

# Industry Central Land Swap Expression of Interest Information Package

July 2022



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## 1. Message from the Mayor



The Industry Central Land Swap project is a strategic solution to assist businesses located within the high risk flood zone in the existing South Murwillumbah industrial precinct to relocate to land at Lundberg Drive (Industry Central) which is located well above any existing flood levels via a conditional land swap agreement.

This project will provide a more secure location for flood prone enterprises in the high risk zone allowing them confidence to reinvest and grow their businesses and to provide more local jobs.

Council has worked very hard to bring this important initiative to this stage.

Businesses in South Murwillumbah have been hit hard from floods in 2017 and again in 2022, so Council plans to help relocate businesses and where possible, remove their old flood prone buildings to reduce the impacts from future floods that could be even worse with climate change.

Removing these buildings as obstacles in this vital flood flow path will not only provide better protection for individual businesses but will also assist the free flow of flood waters.

This is a big decision for your business which requires a commitment to the future in regards to your long-term operation.

This is not an easy decision for any business. Going through this Expression Of Interest process may bring back memories of business losses and personal hardship.

We value your business and want to support you. Our aim is to keep businesses within the shire, employing people and manufacturing local products.

This project will allow selected businesses to have the confidence to reinvest, to grow and to employ more people.

**Chris Cherry**  
Mayor of the Tweed

## 2. Message from the Deputy Premier Paul Toole



As the Minister for Regional NSW and someone who has spent their whole life living in a regional area, I know just how important our rural and regional small businesses are, not just for the local economy and local jobs they support, but for the wider NSW economy.

The NSW Government is committed to supporting our regional and rural businesses through unexpected and difficult challenges that may affect them in continuing their day-to-day operations and put hardship on local communities.

South Murwillumbah suffered significant damage in the 2017 floods that the community was just recovering from when it was hit again with the even larger floods earlier this year. It's only highlighted the need to relocate local industry, so they are able to continue operations during extreme weather events.

The NSW Government continues to assist businesses affected by these devastating floods and remains committed to the Tweed Shire Council Industry Land Swap.

The project builds on the back of an earlier and successful land swap arrangement and will not only assist businesses to relocate from the flood-prone industrial estate at South Murwillumbah to a safer central precinct, but also provide these businesses with additional space to expand operations.

The land swap allows businesses to continue to operate on the North Coast, supporting local jobs for local people, the local economy and strengthening the local community.

The Tweed Shire Council Industry Central Land Swap initiative is one example of how the NSW Government is working together with local councils to provide even more support to the people and places that need it the most.

Not only does that make good business sense, it makes for more resilient and stronger regional communities, which makes for a resilient and stronger NSW.

### 3. Project Introduction

On 1 March 2022, an extraordinary weather event led to extensive rainfall across the Northern Rivers region and unprecedented flooding in the Tweed River.

This event was the largest recorded flooding event in the Tweed's history.

Thousands of Tweed residences and commercial properties were inundated in the flood. Many businesses were severely damaged despite the existence of flood levees and other flood mitigation measures.

The 2022 flood surpassed all previous records in many parts of the Tweed. The Tweed River at Murwillumbah peaked at 6.5m which was 200mm higher than 2017. Murwillumbah narrowly escaped more widespread flooding as the levee only overtopped at a few locations and for a limited time.

The damage was particularly devastating to the South Murwillumbah industrial precinct, a location of many medium sized enterprises, employing hundreds of staff and contributing significantly to the local economy and to the social fabric of our town.

Council conducted a survey of the impact of the flood on business. It is estimated from this survey that the responding businesses experienced losses in excess of \$58 million. The ongoing impact of the flood has become a major threat to jobs.

The Industry Central Land Swap project is intended to be a strategic solution to assist selected land owners or businesses located within the high risk flood zone in the existing South Murwillumbah industrial precinct to relocate to land at Lundberg Drive (Industry Central) which is above the 1 in 100 year flood level via a conditional land swap agreement (Land Swap).

This is intended to build resilience into our economy when we suffer the next flood and in turn help our town better face the ongoing challenges that climate change will present.

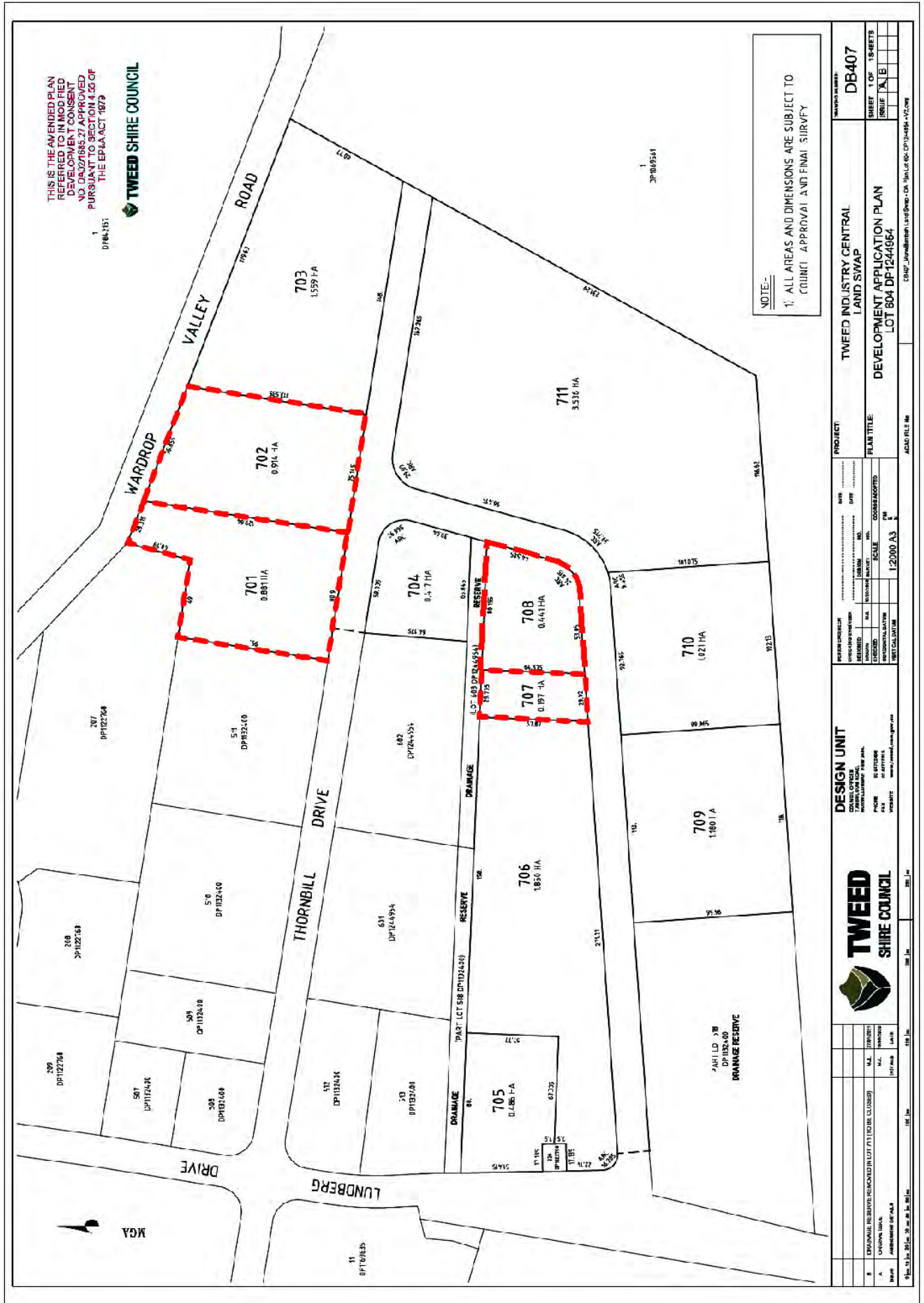
#### 4. Industry Central Land Swap 2018 (Tranche 1)

The original Land Swap program was initiated in 2018 as a result of the 2017 floods which also has significant impacts of the employment lands at South Murwillumbah.

