

Planning Agreement

Midcoast Council (**Council**)
&
Gloucester River Run Pty Ltd &
Brian and Heather Beesley (**Developer**)

Rezoning of land 4571 Bucketts Way South
Gloucester

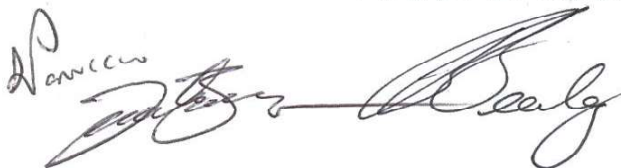
Lot 2 DP 568113, Lots 11 & 12 DP 193003

Prepared under section 7.4 of the Environmental Planning & Assessment Act 1979

FINAL 10 January 2019



Heather Beesley



Brian Beesley

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Parties

Council

Name: Midcoast Council
ABN: 44 961 208 161
Address: 88 King Street, PO Box 11 Gloucester NSW 2430
Email: council@midcoast.nsw.gov.au
Attention: General Manager

Developer

Name: Gloucester River Run Pty Ltd
ABN: 22 097 843 037
Address: 17 Moondara Terrace, Port Macquarie NSW 2444
Email: au.geoff.slack@gmail.com
Attention: Geoffrey Slack

Name: Brian and Heather Beesley
Address: PO Box 295, Gloucester, NSW 2422
Email: brianbees@gmail.com, beesleyheather@gmail.com
Attention: Brian Beesley

Background

- A. On 20 May 2013 the Developer lodged the Planning Proposal with Council for the purpose of making a future development application for development consent to carry out the Development on the Site.
- B. The Developer has since provided an offer to enter into this planning agreement including dedication of the Contribution Land to Council, completion of environmental management works on the Site in accordance with the Vegetation Management Plan and preparation of the Stormwater Management Plan on the terms of this agreement.
- C. The objectives of the planning agreement are to provide for the conservation and enhancement of the natural environment and the amenity of the urban area by retaining a natural bushland setting as part of the Development.

Operative Terms

1. Definitions and Interpretation

1.1 In this agreement, unless the context clearly indicates otherwise:

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

Construction Certificate means a construction certificate issue under Division 6.3 of the Act.

Contribution Land means the land to be dedicated by the Developer to Council as identified and described in Schedule 3.

Development means the development of the Site to be carried out or procured by the Developer in accordance with the Planning Proposal.

GST has the same meaning as in the GST Law.

GST Law has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Just Terms Act means the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW).

LPI means the Land and Property Information New South Wales or its successor body.

Planning Proposal means the planning proposal for the Site prepared by Peter Andrews & Associates Pty Ltd on behalf of the Developer dated May 2013 for the purpose of rezoning the Site to enable the Development.

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

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

Subdivision Certificate means a subdivision certificate issue under Division 6.4 of the Act.

Site means the land the subject of this planning agreement as identified and described in Schedule 2.

Stormwater Management Plan means a stormwater management for the Site prepared in accordance with the requirements of Schedule 5 and approved by Council in accordance with clause 6 of this agreement.

Vegetation Management Plan means a vegetation management plan for the Site prepared in accordance with the requirements of Schedule 4 and approved by Council in accordance with clause 5 of this agreement.

1.2 In this agreement unless the context clearly indicates otherwise:

- a) Headings are inserted for convenience only and do not affect the interpretation of this agreement.

- b) A reference in this agreement to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
- c) If the day on which any act, matter or thing is to be done under this agreement is not a business day, the act, matter or thing must be done on the next business day.
- d) A reference in this agreement to dollars or \$ means Australian dollars and all amounts payable under this agreement are payable in Australian dollars.
- e) A reference in this agreement to any law, 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.
- f) A reference in this agreement to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- g) A reference to a clause, part, schedule, or attachment is a reference to a clause, part, schedule or attachment of or to this agreement.
- h) An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- i) Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- j) A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
- k) References to the word 'include' or 'including' are to be construed without limitation.
- l) A reference to this agreement includes the agreement recorded in this agreement.
- m) A reference to a party to this agreement includes a reference to the servants, agents and contractors of the party, and the party's successors and assigns.
- n) Any schedules form part of this agreement.
- o) Neither this agreement 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. Planning agreement under the Act

- 2.1. The parties agree that this agreement is a planning agreement:
 - a) within the meaning of section 7.4 of the Act; and
 - b) governed by Subdivision 2 of Division 7.1 of Part 7 of the Act.

