

Explanatory Note

Draft Planning Agreement

Under section 93F of the Environmental Planning and Assessment Act 1979

1. Parties

Wollondilly Shire Council (**Council**)

The Estate of the Late Frank Wintle ("**Developer**")

Note: A second Planning Agreement which will apply to the adjoining land (Lot 61 in DP 742228) is to be entered into by the Developers of that land being Gary and Colleen Rhodes

2. Description of the Land to Which the Planning Agreement Applies

2.1 The Planning Agreement applies to the land described as Lot 62 DP1099353 and generally known as 24 Hardwick Street, The Oaks

3. Description of the Proposed Change to the Environmental Planning Instrument and of the Development

3.1 The Developer is seeking changes to *Wollondilly Local Environmental Plan 2011 (WLEP 2011)*. This change will be effected by the Minister for the Department of Planning making WLEP 2001 Amendment No 3.

The effect of the changes to WLEP 2011 will be to rezone the Land to permit residential subdivision together with all necessary road works and ancillary services. It is anticipated that the land the subject of this planning agreement and the adjoining Lot 61 DP 742228 will yield about 100 residential lots.

4. Summary of Objectives, Nature and Affect of the Planning Agreement

4.1 The Planning Agreement provides that the Developer will provide a contribution of \$5,500 for each new Residential Allotment/dwelling approved under the Development Approval. This is estimated to be approximately 60 residential lots.

The contributions payable under the Planning Agreement are to be paid prior to the issue of the relevant Subdivision Certificate for payment towards works set out in Schedule 1 of the Agreement (or as Council otherwise determines). Schedule 1 is outlined as follows:

Schedule 1

Works

Project	Estimated Contribution*
Improvements to Amenities and Facilities at Dudley Chesham Oval	\$234,000
Shelter & seating, BBQ and pathway at Harold Noakes Park	\$12,000
Wollondilly Heritage Centre, extension to existing building	\$36,000
Shared cycleway from Edward St to Glendiver Rd	\$30,000
Barrallier Park Upgrade	\$18,000
Total	\$330,000

*Assuming a total of 60 approved residential lots.

Note: It will be necessary for Council to provide additional funds to complete all of these projects.

The Developer will also be required to pay Section 94 contributions detailed in the Wollondilly Development Contributions Plan for residential subdivision in addition to those contributions paid under the planning agreement.

5. The Planning Purpose of the Planning Agreement

5.1 In accordance with section 93F(2) of the Act, the Planning Agreement has the following public purposes:

- the provision of (or the recoupment of the cost of providing) public amenities or public services;
- the provision of (or the recoupment of the cost of providing) transport or other infrastructure relating to land;

The Council and Developer have assessed the Planning Agreement and the parties hold the view that the provisions of the Planning Agreement provide a reasonable means of achieving the public purposes set out above.

6. How the Planning Agreement promotes the Public Interest

6.1 The Planning Agreement promotes the public interest by dealing with important elements of social, recreational and transport infrastructure and public service needs of the new population which are anticipated by the residential subdivision of the Land once WLEP 2011 Amendment No 3 is made by the Minister;

7. How the Planning Agreement Promotes the Objects of the Act

7.1 The Planning Agreement promotes the following objects of the Act:

- 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;
- the promotion and co-ordination of the orderly and economic use and development of land;
- the provision and co-ordination of community services and facilities;
- the sharing of the responsibility for environmental planning between the different levels of government in the State.

The Planning Agreement promotes the objects of the Act set out above by requiring the Developer to provide the contribution amounts set out in this explanatory note under the heading "Summary of Objectives, Nature and Effect of the Planning Agreement" for the following purposes:

- recreational facility improvements at Dudley Chesham Oval and Harold Noakes Park;
- social and cultural infrastructure improvements at Barrallier Park and the Wollondilly Heritage Centre;
- transport improvements through a shared cycleway between Edward Street and Glendiver Road.

Each of these purposes represents an important public benefit, and the Developer's offer to contribute towards these purposes will provide an important positive impact on the public who use the infrastructure and services to which these purposes relate.

8. How the Planning Agreement promotes the elements of the Council's Charter

8.1 The Planning Agreement is consistent with the following elements of Council's Charter:

- (1) to bear in mind that it is the custodian and trustee of public assets and to effectively plan for, account for and manage the assets for which it is responsible.
- (2) to engage in long-term strategic planning on behalf of the local community.
- (3) to raise funds for local purposes by the fair imposition of rates, charges and fees, by income earned from investments and, when appropriate, by borrowings and grants.
- (4) to promote and to provide and plan for the needs of children. This is achieved by improvements to recreational facilities and shared cycleways proposed under this Planning Agreement.
- (5) to exercise community leadership. This is achieved through funding for improved community and sporting facilities.
- (6) 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 is achieved by all aspects of the works facilitated by funding through the subject Planning Agreement.