Council, with assistance from the NSW Government, purchased a large portion of industrial zoned land at Industry Central. A public Expression of Interest (EOI) process was undertaken where eligible businesses had land within nominated industrial zoned areas.

The subdivision of the original Land Swap land is currently being finalised. Contracts are in place for all of the proposed new lots, except for four. It is these four lots that Council is offering as a second tranche of the Industry Central Land Swap through an EOI process.





## 5. Industry Central Land Swap 2022 (Tranche 2)

The Industry Central Land Swap has four lots that are currently unallocated. These lots are indicated on the approved subdivision plan attached below. This EOI process seeks to find four suitable business that were impacted by the 2022 flood who wish to relocate into the flood free Industry Central industrial area.

The details of the four lots on offer are presented below;

Lot No.	Land Size (m <sup>2</sup> )	Zone (LEP 2014)
701	8,810	IN1 General Industrial
702	9,140	IN1 General Industrial
707	1,970	IN1 General Industrial
708	4,410	IN1 General Industrial

The Land Swap between Council and the successful applicants can occur and land titles may be transferred in accordance with the terms of the written agreements negotiated and entered into between the successful applicants and Council.

Council may, at its discretion allow the successful applicants/businesses to lodge development applications for their new buildings over Council owned land at Industry Central prior to settlement. In addition, at Council's discretion, the successful applicants/businesses may commence the construction of their new buildings on their allocated Land Swap allotments before settlement subject to conditional arrangements within the contract.

This agreement will enable the successful applicants/businesses to continue their operations in their existing premises until they are ready to relocate to Industry Central.

The infrastructure or improvements on the vacated properties in most cases will then be removed and those allotments rezoned to allow for public open space or other community purposes. Council may decide to retain the existing infrastructure or improvements if there is a demonstrated public benefit in retaining the infrastructure/building. Notwithstanding this, the intent is to create an improved floodway for future major flood events.

History has shown that continuing to build/upgrade flood levee walls is not a true safeguard from flooding. Projects such as this are intended to provide long term protection for relocating high value enterprises, allowing them confidence to reinvest and grow their businesses, providing more local jobs and thus benefiting the broader economy and the social fabric of our community.

## 6. How we select

In determining those businesses that will be invited to participate in the Land Swap, a Selection Panel (Panel) has been formed comprising of staff representatives from Tweed Shire Council, Regional NSW, Department of Planning and Environment and overseen by an external Probity advisor.

The Panel will make a recommendation to elected Tweed Shire Councillors based upon criteria including (but not limited to) the maximum reduction in flood damage to the surrounding properties, enhancing flood paths, maximising the benefits to the community or adjacent community infrastructure and maintaining and facilitating business viability.

## 7. Eligibility principles

The original Land Swap (Tranche 1) offered a bonus of 20% extra land if the offered land was developed (existing buildings and structures) and fully serviced (electricity, water, sewer comms.).

At the time of offer for Land Swap (Tranche 2) the land at Industry Central has a subdivision approval and is currently pending a final subdivision certificate. Given the progress of the subdivision development it is not feasible to calibrate the size of the four lots on offer.

As a result the amount of land offered by the EOI applicant may be at a 20% lesser size than the four lots on offer. This represents a 20% uplift in the land size on offer. The details of this is presented below;

Lot No.	Eligible Land by EOI Applicant (m <sup>2</sup> )	EOI Land on offer (20% Land Uplift) (m <sup>2</sup> )
701	7,341	8,810
702	7,841	9,410
707	1,641	1,970
708	3,675	4,410

The Expression of Interest accompanying this Information Memorandum is an invitation to eligible businesses or land holders located within the area identified in the *Map of Eligible Land Swap Areas* to express an interest in participating in the Land Swap.

To be eligible to participate in the Land Swap you must be able to satisfy eligibility principles including, but not limited to, the following:

- Your business or vacant land must be located within the area identified in the Map of Eligible Land Swap Areas
- You must either own the land that your business is situated upon, or if you are a tenant/lessee you must provide, as well as an Expression of Interest completed by you, an Expression of Interest from the landowner
- Your business must be a permissible activity in the IN 1 – General Industrial zone in the Tweed Local Environmental Plan 2014

IN 1 General Industrial zone – For information relating to the objectives of the zone, permissible and prohibited activities within this zone please refer to the Tweed Local Environmental Plan 2014.

- You must demonstrate to the satisfaction of Council that you have the financial capacity to relocate your business from its current location to Industry Central within a mutually agreeable project timeframe,
- You must demonstrate to the satisfaction of Council that you have the ability to grow your business and workforce in the future,
- If you are selected to participate in the Land Swap you must agree to continue your business as a going concern at a similar or greater intensity at Industry Central for a period of not less than five years after relocation,
- If you are selected to participate in the Land Swap you must agree that you will not sell your new allotment at Industry Central for a period of not less than five years without first obtaining Council consent for the transaction. Council may require a caveat, covenant or other encumbrance on the title of your land to ensure this requirement.

**In addition:** If you are selected to participate in the Land Swap you may be required to comply with the following criteria subject to a case by case investigation of the existing improvements/infrastructure on your land.

This investigation will be undertaken by Council to determine if the existing infrastructure or buildings can be utilised for other purposes or if they require complete removal to improve the flood flow.

The successful applicants may be required to:

- remove or demolish your existing business premises and infrastructure located on your allotment including plant and machinery
- clear the site and decontaminate your land to the satisfaction of Council after you relocate to Industry Central if it is determined that your property is contaminated.
  
- You will be required to enter into a written legal agreement to be prepared by Council containing such terms and conditions as Council requires in order to record the terms and conditions upon which you and Council will undertake the Land Swap.
- You will be required to provide security satisfactory to Council in order to secure performance by you of your obligations under the legal agreement.

