

## LEGAL DOCUMENT LODGEMENT FORM



Lodgement Date	6 July 2018	
Date of Legal Documents	4 July 2018	
Type of Documents	Voluntary Planning Agreement	
ie: Agreements, Contracts, Easements, General, Lease, Loans (see separate forms of Bank Guarantees and Certificates of Title)		
Expiry Date of Document (if applicable)	On completion of the obligations specified within the agreement	
Parties	Central Coast Council & Transnational Pastoral Pty Ltd	
Address	2 Hely Street WYONG NSW 2259	The Storage World Complex 3 Bryant Drive Tuggerah, NSW 2259
Details of Document	The agreement specifies the obligations of Transnational Pastoral Pty Ltd (or any subsequent owner of the subject land) to be complied with, prior to and associated with the lodgement of a Development Application for the subdivision of the land to which the agreement applies.	
Property Description	Lot A DP 396416, Lot 36 DP 755249, Lot 41 DP 123953, Lot 1 DP 554423, Lot 1 DP 229971, Lot 101 DP 604655, Lot 1 DP 120512, Lot 1 DP 229970, also known as 414 Old Maitland Road, Mardi	
Review Date	Not Applicable	
Responsible Officer	Jenny Mewing, Principal Strategic Planner	
Folder Number	RZ/14/2012	
<b>Note:</b> This form and the original documents are to be delivered to Corporate Information		
Legal Document supersedes LDOC	Not Applicable	(if applicable)
<b>After legal document is recorded on the computer a TRIM link is emailed to the responsible officer advising of registration</b>		
<b>Send Link to Meg Newington for the Agreement Register to be updated.</b>		
Please tick if you need the Original Document to be returned to you for mailing out <input type="checkbox"/>		

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**Voluntary Planning Agreement**  
*Under Section 93F of the Environmental Planning and Assessment Act, 1979*  
Central Coast Council & Transnational Pastoral Pty Ltd

Final Version  
Central Coast Council  
October 16





Voluntary Planning Agreement

Author: Central Coast Council

Central Coast Council & Proponent

Date: October 16

Final Version

Approved by: Central Coast Council

Date of Approval: 26 October 2016

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Central Coast Council

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# Voluntary Planning Agreement

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## Voluntary Planning Agreement

### SUMMARY SHEET

**Council:**

**Name:** Central Coast Council  
**Address:** 2 Hely Street, WYONG NSW 2259  
**Telephone:** (02) 4350 5555  
**Facsimile:** (02) 4351 2098  
**Representative:** Chief Executive Officer

**Proponent:**

**Name:** Transnational Pastoral Pty Ltd  
**Address:** The Storage World Complex, 3 Bryant Drive, Tuggerah NSW 2259  
**Telephone:** 02 4351 7700  
**Facsimile:** 02 4351 7710  
**Representative:** Lawrence Denton

**Land:** See definition of *Land* in clause 4.1

**Development:** See definition of *Development* in clause 4.1

**Application of s94, s94A and s94EF of the Act:** See clause 3

**Registration:** See clause 13

**Dispute Resolution:** See clause 11

**DATE:**

**Central Coast Council** (ABN 73 149 644 003) of Council Chambers, Hely Street, Wyong, in the State of New South Wales (**Council**)

And

**Transnational Pastoral Pty Ltd** (ABN 96 003 121 882; ACN 003 121 882) of 3 Bryant Drive, Tuggerah, in the State of New South (**Proponent**)

## **BACKGROUND**

- A. The Proponent is the registered proprietor of the Land.
- B. The Proponent has sought the Instrument Change to enable Development on the Land
- C. The Proponent intends to lodge a Development Application for the Development of the Land
- D. The Proponent is prepared to undertake the necessary processes and actions to secure suitable land under a BioBanking Agreement and to offset impacts on native vegetation and/or habitat on the Land arising from the Development.
- E. The Proponent is prepared to undertake any necessary upgrades or treatments to the local road network/infrastructure impacted by the Development required by a Development Consent.
- F. The Proponent is prepared to undertake the necessary actions and works to upgrade the Potters Gully Fire Trail (to the specified standard) and the Mardi Dam West Fire Trail (to the specified standard) where is it located on their land, to enable improved bush fire protection measures.
- G. The Proponent is prepared to provide a monetary contribution to Council to construct and/or upgrade the Mardi Dam West Fire Trail where it is located on Council land
- H. The Proponent is prepared to undertake the necessary actions and works to provide security from unlawful trespass for the Mardi Dam and environs.
- I. The Proponent is prepared to ensure that the ongoing maintenance of the Potters Gully Fire Trail and the Mardi Dam West Fire Trail, where they are on the Proponent's Land, will be the responsibility of the future owners' corporation and that this will be written into a suitable instrument to facilitate maintenance to a reasonable standard for fire-fighting access/purposes.

## 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 applies to the Instrument Change and Development of the Land.

### 3 OPERATION OF THIS AGREEMENT

- 3.1 This Agreement takes effect once executed by all parties.
- 3.2 This Agreement identifies the arrangements and requirements for the:
- (a) Taking the necessary assessments, actions, arrangements, applications and processes to assess and secure land under a BioBanking Agreement in the Mardi area using the BioBanking Assessment Methodology (or other NSW Government Offsetting Scheme);
  - (b) Undertake the necessary assessments, actions, arrangements, applications and processes to obtain consent from relevant state government agencies for any biodiversity impacts arising from the Development of the Land;
  - (c) Undertake any Works required to the local road network/infrastructure impacted by the Development required by a Development Consent;
  - (d) Construction and/or upgrade of the Potters Gully Fire Trail;
  - (e) Construction and/or upgrade of the Mardi Dam West Fire Trail where it is located on the Proponent's land or a Crown Paper Road;
  - (f) Provision of a monetary contribution to Council to construct the Mardi Dam West Fire Trail where it is located on Council land;
  - (g) Prevention of unauthorised access to Mardi Dam and environs; and
  - (h) Granting of access to the Land by Council and the NSW Rural Fire Service to carry out bushfire protection and risk reduction activities.
- 3.3 By complying with the obligations of this Agreement, a benefit, in the form of a strategic conservation outcome, is achieved in that it provides for the offsetting of native vegetation loss arising from the Development of the Land through a legally recognised methodology and process.
- 3.4 This Agreement **does not** exclude the operation of s.94 and s.94A of the Act.
- 3.5 This Agreement **does not** apply to any obligation that the Proponent may have to pay contributions, fees or charges under s.94 and s.94A of the Act or the *Water Management Act 2000* in respect to the Development of the Land.

