



# **Breakwater Island Casino Agreement Act 1984**

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Queensland

# Breakwater Island Casino Agreement Act 1984

## Contents

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		Page
1	Short title .....	3
2	Ratification of formal agreement .....	3
3	Variation of formal agreement .....	3
4	Particular provisions of trustee leases .....	4
5	Parliament not restricted .....	5
<b>Schedule 1</b>	.....	6
<b>Schedule 2</b>	<b>Proposed further agreements</b> .....	106



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# Breakwater Island Casino Agreement Act 1984

**An Act with respect to the ratification of an agreement entered into for and on behalf of the State of Queensland with ANZ Executors & Trustee Company Limited and Breakwater Island Limited; to make provision with respect to certain other agreements; and for associated and consequential purposes**

## **1 Short title**

This Act may be cited as the *Breakwater Island Casino Agreement Act 1984*.

## **2 Ratification of formal agreement**

- (1) The agreement entered into for and on behalf of the State with ANZ Executors & Trustee Company Limited and Breakwater Island Limited, a copy of which is set out in schedule 1, is hereby ratified and approved and given the force of law and shall take effect as if its provisions were expressly enacted in this Act, and such provisions shall apply and prevail notwithstanding inconsistency in any respect with any other Act or law.
- (2) Such agreement is in this Act referred to as *the formal agreement*.

## **3 Variation of formal agreement**

- (1) The formal agreement may be varied by a further agreement corresponding to a proposed further agreement set out in schedule 2 between the Minister and the other parties to the formal agreement.
- (2) The Minister must notify the date of the making of the further agreement by Gazette notice.

- (3) The further agreement in schedule 2, part 3, varies the formal agreement only to the extent the further agreement contains a variation of the formal agreement as in force immediately before the making of the further agreement.

#### 4 Particular provisions of trustee leases

- (1) This section applies to the following (each a *relevant lease*)—
  - (a) trustee lease 601414725;
  - (b) trustee lease 703470717;
  - (c) a trustee lease granted over—
    - (i) if trustee lease 601414725 or 703470717 is surrendered—the trust land to which it relates; or
    - (ii) if land is granted under a deed of grant in trust over all or part of lot 676 on CP909884, however described (the *lot 676 trust land*)—all or part of the lot 676 trust land; or
    - (iii) a combination of the trust lands mentioned in subparagraphs (i) and (ii);
  - (d) a trustee lease granted to replace 1 or more of the relevant leases mentioned in paragraphs (a) to (c).
- (2) Each relevant lease may—
  - (a) despite the *Land Act 1994*, section 61(1), be granted for a period ending on 23 November 2063; and
  - (b) despite the *Land Act 1994*, section 58(1), allow the trustee lessee of the relevant lease to rent berthing or mooring facilities on the leased land—
    - (i) under a licence or other similar arrangement; and
    - (ii) only with the written approval of, and on the conditions decided by, the trustee of the trust land to which the relevant lease relates.
- (3) Subsection (2) applies, and is taken always to have applied, to a relevant lease granted before the commencement of this section.

(4) In this section—

*deed of grant in trust* see the *Land Act 1994*, schedule 6.

*trustee lease* see the *Land Act 1994*, schedule 6.

*trust land* see the *Land Act 1994*, schedule 6.

## **5 Parliament not restricted**

Nothing contained in this Act or in the formal agreement shall be construed to restrict the Parliament in making laws that affect the rights and obligation of the parties to the agreement under the agreement or any variations of it.

## Schedule 1

*Editor's note—*

Consistent with the provisions of the Act, this schedule only contains the proposed agreement authorised to be entered into by the Act as originally enacted. It does not purport to be either the agreement actually entered into or that agreement as amended from time to time.

AN AGREEMENT made this 27th day of November 1984 between THE STATE OF QUEENSLAND (hereinafter called “the State”) of the First Part and ANZ EXECUTORS & TRUSTEE COMPANY LIMITED a Company duly incorporated by law in the State of Victoria and having its principal place of business in the State of Queensland at 307 Queen Street, Brisbane in the said State as trustee of the Breakwater Island Trust (hereinafter called “the Trustee”) of the Second Part and BREAKWATER ISLAND LIMITED a Company duly incorporated by law and having its registered office in the State of Queensland at 27th Floor, Watkins Place, 288 Edward Street, Brisbane (hereinafter called “the Manager”) of the Third Part.

WHEREAS:

- A. The State has resolved to permit the establishment and operation of casinos in the State of Queensland by licensing one casino facility in Northern Queensland and one in Southern Queensland.
- B. The State has set out its objectives and considerations in its Brief to Finalists in which the State considered the following objectives and considerations as being of paramount importance to the establishment and operation of casinos in the State of Queensland:—
  - (i) an applicant shall establish an Hotel-Casino Complex of the highest standard and operate that complex on an impeccable basis;
  - (ii) the establishment of the Hotel-Casino Complex shall be of maximum enhancement to the tourist industry of Queensland by the provision of an international class hotel, casino and convention centre with the best standard of ancillary amenities such as restaurants,



- entertainment theatres, sporting and other community facilities;
- (iii) the permitted establishment and operation of the Casino will give significant community benefits;
  - (iv) that by the operation of the Casino the revenue of the State will be enhanced.
- C. The Company by its First Stage Submission and Second Stage Submission indicated its intentions in respect of the establishment and operation of a casino in Northern Queensland and the State has agreed to enter into negotiations with the Company as the preferred applicant for the issue to it or the Trustee of a Casino Licence for Northern Queensland as aforesaid.
- D. The said negotiations have been completed with the Company and the Trustee as hereinafter provided and the Minister has agreed, subject to ratification by an Act of Parliament and upon the terms of this Agreement, to issue a casino licence to the Trustee to permit the playing and conducting in the Casino of such games as may be approved by the Minister at any time and from time to time pursuant to the Control Act.
- E. The State acknowledges that the establishment of the Complex as hereinafter defined is a large scale development project requiring a very large capital expenditure and that it is necessary to give to the Trustee the security and assurances contained herein to enable the provision of capital for the establishment of the Complex.
- F. It is desirable that in consideration of the Trustee and Manager entering into their and each of their respective obligations on their parts hereinafter set out that the Trustee should be granted the entitlements benefits and privileges hereinafter mentioned.
- G. Whilst the parties recognise that the power of the Parliament of the State of Queensland to make laws is absolute and cannot be taken away by an Agreement made by the State, it is the intention of the State that the titles, rights and privileges of the Trustee be not derogated from by the State in any manner whatsoever except as hereinafter provided.

NOW THEREFORE IT IS HEREBY AGREED AS FOLLOWS:

1. This Agreement shall be divided into parts as follows:—

PART I—PRELIMINARY

PART II—DEVELOPMENT OF THE COMPLEX AND RELATED MATTERS

PART III—CORPORATE ORGANISATION AND RELATED MATTERS

PART IV—GRANTING OF CASINO LICENCE AND RELATED MATTERS

PART V—GRANTING OF LIQUOR LICENCE AND RELATED MATTERS

PART VI—CASINO OPERATIONS AND REVIEW THEREOF

PART VII—TERMINATION

PART VIII—SPECIAL PROVISIONS

PART IX—GENERAL

### **PART I—PRELIMINARY**

2. In this Agreement unless the context otherwise indicates or requires, the terms following shall have the meanings respectively assigned to them:

“this Agreement”—means this agreement and the schedules thereto and all amendments to such agreement or schedules.

“Administrative Assistance Agreement”—means that Agreement a copy of which has been delivered by the Manager to and held by the Minister for tabling in Parliament as listed in the Third Schedule hereto.

“Agreement Act”—means that legislation referred to in Clause 8 hereof.

“Breakwater Island Trust” or “Trust”—means the trusts constituted by the Trust Deed.

“Brief to Finalists”—means that document which is headed “Introduction of Casino Operations to Queensland—Brief to Finalists” and is dated October, 1981 and which explains the State’s detailed conditions and requirements for awarding a casino licence and further describes the submission format necessary for review and assessment by the State.

“Cairns region”—means that area of the State of Queensland which is within a radius in any direction of twenty (20) kilometres from the Cairns Post Office.

“Casino”—means those areas of the Hotel-Casino Complex identified in the schematic design drawings as the areas to constitute the Casino in this particular case. Notwithstanding the inclusion or not of the following areas in the schematic design drawings, the term includes not only areas for the conduct and playing of games but also those ancillary areas which relate directly to the operation and functioning of the Casino and which include money counting, surveillance, accounting and storage.

“Casino gross revenue”—means Casino gross revenue as defined in the Control Act.

“Casino Licence”—means a licence to be granted pursuant to the Control Act in respect of the Casino.

“commissioning”—means the checking, testing and acceptance of the operational readiness and procedures for the various components of the Complex by the State and the Manager.

“Committed Development”—means the works described in Clause 16 (c) of this Agreement.

“Company”—means Breakwater Island Resort Pty. Limited a company duly incorporated in the State of Queensland.

“Companies Code”—means the *Companies (Queensland) Code*.

“Complex”—means the buildings, structures and other works constructed or to be constructed pursuant to this Agreement and comprising the Committed Development.

“Control Act”—means the *Casino Control Act 1982*.

“Design and Construction Programme”—means the programme for the design, documentation, construction, fit-out, commissioning and completion of the Complex as contained in the First Schedule hereto.

“Development Agreement”—means that Agreement a copy of which has been delivered by the Manager to and held by the Minister for tabling in Parliament as listed in the Third Schedule hereto.

“First Stage Submission”—means the submission delivered by the Company to the State dated the thirtieth day of July 1981 which was in response to the State’s initial request for submissions to establish a casino in Northern Queensland.

“fit-out”—means the application of finishing material, furniture, fittings, furnishings and such other built-in and loose items required to bring the Complex to an operating condition.

“Foundation Agreement”—means that Agreement a copy of which has been delivered by the Manager to and held by the Minister for tabling in Parliament as listed in the Third Schedule hereto.

“Founders”—means the parties to the Foundation Agreement (other than the Trustee and the Manager).

“Future Development Area”—means that area of land including land under water between the northern boundary of Portions 639, 641, 643 and 644, the Western Breakwater, the Offshore Breakwater and the proposed Marina Access Channel as are shown in the schematic design drawings.

“gaming” or “gambling”—means the playing in the Casino of any game.

“gaming machine”—means any electronic, electrical or mechanical contrivance or machine that is constructed or adapted for use in a game of chance, where the game is played or commenced by the insertion in a slot or other aperture of money or money’s worth in the form of cash or tokens, or by payment of money or money’s worth by any other means and includes any contrivance or machine used for the purpose of a game of chance where the game is played partly by means of

the contrivance or machine and partly by any other means, but only if the element of chance in the game is provided by means of the contrivance or machine.

“Hotel-Casino Complex”—means the hotel established or to be established on Portion 639 Parish of Coonambelah within the area of which is the Casino and other businesses and amenities identified in the schematic design drawings. The term does not include the Retail Liquor Outlet constructed or to be constructed on the said Portion 639.

“Hotel-Casino Management Agreements”—means those Agreements copies of which have been delivered by the Manager to and held by the Minister for tabling in Parliament as listed in the Third Schedule hereto.

“Letter of Commitment”—means a letter of commitment given by Wardley Australia Limited and which is an annexure to the Foundation Agreement.

“Manager”—means Breakwater Island Limited and any other Manager for the lime being under the Trust Deed.

“Marina”—means a marina or marinas of not more than a maximum of 700 berths or moorings established or to be established on the Marina Basin.

“Marina Access Channel”—means a dredged channel as shown in the schematic design drawings extending from the vicinity of the Marina into Cleveland Bay of not less than 30 metres in width and minus 4.6 metres AHD in depth.

“Marina Basin”—means the area of land and water comprising the Marina Basin as shown in the schematic design drawings.

“Marina Entrance Channel”—means the entrance channel into the Marina as shown in the schematic design drawings.

“Marina Facilities”—means the passenger, freight, fuelling, provisioning and services terminals and the loading and unloading facilities, or any of them, for vessels on or upon the Marina Basin or on or upon a particular portion of land adjacent to the Marina Basin.

“Memorandum and Articles of Association”—means the Memorandum and Articles of Association of the Manager a copy of which has been delivered to and is held by the Minister for tabling in Parliament as listed in the Third Schedule hereto.

“Minister” means the Treasurer or other Minister of the Crown for the time being charged with the administration of the Control Act. The term includes any Minister of the Crown who is temporarily performing the duties of the Minister.

“Minister’s nominated representative”—means an officer of the Queensland Public Service nominated in writing by the Minister to the Manager and who shall be authorised by the Minister pursuant to this Agreement to act on his behalf on only those matters prescribed in writing by the Minister and which are directly related to the design, construction, fit-out and commissioning of the Complex.

“Northern Queensland”—means that area of the State of Queensland which is north of the Tropic of Capricorn.

“Offshore Breakwater”—means the breakwater shown as the “Offshore Breakwater” in the schematic design drawings of not less than 250 metres in length.

“Operative Date”—means the date upon which the Agreement Act comes into operation or the date upon which any necessary approvals of the Foreign Investment Review Board in respect of any Founder are granted, whichever is the later.

“Permitted Development” means the works described in Clause 16 (d) of this Agreement.

“Permits to Occupy”—means the permits to occupy referred to in Clause 61 hereof and in the form and on the terms and conditions of the permits to occupy set out in the Sixth Schedule hereto.

“person”—includes a company, corporation, firm and any other body of persons having legal entity as such body as well as a natural person.

“Portion 639”—means the Portion designated and described as Portion 639 on the plan in the Fourth Schedule and extends

to and includes any future description consequent upon survey of the Site in accordance with the Special Lease.

“Portion 640”—means the Portion designated and described as Portion 640 on the plan in the Fourth Schedule and extends to and includes any future description consequent upon survey of the Site in accordance with the Special Lease.

“Portion 641”—means the Portion designated and described as Portion 641 on the plan in the Fourth Schedule and extends to and includes any future description consequent upon survey of the Site in accordance with the Special Lease.

“Portion 642”—means the Portion designated and described as Portion 642 on the plan in the Fourth Schedule and extends to and includes any future description consequent upon survey of the Site in accordance with the Special Lease.

“Portion 643”—means the Portion designated and described as Portion 643 on the plan in the Fourth Schedule and extends to and includes any future description consequent upon survey of the Site in accordance with the Special Lease.

“Portion 644”—means the Portion designated and described as Portion 644 on the plan in the Fourth Schedule and extends to and includes any future description consequent upon survey of the Site in accordance with the Special Lease.

“Portion 645”—means the Portion designated and described as Portion 645 on the plan in the Fourth Schedule and extends to and includes any future description consequent upon survey of the Site in accordance with the Special Lease.

“Retail Liquor Outlet”—means a commercial development established or to be established on Portion 639 Parish of Coonambelah which includes or may include indoor and outdoor bars and bottle departments for the retail sale of liquor to the public, restaurants and fast-food areas for the retail sale of food to the public, and entertainment areas.

“schematic design drawings”—means the plans, drawings and other data in respect of the Complex and the Permitted Development delivered by the Manager to and held by the Minister for tabling in Parliament as listed in the Third

Schedule hereto. The term includes all variations thereto as hereinafter provided.

“Second Stage Submission”—means that submission delivered by the Company to the State dated the Ninth day of December 1981 which was lodged in response to the State’s Brief to Finalists.

“site”—means all that area of land including the land covered by water hatched in black on the plan in the Fourth Schedule hereto together with the area of land including land covered by water comprising the Marina Access Channel and Offshore Breakwater. The expression extends to and includes any future description consequent upon any resurvey of the site.

“Southern Queensland”—means that area of the State of Queensland which is south of the Tropic of Capricorn.

“Special Lease”—means the special lease referred to in Clause 57 hereof and in the form and on the terms and conditions of the Special Lease and the attachments set out in the Fifth Schedule hereto.

“Townsville City Council Agreement”—means the Agreement referred to in Clause 60 (a) hereof and the Schedules thereto, a copy of which has been delivered by the Manager to and held by the Minister for tabling in Parliament as listed in the Third Schedule hereto and all amendments to such Agreement or Schedules.

“Townsville Harbour Board Agreement”—means the Agreement referred to in Clause 60 (b) hereof and the Schedules thereto, a copy of which has been delivered by the Manager to and held by the Minister for tabling in Parliament as listed in the Third Schedule hereto and all amendments to such Agreement or Schedules.

“Trust Deed”—means that Deed a copy of which has been delivered by the Manager to and held by the Minister for tabling in Parliament as listed in the Third Schedule hereto.

“Trust Fund”—means all the cash and investments and all other property whatsoever for the time being held by the Trustee upon the trusts as are provided for in the Trust Deed.



“Trustee”—means ANZ Executors & Trustee Company Limited or any other person who for the time being is the trustee of the Breakwater Island Trust.

“Trustee’s Contractor”—means the Trustee’s Contractor referred to in Clause 36 hereof.

“Unit”—means that interest or part of the Trust Fund as is provided for in the Trust Deed.

“Unit Holder”—means the person who for the time being is registered under the provisions of the Trust Deed as the holder of a Unit and includes persons jointly so registered.

“Western Breakwater”—means the breakwater existing at the date of this Agreement which adjoins Ross Creek as shown in the schematic design drawings.

“works”—means all design, construction, fit-out and commissioning works of any nature whatsoever necessarily required for the completion of the Complex or the Permitted Development and shall include all excavations and ancillary works preparatory to and associated therewith whether on or off the site.

3. The singular includes the plural and the plural includes the singular.
4. Any reference to any Act or Acts unless the context otherwise requires shall include that Act or those Acts and any Act amending the same or in substitution therefor.
5. The State acknowledges and confirms that the Governor in Council has given his approval for the Minister for and on behalf of the State to enter into this Agreement with the Trustee and the Manager and that this Agreement is an agreement made pursuant to Section 19 of the Control Act.
6. The benefits that are expressed to be conferred upon, and the obligations that are expressed to be imposed upon, the Trustee pursuant to this Agreement shall be so conferred and imposed upon the Trustee and the Manager in accordance with the respective functions powers and responsibilities of the Trustee and the Manager set forth in the Trust Deed and to that intent the following shall apply:—

- (a) the Trustee shall prior to the grant of the Casino Licence be registered pursuant to a Nomination of Trustee as proprietor of an estate in fee simple in Portion 639 Parish of Coonambelah and the legal owner of the Casino and associated hotel and other facilities comprising the Hotel-Casino Complex on the said Portion 639;
  - (b) the Casino Licence and any other licence to be granted in accordance with this Agreement shall be granted to and held by the Trustee as is provided in this Agreement.
7. Neither the State nor any person to whom the Trustee is liable:
- (a) under or pursuant to this Agreement or the Agreement Act or an agreement entered into by the Trustee in pursuance of any of the matters provided for or contemplated in this Agreement or the Agreement Act;
  - (b) under or pursuant to any of the Agreements specified in the Third Schedule hereto;
  - (c) under or pursuant to the Control Act;
  - (d) in respect of or incidental to the acquisition by the Trustee of the site, the design and construction of the Complex and the management and operation of the Complex;
  - (e) in respect of or incidental to the Permitted Development shall be entitled to have recourse, in satisfaction of such liability, to any assets held by the Trustee in its personal capacity or in its capacity as trustee of any trust other than the Breakwater Island Trust and the recourse of the State and/or any such person shall be limited to the Trust Fund;

PROVIDED THAT nothing in the foregoing provisions of this clause shall limit the liability of the Trustee to the Unit Holders for breach of trust where the Trustee fails to show the degree of care and diligence required of a Trustee having regard to the powers, authorities or discretions conferred on the Trustee by the Trust Deed.

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8. (a) This Agreement is made subject to approval and ratification by the Parliament of the State of Queensland expressed in an Agreement Act to be enacted during the sittings of Parliament to be held immediately following the execution hereof or such subsequent sittings as may be practicable and agreed upon by the parties hereto.
- (b) The State agrees that the Government of the State of Queensland shall as soon as practicable after the execution of this Agreement introduce into and sponsor in the Parliament of the State a Bill in the form initialled by or on behalf of the parties hereto for an Act to be intituled “the *Breakwater Island Casino Agreement Act 1984*” to approve and ratify this Agreement in all respects in the form executed by the parties hereto and to provide for carrying this Agreement into effect.
9. If the Bill referred to in sub-clause (b) of Clause 8 hereof is not enacted by the Parliament of the State in the form initialled by or on behalf of the parties hereto or in such other terms as the parties hereto may agree in writing within the time provided for in sub-clause (a) of Clause 8 hereof this Agreement will then cease and determine in which event none of the parties hereto will have any claim against any other of them with respect to any matter or thing arising out of, done, performed or omitted to be done or performed under this Agreement or in anticipation of the coming into force of this Agreement.
10. Acts that have been done on and after 1 July, 1984 by or on behalf of the parties hereto in conformity with, and in anticipation of the coming into force of, the provisions of this Agreement, the Permits to Occupy or the Special Lease shall be deemed to have been done under and for the purposes of this Agreement or, as the case may be, the relevant Permit to Occupy or the Special Lease.
11. The State shall exempt from stamp duty or similar duty:—
- (a) this Agreement, the Townsville City Council Agreement and the Townsville Harbour Board Agreement;
- (b) any contract entered into by the Trustee and/or the Manager for the purposes of this Agreement or any document ancillary to such contract or in

implementation thereof where the other party to such contract or such document is the State, a State Corporation or State Instrumentality;

- (c) any contract of sale, memorandum of transfer or lease relating to the transfer or grant of any interest in the site or any part of the site to the Trustee;
  - (d) any copy of any of the aforesaid documents.
12. The Minister shall have the authority to decide all matters on behalf of the State pertaining to or connected with this Agreement unless the Governor in Council is specifically stated as the approving authority.
13. Notwithstanding anything contained in any Act or other statutory provision or rule of law enacted by the State it is hereby acknowledged that any act by the State, the Trustee or the Manager, connected with, or pertaining to the obligations, titles, rights and privileges of the parties contained in this Agreement, which would, but for the enactment of the Control Act and the Agreement Act, be illegal shall not be illegal.
14. The Trustee as the holder of the Casino Licence may mortgage charge or otherwise encumber:—
- (a) the Casino Licence to be granted pursuant to Clause 45 of this Agreement;
  - (b) the Hotel-Casino Complex;
  - (c) the Special Lease;
  - (d) Portion 639; and
  - (e) the rights and benefits of the Trustee under this Agreement

in accordance with Section 32 of the Control Act:

PROVIDED HOWEVER that the Minister shall be deemed to have consented to the execution by the Trustee of the securities referred to in the Letter of Commitment and to the granting of the security constituted by or provided for in the Letter of Commitment and to have approved of the Mortgagee or the Encumbrancee under those proposed securities as the person to whom such security is to be given in the terms of

and in accordance with Section 32 of the Control Act and Clause 65 hereof.

PROVIDED FURTHER that Section 32 of the Control Act shall not apply to any mortgage charge or other encumbrance granted by the Trustee over any of Portions 640, 641, 642, 643, 644, 645, the Marina, the Marina Basin or the Marina Entrance Channel.

15. The State, the Trustee and the Manager shall each pay its own costs in respect of this Agreement.

## **PART II—DEVELOPMENT OF THE COMPLEX AND RELATED MATTERS**

16. (a) The State accepts and approves the site as the area upon which the Committed Development and the Permitted Development shall be developed and constructed in the terms of this Agreement.
- (b) The State accepts and agrees that the development of the site shall be performed and completed by the Trustee in stages as follows—
  - (i) the committed development referred to in sub-clause (c) of this Clause; and
  - (ii) the permitted development referred to in sub-clause (d) of this Clause.
- (c) The Trustee agrees that it shall be a condition of this Agreement that the Committed Development of the site shall be duly performed and completed in accordance with this Agreement AND that such Committed Development shall comprise the following—
  - (i) reclamation of Portions 639, 640, 641 and 643;
  - (ii) construction of an hotel-casino complex on Portion 639, such hotel to include not less than two hundred (200) room modules and a convention centre for the accommodation of not less than seven hundred (700) persons;

- (iii) construction of revetments on the seaward boundaries of Portions 639, 640, 641 and 643;
  - (iv) construction of the Offshore Breakwater;
  - (v) construction of access to Portion 639, Portion 644 and Portion 645 (in respect of Portions 644 and 645, after those Portions are reclaimed); and
  - (vi) construction of all other buildings, structures, retaining walls, revetments and other works shown on the schematic design drawings as part of or as is necessary to complete the foregoing committed developments.
- (d) Subject to this Agreement, the Trustee may in its discretion perform and complete the Permitted Development of the site in part or whole and/or in stages AND such Permitted Development shall comprise the following—
- (i) reclamation of Portions 642, 644 and 645 including all necessary breakwaters, retaining walls or revetments;
  - (ii) construction of extensions to the casino;
  - (iii) construction of a Retail Liquor Outlet on Portion 639;
  - (iv) construction of not more than 100 additional hotel rooms and associated facilities on Portion 639 by extending the Hotel-Casino Complex and/or constructing additional buildings;
  - (v) construction of a shopping and commercial development on Portion 640 having a gross floor area not exceeding 4,000 square metres;
  - (vi) construction of not more than 100 building units or group title units on Portion 641;
  - (vii) construction of not more than 100 building units on Portion 642;
  - (viii) construction of extensions to the Offshore Breakwater in accordance with the schematic design drawings;
  - (ix) construction of the Marina Basin, the Marina, the Marina Entrance Channel and the Marina Access Channel in accordance with Clause 63 hereof; and

- (x) construction of all further developments of the site that are lawful under this Agreement and any other applicable Act or law.
17. (a) Notwithstanding the provisions of the *Local Government Act 1936-1984* or any by-law thereunder, the State agrees—
- (i) that the land comprising the site (other than the land comprising the Marina Basin, the Marina Entrance Channel, the Marina Access Channel and the Offshore Breakwater) shall in respect of any Town Planning Scheme in force in the Local Authority Area of the City of Townsville be and be deemed to be included in the undermentioned Zones as follows:—

Parish of Coonambelah

Portion No.	Zone
639	Special Facilities—(Hotel-Casino and associated facilities)
640	Commercial
641	Residential E
642	Residential E
643	Future Urban
644	Future Urban
645	Special Facilities—(Marina and boating services); and

- (ii) that the said land other than Portions 643 and 644 shall be deemed to remain so zoned for the purposes of this Agreement.

so that the use to which the Trustee and any other person claiming through or under the Trustee may put the said land, and the erection and use of the buildings, structures and other works thereon, may be undertaken and carried out in accordance with this Clause and without any interference or interruption by any Local Authority or by any other corporation or Instrumentality of the State or by any person on the grounds that such use is contrary to any town planning scheme or town planning by-law of any Local Authority or any other statutory town planning provision.

- (b) subject to sub-clause (c) of this Clause, the purpose for which development may be carried out without the consent of the Council of the City of Townsville under the Town Planning Scheme shall be in accordance with the Table of Uses to the Town Planning Scheme of the Area of the City of Townsville.
- (c) the Trustee shall be entitled to develop as of right as a development which may be carried out without the consent of the Council of the City of Townsville under the Town Planning Scheme the following developments:—

Portion No. As of Right Development

- 639 Hotel not exceeding 300 hotel rooms, Casino, restaurants, convention centre, theatre, Retail Liquor Outlet and associated facilities and parking.
- 640 A shopping and commercial development having a gross floor area not exceeding 4,000 square metres, Marine Facilities, yacht club and associated facilities and parking.
- 641 Building units or group title development not exceeding 100 units in either case, associated facilities and parking.
- 642 Building units development not exceeding 100 units, Marina exclusively for such development, associated facilities and parking.
- 643 Temporary parking in accordance with Clause 10.1 of the Townsville Harbour Board Agreement.
- 645 Marina and Boating and Services (including boat sales, ships chandlery, boat storage, tackle and bait shop, cafe, take-away food shop, boat ramps, travel lift, fuelling provision, small boats repair and maintenance facilities and yacht club), electricity substation, associated facilities and parking.

- (d) The State agrees that the relevant scheme maps for the Town Planning Scheme of the Local Authority Area shall be appropriately endorsed by the Minister for Local Government to give effect to this Clause.



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18. The Manager warrants that:—
- (a) all matters, other than those matters referred to in Clause 17 hereof, which require the consent, permission or approval of the Local Authorities and Statutory Bodies with respect to the design, development, construction and commissioning for operation of the Complex and the Permitted Development have been satisfactorily negotiated with the Council of the City of Townsville and the Townsville Harbour Board; and
  - (b) the financial contributions which the Trustee is required to make as a consequence of the matters referred to in paragraph (a) of this Clause have been duly agreed upon and are set forth in the Townsville City Council Agreement and the Townsville Harbour Board Agreement.
19. The Trustee shall make the financial contributions to the Council of the City of Townsville and the Townsville Harbour Board which are set out in the Second Schedule hereto in the manner and for the purposes referred to in the Townsville City Council Agreement and the Townsville Harbour Board Agreement respectively.
20. (a) The design, construction, fit-out and commissioning of the Complex and the Permitted Development or any stage thereof shall, subject to the provisions of this Agreement, comply with the requirements of all regulations and by-laws of all relevant Local Authorities and Statutory Bodies and all Acts of the State and the Commonwealth applicable thereto and in particular the *Fire Safety Act 1974-1984*, the *Building Act 1975-1984* and the *Factories and Shops Act 1960-1983*.
- (b) The parties acknowledge that compliance by the Trustee and/or the Manager with the provisions of sub-clause (a) of this Clause shall in no manner whatsoever compel or require the Trustee and/or the Manager to carry out any additional works or to make any financial contributions to the Council of the City of Townsville and the Townsville Harbour Board in respect of the design, construction, fit-out and commissioning of the Complex and the Permitted Development which are in addition to those provided for in Clauses 18 and 19 hereof.

21. The Trustee shall as soon as practicable but not later than one hundred and eighty (180) days after the Operative Date commence reclamation and development of the site.
22. The parties acknowledge that the schematic design drawings set out the general design and reflect the planning objectives of the State and the Manager for the design, development, construction, fit-out and commissioning of the Complex and the Permitted Development and the State accepts such schematic design drawings which indicate both Committed Development and Permitted Development as complying with its planning objectives and requirements.
23. The Manager warrants that:—
  - (a) the Complex shall be designed, developed, constructed, fitted out and commissioned for operation in accordance with the schematic design drawings and the further working drawings and specifications which are hereinafter provided for together with any approved alterations or modifications thereto pursuant to Clause 28 hereof; and
  - (b) the Complex shall be completed and ready for operation and use by the public within one hundred (100) working weeks from the Operative Date, subject only to any extensions of time which may be approved by the Manager on behalf of the Trustee pursuant to the Development Agreement and monitored by the State.
24. The Manager shall within eighteen (18) weeks of the Operative Date or such longer period as approved by the Minister submit to the Minister for his approval the following items in respect of the Complex:—
  - (a) an engineering survey drawing indicating to the extent practicable all site alignments and constraints and all metes and bounds of the site and all ownership and controls as well as the names of any abutting roads, waterways, service lines and other material matters both existing and proposed;

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- (b) a Schedule identifying the nature and degree of access to all facilities by people who may not be attending the Complex;
  - (c) a detailed site development master plan or plans clearly indicating the full intentions of the Manager for the development of the Complex which shall contain all intended stages of development;
  - (d) all final schematic design drawings;
  - (e) a budget estimate of costs for the works prepared by a Quantity Surveyor in accordance with the current National Public Works Conference Cost Control Manual;
  - (f) a proposal detailing the intended method of carrying out all phases of the development of the Complex including the type of contract documentation to be used, the system, including the provision for Ministerial review and approval, for the calling of tenders and appointment of sub-contractors, trade contractors and the method for completing construction, fit-out and the commissioning of the Complex;
  - (g) an itemised design and construction programme for all phases of the development of the Complex up to and including the time of commissioning the Complex for operation which may at the option of the Manager provide for the works to be staged to permit pursuant to Clause 35 hereof any part of the Complex to open for use by members of the public before the whole of the Complex is completed;
  - (h) a projected and itemised cash-flow forecast for construction of the Complex up to and including the commissioning stage on a financial year matrix:

PROVIDED HOWEVER where the Governor in Council has approved pursuant to Section 86 of the *Harbours Act 1955-1982* the plans of any works below high water mark to be constructed under this Agreement, the State agrees that it shall not be necessary for the Manager to obtain also the approval of the Minister required by this Clause and Clause

25 hereof in respect of the schematic design drawings, working drawings and specifications for such works but the Manager shall within thirty (30) days of receiving an approval pursuant to Section 86 of the *Harbours Act 1955-1982* forward a copy of the details of such works and the relevant approval to the Minister.

25. (a) The State acknowledges and confirms that the Manager intends to prepare or cause to be prepared all necessary documents and drawings for the design and construction of the Complex other than the documents and drawings contemplated in Clauses 24 and 26 hereof and to carry out or cause to be carried out the construction of the Complex in stages and that subject to Clauses 24, 25 (b) and 26 hereof as the said necessary documents and drawings for each stage are completed to submit all such documents and drawings to the Minister for his approval.
- (b) The Minister may request that all or any of the following drawings and documents so far as they relate to that part of the Complex aforesaid which the Manager intends to commence as the next ensuing stage be submitted for his approval prior to the dates contemplated in the Design and Construction Programme:—
- (i) working drawings and specifications;
  - (ii) pre-tender contract documentation;
  - (iii) nominations of head contractors and sub-contractors;
  - (iv) equipment and fit-out documentation.
26. (a) The Manager shall, not less than thirty (30) days prior to the commencement of any works or any part thereof which relate directly to the Casino, submit to the Minister for his approval, all working drawings and specifications relating to such items of construction and in particular the following details:—
- (i) Casino floor layouts showing placement of gaming tables and closed circuit television cameras;
  - (ii) the design of the reflected ceiling showing the location of catwalks, closed circuit television cameras, viewing panels, lights and other fittings and services;

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- (iii) plans of cashier's cages, count rooms and all security areas including access thereto;
  - (iv) plans of areas to be used for inspectors appointed under the Control Act and the Casino security staff;
  - (v) the electrical installations and in particular for:—
    - (A) closed circuit television system;
    - (B) alarm system;
    - (C) telephone installations;
    - (D) emergency link to local police headquarters;
    - (E) auxiliary power and lighting provisions;
  - (vi) the master-key system proposed; and
  - (vii) the proposed construction, supply or fit-out of the preceding items.
- (b) The Manager shall ensure that all materials, fittings and equipment utilised in the construction, fit-out and operation of those areas specified in sub-clause (a) shall be of a high standard of manufacture and of a quality commensurate with an international class hotel-casino.
27. The Manager shall in sufficient time to allow the Minister to consider but in any event prior to the date upon which the Manager intends to open for use by the public any part of the Complex submit to the Minister for his approval details of the following matters so far as they relate to that part of the Complex which the Manager intends to open as aforesaid:—
- (a) fire safety procedures;
  - (b) emergency shelter arrangements;
  - (c) crowd control procedures;
  - (d) armoured vehicle transfer arrangements;
  - (e) vehicle control and parking arrangements.
28. (a) The parties acknowledge that variations to the schematic design drawings and the working drawings and specifications to be provided pursuant to this Agreement may be necessary. The Manager shall submit to the Minister's nominated

representative or, in the case of works below high water mark, to the Marine Board of Queensland with a copy to the Minister's nominated representative, details of any such variations that are proposed and shall not make any such variations without the prior approval in writing of the Minister or, in the case of works below high water mark, the Governor in Council under Section 86 of the *Harbours Act 1955-1982*.

- (b) If, in the opinion of the Manager or the Trustee's Contractor or its agent, it is necessary to make variations as aforesaid as a matter of urgency (other than variations to works below high water mark), then the Manager shall be permitted to carry out such variations and it shall as soon as is practicable advise the Minister's nominated representative of such variations so as to obtain the Minister's approval.
29. (a) If upon the submissions detailed in Clauses 24, 25, 26, 27 or 28 hereof having being made, the Minister does not approve the whole or any part of such submissions he shall issue a notice to show cause why that part should not be altered, replaced or withdrawn and cause such notice to be delivered to the Manager.
- (b) The notice shall state the grounds upon which the Minister does not approve the whole or such part of the submission and shall allow such time as may be reasonable, but not less than thirty (30) days, by which cause may be shown.
  - (c) The Manager may endeavour to show cause by written, oral or any other type of further submission to the Minister at any time on or before the day specified in the notice by which cause may be shown, and may in showing cause, introduce such further alternative proposals for consideration by the Minister as it deems necessary.
  - (d) The Minister shall give all further submissions forwarded to him in answer to the show-cause notice all due consideration and if, in his opinion:—
    - (i) insufficient cause is shown or, where no cause is shown, direct that the Manager modify its submission in such manner as will satisfy the Minister; or

- 
- (ii) sufficient cause is shown accept and approve the submission of the Manager in its original form or subject to any modification which the Minister directs.
- (e) In his consideration of all submissions made to him pursuant to Clauses 24, 25, 26, 27 or 28 hereof or pursuant to this Clause the Minister shall have regard to the general design and planning objectives of the State and the Manager contained in the schematic design drawings, subject to such variations thereto as shall have been approved where approval is required.
30. The Minister shall approve or not approve the necessary documents and drawings which the Manager is required to lodge with the Minister for approval hereunder within thirty (30) days of receiving same from the Manager and if he has not communicated his approval or delivered a show-cause notice pursuant to Clause 29 hereof to the Manager within the said thirty (30) days then the Manager shall be deemed to have received approval from the Minister and may proceed with that part of the works for which approval was sought.
31. (a) The Minister, and any persons appointed in writing by the Minister or the Minister's nominated representative, shall at all times have free access to the site for the purpose of inspecting and measuring the progress of the works and undertaking tests:
- PROVIDED THAT, in doing so, such persons shall not interfere with the progress of the works except for the purpose of exercising any powers hereby conferred:
- AND PROVIDED FURTHER THAT on entering the site, such persons shall inform the senior representative of the Trustee's Contractor or its agent on the site of their presence.
- (b) The Minister's nominated representative shall be available during all normal working hours, and as often as may be necessary, for consideration of all drawings and specifications and consideration and consultation of any other technical matters connected with design, construction, fit-out and commissioning of the Complex.

- (c) The Minister's nominated representative shall from time to time give to the Manager notice in writing of all inspections, measurements and tests that he proposes to carry out during the progress of the works sufficiently in advance of the proposed dates of completion of the work to be measured or tested so as not to delay the completion thereof and the Manager shall ensure that no part of the works is covered up or otherwise made inaccessible before any required inspection, measurement or test is completed:

PROVIDED HOWEVER that should the Minister's nominated representative not carry out the inspection, measurement or test on the day appointed by the Trustee's Contractor and advised to the Minister's nominated representative the Trustee's Contractor shall be at liberty to continue the works.

32. (a) Within sixty (60) days of the Operative Date the Manager shall provide an on-site secure office for the exclusive use by the Minister's nominated representative and any other representative nominated by the Minister as hereinbefore referred to during the carrying out of the works for the Complex. Such office shall be in a location to be agreed upon by the Minister's nominated representative and the Manager and shall have its own separate access and be of a standard that is, and with facilities that are, not less than that provided for the Trustee's Contractor.
- (b) The Manager shall, if required by the Minister's nominated representative, maintain such office in a clean condition for the duration of its occupancy by the Minister's nominated representative.
33. Project advisory meetings shall be held on a monthly basis and from time to time as may be agreed upon by the Minister's nominated representative and the Manager during the design documentation, construction, fit-out and commissioning stages of the Complex. The principal purposes of these meetings are to monitor design, development, contract documentation and progress of the works, to provide advice by the Minister's nominated representative to the Manager in respect of compliance with the State's requirements during the various stages of the development of



the Complex and to discuss any urgent matters which may arise from time to time. Such meetings shall be chaired by the Minister's nominated representative and attended by the Manager's nominated representative and such others as may be determined by these persons from time to time. The Manager shall provide accurate minutes to the Minister's nominated representative within one (1) week after such meetings.

