

Deed of Settlement

S701/27

+ Legal Fees

LUA03/0363 LUA09/0631

LUA09/0266



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planning • environment • local government

Deed of Settlement

Douglas Road (Lot 21) Planning Agreement

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

Wingecarribee Shire Council

Ronald James Arkcoll

Ross Gordon Hales

Kevin N. Dunlop

K.N.D. Nominees Pty

Date:

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Deed of Settlement

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[Signature]

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Wingecarribee Shire Council**



**Ronald James Arkcoll, Ross Gordon Hales, Kevin N. Dunlop and K.N.D.
Nominees Pty**

Deed of Settlement

Summary Sheet

Council:

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

Developer:

Name: Kevin N. Dunlop
Address: 10 Church Street, BOWRAL NSW 2576
Telephone: (02) 4861 8383
Facsimile: (02) 4861 1951
Email: knd@kdagroup.com.au

Landowners:

Name: Ronald James Arkcoll, Ross Gordon Hales, Kevin N. Dunlop and K.N.D.
Nominees Pty
Address: C/- Kevin N. Dunlop, 10 Church Street, BOWRAL NSW 2576
Telephone: (02) 4861 8383
Facsimile: (02) 4861 1951
Email: knd@kdagroup.com.au
Representative: Kevin N. Dunlop

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

Handwritten initials in black ink, possibly 'RAH'.

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Wingecarribee Shire Council

**Ronald James Arkcoll, Ross Gordon Hales, Kevin N. Dunlop and K.N.D.
Nominees Pty**



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Parties

Wingecarribee Shire Council ABN 49 546 344 354 of Civic Centre, Elizabeth Street, Moss Vale, NSW 2577 (**Council**)

and

Kevin N. Dunlop of 10 Church Street, Bowral NSW 2576 (**Developer**)

and

Ronald James Arkcoll of 17 Carramar Way, Goulburn NSW 2580

Ross Gordon Hales of 9 Maismonde Place, Carlingford NSW 2118

Kevin N. Dunlop of 10 Church Street, Bowral NSW 2576

K.N.D. Nominees Pty ACN 104 723 613 of 2 Walker Street Bowral NSW 2576

(**Landowners**)

Background

- A The Parties entered into the Planning Agreement.
- B The Developer and Landowners notified the Dispute under the Planning Agreement.
- C In accordance with clause 13.3 of the Planning Agreement, the Parties met in an attempt to resolve the Dispute, and the Dispute was subsequently resolved.
- D This Deed sets out the terms of the resolution of the Dispute.

Operative provisions

Part 1 - Preliminary

1 Definitions & Interpretation

1.1 In this Deed the following definitions apply:

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

Development Servicing Plans means the documents entitled 'Development Servicing Plan for Wingecarribee Shire Council Sewerage' adopted on 22

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Wingecarribee Shire Council

Ronald James Arkcoll, Ross Gordon Hales, Kevin N. Dunlop and K.N.D.
Nominees Pty



November 2006 and 'Development Servicing Plan for Wingecarribee Shire Council Water Supply' adopted on 22 November 2006.

Dispute means the dispute notified to the Council by the Developer and Landowners by way of the letter from Colin Biggers & Paisley Lawyers to Lindsay Taylor Lawyers on 9 March 2011, and includes the subject matter set out in that letter, and the subject matter of:

- (a) the letter from Council to the Developer and Landowners dated 1 December 2010;
- (b) the letter from Colin Biggers & Paisley Lawyers to Council dated 9 December 2010; and
- (c) the letter from Lindsay Taylor Lawyers to Colin Biggers & Paisley Lawyers dated 17 February 2011.

Planning Agreement means the Douglas Road (Lot 21) Planning Agreement entered into between the Parties on 23 March 2010.

Stage 3 Consent means the development consent granted to the Stage 3 Development Application.

