**Issue 2. Moss Vale Road South URA**

Structure Plan Living Area 2 – The NBSP identifies Moss Vale Road South as being 99.3 ha in area with a potential development capacity of 1250 dwellings at 12 dwellings/ha and 15 dwellings/ha. The NBSP detailed that the desired future character will be a contained area of urban residential development including commercial development. The future neighbourhood will offer a variety of housing options, characterised primarily by a mix of detached houses and some terrace/town house type dwellings (medium density housing).

The boundary of the Moss Vale Road South URA is shown below.

Excerpt from draft SLEP 2009 as exhibited

The following comments were received regarding the Moss Vale Road South URA.

**General Submissions**

Three general submissions were received from the community/landowners with the following comments:

- Supports the rezoning of part of 49 Hockeys Lane, Cambewarra to R1 and RU1 for future development.
- Concerned with lack of rural lifestyle blocks, buffer of larger blocks between residential and rural blocks.
- Concerned about restrictions on keeping chickens and farm animals.
- Concerned with rate increases due to rezoning.
• Concerned that the draft Plan goes beyond stated aims and existing rights reassurances.
• Requests that the E3 zone (approximately 120m wide) buffer separating Moss Vale Road from the Moss Vale Road South URA be reduced in size to a maximum of 70m and a preferred 50m along the Moss Vale Road frontage.
• Requests that the E3 zone be zoned RU6 Transition or large lot residential zone.
• Requests that the NRS layer – Scenic Protection layer is aligned in accordance with the stated requirement for 50m to a maximum of 70m area for visual buffering.
• Requests Council consider flexibility in the location of the traffic access point into the new residential area and remove SP zone locking the location or move the location of the SP zone a safe distance along the main road.
• Believes that seniors housing or large lot residential could be used to better achieve the visual objectives desired through the use of E3 zone. Believes that seniors housing should not be excluded by the zoning chosen for this area.

Comment

The setbacks shown in the draft SLEP 2009 via intended zoning are consistent with the NBSP. The proposed setbacks were identified and established for a range of reasons under this strategic process e.g. setting this future development back along this key entry to maintain existing trees and a softer, landscaped entry into the urban areas. Further, this setback assists with the transitioning from rural to urban land. The reduced setback inside the future bypass is in place as the bypass is considered to form the future urban edge entry into Nowra Bomaderry. It is however appropriate to amend the NRS – Scenic protection overlay to match the E3 setback. The traffic access points have been zoned as these locations have been assessed as being the safest and most efficient entry points to the URA via detailed traffic modelling.

The future DCP/Contribution Plan (CP) for this URA will investigate further detail for this new living area and its form including but not limited to setbacks from Moss Vale Road (and their use), housing density, access from Moss Vale Road, transport arrangements and urban design controls. Any future DCP will be placed on public exhibition allowing further community engagement at this time.

Land values for properties which are proposed to be rezoned in the URA may change and therefore so could the land rates. Land values are determined by the Valuer General of the Land & Property Management Authority every three years. Rating categories are determined by the dominant use of the land so while the land value may change, if the actual use of the land does not change, the rating category will stay the same in most instances. As per any URA, the timing of the redevelopment of the land will be ultimately determined by each landowner, once Part 6 of the LEP has been satisfied in relation to DCP requirements, including provision of infrastructure.
Existing agricultural uses that are continuous and have not changed substantially may continue in the proposed R1 zone within the URA. Land owners may benefit from existing use rights under the Environmental Planning and Assessment Act (1979).

It is also noted that “seniors housing” is a mandated permissible with consent use in the R1 zone.

**Option 1:**

a) Remove the SP2 zone  
b) Reduce the E3 zone setback between Moss Vale Road and the URA boundary and change it to zone R5 or RU6.

**Implications**

Option 1(a) is not supported because detailed traffic modelling was undertaken and determined this location to be the safest and most efficient entry points to the URA.

Option 1(b) is not supported as the E3 zone setback is consistent with NBSP to set the future development back from Moss Vale Road to maintain existing trees and a softer, landscaped entry into the Nowra-Bomaderry urban area. Rezoning this land to R5 or RU6 would reduce the effect of the E3 zone setback to buffer the development from Moss Vale Road, and the objectives of these two zones do not support the land as a buffer.

**Option 2: (preferable)**

a) Retain the exhibited zoning boundaries and lot size for the Moss Vale Road South URA consistent with the endorsed Structure Plan, and  
b) Amend the NRS – Scenic Protection overlay to align with the E3 zone to the west, north and east of the Moss Vale Road South URA.

**Implications**

The option is preferable as the SP2 zone traffic access points and the E3 zone setbacks are consistent with NBSP. The SP2 zone was mapped after detailed traffic modelling determined this to be the safest and most efficient access point to the URA. The E3 zone setback provides a buffer from Moss Vale Road to future development by maintaining existing trees. This buffer also provides a softer, landscaped entry into the Nowra Bomaderry urban area. It is considered appropriate to amend the NRS – Scenic protection overlay to match the E3 setback.

**Recommendation 2:**

a) Retain the exhibited zoning boundaries and lot size for the Moss Vale Road South URA consistent with the endorsed Structure Plan, and  
b) Amend the NRS – Scenic Protection overlay to align with the E3 zone to the west, north and east of the Moss Vale Road South URA.
Dated

SHOALHAVEN CITY COUNCIL
36 Bridge Road, Nowra, New South Wales (Council)

and

The REGISTERED OWNERS
of Lots 211-222 DP 15559 (collectively the 'Developers')

Goodland Road, Woollamia

Planning Agreement

Environmental Planning and Assessment Act 1979
Background

A. The Goodland Road small lot rural subdivision at Woollamia is located on the western side of Goodland Road, approximately 5 km northwest of Huskisson, off Woollamia Road.

B. The subject land comprises twelve (12) privately owned lots, owned by 7 landowners (the Developers) described as Lots 211-222 DP 15559. The lot sizes are approximately 0.26 - 0.30 ha.

C. The land is currently zoned 1(d) (Rural “D” (General Rural) Zone) under the Shoalhaven Local Environmental Plan 1985 (the SLEP 1985).

D. Dwelling houses are permitted on the Land with development consent. Clause 14(2)(a) of the SLEP 1985 provides that a dwelling house cannot be erected in the 1(d) General Rural zone if the land is less than 40 hectares in size.

E. Only Lot 212 has an existing dwelling house erected on it, the other lots are vacant.

F. Under the Draft Shoalhaven Local Environmental Plan 2009 (as exhibited) the Land would be zoned RU2 Rural Landscape.

G. The Council has been lobbied by the owners of the Land over a number of years in relation to the lack of a dwelling house entitlement on each allotment. In 1991, the Council resolved to prepare an LEP to rezone the Land (and adjoining Lots 102 & 103 DP9289). The LEP process was undertaken and in late 1995 the Minister decided not to gazette the LEP for a number of reasons including: possible adverse impacts on water quality, SEPP 14 coastal wetland, and fauna and fish habitat; set a poor precedent for similar land.

H. In 1997, the Council determined that the matter would be further considered in the context of the Jervis Bay Settlement Strategy (JBSS). The JBSS was endorsed and released by the Council and the Department of Planning in late 2003.

I. On 4 March 2005, Council met with a number of agencies (DIPNR, Integral Energy, NSW RFS, Jervis Bay Marine Parks Authority, Shoalhaven Water) to discuss the Land.

J. At its Ordinary Meeting on 26 July 2005, the Council adopted the following recommendations from its Development Committee:

(a) Council support the preparation of a draft LEP, to resolve the development potential (in relation to the possibility of allowing the development of one dwelling per lot) on the subject lands, being Lots 102 & 103 in DP 9289 and Lots 211-222 in DP 15559 in Goodland Road, Woollamia.

(b) The cost of preparing the Draft LEP to be funded initially by Council on the basis that the costs will be recouped from the landowners.

K. The purpose of the planning agreement is twofold:

(a) Is to facilitate the rezoning of the developable envelope of the Land as E4 Environmental Living with the remainder of the Land being zoned E2 Environmental Conservation (under the new Shoalhaven LEP and in accordance with the Standard Instrument);
(b) To facilitate a consolidation of the Land into a single allotment;

(c) And then a re-subdivision of the Land under the Community Land Development Act 1989. It is proposed that the 12 lots that currently comprise the Land be consolidated and then re-subdivided into 7 smaller lots (Zoned E4) and one large Community Lot (Zoned E2). The smaller lots would range in size from 0.10 – 0.17ha. The residual community lot would be 2.52ha.

L. Under the Draft Shoalhaven LEP 2009 as exhibited, the Land is zoned RU2 Rural Landscape. The identified wetland immediately to the west of the Land is proposed to the zoned E2 Environmental Conservation under this draft instrument.