3. Application of this Agreement

- 3.1. This agreement applies to:
 - a) the Site; and
 - b) the Development.

4. Operation of this Agreement

- 4.1. This agreement operates from the date of execution by both parties.

5. Vegetation Management Plan

- 5.1. The Developer must submit a draft Vegetation Management Plan to Council before the lodgement of any development application relating any proposed Development on the Site.
- 5.2. Council, acting reasonably and within a reasonable time frame, must give the Developer written notice of whether it approves the draft Vegetation Management Plan or if changes are required to the draft Vegetation Management Plan before the lodgement of any development application relating to any proposed Development on the Site. If changes are required:
- a) Council will specify the nature of the changes and the reasons for the changes; and
 - b) the Developer will amend the draft Vegetation Management Plan accordingly.
- 5.3. The Developer must, at its own cost, carry out and complete the works in accordance with the Vegetation Management Plan to Council's reasonable satisfaction before dedication of the Contribution Land to Council.

6. Stormwater Management Plan

- 6.1 The Developer must submit a draft Stormwater Management Plan to Council with the lodgement of any development application relating to any proposed Development on the Site.
- 6.2. Council, acting reasonably and within a reasonable time frame, must give the Developer written notice of whether it approves the draft Stormwater Management Plan or if changes are required to the draft Stormwater Management Plan before the lodgement of any development application relating to the proposed Development on the Site. If changes are required:
- a) Council will specify the nature of the changes and the reasons for the changes; and
 - b) the Developer will amend the draft Stormwater Management Plan accordingly.

7. Dedication of Land

- 7.1 The Developer must dedicate or transfer the Contribution Land to Council:
- a) after completion of the works in the Vegetation Management Plan;
 - b) before the issue of a Subdivision Certificate for the first stage of the Development or before the issue of the first Construction Certificate for the Development, whichever occurs sooner;
 - c) at no cost to Council; and
 - d) free of any trusts, estates, interests, covenants and encumbrances (other than those specified in this agreement).

8. Application of s7.11, s7.12 and s7.24 of the Act

- 8.1 Sections 7.11, 7.12 and 7.24 of the Act apply to the Development.
- 8.2 Benefits under this agreement are excluded from being taken into consideration under section 7.11 of the Act in its application to the Development.

9. Registration of this Agreement

- 9.1 The Developer represents and warrants that it is the owner of the Site.
- 9.2 As contemplated by section 7.6 of the Act, the Developer agrees to lodge this agreement with the LPI for registration under the Real Property Act in the relevant folio of the Register no later than 10 business days after Council provides an executed copy of this agreement to the Developer.
- 9.3 The Developer, at its own expense, will take all practical steps and otherwise do anything to procure:
 - a) the consent of each person who:
 - (i) has an estate or interest in the Site registered under the Real Property Act; or
 - (ii) is seized or possessed or an estate or interest in the Site; and
 - b) the execution of any documents; and
 - c) the production of the relevant certificates of title; and
 - d) the lodgement and registration of this agreement, by the Registrar-General in the relevant folio of the Register.
- 9.4 The Developer will provide Council with a copy of the relevant folios of the Register and a copy of the registered dealing referable to this agreement within 10 business days, or other agreed time, of registration of this agreement in accordance with this clause 9.
- 9.5 Council agrees to do all things reasonably required by the Developer to release and discharge this agreement with respect to any part of the Site upon the Developer satisfying all of its obligations under this agreement in respect of that part of the Site.
- 9.6 The Developer acknowledges that Council may, in its absolute discretion, make a notation under section 10.7 of the Act about the agreement on any certificate issued under section 10.7 of the Act relating to the Site.

