

PLANNING AGREEMENT

Parties

MIDWESTERN REGIONAL COUNCIL

of 86 Market Street Mudgee NSW 2850 New South Wales (Council)

and

RESILAND PTY LTD (ACN 086 161 873) of Unit 33/61 Donald Street, Nelson Bay New South Wales 2315 and

DELEKI PTY LTD (ACN 001 816 057) of PO Box 1029, Mudgee New South Wales 2850 (Developer)

Background

- A. The Developer owns the Land.
- B. The Developer lodged a Development Application (DA0257/2012) to the Council for Development Consent to carry out a 3 lot residential subdivision of the Land.
- C. On 20 March 2012 the Council resolved to grant Development Consent to the Development Application subject to conditions, including conditions 21 and 22 which provides as follows:

21. Inter-allotment drainage is to be provided to remove stormwater from the lots to the yet to be constructed drainage channel and associated stormwater detention basin to be erected on the adjoining land as specified in the statement of environmental effects and supporting owner's undertaking.

22. In the event that the condition 21 of this consent can not be complied with the applicant is to submit a Drainage Report prepared in accordance with the Institution of Engineers publication Australian Rainfall and Run-off to Council for approval prior to the release of the Construction Certificate. The report must demonstrate that stormwater run off from the site is not increased beyond the existing undeveloped state up to and including a 100-year ARI. All storm water detention details including analysis shall be included with the drainage report.

- D. The Developer has offered to enter into this Agreement in order to make Development Contributions towards the Drainage Improvements and in order to satisfy the condition of the Development Consent for the Development.

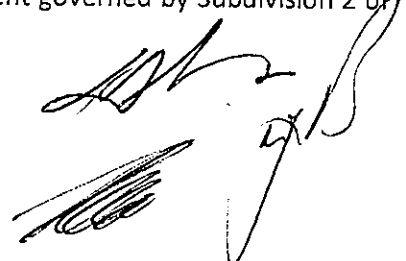
Operative provisions

1. Planning agreement under the Act

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


B Seward



This Agreement applies to the Land and the Development.

3. Operation of this Agreement

This Agreement shall take effect from the date this Agreement is entered into.

4. Definitions and interpretations

4.1 In this Agreement the following definitions apply:

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

CPI means the Consumer Price Index (All Groups Sydney), as published by the Australian Bureau of Statistics.

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

Development means development of the Land in accordance with the Development Consent granted to the Development Application described in Recital B.

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 of \$15,000 + GST (subject to CPI adjustment), being \$5,000 for each of the 3 lots making up the Development to be used towards the costs of construction of the Drainage Improvements.

Drainage Improvements means the drainage solutions detailed in the Report on the Integrated Drainage Solution for Catchment A as adopted by Council on 7 December 2011.

GST has the same meaning as in the GST Law.

GST Law has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* and any other Act or regulation relating to the imposition or administration of the GST.

Land means Lot 31 DP 1169418, known as 12 Rifle Range Road Mudgee.

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

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

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

- (a) Headings are inserted for convenience only and do not affect the interpretation of this Agreement;
- (b) A reference in this Agreement to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
- (c) If the day on which any act, matter or thing is to be done under this Agreement is not a business day, the act, matter or thing must be done on the next business day.
- (d) A reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.
- (e) A reference in this Agreement to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- (f) A reference in this Agreement to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- (g) A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.

- (h) A expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- (i) When a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- (j) A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
- (k) References to the word 'include' or 'including' are to be construed without limitation.
- (l) A reference to this Agreement includes the agreement recorded in this Agreement.
- (m) A reference to a party to this Agreement includes a reference to the servants, agents and contractors of the party, and that party's successors and assigns.
- (n) Any schedules and attachments form part of this Agreement.

5. Development Contributions to be made under this Agreement

Upon execution of this Agreement and the lodgement of the linen plan associated with the Development with the Council, the Developer will pay the Council the Development Contribution in accordance with this Agreement by way of a bank cheque in favour of the Council.

6. Application of the Development Contributions

The Council must, upon receipt of the Development Contributions paid in accordance with clause 5 of this Agreement, and within a reasonable time after the execution of this Agreement, construct the Drainage Improvements.

7. Application for s94 and s94A of the Act to the Development

Sections 94 and 94A of the Act apply to the Development as provided for by the Development Consent for the Development.

8. Registration of this Agreement

This Agreement is not required to be registered on the title to the Land.

9. Review of this Agreement

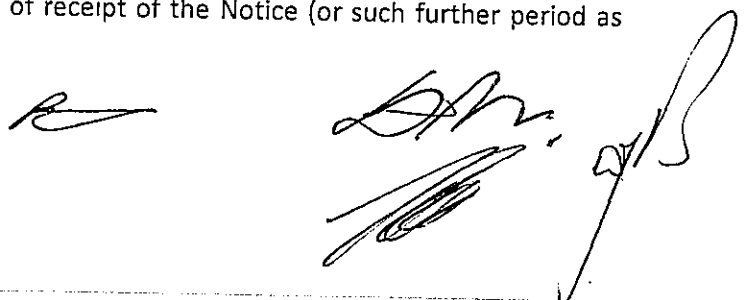
The parties may agree to review this Agreement. Any review or modification will be conducted in the circumstances and manner determined in writing by the Parties.

