

Enforceable Undertaking

Section 9.5 of the *Environmental Planning and Assessment Act 1979*

1. Defined terms

1.1 In this Undertaking, unless otherwise separately defined:

- (a) **BC Act** means *Biodiversity Conservation Act 2016* (NSW).
- (b) **Council** means the Central Coast Council established under the *Local Government Act 1993* (NSW).
- (c) **Council's Bank Account** means:
 - Institution: Commonwealth Bank of Australia
 - Account Name: Central Coast Council
 - BSB: 062544
 - Account Number: 10853460
- (d) **Conservation Area** means the land shown by hatching on Plan of Proposed Conservation Area annexed to this Undertaking at **Annexure A**.
- (e) **Department** means Department of Planning, Housing, and Infrastructure.
- (f) **Department's Bank Account** means:
 - Institution: Westpac
 - Account Name: DPIE Operating CC No 2
 - BSB: 032-001
 - Account Number: 114425
- (g) **EPA Act** means the *Environmental Planning and Assessment Act 1979* (NSW).
- (h) **Department's Delegate** means any delegate appointed by the Department.
- (i) **NPWS** means the National Parks and Wildlife Service established under the *National Parks and Wildlife Act 1974* (NSW).
- (j) **Planning Secretary** has the same meaning as in the EPA Act.

2. Persons giving the Undertaking

2.1 This Undertaking is given to the Secretary under section 9.5 of the *Environmental Planning and Assessment Act 1979* (**EPA Act**) by the following persons:

- (a) Glenworth Valley Horse Riding Pty Limited (ACN 002 589 362)
 - (b) Glenworth Valley Pastoral Company Pty Limited (ACN 119 657 724)
 - (c) Glenworth Valley Mountain Bike Pty Limited (ACN 667 032 322)
 - (d) Glenworth Valley Services Pty Limited (ACN 658 080 810)
- (Together, **Glenworth Valley Entities**).

3. Background

3.1 The Glenworth Valley Entities are incorporated entities involved in the management and operation of a business known as 'Glenworth Valley Adventures' on 41 parcels of land

totalling approximately 1,200 hectares at Calga. The legal allotments which comprise Glenworth Valley Adventures are identified in **Annexure B**.

- 3.2 The conduct that this Undertaking relates to is conduct undertaken by the Glenworth Valley Entities to aid, abet, procure or counsel the carrying out of development without consent between approximately 2022 and 2023. This conduct constitutes an offence under section 9.50(3A)(a) in respect of section 4.2(1)(a) of the EPA Act. The work which was undertaken comprises:
- (a) Earthworks and/or the clearing of trees and/or vegetation for a total distance of 20182 metres (20.182 kilometres) to create trails to be used as part of a proposed mountain bike park identified as CCC1, CCC2, CCC3a, CCC3b, CCC4a, CCC4b, CCC5, CCC6, CCC8, CCC10, CCC11, CCC13 and CCC14 on the map at **Annexure C**; and
 - (b) Earthworks and/or the clearing of trees and/or vegetation for a total distance of 1748 (1.748 kilometres) to create a road for the use by vehicles as part of a proposed mountain bike park identified as "CCC Road" on the map at **Annexure D** (the **Development**).
- 3.1 The land on which the Development took place is known generally as 69 Cooks Road, Calga. Specifically:
- (a) The works to create the trails referred to in clause 3.2(a) were carried out on Lot 108 in Deposited Plan 755221, Lot 86 in Deposited Plan 755221, Lot 85 in Deposited Plan 755221, Lot 21 in Deposited Plan 755221, and Lot 23 in Deposited Plan 755221.
 - (b) The works to create the road referred to in clause 3.2(b) were carried out on Lot 30 in Deposited Plan 755221 and Lot 108 in Deposited Plan 755221.
- 3.2 Council became aware of the Development on 22 November 2022. After conducting an investigation it is apparent that the conduct the subject of this Undertaking took place over 2022 to the end of 2023. The conduct the subject of this Undertaking is that the Glenworth Valley Entities aided, abetted, counselled or procured Dirt Art Pty Ltd and Elevation Parks Groups Pty Ltd to carry out the works set out in clause 3.1(a) above, and the aiding, abetting, counselling or procuring of other persons to carry out the works set out in cl 3.1(b) above, the Council considers the Development contravened section 4.2(1)(a) of the EPA Act as the Development required development consent under:
- (a) clause 2.3(3) of the Gosford Local Environmental Plan 2014 and item 3 of the RU2 Rural Landscape Zoning Table (applying up until 23 June 2022); and
 - (b) clause 3.2(3) of the Central Coast Local Environmental Plan 2022 and item 3 of the RU2 Rural Landscape Zoning Table (applying from 24 June 2022); and
 - (c) development consent was not obtained for the Development.
- 3.3 In September 2024, the Council commenced a criminal prosecution in Land and Environment Court's (proceedings no.2024/4058733 to 2024/405735 and 2024/405579 to 2024/405882) against the Glenworth Valley Entities for the conduct the subject of this Undertaking as described in clause 3.2. No pleas have been entered by the Glenworth Valley Entities and the proceedings are adjourned pending the entering into of this Undertaking.
- 3.4 In response to Council's investigation, the Glenworth Valley Entities:
- (a) Acknowledge the Development required development consent under section 4.2(1)(a) of the EPA Act;