10. Registration of Caveat

- 10.1 The Developer acknowledges and agrees that:
 - a) When this agreement comes into operation, Council is deemed to have acquired, and the Developer is deemed to have granted, an equitable estate and interest in the Site for the purposes of section 74F(1) of the Real Property Act and consequently Council has a sufficient interest in the Site with respect of which to lodge with the LPI a caveat notifying that interest;

- b) it will not object to Council lodging a caveat in the relevant folio of the Register for the Site nor will it seek to remove any caveat lodged by Council provided the caveat does not prevent registration of any dealing or plan other than a transfer; and
 - c) it will obtain the consent to the lodgement of the caveat of each person who has an estate or interest in the Site registered under the Real Property Act.
- 10.2 Council must, at the Developer's cost (with any such cost to be reimbursed to Council promptly on demand), register at the LPI a withdrawal of caveat in respect of the Site within 5 business days after the Developer complies with clause 9.2 and Council must not lodge any other caveats on the titles to any of the Site, providing the withdrawal of the caveat will only apply in respect of such parts of the Site in respect of which registration of the agreement has been procured in accordance with clause 9.2.

11. Compulsory Acquisition

- 11.1. If the Developer fails to transfer the Contribution Land to Council or its nominee in accordance with clause 7, then the Developer:
- a) consents to Council compulsorily acquiring the relevant item of Contribution Land for compensation in the amount of \$1.10 (including any GST) without having to go through the pre-acquisition procedure under the Just Terms Act;
 - b) agrees that this clause 11 constitutes an agreement for the purposes of section 30 of the Just Terms Act as to Part 2 and Part 3 of the Just Terms Act, including the amount of compensation and the gazettal of an acquisition notice under section 19 of the Just Terms Act;
 - c) must ensure that the Contribution Land is free of all encumbrances, except those encumbrances which, in Council's reasonable opinion, do not impede the use of the land for the purpose of public access;
 - d) indemnifies Council for any additional costs associated with the acquisition relating to interests in the relevant item of Contribution Land; and
 - e) will promptly do all things necessary, and agrees to Council doing all things necessary on its behalf, to give effect to this clause 11, including without limit:
 - (i) signing any documents or forms;
 - (ii) giving land owner's consent for lodgement of any development application;
 - (iii) producing certificates of title to the Registrar-General under the Real Property Act; and
 - (iv) paying Council's costs arising from clause 11.

12. Bank Guarantee

- 12.1 Within three months of execution of this agreement, the Developer must deliver to Council an unconditional bank guarantee (in a form acceptable to Council) for the total amount of \$20,000 to cover the costs of Council compulsorily acquiring the Contribution Land.

- 12.2 If the Developer does not dedicate the Contribution Land by the time specified in this agreement, Council may issue the Developer with a notice in accordance with this clause 12.2 requiring the Developer to rectify the relevant default within five business days.
- 12.3 If the Developer fails to comply with a notice issued under clause 12.2 to the reasonable satisfaction of Council, Council may, without limiting any other avenues available to it, call on the bank guarantee to the extent necessary to rectify the default and to cover the costs of exercising its rights under clause 11.
- 12.4. Within one month after the Developer satisfies its obligation under this agreement to dedicate the Contribution Land to Council, Council must return the amount of the bank guarantee to the Developer.

13. Review of this Agreement

- 13.1 The parties will review this agreement annually for the purpose of monitoring the Developer's performance of the agreement.
- 13.2 If the review identifies a need to modify this agreement, then the parties agree to use their best endeavours to agree on the modification of this agreement having regard to the outcome of the review.

14. Dispute Resolution

- 14.1 If a dispute between the parties arises in connection with this agreement or its subject matter, then the process and procedures set out in Schedule 6 (Dispute Resolution) will apply.

15. Notices

- 15.1 Any notice, consent, information, application or request that must or may be given or made to a party under this agreement is only 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 at the beginning of this agreement; or
 - b) Emailed to that party at its email address set out at the beginning of this agreement.
- 15.2 If a party gives the other party three business days notice of a change to its address or email address, then any notice, consent, information, application or request is only given or made by that other party if delivered, posted or emailed to the latest address or email address.
- 15.3 Any notice, consent, information, application or request is taken as given or made at the following time:
- a) If it is delivered, when it is left at the relevant address; or
 - b) If is sent by post, three business days after it is posted; or

- c) If is sent by email, 24 hours after the e-mail was sent, unless the party sending the e-mail knows or ought reasonably to suspect that the e-mail was not delivered to the addressee's domain specified in the e-mail address.

15.4 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.

