

Minister for Planning
ABN 38 755 709 681

and

Focopu Pty Limited
ACN 003 679 203

Planning Agreement

Environmental Planning and Assessment Act 1979

Agreed
Ron Mallam
gmallam

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THIS deed is dated

16 MARCH 2017

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PARTIES:

MINISTER FOR PLANNING (ABN 38 755 709 681) of Level 15, 52 Martin Place, Sydney, New South Wales, 2000 (**Minister**)

And

FOCOPU PTY LIMITED (ACN 003 679 203) as trustee for the Mallam Family Trust of 63 Kangaroo Point Road, Sylvania, New South Wales, 2224 (**Developer**)

INTRODUCTION:

- A** The Developer owns the Land.
- B** The Developer proposes to carry out the Development on the Land.
- C** The Developer's consultant, Precise Planning, has made a Development Application for the Development to the Consent Authority on the Developer's behalf in respect of the Land.
- D** Clause 6.1 of the LEP provides that the Consent Authority must not grant Development Consent to the Development unless the Secretary has certified in writing to the Consent Authority that satisfactory arrangements have been made to contribute to the provision of designated State public infrastructure referred to in clause 6.1 of the LEP.
- E** The Developer has offered to enter into this deed with the Minister to secure the Development Contribution in order to enable the Secretary to provide the certification required by the LEP.

IT IS AGREED:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this deed, unless the context clearly indicates otherwise:

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

Address for Service means the address of each party appearing in Schedule 2 or any new address notified by any party to all other parties as its new Address for Service.

Authority means any Federal, State or local government or semi-governmental, statutory, judicial or public person, instrumentality or department.

Bank Guarantee means an irrevocable and unconditional undertaking:

- (a) by an Australian bank which is an eligible financial institution for the purposes of Treasury Circular NSW TC14/01 dated 24 January 2014 as amended, supplemented or substituted from time to time; and
- (b) on terms acceptable to the Minister, in the Minister's absolute discretion,

to pay the face value of that undertaking (being such amount as is required under this deed) on demand.

Base CPI means the CPI number for the quarter ending 31 March 2015.

Business Day means any day that is not a Saturday, Sunday, gazetted public holiday or bank holiday in Sydney, and concludes at 5 pm on that day.

Consent Authority means Wollondilly Shire Council.

Contribution Amount means the amount of the monetary contribution to be paid by the Developer as described in Schedule 4.

CPI means the Sydney Consumer Price Index (All Groups) published by the Commonwealth Statistician, or if that index no longer exists, any similar index which the Minister determines in its sole discretion.

CPI Adjustment Date means 1 July 2016 and each anniversary of 1 July 2016 thereafter.

Current CPI means the CPI number for the quarter ending immediately before 31 March in the relevant adjustment year.

Development means the subdivision of the Land into approximately twenty two residential lots generally in accordance with Development Application DA2014/159 which has been lodged with Wollondilly Shire Council.

Development Application has the same meaning as in the Act.

Development Consent has the same meaning as in the Act.

Development Contribution means the contributions to be provided by the Developer in accordance with Schedule 4.

Explanatory Note means the note exhibited with a copy of this deed when this deed is made available for inspection by the public pursuant to the Act, as required by the Regulation.

General Register of Deeds means the land register maintained under the *Conveyancing Act 1919* (NSW) and so titled.

GST means any form of goods and services tax payable under the GST Legislation.

GST Legislation means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Land means the land described in Schedule 3 of this deed.

LEP means *Wollondilly Local Environmental Plan 2011*.

Planning Application means:

- (a) a Development Application; or
 - (b) any other application required under the Act,
- which seeks approval for the subdivision of the Land.

Real Property Act means the *Real Property Act 1900* (NSW).

Register means the Torrens title register maintained under the Real Property Act.

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

Residential Accommodation has the same meaning as residential accommodation under the Standard Instrument.