### 4 DEFINITIONS AND INTERPRETATION

- 4.1 In this Agreement the following definitions apply:

**Access Control Works** means all reasonable measures required to be undertaken by the proponent to prevent unauthorised vehicular or pedestrian access from the Land onto lands identified as Mardi Dam and environs. Measures are to meet the following performance criteria:



- The prevention of physical access from the Land to Mardi Dam and environs. Physical access does not include access which would otherwise be considered that to be gained by unlawful means, such as through destruction or modification of the access control works. Such controls may include fencing and bollards/boulders.
- The inclusion of gates at intervals of 200m (average distance) or as dictated by existing landscape features.
- These measures are limited to the northern boundary of the Mardi Dam and environs between Old Maitland Rd and Scaddens Ridge Forest Rd.

**Act** means the *Environmental Planning and Assessment Act 1979*.

**Amending LEP** means an environmental planning instrument that has the effect of amending the *Wyong Local Environmental Plan 2013* so the Development of the Land is permissible with consent.

**Biobanking Agreement** has the same meaning as in the *Threatened Species Conservation Act 1995* being an agreement entered into with the Minister administering the *Threatened Species Conservation Act 1995* which is registered on the title of the Land and which is not being breached.

**Biobanking Assessment Methodology** has the same meaning as in the *Threatened Species Conservation Act 1995*.

**Council** means Central Coast Council.

**Current Development Contributions Plan** means the Wyong District Development Contributions Plan (October 2014) and the Section 94 Contributions Plan for Wyong Shire No. 11 – Shire Wide Infrastructure, Services and Facilities (September 2013).

**Development** means the subdivision of the Land to create large lot residential / rural village scale building allotments and associated infrastructure.

**Development Application** means a development application under Part 4 of the Act seeking consent to undertake the Development on the Land.

**Development Consent** means the development consent granted to the Development Application.

**Fire Trails** means the Mardi Dam West Fire Trail and the Potters Gully Fire Trail

**Instrument Change** means the taking of effect of the Amending LEP.

**Land** means the land the subject to the Planning Proposal, as mapped in Schedule 1, being Lot A DP 396415, Lot 36 DP 755249, Lot 41 DP 123953, Lot 1 DP 554423, Lot 1 DP 229971, Lot 101 DP 604655, Lot 1 DP 120512, Lot 1 DP 229970, also known as 414 Old Maitland Road, Mardi.

**Mardi Dam and environs** means lands owned by Central Coast Council, collectively known as "Mardi Dam" and include Lot 34 DP 755249, Lot 39 DP 755249, Lot 42 DP 755249, Lot 4 DP 134150, Lot 2 DP 134150, Lot 1 DP 134150, Lot 2 DP 229970, Lot 1 DP 512109, Lot 10 DP 1007818, Lot 9 DP 1007818, Lot 37 DP 1133206, Lot 2 DP 229971, Lot 1 DP 32704 and Crown roads within the area identified in Schedule 3.

**Mardi Dam West Fire Trail** means the trail generally defined in Schedule 4.

**NSW Government Offsetting Scheme** means any scheme which provides for environmental or biodiversity offsets or credits which is in force following a review of the *Native Vegetation Act 2003*, *Threatened Species Conservation Act 1995* and related legislation.

**Parties** mean the Council and the Proponent, including both their successors and assigns.

**Party** means a party to this Agreement including its successors and assigns.

**Planning Proposal** means the document required by s.55 of the Act that explains the intended effect of the proposed Amending LEP and sets out the justification for making that Amending LEP, being

Council reference number RZ/14/2012 and Department of Planning and Environment reference number PP\_2013\_WYONG\_007\_00.

**Potters Gully Fire Trail** means the trail generally defined in Schedule 4.

**Property Vegetation Plan (PVP)** has the same meaning as in the *Native Vegetation Act 2003* and includes any alternative equivalent legislative mechanism as a result of the review of the *Native Vegetation Act 2003*.

**Proponent** means the person or entity identified in Item 1 of Schedule 2 to this Agreement.

**Proponent's Representative** is the person identified in Item 2 of Schedule 2 to this Agreement, appointed by the Proponent to act on behalf of the Proponent, or that person, from time to time, notified to Council in writing by the Proponent.

**Regulation** means the *Environmental Planning and Assessment Regulation 2005*.

**Subdivision Certificate** has the same meaning as in the Act.

**Works** means those activities or actions to be undertaken to upgrade or construct the Fire Trails and those actions and activities to prevent unauthorised access to Mardi Dam and environs and to enable greater accessibility for bushfire protection and risk reduction activities and any works to upgrade the local road network/infrastructure required by a Development Consent. This includes but is not limited to any investigation, survey, design, assessment and attainment of relevant approvals from the relevant approval authority.

## 5 DEVELOPMENT CONTRIBUTIONS

- 5.1 This agreement requires the payment of monetary contributions.
- 5.2 The Parties agree that nothing that the Proponent does to meet its obligations under this Agreement will give rise to a reduction or variation or credit in any monetary contributions or works in kind that might later be required by a Development Consent to undertake the Development on the Land.

