

**APPENDIX B**

**AGREEMENT UNDER PART 5  
LAND USE PLANNING AND APPROVALS ACT 1993**

This **Agreement** is made on the \_\_\_\_\_ day of \_\_\_\_\_ 2019

BETWEEN: .....  
of \_\_\_\_\_ in Tasmania (“the Owner”)

-and-

KINGBOROUGH COUNCIL  
of 15 Channel Highway Kingston in Tasmania (“the Council”)

**TERMS OF AGREEMENT**

**1. OBJECTIVES**

- (a) This **Agreement** is entered into pursuant to Part 5 of the *Land Use Planning and Approvals Act 1993*.
- (b) The purpose of the **Agreement** is to protect in perpetuity the **Environmental Values** of the **Land**.
- (c) It is the intention of both parties to the **Agreement** that it will have the effect of binding all future owners as well as the current owner of the **Land**. The **Owner’s** covenants shall run with the Land as if they were covenants to which section 102(2) of the *Land Titles Act 1980* applies.
- (d) This **Agreement** is to be registered pursuant to section 78 of the *Land Use Planning and Approvals Act 1993*.

**2. LAND**

This **Agreement** applies to the **Land**, being:

the area identified on the attached Plan at **SCHEDULE A**, located at 441 Tinderbox Rd Tinderbox in the Municipality of Kingborough in Tasmania and comprising +/- 189.29 hectares.

### 3. DEFINITIONS AND INTERPRETATIONS

3.1 In this agreement unless the contrary intention appears:

- (a) “**Agreement**” means this instrument including any schedules, attachments and annexures;
- (b) “**Building Area**” means that part of the land (if any) marked “Building Area” as shown on the attached plan at **SCHEDULE A**;
- (c) “**Clearance of Native Vegetation**” means the clearing, cutting, pushing over or otherwise removing of native vegetation or the destruction of native vegetation in any way;
- (d) “**Council**” means Kingborough Council;
- (e) “**Development**” mean as defined under the *Land Use Planning and Approvals Act 1993*.
- (f) “**Environmental Values**” means all of the natural features of the **Land**, including but not limited to watercourses and their associated **Riparian Zone**, species, habitats including native trees with a diameter over 700mm at 1.5m from natural ground level, **Native Vegetation Communities** and the physical and hydrological processes that support those features;
- (g) “**Exotic Species**” means any species not native to the **Land** or its immediate surrounds and includes any genetically modified organisms;
- (h) “**Foreign Material**” means any material that is derived from outside the boundaries of the **Land** and includes effluent, rubbish, soil, gravel, mulch and compost;
- (i) “**General Manager**” means the General Manager for the time being of Kingborough Council and his/her successors in office;
- (j) “**Interference with the Natural Flow of Water**” means any diversion or capture of natural water flows and any addition to natural water flows, including the construction of dams or drains and irrigation of any kind;
- (k) “**Land**” means the land described in clause 2 of this **Agreement**;
- (l) “**Local Provenance**” means plants and plant propagules (seeds and cuttings) which are local in origin, preferably collected from within the local catchment area;
- (m) “**Native Vegetation**” means all plants, plant matter and fungi native to the **Land** or its immediate surrounds, including fallen dead wood and litter;
- (n) “**Native vegetation communities**” means vegetation communities meeting the descriptions in Kitchener, A. and Harris, S. (2013) *From Forest to Fjaeldmark: Descriptions of Tasmania’s Vegetation*. Edition 2. Department of Primary Industries, Water and Environment, excluding those vegetation communities within the categories of modified land or other natural environments;
- (o) “**Owner**” means the person or persons named at the beginning of this **Agreement** as “the Owner” and includes any successors or assignees of that person.

3.2 Nothing contained herein should be taken to mean or imply that planning approval or any other approval has been or will be granted for activities which require such approval;

3.3 A reference to the harming or taking of any wildlife includes a reference to the killing, destroying, hunting, pursuing, catching, shooting, netting, snaring or injuring that wildlife.

