



Express DA accreditation kit

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Introduction

Express DA program allows suitably qualified professionals to produce certain types of planning applications in a way that enables the Council to promptly issue approvals for those applications. The program is based on decision ready applications for specific development types as nominated in the Express DA Application Guideline and in this Accreditation Kit.

Express DA by professional consultants relies on two specific processes to be in place to ensure its efficiency:

- The development of clear standards for nominated development applications based on the planning scheme and its associated benchmarks, and adopted Council Policies; and
- Creation of an accreditation system and process where in Council could reasonably rely on a suitably qualified consultant's professional opinion and preparation of a development application to make a decision.

The aim of Express DA is to reduce timeframes, red tape and impacts on industry and Council, and to increase accountability and utilisation of professional consultants. Express DA protects the integrity of the planning assessment and approval process by empowering accredited practitioners which have demonstrated that they possess appropriate expertise, experience, and integrity.

Description of Accreditation

The accreditation process, coupled with the clear standards and criteria, seeks to implement a more efficient assessment of nominated development applications.

The accreditation of professional consultancies is a voluntary process of being certified as meeting minimum requirements designated by an accrediting system. It provides a mechanism for Council to be able to reasonably rely on a consultant's professional qualifications and experience. Its aim is to ensure the integrity of the process and qualify only consultants who, by reason of their expertise, experience, integrity and honesty can be relied upon to properly use the Express DA process and to provide relevant documentation to Council.

Applicants lodging in this way are agreeing to follow and abide by Council's established procedure. Random auditing will be undertaken to assess and monitor the competence of accredited professionals.

To utilise such a process requires experience with lodging competent applications, knowledge of the relevant planning legislation, familiarity with the Council's planning schemes and policies and a high level of reliability in the consultant by the Council.

To undertake Express DA Assessment, accreditation for consultancy is required.

It is critical that the individual has demonstrated the required level of expertise and experience. Equally the firm / consultancy must demonstrate they hold the required insurance policy, as it is the firm that will ultimately take responsibility for rectifying any breaches or mistakes. Where an accredited consultant moves from one firm to another, the individual consultant is not required to reapply for accreditation provided they are moving from one accredited consultancy to another.

The Accreditation Kit

The Accreditation Kit contains all the relevant material to assist **consultants** and **consultancies** in obtaining accreditation and outlines Council's expectations. Outlined below are the documents contained in the Accreditation Kit:

- Accreditation Application Form for Consultants/Consultancy;
- Guideline for an 'Accredited Consultant / Consultancy; and
- Deed of Agreement for Accredited Consultant / Consultancy

The Accreditation Kit adopted for the Express DA Assessment process is at Appendix A.

Accreditation Application Form

The ability to qualify as an 'Accredited Consultancy' is available to all relevant competitors provided they meet the relevant specified criteria. The qualifications / experience includes criteria within the following categories:

1. Professional and Public Indemnity Insurance. Each 'Accredited Consultancy' must have Professional and Public Indemnity Insurance to cover the provision of this service. Insurance demonstrates that the organisation and its employed / contracted consultants have met professional requirements to obtain insurance and have a business enterprise that is sufficiently robust to require financial protection. Additionally, Council may under certain circumstances, obtain access to this insurance if the individual (or organisation) were to engage in fraudulent or misleading activities.
2. Demonstrated knowledge by the consultant of the relevant planning scheme and provisions held therein as well as the relevant planning legislation and other legislation. This may be achieved through providing evidence of lodging a significant number of relevant applications to the Council, in a recent timeframe that demonstrates a detailed understanding of the relevant requirements and processes relating to the assessment of development applications. This includes, but is not limited to:
 - Demonstrated identification and application of the correct benchmarks and policies associated with the set number of applications;
 - Demonstrated identification of referral agencies, if any, for these set number of applications;
 - Demonstrated identification of the correct Level of Assessment for these set number of applications; and
 - Demonstrated ability to prepare a well-made application.

Guideline for an ‘Accredited Consultant / Consultancy’

In order to ensure compliance with the requirements of the accreditation process, guidelines have been developed that clearly articulate the roles and responsibilities of the ‘Accredited Consultant / Consultancy’ and any other interested party. It is recognised that both parties (Council and the ‘Accredited Consultant / Consultancy’) must possess a detailed understanding of the process to guarantee its success.