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

2 Resolution of Dispute

- 2.1 The Parties agree to resolve the Dispute by:
 - 2.1.1 modifying the Planning Agreement as set out in the draft Deed of Variation which is Appendix 1 to this Deed; and
 - 2.1.2 notwithstanding the provisions of the Development Consents and the Stage 3 Consent, Council waiving any obligation of the Developer to pay to the Council any developer charges as prescribed by the Development Servicing Plans in relation to the Development.
- 2.2 The Developer and Landowners agree that, in consideration for the Council agreeing to resolve the Dispute in accordance with clause 2.1 and 2.2, they agree to release and forever discharge Council from all claims, actions, costs, suits and demands which they may have, may have had, or may at any time have in the future in relation to or in any way arising from the Dispute and will take no further action and make no further claims in respect of the Dispute either under the Planning Agreement, or by commencing any proceedings in any Court.

3 Bar to proceedings

- 3.1 This Deed may be pleaded as a full and complete defence by any of the Parties to any proceedings or claims arising out of the Dispute.

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Wingecarribee Shire Council**



**Ronald James Arkcoll, Ross Gordon Hales, Kevin N. Dunlop and K.N.D.
Nominees Pty**

4 No criticism of the Parties

- 4.1 The Parties agree that following the execution of this Deed they will not in any way criticise, disparage or comment adversely upon the other Party in relation to the Dispute or this Deed.

5 Costs

- 5.1 The Parties are to pay their own costs of preparing, negotiating, executing and stamping this Deed and any document related to this Deed.

6 Notices

- 6.1 Any notice, consent, information, application or request that must or may be given or made to a Party under this Deed is only given or made if it is in writing and sent in one of the following ways:
- 6.1.1 delivered or posted to that Party at its address set out in the Summary Sheet, or
 - 6.1.2 faxed to that Party at its fax number set out in the Summary Sheet.
- 6.2 If a Party gives the other Party 3 business days notice of a change of its address or fax number, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or faxed to the latest address or fax number.
- 6.3 Any notice, consent, information, application or request is to be treated as given or made if it is:
- 6.3.1 delivered, when it is left at the relevant address,
 - 6.3.2 sent by post, 2 business days after it is posted, or
 - 6.3.3 sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number.
- 6.4 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, or if on a business day, after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

7 Application of provisions of Planning Agreement

- 7.1 Clauses 19, 20, and 22-29 of the Planning Agreement apply to this Deed, with references to *this Agreement*, being read as *this Deed*.

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Wingecarribee Shire Council



Ronald James Arkcoll, Ross Gordon Hales, Kevin N. Dunlop and K.N.D.
Nominees Pty

Execution

Executed as a Deed

Dated:

9/11/2011

Executed on behalf of the Council

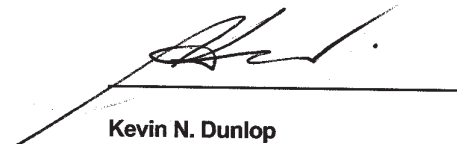


General Manager


H. Williams - PA to GM

Witness/Name/Position

Executed on behalf of the Developer



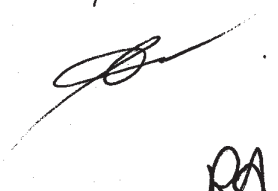
Kevin N. Dunlop



Witness

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RA
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Wingecarribee Shire Council



Ronald James Arkcoll, Ross Gordon Hales, Kevin N. Dunlop and K.N.D.
Nominees Pty

Executed on behalf of Ronald James Arkcoll

Ron J Arkcoll

Witness

Executed on behalf of Ross Gordon Hales

Ross Gordon Hales

Witness

Executed on behalf of K.N.D. Nominees Pty in accordance with s127(1) of
the Corporations Act (Cth) 2001

KEVIN N DUNLOP
DIRECTOR

Name/Position

Witness/Name/Position

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Wingecarribee Shire Council



Ronald James Arkcoll, Ross Gordon Hales, Kevin N. Dunlop and K.N.D.
Nominees Pty

Appendix

(Clause 2.1)

Draft Deed of Variation of Planning Agreement

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