## 8. Map of eligible land swap areas



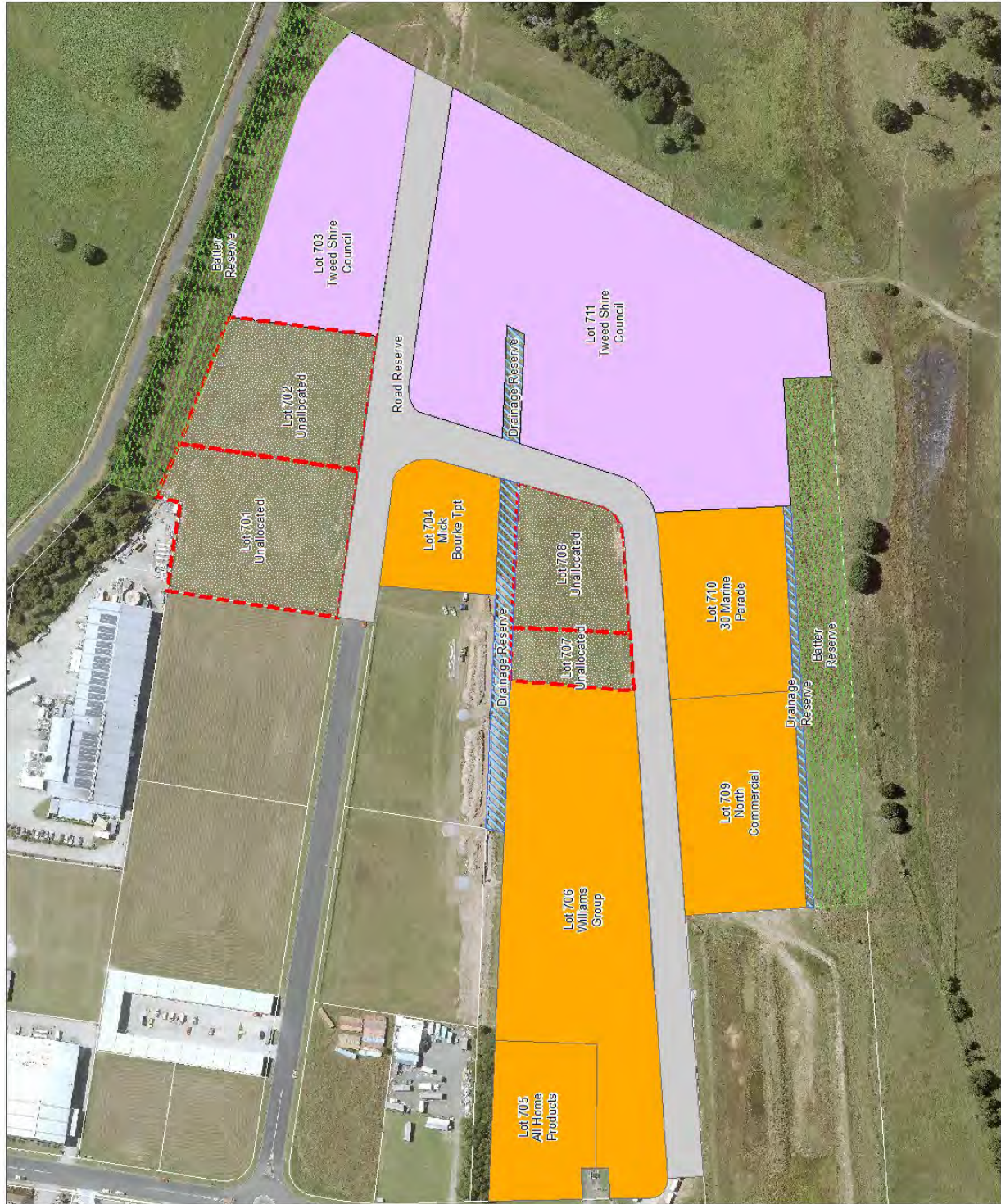
# 9. Land swap at Industry Central

## Land Swap Project Proposed Lot Layout

**Legend**

Owner_Type	Description
[Red dashed border]	Unallocated
[Yellow fill]	Private
[Purple fill]	Council
[Grey fill]	Road Reserve
[Green diagonal lines]	Batter Reserve
[Blue diagonal lines]	Drainage Reserve

- NOTES:**
- 1) Land area in square metres.
  - 2) Land allocations are approximate to match existing allocation.
  - 3) All land allocations are subject to survey.



## 10. Next steps

There is a finite amount of land for this project.

Council will be assessing expressions of interest based on a number of criteria including flood risk and mitigation guided by the South Murwillumbah Flood Risk Management Study and Plan prepared by Tweed Shire Council.

You will have 28 days from the EOI opening date to submit your expression of interest.

Upon closing, the EOI's will be assessed the Panel.

After all EOI's received during the 28 day period have been assessed, you will be contacted to either supply additional information or to be informed you were not successful.

Thank you for your interest.

## 11. Project team and contact information

Phone: 02 6670 2400

Website: [www.yoursaytweed.com.au/landswap](http://www.yoursaytweed.com.au/landswap)



**Kym Kranen**

Economic Development Officer – Business Liaison



## 12. Disclaimer

### Disclaimer to Information Memorandum and Expression of Interest for Industry Central Land Swap

By lodging an Expression of Interest with Council you will be deemed to acknowledge and agree that all of the information contained in this Information Memorandum and Expression of Interest is provided to you on the following basis:

- Please note that the form of Land Exchange Agreement provided is a draft only and may not represent the final form of the Land Exchange Agreement successful participants will be required to enter into with Council.
- Tweed Shire Council makes no representation and gives no warranty to you as to the accuracy or completeness of the information
- To the extent permitted by law, Tweed Shire Council disclaims liability to you in respect of anything done, or omitted to be done, in reliance upon the information
- You have made your own independent evaluation of the suitability of the information for the purposes of submitting your Expression of Interest
- Tweed Shire Council may vary, add to or waive any of the Eligibility Principals either generally, or in relation to any applicant or applicants
- The successful completion of the Land Swap project will be contingent on the funding arrangements between the NSW State Government and Tweed Shire Council regarding the primary land swap parcel (lot 604 DP 1244954), Lundberg Drive and the provision of all necessary infrastructure for the subdivision. For the removal of doubt, this means that if Council does not receive sufficient funding the Land Swap project will not proceed
- Tweed Shire Council will at all times use its discretion to achieve the objectives of the Project utilising the land available within the primary land swap parcel (lot 604 DP 1244954)
- Endorsement of Successful Applicants to participate in the Land Swap and the subsequent allocation of allotments at Industry Central shall be solely at the discretion of Council
- By completing and submitting the application form you acknowledge that you are voluntarily providing Tweed Shire Council's (Council) your personal information. If you choose to not provide Council the requested information your application may not proceed.

Any personal information you provide to Council will be used and disclosed for Council's purposes, or a directly related purpose, unless you consent to another use or disclosure, in emergencies or as otherwise required or authorised by law. The information you provide to Council may be accessed by third parties in certain circumstances.

Under the Privacy and Personal Information Protection Act 1998, you have the right to access your personal information held by Council. You may also have your personal information corrected in certain circumstances. Should you wish to access or correct your personal information held by Council, please make a written request to:

Information Officer, PO Box 816, Murwillumbah NSW 2484

For more information, please read Council's Privacy Management Plan under:

<https://www.tweed.nsw.gov.au/Policies/Privacy>

- By submitting the application form to Council you acknowledge and agree that Council will not be liable to you or anyone else for any inconvenience; misleading or incorrect information; direct or indirect, special or consequential loss; or damage however suffered, including for loss of profit; business interruption; or the loss of data or information, following reliance on Council's actions or inactions relating to this Industry Central Land Swap Project (Project).

You must make your own enquiries and research in relation to this Project, including procuring independent legal and/or financial advice, if deemed necessary.

Council reserves the right to make changes to the Project at any time, including deletions or change to processes, without notification to you or anyone else.

