

**DEED OF AGREEMENT**

between

**STATE OF QUEENSLAND**

acting through Department of Transport and Main Roads

and

**Cairns Regional Council**

about

**a new the boating launching facility, car-trailer park and associated  
infrastructure at Yorkeys Knob**

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## DEED OF AGREEMENT

about

**construction of a boat launching facility, car-trailer park and associated infrastructure at Yorkeys Knob**

**BETWEEN:** The **STATE OF QUEENSLAND** acting through the Department of Transport and Main Roads (“**TMR**”)

**AND:** **CAIRNS REGIONAL COUNCIL** (“**CRC**”)

### RECITALS

- A. The **Parties** want to construct a new all-tide sheltered recreational boat launching facility, access road, and associated car-trailer and single car parking at Yorkeys Knob.
- B. The **Parties** wish to jointly arrange for the funding, **Design**, construction, and on-going management and maintenance of a new public boat launching facility at Yorkeys Knob.
- C. **TMR** wishes to coordinate the overall funding, development application, construction and project management for the delivery of the **Project**.
- D. **TMR** wishes to prepare detailed **Designs** for the **Project**.
- E. **TMR** wishes to own the **In-water Infrastructure**.
- F. **CRC** wishes to own and maintain the **Land-based infrastructure** and manage and maintain the boat ramp and floating walkways at Yorkeys Knob.
- G. **TMR** wishes to refund **CRC** for its maintenance costs of the boat ramp and floating walkway and for its maintenance costs of partial protective fencing installed for public safety along the golf course boundary.
- H. **TMR** wishes to arrange and fund maintenance of the breakwaters, dredged basin and access channel.

### THE PARTIES AGREE AS FOLLOWS:

#### 1. INTERPRETATION

1.1 In this **Agreement**, unless the context otherwise requires or the contrary intention appears, the following terms will have the meanings assigned to them:

“**Agreement**” means this document.

“**all-weather**” means a surface suitable for vehicles and trailers to be driven and parked without slipping or bogging in any weather.

“**Commencement Date**” means the date on which the last **Party** to this **Agreement** executes the **Agreement**.

“**CPI**” means Consumer Price Index

“**Design**” means the drawings, specifications and other information, samples, models, patterns and the like required for the construction of all aspects of the **Project**. This includes a bill of quantities and estimated costs.

“**DNRME**” means the Department of Natural Resources Mines and Energy.

“**Final Completion**” means for a particular works contract when:

- contract obligations have been fulfilled
- the relevant works have been inspected and found to be free of defects
- as-constructed drawings of the works have been shared between the **Parties** in digital format.

“**Funds**” means the amount contributed by **CRC** for the **Land-based infrastructure**.

“**High Water Mark**” means the height of the waters at Yorkeys Knob at the mean of ordinary spring high tides, as published in Queensland Tide Tables and defined therein.

“**In-water infrastructure**” means a multi-lane boat ramp, one or more floating walkways, piles integral to the floating walkways, floating walkways abutments, transition slab from ramp to car park, two new breakwaters, dredged basin, and dredged access channel joining the basin to the **CRC**-maintained access channel, which provides access from the open sea to the Bluewater estate.

“**Land-based infrastructure**” means works above **High Water Mark** constructed for and associated with, and for access to, parking for car-trailer units and single cars and includes but is not limited to: land; a sealed access road, road works; footpaths; kerbing and channelling; drainage pits and pipes; protective fencing along the golf course boundary, protective bollards adjacent to the road (**Appendix 2**); plantings; bridge and culvert works; tie-in works to Buckley Street; lighting; road markings; landscaping; toilets; picnic tables, shelters, barbecues and bins.

“**Parties**” or “**Party**” means **CRC** and/or **TMR**, their employees, duly authorised agents, successors and assigns.

“**Practical Completion**” means the carrying out and completion of a works contract when:

- An inspection of the **In-water infrastructure** is found to be satisfactory and certified so.
- An inspection of the **Land-based infrastructure** is found to be satisfactory and certified so.
- the works are complete except for minor defects, which do not prevent the facility from being used by the public for their design purpose, and which there are reasonable grounds for not promptly rectifying.

“**Project**” means the **Design** and construction of the **In-water infrastructure** and **Land-based infrastructure** as broadly indicated in **Appendix 1**, and includes obtaining the necessary **Statutory Approvals**. The **Project** concludes on finalisation of the contract defects periods following **Practical Completion** of all the **In-water infrastructure** and **Land-based infrastructure**.

“**Public Marine Facility**” takes its meaning from the *Transport Infrastructure Act 1994* and the **Regulation** and in this instance constitutes the **In-water infrastructure** and **Land-based infrastructure** at Yorkeys Knob.

