

# Wilton South East Precinct – Koala Deed of Agreement

Dated *11 SEPTEMBER* 2018

Walker Corporation Pty Limited ("Walker")

Wollondilly Shire Council ("Council")

I certify this to be a true copy of the document  
shown and reported to me as the original.

Dated: *11/9/18*

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Solicitor

Bruce Edward McCann  
A Solicitor of the Supreme Court of New South Wales

*Wesley L. Galt*

# Wilton South East Precinct – Koala Deed of Agreement

## Details

<b>Parties</b>	<b>Walker and Council</b>	
<b>Walker</b>	<b>Names &amp; ABNs</b>	<b>Walker Corporation Pty Ltd (ACN 001 176 263) ("Walker")</b>
	<b>Address</b>	Level 21 Governor Macquarie Tower 1 Farrer Place Sydney NSW 2000
<b>Council</b>	<b>Name</b>	<b>Wollondilly Shire Council</b>
	<b>ABN</b>	93 723 245 808
	<b>Address</b>	62 – 64 Menangle Street Picton NSW 2571
<b>Date of Deed</b>	See Signing page	



# Wilton South East Precinct – Koala Deed of Agreement

## 1 Background

The parties acknowledge the following facts which have preceded this agreement:

- (a) On 13 April 2018 the *State Environment Planning Policy (Sydney Region Growth Centres) Amendment (South East Wilton Precinct) 2018* ("**Sydney Regions Growth Centres Amendment 2018**") was published on the NSW legislation website.
- (b) The effect of the Sydney Regions Growth Centres Amendment 2018 was to:
  - (i) Amend the maps to Wollondilly Local Environmental Plan 2011 to remove the area of the South East Wilton from the land to which the instrument applies; and
  - (ii) Insert a new Appendix 14 into *State Environment Planning Policy (Sydney Region Growth Centres) 2006* being a precinct plan for South East Wilton ("**Wilton South East Precinct**").
- (c) On 13 July 2018 Council commenced the Proceedings seeking to, amongst other matters, have the Court declare the Sydney Regions Growth Centres Amendment 2018 void.
- (d) Since the date of the Proceedings, the parties have been discussing the Council's concerns regarding the Sydney Regions Growth Centres Amendment 2018, in particular with respect to the local koala population within the Allens Creek Corridor.
- (e) The parties have agreed to enter into this Deed ("**Deed**") in order to set out how Walker and Council will work together to address matters relating to the local koala population within the Allens Creek Corridor.
- (f) This Deed is agreed to by the parties to give effect to these matters from the Effective Date.



# General terms

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## 2 Interpretation

### 2.1 Definitions

These meanings apply unless the contrary intention appears.

**Allens Creek Corridor** means the general area as marked green on the plan set out in Annexure A.

**Effective Date** means the date that Council discontinue the Proceedings in full.

**EPI** means an environmental planning instrument (including a SEPP or LEP but not including a DCP) made, or taken to have been made, under Part 3 of the *Environmental Planning and Assessment Act 1979* and in force.

**End Date** means the date that is 24 months from the date of this Deed, unless extended in accordance with clause 3.2 of this Deed.

**Government Agency** means any governmental, semi-governmental, administrative, fiscal, judicial or quasi-judicial body, department, commission, authority, tribunal, agency or entity.

**Proceedings** means the NSW Land and Environment Court proceedings number 2018/216122 between Council as applicant, Walker as first respondent and the Minister for Planning as second respondent.

**Related Entity** has the meaning given in the *Corporations Act 2001* (Cwth).

**SEPP 44** means the *State Environmental Planning Policy No. 44 - Koala Habitat Protection* as amended or replaced from time to time.

