



Planning Agreement to secure Biodiversity Offset Credits for the removal of High Environmental Value vegetation

Explanatory Note

Hare Street Casino — Lots 86 & 87 DP755627

INTRODUCTION

This Explanatory Note has been prepared in accordance with clause 25E of the *Environmental Planning & Assessment Regulation 2000*.

The purpose of this Explanatory Note is to provide a plain English summary to support the notification of a draft Planning Agreement (**PA**) between the parties under s7.4 of the *Environmental Planning & Assessment Act 1979* (the **Act**).

1 PARTIES TO THE PA

The parties to the PA are:

- (1) Richmond Valley Council (**Council**);
- (2) Peter Croke Holdings Pty Ltd (**Landowner**).

2 DESCRIPTION OF THE SUBJECT LAND

The **Land** to which the PA relates is set out in the table below:

Legal Description	Location
<i>Lots 86 & 87 DP755627</i>	<i>Hare Street, Casino (and bound by Hare, East and Boundary Streets)</i>

3 DESCRIPTION OF THE PROPOSED DEVELOPMENT

The PA relates to the clearing of High Environmental Value (HEV) native vegetation on the Land, which was identified during preparation of a Planning Proposal to rezone the Land as Zone R1 General Residential,

under the *Richmond Valley Local Environmental Plan 2012*, so it may be developed, including its subdivision into 46 residential lots.

4 SUMMARY OF OBJECTS, NATURE AND EFFECT OF THE VPA

The objective of the PA is to secure the minimum Biodiversity Offset Credits (also referred to as Biodiversity Credits or Credits in the PA) for the removal of High Environmental Value (HEV) native vegetation located on the Land.

The Biodiversity Offset Credits to be provided under the PA are described in the attached Report prepared by Geolink and summarised in the table below:

Description of Biodiversity Offset Credits
<p>The Voluntary Planning Agreement (VPA) between Richmond Valley Council and the proponent must include the requirement that six (6) credits for PCT 837 shall be retired for the proposed subdivision and development of the site on the basis that all native vegetation will be removed. The credits may be retired by either:</p> <ol style="list-style-type: none">1. paying into the Biodiversity Conservation Fund (BCF) to fulfil all offset obligations.2. purchasing the required credits in the market.3. developing a Biodiversity Stewardship Agreement (BSA) for a suitable offset site. <p>However, should a Biodiversity Development Assessment Report (BDAR) be required as part of any future development application for the Land, and this BDAR requires a larger credit requirement than six (6) credits, the larger credit requirement will form part of any development consent conditions.</p>

5 ASSESSMENT OF THE MERITS OF THE PA

5.1 The planning purposes served by the PA

In accordance with section 7.4(2) of the Act, the PA promotes the following public purpose:

- (1) the establishment of minimum credits required to offset biodiversity impacts associated with the future development of the Land; and
- (2) the conservation or enhancement of the natural environment.

5.2 How the PA promotes the public interest

In accordance with the objects of the Act, the PA promotes the public interest in the following manner:

- (1) The proper management, development and conservation of land.
- (2) The provision to secure minimum Biodiversity Offset Credits for the removal of High Environmental Value (HEV) native vegetation on the Land.
- (3) The PA will not preclude the public being provided with the opportunity for involvement and participation when it is concurrently exhibited with Planning Proposal PP2018/0001. The public will be provided the opportunity to comment on the PA and Planning Proposal, particularly with regard to the public interest.
- (4) The provision of paying into the Biodiversity Conservation Fund (BCF); and/or purchasing the required credits in the market; and/or developing a Biodiversity Stewardship Agreement (BSA) for a suitable offset site, will offset/compensate for the removal of HEV native vegetation located on the Land.

5.3 How the VPA promotes the objectives of the *Local Government Act 1993* (LG Act)

The PA is consistent with the following purposes of the LG Act:

- (1) to give councils the ability to provide goods, services and facilities, and to carry out activities, appropriate to the current and future needs of local communities and the wider public; and
- (2) To give councils a role in the management, improvement and development of the resources of their areas.

5.4 How the PA promotes the elements of Council's charter

The PA promotes a number of elements of Council's Charter under section 8 of the LG Act, as follows:

- (1) the exhibition of the PA facilitates the involvement of members of the public, while council staff were involved in the development of the PA;
- (2) this explanatory note is prepared for the purposes of keeping the local community and the State government (and through it, the wider community) informed about its activities; and
- (3) the PA makes it clear that Council has a statutory role as consent authority for development and that the PA is not intended to unlawfully influence the exercise of its regulatory functions, ensuring that Council will act consistently and without bias, particularly where an activity of the Council is affected.

