



Queensland

Breakwater Island Casino Agreement Amendment Act 2006

Act No. 5 of 2006



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Queensland

Breakwater Island Casino Agreement Amendment Act 2006

Act No. 5 of 2006

An Act to amend the *Breakwater Island Casino Agreement Act 1984*, and for another purpose

[Assented to 15 March 2006]

The Parliament of Queensland enacts—

Part 1 Preliminary

1 Short title

This Act may be cited as the *Breakwater Island Casino Agreement Amendment Act 2006*.

Part 2 Amendment of Breakwater Island Casino Agreement Act 1984

2 Act amended in pt 2

This part amends the *Breakwater Island Casino Agreement Act 1984*.

3 Amendment of s 3 (Variation of formal agreement)

(1) Section 3(1), from ‘(corresponding’ to ‘schedule 2)’—

omit, insert—

‘corresponding to a proposed further agreement set out in schedule 2’.

(2) Section 3—

insert—

‘(3) The further agreement in schedule 2, part 2, varies the formal agreement only to the extent the further agreement contains a variation of the formal agreement as in force immediately before the making of the further agreement.’.

4 Omission of ss 4 and 5

Sections 4 and 5—

omit.

5 Amendment of s 6 (Parliament not restricted)

(1) Section 6, ‘, the Board agreement or the Council agreement’—

omit.

(2) Section 6, from ‘the agreements’—

omit, insert—

‘the agreement under the agreement or any variations of it.’.

(3) Section 6—

renumber as section 4.

6 Omission of ss 7 and 8

Sections 7 and 8—

omit.

7 Amendment of sch 2 (Proposed further agreement)

(1) Schedule 2, from ‘Schedule 2’ to ‘section 3’—

omit, insert—

‘Schedule 2 Proposed further agreements

section 3(1)

Part 1 Proposed further agreement for Wagering Act 1998, part 16’.

(2) Schedule 2, at the end—

- B ANZ Executors and Trustee Company Limited has been replaced as Trustee of the Breakwater Island Trust by Breakwater Island.
 - C Jupiters holds all the units in the Breakwater Island Trust.
-

Operative Provisions

1 Amendment of Breakwater Island Casino Agreement

The parties agree that the Breakwater Island Casino Agreement is amended in terms of the variation attached being a replacement agreement.

2 Governing Law

The interpretation and construction of this agreement shall be governed and determined in accordance with the law of Queensland and the parties submit to the non-exclusive jurisdiction of the Courts of that State.

Executed as a deed.

Signed by the Treasurer of The)
State of Queensland for and on)
behalf of **The State of**)
Queensland in the presence of:)

.....
Witness

.....
Treasurer

.....
Name of Witness (print)

.....
Name of Treasurer (print)

Breakwater Island Casino Agreement Amendment Act No. 5, 2006
2006

The common seal of Jupiters))
Limited ACN 010 741 045 is)
affixed in accordance with its)
articles of association in the)
presence of:)

.....
Director

.....
Director/Secretary

.....
Name of Director (print)

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

The common seal of Breakwater))
Island Limited ACN 010 271 691)
is affixed in accordance with its)
articles of association in the)
presence of:)

.....
Director

.....
Director/Secretary

.....
Name of Director (print)

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

REPLACEMENT AGREEMENT

Date

Parties

The State of Queensland (State)

Jupiters Limited ACN 010 741 045 a company duly incorporated by law and having its registered office at 5 Bowen Crescent, Melbourne, Victoria (**Jupiters**)

Breakwater Island Limited ACN 010 271 691 a company duly incorporated by law and having its registered office at 5 Bowen Crescent, Melbourne, Victoria (**Breakwater Island**)

Background

- A This Agreement was entered into in accordance with section 2 (Ratification of formal agreement) of the *Agreement Act* to satisfy section 19 (Agreement to precede grant of casino licence) of the Control Act.
- B Prior to the grant of the Casino Licence, the State set out its objectives and considerations in its Brief to Finalists in which the State considered the following objectives and considerations as being of paramount importance to the establishment and operation of casinos in the State of Queensland—
- (i) the Casino Licence holder was required to establish a hotel-casino complex of the highest standard and operate that complex on an impeccable basis; and
 - (ii) the establishment of the hotel-casino complex was required to be of maximum enhancement to the tourist industry of Queensland by the provision of an international class hotel, casino and convention centre with the best standard of ancillary amenities such as restaurants, entertainment theatres, sporting and other community facilities; and
 - (iii) the permitted establishment and operation of the Casino was required to give significant community benefits; and

- (iv) by the operation of the Casino the revenue of the State is enhanced.
- C The Trustee holds the Casino Licence, owns the Site and owns the Breakwater Island Casino-Hotel Complex.
- D Jupiters owns all of the Units.
- E The State acknowledged that the establishment of the Breakwater Island Casino-Hotel Complex was a large scale development project requiring a very large capital expenditure and that it was necessary to give to the then trustee of the Breakwater Island Trust, the security and assurances contained herein to enable the provision of capital for the establishment of the Breakwater Island Casino-Hotel Complex.
- F It is desirable that in consideration of the Trustee entering into the obligations on its part hereinafter set out that the Trustee should be granted the entitlements benefits and privileges hereinafter mentioned.
- G Whilst the parties recognise that the power of the Parliament of the State of Queensland to make laws is absolute and cannot be taken away by an agreement made by the State, it is the intention of the State that the titles, rights and privileges of the Trustee be not derogated from by the State in any manner whatsoever except as hereinafter provided.

PART I—PRELIMINARY

1 Definitions

In this Agreement unless the context otherwise indicates or requires, the terms following shall have the meanings respectively assigned to them—

Agreement means this agreement and the schedules thereto and all amendments to such agreement or schedules.

Agreement Act means the *Breakwater Island Casino Agreement Act 1984*.

Approved Holder means—

- (a) a body registered under the *Life Insurance Act 1995* (Cwlth) if the body, in its last published audited financial statements, held net assets of at least \$100 million; or
- (b) a regulated superannuation fund, an approved deposit fund, a pooled superannuation trust, or a public sector superannuation scheme within the meaning of the *Superannuation Industry (Supervision) Act 1993* (Cwlth) if the fund, trust or scheme, in its last published audited financial statements, held net assets of at least \$100 million; or
- (c) a managed investment scheme within the meaning of the *Corporations Act* if the scheme, in its last published audited financial statements, held net assets of at least \$100 million; or
- (d) a person who is a licensed dealer and a member organisation of an Australian stock exchange within the meaning of the *Corporations Act* acting as principal, if the licensed dealer, in its last published audited financial statements, held net assets of at least \$100 million; or
- (e) an authorised deposit taking institution that carries on any banking business in Australia within the meaning of the *Banking Act 1959* (Cwlth) and their wholly owned subsidiaries; or
- (f) any building society regulated by the Australian Prudential Regulation Authority and their wholly owned subsidiaries.

Breakwater Island means Breakwater Island Limited ACN 010 271 691.

Breakwater Island Casino-Hotel Complex means all land and Work used, constructed or effected or to be used, constructed or effected on the Site for a hotel, casino and other Uses in accordance with this Agreement including—

- (a) restaurants, convention centre, theatre and associated facilities and parking; and
- (b) a commercial development which includes or may include indoor and outdoor bars and bottle departments

for the retail sale of liquor to the public, restaurants and fast food areas for the retail sale of food to the public, entertainment areas and associated facilities and parking.

Breakwater Island Trust means the trusts constituted by the Trust Deed.

Brief to Finalists means that document which is headed *Introduction of Casino Operations to Queensland—Brief to Finalists* and is dated October, 1981 and which explains the State's detailed conditions and requirements for awarding a casino licence and further describes the submission format necessary for review and assessment by the State.

Casino means those areas of the Breakwater Island Casino-Hotel Complex identified in the Casino Licence.

Casino Gross Revenue means casino gross revenue as defined in the Control Act.

Casino Licence means the licence dated 14 May 1986 granted pursuant to the Control Act in respect of the Casino.

Casino Part means the part of the Breakwater Island Casino-Hotel Complex that is a Casino.

Chief Executive means, unless specified otherwise in this Agreement, the chief executive of the department responsible for the Control Act.

Control Act means the *Casino Control Act 1982*.

Corporations Act means the *Corporations Act 2001* of the Commonwealth of Australia and the regulations made under that Act, and includes—

- (a) the Act and regulations as amended from time to time; and
- (b) if any law of the Commonwealth is substituted for the Act or regulations—the substituted law.

Crown Land has the meaning given in the *Land Act 1962*.

decision means a decision, report or recommendation made or proposed to be made or required to be made and includes—

- (a) a matter appearing or purporting to be a decision, report or recommendation; and
- (b) a matter relating to or appearing or purporting to relate to a decision, report or recommendation.

Development means—

- (a) a Material Change of Use; or
- (b) Work; or
- (c) Reconfiguring a Lot; or
- (d) the carrying out of a Prescribed Activity.

Development Application means an application to the Minister for approval of Regulated Development in respect of the Breakwater Island Casino-Hotel Complex or the Site pursuant to clause 15.

Development Approval means an approval granted by the Minister in respect of a Development Application and includes other working drawings and specifications approved by the Minister as part of the Development Approval which will result in variation to the Schematic Design Drawings.

Development Legislation means any—

- (a) legislation of whatsoever nature relating to development as defined in the *Integrated Planning Act 1997* including, without limitation, the *Building Act 1975*, the *Water Act 2000*, *Plumbing and Drainage Act 2002*, the *Coastal Protection and Management Act 1995*, the *Local Government Act 1993* and the *Integrated Planning Act 1997*; and
- (b) Planning Instrument whether or not made under the legislation specified in paragraph (a); and
- (c) other statutory provisions regulating the Development of the Site.

Foundation Agreement means the agreement dated 14 November 1984 between the then trustee of Breakwater Island Trust and other parties, as amended from time to time.

Founders means the founders identified from time to time in the Foundation Agreement.

Game means a game as that term is defined in the Control Act.

gaming machine means any device that is designed so that—

- (a) it may be used for the purpose of playing a game of chance or a game of mixed chance and skill; and
- (b) it may be operated, wholly or partly—
 - (i) by the insertion of Australian currency or a chip into the device; or
 - (ii) by the use of gaming machine credits; or
 - (iii) by the electronic transfer of gaming machine credits to the device; or
 - (iv) by the use of gaming machine credits held, stored or accredited by the device or elsewhere.

gaming machine credit means a credit of Australian currency, or chips, registered by a gaming machine.

Jupiters means Jupiters Limited ACN 010 741 045.

Land Act means the *Land Act 1994*.

Liquor Act means the *Liquor Act 1992*.

Local Government means the Townsville City Council constituted under the *Local Government Act 1993* and any local government or joint local government established under the *Local Government Act 1993* having jurisdiction in respect of the Local Government Area in which the Site is situated.

Local Government Area means the area in which the Local Government has jurisdiction including any place under the control of the Local Government outside the boundaries of the area.

Management Agreement means the agreement dated 21 December 1999 between Perpetual Trustees Queensland Limited ACN 009 656 811, Jupiters and Breakwater Island, as amended from time to time.

Marina means a marina or marinas of not more than a maximum of 700 berths or moorings established or to be established on the Marina Basin.

Marina Basin means the area of land and water comprising the Marina Basin as identified on the plan in Schedule 1 as the Marina Basin.

Marina Entrance Channel means the entrance channel into the Marina as identified on the plan in Schedule 1 as the Marina Entrance Channel.

Material Change of Use means a change of the Use of the Breakwater Island Casino-Hotel Complex or the Site.

Minister means unless specified otherwise in this Agreement, the Minister of the Crown for the time being charged with the administration of the Control Act. The term includes any Minister of the Crown who is temporarily performing the duties of the Minister.

Offshore Breakwater means the breakwater shown as the *Offshore Breakwater* in the Schematic Design Drawings of not less than 250 metres in length.

person includes a company, trustee, corporation, firm and any other body of persons having legal entity as such body as well as a natural person.

Personal Licence means a consent, permit, licence, authorisation, registration, membership or approval under Development Legislation (including all the conditions of the consent, permit, licence, authorisation, registration, membership or approval) that is—

- (a) required to be held by a person carrying out an activity; and
- (b) personal to the person carrying out the activity and does not attach to land and bind the owner and the owner's successors in title of the land.

Example—

A flammable and combustible liquids licence under the Dangerous Goods Safety Management Regulation 2001 and a registration certificate under the Environmental Protection Act 1994.

Planning Instrument means any statutory instrument regulating Development.

Premium Junket Revenue means premium junket revenue as defined in the Control Act.

Prescribed Activity means—

- (a) an Environmentally Relevant Activity as defined in the *Environmental Protection Act 1994*; and
- (b) an activity for which—
 - (i) a Personal Licence is required to be held by Development Legislation at the commencement of this Agreement; and
 - (ii) as a result of legislative change an approval is required to be held by Development Legislation which attaches to land and binds the owner and the owner's successors in title of the land.

Prescribed Development Legislation means the following Development Legislation—

- (a) *Standard Building Regulation 1993*; and
- (b) *Water Act 2000*; and
- (c) *Plumbing and Drainage Act 2002*; and
- (d) *Fire and Rescue Service Act 1990*; and
- (e) *Workplace Health and Safety Act 1995*; and
- (f) State laws generally applicable to Work.

Prescribed Work means Work other than operational work as defined in the *Integrated Planning Act 1997*.

Public Official includes a minister, an officer of the public service and an officer or employee of a Public Sector Entity.

Public Sector Entity means—

- (a) a department or part of a department; or
- (b) an agency, authority, commission, corporation, instrumentality, office or other entity, established under an Act for the public or a State purpose.

Reconfiguring a Lot has the meaning given in the *Integrated Planning Act 1997*.

Regulated Development means—

- (a) Development other than—
 - (i) Prescribed Work; and
 - (ii) Work (other than Prescribed Work) which is not being carried out as a part of a Material Change of Use or Reconfiguring a Lot pursuant to clause 15(1); and
- (b) the carrying out of a Prescribed Activity.

Example—

Regulated Development means—

- (a) *a Material Change of Use; and*
- (b) *Reconfiguring a Lot; and*
- (c) *Work other than—*
 - (i) *building work, plumbing work or drainage work; and*
 - (ii) *operational work which is not being carried out as part of a Material Change of Use or Reconfiguring a Lot; and*
- (d) *a Prescribed Activity involving the carrying out of an environmentally relevant activity.*

Review Act means the *Judicial Review Act 1991*.

Schematic Design Drawings means—

- (a) the schematic design drawings including all plans, drawings, reports or other material relating to the schematic design drawings which were tabled in Parliament; and
- (b) all variations and additional plans, drawings, reports and other material relating to the schematic design drawings which were approved under the Agreement; and
- (c) the amended schematic design drawings that are prepared pursuant to clause 21.

Share means a share or stock in Jupiters.

Shareholder means the person who for the time being is registered under the provisions of Jupiters' Constitution as the holder of a Share and includes persons jointly so registered.

Site means—

- (a) all that area of land identified on the plan in Schedule 1 as the Site including the land covered by water and the land within any road whether constructed or otherwise for which the Trustee is the registered owner or lessee; and
- (b) any future description of the land specified in paragraph (a) consequent upon any resurvey of that land.

Special Facility Licence means Special Facility Licence No. 45100022.

Special Lease means Special Lease SL44/47072.

State law means a law other than a law made by the Local Government or by the Commonwealth.

Townsville City Council Agreement means the agreement dated 22 November 1984 between the Local Government and the then trustee of the Breakwater Island Trust and the schedules thereto as amended from time to time.

Townsville Harbour Board Agreement means the agreement dated 27 November 1984 between the then Townsville Harbour Board and the then trustee of the Breakwater Island Trust and the schedules thereto as amended from time to time.

Transport Infrastructure Act means the *Transport Infrastructure Act 1994*.

Trust Deed means the trust deed dated 22 November 1984 which established the Breakwater Island Trust.

Trustee means Breakwater Island or any other person from time to time acting in the capacity of trustee or responsible entity of the Breakwater Island Trust pursuant to the Trust Deed or the Corporations Act.

Trust Fund means all the cash and investments and all other property whatsoever for the time being held by the Trustee upon the trusts as are provided for in the Trust Deed.

Unit means that interest or part of the Trust Fund as is provided for in the Trust Deed.

Unitholder means the person who for the time being is registered under the provisions of the Trust Deed as the holder of a Unit and includes persons jointly so registered.

Use includes any ancillary use.

Western Breakwater means the breakwater existing at the date of this Agreement which adjoins Ross Creek as shown in the Schematic Design Drawings.

Work means building work, operational work, plumbing work and drainage work as defined in the *Integrated Planning Act 1997*.

2 Interpretation

- (1) Unless the context otherwise requires, words importing a singular gender shall include any other gender; the singular includes the plural and vice versa; person includes corporation and/or bodies corporate; whenever a corporation shall be a party hereto the words designating such corporation herein shall extend to and include such corporation, its successors in titles and permitted assigns; whenever a person shall be a party hereto the words designating such person herein shall extend to and include such person and that person's executors, administrators and assigns; where two or more parties are parties to a covenant, agreement, undertaking or provision of any kind hereunder, then whether those parties are referred to individually herein or designated and referred to together by a word in the singular person, such covenant, agreement, undertaking or provision of any kind whatsoever shall bind such parties jointly and each of them severally.
- (2) Unless the context otherwise requires, whenever there is any covenant on the part of the Trustee or obligation placed on the Trustee (express or implied) then any costs associated with the performance of that covenant or obligation shall be at the expense of the Trustee.
- (3) Headings have been inserted for ease of reference only and do not affect the interpretation of this Agreement.

3 Counting of days

Unless nominated specifically otherwise within a particular clause herein, the counting of days is to be based on working week days (Monday to Friday inclusive) but excluding public holidays occurring in the Local Government Area.

4 Legislative Acts

Any reference to any primary or subordinate legislation, unless the context otherwise requires shall include that primary or subordinate legislation amending the same or in substitution therefor.

5 Authority to enter into Agreement

The State acknowledges and confirms that approval has been given in accordance with the Agreement Act for the Minister, for and on behalf of the State, to enter into this Agreement with the Trustee and Jupiters and that pursuant to the Agreement Act this Agreement is taken to be ratified by Parliament for the purposes of section 19 (Agreement to precede grant of casino licence) of the Control Act.

6 Responsibilities of the Trustee

The benefits that are expressed to be conferred upon, and the obligations that are expressed to be imposed upon, the Trustee pursuant to this Agreement shall be so conferred and imposed upon the Trustee in accordance with the respective functions powers and responsibilities of the Trustee set forth in the Trust Deed.

7 Recourse to Trustee's assets

Neither the State nor any person to whom the Trustee is liable—

- (a) under or pursuant to this Agreement or the Agreement Act or an agreement entered into by the Trustee in pursuance of any of the matters provided for or contemplated in this Agreement or the Agreement Act;

- (b) under or pursuant to the Control Act;
- (c) in respect of or incidental to the acquisition by the Trustee of the Site, the design and construction of the Breakwater Island Casino-Hotel Complex and the management and operation of the Breakwater Island Casino-Hotel Complex;
- (d) in respect of or incidental to the Development of the Site;

shall be entitled to have recourse, in satisfaction of such liability, to any assets held by the Trustee in its personal capacity or in its capacity as trustee of any trust other than the Breakwater Island Trust and the recourse of the State and/or any such person shall be limited to the Trust Fund;

PROVIDED THAT nothing in the foregoing provisions of this clause shall limit the liability of the Trustee to the Unitholders for breach of trust where the Trustee fails to show the degree of care and diligence required of a Trustee or responsible entity having regard to the powers, authorities or discretions conferred on the Trustee by the Trust Deed.

