

# Voluntary Planning Agreement

## **Parry's Cove Subdivision**

Mid-Coast Council  
*ABN 44 961 208 161*

Sheargold Property Developments Pty Ltd  
*ABN 82 000 260 462*

SGD 1 Pty Ltd  
*ABN 15 165 286 840*

SGD 2 Pty Ltd  
*ABN 18 165 287 285*

# Contents

|                       |   |    |
|-----------------------|---|----|
| <b>Parties</b>        | <b>1</b>  |    |
| <b>Background</b>     | <b>2</b>  |    |
| <b>Operative part</b> | <b>2</b>  |    |
| 1                     | <i>Definitions</i>  | 2  |
| 2                     | <i>Interpretation</i>   | 4  |
| 3                     | <i>Planning Agreement under the Act</i>                                       | 5  |
| 4                     | <i>Application of this agreement</i>  | 5  |
| 5                     | <i>Operation of this agreement</i>  | 6  |
| 6                     | <i>Conservation Measures</i>  | 6  |
|                       | 6.1 Biodiversity Stewardship  | 6  |
|                       | 6.2 Dedication of Land  | 7  |
| 7                     | <i>Application of s 7.11, s 7.12 and s 7.24 of the Act to the Development</i> | 7  |
| 8                     | <i>Registration of this agreement</i>   | 7  |
|                       | 8.1 Landowners Interest   | 7  |
|                       | 8.2 Registration of this agreement  | 8  |
|                       | 8.3 Removal from Register   | 8  |
|                       | 8.4 Caveat  | 9  |
| 9                     | <i>Review of this agreement</i>   | 9  |
| 10                    | <i>Dispute Resolution</i>   | 9  |
|                       | 10.1 Reference to Dispute   | 9  |
|                       | 10.2 Notice of Dispute  | 9  |
|                       | 10.3 Representatives of Parties to Meet                                       | 10 |
|                       | 10.4 Further Notice if Not Settled  | 10 |
|                       | 10.5 Mediation  | 10 |
|                       | 10.6 Expert determination   | 11 |
|                       | 10.7 Litigation   | 11 |
|                       | 10.8 No suspension of contractual obligations                                 | 12 |
| 11                    | <i>Enforcement</i>  | 12 |
|                       | 11.1 Default  | 12 |
|                       | 11.2 Compulsory Acquisition   | 12 |
|                       | 11.3 Restriction on the issue of Certificates                                 | 12 |
|                       | 11.4 General Enforcement  | 13 |

|    |   |           |
|----|---|-----------|
| 12 | <i>Assignment and Dealings</i>  | 13        |
|    | 12.1 Assignment   | 13        |
|    | 12.2 Transfer of Land   | 13        |
| 13 | <i>Consent of Council is not to be unreasonably withheld Approvals and consents</i> | 13        |
| 14 | <i>No fetter</i>  | 14        |
|    | 14.1 Discretion   | 14        |
|    | 14.2 No fetter  | 14        |
| 15 | <i>Notices</i>  | 14        |
|    | 15.1 Notices  | 14        |
| 16 | <i>General</i>  | 15        |
|    | 16.1 Relationship between parties   | 15        |
|    | 16.2 Time for doing acts  | 15        |
|    | 16.3 Further assurances   | 15        |
|    | 16.4 Variation  | 15        |
|    | 16.5 No assignment  | 15        |
|    | 16.6 Counterparts   | 15        |
|    | 16.7 Legal expenses and stamp duty  | 16        |
|    | 16.8 Entire agreement   | 16        |
|    | 16.9 Representations and warranties   | 16        |
|    | 16.10 Severability  | 16        |
|    | 16.11 Invalidity  | 16        |
|    | 16.12 Waiver  | 16        |
|    | 16.13 GST   | 17        |
|    | 16.14 Governing law and jurisdiction  | 17        |
|    | <b>Schedule 1 Biodiversity Credits to be Retired</b>                                | <b>18</b> |
|    | <b>Schedule 2 Summary of requirements (section 7.4)</b>                             | <b>21</b> |
|    | <b>Annexure A Plan showing Land</b>   |           |
|    | <b>Annexure B Plan showing Conservation Land</b>                                    |           |
|    | <b>Annexure C Staging Plan</b>  |           |
|    | <b>Annexure D Not used</b>  |           |
|    | <b>Annexure E Draft Explanatory note</b>  |           |

|   |           |
|---|-----------|
| <b>Annexure F Works authorised to be undertaken prior to issue of Stage 1 subdivision certificate</b> | <b>30</b> |
| <b>Annexure G Easements currently required within Conservation Land</b>                               | <b>31</b> |

# Agreement

**Date** 1st March 2022

## Parties

### First party

**Name** Mid-Coast Council (**Council**)

**ABN** 44 961 208 161

**Contact** The General Manager

**Telephone** 02 7955 7777

### Second party

**Name** Sheargold Property Developments Pty Ltd  
(**Developer**)

**ABN** 82 000 260 462

**Contact** Sarah Thompson

**Telephone** 02 9939 7566

### Fourth party

**Name** SGD 1 Pty Ltd (**SGD 1**)

**ABN** 15 165 286 840

**Contact** Sarah Thompson

**Telephone** 02 9939 7566

### Fifth party

**Name** SGD 2 Pty Ltd (**SGD 2**)

**ABN** 18 165 287 285

**Contact** Sarah Thompson

**Telephone** 02 9939 7566

## Background

- A. On 25 October 2019, the Developer submitted the Development Application to the Council.
- B. The Development Application is made in accordance with the terms of the Concept Approval.
- C. As at the date of this agreement condition A5(3) of the Concept Approval provides:  
*“Notwithstanding anything else in this concept plan approval and in accordance with section 750(5) of the Act, final concept plan approval is given only when the Secretary is satisfied that suitable arrangements have been made to facilitate the staged retirement of 2,317 ecosystem credits, 482 koala species credits and 665 Wallum Froglet species credits as described in Table 6-1 of the Riverside Subdivision, Tea Gardens Biodiversity Offsets Package prepared by GHD dated September 2017.”*
- D. As at the date of this agreement condition A5(4) of the Concept Approval provides:  
*“Prior to the determination of each development application, the relevant consent authority must be satisfied that suitable arrangements are in place to ensure that the ecosystem and species credits required to offset the clearing of vegetation within stages 1 to 16 are retired prior to vegetation clearing occurring in each stage.”*
- E. The Developer has offered to enter into this agreement in connection with the Development, to secure conservation measures into the future to offset the residual impact of the Development on biodiversity values after the measures required to be taken to avoid or minimise those impacts and to satisfy the obligations under the Concept Approval.

## Operative part

### 1 Definitions

In this agreement, unless the context indicates a contrary intention:

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

**Address** means a party's address set out in the Notices clause of this agreement;

**Approval** means any certificate, licence, consent, permit, approval or other requirement of any Authority having jurisdiction in connection with the activities contemplated by this agreement;

**Authority** means any government, semi-governmental, statutory, administrative, fiscal or judicial body, department, commission, authority, tribunal, public or other person, agency or entity and includes a certifier accredited under the *Building Professionals Act 2005* (NSW);

**BC Act** means the *Biodiversity Conservation Act 2016*;

**Biodiversity Credit** has the same meaning as in the BC Act;

**Biodiversity Offsets Scheme** has the same meaning as in the BC Act;

**Biodiversity Stewardship Agreement** has the same meaning as in the BC Act;

**Biodiversity Stewardship Payments Fund** has the same meaning as in the BC Act;

**Business Day** means a day on which banks are open for general banking business in , excluding Saturdays and Sundays;

**Claim** means any claim, loss, liability, damage, proceeding, order, judgment or expense arising out of the operation of this agreement;

**Concept Approval** means Concept Plan Approval (M10-0136) granted on 17 May 2019 and as modified from time to time, for a residential and tourist community title subdivision of the Land, including the provision of conservation lands, open space, bulk earthworks and associated infrastructure;

**Conservation Land** means that part of the Land to be subject to biodiversity stewardship arrangements and dedicated to Council for conservation purposes as described in **Annexure B**;

**Conservation Landowners** means SGD 1 and SGD 2;

**CPI** means the All Groups Consumer Price Index applicable to Sydney published by the Australian Bureau of Statistics;

**Damages** means all liabilities, losses, damages, costs and expenses, including legal fees and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties;

**Dealing**, in relation to the Land, means, without limitation, selling, transferring, assigning, mortgaging, charging, encumbering or otherwise dealing with the Land;

**Development** means the development described in the Development Application;

**Development Application** means Development Application DA171/2020, or any subsequent modification, for a 725 residential lot community title subdivision of the Land, including community and resident's facilities, sales office building, bulk earthworks and associated activities over 16 stages;

**Development Consent** has the same meaning as in the Act;

**Encumbrances** means any estates, interests, trusts, restrictions, dedications, reservations, easements, rights, charges, rates and contracts in, over or in connection with the land, including but not limited to, municipal rates and charges, water rates and land tax;

**Environment Agency Head** has the same meaning as in the BC Act;

**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 of or administration of the GST;

**Land** means part Lots 10, 19 and 40 DP 270100, known as Parry's Cove, as shown in **Annexure A**;

**Law** means:

- (a) any law applicable including legislation, ordinances, regulations, by-laws and other subordinate legislation;
- (b) any Approval, including any condition or requirement under it; and

- (c) any fees and charges payable in connection with the things referred to in paragraphs (a) and (b);

**Permitted Encumbrances** means:

- (a) the Biodiversity Stewardship Agreement required to be registered against the title to the Conservation Land under clause 6.1(a); and
- (b) any other encumbrance that is authorised or permitted under that agreement;
- (c) easements which are located within conservation land at the date the Biodiversity Stewardship Agreement is entered into; and
- (d) any easement required for the delivery of development approved DA 171/2020, as approved by the relevant consent authority.