**Richmond
Valley
Council**



PLANNING AGREEMENT

Under section 7.4 of the *Environmental Planning and Assessment Act 1979*

Hare Street Casino — Lots 86 & 87 DP755627

**THE COUNCIL OF RICHMOND VALLEY
(Council)**

AND

**PETER CROKE HOLDINGS PTY LTD
(Landowner)**

Richmond Valley Council
Locked Bag 10
CASINO NSW 2470

CONTENTS

Clause		Page No
	DATED	3
	PARTIES	3
	BACKGROUND	3
	OPERATIVE PROVISIONS	5
1	PLANNING AGREEMENT UNDER THE ACT	5
2	SCOPE AND APPLICATION OF THIS AGREEMENT	5
3	OPERATION OF THIS AGREEMENT	5
4	DEFINITIONS AND INTERPRETATION	5
	4.1 Definitions	5
	4.2 Interpretation	6
5	DEVELOPER CONTRIBUTIONS TO BE MADE UNDER THIS AGREEMENT	7
	5.1 Retirement of Biodiversity Credits	7
	5.2 Penalty	7
	5.3 No Trust	8
6	REGISTRATION OF AGREEMENT	8
	6.1 Registration of Agreement	8
	6.2 Caveat	8
	6.3 Consent of Mortgagee	8
	6.4 Removal of Registration of the Agreement and Caveat	9
7	DISPUTE RESOLUTION	9
	7.1 Reference to Dispute	9
	7.2 Notice of Dispute	9
	7.3 Principals of Parties to Meet	9
	7.4 Neither Party May Constrain	10
8	NOTICES	10
	8.1 Service of Notice	10
	8.2 Change of Address	10
	8.3 Time of Service of Notice	10
	8.4 Service After Hours, on Weekends and Holidays	10
9	APPROVALS AND CONSENT	11
10	ASSIGNMENT AND DEALINGS	11
	10.1 Dealings with Land	11
11	COSTS	11
	11.1 Legal and Administrative Costs	11
	11.2 Stamp Duty	11
12	ENTIRE AGREEMENT	11
13	FURTHER ACTS	11
14	GOVERNING LAW AND JURISDICTION	11
15	NO FETTER	11
16	REPRESENTATIONS AND WARRANTIES	12
17	SEVERABILITY	12
18	MODIFICATION	12
19	WAIVER	12
20	EXPLANATORY NOTE	12
	SCHEDULE 1 – REFERENCE SCHEDULE	13
	EXECUTION	14
	ANNEXURE 1 – GeoLink BAM Report	15

PLANNING AGREEMENT

DATED Thirtieth day of September 2020

PARTIES

RICHMOND VALLEY COUNCIL (ABN 54 145 907 009) of 10 Graham Place, CASINO, New South Wales, 2470 (**Council**); and

PETER CROKE HOLDINGS PTY LTD (ACN 001 319 651) of Brisbane QLD 4000 (**Landowner**)

BACKGROUND

- A. The Landowner owns the Land which is the subject of the LEP Amendment.
- B. The Developer has the Landowner's consent to seek a rezoning of the Land.
- C. On 9 February 2018 the Developer lodged (or authorised to be lodged, as the case may be) Planning Proposal PP2018/0001 with Council to rezone the Land so it may be developed for residential purposes, including subdivision.
- C. A small fragmented area of woodland dominated by Forest Red Gum (*Eucalyptus tereticornis*) form part of High Environmental Value (**HEV**) native vegetation on the Land.
- D. As the area of vegetation is small, lacking connectivity and degraded, its future loss is supported by the Biodiversity and Conservation Division (**BCD**), of the NSW Department of Planning, Industry and Environment (formerly part of the NSW Office of Environment and Heritage), by offsetting the loss using the Biodiversity Assessment Method (**BAM**) and securing the retirement of a minimum number of biodiversity credits via a Planning Agreement (**PA**).
- E. GeoLink Consulting was engaged to prepare a BAM report (12 August 2019) (**GeoLink BAM Report**) which concluded the PA must include a requirement to retire a minimum of six (**6**) credits for Plant Community Type PCT 837.
- F. It is noted, that should a Biodiversity Development Assessment Report (**BDAR**) be required as part of any future development application for the Land, and this BDAR requires a larger credit requirement than six (6) credits, the larger credit requirement will form part of any development consent conditions. The retirement of such larger number of credits will satisfy the requirements of this PA.
- G. Credits must be retired prior to the removal of any part of the HEV native vegetation on the Land.
- H. The Owner is responsible for retiring the credits.
- I. The Owner has agreed to have this PA registered on the Land to facilitate its residential rezoning under the *Richmond Valley Local Environmental Plan 2012* (**LEP**).