The Guideline for an ‘Accredited Consultant/Consultancy’ clearly outlines a step-by-step process which:

- Identifies the requirements for the lodgement of an application under Express DA;
- Identifies the timeframe or indicative timeframe by which Council will issue an approval having relied on the accreditation;
- Identifies a probationary period; and
- Identifies an auditing process.

Deed of Agreement for Accredited Consultant / Consultancy

The ‘Accredited Consultant / Consultancy’ must agree to the terms and conditions of the process before Council can reasonably rely on their expert advice. This is achieved by documenting the roles and responsibilities of both the ‘Accredited Consultant / Consultancy’ and the Council and requiring a signature of acceptance of these terms. The documents that formalise this arrangement for consultants and consultancies are titled the Deed of Agreement for Accredited Consultant and Deed of Agreement for Accredited Consultancy (the deeds) and are attached in the Accreditation Kit.

The roles and responsibilities of each party participating in this accreditation process are clearly articulated within these two deeds. This ensures that all have a clear understanding of their role in the process and have no recourse for not following the rules set down through this process. Any non-compliance with the criteria and information provided by the Council may be grounds for removal of accreditation for both the consultant and the consultancy they represent. Council may also undertake proceedings to have any errors by the consultant rectified.

The deeds are legally binding. It is the basis on which Council will rely on the report provided by the consultant.

Qualifying Accredited Representatives and Organisations

Meeting the accepted criteria to qualify as an ‘Accredited Consultant and Consultancy’

The consultant and consultancy are required to submit an application to Council supported by documentation demonstrating how they meet the criteria outlined by Council. If a consultant and consultancy achieve the acceptable criteria for accreditation, that consultant and consultancy will become accredited and will be able to participate in the Express DA process.

Council may outline responsibilities and impose conditions on the accreditation of a consultant

and / or consultancy. If the 'Accredited Consultant or Consultancy' breaches the terms of the accreditation, Council may remove accreditation depending on the severity of the breach.

The consultant and consultancy are required to provide a minimum of two example applications of the development type being applied for. The list of development types is provided below. Each example application must have been lodged and approved in the Cairns Regional Council area within the last 2 years of applying for accreditation.

Development Types are:

- Residential – Dwelling House (including dwelling house and referral agency application)
- Residential – Building Works
- Residential – Dual Occupancy

This accreditation may only apply to the specific development type (i.e Residential – building works etc) that the applicant has requested accreditation for and does not allow the consultant to lodge development applications under Express DA in which they have not demonstrated the necessary competence. For example, a particular applicant may provide a number of compliant development applications for building works but may not have any experience with material change of use applications in Cairns Regional Council. In this case, the applicant should be accredited for applications concerning building works type but not material change of use development type.

Should the applicant not be able to provide sufficient quantum of example applications of a given development type, Express DA accreditation with any other Queensland local authority may be given some weight by Cairns Regional Council. The amount of weight given will depend on the applicants experience and reference from the other Queensland local authority(s).

If the consultant / consultancy only wishes to be accredited for specific uses or development types, this should be clearly stated in the accreditation kit and a covering letter submitted to council.

Agreeing to be bound to the guidelines and requirements of the accrediting body

The 'Accredited Consultant and Consultancy' must sign the terms and conditions applied by the Council in the deeds.

Monitoring the Process

Monitoring the activity of its 'Accredited Consultant and Consultancy'

In order to ensure that the 'Accredited Consultant and Consultancy' are complying with requirements of the Council, a post-approval and post-construction audit process may be undertaken. This post-approval and post-construction audit allow Council to determine how well the process is working, any inconsistencies or issues with their criteria or process, and whether Accredited Consultants are breaching the requirements of the process.

Disciplinary action for misdemeanours

Any breach is grounds for the Council to undertake a detailed assessment of all development applications lodged by the consultant and the consultancy and may result in their removal from the list of 'Accredited Consultants and Consultancies.' Council may however, at their discretion, consider issues such as the severity of the alleged breach, the responsiveness of the consultant to the breach and history of the consultant and the consultancy they represent in determining an appropriate course of action. In these cases, the severity of the breach will dictate the disciplinary action to be taken. Below are four primary disciplinary actions that a Council may take in order of severity (Note that the decision of what action to take resides with the Council):

- Notice to applicant for the first discrepancy;
- Return to a probation period for a set number of applications and subject to an extended approval timeframe;
- Removing the ability to lodge under Express DA for a set period of time (suspension); and
- Cancellation of accreditation of the 'Accredited Consultant and Consultancy'.

