
##DeveloperName##

Cairns Regional Council

Infrastructure Agreement

Deferred payment of levied charges – [address
of premises] – Application [application number]

Neutral options – depending on circumstances: yellow, orange

[If Landowner is a separate party to developer, amend document accordingly – eg including by identifying above]

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Date

Parties

##DeveloperName## (ACN ##DeveloperACN##) (**Developer**)

Cairns Regional Council (**Council**)

Background

A The Developer intends to carry out the Development on the Land.

##OPTION## A – Developer owns all the Land]

B The Developer is the Owner of the Land.

##OPTION## B – Developer doesn't own all the Land]

C The Owners of the Land have consented to the responsibilities under this document being attached to each Owner's respective part of the Land.

D On [date], the Council gave the ICN to the Developer. The parties have agreed that the timing for payment of the Levied Charges is to be varied in accordance with, and subject to, this document.

Agreed terms

1 Commencement and term

1.1 Commencement

This document commences on the date when the last party executes this document, which is to be recorded by that party in **Item 1** at the time of execution.

1.2 Termination

Without affecting any accrued rights, the parties' obligations under this document terminate upon payment of the Levied Charges to Council.

2 Infrastructure agreement

2.1 Purpose of this document

The purpose of this document is to give effect to a deferral of the Developer's obligation to pay of the Levied Charges.

2.2 Application of Planning Act

This document is an infrastructure agreement under the Planning Act and, in particular, under sections 123, 144(2) and 158 of the Planning Act.

2.3 Agreement to bind successors in title

- (a) The Developer Obligations will not be affected by a change in the ownership of the whole or any part of the Land, other than in accordance with **clause 5.1**, and subject to **clause 4.5**.
- (b) It is the intention of the parties that the Developer Obligations will attach to the Land and be binding on the Owner and the Owner's successors in title, in accordance with section 155 of the Planning Act.

[##OPTION## - Developer doesn't own all the Land]

- (c) The parties acknowledge that the Developer has obtained the written consent of each Owner of the Land to the Developer Obligations attaching to each Owner's respective part of the Land, copies of which are included in **Schedule 2**.

2.4 No fetter

Nothing in this document fetters the rights, powers, authorities, functions or discretions of Council, any other Approval Authority or any other government agency under the provisions of any Law.

2.5 Relationship with other documents

Nothing in this document precludes Council, any other Approval Authority, or any other government agency, from requiring infrastructure contributions under a condition of, or levying infrastructure charges in relation to, a development approval in relation to the Development.

2.6 Adverse change to planning instrument

The Developer Obligations do not depend on development entitlements that may be affected by a change to a planning instrument.

3 Parties' obligations

3.1 Developer's obligations

The Developer must comply with the terms of this document.

3.2 Landowner's obligations

- (a) The Landowner must comply with the Developer Obligations (including all obligations in **clause 3.1**).

- (b) The obligations of the Landowner under this document continue and remain in force and effect, even if the Landowner ceases to be the Owner of the Land, unless and until **clause 5** is satisfied.
- (c) For the avoidance of doubt, if there are multiple Landowners, a reference in this document to the Landowner is a reference to each Landowner jointly and severally.

3.3 Council's obligations

Council must comply with the terms of this document.

4 Deferred payment of levied charges

4.1 Effect of this clause

The parties agree that the usual requirements that would apply under the *Planning Act* in relation to the payment of Levied Charges are varied as set out in this **clause 4.2**.

4.2 Deferred payment

The Developer must pay the Levied Charges to Council prior to the earlier of:

- (a) the settlement of any agreement for the sale or transfer of the Land or any part of the Land; or
- (b) [date].

4.3 Consequences of non-payment

Without limiting any other rights of the Council under law, if the Developer fails to comply with **clause 4.2**:

- (a) each Landowner is jointly and severally Liable to pay the Levied Charges to Council, immediately;
- (b) the Levied Charges will become a rate for the purpose of recovery, in accordance with section 144(1) of the *Planning Act*;
- (c) the Developer must not lodge any further Plans of Subdivision for Approval or registration in relation to the Land;
- (d) despite **clause 5**, the Developer must not sell or transfer, or enter into any agreement for the sale or transfer of, the Land or any part of the Land; and
- (e) to the extent permitted by law, the Council may refuse to Approve any Plan of Subdivision in relation to the Land.

