

# ANNEXURE A

## Deed

### **Planning Agreement for Landscape Screen associated with Planning Proposal PP029 Hitchcocks Lane, Berry**

Under s7.4 of the *Environmental Planning and Assessment Act 1979*

**Shoalhaven City Council**

**Lot 762 DP 1224932 Landowner**

**Lot 763 DP 1224932 Landowner**

Date: 24 August 2021

Initials:  MJS

Initials:  PAB

Initials:  PLB

Initials:  SCC CEO

**Planning Agreement for Landscape Screen associated with Planning  
Proposal PP029 Hitchcocks Lane, Berry**

**Shoalhaven City Council**

**Lot 762 Landowner**

**Lot 763 Landowner**

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**Planning Agreement for Landscape Screen  
associated with Planning Proposal PP029 Hitchcocks  
Lane, Berry**

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FINAL Planning Agreement (VPA15) for Landscape Screen south of Hitchcocks Lane Berry

Initials:  MJS

Initials:  PAB

Initials:  PLB

Initials:  SCC CEO

**Planning Agreement for Landscape Screen associated with Planning  
Proposal PP029 Hitchcocks Lane, Berry**

**Shoalhaven City Council**

**Lot 762 Landowner**

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**Planning Agreement for Landscape Screen  
associated with Planning Proposal PP029 Hitchcocks  
Lane, Berry**

**Summary Sheet**

**Council:**

**Name:** Shoalhaven City Council ABN 59 855 182 344

**Address:** 36 Bridge Rd, Nowra NSW 2541

**Telephone:** (02) 4429 3111

**Email:** council@shoalhaven.nsw.gov.au

**Representative:** CEO, Stephen Dunshea

**Lot 762 Landowner:**

**Name:** Peter Aubrey Bice and Pamela Lynton Bice

**Address:** 1200-1202 Pitt St, Sydney NSW 2000

**Telephone:** 02 9222 1234

**Email:** p.bice@peterbice.com.au

**Representative:** Peter Bice and Pamela Lynton Bice

**Lot 763 Landowner:**

**Name:** 2535 No 2 Pty Ltd ACN 621 489 647

**Address:** PO Box 746 MAITLAND NSW 2320

**Telephone:** 02 8922 1234

**Email:** 2535no2@2535no2.com.au

**Representative:** Matthew Somers

**Land:**

See definition of *Land* in clause 1.1.

**Development:**

FINAL Planning Agreement (VPA15) for Landscape Screen south of Hitchcocks Lane Berry

Initials:  MJS

Initials: P.B. PAB

Initials:  PLB

Initials: SD<sup>4</sup> SCC CEO



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See definition of *Development* in clause 1.1.

**Development Contributions:**

See Part 2.

**Application of s7.11, s7.12 and s7.24 of the Act:**

See clause 8.

**Security:**

See Part 4.

**Registration:**

See clause 23.

**Restriction on dealings:**

See clause 24.

**Dispute Resolution:**

See Part 3.

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**Shoalhaven City Council**

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**Planning Agreement for Landscape Screen associated with Planning Proposal PP029 Hitchcocks Lane, Berry**

Under s7.4 of the *Environmental Planning and Assessment Act 1979*

**Parties**

**Shoalhaven City Council** ABN 59 855 182 344 of 36 Bridge Rd, Nowra NSW 2541 (**Council**)

and

**Peter Aubrey Bice and Pamela Lynton Bice** of (**Lot 762 Landowner**)

and

**No 2535 No 2 Pty Ltd** ACN 621 489 647 of PO Box 746 Maitland NSW 2320 (**Lot 763 Landowner**)

**Background**

- A The Lot 762 Landowner owns Lot 762 DP1224932 and the Lot 763 Landowner owns Lot 763 DP1224932.
- B The Landowners have sought the preparation of the Planning Proposal PP029.
- C The Landowners have offered to carry out landscaping works and maintain them for a specified period of time, to construct a stock exclusion fence and maintain it in perpetuity and to pay the Council monetary contributions for the Council's ongoing maintenance of the landscaping works in connection with the Planning Proposal.
- D The Parties enter into this Deed for the above purpose.

**Operative provisions**

**Part 1 – Preliminary**

**1 Interpretation**

- 1.1 In this Deed the following definitions apply:

FINAL Planning Agreement (VPA15) for Landscape Screen south of Hitchcocks Lane Berry

Initials:  MJS

Initials: P.B. PAB

Initials:  PLB

Initials: SD SCC CEO

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

**Approval** includes approval, consent, licence, permission or the like.

**Authority** means the Commonwealth or New South Wales government, a Minister of the Crown, a government department, a public authority established by or under any Act, a council or county council constituted under the *Local Government Act 1993*, or a person or body exercising functions under any Act including a commission, panel, court, tribunal and the like.

**Bank Guarantee** means an irrevocable and unconditional undertaking without any expiry or end date in favour of the Council to pay an amount or amounts of money to the Council on demand issued by:

- (a) one of the following trading banks:
  - (i) Australia and New Zealand Banking Group Limited,
  - (ii) Commonwealth Bank of Australia,
  - (iii) Macquarie Bank Limited,
  - (iv) National Australia Bank Limited,
  - (iv) St George Bank Limited,
  - (v) Westpac Banking Corporation, or
- (b) any other financial institution approved by the Council in its absolute discretion.

**Claim** includes a claim, demand, remedy, suit, injury, damage, loss, Cost, liability, action, proceeding or right of action.

**Cost** means a cost, charge, expense, outgoing, payment, fee and other expenditure of any nature.

**CPI** means the *Consumer Price Index (All Groups – Sydney)* published by the Australian Bureau of Statistics

**Deed** means this Deed and includes any schedules, annexures and appendices to this Deed.

**Development** means development, within the meaning of the Act, on the Land that is authorised by a Development Consent granted as a result of the LEP Amendment.

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

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

**Development Contribution** means a monetary contribution, the dedication of land free of cost, the carrying out of work, or the provision of any other material public benefit, or any combination of them, to be used for, or applied towards a public purpose, but does not include any Security or other benefit provided by a Party to the Council to secure the enforcement of that Party's obligations under this Deed for the purposes of s7.4(3)(g) of the Act.

**Dispute** means a dispute or difference between the Parties under or in relation to this Deed.

**Easement** means an easement in gross within the meaning of the *Conveyancing Act 1919* in respect of the Easement Land benefitting the Council and on terms generally as set out in Schedule 5 and satisfactory to the Council authorising the Council's access onto, and the carrying out of



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landscape management activities on, the Landscape Management Land in perpetuity.

**Easement Land** means the Landscape Management Land and the land identified as the '*Excluded Area – Flood Affected Land*' and '*Landscape Screen Noise Mound &/or Barrier*' on the Location Plan.

**Enforcement Security** means a Security in the amount of \$5,000.

**Equipment** means any equipment, apparatus, vehicle or other equipment or thing to be used by or on behalf of the Landowners in connection with the performance of its obligations under this Deed.

