

Licence Agreement

Date:

Parties

This agreement is between:

Central Coast Council ABN 73 149 644 003 of Council Chambers, 2 Hely Street Wyong New South Wales ("the Council");

and

Crommelin Native Arboretum Inc ABN 79 080 936 319 'Licensee'.

Licence

The Council grants and the Licensee accepts a licence to occupy the Property for the Permitted Use on the terms and conditions of this agreement.

Execution

Signed for and on behalf of **CENTRAL COAST COUNCIL ABN 73 149 644 003** pursuant to delegation granted under section 378 of the *Local Government Act 1993*

Elizabeth Angus

Signature of Witness

Elizabeth Angus

Name

Melanie Smith

21 May 2024

Signature of Authorised Person and Date Signed

Melanie Smith - Director Community and Recreation Services

Name and Position

Signed by **Crommelin Native Arboretum Inc ABN 79 080 936 319** pursuant to section 22(1) of the *Associations Incorporation Act 2009 (NSW)*:

Victoria Crawford

Signature of authorised signatory

VICTORIA CRAWFORD

Name and Position PRESIDENT

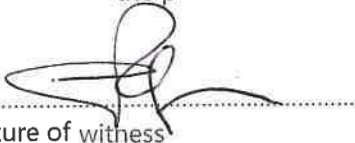
M. Kwaggs

Signature of authorised signatory

MARY KWAGGS, SECRETARY

Name and Position

Signed by **Crommelin Native Arboretum Inc ABN 79
080 936 319** in the presence of:



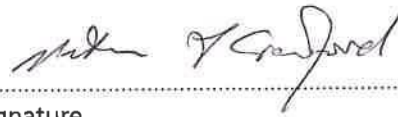
Signature of witness

GARY PHILLIPS

Name of witness

49 CORNELIUS ROAD, PEARL BEACH

Address of witness



Signature

Part 1 – Information Table

Item 1	Licensor/The Council	Central Coast Council ABN 73 149 644 003	
Item 2	Licensee	Crommelin Native Arboretum Inc ABN 79 080 936 319 an Association registered under the <i>Associations Incorporation Act 2009</i> (NSW)	
Item 3	Property (clause 2.1)	(a) Property	The whole the land known as 69 Amethyst Ave and 73B Crystal Ave Pearl Beach as shown on the plan attached in Part 4. The title reference to the land is Lot 215 & 216 DP 755251 and Lot 540 DP 1043338
		(b) Specific Items of Council's Property	The Property includes the following specific items that are owned by Council: Community Facility
		(c) Licensee's Property	The Licensee's Property includes the following specific items that are owned by the Licensee: Greenhouse
		(d) Public Areas	The whole land as shown on the plan attached in Part 4 excluding the meeting building. Note: under clause 2.5 the public has a right to access the area shown on the plan
Item 4	Permitted Use (clause 2.1 and 6.1)	Fetes, cultural activities, celebrations, gatherings, weddings, exhibitions/demonstrations, commercial photos/filming concerts	
Item 5	Term (clause 2.2)	10 years	
Item 6	Commencing Date (clause 2.2)	1 April 2024	
Item 7	Terminating Date (clause 2.2)	31 March 2033	
Item 9	Licence Fee (clause 3.1)	\$1 pa	
Item 10	Payments (clause 3.1)	Annually if requested	
Item 11	Licence Fee Review Dates (clause 4.1)	(a) CPI Review Dates:	Not Applicable
		(b) Fixed Review Dates:	Not Applicable
		(c) Fixed Rate:	Not Applicable
Item 12	Licensee's Outgoings (clause 5.1)	All costs for services supplied to the Licensee or used in or on the Property by the Licensee including, without limitation:	
		Water usage	0%
		Electricity	100%
		Removal of trade waste	100%
		Telephone, internet and data	100%
		Green bin x 2	0%
Item 13	Hours of Operation	7am to 8pm	

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Item 14	Specific Maintenance Obligations and Costs (clause 6.2) (clause 7.3)	(a) The Council (b) Licensee	As per Part 2 – Special Conditions 1 As per Part 2 – Special Conditions 2
Item 15	Notice Period for Termination for Convenience (clause 11)	12 calendar months	
Item 16	Public Liability Insurance (clause 14)	\$20 million	
Item 17	Bank Guarantee or Security Bond (Clause 17)	(a) Bank Guarantee (b) Security Bond	Not Applicable Not Applicable
Item 18	Address for Service of Notices (clause 19)	(a) The Council (b) Licensee	2 Hely Street Wyong NSW 2259 Email: ask@centralcoast.nsw.gov.au Attention: Unit Manager Leisure, Beach Safety and Community Facilities 9 Diamond Rd Pearl Beach NSW 2256 Email: president@pearlbeacharboretum.org.au Attention: President – Pearl Beach Arboretum Cassie Field – 0455 121 421 Victoria Crawford – 0407 272 495
Item 19	Contact Person (clause 19.3)	The Council Licensee	

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Part 2 - Special Conditions

The following alterations and additions are to be made to the Licence Agreement between the Council and **Crommelin Native Arboretum Inc** –

1. Maintenance of the Property and Bushland

The Licensor has responsibility for the following:

- a) Maintain a 20metre wide Asset Protection Zone (APZ) on the eastern side of the Property.
- b) The provision (by Council) of 2 green waste removals per year in May and November, maximum of 5 cubic metres per pick up.
- c) Installation, inspections and maintenance of Fire Safety equipment
- d) Annual Termite inspections