8 Variation of the Agreement

The terms of this Agreement, and specifically so far as they give to the Trustee the entitlements, benefits and privileges as herein provided, may only be varied in accordance with the Agreement Act.

9 Stamp duty

Jupiters and the Trustee shall not be liable for any stamp duty on—

- (a) this Agreement, the Townsville City Council Agreement and the Townsville Harbour Board Agreement; and
- (b) any document entered into by the Trustee pursuant to or in accordance with this Agreement where the other party to the document is the State or a Public Sector Entity; and

- (c) any contract of sale, memorandum of transfer or lease relating to the transfer or grant of any interest in the Site or any part of the Site to the then trustee of the Breakwater Island Trust; and
- (d) any copy of any of the aforesaid documents.

10 Illegal acts

Notwithstanding anything contained in any Act or other statutory provision or rule of law enacted by the State it is hereby acknowledged that any act by the State or the Trustee, connected with, or pertaining to the obligations, titles, rights and privileges of the parties contained in this Agreement, which would, but for the enactment of the Control Act and the Agreement Act, be illegal shall not be illegal.

11 Encumbrances to the Casino Licence

Subject to any other approvals required under any other Act, the holder of the Casino Licence may mortgage, charge or otherwise encumber its interests in—

- (a) the Casino Licence; and
- (b) the Special Facility Licence; and
- (c) the Breakwater Island Casino-Hotel Complex and the Site; and
- (d) the Special Lease; and
- (e) the rights and benefits of the Trustee under this Agreement;

in accordance with section 32 (Mortgage and assignment of casino licence etc.) of the Control Act.

12 Bear own costs

Each party shall pay its own costs in respect of this Agreement.

PART II—DEVELOPMENT AND USE OF THE BREAKWATER ISLAND CASINO-HOTEL COMPLEX AND RELATED MATTERS

13 Application of Development Legislation to Breakwater Island Casino-Hotel Complex and the Site

- (1) Any Development Legislation in force in the Local Government Area in which the Breakwater Island Casino-Hotel Complex and the Site is situated shall not apply to the Development or Use of the Breakwater Island Casino-Hotel Complex or the Site except to the extent provided for in this Agreement.
- (2) For the purposes of the *Integrated Planning Act 1997*, the Development or Use of the Breakwater Island Casino-Hotel Complex or the Site (other than Prescribed Work) shall be exempt development.

14 Use of the Breakwater Island Casino-Hotel Complex and the Site Lawful

- (1) The Breakwater Island Casino-Hotel Complex shall be deemed to be a lawful Use and to be lawfully constructed under any Development Legislation in force in the Local Government Area in which the Breakwater Island Casino-Hotel Complex and the Site is situated.
- (2) Any Development Legislation in force in the Local Government Area in which the Breakwater Island Casino-Hotel Complex and the Site is situated cannot—
 - (a) stop the Use of the Breakwater Island Casino-Hotel Complex or the Site from commencing or continuing; or
 - (b) further regulate the Use of the Breakwater Island Casino-Hotel Complex or the Site; or
 - (c) require the Use of the Breakwater Island Casino-Hotel Complex or the Site to be changed; or
 - (d) require the Work constructed or effected or to be constructed or effected in respect of the Breakwater Island Casino-Hotel Complex or the Site in accordance with the Agreement to be altered or removed.

- (3) The Breakwater Island Casino-Hotel Complex or the Site cannot be interfered with or interrupted by any Public Sector Entity or any person on the grounds that the Breakwater Island Casino-Hotel Complex or the Site is contrary to any Development Legislation in force in the Local Government Area in which the Breakwater Island Casino-Hotel Complex and the Site is situated.
- (4) All Planning Instruments in force in the Local Government Area in which the Breakwater Island Casino-Hotel Complex and the Site is situated are deemed to be of no effect to the extent they are inconsistent with this Agreement.

15 Development of the Breakwater Island Casino-Hotel Complex and the Site

- (1) The Trustee may carry out Work being operational work not being carried out as part of a Material Change of Use or Reconfiguring a Lot without the approval of the Minister pursuant to clause 15.
- (2) Any Development Legislation in force in the Local Government Area in which the Breakwater Island Casino-Hotel Complex and the Site is situated—
 - (a) only applies to Prescribed Work in respect of the Breakwater Island Casino-Hotel Complex or the Site to the extent that the Prescribed Work must comply with the standards and requirements of the Prescribed Development Legislation; and
 - (b) shall not apply to Development in respect of the Breakwater Island Casino-Hotel Complex or the Site other than as set out in clause 15(2)(a) or otherwise as expressly adopted by this Agreement.
- (3) If the Trustee proposes to carry out Regulated Development in respect of the Breakwater Island Casino-Hotel Complex or the Site, the Trustee must make application to the Minister for approval of the Regulated Development.
- (4) The Trustee must make application to the Minister by lodging with the Chief Executive—

- (a) a submission comprising such drawings, reports, or other material as is necessary to illustrate the Regulated Development; and
 - (b) amended Schematic Design Drawings containing particulars of the Regulated Development; and
 - (c) such other information which may be required by the Chief Executive.
- (5) The Minister must—
- (a) consider the application; and
 - (b) make a decision in respect of the application in accordance with clause 15(6); and
 - (c) advise the Trustee in writing of the decision.
- (6) The Minister may subject to clause 15(7)—
- (a) approve the application in whole or in part unconditionally; or
 - (b) approve the application in whole or in part subject to conditions; or
 - (c) refuse the application in whole or in part; or
 - (d) deal with the application under any combination of clauses 15(6)(a), 15(6)(b) and 15(6)(c).
- (7) The Minister may refuse the Development Application only if in the case of a Regulated Development involving—
- (a) a Material Change of Use, the Material Change of Use is—
 - (i) not of a like nature to the Uses comprising the Breakwater Island Casino-Hotel Complex; and
 - (ii) in the Minister's discretion an undesirable Development of the Site; or
 - (b) Reconfiguring a Lot, the Reconfiguring a Lot is in the Minister's discretion an undesirable Development of the Site; or
 - (c) Work—

- (i) the Work does not comply with the standards and requirements applicable to Work contained in the Prescribed Development Legislation; and
 - (ii) compliance with the standards and requirements applicable to Work contained in the Prescribed Development Legislation cannot be achieved by the imposition of conditions; or
 - (d) the carrying out of a Prescribed Activity, the carrying out of the Prescribed Activity is in the Minister's discretion an undesirable Development of the Site.
- (8) If Regulated Development involves a Material Change of Use the Trustee must before carrying out the Regulated Development, take all reasonable steps to negotiate with all Public Sector Entities, to the satisfaction of the Minister, all matters (including financial contributions) which but for clause 15(2) could have been lawfully required as a condition of the consent, permission or approval of the Public Sector Entities under any Development Legislation with respect to that Regulated Development.
- (9) If Regulated Development involves Work then in relation to that part of Regulated Development which is Work, the Minister is hereby empowered to authorise, either generally or in a particular case, any person to exercise a power, authority or discretion or to perform a function or duty which is conferred or imposed on the Minister pursuant to clause 15.
- (10) If Regulated Development involves Reconfiguring a Lot, then in relation to that part of Regulated Development which is Reconfiguring a Lot, the Minister shall assess the application as if it were an application for Reconfiguring a Lot under the *Integrated Planning Act 1997*.
- (11) The Trustee shall, if required by the Chief Executive, within 1 month of 30 June of each year or such longer period approved by the Chief Executive provide a report to the Chief Executive of all Uses carried out on the Site or Breakwater Island Casino-Hotel Complex since the last report.

16 Breakwater Island Casino-Hotel Complex to Comply

The Breakwater Island Casino-Hotel Complex must comply with—

- (a) a Development Approval including any condition in the Development Approval where the Regulated Development authorised by the Development Approval has been started; and
- (b) Development Legislation only—
 - (i) in respect of Personal Licences that may be required to be held by Development Legislation; and
 - (ii) to the extent that the standards and requirements applicable to Work contained in the Prescribed Development Legislation are complied with (except to the extent they are inconsistent with a Development Approval); and
- (c) legislation (including subordinate legislation) other than—
 - (i) Development Legislation except as otherwise provided for in this Agreement; and
 - (ii) legislation specifically excluded by this Agreement.

17 Acknowledgment and Warranties

- (1) The State acknowledges that in respect of the Breakwater Island Casino-Hotel Complex, the Trustee made the financial contributions and performed the Work which are set out in Schedule 2 in the manner and for the purposes referred to in Schedule 2.
- (2) Subject to clause 15(8), the parties acknowledge that compliance by the Trustee with the provisions of clause 16 shall in no manner whatsoever compel or require the Trustee to carry out any additional Work or to make any financial contributions to any Public Sector Entities in respect of the Use or Development of the Breakwater Island Casino-Hotel Complex which are in addition to those provided for in clause

17(1). This clause does not affect the rights of a Public Sector Entity to require the payment of—

- (a) a levy or charge of general application; or
- (b) a fee for a service provided by that Public Sector Entity in relation to Work.

18 Internal Review Procedure—Development Applications

- (1) If the Minister does not approve the whole or any part of a Development Application, the Minister must—
 - (a) issue to the Trustee a written notice stating—
 - (i) the grounds upon which the Minister does not approve the whole or such part of the Development Application; and
 - (ii) that the Trustee may make a written, oral or other type of further submission to the Minister including the introduction of such further alternative proposals for consideration by the Minister as the Trustee deems necessary; and
 - (iii) the time (at least 10 days after the notice is issued to the Trustee) within which the further submission may be made; and
 - (b) consider any further submission made by the Trustee within the time stated in the notice (being not more than 20 days after the further submission is made by the Trustee).
- (2) After considering any further submission made by the Trustee, the Minister must within the time stated in the notice issue to the Trustee—
 - (a) a written notice stating—
 - (i) if the Minister does not accept the further submission, that the Trustee modify its Development Application in such manner as will satisfy the Minister; or
 - (ii) if the Minister does accept the further submission, the Minister's approval of the Development

Application of the Trustee in its original form or subject to any modification which the Minister directs; and

- (b) in the case of that part of a Development Application a statement of reasons containing—
 - (i) the reasons for the Minister’s decision; and
 - (ii) a reference to the evidence or other material on which the reasons were based.
- (3) In the Minister’s consideration of all Development Applications or submissions pursuant to this clause the Minister must have regard to the general design and planning objectives of the State and the Trustee contained in the Schematic Design Drawings.

19 Appeal

- (1) In this clause—

Appeal Court means the Planning and Environment Court established under the *Integrated Planning Act 1997*.

Reviewed Decision means a decision made by the Minister pursuant to clause 18(2).
- (2) The Trustee may appeal against a Reviewed Decision within 20 days after a notice is issued to the Trustee pursuant to clause 18(2).
- (3) An appeal must be started by—
 - (a) filing a written notice of appeal with the Appeal Court; and
 - (b) serving a copy of the notice of appeal on the Chief Executive.
- (4) The Appeal Court may extend the period for appealing.
- (5) In deciding an appeal, the Appeal Court—
 - (a) has the same powers as the Minister; and
 - (b) is not bound by the rules of evidence; and
 - (c) must comply with natural justice; and

- (d) may hear the appeal in either court or in chambers.
- (6) An appeal is by way of hearing anew.
- (7) The Appeal Court may—
 - (a) confirm the Reviewed Decision; or
 - (b) set aside the Reviewed Decision and return the issue to the Minister with the directions that it considers appropriate; or
 - (c) substitute another decision for the Reviewed Decision, in which case the substituted decision is, for the purposes of this Agreement, taken to be that of the Minister.
- (8) The jurisdiction given to the Appeal Court under this Agreement is exclusive.

20 Time for Approval

- (1) The Minister must, subject to clause 20(2), decide a Development Application within 20 days of the lodgment of the Development Application.
- (2) If a Development Application relates to Regulated Development comprising Work as well as a Material Change of Use or Reconfiguring a Lot, the Minister must decide that component of the Development Application being—
 - (a) the Material Change of Use or Reconfiguring a Lot within 20 days of the lodgment of the Development Application; and
 - (b) the Work within 20 days after the approval of the Material Change of Use or Reconfiguring a Lot.
- (3) The Minister may extend the decision making period specified in clause 20(1) and (2) by not more than 20 days by written notice given to the Trustee before the end of the decision making period.
- (4) If the Minister at any time during the period specified in clause 20(1) and (2) or as extended by clause 20(3) requests the Trustee to provide further information relevant to the Development Application, the days between the date that the

information is requested and the date that the information is provided, inclusive of both dates, shall not be counted in the period specified in clause 20(1) and (2) or as extended by clause 20(3).

- (5) If the Minister has not within the time specified in clause 20(1) and (2) or as extended by clause 20(3) advised the Trustee of the Minister's decision—
- (a) that the Development Application has to be resubmitted for non-compliance with clause 15(4), giving particular reasons for the determination as to the non-compliance; or
 - (b) that the Development Application is approved in whole or in part; or
 - (c) that a notice pursuant to clause 18(1) has already been issued covering the topic of the Development Application; or
 - (d) that a notice pursuant to clause 18(1) is hereby issued;
- then the Trustee may at its discretion advise that a Development Approval will be deemed to be in effect by formally advising the Minister.
- (6) If no written response as required herein has been received within 2 days of the Trustee's notice being served, a Development Approval is deemed to be in effect and the Trustee may proceed with the Regulated Development for which approval was sought.

21 Schematic Design Drawings

If Development involving Work is commenced on the Breakwater Island Casino-Hotel Complex or the Site, the Trustee shall, as soon as is reasonably practicable, upon the completion of that Work submit to the Chief Executive amended Schematic Design Drawings that incorporate the Work.

22 Casino to comply

The Trustee shall ensure that all materials, fittings and equipment utilised in operation of the Casino shall be of a high standard of manufacture and of a quality commensurate with an international class casino-hotel.

23 Review of Decisions in respect of Breakwater Island Casino-Hotel Complex and the Site

- (1) Decisions made in relation to the Development of the Breakwater Island Casino-Hotel Complex or the Site under—
 - (a) this Agreement, in the case of Regulated Development, shall—
 - (i) not be subject to review under the Review Act or otherwise; and
 - (ii) only be subject to review in accordance with any review process set out under this Agreement; and
 - (b) Development Legislation, in the case of Prescribed Work as contemplated by clause 15(2)(a), shall—
 - (i) not be subject to review under the Review Act or otherwise; and
 - (ii) only be subject to review in accordance with any review process set out under that Development Legislation which is applicable to the Prescribed Work.

Example for clause 23(1)(a)(ii)—

This Agreement provides for an internal review procedure and appeals in respect of Regulated Development.

Example for clause 23(1)(b)(ii)—

Decisions made under Development Legislation in respect of Prescribed Work such as building work shall be subject to any rights of review that are provided for in that Development Legislation which is applicable to building work.

- (2) In particular, a decision under Part II of this Agreement, or another decision, of a Public Official or Public Sector Entity,

in relation to the Development of the Breakwater Island Casino-Hotel Complex or the Site—

- (a) is final and conclusive; and
- (b) cannot be challenged, appealed against, reviewed, quashed, set-aside, or called into question in any other way, under the Review Act or otherwise (whether by the Supreme Court, another court, a tribunal, an authority or a person); and
- (c) is not subject to any writ or order of the Supreme Court, another court, a tribunal, an authority or a person on any ground.

Examples of writs and orders to which the sub-clause applies—

Example 1—

Writs of mandamus, prohibition and certiorari.

Example 2—

Certiorari orders, prohibition orders, prerogative orders, prerogative injunctions, and statutory orders of review, within the meaning of the Review Act.

Example 3—

Declaratory and injunctive orders.

- (3) Without limiting clause 23(2), the Review Act does not apply to the following matters—
 - (a) conduct engaged in for the purpose of making a decision which has the meaning given by section 8 (Conduct engaged in for making decision—preparatory acts) of the Review Act; and
 - (b) other conduct that relates to the making of a decision; and
 - (c) the making of a decision or the failure to make a decision which has the meaning given by section 5 (Meaning of *making of a decision* and *failure to make a decision*) of the Review Act; and
 - (d) a decision;

under this Agreement, or otherwise, in relation to the Development of the Breakwater Island Casino-Hotel Complex or the Site.

- (4) In particular, but without limiting clause 23(3), the Supreme Court does not have jurisdiction to hear and determine applications made to it under Part 3, 4 or 5 of the Review Act in relation to matters mentioned in clause 23(3).
- (5) The Minister's power under this Agreement to decide whether to accept or reject a recommendation of a Public Official or Public Sector Entity is not affected by clause 23(2).

PART III—CORPORATE ORGANISATION AND RELATED MATTERS

24 Approvals

The State has accepted and approved the following—

- (a) the Constitution of the Trustee; and
- (b) the Trust Deed; and
- (c) the Foundation Agreement; and
- (d) the Constitution of Jupiters; and
- (e) the Townsville City Council Agreement; and
- (f) the Townsville Harbour Board Agreement; and
- (g) the appointment of the Trustee as the trustee or responsible entity of Breakwater Island Trust.

25 Trustee requirements

The Trustee shall—

- (a) remain the trustee or responsible entity of the Breakwater Island Trust; and
- (b) be a wholly owned subsidiary of Jupiters PROVIDED THAT any shares in the Trustee may be held by a nominee, approved in writing by the Minister on behalf of Jupiters; and

- (c) obtain the prior approval in writing of the Minister to any appointment as a director or alternate director of the Trustee; and
- (d) ensure that the appointment of the respective auditors under the Trust Deed and of the Trustee shall be in accordance with the provisions of the Trust Deed and the Corporations Act but no person shall be nominated as auditor unless that person's nomination has been approved in writing by the Minister; and
- (e) notwithstanding clause 25(b), when directed by the Governor-in-Council, which direction shall be final and conclusive and shall not be appealed against, reviewed, quashed or in any other way called in question in any Court on any account whatsoever, enforce the disposal of the shares of any shareholder in the Trustee PROVIDED THAT the Governor-in-Council shall not issue a direction to dispose of shares unless the shareholder is considered not to be a suitable person to be a shareholder having regard to those matters specified in section 20 (Suitability of casino licensee and other persons) of the Control Act; and
- (f) enforce the vacating from office of any director or alternate director of the Trustee in accordance with any direction to that effect by the Governor-in-Council; and
- (g) refrain from entering into any loan agreement in its capacity as the trustee or responsible entity of Breakwater Island Trust or any other capacity except with a party or parties or a class of parties approved in writing by the Minister; and
- (h) make available for inspection by the Minister or the Minister's nominee duly authorised in writing all information held in respect to the ownership, unitholdings, shareholdings, directors or corporate structure of Breakwater Island Trust or the Trustee, and all minutes of meetings of Unitholders, shareholders and directors and other records relating thereto; and
- (i) make available for inspection by the Minister or the Minister's nominee duly authorised in writing all books,

- records and documents relating to the financial transactions, bank accounts, source and application of funds, loans and investments of Breakwater Island Trust and the Trustee as the case may be; and
- (j) ensure that the Minister or the Minister's nominee duly authorised in writing shall be entitled to attend and speak at any meeting of Breakwater Island Trust or the Trustee as though the Minister were a Unitholder in Breakwater Island Trust or a director of the Trustee, respectively, but nothing contained in this clause shall confer on the Minister or the Minister's nominee a right to vote; and
 - (k) deliver to the Minister a copy of all notices that are forwarded to Unitholders or directors advising of such meetings in the same manner and time frame as if the Minister were a Unitholder or a director; and
 - (l) ensure that the Constitution of the Trustee shall not be altered or amended without the prior approval in writing of the Minister; and
 - (m) ensure that the Trust Deed shall not be altered or amended without the prior approval in writing of the Minister; and
 - (n) refrain from registering any transfer of the Units without the prior approval of the Governor-in-Council; and
 - (o) refrain from issuing any Units without the prior approval of the Governor-in-Council.

