

PLANNING AND ENVIRONMENT COMMITTEE	6
10 MAY 2023	

PROPOSED INFRASTRUCTURE AGREEMENT FOR THE DEFERRED PAYMENT OF LEVIED CHARGES FOR THE PALMS DEVELOPMENT STAGES 1 AND 2 (87 RESIDENTIAL LOTS) OF DEVELOPMENT PERMIT 8/30/369 FOR RECONFIGURING A LOT (1 LOT INTO 176 LOTS, PARK AND BALANCE LAND – STAGES 1 - 4) AND OPERATIONAL WORKS (CIVIL WORKS & LANDSCAPING – STAGES 1 & 2)

K Johnston | 8/30/369 | #7177141

RECOMMENDATION:

That Council:

1. Enters into an Infrastructure Agreement with PPNQ Developments Pty Ltd for the Deferred Payment of Levied Charges based on the draft Infrastructure Agreement provided within Attachment 1; and
2. 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 the Infrastructure Agreement including consequential and minor amendments as agreed by the parties.

INTERESTED PARTIES:

- PPNQ Developments Pty Ltd.
- Halpin Partners.
- Planning Plus (Qld).
- RPS.
- Urbis.
- Trinity Engineering and Consulting.
- LandPlan.
- Premise.
- Cardno (now Stantec).
- EcoRex.

Note: The identification of interested parties is provided on a best endeavours basis by Council Officers and may not be exhaustive.

EXECUTIVE SUMMARY:

On 26 April 2023, Council received a request from Planning Plus (Qld) on behalf of PPNQ Developments Pty Ltd (the **Developer**) to defer the payment of levied charges for Stage 1 and Stage 2 of 'The Palms' development (Development Permit for Reconfiguring a Lot (1 Lot into 176 Lots, Park and Balance Land – Stages 1-4) and Operational Work (Civil Works & Landscaping – Stages 1 & 2).

The Developer has requested deferral of levied charges, under an Infrastructure Agreement (**IA**), for a period of up to sixty (60) business days from the date an Application for Approval of the Plan of Subdivision for Stage 1 and Stage 2 of the development is submitted to Council. The request relates to Stage 1 and Stage 2 of the development, which is for 1 Lot into 89 Lots, comprising 87 residential lots, 1 management lot (Stage 3 & 4 super lot), 1 entry feature lot and 1 balance lot. The current value of infrastructure charges for Stage 1 and Stage 2 of the development are \$2,844,844.45 (indexed to March 2023).

Council will only enter into an IA where the legal and financial risks are appropriately mitigated through:

- For Applicants meeting the conditions for deferred payment of levied charges and requests to defer payment of levied charges for up to 60 business days – enforceable terms of an IA that protect Council's and the community's interests.

The Developer's request meets the conditions for deferred payment of levied charges as set out in Council General Policy for Deferred Payment of Levied Charges including:

- the Developer has demonstrated credit worthiness;
- the deferred payment date by which the levied charge will be payable no longer than 60 business days from the Statutory Payment Date; and
- the Developer has agreed to the terms of Council's Template IA for Deferred Payment of Levied Charges.

BACKGROUND:

The site is subject to a Preliminary Approval for a Material Change of Use that includes a Variation Request to vary the effect of CairnsPlan 2016 (*The Palms Plan of Development*). The Preliminary Approval seeks to implement *The Palms Plan of Development* over the site for residential, tourist and commercial uses. Council's decision was appealed to the Planning and Environment Court, which ultimately approved the application via Judgement dated 21 July 2021 (Council Reference: #6704615).

On 1 June 2022 at Council's Planning and Environment Committee Meeting, Council resolved to approve a Development Permit for Reconfiguring a Lot (1 Lot into 176 Lots, Park and Balance Land – Stages 1 - 4) and Operational Work (Civil Works & Landscaping – Stages 1 & 2). A Decision Notice was issued on 3 June 2022 (Council Reference: #6977328).

On 20 April 2023, under Instrument of Delegation, a Negotiated Decision Notice was approved for a Development Permit for Reconfiguring a Lot (1 Lot into 176 Lots, Park and Balance Land – Stages 1 - 4) and Operational Work (Civil Works & Landscaping – Stages 1 & 2). A Negotiated Decision Notice was issued on 20 April 2023 (Council Reference: #7172745).