Additionally, Council may, under certain circumstances, obtain access to the insurance if the individual (or consultancy) were to engage in fraudulent or misleading activities.

Note that all disciplinary action(s) that are imposed on a particular consultant will also be imposed on the consultancy they represent. The expectation is that the participating consultancy develops their own quality assurance process regarding Express DA.

Glossary

Accredited Consultant

A consultant that has demonstrated adequate competency to be considered 'accredited' for the purposes of this accreditation process. The accreditation is valid for an individual consultant whilst under the employment of their current consultancy. In the event of the consultant ceasing employment with the accredited consultancy the accreditation shall be suspended or removed unless the consultant is moving to a consultancy that also has the required accreditation.

Accredited Consultancy

A consultancy that has demonstrated sufficient insurances to be considered 'accredited' for the purposes of this accreditation process. The accreditation is valid for a consultancy whilst an accredited consultant is under their employment. In the event of the consultant ceasing employment with the accredited consultancy or the accredited consultancy's inability to demonstrate sufficient insurance, the accreditation shall be suspended or removed.

PA

Planning Act 2016 (formerly the Sustainable Planning Act 2009).

Relevant Legislation

Queensland

Planning Act 2016 (Qld) (PA)

Sustainable Planning Act 2009 (Qld) (SPA)

Local Government Act 2009 (Qld) (LGA)

Any other future Queensland Planning legislation

Available for viewing at: <https://www.legislation.qld.gov.au/>

Contacts

Council's Development & Planning Branch may be contacted on the details below:

Telephone: 1300 69 22 47

Email: expressda@ Cairns.qld.gov.au

Express DA standards and criteria and additional information are available on Council's website.

Appendix A: Accreditation Kit

Note: a consultant applying for accreditation is required to complete and submit the following three (3) forms:

- 1 Accreditation Application Form
- 2 Guideline for Accredited Consultant/Consultancy
- 3 Deed of Agreement for Accreditation for Consultant and Consultancy

Accreditation Application Form

Section 1: Consultancy details

Name of Consultancy	
Nominated development type applying for (<i>list all</i>)	<input type="checkbox"/> Residential – Dwelling House (including Referral) <input type="checkbox"/> Residential – Dual Occupancy <input type="checkbox"/> Residential – Building Works
Name of Consultant	
Signature of Consultant	
Name of Director	
Signature of Director	
Date	

Section 2: Supporting documents

To qualify for Accreditation for Express DA, the following must be submitted and complied with:

1. An applicant should submit a covering letter which, in addition to identifying example applications, explicitly outlines the following:
 - Applicable Council benchmarks / standards / policies;
 - Applicable State Planning Policies;
 - Applicable Australian Standards;
 - State Referral Agencies - who and what trigger?;
 - A summary outline of the proposal and what the main or significant issues were with the application and how were they resolved; and
 - Outline all the necessary supporting information and reports that were required to approve the development.
 - Resumes detailing relevant experience and qualifications of assigned personnel

2. Provide examples of at least 2 applications for each Development Type being applied for, from each of the various development types listed below. Each example application must have been lodged and approved in the Cairns Regional Council area within the last 2 years of applying for accreditation.

Development Types are:

- Residential – Dwelling House
- Residential – Dual Occupancy
- Residential – Building Works

Note: If the consultant / consultancy only wishes to be accredited for specific uses or development types, this should be clearly stated in the accreditation kit and a covering letter submitted to council.

3. Copies of the following current insurance policies outlining the insured amount, policy provider, policy number, date of commencement and expiry date of policy (to remain current for the term of the accreditation):
 - I. Professional Indemnity Insurance to the value of \$1,000,000 from an insurer and on terms acceptable to Council;
 - II. Public Liability Insurance to the value of \$20,000,000 from an insurer and on terms acceptable to Council;
 - III. Any other insurance required by law, from an insurer and on terms acceptable to Council; and
 - IV. The insurance policies held and maintained by the consultancy must cover the acts or omissions of the individual consultant.

Guidelines for Accredited Consultant / Consultancy

The purpose of this practice guideline is to inform the Accredited Consultant / Consultancy of the operational nature of Express DA and outline general expectations.

