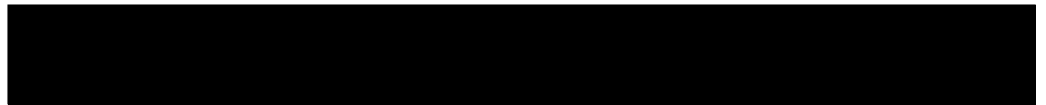


North Murrumbateman Project

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding is made on the 22nd day of December 2021

BETWEEN: Yass Valley Council (Council) of 209 Comur St, Yass, 2582, ABN 50 119 744 650;



collectively known as the 'Project Members'.

BACKGROUND

- A. Each of the Project Members are separate and distinct entities.
- B. Each of the Project Members holds interest in land north of Murrumbateman, adjacent to the Council owned property known as 'Hawthorn'.
- C. The Project Members intend to work collaboratively, in good faith to seek rezoning of the Land in a timely manner, broadly in accordance with the proposed rezoning outlined within Yass Valley Settlement Strategy 2036 (August 2019) as shown in Appendix A (the Project).
- D. The purpose of this MoU is to formalise the Project Members' agreement and understanding of the level of conduct expected by each Project Member.
- E. For the purposes of this MoU, the Council is participating as a landowner and Project Manager for the making of a local environmental plan to the point where section 3.36 of the *Environmental Planning and Assessment Act 1979* may be triggered.
- F. The Project Members agree that this Memorandum shall not create any legal obligations and whilst recognising that there are no enforceable obligations between them, the Project Members agree to perform their obligations pursuant to this Memorandum in good faith and to the best of their abilities.



AND THE PROJECT MEMBERS AGREE:

1. Definitions & Interpretation

1.1 Definitions

- 1.1.1 **Act** means the *Local Government Act 1993* (unless context indicates otherwise);
- 1.1.2 **Project Management Costs** means all costs incurred by Council including, but not limited to expenses, fees, and costs incurred by Council due to managing the Project. Project Management Costs do not include other fees and costs the Council may charge in respect of the receipt and processing of any Planning Proposal, or other applications in respect of the land in its role as consent authority;
- 1.1.3 **Costs Schedule** means the Cost Schedule attached to this Memorandum;
- 1.1.4 **Gifts and benefits** have the same meaning provided in the Model Code of Conduct. At the time of drafting this Memorandum, a gift or benefit is *'something offered to or received by a council official or someone personally associated with them for their personal use and enjoyment'*.
- 1.1.5 **Guidelines** means any number of the following: *'An inherent conflict of interest: councils as developer and regulator'*, NSW Ombudsman, December 2020; *'Direct negotiations: Guidelines for managing risks'*, Independent Commission Against Corruption, August 2018; and *'Unsolicited Proposals: Guides for submission and assessment'*, NSW Government, August 2017.
- 1.1.6 **Interest** means the respective interest of each Project Member in the Project, as set out in the Cost Schedule, based on the percentage that each Project Member's land holding represents of the whole of the Land.
- 1.1.7 **Land** means the area of land identified in **Annexure A**, in which the Project Members have Interest;
- 1.1.8 **Memorandum** means this Memorandum of Understanding;
- 1.1.9 **Other Project Members** means any number of the Project Members, other than Council.
- 1.1.10 **Project Manager** means Council acting in its capacity as land owner, managing the Project up until a Planning Proposal is prepared. This role is entirely separate and distinct from the Council's role as a statutory planning authority. In performing their role as Project Manager, Council will always act in a commercial and competent manner to expedite the Project as quickly as reasonably possible.

1.2 Interpretation

- 1.2.1 The Background set out above forms part of this Memorandum and the Project Members agree that the Background is true and accurate.

