

Infrastructure Agreement

Walker Toondah Harbour Pty Ltd ACN 608 732 921
(Developer)

Redland City Council ABN 86 058 929 428
(Council)

Minister for Economic Development Queensland
ABN 76 590 288 697
(MEDQ)

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Dated:

17 February 2016

Parties:

Walker Toondah Harbour Pty Ltd ACN 608 732 921 of Level 21,
Governor Macquarie Tower, 1 Farrer Place, Sydney in the State of New South Wales
(Developer)

Redland City Council ABN 86 058 929 428 of Corner Bloomfield &
Middle Streets, Cleveland in the State of Queensland
(Council)

**Minister for Economic Development Queensland ABN 76 590
288 697** of Level 7, 63 George Street, Brisbane in the State of Queensland
(MEDQ)

Background:

- A. The PDA Land is located in the PDA.
- B. The Developer has entered into the Development Agreement with Council and the MEDQ and other parties under which the Developer will carry out the Development of the Land.
- C. The Development will require the provision of infrastructure, including Trunk Infrastructure.
- D. The Developer will provide Trunk Infrastructure Contributions in accordance with this agreement as part of its development of the Land.
- E. The Parties have voluntarily agreed to enter into an infrastructure agreement, and have negotiated the terms of this agreement in good faith.
- F. This agreement sets out the terms of the agreement reached between the Parties.

The Parties agree:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this agreement, unless inconsistent with the context or subject matter:

- (1) **Adopted Resolution** means Redland City Council Adopted Infrastructure Charges Resolution (No. 2.2) 2015, which took effect on and from 24 September 2015. For clarity, 'Adopted Resolution' does not include any changes to this resolution, nor any resolution or other instrument that replaces this resolution.
- (2) **Approved Plans** means the plans referred to in an Infrastructure DA.
- (3) **Authorised Person** means:
 - (i) for the Council, an officer of the Council authorised pursuant to section 202 of the *Local Government Act 2009* to exercise the powers of the Council under a Planning Instrument, Adopted Resolution or this agreement;

- (ii) for the MEDQ, the MEDQ, the chief executive officer of the MEDQ and any lawful delegate of the MEDQ.
- (4) **Business Day** means a day that is not a Saturday or Sunday or a public holiday in Brisbane and no days after 24 December and before 2 January.
- (5) **Charges Notice** has the meaning given to it in section 676 of the SPA.
- (6) **Chief Executive Officer** means the Council's Chief Executive Officer at a relevant time, or any person the Chief Executive Officer authorises in writing, by way of delegation pursuant to the *Local Government Act 2009*, to exercise his or her responsibilities for a purpose relating to this agreement.
- (7) **Clause** means a numbered Clause, sub-Clause or paragraph of this agreement, whether referred to individually or collectively.
- (8) **Commencement Date** means the date stated in Item 1 of Schedule 1.
- (9) **Conditions of Approval** means the conditions contained in a Development Approval.
- (10) **Council** means the Redland City Council ABN 86 058 929 428 and includes its predecessors, successors, transferees and assigns.
- (11) **Council's Agents** includes Council's elected members, officers, servants, employees, contractors and subcontractors, and agents and servants of the Council's contractors and subcontractors.
- (12) **Defect Notice** means a notice given under Clause 11.8(2) or Clause 11.9(2).
- (13) **Demand** means the expected level of demand for the Council's Trunk Infrastructure networks generated by the Development of the Land under the Development Agreement, as measured by equivalent persons calculated in accordance with the Council's Priority Infrastructure Plan. For clarity, the Demand generated by the Development of the Land under the Development Agreement has been calculated, at the Commencement Date, based on the Initial Yield.
- (14) **Developed Lot** means a lot in the Land that is created in accordance with a Development Approval and in respect of which no further Development is intended to be carried out (other than the construction of a detached dwelling if permitted under a Development Approval or a Planning Instrument).
- (15) **Developer** means the person or entity described in Item 5 of Schedule 1 and includes:
 - (i) successors and permitted assigns in the case of a corporation, association or other body whether incorporated or not; and
 - (ii) executors, administrators and permitted assigns in the case of a natural person.
- (16) **Developer's Agents** includes the Developer's directors, shareholders, employees, officers, agents, servants, employees, contractors and subcontractors.
- (17) **Developer Obligations** means all obligations of the Developer pursuant to and identified in this agreement, including the Maintenance Obligations.
- (18) **Development** has the meaning in section 7 of the SPA.
- (19) **Development Agreement** means the agreement entered into between the Parties and other persons with respect to the development of land in and adjacent to the PDA.

- (20) **Development Approval** means a PDA development approval or a SPA development approval within the meanings in the EDA.
- (21) **EDA** means the *Economic Development Act 2012*.
- (22) **Endorsement** means, when used in reference to a Plan of Subdivision, the notation of the compliance assessor's approval on the Plan of Subdivision following compliance assessment as required by section 19 and Schedule 19 of the *Sustainable Planning Regulation 2009*, as applied by section 104 of the EDA
- (23) **Event of Default** means an event identified in Clause 15.1 of this agreement.
- (24) **Excluded Loss** means:
- (i) loss arising from special circumstances;
 - (ii) special or indirect loss or damage;
 - (iii) loss of production, use, business opportunity, profit or revenue; and
 - (iv) consequential loss.
- (25) **Force Majeure** means an event:
- (i) that is:
 - A. an act of God, such as a storm surge, storm, lightning, flood, earthquake, tempest, or fire;
 - B. a terrorist act, sabotage, war, protest blockade or riot; and
 - C. an industrial dispute that is not within the control of the Party claiming Force Majeure; and
 - (ii) which could not have been prevented by the exercise by a person of a standard of foresight, care and diligence consistent with that of a prudent and competent person under the circumstances.
- (26) **Independent Certifier** means the person appointed by the Council, the MEDQ and the Developer from time to time as independent certifier for the purposes of the Development Agreement.
- (27) **Infrastructure Charge** means a charge that, under the EDA or the SPA or a Development Approval, is imposed on the Development of the Land as a financial contribution to Trunk Infrastructure.
- (28) **Infrastructure DA** means a Development Approval that authorises Works and/or a reconfiguration of lot required for a Land Dedication.
- (29) **Initial Yield** means the following yield:
- | | |
|---|--------------------------|
| Apartments: | 3,277 dwellings |
| Residential Lots: | 161 lots |
| Hotel: | 157 room / 5,192 sqm GFA |
| convention space. | |
| Retail (including inside New Ferry Terminal): | 5,620 sqm GFA |
| Commercial: | 2,495 sqm GFA |
| Marina Berth: | 342 berths in marina lot |
- (30) **Insolvency Event** has the meaning given in the Development Agreement.

- (31) **Land** means:
- (i) the PDA Land; and
 - (ii) any other land required for a Trunk Infrastructure Contribution under this agreement.
- (32) **Land Dedication** means Land to be dedicated to the Council by the Developer as part of a Trunk Infrastructure Contribution.
- (33) **Law** means any statute, regulation or subordinate legislation of the Commonwealth, the State of Queensland or local or other government in force in the State of Queensland, irrespective of where enacted.
- (34) **Local Law** has the meaning given in the *Local Government Act 2009*, and includes all local law policies made under a Local Law and all approvals granted under a Local Law.
- (35) **Maintain** includes the repair, maintenance, correction, re-establishment or replacement of the Trunk Infrastructure so it is free from defects, and includes any Rectification Works as may be required.
- (36) **Maintenance Bond** means a Security required to be provided to the Council under this agreement to secure the Developer's compliance with Maintenance Obligations.
- (37) **Maintenance Obligations** are the obligations of the Developer identified in Clause 11.6 of this agreement.
- (38) **Maintenance Period** means, for Trunk Infrastructure Works, the period that:
- (i) begins when Trunk Infrastructure is accepted by Council 'on maintenance' pursuant to Clause 11.5 or certified by the Independent Certifier under Clause 11.2;
 - (ii) is the minimum period specified in Item 16 of Schedule 1 plus any extension pursuant to Clause 12; and
 - (iii) ends on the date Council issues an Off-maintenance Certificate pursuant to Clause 13.2.
- (39) **Master Plan** means the master plan for the Development of the Land, which is established and amended from time to time under the Development Agreement.
- (40) **New Ferry Terminal** means the component of the Trunk Infrastructure Contributions identified in Schedule 2 as the 'New Ferry Terminal', including the associated, loading ramps, marine infrastructure, road connections, bus interchange, ticket office, operator facilities and commercial space, and information centre.
- (41) **Notice** means any certificate, demand or notice to be made, given or served by a Party under this agreement.
- (42) **Offset** means an off-set that the Developer is entitled to apply under Clause 5.7.
- (43) **Off-Maintenance** means the end of the Maintenance Period as determined under Clause 13.
- (44) **On-Maintenance Certificate** means a certificate issued by the Council under Clause 11.4(3) or by the Independent Certifier under Clause 11.2.
- (45) **Open Space** means land for public parks and community facilities.

- (46) **Owner** means the registered owner of Land and includes its predecessors, successors, transferees and assignees.
- (47) **Parties/Party** means the parties/a party to this agreement.
- (48) **PDA** means the Toondah Harbour priority development area under the EDA.
- (49) **PDA Land** means the land that, at the Commencement Date, is in the PDA and is the subject of rights and obligations under the Development Agreement.
- (50) **Planning Instrument** means:
- (i) a planning instrument under the SPA; and
 - (ii) a development scheme under the EDA.
- (51)
- (52) **PPI** means the means the Producer Price Index: General Construction Index for Road and Bridge Construction (4121) Queensland Series ID: A2333727L, published by the Australian Bureau of Statistics or if that index is no longer published, then an index which in the Council's reasonable opinion is a similar index.
- (53) **Priority Infrastructure Plan** means the priority **infrastructure** plan of the Council.
- (54) **Reclaimed Land** means Land that is reclaimed by the Developer in accordance with the Development Agreement and that, following the reclamation, will not be inundated land.
- (55) **Rectification Works** means the physical works, site works, design work, professional services and other activities and actions carried out or procured by the Council for any of the following:
- (a) to remedy a failure by the Developer to comply with Maintenance Obligations;
 - (b) to rectify any works done in respect of, or in purported compliance with, the Maintenance Obligations;
 - (c) to mitigate the effects of any failure to comply with the Maintenance Obligations;
 - (d) to fulfil any Developer Obligations under this agreement which have not been performed in accordance with this agreement;
 - (e) testing and commissioning of any works described above; and
 - (f) the compilation of 'as constructed' information with respect to any Works or other Rectification Works.
- (56) **Related Entity** has the same meaning as in the Development Agreement.
- (57) **RPEQ** means a Registered Professional Engineer of Queensland being an engineer registered as a Registered Professional Engineer of Queensland with the Board of Professional Engineers of Queensland in accordance with the *Professional Engineers Act 2002* (Qld).
- (58) **Schedule** means a schedule to this agreement.
- (59) **Schedule of Plans** means the plans which identify the Trunk Infrastructure, as referenced in Item 9 of Schedule 1.

- (60) **Security** means a security provided to the Council by the Developer under Clause 3.1 to ensure the performance of relevant Developer Obligations, including the Maintenance Obligations.
- (61) **Shortfall** means any difference between the Security and any cost, expense, loss or damage incurred by the Council, or which is likely to be incurred by the Council, as a consequence of exercising its rights to rectify a default to which the Security relates (but excluding any cost, expense, loss or damage to the extent that is it caused or contributed to by the Council's or the MEDQ's act or omission, and excluding any Excluded Loss).
- (62) **SPA** means the *Sustainable Planning Act 2009* (Qld).
- (63) **Stage** means a stage in the Development of the Land identified in a staging plan described or approved under Clause 7.2.
- (64) **Subdivision Plan** has the meaning given to it in the *Sustainable Planning Regulation 2009*.
- (65) **Trunk Infrastructure** has the meaning in the SPA.
- (66) **Trunk Infrastructure Contribution** means Trunk Infrastructure that the Developer must contribute under this agreement.
- (67) **Variation** means a change to the New Ferry Terminal Works requested by the Council under Clause 10.
- (68) **Variation Costs** has the meaning given to that term in clause 10.8.
- (69) **Work Contract** means a contract for the carrying out of Works.
- (70) **Works** means all work reasonably necessary or reasonably required to construct or provide the Trunk Infrastructure Contributions.
- (71) **Works Cost** means the cost of Works as determined under Clause 5.5.
- (72) **Works Proposal** means the written notice to be given by the Developer to the Council under Clause 5.6.

1.2 Interpretation

In this agreement, unless inconsistent with the context or subject matter:

- (1) a reference to a person includes any other legal entity;
- (2) a reference to a legal entity includes a person;
- (3) words importing the singular number include the plural number;
- (4) words importing the plural number include the singular number;
- (5) the masculine gender must be read as also importing the feminine or neuter gender;
- (6) a reference to a Party includes the Party's heirs, executors, successors and permitted assigns;
- (7) headings are for reference purposes only and must not be used in interpretation;
- (8) where any word or phrase is given a defined meaning any other part of speech or other grammatical form concerning the word or phrase has a corresponding meaning;

- (9) a reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or other statutory instrument issued under it;
- (10) references to writing include any mode of representing or reproducing words in tangible and permanently visible form, and includes e-mail and fax;
- (11) a reference to a monetary amount is a reference to an Australian currency amount;
- (12) an obligation of two or more Parties binds them jointly and each of them severally;
- (13) an obligation incurred in favour of two or more Parties is enforceable by them severally;
- (14) a government department or any other government entity (the "First Government Entity") includes a reference to any other department or other government entity established or constituted in lieu of the First Government Entity and with as nearly as possible, the powers and responsibilities of the First Government Entity;
- (15) references to time are to local time in Queensland;
- (16) where time is to be reckoned from a day or event, the day or the day of the event must be excluded;
- (17) if any time period specified in this agreement expires on a day which is not a Business Day, the period shall expire at the end of the next Business Day;
- (18) a reference to a month means a calendar month; and
- (19) all schedules and attachments to this agreement form part of this agreement.

1.3 Other expressions

If a term is not defined in this agreement it shall, unless the context otherwise requires, have the meaning given to it by the following, in the following sequence:

- (1) the Development Agreement;
- (2) the Adopted Resolution;
- (3) the EDA or the SPA;
- (4) an applicable Planning Instrument;
- (5) the Macquarie Dictionary; or
- (6) the common understanding of the term or expression in the absence of any other applicable definition.

2. INFRASTRUCTURE AGREEMENT

2.1 Application of the SPA and EDA

This agreement is intended to constitute an infrastructure agreement pursuant to the SPA and the EDA.

2.2 Commencement

This agreement commences on the Commencement Date.

2.3 Agreement to bind successors in title

- (1) It is the intention of the Parties that the Developer Obligations under this agreement will attach to the Land and be binding on the Owner of the Land and any successors in title of the Land or any part of the Land in accordance with section 674 of the SPA.
- (2) A change in the ownership of the Land or part of the Land will not affect the Parties' obligations under this agreement, other than as expressly stated in this agreement.
- (3) To be clear, and subject to any agreement between the parties to the contrary (including in any deed contemplated by Clause 20.2):
 - (i) the obligations of the Developer under this agreement are binding on; and
 - (ii) the rights of the Developer under this agreement benefit and may be exercised by,

any person carrying out Development of the Land, to the extent that the obligations or rights are relevant to the Development of that Land.
- (4) However, nothing in this Agreement requires the MEDQ to carry out obligations of the Developer despite being an Owner of PDA Land.

2.4 Owner's consent

The Parties acknowledge and agree that:

- (1) the Developer is not the Owner of the Land;
- (2) to the extent that the MEDQ and the Council are the Owners of the Land, they consent to the Developer Obligations being attached to the Land; and
- (3) to the extent that the MEDQ and the Council are not the Owners of the Land, the MEDQ and the Council will procure at their expense all necessary consents to this agreement of their respective Related Entities that are Owners of the Land.

2.5 Relationship of Parties

The Parties acknowledge and agree that:

- (1) the Developer will be required to obtain a number of Development Approvals before carrying out the Works; and
- (2) Development Approvals in relation to PDA Land will be granted by the MEDQ under the EDA and Development Approvals for other Land will be granted by the Council.

2.6 Cessation of PDA

To the extent that part of the PDA Land is located within a priority development area under the EDA, if that Land ceases to be within a priority development area under the EDA, and the MEDQ has elected not to continue to be a Party to this agreement, then:

- (1) this agreement will continue in force in accordance with the EDA; and
- (2) the Parties must negotiate in good faith to agree any changes that are reasonably required to this agreement as a result of the cessation.

2.7 No Fettering and obligation to act reasonably

- (1) The Developer acknowledges that this agreement does not in any way fetter or restrict the lawful exercise or performance by the Council or the MEDQ of their statutory functions or powers under an Act.
- (2) Subject only to Clause 2.7(1) and to any express provision in this agreement to the contrary, where a party is required to make a decision or give an approval under this agreement, the party must:
 - (i) act reasonably in making the decision or giving the approval;
 - (ii) make the decision or give the approval as promptly as reasonably practicable;
 - (iii) where appropriate, consult with the other parties before making the decision or giving the approval;
 - (iv) only impose reasonable conditions on the decision or approval; and
 - (v) notify the other parties of the decision or approval and any conditions as promptly as reasonably practicable.
- (3) Subject to any express provision in this agreement to the contrary, if a thing is required or permitted to be done under this agreement and no specific process is provided under the agreement, the parties must act reasonably and cooperate to do the thing as quickly and efficiently as reasonably practicable.

2.8 Extinguishment or modification of development rights

- (1) If:
 - (i) the development entitlements for the Land are affected by changes to Planning Instruments; and
 - (ii) this agreement does not already provide for a change in the obligations of the Parties resulting from those changes,

the Parties must negotiate in good faith to determine the extent to which those obligations should be changed or cancelled because of the change in the development entitlements.
- (2) The Parties must prepare and execute promptly, after they reach agreement, a deed varying this agreement, to give effect to what they have agreed.
- (3) For clarity:
 - (i) Clause 25.16 does not apply to any dispute that arises under this Clause; and
 - (ii) this Clause does not require a Party to enter into a document other than on terms that are satisfactory to it in its absolute discretion.

2.9 Agreement prevails to extent of inconsistency

If this agreement is inconsistent with any Development Approval for the Land, or a Charges Notice for the Land, this agreement prevails to the extent of inconsistency.

2.10 Provision of Security

A Security required by this agreement must be given to the Council by the Developer in the following form:

- (1) money; or
- (2) an unconditional, non-lapsing and irrevocable banker's or insurance company's undertaking in favour of the Council which is:
 - (i) in a form and on terms approved by the Chief Executive Officer acting reasonably;
 - (ii) given by a financial institution approved by the Chief Executive Officer acting reasonably ; and
 - (iii) clearly given in respect of obligations under this agreement.

2.11 Relationship to Development Agreement, termination rights and other obligations

Notwithstanding any other provision of this agreement or any Party's rights under a Law, including without limitation in respect of any Event of Default:

- (1) if the Development Agreement comes to an end and the Developer has not carried out any Development of the Land then any party may terminate this agreement;
- (2) if the Development Agreement comes to an end but the Developer has continuing rights to Develop some Land then the parties must negotiate in good faith to determine whether the Developer's obligations under this agreement :
 - (i) should be changed or cancelled having regard to whether another person will be Developing other Land; or
 - (ii) clearly apportioned between the Land to be Developed by the Developer and the other Land,

and the Parties must prepare and execute promptly, after they reach agreement, a deed varying this agreement, to give effect to what they have agreed; and
- (3) if the Development Agreement has come to an end and the Developer has ceased to have any continuing rights to Develop Land then the Council and MEDQ, but not the Developer, may elect to terminate this agreement.
- (4) For clarity:
 - (i) Clause 25.16 does not apply to any dispute that arises under this Clause; and
 - (ii) this Clause does not require a Party to enter into a document other than on terms that are satisfactory to it in its absolute discretion.

