



# ORDINARY MEETING SUPPLEMENTARY AGENDA

**Notice** is hereby given that the **Ordinary Meeting** of the **Whitsunday Regional Council** will be held at the Council Chambers 67 Herbert Street, Bowen on **Wednesday 24 February 2021** commencing at **9:00 a.m.** a Supplementary Agenda is attached.

**Councillors:** Andrew Willcox, Jan Clifford, Al Grundy, John Collins, Michelle Wright and Gary Simpson and Michael Bruncker

*Council acknowledges and shows respect to the Traditional Custodian/owners in whose country we hold this meeting.*

Rodney Ferguson

CHIEF EXECUTIVE OFFICER



**Supplementary Agenda of the Ordinary Meeting** to be held at  
the Bowen Council Chambers, 67 Herbert Street, Bowen  
on Wednesday 24 February 2021 commencing at 9:00a.m.

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## **18. Supplementary Agenda**

### **18.1 REVIEW OF CEMETERY POLICY**

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**AUTHOR:** Adam Hagy - Deputy Director Infrastructure Services

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**RESPONSIBLE OFFICER:** Adam Hagy - Acting Director Infrastructure Services

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#### **OFFICER'S RECOMMENDATION**

**That Council revokes Policy LSP CE\_04 Cemeteries Policy and adopt revised Cemeteries Policy LSP\_INFRA\_01.**

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The following report has been submitted for inclusion into Council's Ordinary Meeting to be held on 24 February 2021.

#### **SUMMARY**

Following the Council Briefing on 17 February 2021 the current cemetery policy was reviewed by the Council in conjunction with the Executive Leadership Team. Following this meeting changes were made to better reflect the communities' expectations as outlined in the report. This review was further influenced by a public response to proposed changes to cemetery maintenance.

#### **PURPOSE**

At the Council Briefing on 17 February 2021, it was requested to review the current Cemetery Policy that was resolved in June 2019. This was requested so that Councillors could review the policy and amend to better reflect the communities' expectations following feedback through social media. Following this review the suggested changes will be put forth to 24 February 2021 Ordinary Council meeting for Council to consider the amendments to the policy.

#### **BACKGROUND**

In June 2019 Council resolved to adopt the current cemetery policy. Resolution 2019/06/12.46.

Following several complaints from staff trying to maintain the cemeteries due to the policy not being enforced to its full effect, letters were sent to next of kin asking them to remove excess items. The letters and messaging on social media resulted in several adverse complaints.

After several complaints were received, it was requested by Council that the existing policy should be amended to reflect the communities' expectations and to provide better explanation surrounding why some of the policy elements exists.

#### **STATUTORY/COMPLIANCE MATTERS**

*Local Government Act 2009*

*Local Government (Cemetery) Regulations 2010*

*Public Records Act*

*Public Health Act 2005*

*Workplace Health and Safety Act 2011*

*Workplace Health and Safety Regulations 2011*

*Whitsunday Regional Council Local Laws*

## ANALYSIS

As part of the review of the current policy other policies from the 77 Queensland Councils were reviewed to assist in providing guidance toward a more community-based approach. The suggested changes were largely based on community and Council feedback. Some of the major amendments suggested to the Cemetery Policy are summarised below:

- Allowing for real and artificial flowers including wreaths instead of only artificial flowers after the first month of interment.
- Allowing vases up to 300mm high.
- Allowing the family to provide their own vase if it is of a concrete, granite or other durable material and does not encroach on other graves.
- Allowing adornments on graves if they are secure and do not encroach on other graves.
- Allowing flowers, wreaths to be directly placed on the graves following the interment in lawn cemeteries for a period of 2 months instead of one month as per the current policy. After 2 months the grave will be levelled after settling so that lawn can grow on a level surface. The flowers can then be placed either side of the monument.
- No items of value will be removed by Council staff that fall outside of the policy without 3 attempts to contact the next of kin or family members. In the event Council cannot make contact the items will be collected and stored for a period of 2 months at the nearest Council office.

The amendments reflect a more considered approach to respecting the rights of families and the broader community feedback to allow for managing cemeteries and their ongoing maintenance.

## STRATEGIC IMPACTS

### Alignment to Corporate and Operational Plans

Theme 2 People applies as well as Theme 1 Leadership and Governance showing transparency in council decision making.

### Financial Implications

The cemeteries will be managed within the current budget allocation and the fees and the fees and charges will be subject to annual review as part of the budget process for the 2021/22 year. Any additional impacts will be identified with the implementation of the amended policy and addressed in the preparation within the upcoming budget.

### Risk Management implications

One of the key risks to manage in relation to cemeteries is the reputational and public risk association with emotions that attach the cemetery and its operation. Council received a number of social media comments that indicated a lack of compassion and sensitivity to the matters raised.

## CONSULTATION

Council Briefing Session 17 February 2021  
Executive Leadership Team 18 February 2021  
Councillor and ELT Workshop 22 February 2021

## **DISCLOSURE OF OFFICER'S INTERESTS**

Following review of the current Cemeteries Policy LSP CE\_04 and based on feedback from Council, the community, and research of other Council's policies it is recommended to adopt the revised policy LSP\_INFRA\_01.

## **CONCLUSION**

Following review of the current Cemeteries Policy LSP CE\_04 and based on feedback from Council, the community, and research of other Council's policies it is recommended to adopt the revised policy LSP\_INFRA\_01.

## **ATTACHMENTS**

Attachment 1 - Revised Cemetery Policy LSP\_INFRA\_01

## Purpose

Whitsunday Regional Council has the management of three cemeteries within its Local Government Area, namely the Proserpine, Collinsville and Bowen cemeteries (“the cemeteries”).

The purpose of this policy is to provide guidance to Council Officers and users of the cemeteries, and:

- to provide a range of burial and memorial options for the bereaved family of the deceased;
- to identify roles and responsibilities in the burial process;
- to correctively capture the required information for record and archiving purposes;
- to ensure upkeep and maintenance of cemeteries is conducted in an efficient and cost-effective manner; and
- to ensure appropriate amenity.

## Scope

This policy is applicable to all cemeteries administered, operated and maintained by the Whitsunday Regional Council, namely those cemeteries located in Proserpine, Collinsville, and Bowen.

## Applicable Legislation

*Births, Deaths and Marriages Registration Act 2003*

*Births, Deaths and Marriages Registration Regulation 2003*

*Local Government Act 2009*

*Local Government (Cemetery) Regulations 2010*

*Public Records Act*

*Public Health Act 2005*

*Public Health Regulation 2005*

*Workplace Health and Safety Act 2011*

*Workplace Health and Safety Regulations 2011*

*Whitsunday Regional Council Local Laws*

## Policy Statement

- 1.1 Council shall manage the cemeteries to a high standard and in a cost-effective manner.
- 1.2 Council does not permit any person to undertake any activity within the cemeteries unless the activity has been approved by Council.
- 1.3 Only Council Officers and Council or Funeral Director contracted staff shall be allowed to prepare graves in the cemeteries.

## Days and Hours of Operations

- 1.4 Burials are to take place between 0800 and 1500 on business days. Burials outside of the nominated times will be considered for exceptional circumstances such as religious beliefs.
- 1.5 A request for a burial outside of the cemetery operating time must be submitted on the approved form and shall be considered for approval by the Manager Parks and Gardens, or the Director Infrastructure Services
- 1.6 Burials where religious or cultural beliefs dictate burial within 48 hours may be approved by the CEO or delegate.
- 1.7 Burials which are not completed by 1530 on business days may be charged overtime rates.

## Register of Burial Places

- 1.8 Council shall keep a register of burials and ashes placement in respect of all administered cemeteries.
- 1.9 Council shall keep a register of reservation plots/sites/niches which will include the number of the plot, name and address, contact details and proof of identification of the deed holder in respect of each reservation.
- 1.10 Each register, which may be written, printed or electronic form, must include the name of the deceased, date of death, date of birth, listed next of kin and relationship to the deceased, date of interment, depth of interment, interment number e.g 1<sup>st</sup> or 2<sup>nd</sup> interment, name of Rights of Burial holder, name of Funeral Director and location of interment site of every person whose remains are interred in the cemetery.
- 1.11 The register may not include all interments in historical cemeteries.
- 1.12 The register may not include cremations that are not interred in any council cemetery.



1.13 Each register entry must contain the name and address of the owner of the burial right with the exception of the historical records where this information may not have been obtained or kept by previous operating entities.

1.14 Only burials (not cremations) undertaken in the cemeteries shall be registered by Council with the Department of Justice Births, Deaths and Marriages Section through their approved software system.

### **Burials not within a Cemetery**

1.15 Applications for Burials to take place in an area outside a cemetery must be made in accordance with any relevant Local Law.

1.16 The interment must not take place unless approval is granted by the relevant State Government Minister and Local Government as required under the relevant Policy.

### **Reservation of Plot, Niche or Site**

1.17 Reservations are accepted by Council at each of the cemeteries upon receipt of the Approved Form and payment as per Council's Fees and Charges.

1.18 All applications for a reservation must be made using the approved form and accompanied by the fee set out in Council's Fees and Charges. All fields listed on the application form are required to be completed in full and accompanied with a copy of the applicant's identification. Council reserves the right to return the application form and request for further information if items have been left blank.

1.19 Whilst Council shall make every effort to honour specific plot reservations, there may be circumstances where Council may not be able to do so. For example, Council is unable to carry out burials that are adjacent and/or opposite to plots that have been buried in, within a twelve-month period due to the risk of collapse.

1.20 Burial plots which are reserved will have an "R" token placed on the plot to indicate status when the audit is completed at the end of each year.

1.21 The Funeral Director must liaise with Council's Customer Service staff for plot location at time of burial application (not the bereaved family).

1.22 Council staff will allocate existing single sites that are available for single burials prior to utilising new areas for burial.

### **Cancellation of Reservation of Plot, Niche or Site**

1.23 The reservation holder is the only person that has the right to cancel a reservation on a reserved site.



- 1.24 Cancellation of reservation must be submitted in writing to Council and relevant charges will be applied as per Council's Fees and Charges.

### **Interments – Burial and Ashes**

- 1.25 All applications for burial and ash interments must be made using the approved form and accompanied by the fee set out in Council's Fees and Charges.
- 1.26 All fields listed on the application form are required to be completed in full. Council reserves the right to return the application form and request for further information if items have been left blank.
- 1.27 Council staff and any person involved in the preparation of graves, including sub-contractors employed by the Funeral Director for the digging of graves, shall follow Council's Interment of Human Remains Procedure.
- 1.28 For a burial interment to occur, the completed application must be lodged with Council on the approved form not less than two business days prior to the funeral unless pre-approval has been granted by Council. Late lodgements may not be approved or may incur an additional fee. Burials where religious or cultural beliefs dictate burial within 48 hours may be approved by the CEO or delegate.
- 1.29 Ashes may be interred in the Columbarium wall, memorial garden or an existing grave upon approved application and payment of the associated fee in Council's Fees and Charges. Ashes may only be interred in an empty plot where the burial plot was reserved prior to the death occurring and exceptional circumstances have arisen which mean that the family have only ashes to inter.
- 1.30 The old monumental sections in the cemeteries are closed and no further interments shall take place in those sections except in the following circumstances:
- (a) there is a pre-existing reservation; and
  - (b) it is practical and safe to inter remains or ashes.
- 1.31 All new interments shall be conducted in the lawn and beam sections of the cemeteries, memorial gardens, and columbarium walls.
- 1.32 Council shall undertake the process of allocating burials and reserving burial sites.
- 1.33 The interment options at Whitsunday Regional Council cemeteries are as follows:

### Bowen Cemetery:

Type	Single Interment	Double Interment	Single Interment and One Ashes	Ashes Only	Multiple Ashes Interned	Plaque Only
Grave	YES	NO	YES	YES	YES	NO
Memorial (Rose) Garden	NO	NO	NO	YES	YES	YES
Columbarium	NO	NO	NO	YES	YES	YES

### Collinsville Cemetery:

Type	Single Interment	Double Interment	Single Interment and One Ashes	Ashes Only	Multiple Ashes Interned	Plaque Only
Grave	YES	YES	YES	YES	YES	NO
Memorial (Rose) Garden	NO	NO	NO	YES	YES	YES
Columbarium	NO	NO	NO	YES	NO	YES

### Proserpine Cemetery:

Type	Single Interment	Double Interment	Single Interment and One Ashes	Ashes Only	Multiple Ashes Interned	Plaque Only
Grave	YES	YES	YES	YES	YES	NO
Memorial (Rose) Garden	NO	NO	NO	YES	YES	YES
Columbarium	NO	NO	NO	YES	NO	YES

- 1.34 The placing of a plaque on an empty gravesite shall only be approved where the burial plot was reserved prior to the death occurring and exceptional circumstances have arisen which prevent the family from burying the deceased.
- 1.35 No burial or interment of ashes shall be permitted in the cemeteries until an application on the approved form has been received and approved by Council in writing.
- 1.36 Specific cultural/religious requirements are to be advised at the time of application on the approved form. Council shall endeavour to grant the requirement, however the final decision shall be made by the authorised person.
- 1.37 Animal burials are prohibited in the cemeteries.

- 1.38 No more than two coffin interments and six ashes interments shall be made in a singular plot, with the exception of Bowen cemetery which only has the allowance for one coffin interment and multiple ashes.

#### **Columbarium Wall**

- 1.39 A single niche in the columbarium wall can be purchased at Council's cemeteries for the interment of ashes. The Bowen columbarium is the only wall that offers a double niche for family members.

#### **Memorial Gardens**

- 1.40 A Memorial Garden can also be found at each of Council's Cemeteries for the interment of ashes where families do not want to place loved ones in the columbarium wall.
- 1.41 Families may plant a bush rose within the Memorial Garden.
- 1.42 Permission must be sought before planting can occur, as per the Memorials in Council's Parks and Reserves Policy.
- 1.43 The maintenance and upkeep, including watering, of bush roses or trees planted within the Memorial Garden will be the responsibility of the Council.

#### **Lawn Cemeteries – Headstones, Monuments, Plaques Adornments**

- 1.44 A headstone requires a contract with Council authorising construction and maintenance of the structure. Only a licensed monumental mason or licensed builder with experience and relevant QBCC license as required,
- 1.45 No vaults or mausoleums shall be permitted.
- 1.46 Council will take all care when maintaining the cemetery but will not accept any responsibility for cleaning plaques, adornments, or headstones and will not be liable for damage as a result of vandalism, weather, or the operation of the irrigation system.
- 1.47 Council officers may, without notice, remove and dispose of any headstone/monument etc. that does not comply with Council's requirements.
- 1.48 Council shall not be liable for the repair, maintenance, upkeep or preservation of any plaque or item placed on the grave, site or niche. The responsibility for the costs of repairs and maintenance to plaques, monumental and historical graves, site or niche and headstone lies with the family of the deceased.
- 1.49 Monumental works shall be purchased directly through a stonemason and will require written approval from Council prior to being installed.
- 1.50 The type of plaques permitted in lawn cemeteries are:

(a) Bronze; and

(b) Granite/stone.

1.51 Plaques with photographs are acceptable.

1.52 One plaque per gravesite is permitted.

1.53 Updating and replacement of an existing plaque will be at the family's expense.

1.54 Bronze Plaques for the lawn and columbarium shall be approved by Council.

1.55 Where the Public Trustee has organised the burial of a deceased person, only the plaque supplied/paid for by the Public Trustee shall be placed on the grave site.

1.56 Proserpine Cemetery is limited to;

- a. Lawn Section – An inscribed plaque mounted on a cement slope and base having dimensions of 280mm high and 380mm wide and a maximum depth of 20mm.
- b. Columbarium Wall – An inscribed bronze plaque having dimensions of 210mm high and 300mm wide and a maximum depth of 20mm.
- c. Memorial Rose Garden – An inscribed plaque with dimensions of 180mm high and 230mm wide with a depth of 20mm for a single placement and 180mm high and 460mm wide with a depth of 20mm for double placements.

1.57 Bowen Cemetery is limited to;

- a. Old Lawn Section – An inscribed plaque placed on a concrete slab having dimensions of 280mm high and 380mm wide and a maximum depth of 20mm.
- b. New Lawn Section – An inscribed plaque mounted on an angled beam having dimensions of 280mm high and 380mm wide and a maximum depth of 20mm.
- c. Beam Section – A granite headstone having dimensions of 900mm wide and 600mm high with a depth of 130mm in a granite or marble composition (bronze/granite/marble plaques to standard size of 320mm x 280mm can be affixed to a headstone).
- d. Columbarium Wall – An inscribed bronze plaque having dimensions of 165mm wide and 230mm high and a depth of 20mm for a double plaque and dimensions of 150mm wide and 130mm high with a depth of 20mm for a single plaque.

- e. Memorial Garden – An inscribed plaque with dimensions of 280mm high and 380mm wide with a depth of 20mm for a single placement, 280mm high and 740mm wide with a depth of 20mm for a double placement.

1.58 Collinsville Cemetery is limited to;

- a. Beam Cemetery – An inscribed plaque with dimensions of 280mm high and 380mm wide with a depth of 20mm.
- b. Lawn Cemetery – An inscribed plaque with the dimensions of 280mm high and 380mm wide with a depth of 20mm.
- c. New Columbarium Wall – An inscribed plaque with the dimensions of 300mm high and 210mm wide with a depth of 20mm.
- d. Old Columbarium Wall – An inscribed plaque that is made to measure.

1.59 Placement of Vases, Flowers, Adornments, Trees and Shrubs, Structures within the Cemeteries.

1.60 For safety and visual appeal there are certain items permitted for placement in Council cemeteries.

1.61 Fresh or artificial flowers and wreaths may be placed directly on graves for 2 months after interment after which the grave will be prepared for grass to grow in the lawn sections. Thereafter, fresh or artificial flowers including wreaths can be placed on or on either side of the monument. Visitors are encouraged to remove such items when they become unsightly, weathered, or wither.

1.62 Flower vases placed either side of the headstone/plaque shall be of concrete, granite, or other durable long lasting material No glass is permitted. Vases must be of a size that does not encroach on adjoining graves or grassed areas and not exceed 300mm in height so as to not interfere with irrigation spray patterns. The vase must be of a sufficient weight to remain secure. Council does provide the option to purchase vases at suppliers cost from our Customer Service Centres if desired.

1.63 Adornments must fit neatly either side of the monument and must be secure and not encroach on adjoining graves. Adornments that pose a maintenance issue or encroach may be removed only after three (3) attempts to notify the next of kin, giving an opportunity to rectify. If it proves difficult to notify next of kin or a family member and the adornments or other items of value are removed by Council staff, the item(s) may be retrieved from the nearest Council Office closest to the cemetery from which the items were removed. Council reserves the right to dispose of the item(s) that do not comply with

the policy two months from date of collection if next of kin or family member have not come forward to collect.

- 1.64 Planting of trees and shrubs is not permitted in Councils cemeteries by members of the public with the exception being bush roses in the memorial garden upon approval by Council.
- 1.65 Structures such as archways and arbors will not be permitted to be placed at the cemetery without the approval of the CEO or delegate.
- 1.66 Statues will only be permitted if they fit within the monument area either side or are securely fixed and do not encroach on adjoining graves.

### **Cemetery Maintenance**

- 1.67 Council will take all care when maintaining the cemetery but will not accept any responsibility for cleaning plaques, adornments, or headstones and will not be liable for damage as a result of vandalism, weather, or the operation of the irrigation system.
- 1.68 Council will need to from time to time remove withered flowers, or flowers and adornments that have been blown by the wind into areas wherein the grave it came from cannot be readily identified.
- 1.69 The cemeteries shall be maintained in line with Parks & Gardens Technical Levels of Service.

### **Cemetery Access**

- 1.70 Access to all cemeteries is restricted to designated roadways. Public vehicles are not permitted to drive on grave beds.

### **Exhumation**

- 1.71 Council shall not allow exhumation of human remains that have been interred for a period greater than six days and less than six months unless extenuating circumstances exist to the satisfaction of the authorised person.
- 1.72 All arrangements for exhumation are to be made with a Funeral Director who shall liaise with Council.
- 1.73 Permission for exhumation shall only be granted to the next of kin of the deceased person and must be made by way of written application by a Funeral Director to Council.
- 1.74 All requirements of the Council must be met prior to the exhumation being considered for approval by the CEO.
- 1.75 In the case where a notice has been served on Council by the State Coroner for an exhumation, all arrangements are to be undertaken by that Department.
- 1.76 Council shall not compensate or reimburse the Burial Right Holder for such plot.



1.77 The Burial Right Holder shall be responsible for the removal of any headstone, plaque or memorials once the exhumation has been completed.

### Consultation with Suppliers

1.78 A meeting between Council staff and local service providers and suppliers shall be undertaken on at least an annual basis to ensure good relations, to promote continuous improvement of Council's cemetery services and to discuss Council's Fees and Charges.

## Definitions

**Adornments** shall mean Ornaments, photo frames, candles, toys, solar lights, windmills and wind chimes, flags, etc

**Approved form** shall mean a form approved by the CEO.

**Authorised Person** shall mean a Council Officer with the authority to make a decision eg. Manager Parks and Gardens, Director Infrastructure Services or the CEO.

**Burial** shall mean the act of burying the remains of a deceased person.

**Burial Site/Plot** shall mean a grave site, vault site, memorial site or other place for the disposition or commemoration of the remains of the deceased, whether cremated or not.

**Cemeteries** shall mean the Council managed cemeteries in Bowen, Collinsville and Proserpine.

**CEO** shall mean a person who holds an appointment as Chief Executive Officer of the Whitsunday Regional Council under section 194 of the *Local Government Act 2009*. This includes a person acting in this position.

**Council** shall mean the Whitsunday Regional Council.

**Funeral Director** shall mean an individual, or business carrying out a funeral service.

**Grave** shall mean a burial place of a deceased person's remains.

**Memorial Garden** shall mean a place to remember a deceased person and where ashes may or may not be interred.

**Monument** shall mean any structure, plaque, headstone, masonry, metal work, casting or item placed over, in or around a burial plot/site/niche.

**Monumental mason** shall mean a qualified tradesperson mason.

**Niche/s** shall mean a hollow space in a Columbarium Wall to place cremated remains.

**Operating entities** shall mean former Council's prior to the amalgamation of the Whitsunday Regional Council.

**Reservation** shall mean to pre-purchase a burial right for a burial site/plot/niche.

**Register** shall mean Council's formal repository of data containing all the required details of a deceased person.

**Spouse** includes a de facto spouse.

## Relating Documents

N/A

## Effective Date

24 February 2021

## Review Date

24 February 2023

## **18. Supplementary Agenda**

### **18.2 20180816 - REQUEST TO ENTER INTO INFRASTRUCTURE AGREEMENT – WHITSUNDAY PARADISE, BOWEN – HOMELAND PROPERTY DEVELOPMENTS PTY LTD**

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**AUTHOR:** Matthew Twomey - Senior Development Assessment Officer

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**RESPONSIBLE OFFICER:** Neil McGaffin - Director Development Services

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#### **OFFICER'S RECOMMENDATION**

**That Council declines the offer from Homeland Property Development Pty Ltd to enter into an infrastructure agreement for the supply of water and sewer infrastructure, and the de-commissioning of the existing on-site sewerage treatment plant as received from Planit Consultants (prepared by Corrs Chambers Westgarth) on 12 February 2021.**

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The following report has been submitted for inclusion into Council's Ordinary Meeting to be held on 24 February 2021.

#### **SUMMARY**

As part of negotiating the conditions of the development approval for Whitsunday Paradise estate, Council has received a request from the developer of Whitsunday Paradise to enter into an Infrastructure Agreement in relation to the costs of providing infrastructure services for the development.

The request proposes that Council will refund 100% of the costs of providing water to the estate; 100% of sewerage infrastructure and 100% of the costs of de-commissioning the existing on-site sewerage treatment plant. Estimates in the LGIP value these works at ~\$20M. Other conditions of the development approval are being negotiated at the same time, but these are not included in the proposed Infrastructure Agreement.

Council is advised that there is no lawful requirement for the community to contribute to the construction of the proposed works, which will service only the Whitsunday Paradise estate.

It is recommended that Council declines the offer to enter into an infrastructure agreement involving cost-sharing arrangements for the supply of water and sewer infrastructure, and the de-commissioning of the existing on-site sewerage treatment plant.

#### **PURPOSE**

A resolution of Council is required to elect or decline to enter into an Infrastructure Agreement.

#### **BACKGROUND**

At Council's Ordinary Meeting on 28 October 2020, Council resolved to approve the development application subject to conditions, which included Council's determination about infrastructure items which are trunk or non-trunk.

In response to the conditions of the development approval, the applicant lodged a request to negotiate the conditions on 27 November 2020. The representations make various references to a future infrastructure agreement to be negotiated with Council.

On 12 February 2021 a draft Infrastructure Agreement was received from the applicant (Attachment 1) setting out proposed terms for negotiation. Attached to the draft Infrastructure Agreement are the following works items:

**Table 1 – Works items**

<b>Water infrastructure</b>
Works Contribution for water reservoir
Land Contribution for water reservoir easement
<b>Sewer infrastructure</b>
Works Contribution for sewer connection – Stage 3
Works Contribution for pump station – Stage 3
Works Contribution for sewer connection – ultimate development
Works Contribution for pump station – ultimate development
Works Contribution for pipe installation
Works Contribution for decommissioning of sewerage treatment plant

Paragraph 3.3 of the draft Infrastructure Agreement proposes that Council's obligations in respect of the provision of these infrastructure items are as follows:

*Council must:*

- a) accept any Infrastructure Contribution provided to it in accordance with this document;*
- b) provide to the Developer, in accordance with the Developer's instructions, an offset against infrastructure charges for the Development to the Value of the following Infrastructure Contributions:*
  - i) the Value of the Land Contribution and associated access for water infrastructure in item 1.2 of the ICS; and*
  - ii) the Value of the Work Contribution for water infrastructure in item 1.1 of the ICS; and*
  - iii) the Value of the Work Contributions for sewer infrastructure in items 2.1, 2.2, 2.3, 2.4, 2.5 and 2.6 of the ICS; and*

*otherwise comply with the terms of this document.*

In simple terms, the draft Infrastructure Agreement proposes that the developer will construct the works items listed in Table 1 above, and that Council will refund 100% of the actual costs of these items and associated land costs over time, via the "non-collection" of infrastructure contributions.

Concurrent with the request to enter into the Infrastructure Agreement, the applicant's representatives have discussed verbally and by email, an alternative cost sharing formula whereby Council will pay for 30% of the costs of sewerage infrastructure, but 100% of the value of the other works items.

## **STATUTORY/COMPLIANCE MATTERS**

*Planning Act 2016*

## **ANALYSIS**

Council is in receipt of a request from the developer of the Whitsunday Paradise development to enter into an IA (**Attachment 1**). The request relates to the water and sewer infrastructure

conditioned within Council's decision notice. The conditions of approval contained within the decision notice requires the developer to:

1. Construct a minimum 2ML (megalitre) reservoir no higher than RL80.0 metres top water level, in accordance with the requirements of the Whitsunday Regional Council Development Manual. Connection to the reservoir must be via a DN450mm water main connected to Council's Bulk Supply Water Main. The applicant must provide a minimum 10 metre easement at no cost to Council for the full length of the DN450mm water main. This infrastructure will serve only the Whitsunday Paradise estate.
2. Upon ultimate development, the applicant must construct a 10ML (megalitre) reservoir no higher than RL80.0 metres top water level, in accordance with the requirements of the Whitsunday Regional Council Development Manual. Connection to the reservoir must be via a second DN450mm water main connected to Council's Bulk Supply Water Main. The applicant must provide a minimum 10 metre easement at no cost to Council for the full length of the DN450mm water main.
3. Connect all existing lots as shown on Concept Master Plan Dated February 2020 Rev 01 and all proposed lots in Stage 3 to Council's reticulated sewer network via a DN225mm rising main in accordance with the requirements of Section DG 6 Sewerage System of the Whitsunday Regional Council Development Manual.
4. Construct an adequately sized sewer pump station on the subject land to service all flows from the existing lots as shown on Concept Master Plan Dated February 2020 Rev 01 and all proposed lots in Stage 3, in accordance with Section DG 6 Sewerage System of the Whitsunday Regional Council Development Manual.
5. Decommission the existing onsite Sewerage Treatment Plant.
6. Upon ultimate development, the applicant must connect all existing Stage 1 lots as shown on Concept Master Plan Dated February 2020 Rev 01 and all proposed lots in to Council's reticulated sewer network via a DN225mm and DN300mm rising main in accordance with the requirements of Section DG 6 Sewerage System of the Whitsunday Regional Council Development Manual.

The offer before Council is for an offset against the levied infrastructure charges to be applied against the value of land to be contributed to Council and the value of works undertaken for water and sewerage infrastructure. The IA proposes that the Developer will receive a 100% offset against the value of the works and land to be contributed.

The water and sewerage infrastructure required to service the Whitsunday Paradise development has been assessed to be non-trunk infrastructure, not entitling the developer to an offset against the levied charges. Council is advised that there is no legal requirement for Council to contribute to the requested reduction in infrastructure charges by way of a refund. Additionally, it is not within the interests of Council or the community to provide the reduction sought. Infrastructure charges contributions are essential for Council's ability to fund identified trunk infrastructure for the betterment of the community.

In order to take the matter to the Planning and Environment Court the applicant would need to make a "conversion application" under Council's Adopted Infrastructure Charges Resolution (AICR). This application would seek to demonstrate that the items which Council regards as non-trunk, should be categorised as trunk infrastructure. If Council disagrees with these submissions, the path is then open for the applicant to appeal to the Court.

Such an application will be assessed against the criteria within the AICR. Council Officers advise a review of the criteria concludes the infrastructure does not qualify for conversion.

## **STRATEGIC IMPACTS**

Outcome 3.1: Our built environment is well planned, effectively managed and protects our region's heritage and character

Outcome 3.2: Our Natural environment is valued and sustainable

Outcome 3.3: Our infrastructure supports our region's current and future needs

#### Alignment to Operational Plan

KPI: Development Applications are decided within statutory timeframes

Financial Implications – The applicable infrastructure charges to be levied upon all items applied for within the development application total \$6,260,483.00.

Risk Management Implications – The developer may appeal the conditions imposed by Council in the Planning & Environment Court.

Strategic Impacts – Council runs a reputational risk in approving another 'white elephant' development in Bowen.

### **CONSULTATION**

Doug Mackay - Manager Development Assessment

Neil McGaffin - Director Development Services

Troy Pettiford - Chief Operating Officer Whitsunday Water

### **DISCLOSURE OF OFFICER'S INTERESTS**

No officer involved in the preparation of this report has an interest to declare in accordance with the provisions of the Local Government Act 2009 or the Staff Code of Conduct.

### **CONCLUSION**

Council provides a response to Homeland Property Development Pty Ltd advising Council to decline the offer to enter into an Infrastructure Agreement for the purposes of water and sewerage infrastructure and decommissioning the sewage treatment plant.

### **ATTACHMENTS**

Attachment 1 - Draft Infrastructure Agreement



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Homeland Property Developments Pty Ltd

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Whitsunday Regional Council

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# Infrastructure Agreement

## Whitsunday Paradise Development – Local Government Infrastructure

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## Date

# Parties

Homeland Property Developments Pty Ltd (**Developer**)

Whitsunday Regional Council (**Council**)

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## Background

- A The Developer intends to carry out the Development on the Land.
  - B The Developer is the Owner of the Land.
  - C The Development will require the provision of Infrastructure Contributions for water and sewerage infrastructure.
  - D The Developer and the Council have agreed to execute this document to record their agreement about the Infrastructure Contributions in relation to water and sewerage infrastructure.
- 

### AGREED TERMS

#### Commencement

##### 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.

##### 2. Condition precedent

Despite clause 1.1, the Developer is not required to comply with the Developer Obligations unless and until such time as the Development Approval has taken effect and the Developer acts on the Development Approval.

#### Infrastructure agreement

##### 3. Purpose of this document

The purpose of this document is to establish the parties' rights and obligations in relation to the Infrastructure Contributions identified in the ICS.

#### **4. Application of Planning Act**

*This document is an infrastructure agreement under the Planning Act and, in particular, under sections 67 and 158 of the Planning Act.*

#### **5. Agreement to bind successors in title**

*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 8** or **clause 2.6**.*

*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.*

#### **6. 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.

#### **7. 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.

#### **8. Release of Developed Lots**

*Despite any other provision of this document, a Developed Lot is released from the Developer Obligations from the time the Developed Lot is created.*

*If a Lot to which clause 2.6(a) applies ceases to be a Developed Lot, the Developer Obligations will apply to the Lot.*

#### **9. 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.

#### **10. No Appeal rights**

The parties must not commence any Claim in relation to a condition of a development approval requiring compliance with this document.

#### **Parties' obligations**

#### **11. Developer's obligations**

The Developer must:

*provide the Infrastructure Contributions in accordance with the ICS; and  
otherwise comply with the terms of this document.*

## **12. Landowner's obligations**

*Subject to **clause 2.6**, the Landowner must comply with the Developer Obligations (including all obligations in **clause 3.1**).*

*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 8** or **clause 2.6** is satisfied.*

*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.*

## **13. Council's obligations**

Council must:

*accept any Infrastructure Contribution provided to it in accordance with this document;*

*provide to the Developer, in accordance with the Developer's instructions, an offset against infrastructure charges for the Development to the Value of the following Infrastructure Contributions:*

*the Value of the Land Contribution and associated access for water infrastructure in item 1.2 of the ICS; and*

*the Value of the Work Contribution for water infrastructure in item 1.1 of the ICS; and*

*the Value of the Work Contributions for sewer infrastructure in items 2.1, 2.2, 2.3, 2.4, 2.5 and 2.6 of the ICS; and*

*otherwise comply with the terms of this document.*

### **Infrastructure Contributions to comply**

## **14. Infrastructure Contributions to comply generally**

An Infrastructure Contribution must be provided in accordance with the ICS.

## **15. Land Contributions to comply**

A Land Contribution must be provided in a state fit for the purpose the Land Contribution is being given.

## **16. Requirement to obtain Approvals**

The Developer must, in providing any Infrastructure Contribution:



*apply for and obtain from an Approval Authority any and all necessary Approvals to provide the Infrastructure Contribution; and*  
*subject to section 157 of the Planning Act, to the extent that it applies, comply with, and provide the Infrastructure Contribution in accordance with, any and all relevant Approvals.*

## **Value of Infrastructure Contributions**

### **17. Value of Financial Contributions**

The Value of a Financial Contribution is the monetary sum at the time of payment.

### **18. Value of Land Contributions**

The Value of a Land Contribution is:

*the “value” of the land within the meaning of the Land Valuation Act 2010 (Qld); and*  
*the cost of the transfer of the land, including the cost of survey, taxes, legal and registration.*

### **19. Value of Works Contributions**

*The Value of a Works Contribution is to be the total cost of the completed works that directly relate to that Works Contribution, including:*

*project management, planning, design, construction, and construction management costs;*  
*survey and site investigation costs; and*  
*any application fees for any Approvals required for the Works Contribution.*

*Where the Developer is required to establish the Value of a Works Contribution, it must provide to Council a report prepared by an independent and suitably qualified RPEQ that certifies the value having regard to **clause 5.3(a)**.*

*Within 20 Business Days of receiving a report from the Developer under **clause 5.3(b)**, Council must consider the report and provide a Notice to the Developer stating either*

*that Council accepts the value stated in the report as the Value of the Works Contribution; or*

*that Council does not accept the value stated in the report as the Value of the Works Contribution and:*

*the reasons why Council does not accept that value; and*

*the value that Council considers is the Value of the Works Contribution.*

*If Council provides a Notice under **clause 5.3(c)(i)**, the value stated in the report provided by the Developer is taken to be the Value of the Works Contribution.*

*If Council provides a Notice under **clause 5.3(c)(ii)**, the Developer must either:*  
provide a Notice to Council confirming that the Developer accepts the value stated in Council's Notice as the Value of the Works Contribution; or  
provide a Dispute Notice to Council.

*If the Developer provides a Notice under **clause 5.3(e)(i)**, the value stated in Council's Notice is deemed to be the Value of the Works Contribution.*

## **On Maintenance and Off Maintenance**

### **20. On Maintenance**

*Within 10 Business Days of the Developer being satisfied that a Works Contribution has reached Completion, the Developer must provide a Notice to Council which includes:*

- a statement that construction of the Works Contribution has reached Completion;*
- a certificate from a RPEQ or suitably qualified and experienced person that the Works Contribution has been constructed in accordance with this document and any relevant Approval;*
- 'as-constructed' plans of the Works Contribution; and*
- a request for the Works Contribution to be accepted as On Maintenance; and*
- a receipt showing payment of the required Maintenance Security.*

*Following receipt of a Notice referred to in **clause 6.1(a)**, Council may undertake an inspection of the Works Contribution for the purpose of determining whether the Works Contribution should be accepted as On Maintenance.*

*Within 10 Business Days of receipt of the Notice referred to in **clause 6.1(a)**, Council must:*

- consider the Notice; and*
- provide Notice to the Developer stating either:*
  - that the Works Contribution is accepted as On Maintenance; or*
  - the reasons that Council does not consider that the Works Contribution should be accepted as On Maintenance.*

*If the Developer is notified in accordance with **clause 6.1(c)(ii)(B)** above: the Developer must:*

- remedy any relevant defect; and*
- once remedied, resubmit the Notice under **clause 6.1(a)**; and*
- within 10 Business Days of receiving the re-submitted Notice under **clause 6.1(a)**, Council must:*
  - consider the re-submitted Notice; and*
  - either confirm in writing to the Developer:*
    - that it is satisfied that the Works Contribution should be accepted as On Maintenance; or*

that it is not satisfied that the Works Contribution is On Maintenance along with the reasons as to why the action taken to remedy the defect is unsatisfactory.

*Council's consideration of the Notice given under **clause 6.1(a)** is limited to a consideration of whether the Works Contribution has been completed in accordance with the Developer Obligations and any relevant Approval.*

*If the Developer is notified under **clause 6.1(d)(ii)(B)(2)**, any party may give a Dispute Notice for the purposes of **clause 10.2**.*

*If the Council does not respond to a Notice (or resubmitted Notice) provided by the Developer under **clause 6.1(a)**, the Developer may give Council a Notice that the Developer intends that **clause 6.1(h)** apply to deem the Works Contribution to be On Maintenance.*

*If Council does not respond to a Notice provided by the Developer under **clause 6.1(g)** within 10 Business Days of receiving the Notice, Council is taken to have confirmed that the Works Contribution is On Maintenance.*

*The Works Contribution will have reached On Maintenance on:*

the date that Council confirms, or is taken to have confirmed under **clause 6.1(h)**, that the Works Contribution is On-Maintenance; or  
if a Dispute Notice is given, once it is determined that the Works Contribution is On Maintenance through the dispute resolution process in **clause 9.1**.

## **21. Maintenance of Works Contribution**

The Developer, at its own cost, must maintain any Works Contribution provided by the Developer for the duration of the Maintenance Period, including rectification of any defects arising from the design or construction of the Works Contribution.

## **22. Off Maintenance**

*At the end of the Maintenance Period for a Works Contribution, the Developer must provide to Council a Notice which includes:*

a certificate from a RPEQ that any and all known defects in the Works Contribution have been repaired; and  
a request that Council confirm that the Works Contribution be accepted as Off Maintenance.

*Following receipt of the Notice referred to in **clause 6.3(a)**, Council may undertake an inspection of the Works Contribution for the purpose of determining whether the Works Contribution should be accepted as Off Maintenance, and the Developer must allow Council entry onto the Land for that purpose.*

*Within 10 Business Days of receipt of the Notice referred to in **clause 6.3(a)**, Council must:*

consider the Notice; and  
confirm in writing to the Developer either:  
that the Works Contribution is Off Maintenance; or  
the reasons that Council does not consider that the Works Contribution is Off Maintenance.

*If the Developer is notified in accordance with **clause 6.3(c)(ii)(B)**:*

the Developer must:

remedy any relevant defect; and

once remedied, resubmit the Notice; and

within 15 Business Days of receiving the re-submitted Notice, Council must:

consider the re-submitted Notice; and

either confirm in writing to the Developer:

That it is satisfied that the Works Contribution is Off Maintenance; or

That it is not satisfied that the Works Contribution is Off Maintenance along with the reasons why.

*If the Developer is notified in accordance with **clause 6.3(d)(ii)(B)(2)**, the Notice provided by Council will be a Dispute Notice for the purposes of **clause 10.2**.*

*If Council does not respond to the Notice provided by the Developer in accordance with **clause 6.3(a)** or **6.3(d)(i)(B)**, a party may give a Dispute Notice for the purposes of **clause 10.2**.*

*The Works Contribution will be Off Maintenance on the date that Council confirms that the Works Contribution is Off Maintenance or, if a Dispute Notice is given, once it is determined that the Works Contribution is Off Maintenance through the dispute resolution process in **clause 9.1**.*

## **Maintenance Security**

### **23. Requirement for Maintenance Security**

Prior to any Works Contribution being accepted as On Maintenance, the Developer must provide to Council a Maintenance Security for the Works Contribution.

### **24. Calculation of Maintenance Security**

The value of any Maintenance Security is to be 5% of the Value of the Works Contribution.

### **25. Calling on Maintenance Security**

*Council may call on a Maintenance Security if the Developer fails to:*

maintain a Works Contribution in accordance with **clause 6.2**; or

remedy a defect in a Works Contribution in accordance with **clause 6.1(d)(i)** or **clause 6.3(d)(i)**.

*If Council calls on a Maintenance Security, it may only apply the Maintenance Security to the following purposes:*

remedying a defect in the Works Contribution; and

any administrative costs incurred by Council in remedying the defect, or in calling on the Maintenance Security.

### **26. Release of Maintenance Security**

Council must release a Maintenance Security, to the extent it has not been applied under **clause 7.3(b)**, to the Developer within 10 Business Days of the later of:

*the date on which the Works Contribution reaches Off Maintenance; or  
the date that all defects identified during the Maintenance Period have been  
remedied.*

## **Proposed transfers of land**

### **27. Restriction on the right to sell the Land**

*Subject to **clause 8.4**, Landowner must not sell or transfer the whole or any part  
of the Land unless the Landowner has first obtained:  
written consent from the proposed transferee that this agreement will continue  
to attach to the relevant part of the Land; and  
written consent from Council to the proposed transferee becoming subject to the  
Landowner's obligations under **clause 3.2**.*

### **28. No unreasonable refusal of consent**

Council must not refuse to give its consent under **clause 8.1** unless Council  
has a reasonable concern that the proposed transferee will not, or will be  
unable to, comply with the Landowner's obligations under **clause 3.2**..

### **29. 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 8.1**, 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.

### **30. Not to apply to Developed Lots**

This clause does not apply to the sale or transfer of Developed Lots.

## **Default**

### **31. Giving of Default Notice**

If a party considers that another party has defaulted in respect of an obligation  
under this document, that party (ie the non-defaulting party) may give a Default  
Notice to the party considered to be in default:

*specifying the default in reasonable detail; and  
requesting the defaulting party to rectify the default within a reasonable period  
specified in the Default Notice.*

### **32. Failure to comply with Default Notice**

If a party receives a Default Notice and fails to comply with the Default Notice,  
the party that gave the Default Notice may (without limiting any of its rights)  
recover from the defaulting party as a liquidated debt the money it expends in  
giving the Default Notice.

### 33. Effect of Default Notice

*If a Dispute Notice is given in relation to a default the subject of a Default Notice, there is no obligation to comply with the Default Notice until the dispute is resolved under **clause 10** or finally decided by a Court.*

*The giving of a Default Notice does not stay the effect of this document.*

*A default by one party does not prevent the other party from continuing to exercise any rights, or comply with any obligations, under this document.*

*A default in relation to a joint obligation of the parties does not prevent any party from continuing to exercise any rights or comply with any obligations under this document.*

### Disputes

### 34. Application of clause

This **clause 9.1** 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:

*apply to disputes over debts; or*

*prevent a party from applying to a court for urgent injunctive or declaratory relief.*

### 35. Dispute Notices

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

*identifying the dispute and the facts relied on in relation to the dispute; and stating either that:*

*the parties are required to meet within 5 Business Days; or*

*a written response to the Dispute Notice is required from the other party within 10 Business Days.*

### 36. Disputes about Default Notices

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



*whether the Default Notice must be complied with; and  
if the Default Notice must be complied with, the timeframe in which the Default Notice must be complied with; and*

### **37. Initial meeting or correspondence**

*If a Dispute Notice is given under **clause 10.2(b)(i)**, the parties must meet, within 5 Business Days after the date the Dispute Notice is given, at Bowen, Queensland at least once to discuss the dispute including the possible resolution of the dispute.*

*If a Dispute Notice is given under **clause 10.2(b)(ii)**, the recipient party must respond in writing to the Dispute Notice within 10 Business Days.*

### **38. Mediation**

*If a meeting or written response under **clause 10.5** fails to resolve the dispute, the parties may agree to refer the dispute to mediation.*

*If the parties agree to refer the dispute to mediation, then the parties must either:*  
appoint a mediator by agreement; or  
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.

### **39. Determination**

*If any dispute notified under **clause 10.2** is not resolved within the following periods, the parties may agree, within 5 Business Days after that time period ends, to refer the dispute to an independent, appropriately qualified referee for determination:*

*if the dispute was not referred to mediation – within 15 Business Days after the date the Dispute Notice was given; or*

*if the dispute was referred to mediation – within 30 Business Days after the date the Dispute Notice was given.*

*If the parties agree to refer the dispute to a referee determination, then the parties must either:*

*appoint a referee by agreement; or*

*if the parties are unable, within 5 Business Days of agreeing to refer the dispute to a referee determination, agree on a referee to be appointed, request the President of the Queensland Law Society to make the appointment.*

*In determining the dispute, the referee must:*

*determine the process for resolution of the dispute, including whether a conference must be held and whether written submissions must be provided;*

*act fairly and impartially, and conduct the process in accordance with the requirements of procedural fairness;*

*act as an expert, not an arbitrator;*

*act expeditiously to attempt to achieve a resolution for the parties in the most cost effective manner; and*

*make the determination according to law and to reflect the intent of this document.*

*The determination of a referee must:*

be in writing;  
be given to both parties; and  
contain a full statement of the reasons for the determination.

*If a referee has not provided a determination within 50 Business Days of the date the Dispute Notice was given, a party may do either or both of the following:  
apply to a court for resolution of the dispute; or  
notify the other party that it will not be bound by the referee's determination.*

*If a party does not, within 20 Business Days after a referee's determination is given, apply to a court to overturn or vary the determination, the determination will be final and binding on the parties.*

#### **40. 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:

*if the dispute is not referred to mediation – 15 Business Days after the date the Dispute Notice is given;  
if the dispute is referred to mediation, and is not referred to determination – 30 Business Days after the date the Dispute Notice is given; or  
if the dispute is referred to determination – in accordance with **clause 10.6(e)**.*

#### **41. Costs of dispute**

*The parties must share equally all costs of any mediator or referee appointed in relation to a dispute.*

*However, each party must pay its own costs in connection with resolving the dispute.*

### **Notices**

#### **42. Giving Notices**

*A Notice relating to this document:*

*may be given by an Authorised Person of, or the solicitors for, the relevant party;*

*must be in writing; and*

*must, subject to **clause 11.1(b)**, be:*

*left at the address of the addressee in Australia stated in*

**Schedule 1;**

*sent by prepaid ordinary post to the address of the addressee in Australia stated in **Schedule 1**;*

*sent by facsimile to the facsimile number of the addressee in Australia stated in **Schedule 1**; or*

*sent by email to the email address of the addressee stated in **Schedule 1**.*

*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.*

#### **43. Receiving Notices**

*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.*

*A Notice delivered by hand is taken to be received:*

*if delivered by 5.00pm on a Business Day – on that Business Day; or  
otherwise – on the next Business Day.*

*A Notice delivered by post is taken to be received on the day when, it in the ordinary course of post, it would have been delivered.*

*A Notice sent by facsimile is taken to be received:*

*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  
otherwise – on the next Business Day.*

*A Notice sent by email is taken to be received:*

*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  
otherwise – on the next Business Day.*

#### **44. Other matters**

*This **clause 11** is in addition to the methods of service of notices set out in the Property Law Act 1974 (Qld).*

*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.*

### **GST**

#### **45. Construction**

**In this clause 12:**

*unless there is a contrary indication, words and expressions which are not defined in this document but which have a defined meaning in the GST Law have the same meaning as in the GST Law;*

***GST Law** has the same meaning given to that expression in the 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*

*references to GST payable and input tax credit entitlements include:*

*notional GST payable by, and notional input tax credit entitlements of the Commonwealth, a State or a Territory (including a government, government body, authority, agency or instrumentality of the Commonwealth, a State or a Territory); and*

*GST payable by, and the input tax credit entitlements of, the representative member of a GST group of which the entity is a member.*

#### 46. Consideration GST exclusive

Unless otherwise expressly stated, all consideration, whether monetary or non-monetary, payable or to be provided under or in connection with this document is exclusive of GST (**GST-exclusive consideration**).

#### 47. Payment of GST

If GST is payable on any supply made by:

*a party; or*

*an entity that is taken under the GST Law to make the supply by reason of the capacity in which a party acts,*

(**Supplier**) under or in connection with this document, the recipient of the supply, or the party providing the consideration for the supply, must pay to the Supplier an amount equal to the GST payable on the supply.

#### 48. Timing of GST payment

The amount referred to in **clause 12.3** must be paid in addition to and at the same time and in the same manner (without any set-off or deduction) that the GST-exclusive consideration for the supply is payable or to be provided.

#### 49. Tax invoice

The Supplier must deliver a tax invoice or an adjustment note to the recipient of a taxable supply before the Supplier is entitled to payment of an amount under **clause 12.3**.

#### 50. Adjustment event

If an adjustment event arises in respect of a supply made by a Supplier under or in connection with this document, any amount that is payable under **clause 12.3** will be calculated or recalculated to reflect the adjustment event and a payment will be made by the recipient to the Supplier or by the Supplier to the recipient as the case requires.

#### 51. Reimbursements

*Where a party is required under or in connection with this document to pay for, reimburse or contribute to any expense, loss, liability or outgoing suffered or incurred by another party or indemnify another party in relation to such an expense, loss, liability or outgoing (**Reimbursable Expense**), the amount required to be paid, reimbursed or contributed by the first party will be reduced by the amount of any input tax credits to which the other party is entitled in respect of the Reimbursable Expense.*

*This **clause 12.7** does not limit the application of **clause 12.3**, if appropriate, to the Reimbursable Expense as reduced in accordance with **clause 12.7(a)**.*

#### 52. No merger

This **clause 12** does not merge on the completion, rescission or other termination of this document or on the transfer of any property supplied under this document.

## **General**

### **53. Payment of costs**

Each party must pay its own legal and other costs and expenses of negotiating, preparing, executing and performing its obligations under this document.

### **54. 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.

### **55. Amendment of this document**

*The parties may at any time agree to vary the terms of this document except this clause.*

*No modification, variation or amendment of this document is of any force or effect unless it:*

*is in the form of a deed executed by the parties; and  
complies with the requirements of the Planning Act.*

### **56. 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.*

### **57. 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.

### **58. 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.

### **59. 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.

## **60. Governing law and jurisdiction**

*This document is governed by and is to be construed in accordance with the laws applicable in Queensland.*

*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.*

## **61. Assignment**

*A party must not assign or deal with any right under this document without the prior written consent of the other parties.*

*Any purported dealing in breach of this clause is of no effect.*

## **62. Liability**

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

## **63. Entire understanding**

*This document contains the entire understanding between the parties as to the subject matter of this document.*

*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.*

*No oral explanation or information provided by any party to another:*  
affects the meaning or interpretation of this document; or  
constitutes any collateral agreement, warranty or understanding  
between any of the parties.

## **64. Relationship of parties**

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

## 65. Force Majeure

*If a party is unable, by reason of any event of Force Majeure, to carry out its obligations under this document (other than obligation to pay any monetary amount), that party must give a Notice to the other parties advising of the event of Force Majeure under as soon as reasonably practicable after the event of Force Majeure.*

*A Notice under **clause 13.13(a)** must:*

- specify the obligations that the party is unable to perform;*
- fully describe the event of Force Majeure;*
- include an estimate of the time during which the event of Force Majeure will continue; and*
- specify the measures proposed to be adopted to remedy or abate the event of Force Majeure.*

*If a party gives a Notice advising of an event of Force Majeure, that party's obligations that cannot be performed will be suspended during the period for which the event of Force Majeure or its effect extends, provided the party has taken all reasonable steps to remove the Force Majeure or ameliorate its effects.*

*If an obligation is suspended by reason of Force Majeure under this **clause 13.13**, any obligations that are contingent on that obligation are also suspended during the period for which the event of Force Majeure or its effects extends, provided the party has taken all reasonable steps to remove the Force Majeure or ameliorate its effects.*

## 66. 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.

## 67. Deed

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

## Definitions and construction

### 68. Definitions

In this document these terms have the following meanings:

Term	Definition
<b>Approval</b>	A consent, permit, licence, certificate, authorisation, notice or approval under a law, or that is required under or in relation to this document.
<b>Approval Authority</b>	An entity or body with relevant power or authority to issue an Approval.
<b>Authorised Person</b>	The following: <ul style="list-style-type: none"> <li>(a) for the Developer – any person Notified in writing as an authorised person by the Developer;</li> <li>(b) for Council – Council’s chief executive officer and any lawful delegate thereof.</li> </ul>
<b>Business Day</b>	The meaning given to “business day” in the <i>Acts Interpretation Act 1954</i> (Qld), for Council’s local government area.
<b>Claim</b>	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.
<b>Commencement Date</b>	The date the last party executes this document, which is to be recorded in <b>Item 1</b> .
<b>Completion</b>	The stage in the provision of a Works Contribution by the Developer when the Works Contribution is complete, other than for a minor omission or minor defect which: <ul style="list-style-type: none"> <li>(a) is not essential;</li> <li>(b) does not prevent the Works Contribution from being reasonably capable of being used for its intended purpose; and</li> <li>(c) the rectification of which will not prejudice the convenient use of the Works Contribution.</li> </ul>



<b>Developed Lot</b>	<p>A Lot that is:</p> <ul style="list-style-type: none"> <li>(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);</li> <li>(b) in its intended ultimate form for use in accordance with the Development Approval;</li> <li>(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</li> <li>(d) not intended to remain in the ownership of the Developer.</li> </ul>
<b>Developer</b>	The person described in <b>Item 2</b> .
<b>Developer Obligations</b>	The obligations of the Developer under this document.
<b>Development</b>	The proposed development of the Land generally in accordance with the Development Approval.
<b>Development Application</b>	The development application made by the Developer to the Council in June 2018, being an application for Preliminary Approval for a Variation Approval pursuant to section 50 of the Planning Act 2016 and a Development Permits for Material Change of Use for a Food and Drink Outlet, Hotel, Outdoor Sport and Recreation, Service Station and Shopping Centre including a Child Care Centre, Food and Drink Outlet, Health Care Services and Shop; Reconfiguring of a Lot – 3 into 240 Lot Subdivision, Drainage Reserve, Park, Road, and Access Easements; and Operational Works for Excavating or Filling and Preliminary Approval for Excavating or Filling (Impact Assessable).
<b>Development Approval</b>	The approval by the Council of the Development Application.
<b>Dispute Notice</b>	A Notice given by one party to the other under <b>clause 10.2</b> .
<b>Council</b>	The entity described in <b>Item 3</b> .
<b>Financial Contribution</b>	The payment of a monetary amount for infrastructure.

<b>Force majeure</b>	Any of the following: <ul style="list-style-type: none"> <li>(a) damage by fire, pandemic, explosion, earthquake, lightning, storm, war, flood, civil commotion or act of God;</li> <li>(b) legal proceedings (actual or threatened);</li> <li>(c) bad weather;</li> <li>(d) industrial disputes; or</li> <li>(e) a combination of these or any other cause, matter or thing beyond the control of the affected party.</li> </ul>
<b>ICS</b>	The infrastructure contribution schedule in <b>Schedule 3</b> .
<b>Infrastructure Contribution</b>	A contribution for infrastructure, including: <ul style="list-style-type: none"> <li>(a) a Financial Contribution;</li> <li>(b) a Land Contribution; and</li> <li>(c) a Works Contribution.</li> </ul>
<b>Item</b>	An item in <b>Schedule 1</b> .
<b>Land</b>	The land described in <b>Item 4</b> .
<b>Land Contribution</b>	The provision of land (including any interest in, or licence over, land) for infrastructure.
<b>Landowner</b>	The Owner of the Land as at the Commencement Date and any successors in title for the Land or any part of the Land.
<b>Law</b>	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.
<b>Lot</b>	The meaning given in the <i>Land Title Act 1994</i> (Qld).
<b>Maintenance Period</b>	A period of 12 months after a Works Contribution reaches On Maintenance during which the Developer must maintain the Works Contribution and remedy any defects in the Works Contribution in accordance with this document.
<b>Maintenance Security Notice</b>	A Security provided under <b>clause 7</b> .  Any certificate, demand or notice to be given by a party under this document.
<b>Off Maintenance</b>	The stage in the provision of a Works Contribution when the Works Contribution reaches Off Maintenance in accordance with <b>clause 6.3</b>

<b>On Maintenance</b>	The stage in the provision of a Works Contribution when the Works Contribution reaches On Maintenance in accordance with <b>clause 6.1</b> .
<b>Owner</b>	The meaning given in the Planning Act, for an owner of land.
<b>Plan</b>	A map or plan in <b>Schedule 2</b> .
<b>Planning Act</b>	The <i>Planning Act 2016</i> (Qld).
<b>Planning Scheme</b>	Whitsunday Planning Scheme 2017
<b>Plan of Subdivision Proposed Transferee</b>	The meaning given in the <i>Land Title Act 1994</i> (Qld).
<b>RPEQ</b>	A person to whom any part of the Land is proposed to be sold or transferred.
<b>RPEQ</b>	An engineer registered as a Registered Professional Engineer of Queensland with the Board of Professional Engineers in accordance with the <i>Professional Engineers Act 2002</i> (Qld).
<b>Security</b>	Either: <ul style="list-style-type: none"> <li>(a) money;</li> <li>(b) an unconditional, irrevocable bank guarantee obtained by the Developer in favour of the Council from an authorised deposit-taking institution within the meaning of the <i>Banking Act 1959</i> (Cth);</li> <li>(c) an unconditional, irrevocable insurance policy obtained by the Developer in favour of the Council from an insurance company that is authorised under the <i>Insurance Act 1973</i> (Cth) to carry on insurance business and registered by the Australian Prudential Regulatory Authority; or</li> <li>(d) any other form of security that is accepted in writing by Council.</li> </ul>
<b>Value</b>	The value of an Infrastructure Contribution determined in accordance with <b>clause 5</b> .
<b>Works Contribution</b>	The undertaking of works for infrastructure, including any materials or services required for that infrastructure.