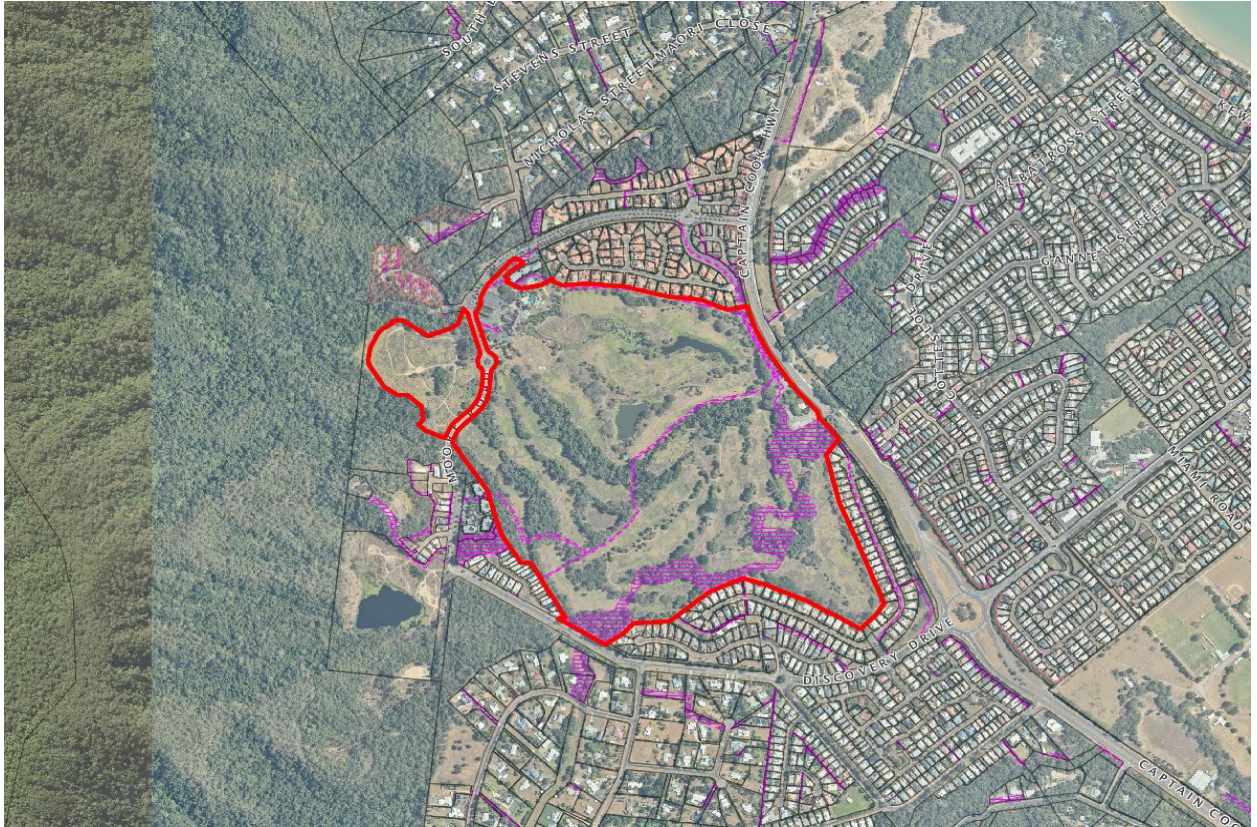
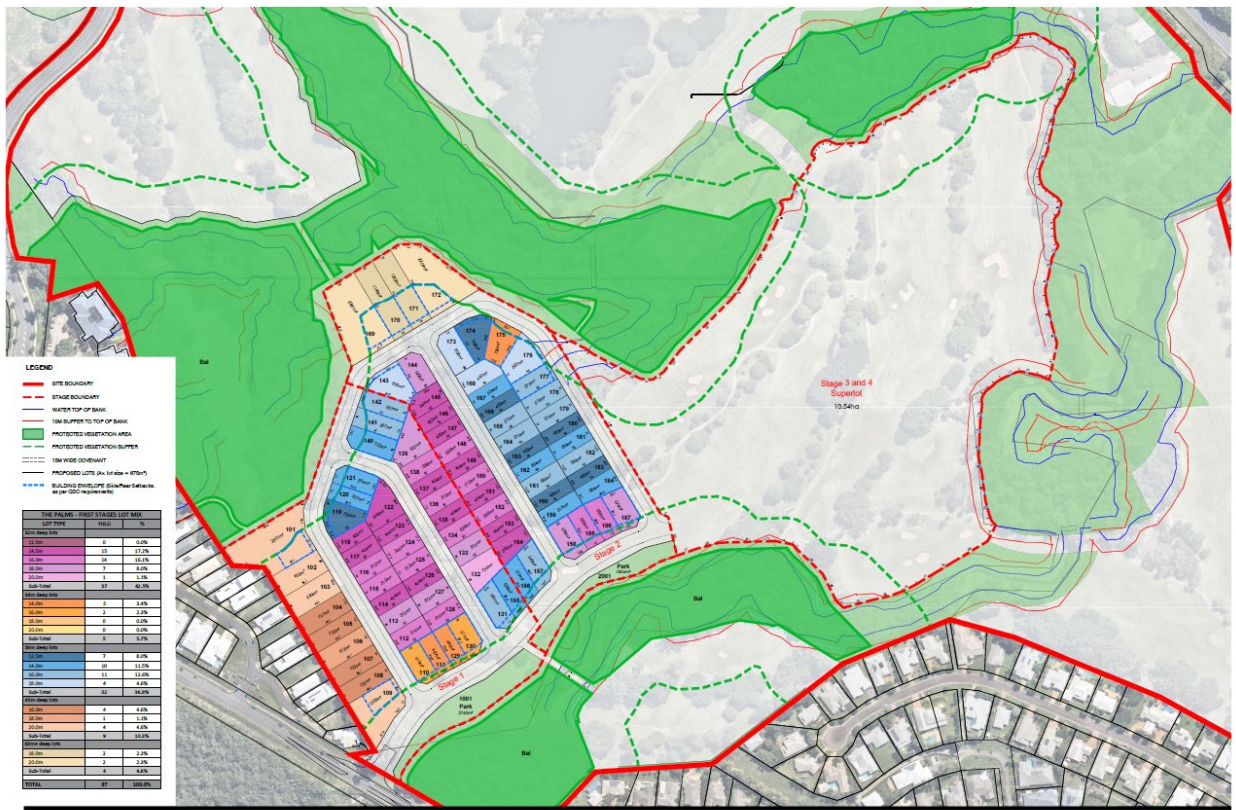


Figure 1: Subject Site – Greater Development



The Palms, Kewarra Beach
 Subdivision Plan - Stage 1 and 2
Level 32, 300 George Street | Brisbane QLD 4000 Australia | (61) 7 3007 3000 | URBIS Pty Ltd (ABN 50 108 298 228)

DISCLAIMER

CLIENT PPNQ Developments

PROJECT NO. 90001596 DATE 17.02.2023
DRAWING NO. REVISED
SUBDIVISION PLAN 10

Figure 2: Stage 1 and 2 – Approved Plans

COMMENT:**Deferred Payment of Levied Charges**

Section 122 of the *Planning Act 2016* (the **Act**) provides that levied charges are required to be paid when Council approves a plan of subdivision (the **Statutory Payment Date**).