Operative Provisions

1 Planning agreement under the Act

1.1 The Parties agree that this Agreement is a planning agreement governed by Subdivision 2 of Division 6 of Part 4 of the Act.

2 Application of this Agreement

2.1 This Agreement relates to the Land and the Development.

3. Operation of this Agreement

3.1 This Agreement shall take effect upon the date hereof.

4. Definitions and Interpretation

4.1 In this Agreement the following definitions apply;

Act means the Environmental Planning and Assessment Act 1979 (NSW)
CPI means annual Consumer Price Index for the relevant proceeding financial year, as published by the Commonwealth Bureau of Statistics, and calculated as a monthly equivalent rate.
Dealing, in relation to the Land, means, without limitation, selling, transferring, assigning, mortgaging, charging, encumbering or otherwise dealing with the Land.
Development means the subdivision of the Land as described in section 5 of this Agreement.
Development Application has the same meaning as in the Act.
Development Consent has the same meaning as in the Act.
Draft Zoning Plan means Goodland Road, Woollamia – Shoalhaven Draft SLEP 2009 (Amendment). A copy of which can be found at Schedule 1 to this Agreement.
DS4 means Goodland Road, Woollamia – Development Scenario 4 (Indicative subdivision). A copy of which can be found at Schedule 2 to this Agreement.
Goodland Road Land Owner Agreement means a separate deed entered into by the registered owners of the Land for the purpose of making the subdivision application, the carrying out of the development, and the creation and registration of the Community Plan.
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.


Party means a party to this agreement, including their successors and assigns.

Person includes an individual, a corporation and a body corporate or politic.

Public Facilities means the upgrading (bitumen sealing) of Goodland Road, Woollamia including any ancillary works in the road reserve; and the preservation and on-going management of an area of land identified as having environmental significance [being E2 Environmental Conservation Zone under the Draft SLEP](the Community Lot); and the construction and maintenance of a fire trail between the land to be zoned E2 and E4.

Register means the Torrens tile register maintained under the *Real Property Act 1900* (NSW).

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

Subdivision Application means a development application as described under clause 5.3 of this Agreement.

4.2 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) Reference 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 scheduled and attachments form part of this Agreement.

5. The Development

5.1 The Council will prepare, undertake and discharge all the necessary statutory requirements to facilitate the rezoning of the Land as part E4 Environmental Living and part E2 Environmental Conservation (under the new Shoalhaven LEP and in accordance with the Standard Instrument) in accordance with Draft Zoning Plan (Schedule 1).

5.2 The Council will undertake the rezoning task in good faith and with all due care and diligence.

5.3 The Developers are to prepare a subdivision application, at their cost, in accordance with the Community Land Development Act 1989 and generally in accordance with the concept subdivision layout DS4, to:

(a) Consolidate the Land into one single allotment;

(b) To subdivide the consolidated Land as follows:

(1) create seven (7) new development lots all contained within the E4 Environmental Living Zone that would result in each Land Owner, identified as 1 to 7 in Table 6.1 below, obtaining one (1) allotment with a one (1) dwelling entitlement.

(2) the remainder of the Land (E2 Environment Conservation Zone) as a single community allotment to be maintained as a conservation area (the Community Lot). The Community Lot is also to contain a perimeter bushfire trail for the protection of the residential lots and a pedestrian access way through to the reserve for pedestrian traffic and drainage on the western boundary of the Land leading to Currambene Creek.

5.4 The Developers are to construct and maintain a fire trail over the Community Lot at the boundary of the E2/E4 Zoning as depicted in DS-4. The fire trail is to be constructed in accordance with any specific requirements of the NSW
5.5 The Developers shall enter into a separate Land Owner Deed, as between themselves, for the sharing of costs, the carrying out of works, and all legal and other administration arrangements to enable the re-subdivision of the Land in accordance with the Community Land Development Act 1989 and generally in accordance with the concept subdivision lay out DS4.

5.6 The Developers must pay to the Council all of the funds indentified in Table 6.1 of this Agreement, including any variation under clause 6.2, before the Subdivision Application is lodged with the Council.

5.7 The Developers are responsible, collectively, for all costs associated with the preparation of the Subdivision Application, all surveying works, and all the supporting documentation requiring to be submitted with that application to allow the Council to make a proper and informed determination under Part 4 of the Act.

Note: While the Council will discharge its statutory duties required under the Act (and other relevant legislation) in its merit assessment of the Subdivision Application, it is not permitted under the laws of NSW to make any predetermination of that application. Any written, oral or any other inference made to that end, would constitute an unlawful fetter of the Council’s statutory planning power discretion and could result in any such determination being declared invalid by a court.

5.8 The Council identifies the following matters that must, amongst other things, be addressed in the Subdivision Application:

(a) Selectively clearing of the development area east of and including the bushfire trail in order to achieve acceptable bushfire Asset Protection Zones (APZs)(as required by the Rural Fire Service), for all of the new residential lots, areas for on-site effluent disposal, building envelopes, access from Goodland Road and the pedestrian pathway through proposed community lot 1 (where necessary).

(b) Bushfire trail – construction and associated drainage of the bushfire trail to meet NSW Rural Fire Service standards, including a passing bay, locked gates at either end, fencing on the western, northern and southern boundaries of the fire trail, signposting.

(c) Bioretention swale – construction of a bioretention swale in accordance with the Office of Environment & Heritage (NSW) requirements on the inside of the western boundary of the proposed residential lots, including piped outlets at various points under the bushfire trail for run-off to be diffused into the community lot 1.

(d) Pedestrian pathway – construction through community lot 1 from the bushfire trail to the western boundary of the subject land and 4 metres wide. Construction would be low key, with signage at either end indicating the purpose of the accessway and the need to protect the environmental area, and 3 strand wire fencing along both sides of the accessway.
(e) **Electricity** – upgrade to the existing reticulation to meet the needs of Endeavour Energy. Works include the upgrading of the substation and new underground currents to give electrical supply access to the lots.

(f) **Restoration works** – within the community lot 1 to remove the number of weed species in this area. To be carried out by qualified bush regenerators and include follow up works over a 3 year period.

(g) **A Community Management Plan** - is to be prepared over the community lot 1 (zoned E2 Environmental Conservation) and include:

1. conservation objectives for this land
2. permissible uses
3. restoration works to be undertaken
4. provisions as to how the area will be continually managed in line with those objectives and specify that the responsibility for undertaking and funding those measures rests with the owners and successors in title of the proposed residential lots in the E4 zone.

(h) **Road drainage easement** – provision of a 10 metre wide easement for road drainage through part of current lot 220 to house a bioswale to slow and filter road drainage. Actual construction works would occur as part of the road rescaling works through Council. The easement is to be registered on the proposed community lot 1.

5.9 The Community Management Plan indentified in clause 5.8(g) above will require the Council’s separate written approval.

5.10 If the Subdivision Application is approved, then the Developers agree to pay the amount set out in Table 6.2 and any section 94 contribution amounts levied at the time of approval and in accordance with the terms of that approval.

5.11 Any works in Goodlands Road to be undertaken by the Developers under this agreement, must be the subject of a separate approval obtained by the Developers pursuant to section 138 of the *Roads Act 1993 (NSW).*

6. **Costs of the Development**

6.1 Within 60 days from the date of the execution by all Parties of this Agreement, the Developers, being the persons nominated in Column 2 of Table 6.1, are to deposit into the Council’s Trust account the amount set out in Column 3 of the Table 6.1.
Table 6.1
REZONING APPLICATION

<table>
<thead>
<tr>
<th>Column 1</th>
<th>Column 2</th>
<th>Column 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Land owner</td>
<td>Person</td>
<td>Amount</td>
</tr>
<tr>
<td>1</td>
<td>Registered owner(s) of Lot 211 DP 15559</td>
<td>$22,857</td>
</tr>
<tr>
<td>2</td>
<td>Registered owner(s) of Lot 212 DP 15559</td>
<td>$22,857</td>
</tr>
<tr>
<td>3</td>
<td>Registered owner(s) of Lot 213 DP 15559</td>
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</tr>
<tr>
<td>4</td>
<td>Registered owner(s) of Lot 214 DP 15559</td>
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</tr>
<tr>
<td>5</td>
<td>Registered owner(s) of Lot 215 DP 15559</td>
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</tr>
<tr>
<td>6</td>
<td>Registered owner(s) of Lot 219 DP 15559</td>
<td>$22,857</td>
</tr>
<tr>
<td>7</td>
<td>Registered owner(s) of Lots 216, 217, 218, 220, 221 and 222 DP 15559</td>
<td>$22,857</td>
</tr>
</tbody>
</table>

6.2 The Council is to provide a receipt for each amount deposited within 14 days.

6.3 Each amount in Column 3 of Table 6.1 will be indexed monthly, in accordance with CPI, and accrue as a debt against each of the Registered Owner(s) listed in Column 2 of Table 6.1. The date that the monthly interest will commence to accrue will be from the due date for payment, provided under clause 6.1.