**Fencing Covenant** means a public positive covenant within the meaning of the *Conveyancing Act 1919* benefitting the Council and on terms generally as set out in Schedule 4 and satisfactory to the Council requiring the registered proprietors of the Easement Land to maintain the Stock Exclusion Fence in perpetuity.

**Final Lot** means a lot created in the Development for separate residential occupation or a lot of a kind or created for a purpose that is otherwise agreed by the Parties, not being a lot created by a subdivision of the Land:

- (a) that is to be dedicated or otherwise transferred to the Council, or
- (b) on which is situated a dwelling-house that was in existence on the date of this Deed.

**GST** has the same meaning as in the GST Law.

**GST Law** has the same meaning as 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.

**Handover Certificate** means the certificate given by the Council to the Landowners under clause 15.3.

**Handover Date** means the date that Council gives the Landowners a Handover Certificate under clause 15.

**Interim Access Route** means the routes across the Land identified by a red dash line on the plan in Schedule 7, or such alternative route(s) as agreed in writing between the Parties from time to time in accordance with clause 13.2.

**Land** means the land comprised in Lot 762 DP1224932 and Lot 763 DP1224932 and includes that land as subdivided or consolidated from time to time.

**Landowners** means the Lot 762 Landowner and Lot 763 Landowner jointly and severally.

**Landscape Establishment Obligation** means the establishment of landscaping and a landscaping screen on the Landscape Management Land in accordance with the Landscape Establishment Plan and any Approval granted by the Council.

**Landscape Establishment Plan** means the plan in Schedule 2, being the plan titled '*Concept Landscape Plan*' issue D dated 1 May 2021 prepared by Peter Phillips Landscape Architecture.

**Landscape Management Contribution** means a monetary Development Contribution in the amount of \$149,053, indexed from the date of this Deed to the date of payment in accordance with the CPI.

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**Landscape Management Land** means a 12m wide strip of the Land adjacent to the southern boundary of the Planning Proposal Land shown as '*Landscape Screen Management Land*' on the Location Plan.

**Landscape Management Obligation** means the management of the landscaping and landscaping screen on the Landscape Management Land, in accordance with the Landscape Management Plan and any Approval granted by the Council, until the Handover Date.

**Landscape Management Plan** means the plan in Schedule 3, being the document titled '*Maintenance Schedule – Landscape Screen south of Hitchcocks Lane, Berry*' Rev B dated 1 May 2021 prepared by Peter Phillips Landscape Architecture.

**Landscape Management Security** means a Security in the amount of \$45,600 in relation to the Landscape Management Obligation.

**LEP** means the *Shoalhaven Local Environmental Plan 2014*.

**LEP Amendment** means an amendment to the LEP as made by the plan-making authority under s3.36(2) of the Act in respect of the Planning Proposal.

**Location Plan** means the plan in Schedule 1.

**Party** means a party to this Deed.

**Planning Proposal** means a planning proposal within the meaning of s3.33 of the Act with reference number PP029 submitted to the Council on 8 September 2017 for which gateway determination under s3.34 of the Act was determined on 3 April 2018 which seeks to rezone part of the Land from RU1 Primary Production to R2 Low Density Residential.

**Planning Proposal Land** means the part of the Land the subject of the Planning Proposal, shown as '*Development Land*' on the Location Plan.

**Preconditions** means the preconditions to the issuing of a Handover Certificate as specified in clause 15.4.

**Rectification Notice** means a notice in writing:

- (a) identifying the nature and extent of a failure to properly perform the Landscape Establishment Obligation or the Landscape Management Obligation,
- (b) specifying the actions that are required to Rectify such failure,
- (c) specifying the date by which or the period within which such actions are to be undertaken.

**Rectify** means rectify, remedy or correct.

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

**Restriction on Use** means a restrictive covenant within the meaning of the *Conveyancing Act 1919* benefitting the Council and on terms generally as set out in Schedule 6 and satisfactory to the Council which prohibits the registered proprietor of the Easement Land from interfering with any landscaping or landscaping screen within the Easement Land.

**Security** means a Bank Guarantee to the satisfaction of the Council indexed in accordance with the CPI from the date of this Deed.



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**Stock Exclusion Fence** means the stock exclusion fence referred to in clause 10.1.

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

**Suitably Qualified Landscape Professional** means a person employed or appointed by the Council that Council considers is suitably qualified to inspect and assess the condition and health of flora and includes but is not limited to a landscape architect or designer, bush regenerator, horticulturalist.

**Work** means the physical result of any building, engineering or construction work in, on, over or under land.

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

- 1.2.1 Headings are inserted for convenience only and do not affect the interpretation of this Deed.
- 1.2.2 A reference in this Deed to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
- 1.2.3 If the day on which any act, matter or thing is to be done under this Deed is not a business day, the act, matter or thing must be done on the next business day.
- 1.2.4 A reference in this Deed to dollars or \$ means Australian dollars and all amounts payable under this Deed are payable in Australian dollars.
- 1.2.5 A reference in this Deed to a \$ value relating to a Development Contribution is a reference to the value exclusive of GST.
- 1.2.6 A reference in this Deed 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.
- 1.2.7 A reference in this Deed to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- 1.2.8 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Deed.
- 1.2.9 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- 1.2.10 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.
- 1.2.11 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.
- 1.2.12 References to the word 'include' or 'including' are to be construed without limitation.
- 1.2.13 A reference to this Deed includes the agreement recorded in this Deed.

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- 1.2.14 A reference to a Party to this Deed includes a reference to the employees, agents and contractors of the Party, the Party's successors and assigns.
- 1.2.15 A reference to 'dedicate' or 'dedication' in relation to land is a reference to dedicate or dedication free of cost.
- 1.2.16 Any schedules, appendices and attachments form part of this Deed.
- 1.2.17 Notes appearing in this Deed are operative provisions of this Deed.

## **2 Status of this Deed**

- 2.1 This Deed is a planning agreement within the meaning of s7.4(1) of the Act.
- 2.2 The Landowners agree that this Deed operates as a deed poll in favour of the Council on and from the date of execution of this deed by the Landowners until the date on which this deed commences.

## **3 Commencement**

- 3.1 This Deed commences and has force and effect on and from the date when the Parties have:
  - 3.1.1 all executed the same copy of this Deed, or
  - 3.1.2 each executed separate counterparts of this Deed and exchanged the counterparts.
- 3.2 The Parties are to insert the date when this Deed commences on the front page and on the execution page.

## **4 Application of this Deed**

- 4.1 This Deed applies to the Land, the Development and the taking effect of the LEP Amendment.

## **5 Warranties**

- 5.1 The Parties warrant to each other that they:
  - 5.1.1 have full capacity to enter into this Deed, and
  - 5.1.2 are able to fully comply with their obligations under this Deed.

## **6 Further agreements**

- 6.1 The Parties may, at any time and from time to time, enter into agreements relating to the subject-matter of this Deed that are not inconsistent with this Deed for the purpose of implementing this Deed.