**Walker Land** means the land owned by Walker within the Wilton South East Precinct.

### 2.2 General interpretation

Headings are for convenience only and do not affect interpretation. Unless the contrary intention appears, in this document:

- (a) the singular includes the plural and vice versa;
- (b) a reference to a document includes any agreement or other legally enforceable arrangement created by it (whether the document is in the form of an agreement, deed or otherwise);
- (c) a reference to a document also includes any variation, replacement or novation of it;
- (d) the meaning of general words is not limited by specific examples introduced by "including", "for example", "such as" or similar expressions;
- (e) a reference to "person" includes an individual, a body corporate, a partnership, a joint venture, an unincorporated association, a Government Agency and an authority or any other entity or organisation;



- (f) a reference to a particular person includes the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (g) a reference to dollars, \$ or A\$ is a reference to the currency of Australia;
- (h) a reference to "law" includes common law, principles of equity and legislation (including regulations);
- (i) a reference to any legislation includes regulations under it and any consolidations, amendments, re-enactments or replacements of any of them;
- (j) a reference to "regulations" includes instruments of a legislative character under legislation (such as regulations, rules, by-laws, ordinances and proclamations);
- (k) a reference to any thing (including an amount) is a reference to the whole and each part of it; and
- (l) if a party must do something under this document on or by a given day and it is done after 5.00pm on that day, it is taken to be done on the next day.

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### 3 Koala matters

#### 3.1 Parties to work together

On and from the Effective Date:

- (a) the parties agree to work expeditiously together to develop a koala plan of management for the Allens Creek Corridor, in accordance with the guidelines in force from time to time under SEPP 44 and lodge such koala plan of management for approval with the Department of Planning and Environment. The koala plan of management is to include the following:
  - (i) a koala habitat restoration plan, with such plan to also address the allocation of funding needed in order to implement the plan. All plantings for habitat restoration to use locally sourced seed;
  - (ii) existing bushland weed management;
  - (iii) appropriate exclusion fencing installation around the koala habitat conservation area to protect koalas from Picton Road and the development interface with the South East Wilton development to facilitate safe movement of koalas through the existing culverts that already exist under Picton Road and maintaining connectivity throughout the Allens Creek Corridor;
  - (iv) bushfire asset protection zones for the Wilton South East Precinct to be clearly defined and not overlap the koala habitat conservation area;
  - (v) areas undergoing environmental protection and habitat restoration works to be clearly identified and marked with signage including interpretative/ educational information;
  - (vi) a koala monitoring program to be developed with such program to also address the allocation of funding needed in order to implement the program. Such a program could potentially include a citizen science project that can educate local communities and schools;



- (vii) the koala plan of management to be reviewed every 5 years;
  - (viii) an information brochure about the significance of the local koala population to be produced;
  - (ix) where required, measures to exclude dogs and cats from the koala habitat conservation area as far as practicable;
  - (x) the installation of permanent koala warning signage in both directions on Picton Road to the reasonable satisfaction of the Roads and Maritime Services;
  - (xi) the extent and placement of exclusion fencing referred to under clause 3.1(a)(iii) above along Picton Road that is intended to both optimise underpass use and keep koalas from entering the exclusion area; and
  - (xii) detail the extent and specification of exclusion fencing and other infrastructure that will be used along the boundary of the exclusion areas;
- (b) until the End Date, the parties agree to work expeditiously together to undertake detailed assessments of any reasonable retro-fitting measures required to optimise utility of the two existing underpass structures under Picton Road as highlighted in red on the plan set out in Annexure B and where reasonable and practicable to do so, implement such measures;
- (c) until the End Date, the parties agree to work expeditiously together and use reasonable endeavours to:
- (i) investigate the widening of the koala corridor along Picton Road (including mechanisms to achieve any such widening), in the general area shown highlighted in yellow on the plan set out in Annexure B and use reasonable endeavours to implement any agreed widening, subject to there not being a reduction in lot yield as a result of the widening having regard to the reasonable reallocation of any reduction in lot yield to other developable areas of the South East Wilton development and having regard to the requirements of any other relevant State Government Agency;
  - (ii) investigate additional koala offset areas along Picton Road through a land swap between the Wilton South East development and the Nepean Conservation Area, being the general area shown in blue on the plan set out in Annexure B;
  - (iii) discuss the potential to create additional safe under-road passage locations for koalas in the Allens Creek Corridor to enhance the connectivity potential of the koala corridor and where such additional safe under-road passage locations are agreed between the parties and are within the Walker Land, implement such under-road passages.

