

**COPY**

**Deed**

**Tyrolean Village Development  
Planning Agreement**

Under s93F of the *Environmental Planning and Assessment Act 1979*

**Snowy River Shire Council  
and  
Tyrolean Pty Ltd**

October 2015

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## **Tyrolean Village Development Stage 3 Planning Agreement**

### **Table of Contents**

<b>Summary Sheet .....</b>	<b>5</b>
<b>Parties .....</b>	<b>7</b>
<b>Background .....</b>	<b>7</b>
Part 1 - Preliminary.....	7
1    Definitions & Interpretation.....	7
2    Status of this Deed.....	10
3    Commencement of this Deed .....	10
4    Application of this Deed .....	10
5    Warranties.....	11
6    Further agreements relating to this Deed .....	11
7    Application of s 94, s 94A and s 94EF of the Act to the Development .....	11
8    Provision of Development Contributions.....	11
9    Effect of Developer's Compliance with this Agreement.....	11
Part 2 – Provisions relating to dedication of land .....	12
10    Procedures relating to the dedication of land .....	12
11    Condition and management of the Reserve Land .....	12
Part 3 – Provisions relating to the carrying out of Work.....	13
12    Maintenance and management of Works .....	13
13    Standard of construction of Work.....	13
14    Variation to Work.....	13
15    Acceptance of risk in Works.....	14
16    Public access to Land .....	14
17    Access to land by Council.....	14
18    Access to land by Developer .....	14
19    Council's obligations relating to Work.....	14
20    Protection of people and property.....	15
21    Completion of Work.....	15
22    Rectification of Defects .....	15
23    Works-as-executed-plan .....	16
Part 4 – Security and Enforcement .....	16
24    Security for dedication of land.....	16
25    Security for the carrying out of Works.....	17

**Tyrolean Village Development Planning Agreement**  
**Snowy River Shire Council**  
**Tyrolean Pty Ltd**

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26	Release & return of Security .....	17
27	Call-up of Security.....	17
28	Breach of obligations.....	18
29	Council to consult before enforcing this Deed .....	18
30	Enforcement in court.....	19
	Part 5 –Dispute Resolution.....	19
31	Dispute resolution – expert determination .....	20
32	Dispute resolution - mediation .....	21
	Part 6 –Restriction on Dealings.....	21
33	Assignment, sale of Land, etc.....	21
	Part 7 – Indemnities & Insurance .....	22
34	Release .....	22
35	Indemnity.....	22
36	Insurance .....	22
	Part 8 - Other provisions .....	23
37	Review of Deed.....	23
38	Notices .....	23
39	Approvals and consent .....	24
40	Costs .....	24
41	Entire Deed .....	24
42	Further acts .....	24
43	Governing law and jurisdiction .....	24
44	Joint and individual liability and benefits .....	24
45	No Fetter .....	25
46	Illegality .....	25
47	Severability.....	25
48	Amendment.....	25
49	Waiver .....	25
50	GST.....	26
51	Explanatory Note Relating to this Deed.....	27
	<b>Schedule 1 .....</b>	<b>28</b>
	<b>Schedule 2 .....</b>	<b>29</b>
	<b>Schedule 3 .....</b>	<b>31</b>
	<b>Schedule 4 .....</b>	<b>32</b>
	<b>Schedule 5 .....</b>	<b>33</b>
	<b>Mill Creek Trail Extension Plan .....</b>	<b>33</b>
	<b>Schedule 6 .....</b>	<b>34</b>

**Tyrolean Village Development Planning Agreement**  
**Snowy River Shire Council**  
**Tyrolean Pty Ltd**

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<b>Footpath Works Plan .....</b>	<b>34</b>
<b>Schedule 7 .....</b>	<b>35</b>
<b>Land Management Plan .....</b>	<b>35</b>
<b>Execution .....</b>	<b>36</b>
<b>Appendix .....</b>	<b>37</b>

## **Tyrolean Subdivision VPA**

### **Summary Sheet**

#### **Council:**

**Name:** Snowy River Shire Council  
**Address:** *PO Box 143, Berridale NSW 2628*  
**Telephone:** 02 6451 1195  
**Facsimile:** 02 6456 3337  
**Email:** [records@snowyriver.nsw.gov.au](mailto:records@snowyriver.nsw.gov.au)  
**Representative:** Dennis Trezise

#### **Developer:**

**Name:** Tyrolean Pty Ltd  
**Address:** c/- Millar Merrigan, 2/126 Merrindale Drive, Croydon  
**Telephone:** 03 8720 9500  
**Facsimile:** 03 8720 9501  
**Email:** [planning@millarmerrigan.com.au](mailto:planning@millarmerrigan.com.au)  
**Representative:** Simon Merrigan

#### **Land:**

See definition of *Land* in clause 1.1.

#### **Development:**

See definition of *Development* in clause 1.1.

#### **Development Contributions:**

See Schedule 2.

#### **Application of s94, s94A and s94EF of the Act:**

See clause 8.

**Security:**

See clauses 24, 25 and 26.

**Restriction on dealings:**

See clause 34.

**Dispute Resolution:**

Expert determination and mediation. See clauses 32 and 33.

## **Tyrolean Village Development Stage 3 Planning Agreement**

Under s 93F of the *Environmental Planning and Assessment Act 1979*

### **Parties**

**Snowy River Shire Council** ABN 21 862 479 274 of 2 Myack Street BERRIDALE NSW (**Council**)

and

**Tyrolean Pty Ltd** (ACN 007 441 661) as Trustee for the **Tyrolean Unit Trust** (ABN 86 625 991 421) of 218 Great Alpine Road HARRIETVILLE VIC (**The Developer**)

### **Background**

- A The Developer is the owner of the Land.
- B The Council has granted Development Consent for the carrying out of the Development.
- C Condition 37 of the Development Consent requires the Developer to make Monetary Contributions.
- D The Developer is prepared to make Development Contributions in connection with the carrying out of the Development in accordance with this Deed.
- E The Act authorises the Council to offset the Contribution Value of the Development Contributions against the Developer's obligation to pay the Monetary Contributions.
- F This Agreement makes provision for the Development Contributions to partially satisfy the Developer's obligation to pay the Monetary Contributions.

## **Part 1 - Preliminary**

### **1 Definitions & Interpretation**

- 1.1 In this Deed the following definitions apply:

**Act** means the *Environmental Planning and Assessment Act 1979* (NSW).

**Approval** includes approval, consent, licence, permission or the like.

**Authority** means the Commonwealth or New South Wales government, a Minister of the Crown, a government department, a public authority established by or under any Act, a council or county council constituted under the *Local Government Act 1993*, or a person or body exercising functions under any Act including a commission, panel, court, tribunal and the like.

## **Tyrolean Village Development Planning Agreement**

### **Snowy River Shire Council**

### **Tyrolean Pty Ltd**

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**Bank Guarantee** means an irrevocable and unconditional written undertaking without any expiry or end date in favour of the Council to pay an amount or amounts of money to the Council on demand issued by:

- (a) one of the following trading banks:
  - (i) Australia and New Zealand Banking Group Limited,
  - (ii) Commonwealth Bank of Australia,
  - (iii) Macquarie Bank,
  - (iv) National Australia Bank Limited,
  - (iv) St George Bank Limited,
  - (v) Westpac Banking Corporation, or
- (b) any other financial institution approved by the Council in its absolute discretion.

**Bus Turn Around Facility** means the facility on the Bus Turn Around Facility Land as varied by the terms of any Approval

**Bus Turn Around Facility Land** means the land specified or described in Schedule 4.

**Claim** includes a claim, demand, remedy, suit, injury, damage, loss, Cost, liability, action, proceeding or right of action but does not include proceedings to enforce this Deed in the Land and Environment Court or any Court on appeal from that Court.

**Construction Certificate** has the same meaning as in the Act.

**Contribution Value** means the amount of \$20,385.00 (being \$4,530 attributable to Stage 1 of the development and \$15,855 attributable to Stage 2, to be paid prior to the release of the subdivision certificate for the applicable stage), indexed from the date of this Deed in accordance with the *Consumer Price Index (All Groups - Sydney)* published by the Australian Bureau of Statistics.

**Cost** means a cost, charge, expense, outgoing, payment, fee and other expenditure of any nature.

**Deed** means this Deed and includes any schedules, annexures and appendices to this Deed.

**Development** means the development described in the Development Consent for Development Application DA0038/2013 granted on 23 July 2013 and as amended by the first amendment MOD0019/2014 granted 25 July 2014.

**Development Application** means development application DA0038/2013 received by the Council.

**Development Consent** means the development consent granted by the Council under s80(1) of the Act to the Development Application.

**Development Contribution** means a monetary contribution, the dedication of land free of cost, the carrying out of a work or the provision of any other material public benefit or any combination of them that is required to be provided by the Developer under this Deed and used for, or applied towards, the provision of public infrastructure or another public purpose.

**Dispute** means a dispute or difference between the Parties under or in relation to this Deed.

**Final Lot** means a lot to be created in the Development for separate residential occupation and disposition, not being a lot created by a subdivision of the Land:

- (a) that is to be dedicated or otherwise transferred to the Council, or
- (b) that may be further subdivided, or
- (c) on which is situated a dwelling-house that was in existence on the date of this Deed

**Footpath Works** means the works shown on the Footpath Works Plan as varied by the terms of any Approval.

**Footpath Works Plan** means the plan in Schedule 6.

**Item** means the object of a Development Contribution specified in Column 1 of Schedule 2.

**Land** means the land specified or described in Schedule 1.

**Land Management Plan** means the plan in Schedule 7.

**Mill Creek Trail Extension** means the works shown on the Mill Creek Trail Extension Plan as varied by the terms of any Approval.

**Mill Creek Trail Extension Plan** means the plan in Schedule 5.

**Monetary Contributions** means the monetary development contributions required to be paid to the Council under condition 37 of the Development Consent.

**Occupation Certificate** has the same meaning as in the Act.

**Party** means a party to this Deed, including their successors and assigns.

**Rectify** means rectify, remedy or correct.

**Regulation** means the *Environmental Planning and Assessment Regulation 2000*.

**Reserve Land** means the land specified or described in Schedule 3.

**Security** means a Bank Guarantee, bond or other form of security to the satisfaction of the Council.

**Stage 1** means Stage 1 of the Development as specified in Condition 3 of the Development Consent. This includes the creation of a separate titles for the two reserves, an electricity and gas reserve, and the developable area of Stage 2.

**Stage 2** means Stage 2 of the Development as specified in Condition 3 of the Development Consent.

**Subdivision Certificate** has the same meaning as in the Act

**Work** means the physical result of any building, engineering or construction work in, on, over or under land, required to be carried out by the Developer under this Deed.

1.2 In the interpretation of this Deed, the following provisions apply unless the context otherwise requires:

- 1.2.1 Headings are inserted for convenience only and do not affect the interpretation of this Deed.
- 1.2.2 A reference to a business day means a day, other than a Saturday or Sunday, on which banks are open for business generally in Sydney.

- 1.2.3 If the day on which something is to be done under this Deed is not a business day, then it must be done on the next business day.
- 1.2.4 A reference to dollars or \$ means Australian dollars and all amounts payable under this Deed are payable in Australian dollars.
- 1.2.5 A reference in this Deed to a \$ value relating to a Development Contribution is a reference to the value exclusive of GST.
- 1.2.6 A reference to any 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.
- 1.2.7 A reference to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- 1.2.8 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Deed.
- 1.2.9 A reference to a person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- 1.2.10 Where a word or phrase is given a defined meaning, another part of speech or other grammatical form for that word or phrase has a corresponding meaning.
- 1.2.11 The singular includes the plural, and the plural includes the singular.
- 1.2.12 References to the word 'include' or 'including' are to be construed without limitation.
- 1.2.13 A reference to a Party to this Deed includes a reference to the Party's employees, agents and contractors, and the Party's successors and assigns.
- 1.2.14 Any schedules, appendices and attachments form part of this Deed.

## **2 Status of this Deed**

- 2.1 This Deed is a planning agreement within the meaning of s93F(1) of the Act.

## **3 Commencement of this Deed**

- 3.1 This Deed commences on the date on which it has been executed by all Parties.
- 3.2 The Party who executes this Deed last is to insert on the front page the date they did so and provide a copy of the fully executed and dated Deed to any other person who is a Party.

## **4 Application of this Deed**

- 4.1 This Deed applies to the Development.

- 4.2 The Parties acknowledge that the Development Contributions required to be made under this Deed are to meet the expected demand for public facilities arising from the Development.

## **5 Warranties**

- 5.1 The Parties warrant to each other that they:
- 5.1.1 have full capacity to enter into this Deed, and
  - 5.1.2 are able to fully comply with their obligations under this Deed.

## **6 Further agreements relating to this Deed**

- 6.1 The Parties may, at any time and from time to time, enter into agreements relating to the subject-matter of this Deed that are not inconsistent with this Deed for the purpose of implementing this Deed.

## **7 Application of s 94, s 94A and s 94EF of the Act to the Development**

- 7.1 This Deed does not exclude the application of s 94 of the Act to the Development.
- 7.2 This Deed does not exclude the application of s 94A of the Act to the Development.
- 7.3 This Deed does not exclude the application of s 94EF to the Development.

## **8 Provision of Development Contributions**

- 8.1 The Developer is to make Development Contributions to the Council in accordance with Schedule 2, any other provision of this Deed relating to the making of Development Contributions and otherwise to the satisfaction of the Council acting reasonably.
- 8.2 The Council is to apply each Development Contribution made by the Developer under this Deed towards the public purpose for which it is made and otherwise in accordance with this Deed.

## **9 Effect of Developer's Compliance with this Deed**

- 9.1 The Parties agree that the effect of compliance with this Deed by the Developer is that the Developer's obligation to pay the Monetary Contributions is offset to the amount of the Contribution Value.
- 9.2 The Developer is not required to pay the Monetary Contributions to that extent.

## **Part 2 – Provisions relating to dedication of land**

### **10 Procedures relating to the dedication of land**

- 10.1 A Development Contribution comprising the dedication of land is made for the purposes of this Deed when:
  - 10.1.1 a deposited plan is registered in the register of plans held with the Registrar General that:
    - (a) dedicates land as a public road (including a temporary public road) under the *Roads Act 1993*, or
    - (b) creates a public reserve or drainage reserve under the *Local Government Act 1993*, or
  - 10.1.2 the Council is given an instrument in registrable form under the *Real Property Act 1900* duly executed by the Developer as transferor that is effective to transfer the title to the Land to the Council when executed by the Council as transferee and registered.
- 10.2 For the purposes of clause 10.1.2:
  - 10.2.1 the Developer is to give the Council, for execution by the Council as transferee, an instrument of transfer under the *Real Property Act 1900* relating to the Land to be dedicated, and
  - 10.2.2 within 7 days of receiving it from Developer, the Council is to execute it and return it to Developer, and
  - 10.2.3 within 7 days of receiving it from the Council (properly executed), the Developer is to lodge it for registration with the Registrar General, and
  - 10.2.4 the Developer is to do all things reasonably necessary to enable it to be registered.
- 10.3 Land required to be dedicated under this Agreement is to be dedicated free of all registered and unregistered encumbrances and affectations.
- 10.4 If, having used all reasonable endeavours, the Developer cannot comply with clause 10.3, the Developer may request that Council agree to accept the land subject to those encumbrances and affectations, and:
  - 10.4.1 Council cannot withhold its agreement unreasonably if the encumbrance or affectation does not prevent the future use of the Land for the public purpose for which it is to be dedicated under this Deed, unless the encumbrance or affectation is a charge arising as a result of unpaid taxes or charges, and
  - 10.4.2 in all other cases, Council may withhold its agreement in its absolute discretion.

### **11 Condition and management of the Reserve Land**

- 11.1 Prior to the transfer of the Reserve Land the Developer agrees to:
  - 11.1.1 undertake weed removal works to the satisfaction of Council; and
  - 11.1.2 complete bushfire mitigation works to the satisfaction of Council.

- 11.2 Prior to the transfer of the Reserve Land, the Developer agrees to manage the Reserve Land in accordance with the Land Management Plan.
- 11.3 The Developer will continue to manage the Reserve Land in accordance with the Land Management Plan for a period of 12 months from the release of the subdivision certificate for Stage 2.