**Register** means the Torrens title register maintained under the *Real Property Act 1900* (NSW);

**Regulation** means the *Environmental Planning and Assessment Regulation 2000*; and

**Stage** means a stage of the Development in accordance with the staging plan at

**Annexure C**, or other staging plan for the Development approved by Council.

## 2 Interpretation

In this agreement, unless the context indicates a contrary intention:

- (a) **(documents)** a reference to this agreement or another document includes any document which varies, supplements, replaces, assigns or novates this agreement or that other document;
- (b) **(references)** a reference to a party, clause, paragraph, schedule or annexure is a reference to a party, clause, paragraph, schedule or annexure to or of this agreement;
- (c) **(headings)** clause headings and the table of contents are inserted for convenience only and do not affect interpretation of this agreement;
- (d) **(person)** a reference to a person includes a natural person, corporation, statutory corporation, partnership, the Crown and any other organisation or legal entity and their personal representatives, successors, substitutes (including persons taking by novation) and permitted assigns;
- (e) **(party)** a reference to a party to a document includes that party's personal representatives, executors, administrators, successors, substitutes (including persons taking by novation) and permitted assigns;
- (f) **(president, CEO or managing director)** the president, CEO or managing director of a body or Authority means any person acting in that capacity;
- (g) **(requirements)** a requirement to do any thing includes a requirement to cause that thing to be done, and a requirement not to do any thing includes a requirement to prevent that thing being done;
- (h) **(including)** including and includes are not words of limitation, and a list of examples is not limited to those items or to items of a similar kind;
- (i) **(corresponding meanings)** a word that is derived from a defined word has a corresponding meaning;



- (j) **(singular)** the singular includes the plural and vice-versa;
- (k) **(gender)** words importing one gender include all other genders;
- (l) **(parts)** a reference to one or more things includes each part and all parts of that thing or group of things but nothing in this clause implies that part performance of an obligation constitutes performance of that obligation;
- (m) **(rules of construction)** 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;
- (n) **(legislation)** a reference to any legislation or provision of legislation includes all amendments, consolidations or replacements and all regulations or instruments issued under it;
- (o) **(time and date)** a reference to a time or date in connection with the performance of an obligation by a party is a reference to the time and date in , Australia, even if the obligation is to be performed elsewhere;
- (p) **(joint and several)** an agreement, representation, covenant, right or obligation:
  - (i) in favour of two or more persons is for the benefit of them jointly and severally; and
  - (ii) on the part of two or more persons binds them jointly and severally;
- (q) **(writing)** a reference to a notice, consent, request, approval or other communication under this agreement or an agreement between the parties means a written notice, request, consent, approval or agreement;
- (r) **(replacement bodies)** a reference to a body (including an institute, association or Authority) which ceases to exist or whose powers or functions are transferred to another body is a reference to the body which replaces it or which substantially succeeds to its power or functions;
- (s) **(Australian currency)** a reference to dollars or \$ is to Australian currency;
- (t) **(month)** a reference to a month is a reference to a calendar month; and
- (u) **(year)** a reference to a year is a reference to twelve consecutive calendar months.

### 3 Planning Agreement under the Act

- (a) The parties agree that this agreement is a planning agreement within the meaning of section 7.4 of the Act.
- (b) Schedule 2 of this agreement summarises the requirements for planning agreements under section 7.4 of the Act and the way this agreement addresses those requirements.

### 4 Application of this agreement

This agreement applies to:

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

## 5 Operation of this agreement

- (a) This agreement commences on and from the date it is executed by all parties.
- (b) The obligations under clause 6 of this agreement to deliver conservation measures do not take effect until Development Consent is granted to the Development Application.
- (c) This agreement terminates in the event that:
  - (i) the Development Application is refused and any appeal rights from the refusal of the Development Application have been exhausted;
  - (ii) the Developer is not satisfied with the terms of any Development Consent granted and surrenders the Development Consent; or
  - (iii) the parties otherwise agree in writing to termination of the agreement.

## 6 Conservation Measures

### 6.1 Biodiversity Stewardship

- (a) The Conservation Landowners and the Developer agree to register a Biodiversity Stewardship Agreement under the Biodiversity Offsets Scheme against the title to the Conservation Land in accordance with the BC Act.
- (b) The Biodiversity Stewardship Agreement required under clause 6.1(a) must be executed and registered prior to any of the following occurring:
  - (i) the dedication of the Conservation Land to Council under clause 6.3 of this agreement;
  - (ii) the issue of a Subdivision Certificate for Stage 1 of the Development and
  - (iii) clearing of vegetation in any later Stage of the Development, except for works to deliver drainage and infrastructure identified in Annexure F.
- (c) The Conservation Landowners must:
  - (i) retire the Biodiversity Credits listed in Table 1 of **Schedule 1**;
  - (ii) secure any koala credits required in Table 1 from sites within the Mid Coast Local Government Area; and
  - (iii) make any payment to the Biodiversity Stewardship Payments Fund required under the BC Act in connection with the retirement of the Biodiversity Credits.
- (d) The Biodiversity Credits must be retired and associated payment into the Biodiversity Stewardship Payments Fund made at the times specified in Table 2 of **Schedule 1**.
- (e) For the avoidance of doubt, the Biodiversity Credits to be retired in accordance with clause 6.1(d) may consist of:
  - (i) Biodiversity Credits generated under the Biodiversity Stewardship Agreement required under clause 6.1(a), and
  - (ii) other Biodiversity Credits purchased or obtained in accordance with the Biodiversity Offsets Scheme.

## 6.2 *Dedication of Land*

- (a) The Conservation Landowners must dedicate or cause to be transferred to the Council, at no cost to the Council, the Conservation Land freed and discharged from all Encumbrances except Permitted Encumbrances.
- (b) The obligation to dedicate the Conservation Land will be taken to have been satisfied when a Certificate of Title is issued by NSW Land Registry Services for the whole of the Conservation Land identifying the Council as the registered proprietor of that land.
- (c) On dedication of the Conservation Land, the Conservation Landowners must:
  - (i) produce a statement from the relevant Authority dated no earlier than 5 Business Days prior to the proposed dedication date, confirming that there are no outstanding breaches of the Biodiversity Stewardship Agreement applying to the Conservation Land; and
  - (ii) do all things necessary, including signing any novation agreement or other document, to ensure that Council, as owner of the Conservation Land is taken to be a party to the Biodiversity Stewardship Agreement applying to that land, and is entitled to management payments from the Biodiversity Stewardship Payments Fund under that agreement.
- (d) The Conservation Land must be dedicated or transferred to Council prior to any of the following occurring:
  - (i) the issue of a Subdivision Certificate for Stage 1 of the Development; and
  - (ii) clearing of vegetation in any later Stage of the Development, except for works to deliver drainage and infrastructure identified in Annexure F

## 7 Application of s 7.11, s 7.12 and s 7.24 of the Act to the Development

- (a) This agreement does not exclude the application of section 7.11 of the Act to the Development.
- (b) This agreement does not exclude the application of section 7.12 of the Act to the Development.
- (c) This agreement does not exclude the application of section 7.24 of the Act to the Development.
- (d) The benefits under this agreement are not to be taken into consideration in determining a development contribution under section 7.11 of the Act.

## 8 Registration of this agreement

### 8.1 *Landowners Interest*

- (a) SGD 1 represents and warrants to Council that on the date of this agreement it is the registered proprietor of Lots 19 and 40 DP 270100.
- (b) SGD 2 represents and warrants to Council that on the date of this agreement it is the registered proprietor of Lot 10 DP 270100.

## 8.2 *Registration of this agreement*

- (a) The Developer and Conservation Landowners agree to procure the registration of this agreement under the *Real Property Act 1900* (NSW) in the relevant folios of the Register of the Land in accordance with section 7.6 of the Act.
- (b) The Developer at its own expense will, promptly after the execution of this agreement, take all practical steps, and otherwise do anything that the Council reasonably requires to procure:
  - (i) The consent of each person who:
    - (A) has an estate or interest in the Land registered under the *Real Property Act 1900* (NSW); or
    - (B) is seized or possessed of an estate or interest in the Land,
  - (ii) The execution of any documents; and
  - (iii) The production of the relevant duplicate certificates of title or electronic equivalent,to enable the registration of this agreement in accordance with clause 8.2(a).
- (c) The Conservation Landowners consent to the registration of the agreement in accordance with this clause 8.2.
- (d) The Developer, at its own expense, will take all practical steps, and otherwise do anything that the Council reasonably requires:
  - (i) to procure the lodgement of this agreement with the Registrar-General as soon as reasonably practicable after this agreement comes into operation, but in any event, no later than 10 Business Days after that date; and
  - (ii) to procure the registration of this agreement by the Registrar-General in the relevant folios of the Register for the Land as soon as reasonably practicable after this agreement is lodged for registration.