34. The Manager shall provide such number of copies not exceeding three copies of all plans, specifications and other such material to the Minister as may be required pursuant to this Agreement or in accordance with any procedure for inspection of the works as may from time to time be advised by the Minister or the Minister's nominated representative to the Manager;

PROVIDED HOWEVER that the Manager shall not be obliged to provide working drawings relating to the installation of the security surveillance and alarm systems to be incorporated into the Complex but shall be required:—

- (a) to deliver to the Minister particulars of such systems to show how they operate and that they are adequate for the purposes for which they are intended;
  - (b) to make available at the office of the Manager the working drawings as aforesaid for perusal by the Minister's nominated representative and such other persons as may be specified by the Minister's nominated representative and agreed to by the Manager;
  - (c) to promptly advise the Minister's nominated representative of any variations proposed for such systems; and
  - (d) to maintain an up-to-date set of working drawings of such systems and to make such drawings available at the office of the Manager to the Minister or to a person nominated by him and agreed to by the Manager.
35. The Manager may at any time during the construction of the Complex apply to the Minister for approval to open such part or parts of the Hotel-Casino Complex as may be completed

and ready for operation notwithstanding that the whole of the Complex is not so complete and the Minister shall not unreasonably withhold his approval to any such application;

PROVIDED THAT the following shall be conditions precedent to the approval of the Minister to open the Casino part of the Hotel-Casino Complex and to issue a Casino Licence in accordance with Clause 45 hereof—

- (i) the Hotel-Casino Complex shall be substantially completed and at least seventy (70) hotel guest rooms shall be ready and available for use by members of the public;
  - (ii) the other works that comprise the Complex shall be substantially completed; and
  - (iii) the Trustee and the Manager shall have observed and performed all relevant obligations under the Townsville City Council Agreement and the Townsville Harbour Board Agreement.
36. The State accepts and approves the appointment of KUMAGAI GUMI CO. LTD. as the Trustee's Contractor and THIESS WATKINS (CONSTRUCTION) LIMITED as the Project Manager for the design, development, construction, fit-out and commissioning of the Complex in terms of the Development Agreement.
37. (a) The State accepts and agrees that the Trustee may, concurrently with the development of the Complex or within a period of thirty (30) years from the Operative Date, further develop the site by performing, wholly or in part, the Permitted Development.
- (b) The State agrees that the Trustee may carry out such further development in accordance with the terms of the Development Agreement and the Trustee agrees that to the full extent or otherwise to the extent required in writing by the Minister the provisions of Clauses 24 (a), (b), (c) and (d), 25, 29 and 30 hereof shall with all necessary adaptations extend and apply to such further development.
- (c) The Trustee shall, within three (3) months after the expiration of each period of three (3) years from the date the Trustee is

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granted the Casino Licence and during the period of thirty (30) years from the Operative Date, furnish to the Minister a report in writing with respect to the undertaking of the Permitted Development. Every such report shall—

- (i) include details of the stage or stages of the Permitted Development (if any) that the Trustee proposes to perform during the period of three (3) years from the date of the report; and
  - (ii) if no part of the Permitted Development is to be performed during such period of three (3) years, include a statement of the facts and circumstances that are then considered by the Trustee to be relevant to the Trustee's decision.
- (d) It is acknowledged by the parties that the proposal to undertake or the undertaking of such Permitted Development will depend on commercial feasibility.
38. The performance by the Trustee and the Manager respectively of the terms and conditions herein contained or referred to as relate to the design, development, construction, fit-out and commissioning of the Complex, is subject to, and is contingent upon, events, happenings or contingencies which interfere with the performance of such terms and conditions and which in the absence of fault or negligence on the part of the Trustee and/or the Manager as the case may be, are beyond the reasonable control of the Trustee and/or the Manager as aforesaid, including but not restricted or limited to accidents, acts of God, force majeure, earthquakes, floods, storms, tempests, washaways, fires, acts of war, acts of public enemies, riots, civil commotions, strikes, lockouts, bans, "go-slow" activity, stoppages, restraints of labour or other similar acts (whether partial or entire), acts or omissions of any Government or any instrumentality (whether legislative, executive or administrative) of the Commonwealth or of any other government or governmental authority or instrumentality (whether legislative, executive or administrative), shortages of labour or materials, reasonable inability to obtain contractors, delays of contractors, inability or delay in obtaining any Government or local authority or any other approval, permit or licence, and delays arising from

any other cause whether of a kind specifically enumerated above or otherwise, which are not reasonably within the control of the Manager and/or Trustee as aforesaid, and, upon the occurrence of any one or more of such events, the Trustee and/or the Manager shall not be liable to the State in any manner whatsoever as a result of such delay or failure to perform and observe any of the terms and conditions herein contained;

PROVIDED HOWEVER that the provisions of this Clause shall not excuse any failure to comply with the provisions of Clause 28 hereof.

### **PART III—CORPORATE ORGANISATION AND RELATED MATTERS**

39. The Manager in the performance of its functions pursuant to the Foundation Agreement and the Trust Deed shall:—

(a) cause the issue to each Founder in accordance with the provisions of the Foundation Agreement the respective number of Units set forth below:

(i) DRAYTON INVESTMENTS PTY. LTD.	Nine million (9,000,000)
(ii) KUMAGAI GUMI CO. LTD.	Seven million (7,000,000)
(iii) THIESS WATKINS (MANAGEMENT) LIMITED	Seven million (7,000,000)
(iv) SHERATON PACIFIC HOTELS PTY. LIMITED	Five million (5,000,000)

at a selling price of FIFTY CENTS (\$0.50) per Unit which shall be payable by instalments and secured in the manner set out in paragraphs (f) and (g) of this Clause;

PROVIDED THAT the above issue of Units shall include the following issue to the Founders of the initial

two thousand (2,000) Fully Paid Units pursuant to the Foundation Agreement and the Trust Deed:

- |     |  |                         |
|-----|--|-------------------------|
| (A) | DRAYTON INVESTMENTS<br>PTY. LTD.       | One thousand<br>(1,000) |
| (B) | THIESS WATKINS<br>(MANAGEMENT) LIMITED | One thousand<br>(1,000) |
- (b) cause the offer, and upon acceptance, the issue to the public of Units, each at a selling price of Fifty Cents (\$0.50), payable in full upon application, to a face value which is not less than FOURTEEN MILLION DOLLARS (\$14,000,000) subject to the requirements of the Australian Associated Stock Exchanges and the National Companies and Securities Commission. The minimum application accepted from the members of the public shall be for a minimum of five hundred (500) Units. In carrying out the allotment of Units the Manager and the Underwriters shall accord priority, during the period of three (3) weeks from the date of the first advertisement of the Prospectus, pursuant to which the Units are offered, in a newspaper circulating throughout the State (“the priority period”), firstly to applications for Units received from members of the public resident in Queensland and secondly to applications received from Queensland residents during the priority period for the minimum subscription;
- (c) cause the granting to the public of options to acquire further Units on the following terms and conditions:—
- (i) Members of the public will be granted one (1) option to acquire a further Unit for every four (4) Units allotted to such members as a result of the issue to them of Units pursuant to paragraph (b) of this clause.
  - (ii) The option may be exercised at any time and from time to time in whole or in part up to and including the thirty-first day of December, 1988.
  - (iii) The price payable per Unit shall be FIFTY CENTS (\$0.50) payable in full on application.

- (iv) The option shall be exercised by the member of the public exercising the same by delivering or sending by prepaid registered post to the Manager a Notice of Exercise of Option which notice shall state the number of Units in respect of which the option is exercised and shall be accompanied by a cheque for the purchase price of those Units.
  - (v) Upon receipt of a Notice of Exercise of Option pursuant to paragraph (iv) together with a cheque in the correct amount the Manager shall forthwith cause and in any event within seven (7) days thereafter shall cause to be issued to the member of the public exercising such Option such number of Units as shall be specified in the said Notice and deliver or forward to such member of the public by prepaid registered post a Certificate in respect of such Units and complete the Register of Units and all other relevant records accordingly.
- (d) cause the granting to each Founder of options to acquire further Units on the following terms and conditions:—
- (i) The maximum number of additional Units which may be acquired by each Founder in exercise of such options shall be that number set forth below against the name of each Founder:—

DRAYTON INVESTMENTS PTY. LTD.	Two million six hundred and sixty-six thousand six hundred and sixty-seven (2,666,667)
THIESS WATKINS (MANAGEMENT) LIMITED	Two million (2,000,000)
KUMAGAI GUMI CO. LTD.	Two million (2,000,000)
SHERATON PACIFIC HOTELS PTY. LIMITED	One million three hundred and thirty-three thousand three hundred and thirty-three (1,333,333)

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- (ii) The option may be exercised at any time and from time to time in whole or in part up to and including the thirty-first day of December, 1988.
  - (iii) The price payable per Unit shall be FIFTY CENTS (\$0.50) payable in full on application.
  - (iv) The option shall be exercised by the Founder exercising the same by delivering or sending by prepaid registered post to the Manager a Notice of Exercise of Option which notice shall state the number of Units in respect of which the option is exercised and shall be accompanied by a cheque for the purchase price of those Units.
  - (v) Upon receipt of a Notice of Exercise of Option pursuant to paragraph (iv) together with a cheque in the correct amount the Manager shall forthwith cause and in any event within seven (7) days thereafter shall cause to be issued to the Founder exercising such Option such number of Units as shall be specified in the said Notice and deliver or forward to such Founder by prepaid registered post a Certificate in respect of such Units and complete the Register of Units and all other relevant records accordingly.
- (e) utilize the facilities to be provided by Wardley Australia Limited pursuant to and upon the terms and conditions set forth in the Letter of Commitment;
  - (f) obtain from each Founder within thirty (30) days of the Operative Date, a guarantee, bond or letter of credit given or confirmed by:—
    - (i) an Australian trading bank; or
    - (ii) an insurance company or financial institution approved in writing by the Trustee, the Manager and the Minister,

and in each case in a form that is approved in writing by the Trustee, the Manager and the Minister to secure the due payment of the total selling price outstanding from

time to time and payable by each Founder for the Units as listed in paragraph (a) of this Clause;

- (g) hold any such guarantee, bond or letter of credit referred to in paragraph (f) of this Clause until such time as the total selling price for the Units in respect of which the same shall have been given shall have been duly paid;
- (h) ensure that the amount of the selling price per Unit that is paid up in respect of the Units issued to the Founders pursuant to paragraph (a) of this Clause shall at all times be equal to or exceed the amount of the selling price per Unit that is called up in respect of the Units issued to the public pursuant to paragraph (b) of this Clause;
- (i) refrain from causing the issue of any Units other than those provided for in paragraphs (a), (b), (c) and (d) of this Clause unless the Governor in Council has approved such issue;
- (j) refrain from entering into any loan agreement in respect of the Complex other than the Letter of Commitment and any agreement to be entered into pursuant to that Letter with a lender or upon terms and conditions without the prior written approval thereof by the Minister;
- (k) refrain from entering into any loan agreement in respect of the Permitted Development or any part thereof with a lender or upon terms and conditions without the prior written approval thereof by the Minister;
- (l) after the issue of Units listed in paragraph (a) of this Clause, refrain from registering any transfer by a Founder whereby the holding of Units by that Founder shall be reduced below that number of Units being not less than thirty-three and one-third per centum ( $33\frac{1}{3}\%$ ) of the total number of Units actually issued to that Founder pursuant to this Part of this Agreement without the prior approval of the Governor in Council;
- (m) when directed by the Governor in Council, which direction shall be final and conclusive and shall not be appealed against, reviewed, quashed or in any other way



called in question in any Court on any account whatsoever, enforce the disposal of any Units held by any person in accordance with the procedure in that respect set forth in the Trust Deed;

PROVIDED THAT the Governor in Council shall not issue a direction to dispose of such Units unless the person holding such Units is considered not to be a suitable person to be the holder thereof having regard to those matters specified in Section 20 of the Control Act;

- (n) when directed by the Minister require the production of a statutory declaration by any person registered as the holder of any Units setting forth the name and address of any person entitled to the same and full particulars of that entitlement.

40. The Manager in respect of its own corporate structure and organisation shall:—

- (a) issue at par the following number of ordinary shares in the capital of the Manager with a nominal value of One Dollar (\$1.00) each to—
- |  |   |
|--|---|
| (i) DRAYTON<br>INVESTMENTS<br>PTY. LTD.        | Nineteen thousand<br>nine hundred and<br>ninety-nine (19,999) |
| (ii) THIESS WATKINS<br>(MANAGEMENT)<br>LIMITED | Ten thousand<br>(10,000)                                      |
| (iii) KUMAGAI GUMI CO.<br>LTD.                 | Fifteen thousand<br>(15,000)                                  |
| (iv) SHERATON PACIFIC<br>HOTELS PTY. LIMITED   | Ten thousand<br>(10,000)                                      |
| (v) LESLIE CHARLES<br>THIESS                   | Four thousand nine<br>hundred and<br>ninety-nine (4,999)      |

PROVIDED HOWEVER that any such shares may be held by a nominee approved of in writing by the Minister, on behalf of any such party;

- (b) refrain from issuing, allotting, re-allotting or otherwise disposing of any shares in the capital of the Manager other than those provided for in paragraph (a) of this Clause, except—
  - (i) with the approval of the Governor in Council, or
  - (ii) the issuing of shares to each of the shareholders for the time being as near as practicable in proportion to their respective shareholdings;
- (c) obtain the prior approval in writing of the Minister to any appointment as a director or alternate director of the Manager;
- (d) obtain the prior approval of the Governor in Council to the registration of any transfer of shares in the capital of the Manager;
- (e) when directed by the Governor in Council, which direction shall be final and conclusive and shall not be appealed against, reviewed, quashed or in any other way called in question in any Court on any account whatsoever, enforce the disposal of the shares of any shareholder in the Manager in accordance with the procedure in that respect set forth in the Articles of Association of the Manager;

PROVIDED THAT the Governor in Council shall not issue a direction to dispose of such shares unless the shareholder is considered not to be a suitable person to be a shareholder having regard to those matters specified in Section 20 of the Control Act;
- (f) enforce the vacating from office of any director of the Manager in accordance with any direction to that effect by the Governor in Council;
- (g) refrain from entering into any loan agreement in respect of the Complex other than the Letter of Commitment and any agreement to be entered into pursuant to that Letter with a lender or upon terms and conditions without the prior written approval thereof by the Minister;

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- (h) refrain from entering into any loan agreement in respect of the Permitted Development or any part thereof with a lender or upon terms and conditions without the prior written approval thereof by the Minister.
41. (a) The State accepts and approves of the participation of the Trustee, the Manager and the Founders in the Foundation Agreement and to the form of the Trust and corporate organisation and the method of financing set forth in the Foundation Agreement.
- (b) The parties hereto acknowledge and agree that the participation of any Founder is subject to and conditional upon that Founder obtaining such approvals as may be necessary from the Foreign Investment Review Board of the Commonwealth of Australia for that Founder's participation upon terms and conditions acceptable to such Founder.
- (c) If the approvals from the Foreign Investment Review Board referred to in sub-clause (b) of this Clause are not obtained within the period of ninety (90) days from the date of this Agreement or such extended period as may be agreed upon in writing by the parties to this Agreement, this Agreement shall thereupon cease and determine and none of the parties to this Agreement will have any claim against any other of them with respect to any matter or thing arising out of, done, performed or omitted to be done or performed under this Agreement or in anticipation of the coming into force of this Agreement other than a claim under Clause 22.4 of the Foundation Agreement.
- (d) The State accepts and approves the appointment of SHERATON PACIFIC HOTELS PTY. LIMITED as the operator of the Hotel-Casino Complex in terms of the Hotel-Casino Management Agreements.
- (e) The State accepts and approves the appointment of DRAYTON INVESTMENTS PTY. LTD. to provide administrative services to the Manager in terms of the Administrative Assistance Agreement.
42. The following shall be conditions of this Agreement:—
- (a) that there shall be no amendment or variation of the terms or conditions of the Foundation Agreement or any

- agreement being a schedule to the Foundation Agreement after the execution of the Foundation Agreement without the prior approval in writing of the Minister;
- (b) that no party to the Foundation Agreement shall be released or discharged from its obligations under the Foundation Agreement without the prior approval in writing of the Minister;
  - (c) that no party shall be added to the Foundation Agreement without the prior approval of the Governor in Council and without such party entering into a supplementary agreement in a form approved by the Minister agreeing to be bound by the provisions of the Foundation Agreement as if an original Founder;
  - (d) that the form of the trust and corporate structure and the method of financing set forth in the Foundation Agreement (subject to any approved amendment or variation) shall be substantially followed and adhered to;
  - (e) that the Trust Deed shall not be altered or amended without the prior approval in writing of the Minister;
  - (f) that the Memorandum and Articles of Association of the Manager shall not be altered or amended without the prior approval in writing of the Minister;
  - (g) that the appointment of the respective auditors under the Trust Deed and of the Manager shall be in accordance with the provisions of the Trust Deed and the Companies Code but no person shall be nominated as auditor unless that person's nomination has been approved in writing by the Minister;
  - (h) that the total number of Units to which any person shall be entitled (other than a holding by a Founder in accordance with Clause 39 hereof) shall not exceed five per centum (5%) of the total number of the Units in issue at any time without the approval in writing of the Minister;

- (i) that the total number of Units to which a foreign person or foreign persons shall be entitled shall not exceed forty per centum (40%) of the total number of the Units in issue at any time;

PROVIDED THAT the Minister may by notice in writing exempt any holding of specified Units by a specified person from the provisions of this paragraph for a specified period and during that period such Units shall be disregarded for the purposes of this paragraph.

43. Notwithstanding Clause 42 hereof, an entitlement to Units in excess of either of the limitations contained in paragraphs (h) and (i) of Clause 42 hereof shall not constitute a breach of the conditions of this Agreement if the Manager shall have acted forthwith to bring about the disposal of the relevant Units in accordance with the powers in that behalf contained in the Trust Deed upon its becoming aware of that entitlement and its being in excess of the relevant limitation.

44. For the purposes of this Part:—

- (a) “Foreign person” means—

- (i) a natural person not ordinarily resident in Australia;
- (ii) a corporation (other than a foreign corporation) in which a natural person not ordinarily resident in Australia or a foreign corporation holds a controlling interest;
- (iii) a corporation (other than a foreign corporation) in which two (2) or more persons, each of whom is either a natural person not ordinarily resident in Australia or a foreign corporation, hold an aggregate controlling interest; or
- (iv) a foreign corporation;

PROVIDED HOWEVER that—

- (A) a corporation incorporated in Australia and having its shares listed for quotation in the official list of a stock exchange in Australia and which is the registered holder or the

beneficial owner of not more than one per centum (1%) of all Units for the time being created and not cancelled;

- (B) a corporation incorporated in Australia which is the registered holder or beneficial owner of not more than one quarter of one per centum (1/4%) of all Units for the time being created and not cancelled

shall not be, for the purposes of this Agreement, a foreign person unless the Minister deems it to be a foreign person;

- (b) “Foreign corporation” means a corporation, incorporated elsewhere than in Australia or any Australian External Territory;
- (c) A person shall be taken to hold a controlling interest in a corporation if the person, alone or together with any associate or associates of the person, is in a position to control not less than fifteen per centum (15%) of the voting power in the corporation or holds interests in not less than fifteen per centum (15%) of the issued shares in the corporation;
- (d) Two or more persons shall be taken to hold an aggregate controlling interest in a corporation if they, together with any associate or associates of any of them, are in a position to control not less than forty per centum (40%) of the voting power in the corporation or hold interests in not less than forty per centum (40%) of the issued shares in the corporation;
- (e) The following persons are associates of a person:—
- (i) the person’s spouse or a parent or remoter lineal ancestor, son, daughter or remoter issue, brother or sister of the person;
  - (ii) any partner of the person;
  - (iii) any corporation of which the person is an officer;
  - (iv) where the person is a corporation—any officer of the corporation;

- (v) any employee or employer of the person;
  - (vi) any officer of any corporation of which the person is an officer;
  - (vii) any employee of a natural person of whom the person is an employee;
  - (viii) any corporation whose directors are accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the person, or where the person is a corporation, of the directors of that corporation;
  - (ix) any corporation in accordance with the directions, instructions or wishes of which, or of the directors of which, the person is accustomed or under an obligation, whether formal or informal, to act;
  - (x) any corporation in which the person holds a controlling interest;
  - (xi) where the person is a corporation—a person who holds a controlling interest in the corporation;
  - (xii) any person who is, by virtue of this paragraph, an associate of any other person who is an associate of the person (including a person who is an associate of the person by another application or other applications of this paragraph);
- (f) A reference to a person being entitled to Units or a stipulated percentage of the same shall have the same meaning as a reference in Division 4 of Part IV of the Companies Code to a person being entitled to a stipulated percentage of the voting shares in a company and that person's entitlement shall be calculated in the manner prescribed for calculation of substantial shareholdings in Division 4 of Part IV of the Companies Code as if that Division applied and as if Units were voting shares.

#### **PART IV—GRANTING OF CASINO LICENCE AND RELATED MATTERS**

45. (a) Upon the Minister being satisfied of compliance by the Trustee and the Manager with:—

- (i) their respective obligations under this Agreement, including the Special Lease, the Townsville City Council Agreement and the Townsville Harbour Board Agreement;
- (ii) the relevant provisions of the Control Act; and
- (iii) the relevant provisions of the Agreement Act,

to be complied with up to the time of the grant of the Casino Licence there shall be granted to the Trustee pursuant to the Control Act a casino licence authorising subject to Section 63 thereof, the conduct and playing in the Casino of the games set out hereunder:

- blackjack;
- roulette;
- baccarat;
- craps;
- keno;
- two-up;
- mini dice;
- big six;
- big and small;

PROVIDED HOWEVER that the Trustee may apply to the Minister for approval under Clause 35 hereof to open the Casino part of the Hotel-Casino Complex, and to have granted to the Trustee a Casino Licence.

(b) Subject to the Casino Licence having been granted pursuant to sub-clause (a) of this Clause the Trustee or the Manager may apply to the Minister at any time for approval to play in the Casino any game commonly played in a casino whether in Australia or elsewhere or any variation or derivative thereof



no matter how played including any game played by the use of any gaming machine where such use is at the time of the application lawful in accordance with the laws of the State of Queensland and upon approval of such application and the Trustee's and the Manager's compliance with any relevant provisions of the Control Act in relation thereto the Minister shall take all such steps as are necessary so that the conduct and playing of such game in the Casino is duly authorised by the said Casino Licence.

- (c) In the event of the State authorising, permitting or approving in any manner whatsoever pursuant to any Act the conduct or playing of any game by use of any gaming machine commonly known as a "poker machine" or any variation or derivative thereof or any gaming machine of a like class or description THEN the Trustee or the Manager may apply to the Minister pursuant to sub-clause (b) of this Clause for approval to play any such game in the Casino.
46. (a) Subject as hereinafter provided, the State shall not either before or during the periods of exclusivity hereinafter provided for respectively, notwithstanding the provisions of any other Act from time to time in force in the State of Queensland authorise, permit or approve in any manner whatsoever and whether pursuant to the Control Act or otherwise the conduct or playing in a casino of any game commonly played in casinos whether in Australia or elsewhere or any variation or derivative thereof no matter how played and in particular any game which the Trustee is authorised to conduct and play under such Casino Licence or the use of any premises of whatsoever nature for the conduct and playing of any such game for a period of five (5) years in Northern Queensland from the date upon which the Trustee opens the Casino for operation and use by members of the public and for a period of fifteen (15) years from the abovementioned date in that area of the said State which is within a radius in any direction of four hundred (400) kilometres from the site but excluding the Cairns region from such area after the first five (5) years.
- (b) The State shall not, except in a casino licensed pursuant to the Control Act, whether before, during or after the period of

exclusivity set out in sub-clause (a) of this Clause and notwithstanding the provisions of any other Act from time to time in force in the State of Queensland authorise, permit or approve in any manner whatsoever and whether pursuant to the Control Act or otherwise the conduct or playing of any of the games set out and named in sub-clause (a) of Clause 45 hereof or any variation or derivative of such games by the use of any gaming machine.

- (c) Nothing in this Agreement shall be construed so as to limit or affect the power of the State to authorise, permit or approve in any manner whatsoever pursuant to any Act for the time being in force in the State the conduct or playing of games by the use of gaming machines save and except—
  - (i) gaming machines referred to in sub-clause (b) of this Clause; and
  - (ii) gaming machines that are declared by the Minister by notification published in the Government Gazette to be casino gaming machines as provided for in sub-clause (d) of this Clause.
- (d) The parties hereto agree that the following provisions shall apply with respect to the declaration and notification of gaming machines as casino gaming machines:
  - (i) the Minister may at any time in his discretion or upon receipt of an application by the Trustee or the Manager, make a declaration and notification in respect of any gaming machine including any gaming machine referred to in sub-clause (b) of this Clause but the non-existence of a notification shall not limit or affect the operation of sub-clause (b) of this Clause;
  - (ii) the Minister shall within ninety (90) days of the receipt thereof or such extended period as he may require consider and determine every application made to him in respect of a gaming machine and where the Minister refuses the application, he shall notify the applicant in writing of the reasons for his refusal;
  - (iii) the Minister may in his absolute discretion refuse to make a declaration and notification in respect of any

- gaming machine commonly known as a “poker machine” or any variation or derivative thereof or any gaming machine of a like class or description;
- (iv) where an application is made to the Minister in respect of any gaming machine other than a gaming machine referred to in paragraph (iii) of this sub-clause, the Minister shall consider the application and subject to Section 63 of the Control Act he shall determine whether in all the circumstances of the application it is reasonable that it be granted. The Minister shall consider all material submitted to him in writing by the applicant and the State and, in particular he shall consider whether it has been established to his reasonable satisfaction that the gaming machine is of a class or description that should be reserved for use in a casino licensed pursuant to the Control Act;
  - (v) no such declaration and notification shall be revoked, amended or varied without the prior consent in writing of the Trustee.
- (e) Subject always to the State giving due effect to the foregoing provisions of this Clause, nothing in this Agreement shall be construed so as to limit or affect the power of the State to authorise, permit or approve in any manner whatsoever and whether pursuant to the *Art Unions and Amusements Act 1976-1984* or any other Act for the time being in force in the State of Queensland—
- (i) any art union or lottery that is of a class or description commonly conducted or played in Australia or elsewhere at the date of execution of this Agreement no matter how played; and
  - (ii) any art union or lottery that is a variation or derivative thereof or that is of a like class or description no matter how played.
47. Subject to the provisions of the Control Act and Clause 51 hereof the amount of the casino tax to be paid by the Manager or the Trustee from the Trust Fund shall be in each month in each year the amount equal to ten per centum (10%) of Casino gross revenue for the month in question.

## **PART V—GRANTING OF LIQUOR LICENCE AND RELATED MATTERS**

48. The State shall take all steps as may be reasonable and necessary to ensure that:—
- (a) the *Liquor Act 1912-1984* is amended so as to create a new type of liquor licence to be known as a Casino liquor licence; and
  - (b) the amendments to the *Liquor Act 1912-1984* as aforesaid shall be enacted to give effect to the entitlements rights and benefits to be granted by and referred to in Clause 49 hereof so that the Trustee shall be granted a Casino liquor licence contemporaneously with the granting of a Casino Licence pursuant to Clause 45 hereof.
49. (a) The Casino liquor licence shall relate to the whole of the Hotel-Casino Complex and shall permit the Manager and any person claiming through or under the Manager as nominee of the Trustee, *inter alia*, to sell or supply liquor:
- (i) for consumption in the whole of the Hotel-Casino Complex and any part or parts thereof except the Casino on the days and between the hours (if any) that are specified in the Casino liquor licence;
  - (ii) for removal from the Hotel-Casino Complex;
  - (iii) for consumption in the Casino on the days and between the hours that the Casino is open for operation and use by the public.

In this Clause the term “Hotel-Casino Complex” includes the Retail Liquor Outlet constructed or to be constructed on Portion 639.

PROVIDED THAT the Casino liquor licence shall not be extended to include the Retail Liquor Outlet unless and until the Trustee has constructed the Marina Basin, the Marina therein having not less than one hundred and fifty (150) berths or moorings contiguous to Portion 645, the Marina Entrance Channel and the Marina Access Channel.

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**PART VI—CASINO OPERATIONS AND REVIEW THEREOF**

50. The State agrees that the Manager may open and operate the Casino for use by the public on any day in any year save and except those days in any year which the Manager is precluded from so opening pursuant to Section 61 (8) of the Control Act for any number of hours on any such day which may be approved by the Minister from time to time;

PROVIDED HOWEVER that the Minister shall not restrict the number of hours in which the Casino is open as aforesaid to less than eighteen (18) hours in any one (1) day unless requested by the Manager in writing so to do.

51. The State agrees to review the rate of casino tax, the amount of fees and the rate of the community benefit levy as defined in the Control Act payable by the Trustee and the terms and conditions of the operation of the Casino in any circumstances of whatsoever nature arising which in the opinion of the Minister are likely to have an adverse impact on the viability of the Casino.

**PART VII—TERMINATION**

52. This Agreement, save and except the rights and obligations of the parties hereto and any mortgagee pursuant to Clause 53 hereof, may be terminated by the Minister in any of the following events:
- (a) If there is a substantial breach by any of the parties hereto other than the State of its obligations under this Agreement in respect of which the Minister shall have delivered to each of such parties and to any mortgagee a notice in writing setting forth particulars of the breach or default and which shall not have been remedied to the satisfaction of the Minister or taken steps to the satisfaction of the Minister to remedy within ninety (90) days from the date of such notice;

- (b) If any distress or execution is levied against the Trust Fund which is for an amount in excess of ONE MILLION DOLLARS (\$1,000,000) and which is not discharged within thirty (30) days from the date upon which the levy is made;
  - (c) If subject to the provisions of Clause 14 and Clause 65 hereof the benefit of this Agreement is in any way whatsoever pledged, encumbered, mortgaged or assigned without the prior written consent of the Minister in accordance with the provisions of Section 32 of the Control Act;
  - (d) If any Casino Licence in respect of the Casino is at any time cancelled or surrendered.
53. (a) In the event that the Casino Licence is cancelled or suspended for any reason whatsoever, other than a suspension referred to in Clause 67 hereof, the following provisions shall apply:—
- (i) The Governor in Council shall appoint an Administrator:—
    - (A) in the case of cancellation of the licence as aforesaid within seven (7) days of the date of such cancellation; or
    - (B) in the case of suspension of the licence as aforesaid for a period of not less than ninety (90) days, within seven (7) days of the date of receipt by the Minister of a request from the Trustee to appoint an Administrator;
  - (ii) In the event of a receiver and manager having been approved or appointed prior to either provision (i) (A) or provision (i) (B) of this sub-clause becoming effective, the Governor in Council shall appoint that person as Administrator for the purposes of this Agreement;
  - (iii) Notwithstanding the provisions of Sections 19 and 21 of the Control Act the Governor in Council shall within the period of seven (7) days referred to in provision (i) of this sub-clause grant a Casino Licence to the Administrator;

- (iv) The Administrator shall pursuant to the Casino Licence to be granted pursuant to provision (iii) of this sub-clause manage and operate in accordance with the provisions of the Control Act the Casino as the agent of the Trustee;
- (v) The Trustee and/or the Administrator if such Administrator has been appointed pursuant to provision (ii) of this sub-clause may at any time and from time to time but always subject to the rights of any mortgagee pursuant to its security and also the mortgagee's rights pursuant to the provisions of Section 32 of the Control Act during a period of twelve (12) calendar months from the date of the appointment of the Administrator introduce a proposed assignee to whom the provisions of Section 32 of the Control Act shall apply as if such assignee was proposed by a mortgagee wishing to enforce its security;
- (vi) Should the proposed assignee be acceptable to the Governor in Council in the terms of provision (v) of this sub-clause the Governor in Council shall terminate the appointment of the Administrator and assign to the proposed assignee in accordance with the procedure set out in Section 32 of the Control Act the Casino Licence issued to the Administrator;
- (vii) In the event that the Trustee and/or the Administrator are unable to introduce an acceptable assignee as hereinbefore provided in provision (v) of this sub-clause the Administrator shall while continuing to operate the Casino as hereinbefore in this Clause provided but always subject to any rights of any mortgagee pursuant to its security and also the mortgagee's rights pursuant to the provisions of Section 32 of the Control Act dispose of the Complex and arrange for the assignment of the Casino Licence at the highest attainable price to the assignee who is approved by the Governor in Council as if that assignee had been nominated by a mortgagee seeking to enforce its security in accordance with Section 32 of the Control Act;

- (viii) The Casino Licence granted to an Administrator shall not be cancelled or suspended prior to its assignment as referred to in provision (vi) of this sub-clause but the Governor in Council may from time to time within his discretion remove an Administrator and appoint another Administrator in his place and shall remove an Administrator who is not a receiver or manager approved pursuant to Section 32 (2) (b) of the Control Act and replace him with an Administrator who becomes so approved;
  - (ix) If the term of any suspension mentioned in provision (i) of this sub-clause is reduced after a request for the appointment of an Administrator has been made, the Governor in Council shall terminate the appointment of any Administrator he has appointed following a request that the appointment be so terminated and:
    - (A) if the Trustee's Casino Licence has been cancelled, he shall assign to the Trustee the Casino Licence granted to the Administrator; or
    - (B) if the Trustee's Casino licence has not been cancelled, he shall cancel the Casino Licence granted to the Administrator;
  - (x) An Administrator may be appointed on such terms which are not inconsistent with this Clause as the Governor in Council considers desirable in the circumstances of the appointment.
- (b) The parties hereto acknowledge confirm and agree that any termination of this Agreement pursuant to the provisions of Clause 52 hereof shall not in any manner whatsoever terminate or reduce the effect of sub-clause (a) of this Clause and the rights and obligations of the parties and any mortgagee therein referred to shall maintain continue and be of full force and effect as if this Agreement had not been terminated.
54. In the event that this Agreement is terminated for any reason whatsoever or the Casino Licence to be granted pursuant to Clause 45 hereof be cancelled or suspended for any reason whatsoever then nothing contained in this Agreement or any



other statutory provision hereinbefore mentioned in Clause 17 hereof shall preclude the Trustee or any person claiming through or under it as the case may be from continuing to erect, complete and use the Complex or any other of the developments referred to in Clause 16 hereof as the case may be without any interference or interruption by any Local Authority or by any other Corporation or Instrumentality of the State or by any person on the grounds that such operations are contrary to any town planning scheme or town planning by-law of any Local Authority or any other statutory town planning provision as if this Agreement was not so terminated or the Casino Licence to be granted as aforesaid was not cancelled or suspended;

PROVIDED HOWEVER that no person, other than an Administrator appointed pursuant to Clause 53 hereof, shall continue to use or operate the Casino part of the Complex as a casino in the event that the Casino Licence is cancelled or suspended as aforesaid.

55. The State acknowledges and agrees that the Casino liquor licence contemplated by Clause 48 hereof shall notwithstanding any termination of this Agreement by whatsoever means or any cancellation or suspension of the Casino Licence to be granted pursuant to Clause 45 hereof by whatsoever means not be cancelled or suspended but rather shall remain in full force and effect so far as it relates to all areas of the licensed premises (as specified in the Casino liquor licence) other than the Casino until such liquor licence shall be cancelled or suspended pursuant to the provisions of the Liquor Act as amended.

## **PART VIII—SPECIAL PROVISIONS**

56. The State agrees and declares:—
- (a) that the site (other than the Marina Basin, the Marina Entrance Channel, the Marina Access Channel and the Offshore Breakwater) shall be deemed to be land—

- (i) within the Parish of Coonambelah, County of Elphinstone; and
    - (ii) within the Area of the City of Townsville within the meaning of the *Local Government Act 1936-1984*; and
    - (iii) sub-divided into portions as delineated on the plan in the Fourth Schedule hereto;
  - (b) that subject to Clause 17 hereof the Town Planning Scheme of the Area of the City of Townsville within the meaning of the *Local Government Act 1936-1984* shall be deemed to extend and apply to the land referred to in sub-clause (a) of this Clause; and
  - (c) that the Marina Basin, the Marina Entrance Channel and any other land that is the subject of any grant, demise or other estate or interest under this Agreement or the Townsville Harbour Board Agreement shall be deemed to be land within the Parish of Coonambelah, County of Elphinstone.
57. (a) The State shall, in conformity with the provisions of the *Land Act 1962-1984* and the *Harbours Act 1955-1982* except insofar as such provisions are inconsistent with this Agreement, grant to the Trustee a Special Lease over the area of land including the land covered by water hatched in black on the Plan attached in the Fifth Schedule hereto containing the terms and conditions set forth in that Schedule. The term of such Special Lease shall commence on the date that is one (1) month after the Operative Date and the Special Lease shall be issued on such date of commencement or as soon as practicable thereafter.
- (b) The State agrees that the Trustee shall be entitled to Deeds of Grant in fee simple from the Crown in accordance with the Special Lease subject to due compliance by the Trustee with the terms and conditions thereof. The land the subject of each grant shall be described by the relevant Portion number as set forth in the plan in the Fourth Schedule hereto.
  - (c)—

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- (i) Upon due compliance by the Trustee with the terms and conditions of the Special Lease, the State shall vest in the Townsville Harbour Board the Marina Entrance Channel and the developed stages of the Marina Basin for subsequent leasing of the Marina Entrance Channel and such stages by the Board to the Trustee or its nominee in terms of the Townsville Harbour Board Agreement.
  - (ii) Every such vesting shall be effected by a deed of grant in trust for Port and Harbour (Marina) Purposes pursuant to Section 334 of the *Land Act 1962-1984*.
  - (iii) The Marina Entrance Channel and the developed stages of the Marina Basin shall be part of the Townsville Harbour within the meaning of the *Harbours Act 1955-1982*.
- (d) In this sub-clause “the Restricted Area” means any land that is Crown land or land held by The Townsville Harbour Board and on which any part of the breakwaters, retaining walls and revetments shown in the schematic design drawings (other than the Offshore Breakwater and the Western Breakwater) is constructed. For better protecting the rights and interests of the Trustee, it is agreed that—
- (i) no person including any statutory or local authority or body shall be permitted to erect any structure of any kind or claim any right of support on, over or against those parts of the breakwaters, retaining walls or revetments on the Restricted Area other than such part thereof retaining Portion 643 (subject to Clause 64 hereof) or The Townsville Harbour Board or any lessee of the Board of any part or whole of the Marina Basin in respect of those parts of the Restricted Area retaining the Marina Basin to the extent necessary for the proper use and enjoyment of the Marina;
  - (ii) no person except a statutory authority expressly authorised by the State (including The Townsville Harbour Board) or the Trustee, shall be permitted to have access to or over those parts of the breakwaters, retaining walls or revetments constructed on the

Restricted Area other than such parts thereof retaining Portion 643 (subject to Clause 64 hereof) or the Marina Basin;

(iii) nothing contained in this sub-clause shall prevent The Townsville Harbour Board doing all things necessary in the ordinary course of maintaining the breakwaters, retaining walls and revetments in good and proper order and condition.

(e) The State agrees that any rights or benefits provided for in sub-clause (d) of this Clause to any statutory or local authority or body including The Townsville Harbour Board or to any other person shall not be exercised in such a manner as to cause or result in undue detriment or loss of amenity to or financial loss or damage to any registered proprietor or occupier for the time being of any part or the whole of Portion 643 or any portion having a frontage to the Marina Basin or the Marina Entrance Channel.

58. (a) In this Clause “lot” means—

(i) in relation to the State, any Crown land (other than land within the Marina Entrance Channel or the Marina Basin) and on which any part of the breakwaters, retaining walls and revetments shown in the schematic design drawings is constructed;

(ii) in relation to the Trustee, the land that is the whole or any part of Portion 639, 641, 643, 644 or 645, and which has a common boundary with any Crown land referred to in subparagraph (i).

(b) In respect of each lot of which the State is the proprietor, there shall be implied as against the State and in favour of the Trustee its successors or assigns as the proprietor of the adjacent lot an easement for the lateral support of that lot and any buildings or structures thereon to the extent that the Crown land and the structures thereon are capable of affording support.