2.12 Schedule 3

Despite anything else in this agreement, the Parties agree that:

- (1) they will comply with and perform Schedule 3; and
- (2) to the extent of any inconsistency between Schedule 3 and the balance of this agreement, the provisions of Schedule 3 prevail,

3. PAYMENT OF SECURITY

3.1 Obligation to provide Security

The Developer must provide Security to the Council only in these circumstances:

- (1) for the completion of Works, in accordance with Schedule 1 Item 14; and
- (2) for Maintenance Obligations in accordance with Schedule 1 Item 15.

Where Security is required to be provided, the amount of the Security must be in accordance with the Council's planning scheme policies.

3.2 Council's right of recourse to Security

If the Developer defaults in its obligation in respect of Works or Maintenance Obligations for which Security has been provided and the Developer does not commence to rectify such default within 20 Business Days of notice from the Council the Council may, acting reasonably:

- (1) draw upon and have recourse to the Security in accordance with Clause 3.5; and
- (2) apply the Security in accordance with Clause 3.5 to remedy the default.

3.3 Request for Release of Security

The Developer may apply to the Council in writing for the return of a Security:

- (1) in the case of Security provided under Clause 3.1(1), when the Developer has duly fulfilled the Developer Obligations for which the Security is given; and
- (2) for a Maintenance Bond, at the conclusion of the timeframe identified in Schedule 1 Item 16; or
- (3) upon an assignment having been undertaken by the Developer in compliance with Clause 20.

3.4 Release of Security

- (1) Subject to Clause 3.4(2), the Council shall release and return to the Developer a Security, or any remaining balance of the Security as the case may be:
 - (i) for a Security provided under Clause 3.1(1), within ten (10) Business Days of the date when an On-Maintenance Certificate issues under Clause 11.2 or under Clause 11.4(3) and any required Maintenance Bond for those Works has been provided;
 - (ii) in the case of a Maintenance Bond, within ten (10) Business Days of the end of the Maintenance Period; or
 - (iii) within ten (10) Business Days of the Developer having complied with Clause 20,as applicable.
- (2) A Security will not be released by the Council if the Security relates to Trunk Infrastructure accepted "on maintenance" and a Maintenance Bond is required and has not been provided.

3.5 Application of money

In exercising its rights under this agreement, the Council may apply a Security to any Shortfall or towards any reasonable cost or expense incurred by the Council to rectify the default relevant to the Security, comprising all or any of the following:

- (1) carrying out the Maintenance Obligations or Rectification Works;

- (2) rectifying any breach of warranty;
- (3) carrying out, whether inside or outside or partly inside or partly outside the perimeter of the Land, such other work (including without limitation any addition or extension to the Trunk Infrastructure Contributions) or activity as the Council reasonably considers necessary to:
 - (i) mitigate the effects of any failure to comply with the Maintenance Obligations; or
 - (ii) make such uncompleted, improperly completed, inefficient or poorly functioning Trunk Infrastructure Contributions in the opinion of the Authorised Person more effective or useful;
- (4) paying for, or reimbursing itself for, all reasonable costs and expenses directly incurred by the Council as a consequence of a default to which the Security relates, including, but not limited to, the following:
 - (i) the acquisition of any land or easements from a person who is not the Council, a Related Entity of the Council or MEDQ and which may be required for the Trunk Infrastructure Contributions, including any compensation as may be payable to the landowner, and the costs of and incidental to the preparation of registrable instruments, duty and registration fees;
 - (ii) any works, material or services reasonably necessary for the provision of the Trunk Infrastructure Contributions;
 - (iii) the preparation of the detailed engineering design and specifications, and any ancillary documentation directly associated with the preparation of same;
 - (iv) obtaining any / all necessary development approvals required in order to provide and construct the Trunk Infrastructure Contributions;
 - (v) the purchase and the delivery of materials required in order to facilitate the provision of the Trunk Infrastructure Contributions;
 - (vi) financing the construction of the Trunk Infrastructure Contributions, including interest charges arising from the cost of finance;
 - (vii) all work reasonably required to facilitate the construction of the Trunk Infrastructure Contributions;
 - (viii) direct job costs incurred by the Council, such as supervision and management costs, investigation costs and specialist consultant fees and charges; and
 - (ix) administration costs and overheads;
 - (x) any third party costs or expenses, including costs of experts or consultants;
 - (xi) solicitor and barrister fees and costs, on a solicitor and own client basis;
 - (xii) costs of enforcement of the Developer's obligations; and
 - (xiii) any loss or damage incurred by the Council as a consequence of the default.

3.6 Security insufficient

Without limiting the Council's rights, if a Security is insufficient to rectify a default to which it relates, the Council may, at its election and in its sole discretion:

- (1) rectify the default, so far as the Security will allow;
- (2) rectify the default and recover any Shortfall from the Developer as a liquidated debt; or
- (3) take whatever steps reasonably required, including but not limited to, legal proceedings in any Court of competent jurisdiction, to compel the Developer to rectify the default.

3.7 Interest

If a Security consists of money, then:

- (1) the Council is not required to hold that Security in an interest bearing account;
- (2) if it does, any interest earned on the Security shall belong to the Council; and
- (3) if the Council holds the Security in an interest bearing or other deposit account it bears the risk of doing so.

4. INFRASTRUCTURE CHARGES

4.1 Levy of Infrastructure Charges

The Developer must pay Infrastructure Charges in respect of the Development of the Land calculated in accordance with this agreement and as follows:

- (1) in accordance with a condition of a Development Approval relating to the payment of Infrastructure Charges for the Development the subject of the approval; or
- (2) if the Development Approval for Development does not include a condition relating to payment of the Infrastructure Charges for the Development, in accordance with a notice given by the Council or the MEDQ or another authority requiring payment of the Infrastructure Charges in respect to the Development.

To be clear, the Developer is not required to pay Infrastructure Charges in an amount greater than that provided for in this agreement, or at a time different from that provided for in this agreement.

4.2 Calculation of Infrastructure Charge

- (1) An Infrastructure Charge payable by the Developer in respect of the Development of the Land will be calculated in accordance with the Adopted Resolution, regardless of the Planning Instruments, any changes to or replacement of the Adopted Resolution, or any provisions of the SPA or the EDA that are in force when the Development Approval that authorises the Development takes effect.
- (2) For clarity, Infrastructure Charges may only be indexed under Clause 4.3.

4.3 Automatic increase of Infrastructure Charges

An Infrastructure Charge payable by the Developer for Development of the Land will be indexed in accordance with the PPI from the Commencement Date to the date of payment or the date an offset is accrued in accordance with Clause 5. To be clear, the indexation applies from the Commencement Date irrespective of the date of the Development Approval for the Development.

4.4 Reduction of Infrastructure Charge by Offset

In return for providing a Trunk Infrastructure Contribution, the Infrastructure Charges payable by the Developer may, at the Developer's election, be reduced by an Offset calculated in accordance with this agreement.

4.5 Timing for payment of Infrastructure Charges

Subject to clause 5.7, the Developer must pay Infrastructure Charges at the latest of these times:

- (1) the time specified in a condition of a Development Approval referred to in clause 4.1(1);
- (2) the time specified in a notice referred to in clause 4.1(2);
- (3) for Development which is a material change of use of premises, the commencement of that use; and
- (4) for Development which is reconfiguration of a lot, when Endorsement of the relevant Subdivision Plan occurs.

5. OFFSETS FOR TRUNK INFRASTRUCTURE CONTRIBUTIONS

5.1 Calculation of Offset

An Offset must be determined and calculated in accordance with this Clause 5 for each Trunk Infrastructure Contribution by the Developer.

5.2 When Offsets apply

The Developer is entitled to Offsets for:

- (1) Trunk Infrastructure Contributions that are Works; and
- (2) Land that is transferred or surrendered to the State of Queensland, the MEDQ, the Council or a Related Entity of the Council for a Trunk Infrastructure Contribution, but only where the person giving the transfer or surrender is not the Council, the MEDQ or a Related Entity of the Council or the State of Queensland or a Related Entity of the State of Queensland.

5.3 When it accrues

The Developer accrues the Offsets for a Trunk Infrastructure Contribution when:

- (1) for Land transferred to the MEDQ, the Council, or a Related Entity of the Council, the instrument which transfers the land is delivered to the relevant transferee, or is registered in the Titles Registry following lodgement by or on behalf of the Developer; and
- (2) for Works, the Maintenance Period for the Works commences.

5.4 Calculation of an Offset

The Offset for a Trunk Infrastructure Contribution is the following amount:

- (1) for Land outside of the PDA Land purchased by the Developer, or acquired by the Council under clause 8.6, for the purpose of making a Trunk Infrastructure Contribution, the amount paid by the Developer:

- (i) as purchase price, duty, registration fees and survey fees and other external costs and expenses; or
 - (ii) to the Council under clause 8.6,
- in respect of the Land acquisition; and
- (2) for Works, the actual cost incurred by the Developer of carrying out the Works calculated in accordance with Clause 5.5.

5.5 Assessing the Works Cost

- (1) The Works Cost for Works is the total of the actual costs incurred by the Developer for the design and construction of the Works as determined by the Independent Certifier.
- (2) Assessment of the Works Cost by the Independent Certifier will include consideration of:
 - (i) the cost of planning and designing the Works;
 - (ii) the cost of survey and site investigation for the Works;
 - (iii) a cost under a Work Contract including but not limited to a variation requested by the Council;
 - (iv) a portable long service leave payment for a Work Contract;
 - (v) an insurance premium for the Works;
 - (vi) any fees payable to the Council or other authorities with respect to the Works, including but not limited to under this agreement;
 - (vii) reasonable supervision, co-ordination, project management and regulatory fees for the Works;
 - (viii) the cost of providing Security required under this agreement or an approval for the work; and
 - (ix) the cost of a Development Approval for the Works,

but does not include the actual cost of those items listed in Clause 5.5(3).
- (3) The Works Cost does not include:
 - (i) the costs of carrying out, decommissioning, removal and rehabilitation of temporary Works for the Developer's convenience and not forming part of the ultimate Trunk Infrastructure Contribution;
 - (ii) a part of the Works provided by the Council or a person other than the Developer;
 - (iii) the total value of the input tax credits that can be claimed by a Developer in respect of supplies that are part of the Works; or
 - (iv) any cost directly or indirectly attributable to:
 - A. the failure of the Developer to comply with an approval or this agreement; and
 - B. the Developer's negligent or wilful act or omission.

- (4) When Works are complete the Developer must give the Council a statement of the calculation of the Works Cost in accordance with this Clause 5.5 and provided in reasonable detail and certified by the Independent Certifier. The amount certified by the Independent Certifier shall be final and binding on the parties except in the case of manifest error.
- (4) The Council may give the Developer a Notice requiring the Developer to provide to the Council a document to enable the Council to determine the value of an Offset including:
 - (i) a Work Contract; and
 - (ii) copies of any invoices and receipts for payment of costs.
- (5) If, before an Offset has been set off under clause 5.7, the Council establishes that the statement provided by the Developer manifestly overstates the actual cost of the Works then the Council may give the Developer a notice stating that the Council has determined that the value of the Offset should be reduced by the amount of the error and the amount of any cost incurred by the Council engaging an expert to assist the Council to determine the actual cost of the Works.

5.6 Steps before Works

- (1) Before the Developer can commence Works to which an Offset applies the Council must have issued a Notice under Clause 5.6(3)(i), or be deemed to have given a notice under Clause 5.6(3)(i).
- (2) The Developer must give to the Council a Works Proposal comprising:
 - (i) design and specifications for the Trunk Infrastructure Contributions prepared in accordance with the Developer's obligations for the design and approval of the Works under Clause 6;
 - (ii) details of the proposed contractors to be used for the works; and
 - (iii) the terms of the proposed Work Contract.
- (3) Within 20 Business Days after receiving a Notice from the Developer under Clause 5.6(2), the Council must notify the Developer in writing that either:
 - (i) the Council has no objection to the Works Proposal, in which case the Works Proposal is accepted;
 - (ii) the Council objects to the Works Proposal and requires reasonable amendments; or
 - (iii) the Council acting reasonably requires more information in order to consider the Works Proposal.
- (4) If the Council does not give the Developer a notice under Clause 5.6(3) within the period specified by that Clause, then the Council is taken to have given a notice under Clause 5.6(3)(i).
- (5) If the Council gives a notice under Clause 5.6(3)(ii):
 - (i) the Council's notice must include reasonable details of the reasonable amendments required by the Council; and
 - (ii) the Developer may make the reasonable amendments and give the amended Works Proposal to the Council, and then Clauses 5.6(3) and 5.6(4) apply to

the amended Works Proposal but the notice period is reduced to 10 Business Days; or

- (iii) the Developer may elect to recommence the process under this Clause by giving the Council a new Works Proposal under Clause 5.6(2).
- (6) If the Council gives a notice under Clause 5.6(3)(iii), the Developer must promptly provide the requested information and may resubmit the Works Proposal to the Council. Clause 5.6(3) applies again to the resubmitted Works Proposal from the date on which the Developer has given all of the requested information.
- (7) The issuing of a notice under Clause 5.6(3) does not limit the obligations of the Developer under Clause 6.

5.7 Set-off against Infrastructure Charges

- (1) The Developer may set-off an Offset against Infrastructure Charges for the Development of the Land, at the time when the Infrastructure Charges are payable under this agreement.
- (2) If the Developer wants a set-off, the Developer must give to the Council a Notice stating:
 - (i) the Infrastructure Charges in respect of which an Offset is claimed; and
 - (ii) the amount of the Offset.

5.8 Limitations on an Offset

- (1) An Offset:
 - (i) can only be used and applied in accordance with this agreement;
 - (ii) which may be accrued is to be:
 - A. calculated and recorded in dollars; and
 - B. indexed in accordance with the movement in the PPI from the date it is accrued to the date that the Offset is set-off against Infrastructure Charges under Clause 5.7; and
 - (iii) may be used for or applied to any Infrastructure Charges in respect of the Land.
- (2) The Council cannot be required to redeem an accrued Offset by cash payment.
- (3) For clarity, nothing in this agreement limits the Developer's ability to apply an Offset accrued in relation to the provision of a Trunk Infrastructure Contribution in relation to one infrastructure network against Infrastructure Charges relating to another type of infrastructure network.

5.9 Offset register

- (1) The Council must keep a register for the purpose of keeping a true and accurate account of the accrual, set-off, allocation and redemption, if any, of Offsets and for this purpose the register will include the following information determined in accordance with this agreement:
 - (i) the original amounts of the Offsets and the dates they accrue;
 - (ii) the indexation of those Offsets; and

- (iii) the application of those Offsets to Infrastructure Charges.
- (2) The Developer may, but is not required to, give the Council a notice that:
 - (i) specifies the Land to which an Offset amount is allocated; and
 - (ii) changes an allocation under Clause 5.9(2)(i), however, if the Developer is not the owner of land to which an Offset is allocated, the allocation cannot be changed without the written consent of the owner.
- (3) If an Offset amount is allocated to particular land then that Offset amount may only be redeemed in respect of Infrastructure Charges that apply to the Development of that Land.
- (4) The Council must without undue delay comply with a Notice given by the Developer stating that the Developer or a person authorised in writing by the Developer wishes to:
 - (i) inspect the Offset register; and
 - (ii) obtain a copy of an extract from the register kept, free of charge.
- (5) The Developer must comply with a Notice given by the Council requiring the Developer to provide reasonable or relevant information for the purpose of enabling the Council to keep the Offset register.

6. TRUNK INFRASTRUCTURE CONTRIBUTIONS

6.1 Construction of Trunk Infrastructure Contributions

The Developer must provide the Trunk Infrastructure Contributions required by this agreement, at the time required by this agreement, and at the Developer's cost.

6.2 What are the Trunk Infrastructure Contributions

- (1) The Trunk Infrastructure Contributions are those
- (2) identified in Schedule 2 (but this is subject to Clauses 9.1 and 9.2). For clarity, Schedule 2 indicates the nature of the Trunk Infrastructure Contributions and their timing, but does not provide precise details of how they will be delivered. For example, the Trunk Infrastructure Contributions may be delivered in stages as the Development of the Land progresses, as approved by the Council through Works Proposals under Clause 5.6.

6.3 Timing

- (1) The Developer must provide the Trunk Infrastructure Contributions at the times specified in Schedule 2.
- (2) For clarity, nothing in this agreement requires the Developer to provide the Trunk Infrastructure Contributions if the Developer is not undertaking the corresponding Development of the Land.

6.4 Design Requirements

Each Trunk Infrastructure Contribution must be designed in accordance with:

- (1) for Open Space for which there are design specifications and requirements in the Master Plan, those specifications and requirements; otherwise

- (2) the Council's Planning Instruments applicable at the time the Trunk Infrastructure Contribution is to be provided; and
- (3) for any revetment wall or other marine structure, as reasonably required by the Council.

6.5 Submission of designs and specifications

The Developer must:

- (1) prepare at its own cost all designs and specifications for the Trunk Infrastructure Contributions, which are certified by an RPEQ (where applicable), including but not limited to, the specification of all earthworks, and the final design and specification for the Trunk Infrastructure Contributions; and
- (2) submit the design and specifications to Council for approval as part of a Works Proposal under Clause 5.6.

6.6 Approvals for Trunk Infrastructure Contributions

- (1) Prior to commencement of construction of the Trunk Infrastructure Contributions, the Developer must obtain all necessary Infrastructure DAs and other approvals or permits required by Law or a Planning Instrument for the Trunk Infrastructure Contributions and any Works.
- (2) The Trunk Infrastructure Contributions and any Works must be constructed in accordance with the relevant Infrastructure DAs and other approvals or permits, and any condition of any Development Approval relevant to the provision of the Trunk Infrastructure Contributions.

6.7 Construction of Trunk Infrastructure Contributions

Without limiting the Developer's obligations under this agreement or otherwise, the Developer must:

- (1) provide the Trunk Infrastructure Contributions and carry out the Works:
 - (i) in a proper and workmanlike manner in accordance with the Approved Plans and specifications and:
 - A. applicable legislative requirements;
 - B. applicable codes of practice;
 - C. applicable Australian standards; and
 - D. the requirements of the applicable Planning Instruments, including Planning Scheme Policy 9 – Infrastructure Works – Chapter 5 – Road and Path Design;
 - (ii) with due diligence and without undue delay;
 - (iii) using its reasonable endeavours to provide the Trunk Infrastructure Contributions and complete the Works within the timeframe stipulated by this agreement; and
 - (iv) with the standard of skill, care and diligence that would be expected of a provider of work and services of a nature similar to the Works; and
- (2) ensure that all registrations, permits, licences, qualifications and other requirements of its trade are in full force and effect at all relevant times.

6.8 Final Specification of Trunk Infrastructure Contributions and Works

- (1) The Trunk Infrastructure Contributions must be provided and the Works done to the satisfaction of the Council, as the case may be, acting reasonably, in the interpretation and application of this Clause:
 - (i) it is recognised that some provisions of this agreement do provide a particular specification for the Works and, in some cases do show diagrammatically and in an indicative way the location of the Works on plans or diagrams;
 - (ii) a specification or location has been determined on the basis of present knowledge and expectation as to circumstances which will prevail at the time the Works are to be carried out; and
 - (iii) the circumstances actually prevailing at the relevant time may result in it being necessary or appropriate to adopt a different specification or vary the location for the final design or performance of the Works.
- (2) The inclusion of a particular specification in this agreement or the depiction of the location of the Trunk Infrastructure Contributions or Works on a plan within this agreement does not prevent the Developer from seeking approval for an altered specification or location, and does not prevent the Council from giving approval where an alteration is necessary or appropriate having regard to the circumstances prevailing at the relevant time.

7. TIMING FOR TRUNK INFRASTRUCTURE CONTRIBUTIONS

7.1 Explanation

- (1) Most of the Trunk Infrastructure Contributions will be provided by the Developer when the Developer carries out a relevant Stage of the Development of adjacent Land in accordance with the staging plan.
- (2) Some Trunk Infrastructure Contributions must be provided within specific time periods or at specified thresholds of Development, as set out in Schedule 2.