#### 4. GENERAL COVENANTS

In consideration of the Council as the relevant planning authority granting a planning permit for the development of the **Land** (Application number DAS-2020-13), the Owners hereby covenant with the Council as follows:

- (a) all of the **Environmental Values** on the **Land**, including native vegetation and habitat for threatened fauna species, are to be protected and must be managed by the Owner in perpetuity in accordance with this **Agreement**;
- (b) future development must be located outside the **Land**, except where necessary for the conduct of specific activities approved by the **Council** under clause 4.4 of this **Agreement**.

4.1 The **Owners** agree in relation to the **Land**:

- (a) to use best endeavours to eliminate or control established **Exotic Species** that pose a threat to the **Environmental Values** of the **Land**;
- (b) to use best endeavours to ensure that any other **Exotic Species** that pose a threat to the **Environmental Values** of the **Land** do not become established;
- (c) to observe any fire management recommendations provided by Tasmania Fire Service or **Council** and to use best endeavours to protect the **Land** from uncontrolled fire;
- (d) to establish and maintain fences where and when necessary to exclude stock or otherwise protect the **Environmental Values** of the **Land**;
- (e) to use best endeavours to ensure that the **Environmental Values** of the **Land** are protected from any external impacts that are under the **Owner's** control;
- (f) when clearing **Native Vegetation** for activities approved under this **Agreement**, to clear by cutting and slashing wherever possible so as to minimise any soil disturbance; and
- (g) in the event that any of the **Owner's** activities are found to pose a threat to the **Environmental Values** of the **Land**, to use best endeavours to remove the threat and to undertake any rehabilitation that may be necessary.

4.2 The **Owner** agrees in relation to the **Land** not to undertake or allow any actions that will damage or degrade the **Environmental Values**, except where necessary for the conduct of specific activities approved by the **Council** under clause 4.4 of this **Agreement**.

4.3 The following general actions may damage or degrade the **Environmental Values** and must not be undertaken within the **Land**, except where necessary for the conduct of specific activities approved by the **Council** under clause 4.4 of this **Agreement**:

- (a) **Clearance of Native Vegetation**;
- (b) introduction of **Exotic Species**;
- (c) planting of any plants;
- (d) use of chemicals (including fertilisers);
- (e) use of effluent of any kind for irrigation or other purposes;
- (f) introduction of **Foreign Material**;
- (g) disturbance of the soil;
- (h) removal of soil, gravel or other mineral resources;
- (i) **Interference with the Natural Flow of Water**;
- (j) subdivision or stratum title development;
- (k) building or placement of structures, including boundary fences;
- (l) construction of roads or tracks;
- (m) removal of dead trees - standing or fallen;
- (n) off-road use of vehicles;
- (o) grazing of domestic animals/stock; and
- (p) harming or taking of wildlife.

- 4.4 The **Council** agrees that the **Owner** may undertake the following activities in the **Land**, provided that any necessary approvals from Council have first been obtained and any associated **Clearance of Native Vegetation** is the minimum required for the conduct of the approved activity:
- (a) boundary fencing;
  - (b) emergency fire-fighting operations, including fire breaks, control lines or “back-burns”;
  - (c) maintenance and use of the ‘Existing Vehicle Tracks’ marked on the attached Plan at **SCHEDULE A** for management purposes;
  - (d) construction and use of the new ‘New Vehicle Tracks’ marked on the attached Plan at **SCHEDULE A** to access infrastructure or other internal vehicle tracks;
  - (e) construction and maintenance of walking tracks, provided that walking tracks are a maximum of 1.5m wide and do not impact any threatened species habitat;
  - (f) the harvesting of up to ten (10) tonnes per annum of domestic firewood, to be sourced from fallen deadwood or from the lopping or felling of black peppermints (*Eucalyptus amygdalina*), white peppermints (*Eucalyptus pulchella*) or brown-topped stringybarks (*Eucalyptus obliqua*), provided they are not trees with a diameter over 700mm at 1.5m from natural ground level;
  - (g) in addition to (e) above, the harvesting of trees and branches which fall across fences or tracks for use as domestic firewood;
  - (h) off-road use of vehicles where necessary for emergency or essential management purposes;
  - (i) use of registered herbicides or pesticides where necessary for the control of **Exotic Species** that threaten the **Environmental Values** of the **Land**;
  - (j) revegetation using **Local Provenance** where necessary to stabilise exposed ground following soil disturbance or erosion;
  - (k) introduction of biological control agents which are declared agent organisms under the *Biological Controls Act 1986* for the control of declared target organisms under the *Biological Controls Act 1986*; and
  - (l) if and when required by Tasmania Fire Service or the Council, **Clearance of Native Vegetation** for fire hazard reduction.