## **Part 3 – Provisions relating to the carrying out of Work**

### **12 Maintenance and management of Works**

- 12.1 The Parties may, by agreement in writing, specify Work to which the Maintenance Period applies and the standard and other particulars of maintenance required.
- 12.2 If the Maintenance Period applies to a Work, the Developer is to maintain the Work during that Period, in accordance with the standard and other particulars of maintenance agreed between the Parties.
- 12.3 Despite any other provision of this Deed, if the Developer has complied with its obligations under this clause, the Council cannot make any claim, objection or demand about the state or condition of a Work referred to in clause 12.1 after the end of the Maintenance Period for that Work.
- 12.4 In this clause, **Maintenance Period** means the period of 12 months commencing on and from the date a Work is completed and only if accepted and agreed upon by Council that the work or works is/are satisfactorily completed for the purposes of this Deed.

### **13 Standard of construction of Work**

- 13.1 Any Work that the Developer is required to carry out under this Agreement is to be carried out in accordance with:
  - 13.1.1 the requirements of any relevant Approval issued by a relevant Authority,
  - 13.1.2 any Australian standards and other laws applicable to the Work, and
  - 13.1.3 in a proper and workmanlike manner, complying with current industry practice and standards relating to the Work.

### **14 Variation to Work**

- 14.1 The design or specification of any Work that is required to be carried out by the Developer under this Deed may be varied in accordance with this clause without the necessity for an amendment to this Deed.
- 14.2 For the purposes of clause 14.1, the Developer may make a written request to the Council to approve a variation to the design or specification of a Work in order to enable it to comply with the requirements of any Authority imposed in connection with any Approval relating to the carrying out of the Work.

- 14.3 The Council is not to unreasonably delay or withhold its approval to a request made by the Developer under clause 14.2.

## **15 Acceptance of risk in Works**

- 15.1 Subject to anything to the contrary in this Agreement, the Council accepts responsibility for a Work on the later of:
- 15.1.1 when Work is completed for the purposes of this Deed in accordance with clause 21, or
  - 15.1.2 when land on which that Work is located is dedicated to the Council.
- 15.2 The Developer, at its own cost, is to repair and make good to the satisfaction of the Council (acting reasonably) any loss or damage to a Work from any cause whatsoever which occurs before Completion of the Work.

## **16 Public access to Land**

- 16.1 Until the dedication of any part of the Land required to be dedicated under this Deed, the Developer:
- 16.1.1 may, subject to a written agreement between applicable parties, allow members of the public to have access to that part of the Land;
  - 16.1.2 such an agreement would proceed on the basis that personnel entering the Land accept all risks in relation to that access.

## **17 Access to land by Council**

- 17.1 The Developer is to permit the Council, its officers, employees, agents and contractors to enter the Land or any other land at any time, upon giving reasonable prior notice, to:
- 17.1.1 inspect, examine or test any Work, or
  - 17.1.2 remedy any breach by the Developer in carrying out a Work.

## **18 Access to land by Developer**

- 18.1 The Council is to permit the Developer its officers, employees, agents and contractors to enter and occupy any land owned or controlled by the Council, including any part of the Land dedicated to the Council, to
- 18.1.1 enable the Developer to carry out any Work under this Agreement that is required to be carried out on that land, or
  - 18.1.2 perform any other obligation imposed on the Developer by this Agreement.

## **19 Council's obligations relating to Work**

- 19.1 The Council is not to unreasonably delay, hinder or otherwise interfere with the performance by the Developer of its obligations under this Deed in relation

to Work, and is to use its reasonable endeavours to ensure third parties unrelated to the Developer do not unreasonably delay, hinder or otherwise interfere with the performance of those obligations.

## **20 Protection of people and property**

- 20.1 The Developer is to ensure to the fullest extent reasonably practicable in carrying out any Work that:
- 20.1.1 all necessary measures are taken to protect people and property, and
  - 20.1.2 unnecessary interference with the passage of people and vehicles is avoided, and
  - 20.1.3 nuisances and unreasonable noise and disturbances are prevented.

## **21 Completion of Work**

- 21.1 Work is completed for the purposes of this Agreement when the Council at the request of the Developer, acting reasonably, gives a certificate to the Developer to that effect or the Developer gives the Council a Compliance Certificate to that effect.
- 21.2 In this clause, **Compliance Certificate** has the same meaning as in the Act.

## **22 Rectification of Defects**

- 22.1 During the Defects Liability Period, the Council may give to the Developer a Rectification Notice.
- 22.2 The Developer is to comply with a Rectification Notice at its own cost according to its terms and to the satisfaction of the Council.
- 22.3 The Council is to do such things as are reasonably necessary to enable the Developer to comply with a Rectification Notice that has been given to it under clause 23.1
- 22.4 In this clause:
- 22.4.1 **Defect** means anything that adversely affects, or is likely to adversely affect, the appearance, structural integrity, functionality or use or enjoyment of a Work or any part of a Work.
  - 22.4.2 **Defects Liability Period** means the period of 12 months commencing on the day immediately after a Work is completed and only if accepted and agreed upon by Council that the work or works is/are satisfactorily completed for the purposes of this Deed.
  - 22.4.3 **Rectification Notice** means a notice in writing
    - (a) identifying the nature and extent of a Defect,
    - (b) specifying the works or actions that are required to Rectify the Defect,
    - (c) specifying the date by which or the period within which the Defect is to be rectified.

## **23 Works-as-executed-plan**

- 23.1 No later than 60 days after a Work is completed , or prior to Council approval of the subdivision certificate, which ever comes first, for the purposes of this Deed, the Developer is to submit to the Council a full works-as-executed-plan for the Work in accordance with the requirements and format as specified in Council's Development Design and Construction Specifications.
- 23.2 The Developer, being the copyright owner in the plan referred to in clause 24.1, gives the Council a non-exclusive licence to use the copyright in the plans for the purposes of this Deed.

## **Part 4 – Security and Enforcement**

### **24 Security for dedication of land**

- 24.1 If the Developer does not dedicate the land required to be dedicated under this Deed, or any part thereof, at the time at which it is required to be dedicated, the Developer consents to the Council compulsorily acquiring that land for compensation in the amount of \$1 without having to follow the pre-acquisition procedures under the Just Terms Act.
- 24.2 The Council is to only acquire land pursuant to clause 24.1 if it considers it reasonable to do so having regard to the circumstances surrounding the failure by the Developer to dedicate the land required to be dedicated under this Deed.
- 24.3 Clause 24.1 constitutes an agreement for the purposes of section 30 of the Just Terms Act.
- 24.4 If, as a result of an acquisition referred to in clause 24.1, the Council is required to pay compensation to any person other than the Developer, the Developer is to reimburse the Council for that amount upon a written request being made by the Council or the Council can call on any Security for that purpose.
- 24.5 The Developer indemnifies and keeps indemnified the Council against all claims made against the Council as a result of any acquisition by the Council of the whole or any part of the land that is required to be dedicated under this Deed.
- 24.6 The Developer is to promptly do all things necessary, and consents to the Council doing all things necessary, to give effect to this clause 24, including without limitation:
- 24.6.1 signing any documents or forms,
- 24.6.2 giving land owner's consent for the lodgement of any Development Application,
- 24.6.3 producing certificates of title to the Registrar-General under the *Real Property Act 1900*, and
- 24.6.4 paying the Council's costs arising from this clause 24.
- 24.7 In this clause, **Just Terms Act** means the *Land Acquisition (Just Terms Compensation) Act 1991*.

## **25 Security for the carrying out of Works**

- 25.1 Not less than 14 days before the time specified in Column 5 of the Table to Schedule 2 for provision of a Work, the Developer is to notify the Council in writing whether the Work will be provided by that time.
- 25.2 If the Developer notifies the Council under clause 25.1 that a Work will not be provided by the time so specified, the Developer is to provide the Council with Security equal to 130% of the full value of any uncompleted part of the Work by not later than that time.
- 25.3 The Developer's obligation under clause 25.2 may be satisfied by the roll-over of an existing Security provided by the Developer to the Council for another purpose if the Council agrees to the roll-over.
- 25.4 The amount of the Security is to be indexed quarterly in accordance with the Consumer Price Index (All Groups - Canberra) as provided by the Australian Bureau of Statistics and the Developer must ensure that the Security held by the Council at all times equals the indexed amount notified to the Developer by Council.

## **26 Release & return of Security**

- 26.1 Council is to release and return any Security held under this Deed if the obligation or obligations that are secured by that Security have been performed to the satisfaction of the Council.
- 26.2 At any time following the provision of the Security, the Developer may provide the Council with a replacement Security in the amount of the Security required to be provided under this Deed.
- 26.3 On receipt of a replacement Security, the Council is to release and return to the Developer as directed, the Security it holds which has been replaced.

## **27 Call-up of Security**

- 27.1 The Council may call-up the Security if, in its absolute discretion and despite clauses 32 and 33, it considers that the Developer has breached this Deed.
- 27.2 If the Council calls on the Security, it may use the amount so paid to it in satisfaction of any costs incurred by it in remedying the Developer's breach including but not limited to:
  - 27.2.1 the reasonable costs of the Council's servants, agents and contractors reasonably incurred for that purpose,
  - 27.2.2 all fees and charges necessarily or reasonably incurred by the Council in order to have the Work carried out, completed or rectified, and
  - 27.2.3 without limiting clause 27.2.2, all legal costs and expenses reasonably incurred by the Council, by reason of the Developer's breach.
- 27.3 If the Council calls on the Security in accordance with this Deed, the Council may, by notice in writing to the Developer, require the Developer to provide a further or replacement Security in an amount that, when added to any unused portion of any existing Security, does not exceed the amount of the Security the Council is entitled to hold under clauses 24 and 25.

## **28 Breach of obligations**

- 28.1 If the Council considers that the Developer is in breach of any obligation under this Deed it may give the Developer a notice to the Developer.
  - 28.1.1 specifying the nature and extent of the breach,
  - 28.1.2 requiring the Developer to Rectify the breach to the Council's satisfaction, and
  - 28.1.3 specifying the period within which the breach is to be rectified, being a period that is reasonable in the circumstances.
- 28.2 A notice given under clause 28.1 is to allow the Developer not less than 28 days (or such further period as the Council considers reasonable in the circumstances) to Rectify the breach.
- 28.3 If the Developer does not comply with the notice given under clause 28.1 relating to the carrying out of Work under this Deed, the Council may step-in and remedy the breach.
- 28.4 Nothing in clause 28.3 affects the Council's other rights to enforce this Deed.
- 28.5 Any costs incurred by the Council in remedying a breach in accordance with clause 28.3 may be recovered by the Council by calling up the Security provided by the Developer under this Deed or as a debt due in a court of competent jurisdiction.
- 28.6 For the purpose of clause 28.3, the Council's costs of remedying a breach the subject of a notice given under clause 28.1 include, but are not limited to:
  - 28.6.1 the costs of the Council's servants, agents and contractors reasonably incurred for that purpose,
  - 28.6.2 all fees and charges necessarily or reasonably incurred by the Council in remedying the breach, and
  - 28.6.3 all legal costs and expenses reasonably incurred by the Council, by reason of the breach.

## **29 Council to consult before enforcing this Deed**

- 29.1 This clause applies to any of the Developer's obligations under this Deed.
- 29.2 If the Council reasonably forms the opinion that the Developer has failed to comply with an obligation to which this clause applies, it is not to enforce this Deed against the Developer unless it has first notified the Developer in writing of its intention to do so and has consulted with the Developer as to:
  - 29.2.1 the reason for the non-compliance,
  - 29.2.2 the likely effects of the non-compliance, and
  - 29.2.3 the Developer's capacity in all of the circumstances to reasonably Rectify the non-compliance.
- 29.3 The Council is not to enforce this Deed against the Developer unless, after having consulted with the Developer:
  - 29.3.1 it has reasonably formed the opinion the Developer has no reasonable excuse for the non-compliance,

## **Tyrolean Village Development Planning Agreement**

### **Snowy River Shire Council**

### **Tyrolean Pty Ltd**

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29.3.2 it has notified the Developer in writing that it intends to enforce the Deed not earlier than 14 days from the date of the notice, and

29.3.3 the notice specifies the enforcement action it intends to take.

29.4 At any time between the date of the notice referred to in clause 29.3 and the time when the Council takes action to enforce this Deed, the Developer may notify the Council of a Dispute under clause 32 or 33.

29.5 If the Developer notifies the Council in accordance with in clause 29.4, the Council is not to enforce this Deed against the Developer in relation to the relevant non-compliance unless and until the dispute resolution process under clause 33 or 34 has been exhausted without resolution between the parties.

## **30 Enforcement in court**

30.1 Without limiting any other provision of this Deed, the Parties may enforce this Deed in any court of competent jurisdiction.

30.2 For the avoidance of doubt, nothing in this Deed prevents:

30.2.1 a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Deed or any matter to which this Deed relates,

30.2.2 the Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Deed or any matter to which this Deed relates.

## **31 Registration of this Agreement**

31.1 The Parties agree to register this Agreement on the title to the Land subject to obtaining the agreement of the persons specified in s93H(1) of the Act to registration.

31.2 The Developer is to use its best endeavours to obtain the consent of the persons specified in s93H(1) of the Act to registration of this Agreement on the Land and to cause this Agreement to be registered on the title to the Land or so much of the Land as is possible having regard to its obligation under this clause.

31.3 If the agreement of the persons specified in s93H(1) of the Act to registration of this Agreement is obtained, the Council is to do such things as are reasonably necessary to enable registration to occur.

31.4 Subject to this clause, within 60 days of commencement of this Agreement, the Developer is to provide the Council with the following documents to enable registration of this Agreement:

31.4.1 an instrument requesting registration of this Agreement on the title to the Land in registrable form duly executed by the Landowner, and

31.4.2 the written irrevocable consent of each person referred to in s93H(1) of the Act to that registration.

31.5 Subject to this clause, the Council is to do such things as are reasonably necessary as requested by the Developer to facilitate the lodging of a request for the registration of this Agreement to be removed from the title to a Residential Lot.

## **Tyrolean Village Development Planning Agreement**

### **Snowy River Shire Council**

### **Tyrolean Pty Ltd**

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- 31.6 If the Developer makes a request referred to in clause 31.5 but the Landowner's obligations under this Agreement are not complete, the Council is to notify the Developer of the Security (if any) that it requires in respect of the removal of the registration of the agreement over the Residential Lot.
- 31.7 The amount of the Security that the Council may require under clause 31.6 is not to exceed the Council's reasonable estimate of:
  - 31.7.1 the value of Land of the Developer required to be dedicated to the Council; and
  - 31.7.2 any Development Contributions required to be made by the Developer.
- 31.8 If the Security required by the Council is provided by the Developer the Council is to do all things necessary as requested by the Developer to enable the lodging of a request for the registration of this Agreement to be removed from the title of the Residential Lot.
- 31.9 The Council is to promptly agree to a request by the Developer for the lodging of a request for the registration of this Agreement to be removed from the title of any part of the Land once the Developer has made all of the Development Contributions required of it under this Agreement.
- 31.10 The Parties are to agree to the lodging of a request for the registration of this Agreement to be removed from the titles to any part of the Land if this Agreement is terminated.

## **Part 5 –Dispute Resolution**

### **32 Dispute resolution – expert determination**

- 32.1 This clause applies to a Dispute between any of the Parties to this Deed about a matter arising in connection with this Deed that can be determined by an appropriately qualified expert (**Expert Determination Dispute**) if:
  - 32.1.1 the Parties to the Dispute agree that it can be so determined, or
  - 32.1.2 the Chief Executive Officer of the professional body that represents persons who appear to have the relevant expertise to determine the Dispute gives a written opinion that the Dispute can be determined by a member of that body.
- 32.2 Such a Dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 32.3 If a notice is given under clause 32.2, the Parties are to meet within 14 days of the notice to try to resolve the Dispute.
- 32.4 If the Dispute is not resolved within a further 28 days, the Dispute must be referred to the President of the NSW Law Society to appoint an expert to determine the Dispute.
- 32.5 The expert determination binds the Parties, except in the case of the expert's fraud or misfeasance.
- 32.6 Each Party must bear its own costs arising from or in connection with the appointment of the expert and the expert determination.

- 32.7 The Parties are to share equally the costs of the President, the expert, and the expert determination.

