



ATTACHMENTS TO BUSINESS PAPER



Wednesday 26 September 2012





ATTACHMENT 7.2.4



August Monthly Budget Review – 2012/13
Operational Plan

Wednesday 26 September 2012



Mid-Western Regional Council

Towards 2030

Operational Plan 2012/13

Monthly Review



August

August Proposed Variations		
Community Plan Theme	Variation	Amount
GENERAL FUND		
Contra Variations		
Connecting our region	Correction to project description - from Henry Lawson Drv	300,000 C
Connecting our region	Correction to project description - Cooper Drv Shoulder Widening	(300,000) C
Good government	Consolidate plant turnover codes to ease administrative requirements - Plant Sales	(854,000) C
Good government	Consolidate plant turnover codes to ease administrative requirements - Heavy Plant	2,913,000 C
Good government	Consolidate plant turnover codes to ease administrative requirements - Light Commercial	368,000
Good government	Consolidate plant turnover codes to ease administrative requirements - Minor Plant	36,000 C
Good government	Consolidate plant turnover codes to ease administrative requirements - Plant	(2,463,000) C
Protecting our natural environment	Transfer from unspent grants - Roadside Vegetation Implementation Project	38,156 C
Protecting our natural environment	Grant funding received - Roadside Vegetation Implementation Project	27,161 C
Protecting our natural environment	Expenditure - Roadside Vegetation Implementation Project	(65,317) C
Looking after our community	Grant funding received - Rural Fire Service - Bylong Station	97,252 C
Looking after our community	Expenditure capital works - Bylong Fire Station	(97,252) C
Looking after our community	Grant funding received - Rural Fire Service - Windeyer Station	46,327 C
Looking after our community	Expenditure capital works - Windeyer Fire Station	(46,327) C
Looking after our community	Grant funding received - Rural Fire Service - Mullamuddy Station	150,000 C
Looking after our community	Expenditure capital works - Mullamuddy Fire Station	(150,000) C
Looking after our community	Grant funding received - Rural Fire Service - Mudgee Station	5,500 C
Looking after our community	Expenditure capital works - Mudgee Fire Station	(5,500) C
Looking after our community	Transfer from unspent grants - Social & Cultural Plan Wollemi Arts Contributions	3,115 C
Looking after our community	Expenditure - Social & Cultural Plan Wollemi Arts Contributions	(3,115) C
Looking after our community	Transfer from unspent grants - Youth Services Xstrata contribution	1,829 C
Looking after our community	Expenditure - Youth Services	(1,829) C
Looking after our community	Transfer from unspent grants - Community Transport	26,395 C
Looking after our community	Expenditure - Community Transport Access Vehicle upgrade	(26,395) C

Community Plan Theme	Variation	Amount
Protecting our natural environment	Transfer from unspent grants - Riverbed Regeneration	500 C
Protecting our natural environment	Expenditure - Riverbed Regeneration	(500) C
Building a strong local economy	Transfer from unspent grants - Regional and local community infrastructure program (RLCIP)	8,792 C
Building a strong local economy	Expenditure on Entrance Signage - Regional and local community infrastructure program (RLCIP)	(8,792) C
Looking after our community	Transfer from unspent grants - Community Services - People Against Violence Committee	1,100 C
Looking after our community	Expenditure - Community Services - People Against Violence Committee	(1,100) C
Good government	Transfer from unspent grants - Kandos Museum Aboriginal Exhibit	12,992 C
Good government	Expenditure - Kandos Museum Aboriginal Exhibit	(12,992) C
Total Contra Variations		0
TOTAL GENERAL FUND		0
SEWER FUND		
Contra Variations		
Protecting our natural environment	Transfer budget from Sewer Pump Station Capital Budget Only	15,000 C
Protecting our natural environment	Sewer Pump Station - Bombira, backup diesel pump replacement	(15,000) C
Total Contra Variations		0
TOTAL SEWER FUND		0
WASTE FUND		
Contra Variations		
Looking after our community	Amend capital waste budgets - Rural Waste Depot upgrades Budget Only	4,000 C
Looking after our community	Waste Transfer Station - Lue Upgrade	(5,000) C
Looking after our community	Waste Transfer Station - Wollar Upgrade	(10,000) C
Looking after our community	Mudgee Waste Depot Upgrades - reduce budget	1,800 C

Community Plan Theme	Variation	Amount
Protecting our natural environment	Waste Site Rehab - Putta Bucca - works deferred	15,000 C
Protecting our natural environment	Waste Site Rehab - Gulgong - works deferred	5,000 C
Protecting our natural environment	Waste Site Rehab - Ilford - works deferred	13,200 C
Protecting our natural environment	Waste Site Rehab - Birriwa Upgrade	(24,000) C
Total Contra Variations		0
TOTAL WASTE FUND		0
Code		
F - Favourable		
U - Unfavourable		
C - Contra		

	Original Annual Budget		Revised Annual Budget		Proposed Variations		Proposed Annual Budget		Actual YTD		% Proposed Annual Budget		Comment

\$'000

Capital Works Program - Looking After Our Community

Income

Capital Works

(90) (90) (299) (389) 25 -6%

IT RECORDS MANAGEMENT IMPLEMENTATION													
RURAL FIRE SERVICE - BYLONG STATION UPGRADE	250	250	0	250	0	250	0	250	0	0	0	0%	Currently with LG Procurement for vendor submissions. Closing date 21 September 2012.
RURAL FIRE SERVICE - WINDEYER FIRE STATION EXTENSIONS	0	0	0	0	97	97	46	97	0	0	0	0%	These brigade improvements are funded by the NSW RFS.
RURAL FIRE SERVICE - MULLAMUDDY FIRE STATION EXTENSIONS	0	0	0	0	150	150	46	150	0	0	0	0%	These brigade improvements are funded by the NSW RFS.
RURAL FIRE SERVICE - MUDGEE FIRE STATION	0	0	0	0	6	6	150	6	4	1	1	1%	These brigade improvements are funded by the NSW RFS.
REGIONAL POUND FACILITIES	185	185	0	185	0	185	0	185	26	26	26	14%	These brigade improvements are funded by the NSW RFS. Shed will be erected September.
HM&M VEHICLE PURCHASE	27	27	0	27	0	27	0	27	0	0	0	0%	Programme for vehicle replacement in place, continuing through the year.
COMM. TRANSPORT- VEHICLE PURCHASE	126	126	0	126	26	152	26	152	0	0	0	0%	Programme for vehicle replacement in place, continuing through the year.
WASTE SITES REHABILITATION	15	15	0	15	0	15	0	15	0	0	0	0%	Budget only to be reallocated as part of September quarterly review.
WASTE SITE REHAB - PUTTA BUCCA	15	15	(15)	0	(15)	0	(15)	0	0	0	0	0%	Works deferred and budget reallocated to Birriwa.
WASTE SITE REHAB - GULGONG	5	5	(5)	0	(5)	0	(5)	0	0	0	0	0%	Works deferred and budget reallocated to Birriwa.
WASTE SITE REHAB - ILFORD	15	15	(13)	2	(13)	2	(13)	2	2	2	2	100%	Completed
WASTE SITE REHAB - BIRRIWA													Works to rehab bulky goods area and provide alternative service to prevent illegal dumping, subject to community consultation.
RYLSTONE CEMETERY CAP IMPV	15	15	0	15	24	24	0	24	0	0	0	0%	Construction commenced, project to be completed September

	Original Annual Budget		Revised Annual Budget		Proposed Variations		Proposed Annual Budget		% Proposed Annual Budget		Comment
	Original Annual Budget	Revised Annual Budget	Proposed Variations	Proposed Annual Budget	Actual YTD	% Proposed Annual Budget	Comment				
PUBLIC TOILETS - RYLSTONE DISABLED TOILETS	60	60	0	60	0	0	0	0%	Designs currently being drafted.		
PUBLIC TOILETS - CORONATION PARK	3	3	0	3	0	0	0	0%	Power to be installed September.		
PUBLIC TOILETS - GULGONG CEMETERY	4	4	0	4	0	0	0	0%	Quotes currently being sought.		
PUBLIC TOILETS - RYLSTONE SHOWGROUND	40	40	0	40	0	0	0	0%	Scope of works being drafted.		
PUBLIC TOILETS - VICTORIA PARK	10	10	0	10	0	0	0	0%	Quotes currently being sought.		
PUBLIC TOILETS - MUDGEES CEMETERY	5	5	0	5	0	0	0	0%	Quotes currently being sought.		
PUBLIC TOILETS - RYLSTONE COUNCIL DEPOT	4	4	0	4	0	0	0	0%	Quotes currently being sought.		
PUBLIC TOILETS - CUDGEGONG WATERS CARAVAN PARK	15	15	0	15	0	0	0	0%	Scope of works being drafted.		
LIBRARY BOOKS									Ongoing program of book purchasing will continue throughout the financial year. Special purchases for opening of Town Hall being arranged		
MUDGEES LIBRARY BUILDING IMPROVEMENTS	111	111	0	111	30	27%			Construction program due for completion at the end of November, followed by library fitout and relation. Library due to open at Town Hall on January 2nd.		
CAP UPGRD-CLANDULLA FACILITIES	5	5	0	5	3	60%			Scope of works being drafted.		
CAP UPGRD-COMMUNITY BLD-BUDGET ONLY	160	160	0	160	0	0%			Budget to be re-allocated as part of the September quarterly review.		
POOL RENEWAL									Pools works substantially commenced. Project to be fully completed by December 14 with facilities progressively opened.		
MUDGEES SHOWGROUNDS - REDEVELOPMENT	4,200	4,200	0	4,200	221	5%			Furniture has been ordered and waiting for quotes for the kitchen works		
KANDOS NETBALL COURTS	25	25	0	25	0	0%			Designs completed, working with Netball club to complete project.		
MUDGEES SKATE PARK	35	57	0	57	0	0%			Planning work to commence prior to Christmas with completion in 2013.		
MEMORIAL PARK CAPITAL - PAVING	12	12	0	12	0	0%			Quotes currently being sought.		
PLAYGROUND EQUIPMENT - DARTON PARK	80	80	0	80	0	0%			Playground ordered, expected completion Dec 2012.		

