

VOLUNTARY PLANNING AGREEMENT

Under s 93F of the *Environmental Planning and Assessment Act 1979*

WOLLONDILLY SHIRE COUNCIL

KEVIN MORRIS

DAVID GREENE PROPERTIES PTY LTD ACN 161 227
265 AS TRUSTEE FOR THE GREENE FAMILY TRUST
ABN 15301482605

PHILLIP LEONARD & LEONIE PATRICIA TURNER

FOCOPU PTY LTD ACN 003 679 203 AS TRUSTEE
FOR THE MALLAM FAMILY TRUST ABN 40479359042

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VOLUNTARY PLANNING AGREEMENT

This deed is dated

2017

Parties

Name	Wollondilly Shire Council ABN 93 723 245 808	
Short form name	<i>Council</i>	
Notice details	Post/by hand	PO Box 21 Picton NSW 2571
	Email	council@wollondilly.nsw.gov.au
	Attention	General Manager
Name	Kevin Morris	
Short form name	<i>Morris</i>	
Notice details	Post/by hand	395 Thirlmere Way Thirlmere NSW 2572
	Email	N/A
	Attention	Kevin Morris
Name	David Greene Properties Pty Ltd ACN 161 227 265 as trustee for the Greene Family Trust ABN 15301482605	
Short form name	<i>Greene</i>	
Notice details	Post/by hand	65 Jarvis Street Thirlmere NSW 2572
	Email	david@awpm.com.au
	Attention	David Greene

Name	Phillip Leonard & Leonie Patricia Turner	
Short form name	<i>Turner</i>	
Notice details	Post/by hand	40 Marion Street Thirlmere NSW 2572
	Email	leoniepatricia@live.com.au
	Attention	Phillip and Leonie Turner
<hr/>		
Name	Focopu Pty Ltd ACN 003 679 203 as trustee for the Mallam Family Trust ABN 40479359042	
Short form name	<i>Focopu</i>	
Notice details	Post/by hand	63 Kangaroo Point Road Kangaroo Point NSW 2224
	Email	mallamr@bigpond.com
	Attention	Ross Mallam

Background

- A Morris, Greene, Turner and Focopu (**the Developer**) are the owners of Lots 55, 57, 59 and 61 in Deposited Plan 21549 (**the Land**) as referred to in Schedule 1.
- B The Land is located within the Wollondilly Shire local government area.
- C The Developer lodged Development Application No. 10.2015.560.1 with the Council on 3 August 2015 for the construction of a bio-retention basin and related infrastructure works, the dedication of the Dedication Land on which the bio-retention basin is to be located to the Council for purpose of a drainage reserve, demolition of buildings and associated works.
- D On 16 June 2016, the applicant for the Development Application issued a letter of offer to the Council setting out the terms of a future voluntary planning agreement.
- E On 30 June 2016, the Council granted development consent to the Development Application. The consent was modified on 11 November 2016. Condition No. 3(1) of the modified consent requires that a draft voluntary planning agreement reflecting the applicant's 16 June 2016 letter be provided to the Council in a form suitable for public exhibition.
- F As part of the Subdivision DA, the Developer has lodged DA 10.2014.153 for a 21 lot subdivision of Lot 59 DP 21549, DA 10.2014.159 for a 22 lot subdivision of Lot 61 DP 21549 and DA 10.2015.197 for a 23 lot subdivision of Lot 57 DP 21549.

- G The Dedication Land is to be created at a future time as exempt development pursuant to clause 2.75 of *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*.
- H Following the dedication of the Dedication Land to the Council, the Council will be responsible for the maintenance and upkeep of the Bio-Retention Basin within the Dedication Land.
- I The estimated cost for the Council to maintain the Bio-Retention Basin within the Dedication Land is \$207,550.00 over a 35 year period.
- J This Deed provides for the Developer paying the Council \$207,550 prior to the dedication of Dedication Land as a contribution towards the maintenance and upkeep of the Bio-Retention Basin within the Dedication Land.
- K The Developer is not obliged to pay the Council any further contribution for the maintenance and upkeep of the Bio-Retention Basin and related infrastructure within the Dedication Land either at the conclusion of a 35 year period from the dedication of the Dedication Land to the Council or at any earlier time within which the Council exhausts the \$207,550.00 contribution for maintenance costs.

Part 1 – Preliminary

1 Definitions and interpretation

1.1 Definitions

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

Authority means the Commonwealth of Australia, the State of New Wales, or any department or agency of the Commonwealth of Australia or the State of New South Wales or any public authority within the meaning of the Act, and any court or tribunal.

Approval includes approval, consent, licence, permission or the like.