## 8.3 *Removal from Register*

- (a) The Council will provide a release and discharge of this agreement so that it may be removed from the folios of the Register for the Land (or any part of it) provided the Council is satisfied the Developer has duly fulfilled its obligations under this agreement, and is not otherwise in default of any of the obligations under this agreement.
- (b) If the Development Application is not approved the Council will provide a release and discharge of this agreement so that it may be removed from the folios of the Register for the Land (or any part of it) and will sign all documents necessary to give effect to the removal of the document from the register, once all appeal rights arising from the refusal of the Development Application have been exhausted.
- (c) If the Development Application is approved, and the development consent is ever surrendered and:
  - (i) the Development has not commenced; or

- (ii) the obligations of this agreement have, to the Council's satisfaction (acting reasonably), been fulfilled to the extent that the Development has been commenced,

the Council will provide a release and discharge of this agreement so that it may be removed from the folios of the Register for the Land (or any part of it) and will sign all documents necessary to give effect to the removal of the document from the Register.

#### 8.4 *Caveat*

- (a) The Conservation Landowners acknowledges and agrees that:
  - (i) when this agreement is executed, the Council is deemed to have acquired and the Developer is deemed to have granted, an equitable estate and interest in the Land for the purposes of section 74F(1) of the *Real Property Act 1900* (NSW) and consequently the Council will have a sufficient interest in the Land in respect of which to lodge a caveat over the Land notifying that interest;
  - (ii) it will not object to the Council lodging a caveat in the relevant folios of the Register for the Land nor will it seek to remove any caveat lodged by the Council provided the caveat does not prevent registration of any dealing or plan other than a transfer.
- (b) The Council must, at Developer's cost, register a withdrawal of any caveat in respect of the Land within five Business Days after the Developer complies with clause 8.2 and must not lodge any other caveats on the titles to any of the Land.

### 9 Review of this agreement

- (a) This agreement may be reviewed or modified. Any review or modification of this agreement will be conducted in the circumstances and in the manner determined by the parties.
- (b) No modification or review of this agreement will be of any force or effect unless it is in writing and signed by the parties to this agreement.
- (c) A party is not in breach of this agreement if it does not agree to an amendment to this agreement requested by a party in, or as a consequence of, a review.

### 10 Dispute Resolution

#### 10.1 *Reference to Dispute*

If a dispute arises between the parties in relation to this agreement, the parties must not commence any court proceedings relating to the dispute unless the parties have complied with this clause, except where a party seeks urgent interlocutory relief.

#### 10.2 *Notice of Dispute*

The party wishing to commence the dispute resolution process must give written notice (**Notice of Dispute**) to the other parties of:

- (a) The nature of the dispute,
- (b) The alleged basis of the dispute, and
- (c) The position which the party issuing the Notice of Dispute believes is correct.

### 10.3 *Representatives of Parties to Meet*

- (a) The representatives of the parties must promptly (and in any event within 15 Business Days of the Notice of Dispute) meet in good faith to attempt to resolve the notified dispute.
- (b) The parties may, without limitation:
  - (i) resolve the dispute during the course of that meeting,
  - (ii) agree that further material or expert determination in accordance with clause 10.6 about a particular issue or consideration is needed to effectively resolve the dispute (in which event the parties will, in good faith, agree to a timetable for resolution); or
  - (iii) agree that the parties are unlikely to resolve the dispute and, in good faith, agree to a form of alternative dispute resolution (including expert determination, arbitration or mediation) which is appropriate for the resolution of the relevant dispute.

### 10.4 *Further Notice if Not Settled*

If the dispute is not resolved within 15 Business Days after the nominated representatives have met, either party may give to the other a written notice calling for determination of the dispute (Determination Notice) by mediation under clause 10.5 or by expert determination under clause 10.6.

### 10.5 *Mediation*

If a party gives a Determination Notice calling for the dispute to be mediated:

- (a) The parties must agree to the terms of reference of the mediation within 10 Business Days of the receipt of the Determination Notice (the terms shall include a requirement that the mediation rules of the Institute of Arbitrators and Mediators Australia (NSW Chapter) apply;
- (b) The mediator will be agreed between the parties, or failing agreement within 10 Business Days of receipt of the Determination Notice, either Party may request the President of the Institute of Arbitrators and Mediators Australia (NSW Chapter) to appoint a mediator;
- (c) The mediator appointed pursuant to this clause 10.5 must:
  - (i) Have reasonable qualifications and practical experience in the area of the dispute; and
  - (ii) Have no interest or duty which conflicts or may conflict with his or her function as a mediator he or she being required to fully disclose any such interest or duty before his or her appointment;
- (d) The mediator shall be required to undertake to keep confidential all matters coming to his or her knowledge by reason of his or her appointment and performance of his or her duties;
- (e) The parties must within 10 Business Days of receipt of the Determination Notice notify each other of their representatives who will be involved in the mediation (except if a resolution of the Council is required to appoint a representative, the Council must advise of the representative within 5 Business Days of the resolution);

- (f) The parties agree to be bound by a mediation settlement and may only initiate judicial proceedings in respect of a dispute which is the subject of a mediation settlement for the purpose of enforcing that mediation settlement; and
- (g) In relation to costs and expenses:
  - (i) Each party will bear its own professional and expert costs incurred in connection with the mediation; and
  - (ii) The costs of the mediator will be shared equally by the parties unless the mediator determines that a party has engaged in vexatious or unconscionable behaviour in which case the mediator may require the full costs of the mediation to be borne by that party.

#### 10.6 *Expert determination*

If the dispute is not resolved under clause 10.3 or clause 10.5, or the parties otherwise agree that the dispute may be resolved by expert determination, the parties may refer the dispute to an expert, in which event:

- (a) The dispute must be determined by an independent expert in the relevant field:
  - (i) Agreed upon and appointed jointly by the parties; and
  - (ii) In the event that no agreement is reached or no appointment is made within 10 Business Days of the agreement to refer the dispute to an expert, appointed on application of a party by the then President of the Law Society of New South Wales;
- (b) The expert must be appointed in writing and the terms of the appointment must not be inconsistent with this clause;
- (c) The determination of the dispute by such an expert will be made as an expert and not as an arbitrator and will be in writing and contain the reasons for the determination;
- (d) The expert will determine the rules for the conduct of the process but must conduct the process in accordance with the rules of natural justice;
- (e) Each party will bear its own costs in connection with the process and the determination by the expert and will share equally the expert's fees and costs; and
- (f) Any determination made by an expert pursuant to this clause is final and binding upon the parties except unless:
  - (i) Within 15 Business Days of receiving the determination, a party gives written notice to the other party that it does not agree with the determination and commences litigation; or
  - (ii) The determination is in respect of, or relates to, termination or purported termination of this agreement by any party, in which event the expert is deemed to be giving a non-binding appraisal.

#### 10.7 *Litigation*

If the dispute is not *finally* resolved in accordance with this clause 10, then either party is at liberty to litigate the dispute.

### 10.8 *No suspension of contractual obligations*

Subject to any interlocutory order obtained under clause 10.1, the referral to or undertaking of a dispute resolution process under this clause 10 does not suspend the parties' obligations under this agreement.

## 11 Enforcement

### 11.1 *Default*

- (a) In the event a party considers another party has failed to perform and fulfil an obligation under this agreement, it may give notice in writing to the other party (**Default Notice**) giving all particulars of the matters in respect of which it considers default has occurred and by such notice require the default to be remedied within a reasonable time not being less than 21 days.
- (b) In determining a reasonable time, regard must be had to both the nature of the default and the work or other action required to remedy it and whether or not the continuation of the default constitutes a public nuisance or raises other circumstances of urgency or emergency.
- (c) If a party disputes the Default Notice it may refer the dispute to dispute resolution under clause 10 of this agreement.

### 11.2 *Compulsory Acquisition*

- (a) If the Conservation Landowners do not dedicate the Conservation Land to Council as required by this agreement, the Council may compulsorily acquire the relevant land, in which case the Conservation Landowners consent to the Council compulsorily acquiring that land for compensation in the amount of \$1.00 without having to follow the pre-acquisition procedures in the *Land Acquisition (Just Terms Compensation) Act 1991* and may recover any costs, including legal costs, incurred by the Council on acquisition of the land from the Developer and Conservation Landowners.
- (b) Clause 11.2(a) constitutes an agreement for the purposes of section 30 of the *Land Acquisition (Just Terms Compensation) Act 1991*.
- (c) The Developer and Conservation Landowners indemnify and keep indemnified the Council against all Claims made against the Council as a result of any acquisition by the Council of the whole or any part of the relevant land under clause 11.2(a).
- (d) The Developer and Conservation Landowners must pay the Council, promptly on demand, an amount equivalent to all costs, including legal costs, incurred by the Council acquiring the whole or any part of the relevant land under clause 11.2(a).
- (e) If the Conservation Land is compulsorily acquired, the Conservation Landowners:
  - (i) are entitled to all of the credits generated from the Conservation Land; and
  - (ii) are not relieved of the obligation to retire credits and make payment to the Biodiversity Stewardship Payments Fund in accordance with clause 6.2.

### 11.3 *Restriction on the issue of Certificates*

In accordance with section 6.15(1)(f) of the Act, a Subdivision Certificate must not be issued for the Development unless all obligations due under this agreement at the time the relevant Subdivision Certificate is to be issued have been satisfied.



#### 11.4 *General Enforcement*

- (a) Without limiting any other remedies available to the parties, this agreement may be enforced by any party in any Court of competent jurisdiction.
- (b) Nothing in this agreement prevents:
  - (i) a party from bringing proceedings in the Land and Environment Court to enforce any aspect of this agreement or any matter to which this agreement relates; and
  - (ii) the Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this agreement or any matter to which this agreement relates.