The recipient of an Infrastructure Charges Notice and the Local Government may enter into an IA to defer the payment of levied charges to an alternative date than that prescribed under section 122 of the Act.

Council's General Policy – Deferred Payment of Levied Charges

Council's General Policy – Deferred Payment of Levied Charges (the **General Policy**) was adopted on 30 May 2022.

The General Policy includes the following conditions for proposals to defer payment of levied charges for a period of up to sixty (60) business days from the Statutory Payment Date:

- a) *A development approval has taken effect;*
- b) *An infrastructure charges notice has been given for the development approval;*
- c) *The Applicant meets the following eligibility criteria:*
 - i. *the Applicant must submit evidence of the individual's or entity's credit worthiness including disclosure of information that a reasonable person or entity has that may prevent the individual or entity from meeting the financial obligations under the IA.*

(Note: Council may take reasonable steps to verify the consumer's financial situation).
- d) *An Application for Deferred Payment of Levied Charges is made in the Approved Form and made at least 60 business days prior to the Statutory Payment Date;*
- e) *The deferred payment date by which the levied charge will be payable is no longer than 60 business days from the Statutory Payment Date; and*
- f) *On application and thereafter, the Applicant and Landowner agree to the terms of the Council's Infrastructure Agreement for Deferred Payment of Levied Charges (template).*
- g) *The Applicant / Developer acknowledges that, until the Levied Charges are paid to Council, the Council may, pursuant to section 105(1) of the LG Reg, include the amount of the Levied Charges on any Rate Notice for the Land as an amount payable to Council; and*

- h) The Applicant and/or the Owner of the land the subject of the development approval, are willing to enter into an IA reflecting the Council's agreement to apply this policy and defer the payment of the levied infrastructure charges.*

Template Infrastructure Agreement

Template IA's have been prepared to support the implementation of the General Policy. The template IA's were intentionally drafted to protect Council and the future purchasers from the legal and financial risks associated with deferred payment of levied charges.

The terms of the Council's IA templates for short-term and longer-term deferrals have been designed to protect Council. Relevantly, the IA terms:

- prohibit the developer lodging any further plans of subdivision, or selling or transferring any further parts of the Land if the IA terms are breached;
- allows Council to include the deferred amount on rates notices, consistent with section 105(1) of the Local Government Regulation 2012;
- make the Developer personally liable for breaching the IA;
- makes each Landowner jointly and severally liable to repay the Levied Charges;
- restricts the right to sell the land (subject to the IA) requiring the consent of the proposed transferee that the IA attaches to the land and consent from Council to the proposed transferee becoming subject to the Landowner's obligations; and
- include a requirement to notify future purchasers of 'developed lots' of the circumstances and legal effect of the IA i.e. if the Developer does not pay the infrastructure charges, you and other owners of the Land will each be jointly and severally liable to Council for the infrastructure charges.

Compliance with the General Policy

The intent of the General Policy is to ensure that the legal and financial risks are appropriately mitigated enforceable terms of an IA that protect Council's and the community's interests. Here, compliance with the General Policy and agreement to Council's template IA terms for deferred payment is paramount.

The Developer's request meets the conditions for deferred payment of levied charges as set out in Council General Policy for Deferred Payment of Levied Charges including:

- the Developer has demonstrated credit worthiness;
- the deferred payment date by which the levied charge will be payable no longer than 60 business days from the Statutory Payment Date; and
- the Developer has agreed to the terms of Council's Template IA for Deferred Payment of Levied Charges.

OPTIONS:**Option 1 (Recommended)**

That Council:

1. Enters into an Infrastructure Agreement with PPNQ Developments Pty Ltd for the Deferred Payment of Levied Charges based on the draft Infrastructure Agreement provided within Attachment 1; and
2. 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 the Infrastructure Agreement including consequential and minor amendments as agreed to by the parties.

Option 2

That Council refuses to enter into an Infrastructure Agreement with PPNQ Developments Pty td for the Deferred Payment of Levied Charges.

CONSIDERATIONS:**Risk Management:**

The legal and financial risks to Council are mitigated and managed by compliance with the General Policy and subsequent administration and enforcement of the terms of the IA.

Council Finance and the Local Economy:

The decision will not adversely impact on Council finance and facilitates the development of land within the Cairns Region which contributes to the local economy.

Community and Cultural Heritage:

The decision will assist in the delivery of the availability of housing within the Local Government Area.

Natural Environment:

Not Applicable.

Corporate and Operational Plans:

The recommendation supports the Strategic Objectives of the Economy, Liveability, and Serving the Community Strategic Goals contained in Council's Corporate Plan 2017 to 2022.

Statutory:

The infrastructure planning and charging framework for Queensland is prescribed under the *Planning Act 2016* and the associated *Planning Regulation 2017*.

The ability for Council and the Developer to enter into an Infrastructure Agreements and the associated legislative requirements are provided for under the *Planning Act 2016*.

Policy:

The recommendation is consistent with the relevant provisions of the General Policy.

CONSULTATION:

Council's Finance Department has been consulted in accordance with the Administrative Instruction for the Administration of the General Policy. Finance have confirmed they have no objections to the deferral of payment of infrastructure charges.