2. Maintenance of the Property and Bushland.

In addition to Clause 7 and 8 of the Licence, the Licensee has responsibility for the following:

- a) General cleanliness of the Property including all Bushland areas.
- b) Advise Council when maintenance or repairs are required if users could be at risk of injury.
- c) Maintenance and regular inspection of all turfed areas of the Property.
- d) Maintenance and regular inspection of all Structures, including walking tracks, directional signage, fencing, bridges and seating within the Property and Bushland areas.
- e) General maintenance and regular inspection of Structures including paintwork, internal and external.
- f) Maintenance checks, repairs and/or replacement of the Structures including electrical, plumbing and drainage. Minor maintenance within the community facility (eg. replacement of tap washers, cisterns, rectify sewer blockages as a result of misuse, globe or fluorescent tube replacement, upgrades required for lessees needs).
- g) Maintenance checks, repairs and/or replacement of the Structures including damaged woodwork, linings, glazing, roof, concrete, ceramic surfaces, floor surfaces, coverings, footpaths and fences. (excluding major maintenance within the community facility).
- h) When an asset is decommissioned due to failure, reaching the end of its useful life, or otherwise, the Licensor will make determination on the asset replacement if the site can adequately function in the absence of that asset.
- i) On expiry of this licence, all assets installed by the licensee during the term will be assessed by the Licensor. The Licensor, at their sole discretion, will determine whether those assets can remain on the site or whether the License must decommission and dispose of them accordingly.
- j) Maintenance and regular inspection of all trees and landscaped areas of the Property and Bushland areas.
- k) Notwithstanding Clause 6.8 of the Licence, the licensee may remove vegetation from the Property, as may be required by the Rural Fire Service NSW, in order to manage and mitigate bush fire risk on, from and to the Property. This may be taken by either mechanical removal or hazard reduction burns when done by appropriately qualified personnel. In undertaking such works, all care must be taken to minimise impacts to neighbouring residents, the broader public, other private and public assets, and the immediate natural environment.
- l) Maintenance of the Property to include promotion of endemic vegetation and management and removal of any weeds. All bush regeneration activities should be done in accordance with the National Standards for the practice of ecological restoration in Australia (Society for Ecological Restoration)

- m) Pest control of the building - internal.
- n) All pesticide and herbicide use undertaken on the Property must be undertaken as per Council's Pesticide & Herbicide Notification Procedure - Recreation Areas.
- o) General ground tidiness of the Property – litter collections, mowing and gardening.
- p) The Licensee is responsible for the provision and regular maintenance checks of all essential fire safety measures installed in or servicing Structures and the Property for which they hold a licence for.
- q) The Licensee must seek Council approval to erect any permanent Structures,
- r) Structural alterations and permanent installations must be approved by Council in accordance with Clause 8.1 of the Licence prior to works.
- s) The Licensee is responsible to comply with WHS Laws when conducting any activity on the Property.
- t) The Licensee must, if requested by Council, disclose financial statements of the licensee's registered business.

3. Permitted Use/Activities/Facilities

The Licensee is permitted to conduct activities on the Property in accordance with Central Coast Council's applicable Plan of Management and the Plan of Management designed by the Licensee over the relevant portion of the Property at the time of use.

4. Prohibited Use

The Licensee must not undertake any activities which could be considered dangerous and/or which may disrupt other users of the reserve and/or adjoining neighbours. Examples of such activities include trail bike riding, horse riding, camping and organized sport, especially hard ball games such as but not limited to cricket and golf.

5. Licensee's Upgrade Works

- (a) The Licensee acknowledges that it has been granted a 10 year licence term on the basis that it will spend over \$50,000 on the renewal or upgrade of the Licenced Premises ('Upgrade Works').
- (b) The Licensee must complete the Upgrade Works within 5 years from the Commencing Date of this licence.
- (c) The Licensee must within 5 years from the Commencing Date of this licence give the Licensor the following evidence that it has completed the Upgrade Works:
 - i. a copy of the Licensee's occupation certificate and 'as built' drawings in relation to the Upgrade Works; or
 - ii. if the Upgrade Works do not require an occupation certificate under Planning Laws, such other evidence reasonably required by the Licensor to demonstrate that the Upgrade Works have been completed.
- (d) This special condition is an essential term of this licence. If the Licensee fails to comply with its obligations under this condition the Licensor has a right to terminate this licence in accordance with **clause 10.1**.

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Part 3 – Standard Licence Terms

Contents

Clause	Subject
1	Defined Terms
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Clause	Subject
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12	Resumption, Destruction or Damage
13	End of Licence
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15	Release and Indemnity
16	Goods and Services Tax
17	Bank Guarantee or Security Bond
18	Assignment and Sublicensing
19	Service of Notices
20	Definitions and Interpretation

1. Defined Terms

- 1.1 Terms used in this licence that are capitalised are defined in the Information Table in **Part 1** and/or in **clause 20** (Definitions and Interpretation).
- 1.2 '**Item**' means an item in the Information Table.

2. Licence

2.1 Grant of the Licence

- (a) The Council grants a licence to use and occupy the Property described in **Item 3(a)** to the Licensee for the purpose of the Permitted Use, on the terms and conditions of this agreement.
- (b) The Property includes the items specified in **Item 3(b)**, if any, which are owned by the Council.
- (c) The Licensee's Property includes the items specified in **Item 3(c)**, if any.

