

Date / / 2018

Three Party Credit Trade Agreement

Subject Land: BushBroker site BB-3021 BCA-04; BCA-10 and BCA-12
Scotchmans Road, French Island

BB-3021 LA01 CA07

Burnside Properties Pty Ltd
ACN: 005 655 701

and

Tierra Land Holdings Pty Ltd
ABN: 22 623 104 612

and

Vegetation Link Pty Ltd
ABN: 92 169 702 032

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Credit Trade Agreement

This Agreement is made on: / /2018

PARTIES

Tierra Land Holdings Pty Ltd ABN: 22 623 104 612
of Level 1, 24 Glenferrie Road, Malvern

(Credit Owner)

AND

Burnside Properties Pty Ltd ACN: 005 655 701
of Suite 2, 2-6 Glenferrie Road, Malvern

(Purchaser)

AND

Vegetation Link Pty Ltd ABN: 92 169 702 032
of 1/233 Barker Street, Castlemaine

(Broker)

INTRODUCTION

- A. Native vegetation is described in Clause 72 of the Victoria Planning Provisions as *plants that are indigenous to Victoria, including trees, shrubs, herbs and grasses*.
- B. Offsets for native vegetation removal may be required in order to comply with regulatory requirements, permits or approvals in Victoria, including requirements under Victorian planning schemes and the *Planning & Environment Act 1987 (Vic)*. Permits issued under Clause 52.16 or 52.17 of a planning scheme may require Offsets of the appropriate quantity (amount of gain) and attributes to be provided for native vegetation removal.
- C. The Register, maintained by the Department, records the ownership, trading and use of Native Vegetation Credits in Victoria. The Register sets minimum standards for the establishment of credit sites and undertakes quality assurance to provide certainty that all Native Vegetation Credits meet minimum requirements for site eligibility, permanency and additionality and are suitable as Offsets.
- D. The Register has developed a series of standard agreements to provide a consistent contractual framework for parties to establish and trade Native Vegetation Credits. These agreements include a Landowner Agreement between the Secretary and a Landowner who undertakes ongoing management of land to generate Native Vegetation Credits; this Agreement; an Over the Counter Credit Owner Agreement between a Credit Owner and a Broker; and a Native Vegetation Credit Register Broker Agreement between the Secretary and a Broker.
- E. The Credit Owner has engaged a Broker to assist with the sale of the Subject Native Vegetation Credits to the Purchaser.

- F. The Credit Owner and the Purchaser enter into this Agreement to facilitate the sale and purchase of the Subject Native Vegetation Credits which may be relied upon by the Purchaser to demonstrate compliance with a regulatory requirement for the provision of an Offset.

THE PARTIES AGREE

1. DEFINITIONS

In this Agreement the words and expressions set out in this clause have the following meanings unless the context admits otherwise:

Agreed Price means the total price per Unit of the Subject Native Vegetation Credits set out in Schedule 1.

Agreement means this deed and includes the schedules and any annexure to it or documents incorporated by reference.

Business Day means a day which is not a Saturday, Sunday or a public holiday (being a public holiday appointed as such under the *Public Holidays Act 1993* (Vic)) in Victoria.

Commencement Date means the date on which this Agreement is executed by all parties or, if executed in counterparts, the day on which the last party executes this Agreement.

Commonwealth Privacy Act means the *Privacy Act 1998* (Cth), including the Australian Privacy Principles under that Act.

Corporations Act means the *Corporations Act 2001* (Cth) as amended from time to time.

Credit Owner means the legal entity recorded as owner of the specified Native Vegetation Credit or Credits on the Register.

Credit Owner Bank Account means the bank account specified by the Credit Owner in Schedule 2, into which any payments to the Credit Owner may be made in accordance with clause 4.2.2.

Credit Owner and Purchaser Collection Statement means the statement at Schedule 5.

Department means the Department of Environment, Land, Water and Planning or its successor.