- By submitting the application form to Council you acknowledge and agree that, if successful, you may be required to demolish and remove any/or existing buildings and structures and/or to decontaminate the land you own or upon which your business currently resides.
- By submitting the application form to Council you acknowledge and agree that you will not deal with any media platform, source, or outlet (including social media) regarding the Land Swap project without Council's prior written consent. If you deal with any media platform, source, or outlet without Council's prior written consent your Expression of Interest may be excluded from consideration.

# LAND EXCHANGE AGREEMENT

**Tweed Shire Council ABN 90 178 732 496**  
(Council)

**[Name of SMIP Lot Owner]**  
(SMIP Lot Owner)

**[Name of Guarantor]**  
(Guarantors)

STACKS LAW FIRM  
PO Box 233, Tweed Heads NSW 2485  
Level 1, Wharf Central  
75 Wharf Street  
TWEED HEADS NSW 2485  
T 07 5536 1311  
F 07 5536 4355  
Ref: ADM:[matter no.]180199

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## Land Exchange Agreement

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<b>Date</b>	The date set out in Part 1 of Schedule 1
<b>Parties</b>	
1.	Tweed Shire Council ABN 90 178 732 496 whose particulars are set out in Part 2 of Schedule 1 ("Council").
2.	The person or entity named and whose particulars are set out in Part 3 of Schedule 1 ("the SMIP Lot Owner").
3.	The person or persons named and whose particulars are set out in Part 4 of Schedule 1 ("the Guarantors").
<b>Recitals</b>	
A.	Council is responsible for implementation of the Project.
B.	Council owns the ICIP Lot.
C.	The SMIP Lot Owner owns the SMIP Lot.
D.	The parties wish to exchange the ICIP Lot for the SMIP Lot subject to the terms and conditions of this Agreement.

It is agreed as follows:

## 1. Defined Terms and Interpretation

### 1.1 Defined Terms

In this Agreement unless the context otherwise requires the following expressions shall have the following meanings:

"**Agreement**" means this Land Exchange Agreement;

"**Business Day**" means the day of which banks are open for general banking business in New South Wales, but does not include Saturdays, Sundays or Public Holidays;

"**Caveat**" means a caveat under Section 74F of the *Real Property Act* 1900 (NSW) generally in the form of that comprising Schedule 3;

"**Climate Change Fund**" means the fund named as such which is established under Part 6A of the *Energy and Utilities Administration Act* 1987 and which is administered by the Office of the Environment and Heritage;

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“**Commencement Date**” means the date of execution of this Agreement by Council;

“**Conditions Precedent**” means the conditions to which the Land Exchange Contract are subject as specified in clause 3;

“**Development Application**” means an application to Council and any other relevant Government Authority seeking approval for use of the ICIP Lot for the Purpose and for construction of the Improvements;

“**Delay Event**” means any act, matter, cause or thing beyond the control of Council, including variations or alterations to the works required to be undertaken by Council in order to create the ICIP Lot, strikes, lock-outs, civil commotion, enemy action, Act of God, inclement weather or inability to obtain necessary labour or materials or the processing or obtaining of approvals from any Government Authority on terms acceptable to Council;

“**Development Consent**” means a consent upon terms and conditions which are satisfactory to the SMIP Lot Owner issued by Council and any other relevant Government Authority for use of the ICIP Lot for the Purpose and construction of the Improvements as contemplated by the Development Application;

“**Early Possession Conditions**” means the conditions set out in Schedule 4;

“**Exchange Date**” means the date of contemporaneous exchange of the Land Exchange Contracts;

“**Government Authority**” includes a Government department, statutory or public authority, instrumentality, corporation, body or person whether Commonwealth, State, Territorial or Local;

“**Force Majeure**” means an act, omission, cause, event or circumstances (or a combination of acts, omissions, causes, events or circumstances) which:

- (a) is beyond the reasonable control of Council or the SMIP Lot Owner; and
- (b) includes, without limitation, acts of God, natural disasters, fire and explosions, accidents, riots, civil commotion, war, attack or other acts of hostility by foreign enemies, terrorism, revolution, radioactive contamination, earthquakes, labour disputes, acts or omissions of a third Party and action or inaction by Government Authorities;

“**GST**” has the same meaning as in the GST Law;

“**GST Law**” means *A New Tax System (Goods and Services Tax) Act* and other GST related legislation;

“**ICIP**” means the Industry Central Industrial Precinct the boundaries of which are as specified from time to time by Council;

“**ICIP Lot Contract**” means a contract substantially in the form of the Contract for Sale of Land (2019 Edition) approved by the Law Society of New South Wales and

## Land Exchange Agreement

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the Real Estate Institute of New South Wales in respect of the ICIP Lot between Council as Vendor and the SMIP Lot Owner as Purchaser and including pages 1 to 3, the special conditions and Schedule contained in Annexure B to this Agreement and such documents as are required by law to be attached to a Contract for Sale of Land in New South Wales;

“**ICIP Lot Value**” means the amount referred to in Part 11 of Schedule 1;

“**ICIP Lot**” means the proposed lot in the Plan which is intended to be transferred by Council to the SMIP Lot Owner pursuant to this Agreement which is referred to in Part 6 of Schedule 1;

“**Improvements**” means those improvements approved to be constructed upon the ICIP Lot pursuant to the Development Consent;

“**Land Exchange Contracts**” means the ICIP Lot Contract and the SMIP Lot Contract;

“**LRS**” means the Office of the NSW Land Registry Services or its successor;

“**Permitted Encumbrance**” means a mortgage, charge or other encumbrance given by the SMIP Lot Owner in favour of a mortgagee, charge or other encumbrancee who is not a Related Entity of the SMIP Lot Owner;

“**Plan**” means the draft plan comprising Schedule 2 in which the ICIP Lot is a proposed lot;

“**Plan Registration Date**” means, subject to clause 3.1(c), the date referred to in Part 7 of Schedule 1;

“**Project**” means assisting owners and businesses located within the high risk flood zone in the SMIP to relocate to land within the ICIP by exchanging flood effected land within the SMIP for similarly zoned land within the ICIP using funding received by Council from the Climate Change Fund;

“**Purpose**” means the intended use of the ICIP Lot after completion of the ICIP Lot Contract, being the purpose referred to in Part 8 of Schedule 1;

“**Related Entity**” has the same meaning as in the *Corporations Act (2000) (Commonwealth)*;

“**Relocation**” means relocation to the ICIP Lot of the business conducted from the SMIP Lot as at the Exchange Date;

“**Security Amount**” means the amount referred to in Part 12 of Schedule 1 being the amount by which the ICIP Lot Value exceeds the SMIP Lot Value;

“**SMIP**” means the South Murwillumbah Industrial Precinct the boundaries of which are as specified from time to time by Council and in which the SMIP Lot is located;



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“SMIP Lot” means the lot in the SMIP owned by the SMIP Lot Owner being the lot referred to in Part 5 of Schedule 1;

“SMIP Lot Contract” means a contract substantially in the form of the Contract for Sale of Land (2019 Edition) approved by the Law Society of New South Wales and the Real Estate Institute of New South Wales in respect of the SMIP Lot between the SMIP Lot Owner as Vendor and Council as Purchaser and including pages 1 to 3, the special conditions and Schedule contained in Annexure A to this Agreement and such documents as are required by law to be attached to a Contract for Sale of Land in New South Wales;

“SMIP Lot Value” means the amount referred to in Part 10 of Schedule 1.

