed for vehicles using that part of Douglas Road;
    - (ii) moving the power lines underground;
    - (iii) moving the power poles to a more suitable location;
  - (f) design and provide street lighting for the part of Douglas Road which fronts the Land, with the exception of any lighting at the intersection of Douglas Road and the access road leading into the Development; and
  - (g) provide and make available a minimum of 2 x 125mm diameter conduits for electrical services along Douglas Road, from Lot 12 DP 1126008 (**Lot 12**) to the railway crossing opposite the frontage of the Land to Douglas Road, and across part of the frontage of Lot 12 to connect with the existing conduits at the High Voltage switching station No. 27628 to the west of the driveway on Lot 12.
- 3 Clause 8.2 of the Planning Agreement is amended by adding the following subclause:  
8.2.4 provide street lighting at the intersection of:

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W.A.M.

**Deed of Variation to Douglas Road (Lot 24) Planning Agreement  
Wingecarribee Shire Council  
Maloney Nominees Pty Ltd, Wilma Adele Maloney**

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- 8.2.4.1 Douglas Road, and
  - 8.2.4.2 the access road leading into the Development.
- 4 Insert Schedules 2 in the Planning Agreement as follows:

*J. nl.*

*W.A.M.*





**Schedule 2**

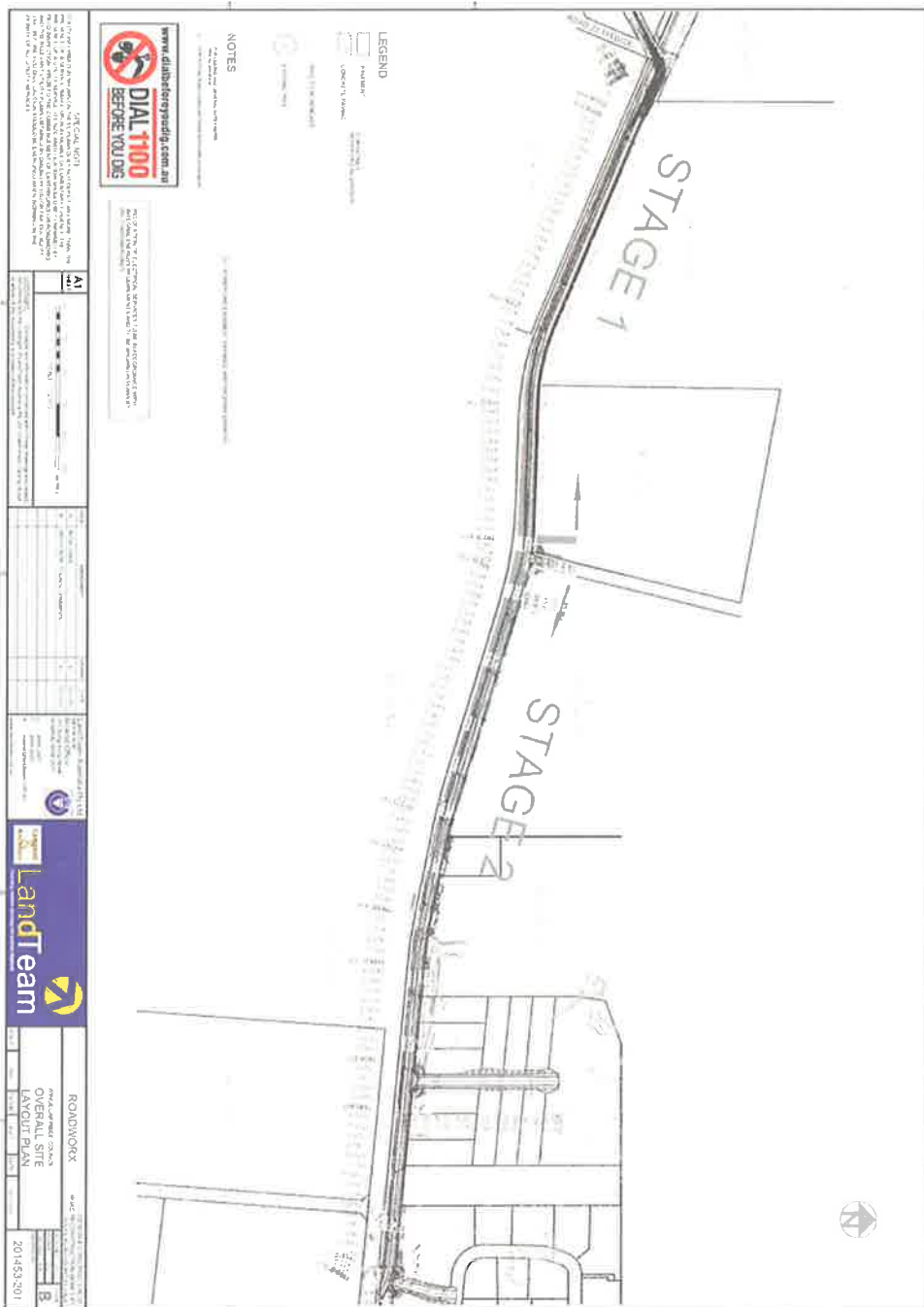
(Clause 1.1)