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**7 Surrender of right of appeal, etc.**

- 7.1 The Landowners are not to commence or maintain, or to cause or procure the commencement or maintenance, of any proceedings in any court or tribunal or similar body appealing against, or questioning the validity of this Deed, or an Approval relating to the Development in so far as the subject-matter of the proceedings relates to the Landowners' obligation to perform their obligations under this Deed.

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

- 8.1 This Deed does not exclude the application of s7.11 or s7.12 of the Act to the Development.
- 8.2 The benefits under this Deed are not to be taken into consideration when determining a development contribution under s7.11 of the Act in relation to the Development.
- 8.3 This Deed does not exclude the application of s7.24 of the Act to the Development.

**Part 2 – Development Contributions**

**9 Performance of Landscape Management Obligations**

- 9.1 The Landowners at their own Cost are to carry out the Landscape Establishment Obligation and the Landscape Management Obligation on the Landscape Management Land to the satisfaction of the Council in accordance with:
- 9.1.1 a Development Consent or other Approval authorising the carrying out of the Landscape Establishment Obligation and the Landscape Management Obligation as modified or varied from time to time,
- 9.1.2 to the extent not inconsistent with such a Development Consent or Approval:
- (a) this Deed,
  - (b) the Landscape Establishment Plan,
  - (c) the Landscape Management Plan,
  - (d) any further agreement that is entered into by the Parties under clause 6, and
  - (e) any reasonable requirements and directions notified in writing by the Council to the Landowners.
- 9.2 The Landscape Establishment Obligation is to be carried out and completed before the issuing of the first Subdivision Certificate for Development on the Planning Proposal Land.



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- 9.3 The Landscape Management Obligation is to be carried out on and from the date the Landscape Establishment Obligation is completed until the Handover Date.
- 9.4 Subject to the Council giving the Landowners reasonable prior notice, the Landowners are to allow the Council to enter upon and inspect the Landscape Management Land.
- 9.5 The Council may give the Landowners a Rectification Notice at any time relating to the Landowners' performance of the Landscape Establishment Obligation and the Landscape Management Obligation.
- 9.6 The Landowners are to comply with a Rectification Notice at their own Cost according to its terms and to the reasonable satisfaction of the Council.
- 9.7 Neither the Landscape Establishment Obligation nor the Landscape Management Obligation are to be modified or varied unless the Landowners have obtained the prior written Approval of the Council to the modification or variation.
- 9.8 The Landowners are to ensure that any landscaping that has been established on the Landscape Management Land under this Deed are not adversely impacted by any earthworks or construction works on the Land.
- 9.9 The Landowners are not to construct or cause, procure or allow the construction of any building or structure on any part of the Landscape Management Land otherwise than in accordance with a Development Consent or other Approval granted by the Council.

## **10 Construction of Stock Exclusion Fence**

- 10.1 The Landowners, at their own Cost, are to construct a robust, barbed wire stock exclusion fence on the Land in the location shown on the Landscape Establishment Plan.
- 10.2 The Stock Exclusion Fence is to be completed before the commencement of the carrying out of the Landscape Establishment Obligation.
- 10.3 For the avoidance of doubt the requirement to complete the Stock Exclusion Fence is a restriction on the issue of the first Subdivision Certificate for Development on the Planning Proposal Land for the purposes of s6.15(1)(d) of the Act.

## **11 Registration of Fencing Covenant, Easement and Restriction on Use**

- 11.1 The Landowners agree to grant the Fencing Covenant, the Easement and the Restriction on Use to the Council free of Cost to the Council.
- 11.2 The Landowners at their own Cost are to prepare one or more instruments in approved form which, when registered, create(s) the Fencing Covenant, the Easement and the Restriction on Use on the Easement Land and provide the draft form of the instrument(s) to the Council for approval.
- 11.3 The Landowners are to do all things necessary as requested by the Council, including, without limitation, preparing plans, signing all documents, producing

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titles, procuring all necessary consents and Approvals from third parties and assisting the Council to respond to requisitions to enable the Council, as the prescribed authority, to register the Fencing Covenant, Easement and Restriction on Use on the title to the Easement Land.

- 11.4 The Fencing Covenant, Easement and Restriction on Use are to be registered on the Easement Land before the date that is 3 years after the issuing of the first Subdivision Certificate for the Development.

## **12 Council access rights prior to registration of Easement**

- 12.1 Until such time as the Easement is registered on the Easement Land, the Landowners permit the Council to enter the Easement Land and exercise the rights set out in Schedule 5 in order for the Council to carry out landscape management activities on the Landscape Management Land.

## **13 Interim Access Route to Easement Land**

- 13.1 Until such time as the Easement Land is accessible directly by a public road:
- 13.1.1 subject to clause 13.1.3 the Landowners permit the Council to travel along the Interim Access Route, with or without vehicles and equipment in order to access the Easement Land, and
- 13.1.2 the Landowners are not to obstruct or do anything that may obstruct the Council's use of the Interim Access Route, and
- 13.1.3 the Council is to provide the Landowners with a minimum of 24 hours notice before accessing the Interim Access Route under this clause.
- 13.2 The Parties may from time to time agree in writing on an alternative route in which case the alternative route is taken to be the Interim Access Route for the purposes of this Deed.

## **14 Payment of Landscape Management Contribution**

- 14.1 The Landowners are to pay to the Council the Landscape Management Contribution to be applied towards the Council's ongoing landscape management of the Landscape Management Land after the Handover Date.
- 14.2 The Landscape Management Contribution is to be paid before the date that is 3 years after the issuing of the first Subdivision Certificate of the Development.
- 14.3 Despite clause 14.1, the Council may apply the Landscape Management Contribution made under this Deed towards a public purpose located on the Land other than the public purpose specified in clause 14.1 if the Council reasonably considers that the public interest would be better served by applying the Development Contribution towards that other purpose rather than the purpose so specified.
- 14.4 The Landscape Management Contribution is made for the purposes of this Deed when the Council receives the full amount of the contribution payable



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under this Deed in cash or by unendorsed bank cheque or by the deposit by means of electronic funds transfer of cleared funds into a bank account nominated by the Council.

**15 Handover of ongoing landscape management obligations**

- 15.1 Not earlier than the date which is 3 years after the issuing of the first Subdivision Certificate for the Development, the Landowners are to give the Council written notice of the date on which they propose to handover the landscape management obligations of the Landscape Management Land to the Council.
- 15.2 A Suitably Qualified Landscape Professional is to inspect the landscaping on the Landscape Management Land in the presence of a representative of the Landowners at a time reasonably agreed between the Parties that is not later than 14 days of the date of the notice given under clause 15.1.
- 15.3 The landscape management obligations of the Landscape Management Land are handed over to the Council on and from the date the Council gives the Landowners a certificate to that effect (**Handover Certificate**).
- 15.4 Nothing in this Deed requires the Council to give the Landowners a Handover Certificate unless and until all the following have occurred:
- 15.4.1 the Fencing Covenant, Easement and Restriction on Use have been registered on the Easement Land,
- 15.4.2 the Landowners have paid to the Council the Landscape Management Contribution, and
- 15.4.3 the Council is satisfied that the following has been achieved on the Landscaping Management Land:
- (a) large tree species are in good health with a maximum spacing between large trees of 10 metres,
  - (b) 90% of shrubs and trees are established and healthy,
  - (c) 80% of the Landscaping Management Land is free of weeds,
  - (d) groundcover has been established over a minimum of 80% of the area of the Landscaping Management Land,
  - (e) the Stock Exclusion Fence has been constructed and is in good repair.
- 15.5 Before the Council gives the Landowners a Handover Certificate, it may give the Landowners a written direction to do such things as to complete, satisfy, rectify or repair any aspect of the Preconditions to the reasonable satisfaction of the Council.
- 15.6 The Landowners, at their own cost, are to promptly comply with a direction referred to in clause 15.5.