Department Trust Account means the bank account in which the Secretary holds funds from the sale of Native Vegetation Credits for payment to Landowners who are also Credit Owners, as set out in Item 2 of Schedule 2. The funds are held in trust for payments to Landowners in accordance with their Landowner Agreement.

Department Website means the Native Vegetation Credit Register section of the website of the Department.

EVC means an Ecological Vegetation Class has the same meaning as set out in the Guidelines 2017.

General Biodiversity Equivalence Unit has the same meaning as set out in the Guidelines 2013.

General Habitat Unit has the same meaning as set out in the Guidelines 2017.

Guidelines 2017 means the *Guidelines for the removal, destruction or lopping of native vegetation* dated December 2017, as varied from time to time, a copy of which is available from the website administered on behalf of the Secretary, which at Commencement is www.delwp.vic.gov.au.

Guidelines 2013 means the *Permitted clearing of native vegetation - Biodiversity Assessment Guidelines* dated September 2013, as varied from time to time, a copy of which is available from the website administered on behalf of the Secretary, which at Commencement is www.delwp.vic.gov.au.

Habitat Hectare has the same meaning as in the NV Framework or the Guidelines 2017, as appropriate.

Information means information, including Personal Information, relating to Purchasers (or their directors and employees) which the Broker receives or has access to under this Agreement.

Landowner means the person or persons registered or entitled from time to time to be registered by the Registrar of Titles as proprietor or proprietors of an estate in fee simple of the Subject Land or any part of it and includes a mortgagee-in-possession.

Landowner Agreement means the agreement made under section 69 of the *Conservation, Forest and Lands Act 1987 (Vic)* which is registered on the title of the Subject Land for purposes including securing the Subject Native Vegetation Credits.

Large Old Tree has the same meaning as in the NV Framework.

Large Tree has the same meaning as set out in the Guidelines 2017.

Medium Old Tree means a tree with a diameter at breast height equal to or greater than 75% of the large tree diameter in the relevant EVC benchmark but less than the diameter at breast height for a large old tree.

Native Vegetation has the same meaning as in the Guidelines 2017.

Native Vegetation Credit means a Unit listed on the Register which may be unallocated and therefore available for sale, or allocated as an Offset, subject to the Rules.

Native Vegetation Credit Register Broker Agreement means the agreement between the Broker and the Secretary with the unique agreement number: BA-09

New Recruit has the same meaning as in the NV Framework.

NV Framework means the *Native Vegetation Management – A Framework for Action* dated August 2002.

Offset has the same meaning as a General Offset as in the Guidelines 2017 or the NV Framework, as appropriate.

Personal Information means any information which is 'personal information' under the Victorian Privacy Act or the Commonwealth Privacy Act.

Register means the Native Vegetation Credit Register as per the Guidelines 2017, administered by the Registrar under the direction of the Secretary and any successor to it, which is a register of Native Vegetation Credits, which are either allocated or unallocated.

Registrar means the person who, under the direction of the Secretary, is responsible for administering the Register and records the creation, trade and allocation of Native Vegetation Credits.

Request to Transfer/Transfer and Allocate Credit Notice means the form set out in Schedule 3.

Responsible Authority has the same meaning as in the *Planning & Environment Act 1987* (Vic).

Rules means the Native Vegetation Credit Register Business Rules, as amended from time to time and available from nativevegetation.creditregister@delwp.vic.gov.au.

Secretary has the same meaning as in the *Conservation, Forests and Lands Act 1987* (Vic).

Species Biodiversity Value Score has the same meaning as set out in the Guidelines 2017.

Species Habitat Unit has the same meaning as set out in the Guidelines 2017.

Specific Biodiversity Equivalence Unit has the same meaning as set out in the Guidelines 2013.

Subject Native Vegetation Credits means the Native Vegetation Credits specified in Schedule 1 to this Agreement.

Subject Land means *Certificate of Title Volume 11812, Folio 852, Lot 16 on Plan of Subdivision TP 363891U, Parish of French Island, Section G*, being the land on which the Subject Native Vegetation Credits BB-3021-01 are situated, and any reference to the Subject Land in this Agreement includes any lot created by the subdivision of the Subject Land or any part of it.