26 Jupiters requirements

Jupiters shall—

- (a) submit to the Minister half-yearly within 3 months of the last day of June or December a copy of its financial accounts for the relevant half-year; and
- (b) as and when requested by notice in writing by the Minister give to the Minister within 10 days of the date of receipt of such notice a copy of any register required to be kept by Jupiters pursuant to the Corporations Act,

PROVIDED THAT the Minister shall not request pursuant to this sub-clause a copy of any such register more than 4 times in any year; and

- (c) obtain the prior approval in writing of the Minister to any appointment as a director or alternate director or associate director of Jupiters; and
- (d) when directed by the Minister, issue a notice pursuant to section 672A (Disclosure Notices) of the Corporations Act; and
- (e) when directed by the Governor-in-Council, which direction shall be final and conclusive and shall not be appealed against, reviewed, quashed or in any other way called in question in any Court on any account whatsoever, enforce the disposal of the Shares of any Shareholder in Jupiters in accordance with the procedure in that respect set forth in the Constitution of Jupiters, PROVIDED THAT the Governor-in-Council shall not issue a direction to dispose of such Shares unless the Shareholder is considered not to be a suitable person to be a Shareholder having regard to those matters specified in section 20 (Suitability of casino licensee and other persons) of the Control Act given after a recommendation from the Minister that such Shareholder is not suitable having regard to the matters set out in section 20 (Suitability of casino licensee and other persons) of the Control Act; and
- (f) enforce the vacating from office of any director or alternate director or associate director of Jupiters in accordance with any direction to that effect by the Governor-in-Council; and
- (g) when directed by the Minister require the production of a statutory declaration by any person registered as the holder of any Shares setting forth the name and address of any person with a relevant interest in the same and full particulars of that interest; and
- (h) refrain from entering into any loan agreement except with a party or parties or a class of parties approved in writing by the Minister; and

- (i) except in the case of—
 - (i) a pro-rata offer of shares to existing Shareholders of shares of a class which is already on issue by Jupiters where notice of the pro-rata offer of shares has been given to the Minister; or
 - (ii) an issue of voting shares pursuant to the terms of any non-voting shares or convertible securities approved in accordance with clause 26(j);refrain from the issue of any voting shares unless the Governor-in-Council has approved such issue and such issue shall be on such terms and conditions as the Governor-in-Council thinks fit; and
- (j) refrain from issuing any non-voting shares or securities convertible into voting shares unless the Minister has approved such issue and such issue shall be on such terms and conditions as the Minister thinks fit; and
- (k) ensure that the appointment of the auditors of Jupiters shall be in accordance with the provisions of the Corporations Act and that no person shall be nominated as auditor unless that person's nomination has been approved in writing by the Minister; and
- (l) ensure that the voting power in Jupiters of any person shall not exceed 5% at any time without the prior approval in writing of the Minister; and
- (m) ensure that the voting power in Jupiters of any person shall not exceed 10% at any time except in the circumstances where—
 - (i) their voting power in Jupiters is at least 90%; and
 - (ii) within 3 calendar months of acquiring the voting power referred to in subparagraph (i)—
 - (A) their relevant interest in Jupiters' voting shares is 100%; and
 - (B) they have a relevant interest in all Jupiters' securities convertible into voting shares; and

- (iii) they have the Governor-in-Council's approval, prior to acquiring the interest referred to in subparagraph (i), to—
 - (A) have the voting power referred to in subparagraphs (i) and (ii); and
 - (B) acquire the relevant interest referred to in subparagraph (ii); and
- (n) ensure that the total number of shares in any class of non-voting shares in which any person and their associates (other than an Approved Holder) shall have a relevant interest shall not exceed 5% of the total number of shares of that class on issue at any time without the prior approval in writing of the Minister; and
- (o) ensure that the Constitution of Jupiters shall not be altered or amended without the prior approval in writing of the Minister; and
- (p) make available for inspection by the Minister or the Minister's nominee duly authorised in writing all information held in respect to the ownership, shareholdings, directors or corporate structure of Jupiters and all minutes of meetings of Shareholders and directors and other records relating thereto; and
- (q) make available for inspection by the Minister or the Minister's nominee duly authorised in writing all books, records and documents relating to the financial transactions, bank accounts, source and application of funds, loans and investments of Jupiters; and
- (r) ensure that the Minister or the Minister's nominee duly authorised in writing shall be entitled to attend and to speak at any meeting of Jupiters as though the Minister were a Shareholder in Jupiters but nothing contained in this clause shall confer on the Minister or the Minister's nominee a right to vote; and
- (s) deliver to the Minister a copy of all notices that are forwarded to Shareholders or directors advising of such meetings in the same manner and time frame as if the Minister were a Shareholder or a director.

27 Structure

The following shall be conditions of this Agreement—

- (a) there shall be no termination of the Foundation Agreement and no amendment or variation of the terms or conditions of the Foundation Agreement without the prior approval in writing of the Minister; and
- (b) no party to the Foundation Agreement shall be released or discharged from its obligations under the Foundation Agreement without the prior approval in writing of the Minister; and
- (c) no party shall be added to the Foundation Agreement without the prior approval of the Governor-in-Council and without such party entering into a supplementary agreement in a form approved by the Minister agreeing to be bound by the provisions of the Foundation Agreement as if an original Founder.

28 Disposal of excess Shares

Notwithstanding clause 26, a person's voting power or shareholding which is in excess of any of the limitations contained in clause 26(l), (m) or (n) shall not constitute a breach of the conditions of this Agreement if Jupiters shall have acted forthwith to bring about the disposal of the relevant voting Shares or shareholding in accordance with the powers in that behalf contained in the Constitution of Jupiters upon Jupiters becoming aware of the person's voting power or shareholding and that the voting power or shareholding exceeds the relevant limitation PROVIDED THAT the parties acknowledge that Jupiters is unable to refuse to register a transfer of Shares.

29 Interpretation of this Part III

For the purposes of this Part III a reference to—

- (a) a person's voting power shall have the same meaning as a reference in section 610 (Voting Power in a body corporate) of the Corporations Act to a person's voting power; and

- (b) a relevant interest in shares shall have the same meaning as a reference to section 608 (Relevant interests in securities) of the Corporations Act; and
- (c) an associate shall have the same meaning as a reference in Division 2 of Part 1.2 (Associates) of the Corporations Act excluding section 13 (References in chapter 7) and section 14 (References in chapter 8) of the Corporations Act.

30 Transitional

Jupiters shall not be obliged to seek approval under any of clauses 26(c), (i), (j), (k), (l), (m), (n) and (o) by reason only of it entering into the deed as authorised by the *Breakwater Island Casino Agreement Amendment Act 2006* in the absence of any further act or matter that would require it to obtain such an approval.

PART IV—CASINO LICENCE AND RELATED MATTERS

31 Casino Licence

The State granted the Casino Licence to the Trustee.

32 Exclusivity

- (1) The State shall not, except in a casino licensed pursuant to the Control Act, notwithstanding the provisions of any other Act from time to time in force in the State of Queensland authorise, permit or approve in any manner whatsoever and whether pursuant to the Control Act or otherwise the conduct or playing of any of the games listed below or any variation or derivative of such games by the use of any gaming machine—
 - blackjack;
 - roulette;
 - baccarat;
 - craps;

two-up;
mini dice;
wheel of fortune;
sic-bo.

- (2) Nothing in this Agreement shall be construed so as to limit or affect the power of the State to authorise, permit or approve in any manner whatsoever pursuant to any Act for the time being in force in the State the conduct or playing of games by the use of gaming machines other than—
 - (a) those referred to in clause 32(1); and
 - (b) gaming machines that are declared by the Minister by notification published in the Government Gazette to be casino gaming machines as provided for in clause 32(3).
- (3) The parties hereto agree that the following provisions shall apply with respect to the declaration and notification of gaming machines as casino gaming machines—
 - (a) the Minister may at any time in the Minister's discretion or upon receipt of an application by the Trustee, make a declaration and notification in respect of any gaming machine including any gaming machine referred to in clause 32(1) but the non-existence of a notification shall not limit or affect the operation of clause 32(1);
 - (b) the Minister shall within 90 days of the receipt thereof or such extended period as the Minister may require consider and determine every application made to the Minister in respect of a gaming machine and, where the Minister refuses the application, the Minister shall notify the applicant in writing of the reasons for the refusal;
 - (c) the Minister may in the Minister's absolute discretion refuse to make a declaration and notification in respect of any gaming machine commonly known as a "poker machine" or any variation or derivative thereof or any gaming machine of a like class or description;
 - (d) where an application is made to the Minister in respect of any gaming machine other than a gaming machine

referred to in clause 32(3)(c), the Minister shall consider the application and determine whether in all the circumstances of the application it is reasonable that it be granted. The Minister shall consider all material submitted to the Minister in writing by the applicant and the State and, in particular the Minister shall consider whether it has been established to the Minister's reasonable satisfaction that the gaming machine is of a class or description that should be reserved for use in a casino licensed pursuant to the Control Act;

- (e) no such declaration and notification shall be revoked, amended or varied without the prior consent in writing of the Trustee.
- (4) Subject always to the State giving due effect to the foregoing provisions of this clause, nothing in this Agreement shall be construed so as to limit or affect the power of the State to authorise, permit or approve in any manner whatsoever and whether pursuant to the *Charitable and Non-Profit Gaming Act 1999* or any other Act for the time being in force in the State of Queensland—
- (a) any art union or lottery that is of a class or description commonly conducted or played in Australia or elsewhere at the date of execution of this Agreement no matter how played; and
 - (b) any art union or lottery that is a variation or derivative thereof or that is of a like class or description no matter how played.

33 Casino tax

Subject to the provisions of the Control Act and clause 36 the amount of the casino tax to be paid by the Trustee from the Trust Fund shall be in each month in each year the amount equal to the sum of—

- (a) 10% of Casino Gross Revenue for the month in question; and
- (b) 8% of Premium Junket Revenue for the month in question.

34 Liquor Act—Special Facility Licence

- (1) The Special Facility Licence was granted in respect of the Breakwater Island Casino-Hotel Complex and is taken to be a special facility licence for the purposes of the Liquor Act.
- (2) The Special Facility Licence shall, subject to this Agreement, be administered in accordance with the Liquor Act.
- (3) Despite section 9 (Ordinary trading hours) of the Liquor Act but for the purposes of this Agreement, the ordinary trading hours during which the Special Facility Licence permits the sale or consumption of liquor in the Casino Part are the same hours approved (under section 61 (Hours of operation) of the Control Act) for the operation of the Casino Part.

PART V—CASINO OPERATIONS AND REVIEW THEREOF

35 Hours of operation

The State agrees that the Trustee may open and operate the Casino for use by the public on any day in any year save and except those days in any year which the Trustee is precluded from so opening pursuant to section 61(8) (Hours of Operation) of the Control Act for any number of hours on any such day which may be approved by the Minister from time to time, PROVIDED HOWEVER that the Minister shall not restrict the number of hours in which the Casino is open as aforesaid to less than 18 hours in any 1 day unless requested by the Trustee in writing so to do.

36 Operational review

The State agrees to review the rate of casino tax, the amount of fees and the rate of the community benefit levy as defined in the Control Act payable by the Trustee and the terms and conditions of the operation of the Casino in any circumstances of whatsoever nature arising which in the opinion of the Minister are likely to have an adverse impact on the viability of the Casino.

PART VI—TERMINATION

37 Grounds for termination

This Agreement, save and except the rights and obligations of the parties hereto and any mortgagee pursuant to clause 38, may be terminated by the Minister in any of the following events—

- (a) If there is a substantial breach by any of the parties hereto other than the State of its obligations under this Agreement in respect of which the Minister shall have delivered to each of such parties and to any mortgagee a notice in writing setting forth particulars of the breach or default and which shall not have been remedied or not have taken steps to have remedied to the satisfaction of the Minister within three months from the date of such notice to remedy;
- (b) If—
 - (i) any distress or execution is levied against the Trust Fund which is for an amount in excess of ONE MILLION DOLLARS (\$1,000,000) and which is not discharged within thirty (30) days from the date upon which the levy is made; or
 - (ii) subject to the provisions of clause 11, the benefit of this Agreement is in any way whatsoever pledged, encumbered, mortgaged or assigned without the prior written consent of the Minister in accordance with the provisions of section 32 (Mortgage and assignment of casino licence etc.) of the Control Act;

and the Minister shall have delivered to the relevant party, as the case may be, and to any mortgagee a notice requiring that party to remedy such circumstance and neither that party nor the mortgagee shall have remedied or taken steps to remedy such circumstance to the satisfaction of the Minister within a reasonable time (being not less than 10 days) from the date of such notice to remedy;

- (c) If any casino licence in respect of the Casino is at any time cancelled or surrendered.

38 Appointment of administrator

- (1) In the event that the Casino Licence is cancelled or suspended for any reason whatsoever, the following provisions shall apply—
 - (a) The Governor-in-Council shall appoint an Administrator—
 - (i) in the case of cancellation of the licence as aforesaid within 7 days of the date of such cancellation; or
 - (ii) in the case of suspension of the licence as aforesaid for a period of not less than three months, within 7 days of the date of receipt by the Minister of a request from the Trustee to appoint an Administrator.
 - (b) In the event of a receiver and manager having been approved or appointed prior to either clause 38(1)(a)(i) or clause 38(1)(a)(ii) becoming effective, the Governor-in-Council shall appoint that person as Administrator for the purposes of this Agreement.
 - (c) Notwithstanding the provisions of sections 19 (Agreement to precede grant of casino licence) and 21 (Hotel-casino complex owner or State as licensee) of the Control Act or any provision of this Agreement the Governor-in-Council shall within the period of 7 days referred to in clause 38(1)(a) grant a casino licence to the Administrator.
 - (d) The Administrator shall pursuant to the casino licence to be granted pursuant to clause 38(1)(c) manage and operate in accordance with the provisions of the Control Act the Casino as the agent of the Trustee.
 - (e) The Trustee and/or the Administrator if such Administrator has been appointed pursuant to clause 38(1)(b) may at any time and from time to time but always subject to the rights of any mortgagee pursuant

to its security and also pursuant to the provisions of section 32 (Mortgage and assignment of casino licence etc.) of the Control Act during a period of 12 calendar months from the date of the appointment of the Administrator introduce a proposed assignee to whom the provisions of section 32 (Mortgage and assignment of casino licence etc.) of the Control Act shall apply as if such assignee was proposed by a mortgagee wishing to enforce its security.

- (f) Should the proposed assignee be acceptable to the Governor-in-Council in the terms of clause 38(1)(e) the Governor-in-Council shall terminate the appointment of the Administrator and assign to the proposed assignee in accordance with the procedure set out in section 32 (Mortgage and assignment of casino licence etc.) of the Control Act the casino licence issued to the Administrator.
- (g) In the event that the Trustee and/or the Administrator are unable to introduce an acceptable assignee as hereinbefore provided in clause 38(1)(e) the Administrator shall while continuing to operate the Casino as hereinbefore in this clause provided but always subject to any rights of any mortgagee pursuant to its security and also the mortgagee's rights pursuant to the provisions of section 32 (Mortgage and assignment of casino licence etc.) of the Control Act dispose of the Breakwater Island Casino-Hotel Complex and arrange for the assignment of the casino licence at the highest attainable price to the assignee who is approved by the Governor-in-Council as if that assignee has been nominated by a mortgagee seeking to enforce its security in accordance with section 32 (Mortgage and assignment of casino licence etc.) of the Control Act.
- (h) The casino licence granted to an Administrator shall not be cancelled or suspended prior to its assignment as referred to in clause 38(1)(f) but the Governor-in-Council may from time to time within the Governor-in-Council's discretion remove an Administrator and appoint another Administrator in that person's place and shall remove an Administrator who is

not a receiver or manager approved pursuant to section 32(2)(b) (Mortgage and assignment of casino licence etc.) of the Control Act and replace that person with an Administrator who becomes so approved.

- (i) If the term of any suspension mentioned in clause 38(1)(a) is reduced after a request for the appointment of an Administrator has been made, the Governor-in-Council shall terminate the appointment of any Administrator the Governor-in-Council has appointed following a request that the appointment be so terminated, and—
 - (i) if the Trustee's Casino Licence has been cancelled, the Governor-in-Council shall assign to the Trustee the casino licence granted to the Administrator; or
 - (ii) if the Trustee's Casino Licence has not been cancelled, the Governor-in-Council shall cancel the casino licence granted to the Administrator.
 - (j) An Administrator may be appointed on such terms which are not inconsistent with this clause as the Governor-in-Council considers desirable in the circumstances of the appointment.
- (2) The parties hereto acknowledge confirm and agree that any termination of this Agreement pursuant to the provisions of clause 37 shall not in any manner whatsoever terminate or reduce the effect of clause 38(1) and the rights and obligations of the parties shall maintain continue and be of full force and effect as if this Agreement had not been terminated.

39 Impact of termination on the development of the Breakwater Island Casino-Hotel Complex or the Site

In the event that this Agreement is terminated for any reason whatsoever the provisions of clause 14 shall apply to Development in respect of the Breakwater Island Casino-Hotel Complex and the Site which at the date of termination has been carried out or approved in accordance with this Agreement.

40 Impact of termination on the Special Facility Licence

The State acknowledges and agrees that the Special Facility Licence granted pursuant to the Liquor Act shall, notwithstanding any termination of this Agreement by whatsoever means or any cancellation or suspension of the Casino Licence by whatsoever means, not be cancelled or suspended but rather shall remain in full force and effect so far as it relates to all areas of the Breakwater Island Casino-Hotel Complex other than the Casino until it shall be cancelled or suspended pursuant to the provisions of the Liquor Act.

PART VII—SPECIAL PROVISIONS

41 Marina Basin and Marina Entrance Channel deemed to be land

- (1) The Marina Basin, the Marina Entrance Channel and any other land that is the subject of any grant, demise or other estate or interest under the Agreement or the Townsville Harbour Board Agreement shall be deemed to be land within the Parish of Coonambelah, County of Elphinstone.
- (2) To remove doubt it is declared that the Marina Basin and the Marina Entrance Channel are not a canal for the purpose of the *Coastal Protection and Management Act 1995* including section 121 of the *Coastal Protection and Management Act 1995*.