(c) In respect of each lot of which the Trustee is the proprietor, there shall be implied as against the Trustee its successors or assigns and in favour of the State as the proprietor of the

adjacent lot an easement for the lateral support of the structures on the Crown land to the extent that the land of the Trustee and the buildings or structures thereon are capable of affording support.

59. (a) In this Clause “lot” means—
- (i) in relation to the State, any Crown land on which any part of the Western Breakwater is constructed;
  - (ii) in relation to the Trustee, Portion 643 or any part thereof that abuts onto any part of the Western Breakwater.
- (b) In respect of each lot of which the State is the proprietor, there shall be implied as against the State and in favour of the Trustee its successors or assigns as the proprietor of the adjacent lot an easement for the lateral support of that lot and any buildings or structures thereon to the extent that the part of the Western Breakwater on the Crown land is capable of affording support.
- (c) In respect of each lot of which the Trustee is the proprietor, there shall be implied as against the Trustee its successors or assigns and in favour of the State as the proprietor of the adjacent lot on which part of the Western Breakwater is constructed an easement for the lateral support of such part of the Western Breakwater to the extent that the land of the Trustee and any buildings or structures thereon are capable of affording support.
- (d) In respect of the easements implied by this Clause and Clause 58—
- (i) the State and the Trustee agree that all ancillary rights and obligations reasonably necessary to make easements effective shall apply;
  - (ii) the State agrees that, upon the relevant deed of grant being issued to the Trustee, the State will, if so requested by the Trustee, enter into a Deed of Easement in respect of each such easement containing such terms and conditions as are agreed upon between the parties or, failing agreement, as are approved by the Governor in Council;

- (iii) the State agrees that every such Deed of Easement will be registered pursuant to Section 283 of the *Land Act 1962-1984* and for the purposes of such registration the relevant Crown land shall be deemed to be a reserve.
60. (a) The State accepts and approves the Townsville City Council Agreement entered into between the Trustee and The Council of the City of Townsville.
- (b) The State accepts and approves the Townsville Harbour Board Agreement entered into between the Trustee and The Townsville Harbour Board.
- (c) The Trustee warrants in respect of the obligations under each of the Special Lease, the Townsville City Council Agreement and the Townsville Harbour Board Agreement, on the part of the Trustee to be observed and performed that the Trustee will observe and perform such obligations in accordance with the terms and conditions of such Lease and such Agreements respectively.
- (d) The Townsville City Council Agreement and the Townsville Harbour Board Agreement (hereinafter in this sub-clause referred to as “the said Agreements”) shall notwithstanding the provisions thereof, give rise to no liability on the part of and impose no duty or obligation on the Trustee or any other person bound thereby to any person not a party to the said Agreements including any duty or obligation to disclose or advise the effect of any of the provisions of either of the said Agreements save and except a duty or obligation to disclose the existence of the said Agreements and the place where copies thereof may be inspected when executing an agreement with any purchaser or other person (other than a party to either of the said Agreements) who is purchasing or acquiring any estate or interest in the Site or any part thereof.
61. The State shall, in conformity with the provisions of the *Land Act 1962-1984* except insofar as such provisions are inconsistent with this Agreement, grant to the Trustee the three (3) Permits to Occupy Crown land in the form and on the terms and conditions set out in the Sixth Schedule hereto and the State agrees that the said Permits to Occupy shall be terminated only in accordance with their terms. Such Permits

to Occupy shall commence on the date that is one (1) month after the Operative Date and shall be issued on such date of commencement or as soon as practicable thereafter.

62. (a) The Trustee shall construct or cause to be constructed the Offshore Breakwater;
- (b) The Manager warrants that:—
- (i) the Offshore Breakwater shall be constructed in accordance with the schematic design drawings, working drawings and specifications, which are hereinafter provided for, together with any approved alterations or modifications thereto pursuant to Clause 28 hereof; and
- (ii) the Offshore Breakwater shall be completed in seventy-eight (78) working weeks from the Operative Date, subject only to any extensions of time which may be approved by the Manager on behalf of the Trustee pursuant to the Development Agreement and monitored by the State.
- (c) The Manager shall within eighteen (18) weeks of the Operative Date or such longer period as approved by the Minister administering the *Harbours Act 1955-1982* submit to The Marine Board of Queensland for the approval of the Governor in Council under Section 86 of the said Act the following items:—
- (i) final schematic design drawings of the Offshore Breakwater;
- (ii) working drawings and specifications of the Offshore Breakwater.
63. (a) The Trustee agrees that notwithstanding any other provision of this Agreement—
- (i) it shall commence to construct the Marina Basin and the Marina Entrance Channel within ten (10) years from the Operative Date and shall construct the Marina having not less than one hundred and fifty (150) berths or moorings contiguous to Portion 645 within fifteen (15) years from the Operative Date;

- (ii) it or its lessee, nominee or other agent shall not commence to operate the Marina whether or not it has constructed more or less than one hundred and fifty (150) berths or moorings unless the Trustee shall have first constructed the Marina Access Channel;
- (iii) the Marina Basin or such parts of it as the Trustee constructs from time to time shall be excavated to the depths approved by the Governor in Council pursuant to Section 86 of the *Harbours Act 1955-1982*;
- (iv) it shall commence to reclaim Portion 645 at the same time as it commences to construct the Marina Basin other than where such construction is to obtain fill material for the reclamation forming part of the Committed Development and shall thereafter progressively reclaim Portion 645 as suitable fill material is removed from the Marina Basin;

PROVIDED THAT subject to paragraph (iii) hereof the Trustee shall not be required to use fill material in the reclamation of Portion 645 other than such fill material as it removes from the Marina Basin;

- (v) it shall not commence to use Portion 645 for any commercial purpose (other than for purposes of construction) unless it has first dedicated access thereto in accordance with the Permit to Occupy and constructed a roadway thereon in accordance with the Townsville City Council Agreement;
- (vi) Portion 645 shall be used for those permitted developments set forth in Clause 17 (c) hereof and for the purposes of the Marina. Upon the construction of Marina berths and moorings contiguous to Portion 645 the Trustee shall construct on Portion 645 Marina Facilities necessary for the operation of a marina of one hundred and fifty (150) berths or moorings and parking space for use in connection with such Marina berths and moorings at the rate of one (1) car space for every two (2) Marina berths or moorings;
- (vii) in the event that the Trustee fails to construct not less than one hundred and fifty (150) Marina berths or



moorings contiguous to Portion 645 or to otherwise comply with the preceding sub-clauses of this Clause 63 within fifteen (15) years from the Operative Date the Special Lease shall be extinguished in respect of Portion 645 and those parts of the site which are the Marina Entrance Channel and the Marina Basin.

- (b) The State agrees that the Trustee shall be entitled to develop the Marina, the Marina Basin, the Marina Entrance Channel and the Marina Access Channel without the consent of the Council of the City of Townsville or the Townsville Harbour Board.
64. (a) The Trustee shall, subject to this Clause, be entitled during a term of fifteen (15) years from the Operative Date to the exclusion of any other person to apply to the State for the grant of a special lease authorizing the reclamation and development of, and authorizing the vesting in the Trustee for an estate in fee simple over, any area of land being any part or the whole of the Future Development Area.
- (b) Upon—
- (i) the Trustee exercising its entitlement under sub-clause (a) of this Clause; or
  - (ii) the expiration of the said term of fifteen (15) years, whichever shall first occur, the Trustee shall—
  - (iii) surrender from the Special Lease at no cost to the State those parts of the site adjoining the northern boundary of Portion 643 as shown cross-hatched in black in the Fourth Schedule hereto with all costs, including survey and the removal of buildings and structures, being borne by the Trustee; and
  - (iv) comply with the provisions of Special Condition 16 of the Special Lease.
- (c) The exercise by the Trustee of its entitlement under sub-clause (a) of this Clause shall be subject to the following—
- (i) the Trustee shall make application in writing to each of the Ministers for the time being respectively charged with the administration of the *Queensland Marine Act*

*1958-1979* and the *Land Act 1962-1984* accompanied by schematic design drawings of the proposed reclamation and development and a plan indicating the uses to which the land is to be put after reclamation;

- (ii) the Ministers aforesaid shall, within ninety (90) days after receipt of the application by them or the last of them whichever applies, make a joint recommendation pursuant to Section 80 of the *Harbours Act 1955-1982*;
  - (iii) upon the Governor in Council approving the application, the State shall as soon as practicable issue to the Trustee a special lease under Section 205 of the *Land Act 1962-1984* and Section 80 of the *Harbours Act 1955-1982* subject to terms and conditions usually imposed by the Governor in Council for the developments of a like nature and at a purchasing price to be determined at that time.
- (d) The Trustee shall not be entitled to make any application for the grant of a special lease under this Clause unless and until the Trustee has constructed the Marina Basin, the Marina therein having not less than one hundred and fifty (150) berths or moorings contiguous to Portion 645, the Marina Entrance Channel and the Marina Access Channel.
65. (a) For the purposes of this Clause the terms following shall have the meanings respectively assigned to them:—
- “dispose” or “disposal” includes subdivide, sell, assign, lease, let, sub-lease, sub-let, licence, mortgage, charge or otherwise encumber, and also includes agrees to dispose and grant consent to the disposal of.
- “site” means the lands comprising Portions 640, 641, 642, 643, 644 and 645, and the Marina, the Marina Basin and the Marina Entrance Channel.
- (b) The Trustee shall not dispose of—
- (i) the site or any building or structure thereon, or any part thereof; or
  - (ii) the rights and benefits under this Agreement in respect thereof,

save pursuant to Clause 14 hereof or sub-clause (d) of this Clause, or with the prior consent of the Minister so to do to a person approved by the Minister (which person is hereafter in this Clause referred to as “the transferee”).

- (c) As conditions applicable to his consent referred to in sub-clause (b) of this Clause, the Minister may impose such requirements as he thinks fit, including requirements that further agreements in writing first be entered into with the approval of the Governor in Council by Order in Council, between any two or more of the following parties, namely the Minister for and on behalf of the State, the Trustee, the Manager, The Townsville Harbour Board, The Council of the City of Townsville and the transferee, with respect to the disposal and the rights and interests of the parties to such further agreements.
- (d) This Clause shall not apply to:—
  - (i) the subdivision of Portion 640, 641, 642, 643 or 644 into lots and common property by the registration of a building units or group title plan in the manner provided by or under the *Building Units and Group Titles Act 1980-1984* or the disposal of any such lot or common property;
  - (ii) any mortgage, charge or other encumbrance granted over Portion 640, 641, 642, 643, 644 or 645 or the Marina, the Marina Basin, or the Marina Entrance Channel in connection with the undertaking of the Permitted Development;
  - (iii) the subdivision of Portion 643, 644 or 645 into lots by the registration of a plan of subdivision in the manner provided by or under the *Local Government Act 1936-1984*, or the disposal of any such lot;
  - (iv) any disposal expressly provided for or permitted under the Townsville Harbour Board Agreement; or
  - (v) any other disposal expressly provided for elsewhere in this Agreement.

## PART IX—GENERAL

66. The State accepts and approves the appointment of BREAKWATER ISLAND LIMITED as the Manager of Breakwater Island Trust in the terms of the Trust Deed.
67. (a) If at any time there shall be no current lease or casino management agreement in respect of the Hotel-Casino Complex or the Casino entered into by the Trustee which shall have received the approval of the Governor in Council pursuant to Section 28 of the Control Act so that the Trustee shall be the Casino operator within the meaning of the Control Act, the Trustee may apply to the Minister and the Minister shall on such application forthwith suspend the Casino Licence upon the following basis:
- (i) the suspension shall be effective on and from the time of closure of the operations of the Casino immediately preceding the making of the application;
  - (ii) the period of such suspension shall be until a lease or casino management agreement in respect of the Hotel-Casino Complex or the Casino shall have been executed and received the approval of the Governor in Council pursuant to Section 28 of the Control Act;
  - (iii) a suspension of the Casino Licence shall, while it remains in force, have the same effect as a cancellation of such licence, without prejudice to the exercise of the powers of the Minister, the Director or any inspector under the Control Act, but the Trustee shall not during such period incur any penal or other liability under this Agreement or the Control Act.
- (b) A failure by the Trustee to comply with PART V of the Control Act shall not constitute an offence under Section 119 of that Act.
68. The appointment of a new trustee and/or a new manager of the Breakwater Island Trust pursuant to the Trust Deed shall be subject to the following:—
- (a) the prior approval of the Governor in Council; and

- (b) the prior execution by such new trustee and/or manager of a deed in such form as the Minister may require whereby such new trustee and/or manager undertakes to the other parties to this Agreement to be bound by all of the terms and conditions on the part of the Trustee or the Manager hereunder, as the case may be, as from the date of such appointment

and upon such appointment the retiring trustee and/or manager, as the case may be, shall be absolved and released from all such terms and conditions hereunder and such new trustee and/or manager shall and may thereafter exercise all the powers and enjoy all the rights and shall be subject to all the duties and obligations of the Trustee and/or the Manager, as the case may be, hereunder as fully and effectually as though such new trustee and/or manager had been originally named as a party hereto.

69. All approvals notices and other writing required or appropriate to be given under the provisions of this Agreement shall be deemed to be properly served if delivered in writing personally or sent by registered post to—
- (a) the Minister at the Executive Building, 100 George Street, Brisbane in the State of Queensland; or
  - (b) the Trustee addressed to the State Manager at its office at 1st Floor, 307 Queen Street, Brisbane in the State of Queensland; and
  - (c) the Manager at 27th Floor, Watkins Place, 288 Edward Street, Brisbane in the State of Queensland

or to such other persons or addresses as each party shall from time to time designate in writing to the other and any such notice or other writing sent by registered post shall unless the contrary be proved be deemed to have been so given when it would have been delivered in the ordinary course of post.

70. No omission by any party to require the performance by another or the others of any of the terms or conditions of this Agreement nor any forbearance or indulgence granted or shown by any party to another or others shall release discharge or in any manner affect or prejudice the right of a

party at any time to require strict and full performance by another or others of any or all of the terms or conditions to be observed or performed hereunder.

71. The law of this Agreement shall be the law of the State of Queensland.
72. In any case in which the Minister may under this Agreement make or give conditions or directions to persons, the Minister may in his absolute discretion amend or revoke and replace those conditions or directions but not so as to delay or adversely affect the Trustee or the Manager or those persons claiming through or under them or either of them.
73. The Trustee and the Manager shall make available for inspection by the Minister or his nominee duly authorised in writing all information held in respect to the ownership, unitholdings, shareholdings, directors or corporate structure of the Breakwater Island Trust or the Manager, and all minutes of meetings of unitholders, shareholders and directors and other records relating thereto.
74. (a) The Minister or his nominee duly authorised in writing shall be entitled to attend and to speak at any meeting of Breakwater Island Trust or the Manager as though he were a unitholder in the Trust or a director of the Manager but nothing contained in this section shall confer on the Minister or his nominee a right to vote.  
(b) The Trustee and the Manager shall deliver to the Minister a copy of all notices that are forwarded to unitholders or directors advising of such meetings in the same manner and time frame as if the Minister were a unitholder or a director.
75. In any case in which the Trustee is obliged to perform or do an act or thing by or within a time specified in this Agreement the Minister may at any time and from time to time in his absolute discretion extend the time specified for performing or doing that act or thing.
76. The state shall cause copies of the documents listed in the Third Schedule hereto to be tabled in Parliament.
77. (a) This Agreement has been executed for and on behalf of the State by the Treasurer of the State of Queensland in

accordance with the authority granted by the Governor in Council. Concurrent with the execution hereof, the Minister has delivered to the Trustee a certified copy of the Minute of the Governor in Council setting forth such approval and authorizing the execution of this Agreement.

- (b) This Agreement has been executed under the Common Seal of the Trustee pursuant to the resolution passed at a meeting of the Directors on the twenty-second day of November 1984 and in pursuance of the powers vested in the Directors under the Trustee's Memorandum and Articles of Association.
- (c) This Agreement has been executed under the Common Seal of the Manager pursuant to the resolution passed at a meeting of the Directors on the twenty-second day of November 1984 and in pursuance of the powers vested in the Directors under the Manager's Memorandum and Articles of Association.

IN WITNESS WHEREOF the parties have executed this Agreement the day and year hereinbefore written.

SIGNED by JOH.	)	JOH. BJELKE-PETERSEN
BJELKE-PETERSEN the Treasurer	)	(Treasurer of Queensland)
of the State of Queensland for and on	)	
behalf of the STATE OF	)	L.S.
QUEENSLAND in the presence of:	)	

K. R. LEYSHON, J.P.  
A Justice of the Peace.

GIVEN under the Official Seal of	)	
ANZ EXECUTORS & TRUSTEE	)	
COMPANY LIMITED for use in	)	B. O'CALLAGHAN
Queensland by authority of the Board	)	(Director)
of Directors under the hand of	)	
BRYAN O'CALLAGHAN a Director	)	L.S.
who hereby certifies that the Official	)	
Seal was affixed at BRISBANE on	)	J. A. RIVERS
the 27th day of November 1984 in the	)	(Director)
presence of: JOHN ALLAN RIVERS	)	
a Director.	)	

L. S. HASSELL, J.P.  
A Justice of the Peace.

THE COMMON SEAL of	)	L. C. THIESS
BREAKWATER ISLAND LIMITED	)	(Director)
was hereunto affixed by authority of	)	
the Board of Directors in the presence	)	L.S.
of: LESLIE CHARLES THIESS	)	
Director and GRAHAM ANDREW	)	G. A. JOHNSTON
JOHNSTON Secretary.	)	(Secretary)

NOEL J. HALL, J.P.  
A Justice of the Peace.



## FIRST SCHEDULE

## DESIGN AND CONSTRUCTION PROGRAMME

Activity	Start	Finish
Design Development . . . . .	. .	12.84
Documentation. . . . .	. .	3.85
Building Permits (Staged) . . . . .	. .	12.84
Reclamation and Breakwater. . . . .	12.84	1.86
Building Platform and Piling. . . . .	. .	11.84
Hotel Structure. . . . .	12.84	11.85
Hotel Finishes . . . . .	6.85	5.86
Hotel Services . . . . .	10.85	5.86
Hotel Commissioning . . . . .	4.86	5.86
Casino Structure. . . . .	12.84	10.85
Casino Finishes . . . . .	6.85	3.86
Casino Services . . . . .	9.85	3.86
Casino Commissioning . . . . .	4.86	5.86
Roadworks and Services . . . . .	12.85	5.86
Landscaping. . . . .	3.86	5.86
Convention Structure . . . . .	12.84	9.85
Convention Finishes . . . . .	6.85	5.86
Convention Services . . . . .	9.85	3.86
Convention Commissioning . . . . .	4.86	5.86
Final Commissioning of Services and Final Clean . . . . .	4.86	5.86
Final Completion . . . . .	. .	5.86

## SECOND SCHEDULE

## CONTRIBUTIONS TO LOCAL AUTHORITIES AND STATUTORY BODIES

(Clauses 18 and 19)

Authority	Requirement	Amount
1. Townsville Harbour Board	(1) Use of Land and Buildings on Yacht Club site	\$500,000
	(2) Purchase of existing reclamation	\$250,000 plus annual payments of \$59,856 over fifteen (15) years
2. Townsville City Council	(1) Water Supply Augmentation	\$88,000
	(2) Road Works and Traffic	At Manager's Cost
	(3) Roads Maintenance	\$30,000

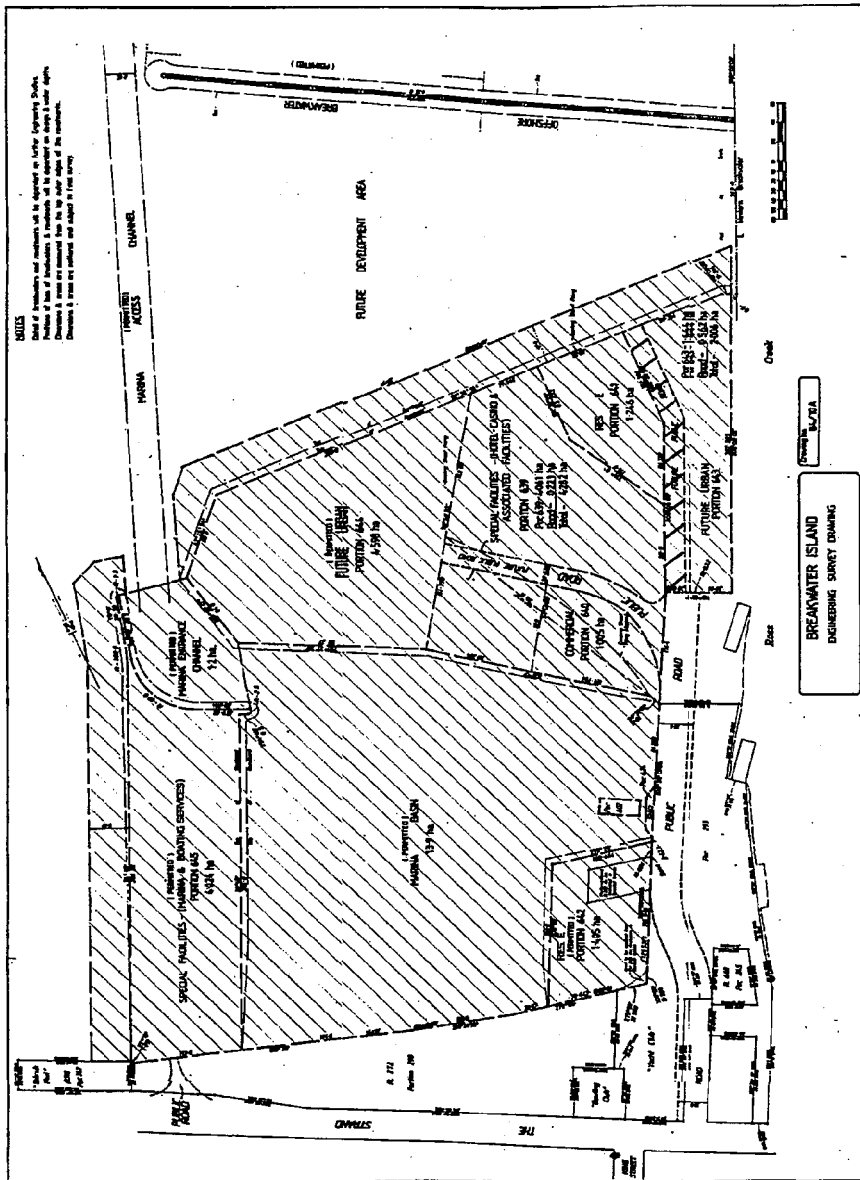
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**THIRD SCHEDULE****DOCUMENTS TO BE TABLED IN PARLIAMENT**

1. Foundation Agreement between ANZ EXECUTORS & TRUSTEE COMPANY LIMITED, DRAYTON INVESTMENTS PTY. LTD., THIESS WATKINS (MANAGEMENT) LIMITED, KUMAGAI GUMI CO. LTD., SHERATON PACIFIC HOTELS PTY. LIMITED and BREAKWATER ISLAND RESORT PTY. LIMITED dated the 14th day of November 1984.
2. Memorandum and Articles of Association of BREAKWATER ISLAND LIMITED (“the Manager”).
3. Trust Deed between BREAKWATER ISLAND LIMITED (“the Manager”) and ANZ EXECUTORS & TRUSTEE COMPANY LIMITED (“the Trustee”) dated the 22nd day of November 1984.
4. Administrative Assistance Agreement between ANZ EXECUTORS & TRUSTEE COMPANY LIMITED (“the Trustee”), BREAKWATER ISLAND LIMITED (“the Manager”) and DRAYTON INVESTMENTS PTY. LTD. (“Drayton”) dated the 22nd day of November 1984.
5. Development Agreement between ANZ EXECUTORS & TRUSTEE COMPANY LIMITED (“the Trustee”), KUMAGAI GUMI CO. LTD. (“the Trustee’s Contractor”) and THIESS WATKINS (CONSTRUCTION) LIMITED (“the Project Manager”) dated the 22nd day of November 1984.
6. Hotel-Casino Management Agreements as follows:
  - (1) Management Agreement between ANZ EXECUTORS & TRUSTEE COMPANY LIMITED (“Owner”), SHERATON PACIFIC HOTELS PTY. LIMITED (“Operator”) and BREAKWATER ISLAND LIMITED (“Manager”) dated the 22nd day of November 1984;
  - (2) Technical Services Agreement between SHERATON PACIFIC HOTELS PTY. LIMITED (“Sheraton”), ANZ EXECUTORS & TRUSTEE COMPANY LIMITED

- (“Owner”) and BREAKWATER ISLAND LIMITED (“Manager”) dated the 22nd day of November 1984;
- (3) Management Services Agreement between SHERATON INTERNATIONAL INC. (“Sheraton”), ANZ EXECUTORS & TRUSTEE COMPANY LIMITED (“Owner”) and BREAKWATER ISLAND LIMITED (“Manager”) dated the 22nd day of November 1984;
- (4) License Agreement between SHERATON INTERNATIONAL INC. (“Licensor”) and ANZ EXECUTORS & TRUSTEE COMPANY LIMITED (“Licensee”) dated the 22nd day of November 1984.
7. Schematic design drawings, numbered 1 to 13, each page of which is signed by each of the parties hereto for the purposes of identification.
8. Townsville Harbour Board Agreement between ANZ EXECUTORS & TRUSTEE COMPANY LIMITED (“the Trustee”) and the TOWNSVILLE HARBOUR BOARD (“the Board”) dated the 27th day of November 1984.
9. Townsville City Council Agreement between ANZ EXECUTORS & TRUSTEE COMPANY LIMITED (“the Trustee”) and THE COUNCIL OF THE CITY OF TOWNSVILLE (“the Council”) dated the 22nd day of November 1984.

FOURTH SCHEDULE—PLAN OF THE SITE



## FIFTH SCHEDULE

### TERMS AND CONDITIONS OF PROPOSED SPECIAL LEASE

Under section 205 of the *Land Act 1962-1984* and Section 80 of the *Harbours Act 1955-1982*

*Land Agent's District:* Townsville.

*Purpose of Lease:* Business (Reclamation, Hotel-Casino, Retail Liquor Outlet, Marina, Tourist, Recreation, Residential, Commercial and Associated Facilities).

*Description of Land:* The area shown on the attached plan, hatched in black, hereinafter called "the leased land".

*Area:* About 39.1 hectares.

*Rent:* To be paid yearly in advance and for the first rental period of five (5) years to be at the rate of \$2,000.00 per annum.

*Term:* To be thirty (30) years.

*Re-appraisal of Rent:* Every five years. The annual rental for the second and each subsequent rental period shall be determined by the Minister.

*Improvements:* No compensation for improvements or developmental work shall be payable by the Crown at the expiration of the term of the Lease but the Lessee shall have the right to remove moveable improvements within a period of three months, provided all moneys due by the Lessee to the Crown on any account whatsoever have been paid. However, should the land be again made available for lease or purchase, the former Lessee will be entitled to receive payment for the value of his improvements or developmental work, in accordance with the principles set out in the *Land Act 1962-1984*.

*Noxious Plants:* the Lessee shall maintain the leased land free of noxious plants.

*Survey:* The Lessee shall bear the cost of any required survey.

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**SPECIAL CONDITIONS:**

1. (a) In these conditions the terms following shall have the meanings respectively assigned to them:

“Assistant Director” means the Assistant Director, Harbours and Marine Works Division, Department of Harbours and Marine.

“Board” means The Townsville Harbour Board.

“Committed Development” means the work described in Clause 16 (c) of the Formal Agreement.

“Council” means The Council of The City of Townsville.

“Formal Agreement” means the Agreement dated entered into between the State of Queensland, the Lessee and Breakwater Island Limited pursuant to Section 19 of the *Casino Control Act 1982*.

“Lessee” means ANZ EXECUTORS & TRUSTEE COMPANY LIMITED.

“Marina” means a marina or marinas consisting of not more than a maximum of 700 berths or moorings established or to be established on the Marina Basin.

“Marina Basin” means the area of land and water comprising the Marina Basin as shown in the Schematic Design Drawings.

“Marina Access Channel” means a dredged channel as shown in the Schematic Design Drawings extending from the vicinity of the Marina into Cleveland Bay of not less than 30 metres in width and minus 4.6 metres AHD in depth.

“Marina Entrance Channel” means the entrance channel into the Marina as shown in the Schematic Design Drawings.

“Maritime Services Minister” means the Minister for Water Resources and Maritime Services or other Minister of the Crown for the time being charged with the administration of the *Harbours Act 1955-1982*. The term includes any Minister of the Crown who is temporarily performing the duties of the Minister.

“Minister” means the Minister for Lands, Forestry and Police or other Minister of the Crown for the time being charged with the administration of the *Land Act 1962-1982*. The term includes any Minister of the Crown who is temporarily performing the duties of the Minister.

“Offshore Breakwater” means the breakwater designated as the “Offshore Breakwater” in the Schematic Design Drawings and being not less than 250 metres in length.

“Schematic Design Drawings” means the schematic design drawings that are applicable for the time being pursuant to the Formal Agreement.

“Site” means the leased land together with the area of land including land covered by water comprising the Marina Access Channel and the Offshore Breakwater.

“Townsville City Council Agreement” means the Townsville City Council Agreement as defined in the Formal Agreement.

“Townsville Harbour Board Agreement” means the Townsville Harbour Board Agreement as defined in the Formal Agreement.

- (b) Any term not defined herein which is defined in the Formal Agreement shall have the same meaning herein as in the Formal Agreement.
2. The Lessee shall reclaim and develop the leased land in accordance with the provisions of:—
- (a) the Formal Agreement;
  - (b) the Townsville City Council Agreement;
  - (c) the Townsville Harbour Board Agreement; and
  - (d) these Special Conditions.
3. The reclamation of the leased land forming part of the Committed Development shall commence as provided for in Clause 21 of the Formal Agreement and shall be continued at a rate satisfactory to the Maritime Services Minister to ensure due completion of the reclamation as provided for in the Design and Construction Programme approved pursuant to the Formal Agreement.



4. (a) All land reclaimed by the Lessee shall be reclaimed to the levels which render the reclaimed land fit for the development and construction of the Complex as defined in the Formal Agreement in terms of the Formal Agreement.
- (b) The Lessee shall not reclaim those areas designated as the Marina Basin and the Marina Entrance Channel.
5. (a) The Lessee shall ensure that all rock, stone, gravel, sand and other material to be used in the reclamation is suitable for the purpose having regard to the location of the leased land and to the proposed use of the land after reclamation.
- (b) The Lessee shall ensure that the material to be used in the reclamation is carefully selected and distributed within the reclamation area so that the better quality material is placed beneath the intended building sites and road and car park areas and the lesser quality material is placed under areas that will not be subject to super-imposed loads.
- (c) If so required by the Assistant Director, the Lessee shall, before commencing the reclamation of the leased land or part thereof, submit to the Assistant Director full particulars of the source, quantity and type of material to be used in the reclamation of the leased land or, as the case may be, part thereof.
- (d) All rock, stone, gravel, sand or other material deemed by the Assistant Director to be unsuitable shall be removed from the reclamation area by the Lessee and duly replaced with suitable material.
- (e) If in the course of reclamation, any material slips or is deposited outside the boundaries of the reclamation area the Lessee, if directed by the Assistant Director to do so, shall remove such material at the Lessee's cost within the time specified by the Assistant Director.
- (f) The Lessee shall ensure that all material used in the reclamation is placed in such a way that settlement subsequent to the completion of the filling is minimised. The Lessee shall comprehensively monitor the settlement over the entire reclamation area both during and subsequent to the filling and

the results of the monitoring shall be used in the design of all buildings, structures, roads and services.

- (g) The Lessee shall provide on the leased land to the satisfaction of the Assistant Director and the Council drainage pipes of sufficient capacity to carry away all storm water which prior to the reclamation flowed onto the leased land.
  - (h) The Lessee shall be free to obtain and utilize in the reclamation works all rock, stone, gravel, sand or other material of any kind from the seabed and other land comprising the site.
6. (a) The Lessee shall cause the reclaimed land to be protected from erosion by means of the breakwaters, retaining walls or revetments shown in the Schematic Design Drawings both during and after the carrying out of the reclamation, and also to be provided with stormwater drainage and any other works necessary to ensure the fitness of the subject land for its proposed use after reclamation.
- (b) The Lessee shall, before commencing the applicable reclamation, submit to The Marine Board of Queensland for the approval of the Governor in Council under Section 86 of the *Harbours Act 1955-1982* plans of:—
- (i) all breakwaters, retaining walls, revetments and other works to be constructed below high water mark including the Offshore Breakwater;
  - (ii) the Marina Basin and the Marina Entrance Channel; and
  - (iii) the Marina Access Channel.
- (c) The Lessee shall cause the breakwaters, retaining walls or revetments to be substantially completed in advance of each stage of the filling of the reclamation in such a way that the material used in the reclamation is not subject to any significant erosion by the sea so as to be carried beyond the limits of the reclamation.
7. The reclamation of the leased land and works performed or carried out by the Lessee in connection with the reclamation:

- (a) shall be subject to inspection from time to time by the Assistant Director or an Engineer nominated by him; and
  - (b) shall be performed carried out and completed in accordance with good engineering practice to the satisfaction of the Assistant Director, having regard to the location of the leased land and to the proposed use of the land after reclamation.
- 8. The Lessee shall before commencing the removal of any rock, stone, gravel, sand or other material from Crown land below high water mark in the harbour of Townsville other than from the Site for use in the reclamation of the leased land obtain a permit from the Board as required by the Board's By-laws.
- 9. During the reclamation and filling of the leased land, the Lessee shall at all times cause all reasonable steps to be taken to ensure that noise is kept within levels acceptable on construction sites and that any nuisance arising from dust during earthmoving operations and stirring up of silt from excavation processes is kept so far as practicable to a minimum within the requirements of the relevant Acts, Regulations and By-laws, and that, in particular, nuisance caused by wind blown dust or sand is kept to a minimum so far as practicable.
- 10. Upon completion of the reclamation of the leased land and construction of the retaining walls or revetments and other works or the applicable part thereof, the Lessee shall cause a survey to be carried out by a Licensed Surveyor to determine accurately the final boundaries of the reclaimed land, such boundaries to be surveyed to the outer top edge of the revetments and breakwaters constructed by the Lessee on the seabed. Such survey shall be carried out after first ascertaining the requirements of the Surveyor-General and Director of Mapping and Surveying. The original plan of Survey and Field Notes shall be lodged at the Office of the Surveyor-General and Director of Mapping and Surveying.
- 11. (a) Upon completion of the reclamation of the leased land and the construction of the retaining walls or revetments and other works required for reclamation of the leased land or the

applicable part thereof, the Lessee shall cause a survey to be carried out to determine the levels of the reclaimed land at points spaced not greater than twenty (20) metres from the nearest neighbouring point and located at the changes in grade and otherwise at the intersections of a right angled grid. The survey shall be carried out after first ascertaining the requirements of the Assistant Director.

- (b) Two copies of the plan of survey shall be forwarded to the Assistant Director upon completion of the survey.
12. (a) Upon the Lessee fulfilling its obligations under the Formal Agreement in respect of the Committed Development, the Lessee will be entitled, subject to this Lease, to receive from the Crown four (4) separate Deeds of Grant in fee simple over those parts of the leased land described as Portions 639, 640, 641 and 643, Parish of Coonambelah, on the attached plan, surveyed in accordance with this Lease.
- (b) If the Lessee has not obtained the Casino Licence pursuant to the Formal Agreement within five (5) years from the commencement of the term of this Lease, then a purchasing price to be paid for each of the said portions will be assessed by the Minister.
13. (a) Upon completion of the construction of a Marina of one hundred and fifty (150) berths or moorings and the Marina Entrance Channel, Marina Access Channel and any part of the Marina Basin which is required for access to the Marina to the satisfaction of the Maritime Services Minister, the Lessee shall surrender the land comprising that part of the Marina Basin on which is constructed a Marina of one hundred and fifty (150) berths or moorings and the Marina Entrance Channel together with any part of the Marina Basin which is required for access to the Marina.
- (b) The Marina Entrance Channel and the said part or parts of the Marina Basin shall thereupon be vested in the Board by Deed of Grant in trust for Port and Harbour (Marina) Purposes pursuant to Section 334 of the *Land Act 1962–1984*, for subsequent leasing by the Board to the Lessee or its nominee in terms of the Townsville Harbour Board Agreement.

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- (c) The Lessee may further develop the Marina in stages to a maximum of seven hundred (700) berths or moorings. The Lessee shall progressively surrender those parts of the Marina Basin on which the Marina is developed from this Lease with a view to such parts of the Marina Basin being progressively vested in the Board by further deeds of grant in trust as referred to in subclause (b) above, for subsequent leasing by the Board to the Lessee or its nominee in terms of the Townsville Harbour Board Agreement. Such progressive surrender shall occur as provided for in the Townsville Harbour Board Agreement or otherwise upon completion of the construction of each further stage of fifty (50) additional Marina berths or moorings.
- (d) The Lessee shall be entitled to access to any part of the Marina Basin vested in the Board for the purpose of constructing any part of the Marina Basin not so vested in the Board or for the construction of the Marina in stages.
- (e) The Marina, the Marina Basin or the Marina Entrance Channel shall not be the property of the Crown nor the Harbours Corporation of Queensland for the purpose of Section 140 of the *Harbours Act 1955-1982*.
14. (a) The Lessee may reclaim and develop the land described as Portions 642, 644 and 645, parish of Coonambelah, on the attached plan, as provided for in the Formal Agreement.
- (b) Upon reclamation of each of such portions to the satisfaction of the Minister, the Maritime Services Minister, the Board and the Council, the Lessee will be entitled, subject to this Lease, to receive from the Crown Deeds of Grant in fee simple over the land contained in such portions, surveyed in accordance with this Lease.

PROVIDED THAT the Crown may refuse to issue a Deed of Grant in fee simple over the land contained in Portion 645 unless the Trustee has first completed the construction of a marina of not less than one hundred and fifty (150) berths or moorings contiguous to Portion 645 or has first produced evidence to the satisfaction of the Minister that the Trustee has entered into a binding commitment in respect thereto.

(c) The Lessee shall maintain the said portion 645 in an aesthetically pleasing condition to the satisfaction of the Council except when the land is necessarily being used for construction purposes.

15. (a) No Deed of Grant will be issued to the Lessee by the Crown over any of the said portions, 639, 640, 641, 642, 643, 644 and 645 unless dedicated access thereto has been first provided by or on behalf of the Lessee at no cost to the State.

(b) For the purposes of provision of dedicated access to Portion 641 prior to any Deed of Grant being issued over that portion, the Lessee at no cost to the State shall surrender to the Crown or procure the surrender of an area of land not more than twenty (20) metres wide from Portion 643, as delineated on a plan of subdivision approved by the Minister, with all costs, including survey and the removal of buildings and structures, being borne by the Lessee.

(c) For the purposes of provision of dedicated access to Portion 644 prior to any Deed of Grant being issued over that portion, the Lessee at no cost to the State shall surrender to the Crown or procure the surrender of an area of land not more than twenty (20) metres wide from Portion 639, as delineated on a plan of subdivision approved by the Minister, with all costs, including survey and the removal of buildings and structures, being borne by the Lessee.

16. For the purpose of provision of dedicated access to the Future Development Area as shown in the Schematic Design Drawings, the Lessee at no cost to the State shall surrender to the Crown or procure the surrender of an area of land not more than twenty (20) metres wide from Portion 643, as delineated on a plan of subdivision approved by the Minister, for continuity of access through Portion 643 to the northern boundary of that portion, with all costs, including survey and the removal of buildings and structures, to be borne by the Lessee.

17. An application by the Lessee to transfer the Special Lease made during the first five (5) years of the Lease shall not be approved, except if such application is made by a Mortgagee, Chargee or Encumbrancee who has been approved by the

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Minister pursuant to Section 32 (1) of the *Casino Control Act 1982* exercising its right under a Mortgage, Charge or Encumbrance which has been consented to by the Minister pursuant to the said Section 32 (1). For the purposes of this Clause 17, the expression “the Minister” shall have the meaning ascribed to it in the *Casino Control Act 1982*.