16. Approvals and consents

16.1 Except as otherwise set out in this agreement, and subject to any statutory obligations, a party may give or withhold an approval or consent to be given under this agreement in the party's absolute discretion and subject to any conditions determined by that party. A party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

17. Assignment and dealings

17.1 The Developer may not sell, transfer, assign or novate or similarly deal with (**Deal**) its right, title or interest in the Site or its rights or obligations under this agreement without Council's consent and unless:

- a) the Developer gives Council no less than 10 business days notice in writing of the proposed Deal; and
- b) Council gives the Developer notice in writing that it is satisfied (acting reasonably) that the person with whom the Developer wishes to deal (**Transferee**) is financially capable of complying with the terms of this agreement; and
- c) a right of Council is not diminished or fettered in any way; and
- d) the Developer and Transferee execute a deed of novation of this agreement prepared by Council in which the Transferee becomes contractually bound to fulfil the terms of this agreement.

17.2 For the avoidance of doubt, the Developer may not give Council a notice Deal with the Site under clause 17.1(a) if it is in breach of the agreement.

18. Costs

18.1 The Developer agrees to pay or reimburse the reasonable external costs of Council in connection with the negotiation, preparation and execution of this agreement within 10 business days after receipt of a tax invoice from Council.

18.2 The Developer also agrees that it is responsible for any costs associated with the registration of this agreement on the title of the Site, and costs associated with the enforcement of this agreement.

19. Entire Agreement

- 19.1 This agreement contains everything to which the parties have agreed in relation to the matters it deals with. 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 agreement was executed, except as permitted by law.

20. Further acts

- 20.1 Each party must promptly execute all documents and do all things that another party from time to time reasonably requests to affect, perfect or complete this agreement and all transactions incidental to it.

21. Governing law and jurisdiction

- 21.1 This agreement is governed by the law of New South Wales. Each party submits to the non-exclusive jurisdiction of its courts and courts of appeal from them. The parties will not object to the exercise of jurisdiction by those courts of any basis.

22. Joint and individual liability and benefits

- 22.1 Except as otherwise set out in this agreement, any agreement, covenant, representation or warranty under this Agreement by two or more persons binds them jointly and each of them individually, and any benefit in favour of two or more persons is for the benefit of them jointly and each of them individually.

23. No fetter

- 23.1 Nothing in this agreement will be construed as requiring Council to do anything that would cause it to be in breach of any obligations at law, and without limitation, nothing will be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

24. Representations and warranties

- 24.1 The parties represent and warrant that they have the power to enter into this agreement and comply with their obligations under the agreement and that entry into this agreement will not result in the breach of any law.

25. Severability

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

26. Modification

- 26.1 No modification of this agreement will be of any force or effect unless it is in writing and signed by the parties.

27. Waiver

- 27.1 The fact that a party fails to do, or delays in doing, something the party is entitled to do under this agreement, does not amount to a waiver of any obligation of, or a breach of obligation by, another party.
- 27.2 A waiver by a party is only effective if it is in writing.
- 27.3 A written waiver by a party is only effective in relation to the particular obligation or breach in respect of 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.

28. GST

- 28.1 If any party reasonably decides that it is liable to pay GST on a supply made to the other party under this agreement and the supply was not priced to include GST, then recipient of the supply must pay an additional amount equal to the GST on that supply.

29. Confidentiality

- 29.1 The parties agree that the terms of this agreement are not confidential and this agreement may be treated as a public document and exhibited or reported without restriction by any party.

30. Termination

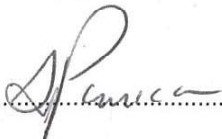
- 30.1 This agreement is terminated on the date the Developer is released and discharged in accordance with clause 30.2.
- 30.2. Council agrees to:
- a) provide a release and discharge of this agreement:
 - (i) upon the dedication or transfer of the Contribution Land in accordance with this agreement; and
 - (ii) completion of the works under the Vegetation Management Plan; and
 - (iii) approval of the Stormwater Management Plan.
 - b) do all things necessary to enable the Developer to arrange for the release and discharge to be registered by the Register-General in the relevant folio of the Register.

31. Explanatory Note

- 31.1 The explanatory note prepared for this agreement in accordance with the Environmental Planning and Assessment Regulation 2000 (NSW) must not be used to assist in construing this agreement.

Executed as an Agreement this day of 7th day of February 2019
2018.

