

Queensland



**LOCAL GOVERNMENT
(ROBINA TOWN CENTRE
PLANNING AGREEMENT)
ACT 1992**

Act No. 63 of 1992

Queensland



**LOCAL GOVERNMENT (ROBINA TOWN
CENTRE PLANNING AGREEMENT) ACT
1992**

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Queensland



**Local Government (Robina Town Centre
Planning Agreement) Act 1992**

Act No. 63 of 1992

**An Act to provide for the approval of an agreement relating to the
planning and development of certain land at Robina in the Shire
of Albert, and for other purposes**

[Assented to 7 December 1992]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows.

Short title

1. This Act may be cited as the *Local Government (Robina Town Centre Planning Agreement) Act 1992*.

Definitions

2. In this Act—

“existing planning scheme” means the scheme that, for the purposes of the *Local Government (Planning and Environment) Act 1990*, was the planning scheme for the Shire of Albert immediately before the commencement of this Act;

“planning agreement” means—

(a) the Robina Town Centre Planning Agreement—

(i) that was made between Robina Land Corporation Pty Ltd ACN 010 159 387 (**“Robina”**), Robina Properties Pty Ltd ACN 010 147 038 (**“Robina Properties”**) and the Council of the Shire of Albert (the **“Council”**) on 18 September 1992; and

(ii) a copy of which is set out in the Schedule (other than the zoning plan identified as Drawing No. 8951 B, which is held, and may be inspected, at the office of the Council, and is reproduced in the Schedule in a modified form); or

(b) if the agreement mentioned in paragraph (a) is amended by a further agreement approved by the Governor in Council by regulation— the agreement as so amended;

“site” means the land referred to in Parts 1 and 2 of the First Schedule of the planning agreement.

Rezoning of land

3. The land referred to in Part 1 of the First Schedule of the planning agreement is—

- (a) excluded from its zoning under the existing planning scheme; and
- (b) included in the zones referred to in Part 4 of the First Schedule of the planning agreement, as provided for in that Part.

The planning agreement

4. Each party to the planning agreement, so far as the planning agreement applies to the site—

- (a) is taken to have been authorised to enter into the planning agreement; and
- (b) may do anything the planning agreement authorises it to do; and
- (c) must do everything that it is required to do under the planning agreement.

Status of planning agreement

5.(1) The planning agreement, so far as it applies to the site, has the force of law.

(2) From the commencement of this Act, for the purposes of the *Local Government (Planning and Environment) Act 1990*, the planning scheme for the Shire of Albert applicable to the site consists of—

- (a) subject to subsection (3), the existing planning scheme; and
- (b) the planning agreement.

(3) If there is an inconsistency between the planning agreement and—

- (a) the existing planning scheme; or
- (b) a by-law made by the Council of the Shire of Albert (whether before or after the commencement of this Act); or
- (c) the *Local Government (Planning and Environment) Act 1990* as in force at the commencement of this Act; or

- (d) the *Building Act 1975* as in force at the commencement of this Act;

the planning agreement prevails to the extent of the inconsistency.

(4) To remove any doubt, it is declared that, if the existing planning scheme is amended or superseded after the commencement of this Act, the amendment or the superseding scheme does not apply to the site.

Amendment of planning agreement

6.(1) In this section—

“**further agreement**” means a further agreement mentioned in paragraph (b) of the definition “planning agreement”.

(2) The requirements of the *Local Government (Planning and Environment) Act 1990* that apply up to, but not including, the giving of approval by order in council if a local authority proposes to amend a planning scheme apply in respect of a further agreement that is proposed to be submitted to the Governor in Council for approval by regulation.

Transfer of land

7.(1) A person who becomes the registered proprietor of land in the site is, with respect to the land, bound by the planning agreement as if the person had become a party to the agreement instead of Robina and Robina Properties.

(2) Subsection (1) does not affect the operation of a provision of the planning agreement that applies only to a person who becomes the registered proprietor of land in the site.

~~Subsection~~ (1) does not affect the operation of a provision of the planning agreement that requires a subsequent purchaser of land in the site to lodge security additional to that which would have been required from Robina or Robina Properties.

Crown and constructing authorities not bound

8. Nothing in this Act or the planning agreement binds—

- (a) the Crown; or
- (b) a constructing authority (within the meaning of the *Acquisition of Land Act 1967*) in relation to its acquisition and use of land in the site.

Regulations

9. The Governor in Council may make regulations for the purposes of this Act.

SCHEDULE

ROBINA TOWN CENTRE PLANNING AGREEMENT

THIS AGREEMENT is made the 18th day of September 1992

BETWEEN

PARTIES

ROBINA LAND CORPORATION PTY. LTD. ACN 010 159 387 a company incorporated in the State of Queensland and having its registered office at 34 Glenferrie Drive Robina in the State of Queensland (hereinafter called “Robina”)

AND

ROBINA PROPERTIES PTY. LTD. ACN 010 147 038 a company incorporated in the State of Queensland and having its registered office at 34 Glenferrie Drive Robina in the State of Queensland (hereinafter called “Robina Properties”)

AND

COUNCIL OF THE SHIRE OF ALBERT of Nerang-Southport Road Nerang in the State of Queensland (hereinafter called “the Council”)

SECTION 1

STRUCTURE OF AGREEMENT

1. This Agreement is divided into the following sections and parts:—

Section	1	(Cl. 1)	Structure of Agreement
Section	2	(Cl. 2)	Recitals
Section	3	(Cl. 3–9)	Obligations of Parties
Section	4	(Cl. 10–27)	Bonding, Security and Release of

SCHEDULE (continued)

			Plans
Section	5	(Cl. 28–37)	Default by Robina
Section	6	(Cl. 38–39)	Release of Robina and Robina Properties
Section	7	(Cl. 40–61)	Sale and Transfer of Land
Section	8	(Cl. 62–68)	Specification and Maintenance of Works
Section	9	(Cl. 69)	Inspection of Works by the Council
Section	10	(Cl. 70–78)	Settlement of Disputes
Section	11	(Cl. 79–82)	Subsequent Approvals to be Consistent with this Agreement
Section	12	(Cl. 83)	Transfers of Land to the Crown or the Council
Section	13	(Cl. 84–92)	General
Section	14	(Cl. 93–99)	Interpretation

THE FIRST SCHEDULE

Part	1	Description of the subject land
Part	2	Description of the Kerrydale Land
Part	3	Present Zone
Part	4	Proposed Zone
Part	5	Description of Robina Town Centre Core
Part	6	Plan of Combined Site

THE SECOND SCHEDULE

Part	1	Introduction
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SCHEDULE (continued)

Part	2	Planning Intentions
Part	3	Roads and Roadworks
Part	4	Water Supply
Part	5	Sewerage Reticulation
Part	6	Parks, Open Space, Pathways, Bikeways and Landscaping
Part	7	Waterways and Weirs
Part	8	Community Facilities
Part	9	Plan of Development—Robina Town Centre Core
Part	10	Development requirements—Special Business Zone
Part	11	Development requirements—Kerrydale Land
Part	12	General
Part	13	Obligations of Council

SCHEDULE (continued)**SECTION 2****RECITALS****2. WHEREAS:—**

- 2.1 Robina and Robina Properties are between them the registered proprietors of an estate in fee simple in all that land more particularly described in Part 1 of the First Schedule (“the subject land”) and Part 2 of the First Schedule (“the Kerrydale land”);
- 2.2 Robina proposes to develop the subject land as a regional business, commercial and community centre over an extended period estimated at 25 years;
- 2.3 The Kerrydale land is zoned to permit its development as a golf course, hotel, accommodation units and public open space and Robina proposes, at the Council’s request, to integrate its development with the development of the subject land;
- 2.4 It is Robina’s intention that substantial elements of the final development on both parcels of land (“the combined site”) be carried out by others on allotments subdivided from the combined site and acquired from Robina;
- 2.5 The nature of Robina’s proposal is such that while the major infrastructure requirements to service it can be particularised and specified with the required level of detail and certainty, the details of the final form of the development are not able to be specified except in terms of:—
 - 2.5.1 statements of planning intent describing the proposed development in terms of uses to be undertaken, facilities to be provided, objectives to be achieved and the planning and social character of the final development;

SCHEDULE (continued)

- 2.5.2 concept plans containing illustrations or examples of how the statements of intent might be implemented;
- 2.6 The proposal has been the subject of a public notice process and the public has had the opportunity to comment on or object to the development;
- 2.7 Following that process, the Council considers that, in the public interest, the development ought to be supported;
- 2.8 The timing, order of development and final form of each part of the development (and hence the development as a whole) will depend upon market demand and related commercial and financial factors;
- 2.9 Accordingly, the approval and development control process required to allow the development to proceed while safeguarding the public interest in securing orderly and properly serviced development involves:—
 - 2.9.1 the imposition of legally enforceable obligations securing provision by Robina of the necessary infrastructure;
 - 2.9.2 the provision of certainty to Robina as to the scope and limit of those obligations;
 - 2.9.3 ensuring that, in exchange for assuming those obligations, Robina is given a legally effective approval to carry out the whole of the development;
 - 2.9.4 implementing a secondary planning approval process for each part of the final development by which the Council can ensure, in the public interest, that each final development proposal is serviced by the necessary infrastructure and is consistent with the statements of intent;
- 2.10 The Local Government (Planning and Environment) Act 1990 does not provide a means or framework by which that process may be implemented (though the mechanisms under that Act for exclusion of land from its existing zone

SCHEDULE (continued)

and including it in another zone appropriate to a development proposal, for obtaining the consent of the Council to use land for particular purposes, for notification of conditions of permitted development and for obtaining approval to subdivide land are relevant to the proposed development and have a role to play in the overall process);

- 2.11 The parties have accordingly determined to enter into an Agreement for the purpose of establishing the required process in contemplation the legal power so to do being conferred on them by enabling legislation and in contemplation of that legislation excluding the subject land from the present zone and including it in the proposed zone, the parties therefore now enter into this Agreement for the purposes aforesaid and acknowledge, undertake and agree as follows.

SCHEDULE (continued)**SECTION 3****OBLIGATIONS OF PARTIES***Obligations of Council*

3. Upon the subject land being excluded from the present zone and included in the proposed zone and this Agreement having the force of law, the Council must do all things which by this Agreement it has undertaken to do within the period or periods set forth in this Agreement.

Obligations of Robina and Robina Properties

4. Upon the subject land being excluded from the present zone and included in the proposed zone and this Agreement having the force of law, Robina and Robina Properties must do all things which by this Agreement each has undertaken to do within the period or periods set forth in this Agreement.

Timing of Certain Obligations

5. Without limiting the generality or plain meaning of clause 4, it is acknowledged by the Council that, except to the extent (if any) otherwise specifically and unequivocally set forth in this Agreement:—
 - 5.1 obligations to carry out works which are to be provided in conjunction with or by the commencement of the use of Stage 1 are not required to be completed any earlier than the time of completion of Stage 1;
 - 5.2 if Robina commences development in any Service District other than the Service District/s which contain/s Stage 1, Robina's only obligations hereunder are to perform the relevant obligations (Service District) associated with that Service District.

To avoid any doubt, this clause does not operate to bring forward the time for completion of any obligations in respect of which a later

SCHEDULE (continued)

date or time for performance has been specified or which are contemplated to be completed subsequent to completion of Stage 1.

Modification of Obligations—Reduction in Shops

6. If the major shopping development in Stage 1 is proposed to have a net lettable shop floor area of less than 40,000 square metres at the time a certificate of classification for the first shop building is issued, then the Council must determine the extent to which the obligations otherwise required to be performed by the completion of Stage 1 should be modified or postponed as a consequence of the proposed reduction in the net lettable shop floor area of the major shopping development.

Suspension of Obligations

7. Where any of Robina's obligations cannot be performed until the occurrence of another event or act to be performed by the Council or third parties, then notwithstanding any other requirement as to time for performance of the obligation, but subject to any specific provision to the contrary elsewhere herein:—
 - 7.1 the obligation is not required to be performed until the occurrence of that event or act;
 - 7.2 where performance of the obligation is a precondition of Robina being entitled to a right or benefit under this Agreement, the performance of the obligation by that time is no longer a precondition of that right or benefit; and
 - 7.3 the obligation must be performed by Robina upon the occurrence of the event or act.

Kerrydale Land

8. It is agreed that:—
 - 8.1 the provisions of this Agreement extend to and apply to the Kerrydale land;
 - 8.2 the requirements which would otherwise apply to the development of the Kerrydale land by virtue of its rezoning pursuant to the Council's approval of Rezoning Application

SCHEDULE (continued)

2061 are modified by this Agreement in that:—

- 8.2.1 the requirements set out in Part 11 of the Second Schedule are those which must be performed specifically in relation to development of the Kerrydale land in consequence of its rezoning pursuant to Rezoning Application 2061 (in lieu of the conditions originally imposed by the Council on its approval of that application);
- 8.2.2 the other obligations and requirements in relation to development of the Kerrydale land for the purposes permitted by its rezoning are those contained in this Agreement which relate or are capable of relating to the Kerrydale land.

Particular Obligations of Robina Properties

9. Upon the subject land being excluded from the present zone and included in the proposed zone and this Agreement having the force of law, Robina Properties must:—
 - 9.1 at all times thereafter allow Robina and the Council full, free and uninterrupted right and liberty to enter upon all parts of the combined site owned by it for the purpose of enabling either of those parties to undertake, carry out, provide and do or cause to be undertaken, carried out, provided and done any work matter or thing which either may be required or authorised so to do under this Agreement or otherwise under any approval or law relating to the proposed development in accordance with or as contemplated by this Agreement; and
 - 9.2 thereafter be bound by the provisions of Section 7 hereof in respect of any transfer of land owned by it.

SCHEDULE (continued)

SECTION 4

BONDING, SECURITY AND RELEASE OF PLANS

Statement of Intent—Security

10. It is acknowledged to be the common intent of the parties with respect to the provision of security for performance by Robina of its obligations hereunder that:—
 - 10.1 Robina must lodge and maintain a security (to the initial value of \$750,000.00) as a general and continuing security for the performance of all its obligations and the obligations of Robina Properties hereunder;
 - 10.2 given that Robina and Robina Properties intend to sell parts of the combined site as separate parcels to third parties, the Council regards its ability under this Agreement and otherwise at law to withhold sealing and/or release of plans of subdivision until performance of relevant obligations by Robina and Robina Properties as being (with the said security) a sufficient means by which to secure performance of those obligations;
 - 10.3 accordingly, Robina will not generally be required to lodge further security for performance of its obligations;
 - 10.4 the Council holds the view set out in clause 10.2 only while Robina remains solely responsible for performance of those obligations and will not necessarily hold the same view once ownership of the combined site is fragmented and the Council is dealing with a multiplicity of obligated persons. Accordingly, other parties may be required to lodge further security upon a transfer of obligations in accordance with Section 7.

SCHEDULE (continued)

General Bond

11. To give effect to clause 10.1 and to secure to the Council the due performance and fulfilment by Robina of its obligations under this Agreement and under subsequent applications, Robina will obtain at Robina's own cost and expense in favour of the Council and deposit with it on the execution hereof a bond in a form approved by the Council ("the General Bond") granted by a bank or financial institution ("the obligor") approved in writing by the Council providing for the payment to the Council by the obligor of the sum of \$750,000.00 or so much thereof as shall be owing or payable by Robina under this Agreement.

Form of Security

12. The General Bond must:—
 - 12.1 provide for the payment of the bonded amount or part thereof at any time or times forthwith upon receipt by the obligor of a certificate signed by the Shire Clerk that a sum of money to be set out therein is payable by Robina to the Council pursuant to the provisions of this Agreement; and
 - 12.2 otherwise contain such terms and conditions as are reasonable and relevant.

Review of Security Amount

13. The amount for which the General Bond is security may, at the election of the Council, be adjusted at intervals of not less than five years commencing from the date of this Agreement. The adjusted bond amount shall be that amount which bears the same proportion to \$750,000.00 as the Consumer Price Index figure (All Groups—City of Brisbane) for the December quarter prior to the adjustment date bears to 213.8 being that figure for the December quarter 1991. Robina must cause the amount of the General Bond to be adjusted within thirty (30) days of the Council exercising its rights under this clause.

Restoration of Security

14. In the event that any part of the General Bond is estreated by the

SCHEDULE (continued)

Council hereunder, Robina will, if required by the Council and within thirty (30) days of receipt of notice in that behalf, take such action as is necessary to restore the amount for which it is effective as security to the sum of SEVEN HUNDRED AND FIFTY THOUSAND DOLLARS (\$750,000.00) or such other sum as is required having regard to any application of clause 13 and/or clause 16.

Release of Security

15. Upon Robina performing and fulfilling its obligations under this Agreement, the Council must within fourteen (14) days thereafter release and discharge the obligor(s) from any bonds.

Partial Release of Security

16. In the event that at any time the Engineer's estimate of the fair estimated cost of completing the works remaining to be performed or completed by Robina (including 5% of the value of any works in respect of which a defects liability period is current) is less than the amount for which the General Bond is effective as security, the Council must within fourteen (14) days after a request by Robina in that behalf certify in writing to that effect and immediately thereupon the amount for which the General Bond is effective as security is reduced to the amount of the Engineer's estimate.

Statement of Intent—Mode of Development

17. Robina may from time to time elect to:—
- 17.1 carry out the proposed development on a single Service District by single Service District basis in which event it is entitled to the sealing and release of plans of subdivision within the one Service District under development upon request and at any time but is obliged to fully complete construction of all subdivision works and infrastructure to service the Service District before being entitled to release of any plans in another Service District proposed to be developed ("Single Service District basis"); or
- 17.2 carry out the proposed development by commencing and carrying out work in more than one Service District at the

 SCHEDULE (continued)

same time, with development in those Service Districts not necessarily being sequential to previously completed Service Districts or other Service Districts under development, in which event plans of subdivision will not be sealed and released until Robina has substantially completed all subdivision works and infrastructure relevant to the subdivision concerned (“Multiple Service District basis”).

Having made an election, Robina may at any time and from time to time elect the other alternative. If it elects to proceed on a Single Service District basis at a time when there are Service Districts not then completed, its election is not effective until such time as all then outstanding relevant obligations (Service District) have been completed.

Sealing of Plans—Single Service District Basis

18. If Robina elects to carry out the proposed development on a Single Service District basis, then, while such election is extant, plans of subdivision (except the last plan of subdivision) comprising land within a single Service District will be sealed and released by the Council upon request by Robina prior to the relevant obligations (Service District) being performed (but otherwise subject to compliance with all relevant legislation and by-laws), and without any further security being provided, but:—
 - 18.1 the last plan of subdivision will not be sealed and released until all relevant obligations (Service District) for the Service District under development have been completed;
 - 18.2 no plans of subdivision (other than those containing only management lots) will be sealed and released in respect of any other Service District until those relevant obligations (Service District) have been completed.

Completion of Relevant Obligations

19. If Robina carries out development on a Single Service District basis, it must carry out development of that Service District progressively and continuously and must complete the relevant obligations (subdivision) in respect of all land contained within a plan of

 SCHEDULE (continued)

subdivision which has been sealed and released within a reasonable time after release of the plan.

Sealing of Plans—Multiple Service District Basis

20. If Robina elects to carry out the proposed development on a Multiple Service District basis, then, while such election is extant, plans of subdivision will be sealed and released by the Council prior to performance of the relevant obligations (subdivision) being complete (but otherwise subject to compliance with all relevant legislation and by-laws) and without any further security being provided, but only where:—
- 20.1 the land comprised in the plans:—
- 20.1.1 has, or will upon completion of those obligations have, constructed access to a dedicated and constructed arterial and/or collector road; and
- 20.1.2 is within the catchment area of completed waterworks and completed sewerage works (as defined in Parts 4 and 5 of the Second Schedule);
- 20.2 performance of those obligations has reached the stage where:—
- 20.2.1 major earthworks have been completed;
- 20.2.2 sewers, water mains, and stormwater drains are installed; and
- 20.2.3 roads have been boxed out,
- all in accordance with drawings approved under Section 8;
- 20.3 a registered surveyor or appropriate consultant has certified that:—
- 20.3.1 works then completed are in accordance with approved drawings;
- 20.3.2 contracts for the work necessary to complete the relevant obligations (subdivision) have been let; and
- 20.3.3 all works are contracted to be completed by a

 SCHEDULE (continued)

nominated date within not more than three (3) months;

and

- 20.4 Robina has paid headworks contributions (if any) or other moneys payable hereunder in respect of that subdivision.

Default in completion

21. In the event that plans of subdivision are sealed and released pursuant to clause 20 and the relevant obligations (subdivision) in respect of land included in such plans of subdivision are not completed by the nominated date then:—
- 21.1 the Council may give Robina notice requiring the works to be completed within twenty-one days from the date of issue of the notice;
- 21.2 subject to clause 22, in the event that the requirements of that notice are not complied with within the specified period:—
- 21.2.1 Robina is deemed for all purposes to be in default with respect to the completion of the relevant works and the provisions of Section 5 may be applied by the Council accordingly as though the notice contemplated by clause 28 had been given; and
- 21.2.2 the Council is not obliged to release any further plans of subdivision relating to any part of the combined site prior to completion of the relevant obligations (subdivision) in respect of which default was made.

Extensions of Time

22. Despite clauses 20 and 21, in the event that Robina is unable to complete the relevant obligations (subdivision) within the time referred to in clause 20.3.3 or, as the case requires, clause 21.1, due to circumstances beyond its control, Robina may apply to the Council for an extension of either of those periods of time and the Council must, if it is satisfied on the balance of probabilities that the failure to complete within the specified time was due to circumstances beyond the control of Robina, grant an extension of

SCHEDULE (continued)

time at least equal to the period of delay caused by those circumstances.

Sealing of Plans—Robina Town Centre Core

23. Clauses 17 to 22 (other than 21.2.2) do not apply to the sealing and release of plans of subdivision of land in the Robina Town Centre Core. The following provisions apply to the sealing and release of such plans:—
- 23.1 despite section 5.8(1) of the Act, but subject to clause 23.2 and to compliance with all (other) relevant legislation and by-laws, the Council will seal and release plans of subdivision of land within the Robina Town Centre Core prepared for the purpose of defining sites for particular components of the proposed development, prior to performance of all works required by this Agreement to be completed prior to the completion of Stage 1 and prior to the performance of all relevant obligations (Service District) within the Service District of which the land comprised in that plan of subdivision forms part, without any further security being provided;
- 23.2 a plan must not be sealed and released pursuant to clause 23.1 if it provides for the dedication of any land comprised therein as road, other than a major infrastructure road shown on Plan 2/3/1;
- 23.3 a plan may be sealed and released if it shows land intended as a road as a lot or lots (or as a balance area) but only if an access restriction strip is provided along the full frontage of that lot or lots (or balance area) to any existing road with which it or they will ultimately connect;
- 23.4 an access restriction strip referred to in clause 23.3 must be transferred to the Council on trust for town planning purposes to be dedicated as a road upon completion of the relevant obligations (Service District) for each of the Service Districts comprising Stage 1.

SCHEDULE (continued)*Development Control—Robina Town Centre Core*

24. The Council is not obliged to:—
- 24.1 issue a certificate of classification for any building erected within the Robina Town Centre Core; or
 - 24.2 consent to, seal or release:—
 - 24.2.1 a plan of subdivision containing a dedication of land within the Robina Town Centre Core as road; or
 - 24.2.2 a request to register a road dedication in respect of land within the Robina Town Centre Core, other than for a major infrastructure road as shown on Plan 2/3/1; or
 - 24.3 dedicate as road an access restriction strip referred to in clause 23.3,
- until Robina has completed the relevant obligations (Service District) for each of the Service Districts comprising Stage 1.