### 12 Assignment and Dealings

#### 12.1 *Assignment*

- (a) A party must not assign or deal with any right under this agreement without the prior written consent of the other parties.
- (b) Any change of ownership or control (as defined in section 50AA of the *Commonwealth Corporations Act 2001*) of a party (excluding the Council) shall be deemed to be an assignment of this agreement for the purposes of this clause.
- (c) Any purported dealing in breach of this clause is of no effect.

#### 12.2 *Transfer of Land*

- (a) The Conservation Landowners may not transfer, assign or dispose of the whole or any part of their right, title or interest in the Land (present or future) or in the Development to another person (**Transferee**) unless before they sell, transfer or dispose of that right, title or interest:
  - (i) Council is satisfied that the proposed Transferee is financially capable of complying with the obligations under this agreement;
  - (ii) Council is satisfied that the rights of the Council will not be diminished or fettered in any way;
  - (iii) The Transferee delivers to the Council a novation deed signed by the Transferee in a form and of such substance as is acceptable to the Council containing provisions under which the Transferee agrees to comply with all the outstanding obligations under this agreement relevant to the land or interest to be transferred;
  - (iv) Any default under any provisions of this agreement has been remedied or waived by the Council, on such conditions as the Council may determine,
  - (v) The Conservation Landowners and the Transferee pay the Council's reasonable costs in relation to the assignment; and

### 13 Consent of Council is not to be unreasonably withheld Approvals and consents

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 that party's absolute discretion and subject to any conditions determined by the party. A

party is not obligated to give its reasons for giving or withholding consent or for giving consent subject to conditions.

## 14 No fetter

### 14.1 Discretion

This agreement is not intended to operate to fetter, in any manner, the exercise of any statutory power or discretion of the Council, including, but not limited to, any statutory power or discretion of the Council relating to the Development Application or any other application for Development Consent (all referred to in this agreement as a “**Discretion**”).

### 14.2 No fetter

No provision of this agreement is intended to constitute any fetter on the exercise of any Discretion. If, contrary to the operation of this clause, any provision of this agreement is held by a court of competent jurisdiction to constitute a fetter on any Discretion, the parties agree:

- (a) They will take all practical steps, including the execution of any further documents, to ensure the objective of this clause is substantially satisfied,
- (b) In the event that (a) cannot be achieved without giving rise to a fetter on the exercise of a Discretion, the relevant provision is to be severed and the remainder of this agreement has full force and effect, and
- (c) To endeavour to satisfy the common objectives of the parties in relation to the provision of this agreement which is to be held to be a fetter on the extent that is possible having regard to the relevant court judgment.

## 15 Notices

### 15.1 Notices

Any notice given under or in connection with this agreement (**Notice**):

- (a) must be in writing and signed by a person duly authorised by the sender;
- (b) must be addressed as follows and delivered to the intended recipient by hand, by prepaid post or by email at the address, or at the address last notified by the intended recipient to the sender after the date of this agreement:
  - (i) to Mid-Coast Council: [TBA]
  - (ii) to Sheargold Property Developments Pty Ltd [TBA]
  - (iii) to SGD1 Pty Ltd
  - (iv) to SGD2 Pty Ltd
- (c) is taken to be given or made:
  - (i) in the case of hand delivery, when delivered; and
  - (ii) in the case of delivery by post, three Business Days after the date of posting (if posted to an address in the same country) or seven Business Days after the date of posting (if posted to an address in another country); and

- (iii) in the case of email when the sender receives an email acknowledgement from the recipient's information system showing the Notice has been delivered to the email address stated above or when the Notice is first opened or read by the recipient, whichever occurs first;
- (d) if under clause (c) a Notice would be taken to be given or made on a day that is not a Business Day in the place to which the Notice is sent, or later than 4.00 pm (local time), it is taken to have been given or made at the start of business on the next Business Day in that place.

## 16 General

### 16.1 *Relationship between parties*

- (a) Nothing in this agreement:
  - (i) constitutes a partnership between the parties; or
  - (ii) except as expressly provided, makes a party an agent of another party for any purpose.
- (b) A party cannot in any way or for any purpose:
  - (i) bind another party; or
  - (ii) contract in the name of another party.
- (c) If a party must fulfil an obligation and that party is dependent on another party, then that other party must do each thing reasonably within its power to assist the other in the performance of that obligation.

### 16.2 *Time for doing acts*

- (a) If the time for doing any act or thing required to be done or a notice period specified in this agreement 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 5.00 pm on the specified day, it is taken to have been done on the following Business Day.

### 16.3 *Further assurances*

Each party must promptly execute all documents and do all other things reasonably necessary or desirable to give effect to the arrangements recorded in this agreement.

### 16.4 *Variation*

A provision of this agreement can only be varied by a later written document executed by or on behalf of all parties and in accordance with the provisions of the Act.

### 16.5 *No assignment*

A party cannot assign or otherwise transfer its rights under this agreement without the prior written consent of the other party.

### 16.6 *Counterparts*

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

#### 16.7 *Legal expenses and stamp duty*

The Developer and Conservation Landowners must pay the Council's reasonable legal costs and disbursements in connection with the negotiation, preparation, execution, carrying into effect and release and discharge of this agreement, including the costs of obtaining any legal advice in connection with this agreement.

#### 16.8 *Entire agreement*

The contents of this agreement constitute the entire agreement between the parties and supersede any prior negotiations, representations, understandings or arrangements made between the parties regarding the subject matter of this agreement, whether orally or in writing.

#### 16.9 *Representations and warranties*

The parties represent and warrant that they have the power and authority 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.

#### 16.10 *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.

#### 16.11 *Invalidity*

- (a) A word or provision must be read down if:
  - (i) this agreement is void, voidable, or unenforceable if it is not read down;
  - (ii) this agreement will not be void, voidable or unenforceable if it is read down; and
  - (iii) the provision is capable of being read down.
- (b) A word or provision must be severed if:
  - (i) despite the operation of clause (a), the provision is void, voidable or unenforceable if it is not severed; and
  - (ii) this agreement will be void, voidable or unenforceable if it is not severed.
- (c) The remainder of this agreement has full effect even if clause 16.11(b) applies.

#### 16.12 *Waiver*

- (a) A right or remedy created by this agreement cannot be waived except in writing signed by the party entitled to that right. Delay by a party in exercising a right or remedy does not constitute a waiver of that right or remedy, nor does 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.
- (b) 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.

#### **16.13 GST**

- (a) Words and expressions which are not defined in this agreement but which have a defined meaning in GST Law have the same meaning as in the GST Law.
- (b) Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this agreement are exclusive of GST.
- (c) If GST is imposed on any supply made under or in accordance with this agreement, the Developer must pay the GST or pay to the Council an amount equal to the GST payable on or for the taxable supply, whichever is appropriate in the circumstances.

#### **16.14 Governing law and jurisdiction**

- (a) The laws applicable in New South Wales govern this agreement.
- (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.

## Schedule 1 Biodiversity Credits to be Retired

Note that clause 22 of the Biodiversity Conservation (Savings and Transitional) Regulation 2017 provides:

### 22 Existing statutory obligations requiring retirement of biodiversity credits

(1) This clause applies to an obligation to retire credits under the *Threatened Species Conservation Act 1995* under the following that have not been retired on the repeal of that Act—

(a) a condition of a development consent under Part 4 of the *Environmental Planning and Assessment Act 1979*,

(b) a condition of a State significant infrastructure approval under Part 5.1 of the *Environmental Planning and Assessment Act 1979*,

(c) a decision of a determining authority to carry out an activity, or approve the carrying out of an activity, under Part 5 of the *Environmental Planning and Assessment Act 1979*,

(d) a requirement of biodiversity certification, or of a biodiversity certification agreement, under Part 7AA of the *Threatened Species Conservation Act 1995*,

(e) any other obligation imposed by a provision of or made under an Act or statutory instrument or an agreement.

(2) If biodiversity credits that are required to be retired under any such obligation have not been retired on the commencement of the new Act, the obligation is to be construed as requiring the retirement of biodiversity credits under the new Act that remain to be retired.

(3) The Environment Agency Head may, for the purposes of this clause, determine the biodiversity credits under the new Act that are reasonably equivalent to the remaining biodiversity credits under the *Threatened Species Conservation Act 1995* that remain to be retired.