Draft Planning Agreement

Parties

Wollondilly Shire Council (Council)

The Estate of the Late Frank Wintle (Developer)

Dated 5th July 2011

THIS PLANNING AGREEMENT is made on the ...5th...day of.....July.....2011

BETWEEN:

Parties

WOLLONDILLY SHIRE COUNCIL of 62-64 Menangle Street, Picton NSW 2571 ("the Council")

AND:

THE ESTATE OF FRANK WINTLE of 24 Hardwicke Street, The Oaks ("the Developers")

Introduction:

- A. The Developers are the registered proprietors of the Development Land.
- B. On or about the 15th May 2007 the Developers lodged with Council the Rezoning Application with respect to the Development Land.
- C. The Developers propose to make a Development Application to Council for Development Approval to carry out the Proposed Development of the Development Land if the Development Land is rezoned in accordance with the Rezoning Application.
- D. The Developers have offered to provide the Developers Contributions on the terms and conditions contained in this agreement if the Development Approval is granted.

And it is agreed as follows:-

1. Definitions and Interpretation

In this agreement the following words and letters have the meanings set opposite them:

- 1.1 "Act" means the *Environmental Planning and Assessment Act 1979* (NSW) (as amended from time to time).
- 1.2 "Approval" means any approvals, consents, modifications, certificates (of all types) permits, endorsements, licenses, conditions or requirements (and any variation to them) which may be required by Law for the Proposed Development.
- 1.3 "Authority" means a government, semi-government, local government, statutory, public, ministerial, civil, administrative, fiscal or judicial body, commission, department, agency, tribunal or other authority or body and where such Authority ceases to exist or where its functions and powers are transferred to another body, such reference is to the replacement body or the body substantially succeeding to the former Authority's function and powers.

- 1.4 “**Business Day**” means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the place where an act and thing is to be performed or a payment is to be made.
- 1.5 “**Costs**” include costs, charges, fees, disbursements and expenses, including those incurred in connection with advisers.
- 1.6 “**Developer’s Contribution**” means for each Residential Allotment approved under the Development Approval, the amount of five thousand five hundred dollars (\$5,500.00).
- 1.7 “**Development Application**” means an application under the Act for the Development Approval.
- 1.8 “**Development Approval**” means the development consent issued under the Act with respect to the Proposed Development.
- 1.9 “**Development Land**” means the land comprising Lot 62 in DP 1099353 and known as 24 Hardwicke Street, The Oaks.
- 1.10 “**Dispute**” in connection with this agreement means an argument, a controversy, a difference, a dispute including of opinion or interpretation.
- 1.11 “**Event of Insolvency**” means in respect of the Developers (and any one of them), any one or more of the following occurrences:
- 1.11.1 becomes bankrupt, is served with a bankruptcy notice or a bankruptcy petition, has committed an act of bankruptcy or has entered into an arrangement within and under the meaning of the *Bankruptcy Act 1976* (Cth); or
- 1.11.2 becomes subject to any order or declaration under the *Mental Health Act 2007* (NSW) or is otherwise incapable of managing his or her own affairs;
- 1.11.3 in the case where a Developer is a company, if:
- 1.11.3.1 a resolution is passed for the winding up or liquidation of that party;.
- 1.11.3.2 a liquidator, provisional liquidator, receiver, receiver manager, controller, controlling manager, administrator,

voluntary administrator or official manager is appointed to the Developer or a resolution is passed for the purposes of placing that party in the control of an external administrator.

1.11.3.3 if it suspends payment of its debts or is unable to pay its debts including, of money payable under this agreement or is deemed insolvent;

1.11.3.4 if it fails to or is taken as having failed to comply with a statutory demand under the *Corporations Act 2001* (Cth); or

1.11.3.5 if anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction with respect to the Developer.

1.12 “**GST**” has the same meaning as in the GST Act and other words or expressions used in the GST Act which have a particular defined meaning (including any applicable legislative determinations and Australian Taxation Office public rulings) have the same meaning.

1.13 “**GST Act**” means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (as amended from time to time).