4.4 Inclusion on rates notice

The Developer acknowledges that, until the Levied Charges are paid to Council, the Council may, pursuant to section 105(1) of the *LG Reg*, include the amount of the Levied Charges on any Rate Notice for the Land as an amount payable to Council.

4.5 Personal obligation on Developer

Without affecting the liability of the Landowner under **clauses 2.3(b) and 3.2**:

- (a) the Developer's obligation under **clause 4.2** also binds the Developer personally; and
- (b) the Developer's personal obligation in respect of **clause 4.2** is not affected by any sale or transfer of the Land, or any part of the Land.

4.6 Confirmation of automatic increases

- (a) To avoid any doubt, nothing in this document affects any automatic increases under section 114(3)(b) of the Planning Act.
- (b) At least 10 Business Days prior to the date that the Developer proposes to pay the Levied Charges to the Council (**Proposed Payment Date**), the developer must give the Council a Notice:
 - (i) stating that it is given under this **clause 4.6(b)**;
 - (ii) stating the Proposed Payment Date; and
 - (iii) requesting that the Council confirm the amount of Levied Charges that will be payable on the Proposed Payment Date.
- (c) Within 5 Business Days after receiving a Notice under **clause 4.6(b)**, the Council must give the Developer a Notice stating the amount of Levied Charges that will be payable on the Proposed Payment Date stated in the Developer's Notice.

5 Proposed transfers of land

5.1 Restriction on the right to sell the Land

Subject to **clause 5.4**, the Landowner must not sell or transfer the whole or any part of the Land unless the Landowner has first obtained:

- (a) written consent from the proposed transferee that this agreement will continue to attach to the relevant part of the Land; and
- (b) written consent from Council to the proposed transferee becoming subject to the Landowner's obligations under **clause 3.2**.

5.2 No unreasonable refusal of consent

Council must not unreasonably refuse to enter into a deed of novation sought to be entered into under **clause 5.1**.

5.3 Landowner to remain liable

In the event of the whole or any part of the Land being sold or transferred other than in accordance with **clause 5.1**, the Landowner (immediately prior to the sale or transfer) must perform and fulfil each of its obligations under this document that have not been performed and fulfilled immediately or at such other time as Council stipulates in a Notice, even if the time otherwise appointed for the performance and fulfilment of that obligation has not yet then arrived.

5.4 Transfer of Developed Lots

- (a) **Clause 5.1** does not apply to the sale or transfer of Developed Lots.

- (b) Before selling or transferring, or entering any agreement for the sale or transfer of, a Developed Lot, the Developer must give the proposed transferee a document in the form set out in **Schedule 3**.

5.5 Effect of failure to pay Levied Charges

For the avoidance of doubt, this **clause 5** is subject to **clause 4.3(d)**.

6 Disputes

6.1 Application of clause

This **clause 6** applies to any dispute between the parties to this document (including in relation to prior conduct of the parties or the interpretation of this document) but does not:

- (a) apply to disputes over debts; or
- (b) prevent a party from applying to a court for urgent injunctive or declaratory relief.

6.2 Dispute Notices

If a dispute arises between the parties to this document, a party may give a Dispute Notice to the other party:

- (a) identifying the dispute and the facts relied on in relation to the dispute; and
- (b) stating either that:
 - (i) the parties are required to meet within 5 Business Days; or
 - (ii) a written response to the Dispute Notice is required from the other party within 10 Business Days.

6.3 Disputes about Default Notices

If a dispute relates to the issuing of a Default Notice, the resolution of the dispute must determine:

- (a) whether the Default Notice must be complied with; and
- (b) if the Default Notice must be complied with, the timeframe in which the Default Notice must be complied with; and

6.4 Initial meeting or correspondence

- (a) If a Dispute Notice is given under **clause 6.2(b)(i)**, the parties must meet, within 5 Business Days after the date the Dispute Notice is given, at Cairns City, Queensland at least once to discuss the dispute including the possible resolution of the dispute.
- (b) If a Dispute Notice is given under **clause 6.2(b)(ii)**, the recipient party must respond in writing to the Dispute Notice within 10 Business Days.

