

PART 5 AGREEMENT

THIS AGREEMENT IS made the 19th day of October 2015

Between:

CLARENCE CITY COUNCIL a body corporate established by the *Local Government Act 1993* ("the Council")

and

MALWOOD PTY LTD of 80 Esplanade, Rose Bay in Tasmania ("the Owner")

RECITALS

- A. The Owner is the registered proprietor of an estate in fee simple situated at 473 Rokeby Road, Howrah in Tasmania, more particularly described in Certificate of Title Volume 159758/1 ("Property").
- B. The Tasmanian Planning Commission issued to the Owner a planning permit numbered SD -2011/30 ("Permit").
- C. At the time the Permit was issued the Property was subject to the provisions of the *Clarence Planning Scheme 2007* ("Scheme") and the Council was and continues to be the Planning Authority under the *Land Use Planning and Approvals Act 1993* ("Act") for the purposes of the Scheme.
- D. Conditions 5 and 8 of the Permit require that an agreement pursuant to Part 5 of the Act be entered into ("Agreement").

1 GENERAL INTERPRETATION

In this Agreement, unless the context otherwise requires:

- (a) a reference to any legislation or any legislative provision includes any statutory modification or re-enactment of, or legislative provisions substituted for, and any subordinate legislation issued under, that legislation or legislative provision;
- (b) the singular includes the plural and vice versa;

- (c) a reference to an individual or person includes a corporation, partnership, joint venture, association, authority, trust, state or government, or vice versa;
- (d) a reference to any gender includes all genders;
- (e) a reference to a recital, clause, schedule, annexure or exhibit is to a recital, clause, schedule, annexure or exhibit of or to this Agreement; and
- (f) a recital, schedule, annexure or a description of the parties forms part of this Agreement.

2 DEFINITIONS

- (a) Hazard Management Area – means the area shown as hatched and designated as “1) HMA” in Lots 3, 4, and 5 and the area of public open space immediately adjacent to Lot 3 designated as A,B,C,D shown on Attachment 1.
- (b) Minimum Fuel Condition – means that fine fuels are minimised to the extent that the passage of fire will be restricted by:
 - (i) Paths and driveways;
 - (ii) Bare grounds or mown green grass;
 - (iii) Leaves, litter and weeds raked and removed;
 - (iv) Low flammability plants, not against the habitable building or decks;
 - (v) Dams, orchards, vegetable gardens, effluent disposal areas using non-flammable materials;
 - (vi) Remove or fire isolate wood piles, rubbish heaps and stored fuels;
 - (vii) No vegetation should be able to fall on the building.
- (c) All-weather modified 4C road – means:
 - (i) Pavement – All-weather construction
 - (ii) Design speed – 15km
 - (iii) Minimum load – 20t including culverts and other structures. Bridges to conform to Austroads Bridge Specification T44

TSC
JAH
A

- (iv) Minimum carriageway – dual lane 6m; single lane 4m; shoulder width 1m
- (v) Minimum clearance – 2m each side, and 4m height
- (vi) Curves – minimum inner diameter 10m
- (vii) Dips - not more than 15 degrees (1 in 3.7 or 27%) entry and exit angle
- (viii) Minimum turning area – inside radius 10m (shoulders, seal or other consolidated edges may be acceptable); or “T” or “Y” turnarounds min. 4m wide and 8m long

3 AGREEMENT

3.1 Condition 5 Requirements

- (a) In accordance with the Permit, the Owner has obtained a Bushfire Hazard Management Plan (“BHMP”) prepared by an appropriately certified practitioner.
- (b) The BHMP requires bushfire risk mitigation measures (“bushfire risk mitigation measures”) which are detailed in Part 4 of this Agreement to be undertaken and maintained on an ongoing basis.
- (c) A plan extract from the BHMP which depicts the Hazard Management Area forms Attachment 1 to this Agreement.

3.2 Condition 8 Requirements

- (a) In accordance with the Permit, the Owner has obtained a plan which shows two mature eucalyptus trees (“the Mature Trees”) located on the Property.
- (b) The Permit requires the Mature Trees to be protected in accordance with Part 4 of this Agreement.
- (c) The Plan which shows the location of the Mature Trees forms Attachment 2 to this Agreement.

3.3 Covenants

The Owner and its assigns hereby covenant and agree with the Council in respect of that part of the Property identified as Lots 3, 4 and 5 and the area of public open space



immediately adjacent to Lot 3 designated as A,B,C,D shown on Attachment 1 to observe the stipulations set out at Part 4 of this Agreement.