1.14 “**Law**” means:

1.17.1 the common law and principles of equity;

1.17.2 the requirements of legislation, regulations and by-laws; and

1.17.3 a binding order made by an Authority.

1.15 “**LPMA**” means Land and Property Management Authority of NSW.

1.16 “**Mortgage**” means a mortgage, charge, lien, pledge, title retention, deposit arrangement, caveat or equitable interest.

1.17 “**Proposed Development**” means the subdivision of the Development Land into approximately sixty (60) Residential Allotments together with all necessary road works and ancillary services.

- 1.18 “**Residential Allotment**” means a lot comprising part of the Land to be created as part of the Proposed Development that is intended to be used for the purpose of a single dwelling house without being further subdivided.
- 1.19 “**Rezoning Application**” means an application to rezone the Development Land in order to allow the Proposed Development to be carried out on that land.
- 1.20 “**Subdivision Certificate**” means a certificate issued under section 109C(d) of the Act with respect to the Proposed Development.
- 1.21 “**Transfer**” means to settle, sell, assign, transfer, convey, alienate, otherwise dispose of or part with possession of.

2. Interpretation

In this agreement unless the contrary intention appears:

- 2.1 One gender includes the opposite gender.
- 2.2 The singular includes the plural and the plural includes the singular.
- 2.3 A party includes that party's executors, administrators, successors, permitted assigns, permitted legal representatives and substitutes..
- 2.4 Dollars means Australian dollars and all money payable under this agreement is payable in that currency.
- 2.5 “Including” and similar expressions are not words of limitation.
- 2.6 Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
- 2.7 Headings, any table of contents or index are for convenience only and do not affect the interpretation of this agreement.
- 2.8 An explanatory note which relates to this agreement does not affect the interpretation of this agreement.
- 2.9 A provision of this agreement must not be construed to the disadvantage of a party merely because that party was responsible, wholly or partly, for the preparation of this agreement or the inclusion of a term or condition in this agreement.

2.10 If an act and thing must be done on a specific day which is not a business day, it must be done instead on the next business day.

2.11 A person means and includes a person, a body corporate, Authority, firm, body of persons, association, trust, joint venture or other legal commercial entity or undertaking recognized by law, whether or not incorporated.

3. Planning Agreement

3.1 This agreement:

3.1.1 applies to the Development Land;

3.1.2 is a planning agreement within the meaning set out in Section 93F of the Act; and

3.1.3 does not exclude the application of each of Sections 94, 94A and 94EF of the Act to the Development and/or the Development Land. The benefits of this agreement are not to be taken into account when determining development contributions with respect to the Proposed Development under sections 94 or 94A of the Act;

3.1.4 is to be registered on the title of the Development Land under Section 93H of the Act in accordance with clause 7.2; and

3.1.5 is not a confidential document and may be exhibited without restriction by either party.

3.2 Subject to clause 3.3, this agreement operates from the date it is formed.

3.3 Clause 4 of this agreement will only operate if and when Council grants the Development Approval.

4. Developers Contributions

4.1 Subject to clause 4.4, the Developers must provide the Developers Contributions equating to the number of lots identified in the application for a Subdivision Certificate to Council prior to the issue of such Subdivision Certificate.

- 4.2 The Developer undertakes to Council not to make an application for the issue of any Subdivision Certificate until it has made the payments required to be made to Council under clause 4.1.
- 4.3 Whilst it is Council's intentions that the Developers Contributions will be used and expended for the purposes of the works set out in Schedule 1, the Developers agree that to the extent that the Developers Contribution may be described as having a particular intended use, Council has no obligation to expend the Developers Contribution, or any part of it, for the purpose set out in Schedule 1.

5. GST

- 5.1 Unless otherwise expressly stated all money or other sums payable or consideration to be provided under this agreement are exclusive of GST.
- 5.2 Despite Clause 5.1 , to the extent that the Commissioner of Taxation, a Court or Tribunal determines that any supply made under or in connection with this agreement is a taxable supply, the GST exclusive consideration otherwise to be paid or provided for that taxable supply is increased by the amount of any GST payable in respect of that taxable supply and that amount must be paid at the same time and in the same manner as the GST exclusive consideration is otherwise to be paid or provided and a valid Tax Invoice is to be delivered to the recipient of the taxable supply and this clause will not merge on completion or termination of the agreement.