6.4 The Council will not process the rezoning application until all the funds identified in clause 6.1 (including any variation under clause 6.3) have been made by the Developers.

6.5 The amounts set out in Column 3 of Table 6.1 are to reimburse the Council for its costs in undertaking and carrying out all the statutory steps to seek the rezoning of the Land.

6.6 On notice of the determination of the rezoning application being provided to the Council (whether by approval or refusal), and within 14 days of such notice in writing from the Council to the Developers, the funds deposited in accordance with clause 6.1 (and any variation under clause 6.3) will be released to the Council.

6.7 Upon the granting of development consent to the Subdivision Application under Part 4 of the Act, and on the date of the Notice of Determination, the persons nominated in column 2 in Table 6.2 below, must cause to be paid to the Council the amount shown in column 3 of Table 6.2 within 30 days.
6.8 Each amount in Column 3 of Table 6.2 will be indexed monthly, in accordance with CPI, and accrue as a debt against each of the Registered Owner(s) listed in Column 2 of Table 6.2. The date that the monthly interest will commence to accrue will be from the due date for payment, given in notice in writing by the Council under clause 6.7.

6.9 The amounts set out in Column 3 of Table 6.2 are to reimburse the Council, in part (32% of the total estimated cost), for the cost of upgrading Goodland Road to a sealed road.

6.10 Any costs associated with the provision of layback kerb and guttering in front of the building envelopes on the western side only of Goodland Road is to be borne at the full cost to each benefiting residential lot.

6.11 The Developers are liable for any section 94 contribution levied at the time of the Subdivision Approval, as required by the terms of that instrument of approval.

6.12 If there are any outstanding rates, due and payable to the Council (including any interest) on any of the lots that comprise the Land, such monies are to be paid in full to Council, before the Council will execute this agreement.

7. Council Agreement and Obligations

7.1 The Council agrees to:

(a) Diligently process the rezoning of the subject land as required by law and the procedures required by NSW Department of Planning and Infrastructure.
(b) Provide professional assistance in this process to the registered owners of the Land as deemed reasonable by Council.

(c) Place a notation on section 149 certificates as to the existence of such a planning agreement.

(d) Hold any funds lodged with it for development of the subject land in a trust account solely for this purpose, but excluding:

   (1) Repayment of Council’s cost incurred to carry out the rezoning investigation.

   (2) Section 94 development contributions

(e) Should the rezoning not proceed, or the total cost is less than the sums contributed, then the remaining amounts minus the amounts itemised in clauses 6.1 and 6.3 above, plus interest (at the average of the 90 day Banking Bill Swap rate (BBSW) for the period that such monies were held) will be reimbursed to the then current registered owner of the lots.

(f) Undertake the works for upgrading of Goodland Road, including associated drainage, and kerb and gutter as proposed within 2 years following the approval of a development application for the subdivision of the subject land.

(g) Once the obligations in the agreements have been met, Council will arrange for the reference to planning agreements on the land titles to be removed and for notations on section 149 certificates to also be removed.

8. Landowners and Council’s Agreement Development Standards

8.1 Council and landowners agree that the following development standards will apply for the development of the subject land:

   (a) **Bushfire Protection Measures- Asset Protection Zones (APZ)**

      The required Asset Protection zones for the development include:

      - 20m to the south of lots 220-222 and north of all lots
      - 25m to the west and south-west of all lots
      - 10m to the east of all lots (due to the remnant nature of the vegetation)

      The first 10m of each APZ is designated as an Inner APZ where tighter conditions on control of potential fuel loads (trees, vegetation and ground fuel) would be required. The remaining part of the APZ is designated an Outer APZ.
(b) **Building Construction Standards**

The building construction standard for all potential dwellings, to assist fire protection is level 3 as specified under AS 3959 - 1999 *Construction of Buildings in Bush Fire-prone Areas*. However, buildings with adjoining buildings to their north or south, may achieve a lower standard, as may all of the eastern elevations of each building (i.e. facing away from the primary hazard (to the west)).

(c) **Water Supply**

1. A stored water supply, minimum 10,000 litres, at each property located and designed to meet the requirements of NSW RFS.

2. If possible, the water storage would be located and accessible from the front of the property.

3. The upgrade of the water mains to 100mm is cost prohibitive for the small number of dwellings and reticulated water supply is therefore not an option for this development. Dwellings will thus be limited to tank water with a storage capacity of at least 10,000 litres for fire fighting purposes, plus additional capacity for residential use.

(d) **Dwellings**

1. Only one dwelling house per proposed residential lot will be allowed and no dual occupancies, attached flats, other multi unit housing or bed and breakfast accommodation.

2. The maximum size of the dwellings (equating to the maximum number of people and hence number of bedrooms) will be restricted by the water balance calculations relating to the size of the on-site sub surface effluent disposal areas for each lot.

(e) **Effluent disposal systems**

1. On-site sub surface effluent disposal systems are the most appropriate systems for each of the proposed residential lots.

2. Indicative effluent disposal areas are to be located in the area nominated as per DS4.

3. A bio-retention swale drain is to be located on the inside western boundary of the new residential lots. Runoff is then to be dispersed into the community lot at various points via pipes.
under the bushfire trail. This dispersal is to be diffused so as not to cause undue erosion within the community lot.

(4) A detailed design and assessment will need to be provided with any development application for a dwelling which is compliant with Development Control Plan 78.

(5) Onsite systems will need to be appropriately licensed.

(f) **Vehicular access**

Vehicular access into the residential lots is to be from Goodland Road. Whilst vehicular access is also available to the rear boundaries of the residential lots for those owners, vehicular access into the rear of the lots is not permissible where it would interfere with the on-site subsurface effluent disposal areas within such lots.

(g) **Environmental area**

(1) The areas of archaeological significance identified in the Local Environmental Study, together with the Ecological Endangered Communities and their buffers and buffers to the SEPP 14 wetland and Currambene Creek are to be protected and maintained.

(2) Pedestrian access for the residential lot owners (not the public) to Currambene Creek is to be formalised through one constructed gravel pathway and be fenced on both sides.

(h) **Protection of Archaeological items of significance**

(1) The site Woollamia 2 (as defined in Figure 22 of the Navin Officer Heritage Report) should be protected from subsurface disturbance.

(2) All landowners are to be informed of the presence of the site and of their legal responsibility under the NSW NPWS Act (i.e. it is illegal to deface, damage or destroy a relic or Aboriginal place in NSW without first obtaining the written consent of the Director of the NPWS).

(3) The scarred tree (referred to in this the Navin Officer Heritage report as Woollamia 1) should be protected during the construction phase of development (with fencing if necessary) and all contractors etc should be notified of the presence of the tree and the necessity to avoid damaging it.
9. **Application of s94 and s94A of the Act to the Development**

9.1 The application of section 94 of the Act to the development, the subject of the Subdivision Application, is not excluded by this Agreement.

9.2 Section 94A of the Act does not apply to the development, the subject of the Subdivision Application.

10. **Registration of this Agreement**

10.1 The Developer agrees to procure registration of this Agreement on the relevant folio of the Register pertaining to the Land upon commencement of this Agreement.

10.2 It is the responsibility of individual landowners of the Land to gain written approval from others shown on the title as having an interest in the Land, or part thereof (e.g. mortgagee, long leaseholder, etc) to the registration of such planning agreement on the land title.

10.3 All the land registered owners of the Land, and their successors, are responsible for all costs associated with the registration, variation or release of this Agreement.

11. **Dispute Resolution**

11.1 **Scope of clause**

This clause applies in respect of any dispute, disagreement or difference between the Parties relating to the interpretation of the purpose, and implementation of, this agreement (“the Dispute”).

11.2 **Dispute Resolution**

If the Parties are unable to resolve a Dispute then this clause 11 will apply.

11.3 **Dispute handling procedure**

A Party to this Agreement who has a Dispute with any other Party may start the dispute procedure provided for in this clause 11.

11.4 **Dispute Procedure**

The Complainant must give the Respondent a Notice setting out the following;

(a) the nature of the Dispute;
(b) the outcome the Complainant wants; and
(c) what action the Complainant thinks will settle the Dispute.

11.5 **Failure to resolve dispute**

As soon as is reasonably practicable after a Respondent receives a Notice from a Complainant pursuant to clause 11.4, the Respondent and Complainant must try to agree about how to resolve the Dispute. If within 21 days after the service of the Complainant’s Notice on the Respondent pursuant to clause 11.4 the Complainant and the Respondent have either not
met and resolved the Dispute or, alternatively, have met but not resolved the Dispute, then the Dispute must be submitted to determination in accordance with clause 11.6.