### 3.2 Extension to End Date

The parties agree that the End Date may be extended by agreement between the parties (acting reasonably) provided such extension is documented in writing and signed by each party.

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### 3.3 Involvement of other Authorities

- (a) The parties acknowledge that the matters set out under clause 3.1 of this Deed may:
  - (i) require consultation with various NSW State Government Agencies including but not limited to the Office of Environment and Heritage, the Department of Planning and Environment, Roads and Maritime Services and Rural Fire Services;
  - (ii) be subject to and dependent on the approval or concurrence of those agencies; and
  - (iii) be subject to and affected by the provisions of current EPIs , and relevant amendments to these EPIs, and future relevant Development Control Plans, and the conditions of any development consent affecting land within the Wilton South East Precinct.
- (b) The parties agree to use all reasonable endeavours to consult, work with and where relevant seek approval from the relevant Government Agencies in relation to the matters set out in clause 3.1.

### 3.4 Regular meetings

The parties agree to establish a koala working group in order to give effect to the matters set out in clause 3.1, with the details of that working group as follows:

- (a) The working group is to meet at least once a month;
- (b) Two representatives from each of Walker and Council will comprise the working group; and
- (c) The working group is to report back to each of Walker and Council each 3 months in respect of progress against the matters set out in clause 3.1.

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## 4 Confidentiality

Each party agrees not to disclose information provided by any other party except:

- (a) information that is publicly available;
- (b) to any person in connection with an exercise of rights or a dealing, or proposed dealing, with rights or obligations in connection with this agreement;
- (c) to officers, employees, agents, contractors, legal and other advisers and auditors of the parties;
- (d) to any party to this agreement or any Related Entity of any of them, provided the recipient agrees to act consistently with this clause;
- (e) to any party providing or proposing to provide finance to a party to this agreement;
- (f) with the consent of the party who provided the information (such consent not to be unreasonably withheld); or
- (g) any disclosure the disclosing party reasonably believes is required by any law, securities exchange or rating agency.

Each party consents to disclosures made in accordance with this clause 4.

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## 5 Term and termination

This Deed shall become effective on the Effective Date and shall remain in full force and effect until the earlier of:

- (a) the entry into formal documentation or approval of such plans or instruments as may be required (or to the extent a matter requires implementation under clause 3.1 on the Walker Land, the implementation of that matter) with respect to the matters set out in clause 3.1 with the relevant parties; and
- (b) the End Date.

Clauses 3.1(a), 4, 5 and 7 of this Deed shall survive any termination of this Deed.

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## 6 Costs

From the date of execution of this Deed and until the End Date, each party shall be responsible for and bear its own costs and expenses in relation to the negotiation of this Deed.

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## 7 General

### 7.1 Publicity

- (a) No party may make any public announcement or press release regarding the existence, content, performance or any part of this Deed except about anything that is already public knowledge other than through their fault, without the prior written consent of the other party, which consent shall not be unreasonably withheld. Without limiting clause 4, no party may include any other party's confidential information in a public announcement or press release without the prior written consent of the other party.
- (b) Subject to clause 7.1(a):
  - (i) the parties agree to make an agreed joint announcement regarding the resolution of the Proceedings and the entry by the parties into this deed; and
  - (ii) Subject to clause 7.1(b)(i), Council may at any time make a public announcement or press release concerning any policies, programs or other activities it proposes regarding subject matter relevant to this Deed, but Council must first use reasonable efforts to tell Walker of its intention to do so.

### 7.2 Variation and waiver

A provision of this document, or right, power or remedy created under it, may not be varied or waived except in writing signed by the party to be bound.

### 7.3 Consents, approvals or waivers

By giving any approval, consent or waiver the party does not give any representation or warranty as to any circumstance in connection with the subject matter of the consent, approval or waiver.





**7.4 Remedies cumulative**

The rights, powers and remedies of a party in connection with this document are in addition to other rights, powers and remedies given by law independently of this document.

**7.5 Inconsistent law**

To the extent the law permits, this document prevails to the extent it is inconsistent with any law.

**7.6 Counterparts**

This document may consist of a number of copies, each signed by 1 or more parties to it. If so, the signed copies are treated as making up a single document and the date on which the last counterpart is executed is the date of the document.