Shoalhaven City Council

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## Part 3 – Dispute Resolution

### 16 Dispute resolution – expert determination

- 16.1 This clause applies to a Dispute between any of the Parties to this Deed concerning a matter arising in connection with this Deed that can be determined by an appropriately qualified expert if:
- 16.1.1 the Parties to the Dispute agree that it can be so determined, or
- 16.1.2 the Chief Executive Officer of the professional body that represents persons who appear to have the relevant expertise to determine the Dispute gives a written opinion that the Dispute can be determined by a member of that body.
- 16.2 A Dispute to which this clause applies is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 16.3 If a notice is given under clause 16.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 16.4 If the Dispute is not resolved within a further 28 days, the Dispute is to be referred to the President of the NSW Law Society to appoint an expert for expert determination.
- 16.5 The expert determination is binding on the Parties except in the case of fraud or misfeasance by the expert.
- 16.6 Each Party is to bear its own costs arising from or in connection with the appointment of the expert and the expert determination.
- 16.7 The Parties are to share equally the costs of the President, the expert, and the expert determination.

### 17 Dispute Resolution - mediation

- 17.1 This clause applies to any Dispute arising in connection with this Deed other than a Dispute to which clause 16 applies.
- 17.2 Such a Dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 17.3 If a notice is given under clause 17.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 17.4 If the Dispute is not resolved within a further 28 days, the Parties are to mediate the Dispute in accordance with the Mediation Rules of the Law Society of New South Wales published from time to time and are to request the President of the Law Society to select a mediator.
- 17.5 If the Dispute is not resolved by mediation within a further 28 days, or such longer period as may be necessary to allow any mediation process which has been commenced to be completed, then the Parties may exercise their legal rights in relation to the Dispute, including by the commencement of legal proceedings in a court of competent jurisdiction in New South Wales.



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**Shoalhaven City Council**

**Lot 762 Landowner**

**Lot 763 Landowner**

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- 17.6 Each Party is to bear its own costs arising from or in connection with the appointment of a mediator and the mediation.
- 17.7 The Parties are to share equally the costs of the President, the mediator, and the mediation.

## **Part 4 - Enforcement**

### **18 Security for performance of obligations**

- 18.1 The Landowners are to provide:
- 18.1.1 the Landscape Management Security to the Council to secure the performance of the Landscape Management Obligation under this Deed,
- 18.1.2 the Enforcement Security to the Council to secure the Council's costs of enforcing a breach of this Deed.
- 18.2 The Landowners are to provide the Landscape Management Security and the Enforcement Security to the Council before the commencement of the Landscape Management Obligation and before the issuing of the first Subdivision Certificate for the Development.
- 18.3 The amount of the Security is to be indexed from the date of this Deed in accordance with the CPI.
- 18.4 The Council may call-up and apply the Security in accordance with clause 20 to remedy any breach of this Deed notwithstanding any other remedy it may have under this Deed, under any Act or otherwise at law or in equity.
- 18.5 The Council is to release and return:
- 18.5.1 the Landscape Management Security or any unused part of it to the Landowners within 14 days of the later of the completion of the Landscape Management Obligation, and
- 18.5.2 the Enforcement Security or any unused part of it to the Landowners within 14 days after the Fencing Covenant, Easement and Restriction on Use have been registered and the Landscape Management Contribution has been paid to the Council.
- 18.6 The Landowners may at any time provide the Council with a replacement Security.
- 18.7 On receipt of a replacement Security, the Council is to release and return the Security that has been replaced to the Landowners.
- 18.8 If the Council calls-up the Security or any portion of it, it may, by written notice to the Landowners, require the Landowners to provide a further or replacement Security to ensure that the amount of Security held by the Council equals the amount it is entitled to hold under this Deed.
- 18.9 The Landowners are to ensure that the Security provided to the Council is at all times maintained to the full current indexed value.

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**19 Caveat**

- 19.1 The Parties acknowledge and agree pursuant to clauses 11, 12 and 13 of this Deed the Landowners are to grant to the Council an equitable interest in the Easement Land and the land on which the Interim Access Route is located and that the Council may lodge and register a caveat on the title to that land in respect of that interest.
- 19.2 The Landowners are not to object to the lodgement and registration of a caveat by the Council referred to in this clause 19.

**20 Breach of obligations**

- 20.1 If the Council reasonably considers that the Landowners are in breach of any obligation under this Deed, it may give a written notice to the Landowners:
- 20.1.1 specifying the nature and extent of the breach,
- 20.1.2 requiring the Landowners to:
- (a) rectify the breach if it reasonably considers it is capable of rectification, or
- (b) pay compensation to the reasonable satisfaction of the Council in lieu of rectifying the breach if it reasonably considers the breach is not capable of rectification,
- 20.1.3 specifying the period within which the breach is to be rectified or compensation paid, being a period that is reasonable in the circumstances.
- 20.2 If the Landowners fail to fully comply with a notice referred to in clause 20.1, the Council may, without further notice to the Landowners, call-up the Security provided by the Landowners under this Deed and apply it to remedy the Landowners' breach.
- 20.3 If the Landowners fail to comply with a notice given under clause 20.1 relating to the carrying out of Work under this Deed, the Council may step-in and remedy the breach and may enter, occupy and use any land owned or controlled by the Landowners and any Equipment on such land for that purpose.
- 20.4 Any costs incurred by the Council in remedying a breach in accordance with clause 20.2 or clause 20.3 may be recovered by the Council by either or a combination of the following means:
- 20.4.1 by calling-up and applying the Security provided by the Landowners under this Deed, or
- 20.4.2 as a debt due in a court of competent jurisdiction.
- 20.5 For the purpose of clause 20.4, the Council's costs of remedying a breach the subject of a notice given under clause 20.1 include, but are not limited to:
- 20.5.1 the costs of the Council's employees, agents and contractors reasonably incurred for that purpose,
- 20.5.2 all fees and charges necessarily or reasonably incurred by the Council in remedying the breach, and



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20.5.3 all legal costs and expenses reasonably incurred by the Council, by reason of the breach.

20.6 Nothing in this clause 20 prevents the Council from exercising any rights it may have at law or in equity in relation to a breach of this Deed by the Landowners, including but not limited to seeking relief in an appropriate court.