This approach offers an opportunity to advance partnerships, assist in delivering services to the community, and provide an innovative approach to service delivery. The process offers a means of fostering a stronger relationship with industry colleagues by quickly deciding applications considered straightforward. It achieves this by effectively allowing Council to rely upon information from an Accredited Consultant / Consultancy, whilst retaining the decision-making powers, thus avoiding any duplication of effort.

Section 1 – General

The Accredited Consultant / Consultancy is responsible for the following:

- Preparing reports that addresses the relevant policies / standards / benchmarks;
- Providing any necessary supporting information including drawings;
- Providing all necessary standard approval conditions;
- Lodging application with Council;

The Accredited Consultant / Consultancy will **not** be responsible for the following:

- Assessing the Development Application
- Issuing Development Permits.

Council will endeavour to decide an application within ten business days of lodgement.

Note: Express DA transfers responsibility to the Accredited Consultant / Consultancy to ensure supporting information is accurate and contains sufficient detail as would otherwise be required by Council for review. If issues arise in future, Council may take legal steps against the Accredited Consultant / Consultancy to rectify the issue or matter.

Both the Consultant and Consultancy must sign a Deed of Agreement with Council, which confirms the roles and responsibilities of the Accredited Consultant(s) and is the basis on which Council and the Accredited Consultant / Consultancy will participate in the Express DA process.

Section 2 – The Express DA process

The **Express DA Assessment** process is outlined below and must be understood and agreed to:

Stage 1 – Accredited Consultants

- Consultant and Consultancy must read the Accreditation Kit including Deeds of Agreement.
- Approval is subject to review of prior application quality or a probation period where application quality can be reviewed.

Stage 2 – Prepare and submit your application

- Accredited Consultant must prepare their development application using the Application Guideline.
- Accredited Consultant must prepare a consultant's report using the Accredited Consultant's standard report format.
- Accredited Consultant to submit completed material including DA Form 1, Accredited Consultant's standard report template and all other relevant documentation including plans and drawings for pre-submission validity check. Pre-submission meeting or discussions are to occur between Accredited Consultants and Council if and when required.
- Upon receiving a lodgement ready letter, Accredited Consultant must pay the applicable development application fees (retain the receipt of payment, this will be required for lodging the application)
- Accredited Consultant to lodge the development application using the Express DA – DA online portal

Stage 3 – Assessment & Decision

- Council as the assessment manager will assess the application and provide a decision within 10 business days.

Section 3: Probation Program

A new Accredited Consultant / Consultancy will be on probation for the first three (3) applications lodged as part of the Express DA Assessment process. Under probation, Council will undertake an audit of the application prior to its approval. The probation program is to provide Council and the consultant with an understanding of the Express DA Assessment process.

Section 4: Auditing

Auditing will be performed by Council, at the Council's discretion, to assess the adequacy of the process and the performance of the individual consultants;

Council may contact the Accredited Consultant / Consultancy during an audit process for information or assistance.

Section 5: Processes Following Accreditation

An initial one-on-one session with the Council officer coordinating Express DA Assessment will occur following accreditation to:

- Introduce the Accredited Consultant(s) to the Standards and Criteria;
- Reaffirm general expectations; and
- Discuss queries from the Accredited Consultant(s).

It is the responsibility of the Accredited Consultant, following assessment of an application, to submit the necessary information to Council to allow for Council as the assessment manager to undertake the assessment and issue a decision.

Section 6: Miscellaneous

Any omissions, errors or misdirection's will be discussed with the consultant and are grounds for removal from the Express DA process. Council may also undertake legal steps to rectify said errors or misdirection's.

All standard templates, forms, criteria and conditions will be provided to an Accredited Consultant / Consultancy and can also be obtained from the Development Assessment Branch.

Section 7: Declaration

Declaration	I, [insert name here] employed by [insert name of employer / company here including ACN] have read the above and agree to adhere to these guidelines.
Signature	
Date	

Accreditation Deed for Consultancy

Section 1: Made as a Deed

Date	This deed is made the _____ day of 20____, _____
Parties to the deed	<p>between:</p> <p>Cairns Regional Council Administration Centre 119 – 145 Spence Street, Cairns, Qld 4870 PO Box 359, Cairns, Qld 4870 (“Cairns Regional Council”)</p> <p>and:</p> <p>[insert Company Name],</p> <p>[insert Company address],</p> <p>[insert ACN of accredited consultancy]</p> <p>(“Accredited Consultancy”)</p> <p>in relation to the accredited consultancy for the purposes of lodging Express DA applications with Cairns Regional Council.</p>

