

## **Heads of Agreement**

**Nature Coast Development Pty Ltd**

and

**Rosedale Farm (NSW) Pty Ltd**



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Ref: ES:RSG:82571

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## Heads of Agreement

Date	2007
Parties	<p><b>Nature Coast Development Pty Ltd ACN 100 110 718</b> of 62 New South Head Road, Edgecliff, New South Wales</p> <p>(Marsim)</p> <p><b>Rosedale Farm (NSW) Pty Ltd ACN 009 315 625</b> of 41 Deering Street, Ulladulla, New South Wales</p> <p>(Rosedale)</p>
Background	<p>A. Marsim is the registered proprietor of the Marsim Land.</p> <p>B. Rosedale is the registered proprietor of the Rosedale Land.</p> <p>C. Marsim has requested and Rosedale has agreed to grant to Marsim for the purposes of access to the Marsim Land through the Rosedale Land a right of way over the Existing Right of Way.</p> <p>D. The parties wish to set out the main terms of the agreement in this heads of agreement with the full terms and conditions to be agreed at a later stage.</p>

## Agreement

### 1. Terms and definitions

#### 1.1 Definitions

In this agreement, unless the context otherwise requires or permits:

**Council** means Eurobodalla Shire Council;

**Marsim Land** means the land contained in Folio Identifiers 119/755902, 11/755902, 118/755902, 29/755902, 72/755902, 102/755902, 32/755902, 213/755902, 2/627034 and 2/623340 located in Rosedale, New South Wales.

**Rosedale Land** means the land contained in Folio Identifier 122/755902 located in Rosedale, New South Wales.

**Right of Way** means the right of way to be granted in favour of the Marsim Land by Rosedale over that part of the Rosedale Land being the Existing Right of Way at all times and for all purposes with or without vehicles on the terms set out in this agreement and any later agreement between the parties.

**Existing Right of Way** means the existing right of way as shown highlighted on the **attached Annexure A**.

## 1.2 Interpretation

In this agreement, unless the context otherwise requires or permits:

- (a) where any word or phrase is given a defined meaning, any other grammatical form of that word or phrase will have a corresponding meaning;
- (b) references to legislation or legislative provisions will include modifying, consolidating or replacing legislation or legislative provisions;
- (c) references to months and years means calendar months and years;
- (d) the use of headings are only for convenience and do not affect interpretation and any headings, underlinings or marginal notes are only included for ease of reference;
- (e) if any part of this agreement is void or unenforceable or would be so unless severed, then the rest of the document will continue to have full force and effect;
- (f) if the day on which any act, matter or thing is to be done under or pursuant to this agreement is not a business day, that act, matter or thing may be done on the next business day. A business day is a day on which banks are open for general banking business;
- (g) references to a person includes any other entity recognised by law;
- (h) words denoting the singular number include the plural and vice versa;
- (i) words denoting one gender include every gender;
- (j) references to clauses, subclauses, paragraphs, annexures and schedules are references to clauses, subclauses, paragraphs, annexures and schedules in this agreement.

## **2. Right of Way**

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- 2.1 In consideration of Marsim's obligations in clause 2.3 of this deed, Rosedale has agreed to grant to Marsim and its successors in title and assigns the Right of Way.
- 2.2 Rosedale agrees to do all things necessary to ensure that the Right of Way is registered with the Department of Lands in favour of the Marsim Land against the title to the Rosedale Land including signing all documentation and any NSW Department of Lands forms required to register the Right of Way within 2 business days from receipt.
- 2.3 Marsim agrees to resurface the road along the Right of Way at its cost within a reasonable time of the registration of the Right of Way with the NSW Department of Lands.
- 2.4 [The parties agree that all future maintenance of the Right of Way will be carried out at the joint expense of the parties.]