### **33 Dispute resolution - mediation**

- 33.1 This clause applies to any Dispute under this Deed other than a Dispute to which clause 33 applies.
- 33.2 Such a Dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 33.3 If a notice is given under clause 33.2, the Parties are to meet within 14 days of the notice to try to resolve the Dispute.
- 33.4 If the Dispute is not resolved within a further 28 days, the Parties must mediate the dispute in accordance with the Mediation Rules of the Law Society of New South Wales published from time to time, and must request the President of the Law Society, or the President's nominee, to select a mediator.
- 33.5 If the Dispute is not resolved by mediation within a further 28 days, or any longer period that may be needed to complete any mediation process which has been started, then the Parties may exercise their legal rights in relation to the Dispute, including by taking legal proceedings in a court of competent jurisdiction in New South Wales.
- 33.6 Each Party is to bear its own costs arising from or in connection with the appointment of a mediator and the mediation.
- 33.7 The Parties are to share equally the costs of the President, the mediator, and the mediation.

## **Part 6 –Restriction on Dealings**

### **34 Assignment, sale of Land, etc**

- 34.1 The Developer is not to:
- 34.1.1 sell or transfer the Land, other than a Final Lot, or
- 34.1.2 assign its rights or obligations under this Deed, or novate this Deed, to any person unless:
- 34.1.3 the Developer has, at no cost to the Council, first procured the execution by the person to whom the Land or part is to be sold or transferred or the Developer's rights or obligations under this Deed are to be assigned or novated, of a deed in favour of the Council on terms satisfactory to the Council, and
- 34.1.4 the Council has given written notice to the Developer stating that it reasonably considers that the purchaser, transferee, assignee or novatee is reasonably capable of performing its obligations under the Deed, and
- 34.1.5 the Developer is not in breach of this Deed, and

34.1.6 the Council otherwise consents to the transfer, assignment or novation, such consent not to be unreasonably withheld.

34.2 Clause 34.1 does not apply in relation to any sale or transfer of any land if this Deed is registered on the title of that land at the time of the sale or transfer.

## **Part 7 – Indemnities & Insurance**

### **35 Release**

35.1 Each Party releases the other Party from any Claim it may have against the other Party arising in connection with the performance of their obligations under this Deed except if, and to the extent that, the Claim arises because of the other Party's negligence or default.

### **36 Indemnity**

36.1 Each Party indemnifies the other Party from and against all Claims that may be sustained, suffered, recovered or made against the other Party arising in connection with the performance of their obligations under this Deed except if, and to the extent that, the Claim arises because of the other Party's negligence or default.

### **37 Insurance**

37.1 The Developer is to, or is to ensure its contractors, take out and keep current to the satisfaction of the Council the following insurances in relation to Work required to be carried out by the Developer under this Deed up until the Work is taken to have been completed in accordance with this Deed:

37.1.1 contract works insurance, noting the Council as an interested party, for the full replacement value of the Works (including the cost of demolition and removal of debris, consultants' fees and authorities' fees), to cover the Developer's liability in respect of damage to or destruction of the Works,

37.1.2 public liability insurance for at least \$20,000,000.00 for a single occurrence, which covers the Council, the Developer and any subcontractor of the Developer, for liability to any third party,

37.1.3 workers compensation insurance as required by law, and

37.1.4 any other insurance required by law.

37.2 If the Developer fails to comply with clause 37.1, the Council may effect and keep in force such insurances and pay such premiums as may be necessary for that purpose and the amount so paid shall be a debt due from the Developer to the Council and may be recovered by the Council as it deems appropriate including:

37.2.1 by calling upon the Security provided by the Developer to the Council under this Deed, or

37.2.2 recovery as a debt due in a court of competent jurisdiction.

## **Part 8 - Other provisions**

### **38 Review of Deed**

- 38.1 The Parties, acting in good faith, are to review this Deed if either Party considers that any change of circumstance has occurred, or is imminent, that materially affects the operation of this Deed.
- 38.2 For the purposes of clause 38.1, the relevant changes include (but are not limited to) any change to a law that restricts or prohibits, or enables the Council or any other planning authority to restrict or prohibit, any aspect of the Development.
- 38.3 For the purposes of addressing any matter arising from a review of this Deed referred to in clause 38.1, the Parties are to use all reasonable endeavours to agree on and implement appropriate amendments to this Deed.
- 38.4 A Party's failure to agree to take action requested by the other Party as a consequence of a review referred to in clause 38.1 is not a Dispute for the purposes of this Deed, and is not a breach of this Deed.

### **39 Notices**

- 39.1 A notice, consent, information, application or request (**Notification**) that must or may be given or made to a Party under this Deed is only given or made if it is in writing and sent in one of the following ways:
  - 39.1.1 delivered or posted to that Party at its address set out in the Summary Sheet,
  - 39.1.2 faxed to that Party at its fax number set out in the Summary Sheet, or
  - 39.1.3 emailed to that Party at its email address set out in the Summary Sheet.
- 39.2 A Party may change its address or fax number by giving the other Party 3 business days' notice of the change, in which case the new address or fax number is treated as the address or number in the Summary Sheet.
- 39.3 A Notification is to be treated as given or made if it is:
  - 39.3.1 delivered, when it is left at the relevant address,
  - 39.3.2 sent by post, 2 business days after it is posted,
  - 39.3.3 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, or
  - 39.3.4 sent by email and the sender does not receive a delivery failure message from the sender's internet service provider within a period of 24 hours of the email being sent.
- 39.4 If a Notification 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.

#### **40 Approvals and consent**

- 40.1 In this clause, a reference to an approval or consent does not include a reference to a Development Consent.
- 40.2 Except as otherwise set out in this Deed, and subject to any statutory obligations, a Party may give or withhold an approval or consent to be given under this Deed in that Party's absolute discretion and subject to any conditions determined by the Party.
- 40.3 A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

#### **41 Costs**

- 41.1 The Parties are each to pay their own costs of preparing, negotiating, executing and stamping this Deed and any document related to this Deed.

#### **42 Entire Deed**

- 42.1 This Deed contains everything to which the Parties have agreed in relation to the matters it deals with.
- 42.2 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 Deed was executed, except as permitted by law.

#### **43 Further acts**

- 43.1 Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to effect, perfect or complete this Deed and all transactions incidental to it.

#### **44 Governing law and jurisdiction**

- 44.1 This Deed is governed by the law of New South Wales.
- 44.2 The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them, and are not to object to the exercise of jurisdiction by those courts on any basis.

#### **45 Joint and individual liability and benefits**

- 45.1 Except as otherwise set out in this Deed:

- 45.1.1 any agreement, covenant, representation or warranty under this Deed by 2 or more persons binds them jointly and each of them individually, and
- 45.1.2 any benefit in favour of 2 or more persons is for the benefit of them jointly and each of them individually.

## **46 No Fetter**

- 46.1 Nothing in this Deed 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.

## **47 Illegality**

- 47.1 If this Deed or any part of it becomes illegal, unenforceable or invalid as a result of any change to a law, the Parties are to co-operate and do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Deed is entered into.

## **48 Severability**

- 48.1 If a clause or part of a clause 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.
- 48.2 If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part of it is to be treated as removed from this Deed, but the rest of this Deed is not affected.

## **49 Amendment**

- 49.1 No amendment of this Deed has any force or effect unless it is in writing and signed by the Parties to this Deed in accordance with clause 25D of the Regulation.

## **50 Waiver**

- 50.1 A Party does not waive any of the other Party's obligation or breach of obligation merely by failing to do, or delaying in doing, something under this Deed.
- 50.2 A waiver by a Party is effective only if it is in writing.
- 50.3 A written waiver by a Party is effective only in relation to the particular obligation or breach for 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.

## **51 GST**

51.1 In this clause:

**Adjustment Note, Consideration, GST, GST Group, Margin Scheme, Money, Supply and Tax Invoice** have the meaning given by the GST Law.

**GST Amount** means in relation to a Taxable Supply the amount of GST payable for the Taxable Supply.

**GST Law** has the same meaning as 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.

**Input Tax Credit** has the meaning given by the GST Law and a reference to an Input Tax Credit entitlement of a Party includes an Input Tax Credit for an acquisition made by that Party but to which another member of the same GST Group is entitled under the GST Law.

**Taxable Supply** has the meaning given by the GST Law, excluding (except where expressly agreed otherwise) a supply for which the supplier chooses to apply the Margin Scheme in working out the amount of GST on that supply.

51.2 Subject to clause 52.4, if GST is payable on a Taxable Supply made under, by reference to or in connection with this Deed, the Party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.

51.3 Clause 52.4 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Deed to be GST inclusive.

51.4 No additional amount is payable by the Council under clause 52.4 unless, and only to the extent that, the Council (acting reasonably and in accordance with the GST Law) determines that it is entitled to an Input Tax Credit for its acquisition of the Taxable Supply giving rise to the liability to pay GST.

51.5 If there are Supplies for Consideration which is not Consideration expressed as an amount of Money under this Deed by one Party to the other Party that are not subject to Division 82 of the *A New Tax System (Goods and Services Tax) Act 1999*, the Parties agree:

51.5.1 to negotiate in good faith to agree the GST inclusive market value of those Supplies before issuing Tax Invoices for those Supplies;

51.5.2 that any amounts payable by the Parties in accordance with clause 52.2 (as limited by clause 52.4) to each other for those Supplies will be set off against each other to the extent that they are equivalent in amount.

51.6 No payment of any amount under this clause 52, and no payment of the GST Amount where the Consideration for the Taxable Supply is expressly agreed to be GST inclusive, is required until the supplier has provided the recipient with a Tax Invoice or Adjustment Note as the case may be.

51.7 Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to a cost, expense or other liability incurred by a Party, must exclude the amount of any Input Tax Credit entitlement of that Party in relation to the relevant cost, expense or other liability.

51.8 This clause continues to apply after expiration or termination of this Deed.

## **52 Explanatory Note Relating to this Deed**

- 52.1 The Appendix contains the Explanatory Note relating to this Deed required by clause 25E of the Regulation.
- 52.2 Under clause 25E(7) of the Regulation, the Parties agree that the Explanatory Note in the Appendix is not to be used to assist in construing this Deed

## **Schedule 1**

(Clause 1.1)

### **Land**

Lot 56 DP818775 and Lot 2 DP1182278

## **Schedule 2**

(Clause 9)

### **Development Contributions**

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>	<b>Column 4</b>	<b>Column 5</b>
<b>Item</b>	<b>Public Purpose</b>	<b>Manner &amp; Extent</b>	<b>Contribution Value</b>	<b>Timing</b>
<b>A. Dedication of land</b>				
1. Reserve Land	Open space	Dedication of the Reserve Land as shown in Schedule 3		Before the release of a Subdivision Certificate for Stage 2
2. Bus Turn Around Facility Land	Transport infrastructure	Dedication of the Bus Turn Around Facility Land as shown in Schedule 4		Before the release of a Subdivision Certificate for Stage 1

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### **B. Carrying out of Works**

1. Mill Creek Trail Extension	Public amenities	Construction of single track cross country shared trail of approximately 1.1km incorporating one raised bridge platform carried out to the satisfaction of Council within Lot 2 DP 1182278, in accordance with condition 4 of DA0038/2013.		Before the release of a Subdivision Certificate for Stage 2
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## **Tyrolean Village Development Planning Agreement**

### **Snowy River Shire Council**

#### **Tyrolean Pty Ltd**

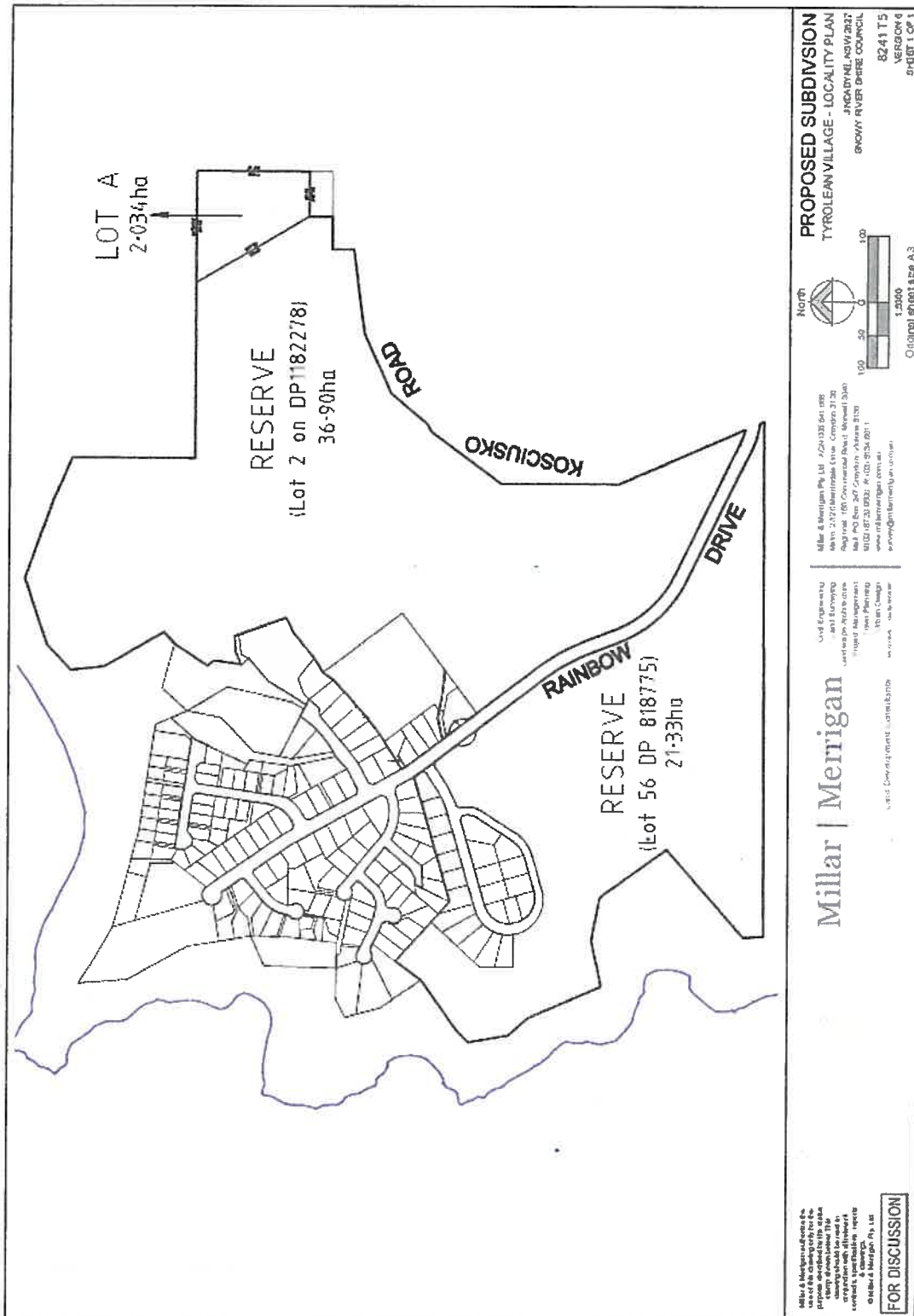
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2.	Bus Turn Around Facility	Transport infrastructure	Construction of Bus Turn Around Facility, including weed eradication works, relocation of existing gas tank and installation of electrical substation, carried out to the satisfaction of Council. This work will include the creation of separate titles in favour of Council, Origin Energy, and Essential Energy (respectively).	Before the release of a Subdivision Certificate for Stage 1
3.	Footpath Works	Public amenities	Construction of concrete footpath to service bus stop carried out to the satisfaction of Council	Before the release of a Subdivision Certificate for Stage 1