Bio-Retention Basin means the bio-retention basin described in the Development Application and includes related infrastructure works also described in the Development Application.

Claim means any allegation, action, demand, cause of action, suit, proceeding, judgement, debt, damage, loss, cost or expense against any person, or

- (a) liability howsoever arising and whether present or future, fixed or
- (b) unascertained, actual or contingent whether at law, in equity, under statute or
- (c) otherwise.

Council means Wollondilly Shire Council.

CPI means the *Consumer Price Index (All Groups – Sydney)* published by the Australian Bureau of Statistics.

Dedication Land means the part of the Land to be created as proposed lot 502 shown on the plan in Schedule 3.

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

Defect means anything that adversely affects, or is likely to adversely affect, the appearance, structural integrity, functionality or use or enjoyment of a Work or any part of a Work.

Defects Liability Period means the period of 1 year commencing on the day immediately after a Work is completed for the purpose of this Deed.

Developer means Kevin Morris (**Morris**), David Greene Properties Pty Ltd ACN 161 227 265 as trustee for the Greene Family Trust ABN 15301482605 (**Greene**), Phillip Leonard & Leonie Patricia Turner (**Turner**) and Focopu Pty Ltd ACN 003 679 203 as trustee for the Mallam Family Trust ABN 40479359042 (**Focopu**).

Development means the development the subject of the Development Application and the Subdivision DA.

Development Application means Development Application No. 10.2015.560.1 lodged with the Council on 3 August 2015.

Development Consent means a development consent or project approval within the meaning of the Act.

Development Contribution means any of the following, or any combination of them, to be used for, or applied towards, a public purpose:

- (a) a monetary contribution,
- (b) the dedication of land free of cost,
- (c) the carrying out of work, and
- (d) the provision of any other material public benefit.

Dispute means a dispute or difference between the Parties under or in relation to this Deed.

Equipment means any equipment, apparatus, vehicle or other equipment or thing to be used by or on behalf of the Developer in connection with the performance of its obligations under this Deed.

Final Lot means a lot created in the Development for separate residential occupation and disposition or a lot of a kind or created for a purpose that is otherwise agreed by the Parties, not being a lot created by a subdivision of the Land:

- (a) that is to be dedicated or otherwise transferred to the Council, or
- (b) on which is situated a dwelling-house that was in existence on the date of this Agreement.

Land means the land that is, or was prior to its subdivision, described in Schedule 1, and bounded by a red line on the plan in Schedule 2.

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

Rectification Notice means a notice in writing:

- (a) identifying the nature and extent of a Defect,
- (b) specifying the works or actions that are required to Rectify the Defect,

(c) specifying the date by which or the period within which the Defect is to be rectified.

Rectify means rectify, remedy or correct.

Registrar General means the Registrar General within the meaning of the Real Property Act 1900 (NSW).

Regulation means the Environmental Planning and Assessment Regulation 2000 (NSW).

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

Subdivision Certificate has the same meaning as in the Act.

Subdivision DA means one or more development applications, within the meaning of the Act, for the subdivision of the Land to create lots for residential purposes.

Work means the physical result of any building, engineering or construction work in, on, over or under land.

1.2 Interpretation

- (a) Unless the context otherwise requires, a reference to:
- (i) Headings are inserted for convenience only and do not affect the interpretation of this Deed.
 - (ii) A reference to a business day means a day, other than a Saturday or Sunday, on which banks are open for business generally in Sydney.
 - (iii) If the day on which something is to be done under this Deed is not a business day, then it must be done on the next business day.
 - (iv) A reference to dollars or \$ means Australian dollars and all amounts payable under this Deed are payable in Australian dollars.
 - (v) A reference in this Deed to a \$ value relating to a Development Contribution is a reference to the value exclusive of GST.
 - (vi) A reference to any 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.
 - (vii) A reference to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
 - (viii) A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Deed.
 - (ix) A reference to a person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.

- (x) Where a word or phrase is given a defined meaning, another part of speech or other grammatical form for that word or phrase has a corresponding meaning.
- (xi) The singular includes the plural, and the plural includes the singular.
- (xii) References to the word 'include' or 'including' are to be construed without limitation.
- (xiii) A reference to a Party to this Deed includes a reference to the Party's employees, agents and contractors, and the Party's successors and assigns and includes any third party undertaking the Development for or on behalf of, or in conjunction with the Party.
- (xiv) Any schedules, appendices and attachments form part of this Deed.

2 Status of Deed

This Deed is a planning agreement within the meaning of s93F(1) of the Act.

3 Commencement of Deed

- 3.1 This Deed commences on the date on which it has been executed by all Parties.
- 3.2 The Party who executes this Deed last is to insert the date they executed this Deed on the front page and provide a copy of the fully executed and dated Deed to any other person who is a Party.