2.2 Term

This licence is for the Term in **Item 5**, commencing on the Commencing Date in **Item 6** and ending on the Terminating Date in **Item 7**.

2.3 Personal Rights

This licence is personal to the Licensee.

2.4 No Leasehold Interest or Exclusive Possession

This agreement does not grant to the Licensee a leasehold interest in the Property. The parties agree that:

- (a) subject to any contrary terms of this agreement, this licence does not confer exclusive possession of the Property on the Licensee
- (b) the Council is entitled to access the Property at any time
- (c) the Licensee may not exclude the Council, its officers, employees and invitees from:
 - (i) entering onto the Property;
 - (ii) conducting inspections of the Property; and/or
 - (iii) performing works on the Property,
 provided that such actions do not unreasonably interfere with the Licensee's use of the Property for the Permitted Use
- (d) the Licensee does not have any right to quiet enjoyment of the Property; and
- (e) the Licensee will not at any time seek to enforce an interest in the Property in competition with the interest held by the Council.

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2.5 Entry by the Public

The Licensee may prohibit unauthorised entry to the Property other than to any Public Areas described in **Item 3(d)**. The Licensee must allow the public to have a right of access to the Public Areas and, if required by the Council, display appropriate signs or plans showing the areas on the Property where public access is permitted.

2.6 Holding Over

If the Licensee continues to occupy the Property after the Terminating Date with the Council's consent, then:

- (a) the Licensee does so as a monthly licensee
- (b) the Licence Fee will be varied on the Terminating Date to the amount calculated in accordance with **clause 4.2** (CPI Review), as if the Terminating Date is a CPI Review Date
- (c) the terms of the monthly licence are the terms of this licence which apply on the Terminating Date, modified so as to apply to a monthly licence; and
- (d) either party may terminate the monthly licence at any time by giving at least one month's written notice to the other.

3. Licence Fee

3.1 Payment of Licence Fee

- (a) The Licensee must pay the Licence Fee stated in **Item 9** in advance, as varied under this licence.
- (b) The Licensee must pay the first instalment of Licence Fee on the Commencing Date.
- (c) Each later instalment of the Licence Fee must be paid on the first day of each subsequent month of the term, or as otherwise stated in **Item 10**.
- (d) If necessary, the parties must apportion the first and last instalments of the Licence Fee on a daily basis.
- (e) The Licence Fee must be paid
 - (i) without set-off, counter-claim, withholding or deduction; and
 - (ii) if the Council requires, by direct credit to the Council's nominated bank account.

3.2 Late Payments

- (a) The Licensee must pay interest on any money payable to the Council under this licence that is more than 28 days overdue, at the rate equal to the rate set by the Council for overdue rates and charges from time to time in accordance with section 566 of the *Local Government Act 1993*.
- (b) Interest will be calculated daily from the due date to the date of payment.

4. Licence Fee Review

4.1 Licence Fee Variations

- (a) The Licence Fee is to be reviewed on the Licence Fee Review Dates in **Item 11**.
- (b) Any variation in the Licence Fee takes effect on the relevant Licence Fee Review Date.
- (c) For the purposes of this clause, the Licence Fee payable immediately after the relevant Licence Fee Review Date is called the 'New Licence Fee'. The Licence Fee payable immediately before the relevant Licence Fee Review Date is called the 'Old Licence Fee'.
- (d) The Licensee must continue to pay the Old Licence Fee until the Council notifies the Licensee of the New Licence Fee.
- (e) The Licensee must pay any shortfall between the Old Licence Fee and the New Licence Fee for the period after the Licence Fee Review Date within 28 days after being notified of the New Licence Fee.

4.2 CPI Review

- (a) The Licence Fee will vary on each CPI Review Date to the amount that is the greater of:
 - (i) The amount represented by NR in the formula:

$$NR = \text{OR} \times \frac{\text{New CPI}}{\text{Old CPI}}$$

Where

NR is the New Licence Fee

OR is the Old Licence Fee

New CPI is the Consumer Price Index for Sydney (All Groups) for the quarter ended just before the relevant CPI Review Date

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Old CPI is the Consumer Price Index for Sydney (All Groups) for the quarter ended just before the date of the previous CPI Review Date; and

- (ii) the Old Licence Fee.
- (b) If the Consumer Price Index for Sydney (All Groups) is discontinued or suspended, the Council may substitute another index that, as nearly as practicable, reflects fluctuations in the cost of living in Sydney.
- (c) If the Australian Bureau of Statistics updates the reference base of the Consumer Price Index for Sydney (All Groups), the relevant conversion factors as published by the Australian Bureau of Statistics are to be applied to convert the previously published time series to the new index reference period, and preserve the intended continuity of calculation.

4.3 Fixed Review

If a Fixed Review Date is set out in **Item 11(b)**, the Licence Fee will be increased on each Fixed Review Date by the percentage or amount stated in **Item 11(c)**.

5. Licensee's Outgoings

- 5.1 The Licensee must pay all Licensee's Outgoings described in **Item 12** in relation to the Property.
- 5.2 If invoices for any Licensee's Outgoings are addressed to the Council, the Council may notify the Licensee to:
 - (a) pay the relevant Licensee's Outgoings directly to the supplier; or
 - (b) reimburse the Council for the relevant Licensee's Outgoings.
- 5.3 The Licensee must pay the relevant Licensee's Outgoings within 14 days after the notice in **clause 5.2** is given to the Licensee.

6. Use

6.1 Permitted Use

The Licensee must use the Property only for the purpose in **Item 4** and not for any other purpose.