Sealing of Plans—Management Lots

25. Clauses 17 to 22 do not apply to the sealing and release of plans of subdivision creating only management lots. The following provisions apply to the sealing and release of such plans:—
- 25.1 subject to clause 21.2.2, the Council must upon request by Robina seal and release plans of subdivision creating only management lots without requiring the relevant obligations in relation to the land therein to have been performed or fulfilled;
 - 25.2 if a management lot is contained within a plan of subdivision consisting of more than one allotment, then the Council will not require the performance of relevant obligations in relation to the land comprising the management lot.

Restriction on Transfer of Management Lots

26. A management lot must not be transferred by Robina without the consent of Council, which consent may be withheld until all relevant

SCHEDULE (continued)

obligations (subdivision) with respect to the land contained within that lot have been performed, except in respect of a management lot which is to be transferred to the Crown or to the Council as required by this Agreement.

Earlier Sealing of Plans—Additional Security

27. Despite anything in this Section, Robina may request the Council to seal and release a plan of subdivision at a time or stage earlier than contemplated under this Agreement and so long as:—

27.1 the Council is satisfied that it holds sufficient security (whether under the General Bond or by reason of the provision of additional security by Robina) for the performance of the relevant obligations (subdivision) in respect of the land comprised in such plan;

27.2 a time for performance of the relevant obligations (subdivision) is specified in this Agreement, fixed by law or otherwise agreed; and

27.3 Robina is not in default in the performance of any obligation under this Agreement then due for performance,

then the Council may comply with Robina's request.

SCHEDULE (continued)

SECTION 5

DEFAULT BY ROBINA

Notice of Default

28. In the event that the Council considers that Robina has failed to perform and fulfil an obligation under this Agreement, it may give notice in writing to Robina, giving full particulars of the matters in respect of which it considers default has occurred and by such notice require the default to be remedied within a reasonable time not being less than 21 days.

Reasonable Time

29. In determining a reasonable time, regard must be had to both the nature of the default and the work or other action required to remedy it, weather, availability of labour, plant and/or equipment, strikes and whether or not the continuation of the default constitutes or causes a public nuisance or raises other circumstances of urgency or emergency.

Suspension of Time—Dispute

30. If Robina, as it is entitled to do, refers the notice to the Expert or the Court under Section 10, Robina's obligation to comply with such a notice is suspended and the Council is not in respect thereof entitled to take any further action or to estreat the General Bond or any other security. The time for compliance (if any) with such notice does not commence to run until Robina has received notice in writing of the Expert's or Court's decision.

Council May Act in Public Interest

31. Despite a suspension of Robina's obligations pursuant to clause 30, the Council may, if in its reasonable opinion circumstances involving a significant threat to or interference with public safety or convenience so warrant, carry out (at its initial cost) such of the work as it alleges is Robina's responsibility and as is necessary to

 SCHEDULE (continued)

remedy the threat or interference in which event such of the costs incurred by the Council (if not the whole) as relate to work which is ultimately found by the Expert or the Court to be Robina's responsibility in accordance with the Council's notice:—

- 31.1 may be recovered from the obligor under the General Bond; and/or
- 31.2 may be recovered from Robina as a liquidated debt.

Council's Remedies

- 32. Should Robina fail to perform and fulfil its obligations as specified in any notice (or any notice amended after reference to the Expert or the Court), the Council may, at its option, forthwith recover from Robina as a liquidated debt or forthwith recover from the obligor pursuant to the General Bond or recover partly from one and partly from the other, the following amounts:—
 - 32.1 the whole of the moneys then due to the Council and not paid by Robina;
 - 32.2 such sum as the Engineer certifies as representing the fair estimated cost of:—
 - 32.2.1 completing works not performed or completed by Robina (including any works performed or to be performed by the Council, the cost of which is payable by Robina) or altering or amending any completed work not constructed in a good and workmanlike manner, all of which are referred to as "incomplete works"; or
 - 32.2.2 carrying out such other work or development (including any addition or extension to any work or development being carried out by Robina) whether within or outside or partly within and partly outside the perimeter of the combined site as the Council may reasonably consider necessary to mitigate the effects of any incomplete works or to make any incomplete works, in the opinion of the Engineer, more effective or useful; and

SCHEDULE (continued)

32.2.3 the Council's charges for supervision, interest, administration costs, legal costs on a solicitor and own client basis, overheads and such reasonable contingency sum as may in the discretion of the Engineer be determined.

Application of Monies Received

33. The Council must apply any sums received by it pursuant to clause 32 as far as the same may extend to or towards all or any one or more of those matters which are referred to in clause 32 as are relevant to remedy or mitigate the default in respect of which payment was claimed and any excess of moneys must be paid to Robina.

Council's Rights of Recovery

34. If the sum or sums at any time or times received or recovered by the Council pursuant to clause 32 are insufficient to complete the carrying out or altering or amending the work required by this Agreement, the Council may at its election:—
- 34.1 carry out, alter or amend such work at its discretion so far as the moneys received by it will, in the opinion of the Engineer, reasonably allow; or
- 34.2 complete the carrying out, altering or amending of such work as required by this Agreement and recover the difference between the costs actually incurred by it in so doing and the sums received or recovered by it under clause 32 from Robina as a liquidated debt.

Alternate Remedy—Direct Action

35. Instead of making recovery from Robina or the obligor in accordance with clause 32, the Council may, after expiration of the time for performance and fulfilment by Robina of its obligations specified in a notice, enter upon the combined site to perform and fulfil the requirements of the notice which Robina has failed to perform or fulfil in which event the Council's actual costs incurred in that regard:—

SCHEDULE (continued)

- 35.1 may be recovered from the obligor under the General Bond;
and/or
- 35.2 may be recovered from Robina as a liquidated debt.

Council's Right to Enter Upon Land

- 36. For the purpose of exercising its rights under clauses 33, 34 and 35, the Council and its agents, servants, employees, contractors and subcontractors and others whether of the class aforementioned or not, authorised by the Council, have the full and free right and liberty to enter upon the combined site with all necessary vehicles plant and equipment.

Time for Rectification by Council

- 37. If the Council exercises any rights under this Section, it must complete the obligations not performed or fulfilled by Robina and which have been specified in the notice to Robina within the same time period after commencement of the exercise of those rights as was stipulated by the Council in the notice given to Robina in respect of those obligations unless prevented from doing so by reasons beyond its reasonable control in which event those obligations must be completed by the Council as soon as is practicable in all the circumstances.

SCHEDULE (continued)

SECTION 6

RELEASE OF ROBINA AND ROBINA PROPERTIES

Completion of Obligations

38. When Robina has performed and fulfilled its obligations under this Agreement then Robina and Robina Properties are released and discharged from any further obligation in respect of the proposed development and the Council must deliver a written release and discharge to Robina and Robina Properties accordingly.

Release in Other Circumstances

39. If before Robina or Robina Properties have performed and fulfilled their obligations hereunder, the last plan of subdivision in the last Service District (not being a plan creating only a management lot) has been sealed and released and there are at the time of release no outstanding obligations then due to be performed, then Robina and Robina Properties have no further obligations hereunder, each is released and discharged from any further performance hereunder, and the Council must deliver a written release and discharge to Robina and Robina Properties accordingly.

SCHEDULE (continued)**SECTION 7****SALE AND TRANSFER OF LAND***Statement of Intent—General*

40. The Council acknowledges that it is Robina's and Robina Properties' intention to subdivide and sell parts of the combined site to third parties. The parties acknowledge that their common understanding and intent with respect to allowing Robina and Robina Properties to so proceed while securing to the Council performance of Robina's obligations hereunder, particularly major infrastructure obligations, is set out in this Section.

Statement of Intent—Major and Minor Obligations

41. Robina's obligations hereunder may be considered under two categories as follows:—
- 41.1 obligations with respect to the provision of the major infrastructure necessary to accommodate the proposed development being:—
 - 41.1.1 the construction of the roads and the payment of the contributions referred to in clauses 24, 25 and 26 of the Second Schedule and Table 2/3/2 (except item 20 thereof);
 - 41.1.2 the construction of the works shown on Plan 2/4/1 and Plan 2/5/1;
 - 41.1.3 the dedication of land and the construction of works pursuant to clauses 81.1, 83, 84, 86 and 87 of the Second Schedule; and
 - 41.1.4 the carrying out of earthworks referred to in clause 101 of the Second Schedule,
("major infrastructure obligations"); and
 - 41.2 obligations with respect to the provision of local roads, parks

 SCHEDULE (continued)

and individual water supply, sewerage services, lakes, waterways and community facilities together with obligations relating to the details and final form of individual components of the proposed development all as described or referred to at various places in Part 6 (other than clauses 81.1, 83, 84, 86 and 87), Part 7 (other than clause 101) and Parts 8 to 12 of the Second Schedule, but not being obligations which the Council may impose on a subsequent application (“minor obligations”).

Statement of Intent—Performance of Major Infrastructure Obligations

42. The major infrastructure obligations must be performed in a co-ordinated and planned manner having regard to regional considerations as well as the sequence of the proposed development and cannot be performed piecemeal or otherwise than in a logical and orderly sequence.

Statement of Intent—Performance of Minor Obligations

43. The minor obligations are not required to be performed until the particular development to which they relate is undertaken and do not ordinarily need to be co-ordinated with similar work being performed in relation to other particular developments.

Statement of Intent—Council’s Approach

44. For the reasons set out in clauses 42 and 43, the Council would prefer Robina to be and remain solely responsible to perform all major infrastructure obligations but does not necessarily take that view in relation to minor obligations. In those circumstances, it is the intent of this Section that:—

- 44.1 Robina or Robina Properties may only include as part of a transfer of land a transfer of major infrastructure obligations if it demonstrates to the Council (on the balance of probabilities) that the transfer of those obligations (and the release of Robina from responsibility therefor) will not prejudice the orderly provision of the major infrastructure required for the proposed development;

 SCHEDULE (continued)

- 44.2 Robina or Robina Properties may transfer land and associated relevant minor obligations without having to demonstrate to the Council anything other than the fact that the transferee is bound by an enforceable agreement to which the Council is a party to perform those obligations.

Sale and Transfer—Major Infrastructure Obligations

45. If Robina or Robina Properties desires to transfer the whole or any part of the combined site subject to the transferee assuming responsibility for performance of some or all of the major infrastructure obligations then all contracts entered into by Robina or Robina Properties must be made conditional upon the consent of the Council to the transfer and the execution by the proposed transferee of the deed contemplated by clause 48 hereof.

Robina to Apply for Consent

46. Robina or Robina Properties must make application in writing to the Council for its consent to the transfer within 7 days of entering into a contract of sale referred to in clause 45.

Application for Consent

47. An application made pursuant to clause 46 must:—
- 47.1 contain full details of the proposed transferee;
 - 47.2 specify the land proposed to be transferred to the transferee;
 - 47.3 specify full details of the major infrastructure obligations for which it is proposed that the transferee assume responsibility instead of Robina;
 - 47.4 demonstrate (on the balance of probabilities) to the Council:—
 - 47.4.1 that the transferee is willing to become contractually bound to the Council to perform those obligations in accordance in all respects with this Agreement and within the time:—
 - 47.4.1.1 specified by this Agreement; or
 - 47.4.1.2 otherwise previously agreed between the

 SCHEDULE (continued)

Council and Robina; or

47.4.1.3 if neither of the foregoing apply, reasonably determined by the Council having regard to work already completed, work due to be completed in accordance with the current construction program and the general co-ordination of infrastructure provision within the land and the surrounding region;

47.4.2 that the transferee is or will be financially able to perform those obligations (including demonstration that the transferee is able to effect dedication of all lands which may be required to be dedicated to the Crown or transferred to the Council pursuant to those obligations);

47.4.3 that the transfer of those obligations (and the release of Robina from responsibility therefore) will not prejudice the orderly provision of the major infrastructure required for the proposed development (having regard, inter alia, to the time fixed for performance of any obligations transferred to other parties under agreements entered into with those other parties pursuant to clause 48.1);

and

47.5 be decided by the Council within fourteen (14) days of its receipt.

The Council in deciding the application may consent to it, refuse it, or consent to it subject to the conditions set out in clause 48.

Decision on Application

48. The Council's consent to such a transfer may be withheld if the Council is not satisfied of any matter required to be demonstrated to it pursuant to clause 47 but the Council must otherwise grant consent subject to:—

 SCHEDULE (continued)

- 48.1 the transferee entering into a deed with the Council whereby it becomes contractually bound to perform the relevant major infrastructure obligations within the relevant time referred to in clause 47.4.1 and otherwise in accordance in all respects with this Agreement;
- 48.2 if required by the Council in any particular case, the transferee providing such security as the Council reasonably requires in respect of the performance of those major infrastructure obligations.

Sale and Transfer—Minor Obligations

- 49. If Robina or Robina Properties desire to transfer the whole or any part of the combined site, subject to the transferee assuming responsibility for performance of some or all of the minor obligations, then Robina or Robina Properties must make application in writing to the Council for its consent to the transfer before completing any Contract of Sale in that regard.

Application for Consent

- 50. An application made pursuant to clause 49 must:—
 - 50.1 contain full details of the proposed transferee;
 - 50.2 specify the land proposed to be transferred to the transferee;
 - 50.3 specify full details of the minor obligations in respect of which it is proposed the transferee assume responsibility instead of Robina; and
 - 50.4 be decided by the Council within fourteen (14) days of its receipt.

Consent if Deed Submitted

- 51. If the application is accompanied by a deed in favour of the Council executed by the transferee whereby:—
 - 51.1 the transferee becomes contractually bound to perform the relevant minor obligations; and
 - 51.2 the transferee, if required by the Council, agrees to provide such security as the Council reasonably requires in respect of

SCHEDULE (continued)

the performance of those minor obligations,
the Council must consent to the application.

Consent in Other Cases

52. If the application is not accompanied by a deed as described in clause 51 then the Council must grant consent subject to:—
- 52.1 the transferee entering into a deed with the Council whereby it becomes contractually bound to perform the relevant minor obligations in accordance in all respects with this Agreement;
 - 52.2 if required by the Council in any particular case, the transferee providing such security as the Council reasonably requires in respect of the performance of those minor obligations.

Consent to Sale of Last Allotment

53. Despite the foregoing and in any event, Robina or Robina Properties must not sell the last allotment in the last plan of subdivision in any Service District without the consent of the Council to that sale. In the event that there is at that time any unremedied default in the performance of the relevant obligations (Service District), the Council may refuse consent until the default is remedied. If, for any other reason, all relevant obligations (Service District) have not been fully performed then, unless the Council is already secured in a manner contemplated by this Agreement in respect of the performance of those obligations, it may, as a condition of its consent, subject such sale to a requirement that:—
- 53.1 the transferee enter into a deed with the Council whereby it becomes contractually bound to perform the outstanding relevant obligations (Service District);
 - 53.2 the transferee provide such security as the Council reasonably requires in respect of the performance of those obligations.

SCHEDULE (continued)

Conditions on Consent to Transfers

54. The Council must not impose any additional conditions or restrictions upon the development of land transferred in accordance with the requirements of this Section beyond those contained in this Agreement.

Certificate as to Completion of Obligations

55. To assist in the easy administration of the requirements of this Section, the Council must within fourteen (14) days of being so requested by Robina issue a certificate/s upon which a person proposing to acquire an interest in the land to which the certificate relates can rely:—

55.1 setting out details of the obligations under this Agreement which continue to be binding on that land; or, as the case requires,

55.2 stating that there are no obligations under this Agreement which continue to be binding on that land and that all such obligations which did bind the land have been satisfied.

Consent Not Required Where Obligations Satisfied

56. Despite clauses 45 and 49, the consent of the Council is not required to a transfer of land in respect of which a certificate under clause 55.2 has been issued or to any transfer from Robina to Robina Properties or from Robina Properties to Robina, whilst they remain related companies under the Corporations Law.

Definition of Transfer

57. In this Section, transfer includes a sale or alienation but does not include a mortgage, lease (other than a lease for a term, including options, exceeding 5 years and granted for the express purpose of permitting development by the lessee pursuant to this Agreement) or grant of easement.

Single Deed Only Required

58. In any case where Robina proposes to transfer both major infrastructure obligations and minor obligations, a deed prepared

SCHEDULE (continued)

pursuant to clause 48 is to deal with all obligations so that only one deed is prepared in connection with the transfer.

No Cost to Council

59. Every deed referred to in this Section is to be prepared at no cost to the Council.

Continuing Liability of Robina

60. Until the proposed transferee executes the required deed and furnishes the required security, or in the event of a transfer being made otherwise than in compliance with this Section, Robina remains liable for the performance of its obligations under this Agreement as though no transfer had taken place.

Release from Liability

61. Upon a deed referred to in this Section being delivered to the Council, executed by all other parties and stamped (where required), together with any security required to be lodged pursuant to the relevant deed, Robina and, where applicable, Robina Properties are released from all obligations under this Agreement in relation to that land or, as the case requires, such of those obligations as are the subject of the deed, and any security given by Robina specifically in respect of that land or those obligations is discharged.

SCHEDULE (continued)

SECTION 8

SPECIFICATION AND MAINTENANCE OF WORKS

Approval of Specification

62. All designs and specifications for those works which Robina is obliged to do by this Agreement (including, without limiting the generality, the specification of all filling, excavation and other earthworks and the final design and specification for all works referred to in the Second Schedule) must be prepared by Robina at its own cost and submitted to the Engineer for the Council's approval and, when required by law, the approval of any other authority or instrumentality. Robina must not commence any such work before it has obtained approval.

Final Specification of Works

63. All works which Robina is obliged to do by this Agreement must be done to the reasonable specification, reasonable satisfaction and under the supervision of the Engineer and of any other authority or instrumentality having jurisdiction in relation thereto. In the interpretation and application of this clause:—
- 63.1 it is recognised that some provisions of the Second Schedule do provide a particular specification for certain works and obligations;
- 63.2 that specification has been determined on the basis of present knowledge and expectation as to circumstances which will prevail at the time the works are to be carried out or the obligations performed;
- 63.3 the circumstances actually prevailing at the relevant time may result in it being necessary or appropriate to adopt a different specification for the final design or performance of such works or obligations;
- 63.4 accordingly, the inclusion of a particular specification in the

SCHEDULE (continued)

Second Schedule does not prevent Robina from seeking approval to an altered specification and does not prevent the Engineer from giving such approval where an alteration is necessary or appropriate having regard to the circumstances prevailing at the relevant time.

Time for Approval

64. The Council must determine its approval or otherwise under clause 62 within a reasonable time. If Robina considers that a reasonable time has elapsed after submission and it has received no response from the Council then it may by notice in writing, hand delivered to the office of the Shire Clerk and stating it is delivered pursuant to this clause, require a response within fourteen (14) days of the date of delivery of the notice and in the event that Robina does not receive a notice of approval or refusal within that time, the designs and specifications submitted are deemed approved.

Notice of Completion

65. Upon effective completion of the works covered by every approved design and specification, Robina must either:—
- 65.1 provide the Council with a certificate of satisfactory completion in accordance with the approved design and specification prepared by an engineer or other appropriate professional person competent to issue it; or
 - 65.2 require inspection and approval of the works by the Council by giving written notice in that regard.

Maintenance Period

66. Upon the Council being satisfied that effective completion of the works has been achieved, it must issue a certificate of practical completion (being, where applicable, the certificate required by Section 5.2(9) of the Act) and notify Robina accordingly that the works are accepted as being “on maintenance”. A defects liability period of 6 months commences to run from the date of the certificate issued under clause 65.1 or from the date of inspection pursuant to clause 65.2. Any defect or want of maintenance in the works advised in writing to Robina by the Council during the

SCHEDULE (continued)

defects liability period must be corrected within a reasonable time, such time to be stated in the notice given by the Council to Robina.

Council to Assume Responsibility

67. At the end of the period of 6 months referred to in clause 66, the works are taken to be “off maintenance” and in the case of works which are to pass to or come under the control of the Council, the Council will thereafter assume responsibility for future maintenance and repair thereof.

No Release of Duty of Care

68. Nothing in this Section operates to:—
- 68.1 limit any relevant duty of care which Robina would otherwise owe to the Council (in tort or contract);
 - 68.2 relieve or release Robina from any relevant duty of care owed by it to the Council,
- in respect of or relating to the design and construction of any works referred to in this Section.

SCHEDULE (continued)

SECTION 9

INSPECTION OF WORKS BY THE COUNCIL

Right of Entry

69. So long as reasonable notice in writing is given of the Council's intention to exercise the powers in this clause, Robina and/or Robina Properties must permit the Council and its officers agents servants contractors and subcontractors and agents and servants of its contractors and subcontractors and others (whether of the class, aforementioned or not), authorised by the Council at all times during the operation of this Agreement to enter into and upon the combined site for the purpose of:—
- 69.1 examining and inspecting the state and condition of the land and any works, including preparation for work and the work site on the combined site or on land adjacent thereto;
 - 69.2 ascertaining whether the obligations of Robina are being observed performed and fulfilled; or
 - 69.3 performing any works which the Council has agreed or is empowered to perform.

SCHEDULE (continued)

SECTION 10

SETTLEMENT OF DISPUTES

Statement of Intent

70. The intent of this Section is to provide a mechanism for:—
- 70.1 ensuring that there is no want of certainty in this Agreement having regard to the necessity to facilitate and expedite the recording of the agreement between the parties without being able to incorporate herein full engineering specifications of the acts and works agreed to be performed undertaken carried out executed provided or done by either party to satisfy the obligations of Robina and/or the Council hereunder;
 - 70.2 resolving, in a speedy and cost-effective manner, any dispute between the parties in relation to the meaning of any provision hereof or the scope, content or extent of their respective obligations hereunder, including disputes as to matters which of necessity cannot be agreed or specified at the present time and must be left to be agreed between the parties at a later time and disputes about decisions of the Council or its officers; and
 - 70.3 referring those matters to the Court for determination or, where the parties prefer an alternate means of dispute resolution, dealing with those matters in accordance with an appropriate non-judicial process.

Reference to Expert

71. It is agreed that if:—
- 71.1 either party alleges or contends that the meaning or effect of any provision of this Agreement is uncertain and therefore to any extent void or of no effect or unenforceable;
 - 71.2 any other dispute arises between the parties relating in any

SCHEDULE (continued)

way to the meaning and effect of any provision of this Agreement or the scope, content or extent of the respective obligations of either party hereunder; or

- 71.3 a dispute arises in relation to any other matter by under or in connection with this Agreement including decisions made by the Council or its officers,

then, unless either or both of the parties wish the matter to be determined by the Court in the first instance and make application to the Court accordingly, that matter may be referred to the final decision of a person (hereinafter called “the Expert”) appointed in accordance with clause 72 who must give a decision in writing on the matter. A party who wishes to refer a matter to the Expert must serve on the other party a written reference giving full particulars of the matter and thereupon the parties must attempt to reach agreement on the appointment of the Expert.

Default of Joint Appointment

72. If after fourteen (14) days from service of the written reference:—

72.1 the parties are unable to agree upon the appointment of the Expert; and

72.2 the party on whom the reference was served has not made application to the Court for determination of the matter in dispute,

the party seeking the reference may request the President for the time being of the Institute of Engineers Australia, Queensland Division to nominate a person having the qualifications set out in clause 73. Robina and the Council must together appoint the person agreed upon by them or the person nominated by the President to be the Expert for the purpose of this clause within seven (7) days of agreement by them on the identity of the Expert or a nomination by the President. If either party refuses to join in the appointment then the other party is hereby irrevocably authorised to appoint the Expert.