## 6 PROPONENT OBLIGATIONS

- 6.1 Prior to lodging a Development Application seeking Development Consent for the Development of the Land, the Proponent must secure approximately 120 hectares of land in the Mardi area that contains Spotted Gum / Ironbark / Blackbutt Dry Open Ridgetop and Upper Slopes Forest (HU631), Moist Forest / Open Forest (Wet Sclerophyll Forest – shrubby subformation), Blackbutt / Turpentine / Blue Gum Mid to Lower Slopes Forest (HU507), Blue Gum / Turpentine Moist Lower Slopes and Gully Forest (HU571), Closed Forest (Rainforest), Gallery Rainforest (HU651), Floodplain Forest / Swamp Forest (Forested Wetland), Forest Red Gum / Cabbage Gum/ Rough-barked Apple Floodplain Forest (HU546), Swamp Mahogany / Paperbark Swamp Forest (HU633), Paperbark Swamp Forest (HU591), Sedgeland / Rushland (Dams) (HU673) vegetation communities or equivalent Plant Community Type (PCT), as well as the threatened species *Melaleuca biconvexa* and *Syzygium paniculatum* under a Biobanking Agreement using the Biobanking Assessment Methodology (or any NSW Government Offsetting Scheme).
- 6.2 In the event the relevant provisions of the *Threatened Species Conservation Act, 1995* are amended or repealed, the Proponent agrees to comply with the provisions of any NSW Government Offsetting Scheme.

- 6.3 The Proponent undertakes that it will, as part of the process of seeking Development Consent, do the following in relation to any part of the Land zoned R5 Large Lot Residential under the Amending LEP:
- 6.3.1 Prior to the lodgement of a Development Application, undertake the necessary investigations, arrangements and applications with Local Land Services to obtain an 'in principle' agreement for a Property Vegetation Plan for the loss or impacts to native vegetation to be submitted to the Director-General for approval on behalf of the Minister in accordance with the provisions of the *Native Vegetation Act 2003* and *Native Vegetation Regulation 2013*.
- 6.3.2 Submit with any Development Application:
- (a) a draft Property Vegetation Plan;
  - (b) evidence of the 'in principle' agreement of the Local Land Services to the terms and provisions of the draft PVP referred to in clause 6.3.1(a) above;
  - (c) in the event the relevant provisions of the *Native Vegetation Act 2003* are amended or repealed, any relevant documentation required in order to comply with any NSW Government Offsetting Scheme;
  - (d) Evidence that 120 hectares of land has been secured as required by clause 6.1 of this Agreement.
- 6.3.3 Consent to, and do all things necessary to enable, the registration of a Property Vegetation Plan on the title of the Land in accordance with the *Native Vegetation Act 2003*.
- 6.4 Prior to the issue of Subdivision Certificate in respect of the Development:
- 6.4.1 submit to the Council evidence of the Minister's approval of a Property Vegetation Plan as required by Clause 6.3.1 of this agreement and if applicable, evidence its registration on the title of the Land.
- 6.4.2 Seek and obtain any necessary approvals, licenses and/or agreements from Council to undertake and complete any Works to the local road network/infrastructure required by a Development Consent.
- 6.4.3 Seek and obtain any necessary approvals, licenses and/or agreements from NSW Forestry Corp to undertake and complete all Works and Access Control Works required to the Potters Gully Fire Trail.
- 6.4.4 Undertake and complete all Works required to the Potters Gully Fire Trail, located as generally identified within Schedule 4. This construction will be consistent with the former Wyong Shire '*Fire and Land Management Trail Construction Guidelines*' (2012) and must meet the performance criteria for fire trails outlined in '*Planning for Bushfire Protection*' (2006);
- 6.4.5 Undertake and complete all Works required to the Mardi Dam West Fire Trail, located on the Proponent's and Crown land as generally identified within Schedule 4. This construction will be consistent with the former Wyong Shire '*Fire and Land Management Trail Construction Guidelines*'

(2012) and must meet the performance criteria for fire trails outlined in '*Planning for Bushfire Protection*' (2006);

- 6.4.6 Make a monetary contribution to Council in accordance with the Schedule 5 to cover the costs associated with Works to the Mardi Dam West Fire Trail and associated Access Control Works where located on land owned by Council and the NSW Forestry Corporation (Issue No. 3, Date 13/04/2016). The monetary contribution rate will be indexed as follows:

$$\frac{\$C_A \times \text{Current CPI}}{\text{Base CPI}}$$

Where:

**\$C<sub>A</sub>** is the monetary contribution rate at the time of adoption of this Agreement expressed in dollars.

**Current CPI** is the *Consumer Price Index (All Groups Index) for Sydney* as published by the Australian Statistician at the time of the review of the contribution rate.

**Base CPI** is the *Consumer Price Index (All Groups Index) for Sydney* as published by the Australian Statistician at the date of adoption of this plan.

- 6.4.7 Undertake and complete all Access Control Works required to prevent unauthorised access to the Mardi Dam West Fire Trail, Potters Gully Fire Trail (at the boundary with the Land only), and the northern boundary of the Mardi Dam and environs between Scaddens Ridge Forest Rd and Old Maitland Rd, to the satisfaction of Council.
- 6.4.8 Prepare a suitable instrument for registration on the title of the Land to ensure the ongoing maintenance of the Fire Trails to a reasonable standard consistent with the NSW Bush Fire Coordinating Committee (NSW BFCC) Policy No. 2/2007 '*Fire Trails*' (as updated) (where they are on the Land) and to specify that that will be the responsibility of the future owners' corporation. This is to facilitate any compliance activities by Council or the NSW Rural Fire Service and prevent them from the need to work with more than one entity to ensure bush fire protection measures are maintained. This instrument must be registered on the title to the Land on or before the date on which the first subdivision of the Land or any part of the Land is registered.
- 6.4.9 Provide suitable instrument/s for registration on the title of the Land to ensure the ongoing maintenance of any Asset Protection Zones (APZ) to a reasonable standard consistent with the NSW Bush Fire Coordinating Committee (NSW BFCC) Policy No. 2/2007 '*Fire Trails*' (as updated) (where they are on the Land) and to specify that perimeter APZs will be the responsibility of the future owners' corporation. This instrument must be registered on the title to the Land on or before the date on which the first subdivision of the Land or any part of the Land is registered. This is to facilitate any compliance activities by Council or the NSW Rural Fire Service and prevent them from the need to work with more than one entity (unless necessary) to ensure bush fire protection measures are maintained;
- 6.4.10 Prepare a suitable instrument/s for registration on the title of the Land which grants access to, in, on or through the Land adjoining the Mardi Dam and environs land by Council and the NSW Rural Fire Service for the purposes of bushfire protection and risk reduction activities. This instrument

must be registered on the title to the Land on or before the date on which the first subdivision of the Land or any part of the Land is registered.

