

THIS PLANNING AGREEMENT made on

2019

BETWEEN

Parties

MID – COAST COUNCIL of Administrative Centre, Breese Parade, Forster, New South Wales, 2428 (**Council**)

AND **RAYMOND JOHN HILL and SUSAN EVE HILL** of 661 The Lakes Way, Darawank, NSW 2428 their successors and assigns.

(**Landowner**) of the second part.

Background

- A. The Landowner owns the Land.
- B. The Landowner has lodged with the Council a Development Application for the subdivision of the Land to create 3 lots comprising a Biodiversity Lot and 2 Development Lots.
- C. The Landowner has offered to dedicate the Biodiversity Lot to the Council in order to allow the creation of the Development Lots consistent with the provisions of clause 4.1B of *Great Lakes Local Environmental Plan 2014*.
- D. The parties have therefore agreed to enter into this Agreement to make the Provision.

Operative Provisions

1. Definitions and interpretation

- 1.1 In this Agreement, unless the context admits otherwise the following definitions apply:

Agreement means this planning agreement.

Biodiversity Lot is that part of the Land shown cross-hatched on Plan A.

Dealing, in relation to the Land, means, without limitation, a sale, transfer, assignment, mortgage, charge, encumbrance or other dealing with the Land or any part thereof.

Dedicate includes Transfer and dedication is to be construed accordingly.

Degrade means to alter the Biodiversity Lot in a way which diminishes its ecological value.

Development Application means an application made or to be made under Part 4 of the EP&A Act by or on behalf of the Landowner.

Development Consent has the same meaning as in the EP&A Act.

Development Lots means the two 1 hectare lots created generally in accordance with the lots shown in Plan A.

EP&A Act or Act means the *Environmental Planning and Assessment Act* 1979 (NSW).

Explanatory Note means the explanatory note required by the *Environmental Planning and Assessment Regulation 2000* (NSW).

GLLEP 2014 means the *Great Lakes Local Environmental Plan 2014*.

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) and any other Act or regulation relating to the imposition or administration of the GST.

Land means the land the subject of this Agreement, owned by the Landowner and described in the Second Schedule.

NSW LRS means NSW Land Registry Services **party** means a party to this Agreement, including its successors and assigns.

Plan A means the plan marked "A" included in Annexure "A" to this Agreement.

Plan of Subdivision means a registered plan of subdivision within the meaning of section 195 of the *Conveyancing Act 1919* (NSW).

Provision means the dedication of the land comprising the Biodiversity Lot to the Council in accordance with the Third Schedule .

registrable form means the document is properly executed and witnessed bears an imprint from the Office of State Revenue to the effect that all necessary duties have been paid, and is otherwise capable of immediate registration by the Registrar-General on the title of the relevant piece or parcel of land.

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

Registrar-General means the Registrar-General, under the Real Property Act.

Service Easements means the easement for pipeline and easement for water supply pipeline registered in the second schedule of the title to the Land.

Subdivision Certificate means a certificate issued under section 6.3(1)(d) of the Act.

Transfer means a transfer in the approved form under the *Real Property Act 1900* (NSW) which is duly stamped, signed and otherwise in registrable form for the purpose of transferring the Biodiversity Lot to Council.

1.2 In the interpretation of this Agreement, the following provisions apply unless the context otherwise requires:

- 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 and attachments form part of this Agreement.

- o) Any dimension given is approximate.
- p) Nothing contained in this Agreement will be deemed or construed as creating the relationship of partnership.
- q) No waiver of any breach of this Agreement or of any of its terms will be effective unless the waiver is in writing and signed by the party against whom the waiver is claimed, and no waiver of any breach will operate as a waiver of any other breach or subsequent breach.
- r) In the interpretation of this agreement no rule of construction shall apply to disadvantage one party on the basis that that party put forward the particular covenant, term or provision.

