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# DRAFT MAINTENANCE AGREEMENT



**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.

## 2. INTERPRETATION

Unless expressed to the contrary:

- (a) Words imparting:
  - (i) the singular includes the plural and vice versa;
  - (ii) any gender includes other genders.
- (b) If a word or phrase is defined cognate, words and phrases have corresponding definitions.
- (c) A reference to:
  - (i) a person includes a firm, unincorporated association, corporation and a government or statutory body or authority;

- (ii) a person includes its legal person or representatives, successors and assigns;
  - (iii) a statute, ordinance, code or other law includes regulations and other statutory instruments under it in consolidations, amendments, re-enactments or replacements of any of them;
  - (iv) a right includes a benefit, remedy, discretion, authority or power;
  - (v) an obligation includes a warranty or representation and a reference to a failure to observe or perform an obligation includes a breach of warranty or representation;
  - (vi) provisions or terms of this document or another document, agreement, understanding or arrangement includes a reference to both expressed and implied provisions and terms;
  - (vii) a time is to local time in Sydney;
  - (viii) "\$" or "dollars" is a reference to the lawful currency of Australia;
  - (ix) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes facsimile transmissions; and
  - (x) anything (included, without limitation, any amount) is a reference to the whole or any part of it and reference to a group of things or persons is a reference to any one or more of them.
- (d) A reference to this document includes all schedules, all annexures and appendices referred to in it.
- (e) Headings do not affect the interpretation of this document.

### **3. OBLIGATIONS OF ARRAWARRA**

In the event that any increased erosion of Arrawarra Beach or Council land adjacent the beach is caused by the presence of the Structure on the Land, Arrawarra must carry out such works as may be required by the Council to restore Arrawarra Beach and any adjacent Council land to the condition which it would have been in but for the construction of the Structure.

#### **4. OBLIGATIONS OF COUNCIL**

In the event of Arrawarra being obliged pursuant to clause 3 hereof to carry out works to restore Arrawarra Beach and any adjacent Council land, Council shall provide full and free access to such land to Arrawarra for that purpose. For the purposes of access to Arrawarra Beach and any adjacent Council land pursuant to this Deed Arrawarra shall be deemed to be a contractor of the Council.

#### **5. ASSIGNMENT**

(a) This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and permitted assigns.

(b) Arrawarra shall not transfer or otherwise dispose of the Land without first securing the agreement of any transferee to enter into a deed with Council in the same terms as this Deed.

#### **6. NOTICES**

##### **(a) General**

A notice or other communication under this document:

- (i) shall be given in writing; and
- (ii) may be given by an agent of the sender.

##### **(b) Method of Service**

In addition to any means authorised by law a communication may be given by:

- (i) being delivered personally;
- (ii) being left at the party's current address for service; or
- (iii) being sent to the current party's address for service by prepaid ordinary mail.

(c) **Address for Service**

The address is initially:

- (i) in the case of Council: Corner Coff and Castle Streets Coffs Harbour NSW 2450
- (ii) in the case of Arrawarra: Suite 1 Level 1 55-65 Grandview Street Pymble NSW 2073
- (iii) a party may from time to time change its address or numbers for service by notice to the other party.

(d) **Service by Post**

A communication by post is taken to be received:

- (i) if posted within Australia, to an Australian address on the third business day after posting; and
- (ii) in any other case, on the tenth business day after posting.

(e) **Service after Hours**

If a communication to a party is received:

- (i) after 5.00pm at the place of receipt; or
- (ii) on a day which is not a business day

it is taken to have been received at the commencement of the next business day.

EXECUTED by the parties as a deed.

THE COMMON SEAL of **ARRAWARRA BEACH ROAD PTY LTD** (ACN 104 215 072) was hereunto affixed by authority of the Board of Directors in the presence of:

.....  
Director

.....  
Director / Secretary

THE SEAL of the **COUNCIL OF THE CITY OF COFFS HARBOUR** was hereunto affixed pursuant to a resolution of the Council dated the day of in the presence of:

.....

.....  
Witness