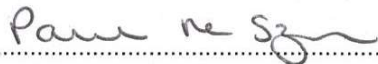
Executed by MidCoast Council)


.....

General Manager

ADRIAN PANUCCIO
.....

(print name)


.....

Mayer WITNESS

PAUL DE SZEU
.....

(print name)

Executed by Gloucester River Run)

Pty Ltd (ABN 22 097 843 037) in)

accordance with Section 127 of)

the Corporations Act 2001 by:)


.....
Director

GRAHAM BEESLEY
.....

(print name)

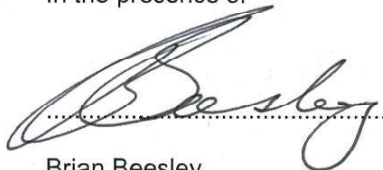

.....
Director

GEOFFREY SPAUL
.....

(print name)

Executed by Brian Beesley)

In the presence of)

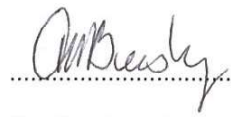

.....
Brian Beesley

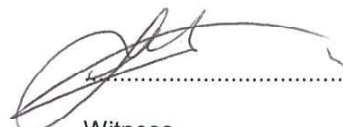

.....
Witness

Julie Yates
.....
The Justice of The Peace
(print name) No: 102486

Executed by Heather Beesley)

In the presence of)


.....
Heather Beesley


.....
Witness

Julie Yates
.....
The Justice of The Peace
(print name) No: 102486
89 King Street
Gloucester NSW 2422
Telephone: 65385250