“**Regulation**” means the Transport Infrastructure (Public Marine Facilities) Regulation 2011 and the *TERMS AND CONDITIONS FOR THE MANAGEMENT AND CONTROL OF A PUBLIC MARINE FACILITY* made pursuant to the **Regulation**.

“**Road**” means land dedicated as road under the *Land Act 1994* (S93, 94) or such other tenure approved by **DNRME** for the proposed access road and car-trailer park.

“**Site**” means land and seabed at Yorkeys Knob available for development as a public boat launching facility and associated **Land-based infrastructure**.

“**Statutory Approvals**” includes:

- acts, ordinances, regulations, by-laws, orders, awards and proclamations of the jurisdiction where the **Site** works or particular part thereof will be carried out
- certificates, licences, consents, permits, approvals and requirements of entities and organisations having jurisdiction in connection with the carrying out of the **Site** works
- fees and charges payable in connection with **Site** works.

“**USL**” means unallocated state land defined in the *Land Act 1994* and controlled by **DNRME**.

1.2 In this **Agreement**:

- References to a person include an individual, firm or a body, whether incorporated or not.
- Words in the singular include the plural and words in the plural include the singular, according to the requirements of the context.
- Words importing a gender include every gender.
- Clause headings and subclause headings will not form part of, nor be used in the interpretation of, this **Agreement**.

## 2 GENERAL PROVISIONS

2.1 **TMR** agrees to work with **CRC** to arrange road tenure with **DNRME** over sufficient **USL** at the **Site** as will give **CRC** control of the road access, car-parking, car-trailer parking and foreshore above **High Water Mark**. **TMR** agrees to pay fees associated with gaining such tenure.

2.2 **CRC** acknowledges that **TMR** cannot proceed with the project unless some form of tenure in favour of **CRC** exists or is agreed to be arranged for the land abutting and providing access from Buckley Street to the proposed boat launching facility.

2.3 **TMR** undertakes to advise **DNRME** of its intention to partner with **CRC** for a new boat launching facility and creation of a formal **Public Marine Facility** at Yorkeys Knob.

- 2.4 **CRC** agrees to become trustee of the reserves that are created to facilitate the **Project**.
- 2.5 **TMR** agrees to design, fund, obtain **Statutory Approvals** for, and deliver the **In-water infrastructure**.
- 2.6 **TMR** agrees to design, obtain **Statutory Approvals** for and deliver an access road (including creek crossing) and the **all-weather** car and car-trailer park per the concept plan (see **Appendix 1**).
- 2.7 **CRC** agrees to consider and promptly respond to any necessary local government projects approvals to facilitate construction of the **In-water infrastructure** and **Land-based infrastructure**, after due consideration and in accordance with its roles and accountabilities under relevant federal and state legislation and applicable **CRC** local laws.
- 2.8 **TMR** intends to the extent possible to utilise all capital (initial) dredging spoil for purposes of reclamation for the car-trailer park construction, noting that additional material may be required beyond that produced from the capital (initial) dredging.
- 2.9 **CRC** agrees to allow **TMR** to utilise **CRC** dredge spoil disposal approvals for **TMR**-funded and managed ongoing maintenance dredging of the **TMR**-owned boat ramp mini-harbour and adjacent short connection channel. **TMR** intends (unless specifically agreed otherwise in writing) to arrange and fund all aspects of this maintenance dredging of **TMR**-owned channels, including hydrographic survey through to dredge spoil disposal and post-dredge survey. **CRC** agrees to give **TMR** at least two years notice of any projected inability of **CRC**'s permits and approvals to be utilised by **TMR** for **TMR**-initiated maintenance dredging. **TMR** agrees to give **CRC** advance notice of proposed **TMR** dredging campaigns.
- 2.10 The **Parties** agree that any and all commercial activities or operations from, to and at the boat ramp and floating walkways will be the subject of a permit with conditions set by **CRC** and consented to by **TMR** as required by the *Transport Infrastructure Act 1994* and the **Regulation**.
- 2.11 The **Parties** agree their intention for the **Public Marine Facility** to act as a public facility for launching and retrieval of trailer boats and other small craft.

### **3 FUNDING**

- 3.1 The **Parties** agree that **TMR** will coordinate the overall funding for the **Project**.
- 3.2 **TMR** will contribute \$5.5 million to construct the **In-water infrastructure**.
- 3.3 The **Parties** agree that **CRC** will contribute the **Funds**, being a capped sum of \$3.5 million (excluding GST), and **TMR** will contribute an initial sum of \$2 million (excluding GST) to construct the **Land-based infrastructure**, noting that **TMR**'s contribution to the **Land-based infrastructure** is intended primarily to cover the cost of the required creek crossing and a gravel construction-standard access road to facilitate initial construction of the **In-water infrastructure**.