1.2.2 Unless the contrary intention appears:

- Words noting the singular shall include the plural and vice versa.
- Reference to any gender shall include every other gender and word denoting individuals shall include corporations and vice versa.
- Reference to any Act of Parliament, statute or regulation shall include any amendment in force at the relevant time and any Act of Parliament, statute or regulation enacted or passed in substitution thereof.
- Headings are for convenience of reference only and do not affect the interpretation or construction of this Memorandum.
- A requirement in this Memorandum for liaison and consultation is a requirement for full and frank discussion and includes a requirement where necessary and appropriate, for full disclosure of relevant information and material.

2. **Term**

- 2.1 The term of this Memorandum shall be five years commencing on **22 December 2022** and expiring on **22 December 2027**, unless otherwise agreed or extended by the Project Members in writing.
- 2.2 The term shall be reviewed by the Project Members not more than twelve months and not less than six months prior to the expiration of the term subject to the term not being reviewed prior to this period.

3. **Negotiate In Good Faith**

The Project Members agree that they will cooperate with each other and at all times act in good faith and with the common objective of successfully and expeditiously concluding and carrying out all of the arrangements and agreements contemplated in this Memorandum.

4. **The Project Members' Obligations**

The Project Members agree that each of them shall have the following obligations in respect of the Project;

4.1 **Council**

- 4.1.1 Council will act as Project Manager in accordance with this Memorandum; the Act and its associated Regulation; and the Guidelines.

For the purpose of clarity, the Council will (as Project Manager) manage the Project to the point of making a local environmental plan as described in section 3.36 of the *Environmental Planning and Assessment Act 1979*. The plan shall seek to achieve rezoning of the land broadly in accordance with the proposed rezoning outlined within Yass Valley Settlement Strategy 2036 (August 2019) and shall seek to optimise the future potential of the land after taking into account all matters of relevance to the Land.

- 4.1.2 Council may in its role as Project Manager, suspend the Project by giving each of the other Project Members written notification. Such notification will include commencement and duration of the suspension.

4.2 Project Members

- 4.2.1 Each Project Member must be open, transparent and willing to share information for the benefit of the Project, as far as reasonably possible;
- 4.2.2 Each Project Member must act in a collegiate manner, and in good faith, for the purpose of progressing the Project;
- 4.2.3 Each Project Member must actively avoid impugning or besmirching any other Project Member, or the Project;
- 4.2.4 Each Project Member is responsible for arranging their own insurances, licences, approvals, and authorisations, as reasonably necessary for the Project;
- 4.2.5 No Project Member will release public comment that names any other Project Member without the other Project Member's express authority to do so;
- 4.2.6 No Project Member, except Council, will release any public comment in relation to the Project without the express consent to do so by all of the other Project Members.

4.3 Contact Person and Delegate

- 4.3.1 Each Project Member is to nominate a Contact Person and a Delegate, as per the Schedule;
- 4.3.2 The Contact Person is to make themselves reasonably accessible and responsive to the other Project Members for the purpose of furthering the Project;
- 4.3.3 The Contact Person must be in a position to make decisions, or arrange for decisions to be made, on behalf of that Project Member;
- 4.3.4 The Delegate must be granted sufficient powers by the relevant Project Member to undertake the functions of the Contact Person in her/his absence;
- 4.3.5 The Contact Person must make themselves or their Delegate available and prepared for meetings.

4.4 Finances

- 4.4.1 At the beginning of each financial year, Council will prepare an annual forecast of Project Management Costs to be shared with the Project Members. The forecast will outline the anticipated amounts and payment timing of the relevant Project Management Costs by the Project Members in accordance with their respective Interests.
- 4.4.2 Council will incur costs associated with managing the Project. Accordingly, the Project Members agree to contribute to the Project Management Costs on a quarterly basis.
- 4.4.3 Council will issue a tax invoice specifying the amount of the Project Management Costs that each of the other Project Members are responsible for during that billing period to each Project Member.
- 4.4.4 Should Council suspend the Project in accordance with Clause 4.1.2 the Project Members shall have no liability for Project Management Costs incurred during the period of suspension.

4.5 Other Project Members

The other Project Members agree to pay to Council within fourteen days of having received a tax invoice the amount specified in the tax invoice (GST inclusive) issued during each billing period for its share of the Project Management Costs.