Section 2: Recitals

- A. The Accredited Consultancy has successfully completed the Accreditation Process and now wishes to lodge through the Express DA assessment service with the Cairns Regional Council, including admission to the List of Accredited Consultants.
- B. The Cairns Regional Council requires the Accredited Consultancy to undertake to preserve and maintain the confidentiality of certain information relevant to those services.
- C. The process and services relevant to the lodgement of applications through the Express DA assessment service are set out in the Guidelines for Accredited Consultant / Consultancy.
- D. The Development Assessment Manager is authorised to sign this deed on behalf of Cairns Regional Council.

Section 3: Terms and conditions

1. Definitions and Interpretation

The following terms shall have the following meaning for the purpose of this Deed:

‘Accredited Consultant’ is the individual considered ‘accredited’ for the purposes of lodging applications through the Express DA assessment service. The individual consultant must demonstrate the required level of expertise and experience to obtain accreditation.

‘Accredited Consultancy’ means the body corporate named in the Accreditation Application Form completed by the Accredited Consultant for the Accreditation Process.

‘Accreditation Process’ means the process and procedures for becoming an Accredited Consultant, as specified by the Cairns Regional Council and which has been completed by the Accredited Consultancy.

‘Authorised User’ has the meaning given to that term by the *Trade Marks Act 1995* (Cth).

‘Confidential Information’ means the confidential information of the Cairns Regional Council and includes any documents or information provided by the Cairns Regional Council: (a) that are marked as confidential; (b) that are provided by the Cairns Regional Council under circumstances or communications that are confidential; or (c) which the Accredited Consultant ought to know are confidential but (in respect of any of the information in (a), (b) and (c) of this definition), does not include any information that is or becomes part of the public domain, other than as a result of a breach of an obligation of confidence or any information that is required to be disclosed by law.

‘Deed’ means this Accreditation Deed.

‘Guidelines for Accredited Consultant / Consultancy’ means the guidelines titled “Guidelines for Accredited Consultant / Consultancy” which are attached to this Deed, as amended by the Cairns Regional Council from time to time.

‘Intellectual Property Rights’ means all intellectual and industrial property rights and interests in Australia and throughout the world, whether registered or unregistered and whether created before on or after the date of this Deed, including trademarks, designs, patents, inventions, circuit layouts, copyright and analogous rights, confidential information, know how, trade secrets and all other intellectual property rights.

‘List of Accredited Consultants’ means the list of accredited consultants and consultancies as from time to time may be published by the Cairns Regional Council and in the manner of publication or disclosure determined by Cairns Regional Council.

‘Operational Works’ has the same meaning as given to it under the *Planning Act 2016* (Qld).

‘Express DA Program’ means the process and procedures, which the Cairns Regional Council specifies from time to time including, but not limited to, the preparation and lodgement of Express DA Accredited Consultant Development applications as outlined in the Express DA Application Guideline.

‘Term’ means the term of this Deed, as determined by clause 5.1.

2. Accredited Consultancy’s obligations

2.1. The Accredited Consultancy hereby warrants to the Cairns Regional Council, and it is a condition of this Deed that the Accredited Consultancy:

- 2.1.1. provided information to the Cairns Regional Council during the Accreditation Process that was true, accurate and correct and will continue to provide information during its performance of preparation of development applications for lodgement through the Express DA assessment service that is true, accurate and correct;
- 2.1.2. has disclosed to the Cairns Regional Council the locations of all the Accredited Consultancy’s business premises;
- 2.1.3. will immediately inform the Cairns Regional Council in writing of any changes to the Accredited Consultancy’s business address(es); business, company or trading name(s) and any other information provided or disclosed by the Accredited Consultancy during the Accreditation Process;
- 2.1.4. will keep itself informed of any changes made by the Cairns Regional Council to the Guidelines for Accredited Consultant / Consultancy;
- 2.1.5. will carry out the preparation of development applications to be lodged through the Express DA assessment service safely, securely and in a professional manner;
- 2.1.6. will carry out the preparation of development applications for lodgement through the Express DA assessment service in accordance with the standards specified by the Cairns Regional Council from time to time including in the Guidelines for Accredited Consultant / Consultancy and as required by law; and