- J. On 30 September 2020 the Council made *Richmond Valley Local Environmental Plan 2012 (Amendment No 10)* (**LEP Amendment**) pursuant to section 3.36 of the Act, as the authorised local plan-making authority under Gateway Determination PP_2018_RICHM_002_00 issued on 21 September 2018.
- K. The LEP Amendment becomes effective upon its Notification on the NSW Legislation Website. This will cause the Land's Zoning to change from Zone RU1 Primary Production to Zone R1 General Residential and for its Minimum Lot Size (MLS) to be reduced from 40ha to 600m².
- L. Notification of the LEP Amendment shall not take place until after this Agreement has been executed and registered.

OPERATIVE PROVISIONS

1 PLANNING AGREEMENT UNDER THE ACT

The parties agree that this **Agreement** is a Planning Agreement (**PA**) governed by Part 7 of the *Environmental Planning and Assessment Act 1979* (**the Act**).

2 SCOPE AND APPLICATION OF THIS AGREEMENT

- (a) This Agreement binds the parties and applies to the Land to be rezoned under *Richmond Valley Local Environmental Plan 2012 (Amendment No 10)* (**LEP Amendment**). This Agreement does not include and does **not** in any way reduce or satisfy obligations to pay monies under:
 - (i) sections 7.11 or 7.12 of the Act; or
 - (ii) any other statute or instrument that may apply to the land or to a development application.
- (b) For the purposes of section 7.4(3)(d) of the Act, the parties expressly agree that this PA does not exclude the operation of section 7.11 or 7.12 of the Act, and conditions may be imposed in respect of the contributions identified in (a) to (b) inclusive.
- (c) For the purposes of section 7.4(3)(e) of the Act, the parties expressly agree that the Credits to be provided under this PA are not to be taken into consideration when determining obligations to pay monies under sections 7.11 or 7.12 of the Act.

3 OPERATION OF THIS AGREEMENT

This Agreement takes effect upon Notification of the LEP Amendment on the NSW Legislation Website, which must not happen prior to the execution of this Agreement by all parties, and its registration on the Title(s) for the Land.

4 DEFINITIONS AND INTERPRETATION

4.1 Definitions

In this Agreement, the following definitions apply:

Act means the *Environmental Planning and Assessment Act 1979* (NSW) (as amended) and includes any regulations made under that Act.

BC Act means the *Biodiversity Conservation Act 2016* (NSW) (as amended) and includes any regulations made under that Act.

Biodiversity Offset Credits or **Biodiversity Credits** or **Credits** means Biodiversity Credits under the BC Act, which includes payment into the Biodiversity Conservation Fund (the BCF); purchasing credits in the market; and/or developing a Biodiversity Stewardship Agreement (a BSA) for a suitable offset site.

Council's Representative means the person specified in Item 2 of Schedule 1 who is duly authorised to give approval under this Agreement or such other person as may be nominated by the person occupying the role of Council's General Manager (**GM**) from time to time.

Dealing means selling, transferring, assigning, mortgaging, charging, encumbering or otherwise dealing with the Land.

Developer means *Wombat Developments #1 Pty Ltd* (ACN 620 689 063) represented by Mr Graeme McKenna, and whom at the time of making this Agreement had an option to purchase the Land.

Development Contribution means the contribution, being material public benefits, set out in clause 5 of this PA.

HEV means High Environmental Value native vegetation, and relates to the Plant Community Type (PCT) No. 837 *Forest Red Gum - Swamp Box of the Clarence Valley lowlands of the NSW North Coast Bioregion*.

GeoLink BAM Report means Annexure 1 to this PA.

Land means the land identified in Item 3 of Schedule 1, comprising the Land on which the HEV is located.

LEP Amendment means the *Richmond Valley Local Environmental Plan 2012 (Amendment No 10)*.