6.2 Hours of Operation

- (a) The Licensee must be open for business at the times specified in **Item 13** and if no times are specified, at the times that are usual for a business or use of the kind conducted by the Licensee.
- (b) The Licensee is not permitted to be open for business or to use the Property outside the times specified in **Item 13**, unless otherwise agreed by the Council in writing.

6.3 Compliance with Laws and Notices

The Licensee must:

- (a) comply with all laws relating to the Licensee's use of the Property
- (b) comply with the requirements of any Authorities and any notices issued by Authorities in relation to the use and occupation of the Property; and
- (c) obtain and keep current any consents or licences needed for the conduct of the Licensee's business on the Property and comply with conditions of such consents or licences at its own expense.

6.4 Prohibitions on Use

The Licensee must not:

- (a) allow the Property to be used for any illegal, noxious, noisy, dangerous or offensive purpose
- (b) do or permit anything to be done that may be a nuisance or annoyance to other users of the Property, owners or occupiers of neighbouring properties or to the Council
- (c) use the Property as a residence or permit any person to reside on the Property unless residential use is a Permitted Use under **Item 4**
- (d) keep or allow any animals on the Property other than assistance and guide dogs
- (e) smoke or allow others to smoke in or near any building on the Property
- (f) do anything to overload the floor, facilities or services to the Property including installing any electrical equipment which may overload the equipment which supplies electricity to the Property; or
- (g) use or store any hazardous, flammable, corrosive, dangerous or explosive goods or substances, including any hazardous chemicals (as defined in the WHS Laws) on the Property, except for general cleaning substances.

6.5 Damage to Walls

The Licensee must ensure that the walls, floors ceilings or other parts of the Property are not cut, marked, drilled or damaged, except so far as is reasonably necessary for the purpose of carrying out the Permitted Use.

6.6 Exterior Signs and Advertising

The Licensee must not install or display signs or advertisements on the Property without the the Council's prior written consent, which must not be unreasonably withheld. This consent is separate to approvals that may be required under Planning and Building Laws, which must also be obtained by the Licensee.

6.7 Cleaning and Rubbish Removal

The Licensee must:

- (a) keep the Property clean and tidy and free from rubbish
- (b) keep trade waste and rubbish in appropriate bins and make sure trade waste and rubbish is collected and cleared regularly from the Property
- (c) not leave rubbish or waste anywhere on the Property other than areas designated for such use by the Council
- (d) clean any grease trap that is on or connected to the Property and used by the Licensee; and
- (e) comply with the Council's reasonable directions concerning disposal or recycling of rubbish.

6.8 Environmental Harm

The Licensee must not contaminate, pollute or cause any environmental harm or hazard on the Property and must comply with all relevant environmental laws.

6.9 Plumbing

The Licensee must use any toilets, sinks, drainage and other plumbing in the Property only for the purposes for which they are constructed, and must not place rubbish or other material in those facilities.

6.10 Locking of Doors and Windows

The Licensee must secure the Property including, if there are buildings on the Property, locking each door and window when the Property is unoccupied.

6.11 Consumption of Alcohol

The Licensee must not allow alcohol to be consumed or sold on the Property unless:

- (a) it holds a current liquor licence for the Property; and
- (b) it complies with the conditions of the liquor licence.

6.12 Degradation and Clearing of the Property

The Licensee must not degrade or damage the Property or remove topsoil, vegetation or any other natural material from the Property, or carry out any burning off, without approval in writing from the Council.

6.13 Access

Unless the Council directs or agrees otherwise, the Licensee must use existing access roads or tracks to, from and within the Property.

6.14 Fences

The Licensee must construct at its cost appropriate fencing around the Premises if required by the Lessor in accordance with the reasonable requirements of the Lessor.

6.15 Public Protection

The Licensee must take all reasonable steps to prevent access to or use of the Premises by any unauthorised person and to safeguard members of the public and others against injury or accident arising from the Licensee's activities or use of the Premises.

7. Repairs and Maintenance

7.1 The Council's Repair and Maintenance Obligations

- (a) Subject to **clause 7.2(b)**, the Council must:

- (i) keep the Property or any building that the Property forms part of, in a weatherproof and structurally sound condition including repairing or replacing gutters; and
- (ii) maintain the existing utility services to the Property.
- (b) The Council is not required to carry out or pay for any repairs, maintenance or replacements or to maintain any services or facilities to any buildings or structures owned or erected on the Property by the Licensee.

7.2 Licensee's General Repair and Maintenance Obligations

- (a) The Licensee must keep the Property in good and substantial repair and working order and in its condition at the Commencing Date and promptly carry out at its cost any repairs needed to keep it in that condition but does not have to:
 - (i) alter or improve the Property
 - (ii) fix structural defects
 - (iii) repair fair wear and tear; or
- (b) The Licensee must keep all buildings and structures erected on the Property by the Licensee, in good repair Property in good and substantial repair (including structural or capital repairs or replacements).
- (c) The Licensee must keep the ground areas of the Property in a well maintained condition.
- (d) The Licensee is responsible for all repairs or works (including structural or capital repairs or replacements) to the extent caused or contributed to by:
 - (i) the act, omission, negligence or default of the Licensee including any failure to carry out its maintenance obligations under this licence
 - (ii) the Licensee's use of the Property; and
 - (iii) damage due to overloading of the floors, facilities or services to the property by the Licensee.