11.6 Determination

A determination, in accordance with clause 11.5, will be obtained in accordance with the following provisions:

(a) The Complainant must send a Notice to the Respondent requiring a determination of the matter;

(b) The determination will be made by:

(i) a Person agreed upon by the interested parties; or
(ii) if such agreement cannot be reached, a Person nominated by the President of the New South Wales Law Society and if so determined by the President or Acting President of the New South Wales Law Society, an appropriate expert with at least 5 years experience dealing with similar Disputes;

(c) The determination will be made in the form of a written option, expressing conclusions as to:

(i) the outcome of the Dispute; and
(ii) which Party should bear the Costs of the determination, or the proportions in which the Costs of the determination should be borne amongst the Parties;

(d) For the purpose of making the termination, each Party will be at liberty to furnish to the Person making the determination (“Referee”):

(i) a written submission; and
(ii) documents which the Party regards as relevant to the making of the determination;

(e) Either Party may request that the Referee meet with the Parties in conference, in which event:

(i) the conference will be held at a time and place nominated by the Referee;
(ii) the conference will be conducted informally;
(iii) the Parties will be entitled, but not obliged, to attend the conference;
(iv) the Parties will be entitled, but not obliged, to have legal representation at the conference;
(v) the Parties will be entitled, but not obliged, to make oral submissions at the conference;
(vi) the Parties will be entitled, but not obliged, to make statements of fact in course of the conference, either under oath or in such other way as the Referee thinks fit;
in the event that statements of fact are made at the conference by or on behalf of any of the Parties, the Person making such statement will be subject to cross-questioning by or on behalf of the other Party, in the discretion of the Referee;

(viii) no formal rules of evidence will apply to such conference, and

(ix) the conference will be conducted in private;

(f) The Referee may give directions to the relevant Parties of a procedural nature;

(g) The Referee will be entitled to inform himself or herself of any matter, in whatever manner the Referee thinks fit;

(h) The Referee will make the determination in accordance with her or her understanding of the law, including his or her understanding of the true construction of this Agreement and evidence of the negotiations leading up to the execution of this Agreement can be submitted by either Party as evidence of the true construction of this Agreement;

(i) Subject to applying his or her understanding of the law, including his or her understanding of the true construction of this Agreement, the Referee will make the determination in accordance with equity and good conscience;

(j) The Referee’s fees will be payable by the Parties jointly and severally, but, amongst the relevant Parties, will be borne in accordance with the determination;

(k) If the Referee thinks fit, he or she may determine that a Party recover from another Party their own Costs or and incidental to the determination, in which event:

(i) such Costs will be assessed in accordance with the determination by a legal cost assessor practicing in New South Wales; and

(ii) the amount so assessed will be debt due and payable between the parties in accordance with the determination.

11.7 Effect of determination

A determination made in accordance with clause 11.6 will be final and binding on the Parties, such that:

(a) Any amount found to be due and payable by one of the Parties to another Party may be enforced as a debt;

(b) Any other Obligation owed by a Party to another Party under the determination will have effect and be enforceable as a contractual Obligation, whether by way of specific performance or injunctive relief, or an action for damages; and
(c) The determination may be pleased as a bar to, and will constitute a lawful accord in respect of, any Claim in respect of the same matter;

(d) No Party will commence proceedings in any court in respect of a Dispute to which this clause relates, unless and until a determination has been obtained in accordance with clause 11.6;

(e) All rights existing between the Parties prior to the making of a determination in accordance with clause 11.6 will be merged in determination, to the intent that in any subsequent proceedings the relevant Parties’ rights and obligations will be fixed by the determination rather than by their rights and obligations antecedent to the determination.

(f) Neither Party will challenge a determination under clause 11.6 except on the grounds of;

(i) non-compliance with the provisions of this clause;

(ii) want of, or excess of, jurisdiction;

(iii) non-compliance with the applicable rules of natural justice; or

(iv) fraud or misrepresentation.

11.8 Continuity

This clause 11 will continue in full force and effect between the Parties to this Agreement notwithstanding the termination or rescission (or purported termination or rescission) of this Agreement, whether before or after a matter has arisen to which this clause relates, and notwithstanding that the matter concerns the termination or rescission (or purported termination or rescission) of this Agreement.

12. Enforcement

12.1 Without limiting any other remedies available to the Parties, this Agreement may be enforced by either Party in any court of competent jurisdiction.

12.2 For the avoidance of doubt, nothing in this Agreement prevents:

(a) A Party from bringing proceedings in the Land & Environment Court to enforce any aspect of this Agreement or any matter to which this Agreement relates; and

(b) 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.
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) Faxed to that Party at its fax number set out below.
(c) Emailed to that Party at its email address set out below.

Council
Attention: The General Manager
Address:
Fax No:
Email:

Developers
Attention:
Address:
Fax No:
Email:

13.2 If a Party gives the other Party 3 business days notice of a change of its address or fax number, any notice, consent, information, application or request 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 fax, as soon as the sender receives from the sender’s fax machine a report of an error free transmission to the correct fax number.

13.4 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, or if on a business day, after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

14. Approvals and consent

14.1 Except as otherwise set out in this Agreement, and subject to any statutory obligations, a Party may not unreasonably refuse to give its approval or consent and if consent is to be given can be subject to any conditions determined by that party acting reasonably.
15. **Assignment and Dealings**

15.1 In the event that the Developer shall enter into a contract of sale of the Land while this Agreement is in force then the Developer shall include in such contract for sale a clause requiring any Purchaser of the Land to enter into an Agreement with the Council on the same terms as this Agreement.

16 **Costs**

16.1 Each party is to be responsible for their own legal costs in relation to the negotiation and entering into of this Agreement.

17. **Entire agreement**

17.1 This Agreement contains everything to which the Parties have agreed in relation to the matters it deals with. No Party can rely on an earlier document, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, before this Agreement was executed, except as permitted by law.

18. **Further acts**

18.1 Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to affect, perfect or complete this Agreement and all transactions incidental to it.

19. **Governing law and jurisdiction**

19.1 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 these courts on any basis.

20. **Joint and individual liability and benefits**

20.1 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.

21. **No fetter**

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

22. **Representations and warranties**

22.1 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.
23. **Severability**

23.1 If a clause or part of a clause of this Agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Agreement, but the rest of the Agreement is not affected.

24. **Modification**

24.1 No modification of this Agreement will be of any force or effect unless it is in writing and signed by the Parties to this Agreement.

25. **Waiver**

25.1 The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or 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.

26. **GST**

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

27. **Termination**

27.1 This Agreement is terminated on the date the Developer is released and discharged in accordance with clause 27.2.

27.2 The Council agrees to provide a release and discharge of this Agreement upon the registration of the Community Lot subdivision and to do all things necessary to have such release and discharge registered by the Register-General in the relevant folio of the Register.

28 **Explanatory Memorandum**

28.1 The Explanatory Memorandum relating to this Agreement must not be used to assist in construing this Agreement.

**Execution**

Executed as an Agreement this day of 2012.

The Seal of Shoalhaven City Council was affixed in accordance with the resolution dated: 2012.
Registered Owner(s) of Lot 219 DP15559

…………………………………………  …………………………………………
Signature     Signature
…………………………………………  …………………………………………
Name     Name

Executed by Belfale Pty Limited (ACN XXXXXXXXX) the registered owner of Lots 216, 217, 218, 220, 221 and 222 DP15559 in accordance with Section 127 of the Corporations Act 2001 by:

…………………………………………  …………………………………………
Signature – Director   Signature – Director
…………………………………………  …………………………………………
Name     Name
Explanatory Note

Draft Planning Agreement

Rezoning and Community Lot Subdivision of Lots 211-222 DP15559, Goodland Road, Woollamia.

Introduction

The purpose of this Explanatory Note is to provide a summary to support the notification of a draft planning agreement (the “planning agreement”) prepared under section 93F of the Environmental Planning and Assessment Act 1979 (“The Act”). This Explanatory Note has been prepared jointly by the parties as required by Clause 25E of the Environmental Planning and Assessment Regulation 2000.

Parties to the Draft Planning Agreement

The parties to the planning agreement are the registered land owners of Lots 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222 in DP 15559 (“Land Owners”) and Shoalhaven City Council (“Council”).

Description of Subject Land

The land to which the planning agreement applies is located at Goodland Road, Woollamia in the Shoalhaven City Council Local Government Area being:

- Lots 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221 and 222 DP15559

Description of Proposed Development Application

The Land Owners propose that the existing 12 lots will be consolidated into a single allotment and then subdivided to form 7 new development lots (each with a single dwelling entitlement) and one Community Lot of 2.52ha in accordance with the Community Land Development Act 1989 (“Development”).

Summary of Objectives, Nature and Effect of the Planning Agreement

The objectives of the planning agreement negotiated between the Landowners and Council are:

- To provide for 2.52ha out of the total combined parcel of land (comprising Lots 211–222 DP 15559 – being 3.39ha) to be managed as a community lot as E2 Environmental Conservation under the Draft Shoalhaven Local Environmental Plan 2009. This will ensure that the Community Lot will have an on-going
management plan to ensure its continuity with environmentally sensitive land immediate to the west and contribute to the preservation of biodiversity in the local government area; and

- Provide funding towards the upgrading of Goodland Road to a sealed pavement.