Planning Proposal means the Planning Proposal, registered with Richmond Valley Council as PP2018/0001, which aims to rezone the Land under the *Richmond Valley Local Environmental Plan 2012* to permit its development for a residential subdivision.

Party or Parties means a party, or the parties, to this agreement, and includes their successors and assigns.

Removal in regards to vegetation, means the cutting, thinning, damaging, destroying, pruning or otherwise removal of the vegetation.

Retire means the retirement of Biodiversity Credits under the BC Act.

4.2 Interpretation

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.
- (c) a reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.
- (d) 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.
- (e) a reference to a clause, part, schedule, attachment or annexure is a reference to a clause, part, schedule, attachment or annexure of or to this Agreement.

- (f) a word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular.
- (g) references to the word 'include' or 'including' are to be construed without limitation.
- (h) a reference to a party to this Agreement includes a reference to the servants, agents and contractors of the party, and the party's successors and assigns.
- (i) any schedules, attachments and annexures form part of this Agreement.
- (j) a word defined in the Act or BC Act has the same meaning in this Agreement.

5 DEVELOPER CONTRIBUTION TO BE MADE UNDER THIS AGREEMENT

5.1 Retirement of Biodiversity Credits

- (a) It is agreed that a minimum of six (**6**) biodiversity credits, under the BC Act, for Plant Community Type PCT 837 shall be retired prior to the removal of any part of the High Environmental Value (HEV) native vegetation on the Land.
- (b) The Landowner is responsible for retirement of the credits.
- (c) Credits may be retired by either:
 - i. paying into the Biodiversity Conservation Fund (the **BCF**) to fulfil its offset obligations; and/or
 - ii. purchasing the credits in the market; and/or
 - iii. developing a Biodiversity Stewardship Agreement (BSA) for a suitable offset site.
- (b) However, should a Biodiversity Development Assessment Report (a **BDAR**) be required as part of any future development application for the Land, and that BDAR requires a larger credit requirement than six (**6**) Credits, the larger Credit requirement will form part of any development consent conditions. The retirement of such larger Credit requirements will be taken to satisfy the Credit retirement requirements of this PA.

5.2 Penalty

- (a) It is agreed that failure to retire the minimum biodiversity credits prior to removal of the HEV native vegetation, shall cause the minimum credit offset requirement of this PA to increase ten (**10**) fold to sixty (**60**) credits.
- (b) Subdivision certificates, construction certificates, and occupation certificates for the Land shall not be released until such time as the minimum credits, including the penalty, have been retired.
- (c) Furthermore, failure to comply with this Agreement will be a breach of the Act, and may be a breach of the BC Act, and could be subject to legal action.

5.3 No Trust

The parties expressly acknowledge and agree that nothing in this Agreement will be read or construed as creating any form of trust arrangement, or fiduciary duty as and between the Developer/Owner and the Council. Without limiting any other part of this Agreement, the Council is not obliged or required to separately account for, or in any manner trace, the Developer's credits at the request of or for the benefit of the Developer/Owner.

6 REGISTRATION OF AGREEMENT

6.1 Registration of Agreement

- (a) The Owner warrants that it is the registered owner of the Land.
- (b) The Owner warrants that it has obtained all consents to the registration of this Agreement on the title to the land as are necessary and in particular the consent of any mortgagee or Lessee registered on the Certificate of Title to the land.
- (c) The Developer/Owner must on execution of this Agreement produce to the Council together with this Agreement for execution by the Council: the written consent of all persons who have an interest in the Land, including any mortgagee and Lessee, confirming their consent to the registration of this Agreement on the title of the Land.
- (d) The Developer/Owner agrees to procure the registration of this Agreement under the *Real Property Act 1900* in the relevant folios of the Register for the Land.
- (e) The Developer/Owner will notify the Council following registration of the Agreement on the title of the Land and forward a copy of the Agreement to the Council.
- (f) Upon receipt of a registered copy of the Agreement, and at Council's earliest convenience, it will cause the LEP Amendment to be notified on the NSW Legislation Website.

6.2 Caveat

The Owner acknowledges and agrees that:

- (1) when this Agreement is executed by the Owner of the Land the Council is deemed to have acquired and the Owner has deemed to have granted an equitable estate in interest in the Land for the purpose of section 74F(1) of the *Real Property Act 1900*; and
- (2) it will not seek to remove any such caveat registered in favour of the Council without first having the consent of Council.