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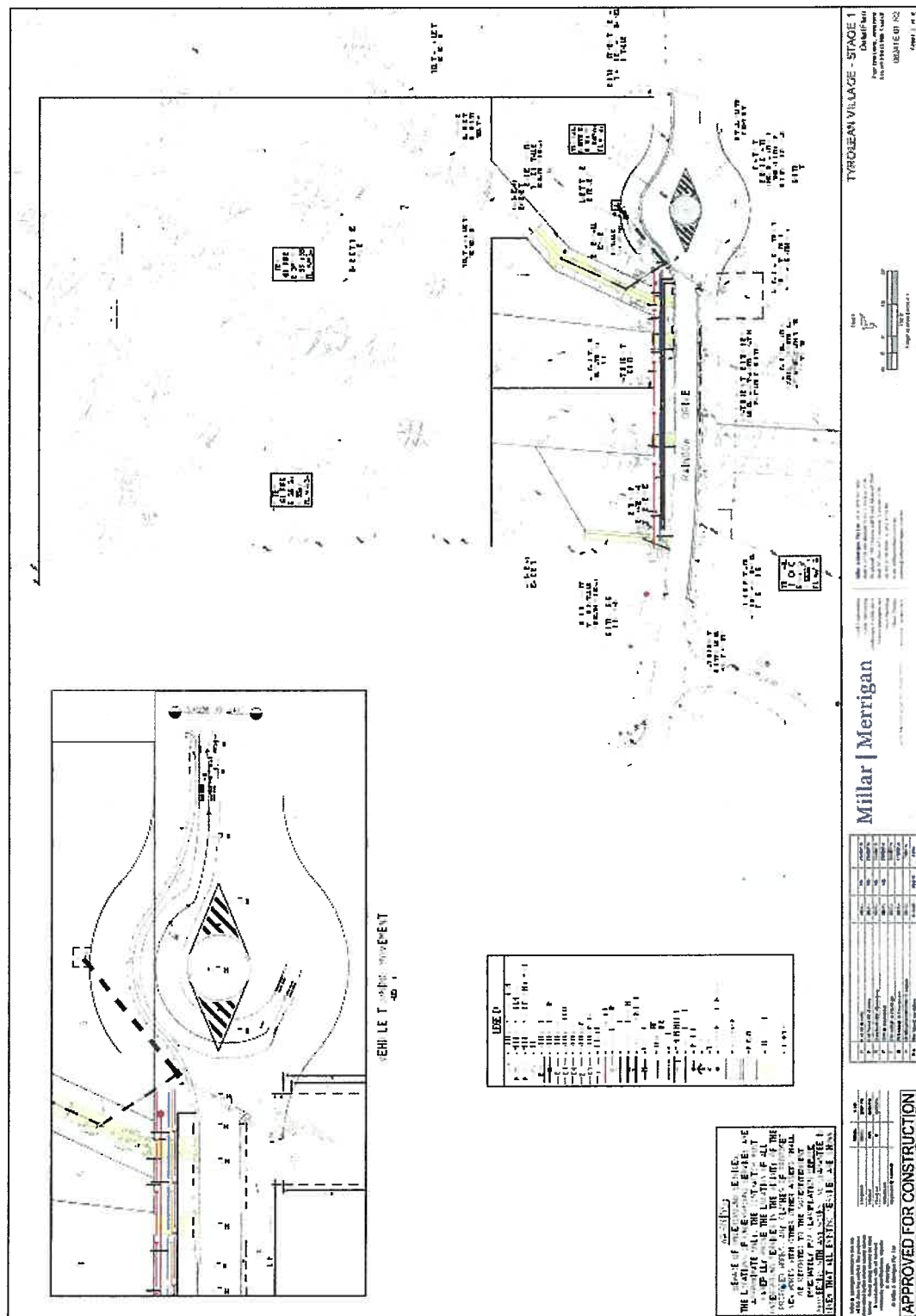
## Schedule 3

### Reserve Land

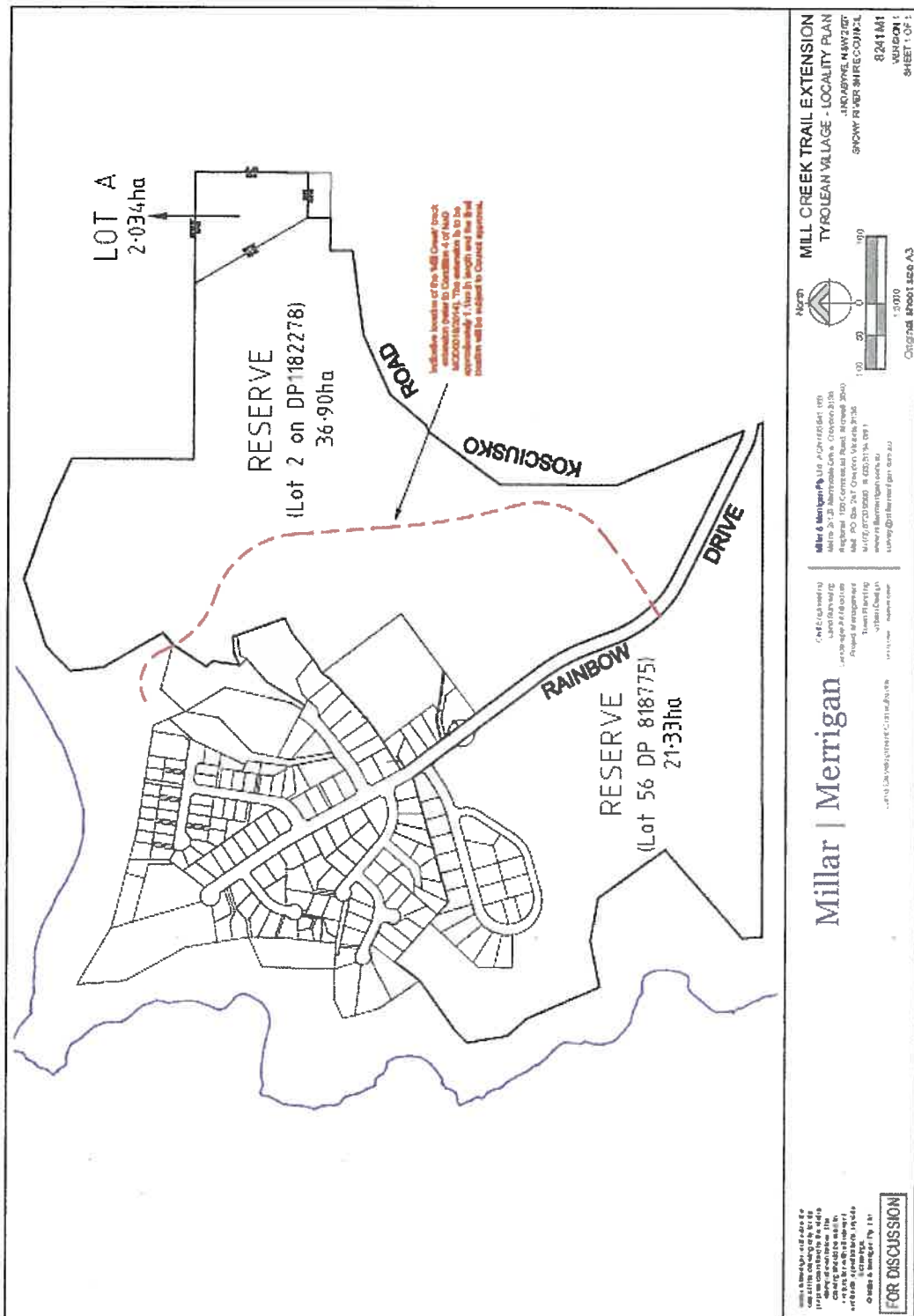


## Schedule 4

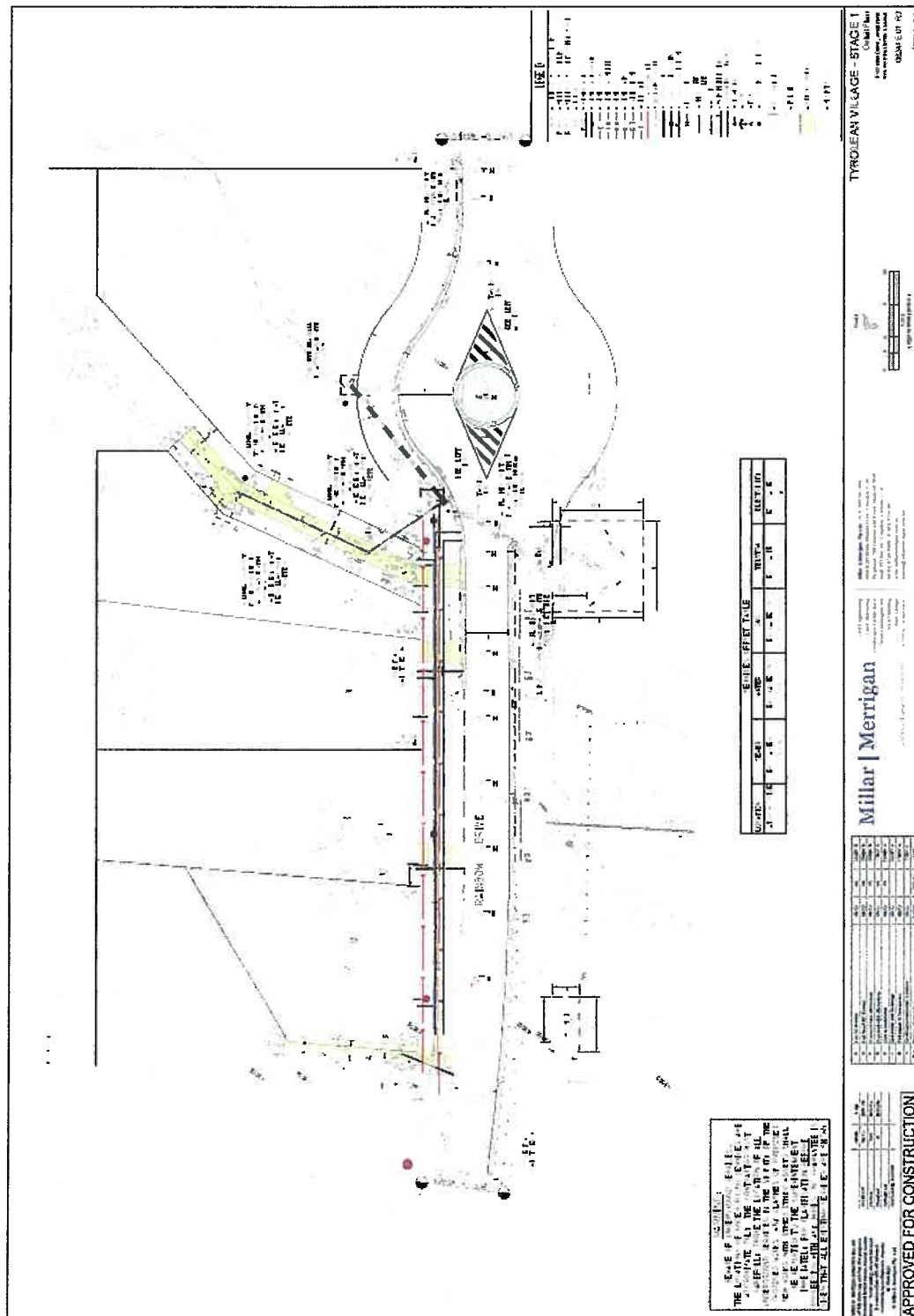
### Bus Turn Around Facility Land



## Schedule 5 Mill Creek Trail Extension Plan



## Schedule 6 Footpath Works Plan



**Tyrolean Village Development Planning Agreement**

**Snowy River Shire Council**

**Tyrolean Pty Ltd**

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## **Schedule 7**

### **Land Management Plan**



**Planning Application**  
8241 Rainbow Drive, Tyrolean Village

**Millar | Merrigan**

Land Development Consultants

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## **Appendix 2 – Land Management Plan**

As prepared by Millar Merrigan, July 2012

# Millar | Merrigan

Land Development Consultants



**Land Management Plan  
Tyrolean Reserve  
Tyrolean Village, Jindabyne**

**Municipality:** Snowy River Shire Council  
**Prepared by:** Millar Merrigan on behalf of Tyrolean Pty Ltd  
**Reference:** 8241/3.1 version 2

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## Document Status

Version	Date	Description	Prepared By	Approved By
1	July 2011	Preliminary	Michael Treadwell	Simon Merrigan
2	October 2012	Final	Michael Treadwell	Lynne Pepper

## **Table of Contents**

<b>1</b>	<b>Introduction.....</b>	<b>1</b>
<b>1.1</b>	<b>Site characteristics.....</b>	<b>2</b>
<b>1.2</b>	<b>Aims and objectives.....</b>	<b>2</b>
<b>2</b>	<b>Land Description And Planning.....</b>	<b>3</b>
<b>2.1</b>	<b>Land tenure, description and existing uses.....</b>	<b>3</b>
<b>2.2</b>	<b>Public land management and classification.....</b>	<b>4</b>
<b>2.2.1</b>	<b>Community land.....</b>	<b>4</b>
<b>2.2.2</b>	<b>Operational Land.....</b>	<b>5</b>
<b>2.3</b>	<b>Other relevant legislation and policies.....</b>	<b>6</b>
<b>3</b>	<b>Basis For Management.....</b>	<b>8</b>
<b>3.1</b>	<b>Cultural setting.....</b>	<b>8</b>
<b>3.2</b>	<b>Environment and Biodiversity.....</b>	<b>9</b>
<b>3.3</b>	<b>Ecological communities.....</b>	<b>10</b>
<b>3.3.1</b>	<b>Tablelands Snow-gum woodland.....</b>	<b>10</b>
<b>3.3.2</b>	<b>Secondary Kangaroo grass grassland.....</b>	<b>12</b>
<b>3.3.3</b>	<b>Modified grasslands.....</b>	<b>12</b>
<b>3.4</b>	<b>Native flora.....</b>	<b>13</b>
<b>3.5</b>	<b>Native fauna.....</b>	<b>14</b>
<b>3.5.1</b>	<b>Mammals.....</b>	<b>14</b>
<b>3.5.2</b>	<b>Avian.....</b>	<b>15</b>
<b>3.5.3</b>	<b>Reptiles and amphibians.....</b>	<b>15</b>
<b>3.5.4</b>	<b>Threatened species likely to be found within Tyrolean Reserve.....</b>	<b>15</b>
<b>3.6</b>	<b>Non-native flora species.....</b>	<b>15</b>
<b>3.7</b>	<b>Non-native fauna species.....</b>	<b>16</b>
<b>3.7.1</b>	<b>Mammals.....</b>	<b>16</b>
<b>3.7.2</b>	<b>Avian.....</b>	<b>16</b>
<b>3.8</b>	<b>Other environment issues and existing management practices:.....</b>	<b>16</b>
<b>3.8.1</b>	<b>Environmental issues.....</b>	<b>16</b>
<b>3.8.2</b>	<b>Key Threatening Processes (KTP's) identified within the reserve (as listed under part 2 of the TSA Act) include:.....</b>	<b>17</b>
<b>3.8.3</b>	<b>Existing land management practices.....</b>	<b>17</b>
<b>4</b>	<b>Management Strategies And Core Objectives.....</b>	<b>17</b>
<b>4.1</b>	<b>Establishing a management framework.....</b>	<b>18</b>
<b>4.2</b>	<b>Protecting water quality flowing into Lake Jindabyne.....</b>	<b>20</b>
<b>4.3</b>	<b>Environmental Management (restoration, regeneration and addressing key threatening processes).....</b>	<b>21</b>
<b>4.4</b>	<b>Community considerations.....</b>	<b>23</b>
<b>4.5</b>	<b>Cultural considerations.....</b>	<b>23</b>
<b>4.6</b>	<b>Summary of actions.....</b>	<b>24</b>
<b>5</b>	<b>Actions Table.....</b>	<b>24</b>
<b>6</b>	<b>Conclusion.....</b>	<b>27</b>

## **Appendices**

**Appendix 1. Proposed Bike Track Route**

**Appendix 2. Land Classification Map**

**Appendix 3. Archaeological Review: Tyrolean Village Estate, East Jindabyne NSW (Navin Officer Heritage Consultants Pty. Ltd., 2006).**

**Appendix 4. Archaeological Sites Within Tyrolean Reserve**

**Appendix 5. Flora And Fauna Assessments**

**Appendix 6. Snowy River Weed Management Plans For: Blackberry, St. John's Wort And Serrated Tussock.**

## 1 Introduction

The site is located to the east of Jindabyne township between the Kosciuszko Road and the shore of Lake Jindabyne (see figure 1). The proposed 58.23ha reserve, referred to in the rest of this document as Tyrolean Reserve, is divided between two existing titles, 21.33ha on lot 56 (western side of Rainbow Drive), and 36.90ha of public open space within Lot 74 (eastern side of Rainbow Drive). The Southern boundary of Lot 56 is formed by an unmade road reservation that runs east-west from the lake to Kosciuszko Road, while the north western boundary of Tyrolean Reserve is bordered in part by both the existing Tyrolean Village and areas that have now been earmarked for future development.

Tyrolean Reserve was rezoned to public open space as part of Amendment 15 to Snowy River Local Environment Plan 1997 (LEP). The amendment was gazetted in June 2010 and consequently accepted as law under the *Environmental Planning and Assessment Act 1979* (EPA Act). Amendment 15 requires that a Land Management Plan (LMP) must be submitted and approved by council for any land proposed to be used for open space prior to the further development of Tyrolean Village. This LMP provides the framework for the management of Tyrolean Reserve, identifying the key goals and strategies for ongoing management of the reserve.