**TABLE 1**

The following table sets out the Biodiversity Credits that must be retired in accordance with an obligation imposed prior to the repeal of the *Threatened Species Conservation Act 1995*, noting that equivalent credits using the Biodiversity Assessment Methodology (BAM) under the BC Act can be determined by the Environment Agency Head.

| Ecosystem / Species  | Biodiversity Credits to be Retired (BBAM) |
|--|---|
| Coastal freshwater lagoons of the Sydney Basin and South East Corner (HU533)   | 153                                       |
| Smooth-barked Apple - White Stringybark - Red Mahogany – <i>Melaleuca sieberi</i> shrubby open forest on lowlands of the lower North Coast (HU832) | 512                                       |
| Swamp Mahogany swamp forest on coastal lowlands of the North Coast and northern Sydney Basin (HU633)   | 433                                       |
| Blackbutt - Smooth-barked Apple shrubby open forest on coastal sands of the southern North Coast (HU509)   | 765                                       |

| <b>Ecosystem / Species</b>   | <b>Biodiversity Credits to be Retired (BBAM)</b> |
|--|--|
| Blackbutt - Tallowood dry grassy open forest of the southern North Coast (HU511)                   | 156  |
| Saltmarsh in estuaries of the Sydney Basin Basin Bioregion and South East Corner Bioregion (HU606) | 185  |
| Spotted Gum – Red Ironbark – Grey Gum shrub – grassy open forest of the Lower Hunter (HU806)       | 55   |
| Mangrove forest in estuaries of the Sydney Basin and South East Corner (HU563)                     | 1  |
| Swamp Oak swamp forest fringing estuaries, Sydney Basin and South East Corner (HU635)              | 10   |
| Paperbark swamp forest of the coastal lowlands of the North Coast and Sydney Basin (HU591)         | 8  |
| Koala Population (species)   | 516  |
| Wallum froglet (species)   | 642  |

**TABLE 2**

Biodiversity Credits must be retired at the time specified in the following table.

| Ecosystem / Species  | Biodiversity Credits to be retired (BBAM)                                      |   |
|--|--|---|
|  | Prior to the issue of a Subdivision Certificate for Stage 1 of the Development | Prior to commencement of construction of Stage 8 of the Development |
| Coastal freshwater lagoons of the Sydney Basin and South East Corner (HU533)   | 153  | 0   |
| Smooth-barked Apple - White Stringybark - Red Mahogany – <i>Melaleuca sieberi</i> shrubby open forest on lowlands of the lower North Coast (HU832) | 0  | 512   |
| Swamp Mahogany swamp forest on coastal lowlands of the North Coast and northern Sydney Basin (HU633)   | 181  | 252   |
| Blackbutt - Smooth-barked Apple shrubby open forest on coastal sands of the southern North Coast (HU509)   | 249  | 516   |
| Blackbutt - Tallowwood dry grassy open forest of the southern North Coast (HU511)  | 59   | 97  |
| Saltmarsh in estuaries of the Sydney Basin Basin Bioregion and South East Corner Bioregion (HU606)   | 185  | 0.0   |
| Spotted Gum – Red Ironbark – Grey Gum shrub – grassy open forest of the Lower Hunter (HU806)   | 55   | 0.0   |
| Mangrove forest in estuaries of the Sydney Basin and South East Corner (HU563)   | 1  | 0.0   |
| Swamp Oak swamp forest fringing estuaries, Sydney Basin and South East Corner (HU635)  | 10   | 0.0   |
| Paperbark swamp forest of the coastal lowlands of the North Coast and Sydney Basin (HU591)   | 8  | 0.0   |
| Koala Population (species)   | 493  | 23  |
| Wallum froglet (species)   | 318  | 324   |



## Schedule 2

## Summary of requirements (section 7.4)

| Subject and subsection of the Act   | Planning Agreement  |
|---|---|
| <p><b>Planning instrument and/or Development Application – Section 7.4(1)</b></p> <p>The Developer has:</p> <p>(a) Sought a change to an environmental planning instrument</p> <p>(b) Made, or propose to make a Development Application</p> <p>(c) Entered into an agreement with, or are otherwise associated with, a person to whom paragraph (a) or (b) applies</p> | <p><input type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p><input checked="" type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> |
| <p><b>Description of the land to which the Planning Agreement applies – Section 7.4(3)(a)</b></p>   | <p>See the definition of Land in clause 1.</p>  |
| <p><b>Description of the development to which the Planning Agreement applies – Section 7.4(3)(b)</b></p>  | <p>See the definitions of Development and Development Application in clause 1.</p>  |
| <p><b>The scope, timing and manner of delivery of contribution required by the Planning Agreement – Section 7.4(3)(c)</b></p>   | <p>See clause 6.</p>  |
| <p><b>Applicability of section 7.11 of the Act – Section 7.4(3)(d)</b></p>  | <p>Not excluded, see clause 7.</p>  |
| <p><b>Applicability of section 7.12 of the Act – Section 7.4(3)(d)</b></p>  | <p>Not excluded, see clause 7.</p>  |
| <p><b>Applicability of section 7.24 of the Act – Section 7.4(3)(d)</b></p>  | <p>Not excluded, see clause 7.</p>  |
| <p><b>Mechanism for dispute resolution – Section 7.4(3)(f)</b></p>  | <p>See clause 10.</p>   |
| <p><b>Enforcement of the Planning Agreement – Section 7.4(3)(g)</b></p>   | <p>See clause 11.</p>   |
| <p><b>Registration of the Planning Agreement – Section 7.4(3)(g)</b></p>  | <p>See clause 8.</p>  |
| <p><b>No obligation to grant consent or exercise functions – Section 7.4(9)</b></p>   | <p>See clause 14 (no fetter)</p>  |

Executed as an agreement

**Signed** for and on behalf of **Mid-Coast Council** ABN 44 961 208 161 by its authorised delegate in accordance with a resolution of the Council dated : )  
)  
)



Signature of Witness

Jodi Hart

Print name of Witness

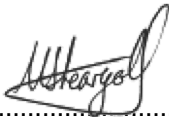


Signature of Authorised Representative

Adrian Panuccio General Manager

Name and Position of Authorised Representative

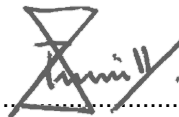
**Executed** by **Sheargold Property Developments Pty Ltd** ABN 82 000 260 462 in accordance with section 127 of the *Corporations Act 2001* (Cth) by: )  
)  
)



Signature of Director

Michael Sheargold

Print name of Director

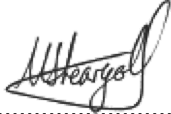


Signature of ~~Director~~ Secretary

Robert Smith

Print name of Director/Secretary

**Executed by SGD 1 Pty Ltd** ABN 15 165 )  
286 840 in accordance with section 127 of )  
the *Corporations Act 2001* (Cth) by: )



.....  
Signature of Director

.....  
Michael Sheargold

.....  
Print name of Director



.....  
Signature of ~~XXXXX~~ Secretary

.....  
Robert Smith

.....  
Print name of Director/Secretary

**Executed by SGD 2 Pty Ltd** ABN 18 165 )  
287 285 in accordance with section 127 of )  
the *Corporations Act 2001* (Cth) by: )



.....  
Signature of Director

.....  
Michael Sheargold

.....  
Print name of Director



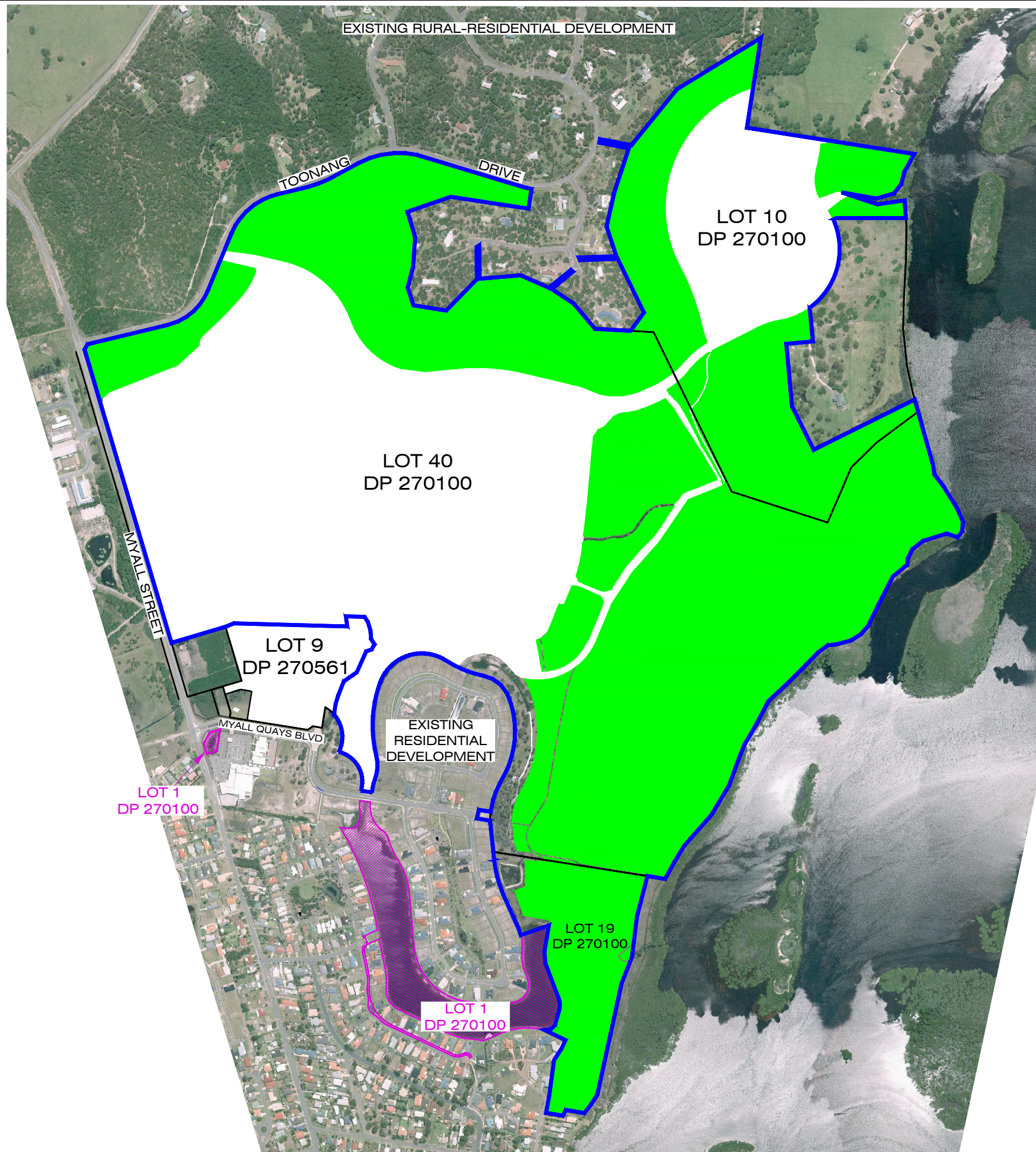
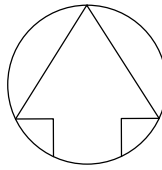
.....  
Signature of ~~XXXXX~~ Secretary