18. From the commencement of the second rental period of this Special Lease, the annual rental payable hereunder shall, having regard to any grant of freehold title or surrender of part or parts of the Lease for any purpose whatsoever be re-adjusted from time to time by being reduced pro-rata according to the area so granted or surrendered from the Lease.
19. The Lessee may require the annual rental for the second and each subsequent rental periods to be determined by the Land Court.
20. Officers of the Crown, the Board, and the Council shall at all times have free and unrestricted access to the leased land for any purpose authorised by the State, the Board or, as the case may be, the Council in connection with its rights, interests or functions under the *Breakwater Island Casino Agreement Act 1984* or any other Act or law.
21. The Lessee shall at all times during the term of this Special Lease or any extension thereof indemnify and save harmless the Crown from it against all actions, proceedings, claims, demands, costs, losses, damages and expenses which may be brought against or made upon the Crown or which the Crown may suffer, sustain or be put to by reason of or in consequence of or in connection with the occupation, development, construction, or any other use hereunder of and on the leased land in any way whatsoever whether in respect of any loss of life or injury to any person including any invitee, agent or servant of the Lessee or property including any property of the Crown or of the Lessee and whether such loss of life or injury or damage to any person or property be occasioned by the act or default of the Crown’s servants or agents, or otherwise howsoever and shall release and discharge the Crown, its servants and agents from any such action, proceeding, claim, demand, cost, loss, damage and expense which but for this

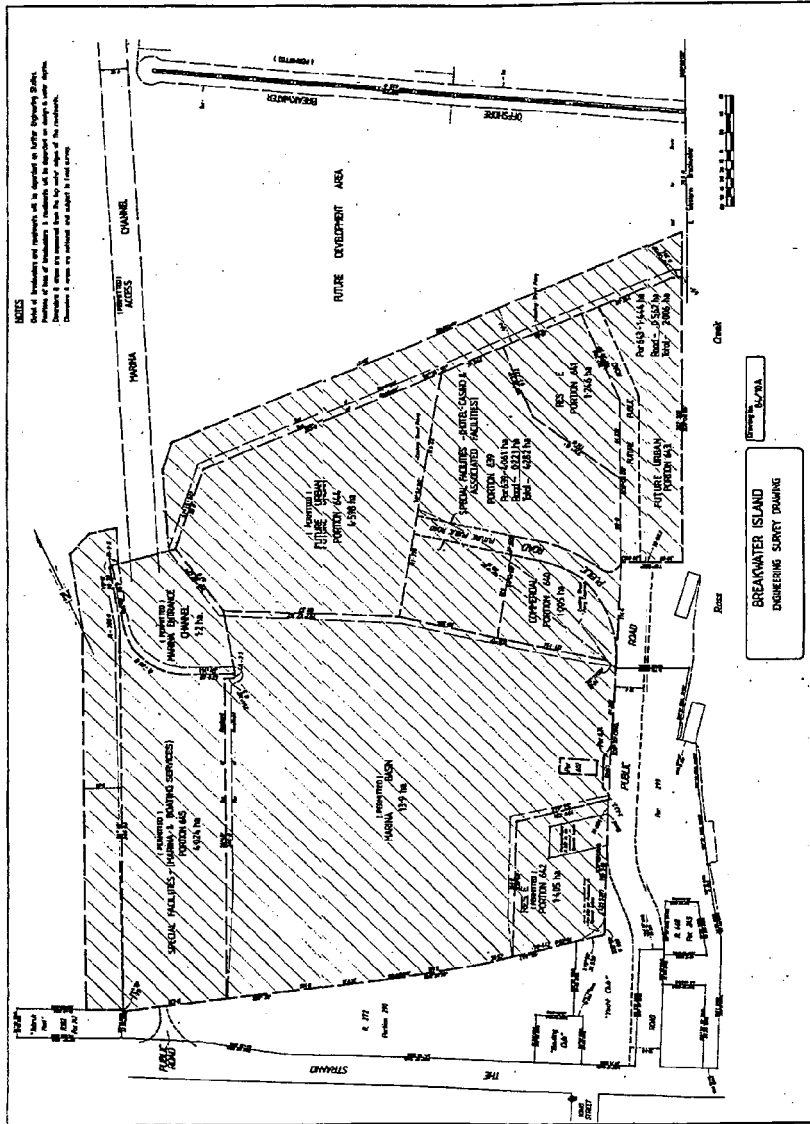
condition might be brought against or made upon the Crown by the Lessee.

PROVIDED THAT nothing herein shall be construed so as to relieve the Crown of any liability for negligence or wilful act or omission of the Crown's servants or agents or for which the Crown is responsible.

22. In all other respects, the conditions of this Special Lease shall be such as are provided for in the *Land Act 1962-1984* and the *Harbours Act 1955-1982*.



ATTACHMENT TO THE FIFTH  
SCHEDULE—PLAN OF THE SPECIAL LEASE



## SIXTH SCHEDULE

### TERMS AND CONDITIONS OF PROPOSED PERMIT TO OCCUPY

Section 371A of the *Land Act 1962-1984*

*Proposed Permittee:* ANZ Executors & Trustee Company Limited.

*Land Agent's District:* Townsville.

*Locality of Land:* The area shown hatched in black on the plan attached.

*Area:* About 7 960 square metres.

#### *Conditions*

1. The rent shall be paid yearly in advance and shall be at the rate of \$100.00 per annum.
2. (a) The occupancy shall be terminable by the Minister administering the *Land Act 1962-1984* (hereinafter called "the Minister") by two (2) months' notice in writing to the permittee in the event of the permittee failing to pay the rent by the due date or failing to comply with the other conditions of this permit. Unless sooner determined, this permit shall be determined upon the expiration of five (5) years after the granting of the Casino Licence.

The permittee may at any time make application to terminate the occupancy hereby granted and the Minister shall on receipt of any such application terminate the occupancy hereby granted.

- 
- (b) An area (to be defined) of approximately 300 m<sup>2</sup> of this occupancy will be terminable by the Minister at the request of the permittee and with the consent of The Council of the City of Townsville (hereinafter called "the Council"), for the purpose of permitting the construction of a zone sub-station.

Upon the termination of such area of approximately 300 m<sup>2</sup> aforementioned from this permit, the Minister will seek Executive Authority to lease the land to The North

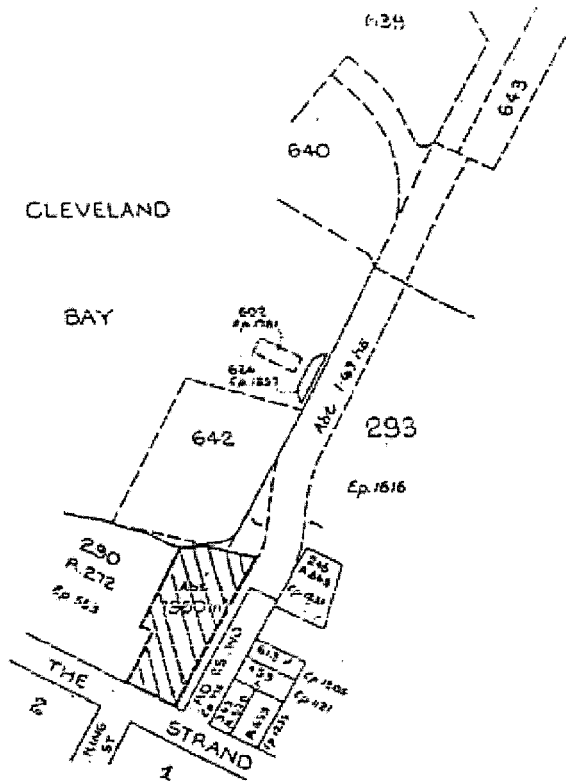
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Queensland Electricity Board (hereinafter called “the Board”), for the purpose of construction of the said zone sub-station, upon terms and conditions determined by the Minister or otherwise deal with the land in a manner satisfactory to the Minister and the Board.

3. No compensation whatsoever shall be payable by the Crown on termination of the occupancy.
4. The permittee shall not assign, transfer, sublet, dispose of or otherwise deal with the occupancy hereby granted without the written permission of the Minister first had and obtained which permission may be given subject to such terms and conditions as the Minister thinks fit.
5. The permittee shall keep the land in a clean, orderly and sanitary condition and maintain improvements to the satisfaction of the Minister.
6. The Minister hereby grants free and uninterrupted access to the permittee for the purposes of and incidental to the development of the Site or any part thereof through and over the subject land and without limiting the generality of the foregoing, the Minister hereby authorizes and permits the permittee:
  - (a) To construct on the subject land a road or roads in accordance with an agreement entered into between the Council and the permittee (hereinafter called “the Townsville City Council Agreement”);
  - (b) To erect fences, barricades and other structures to render safe and secure a part of the subject land for office accommodation and the storage of vehicles, materials, tools and equipment in relation to the development of the Site or any part thereof;
  - (c) To use the subject land for uses consistent with the education of Hotel-Casino employees and future employees; and
  - (d) To occupy and use the two storeyed building (called “the Club House Building”) erected on the subject land for all purposes of and incidental to the Committed

Development and Permitted Development as defined in the Formal Agreement.

7. The Minister shall on or before the granting of the Casino Licence pursuant to the Formal Agreement cause to be dedicated to the public the road or roads, if any, to be constructed on the subject land by the permittee in accordance with the Townsville City Council Agreement and this permit shall be determined in respect of the area or areas of such road or roads, if any, upon such dedication.
8. Upon termination of the permit, the land contained in the permit, less any area thereof required for road purposes shall be set aside as a Reserve for Local Government for a function or purposes to be agreed upon between the Crown and the Council together with all improvements thereon, under the control of the Council, as Trustee.
9. Any term not defined herein which is defined in the Formal Agreement shall have the same meaning herein as in the Formal Agreement.



City of TOWNVILLE Parish of COONAMBELAH County of ELPHINSTONE I.A.D. of TOWNVILLE Local Auth. TOWNVILLE Scale 1:3,000 Drawn By. GB Date 21.2.83	LAND REFERRED TO PRO. PERMIT TO OCCUPY SHOWN HATCHED IN BLACK.
PREPARED BY THE INVESTIGATION SECTION, TECHNICAL INFORMATION BRANCH DEPARTMENT OF MAPPING AND SURVEYING, QUEENSLAND.	

## TERMS AND CONDITIONS OF PROPOSED PERMIT TO OCCUPY

### Section 371A of the *Land Act 1962-1984*

*Proposed Permittee:* ANZ Executors & Trustee Company Limited.

*Land Agent's District:* Townsville.

*Locality of Land:* The area shown hatched in black on the plan attached.

*Area:* About 1.47 hectares.

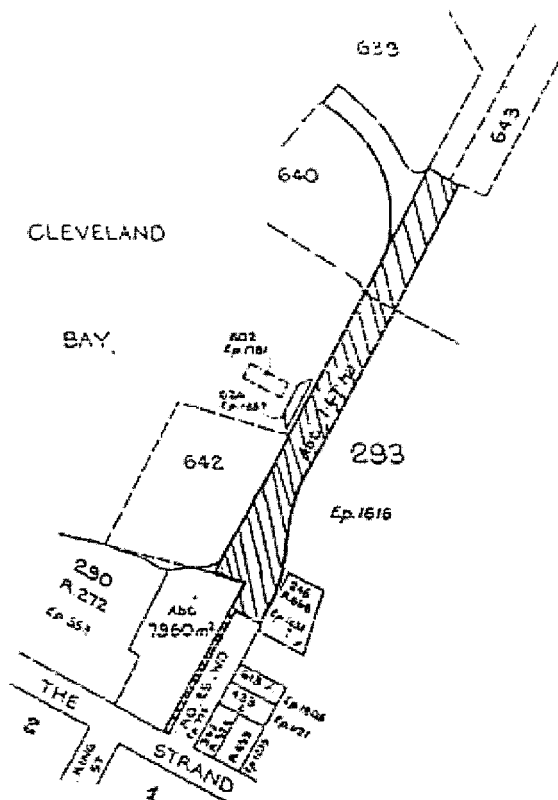
### *Conditions*

1. The rent shall be paid yearly in advance and shall be at the rate of \$100.00 per annum.
2. The Minister administering the *Land Act 1962-1984* (hereinafter called "the Minister") reserves the right to review and amend the rent of this permit at the expiration of five (5) years from the date of commencement hereof and thereafter at the expiration of each five (5) years.
3. The occupancy shall be terminable by the Minister by two (2) months' notice in writing to the permittee in the event of the permittee failing to pay the rent by the due date or failing to comply with the other conditions of this permit.

The permittee may at any time make application to terminate the occupancy hereby granted and the Minister shall on receipt of any such application terminate the occupancy hereby granted.

4. No compensation whatsoever shall be payable by the Crown on termination of the occupancy.
5. The permittee shall not assign, transfer, sublet, dispose of or otherwise deal with the occupancy hereby granted without the written permission of the Minister first had and obtained which permission may be given subject to such terms and conditions as the Minister thinks fit.
6. The permittee shall keep the land in a clean, orderly and sanitary condition.

7. The Minister hereby grants free and uninterrupted access to the permittee for the purposes of and incidental to the development of the Site or any part thereof through and over the subject land and without limiting the generality of the foregoing, the Minister hereby authorizes and permits the permittee to construct on the subject land a road or roads in accordance with an agreement entered into between The Council of the City of Townsville (hereinafter called “the Council”) and the permittee.
8. The permittee shall not unreasonably or unnecessarily interfere with or restrict the rights of the public in the use of the land for the purpose for which it is presently used, namely:
  - (a) Access by the public to the “Barge in” restaurant located on portion 602, parish of Coonambelah as shown on the plan attached.
  - (b) Access by the public to boating facilities located between the permit area and Ross Creek (part of portion 293, parish of Coonambelah).
9. Upon construction of the access road to the satisfaction of the Council, the whole of the permit will be determined and dedicated to public use.
10. Officers of the Crown, The Townsville Harbour Board (hereinafter called “the Board”) and the Council shall, at all times, have free and unrestricted access to the permit area for any purpose authorised by the State, the Board or, as the case may be the Council in connection with its rights, interests or functions under the *Breakwater Island Casino Agreement Act 1984* or any other Act or law.
11. Prior to the grant of this Permit to Occupy the permittee shall execute in favour of the Crown in Right of the State of Queensland, the Council and the Board, a Deed of Indemnity to cover both the construction period and the subsequent use period of the said access roads during the term of this Permit to Occupy.
12. Any term not defined herein which is defined in the Formal Agreement shall have the same meaning herein as in the Formal Agreement.



City of <u>TOWNSVILLE</u>	LAND REFERRED TO
Parish of <u>COONAMBELAH</u>	
County of <u>ELPHINSTONE</u>	PRO. PERMIT TO
L.A.D. of <u>TOWNSVILLE</u>	<u>OCCUPY SHOWN</u>
Local Auth. <u>TOWNSVILLE C.</u>	<u>MARKED IN</u>
Scale 1: <u>3,000</u>	<u>BLACK</u>
Plan Ref. .... Drawn by <u>GB</u> .....	
and Act. <u>TM(2)</u> ... Date <u>21.2.83</u> .....	
PREPARED BY THE INVESTIGATION SECTION, TECHNICAL INFORMATION BRANCH DEPARTMENT OF SURVEYING AND SURVEYS QUEENSLAND	



## DEED OF INDEMNITY

THIS DEED made the \_\_\_\_\_ day of \_\_\_\_\_ One thousand nine hundred and eighty-four ANZ EXECUTORS & TRUSTEE COMPANY LIMITED in its capacity as Trustee for the Breakwater Island Trust (hereinafter called “the Company”) of the one part and the MINISTER FOR LANDS, FORESTRY AND POLICE for and on behalf of the Crown in Right of the State of Queensland (hereinafter called “the Minister”) of the other part.

WHEREAS by an Agreement executed on \_\_\_\_\_ 1984 between The Townsville Harbour Board and the Company it was agreed that the said Harbour Board would when requested by the Company surrender to the Crown certain land for the purposes of the said Agreement.

AND WHEREAS the Company is desirous of having an area of land made available for access roads in Portion 293, Parish of Coonambelah, City of Townsville and reclaimed lands adjacent thereto such land being hatched in black in the lithograph attached hereto and marked “A” (hereinafter referred to as “the subject land”).

AND WHEREAS the subject land has been surrendered to the Crown.

AND WHEREAS pursuant to the *Breakwater Island Casino Agreement Act 1984* the State has agreed to the issue of a Permit to Occupy over the subject land for access roads purposes subject however to such terms and conditions as are contained in Permit to Occupy No. \_\_\_\_\_ including the condition that the Company shall enter into and execute these presents.

NOW THIS DEED WITNESSETH that in consideration of the premises and the Minister allowing the Company to occupy the subject land for a monetary consideration of One hundred dollars (\$100.00) the Company in its capacity as Trustee for the Breakwater Island Trust completely indemnifies and saves harmless the Minister the Crown in Right of the State of Queensland and all and every instrumentality of the Crown in Right of the State of Queensland The Council of The City of Townsville and The Townsville Harbour Board from and against all actions,

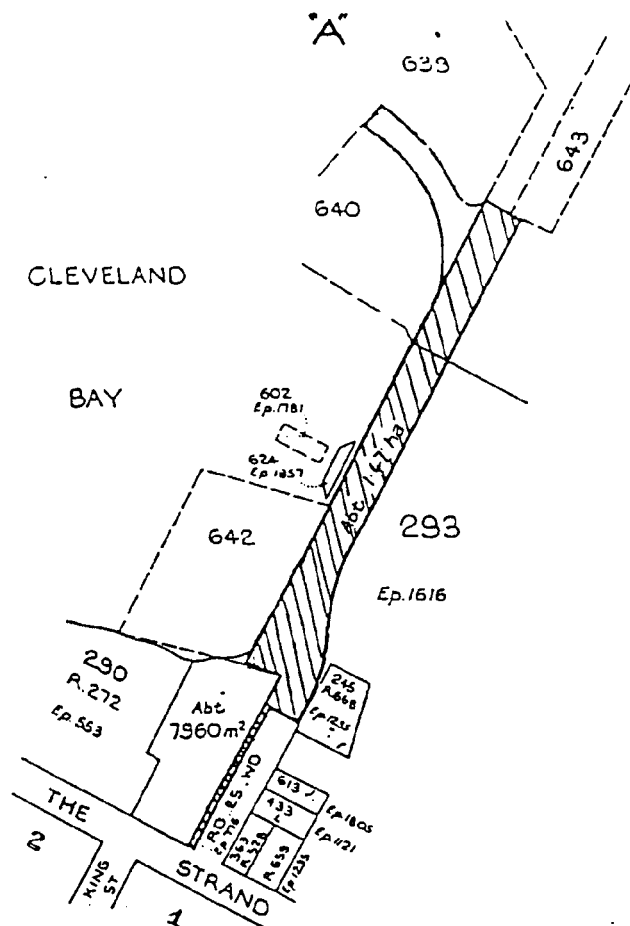
proceedings, claims, demands, costs, losses, damages and expense which may be brought against or made upon him, it or any of them or which he it or any of them may suffer, sustain or be put to by reason of or in consequence of or in connection with the grant to the Company of a Permit to Occupy the subject land and by reason of or in consequence of or in connection with the exercise or attempted exercise by the Company of the Permit to Occupy and without limiting the generality of the preceding provision by reason of or in consequence of or in connection with the use of the subject land and whether in respect of any loss of life of or injury to or damage to any person or property including any property of the Minister the Crown in Right of the State of Queensland and all and every instrumentality of the Crown in Right of the State of Queensland The Council of The City of Townsville and The Townsville Harbour Board and the Company doth hereby release and discharge the Minister the Crown in Right of the State of Queensland and all and every instrumentality of the Crown in Right of the State of Queensland The Council of The City of Townsville and The Townsville Harbour Board from any such action, proceeding, claim, demand, cost, loss, damage or expense which but for the provisions hereof might be brought against or made upon the Minister and/or the Crown in Right of the State of Queensland and/or instrumentality of the Crown in Right of the State of Queensland and/or The Council of The City of Townsville and/or The Townsville Harbour Board PROVIDED THAT nothing herein shall be construed so as to relieve the Minister the Crown in Right of the State of Queensland and all and every instrumentality of the Crown in Right of the State of Queensland The Council of The City of Townsville and The Townsville Harbour Board of any liability for negligence or wilful act or omission for which he it or any of them are responsible.

The liability of the Company under this Deed shall be limited to the same extent as set forth in Clause 7 of the Agreement between the State, the Company, and Breakwater Island Limited which is annexed to the *Breakwater Island Casino Agreement Act 1984*.

IN WITNESS WHEREOF this Deed has been executed  
this                      day of                      , 1984.

GIVEN under the Official Seal of ANZ                      )  
EXECUTORS & TRUSTEE COMPANY                      )  
LIMITED for use in Queensland by authority of the )  
Board of Directors under the hand of                      a )  
Director who hereby certifies that the Official Seal )  
was affixed at                      on the                      day )                      (Director)  
of                      1984 in the presence of:                      )

A Justice of the Peace



City of <u>TOWNSVILLE</u>	LAND REFERRED TO
Parish of <u>COONAMBELAH</u>	<u>PRO. PERMIT TO</u>
County of <u>ELPHINSTONE</u>	<u>OCCUPY SHOWN</u>
L.A.D. of <u>TOWNSVILLE</u>	<u>HATCHED IN</u>
Local Auth. <u>TOWNSVILLE C/C</u>	<u>BLACK.</u>
Scale 1 : <u>3,000</u>	
Plan Ref. .... Drawn by <u>GB</u> .....	
Map Ref. <u>IM(2)</u> .. Date <u>21.2.83</u> .. Ref. ....	
PREPARED BY THE INVESTIGATION SECTION, TECHNICAL INFORMATION BRANCH DEPARTMENT OF MAPPING AND SURVEYING QUEENSLAND	

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**TERMS AND CONDITIONS OF PROPOSED PERMIT TO OCCUPY***Section 371A of the Land Act 1962-1984*

*Proposed Permittee:* ANZ Executors & Trustee Company Limited.

*Land Agent's District:* Townsville.

*Locality of Land:* The area shown hatched in black on the plan attached.

*Area:* About 680 square metres.

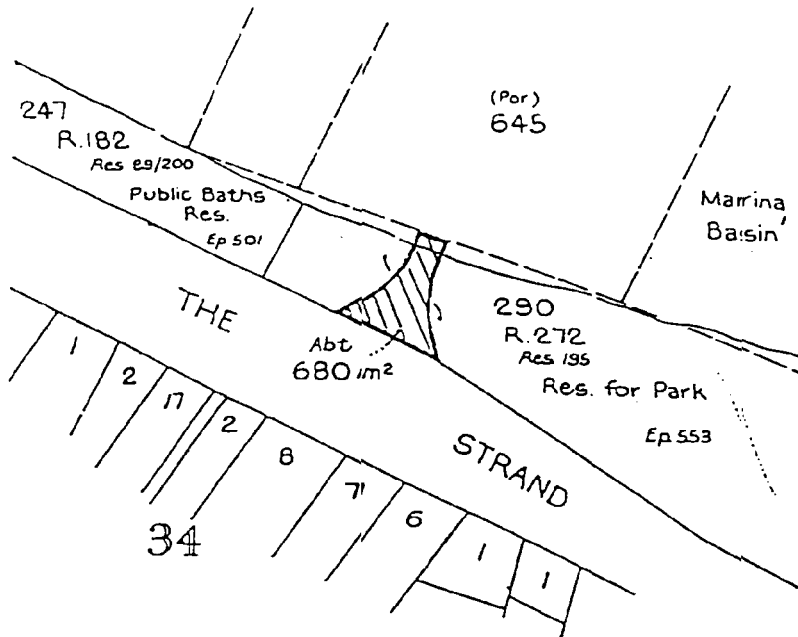
*Conditions*

1. The rent shall be paid yearly in advance and shall be at the rate of \$100.00 per annum.
2. The Minister administering the *Land Act 1962-1984* (hereinafter called "the Minister") reserves the right to review and amend the rent of this permit at the expiration of five (5) years from the date of commencement hereof and thereafter at the expiration of each five (5) years.
3. The occupancy shall be terminable by the Minister by two (2) months' notice in writing to the permittee in the event of the permittee failing to pay the rent by the due date or failing to comply with the other conditions of this permit.

The permittee may at any time make application to terminate the occupancy hereby granted and the Minister shall on receipt of such application terminate the occupancy hereby granted.

4. No compensation whatsoever shall be payable by the Crown on termination of the occupancy.
5. The permittee shall not assign, transfer, sublet, dispose of or otherwise deal with the occupancy hereby granted without the written permission of the Minister first had and obtained which permission may be given subject to such terms and conditions as the Minister thinks fit.
6. The permittee shall keep the land in a clean, orderly and sanitary condition.

7. The public shall be granted free and unrestricted access across the land from either side of Anzac Memorial Park R. 272 to the other except when the permittee necessarily excludes the public in the interest of safety during the construction of the access road.
8. The Minister hereby grants free and uninterrupted access to the permittee for the purposes of and incidental to the development of the Site or any part thereof through and over the subject land and without limiting the generality of the foregoing, the Minister hereby authorizes and permits the permittee to construct on the subject land a road in accordance with an agreement entered into between The Council of the City of Townsville (hereinafter called "the Council") and the permittee.
9. Upon construction of the access road to the satisfaction of the Council, the permit will be determined and the road area dedicated to public use.
10. Officers of the Crown, The Townsville Harbour Board (hereinafter called "the Board") and the Council shall, at all times, have free and unrestricted access to the permit area for any purpose authorised by the State, the Board or, as the case may be, the Council in connection with its rights, interests or functions under the *Breakwater Island Casino Agreement Act 1984* or any other Act or law.
11. Prior to the grant of this Permit to Occupy the permittee shall execute in favour of the Crown in Right of the State of Queensland, the Council and the Board, a Deed of Indemnity to cover both the construction period and the subsequent use period of the said access roads during the term of this Permit to Occupy.
12. Any term not defined herein which is defined in the Formal Agreement shall have the same meaning herein as in the Formal Agreement.



City of TOWNSVILLE	LAND REFERRED TO
Parish of COONAMBELAH	PRO. PERMIT TO
County of ELPHINSTONE	OCCUPY SHOWIN
L.A.D. of TOWNSVILLE	HATCHED IN BLACK.
Local Auth. TOWNSVILLE C/C	
Scale 1:1500	
Plan Ref. Ep.553. Drawn by G.B.	
Map Ref. IM(2) Date 1.3.83	Ref. ....
PREPARED BY THE INVESTIGATION SECTION, TECHNICAL INFORMATION BRANCH DEPARTMENT OF MAPPING AND SURVEYING, QUEENSLAND.	

### DEED OF INDEMNITY

THIS DEED made the                    day of                    One thousand nine hundred and eighty-four ANZ EXECUTORS & TRUSTEE COMPANY LIMITED in its capacity as Trustee for the Breakwater Island Trust (hereinafter called “the Company”) of the one part and the MINISTER FOR LANDS, FORESTRY AND POLICE for and on behalf of the Crown in Right of the State of Queensland (hereinafter called “the Minister”) of the other part.

WHEREAS by an Agreement executed on                    1984 between the Council of The City of Townsville and the Company it was agreed that the said Council would when requested by the Company surrender to the Crown certain land for the purposes of the said Agreement.

AND WHEREAS the Company is desirous of having an area of land made available for an access road in Reserve R.272, Parish of Coonambelah, City of Townsville such land being hatched in black in the lithograph attached hereto and marked “A” (hereinafter referred to as “the subject land”).

AND WHEREAS the subject land has been surrendered to the Crown.

AND WHEREAS pursuant to the *Breakwater Island Casino Agreement Act 1984* the State has agreed to the issue of a Permit to Occupy over the subject land for access road purposes subject however to such term and conditions as are contained in Permit to Occupy No.                    including the condition that the Company shall enter into and execute these presents.

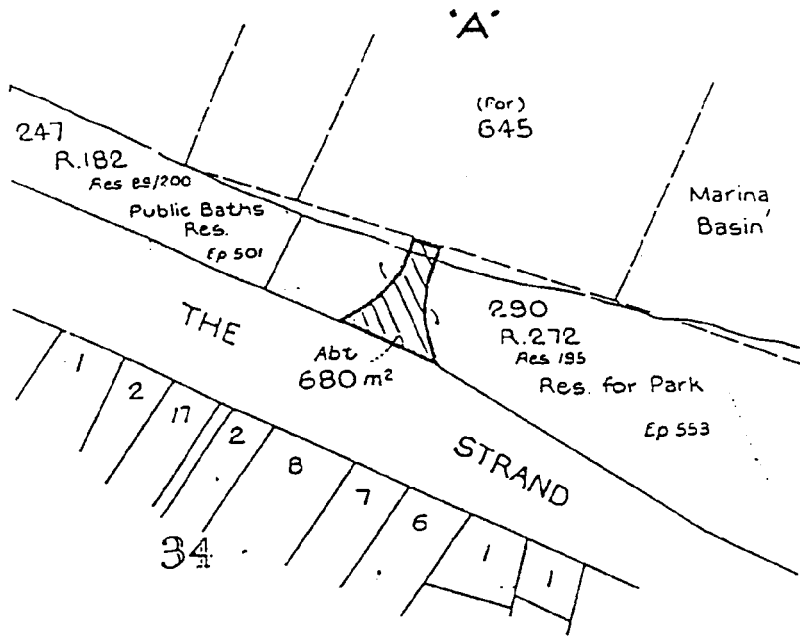
NOW THIS DEED WITNESSETH that in consideration of the premises and the Minister allowing the Company to occupy the subject land for a monetary consideration of One hundred dollars (\$100.00) the Company in its capacity as Trustee of the Breakwater Island Trust completely indemnifies and saves harmless the Minister the Crown in Right of the State of Queensland and all and every instrumentality of the Crown in Right of the State of Queensland The Council of The City of Townsville and The Townsville Harbour Board from and against all actions, proceedings, claims, demands, costs, losses, damages and



expense which may be brought against or made upon him, it or any of them or which he it or any of them may suffer, sustain or be put to by reason of or in consequence of or in connection with the grant to the Company of a Permit to Occupy the subject land and by reason of or in consequence of or in connection with the exercise or attempted exercise by the Company of the Permit to Occupy and without limiting the generality of the preceding provision by reason of or in consequence of or in connection with the use of the subject land and whether in respect of any loss of life or injury to or damage to any person or property including any property of the Minister the Crown in Right of the State of Queensland and all and every instrumentality of the Crown in Right of the State of Queensland The Council of The City of Townsville and the Townsville Harbour Board and the Company doth hereby release and discharge the Minister the Crown in Right of the State of Queensland and all and every instrumentality of the Crown in Right of the State of Queensland The Council of The City of Townsville and The Townsville Harbour Board from any such action, proceeding, claim, demand, cost, loss, damage or expense which but for the provisions hereof might be brought against or made upon the Minister and/or the Crown in Right of the State of Queensland and/or instrumentality of the Crown in Right of the State of Queensland and/or The Council of The City of Townsville and/or The Townsville Harbour Board PROVIDED THAT nothing herein shall be construed so as to relieve the Minister the Crown in Right of the State of Queensland and all and every instrumentality of the Crown in Right of the State of Queensland The Council of The City of Townsville and The Townsville Harbour Board of any liability for negligence or wilful act or omission for which he it or any of them are responsible.

The liability of the Company under this Deed shall be limited to the same extent as set forth in clause 7 of the Agreement between the State, the Company, and Breakwater Island Limited which is annexed to the *Breakwater Island Casino Agreement Act 1984*.





City of TOWNSVILLE	LAND REFERRED TO
Parish of COONAMBELAH	<u>PRO. PERMIT TO</u>
County of ELPHINSTONE	<u>OCCUPY SHOWN</u>
L.A.D. of TOWNSVILLE	<u>HATCHED IN BLACK.</u>
Local Auth. TOWNSVILLE %	
Scale 1 : 1500	
Plan Ref. Ep.553. Drawn by. GB	
Map Ref. JM(2) Date 1.3.83	Ref. ....
PREPARED BY THE INVESTIGATION SECTION, TECHNICAL INFORMATION BRANCH DEPARTMENT OF MAPPING AND SURVEYING, QUEENSLAND.	

## **Schedule 2      Proposed further agreements**

section 3(1)

### **Part 1                      Proposed further agreement for Wagering Act 1998, part 16**

THIS AGREEMENT is made on 1998

**BETWEEN**      THE STATE OF QUEENSLAND (“**State**”)

**AND**              PERPETUAL TRUSTEES QUEENSLAND LIMITED  
ACN 009 656 811 a company duly incorporated and  
having its registered office at 10th Floor, Riverside  
Centre, 123 Eagle Street, Brisbane, Queensland  
 (“**Perpetual**”)

**AND**              BREAKWATER ISLAND LIMITED ACN 010271691 a  
company duly incorporated and having its registered  
office at Ground Floor, Garden Square, 643 Kessels  
Road, Upper Mount Gravatt, Queensland  
 (“**Breakwater**”)

#### **RECITALS**

- A      The parties are parties to an agreement made on 27 November 1984 relating to the establishment and operation of an hotel/casino complex in Townsville in the State of Queensland which was authorised by the Act and as subsequently amended.
- B      The parties have agreed to amend the Breakwater Island Casino Agreement in the manner set out in this agreement.

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## OPERATIVE PROVISIONS

### 1 Definitions

In this agreement—

“**Act**” means the Breakwater Island Casino Agreement Act 1984.

“**Breakwater Island Casino Agreement**” means the agreement referred to in Recital A.

### 2 Amendment of Breakwater Island Casino Agreement

The parties agree that the Breakwater Island Casino Agreement is amended by—

(a) inserting in clause 2 immediately following the definition of “Portion 645”, the following definition—

“ **“Premium Junket Revenue”** means premium junket revenue as defined in the Control Act.”; and

(b) deleting from clause 47 the words “ten per centum (10%) of Casino gross revenue for the month in question.” and inserting in lieu thereof—

“the sum of—

(a) 10% of Casino gross revenue for the month in question; and

(b) 8% of Premium Junket Revenue for the month in question.

The rates set out in this clause 47 shall apply from 1 July 1996.”.

### 3 Governing Law

The interpretation and construction of this agreement shall be governed and determined in accordance with the law of Queensland and the parties submit to the non-exclusive jurisdiction of the courts of that State.

EXECUTED AS A DEED.

SIGNED by the Treasurer of )  
**THE STATE OF QUEENSLAND** )  
for and on behalf of the State of ) -----  
Queensland in the presence of: )

-----  
Witness

-----  
Name of Witness (print)

**THE COMMON SEAL of** )  
**PERPETUAL TRUSTEES** )  
**QUEENSLAND LIMITED** is )  
affixed in accordance with its articles )  
of association in the presence of: )

-----  
Director

-----  
Name of Director (print)

-----  
Director/Secretary

-----  
Name of Director/Secretary (print)

**THE COMMON SEAL of** )  
**BREAKWATER ISLAND LIMITED** )  
was hereunto affixed in accordance with )  
its articles of association in the presence of: )

-----  
Director

-----  
Name of Director (print)

-----  
Director/Secretary

-----  
Name of Director/Secretary (print)

## **Part 2**

# **Proposed further agreement for Breakwater Island Casino Agreement Amendment Act 2006**

**THIS AGREEMENT** is made on **2006**

### **Between**

**The State of Queensland (State)**

and

**Jupiters Limited** ACN 010 741 045 a company duly incorporated by law  
and having its registered office at 5 Bowen Crescent,  
Melbourne, Victoria (**Jupiters**)

and

**Breakwater Island Limited** ACN 010 271 691 a company duly  
incorporated by law and having its registered office at 5 Bowen Crescent,  
Melbourne, Victoria (**Breakwater Island**)

---

### **Recitals**

A The State, ANZ Executors and Trustee Company Limited and Breakwater Island are parties to an agreement made on 27 November 1984 relating to the establishment and operation of a Hotel/Casino complex in Townsville in the State of Queensland which was authorised by the *Breakwater Island Casino Agreement Act 1984* and as varied pursuant to that Act by agreements made on 11 December 1992, 17 September 1993, 16 December 1994 and 31 January 1997.



- B ANZ Executors and Trustee Company Limited has been replaced as Trustee of the Breakwater Island Trust by Breakwater Island.
- C Jupiters holds all the units in the Breakwater Island Trust.

## Operative Provisions

### 1 Amendment of Breakwater Island Casino Agreement

The parties agree that the Breakwater Island Casino Agreement is amended in terms of the variation attached being a replacement agreement.

### 2 Governing Law

The interpretation and construction of this agreement shall be governed and determined in accordance with the law of Queensland and the parties submit to the non-exclusive jurisdiction of the Courts of that State.

**Executed** as a deed.

**Signed** by the Treasurer of The )  
 State of Queensland for and on )  
 behalf of **The State of** )  
**Queensland** in the presence of: )

.....  
Witness

.....  
Treasurer

.....  
Name of Witness (print)

.....  
Name of Treasurer (print)

Schedule 2

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**The common seal of Jupiters) )**  
**Limited ACN 010 741 045 is )**  
affixed in accordance with its )  
articles of association in the )  
presence of: )

.....  
Director

.....  
Director/Secretary

.....  
Name of Director (print)

.....  
Name of Director/Secretary (print)

**The common seal of Breakwater )**  
**Island Limited ACN 010 271 691 )**  
is affixed in accordance with its )  
articles of association in the )  
presence of: )

.....  
Director

.....  
Director/Secretary

.....  
Name of Director (print)

.....  
Name of Director/Secretary (print)

---

## REPLACEMENT AGREEMENT

### Date

### Parties

#### The State of Queensland (State)

**Jupiters Limited** ACN 010 741 045 a company duly incorporated by law and having its registered office at 5 Bowen Crescent, Melbourne, Victoria (**Jupiters**)

**Breakwater Island Limited** ACN 010 271 691 a company duly incorporated by law and having its registered office at 5 Bowen Crescent, Melbourne, Victoria (**Breakwater Island**)

### Background

- A This Agreement was entered into in accordance with section 2 (Ratification of formal agreement) of the *Agreement Act* to satisfy section 19 (Agreement to precede grant of casino licence) of the Control Act.
- B Prior to the grant of the Casino Licence, the State set out its objectives and considerations in its Brief to Finalists in which the State considered the following objectives and considerations as being of paramount importance to the establishment and operation of casinos in the State of Queensland—
- (i) the Casino Licence holder was required to establish a hotel-casino complex of the highest standard and operate that complex on an impeccable basis; and
  - (ii) the establishment of the hotel-casino complex was required to be of maximum enhancement to the tourist industry of Queensland by the provision of an international class hotel, casino and convention centre with the best standard of ancillary amenities such as restaurants, entertainment theatres, sporting and other community facilities; and
  - (iii) the permitted establishment and operation of the Casino was required to give significant community benefits; and

- (iv) by the operation of the Casino the revenue of the State is enhanced.
- C The Trustee holds the Casino Licence, owns the Site and owns the Breakwater Island Casino-Hotel Complex.
- D Jupiters owns all of the Units.
- E The State acknowledged that the establishment of the Breakwater Island Casino-Hotel Complex was a large scale development project requiring a very large capital expenditure and that it was necessary to give to the then trustee of the Breakwater Island Trust, the security and assurances contained herein to enable the provision of capital for the establishment of the Breakwater Island Casino-Hotel Complex.
- F It is desirable that in consideration of the Trustee entering into the obligations on its part hereinafter set out that the Trustee should be granted the entitlements benefits and privileges hereinafter mentioned.
- G Whilst the parties recognise that the power of the Parliament of the State of Queensland to make laws is absolute and cannot be taken away by an agreement made by the State, it is the intention of the State that the titles, rights and privileges of the Trustee be not derogated from by the State in any manner whatsoever except as hereinafter provided.