2. Planning Agreement under the Act

The Parties agree that this Agreement is a planning agreement governed by Subdivision 2 of Division 7.1 of Part 7 of the EP&A Act.

3. Application of this Agreement

This Agreement applies to the Land and the subdivision of the Land to create the Biodiversity Lot and the Development Lots.

4. Operation of this Agreement

4.1 This Agreement is entered into and takes effect on its execution by all the parties but the requirement to Transfer the Biodiversity Lot in accordance with clause 5 of this Agreement does not take effect until the Council imposes a condition under section 7.7(3) of the EP&A Act on a Development Consent for the subdivision of the Land to create the Biodiversity Lot.

4.2 This Agreement will terminate after the Transfer of the Biodiversity Lot in accordance with clause 5 of this Agreement and the Third Schedule and the Landowner is otherwise in compliance with this Agreement.

5. The Landowner's Obligations: the nature, extent, timing and manner by which the Provision is to be made

The Landowner will make the Provision including the dedication of the Biodiversity Lot to Council in accordance with the Third Schedule and the terms of this Agreement.

6. Acknowledgements

- 6.1 The Council acknowledges that the Landowner will dedicate the Biodiversity Lot to Council and that the Council will take this Planning Agreement into consideration when considering a Development Application for the subdivision of the Land.
- 6.2 The Council acknowledges that when section 7.11 contributions are assessed for the subdivision that creates the Biodiversity Lot, credit will be given to the Landowner for section 7.11 contributions equivalent to one residential lot.

7. Dealings

7.1

The Landowner must not assign, transfer, novate, dispose of, sell or otherwise deal with its right, title or interest in the whole or any part of the Land or its rights or obligations under this agreement to another person (Transferee) until:

- (a) the Biodiversity Lot has been dedicated to the Council; and

the Landowner is otherwise in compliance with this Agreement.

8. Ownership of the Land and Registration of this Agreement – Section 7.6 of the Act

- 8.1. The Landowner represents and warrants to Council that as at the date of this Agreement, they are the legal and beneficial owners of the Land.
- 8.2. The parties shall do all things reasonably necessary to enable Council to obtain registration of this Agreement under section 7.6 of the Act by the Registrar-General as soon as possible after the execution of this Agreement, such that on registration of this Agreement, the Registrar-General will have made an entry in the relevant Folio of the Register kept under the Real Property Act in relation to the Land.
- 8.3. The Landowner must:
 - (a) procure the consent of each person who has an estate or interest in the Land registered under the Real Property Act or is seized or possessed of an estate or interest in the Land; and

- (b) deliver to Council on the date this Agreement is made, in registrable form, all such documents as are necessary to obtain such registration, together with the necessary fees for registration; or

8.4. If the title documents are in the possession of another person then the Landowner must procure production of the title documents or deliver to Council a deed poll executed by that person that contains covenants in favour of Council to produce the title documents at NSW LRS when required by Council and cause them to remain there until the Agreement is registered and that the person will not otherwise part with possession of the title deeds without the consent of Council.

8.5. Council shall do all things necessary to remove the notification under section 7.6 of the Act when the Landowner's obligations under this Agreement have been performed.

9. Variation of this Agreement

Any amendment to this Agreement shall only be effective if in writing and signed by all parties and registered under section 7.6 of the Act.

10. Dispute Resolution

10.1. If a dispute arises out of or relates to this Agreement, including any dispute as to breach or termination of this agreement or as to any claim in tort, in equity or under any legislation, a party cannot commence any court proceedings relating to the dispute unless that party has complied with the following clauses except where that party seeks urgent interlocutory relief.

10.2. A party claiming that a dispute has arisen must serve a notice on the other parties specifying the nature of the dispute.

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

10.4. If the parties do not agree within 21 days of service of the notice, 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; and

(c) the selection and compensation of the independent person required for that technique,

the parties must mediate the dispute in accordance with the Mediation Rules of the Law Society of New South Wales and must request the President of the Law Society of New South Wales or the President's nominee to select the mediator and determine the mediator's remuneration.