- 2.1.7. will comply with the lawful advice and directions of the Cairns Regional Council made in connection with the Express DA program.
- 2.2. Other than as expressly set out in this Deed, this Deed does not licence, assign or transfer to the Accredited Consultancy any Intellectual Property Rights of the Cairns Regional Council or any goodwill in the same.
- 2.3. The Accredited Consultancy acknowledges that benefits, rights and privileges attached to the accreditation of the Accredited Consultancy are limited to the type of use the Accredited Consultancy is qualified and demonstrates competency in, as determined by the Cairns Regional Council (e.g Residential – building works etc). The Accredited Consultancy must not prepare development applications for the Express DA assessment service that, in the opinion of Cairns Regional Council, fall outside the limitations of the accreditation of the Accredited Consultancy.
- 2.4. The Accredited Consultancy acknowledges that any non-compliance with or breach by the Accredited Consultancy of the Guidelines for the Accredited Consultant / Consultancy or the terms of this Deed in the conduct or operation of the lodgement of development applications through the Express DA assessment service by the Accredited Consultancy for or on behalf of Cairns Regional Council will provide the Cairns Regional Council with the option to elect to immediately cancel the accreditation of both the Accredited Consultancy and any Accredited Consultant employed or contracted by the Accredited Consultancy who undertook the preparation of development application material.
- 2.5. Prior to lodging any development applications through the Express DA assessment service, the Accredited Consultancy must:
 - 2.5.1. take out and maintain from a reputable insurance company, professional indemnity insurance that applies to the preparation of development applications through the Express DA assessment service by the Accredited Consultancy (whether performed by employees or contractors of the Accredited Consultancy) for an amount of cover of no less than \$1 million per claim; and
 - 2.5.2. take out and maintain from a reputable insurance company, public liability insurance that applies to the preparation of development applications through the Express DA assessment service by the Accredited Consultancy for an amount of cover no less than \$5 million per occurrence; and
 - 2.5.3. provide the Cairns Regional Council with a copy of the certificate of currency and policy schedule of each of the insurance policies referred to in clauses 2.5.1 and 2.5.2; and
- 2.6. Without limiting the insurance obligations of the Accredited Consultancy under clause 4.1.1, the Accredited Consultancy must:
 - 2.6.1. maintain the insurance policies referred to in clauses 2.5.1 and 2.5.2 during the Term and for a period of no less than seven years from the later to occur of:
 - 2.6.1.1. the termination or expiry of this Deed; or

2.6.1.2. the Accredited Consultancy providing the Cairns Regional Council with the final deliverable that the Accredited Consultancy is required by the Cairns Regional Council to provide in connection with this Deed

2.6.2. upon request, provide the Cairns Regional Council with up-to-date copies of the certificate of currency and policy schedule of the insurance policies referred to in clause 2.6.1.

Clause 2.6 survives termination or expiry of this Deed.

2.7. The Accredited Consultancy indemnifies the Cairns Regional Council from and against any loss or damage suffered or incurred by the Cairns Regional Council in connection with the Cairns Regional Council relying upon any errors or omissions caused or contributed to by the Accredited Consultancy (including but not limited to claims by third parties) in connection with preparation and lodgement of development applications through the Express DA assessment service performed by the Accredited Consultancy or by an Accredited Consultant employed or contracted by the Accredited Consultancy who undertook the preparation of the material. This clause 2.7 survives termination or expiry of this Deed.

2.8. The Accredited Consultancy must not provide or disclose any Confidential Information to any third party without the prior written consent of the Cairns Regional Council. If the Accredited Consultancy becomes aware of an unauthorised disclosure of any Confidential Information, it must immediately inform the Cairns Regional Council of the disclosure. These provisions shall not restrict the Accredited Consultancy from:

- a) Disclosing information to third parties (including its sub-consultants or sub-contractors) which is necessary for the performance of Services provided that any such disclosure is on terms which include a confidentiality clause identifiable to the Accredited Consultancy's obligations under this Clause
- b) Disclosing the information to its insurance broker legal representatives and financial or accounting advisors to the extent required for the day to day running of the Accredited Consultancy's business or making or defending a claim either under an insurance policy or in court proceedings

This clause 2.9 survives termination or expiry of this Deed.

2.9. The terms of the Guidelines for the Accredited Consultant / Consultancy form part of the terms of this Deed. In the event of inconsistency, the terms of this Deed shall prevail over the terms of the Guidelines for the Accredited Consultant / Consultancy to the extent of the inconsistency.