42 Lot 795 on CP846293 and Lot 796 on EP2296 deemed to be land

Lot 795 on CP846293 and Lot 796 on EP2296 shall be deemed to be land—

- (a) within the Parish of Coonambelah, County of Elphinstone; and
- (b) within the Local Government Area of the Local Government.

43 Special Lease

- (1) The Special Lease was granted under the *Land Act 1962* and is taken to be a term lease pursuant to section 476 (Existing lease continues) of the Land Act.
- (2) Unless and until clause 61 applies, the Marina Entrance Channel and the Marina Basin shall be part of the port managed by the Townsville Port Authority.

44 Restricted Area

- (1) In this clause 44(1) *the Restricted Area* means any land that is Crown Land or land held by the Townsville Port Authority and on which any part of the breakwaters, retaining walls and revetments shown in the Schematic Design Drawings (other than the Offshore Breakwater and the Western Breakwater) is constructed. For better protecting the rights and interests of the Trustee, it is agreed that—
 - (a) no person including any Public Sector Entity shall be permitted to erect any structure of any kind or claim any right of support on, over or against those parts of the breakwaters, retaining walls or revetments on the Restricted Area other than the Townsville Port Authority or lessee from the State or any lessee of the Townsville Port Authority of any part or whole of the Marina Basin in respect of those parts of the Restricted Area retaining the Marina Basin to the extent necessary for the proper use and enjoyment of the Marina; and
 - (b) no person except a Public Sector Entity expressly authorised by the State (including the Townsville Port Authority) or the Trustee or a lessee from the State authorised to have access, shall be permitted to have access to or over those parts of the breakwaters, retaining walls or revetments constructed on the Restricted Area other than the Marina Basin; and
 - (c) nothing contained in this clause 44(1) shall prevent the Townsville Port Authority or the State doing all things necessary in the ordinary course of maintaining the breakwaters, retaining walls and revetments in good and

proper order and condition in the event of a failure by other parties to maintain.

- (2) The State agrees that any rights or benefits provided for in clause 44(1) to any Public Sector Entity including the Townsville Port Authority or to any other person shall not be exercised in such a manner as to cause or result in undue detriment or loss of amenity to or financial loss or damage to any registered proprietor or occupier for the time being of any land having a frontage to the Marina Basin or the Marina Entrance Channel.

45 Easements of lateral support for breakwaters, retaining walls and revetments

- (1) In this clause 45, *lot* means—
 - (a) in relation to the State, any Crown Land (other than land within the Marina Entrance Channel or the Marina Basin) and on which any part of the breakwaters, retaining walls and revetments shown in the Schematic Design Drawings is constructed;
 - (b) in relation to the Trustee, the land owned by the Trustee (other than land within the Marina Entrance Channel or the Marina Basin), and which has a common boundary with any Crown Land referred to in clause 45(1)(a).
- (2) In respect of each lot of which the State is the owner, there shall be implied as against the State and in favour of the Trustee its successors or assigns as the owner of the adjacent lot an easement for the lateral support of that lot and any buildings or structures thereon to the extent that the Crown Land and the structures thereon are capable of affording support.
- (3) In respect of each lot of which the Trustee is the owner, there shall be implied as against the Trustee its successors or assigns and in favour of the State as the owner of the adjacent lot an easement for the lateral support of the structures on the Crown Land to the extent that the land of the Trustee and the buildings or structures thereon are capable of affording support.

PART VIII—GENERAL

46 Approvals and notices

(1) All approvals notices and other writing required or appropriate to be given under the provisions of this Agreement shall be deemed to be properly served if delivered in writing personally or sent by post or by facsimile transmission to—

- (a) the Minister at the Minister's principal office in Brisbane; or
- (b) Jupiters at its registered office; or
- (c) the Trustee at its registered office;

and such other persons or addresses as each party shall from time to time designate in writing to the other and any such notice or other writing sent by post or facsimile transmission shall unless the contrary be proved be deemed to have been so given when it would have been delivered in the ordinary course of post.

(2) Although copies of such approvals, notices and other documents required to be given under the provisions of this Agreement to a nominated representative may also be forwarded to such other person specifically designated in writing by that nominated representative such additional copies do not substitute for the primary service.

(3) If, before 4.00 p.m. local time in the place of delivery, a party delivers a notice—

- (a) by hand; or
- (b) by facsimile and the sending party completes the transmission;

the notice will be taken as given on the day of delivery of transmission, and in any other case, on the next day.

(4) If a party gives the notice by post the notice will be taken as given on the second business day in the place of delivery after the notice is posted unless it can be established that the notice

was not received until a subsequent date, in which case that later date will be the date notice was given.

- (5) If a party gives notice by facsimile transmission and the transmission is not fully intelligible, or if the sending party, at the time of transmission, has reason to believe that the facsimile transmission is not fully intelligible, the party may not rely upon this clause to prove the giving of the notice.
- (6) The receiving party shall not object to a facsimile transmission as not being fully intelligible unless the receiving party requests a re-transmission within 2 hours.
- (7) If a facsimile transmission is completed within 2 hours of 5.00 p.m. on a day and is unintelligible, the receiving party has until 10.00 a.m. on the next business day to request the re-transmission.
- (8) The party giving the notice or its agent shall sign the notice. The appearance of the name of the person signing at the end of a facsimile transmission is sufficient evidence of signing.
- (9) The address, and facsimile number of the parties for the purposes of this clause are to be advised in writing.
- (10) The parties may give notice of another address or facsimile number (within Australia) to the other party and the new address shall be the address for service of the party for the purpose of this clause.

47 Waiver

No omission by any party to require the performance by another or the others of any of the terms or conditions of this Agreement nor any forbearance or indulgence granted or shown by any party to another or others shall release discharge or in any manner affect or prejudice the right of a party at any time to require strict and full performance by another or others of any or all of the terms or conditions to be observed or performed hereunder.

48 Governing law

The law of this Agreement shall be the law of the State of Queensland.

49 Delegations

- (1) The Minister may delegate in writing the Minister's powers, rights or obligations pursuant to this Agreement, or any of them, to the Chief Executive or the Executive Director of the Queensland Office of Gaming Regulation.
- (2) The Chief Executive may delegate in writing the Chief Executive's powers, rights or obligations pursuant to this Agreement to an officer of the public service within that unit of the public sector for which the Chief Executive is responsible.

50 Extensions of time

In any case in which the Trustee is obliged to perform or do an act or thing by or within a time specified in this Agreement, the Minister may at any time and from time to time in the Minister's absolute discretion extend the time specified for performing or doing that act or thing.

PART IX — TRANSITIONAL ARRANGEMENTS IN RESPECT OF SURPLUS CASINO LAND AND FUTURE DEVELOPMENT AREA

Division 1—Preliminary

51 Definitions

In this Part IX—

Development has the meaning given in the *Integrated Planning Act 1997*.

Future Development Area means—

- (a) all that area of land generally in accordance with the land identified on the plan in Schedule 1 as the Future Development Area including the land covered by water; and
- (b) any future description of the land specified in paragraph (a) consequent upon any resurvey of that land.

Future Development Area Land Platforms means the land platforms in the Future Development Area shown in the Future Development Area Scheme.

Future Development Area Port Protection Code means a code for the purpose of minimising the potential impact of the infrastructure and operations of the Townsville Port on the Development of the Future Development Area notified by the chief executive of the department responsible of the *Transport Infrastructure Act 1994* as having been authorised to the Local Government, the Townsville Port Authority and the owner or owners of the Future Development Area prior to the Future Development Area Scheme taking effect.

Future Development Area Scheme means a scheme for the Future Development Area approved by the Minister under clause 66(5).

Local Planning Instrument has the meaning given in the *Integrated Planning Act 1997*.

Ocean Terminal means a facility for the docking of cruise ships and other vessels located within the Future Development Area.

Planning Instrument has the meaning given in the *Integrated Planning Act 1997*.

Port Protection Codes means the Surplus Casino Land Port Protection Code and the Future Development Area Port Protection Code.

Port Protection Code Notification Date means the latest of the dates on which notification is taken to have been given by the chief executive of the department responsible for the *Transport Infrastructure Act 1994* to the owner or owners of the Surplus Casino Land and the Future Development Area

under the *Acts Interpretation Act 1954* of the authorisation of the Port Protection Code.

Surplus Casino Land means—

- (a) all that area of land identified on the plan in Schedule 1 as the Surplus Casino Land including—
 - (i) the land covered by water comprising the Marina Basin and the Marina Entrance Channel; and
 - (ii) the land within any road whether constructed or otherwise; and
- (b) any future description of the land specified in paragraph (a) consequent upon any resurvey of that land.

Surplus Casino Land Port Protection Code means a code for the purpose of minimising the potential impact of the infrastructure and operations of the Townsville Port on the Development of the Surplus Casino Land notified by the chief executive of the department responsible for the *Transport Infrastructure Act 1994* as having been authorised to the Local Government, the Townsville Port Authority and the owner or owners of the Surplus Casino Land prior to the Surplus Casino Land Scheme taking effect.

Surplus Casino Land Scheme means the scheme for the Surplus Casino Land in Schedule 3.

Division 2—Surplus Casino Land

52 Purpose of division 2

- (1) The purpose of division 2 is to specify transitional arrangements which provide for the application of any Development Legislation in force in the Local Government Area in which the Surplus Casino Land is situated to the Development and Use of the Surplus Casino Land.
- (2) In particular, the provisions provide for—
 - (a) the future Development and Use of the Surplus Casino Land to be subject to Development Legislation to the extent provided for in this Agreement; and

- (b) the registration of the Surplus Casino Land; and
- (c) the Trustee to be able to transfer the Surplus Casino Land without the consent of the Minister; and
- (d) the existing Development and Use of the Surplus Casino Land to be a lawful Use; and
- (e) the effect of the Surplus Casino Land Scheme.

53 Proposed Development of Surplus Casino Land

The Surplus Casino Land is proposed to be the subject of Development for residential and related Uses as specified in the Surplus Casino Land Scheme.

54 Application of Development Legislation to Surplus Casino Land

Any Development Legislation in force in the Local Government Area in which the Surplus Casino Land is situated shall apply to the Development and Use of the Surplus Casino Land except to the extent that the operation of the Development Legislation is varied in the manner provided for in this Agreement.

55 Registration of the Site and the Surplus Casino Land

- (1) The purpose of this clause is to create lots for the Site and the Surplus Casino Land.
- (2) Clause 55(3) applies despite any Development Legislation in force in the Local Government Area in which the Site and the Surplus Casino Land is situated.
- (3) The State agrees and declares that—
 - (a) the division of the Site and the Surplus Casino Land into lots generally in accordance with the plan in Schedule 4 is approved whether division is effected by one or more plans of subdivision; and
 - (b) a plan or plans of subdivision prepared generally to effect the creation of lots as shown on the plan in Schedule 4 is approved; and

- (c) the plans of subdivision may be registered in the appropriate register in the land registry without further approval from a Public Sector Entity.

56 Disposal of Surplus Casino Land

- (1) The Trustee may dispose of the Surplus Casino Land without the prior written consent of the Minister.
- (2) For the purposes of clause 56(1), dispose includes subdivide, sell, assign, lease, let, sub-lease, sub-let, licence, mortgage, charge or otherwise encumber and also includes agree to dispose and grant consent to the disposal of.

57 Existing lawful Use of the Surplus Casino Land

- (1) The existing Development and Use of the Surplus Casino Land shall be deemed to be a lawful Use and to be lawfully constructed under the Development Legislation in force in the Local Government Area in which the Surplus Casino Land is situated.
- (2) Any Development Legislation in force in the Local Government Area in which the Surplus Casino Land is situated cannot—
 - (a) stop the existing lawful Use of the Surplus Casino Land from continuing; or
 - (b) further regulate the existing lawful Use of the Surplus Casino Land; or
 - (c) require the existing lawful Use of the Surplus Casino Land to be changed; or
 - (d) require the existing Work constructed or effected in respect of the lawful Use of the Surplus Casino Land to be altered or removed.
- (3) The existing Development and Use of the Surplus Casino Land cannot be interfered with or interrupted by any Public Sector Entity or any person on the grounds that the existing Development and Use of the Surplus Casino Land, is contrary to the Development Legislation in force in the Local

Government Area in which the Surplus Casino Land is situated.

58 Effect of Surplus Casino Land Scheme

- (1) The Surplus Casino Land Scheme takes effect under the *Integrated Planning Act 1997* in the manner provided for in this clause.
- (2) The Surplus Casino Land Scheme takes effect as a preliminary approval that—
 - (a) is for the Development specified in the Surplus Casino Land Scheme; and
 - (b) is mentioned in section 3.1.6 (Preliminary approval may override a local planning instrument) of the *Integrated Planning Act 1997*; and
 - (c) varies the effect of any applicable Planning Instrument for the Surplus Casino Land.
- (3) The Surplus Casino Land Scheme—
 - (a) states that the Development specified in the Surplus Casino Land Scheme is assessable development (requiring code or impact assessment), self-assessable development or exempt development; and
 - (b) identifies codes for the Development specified in the Surplus Casino Land Scheme.
- (4) To the extent that the Surplus Casino Land Scheme, by doing either or both of the things mentioned in clause 58(3) is different to any applicable Local Planning Instrument, the Surplus Casino Land Scheme prevails.
- (5) The Surplus Casino Land Port Protection Code takes effect as a code identified by the Surplus Casino Land Scheme as a code for the Development specified in the Surplus Casino Land Scheme under clause 58(3)(b) upon the Surplus Casino Land Scheme taking effect.
- (6) The Surplus Casino Land Scheme no longer applies to the Development stated in the Surplus Casino Land Scheme when any time limit stated in the Surplus Casino Land Scheme for

completing the Development or as otherwise extended pursuant to the *Integrated Planning Act 1997* ends.

- (7) For the purpose of the *Integrated Planning Act 1997*—
- (a) the Local Government is deemed to be the assessment manager that decided the preliminary approval referred to in sub-clause (2) including the conditions of the preliminary approval; and
 - (b) the preliminary approval referred to in sub-clause (2) is deemed to—
 - (i) take effect upon the making of this Agreement; and
 - (ii) have a currency period of 10 years from the date the preliminary approval takes effect pursuant to paragraph (b) unless further extended by the Local Government as the assessment manager under the *Integrated Planning Act 1997*.

59 Vesting under Special Lease

- (1) The State agrees that the Trustee or subsequent lessee shall be entitled to Deeds of Grant in fee simple from the Crown in accordance with the Special Lease subject to due compliance by the Trustee with the terms and conditions thereof.
- (2) Upon due compliance by the lessee with the terms and conditions of the Special Lease, the State shall vest in the Townsville Port Authority the Marina Entrance Channel and the developed stages of the Marina Basin for subsequent leasing of the Marina Entrance Channel and such stages by the Townsville Port Authority to the Trustee or its nominee in terms of the Townsville Harbour Board Agreement.
- (3) Every such vesting shall be effected by a deed of grant in trust for Port and Harbour (Marina) Purposes pursuant to section 334 of the *Land Act 1962*.

60 Term Leases

- (1) If—
 - (a) the plan of subdivision under clause 55 is registered; and

- (b) the lessee makes application to the State to subdivide the Special Lease into two new leases comprising one new lease over new lots 637 and 638 and one new lease over new lot 795 and existing lots 676 on Crown Plan 909884 and 796 on Crown Plan EP 2296;

the State agrees to such subdivision which is deemed to be approved for the purposes of sections 351 and 489(2) of the Land Act subject to any conditions stated by the Minister administering the Land Act under section 351(2) of that Act.

- (2) If the Special Lease is subdivided, the two new leases mentioned in clause 60(1) shall, for the purposes of section 354 of the Land Act—
 - (a) be on the same conditions as the Special Lease except where the Minister administering the Land Act considers under section 354 of the Land Act it appropriate to either remove redundant conditions or include conditions to permit maintenance of existing rock walls and revetments within the leased area and for works associated with the future development of the Site and the Future Development Area; and
 - (b) have terms equal to the remaining term of the Special Lease.
- (3) If the Special Lease is subdivided as mentioned in clauses 60(1) and (2), and—
 - (a) the lessee applies under the Land Act for the transfer to the Trustee's nominee of the new lease over new lot 795 and existing lots 676 on Crown Plan 909884 and 796 on Crown Plan EP 2296, the State agrees to the transfer which is deemed to be approved for the purposes of section 322 of the Land Act subject to any conditions stated by the Minister administering the Land Act under section 322(4) of that Act; and
 - (b) the lessee applies for the transfer to the Trustee's nominee of leases 703470717 and 601414725, the State agrees to the transfer which is deemed to be approved for the purposes of—

- (i) section 58(1)(b) of the Land Act, subject to any conditions stated by the Minister administering the Land Act under section 58(2) of that Act; and
 - (ii) section 288(1)(b) of the Transport Infrastructure Act, subject to any conditions in respect of the transfer notified by the Minister administering the Transport Infrastructure Act.
- (4) The conditions stated by the Minister administering the Land Act mentioned in clause 60(3) must include a condition that the Trustee's nominee must be the registered owner of a freehold lot as specified by that Minister in such condition adjoining the Marina Basin.

61 Term lease for the Marina Entrance Channel and Marina Basin

- (1) If the Special Lease is subdivided and the new lease over new lot 795 and existing lots 676 on Crown Plan 909884 and 796 on Crown Plan EP 2296 and leases 703470717 and 601414725 are transferred as mentioned in clause 60, the Trustee's nominee shall be entitled to apply to the State for the grant of a term lease under the Land Act on similar terms in respect of the Marina Basin and Marina Entrance Channel, if—
- (a) the Trustee's nominee is the registered owner of the freehold lot as provided for under clause 60(4); and
 - (b) the Townsville Port Authority with the consent of the lessee of the Marina Basin and Marina Entrance Channel surrenders the tenure of the Marina Basin and Marina Entrance Channel to the State and as a consequence leases 703470717 and 601414725 and any leases granted in respect of the Marina Basin pursuant to clause 59 are cancelled in accordance with section 55 of the Land Act; and
 - (c) if applicable, the new lease over new lot 795 and existing lots 676 on Crown Plan 909884 and 796 on Crown Plan EP 2296 is partially surrendered in respect of lot 676 on CP 909884 or any future description of this lot.

- (2) The term lease for which an application may be made under clause 61(1) is the most appropriate tenure and use for the Marina Basin and Marina Entrance Channel including for the purpose of—
 - (a) section 16 (Deciding appropriate tenure) of the Land Act; and
 - (b) the coastal management plan under the *Coastal Protection and Management Act 1995*.
- (3) If approval for the grant of a term lease under the Land Act is sought following the application to lease under clause 61(1)—
 - (a) section 15(2) (Governor in Council may lease land) of the Land Act is deemed to be satisfied; and
 - (b) a lease may issue without competition to the Trustee's nominee notwithstanding section 121 of the Land Act.
- (4) If a term lease mentioned under this clause 61 is granted, a condition of the grant of the lease will be that the lessee will be required to enter into a covenant under section 373A of the Land Act to provide for no separate transfer of the lease and the freehold lot mentioned in clause 60(4).

