

DEED OF AGREEMENT

about

Molongle Creek boating facility

between

**STATE OF QUEENSLAND
acting through the Department of Transport and Main Roads**

and

WHITSUNDAY REGIONAL COUNCIL

and

MOLONGLE CREEK BOAT CLUB Inc

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BETWEEN: THE STATE OF QUEENSLAND acting through the Department of Transport and Main Roads

AND: WHITSUNDAY REGIONAL COUNCIL

AND: MOLONGLE CREEK BOAT CLUB Inc

RECITALS

- A. The three parties wish to facilitate the upgrade of the access channel to the boat launching facility at Molongle Creek and wish to record their intentions, commitments, roles, responsibilities and accountabilities relating to the overall boat launching facility including land-side issues. The intention is to make the boat launching facility a public marine facility as defined in the *Transport Infrastructure Act 1994*.
- B. This deed is intended to address most high-level matters facing the parties relating to commencement of dredging works, relating to ownership of land-side public infrastructure, relating to in-water public infrastructure, and relating to land and seabed tenures at the site. Such matters contribute to the necessary pre-conditions for commencement of the channel deepening project. This deed may need to be varied or supplemented as circumstances demand.

THE PARTIES AGREE AS FOLLOWS:

1. INTERPRETATION

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

"Commencement date" means the date on which the last **Party** to the **Deed** executes the **Deed**.

"Deed" means this document.

"Dredge material disposal site" means the land associated with a bunded area for the disposal of dredge material resulting from both initial capital dredging and future maintenance dredging.

"Expiry date" means a date ten years after the **Commencement date**.

"In-water infrastructure" means the dredged access channel, boat ramp and associated floating walkway.

"Land-side public infrastructure" means the access road, car-trailer park, and training wall but does not include the **Dredge material disposal site**.

"Site" means the land and seabed at Molongle Creek associated with trailer boat launching.

"TMR" means the State of Queensland acting through the Department of Transport and Main Roads.

“**WRC**” means Whitsunday Regional Council.

“**MCBC**” means Molongle Creek Boat Club Inc.

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

“**Public marine facility**” means a public marine facility as defined in the *Transport Infrastructure Act 1994*. This limited definition applies only to facilities where the in-water infrastructure is owned by **TMR**.

In this **Deed**:

- 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 **Deed**.

2. GENERAL PROVISIONS

- 2.1 The **Parties** agree that ownership of the dredged channel will be transferred from **WRC** to **TMR** after commencement of on-site dredging works.
- 2.2 The **Parties** agree that the existing training wall and any improvements to it will continue to be owned by **WRC**.
- 2.3 **TMR** agrees to keep **WRC** and **MCBC** informed as to the scheduled date for letting of tenders for the dredging works, and after issue of a contract, as to the scheduled date for completion of dredging works.
- 2.4 As an interim measure, the **Parties** agree that **MCBC** and **WRC** will arrange for alteration of lease documents such that the current access road to the car-trailer park is in the sole ownership and control of **WRC**. This interim measure will be in place prior to the commencement of dredging works and will remain in place until such time as **WRC** and **MCBC** agree, arrange for, and construct an alternate public access road to the car-trailer park. The access road is required to be in a tenure controlled solely by **WRC**, without any form of encumbrance.
- 2.5 The **Parties** agree that **WRC** and **MCBC** will arrange for alteration of lease documents such that the current car-trailer park is in the sole ownership and control of **WRC** prior to the commencement of dredging works. The car-trailer park is required to be in a tenure controlled solely by **WRC**, without any form of encumbrance.
- 2.6 The **Parties** agree that **WRC** will be the owner and controller of **Land-side public infrastructure** from the time of commencement of dredging works.
- 2.7 The **Parties** agree that ownership of the existing boat ramp and floating walkway will be transferred from **MCBC** to **TMR** on commencement of dredging works. **MCBC** will advise any agency having assessed or sanctioned tidal works for the boat ramp and floating walkway of the change in ownership, and produce evidence to **TMR** that the change has been so advised. Where the agency no longer exists, **MCBC** will advise the current agency relevant to the originally granted sanctions. **MCBC** will provide a copy of original and any amended tidal works sanctions relating to the boat ramp and floating walkway to **TMR**.