### 1.2 Interpretation

In this Agreement, unless the context requires otherwise:

- (a) the singular includes the plural and conversely;
- (b) a gender includes all genders;
- (c) where a word or a phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) a reference to any party to this Agreement or any other agreement or document includes the party's successors and substitutes or assigns;
- (e) a reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them;
- (f) clause means a clause of this Agreement;
- (g) a reference to any agreement or document is to that agreement or document as amended, novated, supplemented, varied or replaced from time to time, except to the extent prohibited by this Agreement ;
- (h) a reference to writing includes a facsimile transmission and any means of reproducing words in a tangible and permanently visible form;
- (i) unless stated otherwise, one provision does not limit the effect of another;
- (j) a reference to includes or including means includes without limitation, or including without limitation, respectively;
- (k) all obligations are taken to be required to be performed duly and punctually;
- (l) headings are used for convenience only and do not affect the interpretation of this Agreement;
- (m) a reference to a thing includes a reference to a part of a thing;
- (n) if something is to be done on a day which is not a business day then that thing must be done on the next following business day;

## Land Exchange Agreement

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- (o) unless stated otherwise, a discretion given to a party pursuant to a provision of this Agreement shall be that party's sole and unfettered discretion;
- (p) if a party consists of two (2) or more persons then this Agreement benefits and binds them jointly and severally;
- (q) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this document or any part of it.

### **2. EXCHANGE OF THE SMIP LOT AND THE ICIP LOT**

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#### **2.1 Transfer of the SMIP Lot**

Subject to the Conditions Precedent, the SMIP Lot Owner agrees to sell and Council agrees to purchase the SMIP Lot for the sum of \$1.00 subject to the terms and conditions of this Agreement and of the SMIP Lot Contract.

#### **2.2 Transfer of the ICIP Lot**

Subject to the Conditions Precedent, Council agrees to sell and the SMIP Lot Owner agrees to purchase the ICIP Lot for the sum of \$1.00 subject to the terms and conditions of this Agreement and of the ICIP Lot Contract.

#### **2.3 Exchange of the Land Exchange Contracts**

- (a) Council must as soon as practicable after the Commencement Date prepare and submit to the SMIP Lot Owner or a Solicitor nominated by the SMIP Lot Owner the Land Exchange Contracts;
- (b) The SMIP Lot Owner must sign the Land Exchange Contracts and return them within 60 days of their receipt to Council or a Solicitor nominated by Council by way of exchange.

#### **2.4 Rates and Taxes**

- (a) The obligation of the parties to the ICIP Lot Contract to pay rates, taxes and outgoings in respect of the ICIP Lot shall be determined in accordance with clause 14 of the ICIP Lot Contract.
- (b) The obligation of the parties to the SMIP Lot Contract to pay rates, taxes and outgoings in respect of the SMIP Lot shall be determined in accordance with clause 14 of the SMIP Lot Contract.

#### **2.5 Stamp Duty**

The parties acknowledge and agree that any stamp duty payable in respect of:-

## Land Exchange Agreement

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- (a) the acquisition of the SMIP Lot by Council is payable by Council; and
- (b) the acquisition of the ICIP Lot by the SMIP Lot Owner is payable by the SMIP Lot Owner.

### 2.6 GST

The parties acknowledge and agree that:-

- (a) any GST payable in respect of supply by the SMIP Lot Owner to Council of the SMIP Lot will be borne by the SMIP Lot Owner; and
- (b) any GST payable in respect of supply by Council to the SMIP Lot Owner of the ICIP Lot will be borne by Council.

### 2.7 Agreement as to Value

The parties acknowledge and agree that:-

- (a) the value of the SMIP Lot is the SMIP Lot Value; and
- (b) the value of the ICIP Lot is the ICIP Lot Value.

## 3. CONDITIONS PRECEDENT

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### 3.1 Consents and Registration of the Plan

The Land Exchange Contracts are both subject to the following conditions:-

- (a) the SMIP Lot Owner providing to Council within six (6) months from the Exchange Date the written consent in a form acceptable to Council of any person who holds an interest (whether registered or unregistered) in the SMIP Lot (including any mortgagee, chargee or other encumbrancee or any lessee) to the SMIP Lot Owner entering into and completing this Agreement and the SMIP Lot Contract in accordance with their terms;
- (b) Council achieving no later than the Plan Registration Date registration of the Plan at the LRS and in this regard the provisions of clause 28 (as amended by Special Condition 7) of the ICIP Lot Contract shall apply;
- (c) should Council be unable to achieve registration of the Plan by the Plan Registration Date due to a Delay Event then Council shall be entitled to serve upon the SMIP Lot Owner one or more written notices stating that the Plan Registration Date is extended to a later date specified in that notice, in which case the Plan Registration Date shall be that later date.

### 3.2 Further Conditions

The Land Exchange Contracts are both subject to all of the following further conditions if at the Exchange Date the SMIP Lot is not vacant land:-

## Land Exchange Agreement

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- (a) the SMIP Lot Owner causing to be lodged with Council and any other relevant Government Authority within twelve (12) months from the Exchange Date the Development Application;
- (b) issue by Council and any other relevant Government Authority within 18 months from the Exchange Date of the Development Consent.
- (c) the SMIP Lot Owner within five (5) years from the date of issue of the Development Consent:-
  - (i) causing to be satisfied all conditions to which the Development Consent is subject; and
  - (ii) causing construction of the Improvements to commence upon the ICIP Lot;
- (d) the SMIP Lot Owner within three (3) years and six (6) months from the date of satisfaction of the Condition Precedent referred to in clause 3.2(c) causing:
  - (i) an occupation certificate to be obtained in respect of the Improvements; and
  - (ii) the Relocation to be completed;and;
- (e) any other conditions contained in the Land Exchange Contracts which are not referred to in this Agreement.

### 3.3 Contemporaneous completion of the Land Exchange Contracts

- (a) Completion of each Land Exchange Contract is also subject to the condition that completion of both of the Land Exchange Contracts takes place contemporaneously.
- (b) The date for contemporaneous completion of the Land Exchange Contracts shall be fourteen (14) days after satisfaction of all of the Conditions Precedent to which the Land Exchange Contracts are subject.
- (c) Should the Land Exchange Contracts be rescinded as provided for in clause 3.4 then this Agreement shall be deemed rescinded contemporaneously with rescission of the Land Exchange Contracts.

### 3.4 Rescission if Conditions Precedent are not Satisfied

Should any of the Conditions Precedent not be satisfied by the due date for their satisfaction then:-

- (a) either party shall be entitled to rescind the Land Exchange Contracts in which case clause 19 of those contracts shall apply; and

## Land Exchange Agreement

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- (b) this Agreement shall be deemed rescinded.

### 3.5 Early Possession of the ICIP Lot

If clause 3.2 applies because at the Exchange Date the SMIP Lot is not vacant land then:

- (a) to enable the SMIP Lot Owner to satisfy the condition referred to in clause 3.2(c) Council will permit the SMIP Lot Owner to take possession of the ICIP Lot upon issue of the Development Consent; and
- (b) the Early Possession Conditions shall apply from the date the SMIP Lot Owner takes possession of the ICIP Lot pursuant to this clause.