**Site Plan**

[See next Page]

W.A.M.

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**Wingecarribee Shire Council**  
**Maloney Nominees Pty Ltd, Wilma Adele Maloney**



*J. M.*



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**Execution**

**Executed as an Deed**

**Dated:** 15/2/2012

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**Executed on behalf of the Council**

General Manager

Witness/Name/Position

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**Executed on behalf of the Developer**

James Maloney - Director

Wilma Adele Maloney - Secretary

witness

**Deed of Variation to Douglas Road (Lot 24) Planning Agreement  
Wingecarribee Shire Council  
Maloney Nominees Pty Ltd, Wilma Adele Maloney**



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**Executed on behalf of Landowner**

W.A. Maloney

Wilma Adele Maloney

Witness

L. Smith

L. Smith

*J. M.*



## **Appendix**

(Clause 7)

*Environmental Planning and Assessment Regulation 2000*

(Clause 25E)

## **Explanatory Note**

### **Draft Deed**

Under s93G 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)

**Maloney Nominees Pty Ltd ACN 001 982 574 c/- Campbell & Anderson  
Consulting Surveyors Pty Ltd** of 357 Bong Bong Street, BOWRAL, NSW 2576  
(Developer)

**Wilma Adele Maloney** of "Ballyclare" 944 Kangaloon Road GLENQUARRY NSW 2576  
(Landowner)

### **Description of the Land to which the Draft Deed Applies**

Lot 24 in deposited plan 817194.

### **Description of Proposed Development**

18 Lot Industrial subdivision in accordance with development consent LUA05/0324 granted by  
Council on 30 June 2006, as modified on 30 March 2010.

W.A.M.



## **Summary of Objectives, Nature and Effect of the Draft Deed**

### **Objectives of Draft Deed**

The objective of the Draft Deed is to amend the Planning Agreement in relation to the carrying out of works by the Council and the Developer.

### **Nature of Draft Deed**

The Draft Deed is a deed of variation to the Planning Agreement under s93G of the Act.

### **Effect of the Draft Deed**

The Draft Deed:

- amends the Council's obligations under the Planning Agreement.
- amends the Developer's obligations under the Planning Agreement
- otherwise confirms all other provisions of the Planning Agreement.
- is to be registered on the title to the Land.
- 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.

### **Whether the Draft Deed specifies that certain requirements must be complied with before issuing of a construction certificate, occupation certificate or subdivision certificate**

The Draft Deed does not specify requirements that must be complied with before issuing of a construction certificate, occupation certificate or subdivision certificate.

## **Assessment of the Merits of the Draft Deed**

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

The Draft Deed:

- 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.

*J. M.*  
*W.A.M.*



**How the Draft Deed Promotes the Public Interest**

The Draft Deed 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 Deed Promotes its Statutory Responsibilities***

N/A

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

N/A

***Councils – How the Draft Deed Promotes the Elements of the Council's Charter***

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

- providing public facilities for the community,
- providing a means that allows the wider community to make submissions to the Council in relation to the Deed.

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

The Draft Deed does not amend the monetary Development Contributions to be paid by the Developer under the Planning Agreement. As the Planning Agreement conforms with the Council's Capital Works Program, the Draft Deed also conforms with the Council's Capital Works Program.

W.A.M.