ORDINARY MEETING
23 OCTOBER 2019

DEED OF AGREEMENT – DEPARTMENT OF TRANSPORT AND MAIN ROADS AND CAIRNS REGIONAL COUNCIL FOR NEW BOATING LAUNCHING FACILITY, CAR TRAILER PARK AND ASSOCIATED INFRASTRUCTURE AT YORKEYS KNOB

Bruce Gardiner | 1/3/21 | #6205347

RECOMMENDATION:

That Council:

1. Endorses the Deed of Agreement; and

2. Delegates authority to the Chief Executive Officer in accordance with the Local Government Act 2009 to finalise any and all matters relating to the above, subject to Council’s normal procurement policies and practices.

EXECUTIVE SUMMARY:

TMR is progressing with a project to construct a new recreational boat launching facility at Yorkeys Knob. The new boat ramp and associated on-land facilities will be constructed immediately west of the existing harbour at Yorkeys Knob, outside the marina breakwater, with an access road on land between the Yacht Club and Half Moon Bay Golf Club.

Council have been in discussions with TMR and an agreed position has now been reached with regard to the obligations of both parties as contained in the attached Deed of Agreement for consideration by Council. This also includes a funding commitment from TMR towards a rock breakwater on the northern side of Half Moon Creek that will reduce ongoing maintenance dredging in the creek mouth.

This report seeks endorsement from Council for the Deed of Agreement between the State and Council for the proposed works.

BACKGROUND:

At the 26 June 2019 Ordinary Meeting Council resolved as follows:

That Council:

1. Enters into a deed of agreement with the Department of Transport and Main Roads for the delivery of the Yorkeys Knob Boat Ramp as outlined in the report.

2. Contributes $3.5 Million towards the boat ramp project.
3. *Enters into a funding agreement with TMR for the potential construction of a rock breakwater on the northern side of Half Moon Creek mouth, subject to a business case.*

4. *Commences detailed design of the Half Moon Creek rock breakwater.*

5. *Delegates authority to the Chief Executive Officer in accordance with the Local Government Act 2009 to enter into contracts, negotiate, finalise and execute any and all matters associated with or in relation to this project, subject to Council’s normal procurement policies and practices.*

The new boat ramp project will include the following elements:

- 6 lane boat ramp with 2 floating walkways
- 2 new breakwaters for wave protection
- a dredged basin
- an access channel connecting to the existing dredged entrance servicing Half Moon Creek, Bluewater Marina, and Trinity Park canal estate
- a sealed car-trailer park on state land to accommodate cars with trailers
- a new access road to connect the proposed boating facility to Buckley Street
- a toilet block and standard washdown facilities
- utilities including lighting, water and sewer.

Council has ongoing maintenance dredging responsibilities in the mouth of Half Moon Bay Creek to maintain a safe navigable channel for users from the Bluewater boat ramp, Bluewater Marina, and Bluewater Estate. Investigations occurred in 2015 into the construction of a rock breakwater on the northern side of the Half Moon Creek mouth to reduce siltation. The project was put on hold subject to obtaining external funding assistance.

**COMMENT:**

Council Officers have been negotiating the conditions of the Deed of Agreement for this project and believe that the Agreement is now ready for Council endorsement.

As the agreement provides a commitment of funding of up to $1 million from the State towards a rock training wall on the northern bank of Half Moon Bay Creek, design work has recommenced on this project. Council currently has funding of $3.3 million allocated in the 2026/27 financial year for this project. It would be prudent to construct the breakwalls for the new boat ramp facility and the rock training wall at the same time using the same contractor. A proposal for bringing forward these funds to allow for this will be brought back to Council during budget preparation for the 2020/21 year.

**OPTIONS:**

That Council:

1. Endorses the Deed of Agreement; and
2. Delegates authority to the Chief Executive Officer in accordance with the Local Government Act 2009 to finalise any and all matters relating to the above, subject to Council’s normal procurement policies and practices.
OR

That Council does not endorse the Deed of Agreement.