## **21 Enforcement in a court of competent jurisdiction**

21.1 Without limiting any other provision of this Deed, the Parties may enforce this Deed in any court of competent jurisdiction.

21.2 For the avoidance of doubt, nothing in this Deed prevents:

21.2.1 a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Deed or any matter to which this Deed relates, or

21.2.2 the Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Deed or any matter to which this Deed relates.

## **Part 5 – Registration & Restriction on Dealings**

### **22 Registration of this Deed**

22.1 The Parties agree to register this Deed for the purposes of s7.6(1) of the Act.

22.2 Upon the commencement of this Deed, the Landowners are to deliver to the Council in registrable form:

22.2.1 an instrument requesting registration of this Deed on the title to the Land duly executed by the registered proprietor of the land, and

22.2.2 the written irrevocable consent of each person referred to in s7.6(1) of the Act to that registration, and

22.2.3 the certificates of title to the Land or evidence of their production to the Registrar-General for the purpose of registering this Deed.

22.3 The Landowners are to do such other things as are reasonably necessary to enable registration of this Deed to occur.

22.4 The Parties are to remove any notation relating to this Deed from the title to:

22.4.1 subject to clauses 22.4.2 and 22.4.3, any Final Lot but only if the Landscape Establishment Obligation has been completed to the satisfaction of the Council, and

22.4.2 the Easement Land but only after the Preconditions have occurred and Council has given the Landowners the Handover Certificate, and

22.4.3 the Interim Access Route, but only if the Easement Land is directly accessible by public road.



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## **23 Restriction on dealings**

- 23.1 The Landowners are not to:
- 23.1.1 sell or transfer the Land or any part of it (other than a Final Lot), or
  - 23.1.2 assign the Landowners' rights or obligations under this Deed, or novate this Deed,  
to any person unless:
    - 23.1.3 the Landowners have, at no cost to the Council, first procured the execution by the person to whom the land or part is to be sold or transferred or the Landowners' rights or obligations under this Deed are to be assigned or novated, of a deed in favour of the Council on terms reasonably satisfactory to the Council, and
    - 23.1.4 the Council has given written notice to the Landowners stating that it reasonably considers that the purchaser, transferee, assignee or novatee, is reasonably capable of performing its obligations under this Deed, and
    - 23.1.5 the Landowners are not in breach of this Deed, and
    - 23.1.6 the Council otherwise consents to the transfer, assignment or novation, such consent not to be unreasonably withheld.
- 23.2 Subject to clause 23.3, the Landowners acknowledge and agree that they remain liable to fully perform their obligations under this Deed unless and until they have complied with their obligations under clause 23.1.
- 23.3 Clause 23.1 does not apply in relation to any sale or transfer of the land if this Deed is registered on the title to the land at the time of the sale.

## **Part 6 – Indemnities & Insurance**

### **24 Risk**

- 24.1 The Landowners perform this Deed at their own risk and its own cost.

### **25 Release**

- 25.1 The Landowners release the Council from any Claim they may have against the Council arising in connection with the performance of the Landowners' obligations under this Deed except if, and to the extent that, the Claim arises because of the Council's negligence or default.

### **26 Indemnity**

- 26.1 The Landowners indemnify the Council from and against all Claims that may be sustained, suffered, recovered or made against the Council arising in connection with the performance of the Landowners' obligations under this

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Deed except if, and to the extent that, the Claim arises because of the Council's negligence or default.

## **27 Insurance**

- 27.1 The Landowners are to take out and keep current to the satisfaction of the Council the following insurances in relation to Work required to be carried out by the Landowners under this Deed up until the Work is taken to have been completed in accordance with this Deed:
- 27.1.1 contract works insurance, noting the Council as an interested party, for the full replacement value of the Works (including the cost of demolition and removal of debris, consultants' fees and authorities' fees), to cover the Landowners' liability in respect of damage to or destruction of the Works,
  - 27.1.2 public liability insurance for at least \$20,000,000.00 for a single occurrence, which covers the Council, the Landowners and any subcontractor of the Landowners, for liability to any third party,
  - 27.1.3 workers compensation insurance as required by law, and
  - 27.1.4 any other insurance required by law.
- 27.2 If the Landowners fail to comply with clause 27.1, the Council may effect and keep in force such insurances and pay such premiums as may be necessary for that purpose and the amount so paid shall be a debt due from the Landowners to the Council and may be recovered by the Council as it deems appropriate including:
- 27.2.1 by calling upon the Security provided by the Landowners to the Council under this Deed, or
  - 27.2.2 recovery as a debt due in a court of competent jurisdiction.
- 27.3 The Landowners are not to commence to carry out any Work unless it has first provided to the Council satisfactory written evidence of all of the insurances specified in clause 27.1.

## **Part 7 – Other Provisions**

### **28 Review of Deed**

- 28.1 The Parties agree to review this Deed every 5 years, and otherwise if either party is of the opinion that any change of circumstance has occurred, or is imminent, that materially affects the operation of this Deed.
- 28.2 For the purposes of clause 28.1, the relevant changes include (but are not limited to) any change to a law that restricts or prohibits or enables the Council or any other planning authority to restrict or prohibit any aspect of the Development.



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- 28.3 For the purposes of addressing any matter arising from a review of this Deed referred to in clause 28.1, the Parties are to use all reasonable endeavours to agree on and implement appropriate amendments to this Deed.
- 28.4 If this Deed becomes illegal, unenforceable or invalid as a result of any change to a law, the Parties agree to do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Deed is entered into.
- 28.5 A failure by a Party to agree to take action requested by the other Party as a consequence of a review referred to in clause 28.1 (but not 28.4) is not a Dispute for the purposes of this Deed and is not a breach of this Deed.

## **29 Notices**

- 29.1 Any notice, consent, information, application or request that is to or may be given or made to a Party under this Deed is only given or made if it is in writing and sent in one of the following ways:
- 29.1.1 delivered or posted to that Party at its address set out in the Summary Sheet, or
- 29.1.2 emailed to that Party at its email address set out in the Summary Sheet.
- 29.2 If a Party gives the other Party 3 business days' notice of a change of its address or email, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or emailed to the latest address.
- 29.3 Any notice, consent, information, application or request is to be treated as given or made if it is:
- 29.3.1 delivered, when it is left at the relevant address,
- 29.3.2 sent by post, 2 business days after it is posted, or
- 29.3.3 sent by email and the sender does not receive a delivery failure message from the sender's internet service provider within a period of 24 hours of the email being sent.
- 29.4 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.

## **30 Approvals and Consent**

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

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**31 Costs**

- 31.1 The Landowners are to pay to the Council the Council's costs of and incidental to preparing, negotiating, executing, stamping (if required), registering and removal of registration of:
- 31.1.1 this Deed, and
  - 31.1.2 the Fencing Covenant, and
  - 31.1.3 the Easement, and
  - 31.1.4 the Restriction on Use, and
  - 31.1.5 any other document related to this Deed,
- within 7 days of a written demand by the Council for such payment.
- 31.2 The Landowners are also to pay to the Council the Council's costs of and incidental to enforcing this Deed within 7 days of a written demand by the Council for such payment.