.....  
Robert Smith

.....  
Print name of Director/Secretary

Annexure A

Plan showing Land



**LEGEND**

PROPOSED ONSITE CONSERVATION AREA

**LOT OWNERSHIP**

LOT 9 - SGD 1 PTY LTD  
 LOT 10 - SGD 2 PTY LTD  
 LOT 19 - SGD 1 PTY LTD  
 LOT 40 - SGD 1 PTY LTD

| REV | DETAILS OF AMENDMENT           | DESIGNED | DRAWN | CHECKED | APPROVED | DATE |
|-----|--------------------------------|----------|-------|---------|----------|------|
| B   | Lot 9 Removed from Application | AV       | AV    |         |          |      |
| A   | Original Issue                 | AV       | AV    |         |          |      |

\* Denote the original signature and date when revision was issued.

**TATTERSALL LANDER** PTY LTD  
 DEVELOPMENT CONSULTANTS  
 ENGINEERING, SURVEYING & PLANNING  
 2 Bourke St. P.O.Box 580  
 RAYMOND TERRACE 2324  
 Fax (02) 49871733 Phone (02) 49871500

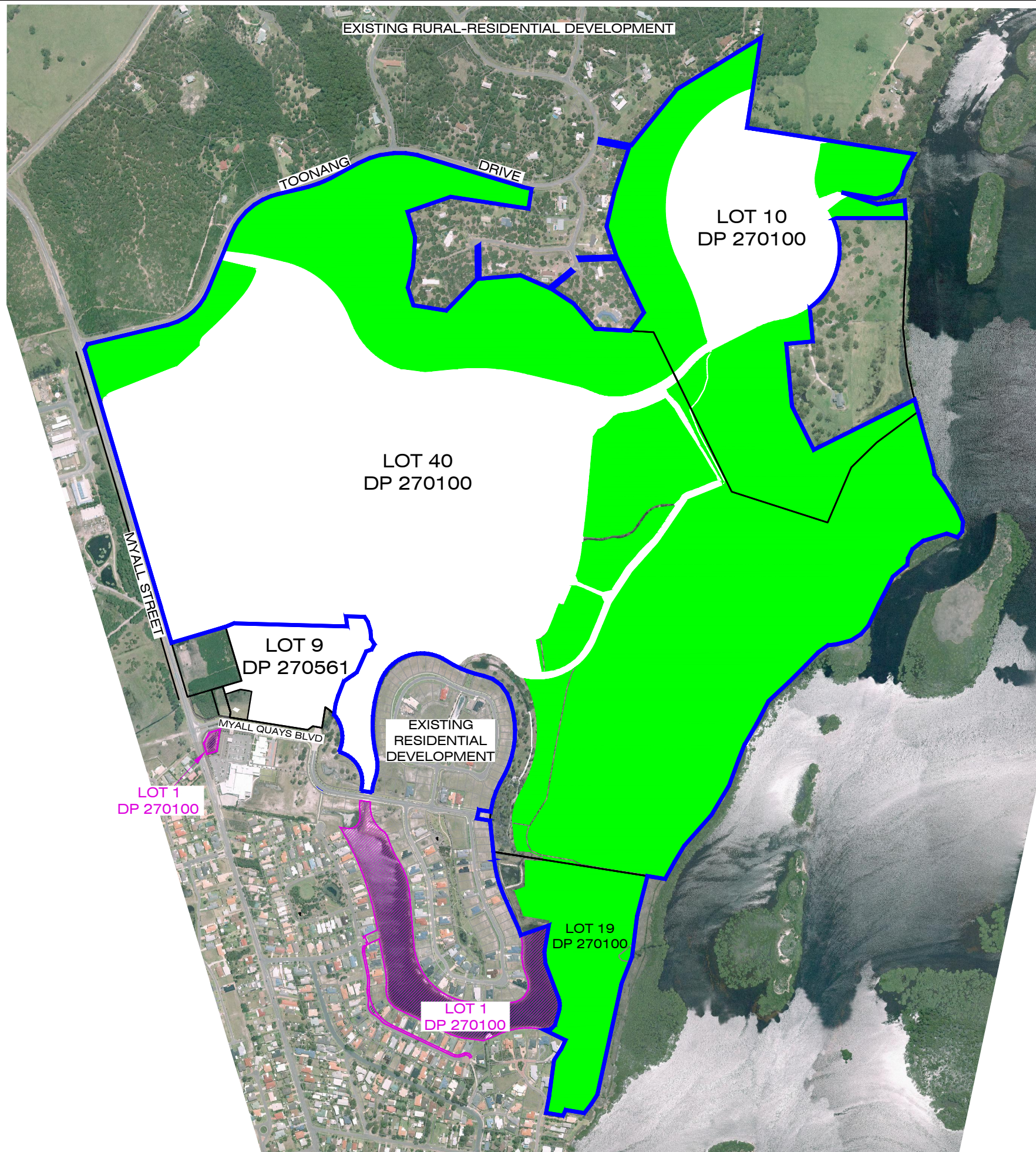
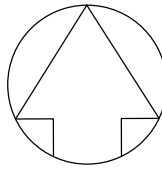


**OVERALL SITE PLAN  
 SHOWING APPROVAL CONSERVATION AREAS  
 PARRY'S COVE  
 MYALL ST TEA GARDENS**

|                               |                         |
|-------------------------------|-------------------------|
| COUNCIL<br>MIDCOAST           | REFERENCE<br>2195038    |
| PARISH                        | SHEET SIZE<br><b>A3</b> |
| SCALE                         | SHEET No.<br>1          |
| DATE: Plotted 16/8/21 3:29 PM |                         |

Annexure B

Plan showing Conservation Land



**LEGEND**

PROPOSED ONSITE CONSERVATION AREA

**LOT OWNERSHIP**

LOT 9 - SGD 1 PTY LTD  
 LOT 10 - SGD 2 PTY LTD  
 LOT 19 - SGD 1 PTY LTD  
 LOT 40 - SGD 1 PTY LTD

0 50 100m  
 (1:110,000 for A3 Size Plot)

| REV | DETAILS OF AMENDMENT           | DESIGNED | DRAWN | CHECKED | APPROVED | DATE |
|-----|--------------------------------|----------|-------|---------|----------|------|
| B   | Lot 9 Removed from Application | AV       | AV    |         |          |      |
| A   | Original Issue                 | AV       | AV    |         |          |      |

\* Denote the original signature and date when revision was issued.

**TATTERSALL LANDER** PTY LTD  
 DEVELOPMENT CONSULTANTS  
 ENGINEERING, SURVEYING & PLANNING  
 2 Bourke St. P.O.Box 580  
 RAYMOND TERRACE 2324  
 Fax (02) 49871733 Phone (02) 49871500

**OVERALL SITE PLAN  
 SHOWING APPROVAL CONSERVATION AREAS  
 PARRY'S COVE  
 MYALL ST TEA GARDENS**

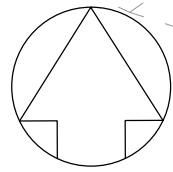
|                               |                         |
|-------------------------------|-------------------------|
| COUNCIL<br>MIDCOAST           | REFERENCE<br>2195038    |
| PARISH                        | SHEET SIZE<br><b>A3</b> |
| SCALE                         | SHEET No.<br>1          |
| DATE: Plotted 16/8/21 3:29 PM |                         |

CLIENT: SHEARGOLD GROUP      JOB No.: 213366      COMPUTER FILE : S:\projects\Parrys Cove\dwg\DA Plans\DA Road & Drainage Design.dwg

Annexure C

Staging Plan





EXISTING RURAL-RESIDENTIAL DEVELOPMENT

TOONANG DRIVE

DRIVE

LEGEND

- - - PROPOSED STAGING BOUNDARY
- ELY 8 DEVELOPMENT SUPERLOTS WITH ESTIMATED LOT YIELD
- NOMINATED DUAL-OCCT SUBDIVISION LOTS

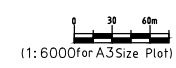
| STAGE        | LOTS | Dwellings |
|--------------|------|-----------|
| 1a           | 44   | 62        |
| 1b           | 0    | 0         |
| 2            | 43   | 61        |
| 3            | 52   | 59        |
| 4            | 40   | 43        |
| 5            | 40   | 52        |
| 6            | 37   | 51        |
| 7            | 30   | 40        |
| 8            | 29   | 44        |
| 9            | 35   | 49        |
| 10           | 39   | 46        |
| 11           | 50   | 64        |
| 12           | 48   | 62        |
| 13           | 42   | 48        |
| 14           | 30   | 43        |
| 15           | 48   | 72        |
| 16a          | 38   | 46        |
| 16b          | 46   | 52        |
| TOTAL        | 691  | 894       |
| Residue Lots | 3    |           |

MYALL STREET

LOT 9 - FUTURE SUBDIVISION UNDER SEPARATE DA

MYALL QUAYS BLVD

EXISTING RESIDENTIAL DEVELOPMENT



| REV | DETAILS OF AMENDMENT           | DESIGNED | DRAWN | CHECKED | APPROVED | DATE      |
|-----|--------------------------------|----------|-------|---------|----------|-----------|
| B   | Lot 9 Removed from Application | AV       | AV    | CG*     | BL*      | 12/8/21*  |
| A   | Original Issue                 | AV       | AV    | CG*     | BL*      | 21/10/19* |

\* Denote the original signature and date when revision was issued.