SCHEDULE (continued)

Qualifications of Expert

73. The Expert referred to in clause 71 must be a professional person in the discipline most appropriate to the character of the dispute and must be an individual member, or a director of a corporate member, of the Expert's professional body with not less than ten (10) years continuous professional experience in his discipline and with such experience being substantially related to conditions and requirements for new developments.

Function and Powers of Expert

74. By the consent to act, the function of the Expert when determining a matter referred to the Expert is to make certain by the terms of his or her decision what is contended to be uncertain or to resolve any dispute and in considering and giving a decision, the Expert:—
- 74.1 acts as an expert and not as an arbitrator; and
 - 74.2 may, without limiting in any way the discharge of his or her function hereunder and the utilisation of expert knowledge skill and experience, refer to and use knowledge and experience of:—
 - 74.2.1 the Act, the Town Plan and other planning schemes in force in Queensland;
 - 74.2.2 the by-laws of the Council or comparable by-laws in force in other areas;
 - 74.2.3 the terms of arrangements and agreements and conditions of approvals consents and refusals and reasons therefor and policy adopted from time to time by the Council generally in relation to applications for rezoning or development or subdivision of land; and
 - 74.2.4 the common or usual or other requirements or standards or any usual or expected variation of requirements or standards adopted from time to time in relation to or applicable to lands in the Shire of Albert and the development and use of such lands;

SCHEDULE (continued)

- 74.3 must recognise that the development is innovative, unusual and one not generally contemplated by the standard development approval and control process and that what might be appropriate in the case of a conventional development application or approval may not necessarily be appropriate to the proposed development or the unique development control process created for it;
- 74.4 may seek submissions on the matter in dispute orally or in writing from both parties;
- 74.5 may award costs including the Expert's own costs against either party if the Expert is of the opinion that such party acted frivolously or vexatiously or unreasonably (but not otherwise);
- 74.6 must act in accordance with the principles of natural justice and fairness;
- 74.7 despite clauses 86 and 87, must have regard to past conduct and practice of the parties and ensure consistency of such conduct and practice unless there has been a material change of circumstances or unless the same is contrary to an express provision of this Agreement;
- 74.8 should he or she consider that they are not qualified to act as the Expert in the matter referred, may appoint a person so qualified in his or her place to be the Expert or may consult a person having the appropriate qualifications for advice;
- 74.9 must give a decision in writing.

Effect of Expert's Decision

75. The Expert's decision:—
- 75.1 where it makes certain a provision of this Agreement, is deemed for all purposes to form part of and be incorporated in this Agreement from the date of this Agreement;
- 75.2 where it resolves a dispute between the parties, is substituted for any decision made by Council or its officers;

SCHEDULE (continued)

- 75.3 does not in any circumstances create or impose any further liability on Robina in respect of any obligations completed hereunder and accepted by the Council.

Application to Court

76. In the event that either party:—
- 76.1 does not agree with the wish of the other that a matter be referred to the Expert for determination;
- 76.2 is not satisfied with a decision of the Expert,
- it shall be at liberty to apply to the Court for its determination upon the matter. Unless the parties agree to waive time limits, an application to the Court must be made:—
- 76.3 under clause 76.1, not later than 14 days after the service of a written reference on that party under clause 71;
- 76.4 under clause 76.2, not later than 30 days after that party receives the written decision of the Expert.

Powers of the Court

77. On an application made under clause 71 or clause 76, the Court has, to the extent relevant, the powers given to it by Part 7 of the Act as well as:—
- 77.1 the power to interpret this Agreement and make findings as to the planning intent evinced by this Agreement;
- 77.2 the power to determine conditions to be performed or complied with pursuant to or in accordance with this Agreement (either as a matter of interpretation or as a matter of determining what is relevant and reasonably required in a particular case within the parameters laid down by this Agreement).

Where a determination of the Court amends or alters a decision of the Expert or the Council, the determination of the Court supersedes the decision of the Expert or, as the case requires, the Council.

SCHEDULE (continued)

Agreement that Expert's Decision Final

78. Nothing in this section shall be construed to prevent the parties from agreeing that the Expert's decision is final and binding in respect of a particular matter and, except in a case of error of law, any such agreement has effect according to its terms.

SCHEDULE (continued)

SECTION 11

**SUBSEQUENT APPROVALS TO BE CONSISTENT
WITH THIS AGREEMENT**

Scope of Conditions

79. It is acknowledged and agreed by the parties that the conditions and obligations imposed upon and to be undertaken by Robina by and under Parts 3 to 8, clause 160 of Part 11, and Part 12 of the Second Schedule specify the obligations of Robina in respect of the proposed development of the whole of the combined site in relation to those classes of conditions:—
- 79.1 which relate to the infrastructure necessary or appropriate to service the proposed development as a whole and regardless of its final specific form; and
- 79.2 which cannot sensibly, practicably and equitably be imposed on a subsequent application.

Limit on Power to Impose Further Conditions

80. The conditions and obligations contained in Parts 3 to 8, clause 160 of Part 11 and Part 12 of the Second Schedule are exhaustive as to the subject matter with which they deal and in imposing conditions on any subsequent application, the Council must not impose as a condition of approval of that subsequent application a condition relating to a subject matter dealt with in those Parts or clause 160 which imposes a greater or different obligation than is therein specified in respect of that particular subject matter.

No Other Fetter on Subsequent Applications

81. Subject to clause 80, this Agreement does not derogate from the Council's discretion to impose upon subsequent applications conditions:—
- 81.1 authorised by, contemplated by or consistent with any provision of the Second Schedule (including Part 9, Part 10

SCHEDULE (continued)

or, as applicable, Part 11); or

- 81.2 otherwise authorised by law from time to time which relate to matters other than those dealt with by Parts 3 to 8, clause 160 of Part 11 and Part 12 of the Second Schedule.

Other Approvals to be Consistent

82. The Council is not obliged to approve any subsequent application or issue any building approval or other approval or licence in respect of a development, subdivision, building or structure or other matter or thing which forms part of the proposed development and which is controlled or regulated in any way by this Agreement if the relevant application or proposal does not conform to the requirements or intent of this Agreement.

SCHEDULE (continued)

SECTION 12

**TRANSFERS OF LAND TO THE CROWN OR THE
COUNCIL**

Required Procedures

83. All transfers to the Council or dedications to the Crown of land or any interest therein (whether by way of fee simple transfer, easement, lease or otherwise) must be carried out in accordance with the following provisions:—
- 83.1 if registration of a plan of survey is necessary to effect the dealing, the required plan of survey must be prepared by Robina's surveyor on instructions supplied to the surveyor by the Council;
 - 83.2 the Council may require that the required documents must be prepared by the Council or its Solicitors and submitted to Robina and/or Robina Properties for execution but otherwise the relevant documents must be prepared by Robina or its Solicitors and submitted to the Council executed by Robina and/or Robina Properties;
 - 83.3 Robina must sign and return such of the documents prepared by the Council or its Solicitor as require execution by it or Robina Properties within seven (7) days of their submission and vice versa;
 - 83.4 Robina and/or Robina Properties must upon request by the Council or its Solicitors produce the instrument of title for the property affected by the transfer at the Department of Freehold Land Titles in Brisbane and will at that time produce any necessary mortgagee's or other consents stamped (where required) and otherwise in registrable form.

SCHEDULE (continued)

SECTION 13

GENERAL

Payment of Moneys

84. All moneys payable to the Council in pursuance of this Agreement must be paid at the office of the Shire Clerk.

Correspondence

85. All correspondence initiated by the Council in respect of any matters relating to or arising from this Agreement must be signed by the Shire Clerk or the Engineer.

Waiver by Council

86. No waiver by the Council of any breach by Robina or Robina Properties of any of the provisions of this Agreement is to be implied against the Council or be otherwise effective unless it is in writing under the hand of the Shire Clerk or the Engineer and no laches or delays by the Council at any time or times in enforcing any of its rights powers and the like hereunder prejudices or affects those rights or powers.

Waiver by Robina

87. No waiver by Robina or Robina Properties of any breach by the Council of any of the provisions of this Agreement is to be implied against Robina or Robina Properties or be otherwise effective unless it is in writing under the common seal of Robina or Robina Properties and no laches or delays by Robina or Robina Properties at any time or times in enforcing any of their rights powers and the like hereunder prejudices or affects those rights or powers.

Service

88. Any certificate demand or notice by or from the Council to or upon Robina is sufficiently made given or served if left at or forwarded by prepaid post in an envelope addressed to Robina at the address

SCHEDULE (continued)

shown in the Council's rate book and such certificate demand or notice if sent by post is deemed to have been made given or served at the time when in the due course of post it would be delivered at the address to which it is directed whether or not it is actually received. In proving such service by post it is only necessary for the Council to certify to that effect under the hand of the Shire Clerk.

Notice of Default

89. Despite clause 88, a notice of default or notice of intention to estreat a bond must be personally served on an officer of Robina at the registered office of Robina.

Robina Project Officer

90. Upon receiving notice from the Council that it has appointed an officer to act as the Co-ordinator between the Council and Robina in relation to the proposed development, Robina must thereafter address all correspondence in relation to this Agreement or the proposed development to the Shire Clerk for the attention of the "Robina Project Officer" or such other title as the Council shall from time to time advise.

Time of the Essence

91. Time is in all cases of the essence of this Agreement.

Costs

92. Robina must pay to the Council its legal costs of and incidental to the preparation and execution of this Agreement including any stamp duty payable hereon.

 SCHEDULE (continued)
SECTION 14**INTERPRETATION***Relevant Law*

93. This Agreement must in all respects be interpreted in accordance with the law of the State of Queensland.

Statements of Intent

94. All provisions in this Agreement headed “Statement of Intent” are designed to explain the background to and intent of the substantive provisions which follow in the relevant Section. Such provisions must be used as an aid to interpretation of substantive provisions and an interpretation of a substantive provision which furthers the stated intent of any Section must be preferred to one which does not.

Other Laws Apply Except where Inconsistent

95. Subject to clause 80 and except to the extent of any inconsistency with this Agreement, nothing herein contained shall affect prejudice or derogate from the requirements of:—
- 95.1 the Town Plan and the Council’s subdivision of land by-laws;
- 95.2 any other statute, proclamation, Order in Council, rule, regulation, ordinance or by-law,
- or from the rights powers and authorities of the Council under the provisions of any such enactment or under any declared lawful policy of the Council.

Schedules Part of Agreement

96. The Schedules take that form for convenience only and form part of this Agreement as though set forth in the body hereof.

Plans, Tables, Drawings and Documents—Identification

97. A reference to a plan, table, drawing or document identified by a

 SCHEDULE (continued)

particular number is a reference to the plan, table, drawing or document bearing that number held at the public office of the Council and certified under seal by both the Council and Robina as being the plan, table, drawing or document of that number referred to in this Agreement.

Plans, Tables, Drawings and Documents—Open to Inspection

98. The Council must make the plans, tables, drawings and documents referred to in clause 97 (or a full colour photographic reproduction of the same) available free of charge at its public office during its hours of conduct of public business to any person for the purpose of perusal by that person.

Definitions

99. In this Agreement (including the Schedules), unless the context otherwise requires:—

“access restriction strip” means a 0.5 metre wide strip of land along the full frontage of any allotment to a road, held in fee simple by the Director-General, Department of Transport or the Council as trustee for town planning purposes related to the temporary, conditional or indefinite limitation of access to and from the road;

“the Act” means the Local Government (Planning and Environment) Act 1990 and all Regulations made under the Act;

“this Agreement” means this Agreement and includes the Schedules and the plans, tables, drawing and documents identified herein;

“approved building plans” means the drawings and specifications of a proposed building with evidence of the building approval stamped or endorsed on them;

“Area” means a part of the subject land delineated for usage as shown on Plan 2/2/2, i.e., Northern Flood Plain, the Core, The Inner Frame, The Southern Frame;

“Brisbane to Gold Coast Urban Corridor” means the area more or less south of Brisbane and north of Coolangatta bounded on the east by the water and on the west by the range of hills and mountains;

SCHEDULE (continued)

“building application” means an application for approval to the carrying out of building work made under the Building Act 1975;

“building approval” means the approval under the Building Act 1975 of a building application;

“certificate of classification” means a certificate issued under the Standard Building By-laws 1991;

“combined site” means the subject land and the Kerrydale land;

“completion of Stage 1” means the substantial completion of the building comprising Stage 1 or, if there are more than one, buildings comprising a substantial part of Stage 1;

“the Council” means the Council of the Shire of Albert and its successors and assigns or the local authority within which area the combined site may from time to time be included;

“Court” means the Planning and Environment Court constituted under the Act;

“detailed development approval” means approval of the details of development on the Kerrydale land under Part 11 of the Second Schedule;

“development” means the use of any land or the erection or use of any building or other structure or the carrying out of building, mining or engineering operations in, on over or under land, or the making of material changes to any premises;

“development site” when used in relation to any application seeking approval for any aspect of development, means the land in respect of which the application is made;

“Development Deed” means the Deed entered into between Robina and the Council dated the 7th day of February 1986 as varied by Deeds dated the 5th day of July 1988 and the 28th day of October 1988 and the date hereof;

“DOT” means the Department of Transport (Roads Division);

“Earthworks Zone” means a zone delineated on a map prepared by Robina;

SCHEDULE (continued)

“the Engineer” means the officer of the Council who heads the department or branch of the Council having responsibility for the subject matter in relation to which the term is used

“external road network” means all roads or part thereof which are not contained in the combined site;

“final development approval” means approval of an application under Section 5 of Part 9 of the Second Schedule;

“the Kerrydale land” means the land described in Part 2 of the First Schedule;

“last plan of subdivision” means the plan of subdivision which subdivides the last 5% (more or less) of the area of land comprised within a Service District. Robina may declare any plan of subdivision containing a greater percentage of area to be the last plan of subdivision and the Council may declare a plan to be the last plan of subdivision if the remaining (unsubdivided) land within the Service District is not or does not appear to be intended for development (other than as a reserve or for some similar purpose);

“major shopping development” has the same meaning as that term has in the Act;

“management lot” means an allotment on a plan of subdivision not intended for final development or sale for final development and identified as such by Robina when lodging a plan of subdivision for approval with the Council and includes but is not limited to:—

- (a) an allotment intended for future road reserve;
- (b) an allotment for later transfer to the Crown or the Council;
- (c) an allotment shown on a plan of a type accepted by the Registrar of Titles for registration for lease purposes only;
- (d) an allotment to define a balance area; and
- (e) an allotment intended for further subdivision (other than building units subdivision);

“Merrimac Regional Open Space Corridor” means the area shown on Plan 2/2/1;

SCHEDULE (continued)

“the Minister” means the Minister of the Crown for the time being responsible for administration of the Act;

“mixed use development” means a development which contains a combination of office, commercial and residential uses in a high density form together with supporting public facilities and services, parks and public spaces;

“Multiple Service District basis” means a method of development by which two or more Service Districts are provided with services and subdivided simultaneously for the purpose of development as contemplated by this Agreement;

“open space” means any land used or intended to be used for:—

- (a) acoustic sound buffer zones
- (b) enlarged areas of roadways used for open space
- (c) golf course
- (d) landscaped areas including landscaping for visual or acoustic screening
- (e) playing fields and parks, if provided within the combined site
- (f) tennis courts
- (g) waterways
- (h) bowling greens
- (i) lakes
- (j) pathways - pedestrian or bicycle
- (k) swimming pools
- (l) walkways
- (m) visual buffer zones

“Precinct” means part of an Area pertaining to land use shown on a plan referred to in clause 174 of the Second Schedule;

“the present zone” means the zones in which the subject land is

SCHEDULE (continued)

presently located as set out in Part 3 of the First Schedule;

“the proposed development” means the use of the combined site for a Regional Business Centre more or less in accordance with the concepts and statements of intent and objectives contained in Parts 1 and 2 of the Second Schedule and otherwise subject to this Agreement;

“the proposed zone” means the zones in which the subject land is proposed to be included as set out in Part 4 of the First Schedule;

“relevant obligations” means relevant obligations (Service District) and relevant obligations (subdivision);

“relevant obligations (Service District)”, in relation to a particular Service District, means:—

- (a) all works to be carried out pursuant to this Agreement within the Service District
- (b) all works to be carried out pursuant to this Agreement outside the Service District and which are required to provide services (including at least one dedicated and constructed connection to an arterial and/or collector road) to that Service District;
- (c) all works to be carried out pursuant to this Agreement outside the Service District, the time for performance of which is by this Agreement related to the development of the Service District
- (d) all works to be carried out pursuant to conditions of any subdivision approval relating to land within the Service District;

“relevant obligations (subdivision)”, in relation to land forming part of a Service District and which is proposed to be subdivided, means such of the relevant obligations (Service District):—

- (a) as are to be performed within the land to be subdivided; or
- (b) as are to be performed outside the land to be subdivided and which must be completed prior to the sealing and release of

SCHEDULE (continued)

a plan of subdivision of that land (other than one creating a management lot);

“RL” means Reduced Level at Australian Height Datum;

“Robina” means Robina Land Corporation Pty. Ltd. and its successors and permitted assigns;

“Robina Properties” means Robina Properties Pty. Ltd. and its successors and permitted assigns;

“Robina Town Centre” means the combined site and, where the context admits, the proposed development;

“Robina Town Centre Core” or “Core” means the land described in Part 5 of the First Schedule and, where the context admits, that part of the proposed development to be carried out on that land;

“sealed” when used in relation to a plan of subdivision means endorsed with the approval of the Council given under Section 5.3 of the Act;

“Service District” means a district delineated on a map prepared by Robina pursuant to clause 179 in Part 12 of the Second Schedule;

“shop” premises used or intended for use for the purpose of displaying or offering of goods for sale by retail. The term includes:—

- (a) the ancillary storage of goods;
- (b) a food barn;
- (c) administration activities carried out in connection with the use;
- (d) where part of a major shopping development, the fitting of motor vehicle accessories and parts or the rendering of minor services or minor running repairs to motor vehicles,

but does not include commercial premises, a general store, a hotel, an industry, a service station, a showroom, a stall or a warehouse as those terms are defined in the Town Plan;

“Single Service District basis” means a method of development by

SCHEDULE (continued)

which only one Service District at a time is provided with services and subdivided for the purpose of development as contemplated by this Agreement, by which plans of subdivision are sealed and released upon request by Robina independently of the stage of performance of relevant obligations and by which no other Service District can be subdivided or developed until completion of relevant obligations in the current Service District;

“the Shire Clerk” means the Shire Clerk of the Council and includes the person (if any) for the time being acting as Shire Clerk;

“Stage 1” means development of that stage, Service District or Service Districts of the proposed development which includes a major shopping development in the Robina Town Centre Core;

“Strategic Plan” means the Strategic Plan forming part of the Town Plan;

“the subject land” means the land described in Part 1 of the First Schedule;

“subsequent application” means any application to the Council for:—

- (a) final development approval;
- (b) notification under the Town Plan of conditions on a permitted use;
- (c) consent under the Town Plan to use land or erect or use a building;
- (d) detailed development approval; or
- (e) approval to subdivide any part of the combined site;

“the Town Plan” means the Town Planning Scheme for the Shire of Albert published in the Queensland Government Gazette dated 19 March 1988 and the Council’s by-laws relating to town planning;

“vessel” includes every ship, boat, and every other description of vessel used or designed for use for any purpose on the sea or in navigation: Without limiting the generality of the foregoing, the term includes any dinghy, lighter, barge, punt, hulk, raft, pontoon, or like

SCHEDULE (continued)

vessel;

“works” means the works set out and contemplated to be undertaken as described in the Second Schedule;

Words importing the singular number include the plural number and vice versa and words importing any gender include the other genders and words importing only persons include corporations and/or associations and/or bodies and vice versa in each respective case.

SCHEDULE (continued)

FIRST SCHEDULEPART 1THE SUBJECT LAND

Lot 1 on Registered Plan No. 68799, Lot 852 and part of Lot 853 on Registered Plan No. 226788, part of Lots 1 and 2 on Registered Plan No. 225573, part of Lot 823 on Registered Plan No. 226764, part of Lot 888 on Registered Plan No. 229613, Lot 889 on Registered Plan No. 229613, part of Lot 866 on Registered Plan No. 228559, Lot 917 on Registered Plan No. 800193 and part of Lot 2 on Registered Plan No. 225584 all in the County of Ward Parish of Gilston containing an area of 253.2176 hectares situated at Pacific Highway, Lavers & Gabriels Roads, Robina Parkway, Kidman Street & Priddeys Road, Christine Avenue & Geraldton Drive, Kerrydale in the State of Queensland being the land shaded and hatched on Drawing No. 8951B and as more particularly described by metes and bounds in Document 1/1/1.

PART 2THE KERRYDALE LAND

Lot 891 on Registered Plan No. 229616, part of Lots 1 and 2 on Registered Plan No. 225573, part of Lot 823 on Registered Plan No. 226764 and part of Lot 853 on Registered Plan No. 226788 all in the County of Ward Parish of Gilston, being the land cross-hatched on Drawing No. 8951B and as more particularly described by metes and bounds in Document 1/1/2.

SCHEDULE (continued)

PART 3

PRESENT ZONE

Future Urban Rural B
Residential A

PART 4

PROPOSED ZONE

As to that part of the subject land shaded on Drawing No. 8951B and as more particularly described by metes and bounds in Document 1/1/3—Special Business zone.

As to that part of the subject land hatched on Drawing No. 8951B and as more particularly described by metes and bounds in Document 1/1/4—Special Facilities (Robina Town Centre Core) zone [*previously described as Special Facilities (Robina Town Centre Core in accordance with Plan of Development No. 2270) zone*].

PART 5

DESCRIPTION OF ROBINA TOWN CENTRE CORE

Part of Lot 888 on Registered Plan 229613 in the County of Ward Parish of Gilston being that part of the subject land hatched on Drawing No. 8951B and as more particularly described by metes and bounds in Document 1/1/4.

SCHEDULE (continued)

SCHEDULE (continued)

SECOND SCHEDULE

PART 1

INTRODUCTION

Rezoning Application

1. Robina applied to the Council by Rezoning Application No. 2270 dated 10 July 1990 to exclude the subject land from the present zone and include it in the proposed zone.

Master Planning

2. As discussions and negotiations in relation to that rezoning application proceeded it became apparent that the development proposed by Robina pursuant to the application involved the master planning of a new mixed use community rather than a specific development application and that the existing legislation did not provide an adequate framework within which to implement the proposal.