4 Application of Deed

- 4.1 This Deed applies to the Land and to the Development Application.
- 4.2 The Parties acknowledge that the Development Contributions required to be made under this Deed are to meet the expected demand for public facilities arising from the Development.

5 Commencement of Development Contributions Obligations

- 5.1 The Developer is under no obligation to make the Development Contributions provided for in this Deed unless and until a Development Consent is granted with respect to any part of the Development

6 Part Performance of Deed

- 6.1 The Council is not to raise any objection, requisition or claim, or impose any requirements beyond that provided for in this Deed in relation to any obligation imposed on the Developer under this Deed that had been

lawfully performed, whether in whole or in part, on the date this Deed commenced.

7 Further Agreements relating to this Deed

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

8 Application of s.94, s.94A and s.94EF of the Act to the Development

- 8.1 This Deed does not exclude the application of s 94, s94A or s.94EF of the Act to the Development.
- 8.2 The Council will not take into consideration the benefits it receives under this agreement when determining a development contribution under section 94.

9 Provision of Development Contributions

- 9.1 The Developer is to make the following Development Contributions to the Council in accordance with this Deed:
- (a) dedication of the Dedication Land to the Council free of cost; and
 - (b) payment to the Council of \$207,550.00, indexed in accordance with clause 9.3 as a contribution towards the maintenance and upkeep by the Council of the bio-retention basin and related infrastructure on the Dedication Land.
- 9.2 The Dedication Land is to be dedicated to Council within 14 days of completion of the Bio-Retention Basin and before any Subdivision Certificate that creates a Final Lot in the Development the subject of a Development Consent to the Subdivision DA is issued.
- 9.3 The monetary Development Contributions required to be paid by the Developer are to be paid prior to the issuing of the first Subdivision Certificate that creates a Final Lot in the Development the subject of a Development Consent to the Subdivision DA.
- 9.4 The payment referred to in clause 9.1(b) is to be indexed from the date of this Deed until the date of payment in accordance with CPI.
- 9.5 The Council will use its best endeavours to apply each Development Contribution made by the Developer under this Deed towards the public purpose for which it is made and otherwise in accordance with this Deed.

Part 2 – Provisions relating to Dedication of Land

10 Procedures relating to the dedication of Land

- 10.1 A Development Contribution comprising the dedication of the Dedication Land is made for the purposes of this Deed when:
- (a) a deposited plan is registered in the register of plans held with the Registrar General that creates the Dedication Land as a drainage reserve under the *Local Government Act 1993* (NSW),
 - or
 - (b) the Council is given an instrument in registrable form under the *Real Property Act 1900* that is effective to transfer the title to the Dedication Land to the Council when registered.
- 10.2 For the purposes of clause 10.1(b):
- (a) the Developer is to give the Council, for execution by the Council as transferee, an instrument of transfer under the *Real Property Act 1900* relating to the Land to be dedicated, and
 - (b) within 21 days of receiving it from the Developer, the Council is to execute it and return it to the Developer, and
 - (c) within 7 days of receiving it from the Council (properly executed), the Developer is to lodge it for registration with the Registrar General, and
 - (d) the Developer is to do all things reasonably necessary to enable it to be registered, and
 - (e) the Developer is to do all things reasonably necessary to enable the certificate of title for the Land dedicated which identifies the Council as the registered proprietor of that Land, to be provided to the Council at no cost to the Council.
- 10.3 The Developer is to ensure that land dedicated to the Council under this Deed is free of all encumbrances and affectations (whether registered or unregistered and including without limitation any charge or liability for rates, taxes and charges) except as otherwise agreed in writing by the Council.
- 10.4 If, having used all reasonable endeavours, the Developer cannot ensure that land to be dedicated to the Council under this Deed is free from all encumbrances and affectations, the Developer may request that Council agree to accept the land subject to those encumbrances and affectations, but the Council may withhold its agreement in its absolute discretion.
- 10.5 Despite any other provision of this Deed, if the Developer is required to dedicate land to the Council on which the Developer is also required to carry out a Work under this Deed, the Developer is to comply with clause 10.1 (b) not later than 7 days after the Work is completed for the purposes of this Deed.

Part 3 –Maintenance of Work Pre Dedication

11 Carrying out of Work

- 11.1 Without limiting any other provision of this Deed, the Bio-Retention Basin is to be carried out in accordance with the Development Consent for the Development Application, any other applicable law and this Deed to the extent that it is not inconsistent with the Development Consent for the Development Application and any law.

Note: The construction of the Bio-Retention Basin forms part of the Development Application and must take place as part of the Development Consent for the Development Application. The provisions of Part 3 are supplementary to obligations to be fulfilled in satisfaction of the Development Consent for the Development Application.