**CONSIDERATIONS:**

**Risk Management:**

Given the opposition from some stakeholders to the project, it is likely that Council will receive some criticism for contributing funds to the project. However, it is also likely that council will receive support from many recreational boat users for supporting the project.

Residents of Bluewater Estate and the Bluewater Marina may request a reduction in the Special Charge they pay for the dredging of the outer channel due to the increase in the number of public boat owners who will use the new ramps. TMR have advised that they will contribute annually towards dredging of the outer channel, but not based on the number of patrons using the new ramps. The residents may therefore turn to Council to contribute more than the current amount for this dredging due to the new ramps.

**Council Finance and the Local Economy:**

Council has allocated $3.5 million in the 2021/22 year for the Yorkeys Knob Boat Ramp, and $3.3 million in the 2026/27 year of the capital works program for the Bluewater Groyne.

The project will result in significant expenditure in the local economy with the total project costs likely to be above $11 million.

There will be ongoing relatively minor operational costs for the maintenance of the land-side infrastructure which will be include in forward operating budgets.

The construction of the rock training wall on the northern side of the Half Moon Bay creek mouth should substantially reduce ongoing dredging costs which are currently $408,000 on average per year. This in turn should reduce the Bluewater Special Charge and Councils ongoing dredging costs.

Council currently has funding of $3.3 million allocated in the 2026/27 financial year for this rock training wall. A proposal for bringing forward these funds to allow for this will be brought back to Council during budget preparation for the 2020/21 year.

**Community and Cultural Heritage:**

The project will result in improved recreational boating and fishing access for the community.

**Natural Environment:**

Both TMR and Council will be required to obtain the necessary environmental and other statutory approvals to ensure that potential impacts are managed and acceptable to relevant government agencies.
The reduction in dredging from the Half Moon Bay creek mouth as a result of the rock breakwater will result in a reduction in potential environmental impacts.

Corporate and Operational Plans:

The matter relates to Strategic Goal number 4 - A vibrant, inclusive and healthy community with access to services and facilities which reflect its unique character, roles and needs.

Statutory:

There is no statutory requirement or other arrangement that requires Council to contribute funds towards new boat ramps. However, TMR have advised that across the state, Councils generally contribute 50% of the capital costs for new boat ramps.

CONSULTATION:

There has been considerable consultation undertaken over a number of years by TMR on this project. Council officers and elected members have also been involved in numerous discussions and meetings on the project.

ATTACHMENTS:

Attachment - Deed of Agreement

Bruce Gardiner
General Manager Infrastructure Services
DEED OF AGREEMENT

between

STATE OF QUEENSLAND

acting through Department of Transport and Main Roads

and

Cairns Regional Council

about

a new the boating launching facility, car-trailer park and associated infrastructure at Yorkeys Knob
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DEED OF AGREEMENT

about

construction of a boat launching facility, car-trailer park and associated infrastructure at Yorkeys Knob

BETWEEN: The STATE OF QUEENSLAND acting through the Department of Transport and Main Roads ("TMR")

AND: CAIRNS REGIONAL COUNCIL ("CRC")

RECITALS

A. The Parties want to construct a new all-tide sheltered recreational boat launching facility, access road, and associated car-trailer and single car parking at Yorkeys Knob.

B. The Parties wish to jointly arrange for the funding, Design, construction, and ongoing management and maintenance of a new public boat launching facility at Yorkeys Knob.

C. TMR wishes to coordinate the overall funding, development application, construction and project management for the delivery of the Project.

D. TMR wishes to prepare detailed Designs for the Project.

E. TMR wishes to own the In-water Infrastructure.

F. CRC wishes to own and maintain the Land-based infrastructure and manage and maintain the boat ramp and floating walkways at Yorkeys Knob.

G. TMR wishes to refund CRC for its maintenance costs of the boat ramp and floating walkway and for its maintenance costs of partial protective fencing installed for public safety along the golf course boundary.