Term means the period from the Commencement Date until all of the Subject Native Vegetation Credits have been transferred to the Purchaser or transferred and allocated to the Purchaser on the Register, unless terminated in accordance with this Agreement at an earlier date.

Unit means:

- General Habitat Units (also GHU); Species Habitat Unit (also SHU) or Large Tree (also LT) as defined in the Guidelines 2017; or
- General Biodiversity Equivalence Unit (also GBEU) or Specific Biodiversity Equivalence Unit (also SBEU) as defined in the Guidelines 2013; or
- Habitat Hectare, Medium Old Tree, Large Old Tree, Very Large Old Tree or New Recruit as defined in the NV Framework, as appropriate.

Very Large Old Tree means a tree with a diameter at breast height equal to or greater than 150% of the large tree diameter in the relevant EVC benchmark.

Victorian Privacy Act means the *Privacy and Data Protection Act 2014* (Vic), including the Information Privacy Principles under that Act.

2. INTERPRETATION

In this Agreement unless the context admits otherwise:

- 2.1 the singular includes the plural and vice versa.
- 2.2 a reference to a gender includes a reference to each other gender.
- 2.3 a reference to a person includes a reference to a firm, corporation or other corporate body and that person's successors in law.
- 2.4 if a party consists of more than one person this Agreement binds them jointly and each of them severally.
- 2.5 a term used in this Agreement has its ordinary meaning unless that term is defined in this Agreement. If a term is not defined in this Agreement and it is defined in the NV Framework or the Guidelines 2017 and 2013 it has the meaning as defined in the NV Framework or the Guidelines 2017 and 2013, as appropriate.
- 2.6 a reference to an Act, Regulation or a Planning Scheme includes any Acts, Regulations or amendments amending, consolidating or replacing the Act, Regulation or Planning Scheme.
- 2.7 the introductory clauses to this Agreement are and will be deemed to form part of this Agreement.
- 2.8 in this clause words that are defined in *A New Tax System (Goods and Services Tax) Act 1999* have the same meaning as their definition in that Act. Except as otherwise provided in this Agreement, all consideration payable under this Agreement in relation to any supply is exclusive of GST.
- 2.9 a reference to writing includes any method of representing or reproducing words, figures, drawings or symbols in a visible and tangible form but excludes a communication by electronic mail.
- 2.10 a reference to an *agreement* includes any undertaking, deed, agreement and legally enforceable arrangement, whether or not in writing, and a reference to a *document* includes an agreement (as so defined) in writing and any certificate, notice, instrument and document of any kind.
- 2.11 a *month* means a calendar month.
- 2.12 a reference to *dollars* or \$ is to Australian currency.

3. SPECIFIC COVENANTS, WARRANTIES AND OBLIGATIONS OF THE PURCHASER

- 3.1 The Purchaser warrants that within a period of no more than 28 Business Days before executing this Agreement it made reasonable enquiries of the Register to confirm that the Subject Native Vegetation Credits are listed on the Register and available for purchase.
- 3.2 The Purchaser covenants and agrees:
- 3.2.1 to purchase the Subject Native Vegetation Credits from the Credit Owner at the Agreed Price;
 - 3.2.2 to pay the Agreed Price into the Department Trust Account;
 - 3.2.3 that if the Subject Native Vegetation Credits are to be allocated on the Register as part of the sale, it must specify any relevant regulatory requirement, approval or planning permit to which to allocate the required number of Native Vegetation Credits in a Request to Transfer/Transfer and Allocate Credit Notice so that the Registrar can allocate those Native Vegetation Credits and provide it with an extract of the Register showing the allocated Native Vegetation Credits;
 - 3.2.4 that if the Subject Native Vegetation Credits are not to be allocated on the Register as part of the sale, but are subsequently relied upon by the Purchaser to satisfy a regulatory requirement, approval or planning permit, the Purchaser must notify the Registrar using a Request to Transfer/Transfer and Allocate Credit Notice so that the Registrar can allocate the Native Vegetation Credits accordingly and provide the Purchaser with an extract of the Register showing the allocated Native Vegetation Credits;
 - 3.2.5 that it must not rely on any allocated Native Vegetation Credits in relation to any Native Vegetation Offset obligations other than the one to which it is already allocated;
 - 3.2.6 it must not attempt to trade the value of any allocated Native Vegetation Credits.
- 3.3 The Purchaser consents to and agrees that without disclosing the Purchaser's identity or the street address or title particulars of the Subject Land, the Secretary and the Department may disclose to any person the Agreed Price and/or the characteristics of the Subject Native Vegetation Credits, for any purpose including (without limitation) advertising or marketing other Native Vegetation Credits for sale or any program for the sale of Native Vegetation Credits.