- 11.2 For the avoidance of doubt, the Council becomes the owner of the Bio-Retention Basin upon the dedication of the Dedication Land

12 Variation to Work

- 12.1 The design or specification of any Work that is required to be carried out by the Developer under this Deed may be varied by agreement in writing between the Parties, acting reasonably, without the necessity for an amendment to this Deed.
- 12.2 Without limiting clause 12.1, the Developer may make a written request to the Council to approve a variation to the design or specification of a Work in order to enable it to comply with the requirements of any Authority imposed in connection with any Approval relating to the carrying out of the Work.
- 12.3 The Council is not to unreasonably delay or withhold its approval to a request made by the Developer under clause 12.2.

13 Maintenance of Work

- 13.1 Prior to the dedication to the Council of the Dedication Land, the Developer owns the Bio-Retention Basin works, must maintain the Bio-Retention Basin in a safe and functional manner consistent with its design and all Approvals and bears all risk and responsibility for the works.
- 13.2 If as a result of the Developer's maintenance obligations under this clause, the Developer has cause to amend the design of the Bio-Retention Basin in any way, it must seek the Council's prior approval for that amendment and obtain any necessary Approvals.

14 Access for Inspections

- 14.1 The Developer must permit the Council, its officers, employees, agents and contractors to enter the Dedication Land or any other land at any time prior to dedication, upon giving reasonable prior notice, to inspect, examine or test any structure within the Dedication Land or to remedy any

breach by the Developer of its obligations under this Deed relating to the Work.

15 Protection of people, property & utilities

- 15.1 The Developer is to ensure to the fullest extent reasonably practicable in relation to the performance of its obligations under this Deed that:
- (a) all necessary measures are taken to protect people and property,
 - (b) unnecessary interference with the passage of people and vehicles is avoided, and
 - (c) nuisances and unreasonable noise and disturbances are prevented.
- 15.2 Without limiting clause 15.1, the Developer is not to obstruct, interfere with, impair or damage any public road, public footpath, public cycleway or other public thoroughfare, or any pipe, conduit, drain, watercourse or other public utility or service on any land except as authorised in writing by the Council or any relevant Authority.

16 Completion of Work

- 16.1 The Developer is to give the Council written notice of the date on which it will complete Work required to be carried out under this Deed or any Stage.
- 16.2 The Council is to inspect the Work the subject of the notice referred to in clause 16.1 within 14 days of the date specified in the notice for completion of the Work.
- 16.3 Work required to be carried out by the Developer under this Deed, is completed for the purposes of this Deed when the Council, acting reasonably, gives a written notice to the Developer to that effect.
- 16.4 Before the Council gives the Developer a notice referred to in clause 16.3, it may give the Developer a written direction to complete, rectify or repair any specified part of the Work to the reasonable satisfaction of the Council.
- 16.5 The Developer, at its own cost, is to promptly comply with a direction referred to in clause 16.4.

17 Rectification of defects

- 17.1 The Council may give the Developer a Rectification Notice during the Defects Liability Period.
- 17.2 The Developer, at its own cost, is to comply with a Rectification Notice according to its terms and to the reasonable satisfaction of the Council.
- 17.3 The Council is to do such things as are reasonably necessary to enable the Developer to comply with a Rectification Notice that has been given to it under clause 17.1

18 Works-As-Executed-Plan

- 18.1 No later than 60 days after Work is completed for the purposes of this Deed, the Developer is to submit to the Council a full works-as-executed-plan in respect of the Work.
- 18.2 The Developer, being the copyright owner in the plan referred to in clause 18.1, gives the Council a non-exclusive licence to use the copyright in the plans for the purposes of this Deed.

Part 4 –Maintenance of Work Post Dedication

19 Maintenance of Work Post Dedication

- 19.1 The parties acknowledge that following the dedication of the Dedication Land to the Council, the Council as the owner of that land and the Bio-Retention Basin will be responsible at law for the maintenance and upkeep of the Bio-Retention Basin within the Dedication Land.
- 19.2 The Developer is not obliged to pay the Council any further contribution for the maintenance and upkeep of the Bio-Retention Basin and related infrastructure within the Dedication Land either at the conclusion of a 35 year period from the dedication of the Dedication Land to the Council or at any earlier time within which the Council exhausts the \$207,550.00 contribution for maintenance costs.