## 4. THE SECURED AMOUNT

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### 4.1 The Climate Change Fund

The SMIP Lot Owner acknowledges and agrees that:-

- (a) the value of the ICIP Lot exceeds the value of the SMIP Lot by the Security Amount;
- (b) a financial benefit will be derived by the SMIP Lot Owner as a result of it participating in the Project;
- (c) a condition of the SMIP Lot Owner participating in the Project is that the SMIP Lot Owner not derive a financial benefit from the transfer or sale of the ICIP Lot for a period of five (5) years following the date of settlement of the Land Exchange Contracts; and
- (d) the condition referred to in the preceding paragraph of this clause is fair and reasonable in all the circumstances including the circumstance that the financial benefit which will be derived by the SMIP Lot Owner as a result of it participating in the Project will be funded from the Climate Change Fund.

### 4.2 The Security Amount

The SMIP Lot Owner agrees that the SMIP Lot Owner must not sell, transfer or otherwise dispose of the ICIP Lot within the period of five (5) years from the date of settlement of the Land Exchange Contracts unless the SMIP Lot Owner first pays to Council the Security Amount.

### 4.3 Charging Clause

- (a) In order to secure performance by the SMIP Lot Owner of the obligation of the SMIP Lot Owner to pay to Council the Security Amount pursuant to the provisions of the preceding clause, the SMIP Lot Owner charges in favour

## Land Exchange Agreement

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of Council all of the right, title and interest of the SMIP Lot Owner in and to the ICIP Lot.

- (b) Council may register at the LRS a Caveat to further secure the performance by the SMIP Lot Owner of the obligations of the SMIP Lot Owner pursuant to the preceding clause.
- (c) The SMIP Lot Owner consents to Council registering a Caveat.
- (d) The SMIP Lot Owner must not (until it is entitled to do so under paragraph (e)), whether by fact or omission:
  - (i) do anything that could prevent or hinder registration at the LRS of the Caveat, or
  - (ii) seek to have the Caveat withdrawn.
- (e) Council must provide the SMIP Lot Owner with a withdrawal of the Caveat on the later to occur of the following dates:
  - (i) the date which is five (5) years from the date of settlement of the Land Exchange Contracts, and
  - (ii) should the SMIP Lot Owner become obliged to pay the Security Amount to Council pursuant to clause 4.2, the date the SMIP Lot Owner pays to Council the Security Amount.

#### 4.4 Council to provide consent

Council must promptly after being requested by the SMIP Lot Owner so to do, provide its consent to registration of a Permitted Encumbrance upon the title to the ICIP Lot.

### 5. FORCE MAJEURE

Any Party shall not be liable for any delay or failure to perform its obligations under this Agreement if such failure or delay is due to Force Majeure. The affected Party shall:-

- (a) notify the other Party as soon as practicable of any anticipated delay due to Force Majeure; and
- (b) ensure that the suspension of performance of its obligations under this Agreement is of no greater scope and no longer duration than is reasonably required by the event of Force Majeure.

### 6. ACKNOWLEDGMENTS BY THE SMIP LOT OWNER

- (a) The SMIP Lot Owner acknowledges, agrees, represents and warrants to Council that:

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## Land Exchange Agreement

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- (i) it has not relied on any warranty or representation made or any conduct engaged in by Council or any person on behalf of Council about the subject matter of this Agreement and the Land Exchange Contracts, except as provided in this Agreement and those contracts;
- (ii) it has relied entirely on its own enquiries relating to the ICIP Lot;
- (iii) it has not relied on any warranty or representation made or any conduct engaged in by Council or any person on behalf of Council as to fitness or suitability of the ICIP Lot or any part of the ICIP for any particular purpose or as to any financial return or income to be derived from the ICIP Lot;
- (iv) it was not induced to enter into this Agreement or the Land Exchange Agreements by any warranty, representation or conduct of the type referred to in clauses 6(a)(i) or 6(a)(iii) other than as is or are expressly contained in this Agreement or in the Land Exchange Agreements; and
- (v) prior to entering into this Agreement and the Land Exchange Contracts the ICIP Lot Owner had the opportunity to:
  - (A) negotiate the terms of this Agreement and the Land Exchange Agreements with Council; and
  - (B) obtain independent legal, financial, taxation and other professional advice as to the nature of this Agreement and the Land Exchange Agreements and the rights and obligations under this Agreement and the Land Exchange Agreements of the SMIP Lot Owner.
- (b) The ICIP Lot Owner acknowledges that Council has entered into this Agreement and the Land Exchange Contracts on the basis that the representations and warranties contained in this clause are true and not misleading;
- (c) The ICIP Lot Owner indemnifies Council against any loss, damages, or other costs which may be incurred by the Council as a result of any of the representations and warranties contained in clause being untrue or misleading.

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### 7. RESCISSION AND TERMINATION

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#### 7.1 Rescission

A notice of rescission pursuant to any express right to rescind as set out in this Agreement shall rescind this Agreement from the date of this Agreement, provided:

- (a) subject to clause 7.1(b), neither party shall be liable to the other party for any loss, damages, costs or expenses; and
- (b) nothing in this clause 7.1 shall be taken to prohibit or restrict the right of either party to take action against the other for any loss, damage, costs or expenses arising from a breach of any term, condition or warranty contained or implied in this Agreement.

#### 7.2 Termination

- (a) In the event that a party is in default of its obligations under this Agreement ("Defaulting Party"), the other party may serve written notice ("Default Notice") requiring rectification of the default within a reasonable period of time having regard to the nature of the default.
- (b) If clause 7.2(a) applies and the Defaulting Party fails to comply with the terms of the Default Notice, the other party may terminate this Agreement upon the service of notice of termination.
- (c) If either party terminates this Agreement in accordance with clause 7.2(b), that termination shall be without prejudice to:-
  - (i) all rights, powers and obligations of the parties existing at the time of termination; and
  - (ii) any right a party may have to damages whether arising under the terms of this Agreement, at common law, in equity or otherwise.
- (d) If this Agreement is terminated in accordance with clause 7.2(b) then the Land Exchange Contracts shall be deemed terminated.

### 8. RESOLUTION OF DISPUTES

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- (a) If a dispute arises out of or relates to this Agreement a party may not commence any court proceedings relating to the dispute unless it has complied with this clause except where the party seeks:
  - (i) urgent interlocutory relief; or
  - (ii) the recovery of moneys pursuant to this Agreement.



## Land Exchange Agreement

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- (b) A party claiming that a dispute ("the dispute") has arisen under or in relation to this Agreement must give written notice to the other parties specifying the nature of the dispute.
- (c) On receipt of that notice by the other party, the parties must endeavour to resolve the dispute expeditiously using information dispute resolution techniques such as mediation, expert evaluation or determination or similar techniques agreed by them.
- (d) If the parties do not resolve the dispute within fourteen (14) days of the notice referred to in clause 8(b), (or such further period as agreed in writing by them) the parties shall within a further fourteen (14) days agree as to:
  - (i) the mediator;
  - (ii) the dispute resolution technique and procedures to be adopted ("the mediation");
  - (iii) the timetable for all steps in the mediation; and
  - (iv) the compensation of the mediator,

and if the parties cannot agree as to all such matters, then the parties shall refer the dispute to the President of the Law Society of New South Wales who will select a mediator and determine the mediator's compensation and the parties shall participate in a mediation as directed by the mediator including directions as to the timetable for all steps in the mediation and the procedures for the mediation.