	Original Annual Budget	Revised Annual Budget	Proposed Variations	Proposed Annual Budget	Actual YTD	% Proposed Annual Budget	Comment
STREET SCAPE CAPITAL IMPROVEMENTS	15	15	0	15	0	0%	Scope of works being drafted.
STREETSCAPE - BIN REPLACEMENT PROGRAM	13	13	0	13	11	85%	Bins arrived, to be installed in September.
Total Capital Works	7,918	7,940	316	8,256	692	8%	
Net Result	7,829	7,850	17	7,867	717	9%	

	Original	Revised	Proposed	Proposed	Proposed	Actual	% Proposed	Comment
	Annual Budget	Annual Budget	Annual Budget	Variations	Annual Budget	YTD	Annual Budget	

\$'000

Capital Works Program - Protecting Our Natural Environment

Income

Capital Works

RURAL WASTE DEPOT UPGRADES	4	4	0	(4)	0	0	0%	Budget only , budget has been reallocated to Waste projects below.
MUDGE WASTE DEPOT UPGRADES	30	37	0	(2)	35	4	12%	Upgrade/repairs to entry road, repair of leachate drain.
WASTE - LAND MATTERS	12	12	0	0	12	0	0%	Queens Pinch WTS - quote for survey received - matter progressing as planned.
RELOCATE ULAN WTS								Finalisation of Ulan WTS project. Facility will be open by end of September with minor road shoulder works to complete in line with sealing crew availability.
RWTS COLLECTION FACILITIES UPGRADE	20	20	0	0	20	0	0%	Completion of new concrete slabs for recycling cages and fencing.
WTS - LUE UPGRADE	5	5	0	5	10	0	0%	Fencing of bulk area, cleaning and capping site.
WTS - HARGRAVES UPGRADE	5	5	0	0	5	0	0%	Cleaning and capping bulk area.
WTS - WINDEYER UPGRADE	5	5	0	0	5	0	0%	Cleaning and capping bulk area.
WTS - WOLLAR UPGRADE	3	3	0	10	13	0	0%	Fencing of bulk area, cleaning and capping site and reducing available area to illegally dump.
WTS - BYLONG UPGRADE	10	10	0	0	10	0	0%	Contruction of fencing and signage to lock facility as per community consultation.
DRAINAGE CAPITAL IMPROVEMENTS	778	846	0	0	846	107	13%	Railway to Gladstone St works complete; VPAs off exhibition and will now be finalised for developments in Catchment A. Land acquisition continuing.
ENV - PUTTA BUCCA WETLANDS	20	20	0	0	20	1	5%	Contractor engaged. Work will commence over the next two months.

	Original Annual Budget		Revised Annual Budget		Proposed Variations		Proposed Annual Budget		Actual YTD		% Proposed Annual Budget		Comment
WATER NEW CONNECTIONS		124		124	0		124	0	124	17		14%	Provision of new connections to subdivisions and other new development types as and when required
WATER AUGMENTATION - RYLSTONE & KANDOS		70		70	0		70	0	70	0		0%	Powdered Activated Carbon Unit to be replaced, minor dam wall works and motorised valve replacement required. Works currently scheduled for March 2013.
WATER CHLORING DOSING PLANT RYL & CHARBON		12		12	0		12	0	12	0		0%	Installation of chlorination plant at Charbon to Clandulla water pump station. Works scheduled for completion during February 2013
WATER TELEMETRY - BUDGET ONLY		20		20	0		20	0	20	0		0%	Budget only. Budget to be reallocated when works are required.
WATER TELEMETRY - RYLSTONE LINK		50		50	0		50	0	50	0		0%	Works completed ahead of schedule during 2012 Financial Year. Budget to be adjusted in September QBR.
WATER LOSS MANAGEMENT WORKS		25		25	0		25	0	25	4		15%	Planning currently underway to allow construction works to commence in early 2013.
WATER MAINS - LAWSON STREET		40		40	0		40	0	40	0		0%	Mains replacement works scheduled to commence in 2013.
WATER MAINS - PERRY ST		70		70	0		70	0	70	0		0%	Mains replacement works scheduled to commence in 2013.
WATER MAINS - CHURCH ST		70		70	0		70	0	70	0		0%	Mains replacement works. Will be scheduled when Church St road and drainage upgrade works confirmed.
WATER MAINS - LOVEJOY ST		30		30	0		30	0	30	0		0%	Mains replacement works scheduled to commence in November 2012.
WATER MAINS - DENISON ST		30		30	0		30	0	30	0		0%	Mains replacement works scheduled to commence in March 2013.

	Original Annual Budget	Revised Annual Budget	Proposed Variations	Proposed Annual Budget	Actual YTD	% Proposed Annual Budget	Comment
WATER MAINS - BROADHEAD RD	0	0	0	0	4	0%	Upgrade of watermain in Broadhead Road associated with Yallabee Estate Subdivision development works. Project Complete. Budget to be adjusted in September QBR.
WATER PUMP STATION - MUDGEE RIVER INTAKE	60	60	0	60	2	3%	Rectification of subsidence and realignment of raw water rising main. Design works to be completed 2012 for construction to commence after the summer period.
WATER RESERVOIR - FLIRTATION HILL MUDGEE	2,500	2,500	0	2,500	0	0%	Scoping of infrastructure requirements to service future development in stages currently being undertaken.
RESERVOIRS - KANDOS	50	50	0	50	0	0%	Reservoir refurbishment including replacement of ladder access system.
RAW WATER SCHEME GULGONG							Project scheduled for completion by end October 2012. Works to complete include refurbishment of reservoir roofs at Flirtation Hill and Elcom Pump Station, extension of irrigation main to service cemetery, fencing and landscaping.
WATER TREATMENT WORKS - MUDGEE	320	633	0	633	80	13%	Removal of lime sludge from drying ponds to be undertaken in summer period.
WATER TREATMENT PLANT - GULGONG	15	15	0	15	2	10%	Removal of lime sludge from drying ponds to be undertaken in summer period.
WATER MIETERS - BULK	90	90	0	90	2	3%	Ongoing program to replace water meters greater than 15 years old.
VALVE REPLACEMENT PROGRAM	20	20	0	20	11	56%	Replacement of damaged and aging valves in reticulation system
SEWER NEW CONNECTIONS	46	46	0	46	6	13%	Provision of new connections associated with new development.

	Original Annual Budget	Revised Annual Budget	Proposed Variations	Proposed Annual Budget	Actual YTD	% Proposed Annual Budget	Comment
SEWER AUGMENTATION - RYLSTONE & KANDOS	50	128	0	128	0	0%	Awaiting for delivery of final documentation and design for Rylstone, Kandos and Villages sewerage augmentation. Land Matters will be progressed this Financial Year.
SEWER AUGMENTATION - MUDGEES	11,921	14,545	0	14,545	1,463	10%	Putta Bucca Pump Station Upgrade, Power Supply Provision and STP Construction Contracts all underway. Major concrete works for aeration and balance tanks completed at STP.
SEWER TELEMETRY	20	20	0	20	0	0%	Budget only. Budget to be reallocated when works are required.
SEWER MAINS - BURRUNDULLA RD	23	43	0	43	6	15%	Sewer main replacement works scheduled for October 2012.
SEWER MAINS RELINING	70	70	0	70	0	0%	Works scheduled for January-February 2013.
SEWER MAINS - MUDGEES INDUSTRIAL AREA	180	180	0	180	0	0%	Awaiting finalisation of land matters with John Holland (Country Rail Network). Works scheduled upon finalisation of land matters.
SEWER MAINS - BROAD ST GULGONG	35	35	0	35	0	0%	Sewer mains extension. Works scheduled for February 2013.
SEWER PUMP STATION - CAPITAL BUDGET ONLY	20	20	(15)	5	0	0%	Budget only. Budget to be reallocated when works are required.
SEWER PUMP STATION - BOMBIRA	0	0	15	15	0	0%	Replacement of diesel pump. Scheduled for completion by December 2012.
SEWER PUMP STATION - INDUSTRIAL	45	92	0	92	0	0%	Awaiting finalisation of land matters with John Holland (Country Rail Network). Works scheduled upon finalisation of land matters.

	Original Annual Budget	Revised Annual Budget	Proposed Variations	Proposed Annual Budget	Actual YTD	% Proposed Annual Budget	Comment
SEWER PUMP STATION - GULGONG HOSPITAL	0	8	0	8	0	0%	Pump Replacement: Installation will commence on arrival of pump already ordered. Expected completion by November 2012.
SEWER TREATMENT WORKS - MUDGEE	45	45	0	45	1	2%	Reserved for urgent works.
SEWER TREATMENT WORKS - GULGONG	0	120	0	120	0	0%	Insurance works - Rectification of storm damage. Scheduled to be completed by December 2012.
Total Capital Works	16,958	20,288	9	20,297	1,726	9%	
Net Result	16,958	20,288	9	20,297	1,726	9%	

	Original Annual Budget	Revised Annual Budget	Proposed Variations	Proposed Annual Budget	Actual YTD	% Proposed Annual Budget	Comment

Capital Works Program - Building a Strong Local Economy

Income

Capital Works

ENTRANCE SIGNAGE	125	125	9	134	0	0%	Currently researching designs and options available for entrance signage to each town. Once finalised, a proposal will go to Council.
KANDOS TOURIST BAY - BVW	40	40	0	40	0	0%	Works planned for February 2013
GULGONG DIRECTIONAL SIGNAGE	7	7	0	7	1	14%	Currently determining the most suitable location for signage.
EXTERNAL TOURISM SIGNAGE	25	25	0	25	0	0%	This signage is being considered as part of a broader marketing strategy for the region.
SALEYARDS - DAY YARD FENCING	10	10	0	10	0	0%	On going capital repairs to the yards will continue throughout the year.
SALEYARDS - CANTEEN IMPROVEMENTS	10	10	0	10	0	0%	As per the strategic plan this expenditure is for air conditioning in the canteen and works will be completed before summer.
PROPERTY - MUDGEER AIRPORT SUBDIVISION	225	225	0	225	1	0%	Report to be presented to October Council on land acquisition options.
PROPERTY - EX SALEYARDS STAGE I	0	20	0	20	10	52%	Preliminary assessments progressing as planned.
Total Capital Works	442	462	9	471	13	3%	
Net Result	442	462	9	471	13	3%	

	Original Annual Budget	Revised Annual Budget	Proposed Variations	Proposed Annual Budget	Actual YTD	% Proposed Annual Budget	Comment