7.2 Staging plan

- (1) Before commencing and at all times during the Development of the Land the Developer must have a staging plan that:
 - (i) shows the Land divided into Stages for the Development of the Land by:
 - A. the creation of lots for Development; and
 - B. the location of the Trunk Infrastructure Contributions and Stage boundaries that include the Open Space Trunk Infrastructure Contributions and proportionate parts of the Land that will result in those contributions being provided in a rational and efficient way;
 - (ii) is consistent with the Master Plan; and
 - (iii) is consistent with the current Development Approvals for the Land.
- (2) To the extent that Stages are shown on the Master Plan, the component of the Master Plan that shows the Stages is the staging plan. If the Master Plan does not show Stages, the Developer must have a staging plan that is approved by the Council.
- (2) The Developer may not apply for a Development Approval that will be inconsistent with the staging plan without the prior approval of the Council to the changes that will

be required to the staging plan because of the Development Approval, if it is granted. The Council will approve the changes if the new staging plan will comply with the requirements in Clause 7.2(1).

7.3 Development to reflect staging plan

The Developer must Develop the Land and provide the Open Space Trunk Infrastructure Contributions consistently with the staging plan.

8. LAND DEDICATION AND EASEMENTS

8.1 Developer to dedicate land to the Council

This Clause applies only to any land that is not public use land or held by the Council or the MEDQ.

The Developer must transfer or grant or dedicate or procure the transfer or grant or dedication:

- (1) to the Council as an estate in fee simple (or any other form of tenure acceptable to the Council, acting reasonably) any land that is:
 - (i) the subject of a Trunk Infrastructure Contribution that is Open Space; or
 - (ii) any land containing any sewer pumping station provided as a Trunk Infrastructure Contribution;
- (2) to the Council easements over any land as required for the Trunk Infrastructure Contributions that are stormwater infrastructure, water supply or sewer network; and
- (3) roads that are Trunk Infrastructure Contributions.

However, the Council may instruct the Developer that Open Space Land is to be transferred to another person and then this Clause will apply as if the other person is the Council.

8.2 Transfer of land

Where land is required to be transferred to the Council pursuant to this agreement, the Developer must, at the Developer's expense:

- (1) arrange for the transfer to the Council of the land; and
- (2) deliver to the Council the stamped transfer instrument for the land within the required timeframe.

The transfer instrument must be capable of immediate registration.

8.3 Cost of transfer

The Developer must bear all costs of and incidental to arranging and effecting the transfer, including:

- (1) the price, if any, payable to the transferor in return for the transfer;
- (2) the duty payable on the transaction;
- (3) the registration fees; and
- (4) all expenses that the Council reasonably incurs.

8.4 Grant of easement for Trunk Infrastructure

Where an easement is required by the Council for Trunk Infrastructure located in land that is not public use land or held by the Council or the MEDQ, the Developer must grant, or procure the grant of, an easement to the Council:

- (1) at no cost to the Council;
- (2) on terms, and in a location, satisfactory to the Council;
- (3) with sufficient dimensions to accommodate the Trunk Infrastructure; and
- (4) in accordance with any condition of the Infrastructure DA or applicable Planning Instrument.

8.5 Acknowledgement

The Council and the MEDQ acknowledge that the Development Agreement includes obligations for the owners of the PDA Land and other Land to give transfers, easements and other instruments that the Developer is required to procure under this Clause.

8.6 Compulsory acquisition

Despite anything else in this agreement, if land required for Trunk Infrastructure Contributions is located outside the PDA Land or is land that is not public use land or held by the Council, the MEDQ or the Developer:

- (1) the Developer must use reasonable endeavours to procure relevant rights to use, occupy or transfer the land, as applicable, in order to carry out its obligations under this agreement;
- (2) if the Developer cannot secure those rights at a reasonable cost and within a reasonable timeframe (determined by the Developer, acting reasonably), the Developer may request the Council to exercise its powers as a constructing authority to compulsorily acquire the rights; and
- (3) if the Developer makes a request under Clause 8.6(2), the Council must, if it is lawful to do so, undertake all necessary steps to compulsorily acquire the relevant rights, as promptly as reasonably practicable and the Developer must pay the Council the costs, expenses and compensation incurred by the Council carrying out and as a consequence of the compulsory acquisition.

9. CHANGES TO TRUNK INFRASTRUCTURE CONTRIBUTIONS

9.1 Explanation for this Clause

- (1) The extent of the Land available for Development is not determined at the date of this agreement and will depend on the satisfaction of conditions in the Development Agreement.
- (2) At the date of this agreement the proposed Development is shown in the initial Master Plan included in the Development Agreement.
- (3) If the Master Plan is changed under the Development Agreement then the Trunk Infrastructure Contributions may be changed for the following reasons:
 - (i) the area of Reclaimed Land outside of the PDA Land may be changed and that will change the Open Space Trunk Infrastructure Contribution provided for in Schedule 2; and

- (ii) the area of Reclaimed Land within the PDA Land may change and that may increase or decrease the Demand created by the Development of the Land.
- (4) The Trunk Infrastructure Contributions required for water and sewer, stormwater and roads and transport may be affected by a change in Demand resulting from a change in the area of Reclaimed Land.

9.2 Change in Demand from initial reclamation

If the area of the Reclaimed Land changes then the Council and the Developer must agree the extent to which the expected Demand from the Development of the Land will change and the consequential changes to the Trunk Infrastructure Contributions required under this agreement.

9.3 Increase in Demand

- (1) Subject to Clause 9.3(2), if the Planning Instruments with respect to the Land change and that will increase the yield of the Land above the Initial Yield of the Land, and hence increase the total Demand, then Development Approvals for the Land that authorise Development that results in the increase of the total Demand from that based on the Initial Yield, may include conditions for the provision of additional Trunk Infrastructure required because of the increase in Demand authorised by those Development Approvals.
- (2) To be clear:
 - (i) a Development Approval does not result in an increase in total Demand from that based on the Initial Yield unless earlier Development Approvals authorised Development to extent of the total Demand (based on the Initial Yield) permitted before the change in the Planning Instruments;
 - (ii) this Clause 9.3 does not apply if the Parties have varied this agreement under Clause 2.8 to take into account the potential change in Demand from the change to the Planning Instruments; and
 - (iii) Trunk Infrastructure which is required to be provided by a condition referred to in Clause 9.3(1) is not a Trunk Infrastructure Contribution, unless the parties agree that this is the case, and make all necessary changes to this agreement to reflect that.

10. VARIATIONS TO NEW FERRY TERMINAL WORKS

10.1 The Council may request Variations

The Council may, by written notice to the Developer, ask for Variations to the New Ferry Terminal Works. The Variations may include the construction of a multi-deck car park in place of or in addition to proposed on-grade car parks.

10.2 When the Developer may refuse Variations

The Developer may refuse the requested Variations only if:

- (1) the Variations would materially and negatively affect the ability of the Developer to develop Private Works according to the Master Plan; or
- (2) the Developer reasonably believes it will be unable to obtain Development Approvals needed for the Variations.

10.3 Response to Council's request

If the Council requests a Variation under this Clause 10 then the Developer must, within 15 Business Days after receipt of the Council's request, either:

- (1) notify the Council that the Variation is refused under clause 10.2, giving reasons in reasonable detail; or
- (2) give the Council a statement specifying the Developer's preliminary estimate of:
 - (i) the period by which the New Ferry Terminal Works may be delayed, if any; and
 - (ii) the cost or saving (including all time-related costs, if any) of the Variation, as a direct result of the Variation.

10.4 Council's response

Within 15 Business Days after receipt of a statement from the Developer under clause 10.3(2), the Council must notify the Developer that it either wants to proceed to further negotiate the Variation or elects to withdraw the Variation request.

10.5 Developer's further statement

If the Council gives notice under clause 10.4 electing to proceed to further negotiate the Variation request then:

- (1) the Developer must obtain from the Independent Certifier and give to the Council a statement estimating:
 - (i) the period by which the New Ferry Terminal Works will be delayed, if any;
 - (ii) the cost or savings (including all time-related costs, if any) of the Variation; and
 - (iii) if requested by the Council in the notice, a detailed quotation for the Variation supported by measurements or other evidence of cost,as a direct result of the Developer procuring the Variation; and
- (2) the Council and the Developer must negotiate to agree the funding of the Variation Cost through:
 - (i) Offsets, for the Variation Cost or a part of it, but with agreement that those Offsets are to be indexed in accordance with the funding cost applying under the Development Agreement for the calculation of "DCIC" in accordance with that agreement; and
 - (ii) payments from the Council on completion of the Variation Works to the extent that Variation Costs are not to be subject to Offsets.

The Council and Developer must prepare and execute promptly, after they reach agreement, a deed varying this agreement, to give effect to what they have agreed with respect to the Variation.

10.6 Council's election

Following the provision of the statement and agreement on funding under clause 10.5, the Council must notify the Developer that it:

- (1) requires the Developer to carry out the Variation, in which case the Developer must carry out the Variation in accordance with this agreement; or
- (2) has elected to withdraw the Variation request.

If the Council fails to give the Developer a notice within the time required under this Clause then the Variation is not to be carried out, but the Council may subsequently re-issue a request for the Variation in which case this Clause 10 will apply to the new request.

10.7 If the Variation is to be carried out

If the Council and the Developer reach agreement under clause 10.5 then the Developer must carry out the Variation.

10.8 Amount of Variation Costs

For the purpose of this agreement, the Variation Costs for a Variation means the net additional construction and other costs the Developer directly, necessarily and reasonably incurs because of the Variation, which are substantiated to the Council and certified by the Independent Certifier and calculated on the following basis:

- (1) the costs payable to the Developer's consultants for design and approval work;
- (2) if a contract exists for the New Ferry Terminal Works, the requirements of that contract; and
- (3) a margin of 10% for preliminaries, profit and overhead,

but the Variation Costs must not include any internal costs for the Developer. The Developer must take all steps to ensure that the Variation Costs are properly determined and minimised.

11. COMMENCEMENT OF MAINTENANCE PERIOD FOR TRUNK INFRASTRUCTURE

11.1 When Trunk Infrastructure Works other than New Ferry Terminal is complete

Trunk Infrastructure Works other than the New Ferry Terminal is complete and ready for acceptance On-Maintenance by the Council when:

- (1) the Works are completed in accordance with the relevant Infrastructure DA;
- (2) all Conditions of Approval to be satisfied before the Works are accepted On-Maintenance have been complied with; and
- (3) the Trunk Infrastructure Contribution is properly functioning.

11.2 When the New Ferry Terminal is complete

- (1) The Works for the New Ferry Terminal are complete when:
 - (i) all Conditions of Approval for the relevant Works in relation to the New Ferry Terminal have been complied with;
 - (ii) the Works are complete other than for minor omissions and defects that do not affect operation and which do not need to be remedied at that time;
 - (iii) for building Works, there is a certificate of classification for the Works and the building or building parts are classified for their intended use;
 - (iv) the plant, equipment and services included in the Works have been commissioned and finally tested, and are working properly and to the required

standard or specification or requirements of any authority and do not malfunction;

- (v) all tests and certificated in respect of the Works reasonably required by the Council have been carried out successfully, and all other tests and commissioning required by this agreement have been completed;
 - (vi) all rubbish, surplus materials, plant and equipment and all other temporary works (including temporary offices, lunchrooms, ablution facilities, storage facilities, hoardings, barricades and foot-crossings) have been removed and the New Ferry Terminal is clean; and
 - (vii) the Council can enjoy safe and convenient access to the New Ferry Terminal.
- (2) The Council must accept that the Works for the New Ferry Terminal are complete on the date on which the Council receives:
- (i) a certificate from the Independent Certifier addressed to the Council and stating that the Works are complete in accordance with the requirements in Clause 11.2(1); and
 - (ii) copies of the certificate of classification for all building Works for the New Ferry Terminal and for all other certificates and tests required for the Works.

11.3 Notice from Developer

With respect to all Works for the construction of Trunk Infrastructure Contributions to be provided under this agreement, the Developer must give the Council notice:

- (1) at least 10 Business Days before the anticipated date that Works will be completed; and
- (2) when the Developer believes those Works are complete.

11.4 Issue of On-Maintenance Certificate for Trunk Infrastructure Contributions other than New Ferry Terminal

- (1) The Council must inspect Works other than New Ferry Terminal:
 - (i) on the anticipated date that the Works will be completed if reasonably able to do so; and
 - (ii) otherwise, as soon as possible after being given a notice under Clause 11.3(2).
- (2) Before issuing an On-Maintenance Certificate for Trunk Infrastructure Contributions other than New Ferry Terminal, the Council may require that the Developer provide certificates and evidence of test results from RPEQs where reasonable having regard to the Works.
- (3) Upon Council being satisfied that a Trunk Infrastructure Contribution other than New Ferry Terminal has been completed in accordance with the terms of this agreement, it must issue an On-maintenance Certificate for the Trunk Infrastructure Contribution.
- (4) The On-maintenance Certificate may be issued subject to reasonable conditions about Maintenance.

11.5 Commencement

The Maintenance Period for a Trunk Infrastructure Contribution commences on the date of issue of the On-Maintenance Certificate by the Council in accordance with 11.4 or the date of

the issue of the On-Maintenance Certificate by the Independent Certifier under Clause 11.2, as applicable.

11.6 Developer's Maintenance Obligations

For the duration of the Maintenance Period, the Developer must, at its own cost:

- (1) comply with any conditions identified in the On-Maintenance Certificate, within any stipulated timeframe;
- (2) rectify, remedy or correct any default related to the Maintenance Obligations;
- (3) rectify, remedy or correct any defects in the Trunk Infrastructure Contributions:
 - (i) identified in a Defect Notice issued during the Maintenance Period, in accordance with the Defect Notice and any timeframes stated within the Defect Notice; or
 - (ii) identified in any written report prepared in accordance with Clause 11.6(5);
- (4) maintain the Trunk Infrastructure Contributions (or replace or reconstruct them to the extent that they cannot be repaired) so that the Trunk Infrastructure Contributions function properly, and are free from defects; and
- (5) ensure the Trunk Infrastructure Contributions are inspected by a RPEQ and the Independent Certifier for defects at least once every three (3) months, and a written inspection report is submitted to the Council and the Developer no later than 14 days after each inspection has occurred.

11.7 Timeframe for rectification of defects

In the absence of any timeframe required under a report prepared under Clause 11.6(5) or a Defect Notice, the Developer must rectify any defect in a Trunk Infrastructure Contribution within a reasonable period (having regard to the extent of the defect) from the date the Developer is provided with a copy of the report under Clause 11.6(5) or the Defect Notice, as applicable.

11.8 Defect Notice - Trunk Infrastructure Contributions other than New Ferry Terminal

- (1) This Clause applies only to Trunk Infrastructure Contributions other than New Ferry Terminal.
- (2) If the Council identifies or becomes aware of a defect in a Trunk Infrastructure Contribution during the Maintenance Period, it may give the Developer a notice specifying the defect in reasonable detail.
- (3) The Developer must comply with the Defect Notice.
- (4) A Defect Notice must allow the Developer a reasonable period within which to rectify a Defect.
- (5) For avoidance of doubt, the Council may give more than one Defect Notice during the Maintenance Period.
- (6) The Developer must request the Council to inspect and approve any Rectification Works when the Developer considers that it has complied with a Defect Notice.
- (7) Council must respond to the request within 14 days from the date of the request.
- (8) Within 14 days after the Council inspects the Rectification Works, the Council must give the Developer a notice:

- (i) confirming that it accepts the Rectification Works as complete; or
- (ii) refusing to accept the Rectification Works as complete, and stating with reasonable particularity the reasons for its refusal (in which case Clause 11.8(6) will apply again).

11.9 Defect Notice - New Ferry Terminal

- (1) This Clause applies only to New Ferry Terminal.
- (2) If the Independent Certifier or the Council identifies or becomes aware of a defect in the New Ferry Terminal during the Maintenance Period for them, it may give the Developer a notice specifying the defect in reasonable detail.
- (3) The Developer must comply with the Defect Notice. However, if there is a dispute about a Defect Notice issued by the Council then the Independent Certifier's decision about the claim of a defect will be final other than for manifest error.
- (4) A Defect Notice must allow the Developer a reasonable period within which to rectify a Defect.
- (5) For avoidance of doubt, the Independent Certifier or the Council may give more than one Defect Notice during the Maintenance Period.
- (6) The Developer must request the Independent Certifier to inspect and approve any Rectification Works when the Developer considers that it has complied with a Defect Notice, and must procure the Independent Certifier to respond to the request promptly.
- (7) Within 14 days after the Independent Certifier inspects the Rectification Works, the Developer must procure that the Independent Certifier gives the Developer a notice:
 - (i) confirming that it accepts the Rectification Works as complete; or
 - (ii) refusing to accept the Rectification Works as complete, and stating with reasonable particularity the reasons for its refusal (in which case Clause 11.9(6) will apply again).

12. EXTENSION TO MAINTENANCE PERIOD FOR TRUNK INFRASTRUCTURE

- (1) Council may, acting reasonably, extend the Maintenance Period for a reasonable period of time if there is an event of Force Majeure (as defined in the Development Agreement).
- (2) If there is to be an extension to the Maintenance Period, the Council must give written Notice to the Developer:
 - (i) stating that fact and the reason for the extension; and
 - (ii) stating the duration of the extension to the Maintenance Period.
- (3) For avoidance of doubt the Developer's Maintenance Obligations continue to apply during any extension to the Maintenance Period.

13. ACCEPTANCE OF TRUNK INFRASTRUCTURE OFF-MAINTENANCE

12.1 Developer to Request Inspection

- (1) When the Maintenance Period for Works ends, the Developer may give the Council a notice requesting an Off-Maintenance inspection. The Developer may give the notice in advance of the end of the Maintenance Period and the Council must attend the Works for the inspection on the later of:
 - (i) the day that is:
 - A. the last day of the period specified in Item 16; or
 - B. the later date from an extension under Clause 12,
or the next Business Day if that is not a Business Day (or an earlier day specified by Council in a notice; and
 - (ii) 10 Business Days after service of the Developer's notice of request.
- (2) The Council and Developer must reasonably cooperate for the Off-Maintenance inspection.

13.2 When Trunk Infrastructure Contributions accepted "Off-Maintenance"

- (1) A Trunk Infrastructure Contribution must be accepted by Council "Off-Maintenance" if:
 - (i) the period specified in Item 16 (and any additional period from an extension under Clause 12) has ended;
 - (ii) for the New Ferry Terminal building Works, all Defects notified in all relevant Defects Notices issued within the Maintenance Period have been certified as complete under Clause 11.9(7)(i);
 - (iii) for other Works, all material Defects in the Trunk Infrastructure Contribution notified in all relevant Defects Notices issued within the Maintenance Period have been certified as complete under Clause 11.8(8)(i) or Clause 11.9(7)(i), as applicable; and
 - (iv) the Trunk Infrastructure Contribution is functioning properly.
- (2) The Council must give the Developer an Off-Maintenance Certificate when a Trunk Infrastructure Contribution is accepted Off-Maintenance.

13.3 Ownership of Trunk Infrastructure Contributions

Council will own a Trunk Infrastructure Contribution, and assume responsibility for its ongoing maintenance, from the end of the relevant Maintenance Period.

14. COUNCIL AND MEDQ INFRASTRUCTURE COMMITMENTS

14.1 Network capacity

- (1) The Council must ensure that there is adequate capacity in the Council's trunk water supply network and sewerage network to service the Development of the Land in accordance with the Master Plan.
- (2) The Council must ensure that any infrastructure provided by the Council under Clause 14.1(1) accords with any network design of and connection points for the Trunk Infrastructure Contributions shown in Schedule 2.

- (3) Nothing in this Clause affects the Developer's obligation to provide Trunk Infrastructure Contributions by the Developer under this agreement.