6.5 Mediation

- (a) If a meeting or written response under **clause 6.4** fails to resolve the dispute, the parties may agree to refer the dispute to mediation.

- (b) If the parties agree to refer the dispute to mediation, then the parties must either:
 - (i) appoint a mediator by agreement; or
 - (ii) if the parties are unable, within 5 Business Days of agreeing to refer the dispute to mediation, agree on a mediator to be appointed, request the President of the Queensland Law Society to make the appointment.

6.6 Court proceedings for unresolved dispute

A party must not apply to a court for the resolution of a dispute unless the dispute is not resolved within:

- (a) if the dispute is not referred to mediation – 15 Business Days after the date the Dispute Notice is given; or
- (b) if the dispute is referred to mediation – 30 Business Days after the date the Dispute Notice is given.

6.7 Costs of dispute

- (a) The parties must share equally all costs of any mediator appointed in relation to a dispute.
- (b) However, each party must pay its own costs in connection with resolving the dispute.

7 Notices

7.1 Giving Notices

- (a) A Notice relating to this document:
 - (i) may be given by an Authorised Person of, or the solicitors for, the relevant party;
 - (ii) must be in writing; and
 - (iii) must, subject to **clause 7.1(b)**, be:
 - (A) left at the address of the addressee in Australia stated in **Schedule 1**;
 - (B) sent by prepaid ordinary post to the address of the addressee in Australia stated in **Schedule 1**;
 - (C) sent by facsimile to the facsimile number of the addressee in Australia stated in **Schedule 1**; or
 - (D) sent by email to the email address of the addressee stated in **Schedule 1**.
- (b) A party may change their address, facsimile number or email address for the giving of Notices at any time by giving Notice to the other parties.

7.2 Receiving Notices

- (a) Unless a later time is specified in it, a Notice takes effect from the earlier of the time that it is actually received, or that it is taken to be received.

- (b) A Notice delivered by hand is taken to be received:
 - (i) if delivered by 5.00pm on a Business Day – on that Business Day; or
 - (ii) otherwise – on the next Business Day.
- (c) A Notice delivered by post is taken to be received on the day when, in the ordinary course of post, it would have been delivered.
- (d) A Notice sent by facsimile is taken to be received:
 - (i) if the transmission report produced by the machine from which the facsimile was sent indicates that the facsimile was sent in its entirety to the recipient's facsimile number by 5.00pm on a Business Day – on that Business Day; or
 - (ii) otherwise – on the next Business Day.
- (e) A Notice sent by email is taken to be received:
 - (i) if the email is sent by 5.00pm on a Business Day, and the sender does not receive a computer-generated report indicating that the email was not successfully sent – on that Business Day; or
 - (ii) otherwise – on the next Business Day.

7.3 Other matters

- (a) This **clause 7** is in addition to the methods of service of notices set out in the *Property Law Act 1974* (Qld).
- (b) A party who receives a Notice is not obliged to enquire as to the authority of a person who purports to sign the Notice on behalf of a party.

8 General

8.1 Duty

All duty and registration fees payable on this document, or on any instruments of transfer, agreements or other documents referred to in or contemplated by this document, must be paid by the Developer.

8.2 Indemnity

- (a) The Developer indemnifies Council against any liability, loss, damage or claim made against Council arising from the Developer's non-compliance with the Developer's obligations under this document, but excluding any liability, loss, damage or claim made against Council arising from Council's actions, omissions or negligence.
- (a) Each indemnity in this document is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this document.
- (b) It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity conferred by this document.
- (c) A party must pay on demand any amount it must pay under an indemnity in this document.

8.3 Amendment of this document

- (a) The parties may at any time agree to vary the terms of this document except this clause.
- (b) No modification, variation or amendment of this document is of any force or effect unless it:
 - (i) is in the form of a deed executed by the parties; and
 - (ii) complies with the requirements of the Planning Act.

8.4 Waiver and exercise of rights

A single or partial exercise or waiver by a party of a right relating to this document does not prevent any other exercise of that right or the exercise of any other right.

8.5 Rights cumulative

Except as expressly stated otherwise in this document, the rights of a party under this document are cumulative and are in addition to any other rights of that party.

8.6 Consents

Except as expressly stated otherwise in this document, a party may conditionally or unconditionally give or withhold any consent to be given under this document and is not obliged to give its reasons for doing so.