Division 3 — Future Development Area

62 Purpose of division 3

- (1) The purpose of division 3 is to specify the transitional arrangements which provide for the application of any Development Legislation in force in respect of the Future Development Area to the Development and Use of the Future Development Area.
- (2) In particular, the provisions provide for—
 - (a) the preparation of an environmental impact statement to address the environmental effects of the Development of the Future Development Area; and
 - (b) the approval by the Minister of the Future Development Area Scheme in respect of the Development and Use of the Future Development Area; and

- (c) the Future Development Area Land Platforms to be land from the date of the completion of work to reclaim the Future Development Area Land Platforms; and
- (d) the approval by the Local Government of Work to reclaim the Future Development Area to facilitate the Development provided for in the Future Development Area Scheme; and
- (e) the future Development and Use of the Future Development Area to be subject to any Development Legislation in force in respect of the Future Development Area to the extent provided for in this Agreement; and
- (f) the most appropriate tenure and use of the Future Development Area.

63 Proposed Development of Future Development Area

The Future Development Area is proposed to be the subject of Development for an Ocean Terminal and residential and related Uses as specified in the Future Development Area Scheme to be approved by the Minister.

64 Application of Development Legislation to Future Development Area

Any Development Legislation in force in respect of the Future Development Area shall not apply to the Development and Use of the Future Development Area except in the manner provided for in this Agreement.

65 Environmental impact statement

- (1) The Trustee or its nominee shall prepare an environmental impact statement to address the environmental effects of the Development of the Future Development Area.
- (2) If the Development of the Future Development Area has been declared a significant project under Part 4—Environmental Coordination of the *State Development and Public Works Organisation Act 1971* by the Coordinator-General, the

environmental impact statement shall be prepared under Part 4—Environmental Coordination of the *State Development and Public Works Organisation Act 1971*.

66 Application for approval of the Future Development Area Scheme

- (1) The Trustee or its nominee may apply to the Minister for approval of the Future Development Area Scheme after the Coordinator-General has completed a report evaluating the environmental impact statement under Part 4—Environmental Coordination of the *State Development and Public Works Organisation Act 1971* and given a copy of the report to the Trustee or its nominee.
- (2) The application mentioned in clause 66(1) is made by lodging with the Chief Executive—
 - (a) a submission comprising of a proposed Future Development Area Scheme and such reports, drawings or other material as is necessary to explain the Future Development Area Scheme; and
 - (b) such other information which may be required by the Chief Executive.
- (3) The proposed Future Development Area Scheme may for the purpose of the *Integrated Planning Act 1997* do either or both of the following for the Development specified in the proposed Future Development Area Scheme—
 - (a) state that the Development is assessable development (requiring code or impact assessment), self-assessable development or exempt development; and
 - (b) identify codes for the Development.
- (4) The Minister must—
 - (a) consider the application; and
 - (b) make a decision in respect of the application in accordance with clause 66(5); and
 - (c) advise the applicant in writing of the decision.
- (5) The Minister must—

- (a) approve the proposed Future Development Area Scheme in whole or in part unconditionally; or
 - (b) approve the proposed Future Development Area Scheme in whole or in part subject to conditions; or
 - (c) refuse the proposed Future Development Area Scheme in whole or in part; or
 - (d) approve the proposed Future Development Area Scheme with variations; or
 - (e) deal with the proposed Future Development Area Scheme under any combination of clauses 66(5)(a), (5)(b), (5)(c) or (5)(d).
- (6) The Minister must subject to clause 66(7) decide the application within 20 days of the lodgment of the application.
- (7) The Minister may extend the decision making period specified in clause 66(6) by not more than 20 days by written notice given to the applicant before the end of the decision making period.

67 Future Development Area Land Platforms deemed to be land

Upon the completion of Work to reclaim the Future Development Area Land Platforms or parts thereof, the Future Development Area Land Platforms or parts thereof, shall respectively be deemed to be land—

- (a) within the Parish of Coonambelah, County of Elphinstone; and
- (b) within the Local Government Area of the Local Government.

68 Work for the Future Development Area

- (1) The Trustee or its nominee may apply to the Local Government for approval to carry out Work to reclaim the Future Development Area if the Minister approves the Future Development Area Scheme.
- (2) If an application is made—

- (a) the processing of the application and all matters incidental to the processing (including any appeal made in relation to a decision about the application) must proceed under the *Integrated Planning Act 1997* subject to the matters specified in clause 68(3); and
 - (b) any approval issued is taken to be a preliminary approval or a development permit as the case may be under the *Integrated Planning Act 1997*.
- (3) For the purpose of the processing of an application specified in clause 68(1) under the *Integrated Planning Act 1997*—
- (a) the Local Government is the assessment manager; and
 - (b) the application is code assessable; and
 - (c) the following are the only referral agencies—
 - (i) the chief executive of the Townsville Port Authority as a concurrence agency with a referral jurisdiction of port authority functions under the *Transport Infrastructure Act 1994*, chapter 8, part 3; and
 - (ii) the chief executive under the *Coastal Protection and Management Act 1995* as a concurrence agency with a referral jurisdiction of coastal management under the *Coastal Protection and Management Act 1995*, excluding amenity and aesthetic significance or value; and
 - (iii) the Queensland Fire and Rescue Service as an advice agency with a referral jurisdiction of the fire and safety management procedures under the *Fire and Rescue Services Act 1990*; and
 - (d) the application is deemed to be supported by—
 - (i) the written consent of the owner of the land to which the application relates to the making of the application; and
 - (ii) any evidence of an allocation of, or an entitlement to, any necessary State resource required under section 3.2.1(5) (Applying for development approval) of the *Integrated Planning Act 1997*.

- (4) To remove doubt it is declared that—
- (a) the application mentioned in clause 68(1) can include land outside of the Future Development Area necessary for the carrying out of Work to reclaim the Future Development Area such as revetment walls that form part of the Site; and
 - (b) in respect of the Site, a Development Approval is not required under Part II of the Agreement in respect of Development necessary for the carrying out of Work to reclaim the Future Development Area; and
 - (c) in respect of other land, an approval is not required under any Development Legislation in force in respect of that land in respect of Development necessary for the carrying out of the Work to reclaim the Future Development Area; and
 - (d) in respect of a term lease under the Land Act mentioned in clause 72, the carrying out of Development necessary for the carrying out of the Work to reclaim the Future Development Area is deemed to be within the permitted use of the term lease; and
 - (e) a waterway created as a result of carrying out of Work to reclaim the Future Development Area is a canal for the purpose of the *Coastal Protection and Management Act 1995* including section 121 (Maintenance of canals) of the *Coastal Protection and Management Act 1995*.
- (5) For the purposes of subsection (4)(e), *waterway* means that part of the Future Development Area which, upon completion of the proposed northern breakwater and each residential land platform (and freehold title being subsequently granted for each land platform), is inundated by tidal water and includes the inundated areas between land platforms, the previous access channel providing access to the Marina Basin and the revetments and breakwaters confining or containing the waterway (surveyed to the outer top edge of the land platforms so that the edge forms the boundary of the abutting freehold land and to the inner top edge of that side of the northern breakwater which faces the access channel).

- (6) However, *waterway* for the purposes of subsection (4)(e) does not include any body of water (including the revetments and breakwaters confining or containing the body of water) which is used, or intended to be used, for the operation of the Townsville Ocean Terminal.

69 Effect of Future Development Area Scheme

- (1) The Future Development Area Scheme takes effect under the *Integrated Planning Act 1997* in the manner provided for under this clause.
- (2) The Future Development Area Scheme takes effect as a preliminary approval that—
- (a) is for the Development specified in the Future Development Area Scheme; and
 - (b) is mentioned in section 3.1.6 (Preliminary approval may override a local planning instrument) of the *Integrated Planning Act 1997*; and
 - (c) varies the effect of any applicable Planning Instrument for the Future Development Area.
- (3) The Future Development Area Scheme—
- (a) states that the Development specified in the Future Development Area Scheme is assessable development (requiring code or impact assessment), self-assessable development or exempt development; and
 - (b) identifies codes for the Development specified in the Future Development Area Scheme.
- (4) To the extent that the Future Development Area Scheme by doing either or both of the things mentioned in clause 69(3) is different to any applicable Local Planning Instrument, the Future Development Area Scheme prevails.
- (5) The Future Development Area Port Protection Code takes effect as a code identified by the Future Development Area Scheme as a code for the Development specified in the Future Development Area Scheme under clause 69(3)(b) upon the Future Development Area Scheme taking effect.

- (6) The Future Development Area Scheme no longer applies to the Development stated in the Future Development Area Scheme when any time limit stated in the Future Development Area Scheme for completing the Development or as otherwise extended pursuant to the *Integrated Planning Act 1997* ends.
- (7) For the purpose of the *Integrated Planning Act 1997*—
 - (a) the Local Government is deemed to be the assessment manager that decided the preliminary approval referred to in sub-clause (2) including the conditions of the preliminary approval; and
 - (b) the preliminary approval referred to in sub-clause (2) is deemed to—
 - (i) take effect upon the approval of the Future Development Area Scheme; and
 - (ii) have a currency period of 20 years from the date the preliminary approval takes effect pursuant to paragraph (b) unless further extended by the Local Government as the assessment manager under the *Integrated Planning Act 1997*.
- (8) To remove doubt it is declared that the Future Development Area Scheme takes effect pursuant to sub-clause (2) even if there is no applicable Local Planning Instrument at the time the Future Development Area Scheme is approved.

70 When the Future Development Area Scheme may be changed by the Local Government

- (1) The Local Government may change the Future Development Area Scheme only where—
 - (a) the change does not relate to—
 - (i) the Port Protection Code; or
 - (ii) the entitlement to create the Future Development Area Land Platforms, their approved use rights or their approved layout; and
 - (b) the change is made within 6 months after each 5 year anniversary of the approval of the Future Development Area Scheme; and

- (c) necessary to upgrade engineering or environmental aspects of the Future Development Area Scheme to align the Future Development Area Scheme with contemporary development control standards.
- (2) If the Local Government is satisfied it is necessary to change the Future Development Area Scheme, the Local Government must give written notice to the owner of the land to which the Future Development Area Scheme attaches, which states—
 - (a) the proposed change and the reasons for the change; and
 - (b) that each person to whom the notice is given may make a written submission to the Local Government about the proposed change; and
 - (c) the time, which must be at least 20 days after the notice is given to the owner, within which the submission must be made.
 - (3) After considering any submissions, the Local Government must give to each person to whom the notice was given—
 - (a) if the Local Government is not satisfied the change is necessary written notice stating it has decided not to change the Future Development Area Scheme; or
 - (b) if the Local Government is satisfied the change is necessary, written notice stating it has decided to change the Future Development Area Scheme and include details of the changed Future Development Area Scheme.
 - (4) The change takes effect from the day the notice is given to the owner of the land.
 - (5) A person to whom a notice is given under clause 70(3)(b) may appeal against the decision in the notice under section 4.1.31 (Appeals for matters arising after approval given (no co-respondents)) of the *Integrated Planning Act 1997*, as if the decision in the notice was a decision specified in section 4.1.31(1)(b) (Appeals for matters arising after approval given (no co-respondents)) of the *Integrated Planning Act 1997*.

71 Development of the Future Development Area

- (1) The Work to reclaim the Future Development Area shall be carried out in accordance with the approval contemplated by clause 68.
- (2) The Development and Use of the Future Development Area to which sub-clause (1) does not apply shall be carried out in accordance with—
 - (a) any applicable Local Planning Instrument for the Future Development Area; and
 - (b) the Future Development Area Scheme which varies the effect of the applicable Local Planning Instruments.
- (3) Any Development and Use of the Future Development Area which is not carried out in accordance with clauses 71(1) and (2)(a) shall be carried out in accordance with the Development Legislation.

72 Term lease for Future Development Area

- (1) Following the completion of an environmental impact statement under Part 4—Environmental Co-ordination of the *State Development and Public Works Organisation Act 1971*, the State may apply to be granted a term lease under the Land Act to facilitate the Development of an Ocean Terminal and residential and related Uses.
- (2) The term lease for which an application may be made under clause 72(1) is the most appropriate tenure and use for the Future Development Area including for the purpose of—
 - (a) section 16 (Deciding appropriate tenure) of the Land Act; and
 - (b) the coastal management plan under the *Coastal Protection and Management Act 1995*.
- (3) If approval for the grant of a term lease under the Land Act is sought following the application to lease under clause 72(1), section 15(2) (Governor in Council may lease land) of the Land Act is deemed to be satisfied.
- (4) If the term lease mentioned in clause 72(1) is granted, and is subsequently surrendered by the State from the date of

practical completion of the Ocean Terminal, a term lease to facilitate the Development of residential and related Uses is the most appropriate tenure and use for the part of the Future Development Area which is to be the subject of Development for residential and related Uses, including for the purpose of—

- (a) section 16 (Deciding appropriate tenure) of the Land Act; and
 - (b) the coastal management plan under the *Coastal Protection and Management Act 1995*.
- (5) The Trustee or its nominee shall, from the date of practical completion of the Ocean Terminal, be entitled to apply to the State to the exclusion of any other person for the grant of a term lease under the Land Act in the form specified in clause 72(4).
- (6) If approval for the grant of a term lease under the Land Act is sought following the application to lease under clause 72(5)—
- (a) section 15(2) (Governor in Council may lease land) of the Land Act is deemed to be satisfied; and
 - (b) a lease may issue without competition to the Trustee or its nominee notwithstanding section 121 of the Land Act; and
 - (c) for the purposes of this term lease, section 129 of the Land Act is satisfied.
- (7) The term lease mentioned in clause 72(5) shall, in addition to other requirements—
- (a) apply to that part of the Future Development Area which is to be the subject of Development for residential and related Uses as specified in the Future Development Area Scheme; and
 - (b) authorise to facilitate the Development of residential and related Uses; and
 - (c) include conditions of lease provided for under the Land Act, including that a request must be made to the Governor in Council to issue to the lessee an estate in

fee simple over the Future Development Area Land Platforms upon—

- (i) performance of and compliance with all of the conditions of the lease to the satisfaction of the Minister administering the Land Act; and
- (ii) payment by the lessee to the said Minister of the determined purchase price and any other relevant fees; and
- (iii) partial surrender to the State of the leased land comprised in the Future Development Area Land Platforms.

73 Land use plan for the Ocean Terminal

- (1) The Minister administering the *Transport Infrastructure Act 1994* may from the date of practical completion of the Ocean Terminal, direct a port authority to prepare a land use plan or an amendment of a land use plan which includes the Ocean Terminal and related land as strategic port land pursuant to section 285(3) (Land use plans) of the *Transport Infrastructure Act 1994*.
- (2) The State agrees and declares that—
 - (a) section 285C (Consultation on statement of proposal or draft plan) of the *Transport Infrastructure Act 1994* does not apply to a land use plan or an amendment of a land use plan prepared pursuant to clause 73(1); and
 - (b) the Minister administering the *Transport Infrastructure Act 1994* is not required to be satisfied of the matters specified in section 286(1)(a)–(c) of the *Transport Infrastructure Act 1994* when considering whether to approve a land use plan or amendment of a land use plan prepared pursuant to clause 73(1).
- (3) Upon notification of approval of the land use plan under clause 73(1) in the government gazette, all applicable Development Legislation will apply to the strategic port land.

74 Review of Decisions in respect of the Future Development Area

- (1) A decision made in relation to the approval of the Future Development Area Scheme shall not be subject to review under the Review Act or otherwise.
- (2) In particular, a decision under clause 66(5) in relation to the approval of the Future Development Area Scheme—
 - (a) is final and conclusive; and
 - (b) cannot be challenged, appealed against, reviewed, quashed, set-aside, or called into question in any other way, under the Review Act or otherwise (whether by the Supreme Court, another court, a tribunal, an authority or a person); and
 - (c) is not subject to any writ or order of the Supreme Court, another court, a tribunal, an authority or a person on any ground.

Examples of writs and orders to which the sub-clause applies—

Example 1—

Writs of mandamus, prohibition and certiorari.

Example 2—

Certiorari orders, prohibition orders, prerogative orders, prerogative injunctions, and statutory orders of review, within the meaning of the Review Act.

Example 3—

Declaratory and injunctive orders.

- (3) Without limiting clause 74(2), the Review Act does not apply to the following matters—
 - (a) conduct engaged in for the purpose of making a decision which has the meaning given by section 8 (Conduct engaged in for making decision—preparatory acts) of the Review Act; and
 - (b) other conduct that relates to the making of a decision; and

- (c) the making of a decision or the failure to make a decision which has the meaning given by section 5 (Meaning of *making of a decision* and *failure to make a decision*) of the Review Act; and
 - (d) a decision;
under this Agreement, or otherwise, in relation to the approval of the Future Development Area Scheme.
- (4) In particular, but without limiting clause 74(3), the Supreme Court does not have jurisdiction to hear and determine applications made to it under Part 3, 4 or 5 of the Review Act in relation to matters mentioned in clause 74(3).

75 Restricted Area

Clause 44(1) does not apply to the Development of the Future Development Area under Division 3 of Part IX of this Agreement.

Division 4—Port Protection Code

76 Limitations on changes to the Port Protection Code

- (1) A decision in respect of the Surplus Casino Land Scheme and the Future Development Area Scheme in relation to a request under section 3.5.24 (Request to change development approval (other than a change of a condition)) and 3.5.33 (Request to change or cancel condition) of the *Integrated Planning Act 1997* may not reduce the measures in the Port Protection Code which minimise the potential impact of the infrastructure and operations of the Townsville Port on the Development of the Surplus Casino Land and the Future Development Area.
- (2) For the purposes of processing a request specified in clause 76(1) under the *Integrated Planning Act 1997* in respect of the Surplus Casino Land Scheme or the Future Development Area Scheme, the chief executive under the *Transport Infrastructure Act 1994* is deemed to be the concurrence

agency which required the Port Protection Code to be identified—

- (a) by the Surplus Casino Land Scheme as a code for the Development specified in the Surplus Casino Land Scheme; and
 - (b) by the Future Development Area Scheme as a code for the Development specified in the Future Development Area Scheme.
- (3) In addition to the procedures under the *Integrated Planning Act 1997* referred to in clause 76(1), the chief executive of the department responsible for the *Transport Infrastructure Act 1994* may also change the Port Protection Code by notification to the Local Government, the Townsville Port Authority and the Owners of the land the subject of the relevant Port Protection Code, if—
- (a) a notice of the proposed change and the reasons for the change have been given by—
 - (i) the chief executive of the department responsible for the *Transport Infrastructure Act 1994* to—
 - (A) each Owner of land the subject of the relevant Port Protection Code; and
 - (B) the Local Government; and
 - (C) the Townsville Port Authority; or
 - (ii) an Owner of land the subject of the relevant Port Protection Code to—
 - (A) the chief executive of the department responsible for the *Transport Infrastructure Act 1994*; and
 - (B) each other Owner of land the subject of the relevant Port Protection Code; and
 - (C) the Local Government; and
 - (D) the Townsville Port Authority; and
 - (b) the chief executive of the department responsible for the *Transport Infrastructure Act 1994* consents to the

- proposed change to the Port Protection Code, if the change is proposed by an Owner; and
- (c) each Owner who is required to be given a notice of a proposed change to the Port Protection Code under clause 76(3)(a) has consented to the proposed change, except that—
 - (i) an Owner must not unreasonably withhold its consent; and
 - (ii) if an Owner has not given notice to the chief executive of the department responsible for the *Transport Infrastructure Act 1994* in response to a notice of a proposed change given by another party under clause 76(3)(a) of either the Owner's consent or the Owner's refusal on specified reasonable grounds within 20 days, the Owner is taken to have consented to the proposed change.
 - (4) For the purpose of clause 76(3), *Owner*—
 - (a) means the Trustee or its nominee, as applicable; and
 - (b) in addition, has the same meaning as *owner* in section 3.4.4(5) (Public notice of applications to be given) of the *Integrated Planning Act 1997*, as if all references to the terms *adjoining* and *adjoining the land the subject of the application* had been omitted from that definition.