The planning agreement provides for the following:

- The provision of funds to reimburse the costs to the council of preparing a rezoning proposal ($160,000.00); and
- To undertake the upgrade of Goodland Road to the benefit of all road users ($86,548.00).

Further contributions under section 94 of the *Environmental Planning and Assessment Act* 1979 will be levied on the subdivision consent in accordance with the Council's Development Contribution Plan.

The contributions payable will be indexed.

**Merits of the Planning Agreement**

In accordance with section 93F(2), the planning agreement promotes the public interest by making provision for the Land Owners to make contributions to the provision of local infrastructure and preserve biodiversity in the Local Government area.

**Planning Purposes Served by the Planning Agreement**

The planning agreement serves the planning purpose of the principles of ecologically sustainable development (ESD) (biodiversity) and the orderly provision of local road infrastructure.

**Promotion of the Objects of the Act**

By providing contributions towards the provision of public amenities and public services, the planning agreement promotes the orderly and economic use and development of land, and the objectives of the Act being ESD.

**Promotion of the Public Interest**

In accordance with the objects of the Act, the planning agreement will promote the public interest in the following manner: the promotion of ecologically sustainable development - conservation of biological diversity and ecological integrity; and the provision of (or the recoupment of the cost of providing) transport infrastructure relating to land.

Signed and Dated by All Parties
Dated XX July 2012

SHOALHAVEN CITY COUNCIL
Bridge Road, Nowra, New South Wales (Council)

and

The REGISTERED OWNERS
of Lots 211-222 DP 15559 (collectively the ‘Developers’)

Council Objectives:

Draft Goodlands Road Land Owner Agreement

The Council makes the following statements in relation to the proposed Goodlands Road Land Owner Agreement:

1. The precise terms and conditions of the Land Owner Agreement are a matter for individual Land Owners to settle.

2. Individual Land Owners should seek their own independent legal advice before executing any agreement.

3. The Council has provided the draft document to enable the individual Land Owners to consider the issues that, in the Council’s opinion, should be addressed.

4. The Council takes no responsibility for the final terms of any agreement.

5. The Council will not be a party to this agreement.

6. The Council takes no responsibility and will not adjudicate, mediate or take any other action to resolve any dispute that may arise between any one (or more) of the Parties to the Land Owner agreement. To this end, the Land Owner agreement should include dispute resolution provisions.

7. The Council does insist, as a precursor to entering into and executing the VPA, that it is provided with a copy of an executed agreement, as between all the Land Owners, being an agreement in writing that will facilitate their cooperative approach to meeting the aims and objectives of the VPA.

8. The Council’s preferred option is that it communicate through a single agent representing all the Land Owners, rather than deal with all the Land Owners individually.

9. The Land Owners must agree on an equitable mechanism for the sharing of costs of the proposed subdivision (draft methodology will be provided for consideration).
Registered Owner(s) of Lots 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221 and DP15559

GOODLAND ROAD
LAND OWNER AGREEMENT
LAND OWNER AGREEMENT

Date

Parties

Name         Befale Pty Ltd
Address
Fax Number
Contact

Name         M K, P W & B H Regle
Address
Fax Number
Contact

Name         D G Stanton
Address
Fax Number
Contact

Name         W R Eger
Address
Fax Number
Contact

Name         G P Dawson
Address
Fax Number
Contact
Name  

A R & W H Smith

Address

Fax Number

Contact

Name  

E D & R Van Beek

Address

Fax Number

Contact

Recitals

A. The Goodland Road small lot rural subdivision at Woollamia is located on the western side of Goodland Road, approximately 5 km northwest of Huskisson, off Woollamia Road.

B. The subject land comprises twelve (12) privately owned lots, owned by 7 landowners (the Developers) described as Lots 211-222 DP 15559. The lot sizes are approximately 0.26 - 0.30 ha.

C. The land is currently zoned 1(d) (Rural “D” (General Rural) Zone) under the Shoalhaven Local Environmental Plan 1985 (the SHLEP 1985).

D. Dwelling houses are permitted on the Land with development consent. Clause 14(2)(a) of the SHLEP 1985 provides that a dwelling house cannot be erected in the 1(d) General Rural zone if the land is less than 40 hectares in size.

E. Only Lot 212 has an existing dwelling house erected on it, the other lots are vacant.

F. Under the Draft Shoalhaven Local Environmental Plan 2009 (as exhibited) the Land would be zoned RU2 Rural Landscape.

G. Council has been lobbied by the owners of the Land over a number of years in relation to the lack of a dwelling house entitlement on each allotment. In 1991, Council resolved to prepare an LEP to rezone the Land (and adjoining Lots 102 & 103 DP9289). The LEP process was undertaken and in late 1995 the Minister decided not to gazette the LEP for a number of reasons including: possible adverse impacts on water quality, SEPP 14 coastal wetland, and fauna and fish habitat; set a poor precedent for similar land.
H. In 1997, Council determined that the matter would be further considered in the context of the Jervis Bay Settlement Strategy (JBSS). The JBSS was endorsed and released by Council and the Department of Planning in late 2003.

I. On 4 March 2005, Council met with a number of agencies (DIPNR, Integral Energy, NSW RFS, Jervis Bay Marine Parks Authority, Shoalhaven Water) to discuss the Land.

J. At its Ordinary Meeting on 26 July 2005, the Council adopted the following recommendations from its Development Committee:

(a) Council support the preparation of a draft LEP, to resolve the development potential (in relation to the possibility of allowing the development of one dwelling per lot) on the subject lands, being Lots 102 & 103 in DP 9289 and Lots 211-222 in DP 15559 in Goodland Road, Woollamia.

(b) The cost of preparing the Draft LEP to be funded initially by Council on the basis that the costs will be recouped from the landowners.

K. The purpose of the separate voluntary planning agreement between all the Land Owners and the Council is twofold:

(a) Is to facilitate the rezoning of the developable envelope of the Land as E4 Environmental Living with the remainder of the Land being zoned E2 Environmental Conservation (under the new Shoalhaven LEP and in accordance with the Standard Instrument);

(b) To facilitate a re-subdivision of the Land under the Community Land Development Act 1989. It is proposed that the 12 lots that currently comprise the Land be firstly consolidated into a single allotment and then re-subdivided into 7 smaller lots (Zoned E4) and one large Community Lot (Zoned E2). The smaller lots would range in size from 0.10 – 0.17ha. The residual community lot would be 2.52ha.

L. The purpose of this Agreement is to facilitate the consolidation and re-subdivision of the Land in accordance with the indicative subdivision plan depicted in DS4.

Operative part

1. Definitions and Interpretation

1.1 In this Agreement the following definitions apply; 
**Act** means the *Environmental Planning and Assessment Act 1979* (NSW)

**Council** means the Shoalhaven City Council, and includes the Councillors, the General Manager, Executive Officers or any other employee of Council.

**CPI** means annual Consumer Price Index for the relevant proceeding financial year, as published by the Commonwealth Bureau of Statistics, and calculated as a monthly equivalent rate.
Dealing, in relation to the Land, means, without limitation, selling, transferring, assigning, mortgaging, charging, encumbering or otherwise dealing with the Land.

Development Application has the same meaning as in the Act. Development Consent has the same meaning as in the Act.

DS4 means Goodland Road, Woollamia – Development Scenario 4 (Indicative subdivision). A copy of which can be found at Schedule 1 to this Agreement.

Draft Zoning Plan means Goodland Road, Woollamia – Shoalhaven Draft SLEP 2009 (Amendment). A copy of which can be found at Schedule 2 to this Agreement.

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 Lots 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221 and 222 DP 15559.

Land Owners means each and every registered land owner of each allotment that forms the Land.

Liaison Person means the person identified under clause 3.3.

Party means a party to this agreement, including their successors and assigns, and includes all the registered owners of any one allotment.

Person includes an individual, a corporation and a body corporate or politic.

Register means the Torrens tile register maintained under the Real Property Act 1900 (NSW).

Regulation means the Environmental Planning and Assessment Regulation 2000.

Subdivision Application means a development application as described under section 3 of this Agreement.

VPA means the separate Voluntary Planning Agreement, as provided for under Part 4 of the Act, entered into by the Parties and the Council to facilitate the rezoning of the Land. The VPA does not form part of this agreement.

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) Reference 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 scheduled and attachments form part of this Agreement.

2. PURPOSE AND INTENTION OF THE PARTIES

2.1 Purpose

The purpose of this Agreement is to record the agreement reached between the parties concerning the rezoning of the Land, its consolidation and re-subdivision under the Community Land Development Act 1989, from 12 lots to 7 lots, and the establishment of a Community Lot.