## 9. CONFIDENTIALITY

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### 9.1 Keep Confidential

Subject to the following sub-clause, each party shall keep the contents of this Agreement (and all documents and information made available to that party for the purposes of entering into this Agreement or in the course of the performance of this Agreement) confidential, and shall not disclose the same to any other person without the written consent of the other party.

### 9.2 Exceptions to Confidentiality

The preceding sub-clause shall not apply in the following circumstances:-

- (a) any disclosure required by law;
- (b) any disclosure required by any applicable stock-exchange listing rules;
- (c) disclosure to solicitors, barristers, or other professional advisers under a duty of confidentiality; or

## Land Exchange Agreement

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- (d) disclosure to a banker or other financial institution relevant to a party, or to a related corporation or a professional advisor to the extent required for the purpose of raising funds or maintaining compliance with credit arrangements, if such banker, financial institution, related corporation or professional advisor first gives a binding covenant to the other parties to maintain confidentiality, in form and substance satisfactory to the other parties.

### **10. GUARANTEE AND INDEMNITY**

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- 10.1 In consideration of Council agreeing to enter into this Agreement, the Guarantors hereby irrevocably and unconditionally guarantee to Council the due and punctual performance by the SMIP Lot Owner of all of the obligations and liabilities of the SMIP Lot Owner to Council (whether liquidated or not, whether contingent or presently accrued due and whether relating to the payment of any money or the performance or omission of any act or thing) ("the Obligations") that are now or become in the future in existence pursuant to either:
  - (a) this Agreement; or
  - (b) the ICIP Lot Contract; or
  - (c) the SMIP Lot Contract,(collectively, "Indemnified Contracts").
- 10.2 The Guarantors as a separate, additional and primary liability hereby irrevocably and unconditionally agree to indemnify Council and at all times hereafter to keep Council indemnified against any loss or damage suffered by Council arising out of:
  - (a) any failure by the SMIP Lot Owner to duly and punctually perform the Obligations; or
  - (b) any obligations or liabilities that would otherwise form part of the liabilities and obligations under an Indemnified Contract being void, voidable or unenforceable against or irrevocable from the SMIP Lot Owner by Council in full for any reason whatsoever.
- 10.3 The liability of the Guarantors hereunder shall be absolute and shall not be subject to the execution of any other instrument or document by any person and shall not be subject to the performance of any condition precedent or subsequent whatsoever between or among any person or persons whatsoever.
- 10.4 The liability of the Guarantors hereunder shall not be affected by any act, omission, matter or thing whatsoever that would otherwise operate in law or equity to reduce or release the Guarantors from such liability.

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- 10.5 This Guarantee and Indemnity shall be a continuing security notwithstanding any termination by the Guarantors, settlement of account, intervening payment, expressed or implied revocation or any other matter or thing whatsoever and shall continue to secure to Council the due and punctual performance of all of the Obligations.
- 10.6 The Guarantors shall on demand reimburse Council for, and keep Council indemnified against, all expenses (including legal costs and disbursements on a solicitor/own client basis) incurred by Council in connection with the enforcement, attempted enforcement or preservation of any rights under this Guarantee and Indemnity.

### 11. GENERAL

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#### 11.1 Notices

Any notice given under or in connection with this Agreement:

- (a) may be given by personal service, post, facsimile or email;
- (b) must be in writing, legible and in English addressed (depending on the manner in which it is given) to the address set out in this Agreement or to any other address last notified by the Party to the sender by notice given in accordance with this clause;
- (c) in the case of a corporation, must be signed by an officer or authorised representative of the sender or in accordance with Section 127 of the *Corporations Act 2000 (Commonwealth)*; and
- (d) is deemed to be given by the sender and received by the addressee:
  - (i) if delivered in person, when delivered to the addressee;
  - (ii) if posted, 2 Business Days after the date of posting to the addressee whether delivered or not;
  - (iii) if sent by facsimile transmission, on the date and time shown on the transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety and in legible form to the facsimile number of the addressee notified for the purposes of this clause; or
  - (iv) if sent by email, on the date and time at which it enters the addressee's information system (as shown in a confirmation of delivery report from the sender's information system, which indicates that the email was sent to the email address of the addressee notified for the purposes of this clause),

## Land Exchange Agreement

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- (v) but if the delivery or receipt is on a day which is not a Business Day or is after 5.00pm (addressee's time), it is deemed to have been received at 9.00am on the next Business Day.

### 11.2 Binding other parties

- (a) A party cannot in any way or for any purpose:
  - (i) bind another party; or
  - (ii) contract in the name of another party.
- (b) If a party must fulfil an obligation and that party is dependent on another party, then that other party must do each thing reasonably within its power to assist the other in the performance of that obligation.

### 11.3 Time for doing acts

- (a) If the time for doing any act or thing required to be done or a notice period specified in this Agreement expires on a day other than a Business Day, the time for doing that act or thing or the expiration of that notice period is extended until the following Business Day.
- (b) If any act or thing required to be done is done after 5.00pm on the specified day, it is taken to have been done on the following Business Day.

### 11.4 Further assurances

Each Party must promptly execute all documents and do all other things reasonably necessary or desirable to give effect to the arrangements recorded in this Agreement.

### 11.5 Variation

A provision of this Agreement can only be varied by a later written document executed by or on behalf of all parties.

### 11.6 No assignment by SMIP Lot Owner

The SMIP Lot Owner must not assign or otherwise transfer or novate their rights or obligations under this Agreement or the Land Exchange Contracts without Council's prior written consent, and any change of control (which will include a change in shareholding so that a different person or group of persons will control the composition of the board of directors or more than 30% of shares giving right to a general vote at meetings) of the SMIP Lot Owner will be deemed to be such an assignment or transfer of its rights or obligations.

## Land Exchange Agreement

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### 11.7 Counterparts

This Agreement may be executed in any number of counterparts. All counterparts taken together constitute one instrument.

### 11.8 Legal Costs

Each party must pay its own legal costs and disbursements in connection with the negotiation, preparation, execution and carrying into effect of this Agreement and the Land Exchange Contracts.

### 11.9 Invalidity

- (a) A word or provision must be read down if:
  - (i) this Agreement is void, voidable, or unenforceable if it is not read down;
  - (ii) this Agreement will not be void, voidable or unenforceable if its read down; and
  - (iii) the provision is capable of being read down.
- (b) A word or provision must be severed if:
  - (i) despite the operation of clause 11.9(a), the provision is void, voidable or unenforceable if it is not severed; and
  - (ii) this Agreement will be void, voidable or unenforceable if it is not severed.
- (c) The remainder of this Agreement has full effect even if clause 11.9(b)(i) or clause 11.9(b)(ii) applies.

### 11.10 Waiver

A right or remedy created by this Agreement cannot be waived except in writing signed by the party entitled to that right. Delay by a party in exercising a right or remedy does not constitute a waiver of that right or remedy, nor does a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.

### 11.11 Survival after termination

Any clause of this Agreement which is capable of continuing to apply after expiration or termination of this Agreement will continue to apply after expiration or termination of this Agreement.