4. SPECIFIC COVENANTS, WARRANTIES AND OBLIGATIONS OF THE CREDIT OWNER

- 4.1 The Credit Owner warrants:
 - 4.1.1 that it is lawfully entitled to deal with the Subject Native Vegetation Credits;
 - 4.1.2 without limiting the operation or effect which this Agreement has, that apart from the Credit Owner and any other person who has consented in writing to this Agreement, no other person has any interest, either legal or equitable, in the Subject Land, the Units or Subject Native Vegetation Credits which may be affected by this Agreement;
 - 4.1.3 if the Credit Owner is also the Landowner, that it has entered into a Landowner Agreement; and
 - 4.1.4 that all details of the Subject Native Vegetation Credits and the Landowner Agreement are accurately recorded in Schedule 1 of this Agreement.
- 4.2 The Credit Owner covenants and agrees that:
 - 4.2.1 if the Credit Owner is also the Landowner, the Agreed Price will be paid by the Purchaser into the Department Trust Account; or
 - 4.2.2 if the Credit Owner is not the Landowner, the Agreed will be paid by the Purchaser into the Credit Owner Bank Account specified in Schedule 3.
- 4.3 The Credit Owner consents to and agrees that the Secretary or the Department may, in its absolute discretion, publish data in relation to the sale of any Subject Native Vegetation Credits (including, without limitation, the price or value of the Units) provided that such publication does not identify the Credit Owner or the street address or title particulars of the Subject Land.

5. SPECIFIC COVENANTS, WARRANTIES AND OBLIGATIONS OF THE BROKER

- 5.1 The Broker warrants that:
 - 5.1.1 the Broker has entered into the Native Vegetation Credit Broker Agreement; and
 - 5.1.2 either:
 - (a) the Broker has been appointed by the Credit Owner under the Credit Owner Agreement; or
 - (b) the Broker has been lawfully appointed by the Purchaser to facilitate the purchase of Native Vegetation Credits.
- 5.2 The Broker covenants and agrees:
 - 5.2.1 to facilitate the preparation and any execution of the notices contained in the Schedules or any other relevant documents by the Credit Owner and the Purchaser required to effect the transfer or transfer and allocation of the Subject Native Vegetation Credits in the Register; and

5.2.2 to arrange for the lodging of this Agreement and the notices contained in the Schedules with the Register in accordance with the processes set out in clause 5.

6. SALE OF NATIVE VEGETATION CREDIT IS FINAL

6.1 The parties agree that the record of ownership of the Units and Subject Native Vegetation Credits on the Register is final and conclusive.

6.2 The parties agree that before the transfer or transfer and allocation of Subject Native Vegetation Credits can be recorded on the Register, the following steps must be completed

6.2.1 If the Credit Owner is also the Landowner:

(a) The Broker must within 28 Business Days after the Commencement Date provide an executed copy of this Agreement, a Request to Transfer/Transfer and Allocate Credit Form, and a Pending Trade Credit Advice Form to the Department on behalf of the parties; and

(b) the Purchaser must:

(i) receive an invoice from the Department for the Agreed Price; and

(ii) within 28 Business Days of the date on which the invoice under clause 6.2.1(b)(i) was issued by the Department make payment of the Agreed Price into the Department Trust Fund, unless otherwise agreed to by the Department.