## 5. WAIVER OF RIGHTS TO RECOVERY AND OTHER COMPENSATION

The **Owner** waives all rights to recover damages from the **Council** for any liability to the **Owner** for:

- (a) personal injury to, or death of, any person; or
- (b) for damage to any of the **Owner's** property or finances,

arising from the performance or purported performance of any obligations or activities required or approved under this **Agreement**. This waiver does not operate to release the **Council** from any liability attributable to a wrongful (including negligent) act or omission on the part of the **Council**.

## 6. DISPUTE

- (a) If a dispute arises between the parties under this **Agreement**, then (except in the case of action required to be taken under statute) the parties agree that it must be resolved expeditiously in accordance with the provisions of this clause.
- (b) If a dispute arises requiring resolution, a party must serve a notice on the other specifying the nature and substance of the matter in dispute.
- (c) If, within thirty (30) days of a notice under Clause 6(b) being served, the parties are unable to resolve the dispute, then the dispute must be submitted by the parties for resolution under the following sub-clauses.
- (d) The matter in dispute must be referred for resolution by a person of appropriate qualifications and experience, as agreed between the parties, who will act as mediator and conduct a mediation concerning the matter in dispute.
- (e) If the dispute is not settled under Clause 7(d) or the parties fail to appoint a mediator, the **General Manager** may establish, in an attempt to resolve the dispute, a review committee comprising an independent chairperson and a representative of the **Owner** and a representative of the **Council**. This committee will be required to review the dispute and then attempt to resolve the dispute by agreement.
- (f) The costs of all mediation under this clause are to be shared equally between the parties.
- (g) Each of the parties agrees to use their best endeavours to resolve the dispute through mediation.
- (h) If a dispute cannot be settled within thirty (30) days (or such other period as the parties agree) of one party serving a notice of that dispute in accordance with Clause 7(b), the dispute must be determined under the provisions of the *Commercial Arbitration Act 1986*.

## 7. SEVERANCE

If any provision of this **Agreement** or its application to any person or circumstance is or becomes invalid, illegal or unenforceable, then so far as possible, the provision will be read down to the extent necessary to ensure that it is not illegal, invalid or unenforceable. If any provision or part of it cannot be so read down, then the provision or part of it will be taken to be void and severable and the remaining provisions of this **Agreement** will not be affected or impaired in any way.

## 8. NOTIFICATION OF CHANGE OF OWNERSHIP

- (a) The **Owner** must notify the **Council** in writing of any agreement entered into by the **Owner** to effect any change of ownership or control of the **Land** and that notice must detail the name and address of all parties to the agreement and the nature of the change of ownership or control.
- (b) The **Owner** must notify the **Council** in writing of any change of ownership or control of any portion of the **Land** and that notice must detail the name and address of the new owner, lessee or licensee.
- (c) The **Owner** must provide a copy of all directions and approvals given by the **Council** under the terms of this **Agreement** to all prospective purchasers, lessees or licensees of the **Land**.