**32 Entire Deed**

- 32.1 This Deed contains everything to which the Parties have agreed in relation to the matters it deals with.
- 32.2 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 Deed was executed, except as permitted by law.

**33 Further Acts**

- 33.1 Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to effect, perfect or complete this Deed and all transactions incidental to it.

**34 Notations on section 10.7(2) Planning Certificates**

- 34.1 The Parties agree that the Council may, in its absolute discretion, make a notation under section 10.7(5) of the Act regarding this Deed on any certificate issued under section 10.7(2) of the Act relating to the Land, the Easement Land and the Fencing Covenant Land.

**35 Governing Law and Jurisdiction**

- 35.1 This Deed is governed by the law of New South Wales.
- 35.2 The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them.
- 35.3 The Parties are not to object to the exercise of jurisdiction by those courts on any basis.

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### **36 Joint and Individual Liability and Benefits**

36.1 Except as otherwise set out in this Deed:

36.1.1 any agreement, covenant, representation or warranty under this Deed by 2 or more persons binds them jointly and each of them individually, and

36.1.2 any benefit in favour of 2 or more persons is for the benefit of them jointly and each of them individually.

### **37 No Fetter**

37.1 Nothing in this Deed shall 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 shall be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

### **38 Illegality**

38.1 If this Deed or any part of it becomes illegal, unenforceable or invalid as a result of any change to a law, the Parties are to co-operate and do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Deed is entered into.

### **39 Severability**

39.1 If a clause or part of a clause of this Deed 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.

39.2 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 Deed, but the rest of this Deed is not affected.

### **40 Amendment**

40.1 No amendment of this Deed will be of any force or effect unless it is in writing and signed by the Parties to this Deed in accordance with clause 25C of the Regulation.

### **41 Waiver**

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

41.2 A waiver by a Party is only effective if it:

41.2.1 is in writing,



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- 41.2.2 is addressed to the Party whose obligation or breach of obligation is the subject of the waiver,
- 41.2.3 specifies the obligation or breach of obligation the subject of the waiver and the conditions, if any, of the waiver,
- 41.2.4 is signed and dated by the Party giving the waiver.
- 41.3 Without limitation, a waiver may be expressed to be conditional on the happening of an event, including the doing of a thing by the Party to whom the waiver is given.
- 41.4 A waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given, and 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.
- 41.5 For the purposes of this Deed, an obligation or breach of obligation the subject of a waiver is taken not to have been imposed on, or required to be complied with by, the Party to whom the waiver is given.

## **42 GST**

- 42.1 In this clause:

**Adjustment Note, Consideration, GST, GST Group, Margin Scheme, Money, Supply and Tax Invoice** have the meaning given by the GST Law.

**GST Amount** means in relation to a Taxable Supply the amount of GST payable in respect of the Taxable Supply.

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

**Input Tax Credit** has the meaning given by the GST Law and a reference to an Input Tax Credit entitlement of a party includes an Input Tax Credit for an acquisition made by that party but to which another member of the same GST Group is entitled under the GST Law.

**Taxable Supply** has the meaning given by the GST Law excluding (except where expressly agreed otherwise) a supply in respect of which the supplier chooses to apply the Margin Scheme in working out the amount of GST on that supply.

- 42.2 Subject to clause 42.4, if GST is payable on a Taxable Supply made under, by reference to or in connection with this Deed, the Party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.
- 42.3 Clause 42.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Deed to be GST inclusive.
- 42.4 No additional amount shall be payable by the Council under clause 42.2 unless, and only to the extent that, the Council (acting reasonably and in accordance with the GST Law) determines that it is entitled to an Input Tax Credit for its acquisition of the Taxable Supply giving rise to the liability to pay GST.
- 42.5 If there are Supplies for Consideration which is not Consideration expressed as an amount of Money under this Deed by one Party to the other Party that

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are not subject to Division 82 of the *A New Tax System (Goods and Services Tax) Act 1999*, the Parties agree:

- 42.5.1 to negotiate in good faith to agree the GST inclusive market value of those Supplies prior to issuing Tax Invoices in respect of those Supplies;
- 42.5.2 that any amounts payable by the Parties in accordance with clause 42.2 (as limited by clause 42.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 42.6 No payment of any amount pursuant to this clause 42, and no payment of the GST Amount where the Consideration for the Taxable Supply is expressly agreed to be GST inclusive, is required until the supplier has provided a Tax Invoice or Adjustment Note as the case may be to the recipient.
- 42.7 Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to a cost, expense or other liability incurred by a party, must exclude the amount of any Input Tax Credit entitlement of that party in relation to the relevant cost, expense or other liability.
- 42.8 This clause continues to apply after expiration or termination of this Deed.

**43 Explanatory Note**

- 43.1 The Explanatory Note relating to this Deed required by clause 25E of the Regulation is in a separate document accompanying this Deed.
- 43.2 Pursuant to clause 25E(7) of the Regulation, the Parties agree that the Explanatory Note is not to be used to assist in construing this Planning Agreement.

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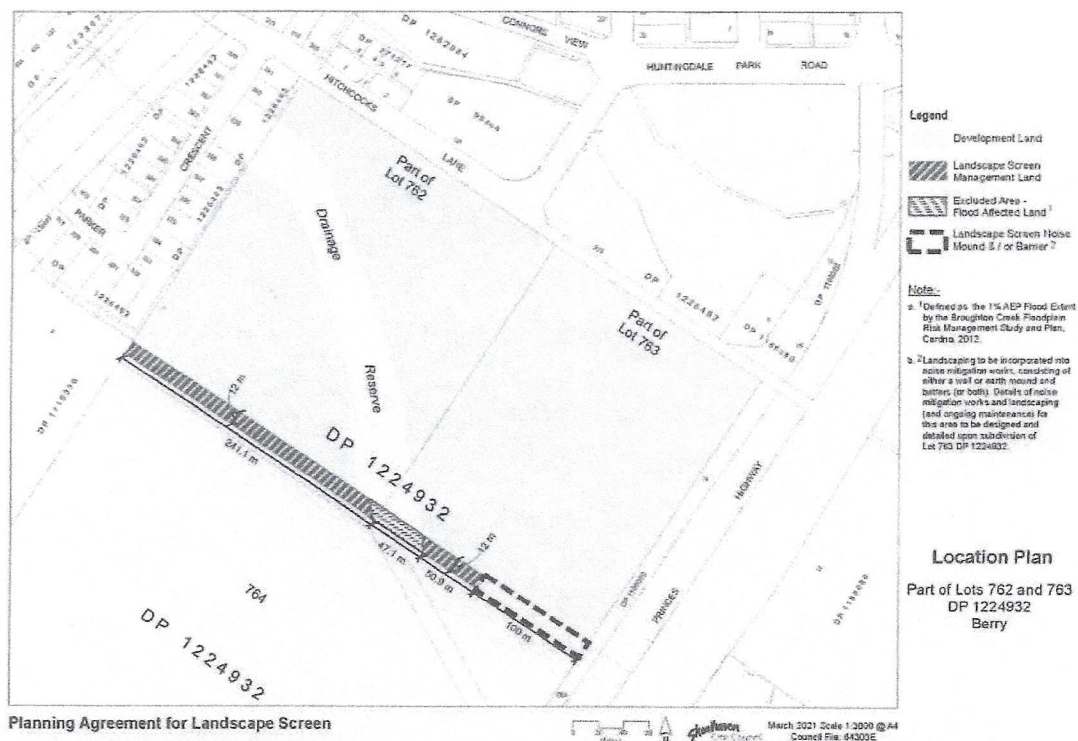
**Lot 762 Landowner**