Schedule 1

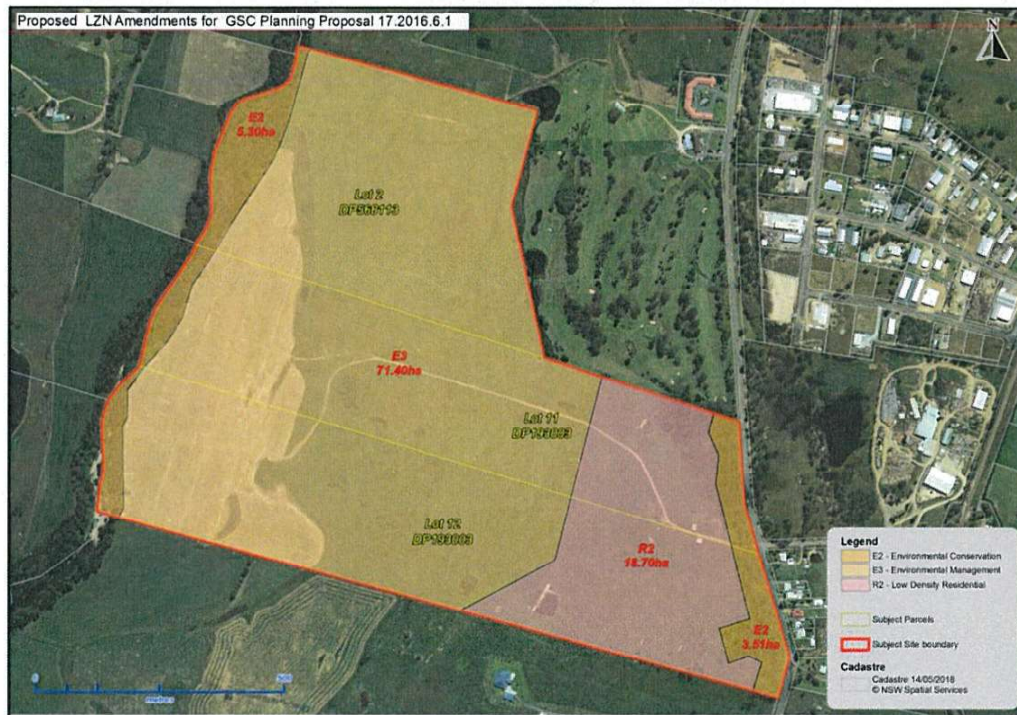
Section 7.4 Requirements

Sub-section of Act	Subject	Planning Agreement
Section 7.4 (1)	Planning instrument and/or development application – 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) Yes (b) Yes (c) Not applicable
Section 7.4(3)(a)	The land affected by this planning agreement	Lot 2 DP 568113 Lot 11 DP 193003 Lot 12 DP 193003
Section 7.4(3)(b)	The environmental planning instrument or the development affected by this planning agreement	<i>Gloucester Local Environmental Plan 2010</i>
Section 7.4(3)(c)	The scope, timing and manner of delivery of contribution required by this Agreement	See clauses 5, 6, and 7 and Schedules 3, 4 and 5.
Section 7.4(3)(d)	Applicability of sections 7.11, 7.12, s7.24 of the Act	This agreement does not exclude the operation of sections 7.11, 7.12 and 7.24. See clause 8.1.
Section 7.4(3)(e)	Consideration of benefits under this Agreement if section 7.11 applies	The benefits under this agreement are not to be taken into consideration in determining a development contribution under section 7.11. See clause 8.2.
Section 7.4(3)(f)	Dispute resolution	See clause 13 and Schedule 6.
Section 7.4(3)(g)	Enforcement and security	See clauses 9, 10, 11 and 12
Section 7.6	Registration	See clause 10.
Section 6.15(1)(d)	Requirements relating to the issue of subdivision certificates	Clause 7

Schedule 2

Site

Site means the land the subject of this planning agreement being Lot 2 DP 568133 and Lots 11 and 12 DP 193003 known as 4571 The Bucketts Way South, Gloucester as shown on the plan below:



Site ownership

Lot	Owner
Lot 2 DP 568133	Gloucester River Run Pty Ltd
Lot 11 DP 193003	Gloucester River Run Pty Ltd
Lot 12 DP 193003	Brian and Heather Beesley

MBeesley

Gloucester River Run Pty Ltd

Hanne

Black

Beesley

Schedule 2

Site

Site means the land the subject of this planning agreement being Lot 2 DP 568133 and Lots 11 and 12 DP 193003 known as 4571 The Bucketts Way South, Gloucester as shown on the plan below:



Site ownership

Lot	Owner
Lot 2 DP 568133	Gloucester River Run Pty Ltd
Lot 11 DP 193003	Gloucester River Run Pty Ltd
Lot 12 DP 193003	Brian and Heather Beesley

Beesley
Beesley
Beesley

Pennell
Pennell

Schedule 3

Site Contribution Land

Contribution Land means the area of land approximately 3.51 hectares in size on the Bucketts Way frontage of the Site which must be dedicated by the Developer to the Council in accordance with this agreement as shown in hatching on the plan below:



Outbreedy *Emile Denny* *Beasley*
Blade *Penner*

Schedule 3

Site Contribution Land

Contribution Land means the area of land approximately 3.51 hectares in size on the Bucketts Way frontage of the Site which must be dedicated by the Developer to the Council in accordance with this agreement as shown in hatching on the plan below:



Beesby
AmBeesby
APennock

Schedule 4

Vegetation Management Plan

Purpose of Vegetation Management Plan

The Developer must dedicate the Contribution Land to Council to protect important native vegetation and habitat on the Site and to mitigate and offset the ecological impacts of the Development.

Before dedication of the Contribution Land to Council the Developer must commission relevantly qualified and experienced personnel to conduct primary intervention works to protect and restore habitat and function of the Contribution Land and to initiate an appropriate restoration trajectory of the Contribution Land. This work must be carried out in the accordance with the vegetation management plan prepared in accordance with this schedule.

This schedule sets out the principles that will underpin the vegetation management plan.

Preparation of Vegetation Management Plan

The Developer must prepare the vegetation management plan for the Contribution Land:

- to define the objectives and scope of the primary intervention works;
- in accordance with the findings of the GHD Biodiversity Report (June 2017) and the requirements set out in this schedule; and
- using a qualified and experienced ecological consultant, with input from qualified bushland regenerators

Scope of Vegetation Management Plan

The vegetation management plan will apply to the Site in so far as it will guide approved tree and habitat removal and set-out the practical measures to minimise clearing, manage the removal of approved hollow-bearing trees and utilise felled timber and native vegetation for rehabilitation and restoration activities.

The vegetation management plan will apply to the Contribution Land for the purposes of restoring the habitat within the Contribution Land. It will adopt a multi-pronged approach including (but not limited to);

- fencing and protection;
- natural regeneration;
- supplementary re-planting to offset trees that are removed from other parts of the Site; and
- habitat enhancement (logs, nesting boxes, food-plants for target fauna); and
- integrated weed management.