Capital Works Program - Connecting Our Region

Income

Capital Works

	0	0	0	0	0	0%	
CULVERT INSTALLATIONS	71	71	0	71	10	15%	On going throughout the year
CAUSEWAY IMPROVEMENTS	30	30	0	30	1	3%	Triangle Swamp Road causeway to be replaced
CAUSEWAY IMPROVEMENT - TRIANGLE SWAMP	0	0	0	0	31	0%	Completed
CAUSEWAY - ULAN WOLLAR RD	0	0	0	0	1	0%	Completed
CAUSEWAY - YARRABIN RD	30	30	0	30	14	46%	Completed
URBAN RESEALS - CHURCH ST (MORTIMER TO DENISON)	21	21	0	21	0	0%	Reseal planned for February 2013
URBAN RESEALS - LEWIS ST (MEARS TO RAILWAY)	10	10	0	10	0	0%	Reseal planned for February 2013
URBAN RESEALS - INGLIS ST SEG 70	3	3	0	3	0	0%	Reseal planned for February 2013
URBAN RESEALS - PITTS LANE SEG 10	13	13	0	13	0	0%	Reseal planned for February 2013
URBAN RESEALS - MELTON RD SEG 20	7	7	0	7	0	0%	Reseal planned for February 2013
URBAN RESEALS - HENBURY AVE (BVW TO DAVIES)	21	21	0	21	0	0%	Reseal planned for February 2013
URBAN RESEALS - DANGAR ST SEG 20/30	14	14	0	14	0	0%	Reseal planned for February 2013
URBAN RESEALS - MUDGEES ST SEG 80	7	7	0	7	0	0%	Reseal planned for February 2013
URBAN RESEALS - YOUNG ST (TALLAWANG TO LYNN)	14	14	0	14	0	0%	Reseal planned for February 2013
URBAN RESEALS - SALEYARDS LN SEG 20	5	5	0	5	0	0%	Reseal planned for February 2013
URBAN ROADS KERB & GUTTER CAPITAL							Early focus on kerb and gutter repairs, remaining works to be continued throughout the year
REHAB - MAYNE STREET	16	16	0	16	8	50%	Works planned for Feb 2013
REHAB - CHURCH ST (GLADSTONE TO MORTIMER)	29	29	0	29	0	0%	Costings have been developed on increased scope of works, awaiting determination by Council.
REHAB - GLADSTONE ST (DOURO TO COURT)	350	350	0	350	0	0%	Works planned for March 2013
RESHEETING - URBAN ROADS	60	60	0	60	0	0%	Works ongoing throughout the year
	12	12	0	12	0	3%	

	Original Annual Budget	Revised Annual Budget	Proposed Variations	Proposed Annual Budget	Actual YTD	% Proposed Annual Budget	Comment
URBAN ROADS LAND MATTERS CAPITAL		15		15	0	0%	Library Lane matter progressing as planned. Investigating the possibility of closing the unformed section of road reserve in Richards Street.
REHAB - LOUJEE ST							Works to commence in mid September with completion planned for early October 2012
RURAL RESEAL - HENRY LAWSON DR FROM DREWS LANE	200	380	0	380	0	0%	Reseal planned for November 2012
RURAL RESEAL - CRUDINE ROAD SEG 30	54	54	0	54	0	0%	Reseal planned for November 2012
RURAL RESEAL - YARAWONGA RD	33	33	0	33	0	0%	Reseal planned for November 2012
RURAL RESEAL - SPRING CREEK RD	56	56	0	56	0	0%	Reseal planned for November 2012
RURAL RESEAL - BURRENDULLA RD SEG 20/30	25	25	0	25	0	0%	Reseal planned for November 2012
RURAL RESEAL - WINDEYER RD SEG 20	67	67	0	67	0	0%	Reseal planned for October 2012
RURAL RESEAL - QUEENS PINCH RD SEG 30/40	30	30	0	30	0	0%	Reseal planned for November 2012
RURAL RESEAL - ROCKY WATERHOLE RD SEG 10	62	62	0	62	0	0%	Reseal planned for October 2012
RURAL RESEAL - PYRAMUL RD SEG 10/20	27	27	0	27	0	0%	Reseal planned for October 2012
RURAL RESEAL - BOTOBOLAR RD SEG 10	65	65	0	65	0	0%	Reseal planned for November 2012
RURAL RESEAL - BROGANS CREEK RD SEG 30	41	41	0	41	0	0%	Reseal planned for November 2012
RURAL REHAB - HENRY LAWSON DVE	51	51	0	51	0	0%	Reseal planned for November 2012
REHAB/RESEAL - LUE RD HAVILAH MISSING LINK	17	17	0	17	0	0%	Final Seal planned for October 2012
RURAL REHAB - LUE RD (OLIVE PRESS)	29	392	0	392	211	54%	Works practically complete with only minor works outstanding.
RURAL REHAB - HENRY LAWSON DVE	350	350	0	350	0	0%	Works planned for November / December 2012
RURAL REHAB - COOPER DRV SHOULDER WIDENING	300	300	(300)	0	0	0%	Incorrect woks description - transferred to Cooper Drv
FUTURE YRS REFS - BUDGET ONLY	0	0	300	300	0	0%	Works planned for October 2012
RURAL SEALED ROAD LAND MATTERS	5	5	0	5	1	18%	No external consultants required yet.
	11	11	0	11	1	7%	Henry Lawson Dr Home Rule realignment & Coxs Crown Rd (to stage of PAN issue) progressing as planned.

	Original Annual Budget		Revised Annual Budget		Proposed Variations		Proposed Annual Budget		Actual YTD		% Proposed Annual Budget		Comment
MRS98 COPE ROAD WIDENING	0	44	44	0	0	44	0	0	0	0	0	0%	Road widening associated with Ulan WTS upgrade.
REPAIR - GOLLAN RD MR7512	200	200	200	0	0	200	0	200	12	6%	0%	0%	Works have commenced. The site clearance and shoulder widening completed. Pavement works area continuing and seal is planned for October 2012
REPAIR - ULAN RD MR214	600	600	600	0	0	600	0	600	0	0%	0%	0%	Works planned for February 2013
PITTS LANE/ULAN RD INTERSECTION	0	0	0	0	0	0	0	0	6	0%	0%	0%	Complete.
BYLONG VALLEY WAY HEAVY PATCHING PROGRAM	100	100	100	0	0	100	0	100	4	4%	0%	4%	Works planned for October 2012
REHAB - WOLLAR RD CUMBO CREEK	250	250	250	0	0	250	0	250	0	0%	0%	0%	Works planned for January 2013
REG RESEAL - HILL END RD	26	26	26	0	0	26	0	26	0	0%	0%	0%	Reseal planned for November 2012
REG RESEAL - GOLLAN RD	27	27	27	0	0	27	0	27	0	0%	0%	0%	Reseal planned for October 2012
REG RESEAL - COX ST (BVW)	10	10	10	0	0	10	0	10	0	0%	0%	0%	Reseal planned for February 2013
REG RESEAL - SHORT ST (ULAN RD)	11	11	11	0	0	11	0	11	0	0%	0%	0%	Reseal planned for October 2012
REG RESEAL - HILL END RD	29	29	29	0	0	29	0	29	0	0%	0%	0%	Reseal planned for November 2012
REG RESEAL - HILL END RD SEG 2265	37	37	37	0	0	37	0	37	0	0%	0%	0%	Reseal planned for November 2012
REG RESEAL - COPE RD	35	35	35	0	0	35	0	35	0	0%	0%	0%	Reseal planned for October 2012
REG RESEAL - ULAN RD	35	35	35	0	0	35	0	35	0	0%	0%	0%	Reseal planned for October 2012
RURAL SEALED REGIONAL ROAD LAND MATTERS CAPITAL													Bylong Valley Way Rylstone - plans & subdivision cert to owners for signing. Black spot programme Ulan Road Budget Budgee - proceeding to draft plans.
SEAL EXTENSION - ULAN-WOLLAR RD	600	600	600	0	0	600	0	600	0	0%	0%	0%	Awaiting scope requirements
RESHEETING - BUDGET ONLY	1,614	1,614	1,614	0	0	1,614	0	1,614	459	28%	28%	28%	Ongoing throughout year
UNSEALED ROADS LAND MATTERS CAPITAL	2	2	2	0	0	2	0	2	1	40%	40%	40%	Matters progressing as prioritised.
RURAL UNSEALED REGIONAL ROAD RESHEETING	100	100	100	0	0	100	0	100	0	0%	0%	0%	Works continuing throughout the year
SEAL EXTENSION - WOLLAR ROAD	210	210	210	0	0	210	0	210	0	0%	0%	0%	Works planned for January / February 2013
CARWELL CREEK BRIDGE	0	34	34	0	0	34	0	34	0	1%	1%	1%	Remedial worksto south approach planned for October 2012
FOOTWAYS - CAPITAL BUDGET ONLY	65	65	65	0	0	65	0	65	23	35%	35%	35%	Works ongoing throughout the year

	Original Annual Budget		Revised Annual Budget		Proposed Variations		Proposed Annual Budget		Actual YTD		% Proposed Annual Budget		Comment
FOOTWAYS - BUS SHELTERS		0		10	0	0	10	10	2		17%	17%	Upgrade two works to urban bus shelters. Works to be carried out to bus shelter adjacent to Coles carpark.
PEDESTRIAN - KANDOS TO CLANDULLA		60		60	0	0	60	60	0		0%	0%	Submission currently with ARTC for review.
PEDESTRIAN - CHARBON PEDESTRIAN BRIDGE		100		100	0	0	100	100	0		0%	0%	Submission currently with ARTC for review.
PEDESTRIAN - GLEN WILLOW WALKWAY		50		50	0	0	50	50	21		42%	42%	Walkway extension is 80% complete with the final pathway section to be laid in September.
CYCLEWAY BELLEVUE		40		90	0	0	90	90	25		28%	28%	Awaiting land acquisition to be finalised. Works to be complete by Dec 2012.
GULGONG WALKWAY		30		30	0	0	30	30	0		0%	0%	Scope to be determined.
AIRPORT EXTEND TAXIWAY		20		20	0	0	20	20	0		0%	0%	Works will commence when the subdivision building is underway
CARPARKING CAPITAL - MORTIMER ST		0		20	0	0	20	20	11		54%	54%	Waiting on invoice for testra works
Total Capital Works		6,403		7,105	0	0	7,105	7,105	847		12%	12%	
Net Result		6,403		7,105	0	0	7,105	7,105	847		12%	12%	

	Original	Revised	Proposed	Proposed	Proposed	Actual	% Proposed	Comment
	Annual Budget	Annual Budget	Annual Budget	Variations	Annual Budget	YTD	Annual Budget	

\$'000

Capital Works Program - Good Government

Income

Capital Works

CORPORATE BUILDINGS UPGRADE BUDGET ONLY	69	69	0	0	0	0	0%	Budget to be re-allocated as part of September quarterly review
RYLSTONE ADMINISTRATION BUILDING UPGRADE	52	52	0	0	52	0	0%	These works were completed last year and the budget is to re-allocated as part of the September QRT review.
KANDOS MUSEUM	0	29	0	0	29	11	38%	Exhibition upgrade program nearing completion. Work has begun on new entrance doors and ramp.
CAPITAL UPGRADE - MWRC DEPOT	29	29	0	0	29	0	0%	Budget to be re-allocated as part of the September qrt review.
STABLES COMPLEX	15	15	0	0	15	0	0%	Budget to be re-allocated as part of the September qrt review.
IT NETWORK UPGRADES	0	23	0	0	23	0	0%	To be undertaken in conjunction with the Library renovations.
SERVER RECONFIGURATION	30	30	0	0	30	0	0%	Awaiting contractor to lock in dates for reconfiguration.
PLANT PURCHASES	368	368	2,825	0	3,193	603	19%	Orders have been raised for tendered items and other plant replacements will occur in the second quarter.
PLANT PURCHASES - HEAVY PLANT	2,913	2,913	(2,913)	0	0	0	0%	This project has been consolidated into one account - Plant Purchases
PLANT PURCHASES - MINOR PLANT	36	36	(36)	0	0	0	0%	This project has been consolidated into one account - Plant Purchases
WORKS DEPOT - OHS CAPITAL IMPROVEMENTS	13	17	0	0	17	0	1%	Improvements for OHS requirements in the store expected to be completed by December 2013.