**Lot 763 Landowner**

**Schedule 1**

(Clause 1.1)

**Location Plan**



FINAL Planning Agreement (VPA15) for Landscape Screen south of Hitchcocks Lane Berry

Initials: MJS

Initials: P.B. PAB

Initials: PLB

27  
Initials: SCC CEO



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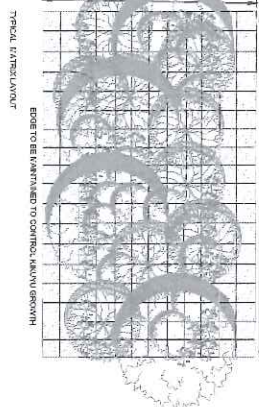
## **Schedule 2**

(Clause 1.1)

### **Landscape Establishment Plan**

See the next page.

## Lot 763 Landowner



## LANDSCAPE SCREEN PLANTING AREA MANAGEMENT

a strand of barbed wire on top

## -ANTING

[illegible][illegible]

**Planning Agreement for Landscape Screen associated with Planning  
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### **Schedule 3**

(Clause 1.1)

## **Landscape Management Plan**

See the next page.



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**MAINTENANCE SCHEDULE-LANDSCAPE SCREEN  
SOUTH OF HITCHCOCKS LANE BERRY**

The Landowners must carry out maintenance for a minimum period of 3 years from the issue of the first Subdivision Certificate for the Development on the Planning Proposal Land. This maintenance is to include but not be limited to watering, weeding, rubbish removal, staking and tying, fertilising, pest and disease control, replacement of dead plant material and turf, renovation, pruning, cultivation and reinstatement of mulch.

**DURATION AND ATTENDANCE**

Landscape contractor is to attend the site weekly for the duration of the stated maintenance or plant establishment period and maintain the site to the satisfaction of Shoalhaven City Council.

**WATERING**

Water grasses, trees, shrubs, and groundcovers to ensure their establishment and continued healthy, and strong growth. Water at 2 day intervals in the first 3 weeks and then weekly for the next 12 weeks or as required to achieve a healthy growth. After the first 15 weeks, watering should be continued twice monthly for the first 12 months and then once monthly for the second year. For the third year, watering shall be carried out when needed with monthly inspections to ascertain the soil moisture content. Additional watering may be needed when extreme dry conditions prevail or plants become stressed.

**RUBBISH**

Remove rubbish from site at each weekly maintenance visit to ensure neat presentation of site at all times.

**PLANT MATERIAL**

Replace all dead, damaged or missing plant material at contractor's cost. Replacement plants are to be identical to those originally installed unless otherwise approved by Landscape Architect. Replacements shall be made within 2 weeks of the plant falling or being removed.

Handover to Shoalhaven City Council will require the following attrition rates:

- All large trees are to be in good healthy condition with a spacing of 10 metres minimum between trees.
- 90% of trees and shrubs to be healthy and established.
- Area to be 80% weed free.
- 80% of groundcovers to be established.

**STAKING**

Replace or adjust any stakes and ties as required or directed by Landscape Architect. Remove stakes and ties at the end of maintenance period or as directed by Landscape Architect.

**PRUNING**

Remove dead, diseased or damaged plant material to improve the health, vigour and foliage density of the plant material. Remove and dispose of prunings away from site according to relevant authorities regulations.

**MULCH**

Reinstate mulch to maintain 75mm depth. Ensure mulch does not contact plant stems.

**PEST AND DISEASES**

Report detection of pests and diseases to Landscape Architect as soon as they are noticed. Spray according to manufacturer's recommendations to control infestations of pests and diseases.

**STOCK PROOF FENCE**

Shall be installed prior to planting and remain in good condition throughout and after the maintenance period.

**WEED CONTROL METHODS**

Introduced species which have been identified for removal or control will be shown on the weed management schedule. The three main methods to be employed are:

**HAND REMOVAL**

The complete removal of all parts of the plant, including roots with all material stockpiled on site.

**CUT AND PAINT**

the plant is to be cut at ground level and painted with the appropriate chemical

**SPRAY**

Where the above methods are inappropriate, spraying of the entire plant with a selective herbicide using the following procedures:

- Best results will be achieved when applied during active growing season
- Strong caution should be used by applicators to ensure non-target species are not affected by spray drift
- All staff involved in the application of chemicals need to be educated on the correct handling procedures and emergency procedures
- An approved bio degradable, non-residual herbicide is to be used

B : Maintenance Schedule- Amended to Council Requests.....01.05.2021

**NOTES**

COPYRIGHT: The Drawings and design remain the property of Peter Phillips Landscape Architecture. Any copying of the design or parts thereof may only be done with consent from PPLA. All dimensions are to be checked onsite prior to the commencement of any work. Peter Phillips is a registered Landscape Architect and is a member of the Australian Institute of Landscape Architects.

**PPLA**

Peter  
Phillips  
Landscape  
Architecture

4 BINDON CLOSE BOMADERRY 2541 FAX: 0244221310 MOB  
0410040507

PROJECT:  
PROPOSED SUBDIVISION  
LANDSCAPE SCREEN PLANTING  
FOR: P.Bice AND M. Somers

TITLE: Maintenance Schedule- Landscape Screen  
south of Hitchcocks Lane, Berry

SCALE: AS SHOWN DWG. M02

Rev: B

DATE: MAY 2021

DRAWN: Peter Phillips

FINAL Planning Agreement (VPA15) for Landscape Screen south of Hitchcocks Lane Berry

Initials:  MJS

Initials:  PAB

Initials:  PLB

Initials:  SCC CEO

Shoalhaven City Council

Lot 762 Landowner

Lot 763 Landowner

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## Schedule 4

(Clause 1.1)

### Terms of Fencing Covenant

#### 1 Definitions

1.1 In this positive covenant:

**Claim** includes a claim, demand, remedy, suit, injury, damage, loss, Cost, liability, action, proceeding or right of action

**Cost** means a cost, charge, expense, outgoing, payment, fee and other expenditure of any nature.

**Prescribed Authority** means Shoalhaven City Council and every person authorised by it including its servants, agents, contractors, successors and assigns.