Part 5 – Security, Enforcement and Disputes

20 Security for the Dedication of Land

- 20.1 Subject to clause 22, if the Developer does not dedicate the Dedication Land, or any part thereof, at the time at which it is required to be dedicated, the Developer consents to the Council compulsorily acquiring that land for compensation in the amount of \$1.00 without having to follow the pre-acquisition procedures under the Just Terms Act.
- 20.2 The Council is to only acquire land pursuant to clause 20.1 if it considers it reasonable to do so having regard to the circumstances surrounding the failure by the Developer to dedicate the Dedication Land.
- 20.3 Clause 20.1 constitutes an agreement for the purposes of section 30 of the Just Terms Act.
- 20.4 If, as a result of an acquisition referred to in clause 20.1, the Council is required to pay compensation to any person other than the Developer, the Developer is to reimburse the Council for that amount upon a written request being made by the Council.
- 20.5 The Developer indemnifies and keeps indemnified the Council against all Claims made against the Council as a result of any acquisition by the

Council of the whole or any part of the land that is required to be dedicated under this Deed.

- 20.6 The Developer is to promptly do all things necessary, and consent to the Council doing all things necessary, to give effect to this clause 20, including without limitation:
- (a) signing any documents or forms;
 - (b) giving land owner's consent for the lodgement of any Development Application;
 - (c) producing certificates of title to the Registrar-General under the *Real Property Act 1900* (NSW); and
 - (d) paying the Council's costs arising from this clause 20.
- 20.7 In this clause, Just Terms Act means the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW).

21 No Security for Monetary Contribution

- 21.1 No security is required for the monetary contribution required by clause 9.1(b) of this Deed if the monetary contribution is paid in accordance with this Deed at the time required by this Deed.

22 Breach of other obligations

- 22.1 This clause applies to a breach of an obligation under this Deed by the Developer.
- 22.2 If the Council reasonably considers that the Developer is in breach of an obligation under this Deed, it may give a written notice to the Developer:
- (a) specifying the nature and extent of the breach,
 - (b) requiring the Developer to:
 - (i) rectify the breach if it reasonably considers it is capable of rectification, or
 - (ii) pay compensation to the reasonable satisfaction of the Council in lieu of rectifying the breach if it reasonably considers the breach is not capable of rectification,
 - (c) specifying the period within which the breach is to be rectified or compensation paid, being a period that is reasonable in the circumstances.
- 22.3 If the Developer fails to comply with a notice given under clause 22.2 relating to the carrying out of Work under this Deed, the Council may step-in and remedy the breach and may enter, occupy and use any land owned or controlled by the Developer and any Equipment on such land for that purpose.
- 22.4 Any costs incurred by the Council in remedying a breach in accordance with clause 22.3 may be recovered by the Council as a debt due in a court of competent jurisdiction.

- 22.5 For the purpose of clause 22.4, the Council's costs of remedying a breach the subject of a notice given under clause 22.1 include, but are not limited to:
- (a) the costs of the Council's servants, agents and contractors reasonably incurred for that purpose,
 - (b) all fees and charges necessarily or reasonably incurred by the Council in remedying the breach, and
 - (c) all legal costs and expenses reasonably incurred by the Council, by reason of the breach.

23 Enforcement in court

- 23.1 The Parties may enforce this Deed in any court of competent jurisdiction.
- 23.2 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/or
 - (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.

24 Dispute resolution – expert determination

- 24.1 This clause applies to a Dispute between any of the Parties to this Deed concerning a matter arising in connection with this Deed that can be determined by an appropriately qualified expert if:
- (a) the Parties to the Dispute agree that it can be so determined, or
 - (b) the Chief Executive Officer of the professional body that represents persons who appear to have the relevant expertise to determine the Dispute gives a written opinion that the Dispute can be determined by a member of that body.
- 24.2 A Dispute to which this clause applies is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 24.3 If a notice is given under clause 24.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 24.4 If the Dispute is not resolved within a further 28 days, the Dispute is to be referred to the President of the NSW Law Society to appoint an expert for expert determination.
- 24.5 The expert determination is binding on the Parties except in the case of fraud or misfeasance by the expert.
- 24.6 Each Party is to bear its own costs arising from or in connection with the appointment of the expert and the expert determination.
- 24.7 The Parties are to share equally the costs of the President, the expert, and the expert determination.

25 Dispute resolution - mediation

- 25.1 This clause applies to any Dispute arising in connection with this Deed other than a Dispute to which clause 24 applies.
- 25.2 Such a Dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 25.3 The Parties are then to meet within 14 days of the notice to try to resolve the Dispute.
- 25.4 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.
- 25.5 If the Dispute is not resolved by mediation within a further 28 days, or any longer period that may be needed to complete any mediation process which has been started, then the Parties may exercise their legal rights in relation to the Dispute, including by taking legal proceedings in a court of competent jurisdiction in New South Wales.