Total Capital Works

Net Result

3,525	3,581	(124)	3,457	615	18%
3,525	3,581	(124)	3,457	615	18%



ATTACHMENT 7.2.7



Draft Voluntary Planning Agreements

Wednesday 26 September 2012



PLANNING AGREEMENT

Parties

MIDWESTERN REGIONAL COUNCIL

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

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 (DA 0592/2004) and modifications (MA0001/2011 and MA0014/2011) to the Council to carry out a 24 lot residential subdivision of the Land.
- C. On 20 October, 2004 the Council resolved to grant Development Consent to the Development Application subject to conditions, including condition 1 (as modified under MA0001/2011 granted on 21 September 2010 and MA0014/2011 granted on 24 June 2011) and condition 15 which provides as follows:

“15. A Stormwater Management Plan (SMP) shall be submitted to Council for approval demonstrating that stormwater generated by the proposed residential subdivision development (including future dwellings) will not [sic] exceed pre-development condition. The SMP shall include all drainage calculations and analysis in this regard, including that for the design of the drain within the drainage reserve. The SMP must be prepared in accordance with The Institute of Engineers publication Australian Rainfall and Runoff.”
- D. On [insert date upon Council resolution] Council resolved to accept the dedication to the Council by the Developer of the Drainage Basin Land.
- E. 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 15 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

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 and C.

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 \$75,000 plus GST (subject to CPI adjustment), being \$5,000 for each of the 24 lots making up the Development (\$120,000) less the agreed value of the Drainage Basin Land of \$45,000 ;

to be used towards the costs of construction of the Drainage Improvements.

Drainage Basin Land means the land shown in plan G740MU-sheet 2 (stamped as approved by the Council on 24 June 2011) as being reserved as a "Drainage Reserve (Detention Basin)" associated with the provision of Drainage Improvements, to be dedicated by the Developer to the Council upon registration of the plan of subdivision associated with the Development.

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 13 DP 1115025; Lot 253 DP 756894; and Lot 254 DP 756894, known as 15-27 Richards Street, 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 each stage of 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 as follows:

Stage 2	Not applicable
Stage 3A (24 lots)	\$120,000
Stage 3B	Not Applicable
Total	\$75,000 (\$120,000 minus value of drainage basin)

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. Drainage Basin Land

The parties agree that the value of the Drainage Basin Land is \$45,000.

In accordance with Council's resolution dated [insert date upon Council resolution] Council agrees to accept, and the Developer agrees to dedicate the Drainage Basin Land to the Council upon the registration of the plan of subdivision associated with the Development.

8. 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.

9. Registration of this Agreement

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

10. 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.

11. Dispute Resolution

11.1 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.

11.2 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.

11.3 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.

11.4 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.

11.5 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.

11.6 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.

12. Enforcement

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

13. Notices

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

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

Council

Attention: The General Manager
Address: 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:

- 13.2 If a Party gives the other Party 3 business days notice of a change of its address or fax number, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or faxed to the latest address or fax number.
- 13.3 Any notice, consent, information, application or request is to be treated as given or made at the following time:
- (a) If it is delivered, when it is left at the relevant address;
 - (b) If it is sent by post, 2 business days after it is posted;
 - (c) If it is sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number.
- 13.4 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, or if on a business day, after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

14. Approvals and consent

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.

15. 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.

16. Costs

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

17. 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.

18. 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.

19. 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.

20. 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.

21. 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.

22. 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.

23. 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.

24. 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.

25. 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.

26. 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.

27. 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.

DRAFT

Executed as an agreement:

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

.....
Signature of Director
Date:

.....
Signature of Director/Secretary
Date:

.....
Print name of Director

.....
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
Date:

.....
Signature of Director/Secretary
Date:

.....
Print name of Director

.....
Print name of Director/Secretary

On behalf of **Mid-Western Regional Council**
by its duly authorised representative:

.....
Signature of Witness
Date:

.....
Signature of Authorised Representative
Date:

.....
Print name of Witness

.....
Name of Authorised Representative

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

Background

- A. The Developer owns the Land.
- B. The Developer lodged a Development Application (DA0282/2012) to the Council for Development Consent to carry out a 9 lot residential subdivision of the Land.
- C. On 29 May 2012 the Council resolved to grant Development Consent to the Development Application subject to conditions, including conditions 32 which provide as follows:

“32. Storm water runoff 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. When on-site storm water detention cannot be practically provided the applicant or beneficiary of this consent may enter into a Voluntary Planning Agreement with Council to permit the compensatory detention of storm water within the public trunk drainage system.”

- 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

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 \$45,000 + GST (subject to CPI adjustment), being \$5,000 for each of the 9 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 53 DP 756894, known as 20-28 Richards Street 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 each stage of 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, as follows:

Stage 1	\$0
Stage 2 (6 lots)	\$30 000
Stage 3 (3 lot)	\$15,000
Total	\$45, 000

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

Print name of Director

Print name of Director/Secretary

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

.....
Signature of Witness

.....
Signature of Authorised Representative

.....
Print name of Witness

.....
Name of Authorised Representative

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

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) An 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

.....
Print name of Director

.....
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

.....
Print name of Director

.....
Print name of Director/Secretary

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

.....
Signature of Witness

.....
Signature of Authorised Representative

.....
Print name of Witness

.....
Name of Authorised Representative

DRAFT

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 (DA0177/2012) to the Council for Development Consent to carry out a 21 lot residential subdivision of the Land.
- C. On 4 April 2012 the Council resolved to grant Development Consent to the Development Application subject to conditions, including conditions 30 which provide as follows:

"30. An onsite detention basin is to be constructed within the site of the proposed development to cater for the post development storm water flows, or alternatively the applicant may enter into a Voluntary Planning Agreement with Council to permit the post development storm water flows to be catered by any public detention basin system.

- 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 condition 30 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

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 \$105,000 + GST (subject to CPI adjustment), being \$5,000 for each of the 21 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 58 DP 756894, known as 21-29 Bellevue 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:

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

.....
Signature of Director
Date:

.....
Signature of Director/Secretary
Date:

.....
Print name of Director

.....
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
Date:

.....
Signature of Director/Secretary
Date:

.....
Print name of Director

.....
Print name of Director/Secretary

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

.....
Signature of Witness
Date:

.....
Signature of Authorised Representative
Date:

.....
Print name of Witness

.....
Name of Authorised Representative

PLANNING AGREEMENT

Parties

MID-WESTERN REGIONAL COUNCIL

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

and

Phillip Marten Orr of 40 Norman Road, Mudgee New South Wales 2850

and

Vicki Vaso Orr of 40 Norman Road, Mudgee New South Wales 2850 (**Developer**)

Background

- A. The Developer owns the Land.
- B. The Developer lodged a Development Application (DA0009/2010) to the Council for Development Consent to carry out a 13 lot residential subdivision of the Land.
- C. On 09 March 2010 the Council resolved to grant Development Consent to the Development Application subject to conditions, including condition 22 which provide as follows:

22. Drainage contributions in lieu of on site detention, to be paid prior to release of each stage of the subdivision. Contribution charges still to be advised.

- 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 condition 22 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

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 \$70,000 + GST (subject to CPI adjustment), being \$5,000 for each of the 14 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 2 DP 1059016, known as 40 Norman 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 each stage of 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, as follows:

Stage 1 (3 lots)	\$15,000
Stage 2 (9 lots)	\$45,000
Stage 3 (1 lot)	\$5,000
Total	\$70,000

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: Phillip M. & Vicky V. Orr
Address: 40 Norman Road, Mudgee 2850
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:

Executed by **Phillip Marten Orr**

.....
Signature of Phillip Marten Orr

Date:

.....
Signature of Witness

Date:

.....
Print name of Witness

Executed by **Vicky Vaso Orr**

.....
Signature of Vicky Vaso Orr

Date:

.....
Signature of Witness

Date:

.....
Print name of Witness

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

.....
Signature of Witness

Date:

.....
Signature of Authorised Representative

Date:

.....
Print name of Witness

.....
Name of Authorised Representative



ATTACHMENT 7.2.19



Mt Penny Coal – Response from Water
Consultants – Gilbert + Sutherland

Wednesday 26 September 2012



14 September 2012

The General Manager – Mid-Western Regional Council
86 Market Street
Mudgee NSW 2850

Attention: Linda Shreeve – Senior Environment Officer

Dear Linda,

Re: Adequacy review – The Mt Penny Coal Project Environmental Assessment

Mid-Western Regional Council commissioned Gilbert & Sutherland Pty Ltd (G&S) to review the adequacy of the surface water, groundwater and agriculture assessment components of the Mt Penny Coal Project Environmental Assessment ('the EA') against the environmental assessment requirements for the project as specified by the Director General of the New South Wales Department of Planning and Infrastructure (the DGRs).

Given the volume and complexity of the EA material that was the subject of our review and the very short timeframe the Department afforded to Council to provide its response, we question whether Council has been given fair opportunity to develop a complete understanding of the EA's adequacy or otherwise. In that regard, we have identified several key aspects of the DGRs that have not been adequately addressed by the EA.

Our review findings comprise the following two parts:

- I. This short summary letter, describing the key issues identified with regard to the surface water, groundwater and agricultural assessments that comprise separate parts of the EA; and,
- II. An appended list, detailing the DGR's relevant to the surface water, groundwater and agricultural assessments, together with our comments and observations in respect of the adequacy of the EA in addressing these requirements.