7.3 Specific Repair and Maintenance Obligations and Costs

- (a) If **Item 14** contains Specific Maintenance Obligations and Costs, the parties must, in addition to their general repair and maintenance obligations under this **clause 7**, carry out or pay for their respective Specific Maintenance Obligations and Costs. The parties may agree in writing to update the Specific Maintenance Obligations and Costs from time to time. The Specific Maintenance Obligations and Costs in **Item 14** prevail over the general requirements in this **clause 7**, to the extent of any inconsistency.
- (b) Any costs payable by the Licensee under this clause must be paid within 14 days of request by the Council.

8. Licensee's Works

8.1 Approvals

- (a) The Licensee must not carry out any work in relation to the Property without the prior written consent of the Council, in its capacity licensor. Council must not unreasonably withhold its consent.
- (b) The requirements of **Clause 8.1(a)** are not consents under Planning and Building Laws. The Licensee must obtain such consents from the Council as the consent authority, if required by law, before starting any work.
- (c) Any works must be carried out by experienced and reputable contractors and tradesmen, holding all necessary and current licences and insurance to do the works.
- (d) The Licensee must give the Council a copy of the Licensee's occupation certificate and 'as built' drawings as soon as reasonably practicable after the works are completed.

8.2 Ownership of Licensee's Works

Unless otherwise agreed in writing by the Council, all works carried out by the Licensee in relation to the Property that are in the nature of fixed improvements vest in the Council from the time construction or installation is completed, at no cost to the Council. The Licensee must transfer to the Council the benefit of all warranties associated with such works.

9. Work Health and Safety

- 9.1 The Licensee must comply with all WHS Laws in connection with the Property and must ensure, as far as reasonably practicable, the health and safety of the Licensee's workers and others who enter or use the Property including visitors and volunteers.
- 9.2 The Licensee must not cause or permit anything to be done which causes a work health and safety hazard in or near the Property and must immediately notify the Council of any hazard that it is aware of.
- 9.3 The Licensee must notify the Council immediately in writing of any serious accident on the Property.

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- 9.4 The Licensee acknowledges that for the purposes of WHS Laws the Licensee has management or control of its workplace that is within the Property, and is the person conducting a business or undertaking from the Property. The Licensee agrees that the Council does not control or influence health and safety matters in relation to the Licensee's use of the Property, other than as set out in this licence.
- 9.5 Where the Licensee carries out work relating to the Property using contractors appointed by the Licensee, the Licensee must ensure that the contractors also comply with WHS Laws.

10. Default

10.1 Council's right to terminate

- (a) If the Licensee:
- (i) is bankrupt, insolvent, has an administrator appointed or enters into a composition or arrangement with its creditors; or
 - (ii) has its registration cancelled under the *Associations Incorporation Act 2009* (if the Licensee is an association registered under that Act)
- the Council may terminate this licence by giving 28 days' notice in writing to the Licensee.
- (b) If the Licensee breaches an obligation under this licence, other than the obligation to pay the Licence Fee or a breach that cannot be remedied or compensated, the Council may give the Licensee a default notice.
- (c) The default notice:
- (i) must specify details of the Licensee's breach; and
 - (ii) if the breach can be remedied, require the Licensee to remedy the breach within a reasonable time (as determined by the Council) after the Council gives notice; or
 - (iii) if the breach cannot be remedied but the Council can be compensated, requiring the Licensee pay to the Council reasonable compensation for the non-compliance within 14 days after the Council gives the Licensee the default notice.
- (d) If the Licensee:
- (i) repudiates this licence
 - (ii) breaches the Licensee's obligation to pay the Licence Fee
 - (iii) breaches an obligation under this licence (other than an obligation to pay the Licence Fee) and the breach cannot be remedied or compensated; or
 - (iv) fails to comply with a default notice under **clause 10.1(b)** within the time specified in that notice (or, if no time is specified, within a reasonable time),
- then the Council may terminate this licence after giving the Licensee 28 days' written notice.

10.2 Damages

If the Council terminates this licence under this clause, the Council can recover the Council's Costs and damages from the Licensee (whether arising before or after termination) in connection with the Licensee's breach of this licence, including legal costs (on a solicitor-own client basis) and court costs.

10.3 Conversion to Monthly Licence

If the Council is entitled to terminate this licence under this clause, the Council may instead elect to convert this Licence to a monthly licence, in which event this licence will terminate, the Licensee will be a monthly licensee and **clause 2.5** will apply.

11. Termination for Convenience

Either party may terminate this licence at any time and for any reason by giving written notice to the other party of not less than the period stated in **Item 15**. No compensation is payable if the lease is terminated under this clause. Any termination under this clause does not affect a party's rights in respect of a prior breach of this licence.

12. Resumption, Destruction or Damage

- 12.1 If:
- (a) the Property or any building that the Property forms part of is damaged or destroyed; or
 - (b) the whole or any part of the Property is resumed or taken for a public purpose by any Authority
- the Council may terminate this licence by giving 28 days' notice in writing to the Licensee.
- 12.2 No compensation is payable if the licence is terminated under this clause.

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12.3 Any termination under this clause does not affect a party's rights in respect of a prior breach.