7. COLLECTION, USE AND DISCLOSURE OF INFORMATION

- 7.1 The Credit Owner and Purchaser agree that the Broker may collect, use and disclose information concerning the Credit Owner or Purchaser and (where relevant) its employees and directors in accordance with the Purchaser Collection Statement in Schedule 5.
- 7.2 The Credit Owner and Purchaser must provide copies of the Credit Owner and Purchaser Collection Statement to any of its employees or directors who disclose any Personal information to the Broker in Schedule 5.

8. FURTHER OBLIGATIONS OF THE PARTIES

The Purchaser, the Credit Owner and the Broker further covenant and agree that they will do promptly all things necessary to give effect to this Agreement.

9. GENERAL MATTERS

9.1 Notices

A notice or other communication required or permitted to be served by a party on another party must be in writing and may be served:

- 9.1.1 by delivering it personally to that party;
- 9.1.2 by sending it by prepaid post addressed to that party at the address set out in this Agreement or subsequently notified in writing to each party from time to time; or
- 9.1.3 by sending it by facsimile to the number set out in Schedule 2 of this Agreement provided that a communication sent by facsimile shall be confirmed immediately in writing by the sending party by hand delivery or prepaid post.

9.2 Service of Notice

A notice or other communication is deemed served:

- 9.2.1 if delivered personally, on the next following Business Day;
- 9.2.2 if posted, on the expiration of 5 Business Days after the date of posting; or
- 9.2.3 if sent by facsimile, on the next following Business Day unless the receiving party has requested retransmission before the end of that Business Day, or the sender receives a transmission control report from the despatching machine showing the relevant number of pages and the correct destination fax number or name of recipient and indicating that the transmission was unsuccessful.

9.3 **No Waiver**

A failure to exercise or a delay in exercising any right, power or remedy under this Agreement does not operate as a waiver. A single or partial exercise or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless made in writing.

9.4 **Severability**

If a court, arbitrator, tribunal or other competent authority determines that a word, phrase, sentence, paragraph or clause of this Agreement is unenforceable, illegal or void then it must be severed and the other provisions of this Agreement will remain operative.

9.5 **Counterparts**

This Agreement may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument.

9.6 **Jurisdiction**

With respect to any legal action or proceedings arising out of or in any way related to this Agreement or its subject matter, the parties irrevocably and unconditionally:

9.6.1 submit to the non-exclusive jurisdiction of the courts with jurisdiction in Victoria; and

9.6.2 waive any right to object to the venue on any ground.

10. GST

10.1 Recovery of GST

If GST is payable, or notionally payable, on a supply made under or in connection with this Agreement, the party providing the consideration for that supply must pay as additional consideration an amount equal to the amount of GST payable, or notionally payable, on that supply (the **GST Amount**). Subject to the prior receipt of a tax invoice, the GST Amount is payable at the same time that the other consideration for the supply is provided. If a tax invoice is not received prior to the provision of that other consideration, the GST Amount is payable within 10 days of the receipt of a tax invoice. This clause does not apply to the extent that the consideration for the supply is expressly stated to be GST inclusive or the supply is subject to reverse charge.

10.2 Liability net of GST

Where any indemnity, reimbursement or similar payment under this Agreement is based on any cost, expense or other liability, it shall be reduced by any input tax credit entitlement, or notional input tax credit entitlement, in relation to the relevant cost, expense or other liability.

10.3 Adjustment events

If an adjustment event occurs in relation to a supply made under or in connection with this Agreement, the GST Amount will be recalculated to reflect that adjustment and an appropriate payment will be made between the parties.

10.4 Survival

This clause will not merge upon completion and will continue to apply after expiration or termination of this Agreement.

10.5 Definitions

Unless the context requires otherwise, words and phrases used in this clause that have a specific meaning in the GST law (as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth)) shall have the same meaning in this clause.