11. Security and Enforcement

11.1. If the Landowner does not Transfer any part of the Biodiversity Lot that it owns to Council in accordance with clause 1 of this Schedule, the Landowner consents to Council compulsorily acquiring the Biodiversity Lot in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW) for the amount of \$1.00.

11.2. The Landowner and Council agree that:

- (a) this clause 11 is an agreement between them for the purposes of section 30 of the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW); and
- (b) in this clause 11 they have agreed on all relevant matters concerning the compulsory acquisition and the compensation to be paid for the acquisition.

11.3. The Landowner indemnifies and agrees to keep indemnified Council, and/or his nominee against all claims made against Council or his nominee as a result of any compulsory acquisition by Council or his nominee of the whole or any part of the Biodiversity Lot.

11.4. The Landowner must pay Council, promptly on demand, an amount equivalent to all costs incurred by Council compulsorily acquiring the whole or any part of the Biodiversity Lot as contemplated by this clause 11.

12. Application of sections 7.11, 7.12 and 7.24 of the Act to the Development.

The application of sections 7.11, 7.12 and 7.24 of the Act are excluded to the extent stated in clause 6.3 and the First Schedule.

13. Notices

13.1. 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 below.
- (b) emailed to that party at its email address set out below.

Council

Attention: General Manager

Mid – Coast Council

Address: PO Box 450, FORSTER, NSW 2428

Landowner

Attention: RJ and SE Hill

Address: 661 The Lakes Way DARAWANK 2428

13.2. If one party gives to another 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.

13.3. Any notice, consent, information, application or request is to be treated as given or made at the following time:

- (a) if it is delivered, when it is left at the relevant address.
- (b) if it is sent by post, 2 business days after it is posted.
- (c) if it is sent by email, as soon as the sender receives a "delivery receipt" from the recipient..

13.4. If any notice, consent, information, application or request is delivered, or a delivery receipt 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.

14. Costs

Each party shall bear its own legal costs and disbursements in connection with the negotiation, preparation and execution of this Agreement.

15. Entire Agreement

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.

16. Further acts

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.

17. Governing law and jurisdiction

This Agreement is governed by the law of New South Wales. The parties submit 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 on any basis.

18. Joint and individual liability and benefits

Except as otherwise set out in this Agreement, any agreement, covenant, representation or warranty under this Agreement by 2 or more persons binds them jointly and each of them individually, and any benefit in favour of 2 or more persons is for the benefit of them jointly and each of them individually.

19. No fetter

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

20. Representations and warranties

The parties represent and warrant that they have 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.

21. Severability

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 this Agreement is not affected.

Note: This clause does not void the ability of either party to undertake mediation under clause 10.

22. Waiver

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 breach of obligation by, another party. A waiver by a party is only effective if it is in writing. 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.

23. Explanatory Note

The Explanatory Note shall not be used to assist in construing this Agreement.

24. GST

25.1 Interpretation

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

25.2 Intention of the parties

The parties intend that:

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

25.3 Reimbursements

Any payment or reimbursement required to be made under this Agreement 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.