13. End of Licence

13.1 When this Licence expires or terminates, the Licensee must:

- (a) deliver the Property back to the Council
- (b) unless the Council agrees or directs otherwise, leave all fixed improvements on the Property other than the Licensee's Property
- (c) unless the Council agrees otherwise, remove the Licensee's Property from the Property
- (d) repair all damage to the Property caused or contributed to by the Licensee's use and occupation and replace any property owned by the Council which the Licensee has broken or damaged and which cannot be repaired
- (e) remove all rubbish and waste from the Property
- (f) unless the Council agrees otherwise, reinstate the Property to the condition that this licence requires the Licensee to keep it in, including removing and reinstating any partitions, internal non-structural walls, removing wiring, cabling and pipe work, repairing walls and reinstating any structural changes made by the Licensee
- (g) make good any damage arising from the Licensee carrying out its obligations under this clause including repairing any damage to carpet, flooring or walls
- (h) return all keys to the Council or pay the cost of replacement of any keys not returned to the Council on demand by the Council (including the cost of re-keying the Property or the building that it forms part of if the Licensee fails to return a GM Key); and
- (i) restore and rehabilitate the land to the extent it has been altered or damaged by the Licensee's occupation and use of the Property as nearly as practicable to the condition of the land at the Commencing Date including reinstating ground levels and replacing topsoil and vegetation, to the reasonable satisfaction of the Council.

13.2 Unless the Council agrees otherwise, anything not removed from the Property, including the Licensee's fixtures and fittings, becomes the Council's property on the date this licence expires or is terminated. The Council may keep them or remove and dispose of them at the Licensee's cost. The Licensee is not entitled to any compensation for such property.

13.3 If the Licensee fails to deliver or reinstate the Property in accordance with this clause the Council may carry out any necessary work. The Licensee must pay the Council's costs of doing so on demand, including the cost of removing, storing and disposing of any property owned by the Licensee.

14. Insurance

14.1 Licensee's Insurance

- (a) The Licensee must during the Term keep current an insurance policy covering public liability for not less than the sum stated in **Item 16** per occurrence or for another minimum sum that the Council may reasonably require from time to time.
- (b) If the Licensee fails to keep current the required insurances or fails to pay a premium, the Council may pay the premium or take out the insurance at the Licensee's cost, payable on demand.

14.2 Policy

- (a) Each insurance policy taken out by the Licensee must:
 - (i) be with an insurer of good reputation and sound financial backing which conducts business in Australia and is approved by the the Council (acting reasonably)
 - (ii) be in the name of the Licensee and note the interest of the Council
 - (iii) be taken out in relation to the Property
 - (iv) include a cross liability clause under which the insurer agrees to waive all rights of subrogation against each party noted on the policy
 - (v) must not exclude cover against malicious acts of third parties; and
 - (vi) be on terms and conditions, including exclusions, that are acceptable to the Council (acting reasonably).
- (b) Before the Commencing Date and immediately following each renewal date of the insurance policy, the Licensee must give the Council a current certificate of currency issued by the insurer and, if requested by the Council, a copy of the current insurance policy.

14.3 Impacts on the Council's Insurance

- (a) The Licensee must not do anything that may increase the insurance premium, or that may allow the insurer to refuse a claim under any insurance policy taken out by the Council.
- (b) The Licensee must pay the cost of any extra premiums which the Council pays because of the Licensee's particular use of the Property.

15. Release and Indemnity**15.1 Licensee's Risk**

- (a) The Licensee occupies and uses the Property at the Licensee's own risk.
- (b) The Licensee has satisfied itself that the Property is sufficient for the Licensee's purposes.

15.2 Release

The Licensee releases the Council from any Claim which the Licensee may have against the Council in connection with the Licensee's occupation and use of the Property except if and to the extent that the Claim arises because of the Council's default or negligence.

15.3 Indemnity

- (a) The Licensee is liable for and indemnifies the Council in respect of all Claims arising directly or indirectly from:
 - (i) the Licensee's use of the Property
 - (ii) any wilful or negligent act or omission of the Licensee
 - (iii) any breach of this licence by the Licensee; and
 - (iv) any breach of an environmental law or any other law by the Licensee, which breach is in relation to the Property.
- (b) It is not necessary for the Council to incur an expense or make a payment before enforcing this right of indemnity.

15.4 Interruption of Services

Except to the extent prohibited by law, the Council is not liable to the Licensee for any loss or damage suffered by the Licensee caused by any malfunction of, failure to function of or interruption to:

- (a) air conditioning equipment (if any);
- (b) the fire equipment (if any);
- (c) any services or facilities to the Property; or
- (d) for the blockage of any sewers, wastes, drains, gutters, downpipes or stormwater drains from any cause,

unless such malfunction, failure to function or interruption is caused or contributed to by the negligence or default of the Council.

16. Goods and Services Tax

- 16.1 All amounts specified as payable by the Licensee to the Council under this licence have been set or determined exclusive of the impact of GST.
- 16.2 In addition to the amount payable, the Licensee must pay to the Council, on demand, any GST payable by the Council in respect of that amount.
- 16.3 If a party is required to pay, reimburse or contribute to any expense or liability incurred by the other party ('payee'), the amount to be paid or reimbursed must be reduced by the amount of any credit or refund of GST to which the payee is entitled as a result of incurring the expense or liability.
- 16.4 For the purposes of this licence GST means a tax in the nature of a supply of goods and services tax levied or imposed by a Federal government.