14.2 Access to Land

If Land required for a Trunk Infrastructure Contribution is held by the Council or the MEDQ or a Related Entity of either of them, and the Developer does not have rights with respect to that Land under the Development Agreement that will allow the Developer to carry out Works for a Trunk Infrastructure Contribution then:

- (1) Council or the MEDQ, or the relevant Related Entity, as appropriate, must give the Developer a licence to access that Land for the purpose of complying with its obligations under this agreement, or procure a licence to be given; and
- (2) the licence must be on reasonable terms (but, for clarity, cannot require the payment of any licence fee to the Council or the MEDQ or any Related Entity of either of them).

15. DEFAULT BY DEVELOPER

15.1 Event of Default

An Event of Default occurs if the Developer:

- (1) fails to duly perform or fulfil all or any part of the Developer Obligations in accordance with this agreement and does not:
 - (i) for a default that reasonably can be rectified within 20 Business Days, rectify that default within that period;
 - (ii) for any other default:
 - A. commence rectifying the default within 15 Business Days (or such other period as is reasonable having regard to the nature of the default); and
 - B. complete the rectification of the default within a reasonable period, after service of a notice from the Council specifying the default and requiring it to be rectified;
- (2) has contravened a warranty given pursuant to this agreement; or
- (3) assigns its interests, liability, rights or obligations other than in accordance with Clause 20; or
- (4) becomes subject to an Insolvency Event.

15.2 Council's rights in the Event of Default

In an Event of Default by the Developer, Council may take whatever steps are reasonably required to rectify the Event of Default, including any or all of the following:

- (1) drawing upon and using a Security, including converting into money any part of a Security that does not consist of money;
- (2) recovering any Shortfall from the Developer as a liquidated debt;
- (3) extending a Maintenance Period in accordance with Clause 12;

- (4) taking any reasonable steps required, at Council's discretion, to enforce the Developer Obligations; and
- (5) the commencement of legal proceedings in any Court of competent jurisdiction,

however Council has no right to terminate this agreement other than in accordance with Clause 2.11.

15.3 No waiver of effect on other rights and obligations

A failure or delay by Council to exercise any right, remedy, power or privilege under this agreement will not operate as a waiver unless and until expressly communicated in writing by Council, under the hand of the Chief Executive Officer, to the Developer.

16. COUNCIL'S RIGHTS OF ENTRY

16.1 Exercise of the Council's rights

For the purpose of exercising the Council's rights under this agreement, the Developer consents to the Council and the Council's Agents accessing the Land with any necessary personnel, vehicles, plant and equipment as may be required, including (but not limited to) the following:

- (1) inspecting, monitoring or testing the Trunk Infrastructure Contributions;
- (2) ascertaining whether the Developer Obligations are, or are being, properly performed and fulfilled;
- (3) exercising the Council's rights to remedy or rectify any Event of Default; and
- (4) exercising the Council's rights under this agreement generally.

16.2 Right of entry at law

Nothing in this agreement in any way limits or restricts any other rights of entry to the Land which the Council or the Council's Agents may have at Law, including but not limited to, the SPA, the EDA, the *Local Government Act 2009*, the *Environmental Protection Act 1994*, a Planning Instrument, and a Local Law.

17. INSURANCE TO BE EFFECTED BY DEVELOPER

17.1 Insurances to be effected

The Developer must effect and maintain, or cause to be effected and maintained:

- (1) public and third party liability insurance:
 - (i) covering claims in respect of:
 - A. damage to any real or personal property including property owned by the Council; and
 - B. the injury to, or death of, any person,caused by the carrying out of the Works:
 - (ii) for the amount required by the Council acting reasonably from time to time, which is at least \$20 million;

- (iii) noting the interests of the Council and also protects all subcontractors and agents engaged in connection with the performance of the Works and the Developer's obligations under this agreement;
 - (iv) for the duration of the carrying out of the Works; and
 - (v) on terms and with an insurer approved by the Council, acting reasonably;
- (2) insurance of the Trunk Infrastructure Contributions for its full replacement value, in the joint names of Council and the Developer;
- (3) Worker's Compensation insurance:
 - (i) in accordance with all Laws; and
 - (ii) for the duration of the carrying out of the Works;
- (4) compulsory third party liability insurance:
 - (i) for registered vehicles owned or leased by the Developer, in accordance with the requirements of any compulsory motor vehicle third party legislation;
 - (ii) which provides protection to the Council arising out of the use of the Developer's vehicles in addition to the Developer; and
 - (iii) for the duration of the carrying out of the Works;
- (5) property damage liability insurance:
 - (i) covering all motor vehicles owned, leased or hired by the Developer used in connection with the Works or the Developer's other obligations under this agreement including the use of unregistered motor vehicles and plant;
 - (ii) with a limit of not less than \$20 million; and
 - (iii) for the duration of the carrying out of the Works.

17.2 Requirements of Insurance

- (1) The Developer must pay all deductibles, costs and premiums in relation to all insurance.
- (2) Whenever reasonably requested by the Council, the Developer must provide to the Council, evidence of its compliance with Clause 17.1. To be clear, the Council is entitled to copies of insurance policies, though they only need to be provided if requested.
- (3) If the Developer fails to provide evidence of insurance in accordance with Clause 17.2(2) Council may:
 - (i) direct the Developer to suspend the Works at its cost;
 - (ii) effect the insurance itself and recover the cost as a liquidated sum from the Developer or from any Security relating to the relevant Works; or
 - (iii) both (i) and (ii).

18. DEVELOPER'S OBLIGATIONS TO SUBSIST

The obligations of the Developer under this agreement continue and remain in force and effect until the Developer Obligations under this agreement have been otherwise fulfilled, or otherwise transferred in accordance with Clause 20 of this agreement.

19. INDEMNITY AND RELEASE

19.1 Developer indemnifies Council

The Developer indemnifies the Council and the Council's Agents against all liability, claims, loss, penalties, payments, costs, charges and expenses directly arising from or incurred in connection with damage to or loss of any property or injury of any person caused or contributed to by the Developer and the Developer's Agents in connection with the Developer doing anything the Developer is required or permitted to do under this agreement, except where arising from the negligent act or omission of the Council, the MEDQ or the Council's or the MEDQ's Agents.

19.2 Developer releases Council

The Developer releases the Council and the Council's Agents from, and agrees that Council and Council's Agents are not liable for, liability, loss, penalties, payments, costs, charges and expenses directly arising from or incurred in connection with Council doing anything Council is required or permitted to do under this agreement except where arising from the negligent act or omission of the Council, the MEDQ or the Council's or the MEDQ's Agents.

18.3 Independence of Developer's other obligations

The indemnity and release in Clauses 19.1 and 19.2 are independent of Developer's other obligations under this agreement.

19.3 Excluded Loss

Nothing in this agreement permits a Party to recover any Excluded Loss from another Party in respect of the subject matter of this agreement.

20. ASSIGNMENT BY DEVELOPER

20.1 Restriction on assignment

The Developer shall not assign its interests, rights or obligations under this agreement prior to the performance and fulfilment of the Developer's obligations unless:

- (1) the assignee has also taken an assignment of the Developer's interest in the Development Agreement and that assignment was not a breach of the Development Agreement; and
- (2) the assignee first enters into a deed of novation of this agreement with the Council and the MEDQ, on terms reasonably acceptable to the Council and the MEDQ, whereby the assignee becomes contractually bound to the Council and the MEDQ to perform and fulfil the provisions of this agreement or such of them as remain unperformed or unfulfilled by the Developer at the time of assignment.

20.2 Covenant with new developer

If a part of the Land is sold to any person at the request of the Developer for the purposes of Development then:

- (1) the Developer must procure that person enter into a deed with the MEDQ and Council to comply with the Developer's obligations under this agreement so far as they relate to that Land and remain unfulfilled, and to exercise the Developer's rights (instead of the Developer) so far as they relate to that Land and have not yet been exercised; and
- (2) the deed must be on terms reasonably acceptable to the Council and the MEDQ.

20.3 Security retained if invalid assignment

The Council may, at its sole discretion, refuse to return a Security to the Developer unless and until:

- (1) any assignment complies with Clause 20.1;
- (2) the assignee has paid Council the full amount of a relevant Security, in substitution for the Security paid by the Developer;
- (3) the Developer has paid any outstanding Shortfall owing to Council; and
- (4) the assignee grants a licence to Council on the same terms as Clause 16.1.

20.4 Developer to remain liable

- (1) In the event of an assignment or transfer being made otherwise than in compliance with Clause 20.1 or Clause 20.2, the Developer shall perform and fulfil such of the Developer Obligations as have not been performed, notwithstanding the assignment or the sale of any part of the Land.
- (2) In the event of an assignment or transfer being made in compliance with Clause 20.1 or Clause 20.2, the Developer is released from the Developer Obligations that relate to the relevant part of the Land.

20.5 Restriction not to apply to Developed Lots

If a Developed Lot is created then the development obligations are no longer binding in respect of that lot.

21. FORCE MAJEURE

20.1 Excuse from performance of Obligation

If a Party is prevented, hindered or delayed from performing its obligations under this agreement (other than an obligation to pay money) by an Event of Force Majeure, then as long as that situation continues, that Party shall be excused from performance of the obligation to the extent it is so prevented, hindered or delayed, and that time for performance of the obligation shall be extended accordingly, but if time is of the essence of this agreement, time shall continue to remain of the essence.

20.2 Notification

A Party affected by an Event of Force Majeure shall immediately notify the other Party of its occurrence and its effect or likely effect, and use all reasonable endeavours to minimise the effect of the Event of Force Majeure and to bring it to an end.

22. INDEXATION

22.1 Application of this Clause

This Clause applies to an amount stated or calculated under this document other than an amount which is stated not to be indexed.

22.2 Indexation of an amount

An amount is to be indexed as follows:

$$IA = A \times \text{Index Number (Later Date)} \div \text{Index Number (Base Date)}$$

Where:

IA is the indexed amount

A is the amount to be indexed

Index Number is the number in the index stated in Schedule 1 **Item 17**.

Base Date is the last date on which the Index Number was published before the date from which the relevant amount is to be indexed

Later Period is the last date on which the Index Number was published before the date to which the relevant amount is to be indexed.

23. GST

23.1 Definitions and interpretation

- (1) Capitalised expressions which are not defined in this Clause but which have a defined meaning in the GST Law have the same meaning in this agreement.
- (2) In this agreement:
 - (i) **GST** means the goods and services tax as imposed by the GST Law;
 - (ii) **GST Amount** means any Payment (or the relevant part of that Payment) multiplied by the appropriate rate of GST (currently 10%);
 - (iii) **GST Law** has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999* (Cth), or, if that Act does not exist for any reason, means any Act imposing or relating to the imposition or administration of a goods and services tax in Australia and any regulation made under that Act; and
 - (iv) **Payment** means any amount payable under or in connection with this agreement including but not limited to any amount payable by way of indemnity, reimbursement or otherwise and includes the provision of any non-monetary consideration.

23.2 Payment of GST

The Parties agree that:

- (1) all Payments have been calculated without regard to GST;
- (2) if the whole or any part of any Payment is the consideration for a Taxable Supply for which the payee is liable to GST, the payer must pay to the payee an additional

amount equal to the GST Amount, either concurrently with that Payment or as otherwise agreed in writing;

- (3) any reference to a cost or expense in this agreement excludes any amount in respect of GST forming part of the relevant cost or expense when incurred by the relevant Party for which that Party can claim an Input Tax Credit; and
- (4) the payee will provide to the payer a Tax Invoice at the time at which any payment is made under this Clause.

23.3 GST – non-monetary consideration

The parties agree and acknowledge that, for GST purposes only:

- (1) if the provision of Works in accordance with this agreement forms additional consideration for supplies made by MEDQ and the Council then the Developer will provide the Council and MEDQ with a calculation of the GST exclusive value of the Works, which shall be used to value the supplies set out in clause 23.3(1);
- (2) within 5 days of receiving the Developer's calculation of the value of the Works in accordance with clause 23.3(1) or on such other date as agreed by the parties, the Council, MEDQ and the Developer shall contemporaneously exchange tax invoices for their respective supplies as set out in clause 23.3(1), with the GST Amount on those supplies calculated by reference to that valuation;
- (3) any GST Amount payable under clause 23.2 by the Council, the MEDQ and the Developer respectively, for the supplies set out in clause 23.3(1), shall be offset against each other so that only the balance, if any, is payable.

24. NOTICES

- (1) A Party's address for service is the address listed in the Party details at the front of this agreement unless the Party has notified the other Parties of a new address.
- (2) Notices under this agreement must be given in writing by or on behalf of a Party, and sent by facsimile, or post with recorded delivery, or delivered to the address of the recipient. A notice may not be sent by email.
- (3) A notice is taken to be received:
 - (i) if hand delivered, on delivery;
 - (ii) if sent by prepaid post with recorded delivery, on the date of delivery; and
 - (iii) if sent by facsimile, when the sender's facsimile machine prints confirmation that the number of pages in the notice have been successfully transmitted.
- (4) However, if a notice is hand delivered or faxed on a day other than a Business Day or after 5:00 pm on a Business Day, the notice will be deemed to have been received at 9:00 am on the next Business Day.
- (5) If two (2) notices are deemed in accordance with Clause 24(4) to have been received on the next Business Day, they are dealt with in the order that they were received.
- (6) Any notice may be given or signed by a Party to this agreement or its appointed solicitor.

25. GENERAL PROVISIONS

25.1 No conversion application

The Developer will not exercise a right under Chapter 8, Part 2, Division 3 of the SPA.

25.2 Payment of costs

Each Party shall pay its own costs, charges and expenses of and incidental to the negotiation, preparation, and execution of this agreement.

25.3 Binding on successors

This agreement shall be for the benefit of and binding upon the Parties and their heirs, executors, successors and permitted assigns.

25.4 Applicable law

The law in force in Queensland applies to this agreement. The Parties submit to the non-exclusive jurisdiction of the courts of Queensland and to appeal courts from them.

25.5 Further assurances

Each Party agrees, at its own expense, on request of the other Party, to do everything reasonably necessary to give effect to this agreement and the transactions contemplated by it, including but not limited to the execution of documents. However this Clause does not require a Party to enter into a document other than on terms that are reasonably satisfactory to it.

25.6 Waiver

- (1) A Party may not rely on the words or conduct (including but not limited to a delay in the exercise, a non-exercise or a partial exercise of a right) of any other Party as a waiver of any right arising under or in connection with this agreement (including but not limited to a right to rely on this Clause) unless the waiver is in writing and signed by the Party granting the waiver.
- (2) In Clause 25.6(1) the term 'waiver' is intended to include an election between rights and remedies as well as conduct which might otherwise give rise to an estoppel.
- (3) A waiver is only effective in relation to the particular obligation or breach in respect of which it is given and is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

25.7 Warranty of authority

Each person signing this agreement:

- (1) as attorney, by so doing, warrants to the other Parties that, as at the date of signing, the signatory has not received notice or information of the revocation of the power of attorney appointing that person; and
- (2) as an Authorised Representative, agent, trustee or in any other representative capacity of a Party, warrants to the other Parties that, as at the date of signing, the signatory has full and unrestricted authority to execute this agreement on behalf of that Party.

25.8 Amendment of agreement

- (1) This agreement may be amended only by another agreement executed by all the Parties.
- (2) No modification, variation or amendment of this agreement is of any force or effect unless:
 - (i) it is in the form of an amendment document and has been signed by the Parties; and
 - (ii) where relevant the amendment document complies with the requirements of the EDA.

25.9 Severance

- (1) If a provision of this agreement is illegal or unenforceable then that provision must be severed from this agreement and the remaining provisions of this agreement continue in force, unless this would materially change the intended effect of this agreement.
- (2) If only part of a provision is illegal or unenforceable then this Clause applies to that part only.

25.10 Remedies cumulative

Except as provided in this agreement and permitted by Law, the rights, powers and remedies provided in this agreement are cumulative with and not exclusive of the rights, powers or remedies provided by Law independently of this agreement.

25.11 Counterparts and fax

This agreement may consist of a number of counterparts and the counterparts taken together constitute one and the same instrument.

25.12 Attorneys

Where this agreement is executed for a Party by an attorney, the attorney by executing it declares that the attorney has no notice of revocation of the power of attorney.

25.13 Rule of construction

No rule of construction is to be applied to this agreement or any provision of it to the disadvantage of a Party solely because they were responsible for preparing it.

25.14 No waiver of effect on other rights and obligations

A failure or delay by the Council to exercise any right, remedy, power or privilege under this agreement will not operate as a waiver unless and until expressly communicated in writing by the Council, under the hand of the Chief Executive Officer, to the Developer.

25.15 Agreement does not affect rights

For the avoidance of doubt, this agreement does not affect:

- (1) any other rights, powers or remedies available to the Council, including enforcement powers under the SPA, the EDA or the *Local Government Act 2009*; and
- (2) any obligations of the Developer to comply with the Development Approvals, the SPA, the EDA, any Local Planning Instrument, Local Law or other applicable legislation.

25.16 **Dispute resolution**

- (1) Except where stated to the contrary in this agreement, if a dispute arises in connection with this agreement, then a party must deal with the dispute in the manner set out in this Clause.
- (2) A party to a dispute which arises in connection with this agreement may give to the other party or parties to the dispute a Notice specifying the dispute and requiring its resolution under this Clause.
- (3) Within 14 days after a Notice is given under Clause 25.16(1) (or such longer period as is agreed in writing by the parties to the dispute) each party to the dispute must use its best efforts to resolve the dispute in good faith.
- (4) If despite the parties' best efforts a dispute is not resolved within 14 days after notice a party may by notice to the other party or parties to the dispute refer the dispute for expert determination, using the process set out under Part U of the Development Agreement.
- (5) The provisions of this Clause do not prevent any party from obtaining any injunctive, declaratory or other interlocutory relief from a Court which may be urgently required.

Executed as a Deed

Signed sealed and delivered by Walker Toondah Harbour Pty Ltd ACN 608 732 921 by its duly authorised attorney PETER JOSEPH SABA who certifies that he has no notice of revocation of the power of attorney dated 22 December 2015

Signature of attorney

Name of attorney (print)

Signature of witness (print)

Name of witness

Date signed

EXECUTED for and on behalf of REDLAND CITY COUNCIL ABN 86 058 929 428 by the Chief Executive Officer in accordance with the Local Government Act 2009 (Qld) on behalf of the Council who has hereunto subscribed his name in the presence of:

Signature of chief executive officer / delegate

Name of chief executive officer / delegate (print)

Signature of witness (print)

Name of witness

Date signed

Signed by Francis Patrick Carroll Delegate under Instrument of Delegation dated 24.9.15 for and on behalf of the MINISTER FOR ECONOMIC DEVELOPMENT QUEENSLAND ABN 76 590 288 697 in the presence of:

Signature of chief executive officer / delegate

Name of chief executive officer / delegate (print)

Signature of witness (print)

Name of witness

Date signed



Schedule 1 Particulars

Item 1	Commencement Date	The date of this agreement
Item 2	Name of document	Toondah Harbour Infrastructure Agreement
Item 3	MEDQ	Minister for Economic Development Queensland ABN 76 590 288 697
	Address	Level 7, 63 George Street, Brisbane Qld 4000
Item 4	Name of local government	Redland City Council ABN 86 058 929 428
	Address	Corner Bloomfield & Middle Streets, Cleveland Qld 4580
Item 5	Developer	Walker Toondah Harbour Pty Ltd ACN 608 732 921
	Address <i>(registered address if corporation)</i>	Level 21, Governor Macquarie Tower, 1 Farrer Place, Sydney NSW 2000
Item 6	Land	See Clause 1.1(29)
	Description <i>(lot and registered plan number)</i>	Not applicable
	Address	Not applicable
	Site area	Not applicable
Item 7	Development Application	Not applicable
Item 8	Development Approval	Not applicable
Item 9	Schedule of Plans	Refer to Schedule 2
Item 10	Infrastructure Charges	See Clause 4
Item 11	Offset	See Clause 5
Item 12	Trunk Infrastructure Contributions	Refer to Schedule 2
Item 13	Land Dedication	Not applicable
Item 14	Security threshold	Only for Works outside the PDA Land for the construction of roads and services, where the expected costs of the Works will be at least \$1,000,000.00.