4 NOW THIS DEED WITNESSES AS FOLLOWS;

4.1 Obligations on the owners of lots 3, 4 and 5

The owner(s) of those lots marked as 3, 4 and 5 and the area of public open space immediately adjacent to Lot 3 designated as A,B,C,D shown on Attachment 1 must, within the boundaries of their individual properties or the designated area as appropriate;

(a) Hazard Management Area

- (i) Maintain the Hazard Management Area in a Minimal Fuel Condition.
- (ii) Nothing in cl.(a)(i) prevents the development or construction of:
 - (A) Non-flammable areas such as paths, driveways or short cropped lawns;
 - (B) Dams, orchards, effluent disposal areas on the fire prone side of any building; and/or
 - (C) Suitably designed and engineered radiation shielding and wind breaks (e.g. stone walls and non-flammable screens).
- (iii) Remove from, and not replace within, Hazard Management Area all fire hazards such as wood piles, rubbish heaps, stored fuels and flammable mulch.
- (iv) Ensure that, within the Hazard Management Area, the horizontal separation between tree crowns is a distance equal to the diameter of the largest adjacent crown, and the vertical separation between ground litter and canopy is at least 2m.
- (v) Ensure that all vegetation is located so as to ensure that no vegetation is capable of falling upon any building.
- (vi) Subject to cl.(a)(iv) and (v) above and the following, retain, within the Hazard Management Area, established trees to trap embers and reduce



wind speeds:

- (A) Small trees and shrubs should be selectively removed to create clumps separated by open areas;
- (B) Where possible “high flammability plants” should be replaced with “low flammability plants” within the meaning of the *Guidelines for development in bushfire prone areas – Tas Fire Service*; and
- (C) Smooth barked trees are preferred for screening of windblown embers.

(vii) Ensure that any gas storage is kept clear from flammable materials at a distance of at least 3m and shielded on the hazard side. Release valves should be facing away from the building.

(viii) Fine fuels at ground level must be removed.

(ix) Active weed management must be undertaken.

(b) Access

(i) Private accesses from the cul-de-sac depicted on Attachment 1 are to be kept clear and accessible at all times.

(ii) Private accesses must be constructed to a standard that is not less than an all-weather modified 4C road.

(iii) Private access must be provided to be within 30m of the furthest part of any habitable building constructed onsite to enable hose access.

(c) Building Construction

(i) No habitable buildings are to be constructed within the Hazard Management Area.

(ii) All buildings (including a dwelling and any associated outbuildings within 6m of a dwelling), must be built in accordance with s.3 and s.6 of AS-3959 for BAL 19.

(iii) Without limiting the application of AS-3959, particular attention should be given to:

TSC
[Handwritten signatures]

- (A) Avoiding locations that may permit ember accumulation or entry, under or into the building;
 - (B) Glazing requirements.
- (iv) For the purpose of cl.(c)(ii) above, construction requirements cannot be reduced based on proposed shielding under cl.3.5 of AS-3959.

4.2 Additional obligations on the owners of lot 4

The owner(s) of the lot marked as 4 on Attachment 1 must not remove the Mature Tree(s) from those parts of their Lot marked on Attachment 2, without the prior written consent of Council (whose consent must not be unreasonably withheld where the owner(s) provides a report to Council from a suitably qualified person demonstrating that the Mature Tree(s) has no conservation value, is of ill health and is not likely to survive or poses a danger to individuals).

5 REGISTRATION

- (a) Following execution the Council will register this Agreement on the folios of the Register to be created for lots 3, 4 and 5 and the area of public open space immediately adjacent to Lot 3 designated as A,B,C,D shown on Attachment 1 pursuant to the provisions of Section 78 of the Act.
- (b) The effect of registration will be that the burden of any commitment contained in this Agreement will run with that part of the Property to which this Agreement relates as if it were a covenant to which Section 102(2) of the *Land Titles Act* 1980 applies.

TSC.
[Handwritten signature]
[Handwritten signature]

The Common Seal of the CLARENCE CITY COUNCIL)
was affixed to this document by:)



Alex Van Der Hek
Corporate Secretary
Clarence City Council
38 Bligh Street
Rosny Park 7018

EXECUTED by MALWOOD PTY LTD pursuant to)
section 127 of the Corporations Act 2001 by:)



Director Signature *FREDERICK JAMES GRANT.*



Director Full Name (print)

Director Signature

Director Full Name (print)

