

RECITALS

- A. Council is the sole owner, or is the responsible party for the disposal, of the excavated material properly described below.
- B. The excavated material is surplus to Council's needs.
- C. The Recipient holds a validly issued Operational Works Permit, Development Approval, or is eligible for an exemption under Cairns Plan 2016 (more commonly referred to as Council's planning scheme), which enables the Recipient to lawfully and appropriately use and store the excavated material.
- D. So as to avoid the cost and inconvenience of Council disposing the excavated material through land fill, Council has decided to gift the Recipient with the excavated material on the terms and conditions set out in this Deed.

TERMS AND CONDITIONS

1. Council guarantees that it is the sole owner, or is the responsible party for the disposal, of approximately _____ m³ of excavated material (hereafter referred to as "the fill").
(quantity)
2. Council declares it has not undertaken any testing, sampling or analysis of the fill to be able to ensure that the quality or materials therein are appropriate for the intended use or otherwise by the Recipient.
3. Council will deliver the fill, as is, to the Recipient at **Property Address** commencing from _____ and continuing for a period not extending beyond the life of the source project.
(date)
4. Upon the delivery of the fill, the Recipient will become the sole owner of the fill. If the delivery occurs in instalments or over time, the Recipient will become the sole owner of each component of the fill upon each individual delivery of same.
5. In the event the property owner at **Property Address** fails to provide Council with consent to access and enter the property, or otherwise revokes any validly obtained consent to access and enter the property, Council will not be:
 - a. taken to have breached this Deed in the event it is unable to subsequently deliver the fill (or a component of the fill) to the Recipient;
 - b. liable to the Recipient for any loss, damage or claim relating to any non-delivery of the fill (or a component of the fill) to the Recipient; and
 - c. required to fulfil its obligations under this Deed to gift and deliver the fill (or a component of the fill) to the Recipient.
6. The Recipient guarantees that they will only use and store the fill (or any component of the fill) in accordance and compliance with:
 - a. all relevant and appropriate legislation, policies and procedures;
 - b. the Cairns Plan 2016 (more commonly referred to as Council's planning scheme); and
 - c. the terms and conditions of any valid permit, licence or approval issued to the Recipient relating to the use and storage of the fill or otherwise.
7. The Recipient will indemnify Council from all claims, demands, suits, actions, proceedings, damage, injury, loss or other liabilities whatsoever (including any costs whether legal or otherwise) which may arise (whether directly or indirectly) now or in the future as a result of Council's gift and delivery of the fill.

8. The parties declare that:
 - a. they have entered into this Deed of their own free will, voluntarily and without influence;
 - b. this Deed is to be governed and construed in all respects by the laws of Queensland and any applicable federal law and they consent to the jurisdiction under the state and federal courts within Queensland;
 - c. this Deed may only be amended in writing signed and agreed to by both parties; and
 - d. if any part of this Deed becomes void or unenforceable then only that part is severed from this Deed and all other parts that are not void remain in full force and remain unaffected by the severance.
9. This Deed may be executed in any number of counterparts. All counterparts, taken together, constitute one Deed. A party may execute this Deed by signing any counterpart.