6.5 The Proponent agrees to, in perpetuity:

6.5.1 maintain any Fire Trails to a reasonable standard consistent with the NSW Bush Fire Coordinating Committee (NSW BFCC) Policy No. 2/2007 'Fire Trails' (as updated) (where they are on the Land) until such time as the future owners' corporation is established, operational and/or has sufficient capital to take over this management responsibility.

6.5.2 maintain any Asset Protection Zones (APZ) to a reasonable standard consistent with the NSW Rural Fire Service document 'Standards for Asset Protection Zones', (as updated) (where they are on the Land) until such time as the future owners' corporation is established, operational and/or has sufficient capital to take over this management responsibility.

6.6 The parties agree that the Proponent's obligations under this Agreement are to be met at no cost to, or other impost on Council. For the avoidance of doubt, the Proponent is to pay all costs, fees, taxes, stamp duties and charges to meet its obligations under this Agreement.

6.7 If the Proponent fails to register on the title to the Land any of the instruments referred to in clause 6 by the required date, the Proponent appoints the Council as its attorney to prepare and execute all such instruments on behalf of the Proponent and to procure their registration, at the Proponent's cost. The Council may refuse to issue a Subdivision Certificate in respect of the Land unless each such instrument has been registered in accordance with the requirements of this Agreement.

## **7 ACCESS TO CARRY OUT WORKS**

7.1 The Proponent acknowledges that the Fire Trails cross a paper Crown Road in certain locations, and that the Department of Trade and Investment (Crown Lands Division) has consented to the construction of the fire trails at those locations, and the Proponent agrees to construct the Fire Trails across the paper Crown Roads at those locations as part of the Works.

7.2 The Proponent acknowledges that the Potters Gully Fire Trail is on land owned by the NSW Forestry Corporation, and that the NSW Forestry Corporation has consented to the upgrade of the fire trail, and the Proponent agrees to construct the Fire Trails at this locality as part of the Works.

## **8 PROPONENT WARRANTIES AND INDEMNITIES**

8.1 The Proponent warrants to Council that:

- (a) It is the registered owner of the Land;
- (b) It is able to fully comply with its obligations under this Agreement;
- (c) It has full capacity to enter into this Agreement; and
- (D) There is no legal impediment to it entering into this Agreement, or performing its obligations under this Agreement.

## **9 REVIEW OF THIS AGREEMENT**

9.1 Any amendments, variation or modification to or of, or consent to any departure by any party from the terms of this Agreement shall have no force or effect unless effected by a document executed by the parties which complies with the requirements of Section 93G of the Act.

## 10 FURTHER AGREEMENT RELATING TO THIS AGREEMENT

- 10.1 The Parties may, at any time and from time to time, enter into agreements relating to the subject-matter of this Agreement for the purpose of implementing this Agreement.

## 11 DISPUTE RESOLUTION

- 11.1 If a dispute arises out of or relates to this Agreement (including any dispute as to the meaning, performance, validity, subject matter, breach or termination of this Agreement or as to any claim in tort, in equity or pursuant to any statute) (**Dispute**), any court or arbitration proceedings shall not be commenced by or against Council, the Proponent or their successors or assigns, relating to the Dispute unless the parties to the Dispute (**Parties**) have complied with this clause, except where a party seeks urgent interlocutory relief.
- 11.2 A party claiming that a Dispute has arisen under or in relation to this Agreement is to give written notice to the other parties to the Dispute, specifying the nature of the Dispute.
- (a) The Parties agree to mediate the Dispute in accordance with the Mediation Rules of the Law Society of New South Wales and to take action to have the Dispute mediated within 7 working days of the receipt of written notice of the Dispute.
  - (b) The Parties agree that the President of the Law Society of New South Wales or the President's nominee will select the mediator and determine the mediator's remuneration.
  - (c) The Parties to the mediation will be jointly responsible for the fees of the mediation and each party shall bear its own costs.
  - (d) The Parties may, but are not required, to enter into a written agreement before mediating a Dispute.
  - (e) If any procedural aspects are not specified sufficiently in the rules under this clause 10, the Parties agree to conduct the mediation regarding those aspects in accordance with the determination of the mediator whose decision regarding those aspects is final and binding on the Parties.
  - (f) A legal representative acting for either of the Parties may participate in the mediation.
- 11.3 From the time when a notice of Dispute is served, neither party shall take action to terminate this Agreement, until after the conclusion of the mediation.
- 11.4 Should mediation fail to resolve any dispute then the dispute shall be determined by arbitration pursuant to the *Commercial Arbitration Act 2010* and the General Manager of the Council shall request the President for the time being of the Law Society of New South Wales to appoint an arbitrator to carry out such arbitration in accordance with the provisions of such Act.
- 11.5 Despite clause 11.1, either Council or the Proponent may institute court proceedings to seek urgent equitable relief in relation to a dispute or difference arising out of or in connection with this Agreement.

## 12 COSTS

- 12.1 The Proponent agrees to pay or reimburse the costs of Council in connection with the:
- (a) Negotiation, preparation and execution of this planning agreement, to a maximum of \$2500.00.
  - (b) Advertising and exhibiting this planning agreement in accordance with the Act, to a maximum of \$350.00, and

- (c) All costs related to registration of this planning agreement where required, within 7 working days after receipt of a tax invoice from Council.

12.2 The obligations to be performed by the Proponent under this agreement shall be performed at no cost to the Council, including any cost of acquisition of the paper Crown Roads (as referred to in clause 7.1), in the eventuation of this requirement.

### 13 REGISTRATION OF THIS AGREEMENT

13.1 The parties agree to register this Agreement for the purposes of s. 93H(1) of the Act.

13.2 On execution, the Proponent is to provide Council with each of the following, at no cost to Council:

- (a) An instrument in registrable form requesting registration of this Agreement on the title to the Land duly executed by the Proponent, and
- (b) The written and irrevocable consent of each person to referred in s. 93H(1) of the Act to that registration; and
- (c) Production of the certificate of title for the Land, for the purpose of procuring the registration of this Agreement.