It is noted that there have been numerous reports developed detailing the environmental, cultural and landscape characteristics of Tyrolean Reserve. These reports have been extensively utilised for the formation of this plan and include:

- Assessment of Significance, Ecological Australia (2012).
- Aboriginal Cultural Heritage Assessment Report, NSW Archaeology (2012);
- Draft Local Environmental Study, GHD (2008);
- Flora and Fauna assessment, GHD (2007);
- Threatened species assessment, NGH Environmental (2003);
- Archaeological Review, Navin officer (2003);



Figure 1. Location plan showing the approximate site of Tyrolean Reserve

## 1.1 Site characteristics

~~Tyrolean Reserve is a combination of remnant vegetation separated by pockets that~~ have been extensively disturbed through poor land management practices. There is a wide diversity of indigenous flora and fauna within the reserve with many species recorded onsite. Soils comprise of thin and heavily weathered granite that are low in nutrients and highly erodible. The fragile nature of the soil is evident within Tyrolean Reserve, with erosion causing significant degradation in areas where vegetation has been removed. Major gullies are present throughout the reserve and range from approximately 2 to 8 metres deep with very steep side slopes in some locations (see Figure 2).

Granite rock outcrops scatter the landscape and provide important habitat for indigenous fauna. There are also a number of sites of cultural significance scattered throughout the reserve (as outlined within various archaeological reports prepared for this site) although it is worth noting that artefacts are present in low or very low densities only. The site is also important in the context of the broader landscape, with distant views from within Tyrolean Reserve considered exceptional and the south facing slopes of the reserve being visible from Jindabyne Township.



Figure 2. Significant erosion within Tyrolean Reserve.

## 1.2 Aims and objectives

The aim of the LMP is to identify the key management objectives for Tyrolean Reserve which will protect and promote existing environmental, landscape and cultural values at the site. The plan provides a framework for sustainable land use practices within the reserve and establishes guidelines for the management of recreation, conservation and cultural values within the reserve.

The following steps have guided the preparation of this LMP:

### Section 2.0 Land Description and Planning

- Identify current tenure and zoning of the land;
- Establish community land categories in accordance with the *Local Government (General) Regulation 1999* and identify the core objectives for each of these categories;

- Identify other important pieces of legislation which are applicable to Tyrolean Reserve.

### Section 3.0 Identify the basis for management

- Detail the cultural and environmental characteristics of Tyrolean Reserve.

### Section 4.0 Identify management strategies

- Establish a management framework;
- Detail how catchment processes are going to remain protected;
- Outline the protection and promotion of environmental characteristics within the reserve;
- Detail community considerations;
- Establish guidelines for the protection and promotion of cultural values within the reserve;
- Establish the framework for sustainable management strategies in accordance with the *Local Government Act 1993*:
  - Schedule of core objectives;
  - Action plan;
  - Address future permitted uses and development (including intensity and scale) within the Tyrolean Reserve.

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## 2 Land Description and Planning

### 2.1 Land tenure, description and existing uses

The reserve is located within the Parish of Jinderboine, County of Wallace. As mentioned above, Tyrolean Reserve is classified as Open Space within Amendment 15 of the Snowy River LEP. The two parcels which the LEP apply to are (see figure 3):

- Lot 56 DP 818775;
- Lot 74 DP 837036.

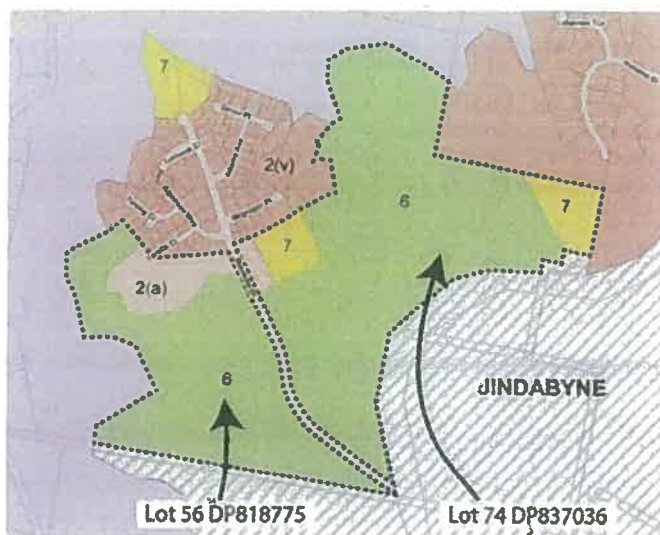


Figure 3. Zoning Map for Tyrolean Reserve and surrounding lands: Zone 2(a): General Residential, Zone 2(v): Village, Zone 6: Open Space, Zone 7: Environmental Protection.

As shown in figure 3, the land is irregular in shape and part of each of the two existing lots is zoned either General Residential (2a) or Environmental Protection (7), the LMP does not apply to these areas of the allotments. Current land uses within Tyrolean Reserve include mountain bike riding and bush walking along the Mill Creek Trail, which starts on lot 56 and continues south to the Jindabyne Township (refer to Appendix 1).

## 2.2 Public land management and classification

Division 2 of the *Local Government Act 1993* (LG Act) provides Councils with a specific framework for the use and management of community land. As detailed within *Practice Note No. 1 - Public Land Management* (Department of Local Government, May 2000), all public land must be classified as either **community** or **operational** land. Operational land has no special restrictions other than those that apply to any piece of land. The classification of community land is different however and must be further classified in a manner which reflects the importance of the cultural and/or environmental characteristics. As shown in figure 4, it is recommended that section of Tyrolean Reserve be classified as both community and operational land.

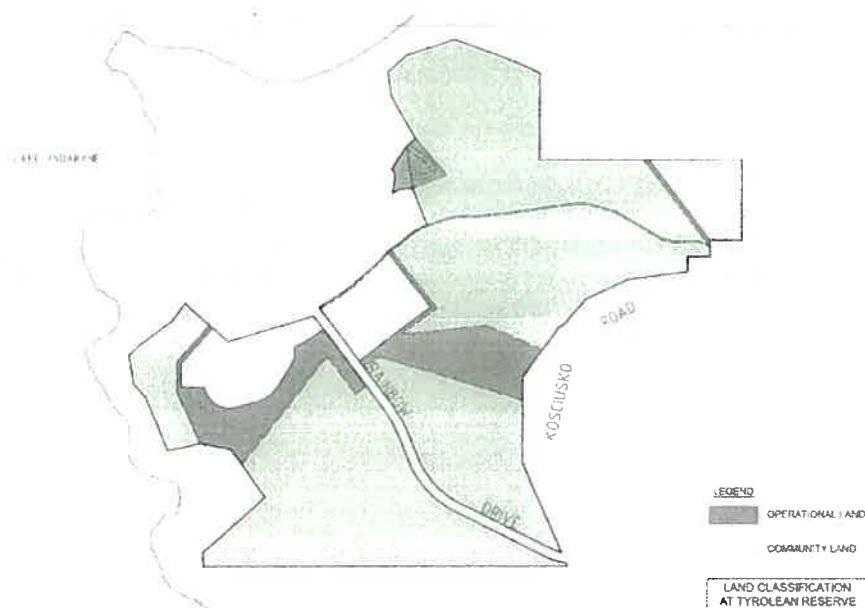


Figure 4. Public land classification within Tyrolean Reserve (see appendix 2 for scaled plan).

### 2.2.1 Community land

In accordance with the *Local Government Act 1993* (LG Act) all community land must be categorised as either a natural area, a sportsground, a park, an area of cultural significance or for general community use, or a combination of these categories. According to this criterion it is recommended that community land within Tyrolean Reserve be classified as a *natural area*. It is also recommended that known sites of cultural significance be classified under the LG Act as an *area of cultural significance*.

The guidelines for classifying and managing land as a *natural area* and *area of cultural significance* are as follows:

*Natural area:*

The guidelines for categorising community land have been outlined in the *Local Government (General) Regulation Act 2005*. Under section 102 of the *Local Government (General) Regulation Act 2005* a natural area must meet the following requirements:

*Land should be categorised as a natural area under s.36(4) of the Act if the land, whether or not in an undisturbed state, possesses a significant geological feature, geomorphological feature, landform, representative system or other natural feature or attribute that would be sufficient to further categorise the land as bushland, wetland, escarpment, watercourse or foreshore under section 36(5) of the Act.*

*Cultural Significance:*

The guidelines for categorising community land have been outlined in the *Local Government (General) Regulation Act 2005*. Land should be categorised as an area of cultural significance under section 36 (4) of the Act if the land is:

- (a) *an area of Aboriginal significance, because the land:*
  - (iv) *displays physical evidence of Aboriginal occupation (for example, items or artefacts such as stone tools, weapons, engraving sites, sacred trees, sharpening grooves or other deposits, and objects or materials that relate to the settlement of the land or place)...*

**2.2.2 Operational Land**

Operational land has been allocated within Tyrolean Reserve to allow for existing infrastructure to be maintained and for new infrastructure to be installed. Three areas of operational land have been recommended within Tyrolean Reserve. These areas have been depicted in figure 5 below. We note that the exact configuration of servicing within Tyrolean Reserve will not be fully known until the development plans have been completed however the allocated area allows sufficient space and flexibility to ensure that areas zoned community land will not be adversely affected by any future development.

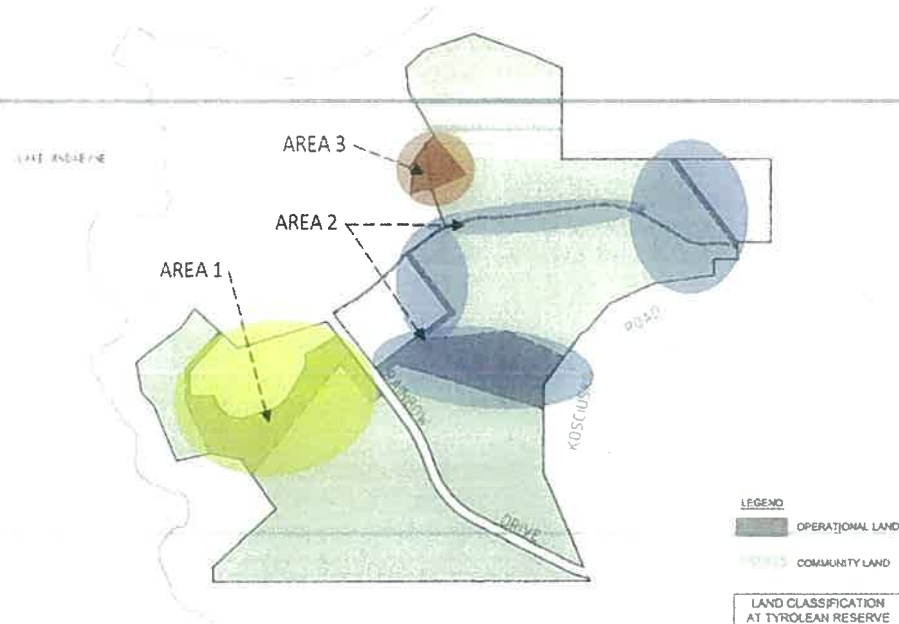


Figure 5. Areas of operational land within Tyrolean Reserve.

Area 1 borders the proposed area for development on the western side of Rainbow Drive and allows provisions for services to be constructed for the development. These services include stormwater drainage infrastructure which is to treat runoff prior to being discharged into Lake Jindabyne, sewerage lines, sewerage pumping station telecommunication lines and allows provisions for the relocation of the existing gas tank and gas lines.

Area 2 is on the eastern side of Rainbow Drive allows for the maintenance and servicing of water and telecommunication lines which dissect the property. Provisions have also been made in area 2 for the installation of additional services around future development including a possible high level water tank adjacent to the Kosciusko Road.

Area 3 has been identified as operational in line with the proposed subdivision of this part of the property and the use of the reserve as a carriageway easement. We note that any future development within the operational land would still require Council consent.

### 2.3 Other relevant legislation and policies

In addition to the requirements listed under LG Act, this plan has been prepared in accordance with the provisions contained in other relevant legislation and policies, including:

- *National Parks and Wildlife Act 1974;*
- *Environment Protection and Biodiversity Conservation Act (Commonwealth) 1999;*
- *Threatened Species Conservation Act 1995;*
- *Environmental Planning and Assessment Act 1979;*
- *Snowy River Local Environment Plan 1997;*

- *Snowy River Development Control Plan 1998;*
- *Noxious Weeds Act 1993;*
- *Catchment Management Authorities Act 2003;*

Acts particularly applicable to this land management plan include:

*National Parks and Wildlife Act 1974 (NPW Act)*

The NPW Act provides the primary basis of the legal protection and management of Aboriginal sites within NSW. An Aboriginal Heritage Impact Permit must be sought under section 90A of the NPW Act for applications that may cause harm to Aboriginal objects or places.

*Environment Protection and Biodiversity Conservation Act (Commonwealth) 1999 (EPBC Act)*

The EPBC Act provides a mechanism for assessing the environmental impacts of activities which concern *matters of national environmental significance*. The EPBC Act, amongst other things, lists ecological communities as well as individual species which are recognised as being of national significance and outlines the process to follow when an activity may impact on such matters.

*Threatened Species Conservation Act (State) 1995 (TSC Act)*

TSC Act provides legislative mechanisms for dealing with flora and fauna that is significant to New South Wales and subsequently listed under the act. This piece of legislation outlines the process to be followed when an area or species of state significance is identified on a property. The TSC Act provides the legislative mechanisms for dealing with listed species. Tyrolean Reserve supports a range of vegetation communities and habitats including one endangered ecological community listed under Part 2, Schedule 2 of the TSC Act. The TSC Act also details Key Threatening Processes (KTP's) under Part 2, Schedule 3. A KTP is a process that threatens, or could threaten the survival or evolutionary development of species populations or ecological communities and includes impacts such as bushrock removal and clearing of native vegetation.

*Environmental Planning and Assessment Act (State) 1979 (EPA Act)*

The EPA Act forms the basis of statutory planning in New South Wales. The EPA Act controls development and the use of land within parks and reserves in the Snowy River Shire Council local government area. In relation to this LMP, the EPA Act outlines Key Threatening Processes (KTP's) and the likely impact of these on species considered likely to occur within the study area and hence identifies key management objectives for the Tyrolean Reserve. KTP's are addressed under section 4 of this management plan.

*Snowy River Local Environment Plan (LEP) 1997*

Local Environmental Plans are planning instruments that are able to change to reflect changing community expectations and environmental legislation. The Snowy River LEP outlines the land use zoning for within the Snowy River Shire. This land management plan has been developed in accordance with Clause 66 of the Snowy River LEP.

*Snowy River Development Control Plan (DCP) 1998*

The Snowy River DCP outlines the relevant considerations that must be made by a development proposal. The document outlines the objectives, performance criteria and potential solutions for developments. We note that the DCP contains more detailed provisions than in the LEP.

*Noxious Weeds Act 1993*

Under the provision of the *Noxious Weeds Act 1993* it is the occupiers' responsibility to continuously suppress and destroy declared noxious weeds on lands. This includes land owned or occupied by the local authority.

*Catchment Management Authorities Act 2003;*

The *Catchment Management Authorities Act 2003* establishes 13 catchment authorities throughout NSW. The specific functions of catchment management authorities are described within the act. The key function of catchment management authorities is managing natural resources at the catchment scale. Under this legislation Tyrolean Village is the responsibility of Southern Rivers Catchment Management Authority.

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### 3 Basis for Management

The LMP provides a framework for protecting and managing the subject site, while also allowing appropriate use of Tyrolean Reserve by the community.

#### 3.1 Cultural setting

Numerous archaeological reports have been undertaken which identify sites of cultural significance within Tyrolean Reserve and its immediate surrounds. This includes an in-depth Archaeological Review conducted by Navin Officer Heritage Consultants Pty Ltd in 2003 which has been included as Appendix 3 to this report. We note that an Aboriginal Cultural Heritage Assessment Report was also prepared in 2012 by NSW Archaeology Pty Ltd for the proposed expansion of Tyrolean Village however this report focused predominantly on areas outside of Tyrolean Reserve thus a copy of this report hasn't been included within the appendices.

The Navin Officer's report provides the most detailed assessment of sites of cultural significance within Tyrolean Reserve. In total fourteen of which have been identified within Tyrolean Reserve and an additional 15 sites (29 in total) have been located in surrounding area (see figure 6). As detailed within Appendix 3, the majority of artefacts within Tyrolean Reserve are classified as disturbed, small, and low-density surface scatters of stone artefacts which reflects the notion that Aboriginal use of the landscape would most likely have been sparse, of low intensity, and restricted to a limited range of activities.