## 9. NOTIFICATION AND COMMUNICATION

- (a) The **Owner** and the **Council** must:
  - i) advise each other of any proposed action which could adversely affect the **Land**; and,
  - ii) respond promptly to all communications from each other relating to this **Agreement**.
- (b) The **Owner** must notify the **Council**:
  - i) of any event which has or could have a significant adverse impact on the **Environmental Values** of the **Land**;
  - ii) if the **Owner** intends to alter the use of any part of the **Land**; or,
- (c) The **Council** must notify the **Owner** of any information relating to the **Land** within its knowledge that could adversely affect the use and management of the **Land**.

## 10. ACCESS

- (a) The **Owner** must, having been given reasonable notice by the **General Manager** or servants of the **Council**, allow relevant and identified servants of the **Council** to enter the **Land** at a reasonable time in order to:
- i) inspect the condition of the **Land**;
  - ii) carry out research relevant to protection of the **Land**; or,
  - iii) determine whether the conditions of this **Agreement** have been complied with.
- (b) The **Owner** and the **Council** must agree on the means of notification for a visit and the length of notice required. The **Owner** may also specify an access route, and the servants of the **Council** must follow that route, except in cases of emergency.

## 11. NOTICES

- (a) A notice or other communication given or made under this **Agreement** must be in writing and addressed to the party to whom the notice is to be given at the address for service of notices as agreed by the parties from time to time.
- (b) A notice or other communication is taken to have been duly served:
- i) in the case of hand delivery - when delivered;
  - ii) if sent by prepaid post - on the third business day after the date of posting;
  - iii) if sent by facsimile transmission (only if the sending facsimile machine produces a print out of the time, date and uninterrupted transmission record of the sending of the notice) - upon completion of sending if completion is within ordinary business hours in the place where the recipient's facsimile machine is located, but if not, then at 9.00 a.m. on the next business day in that place;
  - iv) if sent by email, when the recipient acknowledges receipt of the email.
- (c) A notice or other communication given or made under this Agreement is sufficient if:
- i) in the case of the **Council**, it is under the hand of the **General Manager** or a duly authorised officer of the **Council** or the **Council's** solicitors;
  - ii) in the case of the **Owner**, it is under the hand of the **Owner** or the **Owner's** solicitors.
- (d) A printed or copied signature is sufficient for the purposes of sending any demand, written consent or other communication by facsimile transmission or by email.



## 12. PERFORMANCE AND REVIEW

The **Owner** and the **Council** agree to review the operation of this **Agreement** every five (5) years, or at lesser intervals if circumstances necessitate, including but not limited to discussion of the operation of the **Agreement** and assessment of the level of compliance by both parties.

The **Council** agrees that, in the event that the **Owner** fails to comply with the terms of this **Agreement**, the **Council** must give reasonable notice and opportunity for the **Owner** to undertake the necessary works to rectify this failure and remedy any damage caused by his failure.

The **Owner** agrees that, having been given reasonable notice and opportunity, they will undertake the necessary works to rectify this failure and remedy any damage caused by his failure at their own cost.

The **Owner** also agrees that, in the event that they fail to comply with the terms of this **Agreement** and fail to undertake the necessary works to rectify this failure and remedy any damage caused by his failure, having been given reasonable notice and opportunity to rectify this failure, the **Owner** is burdened by all of **Council's** costs to rectify and undertake these works on the **Owner's** behalf.

## 13. COSTS

The **Owner** must pay all costs associated with the preparation, execution and registration of this **Agreement**. Accepting Clause 12 of the **Agreement**, each party is to pay its own costs of the future operation of this **Agreement**.

DRAFT

**SIGNED BY THE OWNER**

Owner Signature: .....

Owner Name: .....

**in the presence of us:**

Witness Signature: .....

Witness Name: .....