Key surface water, groundwater and agricultural related issues

Following review of the Surface Water Study we have identified several areas where we believe the DGRs have not been adequately addressed. Specific examples include:

- Streamflow characteristics described within the report are generally annualised and averaged and do not adequately capture those characteristics of stream flow of most importance to the environment and users of highly variable watercourses such as the Bylong River and Coggan Creek.
- Water quality has been described very generally and again conclusions reached and management measures proposed based on average values.
- An understanding of the physical environment with regard to surface water would necessarily require a detailed understanding of the relationship between stream flow and water quality. This has not been addressed.
- The reporting of baseline conditions for the existing surface water resources does not provide confidence in the underlying understanding of the existing conditions themselves and therefore creates doubt in the reported potential impacts.
- The EA provides no meaningful understanding of the potential impacts on environmental flows to the Bylong River. The EA's impact assessment has been based on annual-average-percentage change in flow volume, which does not provide detail regarding impact on more relevant hydrological characteristics, such as periods of low flow and no flow and frequency of important flow events.
- The water balance modelling undertaken for the EA does not provide a means by which to understand the credible full range and likelihood of potential volumes of water requiring management. Nor does it provide an understanding of the ongoing behaviour of the site water balance as it evolves over the 21-year project life due to the static 'snap-shot' approach adopted.
- The chosen modelling approach and the values that have been selected for reporting have the potential to mislead, in our view. This is particularly prevalent with regard to the likelihood of conditions or events (for example discharge) occurring at a given point in time during the Project. Reporting has largely been limited to '90% wet conditions' with the implication that events greater than this are unlikely, when in fact, for a 21-year project life a 1 in 100 year event (or 99% wet using similar terminology) has approximately a 20% probability of occurrence at least once during that Project.
- Underlying hydrological input assumptions appear overly conservative (i.e. leading to less water reporting to the mine water balance) compared with known and reported information. For example, the underlying runoff percentage assumptions adopted are not considered to represent realistic conditions and significantly underestimate the credible upper limits for runoff.

- The single most significant component of the mine water balance can be considered to be the operational water requirements for the Coal Handling Process Plant (CHPP). The operational water requirement for the CHPP is based on, and reported as, a single rate of consumptive use. Further information regarding the justification and detail underlying this assumption is required.
- The EA provides no description of the reliability of either the unregulated river entitlements or the alluvial water access licenses and does not meaningfully assess the reliability of supply for the fully range of climatic conditions possible to be experienced over the life of the project.
- Flood modelling has relied upon 1-D modelling techniques. Given the nature of the confluence and potential backwater effects between Coggan Creek and the Bylong and Goulburn Rivers, further justification for adoption of this technique (in preference to 2-D modelling) is required.
- The flood modelling contains a number of issues surrounding missing information, lack of robust, scientific justification of significant input parameters and apparent inconsistency between reported design rainfall inputs and peak flows.
- The salt balance modelling was undertaken in association with the water balance modelling and as such reported outcomes exhibiting the same deficiencies as the water balance modelling.

In relation to the Groundwater Impact Assessment, our primary concerns relate to the minimal amount of data upon which assumptions about current conditions and potential impacts have been made. Some examples of deficits in the EA data are provided below.

- Few (if any) boreholes were drilled through the total thickness of alluvium and colluvium to bedrock to conclude hydraulic relationships. Implications are that all modelling is therefore based on a potentially flawed understanding of actual conditions.
- No bores have been drilled or test pumped in the alluvial aquifers to inform modelling. There is therefore no quantified understanding of aquifer behaviour under stress, be that mine induced or climatic.
- Minimal water quality parameters are reported.
- Only a selection of potentially affected licensed water users have been assessed, rather than all of those who may be affected by the Project.
- Critical features of the landscape, such as the flow regime of the Bylong River and the extraction capacity of the Bylong River alluvium, are concluded based on 'anecdotal' evidence rather than confirmed by detailed sampling.
- A further issue with the EA is the lack of detail provided around important assessment components, including the evaluation of project water demand, project water supply

and groundwater dependent ecosystems. This lack of detail makes it impossible to confirm the project's real impacts on surrounding resources and the environment.

In relation to the Agricultural Assessment, our primary concerns relate back to the adequacy of the surface water and groundwater assessments. Without a comprehensive understanding of these aspects, the impact to agricultural enterprises that may be impacted upon by the Project are inadequately described or unknown.

We trust this is acceptable. Should you have any queries, please do not hesitate to call.

Yours sincerely,



Owen Droop
**Director/Principal Water
Resource Engineer**
BE(Civ)(Hons) BNatRes RPEQ MIEAust



for Eric Rooke
Principal Hydrogeologist
BScGeo(Hons) MScHydGeo FGS MIAH

Author(s) Owen Droop and Eric Rooke

Our Reference 11011_EAA_OPD1D.docx

Your Reference

By Courier Email Facsimile Post

Enclosures 1 (List of DGRs and EA review outcomes)

Attachment 1

Review of the Mt Penny Coal Project Environmental Assessment August 2012 (the EA) with respect to the Revised Director-General's Requirements (DGRs) dated 30 August 2011

1.0 Background

Mt Penny Coal Company Pty Ltd (MPC) presented a conceptual project development plan to the NSW Department of Trade and Investment, Regional Infrastructure and Services (DTIRIS) in September 2010. After it was endorsed by DTIRIS, on 16 December 2010, the proposal was referred to the NSW Department of Planning (now NSW Department of Planning and Infrastructure - DP&I) as a Major Project Application under Part 3A of the *Environmental Planning & Assessment Act 1979* (EP&A Act).

On 2 March 2011, the Director-General of DP&I issued environmental assessment requirements, referred to as Director-General's Requirements (DGRs) in respect of the proposal. The DGRs were subsequently amended on 30 August 2011 to incorporate the requirements of the Commonwealth Department of Sustainability, Environment, Water Population and Communities (SEWPaC) and a submission by the Bylong Valley Protection Alliance (BVPA).

1.1 Review scope

Mid-Western Regional Council commissioned Gilbert & Sutherland Pty Ltd (G&S) to provide independent, specialist input to assist with Council's review of the adequacy of the EA by focusing on particular aspects and components of the document. Specifically, G&S was tasked with conducting a preliminary review focusing on:

- EA Appendix L – Groundwater study,
- EA Appendix M – Surface water study
- EA Appendix N – Agricultural assessment

To the extent that Appendix L, M and N were found to inadequately address the DGRs, the wider report was referenced to confirm that the particular DGR was not adequately addressed elsewhere in the EA.

This review lists each DGR that Appendix L, M and N cite as having been addressed. Appendix L is addressed in Section 2.0, Appendix M in Section 3.0 and Appendix N in Section 4.0. For ease of reference, we reproduce each DGR (using indented *italic text*), followed by our review outcomes and observations (in normal text). Our review concludes (in Section 5.0) with a summary of outcomes and our recommendations to Council.

2.0 EA Appendix L – Groundwater study DGRs

Table 1.2 (page 3) of Appendix L – Groundwater Impact Assessment (the ‘Assessment’) lists the following DGRs as having been addressed.

- *demonstration that water supplies for the construction and operation of the mine can be obtained from an appropriately authorised and reliable supply in accordance with the operating rules of the relevant Water Sharing Plan, including:*
- *consideration and assessment of any proposed amendments to access rules (such as cease to pump) identified in the relevant Water Sharing Plan;*

The EA’s demonstration that ‘water supplies for the construction and operation of the mine can be obtained from an appropriately authorised and reliable supply’ appears contradictory. The Assessment specifies that a total of 8,000ML/annum is available for extraction from the Bylong River alluvium (subsection 3.9.2). However, the Assessment also notes that the NSW Office of Water database (2011) specifies that, based on anecdotal evidence, the total pumped extraction from this source within the project vicinity is believed to be less than 4000ML/annum. This represents only 50% of the mine’s alluvial allocations. In order for the Mt Penny project to completely address the DGR, the reliability of the water source and the available extraction quantity must be confirmed.

In general, the EA’s evaluation of project water demand lacks detail (section 4.3). In order to effectively judge the availability of water for the life of the project, the following information (at a minimum) is required:

- A schedule of water demand (‘ramp-up and ramp-down’).
- A graphical representation of time and volumetric demand centres (for example a pie-diagram indicating the demands of construction, dust suppression, irrigation, domestic supply, processing, etc).

In our view, the information contained in the EA does not adequately address this DGR.

- *identification of need for water supply requirements from water sources outside of Water Sharing Plans (for example fractured rock aquifers) and potential issues associated with cross connectivity to alluvial/surface aquifers*

As with the EA’s evaluation of water demand, the evaluation of project water supply lacks detail (section 4.4). This section requires the addition of considerable detail in order to demonstrate that accurate project requirements have been identified and that ‘potential

issues associated with cross connectivity of alluvial/surface aquifers' (if related to the proposed water sources) have been considered. This section requires, at a minimum, a timeline of pumping schedules for each of the fractured rock aquifers and the alluvial aquifers, which compliments and logically follows the information supplied in section 4.3 on water demand.

It is noted that the location of the alluvial aquifer water supply well-field has yet to be determined. Whilst this may be difficult to define at this early stage of mine planning, it is necessary to inform the model, particularly with regard to aquifer interference between the Permian aquifer(s) (including mine-stripped Permian aquifers) and the alluvial aquifer(s).

There are a number of sections within the EA that require further explanation/clarification in order to confirm that the above DGR has been adequately addressed, these include:

- Section 5.7.3 Low Permeability Barrier – supporting explanation is required as to why planning discussions included the possible need for a grout curtain. If leakage is a concern then this should be stated. Results of modelling need to be explicit about the apparent non-connectivity between Coggan Creek and Bylong Creek valleys.
- Section 5.7.4 Recharge – further explanation of the adoption of lower recharge rates than those recommended by the independent reviewer is required. The adoption of lower recharge rates for alluvial aquifers could mask any modelled cross-connectivity.
- Section 5.7.5 Riverbed Conductance – higher conductance values were selected for the model during the calibration process, as these had an impact on the seasonal variation in modeled water levels and improved the performance of bores adjacent to Coggan Creek. Further explanation of the adoption of higher conductance values in Coggan Creek is required to fully justify the adoption of these values in the model.
- Section 6.2.1 Predicted Impacts on Groundwater Levels in the Permian Coal Measures – further investigation and explanation is required around the acknowledgement that there is hydraulic connectivity between the Upper Permian (fractured rock aquifer) and the Bylong Creek alluvial aquifers. It is further noted that residual drawdowns of up to 20m remain in the Upper Permian within and immediately adjacent to the open cut, 80 years post-mining. Whilst it is accepted that part of this may be due to pre-existing pumping from the alluvial aquifers, this finding needs further assessment and comment.

In our view, the EA does not adequately address this DGR.