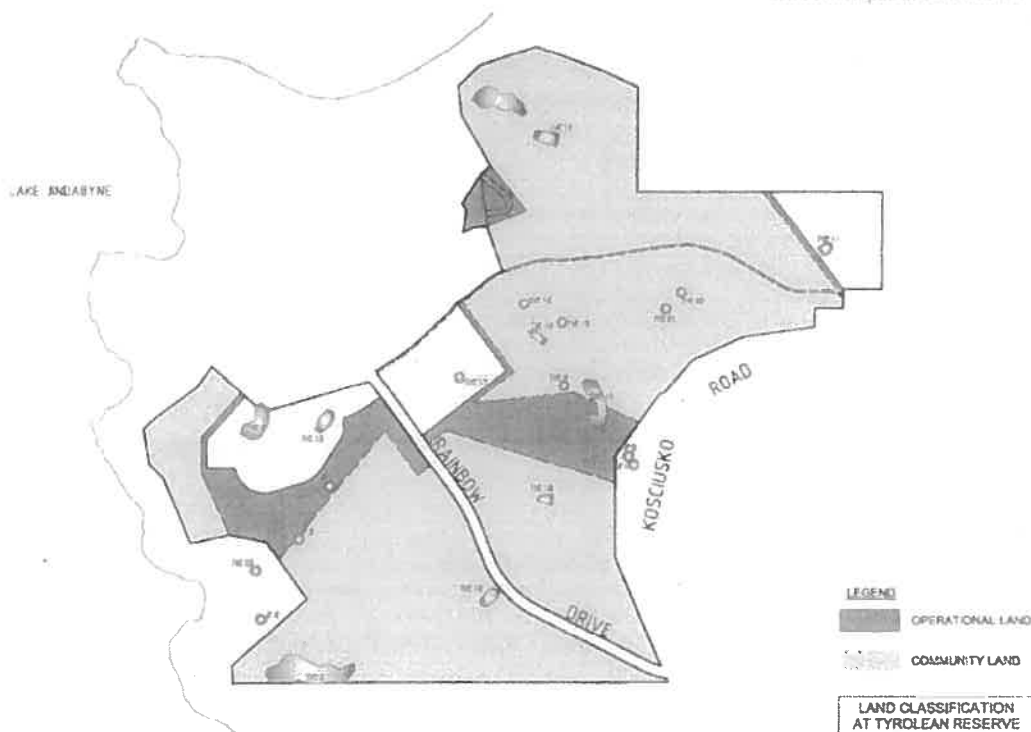


Figure 6. Location of cultural sites within or in close proximity to Tyrolean Reserve (see appendix 4 for scaled plan).

### 3.2 Environment and Biodiversity

Two extensive environmental assessments have been undertaken within the reserve. The most recent of these reports was an extensive flora and fauna assessment which was conducted by GHD (2007) as part of the preparation of the LES. The other report was a threatened species assessment conducted by NGH Environmental (2003). In preparing this LMP Millar Merrigan has also engaged the services of *Enviroworks* (a company who are expert in land management, re-vegetation and weed eradication) to undertake an assessment of exotic species within the proposed reserve and comment in relation to identifying appropriate management actions to control these species. The results of the *Enviroworks* assessment have been incorporated into this LMP.

### 3.3 Ecological communities

Three key vegetation communities have been identified within Tyrolean Reserve based on a combined analysis of the 2012 Ecological Australia Assessment of Significance report, the 2007 GHD Flora and Fauna Assessment report, and the 2003 NGH Threatened Species Assessment report (see appendix 5). These communities and their associated characteristics are as follows:

- Tablelands Snow-gum woodland:
  - The dominant ecological community within Tyrolean Reserve (refer to figure 7);
  - Reasonably healthy, largely remnant indigenous vegetation;
  - Areas of erosion and weed invasion;
  - Listed as endangered under the *Threatened Species Conservation Act 1995*.
- Kangaroo grass grasslands:
  - Canopy layer effectively absent (most likely due to clearing);
  - Dominant species are native ground covers including Kangaroo grass and small herbs, such as the Smooth flax lily.
- Modified grasslands:
  - Highly disturbed, canopy layer absent;
  - Dominated by a mixture of exotic and native species;
  - Erosion is a big issue due to the lack of continuous vegetation.

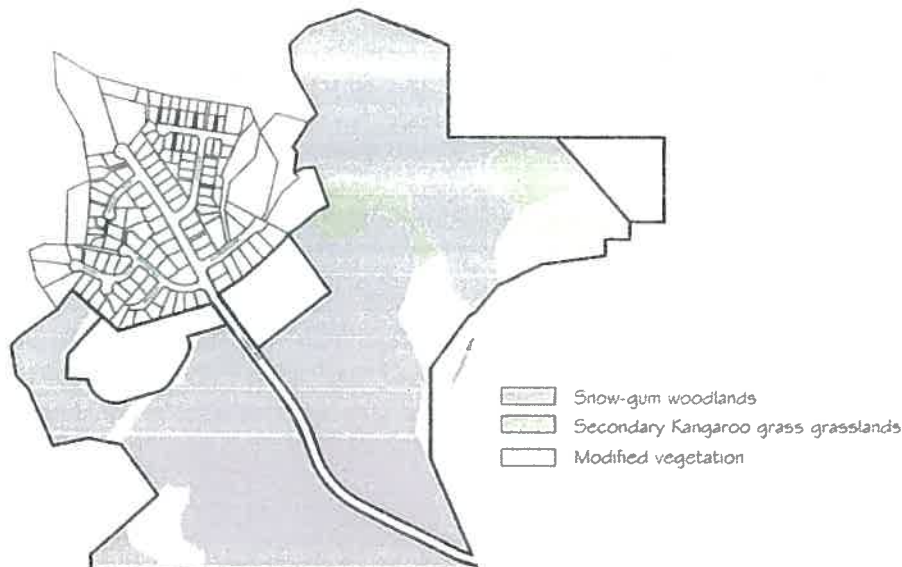


Figure 7. Vegetation classification within Tyrolean Reserve (adapted from the *Threatened Species Assessment*, NGH 2003).

#### 3.3.1 Tablelands Snow-gum woodland

The Tablelands Snow-gum woodland ecological community is the dominant vegetation community within Tyrolean Reserve (see figure 8). This ecological community is known more formally as the *Tablelands Snow Gum, Black Sallee, Candlebark and Ribbon Gum Grassy Woodlands in the South Eastern Highlands Sydney Basin, South East Corner and NSW South westerns Slopes Bioregions*. As

detailed within the 2012 Ecological Australia *Assessment of Significance* report, this ecological community is listed as endangered under the TSC Act. The canopy vegetation within this ecological community is dominated by White sally (*Eucalyptus pauciflora*) or snow-gum; although there are occurrences where Black sally (*Eucalyptus stellata*) and/or Candlebark (*Eucalyptus rubida*) are the dominant canopy species.

In most areas this community has a mixed shrubby and grassy understorey or largely shrubby understorey with numerous outcrops of granite boulders. Shrubs that are widespread include Tree violet (*Hymenanthera dentata*), Burgan (*Kunzea ericoides*), Dogwood (*Cassinia uncata*), Ozothamnus conditus, Poison rice flower (*Pimelea pauciflora*), and Silver wattle (*Acacia dealbata*). Less common shrubs include Daphne heath (*Brachyloma daphnoides*), Bitter cryptandra (*Cryptandra amara*), Woody grevillia (*Grevillia lanigera*), Merbelia oxylobioides, Sticky Cassinia (*Cassinia uncata*), and Anchor plant (*Discaria pubescens*).

The groundcover in less disturbed woodland patches is dominated by Kangaroo grass (*Themeda triandra*) and Snow grass (*Poa sieberiana* var *sieberiana*). Less common grasses include Common wheat grass (*Elymus scaber*), Niggerheads (*Enneapogon nigricans*) and Wallaby grasses (*Austrodanthonia* spp.). Other groundcover species include Wattle mat rush (*Lomandra filiformis*), Blue flax-lily (*Dianella* spp.), Bulbine lily (*Bulbine bulbosa*), Stinking pennywort (*Hydrocotyle laxiflora*), and Cotton fireweed (*Senecio quadridentatus*).

Weed species identified within the Tablelands Snow-gum woodland include the Briar rose (*Rosa rubiginosa*), Hawthorn (*Crataegus monogyna*), Common elder (*Sambucus nigra*), Blackberry (*Rubus fruticosus*) and the common apple tree (*Malus* spp.). For further details on other flora species identified within Tyrolean Reserve refer to the Flora and Fauna Assessment by GHD (2007) included as Appendix 5.



Figure 8. Vegetation within the snow-gums woodland

### 3.3.2 Secondary Kangaroo grass grassland

Secondary Kangaroo grass grassland covers only a small portion of Tyrolean Reserve to the east of the existing village (see figure 9). Vegetation dominated by kangaroo grass with the occasional snow grass or barbed wire grass (*Cymbopogon refractus*). Indigenous shrubs and saplings are scattered throughout grassy areas although canopy vegetation is effectively absent. As detailed within the *Threatened Species Assessment* (NGH, 2003) (refer to Appendix 5), the secondary Kangaroo grass grassland ecological community is likely to have been created from the clearing of Tablelands Snow-gum woodland.



Figure 9. Secondary kangaroo grasslands towards the northern boundary of Tyrolean Reserve.

### 3.3.3 Modified grasslands

Modified grasslands occur throughout Tyrolean Reserve although it is worth noting that the ecological community is largely restricted to areas with a gentle gradient where the woodland has been cleared for intensive grazing (see figure 10). There is a lack of topsoil on these sites and much of the ground is either bare or covered in weed species. The dominant plant species within this ecological community are weeds with very little of the vegetation undisturbed. Common species of weeds include Vipers bugloss, Giant mullein and Twiggy mullein.



Figure 10. Modified grasslands adjacent to the western area zoned for residential purposes

### 3.4 Native flora

Forty-nine native flora species have been identified within the reserve or immediate surrounds. A list of these species, as identified within the flora and fauna assessment by GHD (2007), is included in the appendix of the report (see Appendix 5).

Although the Tablelands Snow-gum woodland ecological community is listed as endangered under the *Threatened Species Conservation Act 1995*, no flora species listed as threatened in Schedules 1 and 2 of the *Threatened Species Conservation Act 1995* have been identified within the reserve. Table 1 outlines threatened plant species found within Tablelands Snow-gum woodlands which are listed under State and Commonwealth threatened species legislation. None of these species have been identified within Tyrolean Reserve.

Table 1. Threatened plant species list under Commonwealth or State legislation.

Scientific Name	Common Name	Status
<i>Amphibromus fluitans</i>	River Swamp Wallaby-grass	Vulnerable
<i>Baloskion longipes</i>	Dense cord rush	Vulnerable
<i>Caladenia tessellata</i>	Thick-lipped Spider-orchid	Endangered
<i>Calotis glandulosa</i>	Mauve Burr-daisy	Vulnerable
<i>Discaria nitida</i>	Shining Anchor Plant	Vulnerable
<i>Diuris aequalis</i>	Buttercup Doubletail	Endangered
<i>Diuris ochroma</i>	Pale Golden Moths Orchid	Endangered
<i>Diuris pedunculata</i>	Small Snake Orchid	Endangered
<i>Dodonaea procumbens</i>	Table Hop-bush	Vulnerable
<i>Eucalyptus aggregata</i>		Vulnerable
<i>Eucalyptus parvula</i>	Small-leaved Gum	Endangered

<i>Eucalyptus saxicola</i>		Endangered
<i>Euphrasia collina</i> ssp. <i>muelleri</i>		Endangered
<i>Euphrasia scabra</i>		Endangered
<i>Leucochrysum albicans</i> var. <i>tricolor</i>	Hoary Sunray	Endangered (EPBC)
<i>Monotoca rotundifolia</i>		Endangered
<i>Prasophyllum canaliculatum</i>		Critically Endangered
<i>Prasophyllum petilum</i>		Endangered
<i>Prasophyllum</i> sp. 'Majors Creek'		Critically Endangered
<i>Rulingia prostrata</i>	Dwarf Kerrawang	Endangered
<i>Rutidosis leiolepis</i>	Monaro Golden Daisy	Vulnerable
<i>Rutidosis leptorrhynchoides</i>		Endangered
<i>Swainsona sericea</i>		Vulnerable
<i>Thesium australe</i>	Austral Toadflax	Vulnerable
<i>Xerochrysum palustre</i>		Vulnerable (EPBC)

### 3.5 Native fauna

#### 3.5.1 Mammals

Studies within Tyrolean Reserve have identified two species of mammal living within the reserve, the possum and common wombat (*Vombatus ursinus*). Further site investigations have determined that echidna's also occur within the reserve (see figure 11).



Figure 11. The echidna observed within Tyrolean Reserve.

Other species of native mammal likely to occur on the property include the Koala, with historical records showing that they have been observed within the reserve, and also

the Eastern Pygmy possum, which has been sighted in close proximity and suitable habitat has been identified within the reserve.

### 3.5.2 Avian

Sixteen species of native birds have been observed within Tyrolean Reserve. These include sightings of the Brown tree creeper (*Climacteris picumnus victoriae*), which is a species listed as threatened under NSW TSC Act. Other species of native birds observed within the reserve include:

- Crimson Rosella;
- Pled Currawong;
- New Holland Honey Eater;
- Gallah;
- White Cheeked Honeyeater;
- Spotted Pardalote;
- Superb Fairy Wren.

### 3.5.3 Reptiles and amphibians

Various reports indicate that no reptile or amphibian species listed under the TSC Act are likely to occur within Tyrolean Reserve. Non-listed species observed onsite include the common skink along with various species of snakes. Amphibians are likely to be found in the gullies and in close proximity to Lake Jindabyne, although there are no records of any observations of amphibians within the reserve.

### 3.5.4 Threatened species likely to be found within Tyrolean Reserve

There are nine threatened species listed under the TSC Act which are likely to frequent the reserve (along with the confirmed sightings of the brown tree creeper):

- Diamond firetail;
- Gang-gang cockatoo;
- Koala;
- Hooded robin;
- Eastern Pygmy possum;
- Speckled warbler;
- Olive whistler;
- Turquoise parrot;
- Common Bentwing-bat.

Species listed under the Commonwealth EPBC Act that are likely to utilize habitat within the Tyrolean Reserve include:

- Rainbow bee-eater (listed migratory species).

Other species listed under the TSC Act which may occur within the reserve include:

- Tiger Quoll (Vulnerable under EPBC act);
- Little-whip snake;
- Eastern Earless Dragon (listed as endangered under EPBC act);
- Masked owl;
- Rosenbergs Monitor.

## 3.6 Non-native flora species

Twenty eight non-native flora species have been identified within Tyrolean Reserve. These species account for a large percentage of the groundcover within the reserve. The vast majority of the exotic species are listed as a class 4 noxious weed within the Snowy River Shire. Class 4 noxious weeds are defined within the Noxious Weeds Act 1993 as:

... plants that pose a threat to primary production, the environment or human health, are widely distributed in an area to which the order applies and are likely to spread in the area or to another area.

Dominant weed species within the reserve include:

- Blackberry (*Rubus fruticosus*)\*;
- Sweet briar (*Rosa rubiginosa*)\*;
- Saint John's wort (*Hypericum perforatum*)\*;
- Scotch thistle (*Onopordum species*)\*;
- Hawthorn (*Crataegus monogyna*).

\*Listed as a class 4 weed

Other weeds species observed onsite include:

- African boxthorn (*Lycium ferocissimum*)\*;
- Vipers Bugloss (*Echium species*)\*;
- Serrated tussock (*Nassella trichotoma*)\*;
- Giant Mullein (*Verbascum Thapsus*);
- Twiggy Mullein (*Verbascum virgatum*).

\*Listed as a class 4 weed

The Snowy River Shires *Local Management Plan for Weeds* outlines the specific management practices for the control of: Blackberries, Saint John's wort, and Serrated tussock (see Appendix 6). This management plan will guide the approach for controlling other Class 4 weeds on the property.

### 3.7 Non-native fauna species

#### 3.7.1 Mammals

Rabbits have been observed within the reserve, with scats and burrows common. Domestic cats and dogs are a potential issue within the reserve given the proximity of the reserve to the existing village. Foxes have also been identified in the Jindabyne area and are very likely to exist within Tyrolean Reserve.