6.3 Consent of Mortgagee

The Owner warrants to the Council that it has obtained and is in possession of a written consent from the mortgagee in which the mortgagee consents to:

- (a) the Developer/Owner entering into and performing its obligations under this Agreement and the lodgement of a caveat notifying of Council's interest in the relevant folio of the register for the Land under the *Real Property Act 1900* and agrees that;

- (b) it will only exercise its rights under any mortgage, charge, lien, trust, power or retention of deposit arrangement in relation to the Land subject to the rights of Council and promptly upon request lodge at NSW Land Registry Services (LRS) the relevant Certificate(s) of Title to enable registration of this Agreement under the *Real Property Act* in the relevant folios of the register of the Land.

6.4 Removal of Registration of the Agreement and Caveat

After the minimum number of Biodiversity Credits has been retired, the Council will execute any form, and supply such other information reasonably required, to the Owner to remove the Agreement and caveat from the title to the Land.

7 DISPUTE RESOLUTION

7.1 Reference to Dispute

If a dispute arises between the parties in relation to this Agreement, then either party may seek to resolve in accordance with this clause 7.

7.2 Notice of Dispute

The party wishing to commence dispute resolution processes must notify the other in writing of:

- (a) the nature, or subject matter, of the dispute, including a summary of any efforts made to resolve matter other than by way of this clause 7;
- (b) the intent to involve this clause 7;
- (c) (if practicable) the outcomes which the notifying party wishes to achieve;
- (d) any material impact which the dispute has upon the completion of the Developer's Works.

The contents of a notice issued under the clause 7.2 are deemed to be confidential. The party issuing the notice may (but is not obliged) to assert legal professional privilege in respect of the contents.

7.3 Principals of Parties to Meet

The principals of the parties (and in the case of the Council, the principal may include the person acting the role of General Manager, or such other person as is nominated by the person holding that role in writing) must promptly (and in any event within 14 days of written notice) meet in good faith to attempt to resolve the notified dispute. The parties may, without limitation:

- (a) resolve the dispute during the course of that meeting;
- (b) agree that further material, expert opinion, or consideration is needed to effectively resolve the dispute (in which event the parties will in good faith agree to a timetable for resolution);
- (c) agree that the parties are unlikely to resolve the dispute and in good faith agree to a form of alternative dispute resolution (including expert determination, arbitration, or mediation) which is appropriate for the resolution of the relevant dispute.

7.4 Neither Party May Constrain

If:

- (a) at least one meeting has been held in accordance with clause 7.3; and
- (b) the parties have been unable to reach an outcome identified in 7.3(a) to (c); and
- (c) either of the parties (acting in good faith) forms the view that the dispute is reasonably unlikely to be resolved in accordance with a process agreed under clause 7.3;

then that party may, by 14 days notice in writing to the other(s), terminate the dispute resolution process in respect of that dispute. The termination of the process set out in this clause 7 does not of itself amount to a breach of the Agreement.

8 NOTICES

8.1 Service of Notice

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

- (a) delivered or posted to that Party at its address set out in Item 6 of Schedule 1 or (if such delivery is not accepted) then to the registered office or principal place of business of the Party.
- (b) emailed to that Party at its email address set out in Item 6 of Schedule 1.

8.2 Change of Address

If a Party gives the other Party 10 business days notice of a change of its address or email address, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or emailed to the latest address or email address.

8.3 Time of Service of Notice

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, 4 business days after it is posted.
- (c) if it is sent by email, the sender does not receive an email undeliverable reply.

8.4 Service after hours, on Weekends and Holidays

If any notice, consent, information, application or request is delivered or emailed 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.

9 APPROVALS AND CONSENT

Except as otherwise set out in this Agreement, 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.

10 ASSIGNMENT AND DEALINGS

10.1 Dealings with Land

The Landowner must not have any Dealings with the Land unless the Landowner first informs the proposed assignee, purchaser or other party (the **Incoming Party**) of this Agreement and provides the Incoming Party with a copy of this Agreement and transfers the obligations of this Agreement to that party.

11 COSTS

11.1 Legal and Administrative Costs

The Landowner must pay all reasonable legal and administrative costs and expenses in relation to:

- (a) the negotiation, preparation and execution of this Agreement; and
- (b) any enforcement of the rights under this Agreement;

and the Council may claim monies in payment of the legal and administrative costs from the Landowner as a debt due and owing.

11.2 Stamp Duty

The Landowner is liable for and must pay all stamp duty (including any fine or penalty) on or relating to this Agreement.