## PART I—PRELIMINARY

### 1 Definitions

In this Agreement unless the context otherwise indicates or requires, the terms following shall have the meanings respectively assigned to them—

*Agreement* means this agreement and the schedules thereto and all amendments to such agreement or schedules.

*Agreement Act* means the *Breakwater Island Casino Agreement Act 1984*.

*Approved Holder* means—

- 
- (a) a body registered under the *Life Insurance Act 1995* (Cwlth) if the body, in its last published audited financial statements, held net assets of at least \$100 million; or
  - (b) a regulated superannuation fund, an approved deposit fund, a pooled superannuation trust, or a public sector superannuation scheme within the meaning of the *Superannuation Industry (Supervision) Act 1993* (Cwlth) if the fund, trust or scheme, in its last published audited financial statements, held net assets of at least \$100 million; or
  - (c) a managed investment scheme within the meaning of the *Corporations Act* if the scheme, in its last published audited financial statements, held net assets of at least \$100 million; or
  - (d) a person who is a licensed dealer and a member organisation of an Australian stock exchange within the meaning of the *Corporations Act* acting as principal, if the licensed dealer, in its last published audited financial statements, held net assets of at least \$100 million; or
  - (e) an authorised deposit taking institution that carries on any banking business in Australia within the meaning of the *Banking Act 1959* (Cwlth) and their wholly owned subsidiaries; or
  - (f) any building society regulated by the Australian Prudential Regulation Authority and their wholly owned subsidiaries.

*Breakwater Island* means Breakwater Island Limited ACN 010 271 691.

*Breakwater Island Casino-Hotel Complex* means all land and Work used, constructed or effected or to be used, constructed or effected on the Site for a hotel, casino and other Uses in accordance with this Agreement including—

- (a) restaurants, convention centre, theatre and associated facilities and parking; and
- (b) a commercial development which includes or may include indoor and outdoor bars and bottle departments

for the retail sale of liquor to the public, restaurants and fast food areas for the retail sale of food to the public, entertainment areas and associated facilities and parking.

*Breakwater Island Trust* means the trusts constituted by the Trust Deed.

*Brief to Finalists* means that document which is headed *Introduction of Casino Operations to Queensland—Brief to Finalists* and is dated October, 1981 and which explains the State's detailed conditions and requirements for awarding a casino licence and further describes the submission format necessary for review and assessment by the State.

*Casino* means those areas of the Breakwater Island Casino-Hotel Complex identified in the Casino Licence.

*Casino Gross Revenue* means casino gross revenue as defined in the Control Act.

*Casino Licence* means the licence dated 14 May 1986 granted pursuant to the Control Act in respect of the Casino.

*Casino Part* means the part of the Breakwater Island Casino-Hotel Complex that is a Casino.

*Chief Executive* means, unless specified otherwise in this Agreement, the chief executive of the department responsible for the Control Act.

*Control Act* means the *Casino Control Act 1982*.

*Corporations Act* means the *Corporations Act 2001* of the Commonwealth of Australia and the regulations made under that Act, and includes—

- (a) the Act and regulations as amended from time to time; and
- (b) if any law of the Commonwealth is substituted for the Act or regulations—the substituted law.

*Crown Land* has the meaning given in the *Land Act 1962*.

*decision* means a decision, report or recommendation made or proposed to be made or required to be made and includes—

- 
- (a) a matter appearing or purporting to be a decision, report or recommendation; and
  - (b) a matter relating to or appearing or purporting to relate to a decision, report or recommendation.

*Development* means—

- (a) a Material Change of Use; or
- (b) Work; or
- (c) Reconfiguring a Lot; or
- (d) the carrying out of a Prescribed Activity.

*Development Application* means an application to the Minister for approval of Regulated Development in respect of the Breakwater Island Casino-Hotel Complex or the Site pursuant to clause 15.

*Development Approval* means an approval granted by the Minister in respect of a Development Application and includes other working drawings and specifications approved by the Minister as part of the Development Approval which will result in variation to the Schematic Design Drawings.

*Development Legislation* means any—

- (a) legislation of whatsoever nature relating to development as defined in the *Integrated Planning Act 1997* including, without limitation, the *Building Act 1975*, the *Water Act 2000*, *Plumbing and Drainage Act 2002*, the *Coastal Protection and Management Act 1995*, the *Local Government Act 1993* and the *Integrated Planning Act 1997*; and
- (b) Planning Instrument whether or not made under the legislation specified in paragraph (a); and
- (c) other statutory provisions regulating the Development of the Site.

*Foundation Agreement* means the agreement dated 14 November 1984 between the then trustee of Breakwater Island Trust and other parties, as amended from time to time.

*Founders* means the founders identified from time to time in the Foundation Agreement.

*Game* means a game as that term is defined in the Control Act.

*gaming machine* means any device that is designed so that—

- (a) it may be used for the purpose of playing a game of chance or a game of mixed chance and skill; and
- (b) it may be operated, wholly or partly—
  - (i) by the insertion of Australian currency or a chip into the device; or
  - (ii) by the use of gaming machine credits; or
  - (iii) by the electronic transfer of gaming machine credits to the device; or
  - (iv) by the use of gaming machine credits held, stored or accredited by the device or elsewhere.

*gaming machine credit* means a credit of Australian currency, or chips, registered by a gaming machine.

*Jupiters* means Jupiters Limited ACN 010 741 045.

*Land Act* means the *Land Act 1994*.

*Liquor Act* means the *Liquor Act 1992*.

*Local Government* means the Townsville City Council constituted under the *Local Government Act 1993* and any local government or joint local government established under the *Local Government Act 1993* having jurisdiction in respect of the Local Government Area in which the Site is situated.

*Local Government Area* means the area in which the Local Government has jurisdiction including any place under the control of the Local Government outside the boundaries of the area.

*Management Agreement* means the agreement dated 21 December 1999 between Perpetual Trustees Queensland Limited ACN 009 656 811, Jupiters and Breakwater Island, as amended from time to time.



*Marina* means a marina or marinas of not more than a maximum of 700 berths or moorings established or to be established on the Marina Basin.

*Marina Basin* means the area of land and water comprising the Marina Basin as identified on the plan in Schedule 1 as the Marina Basin.

*Marina Entrance Channel* means the entrance channel into the Marina as identified on the plan in Schedule 1 as the Marina Entrance Channel.

*Material Change of Use* means a change of the Use of the Breakwater Island Casino-Hotel Complex or the Site.

*Minister* means unless specified otherwise in this Agreement, the Minister of the Crown for the time being charged with the administration of the Control Act. The term includes any Minister of the Crown who is temporarily performing the duties of the Minister.

*Offshore Breakwater* means the breakwater shown as the *Offshore Breakwater* in the Schematic Design Drawings of not less than 250 metres in length.

*person* includes a company, trustee, corporation, firm and any other body of persons having legal entity as such body as well as a natural person.

*Personal Licence* means a consent, permit, licence, authorisation, registration, membership or approval under Development Legislation (including all the conditions of the consent, permit, licence, authorisation, registration, membership or approval) that is—

- (a) required to be held by a person carrying out an activity; and
- (b) personal to the person carrying out the activity and does not attach to land and bind the owner and the owner's successors in title of the land.

*Example—*

*A flammable and combustible liquids licence under the Dangerous Goods Safety Management Regulation 2001 and a*

*registration certificate under the Environmental Protection Act 1994.*

*Planning Instrument* means any statutory instrument regulating Development.

*Premium Junket Revenue* means premium junket revenue as defined in the Control Act.

*Prescribed Activity* means—

- (a) an Environmentally Relevant Activity as defined in the *Environmental Protection Act 1994*; and
- (b) an activity for which—
  - (i) a Personal Licence is required to be held by Development Legislation at the commencement of this Agreement; and
  - (ii) as a result of legislative change an approval is required to be held by Development Legislation which attaches to land and binds the owner and the owner's successors in title of the land.

*Prescribed Development Legislation* means the following Development Legislation—

- (a) *Standard Building Regulation 1993*; and
- (b) *Water Act 2000*; and
- (c) *Plumbing and Drainage Act 2002*; and
- (d) *Fire and Rescue Service Act 1990*; and
- (e) *Workplace Health and Safety Act 1995*; and
- (f) State laws generally applicable to Work.

*Prescribed Work* means Work other than operational work as defined in the *Integrated Planning Act 1997*.

*Public Official* includes a minister, an officer of the public service and an officer or employee of a Public Sector Entity.

*Public Sector Entity* means—

- (a) a department or part of a department; or

- (b) an agency, authority, commission, corporation, instrumentality, office or other entity, established under an Act for the public or a State purpose.

*Reconfiguring a Lot* has the meaning given in the *Integrated Planning Act 1997*.

*Regulated Development* means—

- (a) Development other than—
- (i) Prescribed Work; and
  - (ii) Work (other than Prescribed Work) which is not being carried out as a part of a Material Change of Use or Reconfiguring a Lot pursuant to clause 15(1); and
- (b) the carrying out of a Prescribed Activity.

*Example—*

*Regulated Development* means—

- (a) *a Material Change of Use; and*
- (b) *Reconfiguring a Lot; and*
- (c) *Work other than—*
- (i) *building work, plumbing work or drainage work; and*
  - (ii) *operational work which is not being carried out as part of a Material Change of Use or Reconfiguring a Lot; and*
- (d) *a Prescribed Activity involving the carrying out of an environmentally relevant activity.*

*Review Act* means the *Judicial Review Act 1991*.

*Schematic Design Drawings* means—

- (a) the schematic design drawings including all plans, drawings, reports or other material relating to the schematic design drawings which were tabled in Parliament; and

- (b) all variations and additional plans, drawings, reports and other material relating to the schematic design drawings which were approved under the Agreement; and
- (c) the amended schematic design drawings that are prepared pursuant to clause 21.

*Share* means a share or stock in Jupiters.

*Shareholder* means the person who for the time being is registered under the provisions of Jupiters' Constitution as the holder of a Share and includes persons jointly so registered.

*Site* means—

- (a) all that area of land identified on the plan in Schedule 1 as the Site including the land covered by water and the land within any road whether constructed or otherwise for which the Trustee is the registered owner or lessee; and
- (b) any future description of the land specified in paragraph (a) consequent upon any resurvey of that land.

*Special Facility Licence* means Special Facility Licence No. 45100022.

*Special Lease* means Special Lease SL44/47072.

*State law* means a law other than a law made by the Local Government or by the Commonwealth.

*Townsville City Council Agreement* means the agreement dated 22 November 1984 between the Local Government and the then trustee of the Breakwater Island Trust and the schedules thereto as amended from time to time.

*Townsville Harbour Board Agreement* means the agreement dated 27 November 1984 between the then Townsville Harbour Board and the then trustee of the Breakwater Island Trust and the schedules thereto as amended from time to time.

*Transport Infrastructure Act* means the *Transport Infrastructure Act 1994*.

*Trust Deed* means the trust deed dated 22 November 1984 which established the Breakwater Island Trust.

*Trustee* means Breakwater Island or any other person from time to time acting in the capacity of trustee or responsible entity of the Breakwater Island Trust pursuant to the Trust Deed or the Corporations Act.

*Trust Fund* means all the cash and investments and all other property whatsoever for the time being held by the Trustee upon the trusts as are provided for in the Trust Deed.

*Unit* means that interest or part of the Trust Fund as is provided for in the Trust Deed.

*Unitholder* means the person who for the time being is registered under the provisions of the Trust Deed as the holder of a Unit and includes persons jointly so registered.

*Use* includes any ancillary use.

*Western Breakwater* means the breakwater existing at the date of this Agreement which adjoins Ross Creek as shown in the Schematic Design Drawings.

*Work* means building work, operational work, plumbing work and drainage work as defined in the *Integrated Planning Act 1997*.

## **2 Interpretation**

- (1) Unless the context otherwise requires, words importing a singular gender shall include any other gender; the singular includes the plural and vice versa; person includes corporation and/or bodies corporate; whenever a corporation shall be a party hereto the words designating such corporation herein shall extend to and include such corporation, its successors in titles and permitted assigns; whenever a person shall be a party hereto the words designating such person herein shall extend to and include such person and that person's executors, administrators and assigns; where two or more parties are parties to a covenant, agreement, undertaking or provision of any kind hereunder, then whether those parties are referred to individually herein or designated and referred to together by a word in the singular person, such covenant, agreement, undertaking or provision of any kind whatsoever shall bind such parties jointly and each of them severally.

- (2) Unless the context otherwise requires, whenever there is any covenant on the part of the Trustee or obligation placed on the Trustee (express or implied) then any costs associated with the performance of that covenant or obligation shall be at the expense of the Trustee.
- (3) Headings have been inserted for ease of reference only and do not affect the interpretation of this Agreement.

### **3 Counting of days**

Unless nominated specifically otherwise within a particular clause herein, the counting of days is to be based on working week days (Monday to Friday inclusive) but excluding public holidays occurring in the Local Government Area.

### **4 Legislative Acts**

Any reference to any primary or subordinate legislation, unless the context otherwise requires shall include that primary or subordinate legislation amending the same or in substitution therefor.

### **5 Authority to enter into Agreement**

The State acknowledges and confirms that approval has been given in accordance with the Agreement Act for the Minister, for and on behalf of the State, to enter into this Agreement with the Trustee and Jupiters and that pursuant to the Agreement Act this Agreement is taken to be ratified by Parliament for the purposes of section 19 (Agreement to precede grant of casino licence) of the Control Act.

### **6 Responsibilities of the Trustee**

The benefits that are expressed to be conferred upon, and the obligations that are expressed to be imposed upon, the Trustee pursuant to this Agreement shall be so conferred and imposed upon the Trustee in accordance with the respective functions powers and responsibilities of the Trustee set forth in the Trust Deed.

## **7 Recourse to Trustee's assets**

Neither the State nor any person to whom the Trustee is liable—

- (a) under or pursuant to this Agreement or the Agreement Act or an agreement entered into by the Trustee in pursuance of any of the matters provided for or contemplated in this Agreement or the Agreement Act;
- (b) under or pursuant to the Control Act;
- (c) in respect of or incidental to the acquisition by the Trustee of the Site, the design and construction of the Breakwater Island Casino-Hotel Complex and the management and operation of the Breakwater Island Casino-Hotel Complex;
- (d) in respect of or incidental to the Development of the Site;

shall be entitled to have recourse, in satisfaction of such liability, to any assets held by the Trustee in its personal capacity or in its capacity as trustee of any trust other than the Breakwater Island Trust and the recourse of the State and/or any such person shall be limited to the Trust Fund;

PROVIDED THAT nothing in the foregoing provisions of this clause shall limit the liability of the Trustee to the Unitholders for breach of trust where the Trustee fails to show the degree of care and diligence required of a Trustee or responsible entity having regard to the powers, authorities or discretions conferred on the Trustee by the Trust Deed.

## **8 Variation of the Agreement**

The terms of this Agreement, and specifically so far as they give to the Trustee the entitlements, benefits and privileges as herein provided, may only be varied in accordance with the Agreement Act.

## **9 Stamp duty**

Jupiters and the Trustee shall not be liable for any stamp duty on—

- (a) this Agreement, the Townsville City Council Agreement and the Townsville Harbour Board Agreement; and
- (b) any document entered into by the Trustee pursuant to or in accordance with this Agreement where the other party to the document is the State or a Public Sector Entity; and
- (c) any contract of sale, memorandum of transfer or lease relating to the transfer or grant of any interest in the Site or any part of the Site to the then trustee of the Breakwater Island Trust; and
- (d) any copy of any of the aforesaid documents.

## **10 Illegal acts**

Notwithstanding anything contained in any Act or other statutory provision or rule of law enacted by the State it is hereby acknowledged that any act by the State or the Trustee, connected with, or pertaining to the obligations, titles, rights and privileges of the parties contained in this Agreement, which would, but for the enactment of the Control Act and the Agreement Act, be illegal shall not be illegal.

## **11 Encumbrances to the Casino Licence**

Subject to any other approvals required under any other Act, the holder of the Casino Licence may mortgage, charge or otherwise encumber its interests in—

- (a) the Casino Licence; and
- (b) the Special Facility Licence; and
- (c) the Breakwater Island Casino-Hotel Complex and the Site; and
- (d) the Special Lease; and



(e) the rights and benefits of the Trustee under this Agreement;

in accordance with section 32 (Mortgage and assignment of casino licence etc.) of the Control Act.

## **12 Bear own costs**

Each party shall pay its own costs in respect of this Agreement.

## **PART II—DEVELOPMENT AND USE OF THE BREAKWATER ISLAND CASINO-HOTEL COMPLEX AND RELATED MATTERS**

### **13 Application of Development Legislation to Breakwater Island Casino-Hotel Complex and the Site**

- (1) Any Development Legislation in force in the Local Government Area in which the Breakwater Island Casino-Hotel Complex and the Site is situated shall not apply to the Development or Use of the Breakwater Island Casino-Hotel Complex or the Site except to the extent provided for in this Agreement.
- (2) For the purposes of the *Integrated Planning Act 1997*, the Development or Use of the Breakwater Island Casino-Hotel Complex or the Site (other than Prescribed Work) shall be exempt development.

### **14 Use of the Breakwater Island Casino-Hotel Complex and the Site Lawful**

- (1) The Breakwater Island Casino-Hotel Complex shall be deemed to be a lawful Use and to be lawfully constructed under any Development Legislation in force in the Local Government Area in which the Breakwater Island Casino-Hotel Complex and the Site is situated.
- (2) Any Development Legislation in force in the Local Government Area in which the Breakwater Island Casino-Hotel Complex and the Site is situated cannot—

- (a) stop the Use of the Breakwater Island Casino-Hotel Complex or the Site from commencing or continuing; or
  - (b) further regulate the Use of the Breakwater Island Casino-Hotel Complex or the Site; or
  - (c) require the Use of the Breakwater Island Casino-Hotel Complex or the Site to be changed; or
  - (d) require the Work constructed or effected or to be constructed or effected in respect of the Breakwater Island Casino-Hotel Complex or the Site in accordance with the Agreement to be altered or removed.
- (3) The Breakwater Island Casino-Hotel Complex or the Site cannot be interfered with or interrupted by any Public Sector Entity or any person on the grounds that the Breakwater Island Casino-Hotel Complex or the Site is contrary to any Development Legislation in force in the Local Government Area in which the Breakwater Island Casino-Hotel Complex and the Site is situated.
- (4) All Planning Instruments in force in the Local Government Area in which the Breakwater Island Casino-Hotel Complex and the Site is situated are deemed to be of no effect to the extent they are inconsistent with this Agreement.

**15 Development of the Breakwater Island Casino-Hotel Complex and the Site**

- (1) The Trustee may carry out Work being operational work not being carried out as part of a Material Change of Use or Reconfiguring a Lot without the approval of the Minister pursuant to clause 15.
- (2) Any Development Legislation in force in the Local Government Area in which the Breakwater Island Casino-Hotel Complex and the Site is situated—
- (a) only applies to Prescribed Work in respect of the Breakwater Island Casino-Hotel Complex or the Site to the extent that the Prescribed Work must comply with the standards and requirements of the Prescribed Development Legislation; and

- 
- (b) shall not apply to Development in respect of the Breakwater Island Casino-Hotel Complex or the Site other than as set out in clause 15(2)(a) or otherwise as expressly adopted by this Agreement.
  - (3) If the Trustee proposes to carry out Regulated Development in respect of the Breakwater Island Casino-Hotel Complex or the Site, the Trustee must make application to the Minister for approval of the Regulated Development.
  - (4) The Trustee must make application to the Minister by lodging with the Chief Executive—
    - (a) a submission comprising such drawings, reports, or other material as is necessary to illustrate the Regulated Development; and
    - (b) amended Schematic Design Drawings containing particulars of the Regulated Development; and
    - (c) such other information which may be required by the Chief Executive.
  - (5) The Minister must—
    - (a) consider the application; and
    - (b) make a decision in respect of the application in accordance with clause 15(6); and
    - (c) advise the Trustee in writing of the decision.
  - (6) The Minister may subject to clause 15(7)—
    - (a) approve the application in whole or in part unconditionally; or
    - (b) approve the application in whole or in part subject to conditions; or
    - (c) refuse the application in whole or in part; or
    - (d) deal with the application under any combination of clauses 15(6)(a), 15(6)(b) and 15(6)(c).
  - (7) The Minister may refuse the Development Application only if in the case of a Regulated Development involving—

- (a) a Material Change of Use, the Material Change of Use is—
    - (i) not of a like nature to the Uses comprising the Breakwater Island Casino-Hotel Complex; and
    - (ii) in the Minister's discretion an undesirable Development of the Site; or
  - (b) Reconfiguring a Lot, the Reconfiguring a Lot is in the Minister's discretion an undesirable Development of the Site; or
  - (c) Work—
    - (i) the Work does not comply with the standards and requirements applicable to Work contained in the Prescribed Development Legislation; and
    - (ii) compliance with the standards and requirements applicable to Work contained in the Prescribed Development Legislation cannot be achieved by the imposition of conditions; or
  - (d) the carrying out of a Prescribed Activity, the carrying out of the Prescribed Activity is in the Minister's discretion an undesirable Development of the Site.
- (8) If Regulated Development involves a Material Change of Use the Trustee must before carrying out the Regulated Development, take all reasonable steps to negotiate with all Public Sector Entities, to the satisfaction of the Minister, all matters (including financial contributions) which but for clause 15(2) could have been lawfully required as a condition of the consent, permission or approval of the Public Sector Entities under any Development Legislation with respect to that Regulated Development.
- (9) If Regulated Development involves Work then in relation to that part of Regulated Development which is Work, the Minister is hereby empowered to authorise, either generally or in a particular case, any person to exercise a power, authority or discretion or to perform a function or duty which is conferred or imposed on the Minister pursuant to clause 15.

- (10) If Regulated Development involves Reconfiguring a Lot, then in relation to that part of Regulated Development which is Reconfiguring a Lot, the Minister shall assess the application as if it were an application for Reconfiguring a Lot under the *Integrated Planning Act 1997*.
- (11) The Trustee shall, if required by the Chief Executive, within 1 month of 30 June of each year or such longer period approved by the Chief Executive provide a report to the Chief Executive of all Uses carried out on the Site or Breakwater Island Casino-Hotel Complex since the last report.

## **16 Breakwater Island Casino-Hotel Complex to Comply**

The Breakwater Island Casino-Hotel Complex must comply with—

- (a) a Development Approval including any condition in the Development Approval where the Regulated Development authorised by the Development Approval has been started; and
- (b) Development Legislation only—
- (i) in respect of Personal Licences that may be required to be held by Development Legislation; and
- (ii) to the extent that the standards and requirements applicable to Work contained in the Prescribed Development Legislation are complied with (except to the extent they are inconsistent with a Development Approval); and
- (c) legislation (including subordinate legislation) other than—
- (i) Development Legislation except as otherwise provided for in this Agreement; and
- (ii) legislation specifically excluded by this Agreement.

## **17 Acknowledgment and Warranties**

- (1) The State acknowledges that in respect of the Breakwater Island Casino-Hotel Complex, the Trustee made the financial contributions and performed the Work which are set out in Schedule 2 in the manner and for the purposes referred to in Schedule 2.
- (2) Subject to clause 15(8), the parties acknowledge that compliance by the Trustee with the provisions of clause 16 shall in no manner whatsoever compel or require the Trustee to carry out any additional Work or to make any financial contributions to any Public Sector Entities in respect of the Use or Development of the Breakwater Island Casino-Hotel Complex which are in addition to those provided for in clause 17(1). This clause does not affect the rights of a Public Sector Entity to require the payment of—
  - (a) a levy or charge of general application; or
  - (b) a fee for a service provided by that Public Sector Entity in relation to Work.

## **18 Internal Review Procedure—Development Applications**

- (1) If the Minister does not approve the whole or any part of a Development Application, the Minister must—
  - (a) issue to the Trustee a written notice stating—
    - (i) the grounds upon which the Minister does not approve the whole or such part of the Development Application; and
    - (ii) that the Trustee may make a written, oral or other type of further submission to the Minister including the introduction of such further alternative proposals for consideration by the Minister as the Trustee deems necessary; and
    - (iii) the time (at least 10 days after the notice is issued to the Trustee) within which the further submission may be made; and

- (b) consider any further submission made by the Trustee within the time stated in the notice (being not more than 20 days after the further submission is made by the Trustee).
- (2) After considering any further submission made by the Trustee, the Minister must within the time stated in the notice issue to the Trustee—
- (a) a written notice stating—
    - (i) if the Minister does not accept the further submission, that the Trustee modify its Development Application in such manner as will satisfy the Minister; or
    - (ii) if the Minister does accept the further submission, the Minister's approval of the Development Application of the Trustee in its original form or subject to any modification which the Minister directs; and
  - (b) in the case of that part of a Development Application a statement of reasons containing—
    - (i) the reasons for the Minister's decision; and
    - (ii) a reference to the evidence or other material on which the reasons were based.
- (3) In the Minister's consideration of all Development Applications or submissions pursuant to this clause the Minister must have regard to the general design and planning objectives of the State and the Trustee contained in the Schematic Design Drawings.

## 19 Appeal

- (1) In this clause—

*Appeal Court* means the Planning and Environment Court established under the *Integrated Planning Act 1997*.

*Reviewed Decision* means a decision made by the Minister pursuant to clause 18(2).

- (2) The Trustee may appeal against a Reviewed Decision within 20 days after a notice is issued to the Trustee pursuant to clause 18(2).
- (3) An appeal must be started by—
  - (a) filing a written notice of appeal with the Appeal Court; and
  - (b) serving a copy of the notice of appeal on the Chief Executive.
- (4) The Appeal Court may extend the period for appealing.
- (5) In deciding an appeal, the Appeal Court—
  - (a) has the same powers as the Minister; and
  - (b) is not bound by the rules of evidence; and
  - (c) must comply with natural justice; and
  - (d) may hear the appeal in either court or in chambers.
- (6) An appeal is by way of hearing anew.
- (7) The Appeal Court may—
  - (a) confirm the Reviewed Decision; or
  - (b) set aside the Reviewed Decision and return the issue to the Minister with the directions that it considers appropriate; or
  - (c) substitute another decision for the Reviewed Decision, in which case the substituted decision is, for the purposes of this Agreement, taken to be that of the Minister.
- (8) The jurisdiction given to the Appeal Court under this Agreement is exclusive.

## **20 Time for Approval**

- (1) The Minister must, subject to clause 20(2), decide a Development Application within 20 days of the lodgment of the Development Application.



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- (2) If a Development Application relates to Regulated Development comprising Work as well as a Material Change of Use or Reconfiguring a Lot, the Minister must decide that component of the Development Application being—
    - (a) the Material Change of Use or Reconfiguring a Lot within 20 days of the lodgment of the Development Application; and
    - (b) the Work within 20 days after the approval of the Material Change of Use or Reconfiguring a Lot.
  - (3) The Minister may extend the decision making period specified in clause 20(1) and (2) by not more than 20 days by written notice given to the Trustee before the end of the decision making period.
  - (4) If the Minister at any time during the period specified in clause 20(1) and (2) or as extended by clause 20(3) requests the Trustee to provide further information relevant to the Development Application, the days between the date that the information is requested and the date that the information is provided, inclusive of both dates, shall not be counted in the period specified in clause 20(1) and (2) or as extended by clause 20(3).
  - (5) If the Minister has not within the time specified in clause 20(1) and (2) or as extended by clause 20(3) advised the Trustee of the Minister's decision—
    - (a) that the Development Application has to be resubmitted for non-compliance with clause 15(4), giving particular reasons for the determination as to the non-compliance; or
    - (b) that the Development Application is approved in whole or in part; or
    - (c) that a notice pursuant to clause 18(1) has already been issued covering the topic of the Development Application; or
    - (d) that a notice pursuant to clause 18(1) is hereby issued;

then the Trustee may at its discretion advise that a Development Approval will be deemed to be in effect by formally advising the Minister.

- (6) If no written response as required herein has been received within 2 days of the Trustee's notice being served, a Development Approval is deemed to be in effect and the Trustee may proceed with the Regulated Development for which approval was sought.

## **21 Schematic Design Drawings**

If Development involving Work is commenced on the Breakwater Island Casino-Hotel Complex or the Site, the Trustee shall, as soon as is reasonably practicable, upon the completion of that Work submit to the Chief Executive amended Schematic Design Drawings that incorporate the Work.

## **22 Casino to comply**

The Trustee shall ensure that all materials, fittings and equipment utilised in operation of the Casino shall be of a high standard of manufacture and of a quality commensurate with an international class casino-hotel.

## **23 Review of Decisions in respect of Breakwater Island Casino-Hotel Complex and the Site**

- (1) Decisions made in relation to the Development of the Breakwater Island Casino-Hotel Complex or the Site under—
- (a) this Agreement, in the case of Regulated Development, shall—
    - (i) not be subject to review under the Review Act or otherwise; and
    - (ii) only be subject to review in accordance with any review process set out under this Agreement; and
  - (b) Development Legislation, in the case of Prescribed Work as contemplated by clause 15(2)(a), shall—

- (i) not be subject to review under the Review Act or otherwise; and
- (ii) only be subject to review in accordance with any review process set out under that Development Legislation which is applicable to the Prescribed Work.

*Example for clause 23(1)(a)(ii)—*

*This Agreement provides for an internal review procedure and appeals in respect of Regulated Development.*

*Example for clause 23(1)(b)(ii)—*

*Decisions made under Development Legislation in respect of Prescribed Work such as building work shall be subject to any rights of review that are provided for in that Development Legislation which is applicable to building work.*

- (2) In particular, a decision under Part II of this Agreement, or another decision, of a Public Official or Public Sector Entity, in relation to the Development of the Breakwater Island Casino-Hotel Complex or the Site—
  - (a) is final and conclusive; and
  - (b) cannot be challenged, appealed against, reviewed, quashed, set-aside, or called into question in any other way, under the Review Act or otherwise (whether by the Supreme Court, another court, a tribunal, an authority or a person); and
  - (c) is not subject to any writ or order of the Supreme Court, another court, a tribunal, an authority or a person on any ground.

*Examples of writs and orders to which the sub-clause applies—*

*Example 1—*

*Writs of mandamus, prohibition and certiorari.*

*Example 2—*

*Certiorari orders, prohibition orders, prerogative orders, prerogative injunctions, and statutory orders of review, within the meaning of the Review Act.*

*Example 3—*

*Declaratory and injunctive orders.*

- (3) Without limiting clause 23(2), the Review Act does not apply to the following matters—
- (a) conduct engaged in for the purpose of making a decision which has the meaning given by section 8 (Conduct engaged in for making decision—preparatory acts) of the Review Act; and
  - (b) other conduct that relates to the making of a decision; and
  - (c) the making of a decision or the failure to make a decision which has the meaning given by section 5 (Meaning of *making of a decision* and *failure to make a decision*) of the Review Act; and
  - (d) a decision;
- under this Agreement, or otherwise, in relation to the Development of the Breakwater Island Casino-Hotel Complex or the Site.
- (4) In particular, but without limiting clause 23(3), the Supreme Court does not have jurisdiction to hear and determine applications made to it under Part 3, 4 or 5 of the Review Act in relation to matters mentioned in clause 23(3).
- (5) The Minister's power under this Agreement to decide whether to accept or reject a recommendation of a Public Official or Public Sector Entity is not affected by clause 23(2).

## **PART III—CORPORATE ORGANISATION AND RELATED MATTERS**

### **24 Approvals**

The State has accepted and approved the following—

- (a) the Constitution of the Trustee; and
- (b) the Trust Deed; and
- (c) the Foundation Agreement; and
- (d) the Constitution of Jupiters; and
- (e) the Townsville City Council Agreement; and
- (f) the Townsville Harbour Board Agreement; and
- (g) the appointment of the Trustee as the trustee or responsible entity of Breakwater Island Trust.

## **25 Trustee requirements**

The Trustee shall—

- (a) remain the trustee or responsible entity of the Breakwater Island Trust; and
- (b) be a wholly owned subsidiary of Jupiters PROVIDED THAT any shares in the Trustee may be held by a nominee, approved in writing by the Minister on behalf of Jupiters; and
- (c) obtain the prior approval in writing of the Minister to any appointment as a director or alternate director of the Trustee; and
- (d) ensure that the appointment of the respective auditors under the Trust Deed and of the Trustee shall be in accordance with the provisions of the Trust Deed and the Corporations Act but no person shall be nominated as auditor unless that person's nomination has been approved in writing by the Minister; and
- (e) notwithstanding clause 25(b), when directed by the Governor-in-Council, which direction shall be final and conclusive and shall not be appealed against, reviewed, quashed or in any other way called in question in any Court on any account whatsoever, enforce the disposal of the shares of any shareholder in the Trustee PROVIDED THAT the Governor-in-Council shall not issue a direction to dispose of shares unless the

shareholder is considered not to be a suitable person to be a shareholder having regard to those matters specified in section 20 (Suitability of casino licensee and other persons) of the Control Act; and

- (f) enforce the vacating from office of any director or alternate director of the Trustee in accordance with any direction to that effect by the Governor-in-Council; and
- (g) refrain from entering into any loan agreement in its capacity as the trustee or responsible entity of Breakwater Island Trust or any other capacity except with a party or parties or a class of parties approved in writing by the Minister; and
- (h) make available for inspection by the Minister or the Minister's nominee duly authorised in writing all information held in respect to the ownership, unitholdings, shareholdings, directors or corporate structure of Breakwater Island Trust or the Trustee, and all minutes of meetings of Unitholders, shareholders and directors and other records relating thereto; and
- (i) make available for inspection by the Minister or the Minister's nominee duly authorised in writing all books, records and documents relating to the financial transactions, bank accounts, source and application of funds, loans and investments of Breakwater Island Trust and the Trustee as the case may be; and
- (j) ensure that the Minister or the Minister's nominee duly authorised in writing shall be entitled to attend and speak at any meeting of Breakwater Island Trust or the Trustee as though the Minister were a Unitholder in Breakwater Island Trust or a director of the Trustee, respectively, but nothing contained in this clause shall confer on the Minister or the Minister's nominee a right to vote; and
- (k) deliver to the Minister a copy of all notices that are forwarded to Unitholders or directors advising of such meetings in the same manner and time frame as if the Minister were a Unitholder or a director; and

- (l) ensure that the Constitution of the Trustee shall not be altered or amended without the prior approval in writing of the Minister; and
- (m) ensure that the Trust Deed shall not be altered or amended without the prior approval in writing of the Minister; and
- (n) refrain from registering any transfer of the Units without the prior approval of the Governor-in-Council; and
- (o) refrain from issuing any Units without the prior approval of the Governor-in-Council.

## **26 Jupiters requirements**

Jupiters shall—

- (a) submit to the Minister half-yearly within 3 months of the last day of June or December a copy of its financial accounts for the relevant half-year; and
- (b) as and when requested by notice in writing by the Minister give to the Minister within 10 days of the date of receipt of such notice a copy of any register required to be kept by Jupiters pursuant to the Corporations Act, PROVIDED THAT the Minister shall not request pursuant to this sub-clause a copy of any such register more than 4 times in any year; and
- (c) obtain the prior approval in writing of the Minister to any appointment as a director or alternate director or associate director of Jupiters; and
- (d) when directed by the Minister, issue a notice pursuant to section 672A (Disclosure Notices) of the Corporations Act; and
- (e) when directed by the Governor-in-Council, which direction shall be final and conclusive and shall not be appealed against, reviewed, quashed or in any other way called in question in any Court on any account whatsoever, enforce the disposal of the Shares of any Shareholder in Jupiters in accordance with the procedure in that respect set forth in the Constitution of

Jupiters, PROVIDED THAT the Governor-in-Council shall not issue a direction to dispose of such Shares unless the Shareholder is considered not to be a suitable person to be a Shareholder having regard to those matters specified in section 20 (Suitability of casino licensee and other persons) of the Control Act given after a recommendation from the Minister that such Shareholder is not suitable having regard to the matters set out in section 20 (Suitability of casino licensee and other persons) of the Control Act; and

- (f) enforce the vacating from office of any director or alternate director or associate director of Jupiters in accordance with any direction to that effect by the Governor-in-Council; and
- (g) when directed by the Minister require the production of a statutory declaration by any person registered as the holder of any Shares setting forth the name and address of any person with a relevant interest in the same and full particulars of that interest; and
- (h) refrain from entering into any loan agreement except with a party or parties or a class of parties approved in writing by the Minister; and
- (i) except in the case of—
  - (i) a pro-rata offer of shares to existing Shareholders of shares of a class which is already on issue by Jupiters where notice of the pro-rata offer of shares has been given to the Minister; or
  - (ii) an issue of voting shares pursuant to the terms of any non-voting shares or convertible securities approved in accordance with clause 26(j);refrain from the issue of any voting shares unless the Governor-in-Council has approved such issue and such issue shall be on such terms and conditions as the Governor-in-Council thinks fit; and
- (j) refrain from issuing any non-voting shares or securities convertible into voting shares unless the Minister has



- approved such issue and such issue shall be on such terms and conditions as the Minister thinks fit; and
- (k) ensure that the appointment of the auditors of Jupiters shall be in accordance with the provisions of the Corporations Act and that no person shall be nominated as auditor unless that person's nomination has been approved in writing by the Minister; and
  - (l) ensure that the voting power in Jupiters of any person shall not exceed 5% at any time without the prior approval in writing of the Minister; and
  - (m) ensure that the voting power in Jupiters of any person shall not exceed 10% at any time except in the circumstances where—
    - (i) their voting power in Jupiters is at least 90%; and
    - (ii) within 3 calendar months of acquiring the voting power referred to in subparagraph (i)—
      - (A) their relevant interest in Jupiters' voting shares is 100%; and
      - (B) they have a relevant interest in all Jupiters' securities convertible into voting shares; and
    - (iii) they have the Governor-in-Council's approval, prior to acquiring the interest referred to in subparagraph (i), to—
      - (A) have the voting power referred to in subparagraphs (i) and (ii); and
      - (B) acquire the relevant interest referred to in subparagraph (ii); and
  - (n) ensure that the total number of shares in any class of non-voting shares in which any person and their associates (other than an Approved Holder) shall have a relevant interest shall not exceed 5% of the total number of shares of that class on issue at any time without the prior approval in writing of the Minister; and

- (o) ensure that the Constitution of Jupiters shall not be altered or amended without the prior approval in writing of the Minister; and
- (p) make available for inspection by the Minister or the Minister's nominee duly authorised in writing all information held in respect to the ownership, shareholdings, directors or corporate structure of Jupiters and all minutes of meetings of Shareholders and directors and other records relating thereto; and
- (q) make available for inspection by the Minister or the Minister's nominee duly authorised in writing all books, records and documents relating to the financial transactions, bank accounts, source and application of funds, loans and investments of Jupiters; and
- (r) ensure that the Minister or the Minister's nominee duly authorised in writing shall be entitled to attend and to speak at any meeting of Jupiters as though the Minister were a Shareholder in Jupiters but nothing contained in this clause shall confer on the Minister or the Minister's nominee a right to vote; and
- (s) deliver to the Minister a copy of all notices that are forwarded to Shareholders or directors advising of such meetings in the same manner and time frame as if the Minister were a Shareholder or a director.

## **27 Structure**

The following shall be conditions of this Agreement—

- (a) there shall be no termination of the Foundation Agreement and no amendment or variation of the terms or conditions of the Foundation Agreement without the prior approval in writing of the Minister; and
- (b) no party to the Foundation Agreement shall be released or discharged from its obligations under the Foundation Agreement without the prior approval in writing of the Minister; and

- (c) no party shall be added to the Foundation Agreement without the prior approval of the Governor-in-Council and without such party entering into a supplementary agreement in a form approved by the Minister agreeing to be bound by the provisions of the Foundation Agreement as if an original Founder.

## **28 Disposal of excess Shares**

Notwithstanding clause 26, a person's voting power or shareholding which is in excess of any of the limitations contained in clause 26(l), (m) or (n) shall not constitute a breach of the conditions of this Agreement if Jupiters shall have acted forthwith to bring about the disposal of the relevant voting Shares or shareholding in accordance with the powers in that behalf contained in the Constitution of Jupiters upon Jupiters becoming aware of the person's voting power or shareholding and that the voting power or shareholding exceeds the relevant limitation PROVIDED THAT the parties acknowledge that Jupiters is unable to refuse to register a transfer of Shares.