4.6 Appointments

- 4.6.1 In the event Council engages any third-party consultants to facilitate aspects of the Project, all work, reports and advice from third party consultants will be made available to the Project Members, after redaction of Council's commercial-in-confidence content, if such distribution is permitted pursuant to the *Copyright Act (Cth) 1968*.
- 4.6.2 The costs of any third party consultant will be payable by the members in accordance with their respective Interest in the Project.

5. **No Fetter**

The Project Members acknowledge that nothing in this Memorandum restricts, limits or modifies in any way Council's functions, actions or discretions (of any kind) where it is acting in its capacity as a statutory authority in accordance with legislation for any reason.

6. **Variation**

The Project Members agree that the terms and conditions of this Memorandum may be varied upon written agreement of the proposed variation by all the Project Members.

7. **Withdrawal**

9.1 If a Project Member wishes to no longer participate in the Project, that Project Member may, upon giving three months written notice (the 'Notice Period') to the other Project Members, withdraw from this Memorandum and the Project in which event that Project Member, as at and from the expiration of the Notice Period, shall no longer be a part to this Memorandum or of the Project.

9.2 Notwithstanding withdrawing from the Project, that Project Member shall still be liable for its contribution to all Project Management Costs as per the Cost Schedule up to the Project Member notifying of withdrawal from the Project.

8. **Additional Members**

8.1 Council may, at its sole discretion and at any time, permit a new party to become a project member, provided that the new project member agrees;

8.1.1 to be bound by the terms and conditions of this Memorandum, as a Project Member;

8.1.2 to contribute a share of the Project Management Costs, with the contribution and use thereof.

8.2 Nothing in this Memorandum compels Council to permit any prospective new member to join the Project, or fetter Council's decision in relation to accepting new project members.

8.3 If Council chooses to accept new project members, Council will notify the existing Project Members of its decision, and adjust the Interests of each Project Member accordingly.

9. **No Partnership**

This Memorandum does not create or evidence a partnership, trust, employment agreement or any form of corporate structure between the Project Members.

10. **Liability**

Each Project Member must indemnify and keep itself indemnified against all actions, costs, claims, damages, charges in respect of injury, loss or damage resulting from any negligent act or omission of Council.

11. **Confidentiality**

- 11.1 The Project Members may separately or conjointly create or share confidential information during the Project. Each Project Member will endeavour, to the best of its ability, to identify any such confidential information as confidential as soon as reasonably possible and notify the other Project Members of the confidential status of the information.
- 11.2 Every Project Member warrants that it will treat any such identified confidential information as confidential and will actively protect such information from release, publication, or discussion.

12. Acknowledgement

The Project Members acknowledge and agree that each of the Project Members may, in its own right, engage the other Project Members in any form of agreement separate and distinct from this Memorandum.

If any subsequent agreement impacts or effects the Project in any way, those Project Members must notify Council of the agreement as soon as reasonably possible.

The notification made to Council must contain sufficient details to enable Council to determine whether any conflict has been created, or whether Council's involvement in the Project would be affected.

13. Winding Up

Subject to the Project Members extending this Memorandum, at its expiration, each of the participating Project Members at that time will pay all outstanding Project Management Costs, as per the Costs Schedule, and return any confidential information to its owner Project Member (or destroy it, as agreed).