12 ENTIRE AGREEMENT

This Agreement sets out the whole agreement of the Parties in respect of the subject matter. There are no other agreements, warranties or undertakings.

13 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.

14 GOVERNING LAW AND JURISDICTION

This Agreement is governed by the law of New South Wales. The Parties submit to the jurisdiction of the courts of that State.

15 NO FETTER

Nothing in this Agreement will be construed as requiring Council to do anything that would cause it to be in breach of any of its obligations at law, or fettering in any way the exercise of any statutory discretion or duty.

16 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.

17 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.

18 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.

19 WAIVER

The fact that a Party does not 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.

20 EXPLANATORY NOTE

The Explanatory Note must not be used to assist in construing this deed.

SCHEDULE 1 - REFERENCE SCHEDULE

Item	Name	Description
1.	Owner's Name Owner's ACN Owner's Address	<i>Peter Croke Holdings Pty Ltd</i> <i>ACN 001 319 651</i> <i>12 Bay Street BYRON BAY NSW 2481</i>
2.	Council's Representative	<i>Mr Vaughan Macdonald</i> <i>General Manager - Richmond Valley Council</i>
3.	Land	<i>Lots 86 & 87 DP755627,</i> <i>Hare Street Casino (and bound by Hare, East &</i> <i>Boundary Streets)</i>
4.	Development	<i>Cutting, pruning, clearing or otherwise removal of</i> <i>any native vegetation on the Land</i>
5.	Biodiversity Credits	<i>Minimum of Six (6)</i>
6.	Notices Council Attention Address Email Developer Attention Address Email Owner Attention Address Email	<i>General Manager</i> <i>10 Graham Place</i> <i>Locked Bag 10</i> <i>CASINO NSW 2470</i> council@richmondvalley.nsw.gov.au <i>Wombat Developments #1 Pty Ltd</i> <i>Mr Graeme McKenna</i> <i>PO Box 6 CASINO NSW 2470</i> gmckenna10@gmail.com <i>Peter Croke Holdings Pty Ltd</i> <i>12 Bay Street BYRON BAY NSW 2481</i> <i>-</i>

EXECUTED as an Agreement by:

RICHMOND VALLEY COUNCIL)
(ABN 54 145 907 009))

General Manager
(signature & date):

Witness

Mayor
(signature & date):

Witness

Peter Croke Holdings Pty Ltd)
(ACN 001 319 651))
in accordance with section 127 of)
the Corporations Law:)

Signature & date:

Signature & date:

Full Name (Printed):

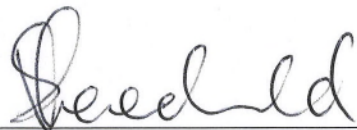
Full Name (Printed):

Position:

Position:

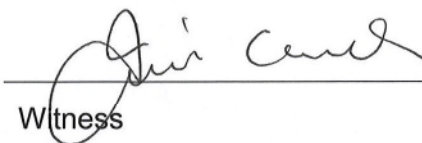
EXECUTED as an Agreement by:

RICHMOND VALLEY COUNCIL
(ABN 54 145 907 009)



General Manager

(signature & date):


Witness

Mayor

(signature & date):

30 September 2020


Witness

Peter Croke Holdings Pty Ltd

(ACN 001 319 651)

in accordance with section 127 of
the Corporations Law:

Signature & date:

Signature & date:

Full Name (Printed):

Full Name (Printed):

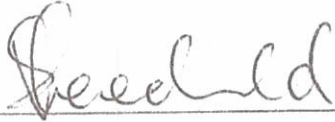
Position:

Position:

Planning Agreement between
Richmond Valley Council and Peter Croke Holdings Pty Ltd

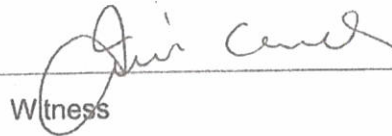
EXECUTED as an Agreement by:

RICHMOND VALLEY COUNCIL
(ABN 54 145 907 009)



General Manager

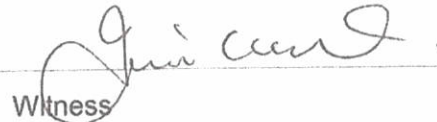
(signature & date):


Witness

Mayor

(signature & date):

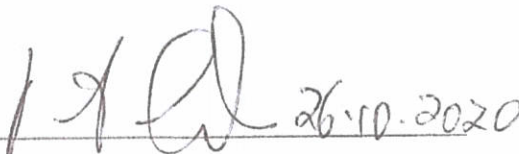
30 September 2020


Witness

Peter Croke Holdings Pty Ltd

(ACN 001 319 651)

in accordance with section 127 of
the Corporations Law:


Signature & date:

PETER JOHN CROKE

Full Name (Printed):

DIRECTOR.