## **29 Interpretation of this Part III**

For the purposes of this Part III a reference to—

- (a) a person's voting power shall have the same meaning as a reference in section 610 (Voting Power in a body corporate) of the Corporations Act to a person's voting power; and
- (b) a relevant interest in shares shall have the same meaning as a reference to section 608 (Relevant interests in securities) of the Corporations Act; and
- (c) an associate shall have the same meaning as a reference in Division 2 of Part 1.2 (Associates) of the Corporations Act excluding section 13 (References in chapter 7) and section 14 (References in chapter 8) of the Corporations Act.

**30 Transitional**

Jupiters shall not be obliged to seek approval under any of clauses 26(c), (i), (j), (k), (l), (m), (n) and (o) by reason only of it entering into the deed as authorised by the *Breakwater Island Casino Agreement Amendment Act 2006* in the absence of any further act or matter that would require it to obtain such an approval.

**PART IV—CASINO LICENCE AND RELATED MATTERS**

**31 Casino Licence**

The State granted the Casino Licence to the Trustee.

**32 Exclusivity**

- (1) The State shall not, except in a casino licensed pursuant to the Control Act, notwithstanding the provisions of any other Act from time to time in force in the State of Queensland authorise, permit or approve in any manner whatsoever and whether pursuant to the Control Act or otherwise the conduct or playing of any of the games listed below or any variation or derivative of such games by the use of any gaming machine—
- blackjack;
  - roulette;
  - baccarat;
  - craps;
  - two-up;
  - mini dice;
  - wheel of fortune;
  - sic-bo.
- (2) Nothing in this Agreement shall be construed so as to limit or affect the power of the State to authorise, permit or approve in any manner whatsoever pursuant to any Act for the time being

in force in the State the conduct or playing of games by the use of gaming machines other than—

- (a) those referred to in clause 32(1); and
  - (b) gaming machines that are declared by the Minister by notification published in the Government Gazette to be casino gaming machines as provided for in clause 32(3).
- (3) The parties hereto agree that the following provisions shall apply with respect to the declaration and notification of gaming machines as casino gaming machines—
- (a) the Minister may at any time in the Minister's discretion or upon receipt of an application by the Trustee, make a declaration and notification in respect of any gaming machine including any gaming machine referred to in clause 32(1) but the non-existence of a notification shall not limit or affect the operation of clause 32(1);
  - (b) the Minister shall within 90 days of the receipt thereof or such extended period as the Minister may require consider and determine every application made to the Minister in respect of a gaming machine and, where the Minister refuses the application, the Minister shall notify the applicant in writing of the reasons for the refusal;
  - (c) the Minister may in the Minister's absolute discretion refuse to make a declaration and notification in respect of any gaming machine commonly known as a "poker machine" or any variation or derivative thereof or any gaming machine of a like class or description;
  - (d) where an application is made to the Minister in respect of any gaming machine other than a gaming machine referred to in clause 32(3)(c), the Minister shall consider the application and determine whether in all the circumstances of the application it is reasonable that it be granted. The Minister shall consider all material submitted to the Minister in writing by the applicant and the State and, in particular the Minister shall consider whether it has been established to the Minister's reasonable satisfaction that the gaming machine is of a

class or description that should be reserved for use in a casino licensed pursuant to the Control Act;

- (e) no such declaration and notification shall be revoked, amended or varied without the prior consent in writing of the Trustee.
- (4) Subject always to the State giving due effect to the foregoing provisions of this clause, nothing in this Agreement shall be construed so as to limit or affect the power of the State to authorise, permit or approve in any manner whatsoever and whether pursuant to the *Charitable and Non-Profit Gaming Act 1999* or any other Act for the time being in force in the State of Queensland—
- (a) any art union or lottery that is of a class or description commonly conducted or played in Australia or elsewhere at the date of execution of this Agreement no matter how played; and
  - (b) any art union or lottery that is a variation or derivative thereof or that is of a like class or description no matter how played.

### **33 Casino tax**

Subject to the provisions of the Control Act and clause 36 the amount of the casino tax to be paid by the Trustee from the Trust Fund shall be in each month in each year the amount equal to the sum of—

- (a) 10% of Casino Gross Revenue for the month in question; and
- (b) 8% of Premium Junket Revenue for the month in question.

### **34 Liquor Act—Special Facility Licence**

- (1) The Special Facility Licence was granted in respect of the Breakwater Island Casino-Hotel Complex and is taken to be a special facility licence for the purposes of the Liquor Act.

- (2) The Special Facility Licence shall, subject to this Agreement, be administered in accordance with the Liquor Act.
- (3) Despite section 9 (Ordinary trading hours) of the Liquor Act but for the purposes of this Agreement, the ordinary trading hours during which the Special Facility Licence permits the sale or consumption of liquor in the Casino Part are the same hours approved (under section 61 (Hours of operation) of the Control Act) for the operation of the Casino Part.

## **PART V—CASINO OPERATIONS AND REVIEW THEREOF**

### **35 Hours of operation**

The State agrees that the Trustee may open and operate the Casino for use by the public on any day in any year save and except those days in any year which the Trustee is precluded from so opening pursuant to section 61(8) (Hours of Operation) of the Control Act for any number of hours on any such day which may be approved by the Minister from time to time, PROVIDED HOWEVER that the Minister shall not restrict the number of hours in which the Casino is open as aforesaid to less than 18 hours in any 1 day unless requested by the Trustee in writing so to do.

### **36 Operational review**

The State agrees to review the rate of casino tax, the amount of fees and the rate of the community benefit levy as defined in the Control Act payable by the Trustee and the terms and conditions of the operation of the Casino in any circumstances of whatsoever nature arising which in the opinion of the Minister are likely to have an adverse impact on the viability of the Casino.

## **PART VI—TERMINATION**

### **37 Grounds for termination**

This Agreement, save and except the rights and obligations of the parties hereto and any mortgagee pursuant to clause 38, may be terminated by the Minister in any of the following events—

- (a) If there is a substantial breach by any of the parties hereto other than the State of its obligations under this Agreement in respect of which the Minister shall have delivered to each of such parties and to any mortgagee a notice in writing setting forth particulars of the breach or default and which shall not have been remedied or not have taken steps to have remedied to the satisfaction of the Minister within three months from the date of such notice to remedy;
- (b) If—
  - (i) any distress or execution is levied against the Trust Fund which is for an amount in excess of ONE MILLION DOLLARS (\$1,000,000) and which is not discharged within thirty (30) days from the date upon which the levy is made; or
  - (ii) subject to the provisions of clause 11, the benefit of this Agreement is in any way whatsoever pledged, encumbered, mortgaged or assigned without the prior written consent of the Minister in accordance with the provisions of section 32 (Mortgage and assignment of casino licence etc.) of the Control Act;

and the Minister shall have delivered to the relevant party, as the case may be, and to any mortgagee a notice requiring that party to remedy such circumstance and neither that party nor the mortgagee shall have remedied or taken steps to remedy such circumstance to the satisfaction of the Minister within a reasonable time (being not less than 10 days) from the date of such notice to remedy;



- (c) If any casino licence in respect of the Casino is at any time cancelled or surrendered.

### **38 Appointment of administrator**

- (1) In the event that the Casino Licence is cancelled or suspended for any reason whatsoever, the following provisions shall apply—
- (a) The Governor-in-Council shall appoint an Administrator—
- (i) in the case of cancellation of the licence as aforesaid within 7 days of the date of such cancellation; or
- (ii) in the case of suspension of the licence as aforesaid for a period of not less than three months, within 7 days of the date of receipt by the Minister of a request from the Trustee to appoint an Administrator.
- (b) In the event of a receiver and manager having been approved or appointed prior to either clause 38(1)(a)(i) or clause 38(1)(a)(ii) becoming effective, the Governor-in-Council shall appoint that person as Administrator for the purposes of this Agreement.
- (c) Notwithstanding the provisions of sections 19 (Agreement to precede grant of casino licence) and 21 (Hotel-casino complex owner or State as licensee) of the Control Act or any provision of this Agreement the Governor-in-Council shall within the period of 7 days referred to in clause 38(1)(a) grant a casino licence to the Administrator.
- (d) The Administrator shall pursuant to the casino licence to be granted pursuant to clause 38(1)(c) manage and operate in accordance with the provisions of the Control Act the Casino as the agent of the Trustee.
- (e) The Trustee and/or the Administrator if such Administrator has been appointed pursuant to clause 38(1)(b) may at any time and from time to time but

always subject to the rights of any mortgagee pursuant to its security and also pursuant to the provisions of section 32 (Mortgage and assignment of casino licence etc.) of the Control Act during a period of 12 calendar months from the date of the appointment of the Administrator introduce a proposed assignee to whom the provisions of section 32 (Mortgage and assignment of casino licence etc.) of the Control Act shall apply as if such assignee was proposed by a mortgagee wishing to enforce its security.

- (f) Should the proposed assignee be acceptable to the Governor-in-Council in the terms of clause 38(1)(e) the Governor-in-Council shall terminate the appointment of the Administrator and assign to the proposed assignee in accordance with the procedure set out in section 32 (Mortgage and assignment of casino licence etc.) of the Control Act the casino licence issued to the Administrator.
- (g) In the event that the Trustee and/or the Administrator are unable to introduce an acceptable assignee as hereinbefore provided in clause 38(1)(e) the Administrator shall while continuing to operate the Casino as hereinbefore in this clause provided but always subject to any rights of any mortgagee pursuant to its security and also the mortgagee's rights pursuant to the provisions of section 32 (Mortgage and assignment of casino licence etc.) of the Control Act dispose of the Breakwater Island Casino-Hotel Complex and arrange for the assignment of the casino licence at the highest attainable price to the assignee who is approved by the Governor-in-Council as if that assignee has been nominated by a mortgagee seeking to enforce its security in accordance with section 32 (Mortgage and assignment of casino licence etc.) of the Control Act.
- (h) The casino licence granted to an Administrator shall not be cancelled or suspended prior to its assignment as referred to in clause 38(1)(f) but the Governor-in-Council may from time to time within the Governor-in-Council's discretion remove an

- Administrator and appoint another Administrator in that person's place and shall remove an Administrator who is not a receiver or manager approved pursuant to section 32(2)(b) (Mortgage and assignment of casino licence etc.) of the Control Act and replace that person with an Administrator who becomes so approved.
- (i) If the term of any suspension mentioned in clause 38(1)(a) is reduced after a request for the appointment of an Administrator has been made, the Governor-in-Council shall terminate the appointment of any Administrator the Governor-in-Council has appointed following a request that the appointment be so terminated, and—
- (i) if the Trustee's Casino Licence has been cancelled, the Governor-in-Council shall assign to the Trustee the casino licence granted to the Administrator; or
- (ii) if the Trustee's Casino Licence has not been cancelled, the Governor-in-Council shall cancel the casino licence granted to the Administrator.
- (j) An Administrator may be appointed on such terms which are not inconsistent with this clause as the Governor-in-Council considers desirable in the circumstances of the appointment.
- (2) The parties hereto acknowledge confirm and agree that any termination of this Agreement pursuant to the provisions of clause 37 shall not in any manner whatsoever terminate or reduce the effect of clause 38(1) and the rights and obligations of the parties shall maintain continue and be of full force and effect as if this Agreement had not been terminated.

### **39 Impact of termination on the development of the Breakwater Island Casino-Hotel Complex or the Site**

In the event that this Agreement is terminated for any reason whatsoever the provisions of clause 14 shall apply to Development in respect of the Breakwater Island Casino-Hotel Complex and the Site which at the date of

termination has been carried out or approved in accordance with this Agreement.

#### **40 Impact of termination on the Special Facility Licence**

The State acknowledges and agrees that the Special Facility Licence granted pursuant to the Liquor Act shall, notwithstanding any termination of this Agreement by whatsoever means or any cancellation or suspension of the Casino Licence by whatsoever means, not be cancelled or suspended but rather shall remain in full force and effect so far as it relates to all areas of the Breakwater Island Casino-Hotel Complex other than the Casino until it shall be cancelled or suspended pursuant to the provisions of the Liquor Act.

### **PART VII—SPECIAL PROVISIONS**

#### **41 Marina Basin and Marina Entrance Channel deemed to be land**

- (1) The Marina Basin, the Marina Entrance Channel and any other land that is the subject of any grant, demise or other estate or interest under the Agreement or the Townsville Harbour Board Agreement shall be deemed to be land within the Parish of Coonambelah, County of Elphinstone.
- (2) To remove doubt it is declared that the Marina Basin and the Marina Entrance Channel are not a canal for the purpose of the *Coastal Protection and Management Act 1995* including section 121 of the *Coastal Protection and Management Act 1995*.

#### **42 Lot 795 on CP846293 and Lot 796 on EP2296 deemed to be land**

Lot 795 on CP846293 and Lot 796 on EP2296 shall be deemed to be land—

- (a) within the Parish of Coonambelah, County of Elphinstone; and

- (b) within the Local Government Area of the Local Government.

#### **43 Special Lease**

- (1) The Special Lease was granted under the *Land Act 1962* and is taken to be a term lease pursuant to section 476 (Existing lease continues) of the Land Act.
- (2) Unless and until clause 61 applies, the Marina Entrance Channel and the Marina Basin shall be part of the port managed by the Townsville Port Authority.

#### **44 Restricted Area**

- (1) In this clause 44(1) *the Restricted Area* means any land that is Crown Land or land held by the Townsville Port Authority and on which any part of the breakwaters, retaining walls and revetments shown in the Schematic Design Drawings (other than the Offshore Breakwater and the Western Breakwater) is constructed. For better protecting the rights and interests of the Trustee, it is agreed that—
  - (a) no person including any Public Sector Entity shall be permitted to erect any structure of any kind or claim any right of support on, over or against those parts of the breakwaters, retaining walls or revetments on the Restricted Area other than the Townsville Port Authority or lessee from the State or any lessee of the Townsville Port Authority of any part or whole of the Marina Basin in respect of those parts of the Restricted Area retaining the Marina Basin to the extent necessary for the proper use and enjoyment of the Marina; and
  - (b) no person except a Public Sector Entity expressly authorised by the State (including the Townsville Port Authority) or the Trustee or a lessee from the State authorised to have access, shall be permitted to have access to or over those parts of the breakwaters, retaining walls or revetments constructed on the Restricted Area other than the Marina Basin; and

- (c) nothing contained in this clause 44(1) shall prevent the Townsville Port Authority or the State doing all things necessary in the ordinary course of maintaining the breakwaters, retaining walls and revetments in good and proper order and condition in the event of a failure by other parties to maintain.
- (2) The State agrees that any rights or benefits provided for in clause 44(1) to any Public Sector Entity including the Townsville Port Authority or to any other person shall not be exercised in such a manner as to cause or result in undue detriment or loss of amenity to or financial loss or damage to any registered proprietor or occupier for the time being of any land having a frontage to the Marina Basin or the Marina Entrance Channel.

**45 Easements of lateral support for breakwaters, retaining walls and revetments**

- (1) In this clause 45, *lot* means—
  - (a) in relation to the State, any Crown Land (other than land within the Marina Entrance Channel or the Marina Basin) and on which any part of the breakwaters, retaining walls and revetments shown in the Schematic Design Drawings is constructed;
  - (b) in relation to the Trustee, the land owned by the Trustee (other than land within the Marina Entrance Channel or the Marina Basin), and which has a common boundary with any Crown Land referred to in clause 45(1)(a).
- (2) In respect of each lot of which the State is the owner, there shall be implied as against the State and in favour of the Trustee its successors or assigns as the owner of the adjacent lot an easement for the lateral support of that lot and any buildings or structures thereon to the extent that the Crown Land and the structures thereon are capable of affording support.
- (3) In respect of each lot of which the Trustee is the owner, there shall be implied as against the Trustee its successors or assigns and in favour of the State as the owner of the adjacent

lot an easement for the lateral support of the structures on the Crown Land to the extent that the land of the Trustee and the buildings or structures thereon are capable of affording support.

## PART VIII—GENERAL

### 46 Approvals and notices

(1) All approvals notices and other writing required or appropriate to be given under the provisions of this Agreement shall be deemed to be properly served if delivered in writing personally or sent by post or by facsimile transmission to—

- (a) the Minister at the Minister's principal office in Brisbane; or
- (b) Jupiters at its registered office; or
- (c) the Trustee at its registered office;

and such other persons or addresses as each party shall from time to time designate in writing to the other and any such notice or other writing sent by post or facsimile transmission shall unless the contrary be proved be deemed to have been so given when it would have been delivered in the ordinary course of post.

(2) Although copies of such approvals, notices and other documents required to be given under the provisions of this Agreement to a nominated representative may also be forwarded to such other person specifically designated in writing by that nominated representative such additional copies do not substitute for the primary service.

(3) If, before 4.00 p.m. local time in the place of delivery, a party delivers a notice—

- (a) by hand; or
- (b) by facsimile and the sending party completes the transmission;

the notice will be taken as given on the day of delivery of transmission, and in any other case, on the next day.

- (4) If a party gives the notice by post the notice will be taken as given on the second business day in the place of delivery after the notice is posted unless it can be established that the notice was not received until a subsequent date, in which case that later date will be the date notice was given.
- (5) If a party gives notice by facsimile transmission and the transmission is not fully intelligible, or if the sending party, at the time of transmission, has reason to believe that the facsimile transmission is not fully intelligible, the party may not rely upon this clause to prove the giving of the notice.
- (6) The receiving party shall not object to a facsimile transmission as not being fully intelligible unless the receiving party requests a re-transmission within 2 hours.
- (7) If a facsimile transmission is completed within 2 hours of 5.00 p.m. on a day and is unintelligible, the receiving party has until 10.00 a.m. on the next business day to request the re-transmission.
- (8) The party giving the notice or its agent shall sign the notice. The appearance of the name of the person signing at the end of a facsimile transmission is sufficient evidence of signing.
- (9) The address, and facsimile number of the parties for the purposes of this clause are to be advised in writing.
- (10) The parties may give notice of another address or facsimile number (within Australia) to the other party and the new address shall be the address for service of the party for the purpose of this clause.

#### **47 Waiver**

No omission by any party to require the performance by another or the others of any of the terms or conditions of this Agreement nor any forbearance or indulgence granted or shown by any party to another or others shall release discharge or in any manner affect or prejudice the right of a party at any time to require strict and full performance by



another or others of any or all of the terms or conditions to be observed or performed hereunder.

#### **48 Governing law**

The law of this Agreement shall be the law of the State of Queensland.

#### **49 Delegations**

- (1) The Minister may delegate in writing the Minister's powers, rights or obligations pursuant to this Agreement, or any of them, to the Chief Executive or the Executive Director of the Queensland Office of Gaming Regulation.
- (2) The Chief Executive may delegate in writing the Chief Executive's powers, rights or obligations pursuant to this Agreement to an officer of the public service within that unit of the public sector for which the Chief Executive is responsible.

#### **50 Extensions of time**

In any case in which the Trustee is obliged to perform or do an act or thing by or within a time specified in this Agreement, the Minister may at any time and from time to time in the Minister's absolute discretion extend the time specified for performing or doing that act or thing.

## **PART IX — TRANSITIONAL ARRANGEMENTS IN RESPECT OF SURPLUS CASINO LAND AND FUTURE DEVELOPMENT AREA**

### **Division 1—Preliminary**

#### **51 Definitions**

In this Part IX—

*Development* has the meaning given in the *Integrated Planning Act 1997*.

*Future Development Area* means—

- (a) all that area of land generally in accordance with the land identified on the plan in Schedule 1 as the Future Development Area including the land covered by water; and
- (b) any future description of the land specified in paragraph (a) consequent upon any resurvey of that land.

*Future Development Area Land Platforms* means the land platforms in the Future Development Area shown in the Future Development Area Scheme.

*Future Development Area Port Protection Code* means a code for the purpose of minimising the potential impact of the infrastructure and operations of the Townsville Port on the Development of the Future Development Area notified by the chief executive of the department responsible of the *Transport Infrastructure Act 1994* as having been authorised to the Local Government, the Townsville Port Authority and the owner or owners of the Future Development Area prior to the Future Development Area Scheme taking effect.

*Future Development Area Scheme* means a scheme for the Future Development Area approved by the Minister under clause 66(5).

*Local Planning Instrument* has the meaning given in the *Integrated Planning Act 1997*.

*Ocean Terminal* means a facility for the docking of cruise ships and other vessels located within the Future Development Area.

*Planning Instrument* has the meaning given in the *Integrated Planning Act 1997*.

*Port Protection Codes* means the Surplus Casino Land Port Protection Code and the Future Development Area Port Protection Code.

*Port Protection Code Notification Date* means the latest of the dates on which notification is taken to have been given by the

chief executive of the department responsible for the *Transport Infrastructure Act 1994* to the owner or owners of the Surplus Casino Land and the Future Development Area under the *Acts Interpretation Act 1954* of the authorisation of the Port Protection Code.

*Surplus Casino Land* means—

- (a) all that area of land identified on the plan in Schedule 1 as the Surplus Casino Land including—
  - (i) the land covered by water comprising the Marina Basin and the Marina Entrance Channel; and
  - (ii) the land within any road whether constructed or otherwise; and
- (b) any future description of the land specified in paragraph (a) consequent upon any resurvey of that land.

*Surplus Casino Land Port Protection Code* means a code for the purpose of minimising the potential impact of the infrastructure and operations of the Townsville Port on the Development of the Surplus Casino Land notified by the chief executive of the department responsible for the *Transport Infrastructure Act 1994* as having been authorised to the Local Government, the Townsville Port Authority and the owner or owners of the Surplus Casino Land prior to the Surplus Casino Land Scheme taking effect.

*Surplus Casino Land Scheme* means the scheme for the Surplus Casino Land in Schedule 3.

## **Division 2—Surplus Casino Land**

### **52 Purpose of division 2**

- (1) The purpose of division 2 is to specify transitional arrangements which provide for the application of any Development Legislation in force in the Local Government Area in which the Surplus Casino Land is situated to the Development and Use of the Surplus Casino Land.
- (2) In particular, the provisions provide for—

- (a) the future Development and Use of the Surplus Casino Land to be subject to Development Legislation to the extent provided for in this Agreement; and
- (b) the registration of the Surplus Casino Land; and
- (c) the Trustee to be able to transfer the Surplus Casino Land without the consent of the Minister; and
- (d) the existing Development and Use of the Surplus Casino Land to be a lawful Use; and
- (e) the effect of the Surplus Casino Land Scheme.

**53 Proposed Development of Surplus Casino Land**

The Surplus Casino Land is proposed to be the subject of Development for residential and related Uses as specified in the Surplus Casino Land Scheme.

**54 Application of Development Legislation to Surplus Casino Land**

Any Development Legislation in force in the Local Government Area in which the Surplus Casino Land is situated shall apply to the Development and Use of the Surplus Casino Land except to the extent that the operation of the Development Legislation is varied in the manner provided for in this Agreement.

**55 Registration of the Site and the Surplus Casino Land**

- (1) The purpose of this clause is to create lots for the Site and the Surplus Casino Land.
- (2) Clause 55(3) applies despite any Development Legislation in force in the Local Government Area in which the Site and the Surplus Casino Land is situated.
- (3) The State agrees and declares that—
  - (a) the division of the Site and the Surplus Casino Land into lots generally in accordance with the plan in Schedule 4

is approved whether division is effected by one or more plans of subdivision; and

- (b) a plan or plans of subdivision prepared generally to effect the creation of lots as shown on the plan in Schedule 4 is approved; and
- (c) the plans of subdivision may be registered in the appropriate register in the land registry without further approval from a Public Sector Entity.

## **56 Disposal of Surplus Casino Land**

- (1) The Trustee may dispose of the Surplus Casino Land without the prior written consent of the Minister.
- (2) For the purposes of clause 56(1), dispose includes subdivide, sell, assign, lease, let, sub-lease, sub-let, licence, mortgage, charge or otherwise encumber and also includes agree to dispose and grant consent to the disposal of.

## **57 Existing lawful Use of the Surplus Casino Land**

- (1) The existing Development and Use of the Surplus Casino Land shall be deemed to be a lawful Use and to be lawfully constructed under the Development Legislation in force in the Local Government Area in which the Surplus Casino Land is situated.
- (2) Any Development Legislation in force in the Local Government Area in which the Surplus Casino Land is situated cannot—
  - (a) stop the existing lawful Use of the Surplus Casino Land from continuing; or
  - (b) further regulate the existing lawful Use of the Surplus Casino Land; or
  - (c) require the existing lawful Use of the Surplus Casino Land to be changed; or
  - (d) require the existing Work constructed or effected in respect of the lawful Use of the Surplus Casino Land to be altered or removed.

- (3) The existing Development and Use of the Surplus Casino Land cannot be interfered with or interrupted by any Public Sector Entity or any person on the grounds that the existing Development and Use of the Surplus Casino Land, is contrary to the Development Legislation in force in the Local Government Area in which the Surplus Casino Land is situated.

## **58 Effect of Surplus Casino Land Scheme**

- (1) The Surplus Casino Land Scheme takes effect under the *Integrated Planning Act 1997* in the manner provided for in this clause.
- (2) The Surplus Casino Land Scheme takes effect as a preliminary approval that—
  - (a) is for the Development specified in the Surplus Casino Land Scheme; and
  - (b) is mentioned in section 3.1.6 (Preliminary approval may override a local planning instrument) of the *Integrated Planning Act 1997*; and
  - (c) varies the effect of any applicable Planning Instrument for the Surplus Casino Land.
- (3) The Surplus Casino Land Scheme—
  - (a) states that the Development specified in the Surplus Casino Land Scheme is assessable development (requiring code or impact assessment), self-assessable development or exempt development; and
  - (b) identifies codes for the Development specified in the Surplus Casino Land Scheme.
- (4) To the extent that the Surplus Casino Land Scheme, by doing either or both of the things mentioned in clause 58(3) is different to any applicable Local Planning Instrument, the Surplus Casino Land Scheme prevails.
- (5) The Surplus Casino Land Port Protection Code takes effect as a code identified by the Surplus Casino Land Scheme as a code for the Development specified in the Surplus Casino

Land Scheme under clause 58(3)(b) upon the Surplus Casino Land Scheme taking effect.

- (6) The Surplus Casino Land Scheme no longer applies to the Development stated in the Surplus Casino Land Scheme when any time limit stated in the Surplus Casino Land Scheme for completing the Development or as otherwise extended pursuant to the *Integrated Planning Act 1997* ends.
- (7) For the purpose of the *Integrated Planning Act 1997*—
  - (a) the Local Government is deemed to be the assessment manager that decided the preliminary approval referred to in sub-clause (2) including the conditions of the preliminary approval; and
  - (b) the preliminary approval referred to in sub-clause (2) is deemed to—
    - (i) take effect upon the making of this Agreement; and
    - (ii) have a currency period of 10 years from the date the preliminary approval takes effect pursuant to paragraph (b) unless further extended by the Local Government as the assessment manager under the *Integrated Planning Act 1997*.

## **59 Vesting under Special Lease**

- (1) The State agrees that the Trustee or subsequent lessee shall be entitled to Deeds of Grant in fee simple from the Crown in accordance with the Special Lease subject to due compliance by the Trustee with the terms and conditions thereof.
- (2) Upon due compliance by the lessee with the terms and conditions of the Special Lease, the State shall vest in the Townsville Port Authority the Marina Entrance Channel and the developed stages of the Marina Basin for subsequent leasing of the Marina Entrance Channel and such stages by the Townsville Port Authority to the Trustee or its nominee in terms of the Townsville Harbour Board Agreement.
- (3) Every such vesting shall be effected by a deed of grant in trust for Port and Harbour (Marina) Purposes pursuant to section 334 of the *Land Act 1962*.

## **60 Term Leases**

- (1) If—
- (a) the plan of subdivision under clause 55 is registered; and
  - (b) the lessee makes application to the State to subdivide the Special Lease into two new leases comprising one new lease over new lots 637 and 638 and one new lease over new lot 795 and existing lots 676 on Crown Plan 909884 and 796 on Crown Plan EP 2296;

the State agrees to such subdivision which is deemed to be approved for the purposes of sections 351 and 489(2) of the Land Act subject to any conditions stated by the Minister administering the Land Act under section 351(2) of that Act.

- (2) If the Special Lease is subdivided, the two new leases mentioned in clause 60(1) shall, for the purposes of section 354 of the Land Act—
- (a) be on the same conditions as the Special Lease except where the Minister administering the Land Act considers under section 354 of the Land Act it appropriate to either remove redundant conditions or include conditions to permit maintenance of existing rock walls and revetments within the leased area and for works associated with the future development of the Site and the Future Development Area; and
  - (b) have terms equal to the remaining term of the Special Lease.
- (3) If the Special Lease is subdivided as mentioned in clauses 60(1) and (2), and—
- (a) the lessee applies under the Land Act for the transfer to the Trustee's nominee of the new lease over new lot 795 and existing lots 676 on Crown Plan 909884 and 796 on Crown Plan EP 2296, the State agrees to the transfer which is deemed to be approved for the purposes of section 322 of the Land Act subject to any conditions stated by the Minister administering the Land Act under section 322(4) of that Act; and



- (b) the lessee applies for the transfer to the Trustee's nominee of leases 703470717 and 601414725, the State agrees to the transfer which is deemed to be approved for the purposes of—
  - (i) section 58(1)(b) of the Land Act, subject to any conditions stated by the Minister administering the Land Act under section 58(2) of that Act; and
  - (ii) section 288(1)(b) of the Transport Infrastructure Act, subject to any conditions in respect of the transfer notified by the Minister administering the Transport Infrastructure Act.
- (4) The conditions stated by the Minister administering the Land Act mentioned in clause 60(3) must include a condition that the Trustee's nominee must be the registered owner of a freehold lot as specified by that Minister in such condition adjoining the Marina Basin.

## **61 Term lease for the Marina Entrance Channel and Marina Basin**

- (1) If the Special Lease is subdivided and the new lease over new lot 795 and existing lots 676 on Crown Plan 909884 and 796 on Crown Plan EP 2296 and leases 703470717 and 601414725 are transferred as mentioned in clause 60, the Trustee's nominee shall be entitled to apply to the State for the grant of a term lease under the Land Act on similar terms in respect of the Marina Basin and Marina Entrance Channel, if—
  - (a) the Trustee's nominee is the registered owner of the freehold lot as provided for under clause 60(4); and
  - (b) the Townsville Port Authority with the consent of the lessee of the Marina Basin and Marina Entrance Channel surrenders the tenure of the Marina Basin and Marina Entrance Channel to the State and as a consequence leases 703470717 and 601414725 and any leases granted in respect of the Marina Basin pursuant to clause 59 are cancelled in accordance with section 55 of the Land Act; and

- (c) if applicable, the new lease over new lot 795 and existing lots 676 on Crown Plan 909884 and 796 on Crown Plan EP 2296 is partially surrendered in respect of lot 676 on CP 909884 or any future description of this lot.
- (2) The term lease for which an application may be made under clause 61(1) is the most appropriate tenure and use for the Marina Basin and Marina Entrance Channel including for the purpose of—
  - (a) section 16 (Deciding appropriate tenure) of the Land Act; and
  - (b) the coastal management plan under the *Coastal Protection and Management Act 1995*.
- (3) If approval for the grant of a term lease under the Land Act is sought following the application to lease under clause 61(1)—
  - (a) section 15(2) (Governor in Council may lease land) of the Land Act is deemed to be satisfied; and
  - (b) a lease may issue without competition to the Trustee's nominee notwithstanding section 121 of the Land Act.
- (4) If a term lease mentioned under this clause 61 is granted, a condition of the grant of the lease will be that the lessee will be required to enter into a covenant under section 373A of the Land Act to provide for no separate transfer of the lease and the freehold lot mentioned in clause 60(4).

## **Division 3 — Future Development Area**

### **62 Purpose of division 3**

- (1) The purpose of division 3 is to specify the transitional arrangements which provide for the application of any Development Legislation in force in respect of the Future Development Area to the Development and Use of the Future Development Area.
- (2) In particular, the provisions provide for—

- (a) the preparation of an environmental impact statement to address the environmental effects of the Development of the Future Development Area; and
- (b) the approval by the Minister of the Future Development Area Scheme in respect of the Development and Use of the Future Development Area; and
- (c) the Future Development Area Land Platforms to be land from the date of the completion of work to reclaim the Future Development Area Land Platforms; and
- (d) the approval by the Local Government of Work to reclaim the Future Development Area to facilitate the Development provided for in the Future Development Area Scheme; and
- (e) the future Development and Use of the Future Development Area to be subject to any Development Legislation in force in respect of the Future Development Area to the extent provided for in this Agreement; and
- (f) the most appropriate tenure and use of the Future Development Area.

### **63 Proposed Development of Future Development Area**

The Future Development Area is proposed to be the subject of Development for an Ocean Terminal and residential and related Uses as specified in the Future Development Area Scheme to be approved by the Minister.

### **64 Application of Development Legislation to Future Development Area**

Any Development Legislation in force in respect of the Future Development Area shall not apply to the Development and Use of the Future Development Area except in the manner provided for in this Agreement.

**65 Environmental impact statement**

- (1) The Trustee or its nominee shall prepare an environmental impact statement to address the environmental effects of the Development of the Future Development Area.
- (2) If the Development of the Future Development Area has been declared a significant project under Part 4—Environmental Coordination of the *State Development and Public Works Organisation Act 1971* by the Coordinator-General, the environmental impact statement shall be prepared under Part 4—Environmental Coordination of the *State Development and Public Works Organisation Act 1971*.

**66 Application for approval of the Future Development Area Scheme**

- (1) The Trustee or its nominee may apply to the Minister for approval of the Future Development Area Scheme after the Coordinator-General has completed a report evaluating the environmental impact statement under Part 4—Environmental Coordination of the *State Development and Public Works Organisation Act 1971* and given a copy of the report to the Trustee or its nominee.
- (2) The application mentioned in clause 66(1) is made by lodging with the Chief Executive—
  - (a) a submission comprising of a proposed Future Development Area Scheme and such reports, drawings or other material as is necessary to explain the Future Development Area Scheme; and
  - (b) such other information which may be required by the Chief Executive.
- (3) The proposed Future Development Area Scheme may for the purpose of the *Integrated Planning Act 1997* do either or both of the following for the Development specified in the proposed Future Development Area Scheme—
  - (a) state that the Development is assessable development (requiring code or impact assessment), self-assessable development or exempt development; and

- (b) identify codes for the Development.
- (4) The Minister must—
  - (a) consider the application; and
  - (b) make a decision in respect of the application in accordance with clause 66(5); and
  - (c) advise the applicant in writing of the decision.
- (5) The Minister must—
  - (a) approve the proposed Future Development Area Scheme in whole or in part unconditionally; or
  - (b) approve the proposed Future Development Area Scheme in whole or in part subject to conditions; or
  - (c) refuse the proposed Future Development Area Scheme in whole or in part; or
  - (d) approve the proposed Future Development Area Scheme with variations; or
  - (e) deal with the proposed Future Development Area Scheme under any combination of clauses 66(5)(a), (5)(b), (5)(c) or (5)(d).
- (6) The Minister must subject to clause 66(7) decide the application within 20 days of the lodgment of the application.
- (7) The Minister may extend the decision making period specified in clause 66(6) by not more than 20 days by written notice given to the applicant before the end of the decision making period.

**67 Future Development Area Land Platforms deemed to be land**

Upon the completion of Work to reclaim the Future Development Area Land Platforms or parts thereof, the Future Development Area Land Platforms or parts thereof, shall respectively be deemed to be land—

- (a) within the Parish of Coonambelah, County of Elphinstone; and

- (b) within the Local Government Area of the Local Government.

## **68 Work for the Future Development Area**

- (1) The Trustee or its nominee may apply to the Local Government for approval to carry out Work to reclaim the Future Development Area if the Minister approves the Future Development Area Scheme.
- (2) If an application is made—
  - (a) the processing of the application and all matters incidental to the processing (including any appeal made in relation to a decision about the application) must proceed under the *Integrated Planning Act 1997* subject to the matters specified in clause 68(3); and
  - (b) any approval issued is taken to be a preliminary approval or a development permit as the case may be under the *Integrated Planning Act 1997*.
- (3) For the purpose of the processing of an application specified in clause 68(1) under the *Integrated Planning Act 1997*—
  - (a) the Local Government is the assessment manager; and
  - (b) the application is code assessable; and
  - (c) the following are the only referral agencies—
    - (i) the chief executive of the Townsville Port Authority as a concurrence agency with a referral jurisdiction of port authority functions under the *Transport Infrastructure Act 1994*, chapter 8, part 3; and
    - (ii) the chief executive under the *Coastal Protection and Management Act 1995* as a concurrence agency with a referral jurisdiction of coastal management under the *Coastal Protection and Management Act 1995*, excluding amenity and aesthetic significance or value; and
    - (iii) the Queensland Fire and Rescue Service as an advice agency with a referral jurisdiction of the fire

and safety management procedures under the *Fire and Rescue Services Act 1990*; and

- (d) the application is deemed to be supported by—
  - (i) the written consent of the owner of the land to which the application relates to the making of the application; and
  - (ii) any evidence of an allocation of, or an entitlement to, any necessary State resource required under section 3.2.1(5) (Applying for development approval) of the *Integrated Planning Act 1997*.
- (4) To remove doubt it is declared that—
  - (a) the application mentioned in clause 68(1) can include land outside of the Future Development Area necessary for the carrying out of Work to reclaim the Future Development Area such as revetment walls that form part of the Site; and
  - (b) in respect of the Site, a Development Approval is not required under Part II of the Agreement in respect of Development necessary for the carrying out of Work to reclaim the Future Development Area; and
  - (c) in respect of other land, an approval is not required under any Development Legislation in force in respect of that land in respect of Development necessary for the carrying out of the Work to reclaim the Future Development Area; and
  - (d) in respect of a term lease under the Land Act mentioned in clause 72, the carrying out of Development necessary for the carrying out of the Work to reclaim the Future Development Area is deemed to be within the permitted use of the term lease; and
  - (e) a waterway created as a result of carrying out of Work to reclaim the Future Development Area is a canal for the purpose of the *Coastal Protection and Management Act 1995* including section 121 (Maintenance of canals) of the *Coastal Protection and Management Act 1995*.

- (5) For the purposes of subsection (4)(e), *waterway* means that part of the Future Development Area which, upon completion of the proposed northern breakwater and each residential land platform (and freehold title being subsequently granted for each land platform), is inundated by tidal water and includes the inundated areas between land platforms, the previous access channel providing access to the Marina Basin and the revetments and breakwaters confining or containing the waterway (surveyed to the outer top edge of the land platforms so that the edge forms the boundary of the abutting freehold land and to the inner top edge of that side of the northern breakwater which faces the access channel).
- (6) However, *waterway* for the purposes of subsection (4)(e) does not include any body of water (including the revetments and breakwaters confining or containing the body of water) which is used, or intended to be used, for the operation of the Townsville Ocean Terminal.