ATTACHMENTS:

1. Draft Infrastructure Agreement
2. Approved Plan



Keanu Johnston
Coordinator Development Services (Planning)



Claire Simmons
Executive Manager Development & Planning

Attachment 1: Draft Infrastructure Agreement ([#7177638](#))



PPNQ Developments Pty Ltd

Cairns Regional Council

Infrastructure Agreement

Deferred Payment of Levied Charges (up to 60 Business Days) – The Palms (Stages 1 and 2) – 4L Captain Cook Highway, Kewarra Beach – Application 8/30/369

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Date**Parties**

PPNQ Developments Pty Ltd (ACN #601 719 493) (**Developer**)

Cairns Regional Council (**Council**)

Background

- A. The Developer intends to carry out the Development on the Land.
 - B. The Developer is the Owner of the Land.
 - C. On 3 June 2022, the Council gave the ICN to the Developer. The parties have agreed that the timing for payment of the Levied Charges for Stage 1 and 2 of the Development is to be varied in accordance with, and subject to, this document.
-

Agreed terms**1 Commencement and Term****1.1 Commencement**

This document commences on the date when the last party executes this document, which is to be recorded by that party in **Item 1** at the time of execution.

1.2 Termination

Without affecting any accrued rights, the parties' obligations under this document terminate upon payment of the Levied Charges to Council.

2 Infrastructure agreement**2.1 Purpose of this document**

The purpose of this document is to give effect to a deferral of the Developer's obligation to pay the Levied Charges for Stage 1 and 2 of the Development.

2.2 Application of *Planning Act*

This document is an infrastructure agreement under the *Planning Act* and, in particular, under sections 123, 144(2) and 158 of the *Planning Act*.

2.3 Agreement to bind successors in title

- (a) The Developer Obligations will not be affected by a change in the ownership of the whole or any part of the Land, other than in accordance with clause 5.
- (b) It is the intention of the parties that the Developer Obligations will attach to the Land and be binding on the Owner and the Owner's successors in title, in accordance with section 155 of the *Planning Act*.

2.4 No fetter

Nothing in this document fetters the rights, powers, authorities, functions or discretions of Council, any other Approval Authority or any other government agency under the provisions of any Law.

2.5 Relationship with other documents

Nothing in this document precludes Council, any other Approval Authority, or any other government agency, from requiring infrastructure contributions under a condition of, or levying infrastructure charges in relation to, a development approval in relation to the Development.

2.6 Adverse change to planning instrument

The Developer Obligations do not depend on development entitlements that may be affected by a change to a planning instrument.

3 Parties' obligations

3.1 Developer's obligations

The Developer must comply with the terms of this document.

3.2 Landowner's obligations

- (a) The Landowner must comply with the Developer Obligations (including all obligations in clause 3.1).
- (b) The obligations of the Landowner under this document continue and remain in force and effect, even if the Landowner ceases to be the Owner of the Land, unless and until clause 5 is satisfied.
- (c) For the avoidance of doubt, if there are multiple Landowners, a reference in this document to the Landowner is a reference to each Landowner jointly and severally.

3.3 Council's obligations

Council must comply with the terms of this document.

4 Deferred Payment of Levied Charges

4.1 Effect of this clause

The parties agree that the usual requirements that would apply under the *Planning Act* in relation to the payment of Levied Charges are varied as set out in this clause Error! Reference source not found..2.

4.2 Deferred Payment

The Developer must pay the Levied Charges to Council prior to the earlier of:

- (a) The settlement of any agreement for the sale or transfer of the Land or any part of the Land; or.
- (b) 60 business days after the Statutory Payment Date.

4.3 Consequences of Non-payment

Without limiting any other rights of the Council under law, if the Developer fails to comply with clause 4.2:

- (a) each Landowner is jointly and severally Liable to pay the Levied Charges to Council, immediately;
- (b) the Levied Charges will become a rate for the purpose of recovery, in accordance with section 144(1) of the *Planning Act*;
- (c) the Developer must not lodge any further Plans of Subdivision for Approval or registration in relation to the Land;
- (d) despite clause 5, the Developer must not sell or transfer, or enter into any agreement for the sale or transfer of, the Land or any part of the Land; and
- (e) to the extent permitted by law, the Council may refuse to Approve any Plan of Subdivision in relation to the Land.

4.4 Inclusion on rates notice

The Developer acknowledges that, until the Levied Charges are paid to Council, the Council may, pursuant to section 105(1) of the *LG Reg*, include the amount of the Levied Charges on any Rate Notice for the Land as an amount payable to Council.

4.5 Personal obligation on Developer

Without affecting the liability of the Landowner under clauses Error! Reference source not found. and 3.2:

- (a) the Developer's obligation under clause Error! Reference source not found. also binds the Developer personally; and
- (b) the Developer's personal obligation in respect of clause Error! Reference source not found. is not affected by any sale or transfer of the Land, or any part of the Land.

4.6 Confirmation of automatic increases

- (a) To avoid any doubt, nothing in this document affects any automatic increases under section 114(3)(b) of the *Planning Act*.

- (b) At least 10 Business Days prior to the date that the Developer proposes to pay the Levied Charges to the Council (**Proposed Payment Date**), the developer must give the Council a Notice:
 - (i) stating that it is given under this **clause 4.6(b)**;
 - (ii) stating the Proposed Payment Date; and
 - (iii) requesting that the Council confirm the amount of Levied Charges that will be payable on the Proposed Payment Date.
- (c) Within 5 Business Days after receiving a Notice under **clause 4.6(b)**, the Council must give the Developer a Notice stating the amount of Levied Charges that will be payable on the Proposed Payment Date stated in the Developer's Notice.

5 Proposed transfers of land

5.1 Restriction on the right to sell the Land

Subject to **clause 5.4**, the Landowner must not sell or transfer the whole or any part of the Land unless the Landowner has first obtained:

- (a) written consent from the proposed transferee that this agreement will continue to attach to the relevant part of the Land; and
- (b) written consent from Council to the proposed transferee becoming subject to the Landowner's obligations under **clause 3.2**.