13.3 The Proponent is to do such other things as are reasonably necessary to remove any notation relating to this Agreement from the title to the Land once the Proponent has completed its obligations under this Agreement or this Agreement is terminated or otherwise comes to an end for any other reason.

### 14 NOTICES

14.1 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 in (b) below.
- (b) Faxed or emailed to that Party at the relevant details set out below.

- (i) Council: **Central Coast Council**
  - Attention: Chief Executive Officer
  - Address: DX 7306 WYONG
  - Fax No: (02) 4350 2098
  - Email: [ask@centralcoast.nsw.gov.au](mailto:ask@centralcoast.nsw.gov.au)

- (ii) Proponent: **Transnational Pastoral Pty Ltd**
  - Attention: Lawrence Denton
  - Address: 3 Bryant Drive  
TUGGERAH NSW 2259
  - Email: [tnt@bigpond.net.au](mailto:tnt@bigpond.net.au)

14.2 If a party gives the other party 3 working days' notice of a change of its address or fax number, any notice, consent, information, application or request is only given or made by that other party if it is delivered, posted or faxed to the latest address or fax number.

14.3 Any notice, consent, information, application or request is to be treated or 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 working 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.

14.4 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 it is on a business day, after 5.00pm 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.

## **15 ENTIRE AGREEMENT**

15.1 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.

## **16 FURTHER ACTS**

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

## **17 GOVERNING LAW AND JURISDICTION**

17.1 This Agreement is governed by the law of New South Wales, Australia. The parties submit to the non-exclusive jurisdiction of its Courts and Courts of appeal from them. The parties will not object to the exercise of jurisdiction by those Courts on any basis provided that the dispute resolution provisions in clause 8 of this Agreement have first been satisfied.

## **18 NO FETTER**

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

## **19 SEVERABILITY**

If a clause or part of a clause in 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.

## **20 WAIVER**

20.1 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.

**21 EXPLANATORY NOTE**

- 21.1 Appendix 1 contains the Explanatory Note relating to this Agreement required by Clause 25E of the Regulation.
- 21.2 Pursuant to Clause 25E(7) of the Regulation, the Parties agree that the Explanatory Note in the Appendix 1 is not to be used to assist in construing this Agreement.

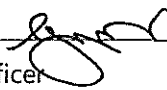
22 EXECUTION PANEL

EXECUTED as a Voluntary Planning Agreement

Date:

Executed pursuant to authorisation of delegated authority under Section 377 of the *Local Government Act, 1993* in accordance with a resolution of the Council made on


the 4<sup>th</sup> day of July 20 : 18

  
\_\_\_\_\_

Chief Executive Officer

~~ROB NOBLE~~ GARY MURPHY

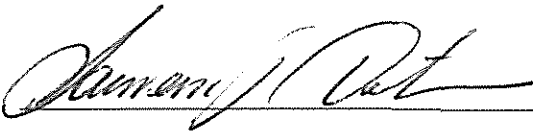
Name [BLOCK LETTERS]

  
\_\_\_\_\_

Witness

DEBORAH MARKS

Name [BLOCK LETTERS]

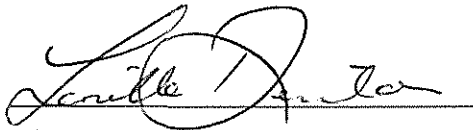
  
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Director/Secretary [if not Sole Director]

Transnational Pastoral Pty Ltd

LAWRENCE DENTON

Name [BLOCK LETTERS]