IN WITNESS WHEREOF the parties have executed this Agreement the day and year hereinbefore written.

SCHEDULE 2

WORK AND CONTRIBUTIONS IN RESPECT OF THE BREAKWATER ISLAND CASINO-HOTEL COMPLEX

(Clauses 18 and 19)

| Entity | Requirement | Amount |
|---------------------------|--|--|
| Townsville Port Authority | (1) Use of Land and Buildings on Yacht Club site | \$500,000 |
| | (2) Purchase of existing reclamation | \$250,000 plus annual payments of \$59,856 over fifteen (15) years |
| Townsville City Council | (1) Water Supply Augmentation | \$88,000 |
| | (2) Road Works and Traffic | At Manager's Cost |
| | (3) Roads Maintenance | \$30,000 |

SCHEDULE 3 SURPLUS CASINO LAND SCHEME

PART A: EXPLANATORY PROVISIONS

1. SHORT TITLE
2. APPLICATION
3. RELATIONSHIP WITH THE INTEGRATED PLANNING ACT
1997

PART B: CONDITIONS OF SCL SCHEME

4. CONDITIONS

PART C—THE SCL SCHEME CODE

5. GENERAL
6. COMPLIANCE WITH THE SCL CODE
7. OVERALL OUTCOMES OF SCL SCHEME AREA
8. DEVELOPMENT SECTOR OUTCOMES

PART D—ASSESSMENT CATEGORIES FOR SECTORS

9. ASSESSMENT CATEGORIES

PART E—MANDATORY REQUIREMENTS OF THE SCL SCHEME CODE

10. DEFINITIONS
11. MAPS

Map 1: SCL Scheme Area

Map 2: Area Sectors

Map 3: Building Heights

Map 4: Plot Ratio

Map 5: Greenspace and Pathways

Map 6: Reconfiguration Concept

PART A: EXPLANATORY PROVISIONS

1 SHORT TITLE

- 1.1 This Surplus Casino Land Scheme may be cited as the SCL Scheme.

2 APPLICATION

- 2.1 This SCL Scheme applies to that part of the Local Government Area identified as the SCL Scheme Area in **Map 1: SCL Scheme Area**.

3 RELATIONSHIP WITH THE INTEGRATED PLANNING ACT 1997

- 3.1 This SCL Scheme takes effect under the *Integrated Planning Act 1997* in accordance with Clause 58 of the Formal Agreement ratified in the *Breakwater Island Casino Agreement Act 1984*.

- 3.2 This SCL Scheme takes effect as a preliminary approval under s.3.1.5 of the *Integrated Planning Act 1997* for a mixed residential and marina development. Pursuant to s.3.1.6 (Preliminary Approval may override a local planning instrument) of the *Integrated Planning Act 1997*, this Preliminary Approval—

- 3.2.1 approves a development being a material change of use for the purposes specified in this SCL Scheme, a reconfiguration of a lot, building work and operational work that varies City Plan 2005 for the SCL Scheme Area by stating—

- 3.2.1.1 whether development is assessable, self assessable or exempt; and

- 3.2.1.2 assessment levels for assessable development that override the Tables of Assessment in Part 4.21, Table 4.18A and 4.18B of City Plan 2005; and

- 3.2.1.3 adopting a specific SCL Scheme Code applying to all development within the SCL Scheme Area; and
 - 3.2.1.4 overriding any code in the City Plan 2005 applicable to development within the SCL Scheme Area, to the extent of any inconsistency with the SCL Scheme Code; and
 - 3.2.2 approves a Reconfiguration of the SCL Scheme Area generally in accordance with **Map 6: Reconfiguration Concept** only to the extent of identifying the individual development areas located on the plan of subdivision.
- 3.3 For clarity, any applicable code or policy in City Plan 2005, not inconsistent with this SCL Scheme Code, including any headworks contributions or infrastructure charges, remain applicable to development in the SCL Scheme Area to the same extent as other development within the Local Government Area.
- 3.4 For the purpose of s.3.5.21 of the *Integrated Planning Act 1997*, the currency period for the Preliminary Approval within this SCL Scheme is ten (10) years. Nothing prevents any extension of this currency period of this SCL Scheme if approved by Council pursuant to the *Integrated Planning Act 1997*.

PART B: CONDITIONS OF SCL SCHEME

4 CONDITIONS

- 4.1 In accordance with Clause 3.1.5(1) of the *Integrated Planning Act 1997*, this Preliminary Approval is subject to the following conditions—
- 4.1.1 Prior to any application for a development permit for a material change of use or commencement of any new use of land within the SCL Scheme Area—

- 4.1.1.1 a development permit authorising a reconfiguration of the SCL Scheme Area must be obtained; and
- 4.1.1.2 compliance with all approved conditions of that development permit for reconfiguration of a lot and registration of the plan of survey must occur.
- 4.1.2 As part of the application for a development permit for the reconfiguration required under clause 4.1.1 an applicant must evidence Council's approval of a master plan of Areas A, B and C (as identified on Map 2), identifying—
 - 4.1.2.1 the applicant's preferred option (if any) for the relocation within Area A, B or C (as the case may be) of the—
 - 4.1.2.1.1 Sailing Club; and
 - 4.1.2.1.2 the Ergon Substation; and
 - 4.1.2.2 how pedestrian access to The Strand from the east can be maintained.
- 4.1.3 While the existing commercial fishing berths within the Marina Basin directly adjacent to Area H (as identified on **Map 2: Area Sectors**) remain operative, reasonable public access to the pontoons and associated facilities must be provided at all times. Prior to the removal of the commercial fishing berths and the public access thereto, an applicant must provide Council with evidence of the alternative relocated marina arrangements for the commercial fishing berths.
- 4.1.4 All lots created within the SCL Scheme Area must be community titled lots under the *Body Corporate and Community Management Act 1997* and the *Land Title Act 1994*, except—
 - 4.1.4.1 any area the subject of a lease, permit or licence under the *Land Act 1994* or which otherwise comprises Crown land; or

- 4.1.4.2 any lot upon which the Sailing Club use is effected; or
 - 4.1.4.3 any area under or part of which is under the high water mark, dedicated as road, parkland or reserve for public use, benefit or utility or any area owned by the provider of utility services; or
 - 4.1.4.4 any area comprised in land vested in the Townsville Port Authority by Deed of grant in trust.
- 4.1.5 In any development application for a Site an applicant must—
- 4.1.5.1 provide evidence of satisfaction of any applicable State Code, incorporating the Design Provisions which applies to that Site; or
 - 4.1.5.2 in the event no applicable State Code exists, include in its supporting information, a draft code for the Design Provisions prepared to the satisfaction of the State.
- 4.1.6 The community management statement for the scheme containing the lots comprised in the Site or the principal scheme, where the Site is or is proposed to comprise scheme land for a subsidiary community titles scheme must, when endorsed by the local government—
- 4.1.6.1 incorporate an Architectural and Landscape Code that reflects and applies the Code prepared under clause 4.1.5 for the site; and
 - 4.1.6.2 contain provisions that require local government consent to any change to the Architectural and Landscaping Code.

PART C — THE SCL SCHEME CODE

5 GENERAL

- 5.1 This SCL Scheme Code is comprised of—
- 5.1.1 overall outcomes for the SCL Scheme Area; and
 - 5.1.2 specific outcomes for each Sector within the SCL Scheme Area; and
 - 5.1.3 Tables of Assessments; and
 - 5.1.4 other specific outcomes and both mandatory solutions and probable solutions for various types of development.

6 COMPLIANCE WITH THE SCL CODE

- 6.1 Development that is—
- 6.1.1 consistent with the overall outcomes for the SCL Area; and
 - 6.1.2 consistent with the specific outcomes for the Sector in which the development is located; and
 - 6.1.3 complies with the Applicable Codes as identified within the Table of Assessment for the Sector in which the development is located;
- complies with this SCL Scheme Code.
- 6.2 The following defined uses as defined by City Plan 2005 are considered inconsistent with the SCL Scheme Area and, in particular, are considered inconsistent with the overall outcomes for the SCL Scheme Area and the specific outcomes for the Sectors—

Agriculture, Animal Husbandry, Aquaculture, Car Washing Station, Caravan Park, Car Park, Commercial Animal Keeping, Community Residence, Educational Establishment, Extractive Industry, Funeral Directors Premises, Garden Centre, General Industry, Hospital, Institutional Residence, Intensive Animal Husbandry, Landscape Supplies, Motel, Outdoor Recreation,

Retirement Village, Roadside Stall, Rural Services Industry, Sales or Hire Yard, Service Industry, Service Station, Showroom, Stable, Storage or Contractor's Yard, Transport Depot, Vehicle Repair Premises, Warehouse.

7 OVERALL OUTCOMES OF SCL SCHEME AREA

Development is to be consistent with the overall outcomes for the SCL Scheme Area as follows—

- 7.1 creates a vital, mixed use and highly urbane environment focused on waterfront access and activities;
- 7.2 development respects the highly visible nature of the SCL Scheme Area and provides a built form that interacts positively with—
 - 7.2.1 existing development in the locality, particularly the Breakwater Island Casino-Hotel Complex and the Entertainment Centre, as the pre-eminent casino/gaming entertainment facility in Townsville; and
 - 7.2.2 The Strand and Anzac Park public open space; and
 - 7.2.3 the Marina.
- 7.3 encourages residential development design within the SCL Scheme Area that protects from the impacts on amenity from the Port of Townsville by satisfaction of any applicable State Code (or draft Code) taking into account the Design Provisions;
- 7.4 establishes a scale of development which respects the planned intent of development overall within this SCL Scheme and the character of the Marina waterfront;
- 7.5 provide for a comprehensive development that includes the following elements—
 - 7.5.1 high quality residential buildings in a variety of built forms and densities;
 - 7.5.2 public open spaces, landscaping and pedestrian circulation;
 - 7.5.3 access to waterfront;

- 7.5.4 facilities to support the existing marina;
- 7.5.5 lot sizes that incorporate landscaping and visual buffers for individual uses;
- 7.6 development must provide all necessary residential, commercial and visitor carparking required and not rely upon any on-street or public carparking areas.

8 DEVELOPMENT SECTOR OUTCOMES

The SCL Scheme Area has been divided into three (3) Sectors (Marina, Dwelling House and Multiple Dwelling) so each can carefully be developed with specific requirements to protect the overall amenity of the SCL Scheme Area.

Within each Sector, further identification of areas (as indicated with alphabetical markers on **Map 2: Area Sectors**) has also occurred where particular development outcomes for that area within a sector are sought to be achieved through this SCL Scheme.

SO1 Development is to be consistent with the specific outcomes for the Sector in which it is located in **Map 2: Area Sectors**. The Specific Outcomes for each Sector within the SCL Scheme Area are as follows—

8.1 Marina Sector

- 8.1.1 this Sector primarily accommodates the facilities associated with the operation of the Marina, including car parking for the Marina, administration facilities, ablutions and marine fuel loading facilities;
- 8.1.2 the existing administration facilities are to be relocated to a new commercial premises/office together with a small scale retail outlet;
- 8.1.3 a boat chandlery business serving the equipment, refuelling and providing requirements of craft using the marina is to be developed and may be together with a small café/restaurant. This facility may also incorporate a small shop for the convenience of visiting craft, local apartment residents and to enhance the business viability of the Chandlery;

- 8.1.4 a boat building or repair facility is not envisaged within this Sector;
- 8.1.5 public access to the Marina Basin and future western sea wall will be paramount.

8.2 **Multiple Dwelling Sector**

- 8.2.1 this Sector primarily locates a range of low- to high-density multiple dwelling residential uses with active ground levels to encourage residents and visitors to utilise ground level water frontage areas;
- 8.2.2 all residential uses must provide basement resident and visitor car parking, without relaxation;
- 8.2.3 mixed use ground floor retail, restaurants and commercial facilities are encouraged to develop an active, highly pedestrian orientated waterside path public area;
- 8.2.4 a safe, interactive outdoor environment for residents is promoted by passive surveillance, lighting and design elements;
- 8.2.5 a residential density not exceeding that indicated in the SCL Scheme Area Code is expected with actual residential density being less than envisaged in **Map 4: Plot Ratio**, after full consideration is given to location, siting, design and climatic aspects of individual developments;
- 8.2.6 the existing character and economic benefit of the Casino Complex and Entertainment Centre to the Local Government Area is to be respected;
- 8.2.7 **Area A, B and C** are intended to create a low height active vibrant entry streetscape into the internal Mariner's Parade to incorporate the continuance of Strand development and public pathways into the SCL Scheme Area;
- 8.2.8 **Area D** is to create a vibrant entry streetscape establishing as a distinctive, attractive and interesting residential development creating a visual consistency between the surrounding residential development on

Melton Hill and the Strand to the Multiple Dwelling Sector land;

8.2.9 **Area E and F** should enhance the existing internal Mariners Parade streetscape and provide public access to—

- (i) the future Western Sea Wall; and
- (ii) the Marina Basin;

as envisaged by **Map 5: Greenspace and Pathways**;

8.2.10 **Area K** is to be an ‘iconic’ slim building of a maximum height as allowed by **Map 3: Building Heights** as an entry statement into the Marina Basin.

8.3 Dwelling House Sector

8.3.1 accommodates low-density individual Dwelling Houses;

8.3.2 most lots will have access to separate berths within the Marina;

8.3.3 **Area G** is restricted in height to maintain the visual outlook from the Mariner's North development, and envisage larger traditional size allotments;

8.3.4 **Area H** envisages reconfiguration into small lots for *terrace* style Dwelling Houses where some party walls are encouraged;

8.3.5 each Dwelling House is to be set in a landscaped private allotment and includes car accommodation on site;

8.3.6 siting and design of each Dwelling House respects the design, privacy and amenity of its neighbours and takes maximum advantage of its water frontage or marina outlook;

8.3.7 public access to the waterfront in front of this Sector is not encouraged.

PART D—ASSESSMENT CATEGORIES FOR SECTORS

9 ASSESSMENT CATEGORIES

- 9.1 The Assessment Categories are identified for development in each Sector in Column 1 of Tables 1 to 3 as follows—
- 9.1.1 Tables 1A–3A—Making a Material Change of Use listed in Column 2; and
 - 9.1.2 Tables 1B–3B—Other Development listed in Column 2, including—
 - 9.1.2.1 carrying out building works not associated with material change of use; and
 - 9.1.2.2 carrying out operational works for excavation or filling; and
 - 9.1.2.3 reconfiguring a lot; and
 - 9.1.2.4 carrying out operational works for reconfiguring a lot.
- 9.2 The relevant assessment criteria in each Sector are referred to in Column 3 of Tables 1A and 1B – 3A and 3B.
- 9.2.1 For self assessable development, solutions in Applicable Codes should be taken as mandatory solutions for that development. Self assessable development that does not comply with any other probable solution identified in a City Plan 2005 Code listed in Column 3 is taken to require code assessment. However, where self assessable development does not comply with the SCL Scheme Area Code: Schedule A it requires impact assessment.
 - 9.2.2 For code assessable development, solutions in the SCL Scheme Area Code Schedule A are mandatory solutions for that development. Any probable solutions identified in brackets for codes contained within City Plan 2005 and identified within Column 3 are mandatory. Code assessable development that does not comply with the SCL Scheme Area Code and those identified mandatory solutions for City Plan 2005 Codes requires impact assessment.

TABLE 1A

ASSESSMENT CATEGORIES AND APPLICABLE CODES FOR THE MARINA SECTOR—MAKING A MATERIAL CHANGE OF USE

| COLUMN 1 | COLUMN 2 | COLUMN 3 |
|----------------------------|---|---|
| | DEFINED USE | APPLICABLE CODES ¹ |
| EXEMPT | Parkland Local Utility | |
| SELF ASSESSMENT | All solutions in identified codes are mandatory for self assessable uses. Self assessable uses require impact assessment if the applicable solutions are not complied with. | |
| | | All self assessable uses: SCL Scheme Area Code District Code No.1 (only S06 to S020) Landscaping Code Parking and Access Code works Code AND |
| | Marina Facilities | Minor Centres Code |
| | Minor or Temporary Telecommunications Facility | Telecommunications Facility Code (section 4) |
| | Office (Where only minor building work is required) | Minor Centres Code |
| | Shop (Where only minor building work is required) | Minor Centres Codes |

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2006

| | | |
|----------------------------|--|--|
| CODE ASSESSMENT | The mandatory solutions in the SCL Scheme Area Code—Schedule A and any probable solutions for specific outcomes identified in brackets for any Code contained in City Plan 2005 are mandatory for code assessable uses. Code assessable uses require impact assessment if the mandatory solutions are not complied with. | |
| | | All code assessable uses: SCL Scheme Area Code District Code No.1 (only S06 to S020) Landscaping Code Parking and Access Code Works Code AND |
| | Caretaker's Residence | Caretaker's Residence Code |
| | Office (where building work is required) | Minor Centres Code |
| | Restaurant (where building works is required) | Minor Centres Code |
| | Shop (where building work is required) | Minor Centres Code |

1 Codes listed are as identified in City Plan 2005 except for the SCL Scheme Area Code in this SCL Scheme

| | | |
|------------------------------|--|--|
| IMPACT ASSESSMENT | All other uses except for a road; and Any use specified in this Table 1A that does not comply with the SCL Scheme Area Code—Schedule A. | |
|------------------------------|--|--|

TABLE 1B

**ASSESSMENT CATEGORIES AND APPLICABLE CODES FOR
MARINA SECTOR — OTHER DEVELOPMENT**

| COLUMN 1 | COLUMN 2 | COLUMN 3 |
|------------------------|---|-----------------------------------|
| | TYPE OF DEVELOPMENT | APPLICABLE CODES |
| EXEMPT | Carrying out building work being demolition or removal of a building | |
| | Any other development not listed below | |
| SELF ASSESSMENT | All solutions in identified codes are mandatory for self assessable uses. Self assessable uses require code assessment if the applicable solutions are not complied with. | |
| | Operational works being excavating or filling premises by >0.3m and <1.0m in depth (where more than 1.5m from a boundary) or >10m ³ and <50m ³ in volume | Works Code (section 2, PS3. only) |
| | Carrying out building work other than demolition or removal, where not associated with a material change of use | SCL Scheme Code—Schedule A |

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| | | |
|------------------------------|--|--|
| SELF ASSESSMENT | All solutions in identified codes are mandatory for self assessable uses. Self assessable uses require impact assessment if the applicable solutions are not complied with. | |
| | | All self assessable uses: SCL Scheme Area Code District Code No.1 (only S06 to S020) AND |
| | Display Home | Detached House Code |
| | Dwelling House | Detached House Code |
| | Home Based Business | Home Based Business Code |
| | Minor or Temporary Telecommunications Facility | Telecommunications Facility Code (section 4) |
| CODE ASSESSMENT | The mandatory solutions in the SCL Scheme Area Code—Schedule A and any probable solutions for specific outcomes identified in brackets for any Code contained in City Plan 2005 are mandatory for code assessable uses. Code assessable uses require impact assessment if the mandatory solutions are not complied with. | |
| | | All code assessable uses: SCL Scheme Area Code District Code No.1 (only S06 to S020) Landscaping Code Parking and Access Code Works Code AND |
| | Caretaker's Residence | Caretaker's Residence Code |
| IMPACT ASSESSMENT | All other uses except for a road Any use specified within this Table 2A that does not comply with the SCL Scheme Area Code | Minor Centres Code |

1 Codes listed are as identified in City Plan 2005 except for the SCL Scheme Area Code in this SCL Scheme

TABLE 2B

**ASSESSMENT CATEGORIES AND APPLICABLE CODES FOR
DWELLING HOUSE SECTOR — OTHER DEVELOPMENT**

| COLUMN 1 | COLUMN 2 | COLUMN 3 |
|------------------------|---|---|
| | TYPE OF DEVELOPMENT | APPLICABLE CODES |
| EXEMPT | <p>Carrying out building work being demolition or removal of a building</p> <p>Any other development not listed below</p> | |
| SELF ASSESSMENT | <p>All solutions in identified codes are mandatory for self assessable uses. Self assessable uses require code assessment if the applicable solutions are not complied with.</p> <p>Operational works being excavating or filling premises by >0.3m and <1.0m in depth (where more than 1.5m from a boundary) or >10m³ and <50m³ in volume</p> <p>Carrying out building work other than demolition or removal, where not associated with a material change of use</p> | <p>Works Code (section 2, PS3.1 only)</p> <p>SCL Scheme Code—Schedule A</p> |
| CODE ASSESSMENT | <p>Operational works being excavating or filling premises by >1.0m in depth or >50m³ in volume or excavating or filling by >0.3m in depth within 1.5m of a boundary</p> <p>Operational work for reconfiguring a lot where the reconfiguring is assessable</p> <p>Reconfiguring a lot</p> | <p>Works Code</p> <p>Works Code</p> <p>Reconfiguring Lots Code</p> |

MULTIPLE DWELLING SECTOR

TABLE 3A

ASSESSMENT CATEGORIES AND APPLICABLE CODES FOR MULTIPLE DWELLING SECTOR—MATERIAL CHANGE OF USE

| COLUMN 1 | COLUMN 2 | COLUMN 3 |
|------------------------|---|---|
| | DEFINED USE | APPLICABLE CODES ¹ |
| EXEMPT | Parkland Local Utility Temporary Car Park (only on Areas I, J, K, L, M) | |
| SELF ASSESSMENT | All solutions in identified codes are mandatory for self assessable uses. Self assessable uses require impact assessment if the applicable solutions are not complied with. | |
| | | All self assessable uses: SCL Scheme Area Code District Code No.1 (only S06 to S020) AND |
| | Display Home (except for Area A) | Detached House Code |
| | Dwelling House (except for Area A) | Detached House Code |
| | Home Based Business (except for Area A) | Home Based Business Code |
| | Minor or Temporary Telecommunications Facility | Telecommunications Facility Code (section 4) |

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|------------------------------|--|--|
| CODE ASSESSMENT | The mandatory solutions in the SCL Scheme Area Code—Schedule A and any probable solutions for specific outcomes identified in brackets for any Code contained in City Plan 2005 are mandatory for code assessable uses. Code assessable uses require impact assessment if the mandatory solutions are not complied with. | |
| | | All code assessable uses: SCL Scheme Area Code District Code No.1 (only S06 to S020) Landscaping Code Parking and Access Code Works Code AND |
| | Catering Shop (except Area A) | Caretaker's Residence Code |
| | Child Care Centre (except Area A) | Child Care Centre Code |
| | Dual Occupancy (except Area A) | Dual Occupancy Code |
| | Indoor Recreation (only on Areas A, B or C) | Minor Centres Code |
| | Major Utility (except Area A) | Minor Centres Code |
| | Multiple Dwellings (except Area A) | Multiple Dwelling Code |
| | Shop (where under 600sqm gross floor area) | Minor Centres Code |
| | Restaurant | Minor Centres Code |
| IMPACT ASSESSMENT | All other uses except for a road; and Any use identified in this Table 3A that does not comply with the SCL Scheme Area Code — Schedule A | |

1 Codes listed are as identified in City Plan 2005 except for the SCL Scheme Area Code in this SCL Scheme

TABLE 3B

**ASSESSMENT CATEGORIES AND APPLICABLE CODES FOR
MULTIPLE DWELLING SECTOR — OTHER DEVELOPMENT**

| COLUMN 1 | COLUMN 2 | COLUMN 3 |
|------------------------|--|---|
| | TYPE OF DEVELOPMENT | APPLICABLE CODES ¹ |
| EXEMPT | Carrying out building work being demolition or removal of a building | |
| | Any other development not listed below | |
| SELF ASSESSMENT | All solutions in identified codes are mandatory for self assessable uses. Self assessable uses require code assessment if the applicable solutions are not complied with. | |
| | <p>Operational works being excavating or filling premises by >0.3m and <1.0m in depth (where more than 1.5m from a boundary) or >10m³ and <50m³ in volume</p> <p>Carrying out building work other than demolition or removal, where not associated with a material change of use</p> | <p>Works Code (section 2, PS3.1 only)</p> <p>SCL Scheme Code—Schedule A</p> |

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| | | |
|----------------------------|---|-------------------------|
| CODE ASSESSMENT | Operational works being excavating or filling premises by >1.0m in depth or >50m ³ in volume or excavating or filling by >0.3m in depth within 1.5m of a boundary | Works Code |
| | Operational work for reconfiguring a lot where the reconfiguring is assessable | Works Code |
| | Reconfiguring a lot | Reconfiguring Lots Code |

-
- 1 Codes listed are as identified in City Plan 2005 except for the SCL Scheme Area Code in this SCL Scheme

PART E—MANDATORY REQUIREMENTS OF THE SCL SCHEME CODE

S02 All development within this SCL Scheme Area must comply with the SCL Scheme Area Code Schedule A

SCL Scheme Area Code Schedule A:

| Specific Outcomes | Mandatory Solutions |
|--|---|
| Building Heights | |
| SO3 The height of buildings or structures is consistent with the desired character and amenity of the SCL Scheme Area | MS3 The building height or structure does not exceed the maximum number of storeys indicated in Map 3—Building Heights ¹ excluding features providing architectural interest and which do not create additional gross floor area such as clock towers, observation platforms, flagpoles and shade structures |
| Plot Ratio | |
| SO4 Residential development is of a density consistent with the character intended for the SCL Scheme Area and provides for a high level of residential amenity | MS4 The maximum plot ratio for residential development other than Dwelling Houses must not exceed that identified in Map 4—Plot Ratios |
| Open Space | |
| SO5 Development provides efficient public open space, pedestrian/bicycle pathway and access to the Marina | MS5 Pedestrian, bicycle and public open space to achieve the intent of public access routes identified in Map 5—Greenspace and Pathways must be provided |

| Marina Facilities Carparking | |
|---|--|
| SO6 Adequate parking must be provided for any Marina Facility use | MS6 Parking spaces are provided at a minimum rate of one (1) carpark for each four (4) marina berths |
| Lot Size | |
| SO7 Lot sizes and dimensions are consistent with the desired character of the Sector in which the lot is located and with the environmental qualities of the site, and enable the provision of adequate— <ul style="list-style-type: none"> • open space and buffering; • ventilation and sunlight; • privacy; • car park and access; • infrastructure services; and • other relevant on-site requirements | MS7 Lot sizes and dimensions are consistent with Table 4, Column 2 |
| Setbacks | |
| SO8 The scale, bulk and location of a building on a site does not adversely impact on streetscape amenity | MS8 The setbacks of buildings from street frontages and boundaries is consistent with Table 4, Column 3 |

TABLE 4: LOT SIZES AND SETBACKS

| Column 1 | Column 2 | Column 3 |
|----------------------|------------------|---|
| Sector | Minimum Lot Size | Setbacks |
| Marina Sector | | <p>Along the Marina Waterfront—</p> <ul style="list-style-type: none"> <li data-bbox="698 524 1127 742">(i) buildings are set back a minimum of five (5) metres along any side boundary to permit visual and pedestrian access corridors to the waterfront; <li data-bbox="698 784 1127 928">(ii) buildings are setback a minimum of two (2) metres from the paved area along the waterfront. |

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|-------------------------------------|--|--|
| <p>Dwelling House Sector</p> | <p>In Area G: 700sqm In Area H: 300sqm</p> | <p>Front Boundary (to road/access point) In Area G: 6 metres In Area H: in alignment with the adjoining and dominant setback in the locality.</p> <p>Rear Boundary (to waterfront) 4 metres</p> <p>Side Boundary</p> <ul style="list-style-type: none"> • Where two (2) buildings on adjoining lots share a party wall at a side boundary— <ul style="list-style-type: none"> o 0 metres; only on one side; and o for second side boundary, as below for detached. • Where detached— <ol style="list-style-type: none"> (a) 1.5 metres if the building is 4.5 metres high or less; or (b) 2.0 metres if the building is greater than 4.5 metres high and does not exceed 7.5 metres in height; or (c) 2.0 metres plus 0.5 metres for every 3.0 metres or part thereof by which the building height exceeds 7.5 metres. |
|-------------------------------------|--|--|

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| | | |
|--|------------------|---|
| <p>Multiple Dwelling Sector</p> | <p>1,000 sqm</p> | <p>Front Setbacks (to access road) are aligned with the adjoining and dominant setback in the locality; or</p> <ul style="list-style-type: none"> (a) Ground to 2nd storey: 2 metres (b) 3rd storey and above: 4 metres <p>Side Boundary</p> <ul style="list-style-type: none"> (a) Buildings are set back a minimum of— <ul style="list-style-type: none"> (i) 5 metres along any side boundary to permit visual and pedestrian access corridors to the waterfront; UNLESS (ii) the side boundary adjoins a permanent area of public access (such as a road or park) where the width of that public area exceeds 6 metres, then 2 metres; or (iii) if a detached house— <ul style="list-style-type: none"> i. 1.5 metres if the building is 4.5 metres high or less; or ii. 2 metres if the building is greater than 4.5 metres high and does not exceed 7.5 metres in height; or iii. 2 metres plus 0.5 metres for every 3 metres of part thereof by which the building high exceeds 7.5 metres; or |
|--|------------------|---|

| | | |
|--|--|---|
| | | <p>(iv) 1 metre from any driveway located on the site; and</p> <p>Rear Boundary (waterfront, where adjoining)</p> <p>(a) if a detached house, as for side boundary; or</p> <p>(b) where adjoining waterside pathways required by SO3, 2m from the public pathway; or</p> <p>(c) otherwise 3 metres.</p> |
|--|--|---|

10. DEFINITIONS

Terms used in this SCL Scheme have the meanings defined by the City Plan 2005 or the *Integrated Planning Act 1997*, unless otherwise defined as below—

- 10.1 **“Amenity Impacts”** means impacts on amenity from the lawful operation of the Port of Townsville including noise, dust (air particle emissions), light, odour, electromagnetic interference and other disturbances;
- 10.2 **“City Plan 2005”** includes all planning instruments for the Townsville Local Government Area as amended (or renamed);
- 10.3 **“Council”** means the Townsville City Council;
- 10.4 **“Design Provisions”** means provisions intended to minimise Amenity Impacts that relate to—
- 10.4.1 orientation of improvements on lots in any community title scheme;
- 10.4.2 materials used in the construction of improvements, including buildings;
- 10.4.3 attenuation stipulations, including in respect of orientation, materials or location of living and sleeping areas appropriately in buildings;

- 10.4.4 location and choice of facilities and services associated with improvements on lots in the community title scheme;
- 10.5 **“ Dwelling House ”** means a Detached House as defined and utilised within City Plan 2005 or any dwelling unit on an independent lot with a single party wall (but excluding a Multiple Dwelling);
- 10.6 **“ Local Government Area ”** means the Local Government Area of Townsville;
- 10.7 **“ Marina Facilities ”** means administrative offices, boat brokerage and charter facilities, chandlery, boat storage, tackle and bait shop, fuelling provisions, marina associated facilities and marina car parking;
- 10.8 **“ SCL Scheme Area ”** means the area identified as the SCL Scheme Area in **Map 1: SCL Scheme Area**;
- 10.9 **“ SCL Scheme Code ”** means Part C, D and E of this SCL Scheme;
- 10.10 **“ Site ”** means any land on which development is carried out or is proposed to be carried out whether such land comprises—
- 10.10.1 the whole or any one lot, or parcel of land; or
 - 10.10.2 only part of one lot; or
 - 10.10.3 more than one lot where each lot is contiguous with the other or another lot; or
 - 10.10.4 conjointly used lands which are not adjoining lands;
- 10.11 **“ Temporary Car Park ”** means the temporary parking of cars on vacant land (prior to construction commencing of any use approved under this SCL Scheme) for patrons of the Entertainment Centre.

11.

MAPS

MAP 1 : SCL Scheme Area

MAP 2 : Area Sectors

MAP 3 : Building Heights

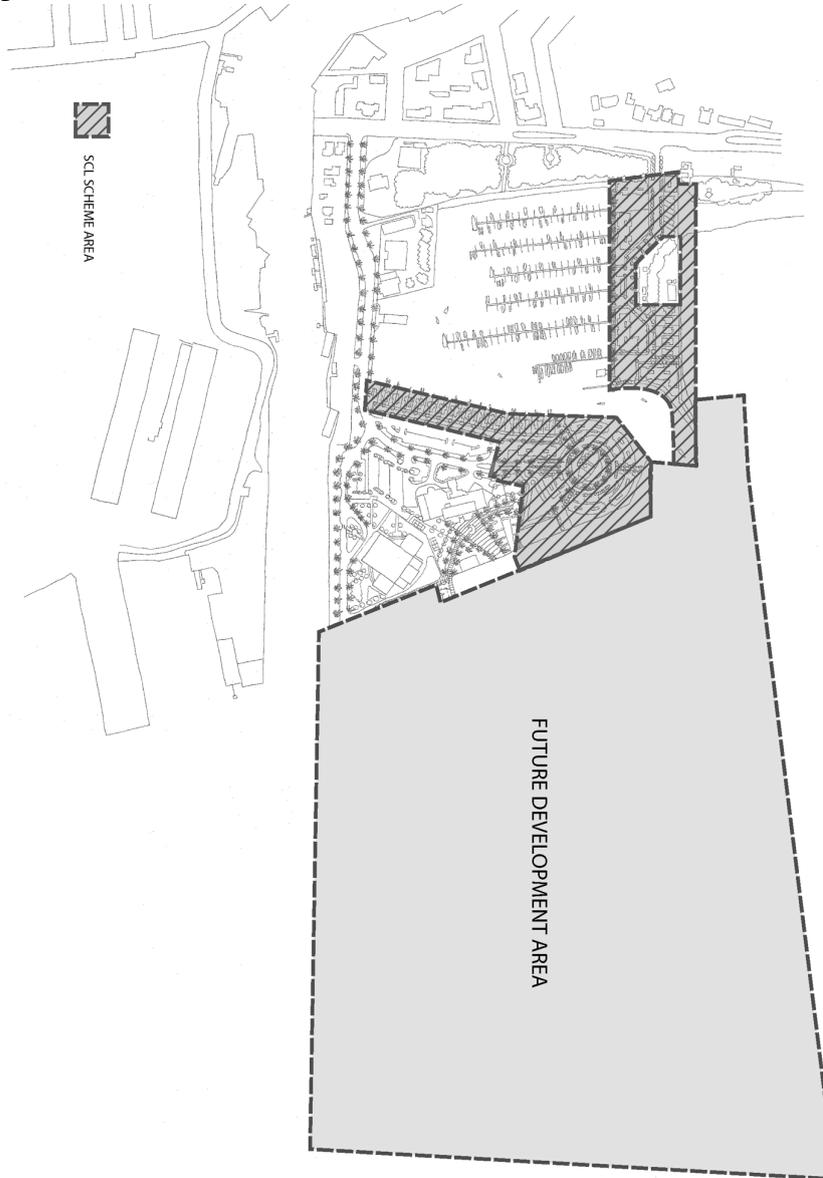
MAP 4 : Plot Ratio

MAP 5 : Greenspace and Pathways

MAP 6 : Reconfiguration Concept

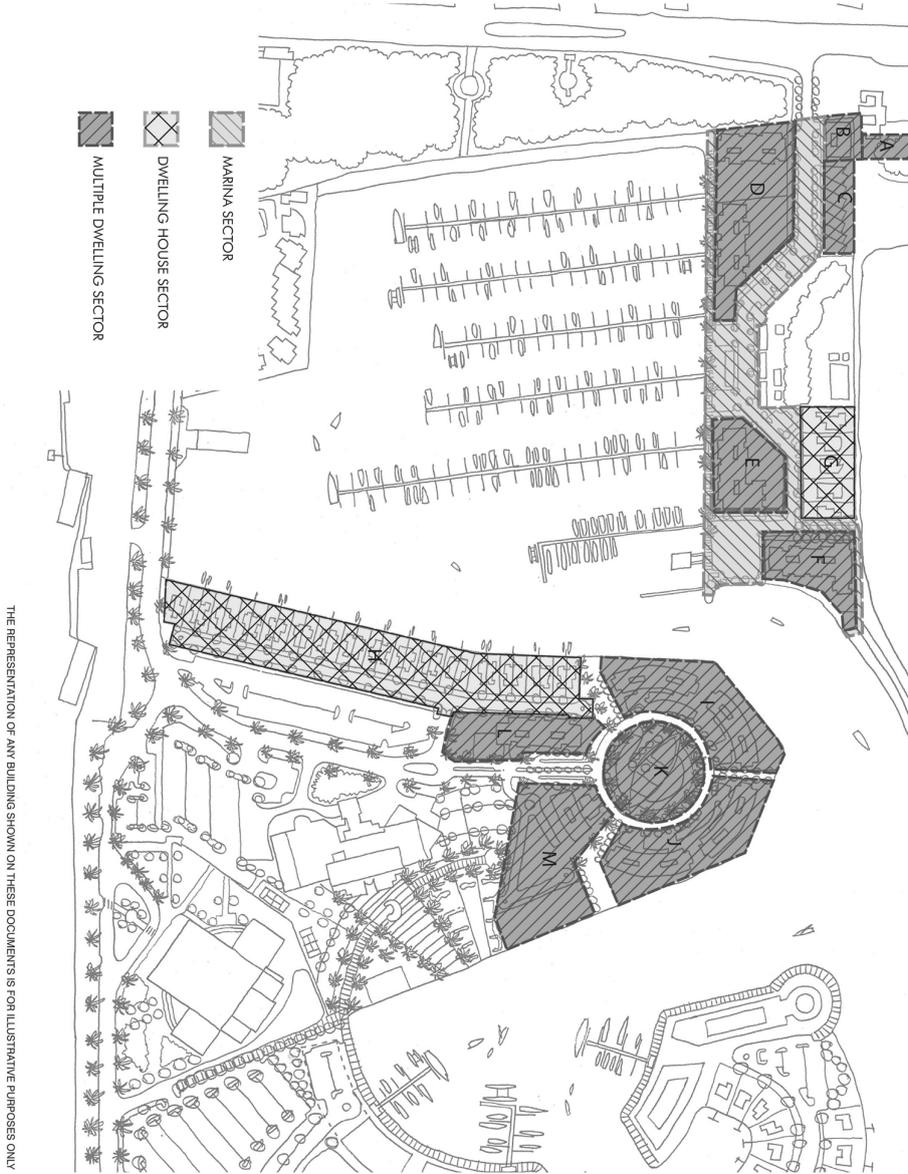
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2006