H. TMR wishes to arrange and fund maintenance of the breakwaters, dredged basin and access channel.

THE PARTIES AGREE AS FOLLOWS:

1. INTERPRETATION

1.1 In this Agreement, unless the context otherwise requires or the contrary intention appears, the following terms will have the meanings assigned to them:

“Agreement” means this document.

“all-weather” means a surface suitable for vehicles and trailers to be driven and parked without slipping or bogging in any weather.
“Commencement Date” means the date on which the last Party to this Agreement executes the Agreement.

“CPI” means Consumer Price Index.

“Design” means the drawings, specifications and other information, samples, models, patterns and the like required for the construction of all aspects of the Project. This includes a bill of quantities and estimated costs.

“DNRME” means the Department of Natural Resources Mines and Energy.

“Final Completion” means for a particular works contract when:

- contract obligations have been fulfilled
- the relevant works have been inspected and found to be free of defects
- as-constructed drawings of the works have been shared between the Parties in digital format.

“Funds” means the amount contributed by CRC for the Land-based infrastructure.

“High Water Mark” means the height of the waters at Yorkeys Knob at the mean of ordinary spring high tides, as published in Queensland Tide Tables and defined therein.

“In-water infrastructure” means a multi-lane boat ramp, one or more floating walkways, piles integral to the floating walkways, floating walkways abutments, transition slab from ramp to car park, two new breakwaters, dredged basin, and dredged access channel joining the basin to the CRC-maintained access channel, which provides access from the open sea to the Bluewater estate.

“Land-based infrastructure” means works above High Water Mark constructed for and associated with, and for access to, parking for car-trailer units and single cars and includes but is not limited to: land; a sealed access road, road works; footpaths; kerbing and channelling; drainage pits and pipes; protective fencing along the golf course boundary, protective bollards adjacent to the road (Appendix 2); plantings; bridge and culvert works; tie-in works to Buckley Street; lighting; road markings; landscaping; toilets; picnic tables, shelters, barbecues and bins.

“Parties” or “Party” means CRC and/or TMR, their employees, duly authorised agents, successors and assigns.

“Practical Completion” means the carrying out and completion of a works contract when:

- An inspection of the In-water infrastructure is found to be satisfactory and certified so.
- An inspection of the Land-based infrastructure is found to be satisfactory and certified so.

- the works are complete except for minor defects, which do not prevent the facility from being used by the public for their design purpose, and which there are reasonable grounds for not promptly rectifying.

“Project” means the Design and construction of the In-water infrastructure and Land-based infrastructure as broadly indicated in Appendix 1, and includes obtaining the necessary Statutory Approvals. The Project concludes on finalisation of the contract defects periods following Practical Completion of all the In-water infrastructure and Land-based infrastructure.
"Public Marine Facility" takes its meaning from the Transport Infrastructure Act 1994 and the Regulation and in this instance constitutes the In-water infrastructure and Land-based infrastructure at Yorkeys Knob.

"Regulation" means the Transport Infrastructure (Public Marine Facilities) Regulation 2011 and the TERMS AND CONDITIONS FOR THE MANAGEMENT AND CONTROL OF A PUBLIC MARINE FACILITY made pursuant to the Regulation.

"Road" means land dedicated as road under the Land Act 1994 (S93, 94) or such other tenure approved by DNRME for the proposed access road and car-trailer park.

"Site" means land and seabed at Yorkeys Knob available for development as a public boat launching facility and associated Land-based infrastructure.

"Statutory Approvals" includes:

- acts, ordinances, regulations, by-laws, orders, awards and proclamations of the jurisdiction where the Site works or particular part thereof will be carried out
- certificates, licences, consents, permits, approvals and requirements of entities and organisations having jurisdiction in connection with the carrying out of the Site works
- fees and charges payable in connection with Site works.

"USL" means unallocated state land defined in the Land Act 1994 and controlled by DNRME.