Item 15	Maintenance Bond	In accordance with the Council's planning scheme policies from time to time
Item 16	Maintenance period	(a) 24 months for any Stormwater Quality Improvement Device; and (b) 12 months for other Trunk Infrastructure Contributions, plus any extensions of time under Clause 12
Item 17	Index Number	PPI

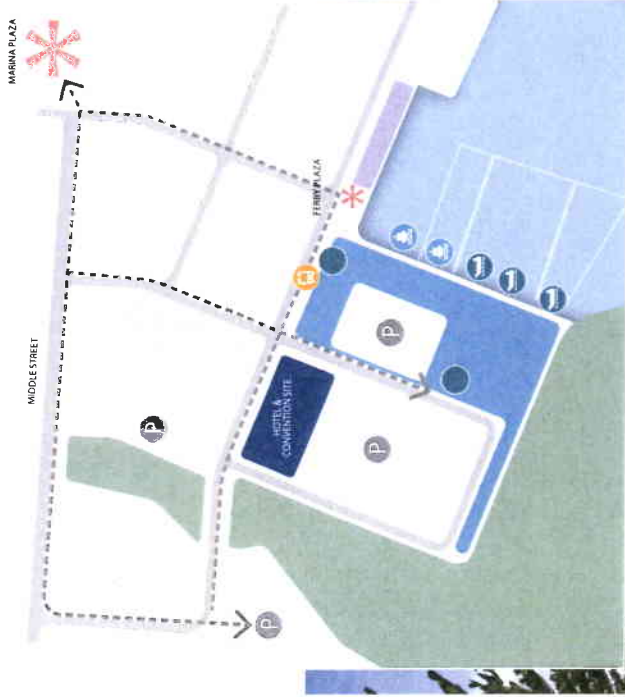
Schedule 2 Developer Trunk Infrastructure Contribution

Toondah Harbour

IA Infrastructure Schedule - 4.1 New Ferry Terminal (Site Prep, Marine Structures, Bus Interchange, Bldgs)
17th December 2015

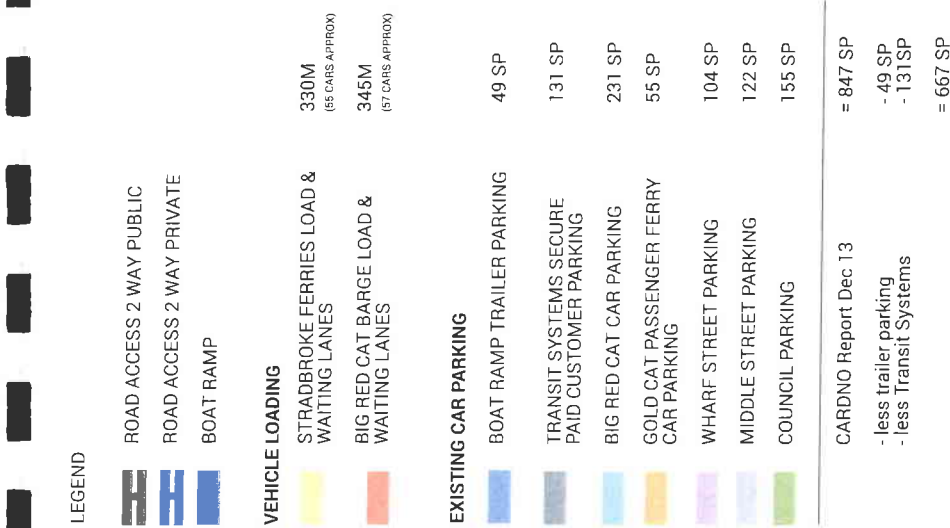
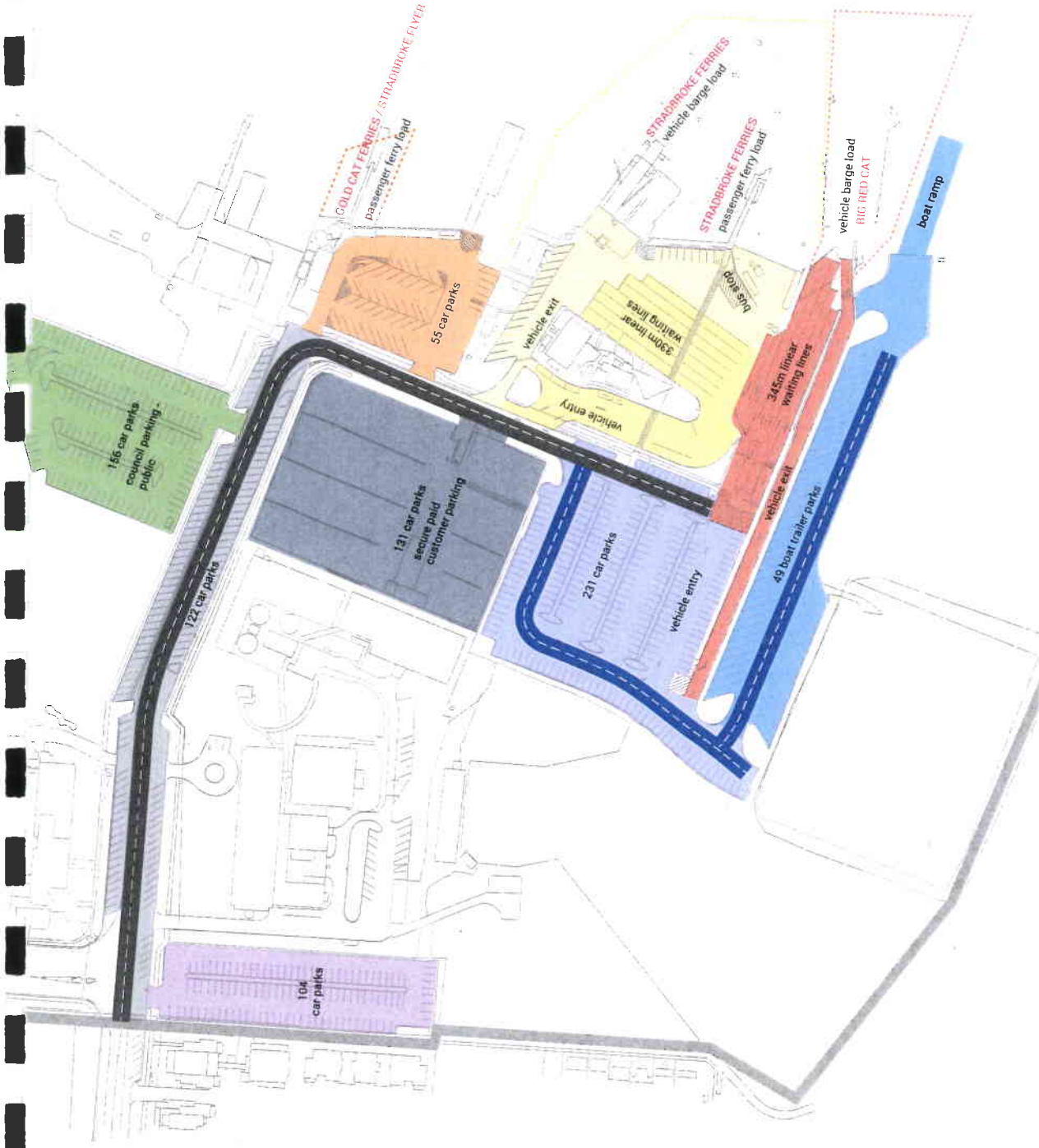
Infrastructure Definition		Estimated Credit	Timing
1.02	Provision for ferry terminals		
	Demolition & Site Preparation	963,600	
	New Inner leads re-alignment to Fison Channel	125,925	
	New Port/Starboard Channel beacons	207,776	
	Floating Pontoons incl piling and lighting	944,438	
	Covered Gangways	271,998	
	RoRo Berthing dolphin piles	611,996	
	Barge Dock Sheet Piling & Concrete	2,336,730	As Required under the Development
	Bulk Fuel Storage Tanks	2,409,000	Management Agreement
1.04	A bus Interchange		
	Premium Bus Interchange	903,375	
1.06	Ticketing and information centre associated with the plaza		
	390 sqm GFA Ferry Commercial (dry shell)	704,633	
	400 sqm GFA Barge Commercial (dry shell)	722,700	
	150 sqm GFA Ferry / Barge Retail (dry shell)	325,215	
TOTAL		10,527,385	

Estimates and Specifications are Indicative only and will be developed further as part of Works Proposals under the IA
All estimates are at December 2014



- LEGEND
- FERRY PARKING SPACES WITHIN 300M WALK OF FERRY TERMINAL
 - BUS STOP
 - △ PASSENGER FERRY
 - VEHICLE BARGE
 - PEDESTRIAN PATHWAYS
 - TICKETING
 - KEY DESTINATION
 - PASSENGER FERRIES AND VEHICLE BARGES
 - ENVIRONMENTAL CONSERVATION AREA
 - HOTEL/RETAIL





ROAD ACCESS 2 WAY PUBLIC
ROAD ACCESS 2 WAY PRIVATE

VEHICLE BARGE LOAD & WAITING LANES

FERRY PARKING-DISABLED
ACCESS, DROP OFF ZONE &
LOAD AREA

FERRY PARKING-SURFACE
LEVEL

MULTI DECK CARPARK - 500SP

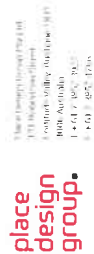
FERRY PARKING- LONG TERM

PUBLIC STREETS
310 SP

COUNCIL PARKING

48 SP

* all car parking is provided within a 400m or 5 minute walk of the ferry terminals and ticketing



FERRY OPERATIONS PROPOSED
Toondah Harbour MASTER POD

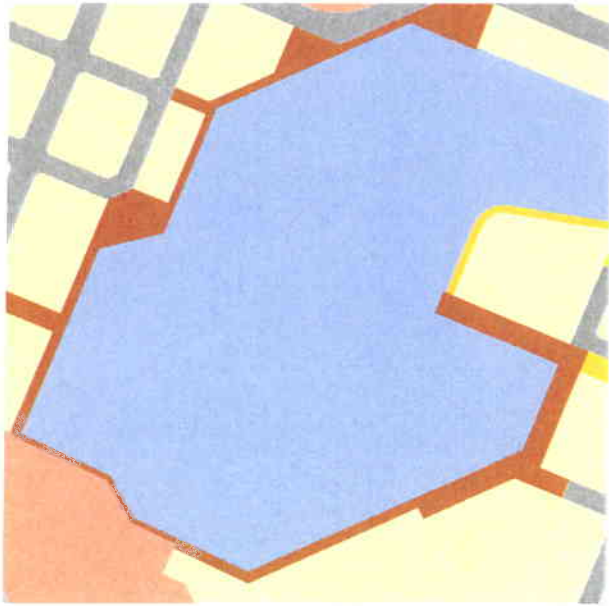
Toondah Harbour

IA Infrastructure Schedule - 4.2 Boardwalk Promenade

17th December 2015

	Infrastructure Definition	Estimated Credit	Timing
1.07	Contiguous boardwalk promenade along the waterfront Contiguous boardwalk promenade along the waterfront	9,523,725	In Stages and as adjoining PDA Land is Developed by the Developer or by a transferee of part of the PDA Land referred to in clause 20.2
TOTAL		9,523,725	(Subparticipant)

Estimates and Specifications are indicative only and will be developed further as part of Works Proposals under the IA
All estimates are at December 2014

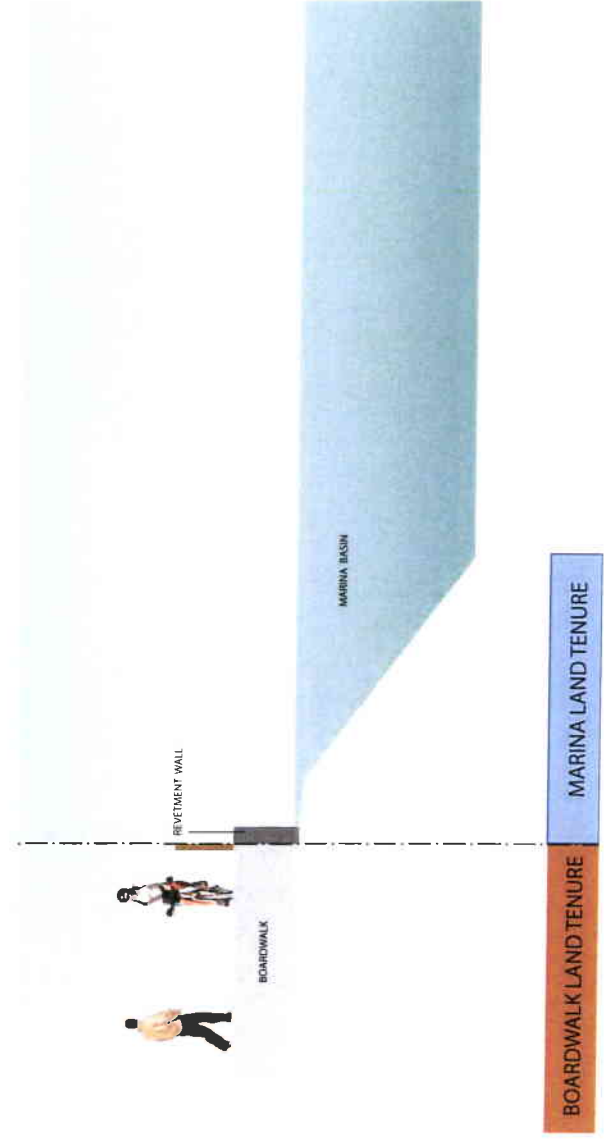


SOURCE: REFERENCE DESIGN LAND TENURE PLAN (1114087_43)

- LEGEND
- FRESHWATER MARINA BASIN
 - FRESHWATER MARINA PLAZA, TERRY PLAZA & BOARDWALK
 - REDLAND CITY COUNCIL



ARTIST'S IMPRESSION OF MARINA BOARDWALK



Toondah Harbour

IA Infrastructure Schedule - 4.3 GJ Walter Park

17th December 2015

Infrastructure Definition		Estimated Credit	Timing
1.08	Improvements and Extension to GJ Walter Park 3ha Park - Improvements only for surface treatments, playground furniture, lighting and planting.	621,000	As required under the Development Management Agreement
TOTAL		621,000	

Estimates and Specifications are indicative only and will be developed further as part of Works Proposals under the IA
All estimates are at December 2014



- LEGEND
- ★ KEY DESTINATION
 - PEDESTRIAN ROUTE
 - BOARDWALK
 - OPEN SPACE/PARKLAND
 - DOG PARK
 - SPORT AND RECREATION
 - PLAYGROUND
 - TREE RETENTION



1. FENCED DOG PARK
2. SHARED BICYCLE/PEDESTRIAN PATH
3. RETAINED TREES (INCLUDING KOALA HABITAT) WITH ADDITIONAL PLANTING UNDER
4. COMMUNITY SHELTER FOR FUNCTIONS AND GATHERINGS
5. EXISTING TREES RETAINED
6. LARGE OPEN GRASSED AREA
7. PARK ACCESS ROAD WITH POSSIBLE PARKING BAYS
8. EXISTING CRICKET FIELD RETAINED
9. ACTIVE FITNESS NODES WITH ALL WEATHER EQUIPMENT
10. TERRACED SEATING ON GRASSED EMBANKMENTS
11. NEW CARPARKING
12. OPEN GRASSED PLAY AREA
13. SHADED CHILDRENS PLAY
14. EXISTING CARPARK
15. NEW FEATURE TREES
16. EXISTING TOILET RETAINED
17. PICNIC SHELTERS AND BBQ FACILITIES
18. EXISTING NORFOLK PINES AND FIG TREES RETAINED

Place Design Group Pty Ltd
 131 Robertson Street
 Brisbane Valley, Brisbane, QLD
 T + 61 7 3852 4766
 F + 61 7 3852 4766

**place
 design
 group.**



TOONDAH HARBOUR KEY PLACES
 GJ WALTER PARK CONCEPT DESIGN

Date	Project No.	Revision	DWG No.
02/12/2015	1114/07	B	SK 05

Scale: 1:1000
 1m



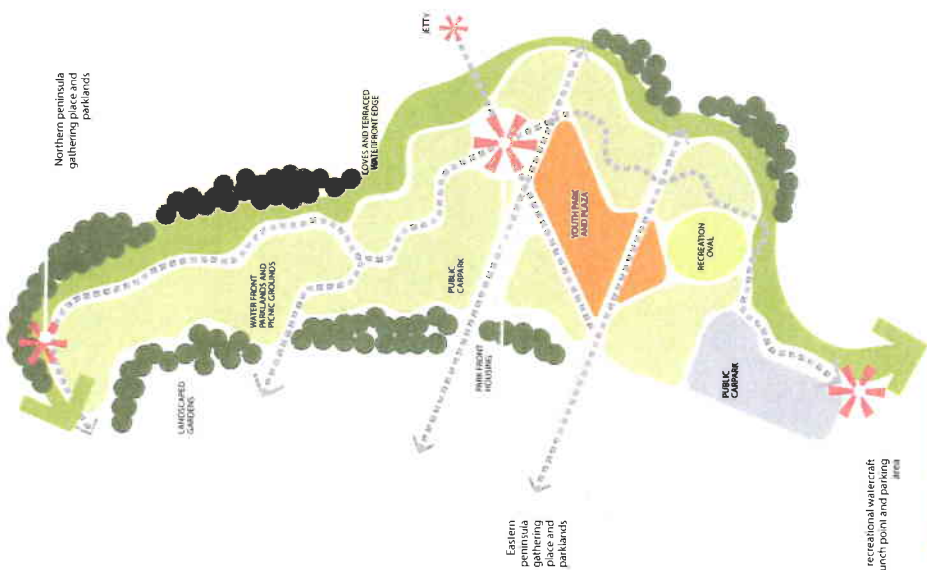
Toondah Harbour

IA Infrastructure Schedule - 4.4 Foreshore Parks

17th December 2015

Infrastructure Definition		Estimated Credit	Timing
1.09	Foreshore Parklands		
	Foreshore Parks - District Parks A, B & D	7,435,038	Staged delivery
	Beach Park C	4,173,925	proportional to residential
3.01	Public Open Space		Development of the
	Foreshore areas (revegetation)	2,833,025	eastern peninsula of the
			PDA Land by the
			Developer or a
			Subparticipant
TOTAL		14,441,988	

Estimates and Specifications are indicative only and will be developed further as part of Works Proposals under the IA
All estimates are at December 2014



- LEGEND
- * KEY DESTINATION
 - PEDESTRIAN ROUTE
 - OPEN SPACE/PARKLAND
 - SPORT AND RECREATION
 - PLAYGROUND
 - TREE RETENTION





1. PUBLIC ART SPACE AND CLIMBABLE SCULPTURE
2. LARGE FORMAT TERRACES DOWN TO EDGE
3. NORTH FACING GRASSSED AREA WITH INFORMAL SEATING
4. UNDER SHADE OF PALMS AND PANDANUS
5. COMMUNITY SHELTER FOR FUNCTIONS AND GATHERING
6. YOUTH ACTIVITY PLAZA
7. ACCESS JETTY TO WATER AND COASTAL EDGES
8. CARPARKING
9. KICK ABOUT SPACE
10. BUFFER PLANTING TO RESIDENTIAL EDGE
11. SHADE AND BBQ SHELTERS
12. MEANDERING TRANSITION EDGE WITH PLANTER
13. ARRANGEMENT REFERENCING THE MORETON BAY ISLANDS
14. BOAT AND TRAILER PARKING
15. WINDING COASTAL PATH CONNECTS THE FORESHORE PARK TO SURROUNDING AREAS
16. BEACON SCULPTURAL INSTALLATION ON THE AXIS OF MAIN ACCESS STREET RUNNING WEST-EAST
17. AMENITIES - TOILETS, CHANGE, SHOWERS
18. SAILING DINGHY WATER ACCESS
19. RECREATIONAL WATER CRAFT LAUNCH AND STORAGE
20. MANGROVE REGENERATION TO COASTAL EDGE

1. MANGROVE INTEGRATION TO SELECTED COASTAL LEDGES
2. COMMUNITY SHELTER FOR FUNCTIONS AND GATHERINGS
3. WINDING COASTAL PATH
4. SHADE AND IBBO SHELTERS
5. ACTIVE FITNESS NODES WITH ALL WEATHER EQUIPMENT



TOONDAH HARBOUR KEY PLACES
FORESHORE PARK CONCEPT DESIGN

Hase Design Group Pty Ltd
7/1 Robertson Street
Sydney, NSW 2000
T +61 2 9652 3922
P +61 2 9652 4766

place
design
group.