**TATTERSALL LANDER** PTY LTD  
 DEVELOPMENT CONSULTANTS  
 ENGINEERING, SURVEYING & PLANNING  
 2 Bourke St. P.O.Box 580  
 RAYMOND TERRACE 2324  
 Fax (02) 49871733 Phone (02) 49871500

OVERALL STAGING PLAN  
 WITH LOT YIELD AND BUILDING TYPOLOGY  
 PARRY'S COVE  
 MYALL ST TEA GARDENS

CLIENT: SHEARGOLD GROUP    JOB No.: 213366    COMPUTER FILE : S:\projects\Parrys Cove\dwg\DA Plans\DA Road & Drainage Design.dwg

|                               |                      |
|-------------------------------|----------------------|
| COUNCIL<br>MIDCOAST           | REFERENCE<br>2195038 |
| PARISH                        | SHEET SIZE<br>A3     |
| SCALE                         | SHEET No.<br>6       |
| DATE: Plotted 16/8/21 3:34 PM |                      |

Annexure D

Not used

## Explanatory Note

### Exhibition of draft Voluntary Planning Agreement

### Lots 10, 19 and 40 DP 270100, known as Parry's Cove

*Environmental Planning & Assessment Regulation 2000 (clause 25E)*

#### Planning Agreement

The purpose of this Explanatory Note is to provide a plain English summary to support the notification of a draft voluntary Planning Agreement (**the Planning Agreement**) under Section 7.4 of the *Environmental Planning and Assessment Act 1979 (the Act)*.

The Planning Agreement will require the implementation of biodiversity conservation measures in connection with development proposed at Parry's Cove.

This Explanatory Note has been prepared jointly between the parties as required by clause 25E of the *Environmental Planning and Assessment Regulation 2000 (the Regulations)*.

This Explanatory Note is not to be used to assist in construing the Planning Agreement.

#### Parties

Sheargold Property Developments Pty Ltd (**the Developer**) and SGD 1 Pty Ltd and SGD 2 Pty Ltd (**Landowners**) made an offer to Mid-Coast Council (**the Council**) to enter into a voluntary Planning Agreement, in connection with a Development Application relating to the subject land.

#### Description of subject land

The land to which the Planning Agreement applies is described as Lots 10, 19 and 40 DP 270100, known as Parry's Cove (**Land**).

#### Description of the Development Application to which the Planning Agreement applies

The proposed development is described in Development Application DA171/2020 being a 725 residential lot community title subdivision, including community and resident's facilities, sales office building, bulk earthworks and associated activities to be constructed over 16 stages (**Development**).

#### Summary of Objectives, Nature and Effect of the Planning Agreement

The Planning Agreement requires the Developer and the Landowners to register a biodiversity stewardship agreement under the *Biodiversity Conservation Act 2016* over part of the land shown in Annexure B in the agreement (**Conservation Land**) before the issue of a subdivision certificate for Stage 1 of the Development.

The Planning Agreement further requires the Landowners to retire biodiversity credits for several ecosystems and species over the course of the Development. A number of credits are to be retired prior to the issue of a subdivision certificate for Stage 1 of the Development and further credits must be retired prior to commencement of construction of Stage 8 of the Development.

The Conservation Land is to be dedicated to Council before the issue of a subdivision certificate for Stage 1 of the Development and before the clearing of vegetation in any later stage of the Development (except for some permitted works for drainage and infrastructure).

## **Assessment of the Merits of the Planning Agreement**

In accordance with section 1.3 of the Act, the Planning Agreement promotes the objects of the Act and specifically achieves the objectives stated in section 1.3 because it facilitates the protection of the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats (s 1.3(e)).

The Planning Agreement will promote the public interest by requiring implementation of conservation measures to offset the ecological impacts of the Development, providing secure long-term protection of ecosystems and habitat.

In accordance with section 7.4(2) of the Act, the Planning Agreement will require contributions towards public purposes, including the conservation or enhancement of the natural environment.

The Planning Agreement provides a reasonable means for achieving the abovementioned public purposes on the basis that the Planning Agreement:

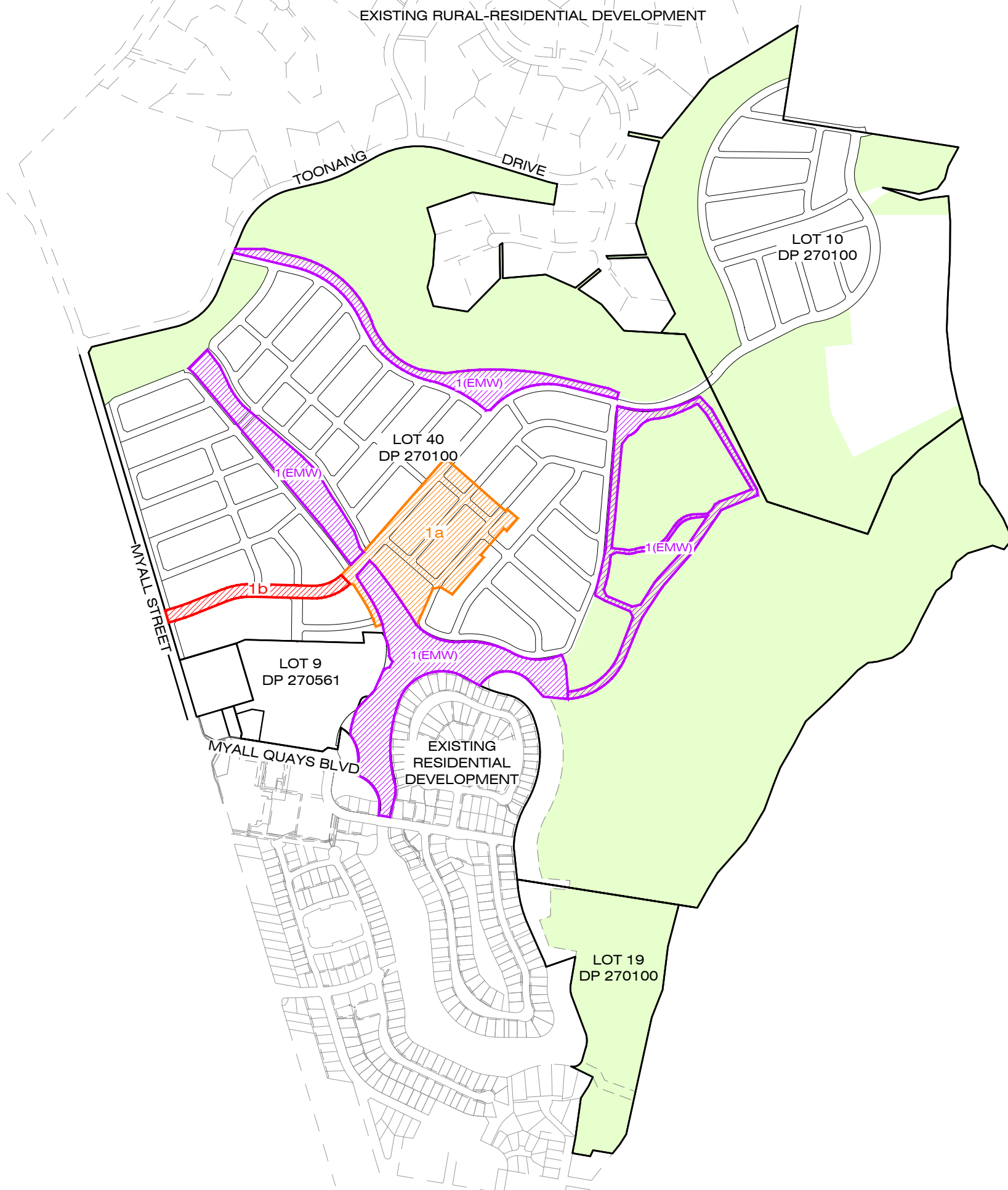
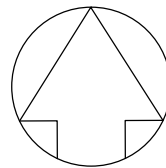
- stipulates the timing for the contributions; and
- restricts the progression of the development unless the obligations are met.

Under the Planning Agreement, subdivision certificates must not be issued unless the obligations due in connection with that subdivision certificate have been met.

The Developer and the Landowners will be required to retire biodiversity credits, which must be created from the protection of the Conservation Land or other similar habitat. The Planning Agreement will have a positive impact on residents and community and future generations because it will ensure that adequate offsets are provided for the Development, including securing conservation lands in the vicinity of the Development that will protect threatened species and endangered ecological communities in the area.