- *a description of the measures proposed to ensure the project can operate in accordance with the proximity and water source protection criteria of the relevant Water Sharing Plan*

Sections 7.1 and 7.2 of the EA cover the licensing requirements of the project adequately. However, there is no discussion of how the proposed project will adopt and apply Water Sharing Plan (WSP) operational rules. Presumably this would form part of a mine water management plan.

Section 7.3 presents an adequate water account derived from the results of the groundwater modelling exercise.

a detailed assessment of potential impacts on:

- *the quality and quantity of existing surface and ground water resources, including assessment of transfer of water trading entitlements into and within the water source as per Water Sharing Plan requirements;*

The EA fails to provide 'a detailed assessment of potential impacts on the quality and quantity of existing surface and ground water resources'. The lack of data in the EA means that it does not provide an accurate description of the quality and quantity of existing resources. Without an accurate characterisation of existing conditions, potential impacts cannot be determined. Further explanation of the data deficits in the Assessment is provided below:

- It appears that few (if any) boreholes were drilled through the total thickness of alluvium/colluvium to the bedrock (subsection 2.2.3). Given that the alluvial aquifers are important, it is critical to understand their fully-saturated thickness and the nature of their interface with bedrock (hard rock). The lack of field-based data casts doubt on the EA's representation of the alluvial/colluvial valley thicknesses (Figures 4 to 6) and their hydraulic relationship with the underlying Permian 'Sandstone'.
- Only bores intercepting the fractured rock aquifer have been test pumped. No bores have yet been drilled or test pumped in the alluvial aquifers. Instead, the model appears to be informed by falling head tests. However, hydraulic parameters obtained by such techniques can be subject to error (mainly related to bore/piezometer construction completion, screen setting, leakage and analysis/interpretation). In short, in such an important project, the falling head tests are no substitute for test pumping. Where test pumping has been completed, test pumping durations need to be stated. Duration of test pumping is critical for accurate assessment, as inadequate (short) pump times may not stress the aquifers sufficiently to explore hydraulic boundary effects. Hydraulic boundary effects are critical to informing surface water – shallow/deep groundwater connectivity.
- The EA does not report on a number of important water quality parameters including oxidation-reduction potential (redox), dissolved oxygen (DO), barium, cobalt, boron, selenium and vanadium (subsection 2.8.1).

- Analysis of data provided from Piezometer GMB-6 is questionable considering confusion around its reported location. Figure 2 in the Assessment shows its location in the upper part of Coggan Creek, while the first paragraph of subsection 2.2.2 places it in the Goulburn River.

Whilst drilling difficulties are noted, considering the need for comprehensive data and analysis, provisions should have been made for this eventuality, including the use of a cable-tool or RC drilling.

In our view, this DGR is inadequately addressed by the EA.

a detailed assessment of potential impacts on...

- *affected licensed water users and basic landholder rights;*

The NSW Office of Water (NOW) groundwater bore database identifies 150 registered bores/wells within a 10 km radius of the project, yet only 56 'sites' were visited throughout the Assessment. The sampled sites represent only a small portion of the potentially affected licensed water users. Justification must be provided for selection of users and exclusion of available data sources. In the absence of such justification, this aspect of the DGR cannot be said to have been adequately addressed.

a detailed assessment of potential impacts on...

- *environmental flows to the Bylong River*

The EA's evaluation of potential impacts on 'environmental flows to the Bylong River' lacks detail. For instance, the summary of ecology in section 3.13 (Groundwater Dependent Ecosystems) is exceedingly brief. The groundwater report deals only with potential impacts on stygofauna and reports only on alluvial groundwater salinity, pH dissolved metals, nitrate and major ion composition (subsection 3.10.1 to 3.10.5). In short, a number of important parameters and ecological relationships are not considered.

The EA states that there is anecdotal evidence that the Bylong River flow is ephemeral (section 3.1). Given the large catchment size feeding the Bylong River, it is possible that the existing level of aquifer pumping may be causing this river to exhibit ephemeral characteristics. The flow regime is critical to understanding potential impacts and must therefore be determined without doubt. The EA in its current form fails to do this.

Section 3.4 (Uncosolidated Material – Alluvium, Colluvium and Regolith) references a number of figures indicating the boundary of the alluvium in the vicinity of the project site. The boundary shown in Figure 10 is presumably derived from the published 1:100,000 Geological Map, while Figure 11 has been derived from field sampling. Despite being

produced from different sources, the boundaries mapped in each figure appear identical. One would expect differences between the figures, owing to the fact that Figure 11 was produced from refined field data. The similarities in Figures 10 and 11 may be a result of the scale at which they are presented. To clarify this, an exploded view of Figure 11 is required, showing the refinement over the northern part the Mt Penny Coal lease. The interpreted/mapped limit of the colluvium associated with Coggan Creek should be shown.

Subsection 5.6.1 Mass Balance indicates that there is a dynamic water balance heavily biased towards inflow/outflow volumes of river water. This will undoubtedly impact the downstream reach of Bylong Creek to its confluence with the Goulburn River end. However, section 6.6 Impact on Groundwater Dependent Ecosystems makes light of this. It is noted that the swampy meadows in the Coggan valley will be lost.

In our view, the EA requires amendment to adequately address this DGR.

- *a detailed description of the proposed water management system and water monitoring program for the project and other measures to mitigate surface and groundwater impacts, with particular reference to management of channel and overland flows into and within the proposed mining area*

A water management system and water monitoring program would usually be described within a water management plan. While the Assessment outlines the requirements for monitoring and reporting during operation and post-mining (section 8), it provides no description of a detailed management plan. The EA notes the need to develop such a plan, but provides no specific details. A mine water management and monitoring plan needs to be developed that states explicitly, on a site-by-site basis what is going to be monitored, where and for what duration. Adequate consideration of the above DGR cannot be verified at this stage.

Current water monitoring and analysis is lacking. This should be acknowledged/rectified to inform a comprehensive monitoring program. For example, Bores GMA-6 and GMA-7 are sited in the Goulburn River alluvium hence are important but are reported as dry as they were not drilled deep enough to encounter the water-table. These two bores need to be re-drilled to an adequate depth so as to form an important part of the monitoring network (subsection 2.7.2).

The EA states that '*due to natural variation in groundwater levels and quality over time, the setting of ANZECC (2000) specific trigger-levels, for either quality parameters or water-levels, is not considered suitable*' (section 9.1). Whilst it is recognised that meeting specific trigger levels will be difficult due to natural variation, this may be necessary for environmental water requirements (EWR) (including creek and river base flows). Specific trigger levels should be determined for the full suite of parameters.

Groundwater quality trigger levels should be established for a range of parameters, not only salinity (subsection 9.1.3). We recommend that trigger levels be set for pH, sulfate, nutrients (including nitrate species) and faecal coliforms (to monitor any release of untreated wastewater), sodium, calcium, magnesium (to calculate sodicity and sodium adsorption ratios), boron, selenium, vanadium and arsenic (as a minimum, as surrogates for any heavy metal exceedances). These parameters should be regularly monitored and reported against appropriately quantified guideline triggers.

In our view, the Assessment requires amendment to adequately address this DGR.

- *development of a salinity budget for the Coggan Creek catchment, and evaluation of salt migration to the Bylong River during the operational and post-mining phases of the project.*

The EA details the development of a mass balance for salt export from the proposed mine-site (section 6.4). Whilst this goes part way to meeting the above DGR, the balance as it stands lacks the detail required to provide an accurate representation of salt migration. It does not apportion the salt budget to the different sub-catchments and fails to acknowledge the potential impacts of acid rock drainage and acid sulfate soils.

The EA claims that *'as the open cut will be backfilled with mine waste of similar lithology and groundwater quality, no significant change in water quality due to leaching of salts is expected'* (section 6.4). In this statement, the EA fails to recognise the potential impacts to water quality from sources such as acid rock drainage, particularly with dewatering of the mine waste material and exposure to air (causing oxidation of metal sulfides within the mine waste material).

The EA speculates that in the area close to the Bylong River, dewatering may reduce the volume of groundwater baseflow, and hence result in a reduction of the discharge of slightly more saline groundwater to surface water. However, the opposite is equally likely. Lowered baseflows could potentially concentrate the salts leading to no net change or possibly even an increase in salts discharged.

In our view, the Assessment requires amendment to adequately address this DGR.

3.0 EA Appendix M – Surface water study DGRs

Table 2-1 (page 3) of Appendix M – Surface Water Study paraphrases the following DGRs (listed herein in indented, italics) as having been addressed. Please note that the DGRs listed below are quoted from the original DGRs as issued by the NSW Department of Planning and Infrastructure (DPI), not the paraphrased versions published in the EA.

- *a detailed assessment of the existing environment, including analysis of baseline data*

The 'assessment of the existing environment' described in the EA is based largely on average or annualised outcomes. For highly variable, ephemeral watercourses, such as those in the study area, this does not provide a detailed understanding of the hydrology and/or water quality.

A number of key hydrological characteristics cannot be identified from the review of averaged data. It is these characteristics that are likely to be of most significance to water users (including the environment). These neglected characteristics include:

- flow duration characteristics on a daily or possibly monthly basis;
- periods of low or no flow (including length of no-flow spells);
- frequency of low and no-flow periods, and the characteristics of flow persistence following flow events (i.e. baseflow/interflow recession); and
- definition and frequency of important flow events within the relevant watercourses.

In terms of water quality, salinity and other contaminant levels, these will almost certainly be related to flow conditions, with differing characteristics within each watercourse. The EA makes no attempt to link quality to flow conditions. The EA reports average quality values based on all samples, regardless of flow conditions. However, 'average' water quality is effectively meaningless in conditions where quality will be directly linked to flow.

In our view, this DGR is not adequately addressed and the EA requires amendment.

a detailed assessment of potential impacts on:

- *the quality and quantity of existing surface and ground water resources, including assessment of transfer of water trading entitlements into and within the water source as per Water Sharing Plan requirements;*
- *affected licensed water users and basic landholder rights; and*
- *environmental flows to the Bylong River*

The EA fails to adequately assess, explain and justify the potential impacts of the Project on the quality and quantity of existing surface and groundwater resources, affected licensed water users and environmental aspects of the Bylong River. For instance, the clean water management description affirms potential for overflow of proposed clean water dams resulting in inflow to the Pit, yet the EA provides no indication that this has been quantified or included in (i) the mine water balance, or (ii) the assessment of potential impacts.

Furthermore, the EA states that the material that *will form the majority of the pit floor, is likely to comprise potentially acid forming materials* (section 5.3). With the inclusion of a discharge scheme in the Water Management Plan and within the context of potential impacts, the acid forming potential of the pit and its effect on all active mine area water requires more detailed explanation. This explanation should involve a comprehensive impact assessment.