Date	Project No.	Revision	DWG No.
07/12/2015	1114087	8	SK 09

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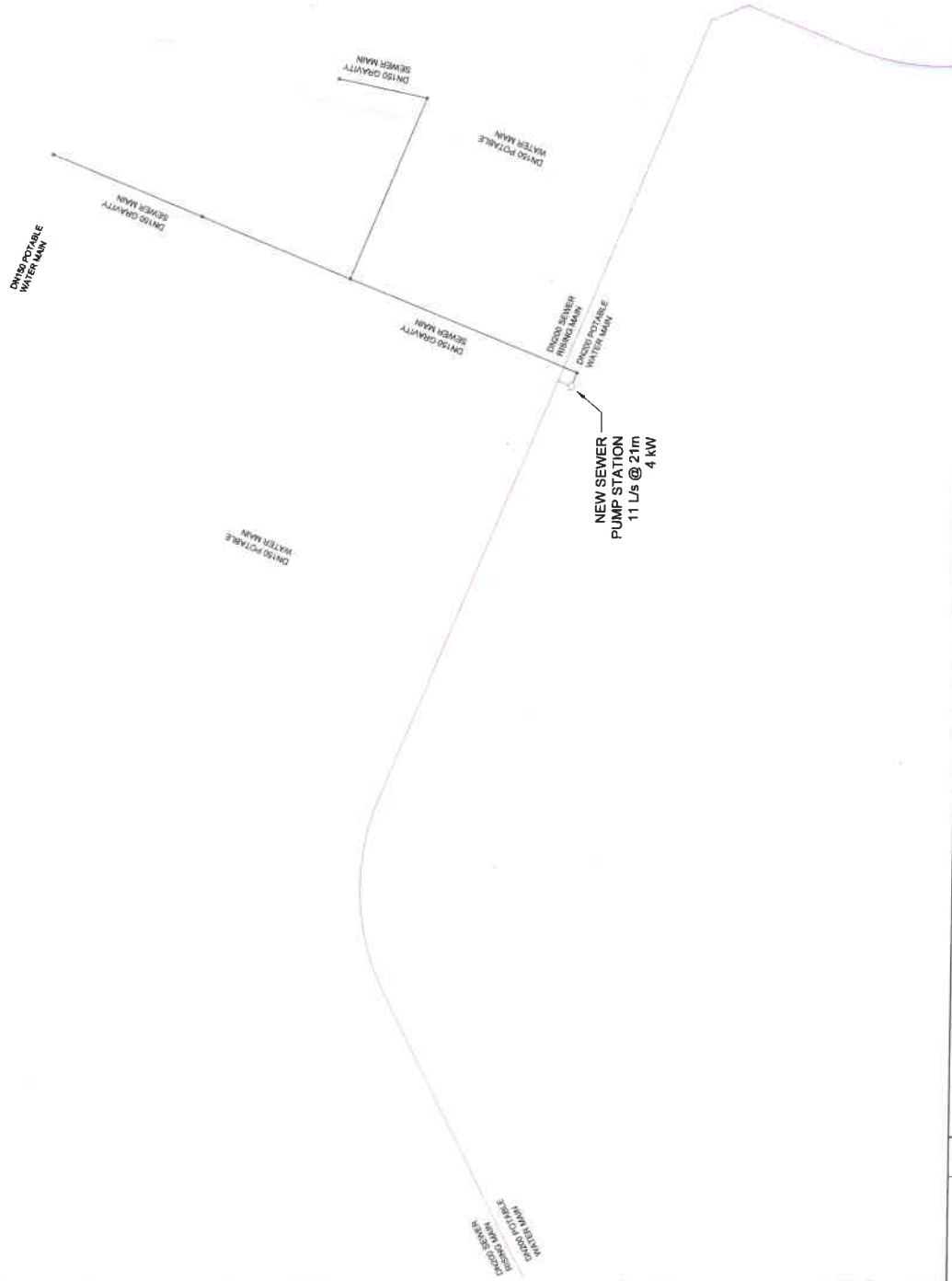
IA Infrastructure Schedule - 4.5 Roads and Services
17th December 2015

Infrastructure Schedule 2015 12 15 for DMA
4.5

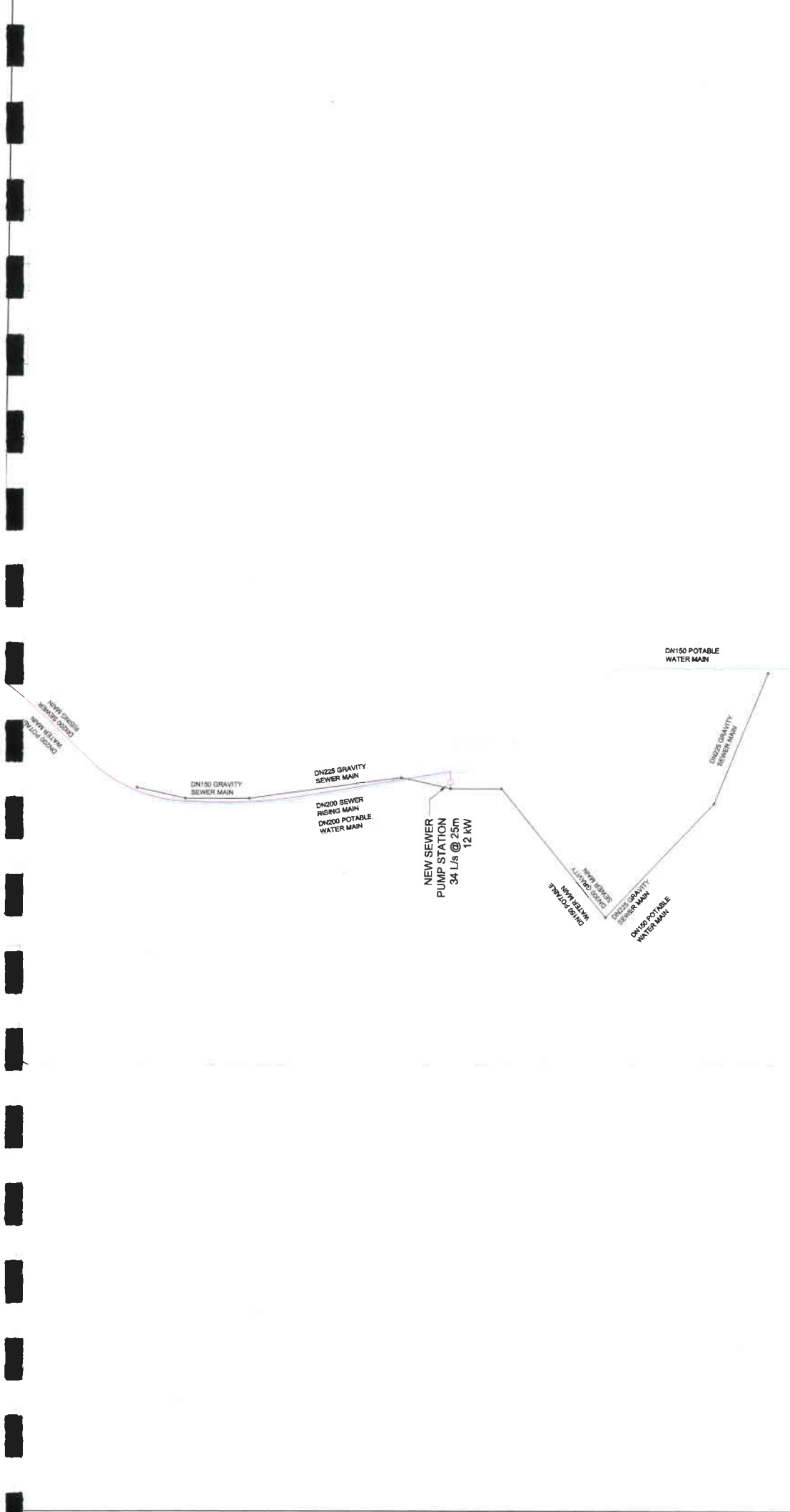
Infrastructure Definition	Plan Ref	Estimated Credit	Timing
3.03 Roads and transport (see attached sketch)			
3.03.1 Extension of Wharf Street to Port facilities			
Civil substage: 1.1		246,100	
Civil substage: 1.2		231,150	
Civil substage: 1.3		175,950	
Electrical / Communications / Gas		533,600	
Streetscape	Hyder SK001-01, ELE 1	436,425	
3.03.2 Upgrading of Wharf St and associated external works to Shore St North			
Civil substage: EXT 1		859,050	In Stages, as necessary
Civil substage: 2.1.1		77,050	to service the
Streetscape	Hyder SK001-01	112,413	Development of the PDA
3.03.3 Connection from Shore Street North Incl external Intersection through to ferry terminals			Land by the Developer or a Subparticipant
Civil substage: EXT 2		174,800	
Civil substage: 2.1.11		287,500	
Civil substage: 2.1.12		90,850	
Civil substage: 2.2.2		535,900	
Civil substage: 2.2.4	Hyder SK001-01	27,600	
Streetscape		105,800	
TOTAL		20,929,344	

Estimates and Specifications are indicative only and will be developed further as part of Works Proposals under the IA
All estimates are at December 2014





Hyder HYDER CONSULTING Pty Ltd Level 7 Penthouse Suite 100 Collins Street Melbourne VIC 3000 Australia Tel: +61 7 5532 3033 Fax: +61 7 5532 4778 Web: www.hyderconsulting.com		Project No: AA007635 Issue: 1	
Project: TOONDAH HARBOUR PDA WATER AND SEWER SERVING STAGE E2		Drawing No: BSW2	
Status:		R.F.E. to be:	
Approved:		Current Issue Signatures:	
Scale:		Author:	
Design:		Designer:	
Check:		Reviewer:	
Date:		Date:	
Client:		File Name:	
CLIENT LINE 1 CLIENT LINE 2 CLIENT LINE 3 CLIENT LINE 4		Date:	
Description:		Date:	



HYDER CONSULTING Pty Ltd
ABN 76 104 485 280
Level 7, Finesse Place
Cnr Danden and High Streets
Southport QLD 4215
Australia
Tel: +61 7 5532 3633
Fax: +61 7 5532 3634
Web: www.hyderconsulting.com

Project No: AA007635
Drawing No: SW 3

Project Title: TOONDAH HARBOUR PDA
WATER AND SEWER SERVING
STAGE E4

Client: CLIENT LINE 1
CLIENT LINE 2
CLIENT LINE 3
CLIENT LINE 4

Scale: 1:1000
Author: A1
Designer: A1
Reviewer: A1
Date: 10/10/2023
Drawn: A1
Checked: A1
Approved: A1
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Revision: 1
Description: 1
Date: 10/10/2023

LEGEND

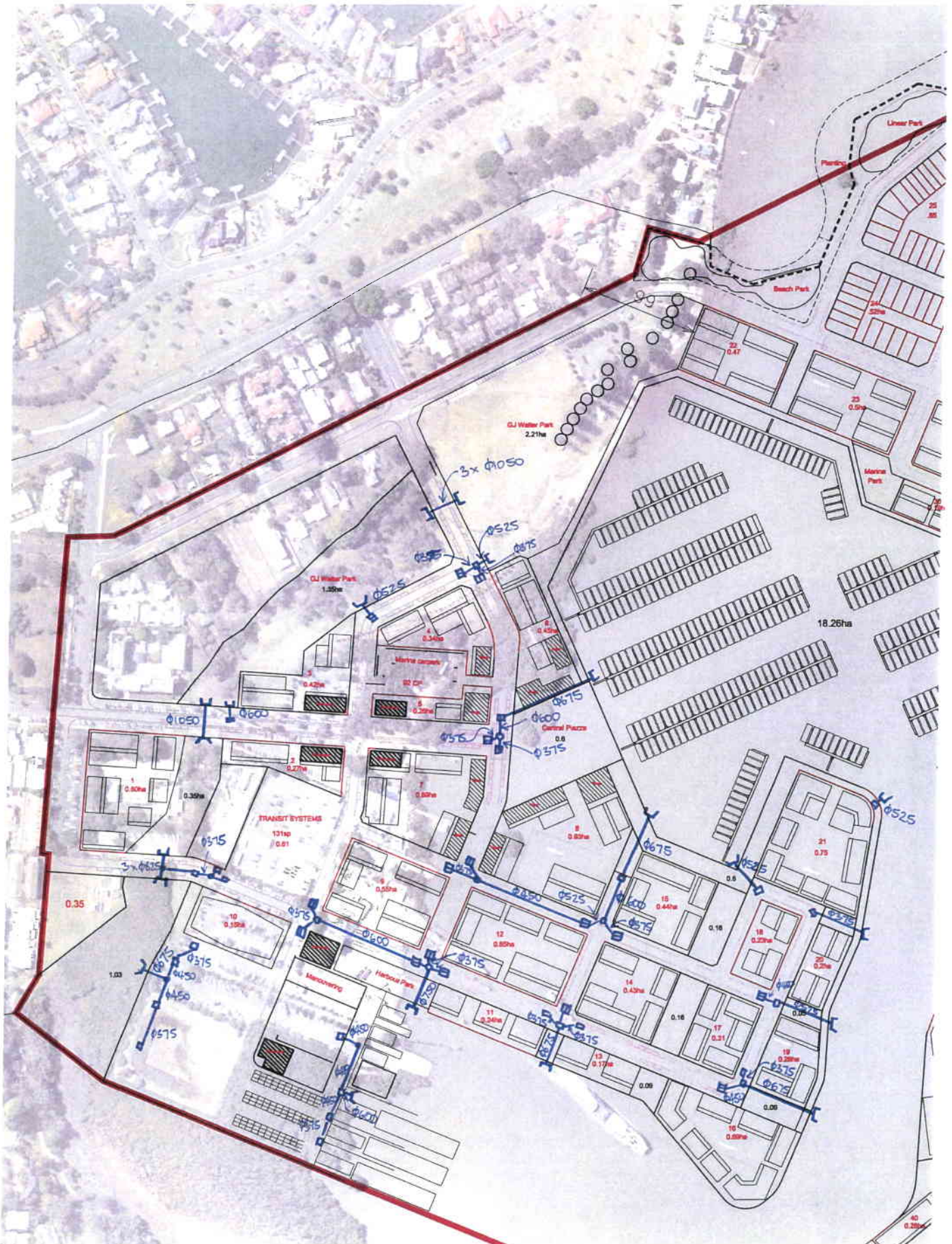
STORMWATER DRAINAGE PIPE

GULLY PIT

MAN HOLE

HEADWALL

NORTH



TOONDAH HARBOUR

CONCEPT STORMWATER DRAINAGE LAYOUT SHEET 1 OF 2

HYDER CONSULTING

AA007635

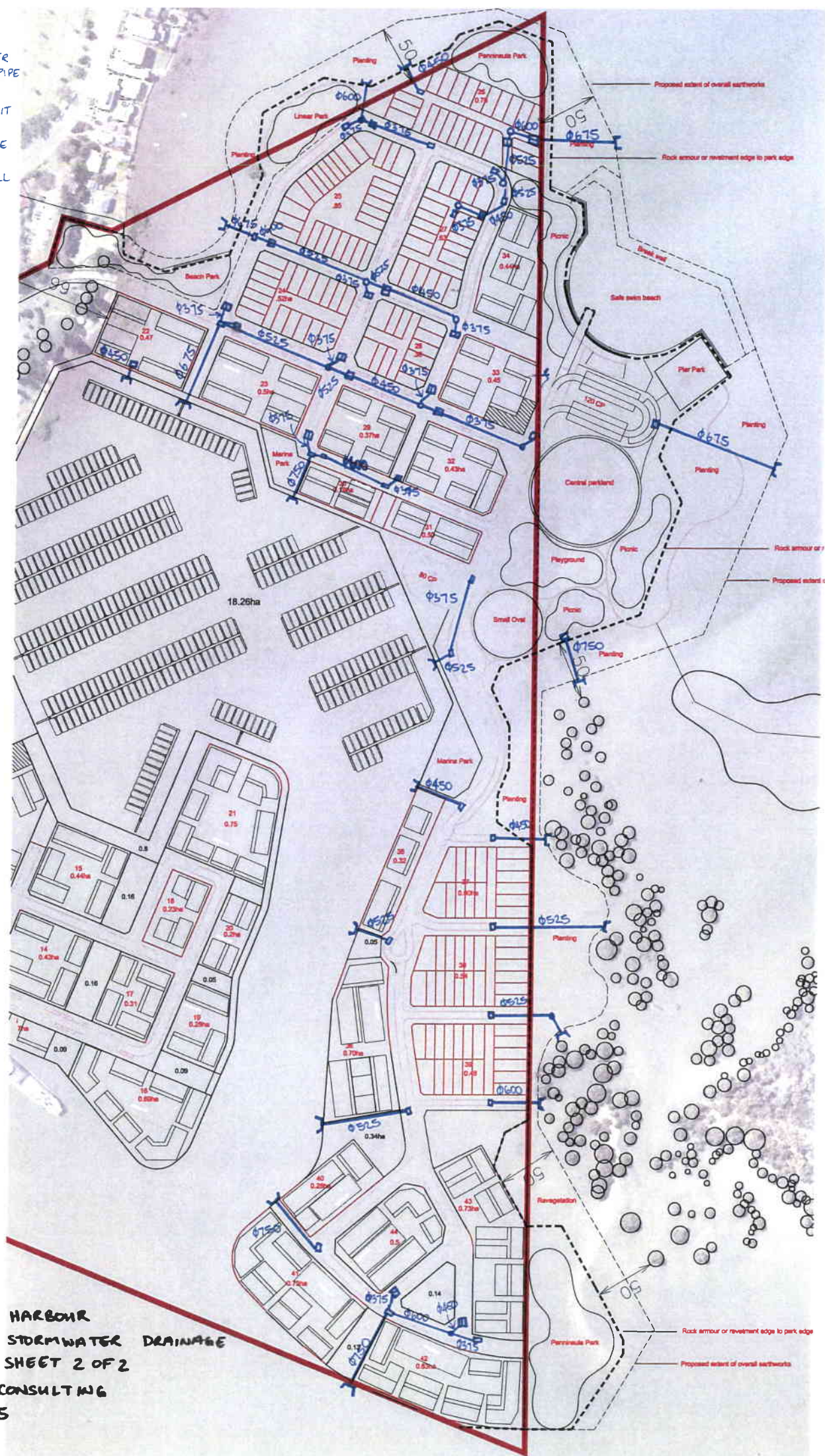
SWD 1

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LEGEND

- STORMWATER DRAINAGE PIPE
- GULLY PIT
- MAN HOLE
- HEADWALL

NORTH



TOONDAH HARBOUR
 CONCEPT STORMWATER DRAINAGE
 LAYOUT SHEET 2 OF 2
 HYDER CONSULTING
 A007635

SWD 2

1:3000 @ A3



Legend
STAGE 1
STAGE 2
STAGE 3
STAGE 4
STAGE 5
STAGE NUMBER
ROAD SEGMENTS
SITE BOUNDARY

Segment	Action
1.0.1	New Road Construction
1.0.2	New Road Construction
1.0.3	New Road Construction
2.1.1	Resurfacing existing road
2.1.2	Resurfacing existing road
2.1.3	New Road Construction
2.1.4	New Road Construction
2.1.5	New Road Construction
2.1.6	New Road Construction
2.1.7	New Road Construction
2.1.8	New Road Construction
2.1.9	New Road Construction
2.1.10	New Road Construction
2.1.11	New Road Construction
2.1.12	New Road Construction
2.2.1	1m Widening - Resurfacing existing road
2.2.2	New Road Construction
2.2.3	New Road Construction
2.2.4	Resurfacing existing road
2.2.5	2.0m widening - Resurfacing existing road
3.1.1	New Road Construction
3.2.1	New Road Construction
3.3.1	New Road Construction
3.3.2	New Road Construction
3.4.1	New Road Construction
4.1.1	New Road Construction
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5.98.1	New Road Construction
5.99.1	New Road Construction
5.100.1	New Road Construction