1.2 In this Agreement:

- References to a person include an individual, firm or a body, whether incorporated or not.
- Words in the singular include the plural and words in the plural include the singular, according to the requirements of the context.
- Words importing a gender include every gender.
- Clause headings and subclause headings will not form part of, nor be used in the interpretation of, this Agreement.

2 GENERAL PROVISIONS

2.1 TMR agrees to work with CRC to arrange road tenure with DNRME over sufficient USL at the Site as will give CRC control of the road access, car-parking, car-trailer parking and foreshore above High Water Mark. TMR agrees to pay fees associated with gaining such tenure.

2.2 CRC acknowledges that TMR cannot proceed with the project unless some form of tenure in favour of CRC exists or is agreed to be arranged for the land abutting and providing access from Buckley Street to the proposed boat launching facility.

2.3 TMR undertakes to advise DNRME of its intention to partner with CRC for a new boat launching facility and creation of a formal Public Marine Facility at Yorkeys Knob.
2.4 CRC agrees to become trustee of the reserves that are created to facilitate the Project.

2.5 TMR agrees to design, fund, obtain Statutory Approvals for, and deliver the In-water infrastructure.

2.6 TMR agrees to design, obtain Statutory Approvals for and deliver an access road (including creek crossing) and the all-weather car and car-trailer park per the concept plan (see Appendix 1).

2.7 CRC agrees to consider and promptly respond to any necessary local government projects approvals to facilitate construction of the In-water infrastructure and Land-based infrastructure, after due consideration and in accordance with its roles and accountabilities under relevant federal and state legislation and applicable CRC local laws.

2.8 TMR intends to the extent possible to utilise all capital (initial) dredging spoil for purposes of reclamation for the car-trailer park construction, noting that additional material may be required beyond that produced from the capital (initial) dredging.

2.9 CRC agrees to allow TMR to utilise CRC dredge spoil disposal approvals for TMR-funded and managed ongoing maintenance dredging of the TMR-owned boat ramp mini-harbour and adjacent short connection channel. TMR intends (unless specifically agreed otherwise in writing) to arrange and fund all aspects of this maintenance dredging of TMR-owned channels, including hydrographic survey through to dredge spoil disposal and post-dredge survey. CRC agrees to give TMR at least two years notice of any projected inability of CRC’s permits and approvals to be utilised by TMR for TMR-initiated maintenance dredging. TMR agrees to give CRC advance notice of proposed TMR dredging campaigns.

2.10 The Parties agree that any and all commercial activities or operations from, to and at the boat ramp and floating walkways will be the subject of a permit with conditions set by CRC and consented to by TMR as required by the Transport Infrastructure Act 1994 and the Regulation.

2.11 The Parties agree their intention for the Public Marine Facility to act as a public facility for launching and retrieval of trailer boats and other small craft.

3 FUNDING

3.1 The Parties agree that TMR will coordinate the overall funding for the Project.

3.2 TMR will contribute $5.5 million to construct the In-water infrastructure.

3.3 The Parties agree that CRC will contribute the Funds, being a capped sum of $3.5 million (excluding GST), and TMR will contribute an initial sum of $2 million (excluding GST) to construct the Land-based infrastructure, noting that TMR’s contribution to the Land-based infrastructure is intended primarily to cover the cost of the required creek crossing and a gravel construction-standard access road to facilitate initial construction of the In-water infrastructure.
3.4 CRC will pay, after the Commencement date and after receipt of a valid tax invoice from TMR in the 2021-22 financial year, the Funds to TMR for the construction of the Land-based infrastructure.

3.5 TMR will keep and maintain such records and accounts (including receipts and invoices) in accordance with accounting principles generally applied in commercial practice and as required by law and as necessary to provide a complete record and explanation of:
   - expenditure of the Funds for the approved purpose
   - other expenditure on the Project
   - implementation and progress of the Project

3.6 TMR will remit to CRC any unspent balance of Funds contributed by CRC within three months of Practical Completion of all Project components.