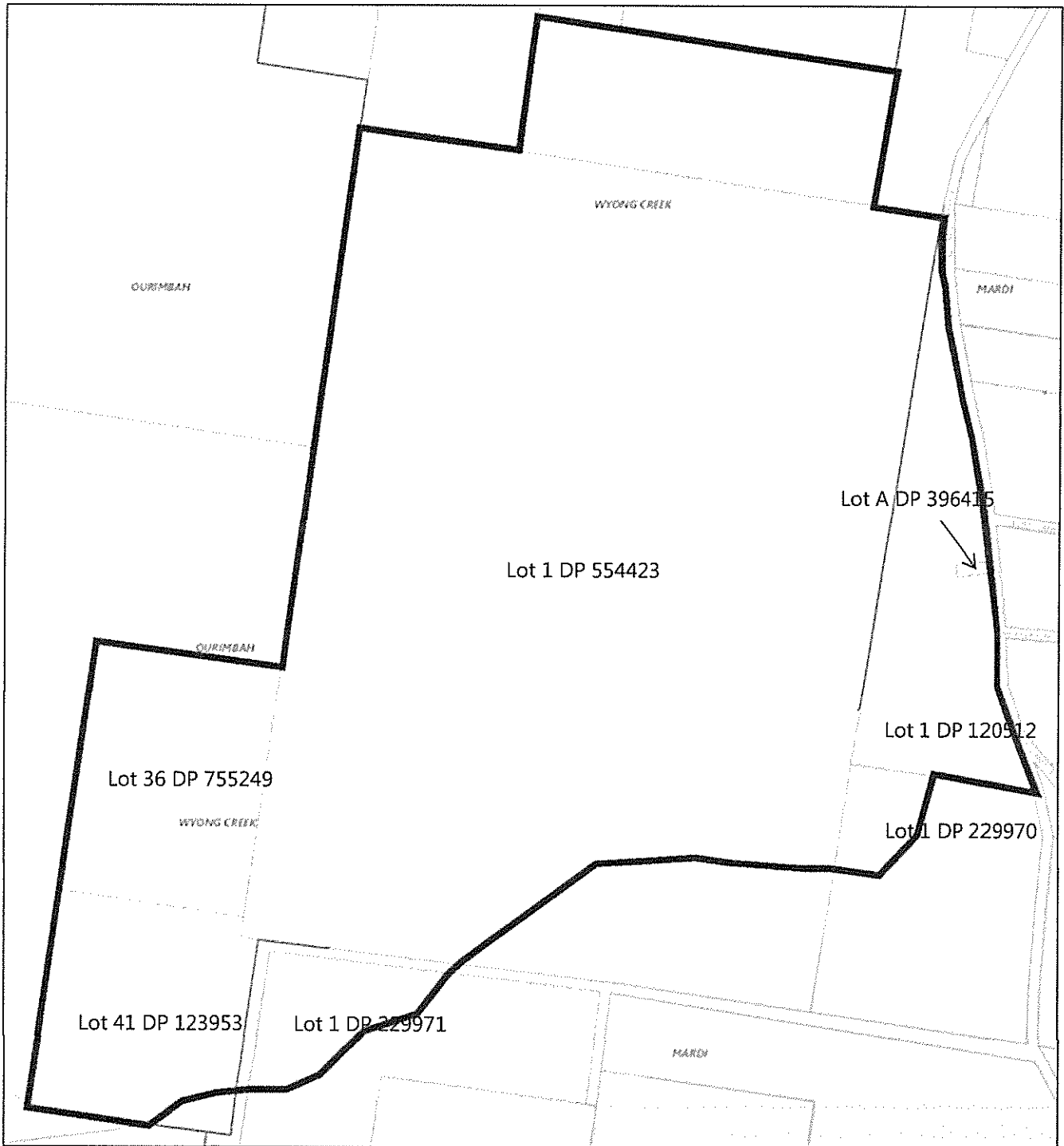
  
\_\_\_\_\_

Witness

TENILLE DENTON

Name [BLOCK LETTERS]

**SCHEDULE 1**

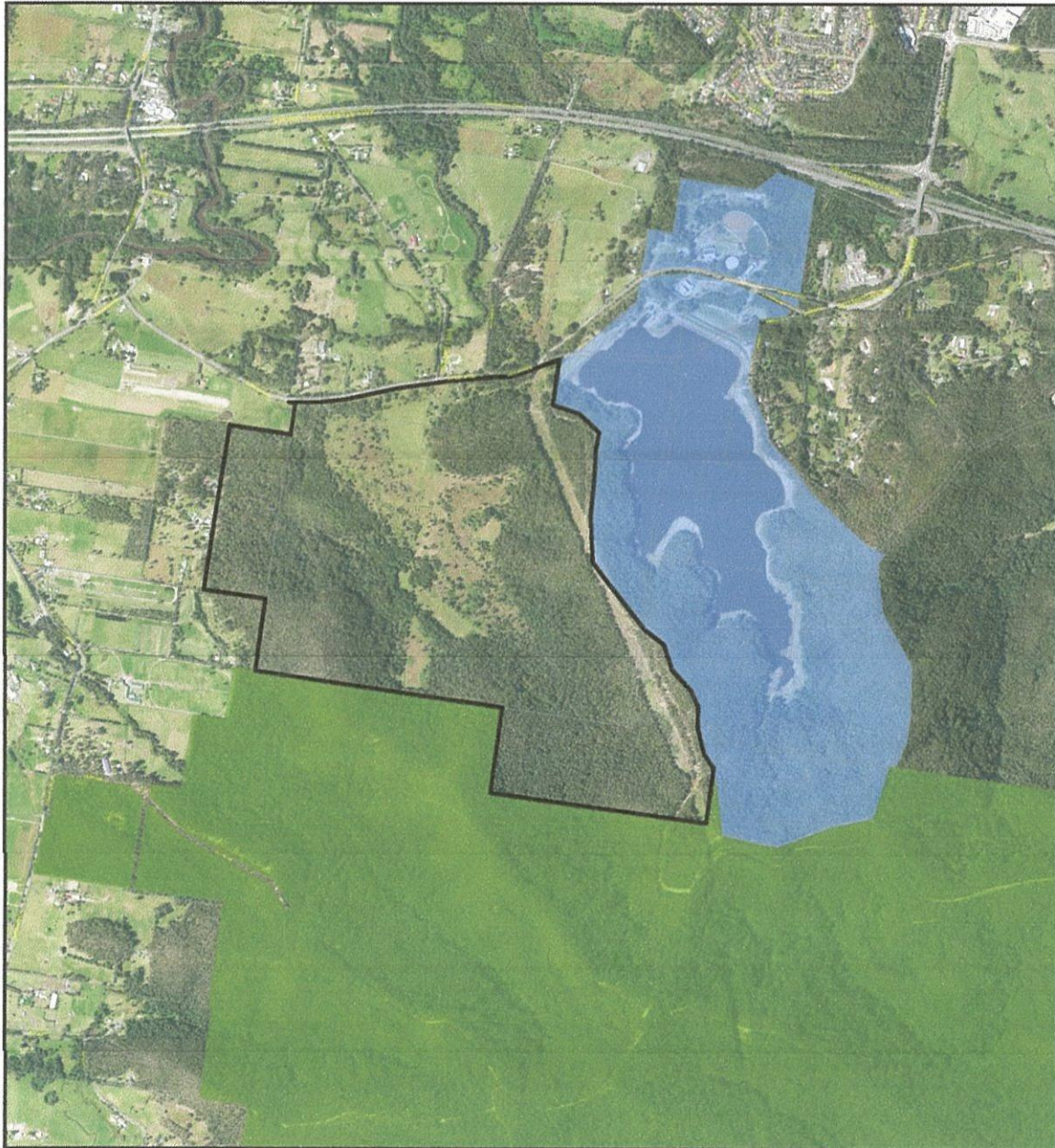
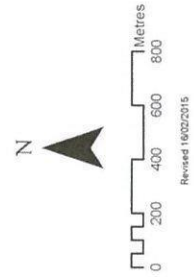