#### 3.7.2 Avian

Two introduced bird species have been identified onsite:

- House Sparrow;
- Common Starling.

### 3.8 Other environment issues and existing management practices:

#### 3.8.1 Environmental issues

##### *Erosion control (storm water/erosion issues)*

As mentioned above, Tyrolean Reserve comprises of heavily wooded slopes with numerous granite rock outcrops and soils that comprise of heavily weathered granite that is thin and highly erodible. The major gullies are relatively stable and do not show signs of recent erosion, with the exception of instances where the sides of gullies have been disturbed by rabbits, wombats and mountain bike trails. In areas recently disturbed, erosion from surface water runoff is a major problem, with concentrated stormwater flows eroding the bare ground and leaving small gullies which scar the landscape. Provisions within the reserve are required to address any likely drainage issues associated with any proposed development, which includes the allocation of land within Tyrolean Reserve to deal with stormwater management.

*Addressing unregulated activities*

There is evidence of unregulated activities occurring within Tyrolean Reserve, which include firewood collection, dumping of garden waste and other rubbish and motorbike/mountain bike tracks. Guidelines need to be developed to ensure that these activities are no longer undertaken within the reserve.

**3.8.2 Key Threatening Processes (KTP's) identified within the reserve (as listed under part 2 of the TSA Act) include:**

As identified within the NSW Environment and Heritage website, a key threatening process is something that threatens or could potentially threaten the evolutionary development of a species, population or ecological community. A threat is listed under the TSA Act as a KTP if it adversely affects threatened species, populations or ecological communities or if it could cause species, populations or ecological communities that are not threatened to become threatened. KTP's identified within Tyrolean Reserve include the following:

- Competition and grazing by feral rabbits;
  - Predation by the feral cats (*Felis catus*);
  - Removal of bush rock;
  - Removal of hollow bearing trees;
  - Clearing of native vegetation;
  - Removal of dead wood and dead trees;
  - Invasion of native plant communities by exotic perennial grasses (Serrated tussock).
- Practicing

**3.8.3 Existing land management practices**

Weed management has been undertaken within Tyrolean Reserve by a private contractor who has been targeting the removal of Serrated tussock from within the reserve. This land management work appears to have been effective in reducing the dominance of the target species, with an ecological assessment by *Enviroworks* noting that this species is no longer prominent within the reserve.

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## **4 Management Strategies and core objectives**

The core objectives for managing Tyrolean Reserve reflect its classification as both a Natural Area as well as an area of Cultural Significance. There are six key objectives for land classified as a Natural Area and culturally significant which have informed the management strategy detailed below (LGA 1993, 36E & H). The six core objectives are:

- *To conserve biodiversity and maintain ecosystem function in respect of the land, or the feature or habitat in respect of which the land is categorised as a natural area;*
- *To maintain the land, or that feature or habitat, in its natural state and setting;*
- *To provide for the restoration and regeneration of the land;*
- *To provide for community use of and access to the land in such a manner as will minimise and mitigate any disturbance caused by human intrusion;*
- *To assist in and facilitate the implementation of any provisions restricting the use and management of the land that are set out in a recovery plan or threat abatement plan prepared under the Threatened Species Conservation Act 1995 or the Fisheries Management Act 1994 .*
- *To retain and enhance the cultural significance of the area (namely its Aboriginal, aesthetic, archaeological, historical, technical or research or social*

significance) for past, present or future generations by the active use of conservation methods.

Based on these objectives, the broad aim of the Land Management Plan is to:

Create a community asset that protects and promotes conservation and cultural values within Tyrolean Reserve and the broader catchment.

To help achieve this aim, five sections for managing Tyrolean Reserve have been created. The five sections address management objectives, actions and means of assessment for the ongoing maintenance and management of Tyrolean Reserve. These sections help to establish the strategies and priorities for protecting and promoting conservation and cultural values within Tyrolean Reserve. These sections are:

- Section 4.1: Establishing a management framework;
- Section 4.2: Protecting water quality flowing into Lake Jindabyne;
- Section 4.3: Ongoing environmental improvement works (restoration, regeneration and addressing key threatening processes);
- Section 4.4: Community considerations;
- Section 4.5: Protecting cultural sites.

#### 4.1 Establishing a management framework.

The management framework provides the template for permitted activities and infrastructure within Tyrolean Reserve. We note that the LG Act is very restrictive on activities and infrastructure to be installed on community land thus the measures outlined below have been divided into two sections: activities permissible on operational land and activities permissible throughout Tyrolean Reserve.

##### Activities permissible within operational land: Easements

This LMP authorises the lease, licence or grant of any other estate over parks for the purpose of providing easements for public utilities, providing pipes, conduits or other connections under the surface of the ground for the connection of premises adjoining the operational land provided that:

- It is within existing designated easements or, where there is no feasible alternative, it is located so that there is no significant impact on the park; and,
- in all cases, the applicant is to be responsible for all costs incurred by Council in the creation of the easement.

##### New services

This LMP authorises the construction of relevant structures for the purposes of delivering adequate services to areas proposed for development around Tyrolean Village. This provision includes gas, sewer, telecommunication, electricity, water and any other services that may need to be installed within Tyrolean Reserve to service any adjacent residential land. This includes provisions for stormwater treatment and a retention basin to treat runoff from any new development which is to be discharged into Lake Jindabyne.

This plan also authorises the installation of sewerage infrastructure, including a sewer pumping station, within operational land provided that it is appropriately sited away from remnant vegetation. This land management plan also supports the relocation of the existing gas facilities.

Telecommunications towers

This LMP authorises the granting of a lease or licence for the erection and use of telecommunications towers on operational land provided the proposal is put on public exhibition prior to a council resolution permitting the use. A rental fee will be payable to Council and that fee is to be used for the improvement of the park in which the facility is located.

Activities permissible throughout Tyrolean Reserve

Permitted uses

In addition to the uses requiring a lease or licence, this LMP authorises the following uses, to be leased or licensed as appropriate:

- **Signage:** This LMP authorizes the erection of regulatory, interpretive and directional signage within parks.
- **Stormwater:** This LMP authorizes the construction of relevant structures for the purposes of stormwater treatment and/or retention. This plan authorizes the continued use of drains, channels and easements and creation of new drains, channels and easements.
- **Structures:** This LMP authorizes the building or use of the following structures:
  - Walkways;
  - Pathways (including mountain bike tracks);
  - Signs;
  - Picnic tables;
  - Bins for the disposal of litter;
  - Toilet facilities;
- **Tourism:** This LMP authorizes the granting of a lease or license for the purpose of tourism activities. Such activities may include guided walks and bicycle tours.

Conditions of approval

Any approval for leases or licences must include, but not be limited to, the following provisions:

- No significant damage to the park is anticipated as a result of the proposed activity;
- A bond in respect of potential damage is held by Council;
- The activity is permissible under the objectives identified for parks;
- The use or occupation does not involve the erection of any building or structure of a permanent nature within community land and that any permanent structure is located within operational land;
- There is anticipated to be no significant disturbance to adjacent property owners;
- There is no interference with other users;
- All litter is removed;
- The activity must not disturb culturally sensitive sites and must detail any new findings of cultural significance to the responsible authority.

Restrictions within the park

This LMP prohibits the following activities within the reserve:

- Playing golf;
- Drinking alcohol;
- Four wheel driving;

- Motorbike riding;
- Horse riding
- Hunting;
- ~~Off-track mountain bike and bmx riding;~~
- Unauthorised removal of bush rock, native vegetation and dead trees.

Additionally dogs must be walked on a lead.

**Schedule of core objectives and actions.**

- Action 1. Establish an appropriate management framework for assessing land uses and activities within the reserve;
- Action 2. Determining future development, land uses and activities.

**4.2 Protecting water quality flowing into Lake Jindabyne.**

This LMP recognises the strategic importance of reserves and vegetated areas surrounding the Lake Jindabyne thus this plan aims to protect water entering the broader catchment through detailing stormwater treatment and dispersal requirements within the reserve. We note that this is a particularly important consideration given that surface runoff flowing through Tyrolean Reserve ends up in Lake Jindabyne, an important drinking water supply for surrounding towns. We also note that soils are highly friable and prone to gully erosion thus existing gullies within the reserve will need to be managed to prevent siltation of Lake Jindabyne.

Infrastructure installed within the reserve as part of any adjacent development will need to adequately slow water running through the reserve and treat runoff. Thus this LMP, as detailed above, permits the installation of drainage infrastructure within operational land that will improve the quality of water entering Lake Jindabyne. The following measures are recommended for installation within Tyrolean Reserve if future development is to proceed on adjacent land zoned for residential purposes. We note that this list is not extensive and that additional measures could be required to ensure that water runoff from any adjacent development is treated to the best standard possible.

- Infrastructure:
  - Contour drain:
    - Collect storm water coming from the development;
    - Slow the water flow and reduce the potential for soil erosion.
  - Stormwater retention basin:
    - Collect water at the end of the contour drain to further slow water runoff into Lake Jindabyne and improve the treatment process.
  - Sewer pumping station
    - To prevent effluent from future residential development from entering Lake Jindabyne by ensuring that it can be pumped into existing pipe systems and taken to a treatment facility.

Other measures to improve water quality include erosion stabilisation works around identified eroded gullies to prevent further channelization. The Tyrolean Reserve landscape is to be constantly monitored to identify any new drainage patterns which may cause long term erosion problems in the future. Unauthorised activities are to also be monitored within the reserve including off track mountain bike riding and illegal vegetation removal to ensure that they do not create further erosion issues and thus negatively impact on water quality entering Lake Jindabyne (see above for permitted activities).

**Schedule of core objectives and actions**

- Action 3. Protect, manage and enhance water quality entering Lake Jindabyne.

**4.3 Environmental Management (restoration, regeneration and addressing key threatening processes).**

**Restoration**

The key restoration objective within the area zoned community land is to manage the growth and spread of weed species to ensure that native vegetation is promoted and enhanced within the reserve. It is proposed that an intensive 5 year treatment period be undertaken with the priority being on reducing weed cover within regions that are hard to get to. We suggest a maintenance program be prescribed outlining a minimum of 4 weed passes annually during the initial management period, with a shift towards biannual weed passes once the intensive program has been undertaken.

The goal of the weed management within the reserve will be to achieve a 90% reduction in weed cover after the first 2 years as a direct consequence of the management initiatives outlined in this plan. It is proposed that different strategies be adopted for different weed species given that there are both woody and non-woody species present within the reserve. For the majority of weed species, which are low, small non-woody species, it is proposed that the management approach revolves around foliage spraying. For the larger woody species, most notably hawthorn, it is suggested that the strategy focus on poisoning in-situ (drill and fill), and the species be allowed to stand as a dead tree. For Hawthorne the ideal time for this to be undertaken is in autumn as it is a deciduous species meaning it will be poisoned during draw down (~3 month period for this work). It is noted by *Environworks* that the issue of weed control needs to be addressed as soon as possible, as a few wet years running could see a significant increase in the cover of weed species on the property, particularly within the more degraded patches of the reserve. We note that weed management is to be undertaken in accordance with the Snowy River Shire's Local Weed Management Plans.

**Regeneration**

Areas of Tyrolean Reserve identified as degraded are to be regenerated with species common to the Tablelands Snow-gum woodlands ecological community (see figure 12). The key areas for regeneration are highlighted in the plan below, noting that the most degraded vegetation is identified within the secondary Kangaroo grass grasslands and the modified vegetation ecological communities. Regeneration activities are to focus on increasing habitat quality and connectivity across the landscape to improve fauna links and habitat quality within the listed Tablelands Snow-gum woodlands ecological community.



Figure 12. Areas of degraded vegetation within Tyrolean Reserve

Addressing Key Threatening Processes (KTP's)

KTP's, as listed under part 2 of the Threatened Species Conservation Act 1995, need to be adequately managed to ensure that the core environmental and cultural values of the reserve are protected in perpetuity. Suggested management initiatives to address the relevant KTP's include:

*Competition and grazing by feral rabbits.*

- Undertake baiting program targeting feral rabbit populations.
- Install a fence around sensitive parts of the reserve.

*Predation by the feral cats (*Felis catus*).*

- Adopt cat curfews within Tyrolean Village.
- Undertake targeted trapping program.

*Removal of bush rock, clearing of native vegetation and the removal of dead wood and dead trees (hollow bearing trees).*

- Establish and advertise penalty system for illegal activities (including bush-rock and dead wood removal) within the reserve.
- Avoid any loss of hollow bearing trees within immediate proximity to development.

*Invasion of native plant communities by exotic perennial grasses (*Serrated tussock*).*

- Adopting the weed suppression approach outlined above will ensure that the invasion of native plant communities by exotic perennial grasses will be adequately managed (we note that *Serrated tussock* is not of major concern within the reserve at present).

Schedule of core objectives and actions

- Action 4. Habitat restoration and regeneration;

#### 4.4 Community considerations

Tyrolean Reserve is to be managed in a manner that promotes a park that is both safe and accessible to the whole community.

*Ensuring the safety of all park users*

Measures of achieving a safe recreation area within Tyrolean include ensuring that all works undertaken within the park are to comply with Councils occupational health and safety policy and guidelines, and through restricting and monitoring unpermitted activities.

All existing infrastructure within the reserve is to be regularly monitored with issues to be addressed when identified and all new infrastructure located within operational land is to be designed in a way that promotes safety. New development on adjacent land is to be designed to maximise surveillance of open space to act as a deterrent for anti-social behaviour. External lighting is to be shielded and triggered by sensors to limit extraneous light where necessary to reduce the potential for light interference on native flora and fauna. New paths are also to be designed to foster casual surveillance. In addition to this, adequate signage is to be installed on walking tracks detailing permitted and unpermitted activities.

*Providing access for the whole community*

Adequate car parking is to be allocated for users of the reserve and this is to be monitored to ensure that it does not create a traffic hazard. A park management plan for people with limited mobility is to be designed and implemented by the Council to ensure that the park provides unrestricted access to all members of the community.

**Schedule of core objectives and actions**

- Action 5. Safety and risk management;
- Action 6. Access and parking;
- Action 7. Recreation and land use.

#### 4.5 Cultural considerations

The park is to be managed in a manner that protects and promotes cultural considerations within the reserve. Key management strategies that will protect and promote culturally significant sites within the reserve include:

- Development of an education program which educates the local community about the significance of the area to the traditional owners of Jindabyne, the Ngarigo people;
- Erection of signs identifying culturally significant sites to inform people of their location and to minimise disturbance.

**Schedule of core objectives and actions**

- Action 8. Protecting and promoting Cultural considerations within the reserve.

#### 4.6 Summary of actions

##### **Establish a management framework**

- Action 1. Establish an appropriate management framework for assessing land uses and activities within the reserve.
- Action 2. Determining future development, land uses and activities.

##### **Protecting water quality flowing into Lake Jindabyne**

- Action 3. Protect, manage and enhance water quality entering Lake Jindabyne.

##### **Ongoing environmental improvement works**

- Action 4. Habitat restoration and regeneration.

##### **Community considerations**

- Action 5. Safety and risk management.
- Action 6. Access and parking.
- Action 7. Recreation and land use.

##### **Cultural Considerations**

- Action 8. Protecting and promoting Cultural considerations within the reserve.

#### 5 Actions table

The following details the implementation and monitoring process for achieving the actions as detailed above. Detailed under each action is the method of achieving the objective, means of assessment and priority of each of the actions listed under section 4 of this report.

##### **Guiding management framework**

##### Action 1. Establish an appropriate management framework for assessing land uses and activities within the reserve.

Management objectives	1.1 Ensure that reserves planning and management are in accordance with relevant legislation and policy.
Means of achievement	▪ <u>Implement actions in accordance with the LGA 1993 and all other relevant legislation.</u>
Means of assessment	Level of implementation over 5-years.
Priority	High.

##### Action 2. Determining future development, land uses and activities.

Management objectives	2.1 Ensure land use is consistent with community land categories and core objectives. 2.2 To protect the reserve's values from inappropriate uses and activities. 2.3 To implement actions that will prevent incremental impacts. 2.4 To restrict threatening processes. 2.5 Provide opportunities for recreation.
Means of achievement	Land use proposals must: ▪ <u>Demonstrate consistency with community land core objectives.</u> ▪ <u>Protect and enhance the natural and cultural setting.</u>

	<ul style="list-style-type: none"> <li><u>and promote environmental sustainability.</u></li> <li><u>Implement Councils bike and pedestrian pathways walking paths and cycling tracks.</u></li> </ul>
Means of assessment	Monitor trends over time.
Priority	High.