Map 1

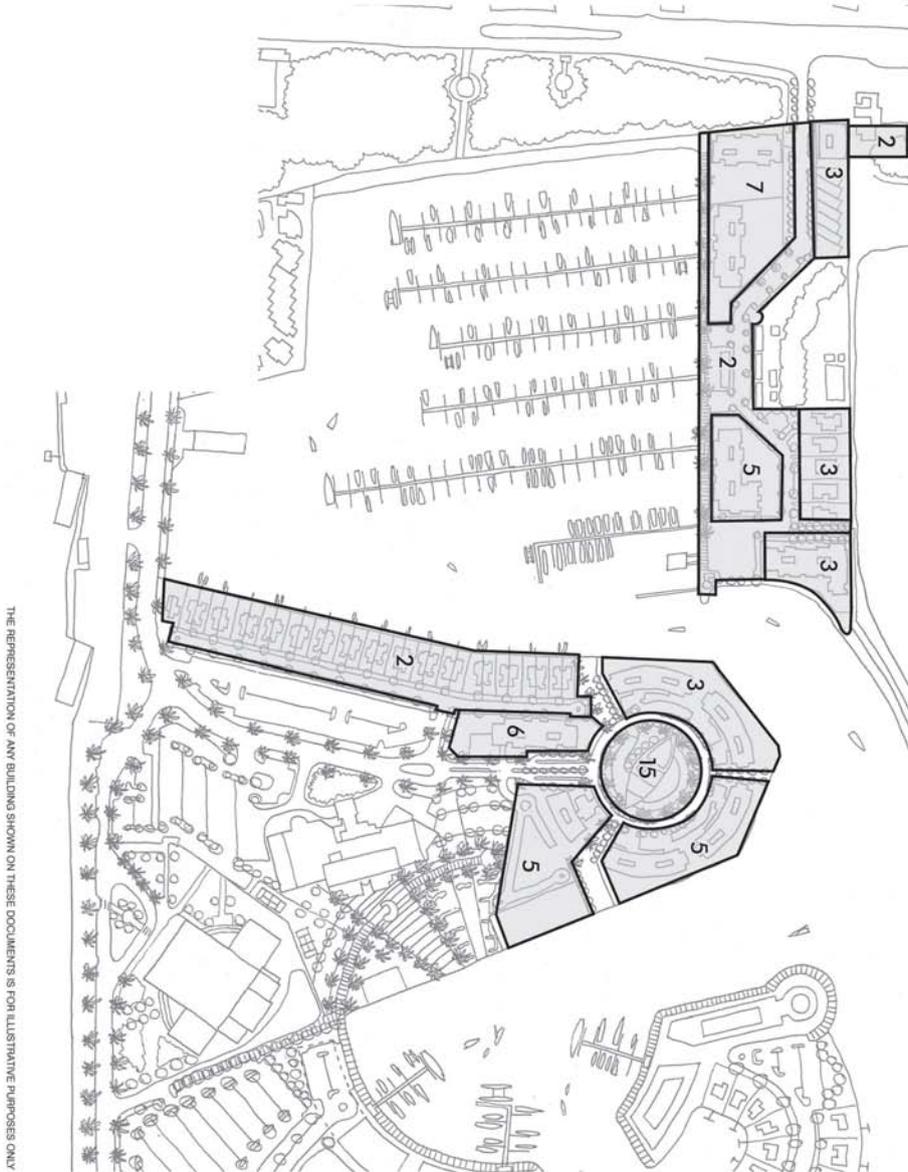


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Map 2

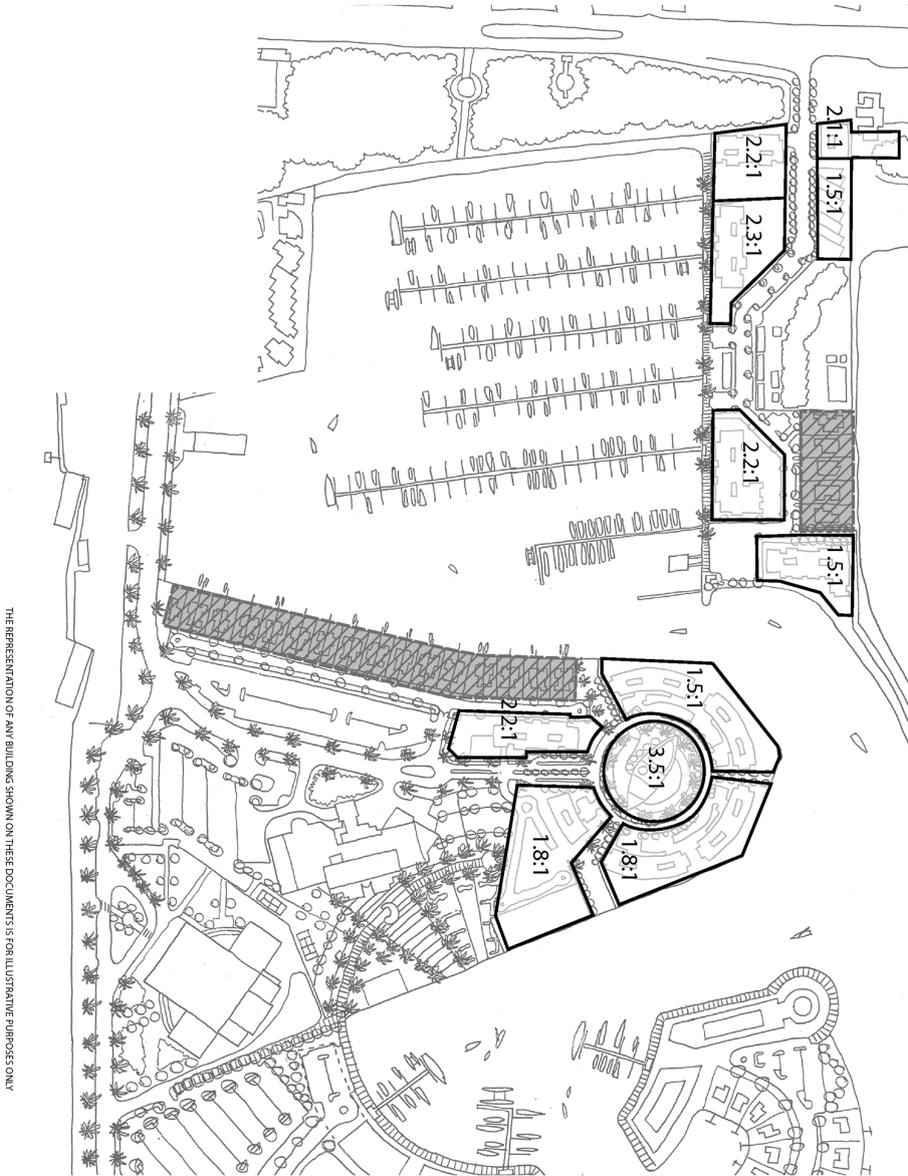


Map 3



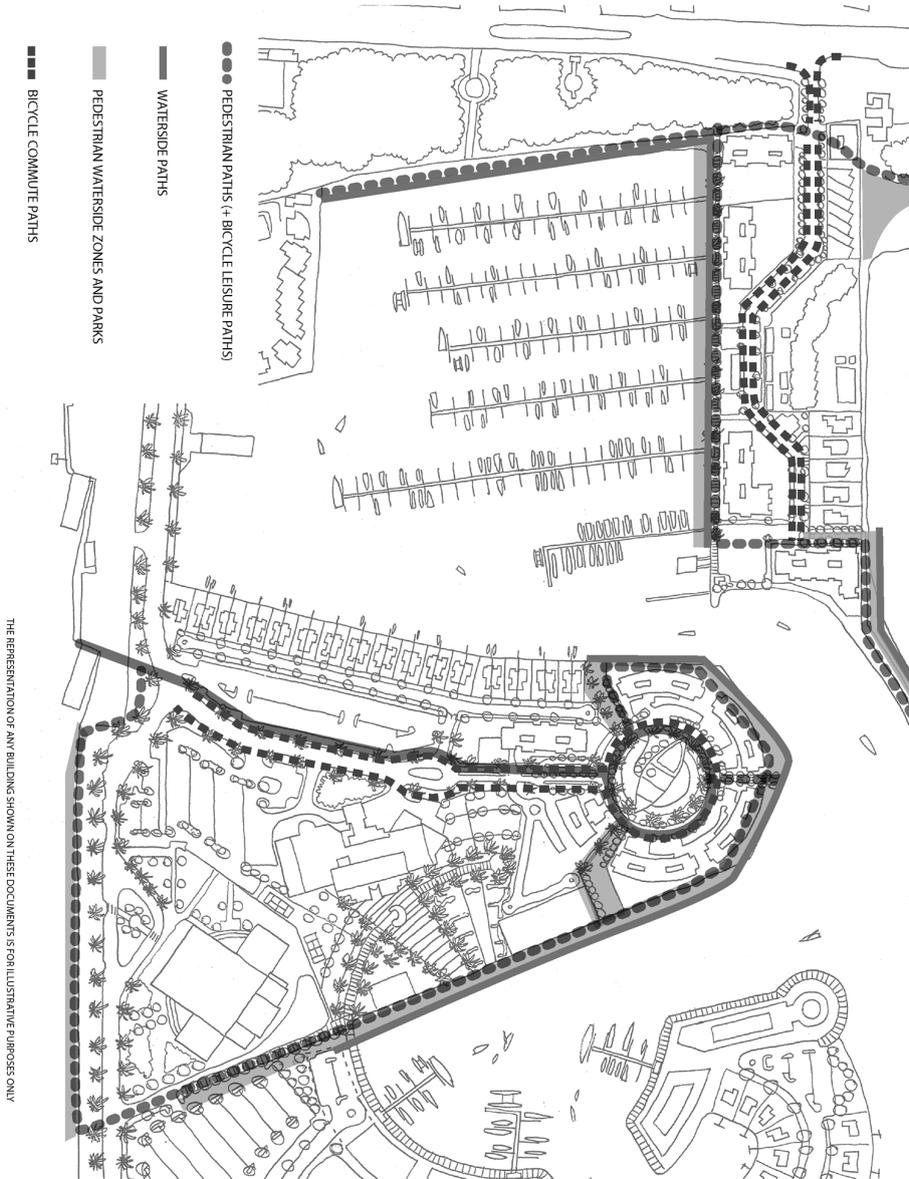
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2006

Map 4



| | | | | | | | | | | | | |
|-------------|---------------------------|--|--|-------------|--------|-------|-----|------|--------------|-------------|---------|--|
| | MAP 4 PLOT RATIO | | <table border="0"> <tr><td>PROJECT NO.</td><td>395035</td></tr> <tr><td>SCALE</td><td>NTS</td></tr> <tr><td>DATE</td><td>OCTOBER 2005</td></tr> <tr><td>DRAWING NO.</td><td>ADR 256</td></tr> </table> | PROJECT NO. | 395035 | SCALE | NTS | DATE | OCTOBER 2005 | DRAWING NO. | ADR 256 | <p><small>© 2005 Buchani Group, Inc. All rights reserved. No part of this document may be reproduced without the prior written permission of Buchani Group, Inc.</small></p> |
| PROJECT NO. | 395035 | | | | | | | | | | | |
| SCALE | NTS | | | | | | | | | | | |
| DATE | OCTOBER 2005 | | | | | | | | | | | |
| DRAWING NO. | ADR 256 | | | | | | | | | | | |

Map 5



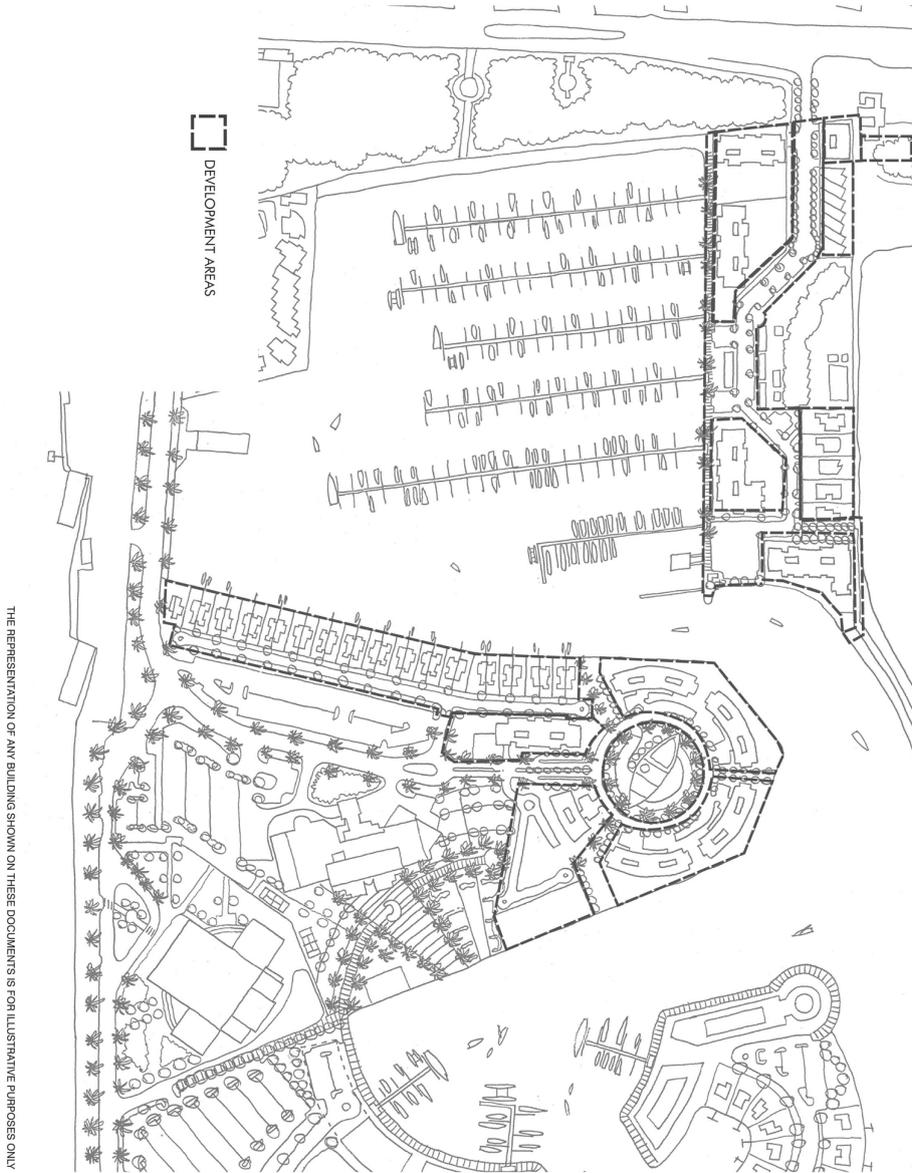
THE REPRESENTATION OF ANY BUILDING SHOWN ON THESE DOCUMENTS IS FOR ILLUSTRATIVE PURPOSES ONLY

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|--|--|--|---------------------|--|
| | MAP 5 GREENSPACE AND PATHWAYS | | PROJECT NO. 399/05 | |
| | | | SCALE N.T.S. | |
| | | | DATE OCTOBER 2005 | |
| | | | DRAWING NO. ASK 207 | |

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2006

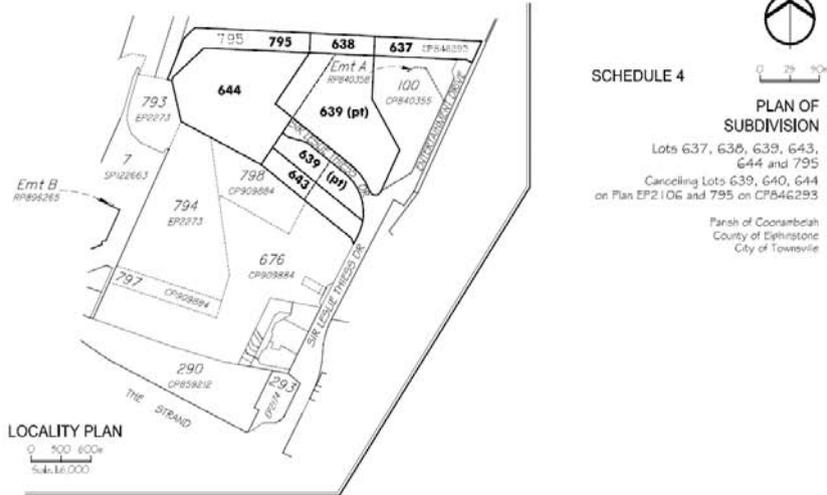
Map 6



| | | | | |
|--|---|--|---|---|
| | <p>MAP 6 RECONFIGURATION CONCEPT</p> | | <p>PROJECT NO. 339203 SCALE N.E.S. DATE OCTOBER 2005 DRAWING NO. ADK 254</p> | <p>BUCHANAN</p> <p><small>Plan, Architect, Survey, 2005. Copyright © by Buchanan Group, Inc. All rights reserved. No part of this drawing may be reproduced without the written permission of Buchanan Group, Inc.</small></p> |
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SCHEDULE 4—PLAN OF SUBDIVISION



SCHEDULE 4



PLAN OF SUBDIVISION
Lots 637, 638, 639, 643, 644 and 795
Cancelling Lots 639, 640, 644 on Plan EP2106 and 795 on CP846293
Parish of Coonambrah
County of Eppingstone
City of Townsville



brozier mcm
surveying town planning
project management mapping and GIS

Date: 13th Nov 2006 | Job No: 666115-2 | Plan No: 6664288 | Scale: 1:2,000 @ A3

This plan is conceptual and for decision purposes only. All areas, dimensions and land uses are preliminary, subject to re-evaluation, survey, engineering, and Local Authority and Agency approval.

Part 3

Repeal of regulation

8 Repeal

The Breakwater Island Casino Agreement Variation Regulation 1997 SL No. 11 is repealed.