5.2 No unreasonable refusal of consent

Council must not unreasonably refuse to enter into a deed of novation sought to be entered into under **clause 5.1**.

5.3 Landowner to remain liable

In the event of the whole or any part of the Land being sold or transferred other than in accordance with **clause 5.1**, the Landowner (immediately prior to the sale or transfer) must perform and fulfil each of its obligations under this document that have not been performed and fulfilled immediately or at such other time as Council stipulates in a Notice, even if the time otherwise appointed for the performance and fulfilment of that obligation has not yet then arrived.

5.4 Transfer of Developed Lots

- (a) **Clause 5.1** does not apply to the sale or transfer of Developed Lots.
- (b) Before selling or transferring, or entering any agreement for the sale or transfer of, a Developed Lot, the Developer must give the proposed transferee a document in the form set out in **Schedule 2**.
- (c) Where an agreement mentioned in **clause 5.4(b)** has been entered into prior to the Commencement Date:
 - (i) the Developer must give the proposed transferee under the agreement a document in the form set out in **Schedule 2**, prior to the earlier of:
 - (A) settlement of the relevant sale or transfer; or

(B) 5 Business Days after the Commencement Date.

- (d) The Developer must notify Council in writing each time the Developer gives a proposed transferee a document mentioned in clause 5.4(b) or clause 5.4(c).

5.5 Effect of failure to pay Levied Charges

- (a) For the avoidance of doubt, this clause 5 is subject to clause 4.3(d).

6 Disputes

6.1 Application of clause

This clause 6.1 applies to any dispute between the parties to this document (including in relation to prior conduct of the parties or the interpretation of this document) but does not:

- (a) apply to disputes over debts; or
 (b) prevent a party from applying to a court for urgent injunctive or declaratory relief.

6.2 Dispute Notices

If a dispute arises between the parties to this document, a party may give a Dispute Notice to the other party:

- (a) identifying the dispute and the facts relied on in relation to the dispute; and
 (b) stating either that:
 (i) the parties are required to meet within 5 Business Days; or
 (ii) a written response to the Dispute Notice is required from the other party within 10 Business Days.

6.3 Initial meeting or correspondence

- (a) If a Dispute Notice is given under clause 6.2(b)(i), the parties must meet, within 5 Business Days after the date the Dispute Notice is given, at Cairns City, Queensland at least once to discuss the dispute including the possible resolution of the dispute.
 (b) If a Dispute Notice is given under clause 6.2(b)(ii), the recipient party must respond in writing to the Dispute Notice within 10 Business Days.

6.4 Mediation

- (a) If a meeting or written response under clause 6.3 fails to resolve the dispute, the parties may agree to refer the dispute to mediation.
 (b) If the parties agree to refer the dispute to mediation, then the parties must either:
 (i) appoint a mediator by agreement; or
 (ii) if the parties are unable, within 5 Business Days of agreeing to refer the dispute to mediation, agree on a mediator to be

appointed, request the President of the Queensland Law Society to make the appointment.

6.5 Court proceedings for unresolved dispute

A party must not apply to a court for the resolution of a dispute unless the dispute is not resolved within:

- (a) if the dispute is not referred to mediation – 15 Business Days after the date the Dispute Notice is given; or
- (b) if the dispute is referred to mediation – 30 Business Days after the date the Dispute Notice is given.

6.6 Costs of dispute

- (a) The parties must share equally all costs of any mediator appointed in relation to a dispute.
- (b) However, each party must pay its own costs in connection with resolving the dispute.

7 Notices

7.1 Giving Notices

- (a) A Notice relating to this document:
 - (i) may be given by an Authorised Person of, or the solicitors for, the relevant party;
 - (ii) must be in writing; and
 - (iii) must, subject to **clause 7.1(b)**, be:
 - (A) left at the address of the addressee in Australia stated in **Schedule 1**;
 - (B) sent by prepaid ordinary post to the address of the addressee in Australia stated in **Schedule 1**;
 - (C) sent by facsimile to the facsimile number of the addressee in Australia stated in **Schedule 1**; or
 - (D) sent by email to the email address of the addressee stated in **Schedule 1**.
- (b) A party may change their address, facsimile number or email address for the giving of Notices at any time by giving Notice to the other parties.

7.2 Receiving Notices

- (a) Unless a later time is specified in it, a Notice takes effect from the earlier of the time that it is actually received, or that it is taken to be received.
- (b) A Notice delivered by hand is taken to be received:
 - (i) if delivered by 5.00pm on a Business Day – on that Business Day; or
 - (ii) otherwise – on the next Business Day.

- (c) A Notice delivered by post is taken to be received on the day when, in the ordinary course of post, it would have been delivered.
- (d) A Notice sent by facsimile is taken to be received:
 - (i) if the transmission report produced by the machine from which the facsimile was sent indicates that the facsimile was sent in its entirety to the recipient's facsimile number by 5.00pm on a Business Day – on that Business Day; or
 - (ii) otherwise – on the next Business Day.
- (e) A Notice sent by email is taken to be received:
 - (i) if the email is sent by 5.00pm on a Business Day, and the sender does not receive a computer-generated report indicating that the email was not successfully sent – on that Business Day; or
 - (ii) otherwise – on the next Business Day.

7.3 Other matters

- (a) This clause 7 is in addition to the methods of service of notices set out in the *Property Law Act 1974 (Qld)*.
- (b) A party who receives a Notice is not obliged to enquire as to the authority of a person who purports to sign the Notice on behalf of a party.

8 General

8.1 Duty

All duty and registration fees payable on this document, or on any instruments of transfer, agreements or other documents referred to in or contemplated by this document, must be paid by the Developer.