**7.7 Prompt performance**

Each party agrees to perform its obligations under this document promptly, unless a specific time for performance is expressly stated in this document.

**7.8 Severability**

If the whole or any part of a provision of this document is void, unenforceable or illegal in a jurisdiction it is severed for that jurisdiction. The remainder of this document has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected. This clause has no effect if the severance alters the basic nature of this document or is contrary to public policy.

**7.9 Rules of construction**

No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this document or any part of it.

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**8 Governing law**

**8.1 Governing law and jurisdiction**

The law in force in New South Wales governs this document and, to the extent the law permits, all matters in connection with this document including any non-contractual matter. The parties submit to the non-exclusive jurisdiction of the courts of that place.

**EXECUTED as a deed.**

Handwritten signature and initials in the bottom right corner, possibly reading 'Page 8' and 'JCH A'.

# Signing page

DATED: 11 SEPTEMBER 2018

EXECUTED by WALKER CORPORATION PTY )  
LIMITED in accordance with s127 of the )  
Corporations Act )



Signature of authorised officer

MARK WILKINSON

Name of authorised officer

DIRECTOR

Office held



Signature of authorised officer

IAN GRIST

Name of authorised officer

SECRETARY

Office held

EXECUTED on behalf of WOLLONDILLY )  
SHIRE COUNCIL )



Acting Chief Executive Officer



Witness



Mayor



Witness

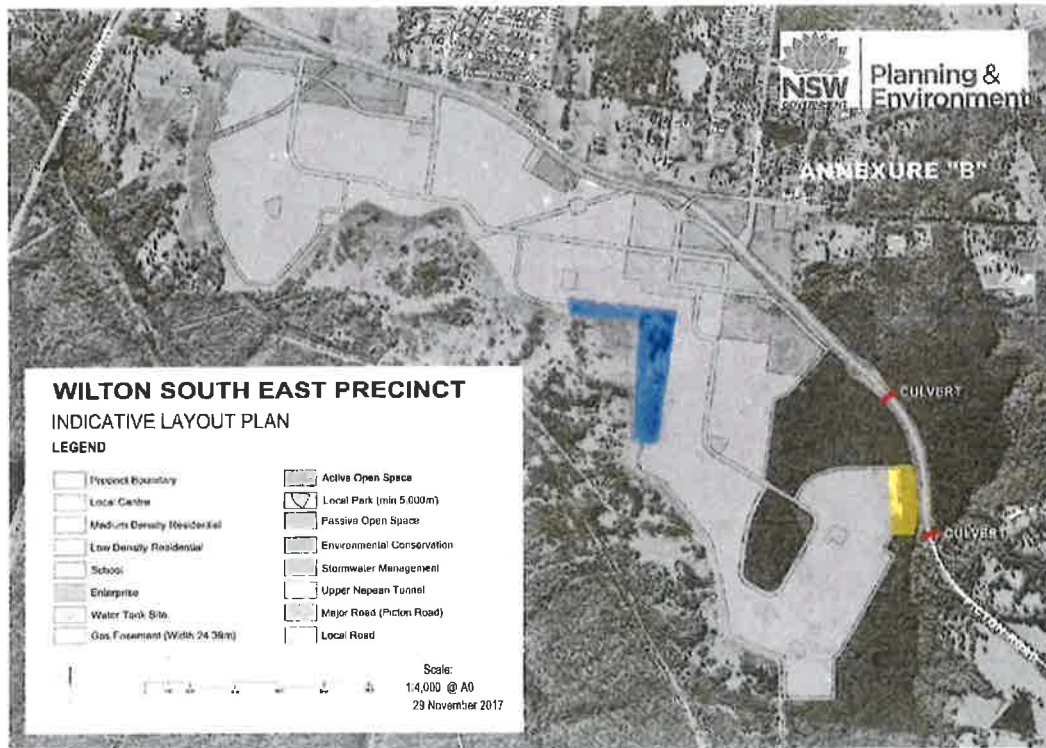


ANNEXURE A – Allens Creek Corridor



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20/11/14

Annexure B – clause 3.1(b) and (c) matters



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