14. Disputes Between Project Members

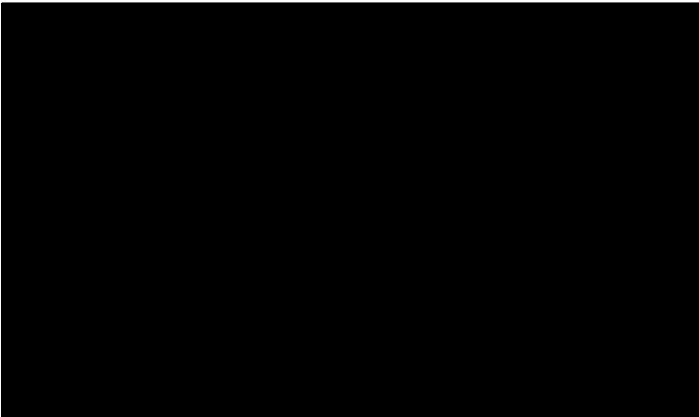
- 14.1 The Project Members agree to work together in good faith to resolve any matter requiring their direction or resolution.
- 14.2 Where the Project Members are unable to resolve a matter within twenty one days of the matter being presented to them, the matter will be referred for arbitration. Council may choose the arbitrator and the Other Project Members will not dispute the choice.
- 14.3 The Project Members agree to be bound by the decision of the appointed arbitrator (except in relation to any decision relating to the acquisition or disposal of any real property) and will endeavour to work together in good faith in the implementation of that decision.
- 14.4 The costs (if any) of arbitration shall be borne equally by the Project Members involved in the arbitration.

EXECUTED as a Memorandum of Understanding

Signed by COUNCIL in accordance with)
section 683 of the *Local Government Act*)
1993:)

)
.....)

