

This is the Annexure A to Positive Covenant between Arrawarra Beach Road Pty Ltd and Coffs Harbour City Council

1. Definitions and Interpretation

1.1. For the purpose of this covenant, the following definitions apply:

Act means the Conveyancing Act 1919.

Business Day means a day that is not a Saturday, Sunday or public holiday in the state of New South Wales.

Council means Coffs Harbour City Council.

Expenses includes:

- (i) any reasonable expense incurred by Council in exercising its powers under this Positive Covenant. ; and
- (ii) reasonable legal costs.

Land means Lots 1 and 2 DP 1209371 and Lot 1 DP 26125

Plans means plans for the revetment on the Land by Coastal Engineering Solutions numbered 15-849NSW – 01 to 18 Revision A dated 18 September 2015.

Prescribed Authority means Coffs Harbour City Council.

Registered Proprietor means Arrawarra Beach Road Pty Ltd being the current registered proprietor in fee simple of the Land and includes the registered proprietors of the Land from time to time.

Relevant Authority means Council and all and any other governmental or semi-governmental entity entitled to authorise or regulate the construction, use, condition and removal of the Structure.

Structure means the revetment on the Land constructed in accordance with the Plans.

1.2. Interpretation

In this Positive Covenant, except where the context otherwise requires:

- (i) the singular includes the plural and vice versa, and a gender includes other genders;
- (ii) another grammatical form of a defined word or expression has a corresponding meaning;
- (iii) a reference to a clause, paragraph, schedule, information table or annexure is to a clause of paragraph of, or schedule or information

table or annexure to, this Positive Covenant and a reference to this Positive Covenant includes any schedule or annexure;

- (iv) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (v) a reference to a party includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (vi) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (vii) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions;
- (viii) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- (ix) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this Positive Covenant or any part of it;
- (x) headings are for ease of reference only and do not affect interpretation; and
- (xi) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day.

2. Obligation to construct

The Registered Proprietor must construct the Structure on the Land:

- (i) in a proper and workmanlike manner by properly insured contractors; and
- (ii) in accordance with the Plans; and
- (iii) in accordance with the requirements of any Relevant Authority.

3. Obligations in relation to Structure

The Registered Proprietor must at all times without notice from Council:

- (i) subject to clause 4(i)(B), keep and maintain the Structure in good and tidy condition and in a proper state of repair;
- (ii) carry out regular inspections of the Structure to ensure that the Structure is securely constructed and meets all requirements from time to time of Relevant Authorities and the law; and
- (iii) refurbish the Structure whenever required to do so by the Council, to the satisfaction of the Council.

4. Covenants of the Registered Proprietor

The Registered Proprietor:

- (i) at its own cost must:
 - (A) ensure that the Structure is at all times securely constructed and meets the requirements of all Relevant Authorities and complies with all building codes and the law;
 - (B) except in the case of an emergency, submit to the Council details of any proposed repairs, maintenance, refurbishment, alteration or replacement of the Structure for approval by the Council and shall not carry out any such work without first obtaining the written approval of the Council and any other Relevant Authority;
 - (C) if applicable, procure the consent of the Relevant Authority under the Environmental Planning and Assessment Act 19793 (NSW) in relation to the Structure or any works associated with the Structure; and
 - (D) promptly comply with all orders and notices issued by the Council or any Relevant Authority in relation to the Structure, including without limitation as to the need to construct, repair, maintain, replace, refurbish or alter the Structure,
- (ii) covenants that in carrying out its obligations and exercising its rights under this Positive Covenant, it must use its best endeavours not to cause any inconvenience to the public and adjoining owners.

5. Notices

Any notice, approval, consent or other communication required to be given or served in connection with this Positive Covenant must be in writing and must be served in accordance with section 170 of the Act.

6. Governing Law

The laws of the State of New South Wales and of the Commonwealth of Australia apply to this Positive Covenant to the exclusion of any other laws and the parties agree to submit to the jurisdiction of the Courts of New South Wales in relation to this Positive Covenant.

7. Severability

In the event that any provision of this Positive Covenant is held to be invalid, illegal or unenforceable, that provision must to the extent of the invalidity, illegality and unenforceability be ignored in the interpretation of this Positive Covenant and all other provisions of this Positive Covenant will remain in full force and effect.

8. No waiver

A party to this Positive Covenant is not to be taken to have waived any right or entitlement it may have under this Positive Covenant unless and until that waiver is notified in writing to the party seeking the benefit of the alleged waiver. Waiver by a party in respect of any act or thing required to be done under this Positive Covenant does not constitute a waiver of any other act or thing (whether of the same or of a different nature) required to be done under this Positive Covenant.

9. Right to extinguish

The only party with the authority to release, vary or modify or extinguish this Positive Covenant is the Council.

10. Legal costs

The Registered Proprietor must pay all the Council's reasonable legal costs and expenses in respect of the preparation of this Positive Covenant and the costs of registering this Positive Covenant.

I certify that the authorised officer of the prescribed authority who is personally known to me or as to whose identity I am otherwise satisfied signed this application in my presence:

Execution by the Prescribed Authority

Signature of Witness:

Signature of an authorised officer:

Name of Witness:

Name of authorised officer:

Address of Witness:

Position of authorised officer:

Execution by the Registered Proprietor