8.2 Indemnity

- (a) The Developer indemnifies Council against any liability, loss, damage or claim made against Council arising from the Developer's non-compliance with the Developer's obligations under this document, but excluding any liability, loss, damage or claim made against Council arising from Council's actions, omissions or negligence.
- (b) Each indemnity in this document is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this document.
- (c) It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity conferred by this document.
- (d) A party must pay on demand any amount it must pay under an indemnity in this document.

8.3 Amendment of this document

- (a) The parties may at any time agree to vary the terms of this document except this clause.

- (b) No modification, variation or amendment of this document is of any force or effect unless it:
 - (i) is in the form of a deed executed by the parties; and
 - (ii) complies with the requirements of the Planning Act.

8.4 Waiver and exercise of rights

A single or partial exercise or waiver by a party of a right relating to this document does not prevent any other exercise of that right or the exercise of any other right.

8.5 Rights cumulative

Except as expressly stated otherwise in this document, the rights of a party under this document are cumulative and are in addition to any other rights of that party.

8.6 Consents

Except as expressly stated otherwise in this document, a party may conditionally or unconditionally give or withhold any consent to be given under this document and is not obliged to give its reasons for doing so.

8.7 Further steps

Each party must promptly do whatever any other party reasonably requires of it to give effect to this document and to perform its obligations under it.

8.8 Governing law and jurisdiction

- (a) This document is governed by and is to be construed in accordance with the laws applicable in Queensland.
- (b) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in Queensland and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

8.9 Assignment

- (a) A party must not assign or deal with any right under this document without the prior written consent of the other parties.
- (b) Any purported dealing in breach of this clause is of no effect.

8.10 Liability

An obligation of two or more persons binds them separately and together.

8.11 Entire understanding

- (a) This document contains the entire understanding between the parties as to the subject matter of this document.
- (b) All previous negotiations, understandings, representations, warranties, memoranda or commitments concerning the subject matter of this document are merged in and superseded by this document and are of no effect. No party is liable to any other party in respect of those matters.

- (c) No oral explanation or information provided by any party to another:
 - (i) affects the meaning or interpretation of this document; or
 - (ii) constitutes any collateral agreement, warranty or understanding between any of the parties.

8.12 Relationship of parties

This document is not intended to create a partnership, joint venture or agency relationship between the parties.

8.13 Effect of execution

This document is not binding on any party unless it has been duly executed by each person named as a party to this document.

8.14 Deed

This document is a deed. Factors which might suggest otherwise are to be disregarded.

9 Definitions and construction

9.1 Definitions

In this document these terms have the following meanings:

Term	Definition
Approval	A consent, permit, licence, certificate, authorisation, notice or approval under a law, or that is required under or in relation to this document.
Approval Authority	An entity or body with relevant power or authority to issue an Approval.
Authorised Person	The following: <ul style="list-style-type: none"> (a) for the Developer – any person Notified in writing as an authorised person by the Developer; (b) for Council – Council’s chief executive officer and any lawful delegate thereof.
Business Day	The meaning given to “business day” in the <i>Acts Interpretation Act 1954</i> (Qld), for Council’s local government area.
Claim	An allegation, debt, cause of action, liability claim, proceeding, appeal, suit or demand of any nature at law or otherwise, whether present or future, fixed or unascertained, actual or contingent. This includes any legal proceeding in the Planning and Environment Court or Supreme Court of Queensland.
Commencement Date	The date the last party executes this document, which is to be recorded in Item 1 .
Council	The entity described in Item 3 .

Developed Lot	<p>A Lot that is:</p> <ul style="list-style-type: none"> (a) created from the Land by the registration of a Plan of Subdivision approved by Council under section 50 of the <i>Land Title Act 1994</i> (Qld); (b) in its intended ultimate form for use in accordance with the Development Approval; (c) not intended to be the subject of a further development application for a material change of use of premises (other than for a "Dwelling house" as defined in the Planning Scheme) or for reconfiguring a lot; and (d) not intended to remain in the ownership of the Developer or the relevant Landowners.
Developer	The person described in Item 2 .
Developer Obligations	The obligations of the Developer under this document.
Development	The proposed Reconfiguring a Lot development of the Land generally in accordance with the Development Approval.
Development Approval	The development permit granted by the Council by way of decision notice dated 20 April 2023, described as being for "Reconfiguring a Lot (1 into 176 Lots, Park and Balance Land - Stages 1-4) and Operational Works (Civil Works & Landscaping - Stages 1 & 2) - The Palms Development", and assigned reference number 8/30/369 #7172745.
Dispute Notice	A Notice given by one party to the other under clause 6.2 .
Financial Contribution	The payment of monetary amount for infrastructure.
ICN	The infrastructure charges notice given to the Developer by the Council, dated 3 June 2022 and with reference number 8/30/369 #6977334.
Item	An item in Schedule 1 .
Land	The land described in Item 4 .
Landowner	The Owner of the Land as at the Commencement Date and any successors in title for the Land or any part of the Land.

Law	Any statute, regulation or subordinate legislation of the Commonwealth, the State of Queensland, or any local or other government in force in the State of Queensland, irrespective of where enacted.
Levied Charges	The infrastructure charges levied by the ICN.
Lot	The meaning given in the <i>Land Title Act 1994</i> (Qld).
Notice	Any certificate, demand or notice to be given by a party under this document.
Owner	The meaning given in the <i>Planning Act</i> , for an owner of land.
Planning Act	The <i>Planning Act 2016</i> (Qld).
Planning Scheme	The CairnsPlan 2016 Version 3.
Plan of Subdivision	The meaning given in the <i>Land Title Act 1994</i> (Qld).
Proposed Transferee	A person to whom any part of the Land is proposed to be sold or transferred.
Rate Notice	The meaning given in the <i>LG Reg</i> .
Stage 1 and 2 of the Development	Stage 1 and 2 of the development being 1 Lot into 87 Lots, Park and Balance Land, as shown on the approved plan of development (Subdivision Plan – Stage 1 and 2, The Palms, Kewarra Beach, Drawing No. Subdivision Plan, Revision 10, Council Reference #7168954).
Statutory Payment Date	The date that, but for this document, the Levied Charges would become payable in accordance with section 122 of the Planning Act.