**Registered Proprietor** means the registered proprietor from time to time of the Burdened Land.

**Burdened Land** means the land burdened by this positive covenant.

#### 2 Terms of positive covenant

- 2.1 The Registered Proprietor and the Prescribed Authority acknowledge and agree that a stock exclusion fence has been installed on the Burdened Land to protect the landscaping and landscaping screen that has been established on the Burdened Land to prevent damage by livestock.
- 2.2 The Registered Proprietor must, at its Cost, and at all times without notice from the Prescribed Authority:
- 2.2.1 maintain, repair and replace (as necessary) the stock exclusion fence referred to in clause 2.1 of this positive covenant to ensure that it is in a good and operational condition and a proper state of repair,
- 2.2.2 carry out regular inspections of the stock exclusion fence to ensure that it is in a good and operational condition and a proper state of repair, to the satisfaction of Prescribed Authority.
- 2.3 Without limiting clause 2.2 of this positive covenant, the Registered Proprietor must, at its Cost, promptly comply with all notices issued by the Registered Proprietor in relation to the maintenance, repair or replacement of the stock exclusion fence.
- 2.4 Any work on the stock exclusion fence is to be carried out by an appropriately qualified civil construction contractor approved by the Prescribed Authority.
- 2.5 If the Registered Proprietor fails to comply with any term of this positive covenant, the Prescribed Authority may take any such action as the Prescribed Authority considers reasonably necessary to remedy the failure including, without limitation, carrying out work on the stock exclusion fence to ensure that it is in a good and operational condition and a proper state of repair, and may

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**Lot 762 Landowner**

**Lot 763 Landowner**

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recover all expenses incurred by the Prescribed Authority of doing so from the Registered Proprietor.

2.6 The Registered Proprietor releases the Prescribed Authority from any Claim it may have against the Prescribed Authority arising in connection with the Registered Proprietor's obligations under this positive covenant and the Prescribed Authority's exercise of its rights under this positive covenant.

2.7 The Registered Proprietor indemnifies and keeps the Prescribed Authority indemnified from and against all Claims that may be sustained, suffered, recovered or made against the Prescribed Authority or that the Prescribed Authority may be liable for arising from the failure of the Registered Proprietor to comply with this positive covenant.

**3 Name of persons empowered to release, vary or modify positive covenant**

Shoalhaven City Council



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**Schedule 5**

(Clause 1.1)

**Terms of Easement**

**1 Definitions**

1.1 In this easement:

**Claim** includes a claim, demand, remedy, suit, injury, damage, loss, Cost, liability, action, proceeding or right of action

**Cost** means a cost, charge, expense, outgoing, payment, fee and other expenditure of any nature.

**Prescribed Authority** means Shoalhaven City Council and every person authorised by it including its servants, agents, contractors, successors and assigns.

**Registered Proprietor** means the registered proprietor from time to time of the Burdened Land.

**Burdened Land** means the land burdened by this easement.

**2 Terms of easement**

2.1 The Prescribed Authority may enter onto the Burdened Land at all times with or without vehicles and equipment for the purposes of carrying out landscape management activities and doing any other thing the Prescribed Authority determines is reasonably necessary to maintain and, if necessary, re-establish the landscaping and landscaping screen located on the Burdened Land.

2.2 The Registered Proprietor releases the Prescribed Authority from any Claim it may have against the Prescribed Authority arising in connection with the Prescribed Authority's exercise of its rights under this easement.

**3 Name of persons empowered to release, vary or modify easement**

Shoalhaven City Council

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**Schedule 6**

(Clause 1.1)

**Terms of Restriction on Use**

**1 Definitions**

1.1 In this restriction on use:

**Claim** includes a claim, demand, remedy, suit, injury, damage, loss, Cost, liability, action, proceeding or right of action

**Cost** means a cost, charge, expense, outgoing, payment, fee and other expenditure of any nature.

**Prescribed Authority** means Shoalhaven City Council and every person authorised by it including its servants, agents, contractors, successors and assigns.

**Registered Proprietor** means the registered proprietor from time to time of the Burdened Land.

**Burdened Land** means the land burdened by this restriction on use.

**2 Terms of restriction on use**

- 2.1 The Registered Proprietor is not to, and is not to allow anything to be done (except by the Prescribed Authority) that disturbs or interferes with any landscaping or landscaping screen on the Burdened Land, except with prior written approval of the Prescribed Authority.
- 2.2 Without limiting clause 2.1, the Registered Proprietor is not to construct or cause, procure or allow the construction of any building or structure on any part of the Burdened Land otherwise than in accordance with a development consent or other approval granted by Shoalhaven City Council.
- 2.3 If the Registered Proprietor fails to comply with any term of this restriction on use, the Prescribed Authority may take any such action as the Prescribed Authority considers reasonably necessary to remedy the failure including, without limitation, carrying out maintenance and, if necessary, re-establishment of the landscaping and landscaping screen located on the Burdened Land, and may recover all expenses incurred by the Prescribed Authority of doing so from the Registered Proprietor.
- 2.4 The Registered Proprietor releases the Prescribed Authority from any Claim it may have against the Prescribed Authority arising in connection with the Registered Proprietor's obligations under this restriction on use and the Prescribed Authority's exercise of its rights under this restriction on use.

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- 2.5 The Registered Proprietor indemnifies and keeps the Prescribed Authority indemnified from and against all Claims that may be sustained, suffered, recovered or made against the Prescribed Authority or that the Prescribed Authority may be liable for arising from the failure of the Registered Proprietor to comply with this restriction on use.

**3 Name of persons empowered to release, vary or modify restriction on use**

Shoalhaven City Council



**Lot 763 Landowner**

(Clause 1.1)

**Legend**

- Landscape Screen
- Proposed Road
- Part of Lot 263

**Notes**

1. The proposed road is shown as a dashed line.
2. The landscape screen is shown as a hatched area.

**Location Plan**

Part of Lots 762 and 763  
DP 1224932  
Berry

March 2007 Scale 1:1000

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Shoalhaven City Council

Lot 762 Landowner

Lot 763 Landowner


**Execution**

Executed as a Deed

Dated:

29/7/2021

**Executed on behalf of the Council**



Chief Executive Officer

Name of Chief Executive Officer:

STEPHEN DUNSMUIR



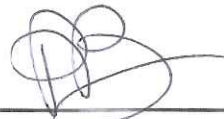
Witness

Name of Witness: CAROLYN CREBBIN

**Executed by Peter Aubrey Bice and Pamela Lynton Bice**



Peter Aubrey Bice



Pamela Lynton Bice



Signature of Witness

Name of Witness:



Signature of Witness

Name of Witness:

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**Shoalhaven City Council**

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**Executed on behalf of No 2535 No 2 Pty Ltd** in accordance with s127(1) of  
the Corporations Act (Cth) 2001

  
\_\_\_\_\_  
Director

21/08/21

Name of Director:

DARREN BOYD VAN AARTD

  
\_\_\_\_\_  
Director/Secretary

19.08.21.

Name of Director/Secretary:

MATTHEW JOSEPH SOMERS.