2.2 Bona fides

Each Party agrees with the other Party that it will exercise any right given under this Agreement only for a bona fide reason and will not do, or omit to do, any act capriciously.
3 PROPOSED ACTIONS

3.1 The Land Owners are to enter into and execute a separate VPA with the Council to facilitate the rezoning of the Land generally in accordance with the Draft Zoning Plan.

*Note: Each Party should seek and rely on its own legal advice in relation to the VPA and this Agreement.*

3.2 On the successful rezoning of the Land [Para 3.1 above] the Parties agree to undertake the actions set out in Sections 3 and 4 of this Agreement, with all due care, diligence and speed.

3.3 Formally engage the services of a solicitor, or professional town planning consultant, or registered surveyor to act for the Land Owners collectively.

*(Note: the solicitor must not act, or have acted, for any of the individual parties).*

[the Liaison Person].

3.4 The Liaison Person is to be given full authority to act on behalf of the Land Owners to the extent provided under this paragraph.

(a) The Liaison Person is the only person who can communicate with the Council in relation to the Subdivision Application.

(b) The Land Owners agree that they will not, individually or collectively, communicate with the Council, by any means, in relation to any aspect concerning the Subdivision Application, other than through the Liaison Person.

(c) The Liaison Person can only act under the unanimous written approval of the Land Owners and only to the extent provided by those instructions.

(d) The appointment of the Liaison Person can be revoked, at any time, but only with the unanimous written approval of all the Land Owners.

(f) The Land Owners can unanimously appoint a replacement Liaison Person.

3.5 All decisions taken, and all the instructions given, by the Parties to any person in relation to any aspect of this Agreement, must have the unanimous agreement of all the Land Owners, which must be evidenced in writing.

3.6 No Party or Land Owner can enter into any contract with any person, in relation to any works or service required to undertake the Subdivision that will bind any other Party or Land Owner. Any contact for such works or service must have the express written approval of all Land Owners.
4. COMMUNITY TITLE SUBDIVISION

4.1 Prepare and lodge a subdivision application with the Council. The subdivision layout should be generally in accordance with DS4 and comply with the requirements of the *Community Land Development Act* 1989.

4.2 The subdivision application should seek to create and provide for the following:

(a) Consolidate the Land into one single allotment

(b) Subdivide the Land as follows:

   (1) seven (7) new development lots in the proposed E4 Zone, one lot per Land Owner;

   (2) the remainder of the Land (E2 Environment Conservation Zone) as a single community allotment to be maintained as a conservation area (the Community Lot).

(c) A fire trail road to be on the boundary of the E2 / E4 Zone interface on the Land

(d) A pedestrian pathway on the Community Lot as depicted in DS4.

4.3 The Council identifies the following matters that must, amongst other things, be addressed in the Subdivision Application:

(a) **Selectively clearing** of the development area east of and including the bushfire trail in order to achieve acceptable bushfire Asset Protection Zones (APZs)(as required by the Rural Fire Service), for all of the new residential lots, areas for on-site effluent disposal, building envelopes, access from Goodland Road and the pedestrian pathway through proposed community lot 1 (where necessary).

(b) **Bushfire trail** – construction and associated drainage of the bushfire trail to meet NSW Rural Fire Service standards, including a passing bay, locked gates at either end, fencing on the western, northern and southern boundaries of the fire trail, signposting.

(c) **Bioretention swale** – construction of a bioretention swale in accordance with the Office of Environment & Heritage (NSW) requirements on the inside of the western boundary of the proposed residential lots, including piped outlets at various points under the bushfire trail for run-off to be diffused into the community lot 1.

(d) **Pedestrian pathway** – construction through community lot 1 from the bushfire trail to the western boundary of the subject land and 4 metres wide. Construction would be low key, with signage at either end indicating the purpose of the accessway and the need to protect the environmental area, and 3 strand wire fencing along both sides of the accessway.
(e) **Electricity** – upgrade to the existing reticulation to meet the needs of Endeavour Energy. Works include the upgrading of the substation and new underground currents to give electrical supply access to the lots.

(f) **Restoration works** – within the community lot 1 to remove the number of weed species in this area. To be carried out by qualified bush regenerators and include follow up works over a 3 year period.

(g) **A Community Management Plan** - is to be prepared over the community lot 1 (zoned E2 Environmental Conservation) and include:

1. conservation objectives for this land
2. permissible uses
3. restoration works to be undertaken
4. provisions as to how the area will be continually managed in line with those objectives and specify that the responsibility for undertaking and funding those measures rests with the owners and successors in title of the proposed residential lots in the E4 zone.

(h) **Road drainage easement** – provision of a 10 metre wide easement for road drainage through part of current lot 220 to house a bioswale to slow and filter road drainage. Actual construction works would occur as part of the road resealing works through Council. The easement is to be registered on the proposed community lot 1.

4.4 The Community Management Plan identified in clause 4.3(g) above will require the Council’s express written approval.

4.5 If development consent is granted to the Subdivision Application, the Land Owners are responsible to ensure that all surveying works are undertaken and the Subdivision is registered and new titles are lawfully created.

4.6 If the Subdivision Application is approved, the Land Owners are responsible for undertaking all the works required by any consent granted, including the payment of any section 94 contribution amounts levied at the time of approval.

4.7 Any works in Goodlands Road to be undertaken by the Land Owners under this agreement, must be the subject of a separate approval obtained from the Council pursuant to section 138 of the *Roads Act 1993 (NSW)*.

5. **COSTS**

5.1 Each party is to be responsible for their own legal costs in relation to the negotiation and entering into of this Agreement.
5.2 The costs of undertaking the actions in clauses 3.3, 3.4, 3.5, 4.1, 4.2, 4.3, 4.4, 4.5, 4.6 and 4.7 above are to be borne by each Party in equal proportion (for abundant clarity, that is one part in seven). It should be agreed by the Parties that funds should be deposited into a Trust Fund at specific times on the occurrence of specific events (e.g. grant of development consent).

5.3 All payments to any person from this Trust Fund must be way of the unanimous agreement of all the Land Owners, which must be evidenced in writing.

5.4 The re-subdivision of the Land, from 12 lots to 7 lots, will mean that an equitable redistribution of equity in the individual lots will need to occur. This must be undertaken in accordance with the methodology set out in Schedule 3 to this Agreement.

5.5 Any costs associated with the provision of layback kerb and guttering in front of the building envelopes on the western side only of Goodland Road is to be borne at the full cost to each benefiting residential lot (being the new development lot under DS4).

5.6 Any monies found to be payable by one or more parties to another party or parties, agrees to pay interest on any amount payable by it under this Agreement from the date it becomes due for payment, calculated on daily balances.

5.7 The rate to be applied to each daily balance is the rate 2% per annum above the “official interest rate” set by the Reserve Bank on the day the relevant payment is due.

6. DISPUTE RESOLUTION

6.1 Scope of clause

This clause applies in respect of any dispute, disagreement or difference between the Parties relating to the interpretation of the purpose, and implementation of, this agreement (“the Dispute”).

6.2 Dispute Resolution

If the Parties are unable to resolve a Dispute then this section 6 will apply.

6.3 Dispute handling procedure

A Party to this Agreement who has a Dispute with any other Party or Parties may start the dispute procedure provided for in this section 6.

6.4 Dispute Procedure

The Complainant must give all other Parties a Notice setting out the following:
(a) the nature of the Dispute;
(b) the outcome the Complainant wants; and
(c) what action the Complainant thinks will settle the Dispute.

6.5 Failure to resolve dispute

As soon as is reasonably practicable after the other Parties receives a Notice from a Complainant pursuant to clause 6.4, the other Parties and Complainant must try to agree about how to resolve the Dispute. If within 21 days after the service of the Complainant’s Notice on the other Parties pursuant to clause 6.4 the Complainant and the other Parties have either not met and resolved the Dispute or, alternatively, have met but not resolved the Dispute, then the Dispute must be submitted to determination in accordance with clause 6.6.