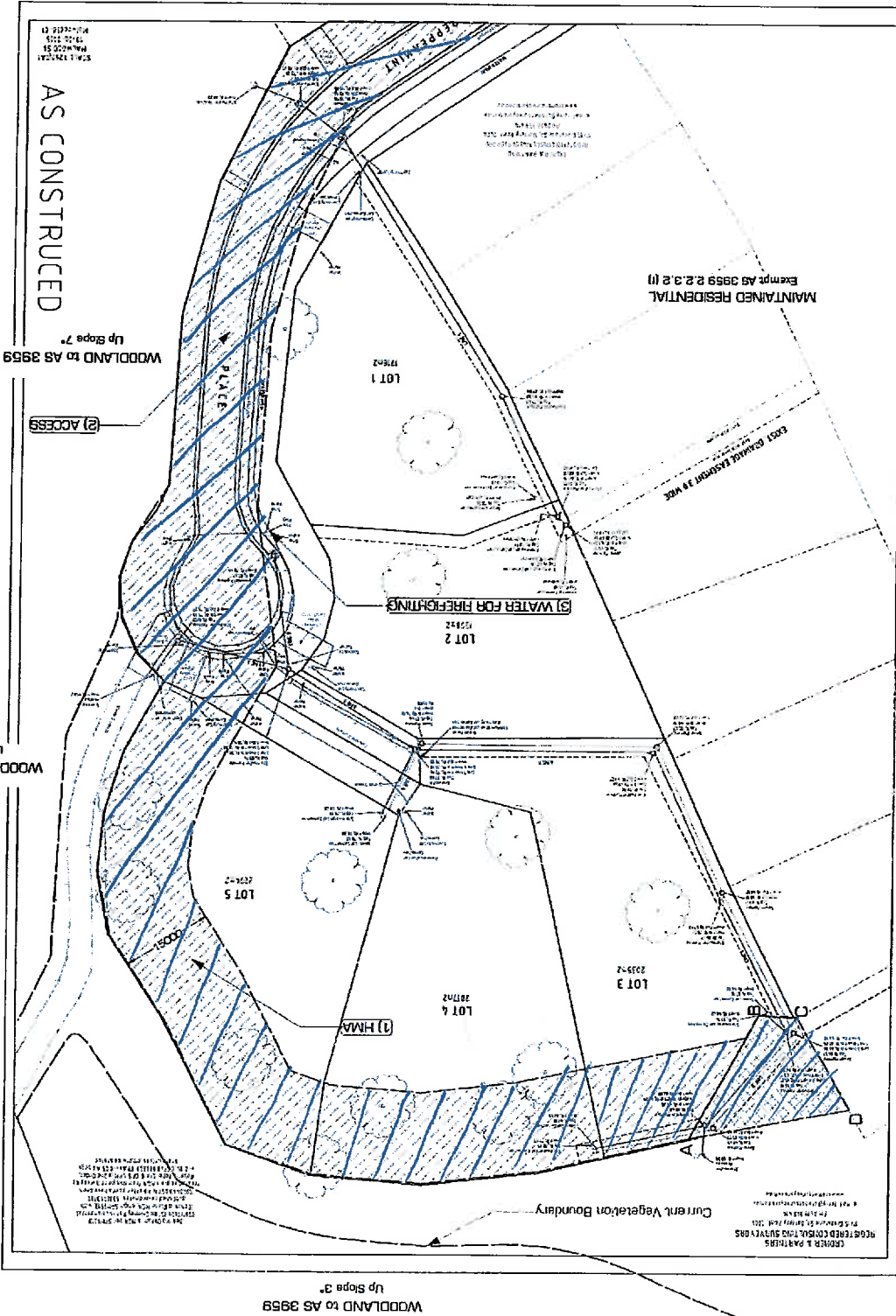
TSC


AV

APPENDICES

Appendix 1 Bushfire Hazard Management Plan Drawing

DESIGN FOR BAL OF 19
TO BE READ IN CONJUNCTION WITH:
Bushfire Hazard Assessment - Development dated 05/07/2015



AS CONSTRUCTED

A 18/11/14 Add table upon issue completion A B C D	
DATE	2014
DATE	15/11/2014
Job No.	BH1
Rev.	A
Drawn by	BH1
Scale	1:850