3. Cairns Regional Council's obligations

3.1. Subject to the terms of this Deed, the Cairns Regional Council shall:

- 3.1.1. carry out the Accreditation Process with due care and skill;
- 3.1.2. promptly after the execution of this Deed, add the name of the Accredited Consultancy to the List of Accredited Consultants (for clarity, the name of the Accredited Consultancy may be removed from that list in accordance with this Deed);

- 3.1.3. during the Term, grant a limited, revocable, non-exclusive licence (without any right to sublicense) to the Accredited Consultancy to use the Cairns Regional Council Accredited Consultant Graphic (Express DA logo) specified by the Cairns Regional Council (Trade Mark) to lodge applications through the Express DA assessment service, provided that:
 - 3.1.3.1. without limiting any other restrictions on use of the Trade Mark by the Accredited Consultancy under this Deed, the Accredited Consultancy must not exercise any rights that it may have as an Authorised User under section 26(1) of the Trade Marks Act 1995 (Cth) without the prior written consent of the Cairns Regional Council; and
 - 3.1.3.2. the Accredited Consultancy may only use the Trade Mark only in accordance with the directions given from time to time by the Cairns Regional Council.
- 3.2. The Accredited Consultancy acknowledges and agrees that:
 - 3.2.1. it has not relied on any statement, representation, warranty, conduct or undertaking made or given by the Cairns Regional Council or any person on its behalf; and
 - 3.2.2. it has relied on its own skill and judgment in agreeing to enter into this deed.
- 3.3. The Cairns Regional Council is not liable to pay to the Accredited Consultancy any fees, expenses or other costs in connection with the Accreditation Process, the Express DA assessment service or for any other work performed by the Accredited Consultancy in connection with this Deed.

4. Suspension and or removal

- 4.1. The Accredited Consultancy agrees that the Cairns Regional Council may, by notice in writing to the Accredited Consultancy, suspend the right of the Accredited Consultancy to prepare and lodge development applications through the Express DA assessment service if, in the opinion of Cairns Regional Council:
 - 4.1.1. the Accredited Consultancy fails to: (a) maintain the relevant level of professional body membership and professional indemnity insurance required by the Guidelines for Accredited Consultant/Consultancy or (b) provide the Cairns Regional Council with evidence (including certificates of currency and policy schedules) of that insurance within one business day of the Cairns Regional Council requesting such evidence;
 - 4.1.2. the Accredited Consultancy's breaches of any of its obligations and/or warranties in clause 2; or
 - 4.1.3. the Cairns Regional Council becomes aware by whatever means of any fraud perpetrated, or allegedly perpetrated by the Accredited Consultancy, its directors, employees, agents, contractors or any of its Senior Management.
- 4.2. The Accredited Consultancy must cease preparing and lodging development applications through the Express DA assessment service on and from the date of suspension and for the period of time specified in the notice given by the Cairns Regional Council under clause 4.1 above, or if no date is specified in that notice, immediately upon receipt of that notice by the Accredited Consultancy.
- 4.3. The Cairns Regional Council may remove the name of the Accredited Consultancy from the List of Accredited Consultants during the period of any suspension under this clause 4.

5. Expiry and Termination

- 5.1. This Deed commences on the date that it is signed by both parties and continues for a period of five years, unless terminated earlier (including but not limited to termination under clauses 5.2 and 5.3 below).
- 5.2. The Cairns Regional Council, may by notice in writing to the Accredited Consultancy, immediately terminate this Deed if:
 - 5.2.1. the Cairns Regional Council determines that it is not reasonable for the Accredited Consultancy to remain accredited because of the nature or extent of conduct which led to the Cairns Regional Council issuing a notice to the Accredited Consultancy under clause 4.1 above;
 - 5.2.2. the Accredited Consultancy breaches of the terms of this Deed, including any failure to comply with the Accredited Consultancy's obligations or warranties in clause 2; or

- 5.2.3. the Accredited Consultancy becomes the subject of any insolvency, bankruptcy or winding-up proceedings of any kind (as determined by the Cairns Regional Council).
- 5.3. The Cairns Regional Council may terminate this Deed for convenience (for any reason or for no reason) by giving no less than 60 days' notice to the Accredited Consultancy.
- 5.4. In exercising any of its rights under clause 5, the Cairns Regional Council has no obligation to consider the impact of the termination on the Accredited Consultancy and has no liability to the Accredited Consultancy for any loss or damage suffered or incurred by the Accredited Consultancy as a result of the termination.

