

DATE:

BETWEEN

**KINGBOROUGH COUNCIL**  
(the Planning Authority)

AND

(the Owner)

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**DEED - PART 5 AGREEMENT**

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# Deed - Part 5 Agreement

*Land Use Planning and Approvals Act 1993* (“the Act”)

DATE:

PARTIES:

**KINGBOROUGH COUNCIL** a body corporate incorporated under the provisions of the *Local Government Act 1993*, of 15 Channel Highway, Kingston in Tasmania.

AND

(the Owner).

## RECITALS:

- A. The Owner is the registered proprietor of an estate in fee simple of the Land.
- B. Kingborough Council is the planning authority under the Act for the purposes of the Planning Scheme.
- C. The Owner has requested the consent of the General Manager of the Kingborough Council to permit the Prescribed Structure to be built on part of the Land over which an easement exists in favour of the Kingborough Council, or an easement exists for public stormwater systems, or within one metre laterally from the outer edge of any public stormwater systems of the Kingborough Council and the General Manager is prepared to consent to the Owner’s request subject to the Owner entering into an agreement with the Kingborough Council on the terms and conditions contained in this deed.
- D. The Owner acknowledges that:
  - (a) the Land is subject to the Planning Scheme;
  - (b) this deed is being entered into pursuant to Part 5 of the Act;
  - (c) the Kingborough Council will apply to register this deed pursuant to the provisions of the Act and the *Land Titles Act 1980* and that the effect of registration will be as set out by Section 79 of the Act; and
  - (d) the consent of the Kingborough Council being issued under Section 13(1) of the *Urban Drainage Act 2013* for the building of the Prescribed Structure is conditional on this deed being registered on the title to the Land.

## **OPERATIVE PROVISIONS:**

### **1. Interpretation**

#### **1.1 Definitions**

In this deed, unless the contrary intention appears:

**Act** means *Land Use Planning and Approvals Act 1993*.

**Land** means that land as described in the schedule hereto.

**Owner** means the person or persons described in the schedule hereto.

**Planning Scheme** means the *Kingborough Interim Planning Scheme 2015*.

**Prescribed Structure** means the structure described in the schedule hereto.

#### **1.2 Rules for interpreting this deed**

In this deed, unless the contrary intention appears:

- (a) one gender includes the other;
- (b) the singular number include the plural and vice versa;
- (c) a reference to a person includes a corporation, unincorporated body or authority;
- (d) clause headings are inserted for convenience only and will be ignored in the interpretation of this deed;
- (e) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- (f) the schedule and annexures to this deed form part of this deed; and
- (g) a party includes its successors, assignors, executors and administrators.

### **2. Confirmation of recitals**

Each of the parties to this deed confirms the recitals that relate to that party.

### **3. Covenants by Owner**

In consideration of the General Manager of the Kingborough Council granting permission for the Owner to build the Prescribed Structure on, over or adjacent to the said easement, the Owner hereby covenants with the Kingborough Council:

- (a) To at all times allow Kingborough Council access to the Land for the purpose of inspecting, repairing, maintaining or replacing any infrastructure on the Land that is the responsibility of the Kingborough Council.
- (b) To indemnify and keep indemnified the Kingborough Council against any claims, costs, expenses however arising as a result of:
  - (ii) the Owner's building the Prescribed Structure on the land in respect of which the consent of the General Manager of the Kingborough Council was obtained;
  - (iii) the reduction or hinderance of access to Kingborough Council infrastructure on the Land; and
  - (iv) the Kingborough Council performing any operation, maintenance or replacement on or to the infrastructure of the Kingborough Council for which Council has a responsibility and is on the Land.
- (c) That the Prescribed Structure to be constructed on the Land must be constructed in such a manner so as to be capable of being removed if access to the easement is required by the Kingborough Council.
- (d) That the Owner will on written demand to do so from the Kingborough Council remove the Prescribed Structure at their own costs in the event that the Kingborough Council requires access to the easement to carry out works on the infrastructure for which Kingborough Council is responsible.
- (e) The Owner agrees to be responsible for any damage caused to the easement or the infrastructure for which Kingborough Council is responsible and to make good any defects caused by the building or removal of the Prescribed Structure.
- (f) To release the Kingborough Council from and not to hold the Kingborough Council liable for any claims, costs, action or demands arising as a result of any injury to or the death of any person or loss of or damage to any property arising as a result of the building of or the existence of the Prescribed Structure or its removal on any portion of the Land provided that the Owner shall not be required to indemnify the Kingborough Council against any claims, costs, actions or demands arising as a result of the negligence of the Kingborough Council, its servants, agents or employees.
- (g) It is especially acknowledged, agreed and accepted by the Owner that notwithstanding the terms of this deed, this deed does not act to extinguish or otherwise hinder the Kingborough Council's rights under law in respect of the

drainage easement and does not amount to a modification, extinguishment or otherwise affect the validity of the existing easement.

**4. Effect of the deed upon registration**

**4.1 Covenants to run with Land**

The parties agree and declare that the obligations imposed on the Owner under this deed are intended to be registered and take effect as covenants:

- (a) the burden of which will run with the Land as if they were covenants to which Section 102(2) of the *Land Titles Act* 1980 applies; and
- (b) which shall bind the Owner and the registered proprietor or proprietors for the time being of the Land;
- (c) bind the parties pending registration of the Agreement.

**4.2 Agreement Under Section 71 of Part 5 of the Act**

The parties agree that without limiting or restricting the respective powers to enter into this deed and, in so far as it can be so treated, this deed is made pursuant to Section 71 of the Act.

**4.3 Commencement of Agreement**

This deed shall commence on the day that the deed is signed by all parties.

**5. Registration & costs**

The Owner agrees that:

- (a) an application, pursuant to section 78 of the Act shall be made by the Kingborough Council to the Recorder of Titles for the registration of this deed on the folio of the Register constituting the title to the Land (and any other land to which this deed relates); and
- (b) the Owner must bear the costs and disbursements associated with the negotiation, preparation and registration of this deed including any legal costs and other costs or disbursements incurred or to be incurred by the Kingborough Council.

**6. No fettering of the Kingborough Council's powers**

The parties acknowledge and agree that this deed does not fetter or restrict the power or discretion of the Kingborough Council in any way, including to make any decision or impose any requirements or conditions in connection with the granting of any planning approval or certification of any plans of subdivision relating to the Land or relating to any use or development of the Land.

**7. Notices**

Any notice under this deed may be served by delivering, either personally or by registered mail, to the parties.

**EXECUTION:**

Executed as a deed.

The Common Seal of the Kingborough Council was hereunto affixed in the presence of:

\_\_\_\_\_ General Manager

\_\_\_\_\_ Director Engineering Services

SIGNED SEALED AND DELIVERED by ) .....  
the Owner in the presence of:- )

Witness: .....  
Name: .....  
Address: .....  
Occupation: .....

..... as Mortgagee over the Land consents to this deed as evidenced by its execution hereunder:

Executed by .....  
in accordance with Section 127 of *The* Director  
*Corporations Act 2000* by being signed by:  
.....  
Director/Secretary

Schedule

**Land** means that land situate at .....in Tasmania  
(*address*) and more particularly described in folio of the register Volume.....  
Folio.....

**Owner** means ..... (*owners name*)

**Prescribed Structure** means

.....  
.....  
(*description of structure*)

and to be located in the position as marked on the annexed map of the land.

**Related Planning Permit**

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