26 Registration of this Deed

- 26.1 The Parties agree to register this Deed for the purposes of s93H(1) of the Act.
- 26.2 By or before the commencement of this Deed, the Developer is to deliver to the Council in registrable form:
- (a) an instrument requesting registration of this Deed on the title to the Land duly executed by the Developer and all other persons (other than the Council) required by the Registrar-General to execute such an instrument, and
 - (b) the written irrevocable consent of each person referred to in s93H(1) of the Act to that registration.
- 26.3 The Developer is to do such other things as are reasonably necessary to enable registration of this Deed to occur.
- 26.4 The Parties are to do such things as are reasonably necessary to remove any notation relating to this Deed from the title to the Land:
- (a) in so far as the part of the Land concerned is a Final Lot,
 - (b) in relation to any other part of the Land, once the Developer has completed its obligations under this Deed to the reasonable satisfaction of the Council or this Deed is terminated or otherwise comes to an end for any other reason.

27 Assignment, Sale of Land etc.

- 27.1 Unless the preconditions specified in clause 27.2 are satisfied, the Developer must not:

- (a) transfer the Land or any part of it, other than a Final Lot, to any person; or
- (b) assign its rights or obligations under this Deed, or novate this Deed, to any person.

27.2 The preconditions to be satisfied under clause 27.1 are:

- (a) the Developer has, at no cost to the Council procured the execution by the person to whom the Developer proposes to sell or transfer the Land or to whom the Developer's rights or obligations under this Deed are to be assigned or novated (Third Party), of an agreement in favour of the Council to the effect that the Third Party is bound as if a party to this Deed; and
- (b) the Developer is not in breach of this Deed.

28 Discharge and Termination of this Deed

28.1 This Deed will be discharged upon the Developer satisfying all of the obligations imposed on it under this Deed.

28.2 This Deed may be rescinded and therefore terminated by either Party by written notice to the other Party to that effect upon:

- (a) all Development Consent/s for the Subdivision DA lapsing within the meaning of s.95 of the Act, being revoked under s.96A of the Act, being surrendered under s.104A of the Act except if any Development the subject of the Development Consent has been carried out, or being declared by a Court to be invalid under s.123 of the Act, or any combination thereof, such that no Development Consent for the Subdivision DA remained.

29 Force Majeure

29.1 In this clause, Force Majeure Event means any physical or material restraint beyond the reasonable control of a Party claiming the Force Majeure Event.

29.2 If a Party is unable by reason of a Force Majeure Event to carry out wholly or partly its obligations under this Deed, it must:

- (a) give to the other Party prompt notice of the Force Majeure Event with reasonably detailed particulars of it, and
- (b) suggest a reasonable alternative method, if any, of satisfying its obligations under this Deed.

29.3 If a Party is unable to satisfy its obligations under this Deed by an alternative method, the obligations of the Parties so far as they are affected by the Force Majeure Event are suspended during continuance of the Force Majeure Event and any further period as may be reasonable in the circumstances.

29.4 The Party giving notice under this clause must use all reasonable effort and diligence to remove the Force Majeure Event or ameliorate its effects as quickly as practicable.

- 29.5 If the Parties are unable to agree on the existence of a Force Majeure Event or the period during which the obligations of the Parties are suspended during the continuance of the Force Majeure Event, then the dispute resolution clauses apply.

30 Obligation to Act in Good Faith

- 30.1 The Parties must at all times:
- (a) cooperate and use their best endeavours to professionally give effect to the rights and obligations of the Parties set out in this Deed,
 - (b) not unreasonably delay any action, approval, directions, determination or decision which is required of it,
 - (c) make decisions that are required of it in good faith and in a manner consistent with the completion of the transactions set out in this Deed, and
 - (d) be just and faithful in its activities and dealings with the other Parties.

31 Notices

- 31.1 A notice, consent, information, application or request (Notification) that must or may be given or made to a Party under this Deed must only be 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 in the Parties section of this Deed; or
 - (b) emailed to that Party at its email address set out in the Parties section of this Deed.
- 31.2 A Party may change its address or email address by giving the other Party 3 business days' notice of the change, in which case the new address email address is treated as the address or number in the Parties section of this Deed.
- 31.3 A Notification is to be treated as given or made if it is:
- (a) delivered, when it is left at the relevant address;
 - (b) sent by post, 2 business days after it is posted;
 - (c) sent by email, and the sender does not receive a delivery failure message from the sender's internet service provider within a period of 24 hours of the email being sent.
- 31.4 If a Notification 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.

32 Approvals and consent

- 32.1 In this clause, a reference to an approval or consent does not include a reference to a Development Consent.
- 32.2 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 that Party's absolute discretion and subject to any conditions determined by the Party.
- 32.3 A Party must give its reasons for giving or withholding consent or for giving consent subject to conditions.

