

A decorative vertical bar on the left side of the page, featuring a white wavy line that separates different colored sections: teal with gold fan patterns, yellow with green palm fronds, yellow with green palm trees, blue with black fish silhouettes, and green with blue fern patterns.

DEED OF CONFIDENTIALITY

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PARTIES

1. **CASSOWARY COAST REGIONAL COUNCIL** of 70 Rankin Street, Innisfail QLD 4870 ("**Council**").
2. THE PARTY SPECIFIED IN **ITEM 1** ("**Applicant**").

BACKGROUND

- A. The parties intend to disclose to each other Confidential Information in relation to the Proposed Transaction.
- B. Each Party agrees and covenants with the other Party to use the other Party's Confidential Information for the Permitted Purpose and for no other purpose subject to the terms contained in this deed.

OPERATIVE PROVISIONS

1. DEFINED MEANINGS

Words used in this document and the rules of interpretation that apply are set out and explained in the definitions and interpretation clause at the back of this document.

2. HANDLING OF CONFIDENTIAL INFORMATION

2.1 Obligation of Confidence

A Party must not use the other Party's Confidential Information for any purpose other than for the Permitted Purpose. A Party may not disclose the other Party's Confidential Information to a third party other than in the Exceptional Circumstances. The Parties must take reasonable steps to prevent the unauthorised disclosure to or use by any other person, firm or company of the Confidential Information.

2.2 Breach of Confidence

If a Party becomes aware of a suspected or actual breach of **clause 2.1**, that Party must immediately notify the other Party and take reasonable steps required to prevent, stop or mitigate the extent of the breach. The Parties acknowledge that damages will not be an adequate remedy for such a breach.

2.3 Return of Confidential Information

Subject to this document, a Party must return or destroy all Confidential Information of the other Party when it is no longer required for the Permitted Purpose. A Party may, subject to its continuing obligation to comply with this **clause 2**, keep such copies as are required to comply with any law or to comply with its reasonable corporate governance requirements for so long as is necessary to satisfy those requirements.

- 2.4 **Personnel** It is our understanding that the resort's treatment plant remains functional and this should not cause you to delay opening the glamping and the café.

The Parties must make every reasonable effort to ensure that only its personnel that have a need to know any Confidential Information for the Permitted Purpose are permitted to access and use the other Party's Confidential Information and its personnel are aware of and comply with the obligations of confidentiality in this **clause 2**.

2.5 Right to Information

The Applicant acknowledges that:

- (a) the *Right to Information Act 2009* (Qld):
 - (i) provides members of the public with a legally enforceable right to access documents held by Queensland Government agencies (including the Council);
 - (ii) requires that documents be disclosed upon request, unless the documents are exempt or on balance, disclosure is contrary to public interest; and
- (b) information provided by the Applicant in connection with the Proposed Transaction is potentially subject to disclosure to third parties, including information marked as confidential;
- (c) the Council will assess any application for disclosure in accordance with the terms of the *Right to Information Act 2009* (Qld).

2.6 Media

The Applicant must not, either on its own account or in conjunction with other parties, issue any publication, advertisement, document, article or information whether oral or written, in connection with the Proposed Transaction in any media without the prior approval of the Council.

3. GENERAL PROVISIONS

3.1 Costs

Unless otherwise expressly stated in this document, each party must pay its own costs in relation to:

- (a) the negotiation, preparation, execution, performance, amendment or registration of, or any consent given or made; and
- (b) the performance of any action by that party in compliance with any liability arising,

under this document, or any agreement or document executed or effected under this document, unless this document provides otherwise.

3.2 Governing Law and Jurisdiction

- (a) This document is governed by and construed under the law in the State of Queensland.
- (b) Any legal action in relation to this document against any party or its property may be brought in any court of competent jurisdiction in the State of Queensland.
- (c) Each party by execution of this document irrevocably, generally and unconditionally submits to the non-exclusive jurisdiction of any court specified in this provision in relation to both itself and its property.

3.3 Pre-contractual negotiation

This document incorporates the entire agreement between the parties in relation to its subject-matter and supersedes and excludes any prior or collateral negotiation, understanding, communication or agreement between the parties in relation to that subject-matter or any term of that agreement.

3.4 Further assurance

Each party must execute any document and perform any action necessary to give full effect to this document, whether before or after performance of this document.

3.5 Severability

Any provision of this document which is invalid in any jurisdiction is invalid in that jurisdiction to that extent, without invalidating or affecting the remaining provisions of this document or the validity of that provision in any other jurisdiction.

3.6 Counterparts

This document may be executed in any number of counterparts, all of which taken together are deemed to constitute one and the same document.