8.7 Further steps

Each party must promptly do whatever any other party reasonably requires of it to give effect to this document and to perform its obligations under it.

8.8 Governing law and jurisdiction

- (a) This document is governed by and is to be construed in accordance with the laws applicable in Queensland.
- (b) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in Queensland and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

8.9 Assignment

- (a) A party must not assign or deal with any right under this document without the prior written consent of the other parties.
- (b) Any purported dealing in breach of this clause is of no effect.

8.10 Liability

An obligation of two or more persons binds them separately and together.

8.11 Entire understanding

- (a) This document contains the entire understanding between the parties as to the subject matter of this document.

- (b) All previous negotiations, understandings, representations, warranties, memoranda or commitments concerning the subject matter of this document are merged in and superseded by this document and are of no effect. No party is liable to any other party in respect of those matters.
- (c) No oral explanation or information provided by any party to another:
 - (i) affects the meaning or interpretation of this document; or
 - (ii) constitutes any collateral agreement, warranty or understanding between any of the parties.

8.12 Relationship of parties

This document is not intended to create a partnership, joint venture or agency relationship between the parties.

8.13 Effect of execution

This document is not binding on any party unless it has been duly executed by each person named as a party to this document.

8.14 Deed

This document is a deed. Factors which might suggest otherwise are to be disregarded.

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9 Definitions and construction

9.1 Definitions

In this document these terms have the following meanings:

Term	Definition
Approval	A consent, permit, licence, certificate, authorisation, notice or approval under a law, or that is required under or in relation to this document.
Approval Authority	An entity or body with relevant power or authority to issue an Approval.
Authorised Person	The following: <ul style="list-style-type: none">(a) for the Developer – any person Notified in writing as an authorised person by the Developer;(b) for Council – Council’s chief executive officer and any lawful delegate thereof.
Business Day	The meaning given to “business day” in the <i>Acts Interpretation Act 1954</i> (Qld), for Council’s local government area.
Claim	An allegation, debt, cause of action, liability claim, proceeding, appeal, suit or demand of any nature at law or otherwise, whether present or future, fixed or unascertained, actual or contingent. This includes any legal proceeding in the Planning and Environment Court or Supreme Court of Queensland.
Commencement Date	The date the last party executes this document, which is to be recorded in Item 1 .
Council	The entity described in Item 3 .

Developed Lot	<p>A Lot that is:</p> <ul style="list-style-type: none"> (a) created from the Land by the registration of a Plan of Subdivision approved by Council under section 50 of the <i>Land Title Act 1994</i> (Qld); (b) in its intended ultimate form for use in accordance with the Development Approval; (c) not intended to be the subject of a further development application for a material change of use of premises (other than for a “Dwelling house” as defined in the Planning Scheme) or for reconfiguring a lot; and (d) not intended to remain in the ownership of the Developer or the relevant Landowners.
Developer	The person described in Item 2 .
Developer Obligations	The obligations of the Developer under this document.
Development	The proposed [delete “proposed” if development has commenced] development of the Land generally in accordance with the Development Approval.
Development Approval	The [development permit/preliminary approval] granted by the Council by way of decision notice dated [date] , described as being for “[description]” , and assigned reference number [insert] .
Dispute Notice	A Notice given by one party to the other under clause 6.2 .
Financial Contribution	The payment of a monetary amount for infrastructure.
ICN	The infrastructure charges notice given to the Developer by the Council, dated [date] and with reference number [insert] .
Item	An item in Schedule 1 .
Land	The land described in Item 4 .
Landowner	The Owner of the Land as at the Commencement Date and any successors in title for the Land or any part of the Land.
Law	Any statute, regulation or subordinate legislation of the Commonwealth, the State of Queensland, or any local or other government in force in the State of Queensland, irrespective of where enacted.
Levied Charges	The infrastructure charges levied by the ICN.

LG Reg	The <i>Local Government Regulation 2012</i> (Qld).
Lot	The meaning given in the <i>Land Title Act 1994</i> (Qld).
Notice	Any certificate, demand or notice to be given by a party under this document.
Owner	The meaning given in the Planning Act, for an owner of land.
Planning Act	The <i>Planning Act 2016</i> (Qld).
Planning Scheme	The CairnsPlan 2016 Version 2.1 [amend as appropriate]
Plan of Subdivision	The meaning given in the <i>Land Title Act 1994</i> (Qld).
Proposed Transferee	A person to whom any part of the Land is proposed to be sold or transferred.
Rate Notice	The meaning given in the <i>LG Reg</i> .