**Catchment management and water quality: Protecting water quality flowing into Lake Jindabyne**

Action 3. Protect, manage and enhance water quality entering Lake Jindabyne.

Management objectives	3.1 Promote strategies which improve water quality flowing into Lake Jindabyne. 3.2 Protect bank stability. 3.3 Monitor unauthorised activities.
Means of achievement	Land use proposals must: <ul style="list-style-type: none"> <li><u>Protect and enhance diversity of natural landforms and restrict further channelization.</u></li> <li><u>Implement stormwater strategy for dealing with runoff from the new estate.</u></li> <li><u>Includes provisions for the installation of a water retention basin within the reserve.</u></li> <li><u>Put in measures that prevent activities that are to be restricted within the reserve.</u></li> <li><u>Includes ensuring that mountain bike use is restricted to the proposed paths within the reserves.</u></li> <li><u>Ensure that all landscaping and additional planting is consistent with the weed management plan.</u></li> </ul>
Means of assessment	Works implemented in accordance with this plan. Monitoring, maintenance and remedial works implemented.
Priority	Ongoing

**Environmental management**

Action 4. Habitat regeneration and restoration.

Management objectives	4.1 Ensure implementation of best practice standards for the management of natural areas. 4.2 To improve quality, extent and connectivity of native habitat and enhance biodiversity. 4.3 To protect and restore natural areas and to promote long term sustainability. 4.4 Identify and address KTP's within the reserve
Means of achievement	Land use proposals must: <ul style="list-style-type: none"> <li><u>Ensure that Tyrolean Reserve is managed in accordance with best practice standards.</u></li> <li><u>Management in accordance with the Florabank Guidelines for native seed collection, production, handling and storage.</u></li> <li><u>Greening Australia's Management principles to guide the restoration and rehabilitation of indigenous vegetation.</u></li> <li><u>Implement an integrated strategy focused on the recovery, recruitment, and long term durability of the</u></li> </ul>

	<p><u>degraded ecological communities.</u></p> <ul style="list-style-type: none"> <li>▪ <u>Use a minimal disturbance bush regeneration regime to habitat restoration.</u></li> <li>▪ <u>Selectively target and control noxious and environmental weeds.</u></li> <li>▪ <u>Undertake five year intensive weed management strategy.</u></li> <li>▪ <u>Manage key threatening processes.</u></li> <li>▪ <u>Address current land use activities that are contributing to land degradation.</u></li> <li>▪ <u>In-particular, unauthorised BMX and mountain-bike use within Tyrolean</u></li> </ul>
Means of assessment	<p>To be assessed during site inspections by Council officers.</p> <p>Key areas for assessment include:</p> <ul style="list-style-type: none"> <li>▪ <u>Area of bush regeneration per annum.</u></li> <li>▪ <u>Weed management reports.</u></li> <li>▪ <u>How successful the revegetation program has been.</u></li> </ul>
Priority	Ongoing

#### Community considerations

##### Action 5. Safety and risk management.

Management objectives	<p>6.1 To ensure the safety of public/staff when visiting the park.</p> <p>6.2 Ensure that all works carried out within parks complies with Councils occupation health and safety policy.</p> <p>6.3 Encourage community involvement in the recognition and remediation of public risk.</p> <p>6.4 Prevent unsafe usage of the reserve.</p> <p>6.5 Protect users from hazards.</p>
Means of achievement	<p>Land use proposals must:</p> <ul style="list-style-type: none"> <li>▪ <u>Conduct quarterly inspections of infrastructure.</u></li> <li>▪ <u>Install appropriate signage.</u></li> <li>▪ <u>All dogs must be walked on a lead.</u></li> <li>▪ <u>Provide appropriate lighting to act as a deterrent for anti-social behaviour.</u></li> <li>▪ <u>Design paths to foster casual surveillance.</u></li> <li>▪ <u>Implement a safe maintenance program in accordance with Council rules and regulations</u></li> </ul>
Means of assessment	To be assessed during site inspections by Council officers.
Priority	Ongoing

##### Action 6. Access and parking.

Management objectives	<p>7.1 Provide access to the park for the whole community.</p> <p>7.2 Ensure that essential pedestrian and vehicular access through or into parkland areas minimises the impact on the area.</p>
Means of achievement	<ul style="list-style-type: none"> <li>▪ <u>Restrict access to sensitive (cultural sites) and hazardous (gullies) areas.</u></li> <li>▪ <u>Appropriately maintain paths to ensure safety and prevent erosion.</u></li> </ul>
Means of assessment	To be assessed during site inspections by Council officers.

Priority	Ongoing
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**Action 7. Recreation and land use.**

Management objectives	8.1 To enhance the recreational opportunities by providing appropriate amenities for a wide range of activities. 8.2 Involve the community in the management of the park.
Means of achievement	<ul style="list-style-type: none"> <li>▪ <u>Permit passive recreation activities such as; walking, bird watching and other unstructured activities provided they do not interfere with other park objectives.</u></li> <li>▪ <u>Prohibit unauthorized vehicles from parks.</u></li> <li>▪ <u>Ensure that the landscape character of the park is retained and enhanced.</u></li> <li>▪ <u>Encourage the community to establish a 'People for Parks' program.</u></li> </ul>
Means of assessment	To be assessed during site inspections by Council officers.
Priority	Ongoing

**Cultural considerations**

**Action 8. Protecting and promoting Cultural considerations within the reserve**

Management objectives	9.1 To manage the known and unknown components of indigenous archaeological records and areas. 9.2 To educate the community about the presence and importance of cultural heritage within the reserve.
Means of achievement	<ul style="list-style-type: none"> <li>▪ <u>New infrastructure installed within Tyrolean Reserve is to avoid, where practicable, impacting on known locations of cultural significance;</u></li> <li>▪ <u>If artefacts are to be disturbed a permit is to be sought in accordance with the Section 90A of the National Parks and Wildlife Act 1974.</u></li> <li>▪ <u>Details of all new cultural sites are to be lodged with the NSW Office of Environmental and Heritage.</u></li> <li>▪ <u>Council is to devise a cultural education plan looking at methods of educating the community about the significance of cultural sites within Tyrolean Reserve.</u></li> </ul>
Means of assessment	To be assessed during site inspections by Council officers.
Priority	Ongoing

**6 Conclusion**

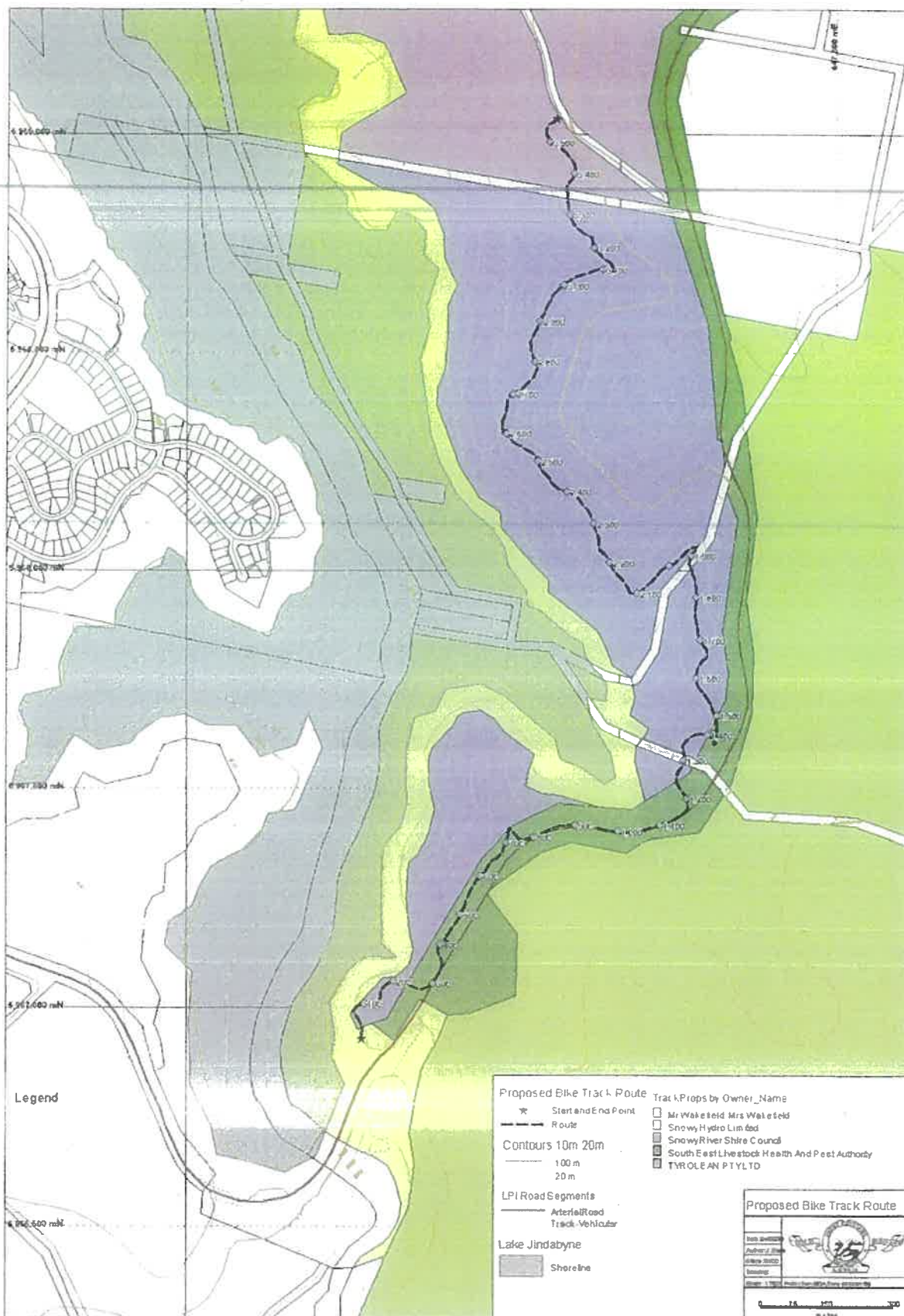
The future management of the site will be measured by the performance of the management issues and strategies in this LMP. The ongoing management of the site will require flexibility to ensure that changing needs and expectations of the community can be met in a timely and coordinated way. This LMP is designed for regular review. Achievements of outcomes should only be measured as milestones and not a completion of the document's objectives. New and innovative approaches to the management of the land should be incorporated into the LMP and an update completed, following a process similar to the process undertaken in preparing this document.

Land Management Plan  
8241 Tyrolean Reserve, Tyrolean

Millar | Merrigan

Land Management Consultants

## Appendix 1. Proposed Bike Track Route






## **Execution**

**Executed as an Deed**

**Dated:** 8 January 2016

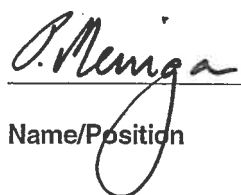
Snowy River Shire Council  
**Executed on behalf of the Council**


  
General Manager

 Jenny Beaumont  
Executive Assistant  
Witness/Name/Position

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**Executed on behalf of the Developer** in accordance with s127(1) of the  
Corporations Act (Cth) 2001

 (DIRECTOR)  
Name/Position

 Scott McTannet - Civil Engineer  
Witness/Name/Position

## **Appendix**

(Clause 53)

*Environmental Planning and Assessment Regulation 2000*

(Clause 25E)

## **Explanatory Note**

### **Draft Planning Agreement**

Under s93F of the *Environmental Planning and Assessment Act 1979*

### **Parties**

**Snowy River Shire Council** (ABN 21 862 479 274) of 2 Myack Street BERRIDALE NSW (**Council**)

**Tyrolean Pty Ltd** (ACN 007 441 661) as Trustee for the **Tyrolean Unit Trust** (ABN 86 625 991 421) of 218 Great Alpine Road HARRIETVILLE VIC (**The Developer**)

### **Description of the Land to which the Draft Planning Agreement Applies**

Lot 56 DP818775 and Lot 2 DP1182278 (**Land**).

### **Description of Development**

Subdivision of the Land into 29 residential lots, 2 reserve lots and 1 balance lot.

### **Summary of Objectives, Nature and Effect of the Draft Planning Agreement**

#### **Objectives of Draft Planning Agreement**

The objectives of the Draft Planning Agreement are to provide open space, facilities and infrastructure in connection with the Development and to provide for the

dedication of land by the Developer to Council. Specifically, the Developer will make the following contributions:

- a) Dedication of the Reserve Land to Council;
- b) Construction of the extension of the Mill Creek Trail within lot 2 DP1182278;
- c) Dedication of land for a Bus Turn Around Facility, construction of the facility and associated works including the provision of a concrete footpath to service the facility.

### **Nature of Draft Planning Agreement**

The Draft Planning Agreement is a planning agreement under s93F of the Act. It is a voluntary agreement, under which the Developer makes Development Contributions for various public purposes.

### **Effect of the Draft Planning Agreement**

The Draft Planning Agreement:

- relates to the carrying out of the Development by the Developer;
- does not exclude the application of s94, s94A and s94EF to the Development;
- requires the dedication of land and carrying out of works
- the Developer is to provide security as follows:
  - (insert details)
- is to be registered on the title of the Land;
- imposes restrictions on the Developer transferring the Land or part of the Land or assigning an interest under the Agreement;
- provides a dispute resolution method where a dispute arises under the agreement, being mediation and expert determination;
- provides that the agreement is governed by the law of New South Wales;
- provides that the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) applies to the agreement.

### **Assessment of the Merits of the Draft Planning Agreement**

#### **The Planning Purposes Served by the Draft Planning Agreement**

In accordance with section 93F (2) of the Act, the Draft Planning Agreement has the following public purposes:



## **Tyrolean Village Development Planning Agreement**

### **Snowy River Shire Council**

#### **Tyrolean Pty Ltd**

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- the provision of (or the recoupment of the cost of providing) public amenities or public services
- the provision of (or the recoupment of the cost of providing) transport or other infrastructure relating to land
- the conservation or enhancement of the natural environment

The Draft Planning Agreement will allow for the transfer of land to Council for use as a public recreational reserve and the construction of associated infrastructure which will service the development and surrounding area.

#### **How the Draft Planning Agreement Promotes the Public Interest**

The Draft Planning Agreement promotes the public interest by promoting the objects of the Act as set out in subsection 5(a)(ii), (a)(iv), (a)(v) namely:

- the promotion and co-ordination of the orderly and economic use and development of land
- the provision of land for public purposes,
- the provision and co-ordination of community services and facilities

#### **For Planning Authorities:**

##### ***How the Draft Planning Agreement Promotes the Elements of the Council's Charter***

The Draft Planning Agreement promotes the elements of the Council's charter by:

- providing adequate, equitable and appropriate facilities for the community.
- ensuring those facilities are managed efficiently and effectively.

##### ***Whether the Draft Planning Agreement Conforms with the Authority's Capital Works Program***

The works proposed are not inconsistent with the Snowy River Shire Council's Capital Works Program.

##### ***Whether the Draft Planning Agreement specifies that certain requirements must be complied with before issuing a construction certificate, subdivision certificate or occupation certificate***

The Draft Planning Agreement requires that the following works are completed prior to the issue of the subdivision certificate for Stage 1 of the development:

- Construction of Bus Turn Around Facility, including weed eradication works, relocation of existing gas tank and installation of electrical substation, carried out to the satisfaction of Council. This work will include the creation of separate titles in favour of Council, Origin Energy, and Essential Energy (respectively).
- Construction of concrete footpath to service bus stop carried out to the satisfaction of Council

**Tyrolean Village Development Planning Agreement**  
**Snowy River Shire Council**  
**Tyrolean Pty Ltd**

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The Draft Planning Agreement requires that the following works are completed prior to the issue of the subdivision certificate for Stage 2 of the development:

- Construction of single track cross country shared trail of approximately 1.1km incorporating one raised bridge platform carried out to the satisfaction of Council within Lot 2 DP 1182278, in accordance with condition 4 of DA0038/2013.

The Draft Planning Agreement requires that the following dedication of land be completed prior to the issue of the subdivision certificate for Stage 1 of the development:

- Dedication of the Bus Turn Around Facility Land as shown in Schedule 4

The Draft Planning Agreement requires that the following dedication of land to be carried out prior to the issue of the subdivision certificate for Stage 2 of the development:

- Dedication of the Reserve Land as shown in Schedule 3