11. TERMINATION

11.1 Either party may terminate this Agreement immediately by notice to the other party in accordance with clause 9.1 if the other party commits a material breach of this Agreement unless the breach is capable of remedy, in which case if the other party fails to remedy the breach within 28 Business Days after being required in writing to do so.

11.2 Termination of this Agreement does not affect any accrued rights or remedies of either party.

11.3 Clauses 3.2.4, 3.3 and 4.3 survive termination of this Agreement.

SCHEDULE 1

Subject Native Vegetation Credits – Guidelines 2017	
Credit Owner	Tierra Land Holdings Pty Ltd
Security Agreement Type	Section 69 of Conservation Forests and Land Act
Subject Land description	Certificate of Title Volume 11812, Folio 852, Lot 16 on Plan of Subdivision TP 363891U, Parish of French Island, Section G
Catchment Management Authority	Port Phillip and Westport
Local Government Area	French Island

<i>Property ID: BBA-3021</i>		
	General biodiversity equivalence units*	Strategic biodiversity score*
BCA: 04	0.700	0.740
BCA: 10	0.400	0.741
BCA: 12	0.471	0.788
Total	1.571 GBEU	
Agreed Price (including GST)	\$129,800.00	per GBEU (including GST)
Agreed trade price (including GST)	\$203,915.80	
Broker fee (including GST)	\$ N/A	
TOTAL Agreed Price (including GST)	\$203,915.80	

SCHEDULE 2

Item 1	Contact/Notice details											
	<table><tr><td>The Purchaser:</td><td>Attention:</td><td>Burnside Properties Pty Ltd att Marshall Dennis</td></tr><tr><td></td><td>Address:</td><td>Suite 2 2/6 Glenferrie Road, Malvern 3144</td></tr><tr><td>The Credit Owner:</td><td>Attention:</td><td>Tierra Land Holding Pty Ltd att Sam Dwyer</td></tr><tr><td></td><td>Address:</td><td>1/24 Glenferrie Road, Malvern Vic</td></tr></table>	The Purchaser:	Attention:	Burnside Properties Pty Ltd att Marshall Dennis		Address:	Suite 2 2/6 Glenferrie Road, Malvern 3144	The Credit Owner:	Attention:	Tierra Land Holding Pty Ltd att Sam Dwyer		Address:
The Purchaser:	Attention:	Burnside Properties Pty Ltd att Marshall Dennis										
	Address:	Suite 2 2/6 Glenferrie Road, Malvern 3144										
The Credit Owner:	Attention:	Tierra Land Holding Pty Ltd att Sam Dwyer										
	Address:	1/24 Glenferrie Road, Malvern Vic										
Item 2	Department Trust Fund Account (For use only when Credit Owner is the Landowner) Payment method details will be provided on the invoice											
Item 3	Credit Owner Bank Account (For use only when Credit Owner is not the Landowner)											
Item 4	Native Vegetation Credit Register Fee To be invoiced to Broker											

SCHEDULE 3

NOTICE TO THE REGISTRAR – NATIVE VEGETATION CREDIT TRADING REGISTER

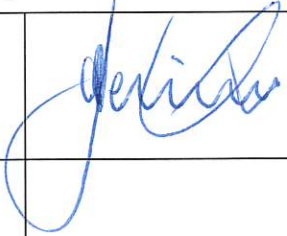
Request Transfer and Allocate Benefit of Credit

NOTE: if this is not filled in then the Registrar will trade the credits as per Schedule 1.

Credit Allocation

<i>If Credit is being allocated as part of this transaction</i>	
Planning approval type:	Planning Permit
Planning approval reference number:	PA2017/5795
Project name:	
Address of clearing site:	Crn Western Highway and Westwood Drive Burnside
Development consent reference and description of the subject land <small>(if there is no planning approval reference)</small>	N/A
Responsible authority:	City of Melton

Transaction approval

Signature of PURCHASER		Date: 23/5/18
Signature of Broker		Date: