

## Deed of Agreement

### Funding for the Reinstatement of Heritage Verandahs and Awnings

This Deed dated                      day of                      2019

#### BETWEEN

THE NAMBUCCA SHIRE COUNCIL of 44 Princess Street, Macksville in the State of New South Wales (hereinafter called “the Council”) in the First Part

#### AND

(INSERT NAME OF PROPERTY OWNER) who own (INSERT PROPERTY DESCRIPTION) (hereinafter called “the Owner”)

#### **WHEREAS:**

1. The Council has received \$150,000 in funding from the NSW Government’s Stronger Country Communities Fund which it seeks to invest in the reinstatement of heritage verandahs and awnings in the Macksville Central Business District (CBD) as a means of improving the vitality and aesthetics of the CBD and to encourage similar investment by other property owners.

#### **Commencement and completion**

2. This Deed will commence on the date shown above and unless otherwise agreed, a project must be completed and all claims for payments made within its project term.

#### **General requirements**

3. In addition to the other terms of this Deed, you:
  - a. must ensure the Grant is used only for the relevant Project at the relevant Location and be accountable for all the Grant funding you received under this Deed;
  - b. must ensure that each Milestone is completed by the relevant deadline specified in the Schedule;
  - c. must ensure that all necessary legal and statutory approvals for the Project are obtained;

- d. must ensure consistency of construction plans and finishes with the concept plans prepared for the Project by Alan Rudge Architects. In the event that the development and construction certificate applications are not prepared by Alan Rudge Architects then to ensure the architectural and heritage integrity of the project, approval of grant funding will be subject to Alan Rudge Architects endorsing their consistency with the concept plans. The Council will pay for the assessment of any applications by Alan Rudge Architects.
- e. must manage a Project with all due skill and care including in relation to financial management, project planning and risk management.

### **Payment**

4. Provided you carry out your obligations under this Deed, the Grant will be paid to you in the Payments shown in the Schedule.

### **Project costs**

5. You agree that the Grant for the Project is the maximum amount to be paid under this Deed towards the carrying out of the Project and you agree that:
  - a. you have prepared or reviewed the scope of works and costs estimate for the Project before you signed this Deed;
  - b. you are responsible for any costs that exceed the Grant for the Project (whether you expected to incur such costs or not at any time before or after you signed this Deed) and you must obtain any additional funding necessary to carry out the Project;
  - c. you are responsible for all maintenance costs arising from the Project.

### **Withholding, suspension, changes to Payments and repayments**

6. If you are not complying with this Deed, the Council may withhold all or part of any Payment until you comply with the Deed.
7. If you breach this Deed, the Council may provide you with a written Notice requiring you to repay any or all Payments (determined by the Council in its absolute discretion) specified in the Notice within 28 days.

### **GST**

8. Unless otherwise indicated, all consideration for any supply under this Deed is exclusive of any GST imposed in relation to the supply.

### **Variation**

9. If you wish to vary the Project, including any Milestone or other matter set out in the Schedule, including:
  - a. changes to the nature of the Project or the scope or works, Location or revised priorities for the Project; and
  - b. changes to the timeframe for delivery of the Project, including extensions to completion of Milestones,you must first make a written request to the Council and provide such information as is reasonably required by the Council.

10. Following your request for a variation, the Council will consider whether to approve your request and you agree that no variation is approved unless it is approved by the Council in writing.
11. You agree you must advise the Council immediately:
  - a. if you are unable to proceed with the Project
  - b. if the Project has been inactive for a period of one month or more;
  - c. If you propose to sell or lease any part of the Location

### **Confidential information**

12. In the expenditure of public funds the Council has a general obligation to be as open and transparent as possible. Accordingly the Council reserves the right to publicly disclose the value of the building contract for the Project and Council's contribution towards same.
13. The Council may be required to disclose other information under the *Government Information (Public Access) Act 2009 (NSW)* or to disclose information to the NSW Parliament or to a court.

### **Insurance**

14. You agree to maintain or require your builder to maintain public liability insurance to a minimum of \$20,000,000 for any single occurrence and unlimited in the aggregate as to the number of occurrences for the Project.
15. You agree that you are responsible for maintaining the currency of any other relevant insurances including contract works insurance.

### **Indemnities**

16. You must indemnify and keep indemnified the Council from and against any loss (including legal costs and expenses) or liability incurred or suffered by, or made against, any of those indemnified arising directly or indirectly from any Claim by any person as a result of or in connection with:
  - a. your breach of this Deed;
  - b. any unlawful or negligent act or omission by you, your employees, your agents or your contractors in connection with this Deed;
  - c. any illness, injury or death of any person caused or contributed to by you, your employees, invitees or your contractors or subcontractors in connection with this Deed;
  - d. any loss or damage to real or personal property caused or contributed to by you, your employees, invitees or your contractors or subcontractors in connection with this Deed; or
  - e. any act or omission by you or your employees, invitees or your contractors or subcontractors in connection with this Deed that is in infringement of any intellectual property, or privacy rights of the Council or any third party.
17. Your obligation to indemnify the Council under this clause will be reduced proportionately to the extent that any negligent or unlawful act or omission by the Council, its officers, employees or agents contributed to the relevant loss or liability.