The EA provides no evidence of a detailed understanding of the relationship between stream flow and water quality, which is fundamental to a 'detailed assessment of the potential impact on the quality and quantity of existing surface and ground water resources'. The impacts of mine discharge during periods of low flow are not adequately assessed, due to a lack of understanding of water quality during such periods. Discharge would not be limited to conditions of 'background' or average salinity, and this needs to be addressed in any detailed assessment of potential impacts.

The EA provides no meaningful understanding of the potential impacts on environmental flows to the Bylong River. The EA's impact assessment has been based on annual-average-percentage change in flow volume, which does not provide detail regarding impact on more relevant hydrological characteristics, such as low flow and no-flow.

The discussion of Water Access License (WAL) holders has been limited to those specified by the NSW Office of Water (NOW) register as being located within 10km of the Project. Licence holders described in the document are limited to Unregulated River entitlement holders upstream of the Proposed project, with no description of downstream users beyond the 10km limit. Within this context it is important to note:

- 65 unit shares of unregulated water access licences from the Bylong River Water Source (presumably WAL owned by MPC as reported in Table 3-7).
- 5,843 unit shares of aquifer access licences in the Bylong River alluvial water source.
- 1,661 unit shares of unregulated water access from the Upper Goulburn Water Source (presumably all located upstream of the proposed Project site or not within 10km as reported).
- 2 unit shares of aquifer access licences in the Upper Goulburn River alluvial water source.

- 14,205 units shares of unregulated water access from the Lower Goulburn Water Source.
- 2,494 unit shares of aquifer access licences in the Lower Goulburn River alluvial water source.

Further detail regarding these existing users is required or alternatively, a greater justification for exclusion of this detail from the assessment.

No discussion of basic landholder rights is provided in the reviewed documentation. The Hunter Unregulated and Alluvial WSP quotes the following:

- basic landholder rights of 0.32 ML/day in the Upper Goulburn River Water Source, 0.66 ML/d in the Lower Goulburn Water Source and 1.01 ML/day within the Bylong River Water Source.
- Stock and domestic access rights of 8 ML/day in the Upper Goulburn River Water Source, 84.5 ML/d in the Lower Goulburn Water Source

Further detail regarding these existing users is required or alternatively, greater justification for exclusion of this detail from the assessment.

In our view, the EA requires amendment to adequately address this DGR.

- *a detailed project water balance, including a description of site water demands, water disposal methods (inclusive of the volume and frequency of any water discharges), water supply infrastructure and water storage structures*

The water balance modelling undertaken in the EA does not provide a means by which to understand the credible range and likelihood of potential volumes of water requiring management or the ongoing behaviour of the site water balance as it evolves over the 21-year project life. The modelling is presented as a series of snap-shots that do not take into account the cumulative, inter-annual and inter-related affects of a continuously varying mine site, under varying climatic conditions. In essence, the assessment of non-continuous operational behavior via a series of static snapshots (i.e. all catchment storages, etc. assumed constant) does not provide a statistically meaningful assessment of likely mine site water management requirements over the continuous 21-year period.

Without continuous assessment over the 21-year life of the project, assessment of mine site water management is limited to a single year only – as illustrated by the annual percentile outcomes relevant to each snap-shot. The percentile values provided for outcomes under ‘wet’ conditions are potentially misleading, in that these represent the probability of occurrence in that year only, and not over the life of the mine. For example,

the EA implies that reported 'wet year' outcomes are unlikely, whereas in reality, the approximately 1 in 10 year events being reported (i.e. '90 percentile wet year') are very likely to occur during the Project. In fact, there is an approximate 90% probability of occurrence at least once over the life of the project. This potential misrepresentation of risk and range of likely conditions is further illustrated by the limiting of reporting to a 90% 'wet' conditions event, when a 1 in 100 year event has an approximately 20% probability of occurrence at least once over the life of the project.

Further issues surround the assumptions regarding runoff coefficient. The assumptions applied appear low compared with known, reported information. This could have significant implications for the Mine Water Management Plan and Mine Plan. For example, active mine areas have been assumed in the Study to exhibit runoff of approximately 15% rainfall, yet experience has indicated that 50% rainfall is a more realistic assumption and even higher values are possible. In addition, the underlying runoff percentage assumptions adopted are not considered to represent realistic conditions and significantly underestimate potential credible upper limits.

The EA does not assess the potential for seepage from in-pit overburden via percolation through the rehabilitated soil profile and then seepage through placed overburden.

The single most consistent and significant component of the mine water balance is the operational water requirement, quoted as between 850 ML/year and 1,065 ML/year over the life of the project. 500 ML/year has been assumed for the Coal Handling Process Plant (CHPP) consumptive water use, based on a figure reported in an existing operating coal mine with similar coal handling facilities to those proposed. Given the significance of this adopted consumptive water use in limiting discharge and other additional mine water management requirements, this component of the project water balance requires further, detailed understanding and inclusion within the project water balance as a whole. As a minimum, the detailed balance of the CHPP should include gross water requirements, water lost to product, water retained in coarse and fine rejects, and overall net loss of water from the project water balance.

In our view, the EA requires amendment to adequately address this DGR.

- *demonstration that water supplies for the construction and operation of the mine can be obtained from an appropriately authorised and reliable supply in accordance with the operating rules of the relevant Water Sharing Plan*

The EA reports the following surface water entitlements: 325 ML/year, with 65 ML/year sourced from the Bylong River and 260 ML/year from the Upper Goulburn River. The Study also reports a total water access licence entitlement of 1,813ML/year. Presumably inferring 1,488ML/year of alluvial water access licenses within nearby water sources. On

that basis, the values reported represent units of water share rather than guaranteed volumes of supply, it is important to understand the long-term sustainable extraction levels from the water sources, as well as, in the case of drought security assessment, the available extraction under drought conditions. The Report includes a section on drought security assessment (section 6.7.1), but provides no comment on the reliability of these ultimately rainfall dependent supplies.

Underlying reliability of supply is to be provided by pit dewatering and water access licence entitlements of 1,813 unit shares. The EA seems to imply that water will be 100% reliable under these entitlements, without scientific justification.

The EA provides no description of the reliability of either the unregulated river entitlements or the alluvial water access licenses and thus requires amendment to adequately address this DGR.

- *a detailed description of the proposed water management system and water monitoring program for the project and other measures to mitigate surface and groundwater impacts, with particular reference to management of channel and overland flows into and within the proposed mining area*

Whilst a general plan has been provided, the methodologies and assumptions upon which the plan has been conceptually designed do not accurately and adequately describe the full range of possible conditions that could be experienced over the life of the project. The way in which data is reported does not provide a meaningful, statistical understanding of the likelihood of this full range of water balance conditions. In our view, reporting of a more realistic range of possible conditions and statistically meaningful risk of occurrence is required before the Proponent can be said to fully understand potential impacts or to have provided detail on the performance of the proposed mitigation measures.

- *a detailed flood impact assessment identifying the impact of the project on flooding and the floodplains of the Bylong River and Goulburn River, and measures proposed to mitigate potential flood impacts*

Upon review of the flood impact assessment, a number of issues surrounding missing information, lack of robust, scientific justification of significant input parameters and apparent inconsistency between reported design rainfall inputs and peak flows were identified. Flood modelling involved the development of separate 1-D models for the Goulburn and Coggan Rivers, which in our view, is not best practice given the nature of the confluence between Coggan, Bylong and Goulburn and potential for backflooding. In this instance, a 2-D model is likely more appropriate for the assessment of flood impacts.

Further issues include:

- Adoption of a single, consistent initial loss (IL) and continuing loss (CL) for all design events requires further justification. Noting that as a proportion of design event rainfall depths, an IL of 50mm is highly significant and is likely to be the single largest factor in resultant design peak flows. It also precludes runoff from any rainfall event of less than 50mm in depth, which includes the 1 in 100 year, 1 hour storm event.
- In *Australian Rainfall and Runoff – A Guide to Flood Estimation*, Institution of Engineers, Australia, 1987/1999 (ARR), design loss rates for NSW of 10-35mm (IL) and 2.5-4mm/hour (CL) are quoted. The values chosen adopted in the Study require further justification in this context.
- Further to this, the approach described comprises event-based hydrologic simulation (via RAFTS) of runoff response to design rainfall inputs. It is not immediately obvious how the design 5-year ARI rainfalls reported in Appendix A are able to lead to runoff (as implied by the reported 5-year design peak flows) under an assumption of 50 mm IL (i.e. the 5-yr ARI design rainfalls for all durations are all less than reported IL + CL over the same durations). In fact, the majority of reported design rainfall events do not exceed the aggregate of IL + CL. Further clarification of the hydrological modelling inputs, approach and resultant design hydrographs is required.
- The EA states that the 36-hour event is critical, yet the design rainfall for this duration is not reported.
- The EA states that predicted peak flows for all storm durations are provided in Appendix A – this does not appear to be the case.
- Adoption of a storage multiplication factor of 2 is potentially significant in the context of reported outcomes and flood risk impacts. Adoption of an increased storage coefficient has the effect of reducing simulated peak flow with consequent reduction in estimated flood levels. This adoption therefore requires further justification.
- There is a reported potential for back-flooding of the pit in Year 1. Given uncertainty around data and confidence limits (CL) associated with the Log Pearson – III methodology (as reported in Plate 4-1), the 500-year flood level adopted for design should be assessed against the 90% CL as a sensitivity test. As an illustration, the FFA reported indicates a 90% confidence of the 1 in 500 year flood being between 3,000m³/s and approximately 12,000m³/s, with assessment based on 5,700m³/s.
- Bylong River flood levels will be directly affected by levels in the Goulburn River, which effectively creates the downstream boundary condition for Bylong River. The EA states that coincident peak flows are 'unlikely' and therefore adopts modelled boundary conditions some 3m less than would be adopted if conditions under corresponding peaks were adopted. Given the significant difference in adopted

boundary conditions, further clarification of what constitutes an 'unlikely' occurrence for the adopted boundary conditions is required.

In our view, the EA requires amendment to adequately address this DGR.

- *development of a salinity budget for the Coggan Creek catchment, and evaluation of salt migration to the Bylong River during the operational and post-mining phases of the project*

The salt balance modelling was undertaken in association with the water balance modelling and as such the reported outcomes exhibit the same deficiencies. As with the water balance modelling, the salinity budget modelling does not meaningfully present the salinity budget over the 21-year life of the mine. The modelling provides a series of annual snapshots, which means that the potential range and associated probability of salt load accumulation / disposal is not accounted for in a statistically robust manner.

In our view, the Study requires amendment to adequately address this DGR.