## **3. Confidentiality**

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- 3.1 All parties agree to keep confidential the terms of this agreement and the content of all negotiations leading to its preparation and will not disclose or discuss any of that information without the prior written approval of other party, except:
  - (a) as specifically provided by this agreement;
  - (b) to the extent permitted or required by law;
  - (c) to the extent required by a party's financiers or intended financiers in relation to the provision of finance for completion of the transaction provided for by this agreement;
  - (d) to the extent required to instruct the party's professional advisers in relation to the preparation and completion of this agreement;
  - (e) where the information is available generally, but not if it is because a person has contravened a confidentiality obligation under this clause.
- 3.2 If completion of this agreement does not occur, each party must return to the other or others and ensure that any person who receives information by the party's authority returns the information to the person who provided it.
- 3.3 The obligations of this clause survive termination of this agreement.

## **4. Formal document**

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The parties intend that the following documents will be entered into prior to completion:

- (a) deed of grant of Right of Way; and
- (b) NSW Department of Lands forms creating the Right of Way.

## **5. Conditions precedent**

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Execution of the Formal Document(s) is/are subject to the following conditions:

- (a) The consent of the Council to the use of the Right of Way as the access road to the Marsim Land.

- (b) Council's consent to the resurfacing works to be carried out to the Right of Way by Marsim.

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**6. Counterparts**

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This agreement may be executed in any number of counterparts and all of those counterparts taken together constitute one and the same instrument.

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**7. Further assurance**

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Each party will do, sign, execute and deliver and will procure that each of its employees and agents does, signs, executes and delivers, all agreements, documents, instruments and acts reasonably required of it by notice from another party to effectively carry out and give full effect to this agreement and the rights and obligations of the parties under it.

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**8. Governing law**

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This agreement is governed by the law in force in New South Wales.

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**9. Jurisdiction**

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The parties submit to the exclusive jurisdiction of the Courts of New South Wales and any Court that may hear appeals from those Courts in respect of any proceedings in connection with this agreement.

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**10. Costs**

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The parties will pay their own costs, fees and expenses in connection with the preparation, negotiation, execution and enforcement of this agreement.

**Executed as an Agreement**

**Executed by Nature Coast Development** )  
**Pty Ltd** in accordance with section 127 of )  
the *Corporations Act* 2001 (Cth): )

.....  
Director

.....  
Director/Secretary

.....  
(Print) Full Name

.....  
(Print) Full Name

**Executed by Rosedale Farm (NSW) Pty** )  
**Ltd** in accordance with section 127 of the )  
*Corporations Act* 2001 (Cth): )