Objectives of the Vegetation Management Plan

The objectives of the vegetation management plan will be to:

- protect existing remnant native vegetation;
- encourage regeneration of functional native vegetation and enhance the habitat for native wildlife;
- control invasive weeds;
- minimise the impact of the Development on the native vegetation; and
- perform monitoring and maintenance activities to ensure that implementation of the mitigation measures are adequate and a satisfactory restoration outcome is achieved.

Vegetation and habitat removal

The vegetation management plan will:

- identify native trees and vegetation that are to be removed from the Site and specifically map the locations and define the hollow-bearing trees, koala food trees and Slaty Red Gum trees that are to be removed to facilitate development on the Site;
- minimise the loss of native trees from within the Site and especially minimise the removal of trees of good growth form, koala feed trees species, trees with hollows, trees with potential to form hollows, Slaty Red Gum trees;
- identify the provisions to ensure tree loss is minimised through lot lay-out patterns, one sided roads to retain natural areas, retention of trees in internal road verges, identification of a drainage reserve in the central southern boundary to protect existing trees outside the E2 Conservation zone;
- define the vegetation removal procedures for approved clearing, including procedures for the ecological supervision and appropriate dismantling of hollow-bearing trees to protect resident fauna;
- define the procedures for handling, transport and installation of logs, refurbished natural hollows, artificial nesting boxes and mulch into the Contribution Land;
- define other practical measures associated with vegetation and habitat removal and management, as required.

Natural Regeneration

The regeneration of the habitat should be undertaken by promoting natural ecological processes under an assisted natural regeneration regime with the aim being to accelerate, rather than replace, natural successional processes by removing or reducing barriers to natural forest regeneration such as soil degradation, competition with weedy species, and recurring disturbances (e.g., fire, grazing, and timber harvesting).

For the purposes of assisted natural regeneration of the habitat within the Contribution Land the following measures should be adopted by the Developer (the Works):

- protect the Contribution Land from disturbance through the installation of appropriate fencing, signage and other practical measures;
- undertake appropriate weed control measures as per methods described below;
- allow natural regeneration of plants within the regeneration area from all strata including groundcover, understorey and canopy; and
- if mulching is to be carried out within the Contribution Land only organic, weed-free natural mulch (preferably from on-site sources) shall be used.

Vegetation Planting

In relation to offsetting the impacts of the tree vegetation loss to facilitate the residential development on the rezoned land:

- replacement trees must be provided through active planting and maintenance of native trees into appropriate parts of the Contribution Land to offset the loss of native trees for development;
- a tree re-planting strategy must be applied for each native tree that is removed on the following basis:
 - re-planting of any Slaty Red Gum *Eucalyptus glaucina* at a ratio of 4:1 which will be propagated from local plant stock; and
 - re-planting of any other native trees with a trunk diameter greater than 150mm at a ratio of 2:1 and
 - re-planting of any other native trees at a ratio of 1:1.
- each replacement native tree shall be of the same species as the native tree it is replacing;
- not less than 20 Craven Grey Box *Eucalyptus largena* shall be used in the planting and these can be used as offset plants for any native tree other than Slaty Red Gum;
- the planting must be undertaken on the Contribution Land;
- the plantings must be placed irregularly within the Contribution Land to simulate a natural plant community;
- street trees must also be provided as part of the Development. Such trees are in addition to the replanting requirements of native trees. Street tree selection is to be made from the following species and size:
 - *Syzygium australe* 'Bush Cherry' - 10m high x 4m wide
 - *Tristaniopsis laurina* 'Water Gum' - 8m high x 4m wide
 - *Waterhousia floribunda* 'Weeping Lilly Pilly' - 12m high x 8m wide
 - *Baloghia inophylla* 'Brush Bloodwood' - 10m x 4m wide
 - *Cupaniopsis parvifolia* 'Small Leaf Tuckeroo' - 10m x 4 wide

- Any subdivision of development of the Site is to be accompanied by a landscape plan prepared by a qualified landscape architect.
- In the case of subdivision, planting densities should be one street tree per two residential lots and street trees must be installed and maintained as part of the subdivision construction process. Details of the locations, species and establishment/maintenance methods for street trees in the subdivision are to be provided at the development application stage for approval by Council.