9.2 Construction

Unless expressed to the contrary, in this document:

- (a) words in the singular include the plural and vice versa;
- (b) any gender includes the other genders;
- (c) if a word or phrase is defined, its other grammatical forms have corresponding meanings;
- (d) "includes" means includes without limitation;
- (e) no rule of construction will apply to the disadvantage of a party because that party drafted, put forward or would benefit from any term;
- (f) a reference to:
 - (i) a person includes a partnership, joint venture, unincorporated association, corporation, entity and a government agency;
 - (ii) a person includes the person's legal personal representatives, successors, assigns and persons substituted by novation;
 - (iii) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced;

- (iv) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation;
- (v) a right includes a benefit, remedy, discretion or power;
- (vi) time is to local time in the Council's local government area;
- (vii) "\$" or "dollars" is a reference to Australian currency;
- (viii) this or any other document includes the document as novated, varied or replaced and despite any change in the identity of the parties;
- (ix) writing includes:
 - (A) any mode of representing or reproducing words in tangible and permanently visible form, including fax transmission; and
 - (B) words created or stored in any electronic medium and retrievable in perceivable form;
- (x) this document includes all schedules and annexures to it;
- (xi) a clause, schedule or annexure is a reference to a clause, schedule or annexure, as the case may be, of this document; and
- (xii) in the ICS, an "item" is to an item in the ICS;
- (g) a term that is used, but not defined in, this document, will, unless the context otherwise requires, have the meaning given to it by (in the following descending order):
 - (i) the *Planning Act*, or
 - (ii) its ordinary meaning;
- (h) if the date on or by which any act must be done under this document is not a Business Day, the act must be done on or by the next Business Day; and
- (i) headings do not affect the interpretation of this document.

Schedule 1

Agreement Details

Item	Description	Details
1	Commencement Date	
	Date	--> to be inserted above by the last party to execute this document <--
2	Developer	
	Name	PPNQ Developments Pty Ltd
	Address	101 Sheridan Street, CAIRNS QLD 4870
	Postal address	C/- Halpin Partners 101 Sheridan Street CAIRNS QLD 4870
	Phone	0402 073 082
	Fax	n/a
	Email	evan@planningplusqld.com.au
3	Council	
	Name	Cairns Regional Council
	Address	119-145 Spence Street, Cairns Qld 4870
	Postal address	PO Box 359, Cairns Qld 4870
	Phone	1300 69 22 47
	Email	council@cairns.qld.gov.au
4	Land	
	Address	4L Captain Cook Highway KEWARRA BEACH
	Lot and plan description	Lot 4 on SP285555

Schedule 2

Notice to proposed transferee of Developed Lot

NOTICE REGARDING INFRASTRUCTURE CHARGES

This notice is important. Please read it carefully. If you have questions, it is **strongly** recommended that you obtain independent legal advice.

You are being given this notice because you are considering entering into an agreement with PPNQ Developments Pty Ltd (**Developer**) for the sale or transfer of land located at 4L Captain Cook Highway, Kewarra Beach (described as Lot 4 on SP332615 (**Lots**)).

The Lots are subject to an infrastructure agreement (**IA**) between the Developer and Cairns Regional Council (**Council**) in relation to development of land including the Lot. As a result of that development, the Developer is liable to pay infrastructure charges to Council, in an amount of \$2,844,844.45. Ordinarily, that would have occurred up-front with the development. However, under the IA, payment has been deferred until 60 business days from the date an Application for Approval of the Plan of Subdivision for Stage 1 and 2 of the Development is submitted to Council.

Under the IA, the Developer is liable to pay the infrastructure charges. However, that liability **also** attaches to the land, including the Lot.

This means that if, for any reason, the Developer does not pay the infrastructure charges, you and other owners of the Land will each be jointly and severally liable to Council for the infrastructure charges.

Execution

Executed as a deed

Executed by PPNQ Developments Pty Ltd)
)
)

.....
Company Secretary/Director

.....
Director

.....
Name of Company Secretary/Director
(print)

.....
Name of Director (print)

.....
Witness signature

.....
Name of witness (print)

Executed for and on behalf of the)
Cairns Regional Council in the)
presence of:)

.....
Authorised officer

.....
Witness

.....
Name of authorised officer (print)

.....
Name of witness (print)

Attachment 2: Approved Plan (DM Reference: #7168954)



URBIS The Palms, Kewarra Beach
 Subdivision Plan - Stage 1 and 2
 Level 32, 300 George Street | Brisbane QLD 4000 Australia | +61 7 3007 3000 | URBIS Pty Ltd | ABN 90 106 296 228

DISCLAIMER
 This drawing is a preliminary design and is not intended for construction. It is provided for information only and is subject to change without notice. The client is responsible for ensuring that this drawing is used in accordance with the relevant legislation and standards. The client is also responsible for ensuring that this drawing is used in accordance with the relevant legislation and standards. The client is also responsible for ensuring that this drawing is used in accordance with the relevant legislation and standards.