6.6 Determination

A determination, in accordance with clause 6.5, will be obtained in accordance with the following provisions:

(a) The Complainant must send a Notice to the other Parties requiring a determination of the matter;

(b) The determination will be made by:

(i) a Person agreed upon by the interested parties; or

(ii) if such agreement cannot be reached, a Person nominated by the President of the New South Wales Law Society and if so determined by the President or Acting President of the New South Wales Law Society, an appropriate expert with at least 5 years experience dealing with similar Disputes;

(c) The determination will be made in the form of a written option, expressing conclusions as to:

(i) the outcome of the Dispute; and

(ii) which Party should bear the Costs of the determination, or the proportions in which the Costs of the determination should be borne amongst the Parties;

(d) For the purpose of making the termination, each Party will be at liberty to furnish to the Person making the determination (“Referee”):

(i) a written submission; and

(ii) documents which the Party regards as relevant to the making of the determination;
(e) Either Party may request that the Referee meet with the Parties in conference, in which event:

(i) the conference will be held at a time and place nominated by the Referee;

(ii) the conference will be conducted informally;

(iii) the Parties will be entitled, but not obliged, to attend the conference;

(iv) the Parties will be entitled, but not obliged, to have legal representation at the conference;

(v) the Parties will be entitled, but not obliged, to make oral submissions at the conference;

(vi) the Parties will be entitled, but not obliged, to make statements of fact in course of the conference, either under oath or in such other way as the Referee thinks fit;

(vii) in the event that statements of fact are made at the conference by or on behalf of any of the Parties, the Person making such statement will be subject to cross-questioning by or on behalf of the other Party, in the discretion of the Referee;

(viii) no formal rules of evidence will apply to such conference, and

(ix) the conference will be conducted in private;

(f) The Referee may give directions to the relevant Parties of a procedural nature;

(g) The Referee will be entitled to inform himself or herself of any matter, in whatever manner the Referee thinks fit;

(h) The Referee will make the determination in accordance with her or her understanding of the law, including his or her understanding of the true construction of this Agreement and evidence of the negotiations leading up to the execution of this Agreement can be submitted by either Party as evidence of the true construction of this Agreement;

(i) subject to applying his or her understanding of the law, including his or her understanding of the true construction of this Agreement, the Referee will make the determination in accordance with equity and good conscience;

(j) The Referee’s fees will be payable by the Parties jointly and severally, but, amongst the relevant Parties, will be borne in accordance with the determination;
(k) If the Referee thinks fit, he or she may determine that a Party recover from another Party their own Costs or and incidental to the determination, in which event:

(i) such Costs will be assessed in accordance with the determination by a legal cost assessor practicing in New South Wales; and

(ii) the amount so assessed will be debt due and payable between the parties in accordance with the determination.

6.7 Effect of determination

A determination made in accordance with clause 6.6 will be final and binding on the Parties, such that:

(a) Any amount found to be due and payable by one of the Parties to another Party may be enforced as a debt;

(b) Any other obligation owed by a Party to another Party under the determination will have effect and be enforceable as a contractual Obligation, whether by way of specific performance or injunctive relief, or an action for damages; and

(c) The determination may be pleaded as a bar to, and will constitute a lawful accord in respect of, any Claim in respect of the same matter;

(d) No Party will commence proceedings in any court in respect of a Dispute to which this clause relates, unless and until a determination has been obtained in accordance with clause 6.6;

(e) All Rights existing between the Parties prior to the making of a determination in accordance with clause 6.6 will be merged in determination, to the intent that in any subsequent proceedings the relevant Parties’ rights and obligations will be fixed by the determination rather then by their rights and obligations antecedent to the determination.

(f) Neither Party will challenge a determination under clause 6.6 except on the grounds of;

(i) non-compliance with the provisions of this clause;

(ii) want of, or excess of, jurisdiction;

(iii) non-compliance with the applicable rules of natural justice; or

(iv) fraud or misrepresentation.
6.8 **Continuity**

This section 6 will continue in full force and effect between the Parties to this Agreement notwithstanding the termination or rescission (or purported termination or rescission) of this Agreement, whether before or after a matter has arisen to which this clause relates, and notwithstanding that the matter concerns the termination or rescission (or purported termination or rescission) of this Agreement.

7. **ENFORCEMENT**

7.1 Without limiting any other remedies available to the Parties, this Agreement may be enforced by any Party in any court of competent jurisdiction.

8. **ASSIGNMENT AND DEALINGS**

8.1 In the event that any Party shall enter into a contract of sale of the Land while this Agreement is in force then the Party shall include in such contract for sale a clause requiring any Purchaser of the Land to enter into an Agreement with the other Parties on the same terms as this Agreement.

9. **ENTIRE AGREEMENT**

9.1 This Agreement contains everything to which the Parties have agreed in relation to the matters it deals with. No Party can rely on an earlier document, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, before this Agreement was executed, except as permitted by law.

10. **FURTHER ACTS**

10.1 Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to affect, perfect or complete this Agreement and all transactions incidental to it.

11. **FORCE MAJERE**

11.1 If a Party is unable by reason of force majeure to carry out wholly or in part its obligations under this Agreement it must:

(a) Give to the other Party prompt notice of the force majeure with reasonably full particulars; and

(b) Suggest an alternative method, if any, of satisfying its obligation under this agreement.

11.2 If a Party is unable to satisfy its obligations under this Agreement by an alternative method, the obligations of the Parties, and any time periods, so afar as they are affected by the force majeure are then suspended during continuance of the force majeure and any further period as may be reasonable in the circumstances.
11.3 The Party giving such notice under this clause must use all reasonable efforts and
diligence to remove the force majeure or ameliorate its effects as quickly as
practicable.

11.4 The Parties agree that any costs associated in ameliorating a force majeure event
will be apportioned, if necessary, in such manner as may be fair and reasonable.

12. FURTHER ACTS

12.1 Each Party must promptly execute all documents and do all things that another
Party from time to time reasonably requests to affect, perfect or complete this
Agreement and all transactions incidental to it.

13. GOVERNING LAW AND JURISDICTION

13.1 This Agreement is governed by the law of New South Wales. The Parties submit
to the nonexclusive jurisdiction of its Courts and Courts of Appeal from them.

13.2 The Parties will not object to the exercise of jurisdiction by those Courts on any
basis.

14. REPRESENTATIONS AND WARRANTIES

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

14.2 If any clause or part of a clause is illegal, enforceable or invalid, that clause or part
is to be treated as removed from this Agreement, but the rest of this Agreement is
not affected.

15. SEVERABILITY

15.1 If a clause or part of a clause of this Agreement can be read in a way that makes it
illegal, unenforceable or invalid, but can also be read in a way that makes it legal,
enforceable and valid, it must be read in the latter way.

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

16. MODIFICATION OF THE AGREEMENT

16.1 No modification of this Agreement will be of any force or effect unless it is in
writing and signed by each of the Parties to this Agreement.
17. WAIVER

17.1 The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this agreement, does not amount to a waiver of any obligation of, or a breach of obligation by, another Party.

17.2 A waiver by a Party is only effective if it is in writing.

17.3 A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

LAND OWNERS

Registered Owner(s) of Lot 211 DP15559

.................................................  .................................................
Signature                           Signature

.................................................  .................................................
Name                               Name

Registered Owner(s) of Lot 212 DP15559

.................................................  .................................................
Signature                           Signature

.................................................  .................................................
Name                               Name

Registered Owner(s) of Lot 213 DP15559

.................................................  .................................................
Signature                           Signature

.................................................  .................................................
Name                               Name
Registered Owner(s) of Lot 214 DP15559

..............................................................  ..............................................................
Signature                      Signature

..............................................................  ..............................................................
Name                            Name

Registered Owner(s) of Lot 215 DP15559

..............................................................  ..............................................................
Signature                      Signature

..............................................................  ..............................................................
Name                            Name

Registered Owner(s) of Lot 219 DP15559

..............................................................  ..............................................................
Signature                      Signature

..............................................................  ..............................................................
Name                            Name

Executed by Belfale Pty Limited (ACN insert number) the registered owner of Lots 216, 217, 218, 220, 221 and 222 DP15559 in accordance with Section 127 of the Corporations Act 2001 by:

..............................................................  ..............................................................
Signature – Director     Signature – Director

..............................................................  ..............................................................
Name                            Name
Attached:

SCHEDULE 1
SCHEDULE 2
SCHEDULE 3
SCHEDULE 3

Draft Costs Allocation Methodology

It is a matter for the Land Owners to develop a methodology that equitably shares the burden balanced against the benefit. For example, Befale Pty Ltd currently owns approximately 51.53% (1.7591 ha) of the total Land (3.414 ha) [see Table A] but after the subdivision its benefit as receiving one development lot reduces to 0.16ha\(^1\) i.e. a net loss of land of about 1.6 ha [see Table B]. The following is one possible method:

1. Have an agreed and licensed land valuer, value the combined net worth of all the allotments (being Lots 211-222 DP15559)("the Agreed Total Value"). Alternatively, the value set by the Valuer-General for the purposes of rating may be adopted if the Land Owners consider this to be a realistic market valuation.

2. The method compares the existing ownership to the proposed subdivision, compares the difference and allocates an adjustment value (compensation).