- (b) Acknowledge that the carrying out of the Development without development consent was likely to constitute a breach of section 4.2(1)(a) of the EPA Act;
- (c) Acknowledge section 9.50(3A)(a) of the EPA Act was likely to have been breached by the Glenworth Valley Entities by:
 - (i) Aiding, abetting, counselling, or procuring by the giving of instructions, consent and/or payment to Dirt Art Pty Ltd and Elevation Groups Pty Ltd to carry out the works identified in clause 3.1(a); and
 - (ii) aiding, abetting, counselling, or procuring by the giving of instructions, consent, and/or payment to another person to carry out the works identified in clause 3.1(b).
- (d) Note the Development has been completed and no further works without development consent will be carried out;
- (e) Acknowledge the community impacts which arise from breaches of the EPA Act including the harm to the regulatory scheme which establishes an orderly method for the obtaining of planning approvals prior to carrying out development;
- (f) Acknowledge the Development caused harm to the environment; and
- (g) Offer this undertaking in response to the concerns.

4. Commencement of this Undertaking

4.1 This Undertaking comes into effect when:

- (a) This Undertaking is executed by the Glenworth Valley Entities; and
- (b) This Undertaking so executed is accepted by the Planning Secretary or the Department's Delegate (**Commencement Date**).

5. Undertaking

5.1 The Glenworth Valley Entities undertake for the purposes of section 9.5 of the EPA Act that they will:

- (a) Immediately:
 - (i) not carry out, or permit to be carried out, any act which may harm the ecological and conservation values of the Conservation Area; and
 - (ii) not carry out any development within the meaning of section 1.4 of the EPA Act in the Conservation Area.
- (b) Will not aid, abet, procure or counsel the carrying out of development in breach of the EPA Act and will comply with section 4.2(1)(a) of the EPA Act when carrying out future development which requires development consent.
- (c) Will seek town planning and/or legal advice on whether development consent is required for future development under section 4.2 of the EPA Act before carrying that development out.
- (d) Within seven (7) days of the Commencement Date, agree to pay the Council, in Council's Bank Account, \$80,000.00 (inclusive of GST) as a contribution to its legal costs incurred in association with Land and Environment Court Proceedings No.2024/4058733 to 2024/405736 and 2024/40579 to 2024/405882.

- (e) Within seven (7) days of compliance with clause 5.1(b) will email to the Council's solicitor (Cecilia Rose – crose@wilshirewebb.com.au) enclosing a copy of the bank statement or transaction receipt which confirms the payment.
- (f) Within thirty (30) days of the Commencement Date, agree to pay the Department, in the Department's Bank Account, (\$1,000.00) for the legal fees associated with accepting this Undertaking.
- (g) Within seven (7) days of compliance with clause 5.1(f), will email to the Director, Compliance and Investigations at the Department (compliance@planning.nsw.gov.au) enclosing a copy of the bank statement or transaction receipt which confirms the payment.
- (h) Within twelve (12) months of the Commencement Date must dedicate, donate and/or transfer the Conservation Area to NPWS for addition to the Popran National Park.