TOONDAH HARBOUR & WEINAM CREEK

TOONDAH HARBOUR ROADWORKS AUGMENTATION PLAN

Hyder

HYDER CONSULTING PTY LTD
ABN 76 104 465 289
104/105 St Georges Road
South Brisbane, QLD 4101
Tel: 1 81 071 332 0000
Fax: 1 81 071 332 0055
www.hyderconsulting.com

PRELIMINARY

NOT TO BE USED FOR CONSTRUCTION

Scale: 1:2500

Author: A1

Check: A1

Drawn: A1

Revised: A1

Disc: A1

Sheet: 01 of 01

Walker Corporation

COTTRELL CAMERON & STEEN SURVEYS

place

Scale: 1:2500

Author: 01/1

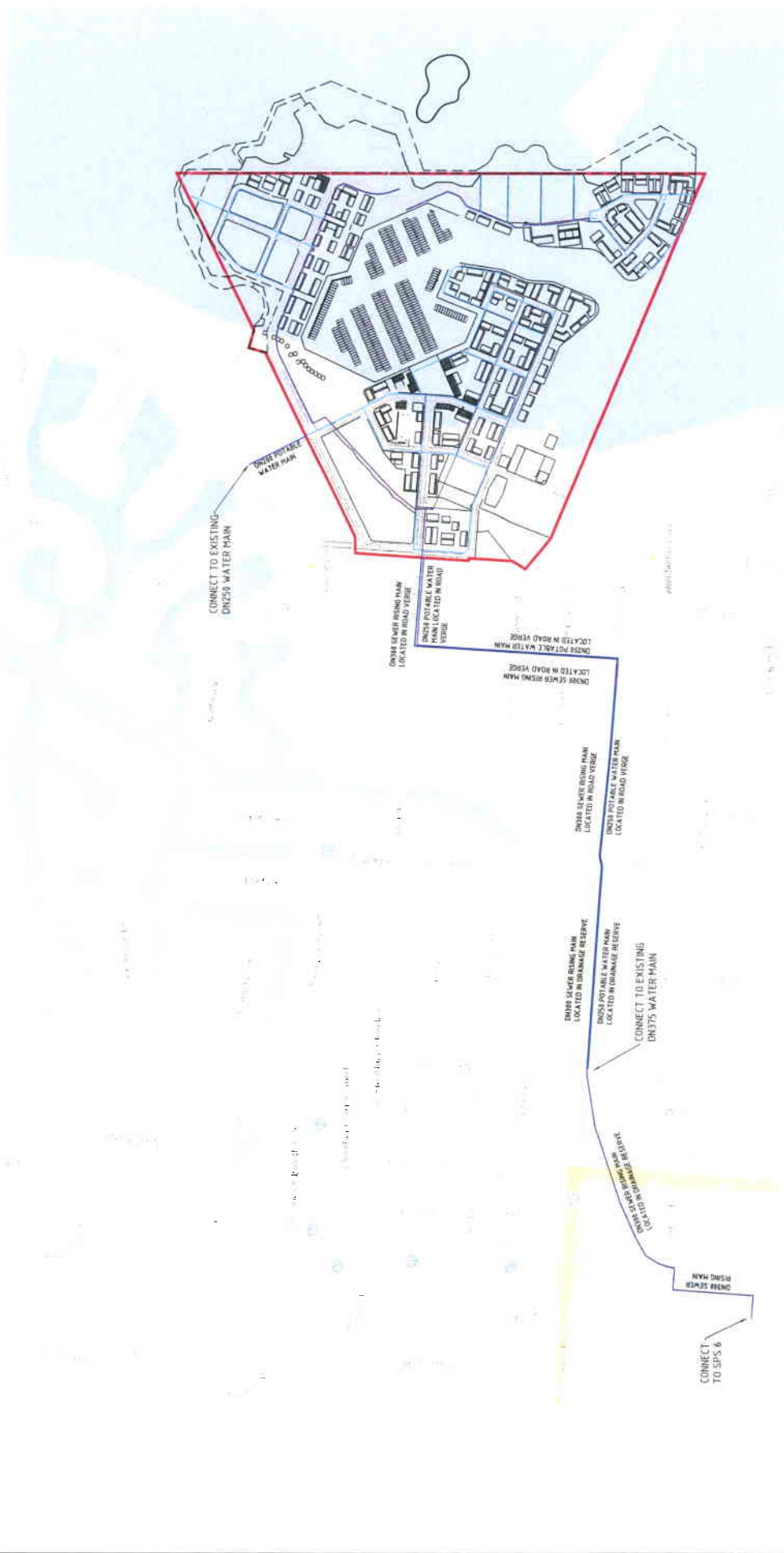
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Revised: 01/1

Disc: 01/1

Sheet: 01 of 01

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Schedule 3 Additional Requirements for Works

Schedule 3 – Additional Requirements for Works

1. APPLICATION OF THE SCHEDULE

- (1) The rights and obligations and processes in this Schedule 3 apply to the extent reasonably required to the carrying out of Works under this agreement. To the extent of any inconsistency with the balance of this agreement, the provisions of this Schedule prevail.
- (2) References in this Schedule to a Clause are to a Clause of this Schedule, unless the context indicates otherwise.

2. ADDITIONAL DEFINED TERMS

In addition to the terms defined in Clause 1 of the agreement, in this Schedule, unless the context otherwise requires:

- (1) **Approved Works Documents** means Works Documents which have been approved by the Council under Clause 5.
- (2) **Building Works** has the meaning given in SPA.
- (3) **Building Permit** means a development permit (as defined in SPA) for Building Works with respect to the Works (or any part of them).
- (4) **Concept Design Drawings** means conceptual architectural drawings and other material and information for a Works Portion that clearly sets out:
 - (i) the Developer's design concepts;
 - (ii) the site context; and
 - (iii) the guiding design principles for the relevant works.
- (5) **Consultancy Agreement** means an agreement under which a Consultant is employed to provide services, including relating to any of the following:
 - (i) the Infrastructure DAs;
 - (ii) the design of Works; and
 - (iii) the construction of Works.
- (6) **Consultant** means a planner, surveyor, urban designer, environmental consultant, architect, engineer, accountant, tax advisor, financial advisor, real estate agent, property consultant, construction manager, lawyer, valuer or other professional advisor or consultant employed in respect of the Development.
- (7) **Contractor** means a contractor engaged by the Developer to carry out Works.

- (8) **Date of Practical Completion**, for Works, means the date the Independent Certifier certifies that Practical Completion occurred for the relevant Works.
- (9) **Defect** has the meaning in the contract entered into by the Developer for the construction of the relevant Works which the Developer must ensure is reasonable having regard to the nature of the Works and the obligation to construct in accordance with this agreement, but in the event a contract does not define 'defect' means:
- (i) any defect, shrinkage, movement, deficiency, subsidence (other than in accordance with predicted settlement rates), fault or omission in the Works, whether in respect of, or arising from any cause including, design, materials, or workmanship;
 - (ii) any other aspect of the Works which is not in accordance with the requirements of this agreement; or
 - (iii) any physical damage to the Works resulting from such defect, shrinkage, movement, deficiency, subsidence, fault, omission or non-compliance.
- (10) **Defects Liability Period** means, in respect of a Trunk infrastructure Contribution:
- (i) the minimum Maintenance Period for that type of Trunk Infrastructure Contribution in Schedule 1; and
 - (ii) in respect of any Building Works for which a Defect has been identified, a further 12 months for that corrected work which begins on the date on which the Defect is corrected.
- (11) **Design Guidelines** means the guidelines required to be adopted by the Developer for the Development as set out in the Development Agreement.
- (12) **Developed Design Drawings** means substantially complete architectural, urban design and landscape architectural design documents, drawings, specifications, material and information which clearly set out the developed design for a Works Portion, which must comply with the Design Guidelines and, where appropriate, which documentation is developed at least to the stage of making application for a Building Permit for the relevant works.
- (13) **Environmental Impact Statement**, has the meaning in the Development Agreement.
- (14) **Existing Contamination** has the meaning in the Development Agreement.
- (15) **Final Design Documentation** means all material and information for a Works Portion relating, as appropriate, to:
- (i) external building design relating to facade, elevations, materials, setbacks, heights, roof profiles, massing, ground level frontages (including retail and commercial frontages), vehicle and pedestrian access, public and service vehicle entrances;
 - (ii) full working drawings and plans and specifications for each Works Portion, including (where relevant):

- A. wind and weather protection;
- B. landscaping;
- C. vehicle parking, access, loading and servicing, bike parking, access for those with limited mobility;
- D. footpaths and public access;
- E. public art;
- F. advertising and signage,

and which complies with the Design Guidelines.

(16) **Fit for Purpose** means:

- (i) to the extent the New Ferry Terminal Brief specifies the requirements for the use and operation of any component of the Works, when those Works will satisfy with those requirements; and
- (ii) to the extent the New Ferry Terminal Brief does not specify the requirements for any component of the Works, when the Works are capable of functioning and being used for the purpose that can reasonably be inferred from the New Ferry Terminal Brief.

(17) **Good Industry Practice** means, with respect to carrying out Works:

- (i) carrying out the Works in a proper and workmanlike manner using new materials and qualified workmen;
- (ii) exercising the degree of care, skill, diligence, prudence and foresight that would reasonably and ordinarily be expected to be exercised by a skilled and experienced developer, engaged in the same type of undertaking, under the same or similar circumstances and conditions; and
- (iii) to the extent relevant to the Works, complying with any relevant Standards Australia codes, standards, specifications, policies and guidelines and nationally accepted construction and management procedures.

(18) **Intellectual Property** means all intellectual property arising out of or used in connection with the Development of the Land under the Development Agreement (including in relation to Approvals, plans and specifications, applications, reports, and other documents), including:

- (i) business names;
- (ii) trade marks, whether registered or unregistered and any right to have a trade mark registered;
- (iii) any right to have information (including, confidential information) kept confidential;
- (iv) patents, patent applications, drawings, discoveries, inventions, improvements, trade secrets, technical data, formulae, computer

programs, databases, know-how, logos, designs, design rights, copyright and similar industrial or intellectual property rights; and

- (v) all agreements for a right to use, but not ownership of, intellectual property (including systems and procedures).
- (19) **New Ferry Terminal Brief** means the brief annexed to this agreement for the design and construction of the New Ferry Terminal.
- (20) **Plans and Specifications** means the plans and specifications for the Works for a Trunk Infrastructure Contribution and includes Concept Design Drawings, Developed Design Drawings and Final Design Documentation.
- (21) **PPSA** has the same meaning as in the Development Agreement.
- (22) **Procurement Documents** means the method of Contractor procurement suitable for the delivery of the New Ferry Terminal (or relevant part of it), that includes:
 - (i) brief details of the proposed tender process for procuring Contractors;
 - (ii) a draft Tender List;
 - (iii) the draft Tender Documentation;
 - (iv) proposed tender assessment criteria for evaluation of tenders, including cost, time, occupational health and safety, quality assurance and contractor experience; and
 - (v) any other information the Developer considers should be given to the Council regarding the procurement of a Contractor.
- (23) **Queensland Code of Practice** means the relevant Queensland Government codes of practice and guidelines for the construction industry, as published from time to time.
- (24) **Reputable Insurer** means an insurance company:
 - (i) having claims paying ability of at least A by AM Best or A by Standard and Poor's (or, if Standard & Poor's ceases to exist or to provide such ratings, the rating which most closely corresponds to that rating by another agency or person which is recognised in global financial markets as a major ratings agency); and
 - (ii) which is authorised to carry on business in Australia by the Australian Prudential Regulatory Authority; and
 - (iii) licensed by the Australian Securities & Investments Commission.
- (25) **Security Interest** means any bill of sale (as defined in any statute), mortgage, charge, lien, pledge, hypothecation, title retention arrangement, trust or power, as or in effect as security for the payment of a monetary obligation or the observance of any other obligation, including a security interest under the PPSA.

- (26) **New Ferry Terminal Tender Documentation** means all documentation to be submitted to proposed Contractors on a Tender List, for the procurement of New Ferry Terminal (or relevant part of it), including:
- (i) the tendering conditions for the tender;
 - (ii) the New Ferry Terminal Plans and Specifications (or relevant parts of them);
 - (iii) the proposed Works Program;
 - (iv) the form of the proposed Works Contract;
 - (v) any other information or document the Developer considers should be given to proposed Contractors for the tender.
- (27) **Tender List** means a list prepared by the Developer of proposed Contractors to carry out the construction of New Ferry Terminal, that:
- (i) identifies proposed Contractors that the Developer considers:
 - A. have the necessary ability, reliability, expertise and financial standing to carry out the relevant works; and
 - B. are experienced in performing similar works; and
 - (ii) includes a minimum of three Contractors proposed by the Developer; and
 - (iii) includes up to two Contractors proposed by the Council (in its sole discretion).
- (28) **Tender Proposal** means a written recommendation by the Developer on which a tenderer for New Ferry Terminal should be accepted, including:
- (i) details of the recommended tenderer (if any);
 - (ii) an evaluation of each tender against the assessment criteria in the relevant Procurement Documents;
 - (iii) details of any proposed changes to the Tender Documentation by the recommended tenderer (including to the Works Program);
 - (iv) if the Developer does not recommend the tenderer with the lowest price, the reasons why the lowest price has not been recommended; and
 - (v) if the Developer considers that no tender should be accepted, the reasons for that recommendation.
- (29) **Trunk Infrastructure Budget** means a fully detailed estimate of the total anticipated Works Costs with respect to the Works.
- (30) **Trunk Infrastructure Contract** means a Works Contract, Consultancy Agreement or other contract or agreement relating to the design or construction of Works (excluding this agreement and the Independent Certifier agreement).

- (31) **Working Group** means the working group of the Council and the Developer established under Clause 4.3 for the purpose of discussing the development of the Works Documents.
- (32) **Works Contract** means a contract entered into, or to be entered into, by the Developer and a Contractor with respect to the whole or any part of the Works to be carried out that satisfies the requirements for a Works Contract in Clause 8.2.
- (33) **Works Documents** means the following documents in respect of a Works Portion:
- (i) the Works Plans and Specification;
 - (ii) the Works Program; and
 - (iii) the Trunk Infrastructure Budget.
- (34) **Works Plans and Specifications** means drawings, detailed plans and specifications, performance specifications and other requirements for the Works prepared in accordance with 4.
- (35) **Works Program** means a statement in writing showing the development and construction activities and various parts for performing a Works Portion, which must specify in reasonable detail the time frame for commencement and completion of each major part of those works including the anticipated date of Practical Completion of the relevant Works.
- (36) **Works Portion** means a discrete portion of the Works to be carried out by the Developer.
- (37)

3. INTERIM TRANSPORT AND EMERGENCY REQUIREMENTS

The Developer must sequence and design and otherwise carry out the Works and the development of the Land in such a manner as to meet the requirements in Column 2 of the following table for the Services in Column 1 of the following table:

Column 1: Service	Column 2: Requirements and solutions
Ferries	<p>Ferry movements not to be unduly disrupted. For clarity reasonable minor ferry path deviations will not be considered a disruption, however there must be no substantial impact on the arrival and departure scheduled times.</p> <p>If a ferry terminal is to be relocated then the new terminal must be commissioned before the existing terminal is closed.</p>
Parking for ferry terminal	Existing parking may not be disrupted unless the Developer provides alternative free car parking for no fewer car spaces than the free car parking available at the date of this agreement and is located no further away from the ferry terminal than the car parking area at the date of this

Column 1: Service	Column 2: Requirements and solutions
	agreement For clarity, the provision of shuttle buses from car parks is not an adequate solution.
Public transport connections to ferry terminal	Must be maintained at all times to Translink requirements.
Emergency service access to ferry terminal and water launch facilities	Existing facilities for emergency services must be maintained until replacement facilities to the satisfaction of the relevant emergency services are constructed and available for use.

4. DESIGN REQUIREMENTS OF WORKS

4.1 Works to be designed

The Developer and the Council acknowledge that:

- (1) at the Commencement Date the design of the Works is not fully or finally documented; and
- (2) the Developer must procure the design of the Works:
 - (i) in consultation with the Council;
 - (ii) for the New Ferry Terminal, in accordance with the New Ferry Terminal Brief;
 - (iii) progressively as the Development is carried out; and
 - (iv) to be consistent with:
 - (A) this agreement, including this Clause and Clause 9;
 - (B) the Master Plan;
 - (C) the Environmental Impact Statement (to the extent relevant);
 - (D) all laws, Authority requirements and Development Approvals affecting the Works.

4.2 Works Plans and Specifications

The Developer must ensure that the Works Plans and Specifications for each Works Portion:

- (1) are prepared by Consultants with appropriate professional qualifications and membership of appropriate professional associations;

- (2) are prepared to the standard required to:
 - (i) obtain the Infrastructure DAs;
 - (ii) enable the works once constructed to be Fit for Purpose; and
 - (iii) enable the Works to be carried out by the Contractors; and
- (3) allows the Works to be carried out in accordance with this agreement.

4.3 Establishment of a Working Group for design

- (1) The Developer will establish a Working Group comprising representatives of the Council and the Developer, as a forum for the Parties to discuss and consult on the development of the Works Documents.
- (2) The Contractors and Consultants appointed by the Developer for the Works may attend the Working Group.

4.4 Meetings of the Working Group

- (1) The Working Group will:
 - (i) be comprised of two representatives of the Council (together) and two representatives of the Developer;
 - (ii) meet as agreed by the Developer and the Council until the Works Documents for each Works Portion are Approved Works Documents.
- (2) If requested by the Council, the Developer must use its reasonable endeavours to procure the Contractors and Consultants for the Works to attend meetings of the Working Group.
- (3) The Council and the Developer may, on reasonable notice to the other Party, bring additional attendees to a meeting of the Working Group, but may not invite more than 5 additional persons without the prior approval of the other Party. Any invitee will attend in an observatory role only.

4.5 Consideration of Works Documents

The Developer must ensure that all Works Documents for a Works Portion are provided to the Working Group prior to the documents being submitted for approval of the Council under Clause 5.1(1).

4.6 Documents prior to meetings

The Developer must ensure that any documents the Developer intends to discuss at a meeting of a Working Group are given to the Council at least 5 Business Days before the meeting of the Working Group (excluding meetings convened on less than 5 Business Days' notice, in which case the documents must be provided as soon as practicable).

4.7 Discussion of documents

- (1) At meetings of the Working Group:

- (i) the Council and the Developer will discuss and consider the requirements of the Works Documents; and
 - (ii) the Developer will provide an update to the Council on any developments, additions or amendments to the Works Documents since the previous meeting.
- (2) The Developer must promptly provide the Council with any information reasonably requested by the Council relating to Works Documents discussed with the Council in a Working Group.

4.8 Rectification of inconsistencies

The Developer must rectify any non-conformance of the Works Documents with the Developer Obligations that are notified by the Council to the Developer or known to the Developer.

4.9 Keeping the Council informed

The Developer must afford the Council an opportunity to review the Works Documents as those documents are progressed, by giving:

- (1) draft copies of the Works Documents to the Council as the documents are developed to each design stage; and
- (2) final copies of the Works Documents to the Council promptly after those documents are finalised for the Council's review in accordance with Clause 5.1.