<table>
<thead>
<tr>
<th>Lot Number*</th>
<th>Lot Size**</th>
<th>Percentage of the Land (Total Area 3.414 ha)</th>
<th>Land Owner Detail</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lot 211</td>
<td>0.2649 ha</td>
<td>7.76%</td>
<td>MK, PW &amp; BH Regle</td>
</tr>
<tr>
<td>Lot 212</td>
<td>0.2687 ha</td>
<td>7.87%</td>
<td>DG Stanton</td>
</tr>
<tr>
<td>Lot 213</td>
<td>0.2725 ha</td>
<td>7.98%</td>
<td>WR Eger</td>
</tr>
<tr>
<td>Lot 214</td>
<td>0.2757 ha</td>
<td>8.07%</td>
<td>GP Dawson</td>
</tr>
<tr>
<td>Lot 215</td>
<td>0.2795 ha</td>
<td>8.18%</td>
<td>AR and WH Smith</td>
</tr>
<tr>
<td>Lot 216</td>
<td>0.2833 ha</td>
<td>8.30%</td>
<td>Befale Pty Ltd</td>
</tr>
<tr>
<td>Lot 217</td>
<td>0.2864 ha</td>
<td>8.39%</td>
<td>Befale Pty Ltd</td>
</tr>
<tr>
<td>Lot 218</td>
<td>0.2902 ha</td>
<td>8.50%</td>
<td>Befale Pty Ltd</td>
</tr>
<tr>
<td>Lot 219</td>
<td>0.2940 ha</td>
<td>8.61%</td>
<td>ED &amp; R Van Beek</td>
</tr>
<tr>
<td>Lot 220</td>
<td>0.2972 ha</td>
<td>8.70%</td>
<td>Befale Pty Ltd</td>
</tr>
<tr>
<td>Lot 221</td>
<td>0.3010 ha</td>
<td>8.82%</td>
<td>Befale Pty Ltd</td>
</tr>
<tr>
<td>Lot 222</td>
<td>0.3010 ha</td>
<td>8.82%</td>
<td>Befale Pty Ltd</td>
</tr>
<tr>
<td>Total</td>
<td>3.414 ha</td>
<td>100%</td>
<td></td>
</tr>
</tbody>
</table>

* All Lots DP 15559
** Areas m\(^2\) denoted on Deposited Plan DP15559

\(^1\) Assuming it accepts Lot 8
3 Proposed Ownership (under the Community Subdivision DS4)

**TABLE B – Proposed Subdivision Lot Details (DS4)**

<table>
<thead>
<tr>
<th>Nominal Lot Number*</th>
<th>Lot Size</th>
<th>Percentage of the Land (Total Area 3.39ha)</th>
<th>Nominal Land Owner detail**</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>2.52 ha</td>
<td>74.32%</td>
<td>Community Lot</td>
</tr>
<tr>
<td>2</td>
<td>0.17 ha</td>
<td>5.01%</td>
<td>MK, PW &amp; BH Regle</td>
</tr>
<tr>
<td>3</td>
<td>0.10 ha</td>
<td>2.95%</td>
<td>DG Stanton</td>
</tr>
<tr>
<td>4</td>
<td>0.11 ha</td>
<td>3.24%</td>
<td>WR Eger</td>
</tr>
<tr>
<td>5</td>
<td>0.11 ha</td>
<td>3.24%</td>
<td>GP Dawson</td>
</tr>
<tr>
<td>6</td>
<td>0.11 ha</td>
<td>3.24%</td>
<td>AR &amp; WH Smith</td>
</tr>
<tr>
<td>7</td>
<td>0.11 ha</td>
<td>3.24%</td>
<td>ED &amp; R Van Beek</td>
</tr>
<tr>
<td>8</td>
<td>0.16 ha</td>
<td>4.72%</td>
<td>Befale Pty Ltd</td>
</tr>
</tbody>
</table>

* Based on DS4 (see Schedule 1)
** Actual Proposed Development Lot/Owner will need to be settled between the Owners

**Note:** There is a small variation in the total area of the Land between the current DP15559 (3.414ha) and the Proposed Subdivision Plan (3.39ha). This will need to be resolved and the calculations adjusted accordingly.

4 Percentage change – from the existing % (Table A) to proposed % (Table B)

**TABLE C – Loss of Land**

<table>
<thead>
<tr>
<th>Nominal Lot Number</th>
<th>Existing Holding</th>
<th>Proposed Lot Size</th>
<th>% loss of land (as expressed as % of total Land)</th>
<th>Nominal Land Owner detail</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>2.52 ha</td>
<td></td>
<td></td>
<td>Community Lot</td>
</tr>
<tr>
<td>2</td>
<td>0.2649 ha</td>
<td>0.17 ha</td>
<td>2.75%*</td>
<td>MK, PW &amp; BH Regle</td>
</tr>
<tr>
<td>3</td>
<td>0.2687 ha</td>
<td>0.10 ha</td>
<td>4.92%</td>
<td>DG Stanton</td>
</tr>
<tr>
<td>4</td>
<td>0.2725 ha</td>
<td>0.11 ha</td>
<td>4.74%</td>
<td>WR Eger</td>
</tr>
<tr>
<td>5</td>
<td>0.2757 ha</td>
<td>0.11 ha</td>
<td>4.83%</td>
<td>GP Dawson</td>
</tr>
<tr>
<td>6</td>
<td>0.2795 ha</td>
<td>0.11 ha</td>
<td>4.94%</td>
<td>AR &amp; WH Smith</td>
</tr>
<tr>
<td>7</td>
<td>0.2940 ha</td>
<td>0.11 ha</td>
<td>5.37%</td>
<td>ED &amp; R Van Beek</td>
</tr>
<tr>
<td>8</td>
<td>1.7591 ha</td>
<td>0.16 ha</td>
<td>46.81%</td>
<td>Befale Pty Ltd</td>
</tr>
</tbody>
</table>

* Example: Regle 7.76% (Table A) – 5.01% (Table B) = 2.75%
5 Assuming that the Agreed Total Value of the total Land is $100,000 (for ease of calculation only).

6 The percentage loss of land (value) for each Land Owner would be as follows:

<table>
<thead>
<tr>
<th>Nominal Lot Number</th>
<th>Nominal Land Owner</th>
<th>Loss in value (assuming Agreed Total Value = $100,000) % Table C x $100,000</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>MK, PW &amp; BH Regle</td>
<td>$2,750</td>
</tr>
<tr>
<td>3</td>
<td>DG Stanton</td>
<td>$4,920</td>
</tr>
<tr>
<td>4</td>
<td>WR Eger</td>
<td>$4,740</td>
</tr>
<tr>
<td>5</td>
<td>GP Dawson</td>
<td>$4,830</td>
</tr>
<tr>
<td>6</td>
<td>AR &amp; WH Smith</td>
<td>$4,940</td>
</tr>
<tr>
<td>7</td>
<td>ED &amp; R Van Beek</td>
<td>$5,370</td>
</tr>
<tr>
<td>8</td>
<td>Befale Pty Ltd</td>
<td>$46,810</td>
</tr>
<tr>
<td>TOTAL</td>
<td></td>
<td>$74,360</td>
</tr>
</tbody>
</table>

7 The amount of $74,360 represents the total loss in value for all the Land Owners. In order for this loss to be shared equally (divided by the number of Land Owners):

$74,360 ÷ 7 = $10,623.00

8 Each Land Owner’s equitable share in the loss in value would be $10,623.

IMPORTANT NOTE:

The Agreed Total Value has been assumed to be $100,000. An actual value should be determined [per (1) above] and all the calculations (in accordance with the methodology above) should be undertaken.

9 Each Land Owner could contribute to the Trust Fund by an amount of $10,623 less their own reimbursement amount, as follows in TABLE E (the amount deposited would then be the final amount to compensate Befale Pty Ltd less Befale’s own contribution of $10,623):

---

2 $10,622.85 expressed in whole dollars
<table>
<thead>
<tr>
<th>Nominal Lot Number</th>
<th>Nominal Land Owner</th>
<th>Loss in value (assuming Agreed Total Value = $100,000)</th>
<th>Amount to be paid to Trust Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>MK, PW &amp; BH Regle</td>
<td>$10,623 - $2,750</td>
<td>$7,873</td>
</tr>
<tr>
<td>3</td>
<td>DG Stanton</td>
<td>$10,623 - $4,920</td>
<td>$5,703</td>
</tr>
<tr>
<td>4</td>
<td>WR Eger</td>
<td>$10,623 - $4,740</td>
<td>$5,883</td>
</tr>
<tr>
<td>5</td>
<td>GP Dawson</td>
<td>$10,623 - $4,830</td>
<td>$5,793</td>
</tr>
<tr>
<td>6</td>
<td>AR &amp; WH Smith</td>
<td>$10,623 - $4,940</td>
<td>$5,683</td>
</tr>
<tr>
<td>7</td>
<td>ED &amp; R Van Beek</td>
<td>$10,623 - $5,370</td>
<td>$5,253</td>
</tr>
<tr>
<td>8</td>
<td>Befale Pty Ltd</td>
<td>$46,810</td>
<td>Nil</td>
</tr>
</tbody>
</table>

Total Amount to be Paid to Befale Pty Ltd  $36,188