10. Dispute Resolution

10.1 If any dispute arises out of this Agreement (*Dispute*) a party to the agreement must not commence any court or arbitration proceedings unless the parties to the Dispute have complied with the following paragraphs of this clause except where a party seeks urgent interlocutory relief.

10.2 A party to this Agreement claiming that a Dispute has arisen out of or in relation to this Agreement must give written notice (*Notice*) to the other party to this Agreement specifying the nature of the dispute.

10.3 If the parties do not agree within 7 days of receipt of the Notice (or such further period as agreed in writing by them) as to:



- a) the dispute resolution technique (eg expert determination) and procedures to be adopted.
- b) the timetable for all steps in those procedures; and
- c) the selection and compensation of the independent person required for such technique.

The parties must mediate the Dispute in accordance with the Mediation Rules of the Law Society of New South Wales as published by the Law Society of New South Wales from time to time, and, 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.

10.4 Any information or documents disclosed by the parties under this clause:

- d) must be kept confidential; and
- e) may only be used to attempt to resolve the dispute whether by mutual agreement, mediation, arbitration or litigation.

10.5 Each party to a Dispute must pay its own costs of complying with this clause. The parties to the Dispute must equally pay the costs of any mediator.

10.6 A party to a Dispute may terminate the dispute resolution process by giving notice to each other after it has complied with clause 10.1 and 10.2. Clauses 10.4 and 10.6 survive termination of the dispute resolution process.

11. Enforcement

This Agreement may be enforced by any Party in any court of competent jurisdiction.

12. Notices

12.1 Any notice, consent, information, application or request that must or may be given or made to a Party under this Agreement is only given or made if it is in writing and sent in one of the following ways:

- (a) Delivered or posted to that Party at its address set out below.
- (b) Faxed to that Party at its fax number set out below.
- (c) Emailed to that Party at its email address set out below.

Council

Attention: The General Manager
Address: Council Chambers, 86 Market Street, PO Box 156 Mudgee
NSW 2850
Fax Number: (20) 6378 2815
Email: Warwick.bennett@midwestern.nsw.gov.au

Developer

Attention:
Address:
Fax Number:
Email:

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

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

- (a) If it is delivered, when it is left at the relevant address;

- (b) If it is sent by post, 2 business days after it is posted;
- (c) If it is sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number.

12.4 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.

13. Approvals and consent

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

14. Assignment and Dealings

The Developer may not assign or in any way deal with its rights or obligations under the terms of this agreement to any third party unless:

- (i) The developer has, at no cost to Council, first procured the execution by that person of all necessary documents in favour of Council by which that person agrees to be bound by the Agreement as if they were a party to the original Agreement; and
- (ii) The party is not in breach of this Agreement.

15. Costs

Each party will bear its own costs associated with the preparation, negotiation and execution of this agreement.

16. Entire Agreement

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

17. Further acts

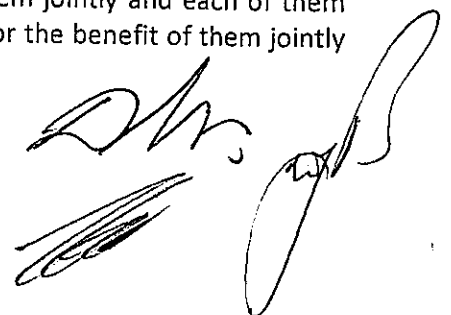
Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to affect, perfect or complete this Agreement and all transactions incidental to it.

18. Governing law and jurisdiction

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

19. Joint and individual liability and benefits

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



20. No fetter

Nothing in this Agreement 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.

21. Representations and warranties

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

22. Severability

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

23. Modification

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

24. Waiver

The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another Party. A waiver by a Party is only effective if it is in writing. A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

25. GST

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

26. Discharge of Developers Obligations

The Developer's obligations under this Agreement shall be discharged on the occurrence of any of the following:

- (a) The Developer's obligations have been fully carried out in accordance with this Agreement; or
- (b) The Development Consent to which the Agreement relates has lapsed; or
- (c) The Development Consent to which the Agreement relates has been modified to such an extent that the planning obligations may not be appropriate; or
- (d) The performance of this Agreement has been frustrated by an event or events beyond the reasonable control of the parties; or
- (e) The Developer has fully and completely assigned the Developer's interest under the Agreement in accordance with its terms; or
- (f) Other material charges affecting the operation of this Agreement have occurred; or
- (g) Council and the Developer otherwise agree to the modification or discharge of this Agreement.

Executed as an agreement:

Dated:

Executed by RESILAND PTY LTD ACN 086 161 873
in accordance with section 127 of the
Corporations Act 2001 (Cth) by:



.....
Signature of Director



.....
Signature of Director/Secretary


H. Bateman

.....
Print name of Director

D. Brayshaw

.....
Print name of Director/Secretary

Executed by DELEKI PTY LTD ACN 001 816 057
in accordance with section 127 of the
Corporations Act 2001 (Cth) by:



.....
Signature of Director



.....
Signature of Director/Secretary

Robert Swords

.....
Print name of Director

BARRY SWORDS

.....
Print name of Director/Secretary

On behalf of MidWestern Regional Council
by its duly authorised representative:



.....
Signature of Witness

Mette Sutton

.....
Print name of Witness



11-10-2012

.....
Signature of Authorised Representative

WARWICK L. BENNETT

.....
Name of Authorised Representative