4.10 Not lodge Development Application

The Developer must not lodge an application for an Infrastructure DA unless the Council has given (or taken to have given) a notice under Clause 5.1(3)(i) or dispute resolution determines the Works Documents do not require amendment.

4.11 Requirements of Consultancy Agreements

- (1) Consultancy Agreements for Works are generally required to be on the following terms:
 - (i) the Developer must be the principal;
 - (ii) all warranties and indemnities from the Consultants must be expressed to be for the benefit of the Council (in addition to the Developer);
 - (iii) an architectural, civil or structural engineering, or services design Consultants must be obliged to have professional indemnity insurance for at least \$10,000,000 or such higher amount as reasonably required by the Council from time to time which includes the Developer and the Council as insured parties for their respective interests, and to provide evidence of the insurance on request for a period of at least 6 years after the Date of Practical Completion of the relevant Works; and
 - (iv) the Consultant is to give appropriate certifications about the matters for which it is responsible.
- (2) To the extent that there is any material comprised in the Approved Works Documents in which there are Intellectual Property rights incapable of being

assigned, the Developer must grant or ensure that the Council is granted a non-exclusive, irrevocable and transferable, royalty-free licence to use the subject material of those Intellectual Property rights for the purpose of the Works Portion and the subsequent use, maintenance and refurbishment of the relevant Works.

5. REVIEW OF WORKS DOCUMENTS

5.1 Council to review Works Documents

- (1) The Developer must submit Works Documents to the Council for each Works Portion.
- (2) The Works Documents submitted to the Council under Clause 5.1(1) must:
 - (i) include:
 - A. Works Plans and Specifications;
 - B. a Works Program; and
 - C. a Trunk Infrastructure Budget for each component of the Works expected to cost more than \$500,000.00; and
 - (ii) state that the documents are given to the Council under this Clause 5.
- (3) Within 20 Business Days of receiving Works Documents under this Clause 5 (including amended documents under Clause 5.5), the Council must notify the Developer in writing that either:
 - (i) the Council has no objection to the Works Documents, in which case the documents are Approved Works Documents; or
 - (ii) subject to Clause 5.2, the Council requires amendments to the Works Documents, giving reasonable details of the amendments.
- (4) If the Council does not give the Developer a notice under Clause 5.1(3) within the period specified in that Clause then the Council is taken to have given a notice under Clause 5.1(3)(i).
- (5) The issue of a notice by the Council under Clause 5.1(3)(i), does not limit the design obligations of the Developer under this agreement.

5.2 Limitation on amendments

- (1) The Council must act reasonably when reviewing Works Documents and issuing a notice under Clause 5.1(3).
- (2) Without limiting Clause 5.2(3), it will be reasonable for the Council to give a notice under Clause 5.1(3)(ii) if Works Documents are inconsistent with (other than in an immaterial way):
 - (i) the New Ferry Terminal Brief;
 - (ii) the Master Plan (as current at the relevant time);

- (iii) the Design Guidelines;
 - (iv) the Trunk Infrastructure Budget for those works; or
 - (v) the Developer's other obligations under this agreement.
- (3) The Council may not request an amendment to an aspect of a Works Document that was required, or is a consequence of, an Variation (provided the Developer has prepared the Works Document in accordance with the Variation).

5.3 Working Group may discuss

- (1) At any time after the Council receives Works Documents under this Clause 5 (and more than once, acting reasonably), the Council may request the Developer to:
- (i) convene a meeting of the Working Group to discuss and explain the Works Documents (or any aspect of them); and
 - (ii) use its reasonable endeavours to procure the Contractors and Consultants with respect to the relevant Works to attend the meeting of the Working Group to assist with the discussion and explanation.
- (2) If a request is made under this Clause 5.3(1) then the Developer must convene the meeting of the Working Group within 3 Business Days of the Developer receiving the request.

5.4 Resolution of disputes

If the Developer disagrees with a notice issued under Clause 5.1(3)(ii), then the Developer may refer the matter to dispute resolution.

5.5 Resubmission of unapproved documents

If the Developer agrees with a notice issued under Clause 5.1(3)(ii) or if dispute resolution determines the Works Documents require amendment, then the Developer must amend and resubmit the Works Documents to the Council and the review process in Clause 5.1(3) will again apply except that the period of time referred to in Clause 5.1(3) will be 10 Business Days instead of 20 Business Days.

6. AMENDMENT OF APPROVED WORKS DOCUMENTS

6.1 Permitted amendments without consent

- (1) The Developer is only entitled to make a variation to an Approved Works Document without the consent of the Council, if the variation:
- (i) is lawfully required by an Authority (but only to the extent required); or
 - (ii) only affects the relevant Works in some immaterial way, including with respect to cost, construction program, quality of works or 'whole of life' maintenance costs; or
 - (iii) is a Variation.
- (2) The Developer must:

- (i) promptly notify the Council of a proposed variation of an Approved Works Document for Clause 6.1(1)(i), which may be given in a meeting of the Working Group; and
- (ii) comply with the Council's reasonable requirements, if any, with respect to the proposed variation (and the Council is deemed to have no requirements if it does not notify the Developer to the contrary within 10 Business Days of receiving the notice of the proposal).

6.2 **Amendment of approved documents**

The Developer may propose any amendment to an Approved Works Document that the Developer is not permitted to make under Clause 6.1 by submitting a revised Works Document to the Council (and the review process in Clause 5.1(3) will apply).

7. **COSTS AND TRUNK INFRASTRUCTURE BUDGET**

7.1 **Developer to prepare budgets**

- (1) The Developer must prepare a Trunk Infrastructure Budget for each component of the Trunk Infrastructure Work.
- (2) The Developer must use its reasonable endeavours to obtain competitive prices for the Works to ensure 'value for money' is obtained in respect of the Trunk Infrastructure without compromising the quality of the Trunk Infrastructure.
- (3) The Parties agree that any pricing or estimates contained in a schedule or annexure to this agreement are estimates only provided by the Developer and are not caps for the purpose of determining a Trunk Infrastructure Budget.

7.2 **Costing of Works**

- (1) The cost of construction and delivery of the Works is calculated as follows:
- (2) the costing for the Works will be prepared on an open book basis;
- (3) the cost of the Works is determined having regard to:
 - (i) the Contractors', relevant trade contractors' and consultants' schedules of rates or, if the schedules of rates are not applicable, using reasonable rates applicable at the time the costing is undertaken;
 - (ii) accepted tender prices for any trade package to construct the Works; and
- (4) a margin of 5% on the amount in Clause 7.2(3) is added on account of the Developer's on and off-site overheads, administrative, management and supervision costs; and
- (5) the following will be included in the Trunk Infrastructure Costs to the extent relevant to the Works:
 - (i) the cost of the Developer complying with a cultural heritage management plan in so far as it directly relates to that part of the Land which is above the high water mark at the Commencement Date; and

- (ii) additional cost to the Developer because of any Existing Contamination in so far as it directly relates to that part of the Land which is above the high water mark at the Commencement Date.

7.3 Independent Certifier

- (1) The Council may request (acting reasonably) the Independent Certifier to review, assess and comment on the Trunk Infrastructure Budgets or budget for a Variation (whether in draft or final form).
- (2) The report of an Independent Certifier on a Trunk Infrastructure Budget or an Variation must be provided to both the Council and the Developer.
- (3) The costs of an Independent Certifier with respect to a Variation are a Trunk Infrastructure Cost.
- (4) The Developer must provide to the Council and the Independent Certifier all information and supporting documents as reasonably required to enable the Independent Certifier to assess and determine the value of the Variation and the Trunk Infrastructure Costs.

8. APPOINTMENT OF CONTRACTORS

8.1 Developer to appoint Contractors

- (1) The Developer must appoint Contractors under Works Contracts to carry out the Works required to complete the Works.
- (2) The Developer may appoint one or more Contractors under Works Contracts to carry out the Works required for Trunk Infrastructure.

8.2 Requirements for Works Contracts

Each Works Contract must:

- (1) require the Contractor to carry out certification and testing procedures for the Works to be carried out under the Works Contract;
- (2) include appropriate work health and safety provisions, with respect to the Works to be carried out under the Works Contract;
- (3) be consistent with, and require compliance with, relevant Queensland Codes of Practice;
- (4) require the Contractor to have appropriate insurances (which must be in the names of the Contractor, the Developer and the Council), including:
 - (i) public liability insurance for \$20,000,000, or such higher amount as reasonably required by the Council from time to time (having regard to what is usual public liability insurance for comparable works to the Works), covering the period from the commencement of the Works until the end of the Defects Liability Period;
 - (ii) for any design and construct contract, professional indemnity insurance for at least \$10,000,000, or such higher amount as reasonably required by the Council from time to time (having regard to what is usual

professional indemnity insurance for comparable works to the Works), for a period of at least 6 years after the acceptance On-maintenance of the relevant Works;

- (iii) providing certificates of currency in respect of the insurances; and
- (iv) notifying the Developer of any insurance claims;
- (5) include the relevant Defects Liability Period, beginning on the date of Practical Completion of the relevant Works;
- (6) provide that:
 - (i) the Developer is the principal under the Works Contract; and
 - (ii) if relevant for the Works, that the Contractor is appointed as the 'principal contractor' pursuant to the *Work Health and Safety Act 2011* (Qld); and
- (7) require the Contractor to hold and maintain all licences required by law for the Contractor to carry out the Works.

8.3 Additional requirements for New Ferry Terminal Contract

A Works Contract for New Ferry Terminal must also:

- (1) require the Contractor to provide security for the Contractor's performance (which may be a bank guarantee or insurance bond, or retention of payments) for:
 - (i) 5% of the Works Contract price, which must be in place until Practical Completion; and
 - (ii) 2.5% of the Works Contract price, which must be in place from the date of Practical Completion until one month after the end of the Defects Liability Period;
- (2) prohibit the assignment of the Works Contract by the Contractor without the prior written consent of the Council;
- (3) contain an obligation on the Contractor, to enter into a multiparty deed with the Developer and the Council that:
 - (i) obliges the Contractor to give notice of any material default prior to exercising a right of termination;
 - (ii) allows the Council to step-in and take over the obligations of the Developer under the Works Contract if the Developer defaults and fails to remedy it within a reasonable time after receipt of a written notice specifying the default and the action required to remedy it and to step-out;
 - (iii) if the Council step-in and takes over the obligations of the Developer under the Works Contract:

- (A) if a Security has been provided under Clause 8.3(1), requires the Contractor to provide to the Council a new Security in the amounts set out in Clause 8.3(1) in favour of the Council; and
 - (B) if a retention amount has been provided under Clause 8.3(1), authorises and directs the Developer to transfer the retention amount to the Council; and
- (4) include a requirement for ownership of all fixtures, fittings, goods, plant and equipment and other items to be installed as part of the Works to pass to the Council from the earlier of:
 - (i) payment for the relevant items; and
 - (ii) installation of the relevant items; and
- (5) the Contractor is to be engaged as the head contractor and responsible for the performance of the works, engaging and managing subcontractors and for engaging and managing the consultants identified in the Works Contract.

8.4 Obligations prior to contract

- (1) The Developer must not enter into a Works Contract unless the Developer:
 - (i) has complied with Clauses 8.2 and 8.3; and
 - (ii) has given the Council reasonable evidence that the proposed Works Contract is consistent with this Clause 8.
- (2) The Council must act reasonably to ensure that the Developer can comply with its obligations under this Clause 8.

8.5 Procurement Documents

- (1) The Developer must prepare Procurement Documents for the New Ferry Terminal..
- (2) If more than one Works Contract is required for the construction and delivery of the New Ferry Terminal, then Procurement Documents must be prepared with respect to each Works Contract.

8.6 Tender List

- (1) The Council may require the Developer to include up to two Contractors nominated by the Council on the Tender List for Procurement Documents.
- (2) The Developer may reject a Contractor proposed by the Council (by written notice to the Council) if the Developer considers (acting reasonably) the proposed Contractor does not have the necessary skills, reliability, expertise, experience or financial standing to carry out the relevant works.

8.7 Keeping the Council informed

- (1) The Developer must afford the Council an opportunity to review the Procurement Documents as they are progressed (by submitting the Procurement Documents to the Council at appropriate times).

- (2) The Developer must take account of the Council's reasonable comments on the Procurement Documents.

8.8 Calling Tenders

- (1) Subject to the Council approving the Works Documents and a Works Contract for a Works Portion, the Developer must:
 - (i) give the Council a complete copy of the Tender Documentation at least 10 Business Days before the documents are issued to the market;
 - (ii) issue the Tender Documentation to each person on a Tender List for the relevant Works;
 - (iii) use reasonable endeavours to obtain prices from each of the tenderers on the Tender List;
 - (iv) examine and analyse all tenders received, highlighting provisional allowances, omissions and non-compliances;
 - (v) if requested by the Council, provide to the Council a complete copy of any subsequent tender related correspondence; and
 - (vi) submit a Tender Proposal to the Council.
- (2) The Developer may negotiate the terms of the tenders (and accept revised tenders), provided that:
 - (i) negotiation of tenders is permitted under the terms of the tender documentation; and
 - (ii) the Developer keeps the Council informed of the negotiations.

8.9 Approval of Works Contractor

- (1) Within 20 Business Days of the Council receiving a Tender Proposal, the Council must notify the Developer in writing that either:
 - (i) the Council agrees with the Developer's recommendation, in which case the Developer must implement that recommendation; or
 - (ii) the Council does not agree with the Developer's recommendation, in which case the Council must recommend another Contractor that tendered for the relevant Works under the Tender Documentation.
- (2) If the Council does not give a notice within the period provided under Clause 8.9(1), then the Council is taken to have given a notice under Clause 8.9(1)(i).
- (3) The Council may object to a Contractor recommended by the Developer on the basis of:
 - (i) the price tendered by the recommended Contractor; or
 - (ii) the experience, financial standing or reputation of the recommended Contractor;

- (4) The Council must not make a recommendation under Clause 8.9(1)(ii) that would cause, or is likely to cause:
 - (i) the relevant part of the Trunk Infrastructure Budget with respect to the Works Contract to be exceeded; or
 - (ii) a delay in the delivery of the relevant Works Portion, as specified in the Works Program for those Works.
- (5) If the Council gives a notice under Clause 8.9(1)(ii) and the Developer objects to the Council's recommendation, then there is a dispute and 13 applies.

9. DELIVERY OF WORKS

9.1 Delivery of Works

In carrying out the Works the Developer must:

- (1) comply with:
 - (i) the Council's planning scheme policies with respect to the relevant Works;
 - (ii) if there is no Council planning scheme policy, the relevant equivalent planning scheme policy of the Brisbane City Council; or
 - (iii) if there is no equivalent planning scheme policy of the Brisbane City Council, the reasonable requirements of the Council;
- (2) diligently progress delivery of the Works (or relevant part of them); and
- (3) use its reasonable endeavours to procure the delivery of the Works in accordance with the relevant Works Program.

9.2 Requirements for Works

The Developer must procure the completion of the Works and ensure that the planning, design, construction and delivery of the Works are carried out:

- (1) in accordance with:
 - (i) this agreement;
 - (ii) the Approved Works Documents;
 - (iii) the Master Plan;
 - (iv) the Environmental Impact Statement (to the extent relevant);
 - (v) all laws, Authority requirements and Approvals with respect to the Works;
 - (vi) Good Industry Practice;
 - (vii) the Queensland Code of Practice;

- (viii) the Design Guidelines;
- (2) using Contractors approved by the Council under Clauses 8.9(1)(i) or 8.9(2); and
- (3) at its sole risk and expense subject to entitlement to Offsets.

10. TESTING FOR DEFECTS

10.1 Tests requested by the Council

- (1) At any time before the expiry of the Defects Liability Period for a Works Portion, the Council may direct that any component of a Works Portion be tested for the purpose of identifying any Defect.
- (2) On completion of the tests, the Developer must promptly make good any aspect of the Works Portion that does not comply with this agreement, so that the Works fully comply with this agreement.
- (3) Tests directed by the Council under Clause 10.1(1) are to be conducted by a person (which may include the Developer or the Contractor) nominated by the Council.

10.2 Testing requirements

- (1) Before conducting a test under this agreement, the Council must give reasonable written notice to the Developer and the Independent Certifier of the time, date and place of the test. If the Developer or Independent Certifier does not then attend, the test may nevertheless proceed.
- (2) Without prejudice to any other right, if the Council delays in procuring a test, the Developer may procure the test after giving reasonable written notice to the Council of its intention to do so.
- (3) Results of tests must be promptly made available by the Party that conducted the test to the other Party and the Independent Certifier.

10.3 Cost of testing

The cost of any test directed under Clause 10.1(1) forms part of the Works Costs.

11. HANDOVER OF NEW FERRY TERMINAL

11.1 Transfer of control

Following Practical Completion of the New Ferry Terminal the Developer must give the Council:

- (1) vacant possession of that part of the Land;
- (2) two complete sets of keys for any lockable structures, together with the master key and written records of all codes and combinations necessary for the purpose of fastening or unfastening any lock or activating or de-activating any security device; and

- (3) a list of the Contractor(s) engaged in the construction of the relevant New Ferry Terminal, together with the address, telephone number and contact personnel for future reference in maintenance of the New Ferry Terminal.

11.2 Documents and records

- (1) Within 10 Business Days after Practical Completion of the New Ferry Terminal the Developer must deliver the following documents to the Council with respect to the New Ferry Terminal(unless previously provided):
 - (i) all manufacturers, suppliers and other warranties;
 - (ii) all operating and maintenance manuals for all services, plant and equipment forming part of the New Ferry Terminal;
 - (iii) a copy of all Approvals for the New Ferry Terminal and supporting material provided to any Authority in respect of the relevant Works including the occupation certificate and the compliance certificate; and
 - (iv) final engineering certificates by the engineers responsible for designing and inspecting the New Ferry Terminal.
- (2) Within 60 Business Days' after Practical Completion of the New Ferry Terminal, the Developer must deliver to the Council:
 - (i) as constructed drawings and surveys (in both hard copy and in electronic format); and
 - (ii) as constructed surveys confirming the location of the New Ferry Terminal.

11.3 Warranties on handover

On Practical Completion of the New Ferry Terminal the Developer warrants to the Council that the Developer has paid, or will pay, all charges, taxes, claims, demands, bills for materials and other indebtedness for which the Developer is liable in connection with those Works and there is no Security Interest with respect to any part of those Works.

12. INDEMNITIES AND WARRANTIES

12.1 Benefit of Council

- (1) The Developer must procure that, at the time of entering a Trunk Infrastructure Contract with the relevant Contractor, Consultant, manufacturer or supplier:
- (2) any warranties, guarantees and indemnities given by:
 - (i) a Contractor under a Works Contract for Works;
 - (ii) a Consultant under a Consultancy Agreement for Works;
 - (iii) a supplier or manufacturer under a supply agreement (including manufacturers and suppliers of plant and equipment),
 - (iv) are given for the benefit of both the Developer and the Council.

- (3) to the extent that there is any material comprised in an Approved Works Document in which there are Intellectual Property rights, the Council is granted a non-exclusive, irrevocable and transferable, royalty-free licence to use the subject material of those Intellectual Property rights for the purpose of the Works, and the subsequent use, maintenance and refurbishment of the relevant Works.

12.2 Warranty ineffective

- (1) If any warranty, guarantee or indemnity required under Clause 12.1 to be in favour of the Council, is not permitted or is ineffective at law or in equity, then the Developer must:
 - (i) hold the right, title, interest and benefit of those warranties, guarantees and indemnities held by the Developer, for the benefit of the Council (in addition to not in substitution for the Developer); and
 - (ii) at the cost of the Developer, do any act, matter or thing reasonably required in writing by the Council in connection with those warranties, guarantees and indemnities.

12.3 Letters of intent

The Parties agree that where necessary or expedient, a Consultant may be engaged under a letter of intent, prior to the execution of a Consultancy Agreement for Works.

13. DISPUTE RESOLUTION

For the avoidance of doubt, Clause 25.16 of the agreement applies to disputes under this Schedule.