18. Your obligation to indemnify the Council under this clause does not exclude or reduce the liability of, or benefit to, a party that may arise by operation of the common law, statute or the other terms of this Deed.

### **Terminating this Deed**

19. Unless terminated earlier in accordance with this clause, this Deed will end at the later of:
  - a. the latest end date for the Project Term, as identified in the Schedule, or
  - b. once you have completed the Project to Council's satisfaction.
20. The Council may terminate this Deed one month after the date of a Notice requiring you to remedy a breach (and you fail to remedy the breach within that period) involving any one or more of the following:
  - a. in the Council's opinion you have not carried out the Project diligently or competently;
  - b. you have not achieved one or more of the Milestones of a Project by the date they are due to be completed;
  - c. the Council considers the Project is no longer viable; or
  - d. the Council considers that there has been a material change in circumstances in your financial position, your structure or your identity.
21. The Council may terminate this Deed immediately by giving you a Notice if:
  - a. you breach a provision of this Deed in a manner that, in the Council's opinion, is not capable of remedy;
  - b. the Council is of the opinion that you have provided intentionally misleading or incorrect information as part of the application for funding or as part of this Deed;
  - c. you use the Grant funding for purposes other than the relevant Project;
  - d. you have failed to comply with legislative requirements;
  - e. you become insolvent, go into liquidation or administration or otherwise become subject to any form of insolvency proceedings;
  - f. the Council is of the opinion a material conflict of interest has arisen; or
  - g. the Council is of the opinion that it is necessary to terminate the Deed to protect the reputation of the Council or the NSW Government.
22. The Council is not liable to pay you any compensation or costs if this Deed is terminated in accordance with clause 18 and you irrevocably and unconditionally release the Council and its officers, employees and agents in respect of such termination.

### **Maintenance of Assets**

23. You agree to maintain and not to demolish, eradicate, remove, dispose of or otherwise interfere with the infrastructure, facilities or improvements (assets) created by the Project for 5 years after the completion of the Project.
24. Where the Council so requests, you must repay the Council the Grant funding for the Project within 20 Business Days' of the disposal or conversion of the asset that is in breach of the previous clause.
25. If the Council notifies you that it requires repayment of any amount under the previous clause that amount will become a debt due and payable to the Council.

26. The three (3) previous clauses will survive termination or expiry of this Deed.

## General

27. **Subcontractors:** You remain responsible for implementing a Project in accordance with the terms of this Deed if you subcontract the performance of any part of the Project. It is your responsibility to ensure that only contractors, subcontractors or project partners (if any) that have appropriate skills, qualifications and experience are hired for the work proposed to be carried out, and that all work meets the requirements of this Deed and complies with relevant legislation, standards and codes of practice. You are responsible for ensuring that all contractors and subcontractors hold the appropriate insurances.
28. **Waiver:** You agree that:
- a. The State does not accept any responsibility or liability for works carried out and bears no responsibility for the Project.
  - b. No failure or delay by the Council or its officers in exercising any right, power or remedy under this Deed, and no course of dealing with you, will operate as a waiver of a breach or default by you. Any waiver by the Council or its officers of a breach or default of this Deed must be in writing and will not be construed as a waiver of any further breach of the same or any other provision.
29. **Assignment or novation:** You must not assign or novate your obligations or interests under this Deed, without the prior written consent of the Council.
30. **Severability:** If any part of this Deed is or becomes illegal, invalid or unenforceable in any relevant jurisdiction, the legality, validity or enforceability of the remainder of this Deed will not be affected and this Deed will be read as if the part had been deleted in that jurisdiction only.
31. **Governing Law:** The laws of New South Wales govern this Deed and the parties submit to the non-exclusive jurisdiction of the courts in that State.

## Execution Clauses

### Nambucca Shire Council

Signed and delivered for and on behalf of Nambucca Shire Council.

\_\_\_\_\_  
Name of Authorised Signatory

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name of Witness

\_\_\_\_\_  
Signature of Witness

**You (Grantee)**

Signed and delivered for and on behalf of the property owner.

\_\_\_\_\_  
Name of Authorised Signatory

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name of Witness

\_\_\_\_\_  
Signature of Witness

## Schedule

Description of Milestone	Evidence of Completion	Payment by Council*	Date for Milestone completion	Date by which claim for Payment must be made
Commencement of Work on Project	Development application and construction certificate approval; approval under the Local Government and Roads Acts; signed contract with builder	15% of the architect's opinion of the estimated cost as shown in the concept plan report	30/06/19	30/06/19
Completion of Project	Occupation certificate issued for completed project	35% of the architect's opinion of the estimated cost as shown in the concept plan report	30/06/20	30/06/20

\* (excludes GST)