17. Bank Guarantee or Security Bond**17.1 Bank Guarantee**

This clause applies if an amount or number of months is in **Item 17(a)**. If this clause applies:

- (a) The Licensee must give a bank guarantee to the Council on the Commencing Date.
- (b) The bank guarantee must:
 - (i) be from a bank acceptable to the Council, acting reasonably

Handwritten signature/initials

- (ii) guarantee to pay the amount set out in or calculated in accordance with **Item 17(a)** to the Council without reference to the Licensee
 - (iii) be unconditional and irrevocable
 - (iv) be without an expiry date; and
 - (v) otherwise be in a form acceptable to the Council, acting reasonably.
- (c) The Council may, without notice to the Licensee, recover from the bank guarantee any monies due but unpaid by the Licensee to the Council under this licence. If monies are recovered from the bank guarantee, the Licensee must either replace the bank guarantee or the portion recovered by the Council within 14 days of receiving notice from the Council to do so.

17.2 Security Bond

- (a) This clause applies if an amount or number of months is in **Item 17(b)**. If this clause applies, the Licensee must pay the security bond to the Council, to the bank account nominated by the Council, on the Commencing Date.
- (b) The Council may, without notice to the Licensee, deduct any moneys due but unpaid by the Licensee to the Council under this licence. If moneys are recovered from the security bond, the Licensee must replace the security bond or the portion recovered by the Council within 14 days of receiving notice from the Council to do so.

17.3 Increase in the Bank Guarantee or Security Bond

If the amount of the bank guarantee or security bond required under this licence increases as a result of an increase in Licence Fee, the Licensee must give the Council a replacement or additional bank guarantee or an additional security bond for that increased amount within 14 days of receiving notice from the Council to do so.

17.4 Return of Bank Guarantee or Security Bond

The Council must return the bank guarantee or security bond to the Licensee within one month after the later of:

- (a) the expiry or termination of this licence; and
- (b) the date the Licensee has no further obligations under this licence or at law.

18. Assignment and Sublicensing

- 18.1 This licence may not be assigned or sublicensed by the Licensee.
- 18.2 The Council may assign or novate this agreement by giving written notice to the Licensee. The Licensee's consent is not required.

19. Service of Notices

19.1 Service

- (a) A notice given by a party under this licence must be in writing and is sufficiently given or served on a party if left at or posted to the address of that party set out in **Item 18**.
- (b) A notice is also sufficiently served on the Licensee if left at or posted to the Property or, if the Licensee is a body corporate, the Licensee's registered office.
- (c) A notice is also validly served if sent by email.

19.2 Time of service

- (a) If a notice is sent by post, it is taken to have been given on the fourth day after posting.
- (b) If a notice is left at an address permitted by **clause 19.1**, it is taken to have been given on the date of delivery, except that if the notice is left on a day that is not a business day or after 5.00 pm on a business day, delivery is taken to have occurred at 9.00 am on the following business day.
- (c) If a notice is sent by email, it is taken to be received when the email enters the recipient's mail server, unless the sender is aware that the transmission is impaired.

19.3 Contact person

The parties must each nominate a person to contact about matters arising under this licence. The contact person is the person stated in **Item 19** or such other person nominated in writing by the parties from time to time.

19.4 Change of address

A party may at any time change its postal address or email address by giving notice to the other party.

20. Definitions and Interpretation

20.1 Agreed Terms

In this licence, unless the context otherwise requires:

Authority includes a federal, state or local government, statutory or public authority, judicial body, commission, entity, department or like authority

Claim includes a claim, demand, action, proceeding, death, injury, damage, loss or Cost.

Cost means a cost, charge, expense, outgoing, payment, fee or other expenditure of any nature.

Day means a calendar day.

Property means the premises described in **Item 3** and includes the specific items of the Council's property (if any).

Licensee means the party described in **Item 2** and, where relevant, includes the Licensee's successors, assigns, employees, agents, contractors, invitees and customers.

The Council means the party described in **Item 1** and, where relevant, includes the Council's successors, assigns, employees, agents and contractors.

Planning and Building Laws means all laws and regulations relating to planning and building including the *Local Government Act 1993* (NSW) and the *Environmental Planning and Assessment Act 1979* (NSW). Compliance with Planning and Building Laws includes obtaining where necessary a development approval, construction certificate, occupation certificate or compliance certificate.

WHS Laws means all laws and regulations relating to work health and safety and all relevant codes of practice and compliance codes including the *Work Health and Safety Act 2011* (NSW) and the *Work Health and Safety Regulation 2011* (NSW).

20.2 General Interpretation

In this Licence unless the context otherwise requires:

- (a) the singular includes the plural and vice versa
- (b) headings and bold type have been inserted for guidance only and do not affect the interpretation of this licence
- (c) the word "including" is not a word of limitation
- (d) a reference to an Act by name includes regulations made under it and its amendments and replacements
- (e) a person includes:
 - (i) a corporation, partnership, joint venture and government body;
 - (ii) the person's executors, administrators, successors, assigns, substitutes and persons who take by novation; and
 - (iii) where the context permits, the employees, agents, contractors and invitees of that person; and
- (f) if a party is more than one person, each person is bound as an individual and they are all bound together jointly and severally.

20.3 Construction of Licence

No rule of construction will apply to the disadvantage of the Council when interpreting this licence on the basis that the Council prepared this licence.

20.4 Entire Agreement

This licence contains the entire agreement between the parties in relation to the licence of the Property and supersedes all previous negotiations, representations, understandings and agreements.

20.5 Governing Law

This licence is governed by the laws of New South Wales.

20.6 No Fetter

The parties acknowledge that the Council is a consent authority with statutory rights and obligations. This agreement is not intended to operate to fetter, in any unlawful manner, the power of the Council to make laws or to exercise any statutory power or discretion.