**SCHEDULE 2**

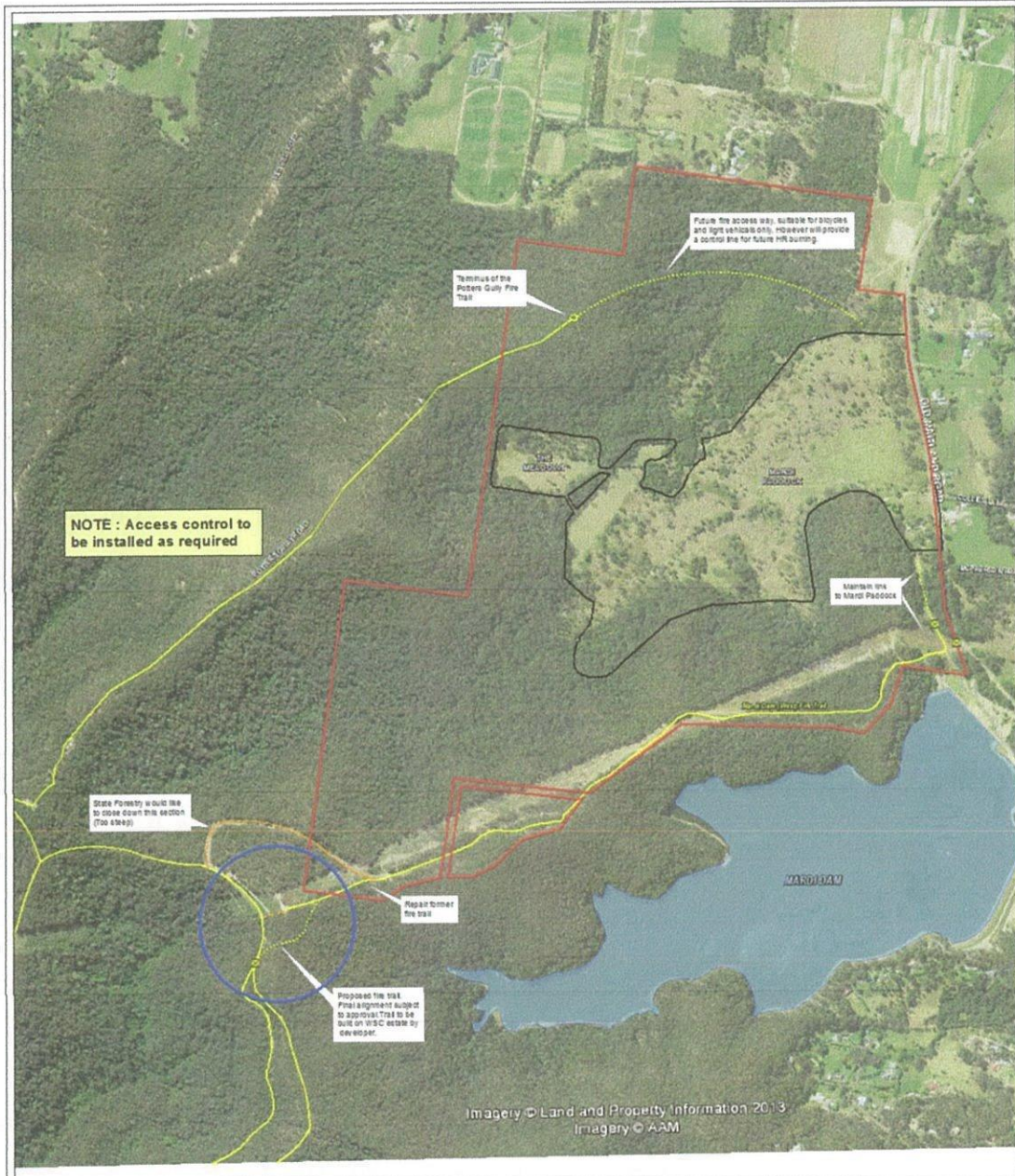
ITEM	DEFINED TERM	PARTICULARS
1	Proponent	Transnational Pastoral Pty Ltd – Lawrence Denton (Director) 3 Bryant Drive TUGGERAH NSW 2259 ABN 96 003 121 882 ACN 003 121 882
2	Proponent’s Representative	DBL Property Pty Ltd Mr Jeffrey Lord, Director Level 6 432 Kent Street SYDNEY NSW 200

**SCHEDULE 3**

**Old Farm Site  
Wyong Creek/Mardi  
MARDI DAM & ENVIRONS**



**SCHEDULE 4**



Legend		
Site boundary	Topographic waterbody	Vegetation Formation
Locked Gate	Topographic watercourse	Forest
<b>Zoning Boundary</b>	Firetrail	Forested Wetland
Central Development Zone	New fire trail link	Rainforest
Environmental Living Zone	Closed firetrail	Dam

	PROJECT & ROAD REFERENCE Old Maitland Road, Mardi A14051_Fire Trails	DATE & ISSUE NUMBER 13/04/2016 Issue 3	SCALE & COORDINATE REFERENCE 1:10 000 @ A3 GDA 1994 MGA Zone 56	
	<b>Mardi Rezoning (Bushfire Access)</b>			

**SCHEDULE 5**

	<b>Works Item</b>	<b>Cost (\$)</b>
1	Planning and liaison with Central Coast Council and Forestry – 75 hrs @ \$150 p/h	11,250
2	Review of Environmental Factors (Environmental Assessment) Some flora and fauna survey work required	5,000
3	Survey including works preparation marks and tree survey	8,000
4	Earthworks	75,000
5	Tree Removal off Site	-
6	Imported surface material for minor areas of improvement	6000
7	Gates	9,000
8	Install Gates	5,000
9	Fencing (Rural Hardwood Post Fence +3 x wires)\$50p/m	10,000
10	Contract & project management (including works inspections)	1,000
	<b>Total</b>	<b>130,250</b>

## **APPENDIX 1**

(Clause 20)

*Environmental Planning and Assessment Regulation 2000*

(Clause 25E)

### **EXPLANATORY NOTE**

#### **Draft Planning Agreement**

Under s93F of the *Environmental Planning and Assessment Act, 1979*

#### **Parties**

**Central Coast Council** (ABN 73 149 644 003) of Council Chambers, Hely Street, Wyong, in the State of New South Wales (**Council**)

**Transnational Pastoral Pty Ltd** (ABN 96 003 121 882; ACN 003 121 882) of 3 Bryant Drive, Tuggerah, in the State of New South (**Proponent**)

#### **Description of the Land to which the Draft Planning Agreement Applies**

Lot A DP 396415, Lot 36 DP 755249, Lot 41 DP 123953, Lot 1 DP 554423, Lot 1 DP 229971, Lot 101 DP 604655, Lot 1 DP 120512, Lot 1 DP 229970, also known as 414 Old Maitland Road, Mardi.