Annexure F

Works authorised to be undertaken prior to issue  
of Stage 1 subdivision certificate



**LEGEND**

- PROPOSED ONSITE CONSERVATION AREA
- STAGE 1a - SUBDIVISION CONSTRUCTION WORKS
- STAGE 1b - ENTRY ROAD CONSTRUCTION
- STAGE 1 (E.M.W.) - ESTATE MAJOR WORKS (STORMWATER DRAINAGE WORKS)

0 50 100m  
(1:10,000 for A3 Size Plot)

| REV | DETAILS OF AMENDMENT           | DESIGNED | DRAWN | CHECKED | APPROVED | DATE |
|-----|--------------------------------|----------|-------|---------|----------|------|
| B   | Lot 9 Removed from Application | AV       | AV    |         |          |      |
| A   | Original Issue                 | AV       | AV    |         |          |      |

\* Denote the original signature and date when revision was issued.

**TATTERSALL LANDER** PTY LTD  
DEVELOPMENT CONSULTANTS  
ENGINEERING, SURVEYING & PLANNING  
2 Bourke St. P.O.Box 580  
RAYMOND TERRACE 2324  
Fax (02) 49871733 Phone (02) 49871500

**OVERALL SITE PLAN  
SHOWING STAGE 1 CONSTRUCTION PHASES**

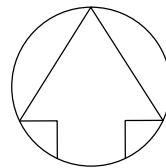
**PARRY'S COVE, MYALL ST TEA GARDENS**

|                                 |                         |
|---------------------------------|-------------------------|
| COUNCIL<br>MIDCOAST             | REFERENCE<br>2195038    |
| PARISH                          | SHEET SIZE<br><b>A3</b> |
| SCALE                           | SHEET No.<br>1          |
| DATE: Plotted 13/10/21 12:53 PM |                         |

CLIENT: SHEARGOLD GROUP      JOB No.: 213366      COMPUTER FILE : S:\projects\Parrys Cove\dwg\DA Plans\DA Road & Drainage Design.dwg

Annexure G

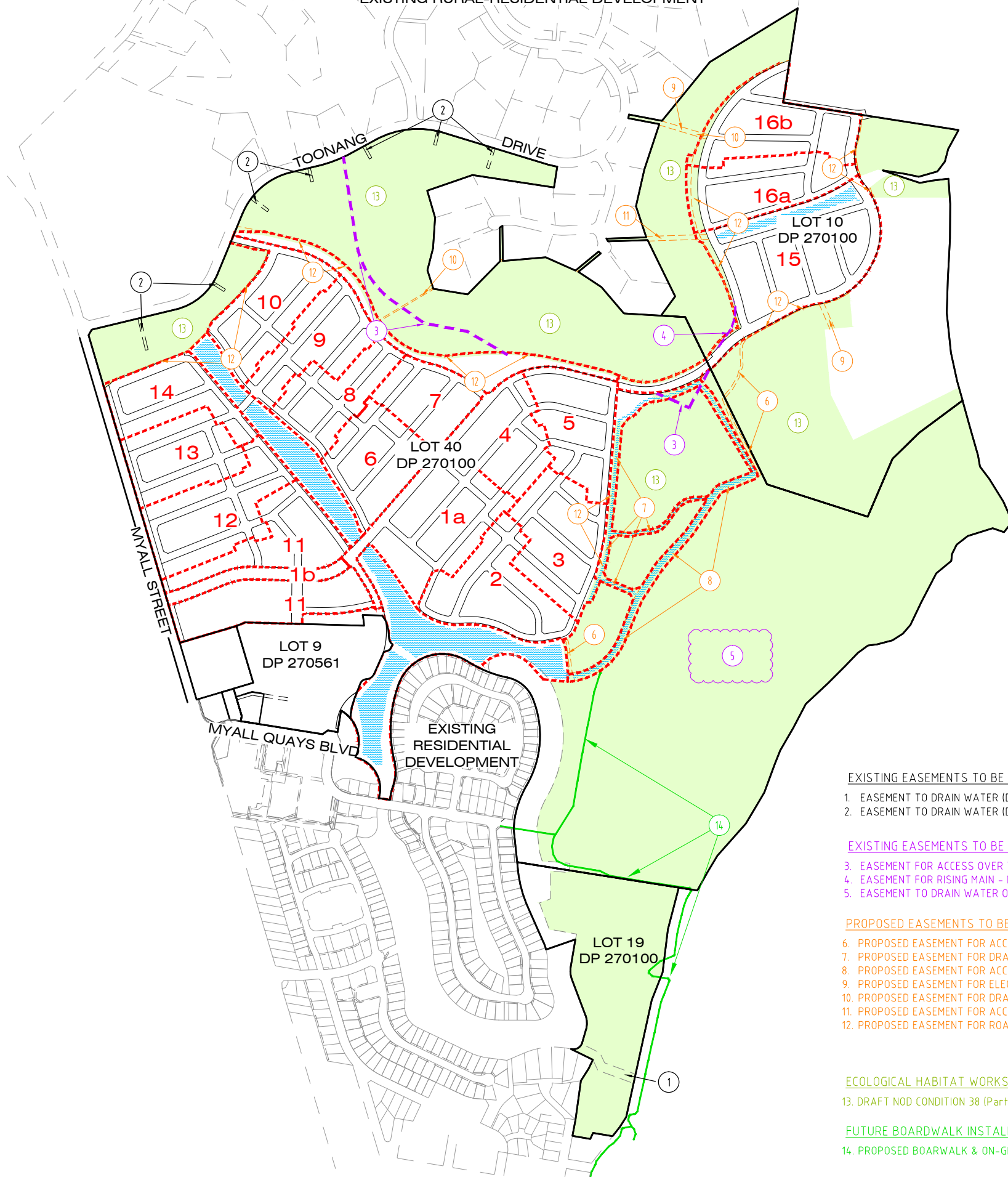
Easements currently required within  
Conservation Land



EXISTING RURAL-RESIDENTIAL DEVELOPMENT

LEGEND

- MP10-0136 MODIFIED DEVELOPMENT FOOTPRINT
- - - MP10-0136 STAGING BOUNDARIES
- PROPOSED ONSITE CONSERVATION AREA



EXISTING EASEMENTS TO BE RETAINED

1. EASEMENT TO DRAIN WATER (DP1249745) - No work proposed
2. EASEMENT TO DRAIN WATER (DP738450) - No work proposed

EXISTING EASEMENTS TO BE EXTINGUISHED

3. EASEMENT FOR ACCESS OVER TRACK IN USE (DP1118863) - Track to be rehabilitated and easement extinguished with Stage 1 construction.
4. EASEMENT FOR RISING MAIN - Main to be removed and easement extinguished with new rising main construction in Stage 15.
5. EASEMENT TO DRAIN WATER OVER THE ENTIRETY OF EXISTING LOT 40 - No works required. Easement to be extinguished in Stage 1.

PROPOSED EASEMENTS TO BE CREATED

6. PROPOSED EASEMENT FOR ACCESS & MAINTENANCE - Maintenance track to level spreader to be constructed in Stage 1
7. PROPOSED EASEMENT FOR DRAINAGE OF WATER & MAINTENANCE - Stage 1 drainage works
8. PROPOSED EASEMENT FOR ACCESS, DRAINAGE OF WATER & MAINTENANCE - Stage 1 drainage works
9. PROPOSED EASEMENT FOR ELECTRICAL PURPOSES - Existing power line to be maintained
10. PROPOSED EASEMENT FOR DRAINAGE OF SEWAGE - Allowance for sewerage of existing properties in future backlog works program by Council - timing unknown
11. PROPOSED EASEMENT FOR ACCESS, SERVICES & DRAINAGE OF SEWAGE - servicing existing dwelling, partial upgrade to RFS requirements during Stage 15 works
12. PROPOSED EASEMENT FOR ROAD BATTER - To be constructed during respective adjacent stages - Stages 1, 2, 3, 5, 10, 14, 15 & 16.

ECOLOGICAL HABITAT WORKS

13. DRAFT NOD CONDITION 38 (Part 4.f) - Requires logs, large limbs and root balls from clearing works to be relocated to the conservation lot "in the early stages"

FUTURE BOARDWALK INSTALLATION

14. PROPOSED BOARDWALK & ON-GROUND PATHWAY - Subject to separate DA, Timing Unknown

0 50 100m  
(1:10,000 for A3 Size Plot)

| REV | DETAILS OF AMENDMENT           | DESIGNED | DRAWN | CHECKED | APPROVED | DATE |
|-----|--------------------------------|----------|-------|---------|----------|------|
| B   | Lot 9 Removed from Application | AV       | AV    |         |          |      |
| A   | Original Issue                 | AV       | AV    |         |          |      |

\* Denote the original signature and date when revision was issued.

**TATTERSALL LANDER** PTY LTD  
DEVELOPMENT CONSULTANTS  
ENGINEERING, SURVEYING & PLANNING  
2 Bourke St. P.O.Box 580  
RAYMOND TERRACE 2324  
Fax (02) 49871733 Phone (02) 49871500

OVERALL SITE PLAN  
SHOWING DEVELOPMENT STAGING BOUNDARIES AND  
PROPOSED WORKS WITHIN PROPOSED CONSERVATION LOT  
PARRY'S COVE, MYALL ST TEA GARDENS

|                               |                      |
|-------------------------------|----------------------|
| COUNCIL<br>MIDCOAST           | REFERENCE<br>2195038 |
| PARISH                        | SHEET SIZE<br>A3     |
| SCALE                         | SHEET No.<br>1       |
| DATE: Plotted 20/8/21 1:13 PM |                      |

CLIENT: SHEARGOLD GROUP

JOB No.: 213366

COMPUTER FILE : S:\projects\Parrys Cove\dwg\DA Plans\DA Road & Drainage Design.dwg