3.7 Trustee Provisions

If the Applicant enters into this document as trustee of a trust, then the Applicant and its successors as trustee of the trust will be liable under this document in its own right and as trustee of the trust. Nothing releases the Applicant from any liability in its personal capacity. The Applicant warrants that at the date of this document:

- (a) all the powers and discretions conferred by the deed establishing the trust are capable of being validly exercised by the Applicant as trustee and have not been varied or revoked and the trust is a valid and subsisting trust;
- (b) the Applicant is the sole trustee of the trust and has full and unfettered power under the terms of the deed establishing the trust to enter into and be bound by this document on behalf of the trust and that this document is being executed and entered into as part of the due and proper administration of the trust and for the benefit of the beneficiaries of the trust;
- (c) no restriction on the Applicant's right of indemnity out of or lien over the trust's assets exists or will be created or permitted to exist and that right will have priority over the right of the beneficiaries to the trust's assets.

4. DEFINITIONS AND INTERPRETATION

4.1 Definitions

In this document unless the context otherwise requires:

"Confidential Information" means all documents and information provided or made available by one Party (**Discloser**) to the other (**Disclosee**), or which comes to the knowledge of a Party in connection with the Proposed Transaction which are of their nature confidential or which the Discloser has identified to the Disclosee as being confidential, but does not include documents and information which are in the public domain other than through a breach of **clause 2**;

"Exceptional Circumstances" means disclosure:

- (i) for the purpose of complying with the Disclosee's obligations or exercising the Disclosee's rights in connection with the Proposed Transaction;
- (ii) with the Discloser's prior consent;
- (iii) to a professional adviser, banker, financier or auditor if that person is obliged to keep the information disclosed confidential and to whom it is necessary to disclose the information;
- (iv) to the extent necessary to comply with the Disclosee's reasonable corporate governance or insurance requirements;
- (v) to any of its personnel who are bound to keep the information confidential and to whom it is necessary to disclose the information;
- (vi) to comply with the law or a requirement of a government authority or body;
- (vii) to the extent necessary to enforce its rights or defend a claim in connection with the Proposed Transaction;
- (viii) by the Council for the purposes of enabling the Council to properly discharge its functions as a local government authority; and

(ix) to the extent otherwise expressly permitted by the Proposed Transaction;

“Party” means a party to this document;

“Permitted Purpose” means in the case of the Applicant, the purpose of assessing the Proposed Transaction or in the case of the Council, the purpose of assessing the suitability of the Applicant to enter the Proposed Transaction;

“Proposed Transaction” means the proposed transaction referred to in **Item 2**.

4.2 Interpretation

In this document unless the context otherwise requires:

- (a) clause and subclause headings are for reference purposes only;
- (b) the singular includes the plural and vice versa;
- (c) words denoting any gender include all genders;
- (d) reference to a person includes any other entity recognised by law and vice versa;
- (e) any reference to a party to this document includes its successors and permitted assigns;
- (f) any reference to any agreement or document includes that agreement or document as amended at any time;
- (g) the use of the word **includes** or **including** is not to be taken as limiting the meaning of the words preceding it;
- (h) an agreement, representation or warranty on the part of two or more persons binds them jointly and severally;
- (i) an agreement, representation or warranty on the part of two or more persons is for the benefit of them jointly and severally;
- (j) reference to an item is a reference to an item in the schedule to this document;
- (k) reference to an exhibit, annexure, attachment or schedule is a reference to the corresponding exhibit, annexure, attachment or schedule in this document;
- (l) reference to a statute includes all regulations and amendments to that statute and any statute passed in substitution for that statute.

SCHEDULE

Item 1

Applicant:	Name:
	ACN (if applicable):
	Address:
	Email:

Item 2

Proposed Transaction:

EXECUTED as a deed.

DATED

DAY OF

20 .

SIGNED SEALED AND DELIVERED by
CASSOWARY COAST REGIONAL COUNCIL in
the presence of:

Witness - Signature

Chief Executive Officer - Signature

Print name

Print name

EXECUTION IF THE APPLICANT IS A COMPANY:

SIGNED SEALED AND DELIVERED by the
Applicant _____
in accordance with its constitution and s127 of the
Corporations Act 2001 (Cth):

Director

Secretary/Director

Print name

Print name

EXECUTION IF THE APPLICANT IS AN INCORPORATED ASSOCIATION:

SIGNED SEALED AND DELIVERED by the
Applicant _____
in accordance with its rules the presence of:

Witness

Signature of President

Print name

Print name

Witness

Signature of Secretary

Print name

Print name