Position:


Signature & date:

Signature & date:

HOLLIE CROKE

Full Name (Printed):

DIRECTOR

Position:

ANNEXURE 1 – GeoLink BAM Report



12 August 2019
Ref No.: 3319-1003

Graeme McKenna
C/- Newton Denny Chapelle
PO Box 1138
LISMORE NSW 2480

Attn: Adrian Zakaras

Dear Adrian

Lennox St, Casino – Biodiversity Offsets

ABN 79 896 839 729
ACN 101 084 557

Return address:
PO Box 119
LENNOX HEAD
NSW 2478

LENNOX HEAD
T 02 6687 7666
F 02 6687 7782

COFFS HARBOUR
T 02 6651 7666

ARMIDALE
T 0488 677 666

LISMORE
T 02 6621 6677

www.geolink.net.au

I refer to the letter from the Office of Environment and Heritage (OEH) dated 11 February 2019 with regard to the proposed rezoning of Lots 85,86 and 87 DP 755627 and Lots 1 and 2 DP 545750 Lennox Street Casino ('the site'). OEH noted that small fragmented patches of woodland dominated by Forest Red Gum (*Eucalyptus tereticornis*) form part of High Environmental Value (HEV) lands, however as the area of subject vegetation is small, lacking connectivity and degraded, its future loss could be supported by offsetting using the Biodiversity Assessment Method ('BAM': OEH, 2017).

On this basis, as an accredited assessor for application of the BAM, I have completed vegetation assessment and data collation to determine credit requirements for the loss of vegetation for the future development of the site. I have reviewed the Ecological Assessment prepared for the rezoning (Blackwood Ecological Services, August 2017) and note the following conclusions:

- Small patches of fragmented Forest Red Gum woodland are degraded examples of the threatened ecological community (TEC) *Subtropical Coastal Floodplain Forest of the New South Wales North Coast Bioregion*.
- No threatened flora species were recorded at the site.
- No threatened fauna species were recorded at the site and the site provides limited resources for opportunistic use by several threatened fauna species.

Field Assessment and BAM

Field assessment was completed on 16 April 2019 and a single 20 x 50 metre vegetation integrity plot was completed in the south-west portion of the site where eucalypt woodland was in best condition. The plot was completed in accordance with BAM requirements and all data entered in the BAM Calculator (BAM-C). The following supporting information was entered into the BAM-C as follows:

- The site is within the South-eastern Queensland region and Clarence Lowlands subregion as per the Interim Biogeographic Regionalisation for Australia (IBRA), version 7.
- The site lies within the Clarence - Richmond Alluvial Plains Mitchell Landscape.
- Approximately 5% of native vegetation cover occurs within a 1500 m radius of the site.





- Forest Red Gum woodland at the site is characteristic of the plant community type (PCT) 837 *Forest Red Gum - Swamp Box of the Clarence Valley lowlands of the NSW North Coast Bioregion*, which is analogous with the *TEC Subtropical Coastal Floodplain Forest of the New South Wales North Coast Bioregion*.
- The total area of PCT 837 (derived from 2017 imagery) and calculated across several polygons is approximately 0.3 hectares. It was decided to use the slightly higher area of 0.3370 ha in the BAM-C as per the GIS calculation derived by Blackwood Ecological Services (2017) to maintain consistency (refer to **Attachment A**).
- Data collected for PCT 837 returned a vegetation integrity score of 36.5. Plot data is provided at **Attachment B**.
- For the purposes of the BAM-C several ecosystem credit species were assumed as having potential to utilise the site for opportunistic foraging (Hoary Wattlebat, Little Bentwing-bat, Eastern Bentwing-bat, Eastern Freetail-bat, Koala, Grey-crowned Babbler, Grey-headed Flying-fox) broadly consistent with the Ecological Assessment.
- No species credit species were assumed likely to utilise the site. Threatened flora species were discounted on the basis that they were not detected in the Ecological Assessment and given the highly degraded and modified nature of the site.

On the basis of removing all of the fragmented patches of PCT 837 from the site, the BAM-C determined that retirement of six (6) credits was required (refer to Attachment C).