Deficiencies in Existing Legislation

3. The reasons why the existing legislation was inadequate may be summarised as follows:—
 - 3.1 the inclusion of part of the land in the Special Facilities (Robina Town Centre Core) zone is intended to confer a legal right to use any part of that land for any of the purposes set out in clauses 120 and 121 of Part 9 of the Second Schedule (subject to the Council's approval of the details of the final development and, in the latter case, subject to obtaining town planning consent);
 - 3.2 the land to be included in the Special Business zone may be used for any of the purposes set out for the zone under Columns 3 and 4 of the Table of Zones in the Town Plan

 SCHEDULE (continued)

subject to the notification of conditions or to obtaining the Council's consent where required;

- 3.3 the infrastructure requirements for the development as a whole can be determined with certainty on the basis of maximum equivalent population fixed by prescription of limits on building heights and site coverage for commercial buildings and by prescription of maximum populations for residential buildings;
- 3.4 it is nevertheless not possible to determine the proportion or extent that each of the permitted or permissible uses will assume;
- 3.5 it is similarly not possible to determine or specify the precise form and sequence of development;
- 3.6 the matters referred to in clauses 3.4 and 3.5 are capable of description but only in a conceptual way by means of:-
 - 3.6.1 statements of planning intent describing the proposed development in terms of uses to be undertaken, facilities to be provided, objectives to be achieved and the planning and social character of the final development; and
 - 3.6.2 concept plans containing illustrations or examples of how the statements of intent might be implemented;
- 3.7 part of the land considered to form part of the Robina Town Centre concept (the Kerrydale land) had already been rezoned and there was no adequate mechanism available to integrate this approval with the rest of the proposal.

Required Method of Development Control

4. The matters referred to in clauses 3.4 and 3.5 will evolve gradually over a period of years. A flexible method of controlling development is accordingly required so that:—
 - 4.1 infrastructure including roads, drainage, water supply, sewerage, transport and open space can be properly provided for, not just for immediate development needs, but for what

 SCHEDULE (continued)

is envisaged to be the future population living and working in the subject land and surrounding regions; and

- 4.2 final development proposals can be assessed for consistency with the statements of planning intent to ensure that the development actually carried out is within the spirit and intent of this Agreement.

Areas and Precincts

5. Development will take place on a stage-by-stage basis in no readily or accurately predictable pattern or timing. To facilitate an understanding of the methodology adopted, the subject land has been divided into the following categories:—

- 5.1 **Land Use Areas**, being
- Northern Flood Plain
 - The Core
 - The Inner Frame
 - The Southern Frame

These areas are shown on Plan 2/2/2 and a more detailed explanation of their characterisation is contained in Part 2.

- 5.2 **Precincts**, being parts of each of those land use Areas identified for different uses.

In the Core, shops, offices and associated service and recreation activities will, together with car parking, open space and the waterways, dominate the Area and identification of particular Precincts within the Core may be unnecessary or, if done, may relate simply to breaking down the Core into physically smaller areas within which detailed development planning can be done (rather than into areas of different land use character).

In the Inner Frame, some Precincts have already been identified, as can be seen from Part 2.

In the other Areas, planning has not yet reached the stage where Precincts can be identified, though Plan 2/11/1 is a de facto Precinct plan for most of the Northern Flood Plain.

SCHEDULE (continued)

It is intended, when land uses are being considered, that Precincts will be delineated by the use or uses intended for them. Whilst uses in Precincts will emerge from time to time, it is not expected that this will in any way have a bearing on where actual physical construction will take place or that their boundaries will be inflexible.

Stages of Construction

6. Construction can be thought of as occurring in three stages:—
 - 6.1 the first stage being earthworks when the land is shaped and roads, waterways, parks, etc. are formed;
 - 6.2 the second stage when services such as roads, water supply, sewerage, electricity and telephone are constructed; and
 - 6.3 the third is when construction of buildings occurs.

Purpose of Agreement

7. The purpose of this Agreement is to:—
 - 7.1 specify with the necessary certainty and enforceability Robina's obligations in relation to those matters referred to in clauses 6.1 and 6.2 which cannot be adequately regulated by application of existing legislation to the proposed development; and
 - 7.2 provide a mechanism and a process whereby Robina's planning obligations in relation to the matters referred to in clause 6.3 can be determined, within certain parameters and subject to a fair and effective dispute resolution process where necessary.

Earthworks Zones and Service Districts

8. Earthworks contracts will usually be undertaken over a larger area than that for which services are to be provided. Accordingly, for ease of administration and understanding, the combined site will be categorised by:—
 - 8.1 "Earthworks Zones" within which earthworks will be carried out in accordance with an approved plan or plans;

 SCHEDULE (continued)

and

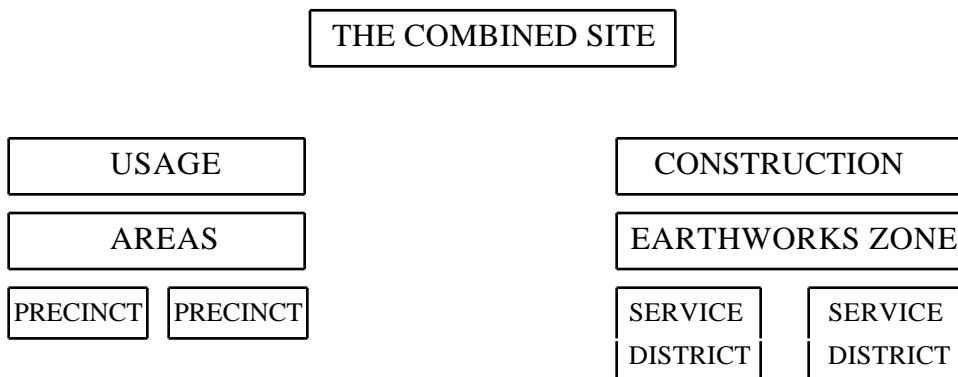
8.2 “Service Districts” within which services will be constructed or provided in accordance with an approved plan or plans.

This Agreement has therefore adopted the following scheme:—

Areas (for usage)	Earthworks Zones (for earthworks)
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Precincts (for usage)	Service Districts (for services)
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which may be shown diagrammatically as follows:—



Importance of Identifying Zones and Districts

9. Having regard to the foregoing scheme, the proper identification of Earthworks Zones and, more importantly, Service Districts is of fundamental importance from the point of view of development control. The usage to which the combined site may be put is already controlled by the terms of this Agreement and, subject thereto, the precise content and form of the final development are matters for Robina and other parties who ultimately take the benefit of this Agreement or the approval of subsequent applications.

The Council requires that development occur in an orderly and controlled manner and this is to be achieved by requiring Robina to complete, effectively secure and/or effectively co-ordinate the first

SCHEDULE (continued)

two stages of construction (earthworks and services) in any given Service District before fragmentation of the landholding in that District is permitted. The provisions of Sections 4 and 7 in this Agreement are designed to achieve this result.

SCHEDULE (continued)**PART 2****PLANNING INTENTIONS***Regional Context*

10. The intention of this Agreement is to enable the development of Robina Town Centre as a major comprehensively planned Regional Business Centre accommodating the highest order of retailing, business, administration, entertainment, cultural, recreational and other community facilities.

Given its strategic location and the opportunity for comprehensively planning a “green field” site, Robina Town Centre will play a major role in serving central place needs of not just adjacent districts, but also the area included in the Gold Coast Statistical District and southern parts of the wider Brisbane to Gold Coast Urban Corridor as well as parts of Northern New South Wales, as demonstrated by Plan 2/2/1.

As the first major Regional Business Centre to be located inland from the coastal strip, it is well placed to service the needs of the growing hinterland population and its strategic location at the intersection of major arterial roads with the Pacific Highway as well as at the terminus of the proposed Brisbane to Robina/Gold Coast railway will ensure high levels of accessibility from/to both the local and wider regions.

The opportunity this location offers for Robina Town Centre to become a major public transport focus with a transit network radiating from the proposed rail terminus, will enable its development as a major office employment centre for both the public and private sectors as well as a major centre for the provision of government/community services, cultural and recreational facilities.

The high employment potential is further enhanced by the Robina Town Centre’s location close to the Bond University and its

SCHEDULE (continued)

Research Park as well as by its attractive water enhanced landscape setting at the edge of the Merrimac regional open space corridor.

The continuing development of this Merrimac regional open space corridor for golf and recreation resort facilities, the increasing tourist traffic on the national Pacific Highway and the proximity to both hinterland and coastal tourist and recreation attractions will also ensure a major tourism and recreation role for the Robina Town Centre for hotel/motel accommodation, shopping and support facilities.

In view of these opportunities, it is recognised that Robina Town Centre may eventually develop as a major central place anchor for the Brisbane to Gold Coast Urban Corridor as well as one of the major regional business districts for the Gold Coast Statistical District. The possibility of the Robina Town Centre becoming the dominant central business district for the region is neither disregarded nor discouraged and the Council recognises that the matters referred to in this section give the Robina Town Centre a potential advantage in that regard. The Council, however, views the Robina Town Centre in accordance with the Strategic Plan as one of the regional business centres referred to in Objective 7(a) within clause 5 of Division 3 of the Strategic Plan.

Planning Concepts and Intentions—Structure Plan

11. Plan 2/2/2 is a structure plan to guide in general terms the planning and development of the subject land, which may be varied by Robina from time to time. It should not be regarded as defining the final nature or location of specific land uses but should be regarded as conceptual with its intent and purpose being to indicate the goals and aims to be pursued and the predominant components of the final development.

This plan sets down a framework of roads, pathways, open space within which the Robina Town Centre can continue to develop over time and that framework is fixed with some certainty by other Parts of this Second Schedule. The key land uses shown are indicative only and the plan therefore purposely has flexibility to accommodate needs which cannot be properly foreseen at this time. This

 SCHEDULE (continued)

framework creates a series of land use Areas with different characteristics in terms of landscape setting and accessibility against which actual site needs can be matched in a continuing process.

There is a physical constraint on the ultimate development in that the infrastructure for which this Agreement provides is designed to service an equivalent population of 23,000 persons (more or less). The planning for the ultimate development (and for each Area and Precinct) must take this constraint into account. Development which would generate an equivalent population significantly exceeding 23,000 persons is not permitted.

Planning Concepts and Intentions—Master Plan

12. Plan 2/2/4, described as the Robina Town Centre Master Plan, is the current interpretation of the structure plan. It is an illustration of one form of final development which gives effect to the planning intent contained in this Part. It is recognised that the proposed rail terminus within the subject land and the proposed high school and hospital adjacent to the subject land depend upon anticipated State Government commitments in respect of which a final decision is not yet made.

Intent of the Structure Plan

13. The structure plan identifies four broad Areas:
- Northern Flood Plain
 - The Core
 - The Inner Frame
 - The Southern Frame

The planning intent for those areas is as follows:—

13.1 The Northern Flood Plain

This Area forms part of the wider Merrimac flood plain open space system to the north and west and provides an important regional landscape setting for the Robina Town Centre. Its development for waterways, golf courses and major recreation facilities will provide an attractive water-themed landscape identity and orientation as well

SCHEDULE (continued)

as providing valuable recreational facilities in close association with the core of the Robina Town Centre.

The extension of the waterways into the heart of the Robina Town Centre may allow this landscape theme and enhancement to continue as a framework within the Core and Inner Frame as well as providing efficient drainage of the flood plain re-entrants and will allow access by vessels from the wider waterway system to the Robina Town Centre. Tourist, commercial and pleasure vessels are envisaged operating from the Nerang River system to the Robina Town Centre via the Boobegan and Mudgeeraba Creeks.

13.2 The Core

This is the central Area and is intended as the area of maximum pedestrian activity within which the major regional shopping Precinct will be located together with personal and community services, professional offices, restaurants, cultural, civic and recreational facilities, hotel and studio apartments.

The Core is focused on an ornamental lake and major town centre plaza which together form a celebration place, accessible to the public 24 hours per day, where the community can come together with a sense of pride and belonging to partake of urban activities such as eating, dining, shopping, promenading and cultural events.

13.3 The Inner Frame

The Area surrounding the Core to the north of the Robina Parkway ridge is intended as an intensive mixed use area containing offices, business premises, residential apartments, hotels, cultural, recreational and entertainment facilities in close proximity to allow easy pedestrian connections and convenient access by public transport.

Within this frame the main Precincts envisaged are:

- a traditional “main street” styled ***business services Precinct*** along the important pedestrian link from the Core to the anticipated railway terminus/public transport interchange.
- a ***Government Precinct*** on sites adjacent to the anticipated

SCHEDULE (continued)

rail interchange and the anticipated Hospital and High School for predominantly Federal and State administrative offices and their agencies.

- the ***rail interchange Precinct*** where convenience shopping and offices are intended associated with the public areas of the interchange and a regional indoor sports entertainment centre is envisaged adjoining the interchange to take advantage of the high level of accessibility by regional public transport.
- the ***medical Precinct*** immediately east of the hospital and south of the interchange, where priority is to be given to the location of medical uses associated with the hospital. These uses could also extend into adjacent mixed use areas.
- the ***peninsular and west lakeshore Precincts*** which are intended for prime office, hotel, restaurant and residential mixed use development.
- the ***east lakeshore Precinct*** which is intended predominantly for high density residential uses.
- the ***riverwalk Precinct*** linking south from the lake to the main highway gateway entry is intended as an alternative linear river-like park setting for further mixed use development.
- the ***gateway Precincts*** flanking the main road entry to the Robina Town Centre from the Pacific Highway which offer prime sites for major large private office development at the southern end of the riverwalk but which also contains the proposed route for the southern railway extension which may be a constraint on development.
- the ***parkway Precincts*** between the Core and the Robina Parkway, one for service stations and fast food outlets and the other for the beginnings of showroom development, which then links via roads and paths under the Parkway to similar development to the south.

SCHEDULE (continued)**13.4 The Southern Frame**

This Area to the south of the Robina Parkway ridge is intended as a less intensive area for activities requiring easier motor vehicle access such as an auto mall, showrooms, service trades, service authority facilities, office parks as well as for medium density residential development and higher education facilities. The Area forms an important link from the Core and Inner Frame to the Bond University to the south with its associated Research Park, recreational facilities and high and medium density residential Precincts as well as to the industrial development zones at the Reedy Creek Highway interchange and along the Burleigh Connection Road.

Public Transport

14. As the proposed rail is likely to be essentially inter-urban rather than intra-urban it will function primarily as a commuter service within the Brisbane to Gold Coast corridor. Its location therefore favours office employment, and particularly government offices, to encourage maximum benefit to the Robina Town Centre and maximum rail usage.

Shoppers and workers from the more local Gold Coast region will be served by a public transit distribution network, which it is anticipated will initially be provided by bus, but may later include other forms of public transport, focused on the rail terminus. The network will be planned to meet broad community needs, including distribution to other employment, educational, tourist and entertainment nodes, as well as internal movements within the Robina Town Centre. Links from the interchange and Core through the Southern Frame to the Bond University and environs are also envisaged.

Open Space and Pathways

15. The open space system together with the roads provides a basic framework to shape and link the total development.

The open space system proposed provides for two major north-south linear park connections linking from the extensive flood

 SCHEDULE (continued)

plain open space in the north to the University Lake open space system in the south—one linking along the Robina Town Centre lakeshore, riverwalk and highway buffer and the other along the eastern power easement. A further spine along the Mudgeeraba Creek has potential to link through adjoining properties north to Carrara and south-west to Mudgeeraba and Bonogin.

A series of sports fields are located along these spines and, together with the proposed golf and water based recreational facilities, they provide a strong recreational and leisure lifestyle orientation for the Robina Town Centre for both resident and worker populations.

A network of major pedestrian/bicycle paths is proposed along these open space corridors as an important part of the transportation system linking Precincts within the Robina Town Centre to each other and to the surrounding districts.

Residential

16. The concept of locating medium and high density residential uses immediately adjoining focal points for commercial and community activity has long been a principle of contemporary town planning and is seen as an important objective for the Robina Town Centre.

The advantage of such a concept is best summarised as follows:—

16.1 Increased Choice of Residential Stock

An increased variety of residential accommodation can be provided to better meet the particular lifestyle needs of different population segments. For example, there are those with children in small households who wish to live close to work and facilities in a more urban environment. These can include the young, the middle-aged, the elderly and people in a variety of economic situations, from service industry workers or shop assistants to professionals and executives.

16.2 A More Active and Diverse Environment

The addition of a residential population increases the “people” activity, particularly after normal working hours when offices are empty. This has a civilising influence and

 SCHEDULE (continued)

helps create a safer and more diverse and urbane environment to the benefit of all users of the Robina Town Centre.

16.3 Extended Use of Facilities

An immediate residential population allows for the extended use and more economical provision of all types of facilities.

16.4 Contribution to Urban Consolidation

The provision of housing at higher densities in the Robina Town Centre allows for a more efficient and balanced use of regional infrastructure, e.g., roads, public transport, utility and community services, as well as landscape enhancement, and contributes to overall regional urban consolidation. Population successfully accommodated in the Robina Town Centre reduces the need for residential land at the edge of urban areas.

For these advantages to be realised, a more flexible approach is required towards planning and design than currently applies to development in Residential B and C zonings which have been developed for suburban situations where segregation of residential uses and compatibility with surrounding lower density development are desirable.

As a result, the combined site is designated for a target population of 5,000 persons to be accommodated in development designed under controls based on performance criteria developed from first principles for each situation.

Landscape/Townscape Design and Siting Controls

17. It is recognised that a major objective will be to create an attractive and environmentally sensitive development characterised by a distinctive landscape and townscape and high levels of architectural and landscape design. To achieve this, appropriate design and siting controls are envisaged for the various Precincts.

In general terms, the townscape character of the area north of the Robina Parkway ridge is envisaged as more compact and urban in

SCHEDULE (continued)

character with generally higher rise buildings, while the southern area will be lower rise and more office-park in character.

A landscaped buffer zone is proposed along the Pacific Highway frontage to ensure a consistent landscape image is maintained along this important edge. View corridors are proposed at selected locations to allow motorists an awareness of the proximity and scale of the Robina Town Centre. Plan 2/2/3 is a conceptual plan of the buffer zone and view corridors.

Innovative Developments

18. In view of the long term nature of the development being undertaken, it is recognised that a flexible approach will be required in relation to innovative development standards and practices to take account of technological developments and changing patterns in our society. Indeed, to ensure the continued vitality of the Robina Town Centre, it will be important to keep abreast of the latest developments in all areas affecting its development and operations.

SCHEDULE (continued)

PART 3

ROADS AND ROADWORKS

Road Network

19. The Council and DOT have agreed that the road network shown on Plan 2/3/1 is an appropriate traffic network for the region in which the combined site is located.

Acceptance by Robina

20. Robina accepts and acknowledges that the road network shown on Plan 2/3/1 is an appropriate traffic network for the region in which the combined site is located.

Reliance on Network by Robina

21. The Council acknowledges that Robina has planned the proposed development on the basis that, so far as relates to the land external to the combined site:—
- 21.1 the road network shown on Plan 2/3/1 will be adhered to as closely as possible by the Council (and DOT where relevant) in acquiring and constructing regional roads;
- 21.2 the Council will, when approving applications for development in the region by others, recognise and support the road network by ensuring (so far as permissible under the law which applies to its determination of those applications):—
- 21.2.1 that the approved plans for such development are consistent with the network; and
- 21.2.2 that each developer makes any dedication and/or contribution to the network which is reasonably required by its particular application.

The Council also acknowledges that Robina will be proceeding with the proposed development in reliance on the road network in the

SCHEDULE (continued)

region being substantially in accordance with Plan 2/3/1.

Acquisition of External Road Reserves

22. So far as relates to land external to the combined site (other than land already dedicated as a road), and despite clause 21, the road network shown on Plan 2/3/1 is indicative only based upon existing and anticipated development approvals and discussions with the relevant landowners.

The Council acknowledges that there are unlikely to be significant variations from Plan 2/3/1 having regard to the fact that location of the Pacific Highway interchanges is fixed already and the fact that the network within the combined site is fixed by this Agreement.

Robina nevertheless acknowledges and accepts that:-

- 22.1 acquisition of land external to the combined site which is required for the road network is a matter under the sole control and within sole discretion of the Council (and DOT where relevant);
- 22.2 the Council and/or DOT will be attempting to negotiate the required acquisitions with the affected landowners;
- 22.3 the Council may, in its discretion, enforce any rights which it may have pursuant to development approvals or exercise any other powers of acquisition which it is entitled to exercise for the purpose of acquiring the required land, but that it can only do so in accordance with the law which regulates those rights and powers;
- 22.4 any acquisitions by the Council (or DOT) otherwise than by agreement accordingly depend upon the Council's (or DOT's) legal powers at any relevant time and, possibly, upon availability of funds and the Council gives no undertaking to Robina that such land (or any part thereof) will be acquired at any particular time.

Robina Not Responsible for Additional Costs

23. Should any section of the road network ultimately put in place by dedication of land external to the combined site be on a substantially

 SCHEDULE (continued)

different alignment from that shown on Plan 2/3/1, then to the extent that the cost of construction of any section of the network which Robina is to construct is increased by such change, that cost, as certified by a consultant with appropriate knowledge and expertise and as accepted by the Engineer, must (as between Robina and the Council) be paid by the Council.

Robina's Obligations

24. Subject to clause 26, Robina must contribute to the implementation of the road network by:—
- 24.1 carrying out the roadworks specified to be its responsibility in Table 2/3/2, to the standards and at the times set out therein; and
- 24.2 paying the contributions specified to be payable by it in Table 2/3/2 as and when specified therein.

Interpretation of Time for Performance

25. Where the time for construction of a road section is specified in Table 2/3/2 as being prior to sealing and release of the plan of subdivision which creates the first or last allotment(s) for sale in an adjoining Service District, and that road section adjoins or passes through more than one Service District, then the road section is to be constructed in segments along the frontage of or within each Service District and:—
- 25.1 Robina's obligation when developing a Service District is to construct only the segment having frontage to or passing through that Service District; and
- 25.2 that obligation is to be performed prior to sealing and release of the plan of subdivision which creates the first allotment(s) for sale in that Service District or, as the case requires, the last plan of subdivision of that Service District.

Special Provision—Mudgeeraba Interchange Connection

26. If Robina gives notice that it is ready to commence the work specified in Item 8(a) in Table 2/3/2 so as to be able to complete that work by the completion of Stage 1, and the relevant land is not

 SCHEDULE (continued)

dedicated or controlled by the Council or DOT within 120 days after the date of giving of that notice, then Robina is no longer obliged to construct that section but instead must contribute to the cost of construction thereof an amount not exceeding the estimated cost of construction.

This contribution must be paid progressively in accordance with certificates by the Engineer as to the value of work completed as and when that section is constructed.

To secure the obligation of Robina under this clause, it must provide, in addition to the General Bond, a further Bond in an amount equal to the estimated cost of construction as at the date of Robina's notice. The further bond:—

- 26.1 must be lodged within 30 days of demand by the Council made after Robina's obligation to contribute arises; and
- 26.2 may be called upon by the Council if the contribution or any part thereof is not paid within 14 days of demand therefor accompanied by the Engineer's certificate.

In this clause, "estimated cost of construction" is the amount at which Robina could have constructed that section by the completion of Stage 1 having regard to the rates actually paid by Robina for earth and road works constructed or under construction in connection with Stage 1.

Suspension of Certain External Obligations

- 27. So far as relates to land external to the combined site (other than land already dedicated as a road and the land referred to in clause 26), and notwithstanding the times for performance specified in Table 2/3/2, Robina's obligations to carry out work on such land:—
 - 27.1 are suspended if the land is not dedicated as a road or otherwise controlled by the Council or DOT at the time the work would otherwise be required to be performed;
 - 27.2 must be performed as soon as practicable after the land becomes so dedicated or controlled.

SCHEDULE (continued)

Suspension of Certain Internal Obligations

28. Where a road to be constructed on the combined site is planned to connect to a road external to the combined site which is to be constructed by others then, notwithstanding the times for performance specified in Table 2/3/2 in respect of that road, Robina's obligations to construct that road:—
- 28.1 are suspended if the external road has not been so constructed at the time the road would otherwise be required to be constructed; and
- 28.2 must be performed as soon as practicable after the external road is constructed to the boundary of the combined site.