Integrated Weed Management

A primary integrated weed management program must be implemented on the Contribution Land. This would involve an approach that incorporates weed management techniques such as:

- physical control such as hand removal, mulching, tilling and mowing;
- chemical control through the use of appropriate herbicides;
- biological control where available;
- cultural control by encouraging the competitiveness of desired species that helps to suppress weed growth by reducing access to available sunlight, nutrients and moisture; and
- Parramatta grass has been identified as a priority for control

The Developer is responsible only for one primary treatment and one follow-up treatment in the Contribution Land before the dedication of that Land to Council. The intent of the primary treatment is to provide Council with land that is resilient and functional.

Development Design Principles

Any development of the Site shall be sensitively designed where it is adjacent to the Contribution Land. The following measures must be identified in the vegetation management plan and subsequently in any development planning:

- Any subdivision design should ensure that privately owned lots should not have rear boundaries to the Contribution Land (ie one-sided roads are to be provided);
- Appropriate transitioning should occur between the Contribution Land and any development. Roads and / or access driveways are to be adjacent to the Contribution Land to form adequate buffer areas;
- Native trees shall be retained in street verges, rear yards and other spaces, wherever possible;
- An open space drainage reserve is to be provided in the vicinity of the remnant native trees near the central southern boundary of the Site. A bio-retention facility for water quality purposes is to be provided for within this drainage reserve and shall be designed in a manner that protects all existing native trees.

Schedule 5

Stormwater Management Plan

As part of any future development of the Site a number of water quality objectives must be achieved in a Council approved stormwater management plan.

This schedule sets out the objectives of the stormwater management plan:

- To safeguard the surrounding environment to the site by maintaining or improving the quality of the stormwater run-off from any development of the Site;
- To protect and restore adjacent aquatic, estuarine or riparian ecosystems and bushland areas to the development site;
- To harvest rainwater and urban stormwater runoff for use where appropriate;
- To control the hydrological impacts of development on receiving surface and ground water systems by controlling the frequency, magnitude and duration of flows to preserve, as far as practicable, pre-development groundwater and surface water regimes and interactions;
- To control the impacts of the development on channel bed and bank erosion by controlling the magnitude, nature and duration of sediment-transporting flows;
- To promote disconnection of impervious areas to the drainage system by introducing appropriate measures to minimise the rate, frequency and volume of urban runoff events in order to improve WSD performance;
- To incorporate and integrate water quality measures into quality development design so that it fits into the natural landscape and contributes to the amenity of such development.

Schedule 6

Dispute Resolution

1.1 Dispute

Before court proceedings (other than for urgent interlocutory relief) may be commenced, the following steps must be taken to attempt to resolve any dispute that arises out of or in connection with this agreement.

1.2 Notice of Dispute

Notice (the notice of dispute) must be given in writing by the party claiming that a dispute has arisen to the other party (or parties) to this agreement specifying the nature of the dispute.

1.3 Negotiation

Within 10 business days of receipt of notice of dispute, the parties must meet to discuss the matter in good faith and use reasonable endeavours to settle or resolve the dispute (including attempting to agree upon an appropriate procedure for resolving the dispute).

1.4 Resolution Institute

If within 10 business days of the parties meeting to discuss the dispute:

- (a) the dispute is not resolved; or
- (b) an appropriate alternative dispute resolution process is not agreed,

then the parties will refer the dispute to the:

Resolution Institute
Level 1, 13-15 Bridge Street
Sydney NSW 2000
Telephone: (61-2) 9251 3366
Fax (61-2) 9251 3733

for facilitation of a mediation in accordance with Resolution Institute's Mediation Rules.

1.5 Mediator

The mediator appointed under this process must have reasonable qualifications and practical experience in the area of the dispute. If within 10 business days after referral of the dispute to the Resolution Institute the parties have not agreed upon the mediator or other relevant particular, the mediator and any other particular will be determined in accordance with the Resolution Institute's Mediation Rules.

1.6 Litigation

If the dispute is not finally resolved in accordance with this process, either party is at liberty to litigate the dispute.

1.7 Continue to perform obligations

Each party must continue to perform its obligations under this agreement despite the existence of a dispute.



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