Conclusion

The Voluntary Planning Agreement (VPA) between Richmond Valley Council and the proponent must include the requirement that six (6) credits for PCT 837 shall be retired for the proposed subdivision and development of the site on the basis that all native vegetation will be removed. The single credit may be retired by either:

1. Paying into the Biodiversity Conservation Fund (BCF) to fulfil all offset obligations.
2. Purchasing the required credits in the market.
3. Developing a Biodiversity Stewardship Agreement (BSA) for a suitable offset site.

This outcome will satisfy the requirements of OEH and no further assessment or reporting is required. If you have any queries please contact me on phone 02 6687 7666 or email icolvin@geolink.net.au.

Yours sincerely

GeoLINK

Ian Colvin
Senior Ecologist
Biodiversity Accredited Assessor (BAAS18055)

Attach: Attachment A: Vegetation Zones Report
Attachment B: Vegetation Plot Data
Attachment C: BAM Calculator Credit Summary Report

References:

Blackwood Ecological Services (2017). *Ecological Assessment. Proposed Rezoning of Lots 85,86 and 87 DP 755627 & Lots 1 and 2 DP 545750 Lennox Street, Casino, NSW*. Report to Graeme McKenna.

OEH (2017). *Biodiversity Assessment Method*. Published by the Office of Environment and Heritage on behalf of the NSW Government.



Lennox St, Casino – Biodiversity Offsets
3319-1003



Attachment A: Vegetation Zones Report



BAM Vegetation Zones Report

Proposal Details

Assessment Id	00015249/BAAS17014/19/00015250	Assessment name	Lennox Street Casino	BAM data last updated *	12/06/2019
Assessor Name	Ian Colvin	Report Created	04/07/2019	BAM Data version *	11

* Disclaimer: BAM data last updated may indicate either complete or partial update of the BAM calculator database. BAM calculator database may not be completely aligned with Bionet.

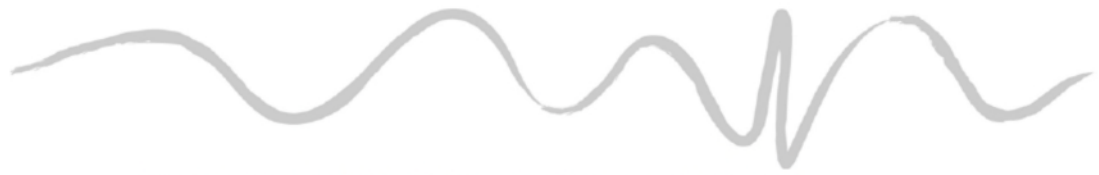
Vegetation Zones

#	Name	PCT	Condition	Area	Minimum number of plots	Management zones
1	837_Low	837-Forest Red Gum - Swamp Box of the Clarence Valley lowlands of the NSW North Coast Bioregion	Low	0.34	1	



Attachment B: Vegetation Plot Data

[illegible]



Attachment C: BAM Calculator Credit Summary Report



BAM Credit Summary Report

Proposal Details

Assessment Id	00015249/BAAS17014/19/00015250	Proposal Name	Lennox Street Casino	BAM data last updated *	12/06/2019
Assessor Name	Ian Colvin	Report Created	04/07/2019	BAM Data version *	11
Assessor Number	BAAS18055	* Disclaimer: BAM data last updated may indicate either complete or partial update of the BAM calculator database. BAM calculator database may not be completely aligned with Bionet.			
Revision No	0				

Ecosystem credits for plant communities types (PCT), ecological communities & threatened species habitat

Zone	Vegetation zone name	Vegetation integrity loss / gain	Area (ha)	Constant	Species sensitivity to gain class (for BRW)	Biodiversity risk weighting	Potential SAIL	Ecosystem credits
------	----------------------	----------------------------------	-----------	----------	---	-----------------------------	----------------	-------------------



BAM Credit Summary Report

Forest Red Gum - Swamp Box of the Clarence Valley lowlands of the NSW North Coast Bioregion						
1	837_Low	35.6	0.3	0.25	High Sensitivity to Potential Gain	2.00
					Subtotal	6
					Total	6

Species credits for threatened species

Vegetation zone name	Habitat condition (HC)	Area (ha) / individual (HL)	Constant	Biodiversity risk weighting	Potential SAI	Species credits
----------------------	------------------------	-----------------------------	----------	-----------------------------	---------------	-----------------