33 Costs

- 33.1 The Developer is to pay the Council's costs of preparing, negotiating, executing and stamping this Deed and any document related to this Deed within 7 days of a written demand by the Council for such payment.

34 Entire Deed

- 34.1 This Deed contains everything to which the Parties have agreed in relation to the matters it deals with.
- 34.2 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 Deed was executed, except as permitted by law.

35 Further Acts

- 35.1 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 Deed and all transactions incidental to it.

36 Power of Attorney

- 36.1 Any attorney who executes this Deed on behalf of a Party declares that it has no notice of:
- (a) the revocation or suspension of the power of attorney by the grantor, or
 - (b) the death of the grantor.

37 Governing law and jurisdiction

- 37.1 This Deed is governed by the law of New South Wales.
- 37.2 The Parties submit to the non-exclusive jurisdiction of its courts, and are not to object to the exercise of jurisdiction by those courts on any basis.

38 Joint and individual liability and benefits

- 38.1 Except as otherwise set out in this Deed:
- (a) any agreement, covenant, representation or warranty under this Deed by 2 or more persons binds them jointly and each of them individually, and
 - (b) any benefit in favour of 2 or more persons is for the benefit of them jointly and each of them individually.

39 No Fetter

- 39.1 Nothing in this Deed 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.

40 Representations and warranties

- 40.1 The Parties represent and warrant that they have power to enter into this Deed and to comply with their obligations under the Deed, and that entry into this Deed will not result in the breach of any law.
- 40.2 Notwithstanding clause 40.1, Greene and Focopu each warrant that:
- (a) it is the sole trustee of the trust it is specified in the Parties section of this Deed to be the trustee for, and no action has been taken to remove or replace it,
 - (b) it is authorised under the trust deed of the relevant trust to enter the Deed,
 - (c) it is not in breach of the trust deed of the relevant trust, and
 - (d) it has the power under the deed constituting the relevant trust to execute and perform its obligations under this Deed and all necessary action has been taken to authorise the execution and performance of this Deed under the trust deed constituting the relevant trust.

41 Severability

- 41.1 If a clause or part of a clause 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.

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

42 Modification

- 42.1 No modification of this Deed has any effect unless it is in writing and signed by the Parties.

43 Waiver

- 43.1 A Party does not waive any of the other Party's obligation or breach of obligation merely by failing to do, or delaying in doing, something under this Deed.
- 43.2 A waiver by a Party is effective only if it is in writing.
- 43.3 A written waiver by a Party is effective only in relation to the particular obligation or breach for 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.

44 GST

- 44.1 In this clause:
- (a) Adjustment Note, Consideration, GST, GST Group, Margin Scheme, Money, Supply and Tax Invoice have the meaning given by the GST Law.
 - (b) GST Amount means in relation to a Taxable Supply the amount of GST payable for the Taxable Supply.
 - (c) 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.
 - (d) 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.
 - (e) Taxable Supply has the meaning given by the GST Law, excluding (except where expressly agreed otherwise) a supply for which the supplier chooses to apply the Margin Scheme in working out the amount of GST on that supply.
- 44.2 Subject to clause 44.4, if GST is payable on a Taxable Supply made under, by reference to or in connection with this Deed, the Party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.
- 44.3 Clause 44.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Deed to be GST inclusive.

- 44.4 No additional amount is payable by the Council under clause 44.2 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.
- 44.5 If there are Supplies for Consideration which is not Consideration expressed as an amount of Money under this Deed 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:
- (a) to negotiate in good faith to agree the GST inclusive market value of those Supplies before issuing Tax Invoices for those Supplies;
 - (b) that any amounts payable by the Parties in accordance with clause 44.2 (as limited by clause 44.4) to each other for those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 44.6 No payment of any amount under this clause 44, 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 the recipient with a Tax Invoice or Adjustment Note as the case may be.
- 44.7 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.
- 44.8 This clause continues to apply after expiration or termination of this Deed.

45 Explanatory Note Relating to this Deed

- 45.1 The Appendix contains the Explanatory Note relating to this Deed required by clause 25E of the Regulation.
- 45.2 Under 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.

