



Draft Heads of Agreement prepared by Wroth Wall concerning the proposed Deed-granting Option-to-Purchase between Kelvin and Skai Daly and Bruns Eco-Village Incorporated.

Preamble

These Heads of Agreement are subject to execution of a formal Deed of Option or Contract and are not intended to create a binding contract. It is intended that this document will provide the basis for further negotiation between the parties with a view to entering into a mutually satisfactory agreement embodying the clearly articulated intentions of the parties.

Draft Recitals:

1. Kelvin and Skai Daly (the "Dalys") are the registered proprietors of the land situated at 66 Saddle Road Brunswick Heads comprising approximately 52.12 hectares and being all of the land referred to in Certificate of Title Folio Identifier 2/1159910 ("the land").
2. The Dalys have lodged a planning proposal with Byron Shire Council for the rezoning of part of the Land comprising approximately 42 Hectares and comprising that part of the Land West of the Pacific Highway in order to facilitate the creation of an eco-village comprising residential, agricultural, educational and non-residential precincts and to be known and described in this document as "The Bruns Eco Village".
3. For the purpose of creating the Bruns Eco Village, Bruns Eco Village Incorporated ("BEV Inc") has been incorporated pursuant to the provisions of *The Associations Incorporation Act 2009*.
4. BEV Inc is currently undertaking an education program for prospective residents of the Bruns Eco Village called the "Village Development Programme" ("VDP").
5. It is intended that an application will be made under Section 78 of *The Associations Incorporation Act 2009* and section 601BC of the Corporations Act 2001 for a transfer of registration to enable BEV to become a company limited by guarantee pursuant to the provisions of the Corporations Act 2001. Thereafter BEV Inc will be described as "Bruns Eco Village Ltd ("BEV Ltd")
6. Subsequent to the rezoning of the land to permit an eco-village comprising approximately 120 dwelling houses, an educational precinct and non-residential precincts, it is intended that BEV Ltd will;
 - a. Secure loan funding for the development of the project to the extent that the approved loan will be sufficient to develop and construct two clusters





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- of dwelling houses each comprising up to approximately thirteen dwellings within a period of one year following the granting of development consent for such clusters and makes provision for the funding of approximately a further two clusters per year for a further period of four years;
- b. Purchase the Land from the Dalys for a sum comprising approximately one third of the value of the Land as land that is zoned to allow residential development of the same density that will be rendered permissible by the rezoning (presently estimated to be Eight Million Dollars (\$8,000,000.00)) on the basis that the equivalent of 120 dwellings will be permissible;
 - c. Reimburse the Dalys in respect of the expenses outlined in the agreement between the Dalys and BEV Inc dated 2018 ("Cost Sharing Agreement") or otherwise enter into an agreement for the payment of such monies;
 - d. Facilitate the formulation of the process by which the execution of the development will be staged;
 - e. Enter into a binding agreement for the management of the development and construction of the approved development on the Land; and
 - f. Enter into agreements for lease with the prospective residents.
7. The parties acknowledge that
- a. BEV Inc will be undertaking with its own resources education programs for the prospective residents of the Bruns Eco Village;
 - b. While it is intended to seek approval for up to 130 dwelling houses, the parties acknowledge that in the event that the Land is rezoned a smaller number of dwelling houses may be permissible on the land;
 - c. The Daly's will be responsible for the rezoning of the Land and for the payment of all expenses associated with the rezoning of the Land which are currently estimated as being approximately One Million Dollars (\$1,000,000.00) and comprise the work described in the attached specifications for rezoning from Balanced Advice Planning Consultants; and
 - d. The Dalys and BEV Ltd will equally share other costs associated with the proposed development of the Land including fees payable to lawyers, town planning consultants fees for work other than the work described in clause 7(c), architects and others as specified in the Cost Sharing Agreement.
8. It is intended by the parties to create a unique model for the Bruns Eco Village in which the land is to be developed and occupied by members of the BEV Ltd





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who will pay to the BEV Ltd amounts presently estimated to be between Fifty Thousand Dollars (\$50,000.00) and Ninety Thousand Dollars \$90,000.00 by way of redeemable bonds and they will be given life tenancies in respect of particular dwelling houses and pay rental in respect of such dwelling houses fixed at an amount representing a maximum of 80% of the current market rental, determined by a member of BEV Ltd by a valuer appointed by agreement between the parties or failing agreement by a responsible officer from the Australian Property Institute. Rentals will increase only in accordance with Consumer Price Index (Sydney All Ordinaries). It is intended that the BEV Ltd will apply such funds towards the purchase of the Land and the payment of monies to the Dalys pursuant to the Cost Sharing Agreement. The parties acknowledge that the amounts payable for the redeemable bonds will vary in the event that it will not be permissible to erect less than 120 dwelling houses on the Land.

9. After the loans secured for the development for the Land have been repaid, it is intended that, subject to allowing for the future development of the Land in a manner not envisaged by the initial development applications and recited in this document, excess funds will be invested by way of low interest loans to other non-distributing co-operatives without share capital for the purpose of developing similar projects and the Objects and rules of the BEV Ltd will incorporate such matters. All interest on such low interest loans will be applied to maintain and improve facilities on the Land and any excess shall be accumulated for the purpose of providing loans for the above purposes.
10. It is a fundamental premise upon which this transaction will proceed that the proposed development by BEV Ltd will permit "affordable housing" for the members of the BEV Ltd and to the members of future Not for Profit Corporations that will be funded by BEV Ltd and the operative terms of this Deed are intended to ensure that the purposes for which this Deed has been entered into and the mechanisms designed to give effect to such purposes will be adhered to in perpetuity.
11. It is anticipated that the planning instrument giving effect to the rezoning will ensure that the part of the Land comprising the proposed eco-village cannot be subdivided and that the various precincts within the Land will operate symbiotically.

Draft operative part

1. The following preconditions must be fulfilled before the option embodied in the proposed Deed can be exercised:
 - a. Bruns Eco-Village Incorporated must be incorporated under the Corporations Act 2001;
 - b. BEV Ltd must have objects that include (i) "the provision of housing accommodation to its members upon payment of a redeemable bond by way of life tenancy on the basis that the leases creating such life tenancies cannot be assigned inter vivos or devolve to any other party by operation of law" (ii) the establishment of an educational facility and





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- the ability of BEV Ltd to lease or licence part of the Land to another entity for the purpose of the operation of an Educational Facility (iii) the establishment of socially, ecologically and economically sustainable activities on the Land.
- c. The Constitution shall contain by-laws that provide for the following matters:
 - (i) A membership base that includes existing and proposed residents of the proposed eco-village, members of any organisation that comprises an education facility, members of any organisation or corporation that conducts business within any light industrial areas on the Land and (iv) members of the wider community appointed by a yet to be determined organisation involved in the provision of low coast housing.
 - (ii) The payment of directors fees to directors of BEV Ltd provided that any such fees shall not exceed \$20,000.00 per annum.
 - d. BEV Ltd must have entered into a project management agreement envisaged by recital 6(d),
 - e. BEV Ltd must have secured loan approvals sufficient to undertake the construction of the approved development, and
 - f. BEV Ltd must have entered into agreements to lease that part of the approved development comprising residential premises to its members.
2. The rights conferred upon BEV Inc and BEV Ltd by this agreement cannot be assigned.

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