Residue Lot means a lot that is created for one or more of the following purposes:

- (a) to be dedicated or otherwise transferred to an Authority; or
- (b) for any public utility undertaking within the meaning of the Standard Instrument as at the date of this deed;

but does not include a Super Lot.

Satisfactory Arrangements Certificate means a certificate issued by the Secretary that satisfactory arrangements have been made to contribute to the provision of designated State public infrastructure in accordance with clause 6.1 of the LEP.

Secretary means the Secretary of the Department of Planning and Environment from time to time (or nominee, whether nominated before or after the date of this deed).

Security Amount means the amount identified in clause 2(a) of Schedule 5 of this deed.

Special Infrastructure Contribution means a contribution determined in accordance with section 94EE of the Act with respect to the Land.

Standard Instrument means the standard instrument set out at the end of the *Standard Instrument (Local Environmental Plans) Order 2006*.

Subdivision Certificate has the same meaning as in the Act.

Super Lot means a lot that forms part of the Land which, following the registration of a plan of subdivision, is intended for further subdivision (including community title subdivision but excluding strata subdivision) for Residential Accommodation, but does not include a Residue Lot.

Tax means a tax, duty (including stamp duty and any other transaction duty), levy, impost, charge, fee (including a registration fee) together with all interest, penalties, fines and costs concerning them.

1.2 Interpretation

In this deed unless the context clearly indicates otherwise:

- (a) a reference to **this deed** or another document means this deed or that other document and any document which varies, supplements, replaces, assigns or novates this deed or that other document;
- (b) a reference to **legislation** or a **legislative provision** includes any statutory modification, or substitution of that legislation or legislative provision and any subordinate legislation issued under that legislation or legislative provision;
- (c) a reference to a **body** or **authority** which ceases to exist is a reference to either a body or authority that the parties agree to substitute for the named body or authority or, failing agreement, to a body or authority having substantially the same objects as the named body or authority;
- (d) a reference to the **introduction**, a **clause**, **schedule** or **annexure** is a reference to the introduction, a clause, a schedule or an annexure to or of this deed;
- (e) **clause headings**, **the introduction** and the **table of contents** are inserted for convenience only and do not form part of this deed;
- (f) the **schedules** form part of this deed;
- (g) a reference to a **person** includes a natural person, corporation, statutory corporation, partnership, the Crown or any other organisation or legal entity;
- (h) a reference to a **natural person** includes their personal representatives, successors and permitted assigns;
- (i) a reference to a **corporation** includes its successors and permitted assigns;

- (j) a reference to a right or obligation of a party is a reference to a right or obligation of that party under this deed;
- (k) an **obligation** or **warranty** on the part of 2 or more persons binds them jointly and severally and an obligation or warranty in favour of 2 or more persons benefits them jointly and severally;
- (l) a requirement to do anything includes a requirement to cause that thing to be done and a requirement not to do anything includes a requirement to prevent that thing being done;
- (m) **including** and **includes** are not words of limitation;
- (n) a word that is derived from a defined word has a corresponding meaning;
- (o) **monetary amounts** are expressed in Australian dollars;
- (p) the singular includes the plural and vice-versa;
- (q) words importing one gender include all other genders;
- (r) a reference to a thing includes each part of that thing; and
- (s) neither this deed nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting.

2 OPERATION AND APPLICATION OF THIS DEED

2.1 Operation

This deed will commence from the date this deed is signed by all the parties.

2.2 Planning agreement under the Act

This deed constitutes a planning agreement within the meaning of section 93F of the Act.

2.3 Application

This deed applies to:

- (a) the Land; and
- (b) the Development.

3 APPLICATION OF SECTIONS 94, 94A AND 94EF OF THE ACT

The application of sections 94, 94A and 94EF of the Act are excluded to the extent stated in Schedule 1.

4 DEVELOPMENT CONTRIBUTION

4.1 Developer to provide Development Contribution

The Developer undertakes to provide to the Minister or the Minister's nominee, the Development Contribution in accordance with the provisions of Schedule 4 to this deed.