3.7 TMR will, subject to a CRC feasibility business case, provide a capped $1 million (excluding GST) grant to CRC as a contribution towards CRC’s proposed training wall adjacent to the northern entrance to Half Moon Creek. This $1 million TMR grant will, if confirmed by CRC as required, be paid to CRC in two equal instalments of $500,000, the first instalment in 2021-22 and the second instalment in 2022-23.

3.8 The Parties agree that TMR will contribute $30,000, CPI adjusted each year, to CRC’s annual maintenance dredging campaign of the offshore access channel leading from the open sea to the new mini-harbour’s short access channel after the commencement of this Agreement. TMR’s contribution will not be used for maintenance dredging channels inshore of the new mini-harbour or any part of the Bluewater canal estate or marina. This undertaking is not limited by expiry of this Agreement.

3.9 TMR will contribute, proportionate to relative dredging volumes, its share of fees associated with keeping CRC’s dredging permit active. This undertaking is not limited by expiry of this Agreement.

4 WORKS TIMING AND COORDINATION

4.1 TMR agrees that, subject to land tenure resolution and Statutory Approvals satisfactory to TMR and CRC, it intends to complete the In-water infrastructure and Land-based infrastructure during the 2021 calendar year.

4.2 TMR agrees to provide CRC with as-constructed drawings prior to Final Completion.

5 SITE ACCESS AND ATTENDANCE

5.1 The Parties agree that they will each have access to the Site during construction, subject to the usual protocols of prior advice to the relevant contractor and contract administrator.
5.2 The Parties agree that CRC will be represented at the Site for Practical Completion and Final Completion of any aspect of the works. One purpose of this provision in relation to In-water infrastructure is to ensure CRC is aware of its public liability commencement at Practical Completion, of its responsibility to advise TMR of defects requiring rectification prior to Final Completion, and of its on-going maintenance responsibilities as the appointed facility manager under the Transport Infrastructure Act 1994 and the Regulation. The Parties agree that in relation to the Land-based infrastructure this provision is in CRC’s interest as future owner.

6 OWNERSHIP AND MANAGEMENT
From Practical Completion of the final Project component deemed necessary for commencement of public use of and access to the facility:

- CRC will be the owner and manager of the Land-based infrastructure.
- TMR will be the owner of the In-water infrastructure.
- CRC will be the manager of In-water infrastructure as the appointed manager of the Public Marine Facility under the Regulation.

An effect of this provision is that public liability will pass direct from the respective works contractors to CRC at Practical Completion of both the Land-based infrastructure and In-water infrastructure (excluding contractor defects rectification, which will be notified by CRC to TMR for TMR attention).

7 MAINTENANCE COSTS
7.1 In accordance with the Regulation, CRC will be responsible for maintenance of the boat ramp and floating walkways after Practical Completion (excluding contractor defects rectification, which CRC will advise to TMR). CRC can seek a refund from TMR for structural maintenance of the boat ramp and floating walkways in accordance with the Regulation (terms and conditions component).

7.2 TMR will arrange and fund maintenance of the breakwaters.

7.3 TMR will arrange and fund maintenance dredging of the mini-harbour and its short connection channel to the existing dredged main Bluewater access channel.

7.4 CRC will, as owner, be responsible for maintenance of the Land-based infrastructure after Practical Completion (excluding contractor defects rectification, which CRC will advise to TMR).

7.5 The Parties agree that should any man-made golf course protective measures, such as fencing or vehicular bollards (but exclusive of existing or Project plantings), require maintenance then TMR will refund to CRC the contractor maintenance costs, in a similar manner to the standard refund to appointed managers of boat ramp and floating walkways maintenance costs – that is, with prior approval by TMR of the proposed expenditure.