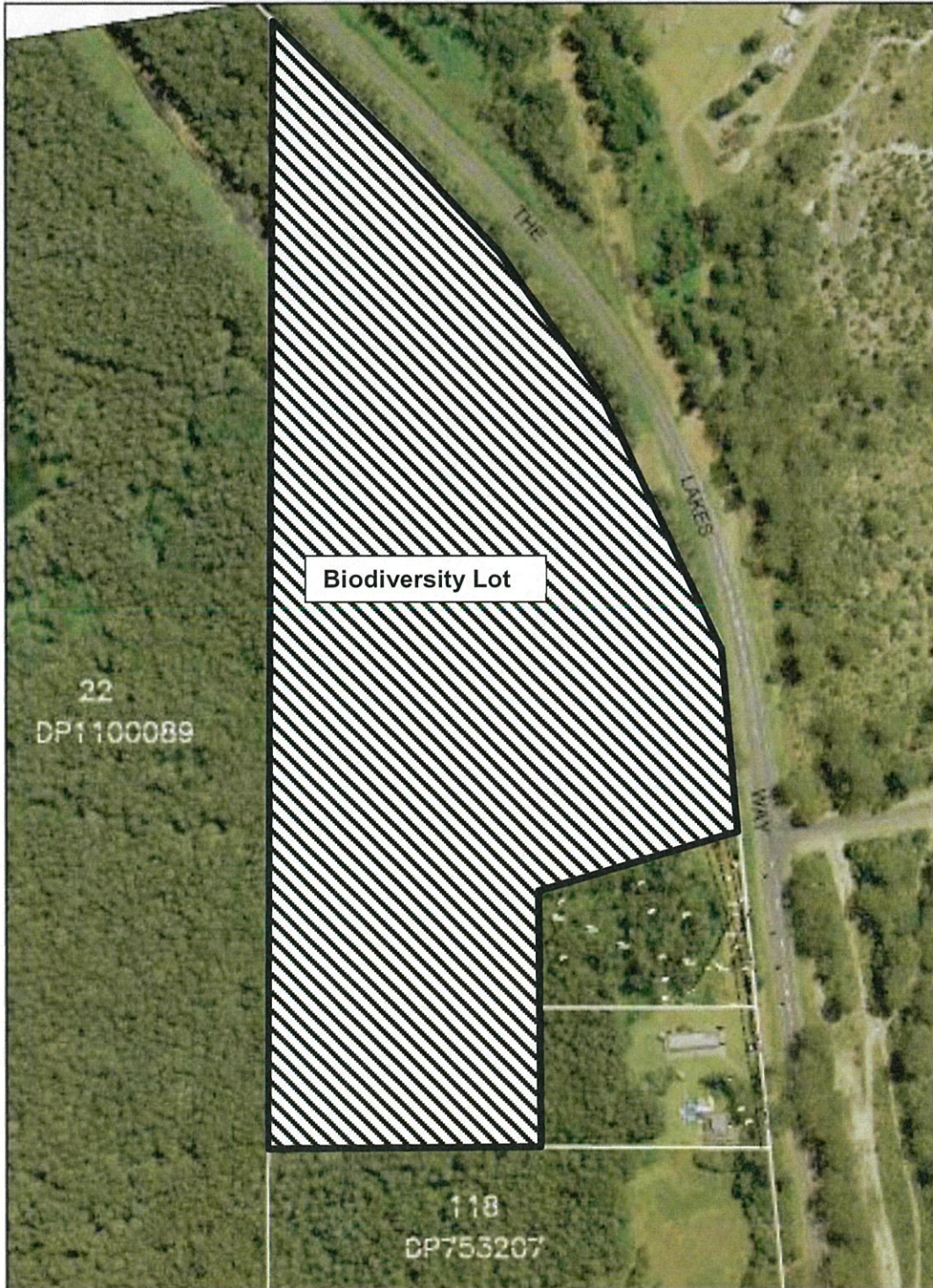
25.4 Consideration GST exclusive

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this Agreement 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 25.

25.5 No merger

This clause 25 will not merge on completion or termination of this Agreement.