- 2.8 The **Parties** agree that control or lease by **MCBC** of any seabed (land below high water mark) associated with access from the sea to the proposed **Public marine facility** will be transferred or ceded into public control prior to commencement of dredging works. For this purpose public control means either **TMR** or **WRC**. **WRC** and **MCBC** agree to arrange any lease changes necessary to effect this provision. This provision does not apply to seabed proposed to be reclaimed by **MCBC** and not associated with access from the sea to the proposed **Public marine facility**. The **Parties** acknowledge that the Department of Natural Resources Mines and Energy remains the underlying owner of seabed on behalf of the State of Queensland.
- 2.9 The **Parties** agree that, to the extent possible, the land associated with the **Dredge material disposal site** and access for positioning of dredge pipelines and booster pumps will be in public ownership and control from the time of commencement of dredging works. The **Parties** acknowledge that **TMR** will be the owner of the **Dredge material disposal site**. An intention of this provision is that **TMR** should not need to obtain consent from any entity prior to connecting a dredge pipeline to, or using, the **Dredge material disposal site**. Should it not be possible for any part or parcel of land associated with dredge pipelines or booster pumps to be in public ownership and control, **WRC** and **MCBC** undertake to cooperate to the extent practicable to enable **TMR** to occupy such part or parcel of land during capital and maintenance dredging works.
- 2.10 The **Parties** agree to cooperate as necessary to enable **TMR** to obtain the statutory approvals needed for conducting the capital dredging of the access channel.
- 2.11 The **Parties** agree to cooperate as necessary to enable the current privately-owned boat launching facility to become a **Public marine facility** as defined in the *Transport Infrastructure Act 1994*.
- 2.12 The **Parties** agree to meet their own administrative and legal costs relating to implementation of this **Deed**.
- 2.13 **WRC** agrees that from the commencement of dredging works, and subject to the satisfactory implementation of the provisions of this **Deed**, it will become the appointed facility manager of the **Public marine facility** under the terms and conditions of the *Transport Infrastructure (Public Marine Facilities) Regulation 2011*. This **Deed** will act as the instrument of appointment to be confirmed through **TMR** action in due course by gazettal in the schedules to the regulation.
- 2.14 **TMR** and **WRC** agree that, except in times of actual disposal of dredged material to the **Dredge Material disposal site**, **WRC** will act as day to day site manager on behalf of **TMR** for the **Dredge Material disposal site**. **WRC** will meet day to day costs associated with that management, and attend to maintenance of public safety in relation to the **Dredge material disposal site**. Should any structural repairs or works be required to the **Dredge material disposal site**, the costs will be refunded by **TMR** to **WRC** provided prior approval has been sought, with this arrangement continuing after expiry of this **Deed**. Should the **Dredge Material disposal site** require emptying to remote land fill, **TMR** agrees to arrange and fund this activity.
- 2.15 **WRC** and **MCBC** agree they will make allowance in land tenure arrangements for future expansion by up to ten metres each side of the existing boat ramp and floating walkway. Such allowance will provide adequate turning and manoeuvring room for cars with trailers accessing any expanded in-water infrastructure.

- 2.16 The **Parties** acknowledge that the existing reserve boundaries are incorrect in relation to the dredged access channel. **WRC** agrees that, at its sole discretion, it will investigate and pursue amendment of the reserve boundaries with the Department of Natural Resources Mines and Energy such that the existing access channel, which is proposed to be deepened, is contained within the reserve.
- 2.17 The **Parties** acknowledge that **TMR** is not able to commence dredging works unless and until arrangements are in place, or agreed to be in place, for all aspects of the proposed **Public marine facility** to be in standard statewide status for **TMR**-owned boating facilities – as follows:
- seabed to be owned solely by Department of Natural Resources Mines and Energy with any encumbrance (such as a reserve) limited solely to **WRC** trusteeship or control
 - **In-water infrastructure** to be owned by **TMR**
 - legal access road connection to the public road network to be in the sole control of **WRC**
 - **WRC** to own any improvements on the legal road access
 - car-trailer park to be in sole control of **WRC**
 - car-trailer park improvements to be in sole ownership of **WRC**
 - whole public facility, except dredged access channels and navigation aids, to be controlled by **WRC** as appointed manager under the *Transport Infrastructure (Public Marine Facilities) Regulation 2011*.

3. TERM AND CONTINUING OBLIGATIONS

- 3.1 The **Deed** will commence on the **Commencement date** and expire on the **Expiry date**.
- 3.2 Termination or expiry of this **Deed** will not relieve any **Party** of any obligation under the **Deed** which is expressed to continue after termination of the **Deed** or is otherwise required to continue.