7.6 The Parties agree that, within the mini-harbour created by the two breakwaters, the foreshore along the High Water Mark (not being part of the boat ramp, its shoulders, the floating walkways or the breakwaters) will be maintained by CRC to the extent required to protect and maintain the car-trailer park land. Aside from necessary car-trailer park protective measures near High Water Mark, CRC will maintain beaches to each side of the boat ramp along these two foreshore sections.
7.7 The Parties agree that the foreshore along the High Water Mark adjacent and parallel to the access road and adjacent to the Yorkeys Knob Boating Club seabed lease will be maintained by CRC to the extent required to protect and maintain the access road and associated infrastructure.

7.8 The Parties agree that the part of the new mini-harbour western breakwater that becomes, after reclamation, a revetment to protect the car-trailer park will, for maintenance purposes into the future, be maintained by TMR as part of the breakwater.

8 ACKNOWLEDGEMENT
8.1 The Parties will consult prior to making any public announcement or advertisement in any medium in relation to matters being the subject of this Agreement.

8.2 Each of the Parties is required to acknowledge the contribution of the other to the project wherever possible. This may include acknowledgement in publicly made statements or other documents.

8.3 The intellectual property rights embodied in or used in connection with the TMR or Queensland Government name and logo and the CRC name and logo will remain the sole property of the respective Parties.

9 DISPUTE RESOLUTION
9.1 Any dispute arising out of this agreement will be dealt with initially by direct negotiation between the Parties.

9.2 If the dispute is not resolved within fifteen business days, the Parties will submit the dispute to mediation or some other form of agreed dispute resolution procedure.

10 TERM
10.1 The Agreement will commence on the Commencement Date and will expire when the Parties agree in writing (receipted email exchange sufficient) that the Agreement no longer serves a valid purpose.

10.2 The expiry of the Agreement will not relieve either Party of obligations intended to be ongoing or remaining to be delivered or carried out as a requirement of this Agreement unless agreed in writing by variation to this Agreement.

11 AGENCY
The Parties are not, by virtue of this Agreement, the agent or representative of each other, and each will ensure that it conducts itself in dealings with others in such a manner as not to infer agency on behalf of the other.

12 VARIATION AND WAIVER
12.1 This Agreement may be varied at any time by a further agreement in writing executed by the Parties.
12.2 No variation, modification or waiver of any provisions of this Agreement, will be of any effect unless it is in writing and signed by the Parties and in the case of waiver, by the Party giving it.

13 ENTIRETY OF AGREEMENT

The Parties agree that this Agreement constitutes the entirety of the Agreement between the Parties, and relevant prior arrangements, agreements, warranties, representations or undertakings (written and/or oral), made by any Party, will be revoked upon execution of this Agreement.

14 GOVERNING LAW AND JURISDICTION

14.1 This Agreement is governed by the laws of Queensland and to applicable Commonwealth law. The Parties agree to submit to the jurisdiction of the courts of Queensland.

14.2 Any provision in this Agreement that is invalid or unenforceable in any jurisdiction is, if possible, to be interpreted for the purpose of that jurisdiction to be valid and enforceable. Such a provision will be not applicable to the extent of the invalidity or unenforceability, and will not affect the remaining provisions of this Agreement.

15 COUNTERPARTS

This Agreement may be signed in counterparts.

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EXECUTED as an agreement

SIGNED for and on behalf of the STATE OF QUEENSLAND acting through the Department of Transport and Main Roads
this day of 2019
by ..................................................
(print full name)

..................................................
(position)
who is a duly authorised officer in the presence of:

..................................................
(signature of witness)
..................................................
(print full name of witness)

SIGNED for and on behalf of Cairns Regional Council
this day of 2019
by ..................................................
(print full name)

..................................................
(position)
who is a duly authorised officer in the presence of:

..................................................
(signature of witness)
..................................................
(print full name of witness)
APPENDIX 1
APPENDIX 2

Extract from Half Moon Bay Golf Club 14th Hole Report Protective Screen Arrangement and Associated Works dated 30 May 2019 and prepared by David Burrup for Department of Transport and Main Roads.