6. Dispute Resolution

- 6.1 If a party believes that there is a Dispute then:
 - 6.1.1 that party must give notice (**Dispute Notice**) in writing to the other party stating that there is a Dispute; and
 - 6.1.2 the Dispute Notice must outline:
 - 6.1.2.1 what the party believes the dispute to be;
 - 6.1.2.2 what the party wants to achieve;
 - 6.1.2.3 what the party believes will settle the Dispute; and
 - 6.1.2.4 who will be the party's representatives to negotiate the dispute.

- 6.2 Within fifteen (15) business days of a notice served in accordance with clause 6.1 the representatives of each of the parties must meet in order to resolve the Dispute.
- 6.3 Both parties must adhere to the dispute resolution procedure set out in this agreement.
- 6.4 The only time that either party may depart from the dispute resolution procedure set out in this clause is when urgent interlocutory relief is required to restrain a breach or threatened breach of this agreement.
- 6.5 If the parties cannot resolve the Dispute after adhering to the dispute resolution procedure set out in this agreement then either party may seek any other avenues available to it in order to resolve the Dispute.

7. Agreements of the Developer

The Developers warrant that they:

- 7.1 are the legal and beneficial owners of the Development Land;
- 7.2 will take all practicable steps, use their best endeavours and do all acts and things reasonably required to procure:
 - 7.2.1 the consent of each person who has an interest (including by way of a Mortgage) in the Development Land;
 - 7.2.2 the execution of any documents;
 - 7.2.3 the production of the relevant certificates of title for the Development Land, and the registration of this agreement at LPMA on the title of the Development Land within twenty (20) Business Days of the date of this agreement.

8. Assignment

The Developers must not Transfer their interest in the whole or any part of the Development Land (other than a Residential Allotment for which the relevant Development Contribution has been paid to Council) unless:

- 8.1 the Developers are not in breach of any terms of this agreement; and

8.2 before the Transfer of any part of the Development Land to another person, the transferee executes a deed in a form and with conditions acceptable to Council, including containing provisions under which the transferee:

8.2.1 agrees to comply with this agreement as if the transferee was the Developer with respect to that part of the Development Land transferred, including obligations which arose before the Transfer; and

8.2.2 acknowledges and agrees that the rights of the Council under this agreement are not diminished or fettered in any way.

9. Release

When the Developers have satisfied all of the obligations imposed on them under this agreement in respect of that part of the Development Land in respect of which a Subdivision Certificate has been issued and for which the Developers Contribution has been paid, then the Council must promptly at the request and at the expense of the Developers do all acts and things necessary to remove this agreement from the title of that part of the Development Land..

10. Termination

10.1 This agreement may be terminated by Council by written notice to the Developers if:

10.1.1 the Developers commit a breach of any of the terms and conditions of this agreement and fail to remedy such breach within fourteen (14) days of receipt of a written notice (which specifies the breach and requires the Developers to remedy the same) whereupon the date of such termination will be effective on the effluxion of fourteen (14) days of receipt of such written notice; or

10.1.2 the Developers become subject to an Event of Insolvency.

10.2 Unless the written notice as provided in this Clause is required to be expressed in terms of time, all notices will otherwise be effective in accordance with clause 12.

11. Review Procedures

The parties may agree to review this agreement, in circumstances and in a manner determined by the parties. Any amendment, modification, supplement or replacement document which results from a review must be in writing, signed by the parties and registered at LPMA under Section 93H of the Act.

12. Notices

Any notice, request for information to be made or information to be given under this agreement must, in order to be valid, be in writing and may be given to or served upon a party:

- 12.1 by being left at that party's address or such other address as may be notified to the first party giving or serving any such document which will be deemed served when so left; or
- 12.2 by being posted in a pre-paid ordinary, certified or registered letter addressed to that party at such address which will be deemed duly served three (3) Business Days after the posting of the same; or
- 12.3 by being dispatched by facsimile transmission to that party and which will be deemed served at the time recorded on the facsimile machine of the party serving such document of an error free transmission to the correct facsimile number.

For the purposes of particulars of a party's contact details for service are:

The Developers

Address: 12 Hordern Street, Wilton 2571

Telephone: mobile 04 1457 1750

Fax: nil

Email: mwintle@scottcorp.com.au

Council

Address: 62-64 Menangle Street, Picton NSW 2571

PO Box 21, Picton NSW 2571

Telephone: 4677 1100

Fax: 4677 2339

Email: council@wollondilly.nsw.gov.au

Attention: The General Manager

13. Proper Law and Jurisdiction

This agreement is made and will be construed and governed in accordance with the Law of the State of New South Wales. Each party submits to the non-exclusive jurisdiction of each and every Court or Tribunal of the said State having jurisdiction to hear the matter submitted to it.