The easement for access 10m wide shown in the Plan of Proposed Conservation Area is only required to be created if requested by NPWS, and the location and terms of any easement for access may be negotiated between the Glenworth Valley Entities and NPWS at their discretion.
- (i) Within seven (7) days of compliance with clause 5.1(h), will email to Council's Manager Legal (edward.hock@centralcoast.nsw.gov.au) enclosing copies of all deeds, agreements and registered instruments concerning the dedication, donation and/or transfer.
- (j) Within 7 days of the execution of the Undertaking by a delegate of the Planning Secretary of the Department of Planning, Housing and Infrastructure pursuant section 9.5 of the EPA Act, the Council will discontinue the proceedings relating to the persons giving the Undertaking, currently before the Land and Environment Court as proceedings no.2024/4058733 to 2024/405735 and 2024/405579 to 2024/405882 noting the Glenworth Valley Entities have not entered any pleas and the Land and Environment Court has not determined liability.
- (k) If at any point within the period provided for in clause 5.1(h) or as extended under clause 6.1 NPWS confirms that it will not accept the Conservation Area then the Glenworth Valley Entities will, within six (6) months from receiving that confirmation:
 - (i) Enter into a conservation agreement with the Biodiversity Conservation Trust under Part 5, Division 3 of the BC Act for the purpose of conserving the biodiversity values of the Conservation Area; or
 - (ii) Must enter into a biodiversity stewardship agreement with the Minister under Part 5, Division 2 of the BC Act for the purpose of establishing a biodiversity stewardship site over the Conservation Area.
- (l) Within twelve (12) months from the Commencement Date must lodge development applications or building information certificates to seek development consent or regularisation for the prospective use of the Development.
- (m) Not use the areas described in clause 3.2 unless and until development consent for prospective use has been granted.
- (n) Within twelve (12) months from the Commencement Date make a gift in the amount of \$75,000.00 (inclusive of any GST) to the Darkinjung Aboriginal Land Council to be used for the Community Benefit Fund Sponsorship program.

- (o) Within seven (7) days of compliance with 5.1(n), will email Council's solicitor (Cecilia Rose – crose@wilshirewebb.com.au) enclosing a copy of the bank statement or transaction receipt which confirms the payment.

6. Extension of period of compliance

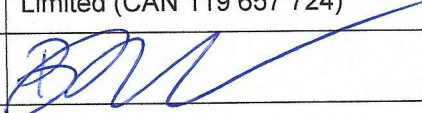
- 6.1 The Chief Executive Officer of the Council may extend the period for compliance in clause 5.1(h) upon a request being made in writing by the Glenworth Valley Entities if:
- (i) at any point NPWS confirms that it will accept the Conservation Area; or
 - (ii) if NPWS has not yet confirmed whether it will accept the Conservation Area.
- 6.2 The Chief Executive Officer of the Council may extend the period for compliance in clause 5.1(k) and/or clause 5.1(l) upon a request being made in writing by the Glenworth Valley Entities if the Chief Executive Officer is satisfied that the Glenworth Valley Entities have demonstrated they have used their best endeavours to comply with clause 5.1(k) and/or 5.1(l) but require additional time to comply.

7. Acknowledgements

- 7.1 The Glenworth Valley Entities acknowledges that:
- (a) The Department will make this Undertaking publicly available including by publishing it on the Department's public register of section 9.5 undertakings on its website.
 - (b) The Department will, from time to time, make public reference to this Undertaking including in news media statements and in department's publications.
 - (c) This Undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct.

8. Executed as an undertaking

Glenworth Valley Entities – executed by the relevant director pursuant to section 127 of the Corporations Act 2001

Signature:	Signature:
Signature of authorised representative of Glenworth Valley Horse Riding Pty Limited (CAN 002 589 362)	Signature of authorised representative of Glenworth Valley Pastoral Company Pty Limited (CAN 119 657 724)
	
Name of Director	Name of Director
Mia Lawler	Barton Lawler
Date 29/9/25	Date 29/9/25

Signature:	Signature:
Signature of authorised representative of Glenworth Valley Mountain Bike Pty Limited (CAN 667 032 322)	Signature of authorised representative of Glenworth Valley Services Pty Limited (CAN 658 080 810)

<i>Mia Lawler</i>	<i>Mia Lawler</i>
Name of Director	Name of Director
<i>Mia Lawler</i>	<i>Mia Lawler</i>
Date <i>29/9/25</i>	Date <i>29/9/25</i>