## **69 Effect of Future Development Area Scheme**

- (1) The Future Development Area Scheme takes effect under the *Integrated Planning Act 1997* in the manner provided for under this clause.
- (2) The Future Development Area Scheme takes effect as a preliminary approval that—
  - (a) is for the Development specified in the Future Development Area Scheme; and
  - (b) is mentioned in section 3.1.6 (Preliminary approval may override a local planning instrument) of the *Integrated Planning Act 1997*; and
  - (c) varies the effect of any applicable Planning Instrument for the Future Development Area.
- (3) The Future Development Area Scheme—
  - (a) states that the Development specified in the Future Development Area Scheme is assessable development (requiring code or impact assessment), self-assessable development or exempt development; and



- 
- (b) identifies codes for the Development specified in the Future Development Area Scheme.
- (4) To the extent that the Future Development Area Scheme by doing either or both of the things mentioned in clause 69(3) is different to any applicable Local Planning Instrument, the Future Development Area Scheme prevails.
- (5) The Future Development Area Port Protection Code takes effect as a code identified by the Future Development Area Scheme as a code for the Development specified in the Future Development Area Scheme under clause 69(3)(b) upon the Future Development Area Scheme taking effect.
- (6) The Future Development Area Scheme no longer applies to the Development stated in the Future Development Area Scheme when any time limit stated in the Future Development Area Scheme for completing the Development or as otherwise extended pursuant to the *Integrated Planning Act 1997* ends.
- (7) For the purpose of the *Integrated Planning Act 1997*—
- (a) the Local Government is deemed to be the assessment manager that decided the preliminary approval referred to in sub-clause (2) including the conditions of the preliminary approval; and
- (b) the preliminary approval referred to in sub-clause (2) is deemed to—
- (i) take effect upon the approval of the Future Development Area Scheme; and
- (ii) have a currency period of 20 years from the date the preliminary approval takes effect pursuant to paragraph (b) unless further extended by the Local Government as the assessment manager under the *Integrated Planning Act 1997*.
- (8) To remove doubt it is declared that the Future Development Area Scheme takes effect pursuant to sub-clause (2) even if there is no applicable Local Planning Instrument at the time the Future Development Area Scheme is approved.

**70 When the Future Development Area Scheme may be changed by the Local Government**

- (1) The Local Government may change the Future Development Area Scheme only where—
  - (a) the change does not relate to—
    - (i) the Port Protection Code; or
    - (ii) the entitlement to create the Future Development Area Land Platforms, their approved use rights or their approved layout; and
  - (b) the change is made within 6 months after each 5 year anniversary of the approval of the Future Development Area Scheme; and
  - (c) necessary to upgrade engineering or environmental aspects of the Future Development Area Scheme to align the Future Development Area Scheme with contemporary development control standards.
- (2) If the Local Government is satisfied it is necessary to change the Future Development Area Scheme, the Local Government must give written notice to the owner of the land to which the Future Development Area Scheme attaches, which states—
  - (a) the proposed change and the reasons for the change; and
  - (b) that each person to whom the notice is given may make a written submission to the Local Government about the proposed change; and
  - (c) the time, which must be at least 20 days after the notice is given to the owner, within which the submission must be made.
- (3) After considering any submissions, the Local Government must give to each person to whom the notice was given—
  - (a) if the Local Government is not satisfied the change is necessary written notice stating it has decided not to change the Future Development Area Scheme; or
  - (b) if the Local Government is satisfied the change is necessary, written notice stating it has decided to change the Future Development Area Scheme and include

details of the changed Future Development Area Scheme.

- (4) The change takes effect from the day the notice is given to the owner of the land.
- (5) A person to whom a notice is given under clause 70(3)(b) may appeal against the decision in the notice under section 4.1.31 (Appeals for matters arising after approval given (no co-respondents)) of the *Integrated Planning Act 1997*, as if the decision in the notice was a decision specified in section 4.1.31(1)(b) (Appeals for matters arising after approval given (no co-respondents)) of the *Integrated Planning Act 1997*.

## **71 Development of the Future Development Area**

- (1) The Work to reclaim the Future Development Area shall be carried out in accordance with the approval contemplated by clause 68.
- (2) The Development and Use of the Future Development Area to which sub-clause (1) does not apply shall be carried out in accordance with—
  - (a) any applicable Local Planning Instrument for the Future Development Area; and
  - (b) the Future Development Area Scheme which varies the effect of the applicable Local Planning Instruments.
- (3) Any Development and Use of the Future Development Area which is not carried out in accordance with clauses 71(1) and (2)(a) shall be carried out in accordance with the Development Legislation.

## **72 Term lease for Future Development Area**

- (1) Following the completion of an environmental impact statement under Part 4—Environmental Co-ordination of the *State Development and Public Works Organisation Act 1971*, the State may apply to be granted a term lease under the Land Act to facilitate the Development of an Ocean Terminal and residential and related Uses.

- (2) The term lease for which an application may be made under clause 72(1) is the most appropriate tenure and use for the Future Development Area including for the purpose of—
  - (a) section 16 (Deciding appropriate tenure) of the Land Act; and
  - (b) the coastal management plan under the *Coastal Protection and Management Act 1995*.
- (3) If approval for the grant of a term lease under the Land Act is sought following the application to lease under clause 72(1), section 15(2) (Governor in Council may lease land) of the Land Act is deemed to be satisfied.
- (4) If the term lease mentioned in clause 72(1) is granted, and is subsequently surrendered by the State from the date of practical completion of the Ocean Terminal, a term lease to facilitate the Development of residential and related Uses is the most appropriate tenure and use for the part of the Future Development Area which is to be the subject of Development for residential and related Uses, including for the purpose of—
  - (a) section 16 (Deciding appropriate tenure) of the Land Act; and
  - (b) the coastal management plan under the *Coastal Protection and Management Act 1995*.
- (5) The Trustee or its nominee shall, from the date of practical completion of the Ocean Terminal, be entitled to apply to the State to the exclusion of any other person for the grant of a term lease under the Land Act in the form specified in clause 72(4).
- (6) If approval for the grant of a term lease under the Land Act is sought following the application to lease under clause 72(5)—
  - (a) section 15(2) (Governor in Council may lease land) of the Land Act is deemed to be satisfied; and
  - (b) a lease may issue without competition to the Trustee or its nominee notwithstanding section 121 of the Land Act; and

- (c) for the purposes of this term lease, section 129 of the Land Act is satisfied.
- (7) The term lease mentioned in clause 72(5) shall, in addition to other requirements—
- (a) apply to that part of the Future Development Area which is to be the subject of Development for residential and related Uses as specified in the Future Development Area Scheme; and
  - (b) authorise to facilitate the Development of residential and related Uses; and
  - (c) include conditions of lease provided for under the Land Act, including that a request must be made to the Governor in Council to issue to the lessee an estate in fee simple over the Future Development Area Land Platforms upon—
    - (i) performance of and compliance with all of the conditions of the lease to the satisfaction of the Minister administering the Land Act; and
    - (ii) payment by the lessee to the said Minister of the determined purchase price and any other relevant fees; and
    - (iii) partial surrender to the State of the leased land comprised in the Future Development Area Land Platforms.

### **73 Land use plan for the Ocean Terminal**

- (1) The Minister administering the *Transport Infrastructure Act 1994* may from the date of practical completion of the Ocean Terminal, direct a port authority to prepare a land use plan or an amendment of a land use plan which includes the Ocean Terminal and related land as strategic port land pursuant to section 285(3) (Land use plans) of the *Transport Infrastructure Act 1994*.
- (2) The State agrees and declares that—

- (a) section 285C (Consultation on statement of proposal or draft plan) of the *Transport Infrastructure Act 1994* does not apply to a land use plan or an amendment of a land use plan prepared pursuant to clause 73(1); and
  - (b) the Minister administering the *Transport Infrastructure Act 1994* is not required to be satisfied of the matters specified in section 286(1)(a)–(c) of the *Transport Infrastructure Act 1994* when considering whether to approve a land use plan or amendment of a land use plan prepared pursuant to clause 73(1).
- (3) Upon notification of approval of the land use plan under clause 73(1) in the government gazette, all applicable Development Legislation will apply to the strategic port land.

#### **74 Review of Decisions in respect of the Future Development Area**

- (1) A decision made in relation to the approval of the Future Development Area Scheme shall not be subject to review under the Review Act or otherwise.
- (2) In particular, a decision under clause 66(5) in relation to the approval of the Future Development Area Scheme—
  - (a) is final and conclusive; and
  - (b) cannot be challenged, appealed against, reviewed, quashed, set-aside, or called into question in any other way, under the Review Act or otherwise (whether by the Supreme Court, another court, a tribunal, an authority or a person); and
  - (c) is not subject to any writ or order of the Supreme Court, another court, a tribunal, an authority or a person on any ground.

*Examples of writs and orders to which the sub-clause applies—*

*Example 1—*

*Writs of mandamus, prohibition and certiorari.*

*Example 2—*

*Certiorari orders, prohibition orders, prerogative orders, prerogative injunctions, and statutory orders of review, within the meaning of the Review Act.*

*Example 3—*

*Declaratory and injunctive orders.*

- (3) Without limiting clause 74(2), the Review Act does not apply to the following matters—
- (a) conduct engaged in for the purpose of making a decision which has the meaning given by section 8 (Conduct engaged in for making decision—preparatory acts) of the Review Act; and
  - (b) other conduct that relates to the making of a decision; and
  - (c) the making of a decision or the failure to make a decision which has the meaning given by section 5 (Meaning of *making of a decision* and *failure to make a decision*) of the Review Act; and
  - (d) a decision;
- under this Agreement, or otherwise, in relation to the approval of the Future Development Area Scheme.
- (4) In particular, but without limiting clause 74(3), the Supreme Court does not have jurisdiction to hear and determine applications made to it under Part 3, 4 or 5 of the Review Act in relation to matters mentioned in clause 74(3).

## **75 Restricted Area**

Clause 44(1) does not apply to the Development of the Future Development Area under Division 3 of Part IX of this Agreement.

## Division 4—Port Protection Code

### 76 Limitations on changes to the Port Protection Code

- (1) A decision in respect of the Surplus Casino Land Scheme and the Future Development Area Scheme in relation to a request under section 3.5.24 (Request to change development approval (other than a change of a condition)) and 3.5.33 (Request to change or cancel condition) of the *Integrated Planning Act 1997* may not reduce the measures in the Port Protection Code which minimise the potential impact of the infrastructure and operations of the Townsville Port on the Development of the Surplus Casino Land and the Future Development Area.
- (2) For the purposes of processing a request specified in clause 76(1) under the *Integrated Planning Act 1997* in respect of the Surplus Casino Land Scheme or the Future Development Area Scheme, the chief executive under the *Transport Infrastructure Act 1994* is deemed to be the concurrence agency which required the Port Protection Code to be identified—
  - (a) by the Surplus Casino Land Scheme as a code for the Development specified in the Surplus Casino Land Scheme; and
  - (b) by the Future Development Area Scheme as a code for the Development specified in the Future Development Area Scheme.
- (3) In addition to the procedures under the *Integrated Planning Act 1997* referred to in clause 76(1), the chief executive of the department responsible for the *Transport Infrastructure Act 1994* may also change the Port Protection Code by notification to the Local Government, the Townsville Port Authority and the Owners of the land the subject of the relevant Port Protection Code, if—
  - (a) a notice of the proposed change and the reasons for the change have been given by—
    - (i) the chief executive of the department responsible for the *Transport Infrastructure Act 1994* to—



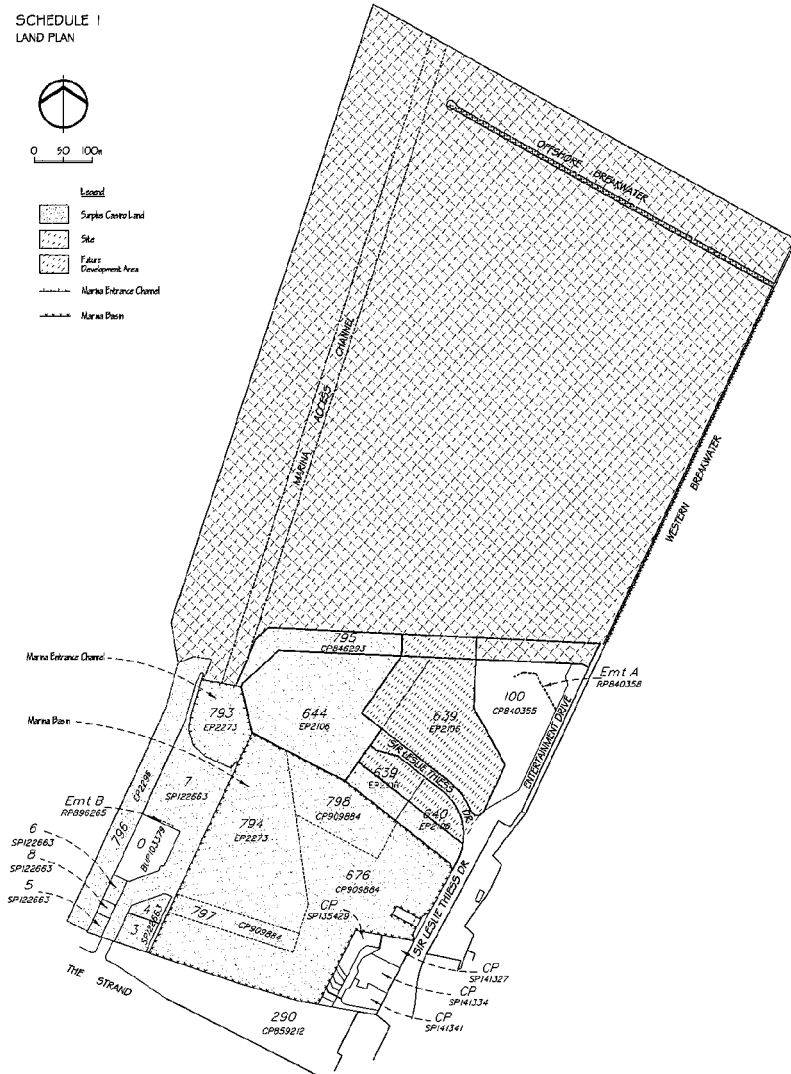
- 
- (A) each Owner of land the subject of the relevant Port Protection Code; and
  - (B) the Local Government; and
  - (C) the Townsville Port Authority; or
- (ii) an Owner of land the subject of the relevant Port Protection Code to—
- (A) the chief executive of the department responsible for the *Transport Infrastructure Act 1994*; and
  - (B) each other Owner of land the subject of the relevant Port Protection Code; and
  - (C) the Local Government; and
  - (D) the Townsville Port Authority; and
- (b) the chief executive of the department responsible for the *Transport Infrastructure Act 1994* consents to the proposed change to the Port Protection Code, if the change is proposed by an Owner; and
- (c) each Owner who is required to be given a notice of a proposed change to the Port Protection Code under clause 76(3)(a) has consented to the proposed change, except that—
- (i) an Owner must not unreasonably withhold its consent; and
  - (ii) if an Owner has not given notice to the chief executive of the department responsible for the *Transport Infrastructure Act 1994* in response to a notice of a proposed change given by another party under clause 76(3)(a) of either the Owner's consent or the Owner's refusal on specified reasonable grounds within 20 days, the Owner is taken to have consented to the proposed change.
- (4) For the purpose of clause 76(3), *Owner*—
- (a) means the Trustee or its nominee, as applicable; and

- (b) in addition, has the same meaning as *owner* in section 3.4.4(5) (Public notice of applications to be given) of the *Integrated Planning Act 1997*, as if all references to the terms *adjoining* and *adjoining the land the subject of the application* had been omitted from that definition.

IN WITNESS WHEREOF the parties have executed this Agreement the day and year hereinbefore written.

# SCHEDULE 1 LAND PLAN

SCHEDULE 1  
LAND PLAN



crozier mott  
www.croziermott.com.au  
surveying town planning  
project management mapping and GIS

Date: 6th February 2006 | Job No: 660416-2 | Plan No: 6604/09C | Scale: 1:1,000 @ A3 | Drawn: AJL

This plan is conceptual and for discussion purposes only. All sizes, dimensions and lot areas are preliminary, subject to investigation, survey, engineering, and Local Authority and Agency approvals.

**SCHEDULE 2**  
**WORK AND CONTRIBUTIONS IN RESPECT OF THE**  
**BREAKWATER ISLAND CASINO-HOTEL COMPLEX**

(Clauses 18 and 19)

Entity	Requirement	Amount
Townsville Port Authority	(1) Use of Land and Buildings on Yacht Club site	\$500,000
	(2) Purchase of existing reclamation	\$250,000 plus annual payments of \$59,856 over fifteen (15) years
Townsville City Council	(1) Water Supply Augmentation	\$88,000
	(2) Road Works and Traffic	At Manager's Cost
	(3) Roads Maintenance	\$30,000

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## **SCHEDULE 3    SURPLUS    CASINO    LAND SCHEME**

### **PART A: EXPLANATORY PROVISIONS**

1.     SHORT TITLE
2.     APPLICATION
3.     RELATIONSHIP WITH THE INTEGRATED PLANNING ACT  
1997

### **PART B: CONDITIONS OF SCL SCHEME**

4.     CONDITIONS

### **PART C—THE SCL SCHEME CODE**

5.     GENERAL
6.     COMPLIANCE WITH THE SCL CODE
7.     OVERALL OUTCOMES OF SCL SCHEME AREA
8.     DEVELOPMENT SECTOR OUTCOMES

### **PART D—ASSESSMENT CATEGORIES FOR SECTORS**

9.     ASSESSMENT CATEGORIES

### **PART E—MANDATORY REQUIREMENTS OF THE SCL SCHEME CODE**

10.    DEFINITIONS
11.    MAPS

**Map 1: SCL Scheme Area**

**Map 2: Area Sectors**

**Map 3: Building Heights**

**Map 4: Plot Ratio**

**Map 5: Greenspace and Pathways**

**Map 6: Reconfiguration Concept**

## **PART A: EXPLANATORY PROVISIONS**

### **1 SHORT TITLE**

- 1.1 This Surplus Casino Land Scheme may be cited as the SCL Scheme.

### **2 APPLICATION**

- 2.1 This SCL Scheme applies to that part of the Local Government Area identified as the SCL Scheme Area in **Map 1: SCL Scheme Area**.

### **3 RELATIONSHIP WITH THE INTEGRATED PLANNING ACT 1997**

- 3.1 This SCL Scheme takes effect under the *Integrated Planning Act 1997* in accordance with Clause 58 of the Formal Agreement ratified in the *Breakwater Island Casino Agreement Act 1984*.
- 3.2 This SCL Scheme takes effect as a preliminary approval under s.3.1.5 of the *Integrated Planning Act 1997* for a mixed residential and marina development. Pursuant to s.3.1.6 (Preliminary Approval may override a local planning instrument) of the *Integrated Planning Act 1997*, this Preliminary Approval—
- 3.2.1 approves a development being a material change of use for the purposes specified in this SCL Scheme, a reconfiguration of a lot, building work and operational work that varies City Plan 2005 for the SCL Scheme Area by stating—
- 3.2.1.1 whether development is assessable, self assessable or exempt; and
- 3.2.1.2 assessment levels for assessable development that override the Tables of Assessment in Part 4.21, Table 4.18A and 4.18B of City Plan 2005; and

- 3.2.1.3 adopting a specific SCL Scheme Code applying to all development within the SCL Scheme Area; and
  - 3.2.1.4 overriding any code in the City Plan 2005 applicable to development within the SCL Scheme Area, to the extent of any inconsistency with the SCL Scheme Code; and
  - 3.2.2 approves a Reconfiguration of the SCL Scheme Area generally in accordance with **Map 6: Reconfiguration Concept** only to the extent of identifying the individual development areas located on the plan of subdivision.
- 3.3 For clarity, any applicable code or policy in City Plan 2005, not inconsistent with this SCL Scheme Code, including any headworks contributions or infrastructure charges, remain applicable to development in the SCL Scheme Area to the same extent as other development within the Local Government Area.
- 3.4 For the purpose of s.3.5.21 of the *Integrated Planning Act 1997*, the currency period for the Preliminary Approval within this SCL Scheme is ten (10) years. Nothing prevents any extension of this currency period of this SCL Scheme if approved by Council pursuant to the *Integrated Planning Act 1997*.

## PART B: CONDITIONS OF SCL SCHEME

### 4 CONDITIONS

- 4.1 In accordance with Clause 3.1.5(1) of the *Integrated Planning Act 1997*, this Preliminary Approval is subject to the following conditions—
- 4.1.1 Prior to any application for a development permit for a material change of use or commencement of any new use of land within the SCL Scheme Area—

- 4.1.1.1 a development permit authorising a reconfiguration of the SCL Scheme Area must be obtained; and
  - 4.1.1.2 compliance with all approved conditions of that development permit for reconfiguration of a lot and registration of the plan of survey must occur.
- 4.1.2 As part of the application for a development permit for the reconfiguration required under clause 4.1.1 an applicant must evidence Council's approval of a master plan of Areas A, B and C (as identified on Map 2), identifying—
- 4.1.2.1 the applicant's preferred option (if any) for the relocation within Area A, B or C (as the case may be) of the—
    - 4.1.2.1.1 Sailing Club; and
    - 4.1.2.1.2 the Ergon Substation; and
  - 4.1.2.2 how pedestrian access to The Strand from the east can be maintained.
- 4.1.3 While the existing commercial fishing berths within the Marina Basin directly adjacent to Area H (as identified on **Map 2: Area Sectors**) remain operative, reasonable public access to the pontoons and associated facilities must be provided at all times. Prior to the removal of the commercial fishing berths and the public access thereto, an applicant must provide Council with evidence of the alternative relocated marina arrangements for the commercial fishing berths.
- 4.1.4 All lots created within the SCL Scheme Area must be community titled lots under the *Body Corporate and Community Management Act 1997* and the *Land Title Act 1994*, except—
- 4.1.4.1 any area the subject of a lease, permit or licence under the *Land Act 1994* or which otherwise comprises Crown land; or



- 4.1.4.2 any lot upon which the Sailing Club use is effected; or
  - 4.1.4.3 any area under or part of which is under the high water mark, dedicated as road, parkland or reserve for public use, benefit or utility or any area owned by the provider of utility services; or
  - 4.1.4.4 any area comprised in land vested in the Townsville Port Authority by Deed of grant in trust.
- 4.1.5 In any development application for a Site an applicant must—
- 4.1.5.1 provide evidence of satisfaction of any applicable State Code, incorporating the Design Provisions which applies to that Site; or
  - 4.1.5.2 in the event no applicable State Code exists, include in its supporting information, a draft code for the Design Provisions prepared to the satisfaction of the State.
- 4.1.6 The community management statement for the scheme containing the lots comprised in the Site or the principal scheme, where the Site is or is proposed to comprise scheme land for a subsidiary community titles scheme must, when endorsed by the local government—
- 4.1.6.1 incorporate an Architectural and Landscape Code that reflects and applies the Code prepared under clause 4.1.5 for the site; and
  - 4.1.6.2 contain provisions that require local government consent to any change to the Architectural and Landscaping Code.

## **PART C — THE SCL SCHEME CODE**

### **5 GENERAL**

- 5.1 This SCL Scheme Code is comprised of—
- 5.1.1 overall outcomes for the SCL Scheme Area; and
  - 5.1.2 specific outcomes for each Sector within the SCL Scheme Area; and
  - 5.1.3 Tables of Assessments; and
  - 5.1.4 other specific outcomes and both mandatory solutions and probable solutions for various types of development.

### **6 COMPLIANCE WITH THE SCL CODE**

- 6.1 Development that is—
- 6.1.1 consistent with the overall outcomes for the SCL Area; and
  - 6.1.2 consistent with the specific outcomes for the Sector in which the development is located; and
  - 6.1.3 complies with the Applicable Codes as identified within the Table of Assessment for the Sector in which the development is located;
- complies with this SCL Scheme Code.
- 6.2 The following defined uses as defined by City Plan 2005 are considered inconsistent with the SCL Scheme Area and, in particular, are considered inconsistent with the overall outcomes for the SCL Scheme Area and the specific outcomes for the Sectors—

Agriculture, Animal Husbandry, Aquaculture, Car Washing Station, Caravan Park, Car Park, Commercial Animal Keeping, Community Residence, Educational Establishment, Extractive Industry, Funeral Directors Premises, Garden Centre, General Industry, Hospital, Institutional Residence, Intensive Animal Husbandry, Landscape Supplies, Motel, Outdoor Recreation,

Retirement Village, Roadside Stall, Rural Services Industry, Sales or Hire Yard, Service Industry, Service Station, Showroom, Stable, Storage or Contractor's Yard, Transport Depot, Vehicle Repair Premises, Warehouse.

## **7 OVERALL OUTCOMES OF SCL SCHEME AREA**

Development is to be consistent with the overall outcomes for the SCL Scheme Area as follows—

- 7.1 creates a vital, mixed use and highly urbane environment focused on waterfront access and activities;
- 7.2 development respects the highly visible nature of the SCL Scheme Area and provides a built form that interacts positively with—
  - 7.2.1 existing development in the locality, particularly the Breakwater Island Casino-Hotel Complex and the Entertainment Centre, as the pre-eminent casino/gaming entertainment facility in Townsville; and
  - 7.2.2 The Strand and Anzac Park public open space; and
  - 7.2.3 the Marina.
- 7.3 encourages residential development design within the SCL Scheme Area that protects from the impacts on amenity from the Port of Townsville by satisfaction of any applicable State Code (or draft Code) taking into account the Design Provisions;
- 7.4 establishes a scale of development which respects the planned intent of development overall within this SCL Scheme and the character of the Marina waterfront;
- 7.5 provide for a comprehensive development that includes the following elements—
  - 7.5.1 high quality residential buildings in a variety of built forms and densities;
  - 7.5.2 public open spaces, landscaping and pedestrian circulation;

- 7.5.3 access to waterfront;
  - 7.5.4 facilities to support the existing marina;
  - 7.5.5 lot sizes that incorporate landscaping and visual buffers for individual uses;
- 7.6 development must provide all necessary residential, commercial and visitor carparking required and not rely upon any on-street or public carparking areas.

## 8 DEVELOPMENT SECTOR OUTCOMES

The SCL Scheme Area has been divided into three (3) Sectors (Marina, Dwelling House and Multiple Dwelling) so each can carefully be developed with specific requirements to protect the overall amenity of the SCL Scheme Area.

Within each Sector, further identification of areas (as indicated with alphabetical markers on **Map 2: Area Sectors**) has also occurred where particular development outcomes for that area within a sector are sought to be achieved through this SCL Scheme.

**SO1** Development is to be consistent with the specific outcomes for the Sector in which it is located in **Map 2: Area Sectors**. The Specific Outcomes for each Sector within the SCL Scheme Area are as follows—

### 8.1 Marina Sector

- 8.1.1 this Sector primarily accommodates the facilities associated with the operation of the Marina, including car parking for the Marina, administration facilities, ablutions and marine fuel loading facilities;
- 8.1.2 the existing administration facilities are to be relocated to a new commercial premises/office together with a small scale retail outlet;
- 8.1.3 a boat chandlery business serving the equipment, refuelling and providing requirements of craft using the marina is to be developed and may be together with a small café/restaurant. This facility may also incorporate a small shop for the convenience of

visiting craft, local apartment residents and to enhance the business viability of the Chandlery;

- 8.1.4 a boat building or repair facility is not envisaged within this Sector;
- 8.1.5 public access to the Marina Basin and future western sea wall will be paramount.

## 8.2 Multiple Dwelling Sector

- 8.2.1 this Sector primarily locates a range of low- to high-density multiple dwelling residential uses with active ground levels to encourage residents and visitors to utilise ground level water frontage areas;
- 8.2.2 all residential uses must provide basement resident and visitor car parking, without relaxation;
- 8.2.3 mixed use ground floor retail, restaurants and commercial facilities are encouraged to develop an active, highly pedestrian orientated waterside path public area;
- 8.2.4 a safe, interactive outdoor environment for residents is promoted by passive surveillance, lighting and design elements;
- 8.2.5 a residential density not exceeding that indicated in the SCL Scheme Area Code is expected with actual residential density being less than envisaged in **Map 4: Plot Ratio**, after full consideration is given to location, siting, design and climatic aspects of individual developments;
- 8.2.6 the existing character and economic benefit of the Casino Complex and Entertainment Centre to the Local Government Area is to be respected;
- 8.2.7 **Area A, B and C** are intended to create a low height active vibrant entry streetscape into the internal Mariner's Parade to incorporate the continuance of Strand development and public pathways into the SCL Scheme Area;
- 8.2.8 **Area D** is to create a vibrant entry streetscape establishing as a distinctive, attractive and interesting

residential development creating a visual consistency between the surrounding residential development on Melton Hill and the Strand to the Multiple Dwelling Sector land;

8.2.9 **Area E and F** should enhance the existing internal Mariners Parade streetscape and provide public access to—

(i) the future Western Sea Wall; and

(ii) the Marina Basin;

as envisaged by **Map 5: Greenspace and Pathways**;

8.2.10 **Area K** is to be an 'iconic' slim building of a maximum height as allowed by **Map 3: Building Heights** as an entry statement into the Marina Basin.

### 8.3 Dwelling House Sector

8.3.1 accommodates low-density individual Dwelling Houses;

8.3.2 most lots will have access to separate berths within the Marina;

8.3.3 **Area G** is restricted in height to maintain the visual outlook from the Mariner's North development, and envisage larger traditional size allotments;

8.3.4 **Area H** envisages reconfiguration into small lots for *terrace* style Dwelling Houses where some party walls are encouraged;

8.3.5 each Dwelling House is to be set in a landscaped private allotment and includes car accommodation on site;

8.3.6 siting and design of each Dwelling House respects the design, privacy and amenity of its neighbours and takes maximum advantage of its water frontage or marina outlook;

8.3.7 public access to the waterfront in front of this Sector is not encouraged.

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## **PART D—ASSESSMENT CATEGORIES FOR SECTORS**

### **9 ASSESSMENT CATEGORIES**

9.1 The Assessment Categories are identified for development in each Sector in Column 1 of Tables 1 to 3 as follows—

9.1.1 Tables 1A–3A—Making a Material Change of Use listed in Column 2; and

9.1.2 Tables 1B–3B—Other Development listed in Column 2, including—

9.1.2.1 carrying out building works not associated with material change of use; and

9.1.2.2 carrying out operational works for excavation or filling; and

9.1.2.3 reconfiguring a lot; and

9.1.2.4 carrying out operational works for reconfiguring a lot.

9.2 The relevant assessment criteria in each Sector are referred to in Column 3 of Tables 1A and 1B – 3A and 3B.

9.2.1 For self assessable development, solutions in Applicable Codes should be taken as mandatory solutions for that development. Self assessable development that does not comply with any other probable solution identified in a City Plan 2005 Code listed in Column 3 is taken to require code assessment. However, where self assessable development does not comply with the SCL Scheme Area Code: Schedule A it requires impact assessment.

9.2.2 For code assessable development, solutions in the SCL Scheme Area Code Schedule A are mandatory solutions for that development. Any probable solutions identified in brackets for codes contained within City Plan 2005 and identified within Column 3 are mandatory. Code assessable development that does not comply with the SCL Scheme Area Code and

those identified mandatory solutions for City Plan  
2005 Codes requires impact assessment.



TABLE 1A

**ASSESSMENT CATEGORIES AND APPLICABLE CODES FOR  
THE MARINA SECTOR—MAKING A MATERIAL CHANGE OF  
USE**

<b>COLUMN 1</b>	<b>COLUMN 2</b>	<b>COLUMN 3</b>
	DEFINED USE	APPLICABLE CODES <sup>1</sup>
<b>EXEMPT</b>	Parkland Local Utility	
<b>SELF ASSESSMENT</b>	All solutions in identified codes are mandatory for self assessable uses. Self assessable uses require impact assessment if the applicable solutions are not complied with.	
		<b>All self assessable uses:</b> SCL Scheme Area Code District Code No.1 (only S06 to S020) Landscaping Code Parking and Access Code works Code <b>AND</b>
	Marina Facilities	Minor Centres Code
	Minor or Temporary Telecommunications Facility	Telecommunications Facility Code (section 4)
	Office (Where only minor building work is required)	Minor Centres Code
Shop (Where only minor building work is required)	Minor Centres Codes	

Schedule 2

<b>CODE ASSESSMENT</b>	The mandatory solutions in the SCL Scheme Area Code—Schedule A and any probable solutions for specific outcomes identified in brackets for any Code contained in City Plan 2005 are mandatory for code assessable uses. Code assessable uses require impact assessment if the mandatory solutions are not complied with.	
		<b>All code assessable uses:</b> SCL Scheme Area Code District Code No.1 (only S06 to S020) Landscaping Code Parking and Access Code Works Code <b>AND</b>
	Caretaker's Residence	Caretaker's Residence Code
	Office (where building work is required)	Minor Centres Code
	Restaurant (where building works is required)	Minor Centres Code
Shop (where building work is required)	Minor Centres Code	

1 Codes listed are as identified in City Plan 2005 except for the SCL Scheme Area Code in this SCL Scheme

<b>IMPACT ASSESSMENT</b>	All other uses except for a road; and Any use specified in this Table 1A that does not comply with the SCL Scheme Area Code—Schedule A.	
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TABLE 1B

**ASSESSMENT CATEGORIES AND APPLICABLE CODES FOR  
MARINA SECTOR — OTHER DEVELOPMENT**

COLUMN 1	COLUMN 2	COLUMN 3
	TYPE OF DEVELOPMENT	APPLICABLE CODES
<b>EXEMPT</b>	Carrying out <b>building work</b> being demolition or removal of a building  Any other development not listed below	
<b>SELF ASSESSMENT</b>	All solutions in identified codes are mandatory for self assessable uses. Self assessable uses require code assessment if the applicable solutions are not complied with.  <b>Operational works</b> being excavating or filling premises by >0.3m and <1.0m in depth (where more than 1.5m from a boundary) or >10m <sup>3</sup> and <50m <sup>3</sup> in volume  Carrying out <b>building work</b> other than demolition or removal, where not associated with a material change of use	Works Code (section 2, PS3. only)  SCL Scheme Code—Schedule A

<p><b>CODE ASSESSMENT</b></p>	<p><b>Operational works</b> being excavating or filling premises by &gt;1.0m in depth or &gt;50m<sup>3</sup> in volume or excavating or filling by &gt;0.3m in depth within 1.5m of a boundary</p> <p><b>Operational work for reconfiguring a lot</b> where the reconfiguring is assessable</p> <p><b>Reconfiguring a lot</b></p>	<p>Works Code</p> <p>Works Code</p> <p>Reconfiguring Lots Code</p>
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TABLE 2A

**ASSESSMENT CATEGORIES AND APPLICABLE CODES FOR the DWELLING HOUSE SECTOR—MAKING A MATERIAL CHANGE OF USE**

COLUMN 1	COLUMN 2	COLUMN 3
	DEFINED USE	APPLICABLE CODES <sup>1</sup>
<b>EXEMPT</b>	Parkland Local Utility	

<b>SELF ASSESSMENT</b>	All solutions in identified codes are mandatory for self assessable uses. Self assessable uses require impact assessment if the applicable solutions are not complied with.	
		<b>All self assessable uses:</b> SCL Scheme Area Code District Code No.1 (only S06 to S020) <b>AND</b>
	Display Home	Detached House Code
	Dwelling House	Detached House Code
	Home Based Business	Home Based Business Code
	Minor or Temporary Telecommunications Facility	Telecommunications Facility Code (section 4)
<b>CODE ASSESSMENT</b>	The mandatory solutions in the SCL Scheme Area Code—Schedule A and any probable solutions for specific outcomes identified in brackets for any Code contained in City Plan 2005 are mandatory for code assessable uses. Code assessable uses require impact assessment if the mandatory solutions are not complied with.	
		<b>All code assessable uses:</b> SCL Scheme Area Code District Code No.1 (only S06 to S020) Landscaping Code Parking and Access Code Works Code <b>AND</b>
	Caretaker's Residence	Caretaker's Residence Code
<b>IMPACT ASSESSMENT</b>	All other uses except for a road	Minor Centres Code
	Any use specified within this Table 2A that does not comply with the SCL Scheme Area Code	

- 1 Codes listed are as identified in City Plan 2005 except for the SCL Scheme Area Code in this SCL Scheme

TABLE 2B

ASSESSMENT CATEGORIES AND APPLICABLE CODES FOR  
DWELLING HOUSE SECTOR — OTHER DEVELOPMENT

COLUMN 1	COLUMN 2	COLUMN 3
	TYPE OF DEVELOPMENT	APPLICABLE CODES
<b>EXEMPT</b>	Carrying out <b>building work</b> being demolition or removal of a building  Any other development not listed below	
<b>SELF ASSESSMENT</b>	All solutions in identified codes are mandatory for self assessable uses. Self assessable uses require code assessment if the applicable solutions are not complied with.	
	<b>Operational works</b> being excavating or filling premises by >0.3m and <1.0m in depth (where more than 1.5m from a boundary) or >10m <sup>3</sup> and <50m <sup>3</sup> in volume  Carrying out <b>building work</b> other than demolition or removal, where not associated with a material change of use	Works Code (section 2, PS3.1 only)  SCL Scheme Code—Schedule A
<b>CODE ASSESSMENT</b>	<b>Operational works</b> being excavating or filling premises by >1.0m in depth or >50m <sup>3</sup> in volume or excavating or filling by >0.3m in depth within 1.5m of a boundary	Works Code
	<b>Operational work for reconfiguring a lot</b> where the reconfiguring is assessable	Works Code
	<b>Reconfiguring a lot</b>	Reconfiguring Lots Code

**MULTIPLE DWELLING SECTOR**

TABLE 3A

**ASSESSMENT CATEGORIES AND APPLICABLE CODES FOR  
MULTIPLE DWELLING SECTOR—MATERIAL CHANGE OF USE**

<b>COLUMN 1</b>	<b>COLUMN 2</b>	<b>COLUMN 3</b>
	DEFINED USE	APPLICABLE CODES <sup>1</sup>
<b>EXEMPT</b>	Parkland  Local Utility  Temporary Car Park (only on Areas I, J, K, L, M)	
<b>SELF ASSESSMENT</b>	All solutions in identified codes are mandatory for self assessable uses. Self assessable uses require impact assessment if the applicable solutions are not complied with.	
		<b>All self assessable uses:</b> SCL Scheme Area Code District Code No.1 (only S06 to S020)  <b>AND</b>
	Display Home (except for Area A)	Detached House Code
	Dwelling House (except for Area A)	Detached House Code
	Home Based Business (except for Area A)	Home Based Business Code
	Minor or Temporary Telecommunications Facility	Telecommunications Facility Code (section 4)

## Schedule 2

<b>CODE ASSESSMENT</b>	The mandatory solutions in the SCL Scheme Area Code—Schedule A and any probable solutions for specific outcomes identified in brackets for any Code contained in City Plan 2005 are mandatory for code assessable uses. Code assessable uses require impact assessment if the mandatory solutions are not complied with.	
		<b>All code assessable uses:</b> SCL Scheme Area Code District Code No.1 (only S06 to S020) Landscaping Code Parking and Access Code Works Code <b>AND</b>
	Catering Shop (except Area A)	Caretaker's Residence Code
	Child Care Centre (except Area A)	Child Care Centre Code
	Dual Occupancy (except Area A)	Dual Occupancy Code
	Indoor Recreation (only on Areas A, B or C)	Minor Centres Code
	Major Utility (except Area A)	Minor Centres Code
	Multiple Dwellings (except Area A)	Multiple Dwelling Code
	Shop (where under 600sqm gross floor area)	Minor Centres Code
	Restaurant	Minor Centres Code
<b>IMPACT ASSESSMENT</b>	All other uses except for a road; and Any use identified in this Table 3A that does not comply with the SCL Scheme Area Code — Schedule A	

- 1 Codes listed are as identified in City Plan 2005 except for the SCL Scheme Area Code in this SCL Scheme



TABLE 3B

ASSESSMENT CATEGORIES AND APPLICABLE CODES FOR  
MULTIPLE DWELLING SECTOR — OTHER DEVELOPMENT

COLUMN 1	COLUMN 2	COLUMN 3
	TYPE OF DEVELOPMENT	APPLICABLE CODES <sup>1</sup>
<b>EXEMPT</b>	Carrying out <b>building work</b> being demolition or removal of a building  Any other development not listed below	
<b>SELF ASSESSMENT</b>	All solutions in identified codes are mandatory for self assessable uses. Self assessable uses require code assessment if the applicable solutions are not complied with.	
	<b>Operational works</b> being excavating or filling premises by >0.3m and <1.0m in depth (where more than 1.5m from a boundary) or >10m <sup>3</sup> and <50m <sup>3</sup> in volume  Carrying out <b>building work</b> other than demolition or removal, where not associated with a material change of use	Works Code (section 2, PS3.1 only)  SCL Scheme Code—Schedule A
<b>CODE ASSESSMENT</b>	<b>Operational works</b> being excavating or filling premises by >1.0m in depth or >50m <sup>3</sup> in volume or excavating or filling by >0.3m in depth within 1.5m of a boundary	Works Code
	<b>Operational work for reconfiguring a lot</b> where the reconfiguring is assessable	Works Code
	<b>Reconfiguring a lot</b>	Reconfiguring Lots Code