Annexure "Plan A" (the hatched Biodiversity Lot)



THE FIRST SCHEDULE – SECTION 7.4 REQUIREMENTS

SUBJECT and SUB-SECTION OF THE ACT	THE PLANNING AGREEMENT
Planning instrument and/or Development Application - (Section 7.4(1)) The Landowner has: <ul style="list-style-type: none"> (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. 	<ul style="list-style-type: none"> (a) No (b) Yes (c) No
Description of the land to which the Planning Agreement applies - (Section 7.4(3)(a))	The whole of the Land.
Description of change to the environmental planning instrument to which the Planning Agreement applies - (Section 7.4(3)(b))	N/A
The scope, timing and manner of delivery of contribution required by the Planning Agreement - (Section 7.4(3)(c))	See the Third Schedule
Applicability of section 7.11 of the Act - (Section 7.4(3)(d))	The application of section 7.11 of the Act is not excluded, <i>except as referred to in clause 6.2 of this Agreement</i>
Applicability of section 7.12 of the Act - (Section 7.4(3)(d))	The application of section 7.12 of the Act is excluded.
Applicability of section 7.24 of the Act - (Section 7.4(3)(d))	The application of section 7.24 of the Act is not excluded.
Consideration of benefits under this Agreement if section 7.11 applies (Section 7.4(3)(e))	N/A
Mechanism for dispute resolution - (Section 7.4(3)(f))	See clause 10.
Enforcement of the Planning Agreement - (Section 7.4(3)(g))	See clause 11.
Registration of the Planning Agreement - (Section 7.4(3)(g)) The Parties agree that the Planning Agreement will be registered in accordance with clause	Yes
No obligation to grant consent or exercise functions - (Section 7.4(9))	No obligation. See clause 20.

THE SECOND SCHEDULE – THE LAND

The Land is Lot 1 DP 125692, known as 661 The Lakes Way, Darawank.

THE THIRD SCHEDULE – THE DEVELOPMENT CONTRIBUTION

1. Transfer of land



- (a) The Landowner must Dedicate the Biodiversity Lot to the Council. In order to give effect to the dedication there must be a subdivision of the Land to create the parcels of land that will comprise the Biodiversity Lot and the Development Lots.
- (b) Within 1 month of the granting of Development Consent to the subdivision creating the Biodiversity Lot and Development Lots the Landowner must lodge an application for a Subdivision Certificate in respect of the Biodiversity Lot and the Development Lots with the proposed Plan of Subdivision showing the Biodiversity Lot marked with the words “public reserve”.
- (c) Within 1 month of any approval being given by the Council for the Subdivision Certificate, the Landowner must:
 - (i) lodge the Plan of Subdivision for registration under s195G of the Conveyancing Act 1919 at the NSW LRS.

in circumstances where the Biodiversity Lot is free from any encumbrances other than the Service Easements and other restrictions on the title imposed by the NSW Government or its Agencies; and
 - (ii) prior to lodging the Plan of Subdivision for registration, serve on Council or its nominee relevant discharges in registrable form in relation to any encumbrances other than the Service Easements and other restrictions on the title imposed by the NSW Government or its Agencies.
- (d) The Landowner will not seek compensation for the dedication of the Biodiversity Lot.
- (e) The Landowner will pay all rates and taxes owing in respect of the Biodiversity Lot up to and including the date of dedication of the Biodiversity Lot after which Council will be liable.
- (f) The Landowner, from the date of this Agreement, must not undertake any action or activity, prior to the dedication that will degrade or have a detrimental effect on the conservation or Aboriginal heritage values of the Biodiversity Lot except where the Landowner is:
 - (i) directed to undertake such action or activity by another government agency or instrumentality (such as the Rural Fire Service);
 - (ii) maintaining existing access and existing tracks; or
 - (iii) otherwise required by law to undertake such an action or activity.

Execution

21 The Common Seal of Mid - Coast Council was
hereunto affixed pursuant to resolution made on
~~13 December 2017~~ 25 July 2017


.....
General Manager


ABN: 44 961 208 161

.....
Mayor

ADRIAN PANUCCIO
.....
Name of Witness in full

DAVID WEST
.....
Signature of Witness NAME

Signed by the **Landowner**
RAYMOND JOHN HILL


.....

Signed by the **Landowner** SUSAN EVE HILL


.....

Robyn Joy Shelley
.....
Name of Witness in full


.....
Signature of Witness