Planning for Additional Interchange

29. Robina acknowledges the desire of the Council and DOT, having regard to the long term development of the region, to preserve the opportunity of an additional partial interchange between the Reedy Creek Interchange and the Robina Parkway Interchange as shown at intersection V on Plan 2/3/1. Such an interchange would have, as a primary objective, the provision of a right-turn movement for northbound traffic into the lands east of the Pacific Highway, more specifically into the subject land and the present Bond University lands. Such an interchange could also provide for a cross-connection to the area west of the highway.

Robina must accordingly make provision in its planning for this potential future connection by allocating a road reserve corridor with one end at the Pacific Highway and the other joining the proposed Christine Avenue, that is from V-W-Q as shown on Plan 2/3/1. Robina must not alienate any part of the land so reserved prior to 30 June, 2006, and no buildings or structures may be erected thereon.

Robina will dedicate the land within the corridor as a road without compensation when called upon by the Council so to do at any time on or prior to 30 June, 2006, and the Council must thereupon immediately construct the roadworks forming the connection. If the Council does not require the dedication by 30 June, 2006, Robina is thereafter free to deal with the land reserved without regard to this

SCHEDULE (continued)

clause.

General Construction Requirements

30. Robina must, when creating the new roads shown on Plan 2/3/1, dedicate sufficient land for the full proposed width of the road requirements as shown on Plan 2/3/3. The dedication must include sufficient land to accommodate any cut or fill requirements and must also provide sufficient land in relevant road reserves for anticipated interchanges at intersections B and D on Plan 2/3/1.

No Other External Obligations

31. Unless otherwise specifically stated in this Agreement, and only to such extent, Robina is not liable to construct or contribute to the cost of any roadworks external to the combined site.

Integrated Roadside Landscaping

32. Robina must, when it submits engineering drawings for roadworks within a road reserve to the Council for approval, also submit for approval a landscape concept plan for that part of the road reserve. Robina must carry out the landscaping generally in accordance with the approved concept plan in conjunction with the construction of the relevant roadworks.

Provision for Signalisation

33. If reasonably so determined by the Engineer at the time of approval of engineering drawings for an intersection, having regard to the volume of future traffic movements and the probability of signalisation of the intersection within 10 years of its construction, Robina must, when constructing that intersection, install as part of that construction and at its cost underground conduits for traffic signalisation of that intersection. Upon constructing those conduits, Robina has no further liability for any costs of traffic signalisation of that intersection.

Interpretation

34. In this Part (including Table 2/3/2):—
“cost of construction” means the sum agreed to be paid to the

SCHEDULE (continued)

contractor/s carrying out the road construction;

“Limitation of Access” means restriction of access to an existing or proposed road by means of an access restriction strip along the frontage of the road to any property or, in the case of a declared road, by any other means specified in Section 3.8 of the Transport Infrastructure (Roads) Act 1991;

Where the word “full” is used under the column headed “Limitation of Access in Table 2/3/2 it means that access to the road section to which it refers is prohibited from either alignment and that appropriate Limitation of Access must be implemented along the entire road section;

Where the word “partial” is used under the column headed “Limitation of Access” in Table 2/3/2 it means that access will be permitted to the road section to which it refers from either or both sides of the alignment but that access points may be restricted and/or specifically determined by DOT or the Council and that appropriate Limitation of Access must be implemented at those parts of the road section where access is not permitted.

SCHEDULE (continued)**PART 4****WATER SUPPLY***Statement of Intent*

35. The intent of this Part is to prescribe a special method for the calculation and payment of water headworks charges in relation to commercial and residential development other than the proposed golf course facilities. This Part also provides for administration of credits arising from actual construction of headworks by Robina.

It is recognised that while the nature of the use to which an allotment will be put will be known at the time of its creation, the final form of development thereon will not necessarily be fixed with certainty at that time. It is also recognised that headworks charges should be paid according to the actual level of service demand created by a final development. Nevertheless, payment of headworks at the time of creation of an allotment allows a purchaser to have certainty that headworks obligations are fulfilled which facilitates the development process. The intent of this Part is to reconcile these objectives and concerns in the following manner:—

- 35.1 water headworks charges calculated in accordance with an agreed fixed formula must be paid at the time an allotment is created;
- 35.2 payment of those charges confers the right (subject to this Agreement generally) to develop to a certain intensity without the imposition of further water headworks charges;
- 35.3 if development at a greater intensity is proposed (and is otherwise permitted or permissible under this Agreement), additional water headworks charges must be paid by the party undertaking the development so that the total paid reflects the actual service demand;
- 35.4 because water headworks charges will be allocated by the Council to the carrying out of works and spent on those

SCHEDULE (continued)

works at any time after payment, the Council cannot make and will not be obliged to make a refund of water headworks charges if the development actually carried out is of a lesser intensity.

Ordinary Rates of Headworks Charge Applicable

36. Robina must pay to the Council contributions towards the provision of water supply headworks to service the proposed development (“water headworks charges”). Charges must be paid at the rates per equivalent person specified by the relevant planning policy adopted by the Council pursuant to section 6.2 of the Act (“relevant planning policy”) in force at the time payment is made, but must be calculated in the manner and paid at the times specified in this Part.

Time for Payment

37. Water headworks charges must be paid in respect of any allotment other than a management lot not later than the time of release of, and in exchange for, the sealed plan of subdivision creating the allotment. Robina may elect to pay the water headworks charges at an earlier date so long as the allotment or proposed allotment to which they relate is ascertainable with sufficient certainty. Water headworks charges are not payable upon the creation of a management lot.

Application of Headworks Policy to Golf Course

38. Contributions towards water supply headworks in respect of the Golf Course and all associated buildings to be constructed on the Kerrydale land (excluding the hotel and all residential units) must be calculated and paid in all respects in accordance with the relevant planning policy as in force from time to time and clauses 39 to 45 have no application to that part of the proposed development.

Calculation of Equivalent Population (non-residential)

39. Subject to clause 38, the Equivalent Population (number of equivalent persons) for an allotment intended for non-residential uses is calculated by multiplying the surveyed area (in hectares) of the allotment by 60, that is to say by the following formula:—

 SCHEDULE (continued)

$$EP = NA \times 60$$

where

- (1) EP is the Equivalent Population for the purpose of calculating the water headworks charges in respect of the allotment; and
- (2) NA is the area in hectares of the allotment in respect of which the water headworks charges are being calculated.

Development Entitlement (non-residential)

40. Upon payment of the water headworks charges calculated by reference to the Equivalent Population determined in accordance with clause 39, the Council must not impose further water headworks charges in respect of development on that allotment that does not exceed 4 occupied storeys.

In calculating an occupied storey, car parks, plant rooms and other non-habitable floors or floors not able to be occupied are not counted as an occupied storey.

Where a floor or floors are less in area than the largest floor of a building then, for the purpose of calculating the number of storeys, the gross floor area of the building able to be occupied is divided by the area of the largest floor of the building able to be occupied and, if the resulting number is 4 or less the building does not, for the purpose of this clause, exceed 4 occupied stories.

Additional Headworks (non-residential)

41. In the event that it is proposed to construct a building exceeding 4 occupied stories on an allotment for which water headworks charges have been paid on the basis of the calculation in clause 39, additional water headworks charges must be paid in respect of the floor area in excess of 4 occupied stories in accordance with the provisions following:—

- 41.1 the amount of the additional water headworks charges is the number of equivalent persons represented by the excess floor area (determined in accordance with the relevant planning policy) multiplied by the applicable rate per

 SCHEDULE (continued)

- equivalent person under the relevant planning policy as at the date building approval is granted for the building;
- 41.2 the additional water headworks charges must be paid by the person proposing to undertake the development permitted by the relevant building approval (despite the fact that this person may not have made or may not be required to make any further or other application of a planning nature under the Act or this Agreement);
- 41.3 the Council is not obliged to release approved building plans to any person until any additional water headworks charges payable in respect of the building have been paid.

Calculation of Equivalent Population (residential)

42. Subject to clause 38, the Equivalent Population (number of equivalent persons) for an allotment intended for residential uses is calculated by multiplying the number of proposed residential units nominated by Robina for the allotment by 2.4, that is to say by the following formula:—

$$EP = NOU \times 2.4$$

where

- (1) EP is the Equivalent Population for the purpose of calculating the water headworks charges in respect of the allotment
- (2) NOU is the number of residential units nominated by Robina as intended to be constructed on each allotment.

To give effect to this clause, Robina must, at the time of lodging a plan of subdivision creating allotments intended for residential development, nominate the number of residential units intended to be constructed on each allotment shown on that plan. If a concept plan for the development of any allotment has been approved by the Council as part of an approval referred to in Parts 9, 10 or 11 of the Second Schedule, the number of units so nominated must accord with the approved concept plan.

SCHEDULE (continued)*Development Entitlement (residential)*

43. Upon payment of the water headworks charges calculated by reference to the Equivalent Population determined in accordance with clause 42, the Council must not impose further water headworks charges in respect of development on that allotment containing not more than the number of residential units nominated.

Additional Headworks (residential)

44. In the event that it is proposed to construct on an allotment for which water headworks charges have been paid on the basis of the calculation in clause 42, more than the number of residential units nominated for the purposes of that calculation, additional water headworks charges must be paid. The additional charges must be calculated and paid in accordance with the provisions following:—
- 44.1 the total water headworks charges will not in any event be less than the amount already paid;
 - 44.2 if the Equivalent Population calculated for the residential units (applying clause 42 to the actual number of residential units proposed) exceeds the Equivalent Population originally calculated in accordance with clause 42, additional water headworks charges are payable in respect of the Equivalent Population represented by the difference between the two calculations;
 - 44.3 the amount of the additional water headworks charges is that difference (in equivalent persons) multiplied by the applicable rate per equivalent person under the relevant planning policy as at the date building approval is granted for the building or buildings containing the residential units;
 - 44.4 the additional water headworks charges must be paid by the person proposing to undertake the development permitted by the relevant building approval (despite the fact that this person may not have made or may not be required to make any further or other application of a planning nature under the Act or this Agreement);
 - 44.5 the Council is not obliged to deliver the approved building

SCHEDULE (continued)

plans to any person until any additional water headworks charges payable in respect of the building or buildings have been paid.

No Refund of Contributions Paid

45. Regardless of the nature, size or scale of any final development actually carried out, the Council is not under any circumstances obliged to repay or refund any water headworks charges calculated and paid in accordance with clauses 39 or 42.

Regional Context—Water Supply

46. Robina Town Centre forms an integral part of the area serviced by the Reedy Creek District Water Supply Scheme in the South Albert Shire Water Supply System as defined and costed in the document “Albert Shire—Schedule of Headworks Contributions—July 1991 to June 1992” forming part of the Council’s relevant planning policy. That Scheme provides for the water supply headworks necessary to service, inter alia, the proposed development. The internal trunk water mains forming part of that Scheme which are shown on Plan 2/4/1 (“the waterworks”) are accordingly works the cost of which will be defrayed from water headworks charges if those works are constructed by the Council.

Construction by Robina

47. If the waterworks (or any part) are not constructed by the Council, Robina intends during the course of the development, at its own cost and in stages related to Service Districts, to construct the waterworks so as to provide water supply to the proposed development. Any such construction will be carried out by Robina at its election and for its own benefit and Robina assumes no obligation to any person to carry out any construction at any time.

No Plans to be Sealed until Water Available

48. Subject to clause 18 in the body of this Agreement, the Council is not obliged to seal and release any plan of subdivision (other than one creating only management lots or only lots in the Robina Town Centre Core) unless the Service District in which the land is contained is within the catchment able to be serviced by completed

 SCHEDULE (continued)

waterworks.

Mode of Construction

49. In the event that Robina undertakes construction of the waterworks, it must do so to suit the rate and location of development. Where practicable, mains having a diameter of 375 millimetres or less must be constructed in association with roads in Service Districts.

Specific Timing of Certain Construction

50. Despite clauses 47 and 49, if:—
- 50.1 Robina commences to construct waterworks; and
 - 50.2 the Council is concurrently constructing or has constructed the balance of line 1560–1561 (600mm) not included in Table 2/4/3,

Robina must construct line 1552–1553 (450mm) not later than 30 June 1994 and line 1552–1560 (450mm) and the part of line 1560–1561 (600mm) included in Table 2/4/3 by not later than 30 December 1998.

Headworks Credits for Construction

51. If Robina constructs all or some of the waterworks then it is entitled to set off the cost of that construction against the water headworks charges otherwise payable by it in accordance with the provisions following:—
- 51.1 the set off is by way of an Equivalent Population Credit (“EPC”) and is measured in numbers of equivalent persons;
 - 51.2 Robina is entitled to an EPC for each stage of the waterworks constructed by it;
 - 51.3 Table 2/4/3 sets out the stages of the waterworks which give rise to an EPC (under the column headed “Trunk Main/Stage”) and the EPC for each stage (opposite each stage under the column headed “EPC”);
 - 51.4 a credit to which Robina has become entitled must be allowed against any calculation of water headworks charges which would otherwise be payable on the sealing and release

 SCHEDULE (continued)

of a plan of subdivision by deducting the EPC from the Equivalent Population in respect of which charges would otherwise be calculated, that is to say by the following formula:—

$$\text{HWEP} - \text{EPC} = \text{HWEP Due}$$

where

- (1) HWEP is the Equivalent Population which would be used to calculate water headworks charges but for this clause; and
- (2) EPC is the Equivalent Population Credit; and
- (3) HWEP due is the Equivalent Population which is actually used to calculate water headworks charges after application of this clause.

Credits Carried Forward

52. In the event that the EPC exceeds HWEP when water headworks charges are calculated in respect of any plan, no water headworks charges are payable in exchange for sealing and release of the plan and:—
- 52.1 the EPC is reduced by HWEP;
 - 52.2 the (reduced) EPC is carried forward to be applied in accordance with clause 51 the next time water headworks charges are otherwise payable by Robina.

Administration of Moneys Payable and EPC

53. For the purpose of administration of the moneys paid/payable by Robina and the EPC to which it is from time to time entitled, Robina and the Council must maintain a statement of account in the form contained in Drawing 2/4/2. Robina and the Engineer must at the completion of each Service District (and at least once every six months in any event) verify the statement of account for the preceding period and on agreement being reached as to the balance, the statement must be certified by Robina and the Engineer as being correct.

SCHEDULE (continued)*When Credit Arises*

54. Robina is entitled to the EPC set out in Table 2/4/3 on completion of construction of the Trunk/Main Stage to which the EPC is related. Where only part of a Trunk/Main Stage is completed, the EPC to which Robina is entitled at any given time in respect of that stage is calculated pro rata, having regard to the length of line constructed at that time.

Population Distribution Indicative Only

55. Plan 2/4/4 shows a distribution of total equivalent population, which distribution is indicative and prepared for water supply planning purposes only. The distribution of the ultimate population of the proposed development is not known and will evolve over time but the total ultimate equivalent population must not exceed the total shown on Plan 2/4/4.

Alternate Schemes

56. The EPC calculation in Table 2/4/3 is based upon the scheme shown in Plan 2/4/1. In the event that the parties agree to substantially alter the scheme shown on Plan 2/4/1, they must prepare a new table in the form of Table 2/4/3 showing the estimated cost of construction in 1991 dollars of the altered scheme and that Table must then be substituted for Table 2/4/3. The EPC for the revised scheme must be calculated by dividing the estimated cost shown in the substituted table by 934.

In this clause, "cost in 1991 dollars" means at the same rate or rates as were used by the consulting engineers to Robina and the Council in calculating the amounts shown under the column "Estimated Cost of Construction" in Table 2/4/3.

Grant of Easements

57. If any part of the waterworks are constructed within the combined site on land which is not and is not to become a dedicated road or public lands, Robina or, as the case requires, Robina Properties must at its cost grant to the Council a water supply easement on the Council's usual terms over the land upon which the waterworks are constructed.

SCHEDULE (continued)**PART 5****SEWERAGE***Statement of Intent*

58. The intent of this Part is to prescribe a special method for the calculation and payment of sewerage headworks charges in relation to commercial and residential development other than the proposed golf course facilities. This Part also provides for administration of credits arising from actual construction of headworks by Robina.

It is recognised that while the nature of the use to which an allotment will be put will be known at the time of its creation, the final form of development thereon will not necessarily be fixed with certainty at that time. It is also recognised that headworks charges should be paid according to the actual level of service demand created by a final development. Nevertheless, payment of headworks at the time of creation of an allotment allows a purchaser to have certainty that headworks obligations are fulfilled which facilitates the development process. The intent of this Part is to reconcile these objectives and concerns in the following manner:—

- 58.1 sewerage headworks charges calculated in accordance with an agreed fixed formula must be paid at the time an allotment is created;
- 58.2 payment of those charges confers the right (subject to this Agreement generally) to develop to a certain intensity without the imposition of further sewerage headworks charges;
- 58.3 if development at a greater intensity is proposed (and is otherwise permitted or permissible under this Agreement), additional sewerage headworks charges must be paid by the party undertaking the development so that the total paid reflects the actual service demand;
- 58.4 because sewerage headworks charges will be allocated by

SCHEDULE (continued)

the Council to the carrying out of works and spent on those works at any time after payment, the Council cannot make and will not be obliged to make a refund of sewerage headworks charges if the development actually carried out is of a lesser intensity.

Ordinary Rates of Headworks Charge Applicable

59. Robina must pay to the Council contributions towards the provision of sewerage headworks to service the proposed development (“sewerage headworks charges”). Charges must be paid at the rates per equivalent person specified by the relevant planning policy adopted by the Council pursuant to section 6.2 of the Act current at the time payment is made, but must be calculated in the manner and paid at the times specified in this Part.

Time for Payment

60. Sewerage headworks charges must be paid in respect of any allotment other than a management lot not later than the time of release of, and in exchange for, the sealed plan of subdivision creating the allotment. Robina may elect to pay the sewerage headworks charges at an earlier date so long as the allotment or proposed allotment to which they relate is ascertainable with sufficient certainty. Sewerage headworks charges are not payable upon the creation of a management lot.

Application of Headworks Policy to Golf Course

61. Contributions towards sewerage headworks in respect of the Golf Course and all associated buildings to be constructed on the Kerrydale land (excluding the hotel and all residential units) must be calculated and paid in all respects in accordance with the relevant planning policy as in force from time to time and clauses 62 to 68 have no application to that part of the proposed development.

Calculation of Equivalent Population (non-residential)

62. Subject to clause 61, the Equivalent Population (number of equivalent persons) for an allotment intended for non-residential uses is calculated by multiplying the surveyed area (in hectares) of the allotment by 60, that is to say by the following formula:—

SCHEDULE (continued)

$$EP = NA \times 60$$

where

- (1) EP is the Equivalent Population for the purpose of calculating the sewerage headworks charges in respect of the allotment; and
- (2) NA is the area in hectares of the allotment in respect of which the sewerage headworks charges are being calculated.

Development Entitlement (non-residential)

63. Upon payment of the sewerage headworks charges calculated by reference to the Equivalent Population determined in accordance with clause 62, the Council must not impose further sewerage headworks charges in respect of development on that allotment which does not exceed 4 occupied storeys.

In calculating an occupied storey, car parks, plant rooms and other non-habitable floors or floors not able to be occupied are not counted as an occupied storey.

Where a floor or floors are less in area than the largest floor of a building then, for the purpose of calculating the number of storeys, the gross floor area of the building able to be occupied is divided by the area of the largest floor of the building able to be occupied and, if the resulting number is 4 or less the building does not, for the purpose of this clause, exceed 4 occupied stories.

Additional Headworks (non-residential)

64. In the event that it is proposed to construct a building exceeding 4 occupied stories on an allotment for which sewerage headworks charges have been paid on the basis of the calculation in clause 62, additional sewerage headworks charges must be paid in respect of the floor area in excess of 4 occupied stories in accordance with the provisions following:—

- 64.1 the amount of the additional sewerage headworks charges is the number of equivalent persons represented by the excess floor area (determined in accordance with the relevant planning policy) multiplied by the applicable rate per

 SCHEDULE (continued)

equivalent person under the relevant planning policy as at the date building approval is granted for the building;

- 64.2 the additional sewerage headworks charges must be paid by the person proposing to undertake the development permitted by the relevant building approval (despite the fact that this person may not have made or may not be required to make any further or other application of a planning nature under the Act or this Agreement);
- 64.3 the Council is not obliged to release approved building plans to any person until any additional sewerage headworks charges payable in respect of the building have been paid.

Calculation of Equivalent Population (residential)

65. Subject to clause 61, the Equivalent Population (number of equivalent persons) for an allotment intended for residential uses is calculated by multiplying the number of proposed residential units nominated by Robina for the allotment by 2.4, that is to say by the following formula:—

$$EP = NOU \times 2.4$$

where

- (1) EP is the Equivalent Population for the purpose of calculating the sewerage headworks charges in respect of the allotment
- (2) NOU is the number of residential units nominated by Robina as intended to be constructed on each allotment.

To give effect to this clause, Robina must, at the time of lodging a plan of subdivision creating allotments intended for residential development, nominate the number of residential units intended to be constructed on each allotment shown on that plan. If a concept plan for the development of any allotment has been approved by the Council pursuant to Parts 9, 10 or 11 of the Second Schedule, the number of units so nominated must accord with the approved concept plan.

SCHEDULE (continued)*Development Entitlement (residential)*

66. Upon payment of the sewerage headworks charges calculated by reference to the Equivalent Population determined in accordance with clause 65, the Council must not impose further sewerage headworks charges in respect of development on that allotment containing not more than the number of residential units nominated.

Additional Headworks (residential)

67. In the event that it is proposed to construct on an allotment for which sewerage headworks charges have been paid on the basis of the calculation in clause 65, more than the number of residential units nominated for the purposes of that calculation, additional sewerage headworks charges must be paid. The additional charges must be calculated and paid in accordance with the provisions following:—
- 67.1 the total sewerage headworks charges will not in any event be less than the amount already paid;
 - 67.2 if the Equivalent Population calculated for the residential units (applying clause 65 to the actual number of residential units proposed) exceeds the Equivalent Population originally calculated in accordance with clause 65, additional water headworks charges are payable in respect of the Equivalent Population represented by the difference between the two calculations;
 - 67.3 the amount of the additional sewerage headworks charges is that difference (in equivalent persons) multiplied by the applicable rate per equivalent person under the relevant planning policy as at the date building approval is granted for the building or buildings containing the residential units;
 - 67.4 the additional sewerage headworks charges must be paid by the person proposing to undertake the development permitted by the relevant building approval (despite the fact that this person may not have made or may not be required to make any further or other application of a planning nature under the Act or this Agreement);

SCHEDULE (continued)

- 67.5 the Council is not obliged to deliver the approved building plans to any person until any additional sewerage headworks charges payable in respect of the building or buildings have been paid.

No Refund of Contributions Paid

68. Regardless of the nature, size or scale of any final development actually carried out, the Council is not under any circumstances obliged to repay or refund any sewerage headworks charges calculated and paid in accordance with clauses 62 or 65.

Regional Context—Sewerage

69. Robina Town Centre forms an integral part of the area serviced by the Merrimac Trunk Sewerage System in the South Albert Sewerage System as defined and costed in the document “Albert Shire—Schedule of Headworks Contributions—July 1991 to June 1992” forming part of the Council’s relevant planning policy. That Scheme provides for the sewerage headworks necessary to service, inter alia, the proposed development. The internal trunk sewer mains forming part of that Scheme which are shown on Plan 2/5/1 (“the sewerage works”) are accordingly works the cost of which will be defrayed from sewerage headworks charges if the works are constructed by the Council.