.....  
Director

.....  
Director/Secretary

.....  
(Print) Full Name

.....  
(Print) Full Name

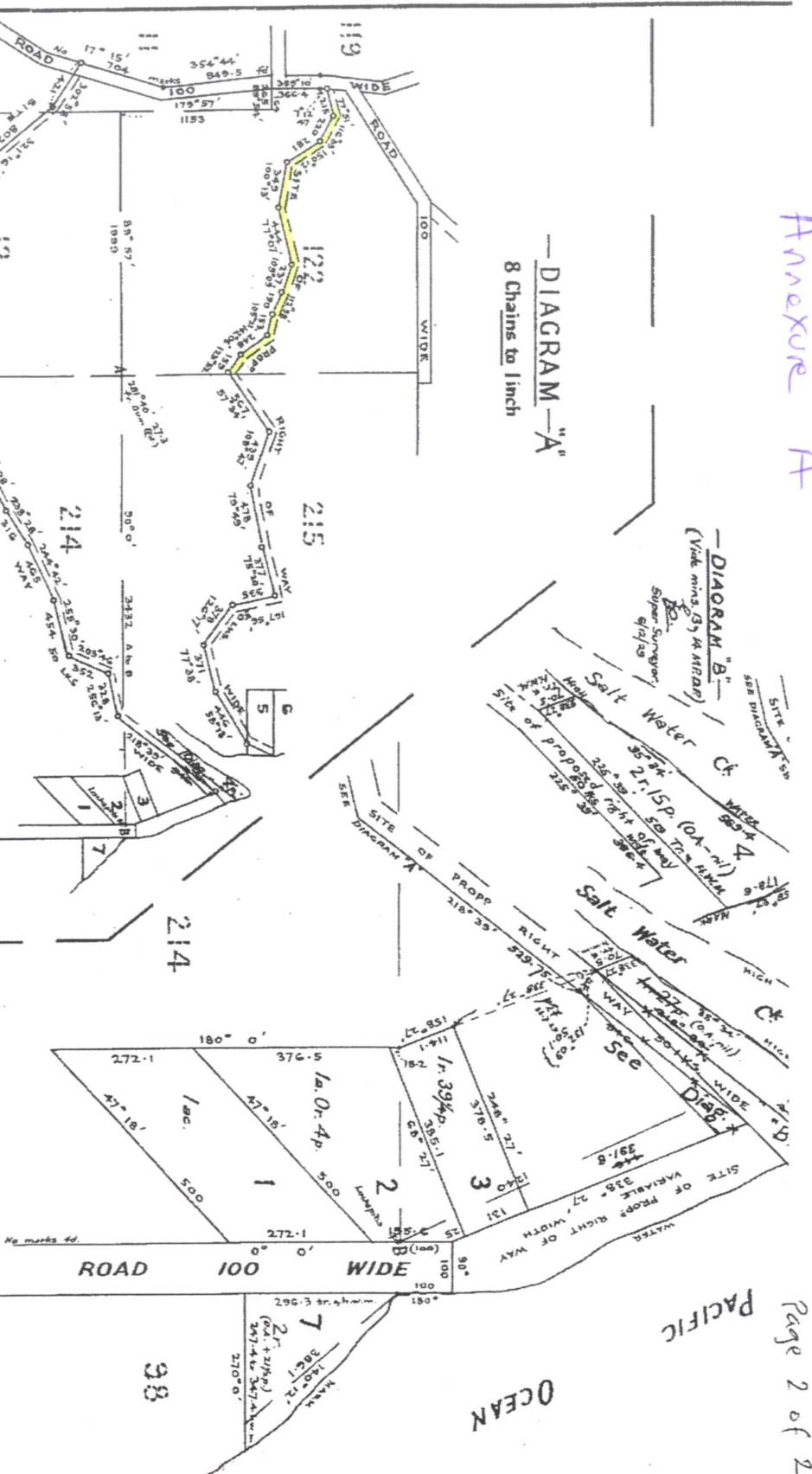
**Annexure A**

**Existing Right of Way**



—DIAGRAM—"A"  
8 Chains to Inch

—DIAGRAM—"B"  
(Vide map of A.M.R.A.P.)



Approved 3<sup>rd</sup> July 1929  
Municipal Council Clerk's Certificate  
No. 58 of 9.7.29

Shire Clerk  
Edward J. Shire

Subscribed and declared before me at Goulburn  
this 1<sup>st</sup> day of June A.D. 1929

Edmund J. Shire

L.P. Date of Survey May 1929

DP16191(E)

I, Joseph Edward Fitzgerald of Goulburn  
Licensed Surveyor specially licensed under the Real Property Act, 1900, do hereby  
solemnly and sincerely declare (a) that all boundaries and measurements shown on  
this plan are correct, (b) that all survey marks found and relevant physical objects on  
or adjacent to the boundaries are correctly represented, (c) that all physical objects  
indicated actually exist in the positions shown, (d) that the whole of the material facts  
in relation to the land are correctly represented, (e) that the survey has been made  
under my immediate supervision, and I make this solemn declaration conscientiously  
believing the same to be true, and by virtue of the provisions of the Oaths Act, 1900.

J. E. Fitzgerald

Licensed Surveyor

\*Not here by me or under my immediate supervision as the case may be.