20.7 No waiver

- (a) The Council's failure to exercise the Council's rights or delay in exercising the Council's rights arising from the Licensee's breach of this licence is not a waiver of that default.
- (b) The demand or acceptance from the Licensee of any overdue payment does not prevent the Council from exercising or enforcing the Council's other rights under this licence, including a payment made or accepted after termination.

20.8 Severability

If a clause of this licence is illegal or unenforceable, it may be severed or read down to the extent necessary to give it validity without affecting the enforceability of other clauses in this licence.

20.9 Operation of Indemnities

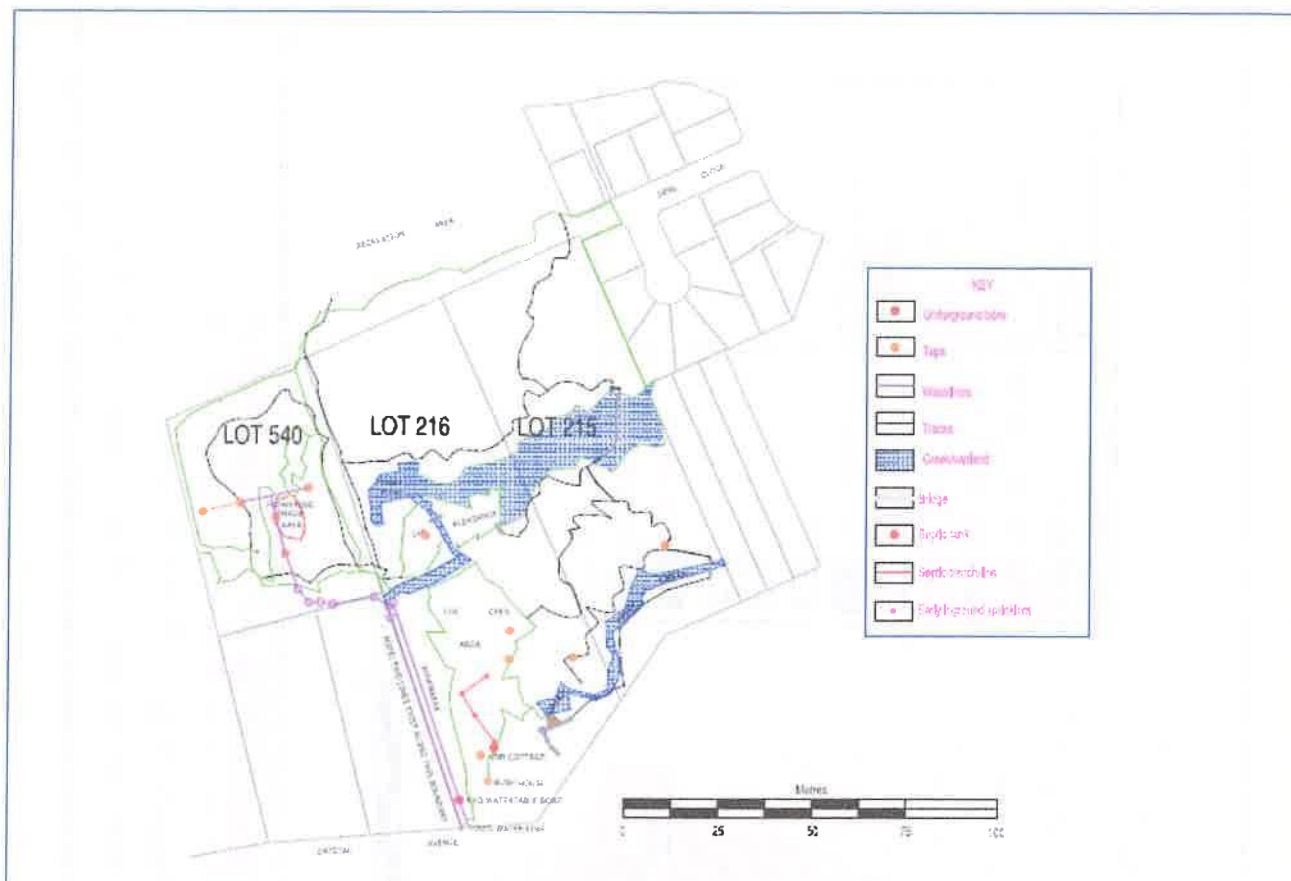
Each indemnity in this licence is a continuing obligation, separate from the other obligations of a party, and survives the expiry or termination of this licence.

20.10 Relationship between the parties

- (a) The relationship between the Council and the Licensee constituted by this agreement is licensor-licensee only.
- (b) No term of this agreement is to be construed so as to give rise to any of the following relationships:
 - (i) principal and independent contractor
 - (ii) joint venturers
 - (iii) partners
 - (iv) trustee and beneficiary; or
 - (v) employer and employee.
- (c) Each party must ensure that they do not conduct themselves so as to hold out, or otherwise represent, that a relationship referred to above exists between them.
- (d) The Licensee must not conduct itself so as to hold out, or otherwise represent, that its business is being carried on by or managed, supervised or endorsed by the Council.



Plan (ii)



PLAN SHOWING WATER LINES AND TAPS

SURVEY: DIFFERENTIAL GPS

DATE: DECEMBER 2015 - OCTOBER 2016-MAY 2017

ACCURACY: + or - 2M

CROMMELIN NATIVE ARBORETUM COMMITTEE PEARL BEACH