Construction by Robina

70. If the sewerage works (or any part) are not constructed by the Council, Robina intends during the course of the development, at its own cost and in stages related to Service Districts, to construct the sewerage works so as to provide sewerage to the proposed development. Any such construction will be carried out by Robina at its election and for its own benefit and Robina assumes no obligation to any person to carry out any construction at any time.

No Plans to be Sealed until Sewerage Available

71. Subject to clause 18 in the body of this Agreement, the Council is not obliged to seal and release any plan of subdivision (other than one creating only management lots or only lots in the Robina Town Centre Core) unless the Service District in which the land is

 SCHEDULE (continued)

contained is within the catchment able to be serviced by completed sewerage works.

Mode of Construction

72. In the event that Robina undertakes construction of the sewerage works, it must do so to suit the rate and location of development.

Headworks Credits for Construction

73. If Robina constructs all or some of the sewerage works then it is entitled to set off the cost of that construction against the sewerage headworks charges otherwise payable by it in accordance with the provisions following:—

73.1 the set off is by way of an Equivalent Population Credit (“EPC”) and is measured in numbers of equivalent persons;

73.2 Robina is entitled to an EPC for each stage or component of the sewerage works constructed by it;

73.3 Table 2/5/2 sets out the stages or components of the sewerage works which give rise to an EPC (under the column headed “Stage”) and the EPC for each stage (opposite each stage under the column headed “EPC”);

a credit to which Robina has become entitled must be allowed against any calculation of sewerage headworks charges which would otherwise be payable on the sealing and release of a plan of subdivision by deducting the EPC from the Equivalent Population in respect of which charges would otherwise be calculated, that is to say by the following formula:—

$$\text{HWEP} - \text{EPC} = \text{HWEP Due}$$

where

- (1) HWEP is the Equivalent Population which would be used to calculate sewerage headworks charges but for this clause; and
- (2) EPC is the Equivalent Population Credit; and
- (3) HWEP Due is the Equivalent Population which is

SCHEDULE (continued)

actually used to calculate sewerage headworks charges after application of this clause.

Credits Carried Forward

74. In the event that the EPC exceeds HWEP when sewerage headworks charges are calculated in respect of any plan, no sewerage headworks charges are payable in exchange for sealing and release of the plan and:—
- 74.1 the EPC is reduced by HWEP;
- 74.2 the (reduced) EPC is carried forward to be applied in accordance with clause 73 the next time sewerage headworks charges are otherwise payable by Robina.

Administration of Moneys Payable and EPC

75. For the purpose of administration of the moneys paid/payable by Robina and the EPC to which it is from time to time entitled, Robina and the Council must maintain a statement of account in the form contained in Drawing 2/5/3. Robina and the Engineer must at the completion of each Service District (and at least once every six months in any event) verify the statement of account for the preceding period and on agreement being reached as to the balance, the statement must be certified by Robina and the Engineer as being correct.

When Credit Arises

76. Robina is entitled to the EPC set out in Table 2/5/2 on completion of construction of the stage or component to which the EPC is related. Where only part of a stage is completed, the EPC to which Robina is entitled at any given time in respect of that stage is calculated pro rata, having regard to the length of line constructed at that time.

Population Distribution Indicative Only

77. Plan 2/5/4 shows a distribution of total equivalent population, which distribution is indicative and prepared for sewerage planning purposes only. The distribution of the ultimate population of the proposed development is not known and will evolve over time but the total ultimate equivalent population must not exceed the total

SCHEDULE (continued)

shown on Plan 2/5/4.

Alternate Schemes

78. The EPC calculation in Table 2/5/2 is based upon the scheme shown in Plan 2/5/1. In the event that the parties agree to substantially alter the scheme shown on Plan 2/5/1, they must prepare a new table in the form of Table 2/5/2 showing the estimated cost of construction in 1991 dollars of the altered scheme and that Table must then be substituted for Table 2/5/2. The EPC for the revised scheme must be calculated by dividing the estimated cost shown in the substituted table by 636.

In this clause, "cost in 1991 dollars" means at the same rate or rates as were used by the consulting engineers to Robina and the Council in calculating the amounts shown under the column "Estimated Cost of Construction" in Table 2/5/2.

Grant of Easements

79. If any part of the sewerage works are constructed within the combined site on land which is not and is not to become a dedicated road or public lands, Robina or, as the case requires, Robina Properties must at its cost grant to the Council a sewerage easement on the Council's usual terms over the land upon which the sewerage works are constructed.

SCHEDULE (continued)**PART 6****PARKS—OPEN SPACE—PATHWAYS/BIKEWAYS
AND LANDSCAPING***Statement of Intent*

80. It is the intent of this Part to prescribe exhaustively Robina's obligations to provide land for open space in connection with the proposed development and also in connection with the balance of its development of the land referred to in the Development Deed. The requirements contained in this Part, taken with open space previously provided by Robina, ensure the well-planned, orderly, sensible and practical provision of open space for the whole of the development contemplated by the Development Deed.

If the requirements of this Part are performed, the provision of open space will not be a matter which the Council will have to consider when determining subsequent applications (except for the purpose of giving effect to this Part). It is accordingly provided by this Part that conditions relating to the provision of open space must not be imposed upon subsequent applications except as specifically contemplated by this Part.

Provision of Open Space

81. Robina must transfer to or cause to revert to the Crown for use as open space:—
- 81.1 those parcels of land outlined in red on Plan 2/6/1; and
 - 81.2 an additional six hectares of land within the combined site.

Partial Satisfaction by Certain Required Transfers

82. The requirement in clause 81.2:—
- 82.1 is satisfied in part by the transfer of land for the buffer zone pursuant to clause 86 but only if a pedestrian/bikeway is constructed in it;

 SCHEDULE (continued)

82.2 is satisfied in part by the transfer of the land required by clause 87,

and the balance of the requirement must be satisfied in accordance with clauses 88 to 90.

Development of Open Space

83. Robina must develop the parcels referred to in clause 81.1 to the extent and at the times specified in Table 2/6/2 and in accordance with Plans 2/6/3 to 2/6/6.

Pedestrian/Bikeway Network

84. Robina must provide a pedestrian/bikeway network which gives effect to the concepts and intent illustrated by Plan 2/6/7.

Plan 2/6/7 is not necessarily the only appropriate layout and Robina may propose a substituted plan to suit the circumstances from time to time existing. If the Council is satisfied that any such plan gives effect to the concepts and intent illustrated by Plan 2/6/7, it must approve that plan which is thereafter substituted for Plan 2/6/7.

The network must be constructed substantially in accordance with the approved plan from time to time (or Plan 2/6/7 if no other plan is approved).

Pedestrian Bikeway Construction Requirements

85. The pedestrian/bikeway network must be constructed as follows:

85.1 the time at which construction must be carried out is:—

85.1.1 where a network section is located within a road reserve, at the time of construction of the road;

85.1.2 where a network section is located within open space/park on which other construction work is to be carried out, at the time of construction of the open space/park; and

85.1.3 in other cases, prior to dedication of the land to the Crown.

85.2 the pavement for pedestrian/bikeways must be a minimum

SCHEDULE (continued)

of 2 metres wide and the continuous pedestrian access pavements must be a minimum of 1.2 metres wide.

Highway Buffer

86. Robina must, prior to the completion of Stage 1, transfer to the Crown the land outlined in black on Plan 2/6/1 as open space for use as a highway buffer. Robina must:—

86.1 if DOT plans to carry out works within or affecting that buffer, after completion of those works; or

86.2 by the completion of Stage 1,

whichever is the later, carry out planting of the buffer in accordance with Plan 2/2/3.

Any bikeway or path way contained in the buffer must be constructed in conjunction with development of the nearest adjoining Service District.

Community Site

87. Robina must, when requested by Council, transfer to the Crown the land outlined in red on Plan 2/6/9 for Local Government purposes (Community Centre).

Plan of Balance Open Space Requirement

88. Robina must from time to time lodge with the Council for approval an Open Space Master Plan showing Robina's current proposals for provision of the balance of the six hectares of open space referred to in clause 81.2 remaining to be provided after taking into account the transfers pursuant to clause 87 and, if applicable, clause 86. The first such plan must be lodged with the Council within three months of the date of this Agreement having the force of law.

Amendment of Plan

89. The Open Space Master Plan may be amended from time to time by agreement but:—

89.1 the Open Space Master Plan must always show land dedicated and to be dedicated as open space which makes up the balance of the six hectares referred to in clause 81.2, and

SCHEDULE (continued)

which is reasonably comparable in terms of character as open space to that shown on the first plan;

- 89.2 the Open Space Master Plan may show a greater provision or proposed provision but need not do so and, if it does, may be amended at any time to reduce the land dedicated and to be dedicated as open space to the balance of the six hectares (without a requirement to substitute other land).

Dedication of Balance Open Space Requirement

90. Where Robina proposes to make an application to subdivide land which adjoins land shown as proposed open space on the Open Space Master Plan, it must include that proposed open space in that application. The Council is authorised to impose as a condition of approval of such an application that the open space included in the application be dedicated as open space.

Open Space Not to be Dealt With

91. Robina must not deal with land which is shown on the current Open Space Master Plan as being proposed open space in any manner whatsoever except to transfer that land to the Council or dedicate the same to the Crown as open space.

Requirements Exhaustive

92. Upon Robina complying with the foregoing requirements of this Part, its obligations to make provision for open space in respect of the proposed development and under the Development Deed are satisfied in full.

Prohibition on Further Requirements

93. The Council must not impose a condition or other obligation relating in any way to the provision of open space on any subsequent application except as specifically provided in clause 90.

SCHEDULE (continued)**PART 7****WATERWAYS AND WEIRS***Merrimac Drainage Plan*

94. The Council has adopted a comprehensive Drainage Scheme for the Merrimac Flood Plain known as the Merrimac Drainage Plan more particularly shown on Plan 2/7/1. The works required to be undertaken by Robina pursuant to this Part form part of the Merrimac Drainage Plan.

Definitions and Specification of Works

95. In this Part:—

“Mudgeeraba Creek Flood Flow Improvement Works” mean widening Mudgeeraba Creek to a maximum width of 28.5 metres on each side of its centre line; excavating the widening at its deepest point to a maximum depth of RL-3.0 AHD; and constructing bank treatment along each of the banks of the widened creek. The widening and excavation must be constructed in accordance with the indicative cross-section on Plan 2/7/3 so far as the circumstances shall permit and allow. The method of construction may be by dry excavation effected by bunding of the creek, to be undertaken only during periods of the year when the expectation of rainfall is low, i.e., April–December. Edge treatment must be in accordance with any of the designs set out in Plan 2/7/4, which the Council acknowledges are appropriate and acceptable designs;

“Mudgeeraba Creek land” means every parcel of land having a frontage to or boundary with Mudgeeraba Creek along that part of Mudgeeraba Creek downstream from its intersection with the Pacific Highway to its intersection with Robina Parkway;

“the weir works” means a weir and lock in Boobegan Creek and a bridge on Robina Parkway over Mudgeeraba Creek together with necessary raising of the water main on the Broadbeach-Nerang Road where it crosses Boobegan Creek to allow boating access to

 SCHEDULE (continued)

the Merrimac waterways system.

Widening of Mudgeeraba Creek

96. Subject to and conditional upon:—

96.1 the weir works being completed by the completion of Stage 1;

96.2 the surrender of all easements over or in favour of the Mudgeeraba Creek land, or the securing of other legally effective arrangements whereby Robina's obligations under this Part may be carried out without:—

96.2.1 adversely affecting Robina's ability to lawfully discharge drainage from the proposed development;
or

96.2.2 otherwise exposing Robina to any actual or potential liability to other persons or to any expense additional to the cost of carrying out the works specified in this Part,

Robina must, in conjunction with the development of the land shaded blue on Plan 2/7/2, or by 31 December 2000 (whichever is the earlier), at its cost either:—

96.3 if the legal right for Robina to carry out Mudgeeraba Creek Flood Flow Improvement Works on land not owned by Robina or Robina Properties has been secured by the Council, carry out such works from Point A on Plan 2/7/2 upstream along Mudgeeraba Creek to Point B on Plan 2/7/2;
or

96.4 if that right is not secured, carry out half of Mudgeeraba Creek Flood Flow Improvement Works (that is, widening along the southern side only of Mudgeeraba Creek) from Point A on Plan 2/7/2 upstream along Mudgeeraba Creek to Point D on Plan 2/7/2.

Despite clause 95, if Mudgeeraba Creek upstream of Point D on Plan 2/7/2 has been widened or is planned (at the time Robina commences work) to be widened, to less than 28.5 metres from the

SCHEDULE (continued)

centre line of Mudgeeraba Creek or to a depth less than RL-3.0 AHD, then Robina's obligation to widen and excavate Mudgeeraba Creek from Point D to Point C is reduced to the same width and depth.

Disposal of Spoil

97. Robina is permitted to dispose of spoil resulting from such widening and excavation on the land shaded in blue on Plan 2/7/2 as part of its fill entitlement referred to in clause 181.

Land Transfer and Easement Surrender

98. Robina must transfer to the Council (subject to any encumbrance easements), without compensation, any land of which it is the registered proprietor required for Mudgeeraba Creek Flood Flow Improvement Works and must, if required by the Council and when requested by the Council, surrender the benefit of all relevant downstream easements.

Despite the foregoing, Robina is not obliged to surrender any easement if the surrender will:—

- 98.1 adversely affect Robina's ability to lawfully discharge drainage from the proposed development; or
- 98.2 otherwise expose Robina to any actual or potential liability to other persons or to any expense additional to the cost of carrying out the works specified in this Part.

Resumption of Waterways Reserve

99. It is acknowledged by Robina and the Council that the Council intends to use its best endeavours to create a Waterways Reserve for the widening of Mudgeeraba Creek and that it may be necessary for the Council to exercise powers of compulsory acquisition for this purpose. If the Council compulsorily acquires for that purpose any of the combined site which Robina is required to transfer to the Council under clause 98, then Robina undertakes not to claim any compensation therefor and releases the Council from, and indemnifies it against, any such claim accordingly.

SCHEDULE (continued)*Specifications—Waterways and Water Bodies*

100. The designs for water body edge treatments and revetment walls as set out in Plan 2/7/4 are appropriate and acceptable designs for lakes and waterways within the combined site including Mudgeeraba Creek. Robina may choose from these designs the design or designs appropriate to the development adjacent to and/or the likely use on/of and/or the function of the water body.

Despite the foregoing, Robina may from time to time submit alternative designs to the Engineer for approval which, if approved, shall be deemed to form part of or, as the case requires, replace Plan 2/7/4.

Design and construction requirements for waterways and water bodies are as follows:—

- 100.1 the nominal standing water level for the general lake and waterways system is to be a minimum of RL 0.6 AHD;
- 100.2 water body edge treatments Type A and B shown on Plan 2/7/4 are permissible treatments in passive recreation locations only;
- 100.3 waterways must be excavated such that a minimum depth of 2.6 metres of water exists from the nominal standing water level in each waterway, except over batter profiles and beaches.

Timing and Staging of Earthworks

101. Earthworks Zone ED on Plan 2/11/3 and that part of Earthworks Zone EF on Plan 2/11/3 which covers the connection from the proposed Town Centre lake to Mudgeeraba Creek must be completed by the completion of Stage 1.

Earthworks for the lakes and waterways must otherwise be carried out in stages and must be carried out in conjunction with the development of the Earthworks Zone in which they are situated. Robina is not required to carry out earthworks in any zone in advance of the development of that zone (but may elect to do so).

SCHEDULE (continued)*Standards of Construction*

102. The overriding requirement for the standard of works carried out by Robina under this Part is that it be consistent with other work carried out by the Council or other persons in connection with the Merrimac Drainage Plan. Accordingly, and despite anything in this Part, the standard of construction of any works to be carried out by Robina under this Part is the lesser of:—
- 102.1 the standards specified in this Part;
 - 102.2 the standards specified in the Merrimac Drainage Plan; or
 - 102.3 the standards actually specified for other works of a similar nature pursuant to the Merrimac Drainage Plan or to which such works are actually constructed.

Control of Erosion/Siltation

103. Robina must use and conform to such good and workmanlike construction practices which are reasonably necessary to control erosion or siltation of waterways on the combined site and in adjoining areas, including installation of silt traps in accordance with accepted soil conservation practices and to the requirements of the Engineer.

Bridge, Weir and Lock Construction

104. Robina acknowledges that the Council is undertaking the co-ordination of agreements between all owners of Mudgeeraba Creek Land (who are set out in Table 2/7/6) and Sun Lakelands Pty. Ltd. (ACN 010 907 561) by which:—
- 104.1 Sun Lakelands Pty. Ltd. will construct the weir works under contract with the Council;
 - 104.2 the Council will construct the weir works (or the balance thereof) if Sun Lakelands has not completed construction of the weir works by 30 June, 1993; and
 - 104.3 the Council will be reimbursed by those landowners for part of the cost to it under that contract or in carrying out the construction in the amounts set out beside their names in

SCHEDULE (continued)**Table 2/7/6.**

The weir works are to be constructed for the purpose of improving drainage and flood control in the Merrimac flood plain and providing access by vessels to those lands from the existing navigable waterways. The location of the weir works are shown on Plan 2/7/5 and the present navigable water is marked thereon in blue.

Clause 104.2 does not, of itself, create a legal relationship between the Council and parties (other than Robina) who may benefit from the weir works.

Robina Contribution

105. In accordance with that proposal, Robina has contributed the sum of \$550,000.00 to the cost of the weir works, which sum was paid to the Council on 30 December 1991 and is being held by the Council in its trust account.

The Council may use the monies contributed by Robina to defray the cost of construction of the bridge on Robina Parkway over Mudgeeraba Creek (being part of the weir works). The monies may be paid for that purpose to Sun Lakelands Pty Ltd (or any other party who has carried out or completed the work in lieu of Sun Lakelands Pty Ltd, including the Council itself) upon issue of the Engineer's certificate of practical completion of the bridge and associated works referred to in the agreement between the Council and Sun Lakelands Pty Ltd dated 16 June, 1992.

In any event, no further contribution to the weir works is payable by Robina.

If substantial progress has not been made towards completion of the whole of the weir works by 31 December, 1993, or if clause 106 is not satisfied, then the Council must refund the sum of \$550,000.00 to Robina together with interest thereon at the rate or rates which would have been earned had the moneys been invested and re-invested from time to time with Westpac Banking Corporation on 90 day call commencing on 31 December, 1991. Aside from the obligation to make that refund, and despite clause 104.2:—

SCHEDULE (continued)

- 105.1 the Council has no liability to Robina on any account (including economic loss) in damages or otherwise; and
- 105.2 Robina has no other remedy against the Council,
- in the event that substantial progress has not been made towards completion of the whole of the weir works by 31 December, 1993.

Height of Mudgeeraba Creek Bridge

106. It is acknowledged as a fundamental term in relation to Robina's obligation under clause 105 that the underside of the bridge on Robina Parkway over Mudgeeraba Creek must be at least RL 4.783 AHD.

Robina To Carry Out Additional Work in Certain Circumstances

107. If at the completion of Stage 1 or 31 December 1995, whichever is the later:—
- 107.1 the deepening of that section of Mudgeeraba Creek from Robina Parkway upstream to Point A on Plan 2/7/4 (being part of the Mudgeeraba Creek Flood Flow Improvement Works) has not been undertaken by others; and
- 107.2 the Council has the appropriate right and authority over the area of Mudgeeraba Creek to be excavated in that regard,

Robina agrees to remove at its cost 40,000 cubic metres of soil along and from that section of Mudgeeraba Creek and in doing so it is permitted to dispose of the soil on the combined site as part of its fill entitlement referred to in clause 181.

Despite the aforesaid specification as to time, if that section of Mudgeeraba Creek has been dewatered by Sun Lakelands Pty Ltd (or a successor in title) before Robina's obligations would otherwise arise, and Sun Lakelands Pty Ltd or its successor does not wish to retain or use the material to be excavated, then the Council may require Robina to carry out its obligations under this clause upon the section being dewatered.

SCHEDULE (continued)

PART 8

COMMUNITY FACILITIES

Lease of Public Library

108. Robina must, upon the completion of Stage 1, grant to the Council (and the Council must take) a lease of 1000 square metres of floor space which is accessible to all members of the public, including disabled persons, in a building to be nominated by Robina and which is reasonably satisfactory to the Council and which is within the major shopping development in the Robina Town Centre Core for use as a public library.

Terms of Public Library Lease

109. The lease referred to in clause 108 must be on the following terms and conditions:—
- 109.1 the annual rental in the first year of the lease shall be \$100.00 per square metre and the Council will not be required to pay any additional monies in respect of outgoings or similar expenses of the lessor;
- 109.2 the rental for each subsequent year of the lease and the first and subsequent years of any further term or terms granted consequent upon the exercise of an option will be subject to increase in proportion to the increase in the Consumer Price Index (All Groups—Brisbane) each year over and above the Consumer Price Index (All Groups—Brisbane) for the quarter ended immediately before the commencement of the term, but under no circumstances shall the rental ever be less than that being paid in the preceding year;
- 109.3 the term is for ten years with two options for the lessee to renew each for a further ten years;
- 109.4 commencing date is the date of completion of Stage 1;
- 109.5 the premises must be used for the purpose of a public library

 SCHEDULE (continued)

(including reading and meeting rooms and book storage);

109.6 facilities must be provided within the premises to a standard of furnishing and amenity not less than that normally provided by Council in other areas of the Shire;

109.7 the other terms and conditions of the lease must be the same as in other leases in that building adapted to the extent necessary to take account of the fact that the lessee is a public authority rather than a commercial tenant.

Lease of Community Centre—Council's Notice

110. The Council:—

110.1 must on 30 June, 2001 if it has not by that date provided a community centre on the land outlined in red on Plan 2/6/9; and

110.2 may, prior to 30 June, 2001 if it so wishes,

notify Robina that it wishes to take a lease from Robina of not more than 1000 square metres of floor space which is accessible to all members of the public, including disabled persons, in a building to be nominated by Robina and which is in the major shopping development in the Robina Town Centre Core for use as a community centre (including provision of meeting rooms).

Upon that notice being given, Robina must use its best endeavours to allocate or otherwise provide floor space in a building in the Robina Town Centre Core over which the requested lease can be granted.

Lease of Community Centre—Robina's Notice

111. Whenever Robina proposes to construct a building forming part of the major shopping development within the Robina Town Centre Core which will contain 1000 square metres of floor space which will be accessible to all members of the public, including disabled persons, and which will otherwise be suitable for use as a community centre (including provision of meeting rooms), Robina may give the Council notice of the fact that suitable space will be available in the building (which notice must contain as much detail

 SCHEDULE (continued)

of the location, shape and dimensions of the space as can practicably be given). The Council may within 90 days after receipt of that notice give Robina notice that it wishes to take a lease from Robina of the whole or specified part of that floor space.

Terms of Community Centre Lease

112. If:—

112.1 the Council gives a notice to Robina under clause 110 and Robina is able to allocate or provide the required space; or

112.2 the Council gives a notice to Robina under clause 111,

the Council and Robina must thereupon negotiate in good faith with a view to reaching agreement on the terms of the lease other than the rental. The commencing annual rental must be the same rental per square metre as is being paid under the public library lease as at the date of commencement of the community centre lease and the provision for increase of rental must be the same as in the public library lease.