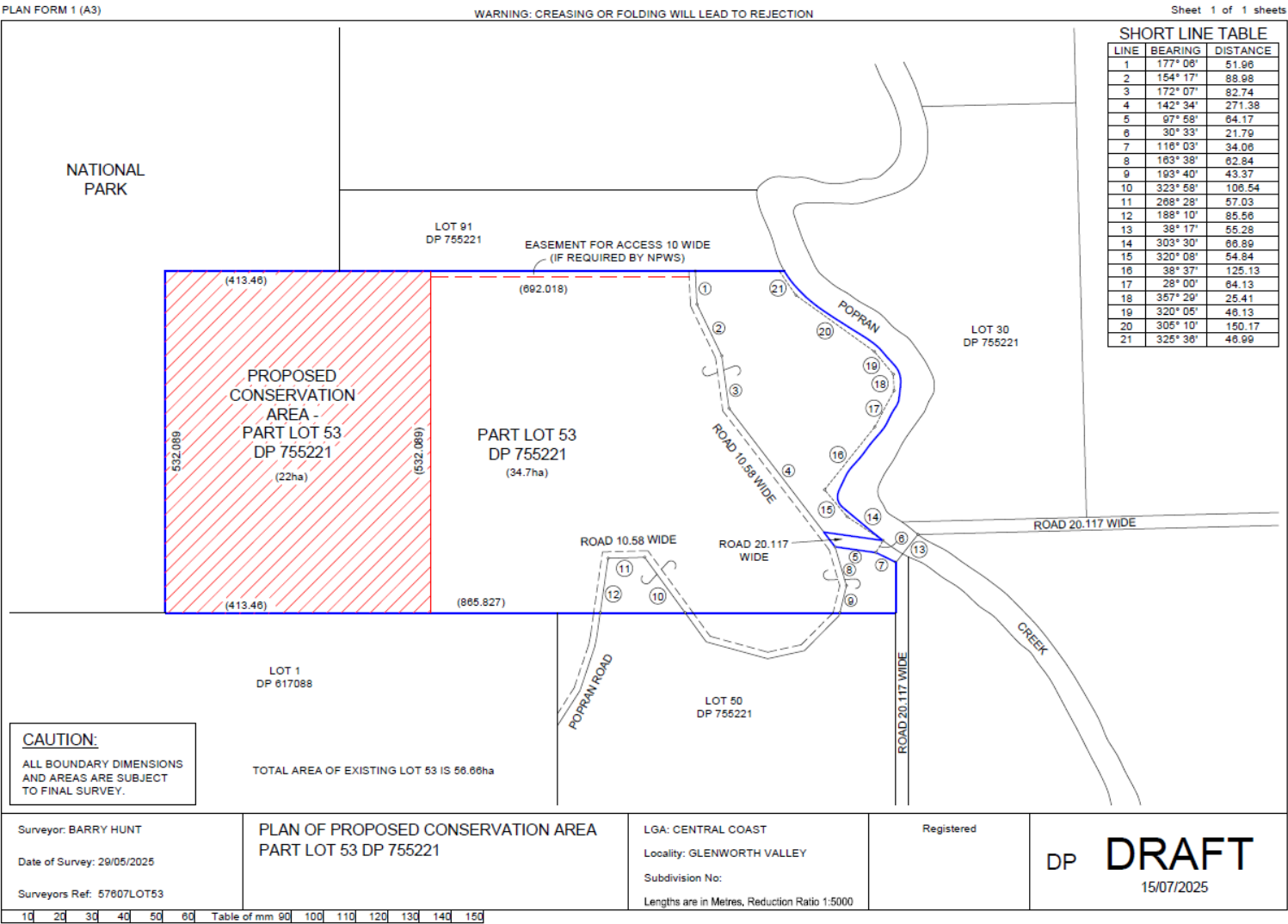
Council

The Council has negotiated the Undertaking with the Glenworth Valley Entities in relation to the Council's functions under the EPA Act and recommends that the Secretary accept the Undertaking	
Signature:	<i>[Signature]</i>
Name of authorised representative: Marissa Racomelara	
Position: General Manager - Acting	
Date 01.10.2025	

Department

Accepted by the delegate of the Planning Secretary of the Department of Planning, Housing and Infrastructure pursuant section 9.5 of the EPA Act	
Signature:	<i>[Signature]</i>
Name of authorised representative: David Gainsford	
Position: Deputy Secretary, Development Assessment and Sustainability	
Date 02/10/2025	

Annexure A: Plan of Proposed Conservation Area



Annexure B: Legal allotments

1. Lot A in DP 365595
2. Lot 881 in DP 563889
3. Lot 882 in DP563889
4. Lot 120 in DP755221
5. Lot C in DP 382358
6. Lot 108 in DP755221
7. Lot 145 in DP755221
8. Lot 2 in DP1139242
9. Lot 3 in DP 617088
10. Lot 30 in DP 755221
11. Lot 65 in DP755221
12. Lot 23 in DP755253
13. Lot 1 in DP617088
14. Lot 32 in DP755221
15. Lot 32 in DP755253
16. Lot 31 in DP755221
17. Lot 25 in DP755221
18. Lot 82 in DP755221
19. Lot 24 in DP755221
20. Lot 33 in DP755221
21. Lot 75 in DP755253
22. Lot 37 in DP755221
23. Lot 22 in DP755253
24. Lot 85 in DP755221
25. Lot 23 in DP755221
26. Lot 20 in DP755221
27. Lot 89 in DP755221
28. Lot 19 in DP755221□
29. Lot 76 in DP755253
30. Lot 87 in DP755221
31. Lot 80 in DP755221
32. Lot 50 in DP755221
33. Lot 21 in DP755221