14. Severance

If it is held by any Court or Tribunal that:

14.1 any part or condition of this agreement is void, voidable, invalid, illegal or otherwise unenforceable; or

14.2 this agreement would be void, voidable, invalid, illegal or otherwise unenforceable unless any part or condition of this agreement was severed,

then that part or provision which is severed from this agreement will not affect the continued operation of the remainder of this agreement which has not been severed nor the validity or enforceability of that part or condition, provided that the fundamental purpose of or the intentions expressed by the parties under this agreement is not substantially altered.

15. Waiver

15.1 No failure on the part of a party to exercise, and no delay in exercising, and no cause of dealing with respect to, any condition and the rights, powers or remedies of that party under this agreement will impair any of those rights, powers or remedies, nor constitute a waiver of any of those rights, powers or remedies.

15.2 No single or partial exercise by a party of any condition and rights, powers or remedies under this agreement will preclude any other or further exercise of those, or exercise of any other conditions rights, powers or remedies.

15.3 Any condition and the rights, powers or remedies under or relating to this agreement are cumulative and will not exclude any other rights, powers or remedies under or relating to this agreement, at Law.

15.4 No waiver of any of the conditions of this agreement will be effective unless in writing signed by the party against whom such waiver is sought to be enforced.

15.5 Any waiver of the conditions of this agreement will be effective only in the specific instance and for the specific purpose given and the waiver will not be deemed a waiver of such obligations or of any subsequent breach of the same or some other obligation.

16. Further Acts

Unless otherwise dealt with specifically in this agreement each party must with due diligence do all acts and things and will sign all documents required or necessary to be done and performed so as to give full force and effect to, to perfect and complete the terms and conditions of this agreement or as contemplated.

17. Assignment and Dealings

None of the parties to this agreement may assign or otherwise deal with their rights, powers, obligations and remedies under this agreement or allow any interest in them to arise or be varied, save and except as provided in clause 8.

18. Entire Agreement

This agreement contains all the terms and conditions to which the parties have agreed on in relation to the matters which they have dealt with. No party can rely on an earlier document, anything said or done by another party, or omitted to be relied upon, said or done except as permitted by Law.

19. No Fetter

Nothing in this agreement is to be construed as requiring Council to do anything,

19.1 that would cause it to be in breach of any of its obligations at Law;

19.2 limiting or fettering in any way the exercise of any statutory discretion or duty; at Law; or

19.3 imposing any obligation to grant an Approval.

20. Representations and Warranties

Each party agrees that he has power and authority to enter into this agreement and comply with their obligations under the same and that entry into this agreement will not result in a breach of Law.

21. Costs

Each party must bear and pay his own Costs of and incidental to the preparation and execution of this agreement.

22. Joint and Several Liability

If two or more parties are included within the same defined term in this agreement:

- (1) a liability of those parties under this agreement is a joint liability of all of them and a several liability of each of them;
- (2) a right given to those parties under this agreement is a right given severally to each of them; and
- (3) a representation, warranty or undertaking made by those parties is made by each of them.

Schedule 1

Works

Project	Estimated Contribution*
Improvements to Amenities and Facilities at Dudley Chesham Oval	\$234,000
Shelter & seating, BBQ and pathway at Harold Noakes Park	\$12,000
Wollondilly Heritage Centre, extension to existing building	\$36,000
Shared cycleway from Edward St to Glendiver Rd	\$30,000
Barrallier Park Upgrade	\$18,000
Total	\$330,000

*Assuming a total of 60 approved residential allotments

Execution:

Executed as an Agreement

**The Common Seal of Wollondilly
Shire Council** was hereunto affixed

on 5th day of July, 2011
pursuant to resolution no. 121/2011
of Council's Ordinary meeting minutes
made on 20 June 2011.

Signed: Mayor [Signature] General Manager [Signature]

Name: (printed) Michael Bonasich Name: (printed) LES McMAHON

SIGNED by **MARK WINTLE** (Executor to the Estate of Frank Wintle) in the presence of:

Witness: [Signature] Developer: [Signature]

Name: (printed) Debra WINTLE Name: (printed) MARK WINTLE

SIGNED by **KERRY WINTLE** (Executor to the Estate of Frank Wintle) in the presence of:

Witness: [Signature] Developer: [Signature]

Name: (printed) P. SHEY Name: (printed) Kerry Wintle