Failure to Agree

113. If:—

113.1 the Council gives a notice to Robina under clause 110 and Robina determines in good faith that it is impossible to allocate or provide the required space or impracticable to allocate or provide the required space in any reasonable manner; or

113.2 despite negotiating in good faith pursuant to clause 112, the parties are unable to reach agreement on the terms of the lease other than rental,

the matter of the lease is at an end and neither party has any further obligation in respect of that matter. A dispute in relation to Robina's determination under clause 113.1 may be the subject of proceedings under Section 10 of this Agreement but, as it is not the intention of the parties that they be bound by lease terms unless actually agreed, a failure by the parties, acting in good faith, to agree on the terms of the lease other than rental may not be the subject of proceedings

SCHEDULE (continued)

under Section 10 of this Agreement.

Operation of Community Centre/Library

114. The Council must provide, maintain and operate:—

114.1 a public library on the premises leased pursuant to clause 108 on and from the date of commencement of the lease;

114.2 if a lease is entered into pursuant to clause 112, a community centre (including provision of meeting rooms) on the premises so leased on and from the date of commencement of the lease until it has provided a community centre on the land outlined in red on Plan 2/6/9, at which time the Council may surrender the lease subject to it having given 12 months prior notice in writing to Robina.

SCHEDULE (continued)**PART 9****PLAN OF DEVELOPMENT—ROBINA TOWN
CENTRE CORE***Statement of Intent*

115. This Part contains the Plan of Development for the Robina Town Centre Core. It is the development code which defines the terms of the Special Facilities (Robina Town Centre Core) zone and controls:—

115.1 the final form of development in the Robina Town Centre Core; and

115.2 the procedures to be followed to obtain final development approval in the Robina Town Centre Core.

Apart from shops exceeding 100,000 square metres net lettable shop floor area and certain ancillary uses, no town planning consent is required for uses permitted in the Robina Town Centre Core. An application for final development approval must however be made in respect of the final form of development proposed for any allotment. The Council must approve the application if it is consistent with the planning intent for the proposed development set out in Part 2 and the planning intent for the Robina Town Centre Core contained in this Part and otherwise complies with all relevant requirements of this Agreement.

The Council may impose conditions contemplated by or consistent with this Agreement and other relevant and reasonably required conditions which relate to subject matter not specifically covered by this Agreement and which are not inconsistent with this Agreement.

Structure

116. This Plan of Development is divided into the following sections:—

1. Intent of the Plan of Development;

 SCHEDULE (continued)

2. Land uses;
3. Vehicle Parking;
4. General Development Guidelines;
5. Final Development Approval
6. Variation of Plan of Development;

Definitions

117. In this Plan of Development, unless otherwise stipulated herein, the terms used have the meanings designated in the Town Plan.

SECTION 1**INTENT OF THE PLAN OF DEVELOPMENT***Relation to Strategic Plan*

118. The Strategic Plan envisages the creation of a number of Regional Business Centres within the Shire for the provision of high order retailing and other commercial facilities and which will accommodate significant business, employment and cultural facilities, Government services and entertainment and to which significant concentrations of employment and future public transport systems will be orientated.

Robina Town Centre which is encompassed by the land the subject of this Agreement is one of the areas identified in the Strategic Plan as the site of a Regional Business Centre.

Role of Robina Town Centre Core

119. The Robina Town Centre Core forms the central core of the Regional Business Centre.

The Robina Town Centre Core will contain the core or central uses associated with the Robina Town Centre, including the highest range of retailing and other commercial facilities and will accommodate significant business, employment and cultural facilities, Government services and entertainment.

The intent of this Plan of Development is therefore to provide a basis for the overall development and orderly control of the Robina

SCHEDULE (continued)

Town Centre Core as the core of the Robina Town Centre in accordance generally with the goals, objectives and intent of the Strategic Plan and the Town Plan.

SECTION 2**LAND USES***Permitted Uses*

120. The purposes for which development may be carried out without the consent of the Council in the Robina Town Centre Core are:—
- accommodation units
 - car parks
 - catering businesses
 - child care centres
 - commercial premises
 - hotels
 - medical centres
 - offices
 - parks
 - places of worship
 - private recreation
 - professional offices
 - public recreations
 - service industries
 - service stations
 - shops not forming part of a major shopping development
 - shops forming part of a major shopping development having a net
 lettable shop floor area not exceeding 100,000 square metres
 - showrooms

 SCHEDULE (continued)

tourist facilities.

Permissible Uses

121. The purposes for which development may be carried out only with the consent of the Council on the Robina Town Centre Core are:—
- ~~an application for approval of a major shopping development (including existing shops in a major shopping development) will have a net lettable shop floor area greater than 100,000 square metres~~
- ~~those purposes which, in clause 120, are in the opinion of the Council considered to be ancillary to that particular purpose even though they do not form part of that purpose as a matter of planning law.~~

Prohibited Uses

122. Development must not be carried out in the Robina Town Centre Core for any purposes other than those referred to in clauses 120 and 121.

Environmental Impact Assessment Required

123. An application for the consent of the Council to use land for shops forming part of a major shopping development where, if the application is approved, the development (including existing shops in a major shopping development) will have a net lettable shop floor area greater than 100,000 square metres must be accompanied by an Environmental Impact Assessment, and is otherwise made in all respects in accordance with the law relating to applications for the consent of the Council under the Town Plan.

SECTION 3

VEHICLE PARKING

Principles, Guidelines and Planning Requirements

124. Vehicle parking spaces must be provided for each development in accordance with the principles, guidelines and planning requirements following:—
- 124.1 the integrated and overall planning of the development of the Robina Town Centre Core (which is possible due to the scale of the proposed development) means that car parking can be

SCHEDULE (continued)

provided in an overall orderly and planned basis which will provide adequate car parking spaces within easy walking distance of each development which will thereby avoid a proliferation of unsightly car parking areas and a general wastage of land;

- 124.2 the Council presently has special requirements for provision of car parking for particular developments as set out in clause 20 of the Town Plan;
- 124.3 the car parking space requirements in clause 20 of the Town Plan were calculated on the basis of stand-alone developments of relatively small size and therefore such tables represent only indicative levels of car parking provisions which are not necessarily appropriate to the proposed development of the Robina Town Centre Core because of the scale, complexity, mass and relationship of the developments proposed;
- 124.4 not all car parking generated by a development need be provided on the site of that development and parking requirements for each development may wholly or in part be provided off-site;
- 124.5 as it is not possible to be specific about car parking provisions at the date of this Agreement, it is appropriate for car parking needs to be assessed at the beginning of the development of each Precinct (or the Core as a whole if there are no Precincts), or at least each proposed development site;
- 124.6 this assessment must be carried out by a traffic engineer whose qualifications and experience are acceptable to Council taking into account some or all of the following circumstances as appropriate:—
 - 124.6.1 the level of provision of public transport facilities;
 - 124.6.2 the likelihood of a generation of greater or less than normal peak parking demand, including requirements for staff;
 - 124.6.3 the location of the Precinct (or Core) or site in

 SCHEDULE (continued)

- relation to existing or proposed public car parking areas and other parking areas;
- 124.6.4 the level of pedestrian/cycle accessibility;
- 124.6.5 the nature of the proposed use including hours of operation and anticipated intensity;
- 124.6.6 the existing uses in the Precinct (or Core) or on the site;
- 124.6.7 the levels and depth of the allotment or allotments;
- 124.6.8 the convenience and safety of vehicle access;
- 124.6.9 the proposed layout and size of parking spaces;
- 124.6.10 the provisions of any Development Control Plan affecting the Precinct (or Core) or site;
- 124.6.11 the integration, overall planning, the inter-relationship and compatibility of proposed development;
- 124.6.12 avoidance of proliferation of unsightly car parks;
- 124.6.13 avoidance of over-provision of car parking space;
- 124.6.14 the need to encourage the use of public transport;
- 124.6.15 the amount of off-site parking spaces, including kerbside parking spaces; and
- 124.6.16 such other factors as may seem to be relevant and reasonable.

In this clause:—

“off-site parking spaces” means parking spaces provided on land other than the site, the development of which requires the provision of parking spaces but which are within the Precinct in which the development is situated (or the Core if there are no Precincts) or, if not within that Precinct (or Core), within 400 metres of the development. Off-site parking spaces need not necessarily be on land owned by the person undertaking the development to which they relate.

 SCHEDULE (continued)

“on-site parking spaces” means parking spaces provided within the curtilage of the development site to which they relate.

Parking Need Assessment for each Precinct

125. Before development in any Precinct (or, if there are no Precincts, any part of the Core) takes place, Robina must furnish to the Council an assessment described in clause 124.6 in relation to car parking needs for the Precinct (or Core as a whole), which assessment must be considered by the Council in determining the number of parking spaces to be provided in that Precinct (or Core) for the uses and developments planned and as set out in that assessment.

If application is made for final development approval in respect of a use or development substantially different (in nature or scale) from what is contemplated by the assessment, the Council may refuse to deal with that application until an amended assessment which takes the particular site and the relevant development into account is furnished.

Off-Site Parking Spaces

126. Developments within a Precinct (or the Core) may satisfy parking space requirements by the provision of on-site or off-site parking spaces or by a combination of both.

Where off-site parking spaces are to be provided, the Council may require the applicant for final development approval to furnish a certificate from the owner of any land that the required number of parking spaces within the curtilage of that land as identified in that certificate:—

126.1 are provided or will be provided on that land; and

126.2 are available or will be available to the applicant and persons having resort to the applicant’s proposed development.

A certificate must not be furnished (and must be refused by the Council) if it relates to parking spaces which are or have been the subject of a previous certificate.

Acceptance of Certificate

SCHEDULE (continued)

127. Before accepting any such certificate, the Council must satisfy itself that the parking spaces and the parking arrangements the subject of the certificate, are adequate and, if the parking spaces have not been physically constructed, the Council must also satisfy itself that construction of such parking spaces will be completed not later than completion of construction of the development to which it relates and will be available for use as represented in the certificate. Upon the Council being satisfied of those matters, it may proceed to consider the application for final development approval.

Building Not to be Used Unless Spaces Provided

128. A person must not use or occupy, and the Council must not issue a certificate of classification in respect of, a building forming part of a development in respect of which off-site parking spaces are to be provided unless the spaces referred to in the relevant certificate furnished under clause 126 (or equivalent spaces) are constructed and available for use.

Off-site Spaces must be Maintained

129. Off-site parking spaces provided in respect of any development must continue to be available for use while that development remains in existence and no redevelopment or other use of land containing such parking spaces may be undertaken unless off-site parking spaces, comparable in character and convenience to those lost, are provided to replace those lost.

Commercial Parking Operations

130. Nothing in this Agreement prevents Robina or other persons from providing off-site parking for monetary reward but, where a certificate furnished under clause 126 refers to spaces provided or to be provided in a commercially operated car park, the Council must take into account the commercial terms and arrangements applying to such parking in determining whether or not it is satisfied of the matters referred to in clause 127.

Development of Car Parks

131. The Council, in assessing applications for final development approval to use land as a car park, may take into consideration the

 SCHEDULE (continued)

desirability of concentrating vehicle parking in separate and distinct places and of assisting to create a multiplicity of owners of vehicle parking stations so as to offer a choice for vehicle park users and avoid undue concentration of ownership and control of car parks in the Robina Town Centre Core.

SECTION 4**GENERAL DEVELOPMENT GUIDELINES***Exclusion of clause 55*

132. The provisions of clause 55 of the Town Plan do not apply to development in the Robina Town Centre Core.

Development Requirements

133. The following requirements must be met, performed or carried out in respect of every development in the Robina Town Centre Core:—
- 133.1 a person who undertakes development involving the erection of a building on land within the Robina Town Centre Core must, as part of that development:—
- 133.1.1 construct a pedestrian pavement full width in accordance with Urban Design Guidelines, or, if there are no such Guidelines, in accordance with the Council's specification, for the full length of each road frontage to the development site;
- 133.1.2 construct concrete kerb and channelling to the Council's specification for the full length of each road frontage to the development site;
- 133.1.3 construct reinforced concrete industrial crossings to the Council's specification from the kerb and channelling to the property alignment at approved locations where vehicular access to the property is required, and provide vehicle barriers along the remainder of the frontage of the site to the specification of the Council;
- 133.1.4 provide drainage work specified by the Council as

SCHEDULE (continued)

necessary in connection with the works set out above including debris traps where drainage discharges directly or indirectly to the lake and/or waterway system;

- 133.1.5 provide adequate reticulated sewerage and water supply to development by connection to the Council's services in accordance with the requirements of the Council.
- 133.2 the person carrying out the development must bear the cost of any alteration necessary to public utility, mains, services or installations involved in the construction of the works referred to in clause 133.1;
- 133.3 the materials used in and the execution of the works referred to in clause 133.1 must be to the requirements and satisfaction of the Council;
- 133.4 the development must incorporate cantilevered or other awnings unless the final development approval specifies otherwise;
- 133.5 provision must be made within the curtilage of the development site for bitumen sealed loading and unloading areas located separate from car parking areas and readily accessible from all tenancies in the site so designed that vehicles can enter and leave in forward gear;
- 133.6 the building or buildings must be set back from any road frontages in accordance with the Urban Design Guidelines or otherwise in accordance with the approved concept plan;
- 133.7 if buildings are to be constructed on sites fronting any lake or waterway, the setback from the boundary adjoining such waterway must be in accordance with the Urban Design Guidelines or, if there are no such Guidelines, the Council's current planning policy or any other relevant law in relation to setback from water bodies. Where appropriate, cantilevered awnings must be provided along any walkway or access way provided across such frontage;

SCHEDULE (continued)

133.8 where a development site is proposed to be developed with high rise business uses, the maximum ratio of floor area to site area is generally four to one but the Council may approve of a higher density if it is satisfied that the proposal will not:-

133.8.1 impose traffic loads beyond desirable limits;

133.8.2 otherwise create a traffic hazard; or

133.8.3 lead to the maximum equivalent population for the proposed development contemplated by this Agreement being exceeded.

133.9 arcades must be provided, if required by the Council at the time of final development approval, for the free and unobstructed movement of pedestrian traffic.

Relaxation Power

134. Despite clause 133, the Council may with the consent of Robina dispense with or modify any of the requirements or conditions therein if it considers a dispensation or modification is justified, having regard to:—

134.1 the existing development in the area;

134.2 the existing and likely future amenity of the area;

134.3 the nature of the proposed use;

134.4 the provisions of the Strategic Plan.

Toilet Facilities/Parent's Rooms

135. Where it is proposed to erect a building having a gross floor area exceeding 500 square metres, other than one for purposes not involving business or commercial activity, and the Council forms the view at the time application is made for final development approval that there is insufficient access to toilet facilities and/or parents' rooms for members of the public provided within the development, the Council may require as a condition of final development approval that such toilet facilities and parents' rooms for the public as it considers reasonable be provided.

SCHEDULE (continued)

Where it is proposed to erect such a building having a lesser floor area, the Council may require, as a condition of final development approval, that the party undertaking the development pay a monetary contribution towards the provision of such facilities in adjacent or nearby areas. Any contributions received by the Council must be expended, at the Council's discretion, for the purpose for which received.

Design of Buildings

136. All buildings must be designed by a registered architect and a building must not, by reason of its design, orientation or construction materials, have a detrimental effect on the amenity of the Robina Town Centre Core, area or adjoining development or likely future development in the Robina Town Centre Core.

Building Heights

137. The heights of office or commercial buildings will vary from time to time depending upon the requirements for office space both in terms of demand for floor areas as well as the need to accommodate like users in the same building, for example, the need for Government Departments or a large single tenant to be housed in one building. The height of any building in the Robina Town Centre Core must not exceed eight storeys above average finished ground level unless the Council otherwise approves upon being satisfied that a particular proposal for a higher building will not:—

137.1 contravene clause 136;

137.2 impose traffic loads beyond desirable limits;

137.3 otherwise create a traffic hazard; or

137.4 lead to the maximum equivalent population for the proposed development contemplated by this Agreement being exceeded.

Urban Design Guidelines

138. The Council may make Urban Design Guidelines for the Robina Town Centre dealing with the matters in this Section. To the extent of any inconsistency with a provision of this Section, the Guidelines

SCHEDULE (continued)

supersede the relevant provision.

SECTION 5

FINAL DEVELOPMENT APPROVAL

Final Approval Required

139. Prior to lodging a building application in respect of any proposed development within the Robina Town Centre Core, the person proposing to undertake the development must make application to the Council for final development approval in respect of the development.

Requirements for Application

140. An application for final development approval must be made in accordance with the law generally applicable to applications in respect of a permitted use but must include concept plans of the proposed development.

Requirements for Concept Plans

141. Concept plans forming part of an application for final development approval must include the following information:—
- 141.1 siting and configuration;
 - 141.2 height and bulk;
 - 141.3 relationship to adjoining buildings;
 - 141.4 materials and colours;
 - 141.5 relationship of building, land and water;
 - 141.6 identification of climate and energy efficiency measures;
 - 141.7 architectural perspectives;
 - 141.8 a landscape plan which indicates the extent of soft and hard landscaping elements.

Consideration of Application

142. In considering an application for final development approval, the Council must have regard to the following:—

SCHEDULE (continued)

- 142.1 external appearance, including selection of materials, building form and orientation;
- 142.2 the relationship between the proposed development and adjoining developments or likely future developments and overall siting within the area;
- 142.3 protection of amenity in terms of provision of light, privacy, ventilation and isolation of potential sources of noise, vibrations, smells, fumes, smoke, vapour, steam, soot, dust, water products, excessive light or glare or other hazards likely to cause undue disturbance to persons or property not connected with the use;
- 142.4 integration of the building form with the principal elements of the Robina Town Centre;
- 142.5 the adequacy of climate and energy efficiency proposals in terms of alignment, window apertures, pollution controls, energy efficiencies and measures to prevent adverse impacts upon and to enhance the environment;
- 142.6 acceptability of landscape in terms of:—
 - 142.6.1 compatibility of hard landscape elements with adjoining similar elements;
 - 142.6.2 appropriateness of plant species;
 - 142.6.3 provision for maintenance.

Decision on Application

- 143. In deciding an application for final development approval, the Council must:—
 - 143.1 approve the application;
 - 143.2 approve the application, subject to conditions; or
 - 143.3 refuse the application.

Ground for Refusal

- 144. An application for final development approval must not be refused except on the ground that the development proposed by the

 SCHEDULE (continued)

application does not accord with this Agreement in that it, or some feature of it:—

- 144.1 conflicts with the planning intent contained in Part 2 of the Second Schedule and this Part or evinced by Area and Precinct plans (if any) which include the land to which the application relates, and there are not sufficient planning grounds to justify proceeding with the development proposed despite the conflict; or
- 144.2 does not comply with or make provision for compliance with a requirement of this Part.

Conditions of Approval

- 145. The only conditions to which approval of an application for final development approval can be subjected are:—
 - 145.1 conditions specifically authorised by, contemplated by or consistent with this Agreement; and
 - 145.2 conditions relevant to and reasonably required by the proposed development or otherwise authorised by law from time to time which relate to matters other than those dealt with in Parts 3 to 8 and 12 of the Second Schedule.

Conditions Run with Land

- 146. Conditions to which approval of an application for final development approval is subject attach to the development site and are binding on successors in title.

Consideration of Building Application

- 147. The Council is not required to consider an application for building approval in respect of a proposed building in the Robina Town Centre Core:—
 - 147.1 in respect of which there is no final development approval; or
 - 147.2 which does not conform in all material respects to a final development approval relevant to the proposed building.

Where a final development approval relevant to a proposed building

SCHEDULE (continued)

is subject to conditions, a building application does not conform to that approval unless it indicates compliance with, or adequate provision for compliance with, every such condition.

Certificate of Classification

148. The Council must not issue a certificate of classification for any building in the Robina Town Centre Core unless it conforms in all material respects with the final development approval relevant to the building.

Where the final development approval relevant to a proposed building is subject to conditions, the building does not conform to that approval unless there is compliance with every such condition.

SECTION 6**VARIATION OF PLAN OF DEVELOPMENT***Power to Vary*

149. The Council may at any time at the request of and with the consent of Robina modify or vary the terms of this Plan of Development having regard to:—
- 149.1 the existing development in the area;
 - 149.2 the existing and likely future amenity of the area;
 - 149.3 the provisions of the Strategic Plan;
 - 149.4 any Urban Design Guidelines approved by the Council for the Robina Town Centre.

SCHEDULE (continued)**PART 10****DEVELOPMENT REQUIREMENTS—SPECIAL
BUSINESS ZONE***Statement of Intent*

150. This Part is a supplementary development code to be applied to that part of the subject land to be included in the Special Business zone. Most of the uses intended to be established in that zone are permitted development subject to conditions or permissible with the consent of the Council under the Town Plan and it is not intended that this Part supplant the Town Plan in that regard except that an application for notification of conditions may be refused in particular limited circumstances where the proposal conflicts with this Agreement. That aside, this Part contains provisions to be applied by the Council when deciding applications for notification of conditions or consent to carry out development. It is to that extent a modification of clauses 20 and 55 of the Town Plan for all purposes relating to development in the Special Business zone.

Vehicle Parking

151. Section 3 of Part 9 applies to control and regulate the provision of vehicle parking in the Special Business zone and is incorporated by reference into this Part as though each reference to “Robina Town Centre Core” were a reference to land in the Special Business zone and each reference to “final development approval” were a reference to notification of conditions of permitted development under the Town Plan or, as the case requires, consent under the Town Plan and the provisions of clause 20 of the Town Plan do not apply to the land in the Special Business zone.

General Development Guidelines

152. Section 4 of Part 9 applies to control and regulate requirements for development in the Special Business zone and is incorporated by reference into this Part as though each reference to “Robina Town

 SCHEDULE (continued)

Centre Core” were a reference to land in the Special Business zone and each reference to "final development approval" were a reference to notification of conditions of permitted development under the Town Plan or, as the case requires, consent under the Town Plan and the provisions of clause 55 of the Town Plan do not apply to the land in the Special Business zone.

Concept Plans to Form Part of Application

153. Every application under the Town Plan for the consent of the Council to carry out development and every application under the Town Plan for notification of conditions on a permitted development must include concept plans for each proposed building complying with clause 141.

Additional Matters for Consideration

154. When considering an application referred to in clause 153, the Council must, in addition to all other matters required by the relevant law, have regard to:—
- 154.1 all provisions of this Agreement relating to the planning intent or to development requirements for the land to which the application relates;
 - 154.2 the planning intent evinced by Area and Precinct plans (if any) which include the land to which the application relates; and
 - 154.3 the matters referred to in clause 142 so far as they are relevant to the application.

Power and Ground of Refusal

155. Without otherwise affecting the Council’s powers under the relevant law, the Council may refuse an application under the Town Plan for the consent of the Council to carry out development or, despite clause 5(1)(b) of the Town Plan and clause 5 of Division 3 of Part 2 of By-law 24, an application under the Town Plan for notification of conditions of permitted development in respect of land in the Special Business zone if the development proposed:—
- 155.1 conflicts with the planning intent contained in Part 2 of the

SCHEDULE (continued)

Second Schedule or evinced by Area and Precinct plans (if any) which include the land to which the application relates and there are not sufficient planning grounds to justify proceeding with the development proposed despite the conflict; or

- 155.2 does not comply with or make provision for compliance with a requirement contained in or incorporated by reference into this Part.