3.4 **CRC** will pay, after the **Commencement date** and after receipt of a valid tax invoice from **TMR** in the 2021-22 financial year, the **Funds** to **TMR** for the construction of the **Land-based infrastructure**.

3.5 **TMR** will keep and maintain such records and accounts (including receipts and invoices) in accordance with accounting principles generally applied in commercial practice and as required by law and as necessary to provide a complete record and explanation of:

- expenditure of the **Funds** for the approved purpose
- other expenditure on the Project
- implementation and progress of the Project

3.6 **TMR** will remit to **CRC** any unspent balance of **Funds** contributed by **CRC** within three months of **Practical Completion** of all **Project** components.

3.7 **TMR** will, subject to a **CRC** feasibility business case, provide a capped \$1 million (excluding GST) grant to **CRC** as a contribution towards **CRC's** proposed training wall adjacent to the northern entrance to Half Moon Creek. This \$1 million **TMR** grant will, if confirmed by **CRC** as required, be paid to **CRC** in two equal instalments of \$500,000, the first instalment in 2021-22 and the second instalment in 2022-23.

3.8 The **Parties** agree that **TMR** will contribute \$30,000, CPI adjusted each year, to **CRC's** annual maintenance dredging campaign of the offshore access channel leading from the open sea to the new mini-harbour's short access channel after the commencement of this **Agreement**. **TMR's** contribution will not be used for maintenance dredging channels inshore of the new mini-harbour or any part of the Bluewater canal estate or marina. This undertaking is not limited by expiry of this **Agreement**.

3.9 **TMR** will contribute, proportionate to relative dredging volumes, its share of fees associated with keeping **CRC's** dredging permit active. This undertaking is not limited by expiry of this **Agreement**.

#### **4 WORKS TIMING AND COORDINATION**

4.1 **TMR** agrees that, subject to land tenure resolution and **Statutory Approvals** satisfactory to **TMR** and **CRC**, it intends to complete the **In-water infrastructure** and **Land-based infrastructure** during the 2021 calendar year.

4.2 **TMR** agrees to provide **CRC** with as-constructed drawings prior to **Final Completion**.

#### **5 SITE ACCESS AND ATTENDANCE**

5.1 The **Parties** agree that they will each have access to the **Site** during construction, subject to the usual protocols of prior advice to the relevant contractor and contract administrator.

5.2 The **Parties** agree that **CRC** will be represented at the **Site** for **Practical Completion** and **Final Completion** of any aspect of the works. One purpose of this provision in relation to **In-water infrastructure** is to ensure **CRC** is aware of its public liability commencement at **Practical Completion**, of its responsibility to advise **TMR** of defects requiring rectification prior to **Final Completion**, and of its on-going maintenance responsibilities as the appointed facility manager under the *Transport Infrastructure Act 1994* and the **Regulation**. The **Parties** agree that in relation to the **Land-based infrastructure** this provision is in **CRC's** interest as future owner.

## 6 OWNERSHIP AND MANAGEMENT

From **Practical Completion** of the final **Project** component deemed necessary for commencement of public use of and access to the facility:

- **CRC** will be the owner and manager of the **Land-based infrastructure**.
- **TMR** will be the owner of the **In-water infrastructure**.
- **CRC** will be the manager of **In-water infrastructure** as the appointed manager of the **Public Marine Facility** under the **Regulation**.

An effect of this provision is that public liability will pass direct from the respective works contractors to **CRC** at **Practical Completion** of both the **Land-based infrastructure** and **In-water infrastructure** (excluding contractor defects rectification, which will be notified by **CRC** to **TMR** for **TMR** attention).

## 7 MAINTENANCE COSTS

7.1 In accordance with the **Regulation**, **CRC** will be responsible for maintenance of the boat ramp and floating walkways after **Practical Completion** (excluding contractor defects rectification, which **CRC** will advise to **TMR**). **CRC** can seek a refund from **TMR** for structural maintenance of the boat ramp and floating walkways in accordance with the **Regulation** (terms and conditions component).

7.2 **TMR** will arrange and fund maintenance of the breakwaters.

7.3 **TMR** will arrange and fund maintenance dredging of the mini-harbour and its short connection channel to the existing dredged main Bluewater access channel.

7.4 **CRC** will, as owner, be responsible for maintenance of the **Land-based infrastructure** after **Practical Completion** (excluding contractor defects rectification, which **CRC** will advise to **TMR**).

7.5 The **Parties** agree that should any man-made golf course protective measures, such as fencing or vehicular bollards (but exclusive of existing or **Project** plantings), require maintenance then **TMR** will refund to **CRC** the contractor maintenance costs, in a similar manner to the standard refund to appointed managers of boat ramp and floating walkways maintenance costs – that is, with prior approval by **TMR** of the proposed expenditure.