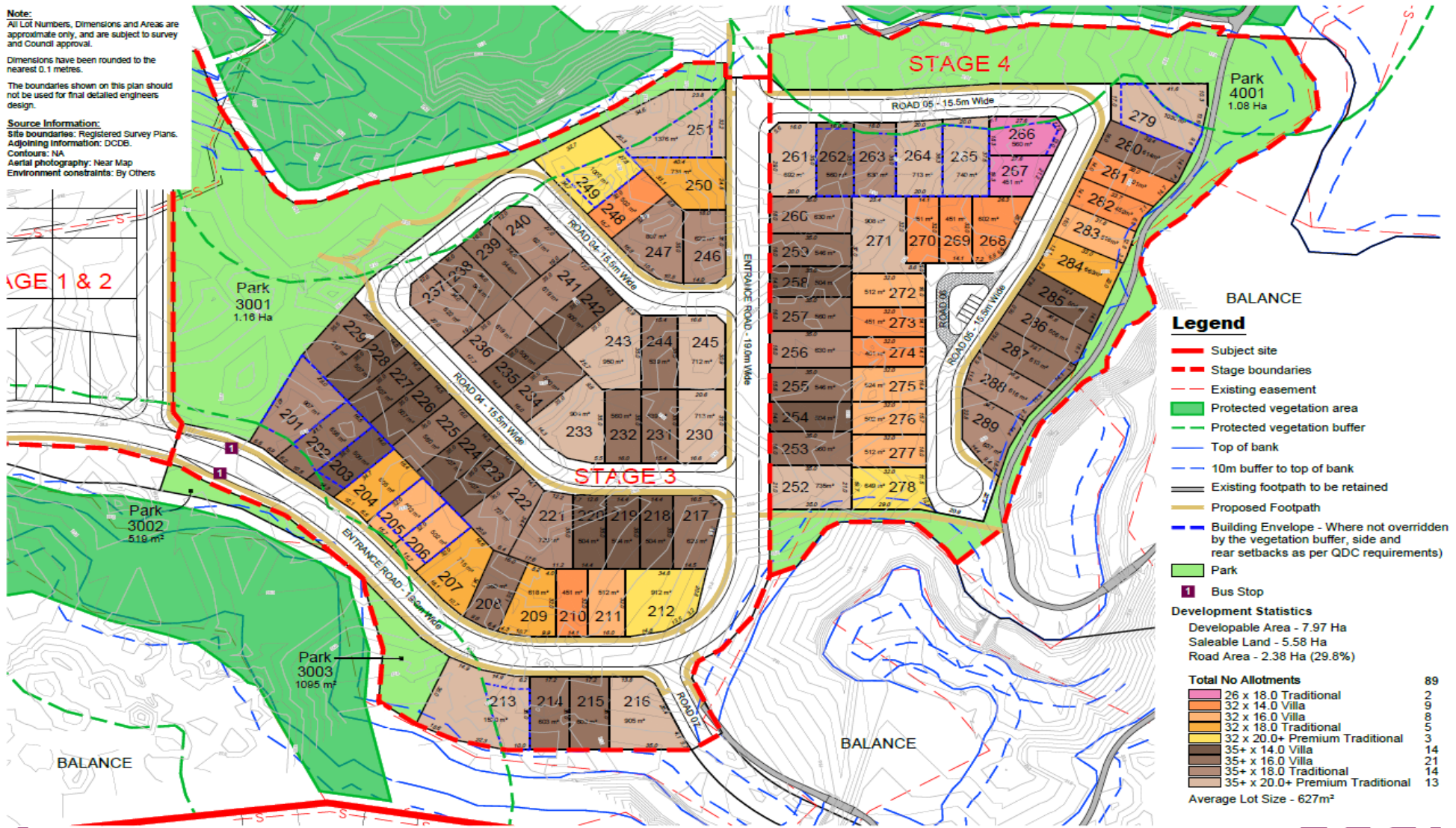
CLIENT
 PPNQ Developments

PROJECT NO. P0001566
DATE 17.02.2023
DRAWING NO. 10
REVISION

Subdivision Plan 10

Note:
 All Lot Numbers, Dimensions and Areas are approximate only, and are subject to survey and Council approval.
 Dimensions have been rounded to the nearest 0.1 metres.
 The boundaries shown on this plan should not be used for final detailed engineers design.

Source Information:
 Site boundaries: Registered Survey Plans.
 Adjoining Information: DCDB.
 Contours: NA
 Aerial photography: Near Map
 Environment constraints: By Others



- BALANCE**
- Legend**
- Subject site
 - - - Stage boundaries
 - - - Existing easement
 - Protected vegetation area
 - - - Protected vegetation buffer
 - - - Top of bank
 - - - 10m buffer to top of bank
 - - - Existing footpath to be retained
 - - - Proposed Footpath
 - - - Building Envelope - Where not overridden by the vegetation buffer, side and rear setbacks as per QDC requirements)
 - Park
 - Bus Stop

Development Statistics

Developable Area - 7.97 Ha
 Saleable Land - 5.58 Ha
 Road Area - 2.38 Ha (29.8%)

Total No Allotments

26 x 18.0 Traditional	2
32 x 14.0 Villa	9
32 x 16.0 Villa	6
32 x 18.0 Traditional	6
32 x 20.0+ Premium Traditional	3
35+ x 14.0 Villa	14
35+ x 16.0 Villa	21
35+ x 18.0 Traditional	14
35+ x 20.0+ Premium Traditional	13

Average Lot Size - 627m²

PLAN REF: 143921 - 04i
 DATE: 20th March 2023
 CLIENT: PFMQ Developments Pty Ltd
 DRAWN BY: MJB
 CHECKED BY: MJB

**PARADISE PALMS
 STAGE 3 & 4
 RAL PROPOSAL PLAN**

URBAN DESIGN

Unit 1
 57 Barkly Street
 South Townsville QLD 4810
 T: 481 74754 4244
 W: rpigroup.com

RPIS

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