General Manager / Public Officer



ANNEXURE A: RELEVANT MAPS

Figure 23: Murrumbateman Settlement and Future Growth

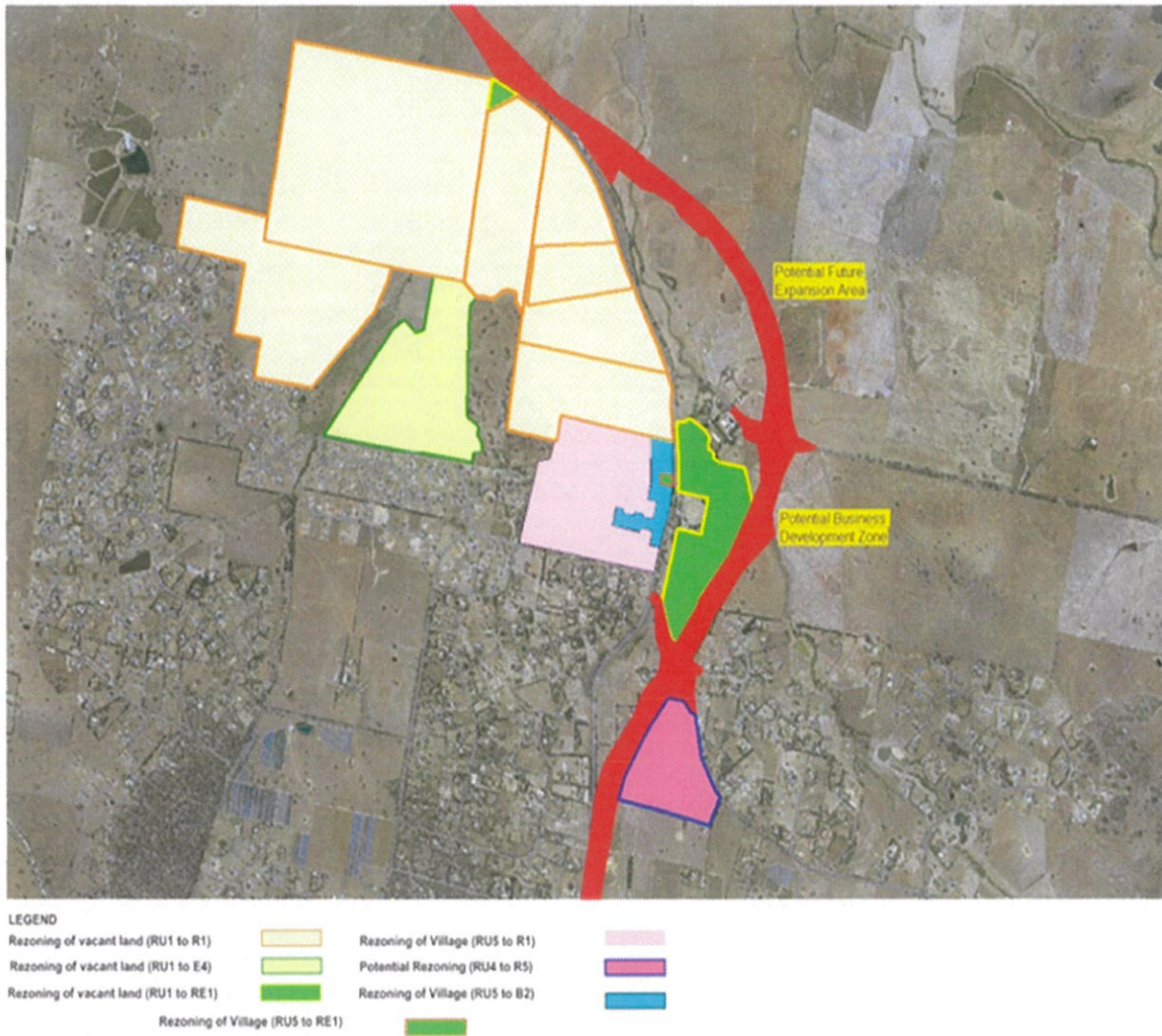


Figure 1 – Murrumbateman Settlement and Future Growth – *Yass Valley Settlement Strategy 2036 (August 2019 Version)*