#### **Description of Proposed Development**

Development means the subdivision of the land to create large lot residential/rural village scale building allotments and associated infrastructure.

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

##### **Objectives of the Draft Planning Agreement**

The objective of the Draft Planning Agreement is to secure, in perpetuity, land for the purposes of environmental conservation, upgrade the local road/network/infrastructure as impacted by the Development and reduce the risk of future development of the Land from bushfire attack.

The agreement requires the Proponent to undertake the necessary actions and works to establish a Biobank site for environmental conservation purposes.

The agreement requires that any Works required to the local road network/infrastructure as required by any Development Consent are undertaken at the expense of the Proponent.

It requires the Proponent to make financial contributions for the upgrade and maintain the Potters Gully Fire Trail and Mardi Dam West Fire Trail to enable improved bush fire protection measures for any future Development which may occur on the Land.



Further, the Proponent is also required to undertake the necessary actions and works to provide security from unlawful trespass for the Mardi Dam and environs.

The agreement also ensures the undertaking of measures and processes to offset the impact on native vegetation and habitat on the Land arising from the Development of the Land through legally recognised and enforceable mechanisms.

### **Nature of the Draft Planning Agreement**

The Draft Planning Agreement is a planning agreement under s93F of the *Environmental Planning and Assessment Act 1979* (Act). It is an agreement between the Council and the Proponent. The Draft Planning Agreement is a voluntary agreement under which provisions are made by the Proponent for the conservation or enhancement of the natural environment s93F(2)(f).

### **Effect of the Draft Planning Agreement**

The Draft Planning Agreement:

- relates to the Instrument Change,
- relates to the carrying out by the Proponent of the Development on the Land,
- does not exclude the application of s94A, s94 or s94EF to the Development,
- requires the Proponent to:
  - Establish a biobank site of approximately 120hectares within the Mardi area;
  - undertake the necessary measures to offset the impact on native vegetation and habitat on the Land arising from the Development of the Land;
  - undertake any Works required to the local road network/infrastructure impacted by the Development as required by any Development Consent
  - undertake the necessary actions and works to upgrade/construct the Potters Gully Fire Trail and the Mardi Dam West Fire Trail (where located on the Proponents land) to the specified standard, to enable improved bush fire protection measures;
  - Make a financial contribution to Council to undertake the necessary actions and works to upgrade/construct the Mardi Dam West Fire Trail where it is located on Council land;
  - undertake the necessary actions and works to provide security from unlawful trespass for the Mardi Dam and environs;
  - ensure that the ongoing maintenance of the Potters Gully Fire Trail and the Mardi Dam West Fire Trail and Asset Protection Zones, where they are on the Proponent's Land, will be the responsibility of the future owners' corporation (and the owner in the interim prior to its establishment) and that this will be written into a suitable instrument to facilitate maintenance to a reasonable standard.
- is to be registered on the title to the Land,
- provides dispute resolution methods for a dispute under the Agreement, being mediation and arbitration, and
- provides that the Agreement is governed by the law of New South Wales.

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

### **Planning Purposes Served by the Draft Planning Agreement**

In accordance with Section 93F(2) of the Act, the Draft Planning Agreement has the following public purposes:

- the provision of (or the recoupment of the cost of providing) transport or other infrastructure relating to land; and
- the conservation or enhancement of the natural environment.

The Council and the Proponent have assessed the Planning Agreement and hold the view that the provisions therein provide a reasonable means of achieving the public purpose set out above.

### **How the Draft Planning Agreement Promotes the Public Interest**

The Draft Planning Agreement promotes the public interest by ensuring that upgrades, maintenance and restriction of access to and from the Land will assist in the protection of the Land in the event of a bushfire. Furthermore, public infrastructure and assets will benefit from the provisions contained within the agreement, being additional security for public infrastructure, being Mardi Dam Water Treatment Facility and environs, and the upgrade of the Potters Gully Fire Trail.

It further promotes a strategic environmental conservation outcome through the establishment of 'in perpetuity' of land in accordance with legally recognised frameworks.

### **How the Draft Planning Agreement Promotes the Objects of the Act**

The Draft Planning Agreement promotes the objects of the Environmental Planning and Assessment Act, 2000 by:

- encouraging the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,
- encouraging the proper management, development and conservation of natural and artificial resources to promote the social and economic welfare of the community, and
- promoting the co-ordination of the orderly and economic use and development of land.

The Draft Planning Agreement promotes the object of the Act set out above by improving bushfire management infrastructure, enabling future risk reduction activities to be undertaken to assist in the protection of public and private assets and facilitating future opportunities for development within the region, and promoting strategic conservation outcomes.

### **How the Draft Planning Agreement Promotes the Council's Charter**

The Draft Planning Agreement promotes the elements of the Council's Charter by:

- enabling the proper management, development, protection, restoration, enhancement and conservation the environment of the area for which it is responsible, in a manner that is consistent with and promotes the principles of ecologically sustainable development,
- enabling the effective planning, accounting and management of the assets for which it is responsible; and
- providing a means that allows the wider community to make submissions to the Council in relation to the Agreement.

**How the Draft Planning Agreement Conforms with Council's Capital Works Program**

Council's current Capital Works Program includes identifies requirements for the upgrade and renewal of asset protection zones (Reference PED.30) and fire trails (Reference PED.31) throughout the Shire.

The contribution proposed within this agreement will be a cost effective contribution to the program. The existing steep trails up the hill can be closed to stop erosion and better secure Mardi Dam asset

**Whether the Draft Planning Agreement specifies that certain requirements be complied with before issuing a Construction Certificate, Subdivision Certificate or Occupation Certificate**

The Draft Planning Proposal specifies that the Proponent's obligations must be met:

- a) prior to the lodgement of a Development Application for the Development of the land in regard to the establishment a Biobank Site; and
- b) Prior to Council issuing Subdivision Certificate associated with a Development Application for Development of the Land with regard to undertaking upgrades/construction of the the local road network/infrastructure and identified Fire Trails and monetary contribution to Council for this purpose