6. Effect of Suspension, Termination and Completion of Term

Immediately upon suspension or termination of this Deed under clauses 4 and / or 5 all rights granted by the Cairns Regional Council to the Accredited Consultancy end and:

- 6.1. the Accredited Consultancy must immediately cease using the Trade Mark (Express DA logo) and must (at the election of the Cairns Regional Council) return or destroy any documentation, signage or other materials that feature the Trade Mark or any other Intellectual Property Rights at all licensed by the Cairns Regional Council;
- 6.2. the Cairns Regional Council shall remove the Accredited Consultancy from the List of Accredited Consultants;
- 6.3. the Accredited Consultancy must cease providing any service under the Express DA program;
- 6.4. the Accredited Consultancy must cease to represent or refer to itself as an "Accredited Consultancy" of the Cairns Regional Council; and
- 6.5. the Accredited Consultancy must immediately return any documents and confidential information of the Cairns Regional Council and must provide written undertakings that it has done so, upon request by the Cairns Regional Council. Nothing in this Deed prevents the Accredited Consultant from retaining one copy of any document solely for the purpose of its own records and upon the continuing duty of confidence set out in this Deed.

7. Waiver and Forbearance

The waiver or forbearance of the Cairns Regional Council in the face of any breach of this Deed by the Accredited Consultancy shall not be construed as a waiver or relinquishment of the Cairns Regional Council's rights to future performance of such provision and the Accredited Consultancy's obligations in respect of such future performance shall continue in full force and effect.

8. Limitation of Liability

Notwithstanding anything to the contrary in this Deed, the Cairns Regional Council excludes all liability to the Accredited Consultancy in connection with any loss or damage (including consequential loss, indirect loss, loss of profit, loss of revenue, loss of opportunity, loss of bargain and damage to reputation) suffered or incurred by the Accredited Consultancy in connection with this Deed or any act or omission of the Cairns Regional Council, including the negligence of the Cairns Regional Council (but not including death or personal injury directly caused by the gross negligence of the Cairns Regional Council).

9. Entire Agreement

These terms and conditions of this Deed contain the entire understanding between the parties and any variation of the provisions of this Deed shall have no effect unless in writing and signed by the parties.

10. Notices

Any notice to be served under this Deed shall be in writing and served upon the recipient at its address set out at page 1 of the Accreditation Application Form by hand, regular post or facsimile and shall be deemed served 48 hours after posting if sent by post, on delivery if delivered by hand and on completion of transmission if sent by facsimile.

11. Jurisdiction and Law

This Deed is governed by and is to be construed in accordance with the laws applicable in Queensland. 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.

12. Consent and approval

If the Cairns Regional Council has a right to approve, consent, decide, determine, form an opinion or make any other decision of any kind under this Deed, it may exercise that right at its absolute discretion and, in exercising the right, it may do so conditionally or unconditionally, is not obliged to give reasons or consult with the Accredited Consultancy in exercising that right and has no obligation to exercise the right within any particular period of time or a within reasonable period of time.

13. Amendment

This Deed may only be varied or replaced by a document executed by the parties.

14. Contra proferentem

No rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it.

15. Counterparts

This Deed may consist of a number of counterparts and, if so, the counterparts taken together constitute one document

Section 4: Executed as a Deed

Witness of Council representative	<p>In witness hereof the parties hereto set their hands and seals the Day and year first herein before written.</p> <p>Signed, sealed and delivered by [Signature of Council representative],</p> <p>[Name of Council representative (print)],</p> <p>on behalf of Cairns Regional Council with the intention of being immediately and unconditionally legally bound by this Deed in the presence of:</p> <p>[Signature of Witness],</p> <p>[Name of Witness (print)],</p> <p>Date:</p>
Accredited Consultancy	<p>Signed, sealed and delivered by [Company Name],</p> <p>[ACN of accredited consultancy],</p> <p>[Signature of Director of the accredited consultancy],</p> <p>[Name of Director of the accredited consultancy (print)],</p> <p>Date:</p>

MORE INFORMATION

P: 1300 69 22 47

Email: info@cairns.qld.gov.au

Web: www.cairns.qld.gov.au



Cairns
REGIONAL COUNCIL