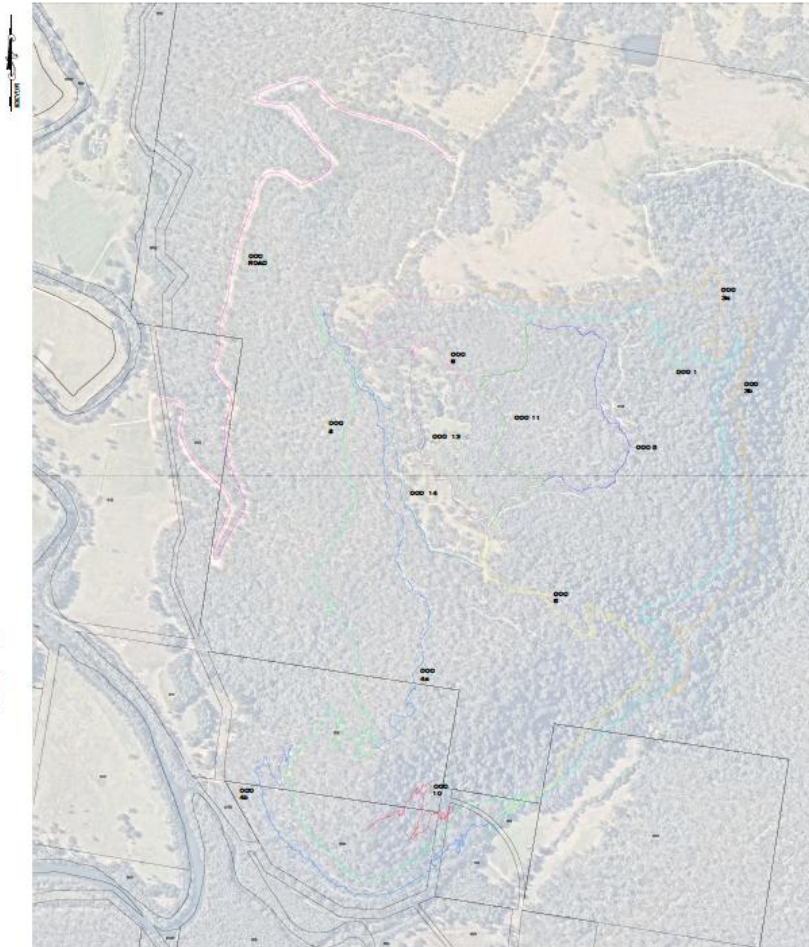
- 34. Lot 64 in DP755221
- 35. Lot 86 in DP755221
- 36. Lot 68 in DP755221
- 37. Lot 81 in DP755221
- 38. Lot 53 in DP755221
- 39. Lot 91 in DP755221
- 40. Lot 1 in DP1222754
- 41. Lot 73 in DP755253

Annexure C: Map of Development

TRAIL NAME	LENGTH (M)
CCC Road	2182
CCC1	2337
CCC2	2653
CCC3a	970
CCC3b	1307
CCC4a	1339
CCC4b	1260
CCC5	743
CCC6	1369
CCC8	714
CCC10	638
CCC11	706
CCC13	537
CCC14	572
TOTAL	17327

NOTES:

1. All measurements have been made using handheld GPS only and should be considered approximate only (+/- 5M). Additional checks were made with Survey GNSS equipment and data is shown on MGA2020 Projection
2. Only paths found on the day of survey (17/12/2024) have been recorded. Other trails may exist which were not identified on site
3. Trail identifiers are not sequential as some paths were measured in duplicate due to the nature of the survey and difficulty in identifying the trails
4. No boundary survey has been undertaken



					SCALE ON ORIGINAL A1 SIZE DRAWING		SURVEYED		DCC Survey		SURVEY NO		v5349			Central Coast Council		DCC NUMBER F3002/4/01416		
					NOT TO SCALE		CHECKED		DM		DRAWN		DM			PROJECT NUMBER v5349				
							STATUS		CRAFT		DATE		24/05/2018			PLAN NUMBER 2				
							DESIGNED - DESIGN MANAGER				APPROVED - LINT MANAGER					DCC NUMBER v5349				
					DATE AND											1 OF 1				
REV		AMENDMENT			DATE		DRAWN		APPROVED		ALL DIMENSIONS IN m UNLESS OTHERWISE SHOWN		SURVEY		PROCUREMENT AND PROJECT MANAGEMENT		INFRASTRUCTURE SERVICES		AT	