Schedule 1 Land (Clause 1.1)

Title Reference	Owner
55 / 21549	Morris
57 / 21549	Greene
59 / 21549	Turner
61 / 21549	Focopu





Signing page(s)

Executed as a deed on behalf of Wollondilly Shire Council ABN 93 723 245 808



Signature of General Manager



Name of General Manager

12/6/18



Signature of witness



Name of witness:

Executed as a deed by Kevin Morris

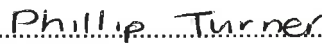


Signature of Kevin Morris

KEVIN MORRIS



Signature of witness




Name of witness:

Executed as a deed by David Greene Properties Pty Ltd ACN 161 227 265 as trustee for the Green Family Trust ABN 15301482605 in accordance with section 127 of the Corporations Act 2001


Signature of director

Name of director – BLOCK LETTERS


Signature of director/secretary
Name of director/secretary – BLOCK LETTERS

Executed as a deed by Phillip Leonard Turner and Leonie Patricia Turner

P. Turner
Signature

PHILLIP LEONARD TURNER

etunne
Signature of witness

Leonie Turner
Name of witness:

etunne
Signature

LEONIE PATRICIA TURNER

P. Turner
Signature of witness

Phillip Turner
Name of witness:

**Executed as a deed by Focopu Pty Ltd ACN 003 679 203 as trustee for the Mallam Family Trust
ABN 40479359042 in accordance with section 127 of the Corporations Act 2001**

Ross Mallam
Signature of director

ROSS MALLAM
Name of director – BLOCK LETTERS

JM Mallam
Signature of director / secretary

JULIE MARGARET MALLAM
Name of director/secretary – BLOCK LETTERS

Annexure A Appendix (Clause 46)

Environmental Planning and Assessment Regulation 2000 (Clause 25E)

Explanatory Note

Draft planning agreement under s93F of the Environmental Planning and Assessment Act 1979. The explanatory note has been prepared jointly by all the parties to the draft planning agreement.

Parties

Wollondilly Shire Council ABN 93 723 245 808
of 62-64 Menangle Street, Picton, New South Wales 2571 (Council)

Kevin Morris
of 395 Thirlmere Way, Thirlmere NSW 2572

David Greene Properties Pty Ltd ACN 161 227 265 ATF The Greene Family Trust ABN 15301482605
of 65 Jarvis Street, Thirlmere NSW 2572

Phillip Leonard Turner and Leonie Patricia Turner
of 40 Marion Street, Thirlmere NSW 2572

Focopu Pty Ltd ACN 003 679 203
of 63 Kangaroo Point Road, Kangaroo Point NSW 2223

Description of the Land to which the Draft Planning Agreement Applies

Land described in Schedule 1.

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 for the dedication to Council of land to Council to be used for drainage purposes and to fund the maintenance costs for works within the dedicated land for a period of 35 years.

Nature of Draft Planning Agreement

The Draft Planning Agreement is a planning agreement under s93F of the Environmental Planning and Assessment Act 1979 (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 various public purposes (as defined in s93F(2) of the Act).

Effect of the Draft Planning Agreement

The Draft Planning Agreement relates to:

- (a) the carrying out by the Developer of the Development,
- (b) does not exclude the application of s94, s94A or s94EF of the Act to the Development,
- (c) requires a monetary contribution and the dedication of land free of cost.

- (d) is to be registered on the title to the Land,
- (e) imposes restrictions on the Developer transferring the Land or part of the Land or assigning an interest under the agreement,
- (f) provides a dispute resolution method for a dispute under the agreement, being mediation and expert determination,
- (g) provides that the agreement is governed by the law of New South Wales, and
- (h) 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:

- (a) promotes and co-ordinates of the orderly and economic use and development of the Land to which the agreement applies,
- (b) provides land, free of cost, for public purposes in connection with the Development, and
- (c) provides for a monetary contribution whereby the Council (and therefore the public via rate revenue) will not incur maintenance costs for an estimated 35 year period.

The agreement provides for a reasonable means of achieving the above purposes.

How the Draft Planning Agreement Promotes the Public Interest

The Draft Planning Agreement promotes the public interest by promoting the objects of the Act as set out in s5 (a) (ii)-(v) and 5(c) of the Act by ensuring the provision of land to accommodate public drainage infrastructure and by providing a mechanism for the ongoing maintenance of such land.

Planning Authorities:

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

N/A, the Council is not a Development Corporation.

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:

- (a) providing services and facilities for the community, and
- (b) ensuring the public facilities provided by the Developer are transferred to and managed by the Council or are otherwise subject to the Council's control.

Whether the Draft Planning Agreement Conforms to the Council's Capital Works Program

The works under the Draft Planning Agreement are not included in the Council's capital works program. Therefore, this Draft Planning Agreement does not conform with the Council's capital works program.

Whether the Draft Planning Agreement specifies that certain requirements must be complied with before issuing a construction certificate, subdivision certificate or occupation certificate

The draft agreement does not specify that certain requirements must be complied with before the issuing of a construction certificate, subdivision certificate or occupation certificate. The draft agreement does include requirements to be satisfied at or prior to the registration of land to be dedicated to the Council.