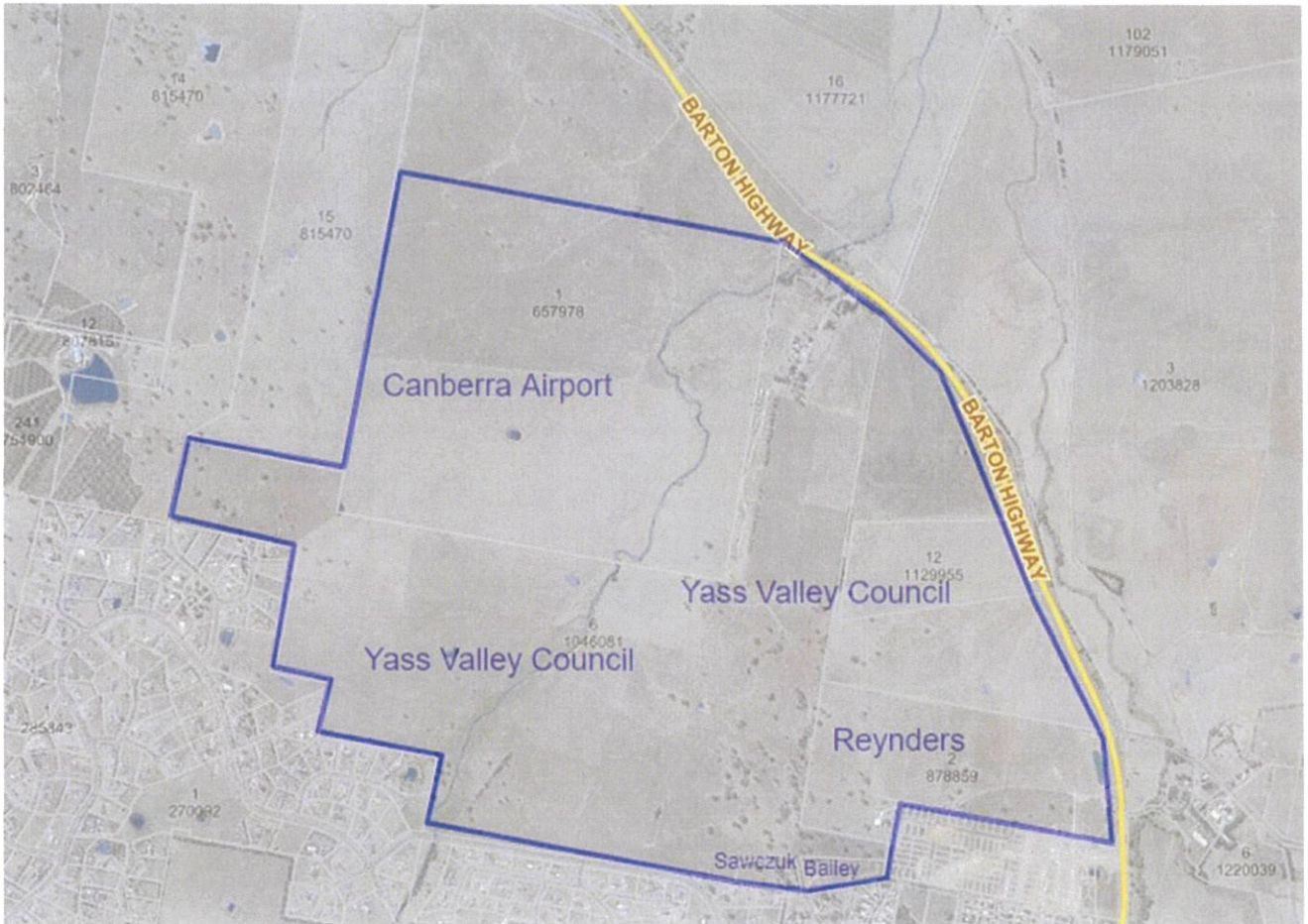


Figure 2 – Plan of Yass Valley Council property and adjacent properties

CONTACT SCHEDULE

Contact person	Council	Maxwell Project Management	Baileys
Name	<u>Chris Berry</u>	<u>David Maxwell</u>	<u>Simon Bailey</u>
Position/Title	General Manager	Managing Director	Resident
Phone	02 6226 1477	0404 829 048	0414 739 507
Email	cberry@yass.nsw.gov.au	david@m-pm.com.au	baileys2611@gmail.com
Delegate contact			
Name	Kevin Gaddes	Andrew Cook	Alison Bailey
Position/Title	Manager Governance	Development Manager	Resident
Phone	02 6226 1477	0431 891 519	0410 577 520
Email	kgaddes@ass.nsw.gov.au	andrew@m-pm.com.au	abailey73@gmail.com

COST SCHEDULE – All Amounts are GST Exclusive

Payment Due	Total Budget	Council	MPM	Mr S L & Ms A J Bailey
Background Studies	\$ 112,500	\$ 97,718.90	\$ 14,044.95	\$ 736.14
Structure Plan	\$ 37,500	\$ 32,572.97	\$ 4,681.65	\$ 245.38
Staging Plan	NA			
Planning Proposal	\$ 37,500	\$ 32,572.97	\$ 4,681.65	\$ 245.38
DCP	\$ 22,500	\$ 19,543.78	\$ 2,808.99	\$ 147.23
Urban Services Plan	\$ 37,500	\$ 32,572.97	\$ 4,681.65	\$ 245.38
Community and Rec Needs Assessment	\$ 22,500	\$ 19,543.78	\$ 2,808.99	\$ 147.23
Services Delivery Plan	\$ 22,500	\$ 19,543.78	\$ 2,808.99	\$ 147.23
Contributions Plan	\$ 37,500	\$ 32,572.97	\$ 4,681.65	\$ 245.38
Project Management	\$ 75,000	\$ 65,145.94	\$ 9,363.30	\$ 490.76
Total estimate	\$ 405,000	\$ 351,788.05	\$ 50,561.83	\$ 2,650.12

The arrangements for Project Management Costs is

Project Management Costs will be disbursed proportionately to all project members based on the size of landholding.

Liability limited by a scheme approved under Professional Standards Legislation

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www.preventionpartnersnsw.com

ABN 59 038 820 166

enquiry@preventionpartnersnsw.com

The total Project Management Costs for each period will be divided by the total number of hectares of all Project Member landholdings, giving a per unit price.

Each Project Member will be invoiced an amount calculated by multiplying the unit price with the number of hectares the Project Members has an interest in.

The formula for Project Management Costs may be amended by agreement of the Project Members.