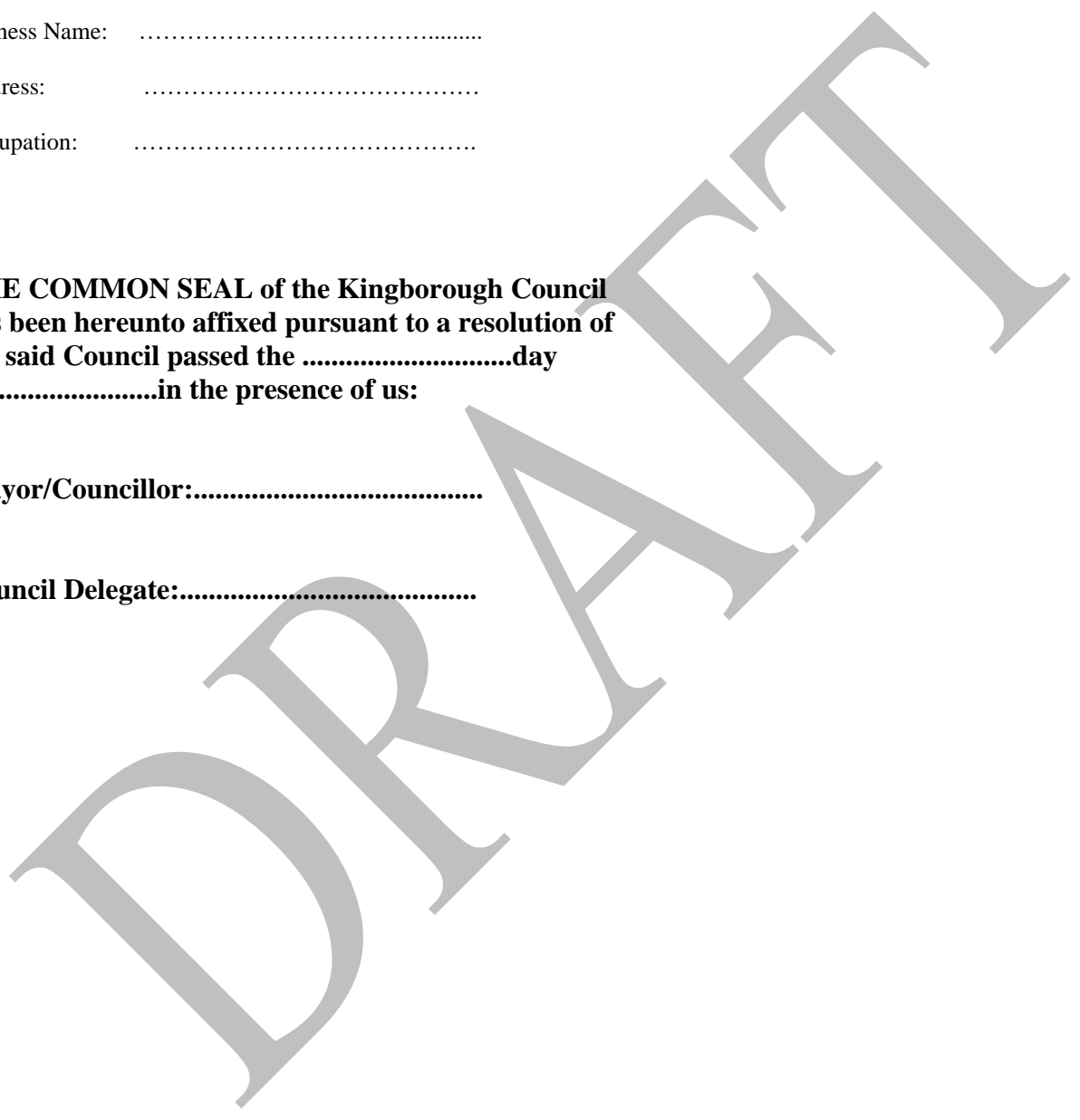
Address: .....

Occupation: .....

**THE COMMON SEAL of the Kingborough Council  
has been hereunto affixed pursuant to a resolution of  
the said Council passed the .....day  
of.....in the presence of us:**

**Mayor/Councillor:.....**

**Council Delegate:.....**



**SCHEDULE A. Plan of the Land**