## 69. Construction

Unless expressed to the contrary, in this document:

*words in the singular include the plural and vice versa;*

*any gender includes the other genders;*

*if a word or phrase is defined, its other grammatical forms have corresponding meanings;*

*“includes” means includes without limitation;*

*no rule of construction will apply to the disadvantage of a party because that party drafted, put forward or would benefit from any term;*

*a reference to:*

a person includes a partnership, joint venture, unincorporated association, corporation, entity and a government agency;

a person includes the person’s legal personal representatives, successors, assigns and persons substituted by novation;

any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced;

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;

a right includes a benefit, remedy, discretion or power;

time is to local time in the Council’s local government area;

“\$” or “dollars” is a reference to Australian currency;

this or any other document includes the document as novated, varied or replaced and despite any change in the identity of the parties;

writing includes:

any mode of representing or reproducing words in tangible and permanently visible form, including fax transmission; and

words created or stored in any electronic medium and retrievable in perceivable form.

this document includes all schedules and annexures to it;

a clause, schedule or annexure is a reference to a clause, schedule or annexure, as the case may be, of this document; and

in the ICS, an “item” is to an item in the ICS;

*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):*

*the Planning Act; or*

*its ordinary meaning;*

*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*

*headings do not affect the interpretation of this document.*

# Schedule 1

## Agreement Details

Item	Description	Details
<b>1</b>	<b>Commencement Date</b>	
	<b>Date</b>	<i>[to be inserted above by the last party to execute this document]</i>
<b>2</b>	<b>Developer</b>	
	<b>Name</b>	Homeland Property Developments Pty Ltd ACN 609 399 233
	<b>Address</b>	Level 2, 29 Elkhorn Avenue Surfers Paradise QLD 4217
	<b>Postal address</b>	As above
	<b>Phone</b>	0433 620 840
	<b>Email</b>	<a href="mailto:blake.thomas@greatrewards.com.au">blake.thomas@greatrewards.com.au</a>
<b>3</b>	<b>Council</b>	
	<b>Name</b>	Whitsunday Regional Council
	<b>Address</b>	83 – 85 Main Street Proserpine QLD 4800
	<b>Postal address</b>	PO Box 104 Proserpine QLD 4800
	<b>Phone</b>	[insert]
	<b>Email</b>	[insert]
<b>4</b>	<b>Land</b>	
	<b>Address</b>	Ocean View Drive, Bruce Highway and McDonald Close, Bowen, Queensland
	<b>Lot and plan description</b>	Lot 900 on SP225370; Lot 1 and Lot 2 on SP172275; Lot 902 on SP212269; Lot 958 and Lot 959 on SP194473; and Lot 15 on SP194473.

## Schedule 2

### Plans

No.	Description
1	Concept Master Plan dated February 2020 Rev 1

draft

Plan 1 –
[insert]

draft

## Schedule 3

### Infrastructure Contribution Schedule (ICS)

Column 1 Item	Column 2 Infrastructure Contribution	Column 3 Description of Infrastructure Contribution	Column 4 Timing of provision of Infrastructure Contribution	Column 5 Provider of Infrastructure Contribution	Column 6 Recipient of Infrastructure Contribution
<b>1</b>	<b>Water infrastructure</b>				
1.1	Works Contribution for water reservoir	Provision of a Works Contribution: (a) at no cost to the Council; (b) comprising a 12ML (megalitre) reservoir, consistent with the infrastructure identified as Water reservoir W8 in the Council's Local Government Infrastructure Plan version 1.6, and constructed; (i) no higher than RL80.0 metres top water level; (ii) in accordance with the requirements of the Whitsunday Regional Council Development Manual; (iii) with connection to the reservoir via a DN450mm water main connected to Council's Bulk Supply Water Main; and (c) generally located [insert] on Plan [insert].	The Works Contribution must be provided: (a) prior to, or at the same time as, the registration of the first Plan of Subdivision for Stage 3 of the Development after the Commencement Date; or (b) as agreed between the parties.	Developer	Council
1.2	Land Contribution for water reservoir easement	Provision of a Land Contribution: (a) at no cost to Council; (b) comprising .....; (c) comprising a minimum 10 metre easement for the full length of the DN450mm water main; and (d) in the locations shown on Plan [insert].	The Land Contribution must be provided: (a) prior to, or at the same time as, the registration of the first Plan of Subdivision for Stage 3 of the Development after the Commencement Date; or (b) as agreed between the parties.	Developer	Council
<b>2</b>	<b>Sewer infrastructure</b>				
2.1	Works Contribution for sewer connection – Stage 3	Provision of a Works Contribution: (a) at no cost to the Council; (b) comprising connection of all existing lots as shown on [Concept Master Plan dated February 2020 Rev 1] and all proposed lots in Stage 3 to Council's reticulated water network: (i) via a DN225mm rising main; (ii) in accordance with the requirements of Section DG 6 Sewerage System of the Whitsunday Regional Council Development Manual; and (c) generally located [insert] on Plan 1.	The Works Contribution must be provided: (a) prior to, or at the same time as, the registration of the first Plan of Subdivision for Stage 3 of the Development after the Commencement Date; or (b) as agreed between the parties.	Developer	Council



Column 1 Item	Column 2 Infrastructure Contribution	Column 3 Description of Infrastructure Contribution	Column 4 Timing of provision of Infrastructure Contribution	Column 5 Provider of Infrastructure Contribution	Column 6 Recipient of Infrastructure Contribution
2.2	Works Contribution for pump station – Stage 3	Provision of a Works Contribution: (a) at no cost to the Council; (b) comprising construction of a sewer pump station on the Land: (i) adequately sized to service all flows from the existing lots as shown on [Concept Master Plan dated February 2020 Rev 1] and all proposed lots in Stage 3; (ii) in accordance with the requirements of Section DG 6 Sewerage System of the Whitsunday Regional Council Development Manual; (iii) with all pump station switchboards constructed in accordance with the requirements of the Construction Specification for Electrical Switchboards section of the Whitsunday Regional Council Development Manual; and (c) generally located [insert] on Plan 1.	The Works Contribution must be provided: (a) prior to, or at the same time as, the registration of the first Plan of Subdivision for Stage 3 of the Development after the Commencement Date; or (b) as agreed between the parties.	Developer	Council
2.3	Works Contribution for sewer connection – ultimate development	Provision of a Works Contribution: (a) at no cost to the Council; (b) comprising connection of all existing Stage 1 lots as shown on [Concept Master Plan dated February 2020 Rev 1] and all proposed lots to Council's reticulated water network: (i) via a DN225mm and DN300mm rising main; (ii) in accordance with the requirements of Section DG 6 Sewerage System of the Whitsunday Regional Council Development Manual; and (c) generally located [insert] on Plan 1.	The Works Contribution must be provided: (a) upon completion of the Development; or (b) as agreed between the parties.	Developer	Council
2.4	Works Contribution for pump station – ultimate development	Provision of a Works Contribution: (a) at no cost to the Council; (b) comprising construction of a sewer pump station on the Land: (i) adequately sized to service all flows from the existing Stage 1 lots as shown on [Concept Master Plan dated February 2020 Rev 1] and all proposed lots; (ii) in accordance with the requirements of Section DG 6 Sewerage System of the Whitsunday Regional Council Development Manual; (iii) with all pump station switchboards constructed in accordance with the requirements of the Construction Specification for Electrical Switchboards section of the Whitsunday Regional Council Development Manual; and (c) generally located [insert] on Plan 1.	The Works Contribution must be provided: (a) upon completion of the Development; or (b) as agreed between the parties.	Developer	Council

Column 1 Item	Column 2 Infrastructure Contribution	Column 3 Description of Infrastructure Contribution	Column 4 Timing of provision of Infrastructure Contribution	Column 5 Provider of Infrastructure Contribution	Column 6 Recipient of Infrastructure Contribution
2.5	Works Contribution for pipe installation	Provision of a Works Contribution: (a) at no cost to the Council; and (b) comprising construction of a non-corrosive pipe: (i) installed for the length of the sewer to the next downstream manhole; (ii) including provision of an inert lining to all internal surfaces of all rising main discharge manholes; and (iii) in accordance with the requirements of section DG 6 Sewerage System of the Whitsunday Regional Council Development Manual.	The Works Contribution must be provided: (a) upon completion of the Development; or (b) as agreed between the parties.	Developer	Council
2.6	Works Contribution for decommissioning of sewerage treatment plant	Provision of a Works Contribution: (c) at no cost to the Council; and (d) comprising decommissioning of the existing onsite sewerage treatment plant.	The Works Contribution must be provided: (a) prior to the first of: (i) the registration of the first Plan of Subdivision for the Development after the Commencement Date; or (ii) commencement of operational works; or (b) as agreed between the parties.		

Execution

**Executed** as a deed

**Executed by Homeland Property  
Developments Pty Ltd ACN 609 399  
233** )  
)  
)

.....  
Company Secretary/Director

.....  
Director

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

.....  
Name of Director (print)

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

.....  
Authorised person

.....  
Witness

.....  
Name of authorised person (print)

.....  
Name of witness (print)