- 1 Codes listed are as identified in City Plan 2005 except for the SCL Scheme Area Code in this SCL Scheme

## **PART E—MANDATORY REQUIREMENTS OF THE SCL SCHEME CODE**

**S02** All development within this SCL Scheme Area must comply with the SCL Scheme Area Code Schedule A

### **SCL Scheme Area Code Schedule A:**

<b>Specific Outcomes</b>	<b>Mandatory Solutions</b>
<b>Building Heights</b>	
<b>SO3</b> The height of buildings or structures is consistent with the desired character and amenity of the SCL Scheme Area	<b>MS3</b> The building height or structure does not exceed the maximum number of storeys indicated in <b>Map 3—Building Heights<sup>1</sup></b> excluding features providing architectural interest and which do not create additional gross floor area such as clock towers, observation platforms, flagpoles and shade structures
<b>Plot Ratio</b>	
<b>SO4</b> Residential development is of a density consistent with the character intended for the SCL Scheme Area and provides for a high level of residential amenity	<b>MS4</b> The maximum plot ratio for residential development other than Dwelling Houses must not exceed that identified in <b>Map 4—Plot Ratios</b>

<b>Open Space</b>	
<b>SO5</b> Development provides efficient public open space, pedestrian/bicycle pathway and access to the Marina	<b>MS5</b> Pedestrian, bicycle and public open space to achieve the intent of public access routes identified in <b>Map 5—Greenspace and Pathways</b> must be provided
<b>Marina Facilities Carparking</b>	
<b>SO6</b> Adequate parking must be provided for any Marina Facility use	<b>MS6</b> Parking spaces are provided at a minimum rate of one (1) carpark for each four (4) marina berths
<b>Lot Size</b>	
<b>SO7</b> Lot sizes and dimensions are consistent with the desired character of the Sector in which the lot is located and with the environmental qualities of the site, and enable the provision of adequate— <ul style="list-style-type: none"> <li>•open space and buffering;</li> <li>•ventilation and sunlight;</li> <li>•privacy;</li> <li>•car park and access;</li> <li>•infrastructure services; and</li> <li>•other relevant on-site requirements</li> </ul>	<b>MS7</b> Lot sizes and dimensions are consistent with Table 4, Column 2

<b>Setbacks</b>	
<b>SO8</b> The scale, bulk and location of a building on a site does not adversely impact on streetscape amenity	<b>MS8</b> The setbacks of buildings from street frontages and boundaries is consistent with Table 4, Column 3

1 Storeys as defined in City Plan 2005

**TABLE 4: LOT SIZES AND SETBACKS**

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Sector</b>	<b>Minimum Lot Size</b>	<b>Setbacks</b>
<b>Marina Sector</b>		<p>Along the Marina Waterfront—</p> <ul style="list-style-type: none"> <li>(i) buildings are set back a minimum of five (5) metres along any side boundary to permit visual and pedestrian access corridors to the waterfront;</li> <li>(ii) buildings are setback a minimum of two (2) metres from the paved area along the waterfront.</li> </ul>

<p><b>Dwelling House Sector</b></p>	<p>In Area G: 700sqm In Area H: 300sqm</p>	<p><b>Front Boundary</b> (to road/access point)</p> <p>In Area G: 6 metres</p> <p>In Area H: in alignment with the adjoining and dominant setback in the locality.</p> <p><b>Rear Boundary</b> (to waterfront)</p> <p>4 metres</p> <p><b>Side Boundary</b></p> <ul style="list-style-type: none"> <li>• Where two (2) buildings on adjoining lots share a party wall at a side boundary— <ul style="list-style-type: none"> <li>o 0 metres; only on one side; and</li> <li>o for second side boundary, as below for detached.</li> </ul> </li> <li>• Where detached— <ul style="list-style-type: none"> <li>(a) 1.5 metres if the building is 4.5 metres high or less; or</li> <li>(b) 2.0 metres if the building is greater than 4.5 metres high and does not exceed 7.5 metres in height; or</li> <li>(c) 2.0 metres plus 0.5 metres for every 3.0 metres or part thereof by which the building height exceeds 7.5 metres.</li> </ul> </li> </ul>
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<p><b>Multiple Dwelling Sector</b></p>	<p>1,000 sqm</p>	<p><b>Front Setbacks</b> (to access road) are aligned with the adjoining and dominant setback in the locality; or</p> <ul style="list-style-type: none"> <li>(a) Ground to 2<sup>nd</sup> storey: 2 metres</li> <li>(b) 3<sup>rd</sup> storey and above: 4 metres</li> </ul> <p><b>Side Boundary</b></p> <ul style="list-style-type: none"> <li>(a) Buildings are set back a minimum of— <ul style="list-style-type: none"> <li>(i) 5 metres along any side boundary to permit visual and pedestrian access corridors to the waterfront; <b>UNLESS</b></li> <li>(ii) the side boundary adjoins a permanent area of public access (such as a road or park) where the width of that public area exceeds 6 metres, then 2 metres; or</li> <li>(iii) if a detached house— <ul style="list-style-type: none"> <li>i. 1.5 metres if the building is 4.5 metres high or less; or</li> <li>ii. 2 metres if the building is greater than 4.5 metres high and does not exceed 7.5 metres in height; or</li> <li>iii. 2 metres plus 0.5 metres for every 3 metres of part thereof by which the building high exceeds 7.5 metres; or</li> </ul> </li> </ul> </li> </ul>
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		<p>(iv) 1 metre from any <b>driveway</b> located on the site; and</p> <p><b>Rear Boundary</b> (waterfront, where adjoining)</p> <p>(a) if a detached house, as for side boundary; or</p> <p>(b) where adjoining waterside pathways required by SO3, 2m from the public pathway; or</p> <p>(c) otherwise 3 metres.</p>
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## 10. DEFINITIONS

Terms used in this SCL Scheme have the meanings defined by the City Plan 2005 or the *Integrated Planning Act 1997*, unless otherwise defined as below—

- 10.1 **“Amenity Impacts”** means impacts on amenity from the lawful operation of the Port of Townsville including noise, dust (air particle emissions), light, odour, electromagnetic interference and other disturbances;
- 10.2 **“City Plan 2005”** includes all planning instruments for the Townsville Local Government Area as amended (or renamed);
- 10.3 **“Council”** means the Townsville City Council;
- 10.4 **“Design Provisions”** means provisions intended to minimise Amenity Impacts that relate to—
- 10.4.1 orientation of improvements on lots in any community title scheme;
- 10.4.2 materials used in the construction of improvements, including buildings;

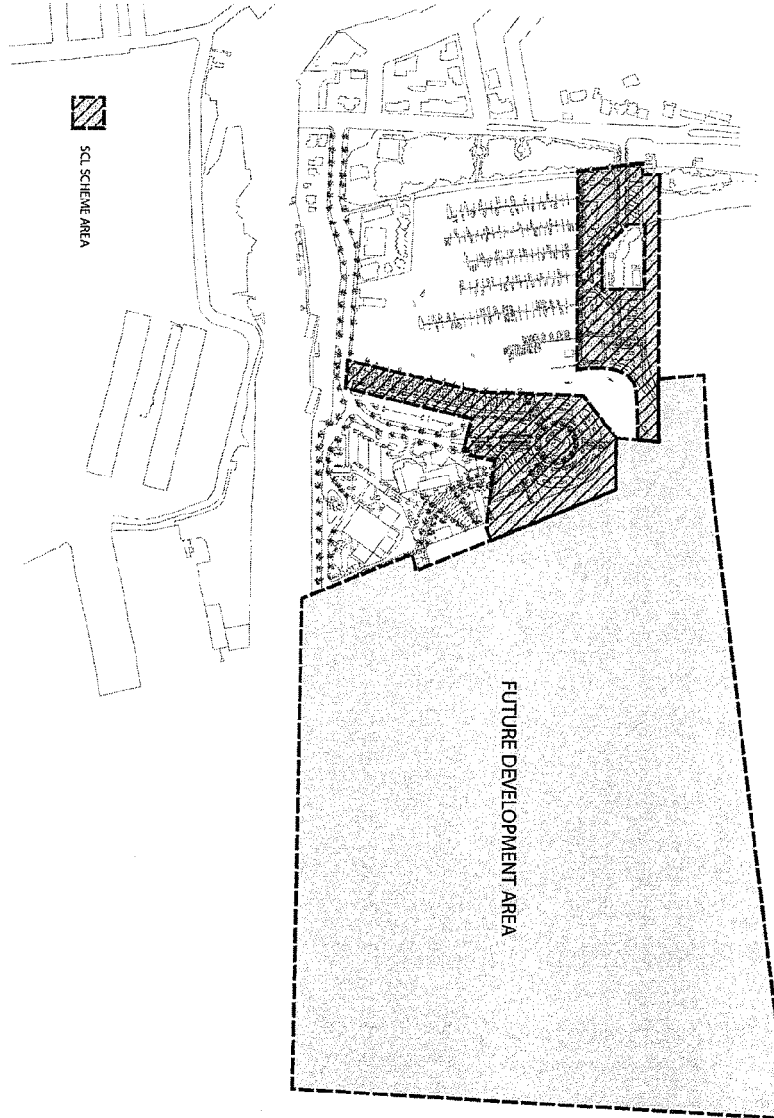
- 10.4.3 attenuation stipulations, including in respect of orientation, materials or location of living and sleeping areas appropriately in buildings;
- 10.4.4 location and choice of facilities and services associated with improvements on lots in the community title scheme;
- 10.5 **“ Dwelling House ”** means a Detached House as defined and utilised within City Plan 2005 or any dwelling unit on an independent lot with a single party wall (but excluding a Multiple Dwelling);
- 10.6 **“ Local Government Area ”** means the Local Government Area of Townsville;
- 10.7 **“ Marina Facilities ”** means administrative offices, boat brokerage and charter facilities, chandlery, boat storage, tackle and bait shop, fuelling provisions, marina associated facilities and marina car parking;
- 10.8 **“ SCL Scheme Area ”** means the area identified as the SCL Scheme Area in **Map 1: SCL Scheme Area**;
- 10.9 **“ SCL Scheme Code ”** means Part C, D and E of this SCL Scheme;
- 10.10 **“ Site ”** means any land on which development is carried out or is proposed to be carried out whether such land comprises—
  - 10.10.1 the whole or any one lot, or parcel of land; or
  - 10.10.2 only part of one lot; or
  - 10.10.3 more than one lot where each lot is contiguous with the other or another lot; or
  - 10.10.4 conjointly used lands which are not adjoining lands;
- 10.11 **“ Temporary Car Park ”** means the temporary parking of cars on vacant land (prior to construction commencing of any use approved under this SCL Scheme) for patrons of the Entertainment Centre.

## 11. MAPS



MAP 1	:	SCL Scheme Area
MAP 2	:	Area Sectors
MAP 3	:	Building Heights
MAP 4	:	Plot Ratio
MAP 5	:	Greenspace and Pathways
MAP 6	:	Reconfiguration Concept

Map 1

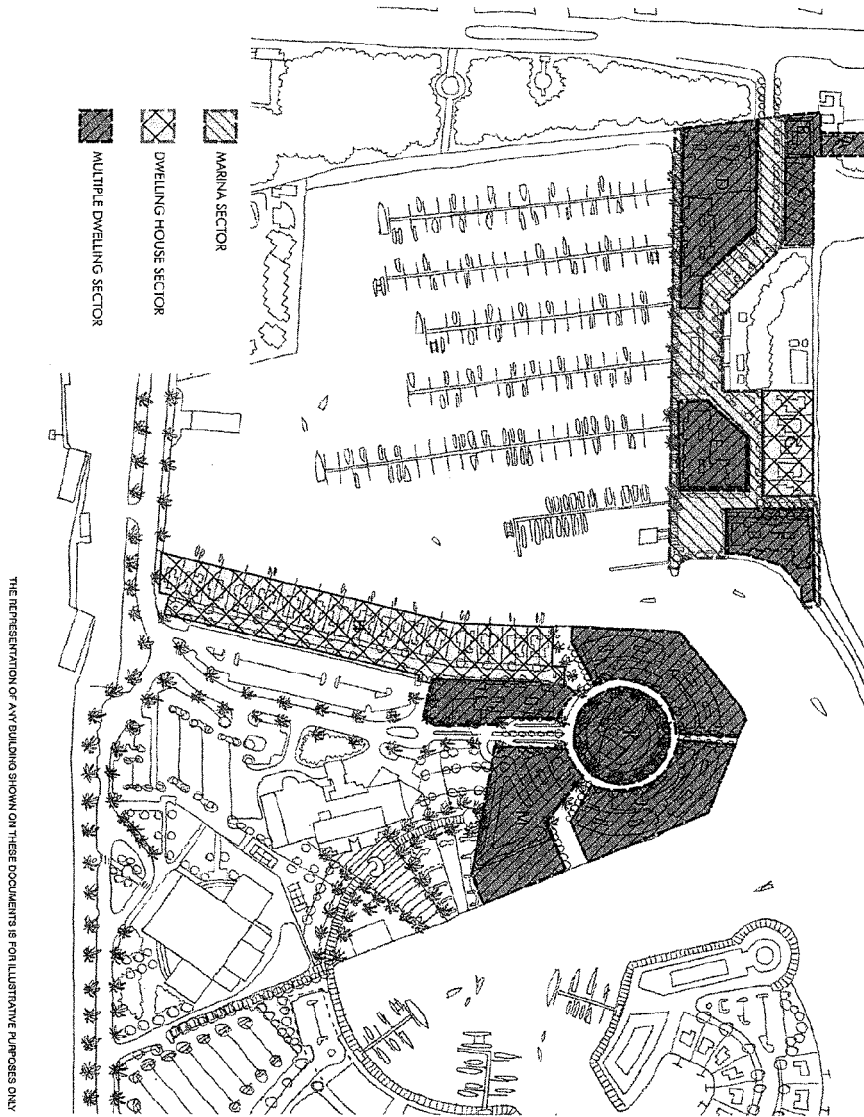


MAP 1 | SCL SCHEME AREA

PROJECT No.	00000
SCALE	1:100
DATE	October 2014

**BUCHAN**  
CONSULTING ENGINEERS

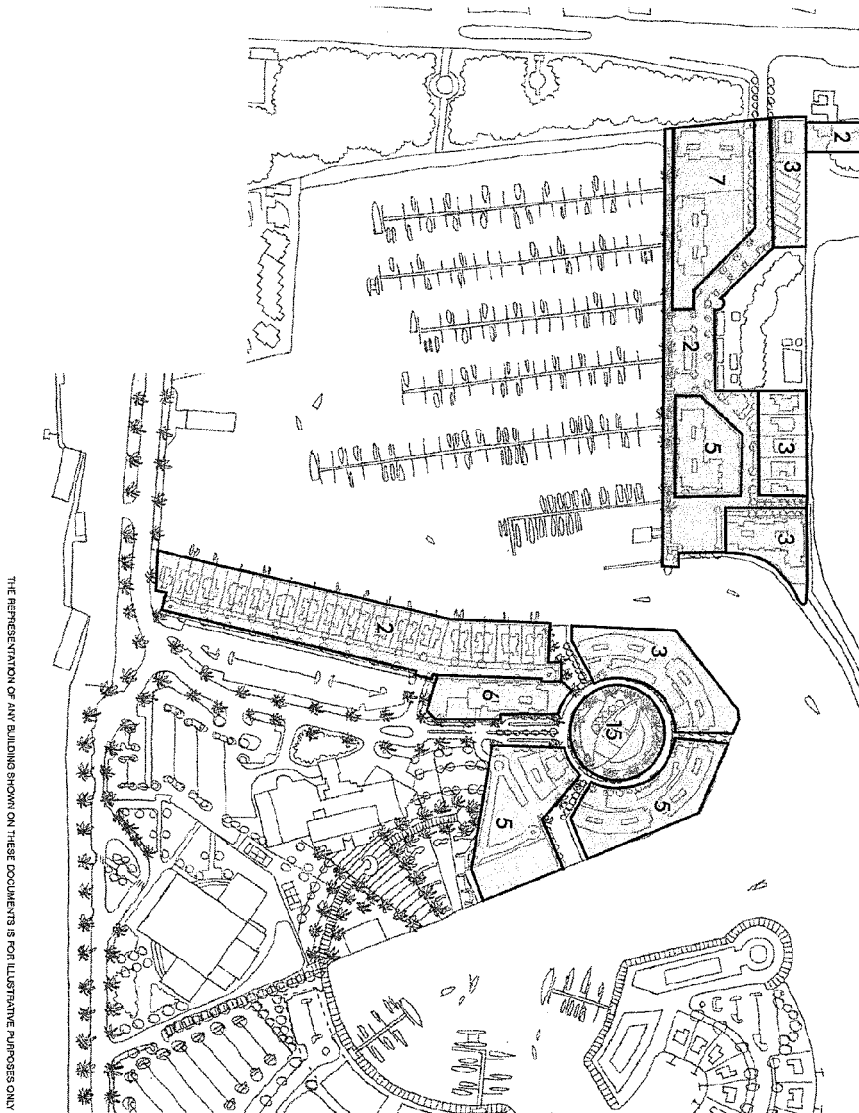
Map 2



THE REPRESENTATION OF ANY BUILDING SHOWN ON THESE DOCUMENTS IS FOR ILLUSTRATIVE PURPOSES ONLY

**TARCONY** MAP 2 | AREA SECTORS  PROJECT NO. 106014 BUCHAN   
SCALE: 1:1000  
DATE: 07/10/2014  
DRAWN BY: MJC  
CHECKED BY: MJC

Map 3



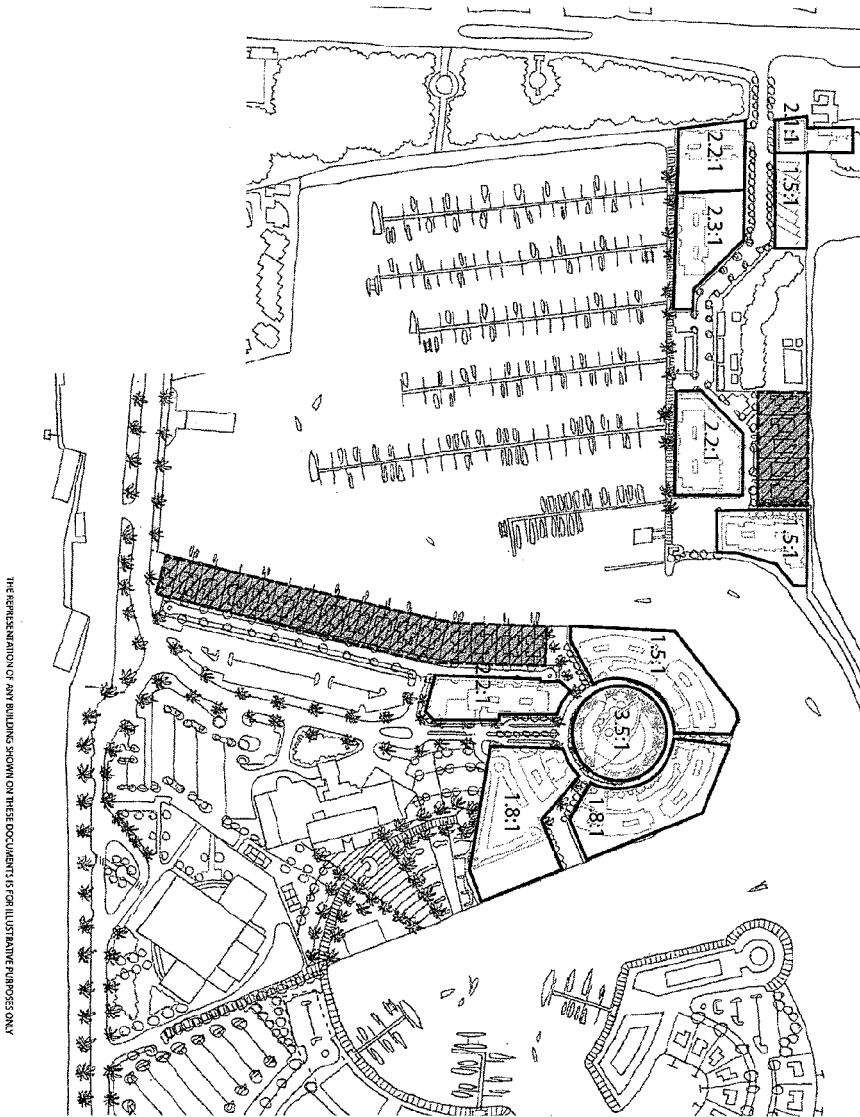
THE REPRESENTATION OF ANY BUILDING SHOWN ON THESE DOCUMENTS IS FOR ILLUSTRATIVE PURPOSES ONLY.

 **MAP 3 | BUILDING HEIGHTS** 

DATE OF NO.	2/2012
STAGE	4/14
REV.	02/2012 & 2/14
DATE/NO.	10/1/10



Map 4

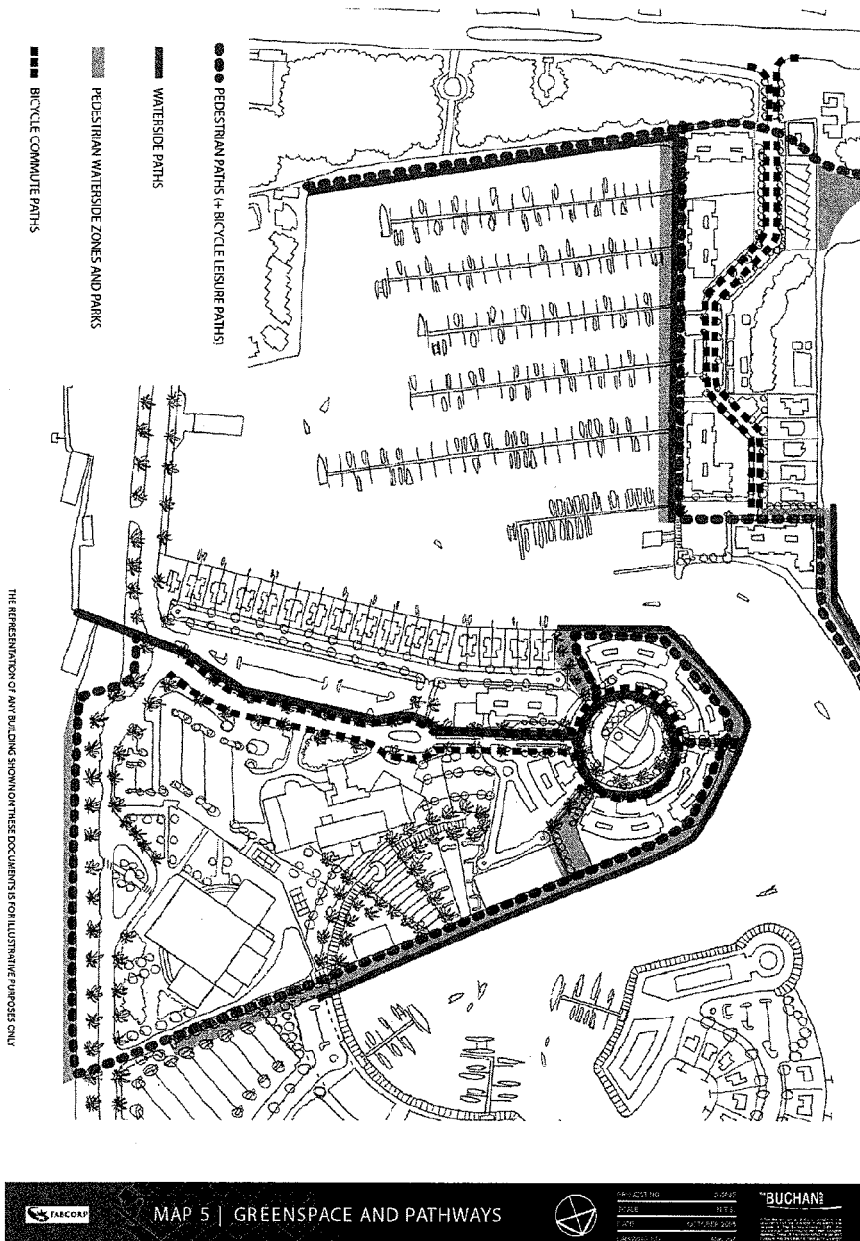


**TABCORP** **MAP 4 | PLOT RATIO** 

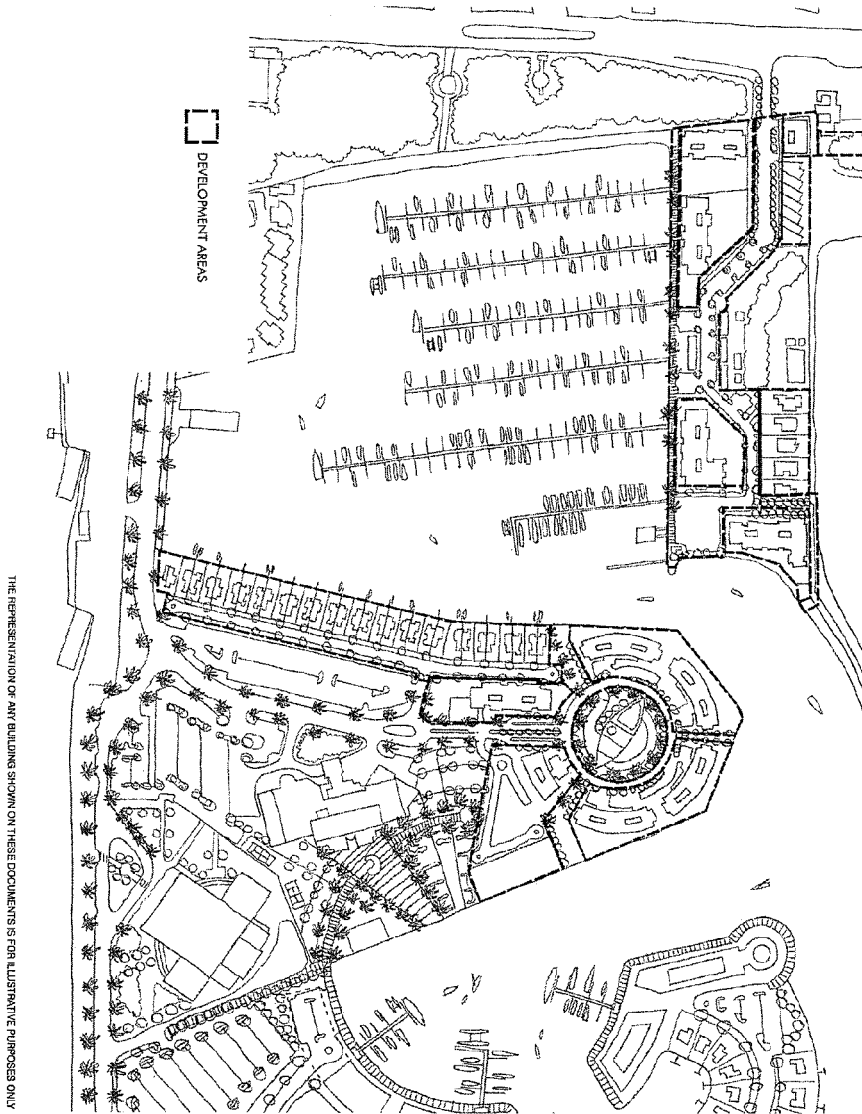
PROJECT NO.	10000
DATE	2014
BY	BUCHANAN
SCALE	1:1000
REVISIONS	4/14/14

**BUCHANAN**

Map 5



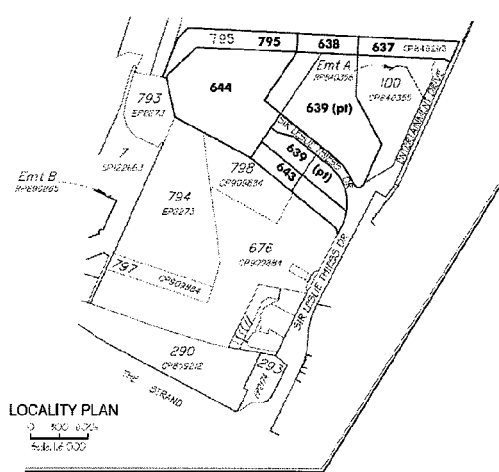
Map 6



 **MAP 6 | RECONFIGURATION CONCEPT**  PROJECT NO: 20270  
DATE: 13/11/2013  
DRAWN BY: GUY/DA/2013  
CHECKED BY: ESK/2014

**BUCHAN**  
ARCHITECTS  
100/101/102/103/104/105/106/107/108/109/110/111/112/113/114/115/116/117/118/119/120/121/122/123/124/125/126/127/128/129/130/131/132/133/134/135/136/137/138/139/140/141/142/143/144/145/146/147/148/149/150/151/152/153/154/155/156/157/158/159/160/161/162/163/164/165/166/167/168/169/170/171/172/173/174/175/176/177/178/179/180/181/182/183/184/185/186/187/188/189/190/191/192/193/194/195/196/197/198/199/200/201/202/203/204/205/206/207/208/209/210/211/212/213/214/215/216/217/218/219/220/221/222/223/224/225/226/227/228/229/230/231/232/233/234/235/236/237/238/239/240/241/242/243/244/245/246/247/248/249/250/251/252/253/254/255/256/257/258/259/260/261/262/263/264/265/266/267/268/269/270/271/272/273/274/275/276/277/278/279/280/281/282/283/284/285/286/287/288/289/290/291/292/293/294/295/296/297/298/299/300/301/302/303/304/305/306/307/308/309/310/311/312/313/314/315/316/317/318/319/320/321/322/323/324/325/326/327/328/329/330/331/332/333/334/335/336/337/338/339/340/341/342/343/344/345/346/347/348/349/350/351/352/353/354/355/356/357/358/359/360/361/362/363/364/365/366/367/368/369/370/371/372/373/374/375/376/377/378/379/380/381/382/383/384/385/386/387/388/389/390/391/392/393/394/395/396/397/398/399/400/401/402/403/404/405/406/407/408/409/410/411/412/413/414/415/416/417/418/419/420/421/422/423/424/425/426/427/428/429/430/431/432/433/434/435/436/437/438/439/440/441/442/443/444/445/446/447/448/449/450/451/452/453/454/455/456/457/458/459/460/461/462/463/464/465/466/467/468/469/470/471/472/473/474/475/476/477/478/479/480/481/482/483/484/485/486/487/488/489/490/491/492/493/494/495/496/497/498/499/500/501/502/503/504/505/506/507/508/509/510/511/512/513/514/515/516/517/518/519/520/521/522/523/524/525/526/527/528/529/530/531/532/533/534/535/536/537/538/539/540/541/542/543/544/545/546/547/548/549/550/551/552/553/554/555/556/557/558/559/560/561/562/563/564/565/566/567/568/569/570/571/572/573/574/575/576/577/578/579/580/581/582/583/584/585/586/587/588/589/590/591/592/593/594/595/596/597/598/599/600/601/602/603/604/605/606/607/608/609/610/611/612/613/614/615/616/617/618/619/620/621/622/623/624/625/626/627/628/629/630/631/632/633/634/635/636/637/638/639/640/641/642/643/644/645/646/647/648/649/650/651/652/653/654/655/656/657/658/659/660/661/662/663/664/665/666/667/668/669/670/671/672/673/674/675/676/677/678/679/680/681/682/683/684/685/686/687/688/689/690/691/692/693/694/695/696/697/698/699/700/701/702/703/704/705/706/707/708/709/710/711/712/713/714/715/716/717/718/719/720/721/722/723/724/725/726/727/728/729/730/731/732/733/734/735/736/737/738/739/740/741/742/743/744/745/746/747/748/749/750/751/752/753/754/755/756/757/758/759/760/761/762/763/764/765/766/767/768/769/770/771/772/773/774/775/776/777/778/779/780/781/782/783/784/785/786/787/788/789/790/791/792/793/794/795/796/797/798/799/800/801/802/803/804/805/806/807/808/809/810/811/812/813/814/815/816/817/818/819/820/821/822/823/824/825/826/827/828/829/830/831/832/833/834/835/836/837/838/839/840/841/842/843/844/845/846/847/848/849/850/851/852/853/854/855/856/857/858/859/860/861/862/863/864/865/866/867/868/869/870/871/872/873/874/875/876/877/878/879/880/881/882/883/884/885/886/887/888/889/890/891/892/893/894/895/896/897/898/899/900/901/902/903/904/905/906/907/908/909/910/911/912/913/914/915/916/917/918/919/920/921/922/923/924/925/926/927/928/929/930/931/932/933/934/935/936/937/938/939/940/941/942/943/944/945/946/947/948/949/950/951/952/953/954/955/956/957/958/959/960/961/962/963/964/965/966/967/968/969/970/971/972/973/974/975/976/977/978/979/980/981/982/983/984/985/986/987/988/989/990/991/992/993/994/995/996/997/998/999/1000

**SCHEDULE 4—PLAN OF SUBDIVISION**



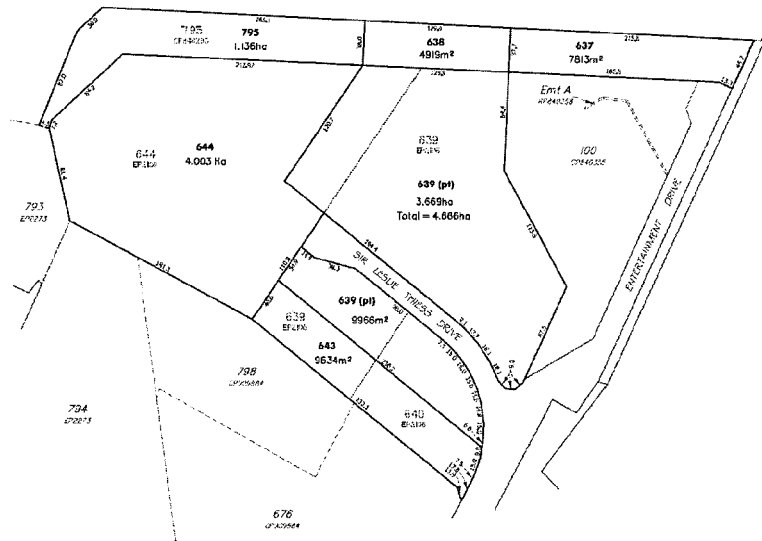
**SCHEDULE 4**

**PLAN OF SUBDIVISION**

Lots 637, 638, 639, 643, 644 and 795

Cancelling Lots 639, 640, 641 on Plan EP2 106 and 795 on CP346293

Parish of Cooksmuir  
 County of Inverclyde  
 City of Townsville



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surveying project management  
 town planning mapping and GIS

Date: 15h Nov, 2009 | Job No: 6004152 | Plan No: 6004258 | Scale: 1:2,500 @ A3

This plan is submitted solely for disclosure purposes only. All areas, dimensions and lot numbers are preliminary, based on investigation, survey, measurement, and local authority and Agency approvals.





- C. Jupiters currently holds all the units in the Breakwater Island Trust and all of the shares in Breakwater Island.
- D. Jupiters proposes, subject to relevant consents and approvals, to transfer all of the units in the Breakwater Island Trust and all of the shares in Breakwater Island to CLG Properties pursuant to a sale and purchase agreement between Jupiters and CLG Properties dated 24 January 2014.
- E. The parties have agreed to amend the Breakwater Island Casino Agreement on the terms set out in this Deed.

## OPERATIVE PROVISIONS

### 1 Definitions and Interpretation

In this Deed:

- (a) *Act* means the *Breakwater Island Casino Agreement Act 1984* (Qld), as amended from time to time.
- (b) *Breakwater Island Casino Agreement* means the agreement referred to in Recital A.
- (c) *Effective Date* means the date on which the last of the following conditions is satisfied:
  - (i) Jupiters and CLG Properties provide evidence to the Minister's satisfaction that all of the Shares and Units have been transferred to CLG Properties by Jupiters and CLG Properties has been registered as the legal owner of the Shares and Units;
  - (ii) all approvals required in order to permit, or that may be required as a result of or in connection with, any of the matters described in subclause (i) above, including under section 30 of the *Casino Control Act 1982* and under clauses 26(l), 26(m) and 26(n) of the Breakwater Island Casino Agreement, have been obtained; and
  - (iii) a deed, in a form acceptable to the Minister and dealing with:

- (A) the legal or beneficial interests in, or control of, CLG Properties and the CLG Property Trust, including in relation to the matters in clauses 26(e), (i) and (j) of the Breakwater Island Casino Agreement;
- (B) the present or future beneficiaries of the CLG Property Trust; and
- (C) such other matters as the Minister may require,

has been executed by all relevant parties, including CLG Properties, its parent entity and any persons that legally or beneficially own or control CLG Properties or its parent entity and the State.

- (d) Words which are defined in the Breakwater Island Casino Agreement and which are used in this Deed have the same meaning in this Deed as in the Breakwater Island Casino Agreement, unless the context requires otherwise.

## 2 Amendment of the Breakwater Island Casino Agreement

The parties agree that with effect from the Effective Date the Breakwater Island Casino Agreement is amended as follows—

- (a) deleting Jupiters from the “Parties” section and inserting the following in its place:
  - “**CLG Properties Pty Ltd as trustee for CLG Property Trust ACN 134 383 547** of 1/177 Salmon Street, Port Melbourne, Victoria (*CLG Properties*)”;
- (b) amending Background paragraph D by deleting reference to “Jupiters” and inserting “CLG Properties” in its place;
- (c) inserting the following defined term into clause 1 after the definition of “Chief Executive”:

“*CLG Properties* means CLG Properties Pty Ltd as the Trustee for CLG Property Trust ACN 134 383 547”;

- (b) amending the definitions in clause 1 by deleting the definition “Management Agreement”;
- (c) amending the definitions of “Share” and “Shareholder” in clause 1 by deleting “Jupiters” and inserting “CLG Properties” in its place;
- (d) amending clauses 5, 9, 24, 25, 26, 28 and 46 by deleting references to “Jupiters” and inserting “CLG Properties” in its place; and
- (e) amending clause 26(o) by the addition of “and the trust deed of the CLG Property Trust” before “shall not be altered or amended without the prior approval in writing of the Minister”.

### **3 Notification**

The Minister must notify the Effective Date by Gazette notice as soon as possible after the last of the conditions specified in the definition of “Effective Date” in clause 1(c) of this Deed is satisfied.

### **4 Remaining Provisions Unaffected**

Except as specifically amended by this Deed, all terms and conditions of the Breakwater Island Casino Agreement remain in full force and effect.

### **5 Accession**

On and with effect from the Effective Date, CLG Properties agrees to be bound by the terms of the Breakwater Island Casino Agreement (as amended by this Deed).

### **6 Governing Law and Jurisdiction**

This Deed is governed by the laws of Queensland. Each party submits to the non-exclusive jurisdiction of courts exercising jurisdiction there in connection with matters concerning this Deed.

**Executed** as a Deed

**EXECUTED AS A DEED** by **THE**  
**ATTORNEY-GENERAL AND MINISTER**  
**FOR JUSTICE OF THE STATE OF**  
**QUEENSLAND** for and on behalf of **STATE**  
**OF QUEENSLAND**

**EXECUTED AS A DEED** in accordance with  
s 127 of the Corporations Act by  
**BREAKWATER ISLAND LIMITED**

**EXECUTED AS A DEED** in accordance with  
s 127 of the Corporations Act by **JUPITERS**  
**LIMITED**

**EXECUTED AS A DEED** in accordance with  
s 127 of the Corporations Act by **CLG**  
**PROPERTIES PTY LTD AS TRUSTEE**  
**FOR CLG PROPERTY TRUST**