TASMAN PROPERTY SERVICES
31 Hopson Road, Burnside TAS, Tasmania

BUSHFIRE HAZARD MANAGEMENT PLAN
Scale: 1:850

BHMP for 5 Lots at Eucalyptus Rise

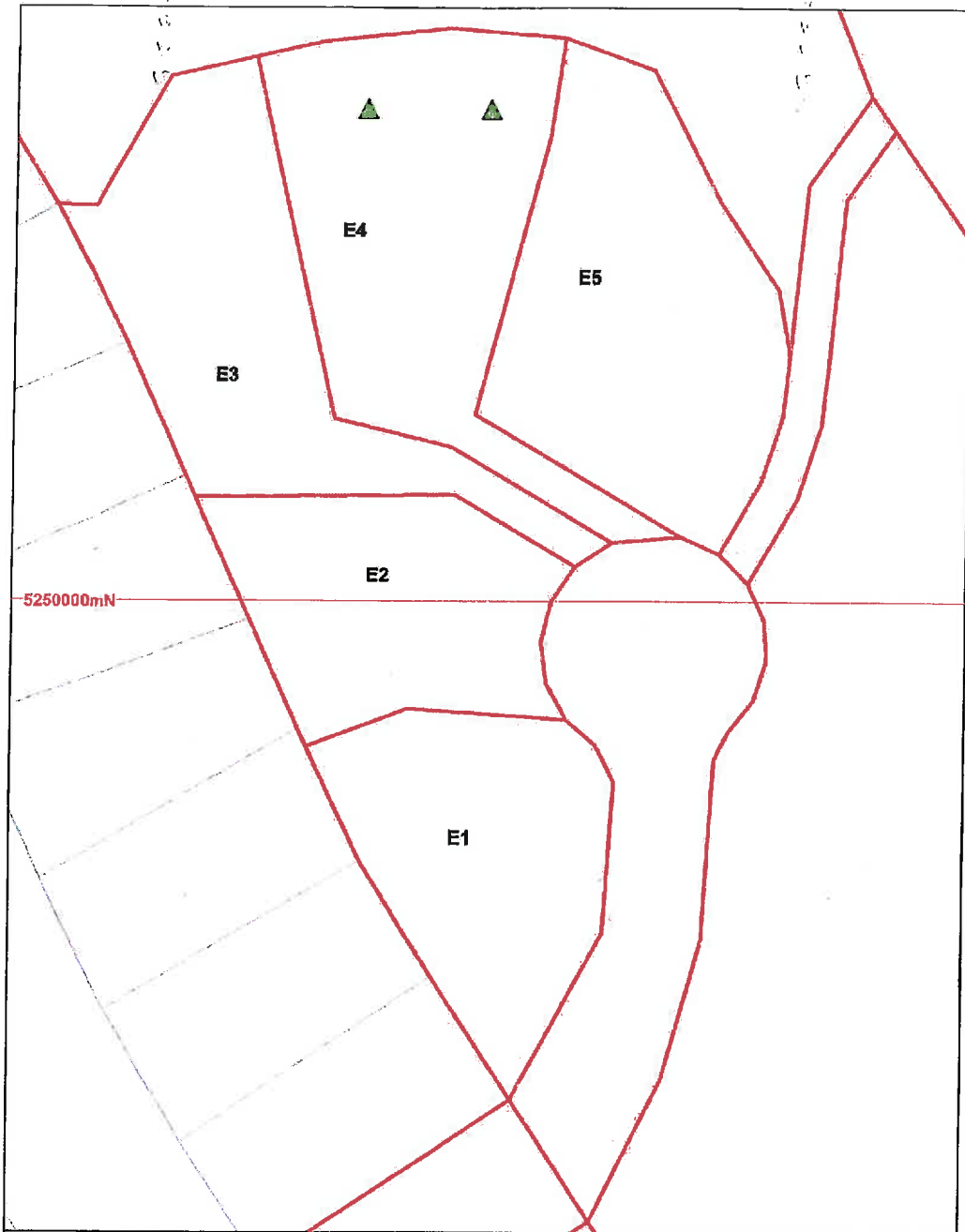
Eucalyptus Rise Howrah

Malwood Pty Ltd

Client

TASMAN PROPERTY SERVICES BH1 BUSHFIRE OVERLAY

Handwritten signature and initials in blue ink.



Threatened Fauna Habitat

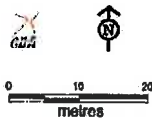
▲ Eucalyptus globulus exceeding 0.4m dbh (swift parrot habitat)
 ▲ - Protected - Part 5 Agreement

Proposed Development - Stage 1

As supplied by Terry Cromer - 03/02/2014
 — Development and Lot Boundaries

The mapping has been undertaken using a hand held GPS and subjective interpretation.
 Consequently it should be considered indicative only.

Base data from the LIST, © State of Tasmania
 Datum: GDA94, AHD Grid: MGA Zone 65



northbarker
 ECOSYSTEM SERVICES

MAL006 12/01/2016

TSC.
 [Handwritten initials]