4. DISPUTE RESOLUTION

- 4.1 If a breach of any terms or conditions of the **Deed** by any **Party** arises, the **Party** claiming the breach by the other **Party** shall, within a reasonable time, give the breaching **Party** notice in writing stating the nature of the alleged breach and steps required to rectify the breach.
- 4.2 On giving of the notice of breach pursuant to the preceding clause, the subject **Parties** shall nominate, within a reasonable time, a representative, for the purpose of amicable resolution of the dispute. The subject **Parties** may, by mutual consent, agree to hold meetings or take any steps including the appointment of a mutually agreed third party mediator in an attempt to resolve the dispute in a timely manner.
- 4.3 In the event the **Parties** are unable to amicably resolve any dispute after compliance with the preceding sub-clauses, the subject **Parties** shall appoint a third party arbitrator to resolve the dispute in a timely manner.

5. VARIATION OF DEED

The **Deed** may be varied at any time by a written agreement or further deed in writing executed by the **Parties**.

6. COUNTERPARTS

This deed may be signed in counterparts. **TMR** agrees, after the **Commencement date**, to compile and share a single instrument with all three counterpart executions.

7. ENTIRETY OF AGREEMENT

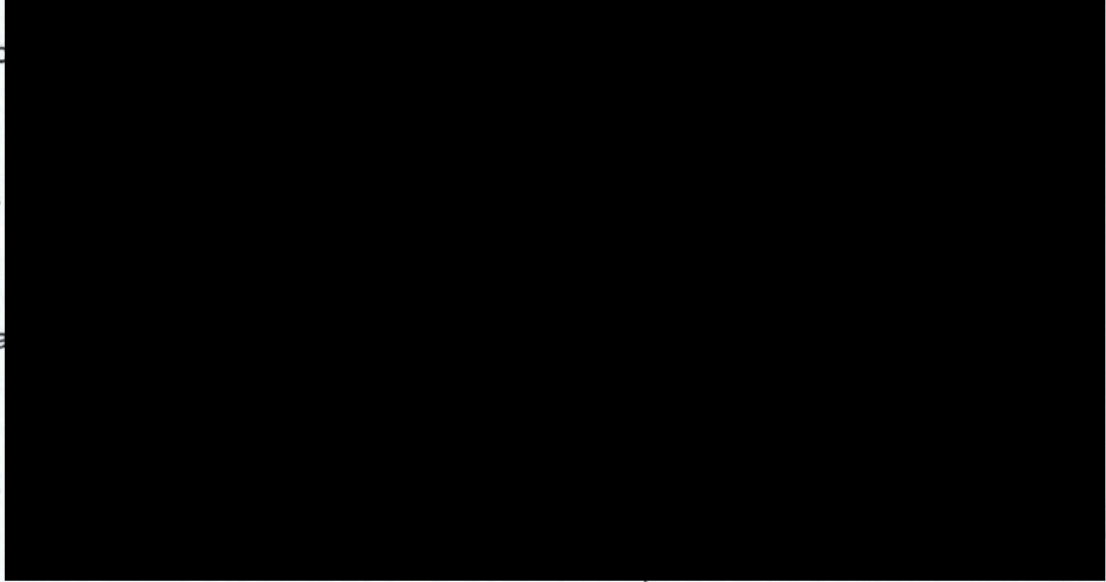
The **Parties** agree that the **Deed** shall constitute the entirety of the agreement.

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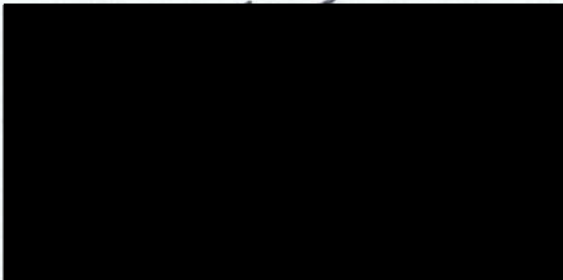
8. EXECUTED AS A DEED

SIGNED for and on behalf of **Molongle Creek
Boat Club Inc**)

this 25th day of October 2018)