7.6 The **Parties** agree that, within the mini-harbour created by the two breakwaters, the foreshore along the **High Water Mark** (not being part of the boat ramp, its shoulders, the floating walkways or the breakwaters) will be maintained by **CRC** to the extent required to protect and maintain the car-trailer park land. Aside from necessary car-trailer park protective measures near **High Water Mark**, **CRC** will maintain beaches to each side of the boat ramp along these two foreshore sections.

7.7 The **Parties** agree that the foreshore along the **High Water Mark** adjacent and parallel to the access road and adjacent to the Yorkeys Knob Boating Club seabed lease will be maintained by **CRC** to the extent required to protect and maintain the access road and associated infrastructure.

7.8 The **Parties** agree that the part of the new mini-harbour western breakwater that becomes, after reclamation, a revetment to protect the car-trailer park will, for maintenance purposes into the future, be maintained by **TMR** as part of the breakwater.

## **8 ACKNOWLEDGEMENT**

8.1 The **Parties** will consult prior to making any public announcement or advertisement in any medium in relation to matters being the subject of this **Agreement**.

8.2 Each of the **Parties** is required to acknowledge the contribution of the other to the project wherever possible. This may include acknowledgement in publicly made statements or other documents.

8.3 The intellectual property rights embodied in or used in connection with the **TMR** or Queensland Government name and logo and the **CRC** name and logo will remain the sole property of the respective **Parties**.

## **9 DISPUTE RESOLUTION**

9.1 Any dispute arising out of this agreement will be dealt with initially by direct negotiation between the **Parties**.

9.2 If the dispute is not resolved within fifteen business days, the **Parties** will submit the dispute to mediation or some other form of agreed dispute resolution procedure.

## **10 TERM**

10.1 The **Agreement** will commence on the **Commencement Date** and will expire when the **Parties** agree in writing (receipted email exchange sufficient) that the **Agreement** no longer serves a valid purpose.

10.2 The expiry of the **Agreement** will not relieve either **Party** of obligations intended to be ongoing or remaining to be delivered or carried out as a requirement of this **Agreement** unless agreed in writing by variation to this **Agreement**.

## **11 AGENCY**

The **Parties** are not, by virtue of this **Agreement**, the agent or representative of each other, and each will ensure that it conducts itself in dealings with others in such a manner as not to infer agency on behalf of the other.

## **12 VARIATION AND WAIVER**

12.1 This **Agreement** may be varied at any time by a further agreement in writing executed by the **Parties**.

12.2 No variation, modification or waiver of any provisions of this **Agreement**, will be of any effect unless it is in writing and signed by the **Parties** and in the case of waiver, by the **Party** giving it.

### **13 ENTIRETY OF AGREEMENT**

The **Parties** agree that this **Agreement** constitutes the entirety of the **Agreement** between the **Parties**, and relevant prior arrangements, agreements, warranties, representations or undertakings (written and/or oral), made by any **Party**, will be revoked upon execution of this **Agreement**.

### **14 GOVERNING LAW AND JURISDCITION**

14.1 This **Agreement** is governed by the laws of Queensland and to applicable Commonwealth law. The **Parties** agree to submit to the jurisdiction of the courts of Queensland.

14.2 Any provision in this **Agreement** that is invalid or unenforceable in any jurisdiction is, if possible, to be interpreted for the purpose of that jurisdiction to be valid and enforceable. Such a provision will be not applicable to the extent of the invalidity or unenforceability, and will not affect the remaining provisions of this **Agreement**.

### **15 COUNTERPARTS**

This **Agreement** may be signed in counterparts.

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EXECUTED as an agreement

SIGNED for and on behalf of the **STATE OF QUEENSLAND** acting through the **Department of Transport and Main Roads** this 12 day of November 2019 by Les Dunn

  
.....  
(signature)

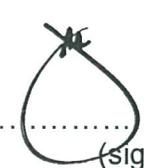
(print full name)  
General Manager (Program Delivery and Operations)  
(position)

who is a duly authorised officer in the presence of:

  
.....  
(signature of witness)

ROGER PRIEST  
.....  
(print full name of witness)

SIGNED for and on behalf of **Cairns Regional Council** this 8th day of November 2019 by John Andrejic  
(print full name)  
Chief Executive Officer  
(position)

  
.....  
(signature)

who is a duly authorised officer in the presence of:

  
.....  
(signature of witness)

Karen Hilton  
.....  
(print full name of witness)



# APPENDIX 2

Extract from *Half Moon Bay Golf Club 14th Hole Report Protective Screen Arrangement and Associated Works* dated 30 May 2019 and prepared by David Burrup for Department of Transport and Main Roads.