9.2 Construction

Unless expressed to the contrary, in this document:

- (a) words in the singular include the plural and vice versa;
- (b) any gender includes the other genders;
- (c) if a word or phrase is defined, its other grammatical forms have corresponding meanings;
- (d) “includes” means includes without limitation;
- (e) no rule of construction will apply to the disadvantage of a party because that party drafted, put forward or would benefit from any term;
- (f) a reference to:
 - (i) a person includes a partnership, joint venture, unincorporated association, corporation, entity and a government agency;
 - (ii) a person includes the person’s legal personal representatives, successors, assigns and persons substituted by novation;
 - (iii) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced;
 - (iv) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation;
 - (v) a right includes a benefit, remedy, discretion or power;
 - (vi) time is to local time in the Council’s local government area;
 - (vii) “\$” or “dollars” is a reference to Australian currency;
 - (viii) this or any other document includes the document as novated, varied or replaced and despite any change in the identity of the parties;

- (ix) writing includes:
 - (A) any mode of representing or reproducing words in tangible and permanently visible form, including fax transmission; and
 - (B) words created or stored in any electronic medium and retrievable in perceivable form;
- (x) this document includes all schedules and annexures to it; and
- (xi) a clause, schedule or annexure is a reference to a clause, schedule or annexure, as the case may be, of this document.
- (g) a term that is used, but not defined in, this document, will, unless the context otherwise requires, have the meaning given to it by (in the following descending order):
 - (i) the Planning Act; or
 - (ii) its ordinary meaning;
- (h) if the date on or by which any act must be done under this document is not a Business Day, the act must be done on or by the next Business Day; and
- (i) headings do not affect the interpretation of this document.

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Schedule 1

Agreement Details

Item	Description	Details
1	Commencement Date	
	Date	<i>[to be inserted above by the last party to execute this document]</i>
2	Developer	
	Name	[insert]
	Address	[insert]
	Postal address	[insert]
	Phone	[insert]
	Fax	[insert]
	Email	[insert]
3	Council	
	Name	Cairns Regional Council
	Address	119-145 Spence Street, Cairns Qld 4870
	Postal address	PO Box 359, Cairns Qld 4870
	Phone	1300 69 22 47 [insert more specific number if appropriate]
	Email	council@cairns.qld.gov.au [insert more specific email if appropriate]
4	Land	
	Address	[insert]
	Lot and plan description	[insert]

Schedule 2

Owner's consents

No.	Name
1	[insert]

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Schedule 3

Notice to proposed transferee of Developed Lot

NOTICE REGARDING INFRASTRUCTURE CHARGES

This notice is important. Please read it carefully. If you have questions, it is strongly recommended that you obtain independent legal advice.

You are being given this notice because you are considering entering into an agreement with **[insert developer name]** (**Developer**) for the sale or transfer of land located at **[insert address]** (described as **[insert lot and plan details]**) (**Lot**).

The Lot is subject to an infrastructure agreement (**IA**) between the Developer and Cairns Regional Council (**Council**) in relation to development of land including the Lot. As a result of that development, the Developer is liable to pay infrastructure charges to Council, in an amount of \$**[insert]**. Ordinarily, that would have occurred up-front with the development. However, under the IA, payment has been deferred until **[insert date from clause 4.2]**.

Under the IA, the Developer is liable to pay the infrastructure charges. However, that liability **also** attaches to the land, including the Lot.

This means that if, for any reason, the Developer does not pay the infrastructure charges, you and other owners of the Land will each be jointly and severally liable to Council for the infrastructure charges.

Execution

Executed as a deed

Executed by **##DeveloperName##**)
)
)

.....
Company Secretary/Director

.....
Director

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

.....
Name of Director (print)

Executed for and on behalf of the)
Cairns Regional Council in the)
presence of:)

.....
Authorised officer

.....
Witness

.....
Name of authorised officer (print)

.....
Name of witness (print)

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