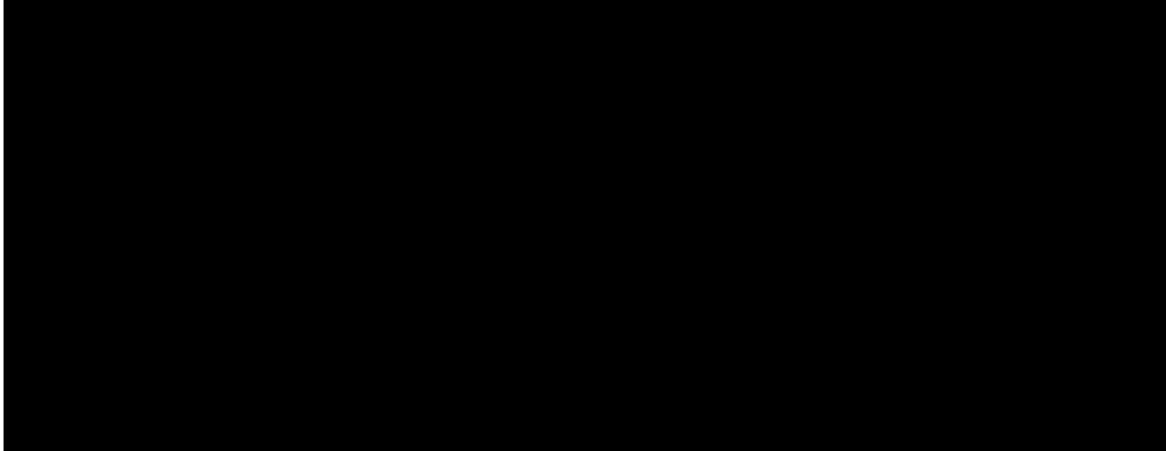


who are duly authorised and elected officers in
the presence of:



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SIGNED for and on behalf of **Whitsunday**)
Regional Council)



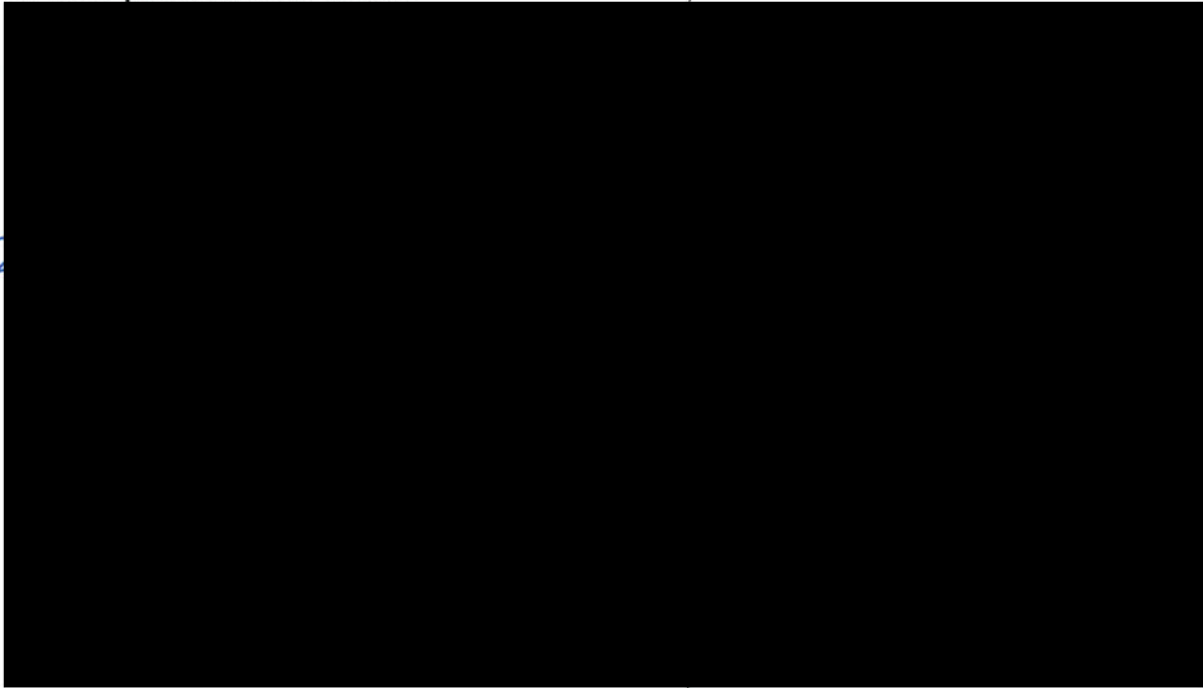
who is a duly authorised officer in the presence of:)



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SIGNED for and on behalf of the STATE OF)
QUEENSLAND acting through the Department)
of Transport and Main Roads)



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