- *a detailed assessment (environmental, hydro-geological and geomorphic) of the proposed final alignment of Coggan Creek*

The geomorphological design of the watercourse reinstatement will be directly dependent upon demonstrably realistic hydrological assumptions. As described in the review of flood modelling above, further justification is required for the input assumptions adopted (for example CL and IL), as well as, clarification of the apparent inconsistency between design loss, design rainfall and simulated peak flows.

4.0 EA Appendix N – Agricultural assessment DGRs

Table 2.1.2 (page 4) of Mt Penny Coal Pty Ltd Agricultural Assessment (Appendix N of the EA) lists the following DGRs as having been addressed.

a detailed assessment of the impacts of the project on:

agricultural land capability and productivity, which includes:

- *a description of land capability and suitability of soils within the project area pre and post-mining*
- *a description of the agricultural resources (especially soils and water resources used or capable of being used for agriculture) and agricultural enterprises of the locality;*

Appendix N inconsistently presents information on the capability and productivity of the site. It concludes that 93% of the site is suitable for primary production/agricultural, comprised of 64% suitable for grazing only, 21% suitable for grazing and occasional cultivation and 8% suitable for regular cultivation (refer to Table 4.1 below). The report states that rainfall and temperature conditions in the area make the site suitable for the production of pastures for livestock production supplemented by winter cereal fodder cropping when seasons allow.¹

The soils section of the EA reinforces the site's suitability by stating that '*with careful management... the project site is capable of productive agriculture*'.² However, the EA also states that the site is suffering from unreliable water supply and soils-related issues, impacting on the overall productivity of the site.³

Table 4.1 Current land capability within the project site, as defined in Appendix N⁴

Land class	Area (Ha)	Percent (%)
Class III	100.9	8%
Class IV	94.8	7%
Class V	187.6	14%
Class VI	850.9	64%
Class VII	65.0	5%
Class VIII	24.4	2%
Total	1,323.6	100%

¹ GHD Pty Ltd, June 2012. Mt Penny Coal Pty Ltd Agricultural Assessment, page16.

² Ibid, page 36.

³ Ibid, page v.

⁴ Ibid, page 29.

Clarification of these inconsistencies is required and in our view, the Assessment requires amendment to adequately address this DGR.

- *identification of any regionally or state significant agricultural resources in the locality, with particular reference to higher productive alluvial soils and associated surface/groundwater systems in the wider Bylong Valley area that may be impacted by the proposal;*

The Assessment states that no regionally or state significant agricultural land (defined in Schedule 2 of the Rural SEPP) has been identified at the project site or in the locality.⁵ However, the project site is acknowledged to contain some productive alluvial lands (Class C).⁶ The Agricultural Assessment refutes any impact on these highly productive soils, however, without a comprehensive understanding of surface and groundwater characteristics of the Project area, the impact to agricultural enterprises in the vicinity of the Project are unknown.

In our view, the issues raised regarding the adequacy of the Surface and groundwater assessments are directly related to the agricultural assessment. Without clarification and further detailed assessment of the surface and groundwater implications of this Project, the true impact to Agricultural lands and enterprises in the vicinity of the Project can not be quantified at this stage.

- *a detailed assessment of the potential impacts of the project on agricultural resources and/or enterprises of the locality including;*
- *impacts as a result of re-allocation of licensed water extraction from irrigation to mining uses; and*
- *direct impacts on groundwater and surface water resources as a result of mining activity;*

The EA acknowledges that *'a large portion of the surrounding properties obtain stock and irrigation water via licensed access to alluvial and surface water associated with the Goulburn and Bylong Rivers'*. In addition some properties utilise farm dams harvesting surface water runoff. However, the Assessment fails to recognise the extent of the potential impacts of the project on agricultural resources and/or enterprises in the locality through the acquisition of substantial groundwater licenses and modification of the catchment, which may potentially alter surface water runoff to surrounding properties.

⁵ GHD Pty Ltd, June 2012, Mt Penny Coal Pty Ltd Agricultural Assessment, page18.

⁶ Ibid, page 55.

- *a detailed description of the measures that would be implemented to avoid, reduce or mitigate impacts of the project on agricultural resources and/or enterprises of the locality including;*

The Assessment details no avoidance, reduction or mitigation measures to reduce project impacts on agricultural resources and/or enterprises in the locality. Whilst the EA details rehabilitation measures to be implemented after the cessation of the Project, it must be recognised that rehabilitation does not avoid, reduce or mitigate impacts of the project, it only responds to final end-of-mine impacts.

- *justification for any significant long term changes to agricultural resources, particularly if highly productive agricultural resources (e.g alluvial lands associated groundwater resources) are proposed to be affected by the project*

The Assessment acknowledges that the overall Agricultural Land Suitability of the site will decrease, but justifies this degradation by:

- The expected increase in the socio-economic indicators in the LGA resulting from the increase in employment during construction and operation;
- The improvement in roads in the locality that will increase the efficiency of transport for the agricultural sector;
- Construction of a final, vegetated land form that will decrease the risk of soil erosion and increase the biodiversity of the site and surrounds compared to the current condition; and
- Implementation of PVPs and provision of funding to reduce erosion on surrounding properties to improve overall agricultural production and sustainability in the locality.⁷

Whilst the justifications given in Appendix N may have some basis during the life of the mine, the emphasis in the DGR is on the long-term changes to agricultural resources, which should also be quantified for the period after cessation of the mine operations.

⁷ GHD Pty Ltd, June 2012, Mt Penny Coal Pty Ltd Agricultural Assessment, page 55.

5.0 Review outcomes and recommendations

Our review is preliminary, given the limited timeframe afforded to Council. Nonetheless, we find that:

- A number of DGRs are inadequately addressed in the Groundwater Assessment (EA Appendix L), Surface Water Study (EA Appendix M) and the, Agricultural Assessment (EA Appendix N); and
- The failure of these aspects of the EA to adequately address the DGRs has potentially significant implications for any project approval.

Accordingly, we recommend:

- The EA be amended to adequately address the DGRs.
- In our view, the public exhibition of the EA without amendments to adequately address the DGRs would be contrary to the interests of Mid-Western Regional Council and its constituent community due to the potential for the EA (as currently written) to misrepresent the impacts of the proposal.



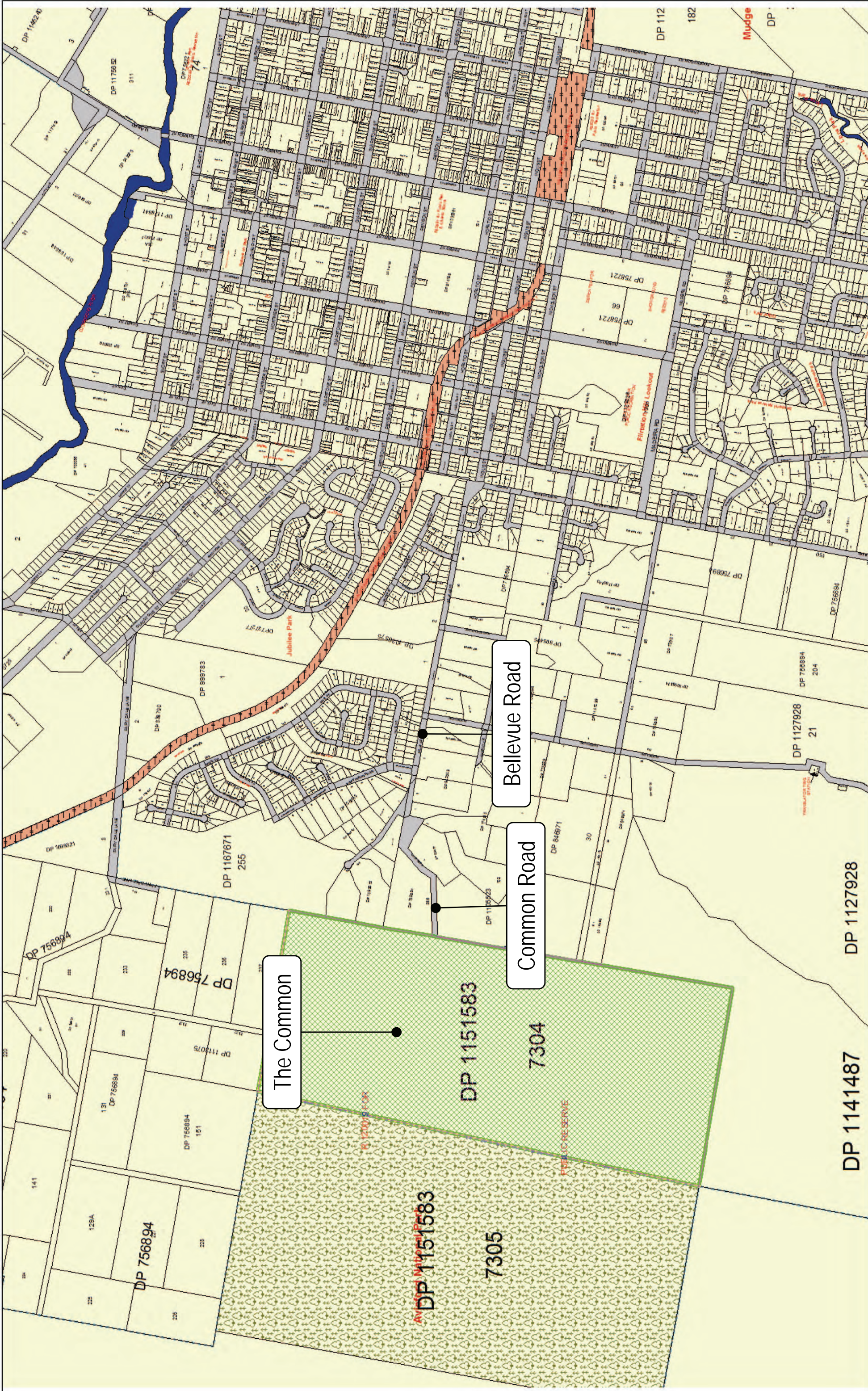
ATTACHMENT 7.2.20



Mudgee Mountain Bike Plan –
Map of proposed area

Wednesday 26 September 2012





Map Scale: 1:14,090

Disclaimer
 This map has been created for the purpose of showing basic locality information over Mid-Western Regional Council. Property boundary line network data is supplied by Department of Lands.
 This map is a representation of the information currently held by Mid-Western Regional Council. While every effort has been made to ensure the accuracy of the product, Council accepts no responsibility for any errors or omissions.

Legend

- Parcel
- Crown Land
- Parish
- Localities
- LGA Boundary
- Forest
- Road
- Railway
- Waterway
- National Park