Conditions of Approval

156. Approval of an application referred to in clause 153 may be given subject to:—
- 156.1 conditions specifically authorised by, contemplated by or consistent with this Agreement; and
- 156.2 conditions otherwise authorised by the relevant law except conditions relating to a matter dealt with in Parts 3 to 8 and 12 of the Second Schedule.

Building Approvals to be Consistent

157. Clauses 147 and 148 apply to control and regulate the consideration of building applications and the issue of certificates of classification for buildings forming part of development in the Special Business zone and are incorporated by reference into this Part as though each reference to “Robina Town Centre Core” were a reference to land in the Special Business zone and each reference to “final development approval” were a reference to notification of conditions of permitted development under the Town Plan or, as the case requires, consent to carry out development under the Town Plan.

SCHEDULE (continued)**PART 11****DEVELOPMENT REQUIREMENTS—KERRYDALE
LAND***Statement of Intent*

158. This Part is a supplementary development code to integrate the development of the Kerrydale land with that of the rest of Robina Town Centre. The Kerrydale land is zoned Special Facilities (Golf Course, Hotel, Accommodation Units and Public Open Space) consequent upon the approval and gazettal of Rezoning Application No. 2061 and may be used for those purposes without the consent of the Council but subject to compliance with relevant and reasonably required conditions. The conditions originally imposed on approval of that application overlap to a large degree with provisions of this Agreement and have largely been rendered redundant by inclusion of the Kerrydale land in the combined site to be developed in accordance with this Agreement. This Part accordingly:—

158.1 specifies development requirements, derived from those conditions, which have operation specifically in relation to the Kerrydale land; and

158.2 ensures that the development control process applying to the Kerrydale land is consistent with the process applying to the rest of Robina Town Centre.

Kerrydale Plan of Development

159. Development of the Kerrydale land must be carried out substantially in accordance with plan 2/11/1.

Kerrydale Development Requirements

160. The following requirements must be met, performed or carried out in respect of development of the Kerrydale land in accordance with Plan 2/11/1:—

SCHEDULE (continued)

- 160.1 buildings must be constructed only in materials of construction approved by the Council;
- 160.2 the site of each detached dwelling, duplex dwelling or building containing residential units must be filled to a minimum level of RL 4.4 metres AHD. A report from a qualified engineer as to the extent and nature of fill proposed must be submitted for the approval of the Council prior to filling operations commencing and filling must be carried out in accordance with the approved report;
- 160.3 provision must be made for all site drainage and stormwater run-off to be channelled to the road or drainage outlet designated by Council;
- 160.4 no access is to be provided to the golf course and its associated facilities off Thorngate Drive;
- 160.5 all services and utilities along any road frontage of the Kerrydale land which are affected by the development must be relocated or otherwise adjusted by and at the cost of the party undertaking development;
- 160.6 each component of the development must be connected to Council's reticulated sewerage scheme at a point nominated by Council by and at the cost of the party undertaking development;
- 160.7 each component of the development must be connected to Council's water supply system by and at the cost of the party undertaking development;
- 160.8 access must not be provided to the golf course and its associated residential areas to or from Kidman Street;
- 160.9 watering of the site or other means must be used to prevent dust from affecting adjoining properties;
- 160.10 site works, construction works or the like may be conducted only between the hours of 7.00 am and 6.00 pm Monday to Friday inclusive. Work must not be carried out outside these hours or on Saturday, Sunday or public

SCHEDULE (continued)

- holidays unless specifically approved by Council;
- 160.11 provision must be made within the development for a wheelie bin or industrial bin service, in accordance with Council policy at full cost to the applicant;
- 160.12 maximum height of residential units is four storeys;
- 160.13 maximum height of the resort hotel building is eight storeys.

Detailed Approval Required

161. Prior to lodging a building application in respect of any building shown on Plan 2/11/1, other than a detached dwelling house or duplex dwelling, the person proposing to undertake the development must make application to the Council for detailed development approval in respect of the development.

Requirements for Application

162. An application for detailed development approval must be made in accordance with the law generally applicable to applications in respect of a permitted use but must include concept plans of the proposed building.

Requirements for Concept Plans

163. Concept plans forming part of an application for detailed development approval must include the following information:—
- 163.1 siting and configuration;
- 163.2 height and bulk;
- 163.3 relationship to adjoining buildings;
- 163.4 materials and colours;
- 163.5 relationship of building, land and water;
- 163.6 identification of climate and energy efficiency measures;
- 163.7 architectural perspectives;
- 163.8 a landscape plan which indicates the extent of soft and hard landscaping elements.

SCHEDULE (continued)*Consideration of Application*

164. In considering an application for detailed development approval, the Council must have regard to the following:—
- 164.1 external appearance, including selection of materials, building form and orientation;
 - 164.2 protection of amenity in terms of provision of light, privacy, ventilation and isolation of potential sources of noise, vibrations, smells, fumes, smoke, vapour, steam, soot, dust, water products, excessive light or glare or other hazards likely to cause undue disturbance to persons or property not connected with the use;
 - 164.3 the adequacy of climate and energy efficiency proposals in terms of alignment, window apertures, pollution controls, energy efficiencies and measures to prevent adverse impacts upon and to enhance the environment;
 - 164.4 the extent to which the application including road and access provision, landscaping provision and all other associated matters is consistent with Plan 2/11/1.

Decision on Application

165. In deciding an application for detailed development approval, the Council must:—
- 165.1 approve the application;
 - 165.2 approve the application, subject to conditions; or
 - 165.3 refuse the application.

Ground for Refusal

166. An application for detailed development approval must not be refused except on the ground that the development proposed by the application does not accord with this Part in that it, or some feature of it, is contrary to or inconsistent with Plan 2/11/1 or some other provision of this Agreement applying to the development site.

SCHEDULE (continued)

Conditions of Approval

167. The only conditions to which approval of an application for detailed development approval can be subjected are conditions which are relevant and reasonably required in order to ensure that the development is consistent with Plan 2/11/1 and other provisions of this Agreement applying to the development site.

Conditions Run with Land

168. Conditions to which approval of an application for detailed development approval is subject attach to the development site and are binding on successors in title.

Consideration of Building Application

169. The Council is not required to consider an application for building approval in respect of a proposed building on the Kerrydale Land:—
- 169.1 in respect of which there is no detailed development approval; or
 - 169.2 which does not conform in all material respects to a detailed development approval relevant to the proposed building.

Where a detailed development approval relevant to a proposed building is subject to conditions, a building application does not conform to that approval unless it indicates compliance with, or adequate provision for compliance with, every such condition.

Certificate of Classification

170. The Council must not issue a certificate of classification for any building on the Kerrydale land unless it conforms in all material respects with the detailed development approval relevant to the building.

Where the detailed development approval relevant to a proposed building is subject to conditions, the building does not conform to that approval unless there is compliance with every such condition.

SCHEDULE (continued)**PART 12****GENERAL***Public Transport*

171. Robina acknowledges that the Queensland Department of Transport has requested that Robina liaise with its Passenger Transport Division to obtain advice on the provision of public transport facilities described in a letter from the Queensland Department of Transport to the Council dated 28 August 1990 (Document 2/12/1) and undertakes to do so at the appropriate time in its planning. It is acknowledged that Robina has been conducting negotiations with the Department of Transport and it is understood at the date of this Agreement that the Department of Transport will acquire that part of the subject land necessary for the construction of the rail link to Robina Town Centre and construction and provision of the necessary station and passenger transport terminal. Provision has been made in the plans of Robina for road access to the terminal to and from arterial roads. Robina must incorporate into its planning, any agreements reached with the Department for the provision of public transport and in relation to the proposed route of the future southern rail extension.

Street Lighting

172. Robina must provide street lighting to all roads, paths and bikeways as part of the construction thereof in accordance with Table 2/12/2.

Construction Program

173. Robina must provide to the Council, within 30 days of this Agreement having the force of law, an indicative timetable of all works to be carried out pursuant to this Agreement in the following five year period and must on or before the 30th of June in each year provide to the Council a revision of such timetable.

So as to co-ordinate the construction of those works with the Council's own works program, the Council may on or before the

SCHEDULE (continued)

1st of June in each year notify Robina in writing of any works to be carried out pursuant to this Agreement which the Council would prefer be carried out in the year commencing on the 1st of July next. Robina must give due consideration and use its best endeavours to incorporate any work so notified by the Council into its indicative timetable for that year.

Precincts

174. Robina must from time to time or when requested by the Council provide to the Council a plan on which is delineated the current land use Areas and their Precincts. A plan referred to in this clause must be consistent with the planning intent contained in Part 2 of the Second Schedule and otherwise consistent with this Agreement.

Earthworks

175. Earthworks must be carried out by stages which will correspond to each Earthworks Zone. Robina is not be required to carry out earthworks in any zone in advance of its plan to develop that zone (though it may do so).

Earthworks Zones are defined on Plan 2/12/3 and may be constructed in any order chosen by Robina. Earthworks Zones may be redefined by Robina from time to time by lodging with the Council a plan of the redefined Earthworks Zones. Robina may not redefine an Earthworks Zone wherein earthworks have been commenced.

This clause does not relate to the earthworks shown on Plan 2/6/8 which will be carried out at the time specified in and in accordance with Table 2/6/2.

Removal of Vegetation

176. The proposed development will necessitate extensive reshaping of the land surface and profile and removal of vegetation.

Robina must, prior to commencing any clearing and/or earthworks in an Earthworks Zone, submit to the Council for the approval of the Engineer a report prepared by a professional engineer detailing the nature and extent of the clearing and/or works proposed and a

SCHEDULE (continued)

plan for the regeneration/restoration of vegetation. In granting approval to the report the Engineer may impose requirements for the carrying out of the work including a requirement for pit burning or chipping of timber.

Preservation of Historic Trees

177. Robina must not remove or destroy the three Bunya Pine Trees or any of them growing on the land shown in Plan 2/6/10. Robina must make provision for the preservation of the trees in its design for development of the site which contains them and will design that development so that there is no impediment to persons otherwise lawfully on that site obtaining access to the trees. Robina agrees to erect an historical marker in an appropriate position near the trees at the time the site containing the trees is developed.

Downstream Drainage

178. Waterways must be constructed in a sequential manner such that drainage discharge paths are available downstream of land proposed for development before final development of such land commences.

Service Districts

179. Services must be constructed generally on a Service District by Service District basis and each Service District must form part of an Earthworks Zone or Zones.

The Service Districts as presently defined are shown on Plan 2/12/7. Service Districts may be redefined by Robina from time to time by lodging with the Council a plan of the redefined Service Districts. Robina must not redefine a Service District wherein works (other than earthworks) have been commenced and must not redefine Service Districts such that the average area thereof is substantially increased or decreased as compared to the average area of the Service Districts defined on Plan 2/12/7.

Environmental Considerations

180. All plans for development of any part of the combined site, or for the carrying out of any other work under this Agreement, must have regard to and, so far as possible, conform with the following

 SCHEDULE (continued)

environmental guidelines:—

- 180.1 prohibition of planting of lantana for revegetation;
- 180.2 promotion of the breeding of water fowl and migrating birds along the waterways systems to be created;
- 180.3 continuation of the present policy of Robina of creation of a network of corridors and planting those corridors with native species of vegetation;
- 180.4 where revegetation of cleared areas is required, continuation of replanting those areas with appropriate species of vegetation; and
- 180.5 employment of revegetation techniques as previously employed in the Robina Development.

Reclamation

- 181. So far as concerns the Council's jurisdiction and powers:—
 - 181.1 Robina presently has a credit or right to reclaim 800,000 cubic metres (which includes the 420,000 cubic metres permitted under the original conditions of rezoning of the Kerrydale land) of the Mudgeeraba Creek floodplain ("the floodplain") to the north and west of Robina Parkway in the area shown on Plan 2/12/4 without any corresponding further obligation by it to excavate any part of the floodplain;
 - 181.2 Robina may undertake that reclamation substantially in accordance with Plan 2/12/5 which has been approved by the Council;
 - 181.3 earthworks for the construction of roads within the area outlined by a broken line on Plan 2/12/5 which involve filling of the floodplain form part of that reclamation.

Robina is not bound to reclaim the floodplain in accordance with Plan 2/12/5 so long as any alternative reclamation scheme has no greater impact on flood levels within the floodplain than the scheme shown on Plan 2/12/5.

Robina may accordingly propose a substituted plan from time to

 SCHEDULE (continued)

time. If the Council is satisfied that any such plan gives effect to the intent on which Plan 2/12/5 is premised, it must approve that plan which is thereafter substituted for Plan 2/12/5.

Filling must be carried out substantially in accordance with the approved plan from time to time (or Plan 2/12/5 if no other plan is approved).

Record of Reclamation Rights

182. For the purpose of administration of the reclamation rights to which Robina is from time to time entitled, Robina and the Council must maintain a balance sheet in the form contained in Drawing 2/12/6.

Robina and the Engineer must at the conclusion of any filling or excavation work in the floodplain (and at least once every six months in any event) verify the balance sheet for the preceding period and on agreement being reached as to the balance, the balance sheet must be certified by Robina and the Engineer as being correct.

Calculation of Reclamation Rights

183. For the purposes of clauses 181 and 182:—

- 183.1 a reclamation debit is calculated by multiplying:

the area (in square metres) of land filled

by

(the RL of that filled area or RL 4.43 AHD, **whichever is the lesser**) minus the RL of Natural Ground Level before filling commenced,

and the resultant answer is expressed in cubic metres.

- 183.2 a reclamation credit is calculated by multiplying:

the area (in square metres) of land which has been excavated

by

(the RL of Natural Ground Level before excavation or RL 4.43 AHD **whichever is the lesser**)

minus

 SCHEDULE (continued)

(the RL after excavation has been completed or RL 0.6 AHD
whichever is the higher)

and the resultant answer is expressed in cubic metres.

EXAMPLES OF CALCULATION OF **DEBIT**

(Assume area of filling = 20m² and RL of Natural Ground = RL 1.2 AHD)

Example A

WHERE RL OF FILLED AREA IS LESS THAN RL 4.43
AHD:—

RL 4.43 AHD _____

RL 3.00 AHD _____ Height of ground
after filling

RL 1.20 AHD _____ RL of Natural
Ground before
filling

$$\begin{aligned}
 \text{Debit} &= \text{Area in m}^2 \text{ of filled area} \times (\text{RL after fill} - \text{RL at Natural Ground}) \\
 &= 20\text{m}^2 \times (3.0 - 1.2) \\
 &= 20 \times 1.8 \\
 &= 36.0\text{m}^3
 \end{aligned}$$

Example B

WHERE RL OF FILLED AREA EXCEEDS RL 4.43 AHD:—

Height of ground after filling _____

RL of Natural Ground before filling _____

$$\begin{aligned}
 \text{Debit} &= \text{Area in m}^2 \text{ of filled area} \times (\text{RL after fill (to max of 4.43)} - \text{RL at Natural Ground}) \\
 &= 20\text{m}^2 \times (4.43 \text{ (since fill is above 4.43)} - 1.2) \\
 &= 20 \times 3.23 \\
 &= 64.6\text{m}^3
 \end{aligned}$$

 SCHEDULE (continued)

EXAMPLES OF CALCULATION OF **CREDIT**(Assume area of excavation = 20m²)*Example C*WHERE EXCAVATED AREA WAS ABOVE RL 4.43 AHD
AND EXCAVATED BELOW RL 0.6 AHDRL 5.00 AHD _____ RL of Natural
Ground before
Excavation

RL 4.43 AHD _____

RL 1.00 AHD _____

RL 0.60 AHD _____

RL 0.10 AHD _____ Excavated Depth

Credit = Area of land excavated in m² x (RL of Natural
Ground or RL 4.43 AHD **whichever is lower** – RL
after excavation or 0.6 **whichever is higher**)

= 20m² x (4.43 - 0.6)

= 20 x 3.83

= 76.6m³

*Example D*WHERE EXCAVATED AREA WAS RL 4.0 AHD AND
EXCAVATED TO 0.7RL 4.0 AHD _____ RL of Natural
Ground before
Excavation

RL 0.7 AHD _____ Excavated Depth

Credit = Area of land excavated in m² x (RL of Natural
Ground – RL after excavation)

= 20m² x (4.0 - 0.7)

= 20 x 3.3

SCHEDULE (continued)

= 66m³

SCHEDULE (continued)**PART 13****OBLIGATIONS OF COUNCIL***Support for Elements and Objectives of Agreement*

184. The Council acknowledges that the proposed development is a desirable one and agrees that the elements and objectives of the Agreement should be protected and agrees to give those elements and objectives and the other contents of this Agreement such due weight as is permitted by law when considering applications made to it by any person in connection with development of land in the region other than the combined site.

Support for Innovation

185. The Council acknowledges that Robina, during the course of developing the combined site, plans to introduce innovative and experimental forms and types of development in the public interest and must, consistent with its duties and obligations under the Act and any other law governing its conduct and activities, support and assist Robina in fulfilling its initiatives in this respect.

Best Endeavours to Secure Contributions

186. The Council must endeavour to ensure that appropriate and reasonable contributions towards the cost of providing or constructing the roadworks set out in Table 2/13/1 are obtained from developers carrying out development which has any traffic impact upon the roads or intersections referred to in Table 2/13/1 or would, if those roadworks were not provided by Robina, have required roadworks at those locations

Performance of Work by Others

187. The Council must where Robina has paid for or is required to pay contributions to the cost of roadworks as shown in Table 2/3/2 use all reasonable endeavours to ensure that those roadworks are constructed within a reasonable time.

SCHEDULE (continued)*Council's Liability*

188. The Council is not liable to Robina in damages or otherwise in respect of a failure to achieve the objectives of clauses 186 or 187 except in the case of a wilful refusal to comply with its obligations unrelated to any proper reasons or considerations connected with the Council's overall responsibility for the carrying out of the functions of Local Government within the Shire of Albert.

Performance of Work by Council

189. Except in respect of item 1 (ii) in Table 2/3/2 (for performance of which the Council assumes contractual liability), the Council's obligation in relation to the things which are stated to be the responsibility of the Council in Table 2/3/2 is to use all reasonable endeavours to do all those things within the times therein set out if funds are available.

Securing Road Reserves

190. The Council must dedicate as a road (without compensation) such of the land required for the Christine Avenue extension as shown on Plan 2/13/2 as is owned by it.

Water

191. The Council must provide operate and maintain at its own expense those parts of the Reedy Creek Water Supply Scheme required to provide the combined site with water supply flows at sufficient head commensurate with the design of the Water Works and at a time to coincide with the completion of the water works (as defined in Part 4 of the Second Schedule) or any part thereof within the combined site.

Sewerage

192. The Council must provide operate and maintain at its own expense those parts of the Merrimac Trunk Sewerage System required to service the combined site to the same standard as generally provided by the Council elsewhere in the Shire at a time to coincide with the completion of the sewerage works (as defined in Part 5 of the Second Schedule) or any part thereof within the combined site.

SCHEDULE (continued)

Mudgeeraba Creek

193. The Council must use its best endeavours, as part of the implementation of the Merrimac Drainage Plan, to create a Waterways Reserve more or less along the present course of Mudgeeraba Creek from the Pacific Highway to Robina Parkway and, in doing so, to:—
- 193.1 clarify the right title and ownership to the creek and adjoining lands; and
- 193.2 extinguish the existing multitudinous and outdated drainage easements in that vicinity.

Surrender of Easements etc.

194. The Council must use its best endeavours to procure agreements from owners along Mudgeeraba Creek to the construction of the Mudgeeraba Creek Flood Flow Improvements Works referred to in Part 7, the dedication of any lands required in that regard and the surrender of existing drainage easements affecting those lands.

Enforcement of Agreement

195. The Council must ensure that all development carried out by any person within the subject land is carried out in accordance with the spirit, intent and legal effect of this Agreement and so as to preserve the integrity of the proposed development.

Community Facilities

196. The Council must continuously provide, maintain and operate at a level of service not less than that normally provided in the Shire and at its own expense:—
- 196.1 on and from the date of commencement of the lease, a public library from the premises provided by Robina pursuant to clause 108; and
- 196.2 on any from the date of any lease entered into pursuant to clause 112 and, in any event, by not later than 30 June, 2001, a community centre (including provision of meeting rooms) from either the premises so leased (if any) or, if there is no

SCHEDULE (continued)

lease, from the land referred to in clause 87.

Provision of Services and Facilities

197. Subject to its overriding legal responsibility to perform the functions of local government in the manner best calculated to serve the interests of all inhabitants of the Shire of Albert as a whole, the Council must provide Council services, facilities and amenities to Robina Town Centre and maintain, manage and upkeep amenities, facilities, roads, parks, and public open space provided by Robina to the same standard as generally provided by the Council elsewhere in the Shire.

Use of Parks

198. The Council agrees not to intensify or permit intensification of development of parks and open space without consultation with and consideration of community views.

Road Opening and Closure—Christine Avenue

199. As the existing Christine Avenue delineated on Plan 2/13/2 is no longer required and is to be replaced by Robina dedicating the proposed Christine Avenue extension as delineated on Plan 2/13/2, the Council must, subject to clause 200, effect a closure of and a transfer to Robina of the existing Christine Avenue road reserve to be carried out by the Council in conjunction with the dedication by Robina of the land required for the proposed new Christine Avenue extension.

Negotiations with Department of Lands

200. The Council agrees to use its best endeavours to negotiate the required road closure and opening on the basis that no consideration or purchase price is payable by either party in relation to the transaction.

If the Council is successful in that regard, the Council and Robina must bear the costs necessarily incurred in documenting and giving effect to the transaction equally.

If the Council is unsuccessful in that regard, the parties' respective obligations under clause 199 and this clause shall cease and the

SCHEDULE (continued)

parties must negotiate in good faith with a view to reaching an alternate agreement to give effect to the required road closure and opening.

Robina recognises that the Council has not previously received any payment in connection with this matter and that there is accordingly no reason why the Council should be responsible for the payment of any compensation or purchase moneys required by the Department of Lands as a condition of road closure and transfer.

The Council recognises in this regard that the land which now comprises the existing and proposed X to Y Christine Avenue road reserve was dedicated by Robina free of compensation and accordingly it is recognised that the road opening and closure (which is effectively a land exchange) should be free of any consideration payable by Robina.

Change of Place Name of Combined Site

201. The Council agrees to co-operate with Robina to bring about a change of boundaries and, if necessary, the names of suburbs, so that the place name of the suburb in which Robina Town Centre is located is "Robina".

SCHEDULE (continued)

IN WITNESS WHEREOF the parties have executed this agreement on the day and year first hereinbefore written.

The Common Seal of Robina Land Corporation Pty Ltd A.C.N. 010 159 387 was hereunto affixed in accordance with its Memorandum and Articles of Association in the presence of Robert Keith Hill a Director and Robert John Slag the Secretary and in the presence of:

R.K. HILL

Director

R.J. SLAG

Secretary

B. REASON

Witness:

The Common Seal of Robina Properties Pty Ltd A.C.N. 010 147 038 was hereunto affixed in accordance with its Memorandum and Articles of Association in the presence of Robert Keith Hill a Director and Robert John Slag the Secretary and in the presence of:

R.K. HILL

Director

R.J. SLAG

Secretary

B. REASON

Witness:

SCHEDULE (continued)

The Corporate Seal of Council of the Shire of Albert was hereunto affixed in the presence of William Maurice Laver the Chairman and Terrence Robert Leslie Moore the General Manager/Shire Clerk and in the presence of:

W.M. LAVER

Chairman

T.R.L. MOORE

General Manager/Shire Clerk

Witness: Valerie TITE J.P.