4.2 Determination of Special Infrastructure Contribution

- (a) This clause will apply where:
 - (i) the Minister determines a Special Infrastructure Contribution; and
 - (ii) upon the date of determination of the Special Infrastructure Contribution, the Developer has not provided the Development Contribution in full.
- (b) If the determination of a Special Infrastructure Contribution specifies a rate or method of calculation for a contribution amount that if applied to this deed would result in a contribution amount that is less than the amount that would have been payable under this deed having regard to the rate and method of calculation of a Contribution Amount, then:
 - (i) the Special Infrastructure Contribution amount will be deemed to be the Contribution Amount for the purpose of this deed;
 - (ii) the Minister will not be required to refund any part of the Development Contribution paid by the Developer under this deed to the extent that such amounts exceed the Special Infrastructure Contribution; and
 - (iii) the Developer will be entitled to a credit to be offset against the balance of any unpaid Contribution Amounts payable under this deed as at the date of the determination for an amount equal to the difference between:
 - (A) all paid Contribution Amounts as at the date of the determination of the Special Infrastructure Contribution; and
 - (B) the Special Infrastructure Contribution.

4.3 Acknowledgement

The Developer acknowledges and agrees that the Minister:

- (a) has no obligation to use or expend the Development Contribution for a particular purpose and has no obligation to repay the Development Contribution; and
- (b) in circumstances where the Development Contribution is transferred to any Authority, has not made any representation or warranty that the Development Contribution will or must be used for a particular purpose by that Authority.

5 INTEREST

5.1 Interest for late payment

- (a) If the Developer fails to pay a Contribution Amount due to the Minister on the due date for payment, the Developer must also pay to the Minister interest at a rate of 2% above the loan reference rate charged by the Commonwealth Bank of Australia from time to time.
- (b) Interest will be payable on the daily balance of amounts due from the due date for payment of those amounts until all outstanding amounts (including interest on those amounts) have been paid to the Minister.

6 ENFORCEMENT

6.1 Developer to provide security

The Developer has agreed to provide security to the Minister for the performance of the Developer's obligations under this deed by providing the Bank Guarantee to the Minister in accordance with the terms and procedures set out in Schedule 5.

7 REGISTRATION

7.1 Registration of deed

- (a) Within 10 Business Days of receiving a copy of this deed executed by the Minister, the Developer at its own expense will take all practical steps and otherwise do anything to procure:
 - (i) the consent of each person who:
 - (A) has an estate or interest in the Land registered under the Real Property Act; or
 - (B) is seized or possessed of an estate or interest in the Land; and
 - (ii) the execution of any documents; and
 - (iii) the production of the relevant certificates of title; and

- (iv) the lodgement of this deed in a registrable form at the Land and Property Information for registration by the Registrar-General in the relevant folio of the Register for the Land, or in the General Register of Deeds if this deed relates to land not under the Real Property Act.
- (b) The Developer will take all practical steps and otherwise do anything to procure the registration of this deed within three months of the date of this deed in the relevant folio of the Register for the Land, or in the General Register of Deeds if this deed relates to land not under the Real Property Act, including promptly responding to any requisitions made by the Registrar-General in respect of this deed and/or any ancillary documents.

7.2 Evidence of registration

- (a) The Developer must provide the Minister with evidence of the lodgement of this deed pursuant to clause 7.1(a)(iv) within 10 Business Days of such lodgement at the Land and Property Information.
- (b) The Developer will provide the Minister with a copy of the relevant folio of the Register and a copy of the registered dealing within 10 Business Days of registration of this deed.

7.3 Release and discharge of deed

The Minister agrees to do all things reasonably required by the Developer to release and discharge this deed with respect to any part of the Land upon the Developer satisfying all of its obligations under this deed in respect of that part of the Land.

7.4 Developer's interest in Land

The Developer represents and warrants that it is:

- (a) the owner of the Land; or
- (b) legally and beneficially entitled to become the owner of the Land and will become the legal and beneficial owner of the Land, prior to the date that this deed is required to be registered under clause 7.1 of this deed; and
- (c) legally and beneficially entitled to obtain all consents and approvals and to compel any person referred to in or contemplated by clause 7.1(a)(i) to assist, cooperate and to otherwise do all things necessary for the Developer to comply with its obligations under clause 7.

8 DISPUTE RESOLUTION

8.1 Not commence

A party must not commence any court proceedings relating to a dispute unless it complies with this clause 8.

8.2 Written notice of dispute

A party claiming that a dispute has arisen under or in relation to this deed must give written notice to the other party specifying the nature of the dispute.

8.3 Attempt to resolve

On receipt of notice under clause 8.2, the parties must endeavour in good faith to resolve the dispute expeditiously using informal dispute resolution techniques such as mediation, expert evaluation or other techniques agreed by them.

8.4 Mediation

If the parties do not agree within 21 Business Days of receipt of notice under clause 8.2 (or any further period agreed in writing by them) as to:

- (a) the dispute resolution technique and procedures to be adopted;
- (b) the timetable for all steps in those procedures; or
- (c) the selection and compensation of the independent person required for such technique,

the parties must mediate the dispute in accordance with the Mediation Rules of the Law Society of NSW. The parties must request the president of the Law Society of NSW or the president's nominee to select the mediator and determine the mediator's remuneration.

8.5 Court proceedings

If the dispute is not resolved within 60 Business Days after notice is given under clause 8.2 then any party which has complied with the provisions of this clause 8 may in writing terminate any dispute resolution process undertaken under this clause and may then commence court proceedings in relation to the dispute.

8.6 Not use information

The parties acknowledge the purpose of any exchange of information or documents or the making of any offer of settlement under this clause 8 is to attempt to settle the dispute. No party may use any information or documents obtained through any dispute resolution process undertaken under this clause 8 for any purpose other than in an attempt to settle the dispute.

8.7 No prejudice

This clause 8 does not prejudice the right of a party to institute court proceedings for urgent injunctive or declaratory relief in relation to any matter arising out of or relating to this deed.

9 GST

9.1 Definitions

Words used in this clause that are defined in the GST Legislation have the meaning given in that legislation.

9.2 Intention of the parties

The parties intend that:

- (a) Divisions 81 and 82 of the GST Legislation apply to the supplies made under and in respect of this deed; and
- (b) no additional amounts will be payable on account of GST and no tax invoices will be exchanged between the parties.

9.3 Reimbursement

Any payment or reimbursement required to be made under this deed that is calculated by reference to a cost, expense, or other amount paid or incurred will be limited to the total cost, expense or amount less the amount of any input tax credit to which any entity is entitled for the acquisition to which the cost, expense or amount relates.

9.4 Consideration GST exclusive

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this deed are GST Exclusive. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purposes of this clause 9.

9.5 Additional Amounts for GST

To the extent an amount of GST is payable on a supply made by a party under or in connection with this deed (the **GST Amount**), the Recipient will pay to the Supplier the GST Amount. However, where a GST Amount is payable by the Minister as Recipient of the supply, the Developer will ensure that:

- (a) the Developer makes payment of the GST Amount on behalf of the Minister, including any gross up that may be required; and
- (b) the Developer provides a Tax Invoice to the Minister.

9.6 Non monetary consideration

Clause 9.5 applies to non-monetary consideration.

9.7 Assumptions

The Developer acknowledges and agrees that in calculating any amounts payable under clause 9.5 the Developer will assume the Minister is not entitled to any input tax credit.

9.8 No merger

This clause will not merge on completion or termination of this deed.

10 ASSIGNMENT AND TRANSFER

10.1 Right to assign or novate

- (a) Prior to a proposed assignment or novation of its rights or obligations under this deed, the party seeking to assign its rights or novate its obligations (**Assigning Party**) must seek the consent of the Minister and:
 - (i) satisfy the Minister (acting reasonably) that the person to whom the Assigning Party's rights or obligations are to be assigned or novated (**Incoming Party**) has sufficient assets, resources and expertise required to perform the Assigning Party's obligations under this deed insofar as those obligations are to be novated to the Incoming Party;
 - (ii) procure the execution of an agreement by the Incoming Party with the Minister on terms satisfactory to the Minister (acting reasonably) under which the Incoming Party agrees to comply with the terms and conditions of this deed as though the Incoming Party were the Assigning Party; and
 - (iii) satisfy the Minister, acting reasonably, that it is not in material breach of its obligations under this deed.
- (b) The Assigning Party must pay the Minister's reasonable legal costs and expenses incurred under this clause 10.1.

10.2 Right to transfer Land

- (a) The Developer must not sell or transfer to another person (**Transferee**) the whole or part of any part of the Land on which this deed remains registered under section 93H of the Act.

- (b) Notwithstanding clause 10.2(a) the Developer may sell or transfer the whole or any part of the Land to a Transferee if prior to the proposed sale or transfer the Developer:
 - (i) satisfies the Minister, acting reasonably, that the proposed Transferee has sufficient assets, resources and expertise required to perform any of the remaining obligations of the Developer under this deed or satisfies the Minister, acting reasonably, that the Developer will continue to be bound by the terms of this deed after the transfer has been effected;
 - (ii) procures the execution of an agreement by the Transferee with the Minister on terms satisfactory to the Minister, acting reasonably, under which the Transferee agrees to comply with the terms and conditions of this deed as though the Transferee were the Developer; and
 - (iii) satisfies the Minister, acting reasonably, that it is not in material breach of its obligations under this deed.
- (c) The Developer must pay the Minister's reasonable legal costs and expenses incurred under this clause 10.2.

10.3 Replacement Security

Provided that:

- (a) the Developer has complied with clause 10.1 and 10.2; and
- (b) the Transferee or Incoming Party (as the case may be) has provided the Minister with a replacement Security in accordance with the requirements of Schedule 5 and on terms acceptable to the Minister,

the Minister will promptly return the Security to the Developer

11 .CAPACITY

11.1 General warranties

Each party warrants to each other party that:

- (a) this deed creates legal, valid and binding obligations, enforceable against the relevant party in accordance with its terms; and
- (b) unless otherwise stated, it has not entered into this deed in the capacity of trustee of any trust.

11.2 Power of attorney

If an attorney executes this deed on behalf of any party, the attorney declares that it has no notice of the revocation of that power of attorney.

11.3 Trustee Developer

- (a) Focopu Pty Limited (ACN 003 679 203) enters into this deed in its capacity as the trustee for the Mallam Family Trust.
- (b) Focopu Pty Limited (ACN 003 679 203) warrants that:
 - (i) it is the sole trustee of the Mallam Family Trust and no action has been taken to remove or replace it;
 - (ii) it is authorised under the trust deed of the Mallam Family Trust to enter into this deed;
 - (iii) it is not in breach of the trust deed of the Mallam Family Trust; and
 - (iv) it has the power under the deed constituting the Mallam Family 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 Mallam Family Trust.
- (c) If the trustee of the Mallam Family Trust is replaced in accordance with the trust deed of the Mallam Family Trust, then:
 - (i) the Minister and the replacement trustee will enter into a new deed on the same terms as this deed; and
 - (ii) the Minister and the outgoing trustee will release each other from the requirement to observe and perform any future obligation under this deed; and
 - (iii) the outgoing trustee will pay the reasonable costs and expenses of the Minister in relation to the replacement of a trustee under this clause and the costs and expenses of registering any new deed on the title to the Land.

12 REPORTING REQUIREMENT

- (a) By 1 September each year or as otherwise agreed with the Secretary, the Developer must deliver to the Secretary a report which must include those matters set out in clauses (b) and (c), as applicable.

- (b) If the Developer has not provided a Contribution Amount in the 12 month period immediately preceding the relevant anniversary of this deed, the Report must include:
 - (i) a description of the status of the Development;
 - (ii) a forecast in relation to the anticipated progression and completion of the Development; and
 - (iii) an estimated date for when the Developer expects to lodge the first Planning Application.
- (c) If the Developer has provided one or more Contribution Amounts under this deed, the report must include:
 - (i) details of all Development Consents granted in relation to the Development;
 - (ii) a schedule that details all Contribution Amounts provided under this deed as at the date of the report; and
 - (iii) an estimated date for when the Developer expects to lodge the next Planning Application.
- (d) Upon the Secretary's request, the Developer must deliver to the Secretary all documents and other information which, in the reasonable opinion of the Secretary are necessary for the Secretary to assess the status of the Development.

13 GENERAL PROVISIONS

13.1 Entire deed

This deed constitutes the entire agreement between the parties regarding the matters set out in it and supersedes any prior representations, understandings or arrangements made between the parties, whether orally or in writing.

13.2 Variation

This deed must not be varied except by a later written document executed by all parties.

13.3 Waiver

A right created by this deed cannot be waived except in writing signed by the party entitled to that right. Delay by a party in exercising a right does not constitute a waiver of that right, nor will a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.

13.4 Further assurances

Each party must promptly execute all documents and do every thing necessary or desirable to give full effect to the arrangements contained in this deed.

13.5 Time for doing acts

- (a) If:
 - (i) the time for doing any act or thing required to be done; or
 - (ii) a notice period specified in this deed,

expires on a day other than a Business Day, the time for doing that act or thing or the expiration of that notice period is extended until the following Business Day.
- (b) If any act or thing required to be done is done after 5 pm on the specified day, it is taken to have been done on the following Business Day.

13.6 Governing law and jurisdiction

- (a) The laws applicable in New South Wales govern this deed.
- (b) The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts competent to hear appeals from those courts.

13.7 Severance

If any clause or part of any clause is in any way unenforceable, invalid or illegal, it is to be read down so as to be enforceable, valid and legal. If this is not possible, the clause (or where possible, the offending part) is to be severed from this deed without affecting the enforceability, validity or legality of the remaining clauses (or parts of those clauses) which will continue in full force and effect.

13.8 Preservation of existing rights

The expiration or termination of this deed does not affect any right that has accrued to a party before the expiration or termination date.

13.9 No merger

Any right or obligation of any party that is expressed to operate or have effect on or after the completion, expiration or termination of this deed for any reason, will not merge on the occurrence of that event but will remain in full force and effect.

13.10 Counterparts

This deed may be executed in any number of counterparts. All counterparts taken together constitute one instrument.

13.11 Relationship of parties

Unless otherwise stated:

- (a) nothing in this deed creates a joint venture, partnership, or the relationship of principal and agent, or employee and employer between the parties; and
- (b) no party has the authority to bind any other party by any representation, declaration or admission, or to make any contract or commitment on behalf of any other party or to pledge any other party's credit.

13.12 Good faith

Each party must act in good faith towards all other parties and use its best endeavours to comply with the spirit and intention of this deed.

13.13 No fetter

Nothing in this deed shall be construed as requiring the Minister to do anything that would cause the Minister to breach any of the Minister's obligations at law and without limitation, nothing in this deed shall be construed as limiting or fettering in any way the discretion of the Minister in exercising any of the Minister's statutory functions, powers, authorities or duties.

13.14 Explanatory note

The Explanatory Note must not be used to assist in construing this deed.

13.15 Expenses and stamp duty

- (a) The Developer must pay its own and the Minister's reasonable legal costs and disbursements in connection with the negotiation, preparation, execution and carrying into effect of this deed.
- (b) The Developer must pay for all costs and expenses associated with the giving of public notice of this deed and the Explanatory Note in accordance with the Regulation.
- (c) The Developer must pay all Taxes assessed on or in respect of this deed and any instrument or transaction required or contemplated by or necessary to give effect to this deed (including stamp duty and registration fees, if applicable).

- (d) The Developer must provide the Minister with bank cheques in respect of the Minister's costs pursuant to clauses 13.15(a) and (b):
 - (i) where the Minister has provided the Developer with written notice of the sum of such costs prior to execution, on the date of execution of this deed; or
 - (ii) where the Minister has not provided the Developer with prior written notice of the sum of such costs prior to execution, within 30 Business Days of demand by the Minister for payment.

13.16 Notices

- (a) Any notice, demand, consent, approval, request or other communication (**Notice**) to be given under this deed must be in writing and must be given to the recipient at its Address for Service by being:
 - (i) hand delivered; or
 - (ii) sent by facsimile transmission; or
 - (iii) sent by prepaid ordinary mail within Australia.
- (b) A Notice is given if:
 - (i) hand delivered, on the date of delivery;
 - (ii) sent by facsimile transmission during any Business Day, on the date that the sending party's facsimile machine records that the facsimile has been successfully transmitted; or
 - (iii) sent by prepaid ordinary mail within Australia, on the date that is 2 Business Days after the date of posting.

SCHEDULE 1

Table 1 – Requirements under section 93F of the Act (clause 2.2)

The parties acknowledge and agree that the table set out below provides for certain terms, conditions and procedures for the purpose of the deed complying with the Act.

REQUIREMENT UNDER THE ACT	THIS DEED
Planning instrument and/or development application – (section 93F(2)) The Developer has: (a) sought a change to an environmental planning instrument. (b) made, or proposes to make, a Development Application. (c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.	(a) No (b) No (c) Yes
Description of land to which this deed applies – (section 93F(3)(a))	See Schedule 3
Description of change to the environmental planning instrument to which this deed applies – (section 93F(3)(b))	N/A
The scope, timing and manner of delivery of contribution required by this deed – (section 93F(3)(c))	See Schedule 4
Applicability of sections 94 and 94A of the Act – (section 93F(3)(d))	The application of sections 94 and 94A of the Act is not excluded in respect of the Development.
Applicability of section 94EF of the Act – (section 93F(3)(d))	The application of section 94EF of the Act is excluded in respect of the Development.
Consideration of benefits under this deed if section 94 applies – (section 93F(3)(e))	No
Mechanism for Dispute Resolution – (section 93F(3)(f))	See clause 8
Enforcement of this deed – (section 93F(3)(g))	See clause 6
No obligation to grant consent or exercise functions – (section 93F(10))	See clause 13.13

Table 2 – Other matters

REQUIREMENT UNDER THE ACT OR REGULATION	THIS DEED
Registration of the Planning Agreement – (section 93H of the Act)	Yes (see clause 7)
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a construction certificate is issued – (clause 25E(2)(g) of the Regulation)	No
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before an occupation certificate is issued – (clause 25E(2)(g) of the Regulation)	No
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a subdivision certificate is issued – (clause 25E(2)(g) of the Regulation)	Yes (see clause 4 of Schedule 4)

SCHEDULE 2

Address for Service (clause 1.1)

Minister

Contact: The Secretary

Address: Department of Planning and Environment
23-33 Bridge Street
SYDNEY NSW 2000

Facsimile No: (02) 9228 6191

Developer

Contact: Chris Shaw

Street Address: Swaab Attorneys
1/20 Hunter Street
SYDNEY NSW 2000

Facsimile No: (02) 9233 5400

SCHEDULE 3**Land (clause 1.1)****1 Lots proposed for development**

Lot	Deposited Plan	Folio Identifier
61	21549	61/21549

SCHEDULE 4

Development Contributions (clause 4)

1 Development Contributions

The Developer undertakes to make the following Development Contributions:

- (a) The Developer undertakes to provide the Development Contribution in the manner set out in the table below:

Development Contribution	Value	Timing
Contribution Amount - Cash contribution towards designated State public infrastructure	\$9,145 for each lot created for the purpose of Residential Accommodation, excluding any Residue Lot and Super Lot, on the Land to which each Subdivision Certificate application relates.	Pursuant to clause 3 of this Schedule 4.

- (b) The Minister and Developer acknowledge and agree that the sum of the Contribution Amounts form the Development Contribution under this deed.

2 Calculation of the value of a Contribution Amount

On each CPI Adjustment Date, the value provided in column 2 of the table to clause 1(a) of this Schedule will be adjusted by multiplying that value by an amount equal to the Current CPI divided by the Base CPI.

3 Existing Residence Credit

- (a) The parties acknowledge that there are 2 dwellings located on the Land at the date of commencement of this deed which are intended to be demolished.
- (b) In recognition of the existing residences referred to in clause 3(a) and notwithstanding clause 1(a) of this Schedule, the parties agree that no contribution will be payable in relation to 2 lots for which a contribution would otherwise have been required under this deed.

4 Payment of Contribution Amounts

- (a) The Developer must pay to the Minister or the Minister's nominee (whether nominated before or after the date of this deed), each Contribution Amount prior to the issue of the relevant Subdivision Certificate.
- (b) The parties agree that the requirement to make a payment under this clause is a restriction on the issue of the relevant Subdivision Certificate within the meaning of section 109J(1)(c1) of the Act.

SCHEDULE 5

Security terms (clause 6)

1 Developer to provide Bank Guarantee

- (a) In order to secure the payment of each Contribution Amount, the Developer has agreed to provide security in the form of a Bank Guarantee.
- (b) The Bank Guarantee must:
 - (i) name the "Minister for Planning and Department of Planning and Environment ABN 38 755 709 681" as the relevant beneficiaries; and
 - (ii) not have an expiry date.

2 Bank Guarantee

- (a) Upon execution of this deed, the Developer will provide security to the Minister in the form of the Bank Guarantee for a face value equivalent to \$20,000.
- (b) From the date of execution of this deed until the date that the Developer has provided the Development Contribution in full, the Minister will be entitled to retain the Bank Guarantee.

3 Claims under the Bank Guarantee

- (a) The Minister may call upon a Bank Guarantee where:
 - (i) the Developer has failed to pay a Contribution Amount on or before the date for payment under this deed; or
 - (ii) the Developer has failed to provide one or more Bank Guarantees to ensure that at all times the value of the security held by the Minister is for a face value equivalent to the Security Amount,

and retain and apply such monies towards the costs and expenses incurred by the Minister in rectifying any default by the Developer under this deed.
- (b) Prior to calling upon a Bank Guarantee the Minister must give the Developer not less than 10 Business Days written notice.
- (c) If :
 - (i) the Minister calls upon a Bank Guarantee; and
 - (ii) applies all or part of such monies towards the costs and expenses incurred by the Minister in rectifying any default by the Developer under this deed; and
 - (iii) has notified the Developer of the call upon the Bank Guarantee in accordance with clause 3(b) of this Schedule 5,

then the Developer must provide to the Minister a replacement Bank Guarantee to ensure that at all times until the date that the Developer has provided the Development Contribution in full, the Minister is in possession of a Bank Guarantee for a face value equivalent to \$20,000.

4 Release of Bank Guarantee

If:

- (a) the Developer has satisfied all of its obligations under this deed secured by a Bank Guarantee; and
- (b) the whole of the monies secured by the Bank Guarantee have not been expended and the monies accounted for in accordance with clause 3 of this Schedule 5,

then the Minister will promptly return the Bank Guarantee (less any costs, charges, duties and taxes payable), or the remainder of the monies secured by the Bank Guarantee (as the case may be), to the Developer.

EXECUTED as a deed

Signed sealed and delivered for and on behalf of the **Minister for Planning** in the presence of:



Signature of Witness



Signature of the Minister for Planning - DELEGATE



Name of Witness in full



Minister for Planning - DELEGATE

Signed sealed and delivered by Focapu Pty Limited (ACN 003 679 203) in accordance with section 127 of the Corporations Act:



Signature of Director



Signature of Director/Secretary



Name of Director



Name of Director/Secretary