### 11.12 Governing law and jurisdiction

- (a) The laws applicable in the State of New South Wales govern this Agreement.

## Land Exchange Agreement

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- (b) The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts competent to hear appeals from those courts.

### 11.13 Consent

Where this Agreement contemplates that a party may agree or consent to something (however it is described) the party may:

- (a) agree or consent, or not agree or consent, in its absolute discretion; and
- (b) agree or consent subject to conditions, unless this Agreement expressly contemplates otherwise.

### 11.14 Inconsistency with other documents

If this Agreement is inconsistent with any other document or agreement between the parties (including the Land Exchange Contracts), this Agreement prevails to the extent of that inconsistency.

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## Land Exchange Agreement

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### SCHEDULE 1 – REFERENCE SCHEDULE

This Schedule 1 is annexed to and forms part of this Agreement.

**Part 1.**

Date of this Agreement – [Date]

**Part 2.**

Particulars of Council – Tweed Shire Council ABN 90 178 732 496 of PO Box 816, Murwillumbah NSW 2484

**Part 3.**

Particulars of the SMIP Lot Owner – [Name of SMIP Lot Owner] of [Address]

**Part 4.**

Particulars of Guarantors – [Name of Guarantor] of [Address]

**Part 5.**

SMIP Lot – [insert]

**Part 6.**

ICIP Lot – [insert]

**Part 7.**

Plan Registration Date – The date which is:  
(a) eighteen (18) months after the Exchange Date;  
or  
(b) if the Plan Registration Date is extended to a later date pursuant to clause 3.1(c), that later date.

**Part 8.**

Purpose – [insert]

**Part 9.**

Exchange Date – The date of contemporaneous exchange of the Land Exchange Contracts

**Part 10.**

SMIP Lot Value – \$[insert]

**Part 11.**

ICIP Lot Value – \$[insert]

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### Part 12.

Security Amount – \$[insert]

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# Land Exchange Agreement

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## SCHEDULE 2 – PLAN



# Land Exchange Agreement

## SCHEDULE 3 - CAVEAT

Form: 08CX  
Release: 4-5

### CAVEAT

Leave this space clear. Affix additional pages to the top left-hand corner.

Prohibiting Recording of a Dealing or Plan  
or Granting of a Possessory Application  
New South Wales  
Section 74F Real Property Act 1900

PRIVACY NOTE: Section 31B of the Real Property Act 1900 (RP Act) authorises the Registrar General to collect the information required by this form for the establishment and maintenance of the Real Property Act Register. Section 95B RP Act requires that the Register is made available to any person for search upon payment of a fee, if any.

**STAMP DUTY**

Revenue NSW use only
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(A) **TORRENS TITLE**

--

(B) **REGISTERED DEALING**

Number	Torrens Title
--------	---------------

(C) **LODGED BY**

Document Collection Box	Name, Address or DX, Telephone, and Customer Account Number if any	CODE <b>X</b>
	Reference: _____	

(D) **REGISTERED PROPRIETOR**

--

(E) **CAVEATOR**

Insert the full name and address (residential if individual/registered office if body corporate)  Tweed Shire Council ABN 90 178 732 496 of 10-14 Tumbulgum Road, Murwillumbah, NSW  Postcode: 2484
--

(F) **NAME AND ADDRESS IN AUSTRALIA SERVICE OF NOTICES ON THE CAVEATOR**

<b>IMPORTANT NOTE:</b> The address <i>must</i> be a street address. If desired, a Document Exchange box in NSW may be provided <i>in addition</i> . If the caveator's name or address for service of notices changes, notification <i>must</i> be lodged on form 08CX. Name: Tweed Shire Council ABN 90 178 732 496 Street Address: 10-14 Tumbulgum Road, Murwillumbah NSW  Postcode: 2484
--

(G) **ACTION PROHIBITED**

Document Exchange Box in NSW (additional):
1, 2 and 4

(H) The caveator claims to be entitled to the estate or interest in the above land \_\_\_\_\_ specified in Schedule 1 by virtue of the instrument \_\_\_\_\_ set out in that schedule and prohibits the Registrar General from taking, with respect to the above land \_\_\_\_\_, the action specified above unless the caveator has consented in writing or this caveat has lapsed or been withdrawn.

ALL HANDWRITING MUST BE IN BLOCK CAPITALS.

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**WARNING:** care should be exercised in completing a caveat form. An unsupported caveat may be challenged in the Supreme Court; compensation may be awarded for lodging a caveat without justification (section 74P Real Property Act 1900). Failure to observe the requirements of regulations 7 and 8 of the current Real Property Regulation may make the caveat invalid.

(F) **SCHEDULE 1 Estate or interest claimed**

Particulars of the estate or interest in the abovementioned land		
1. Equitable interest as chargee. 2. Equitable interest arising pursuant to the rights created.		
By virtue of the instrument referred to below		
Nature of Instrument	Date	Parties
Land Exchange Agreement		The Caveator and the Registered Proprietor
By virtue of the facts stated below		

(G) **SCHEDULE 2 Action prohibited by this caveat**

- The recording in the Register of any dealing other than a plan affecting the estate or interest claimed by the caveator and set out in Schedule 1.
- The registration or recording of any plan other than a definition plan affecting the estate or interest claimed by the caveator and set out in Schedule 1.
- The registration of definition plan<sup>1</sup> No. \_\_\_\_\_
- The granting of any possessory application<sup>2</sup> with respect to the land in the Torrens Title referred to above.
- The recording in the register of any dealing affecting the estate or interest of which the caveator is registered proprietor.
- The granting of an application to extinguish the NOT APPLICABLE created by NOT APPLICABLE >>> No.
- The recording in the Register of a writ affecting the estate or interest claimed by the caveator and set out in Schedule 1.

(H) **STATUTORY DECLARATION<sup>3</sup>**

I, \_\_\_\_\_, solemnly and sincerely declare that—

- To the best of my knowledge, information and belief
  - the caveator has a good and valid claim to the estate or interest set out in Schedule 1.
  - the address specified at (D) as the address of the registered proprietor is the correct address.
- This caveat does not require the leave of the Supreme Court or the endorsed consent of the SUBJECT >>> >>> ; I make this solemn declaration conscientiously believing the same to be true and by virtue of the Oaths Act 1900 and I certify this caveat to be correct for the purposes of the Real Property Act 1900.

Made and subscribed at \_\_\_\_\_ in the \_\_\_\_\_ on \_\_\_\_\_

in the presence of \_\_\_\_\_ of \_\_\_\_\_

Justice of the Peace (J.P. Number: \_\_\_\_\_)       Practising Solicitor

Other qualified witness (specify) \_\_\_\_\_

\*\* who certifies the following matters concerning the making of this statutory declaration by the person who made it:

- I saw the face of the person OR I did not see the face of the person because the person was wearing a face covering, but I am satisfied that the person had a special justification for not removing the covering; and
- I have known the person for at least 12 months OR I have confirmed the person's identity using an identification document and the document I relied on was a \_\_\_\_\_ [Over ID No.]

Signature of witness: \_\_\_\_\_ Signature of declarant: \_\_\_\_\_  
Capacity of declarant if other than the caveator: \_\_\_\_\_

(I) **CONSENT (section 74O Real Property Act 1900)<sup>4</sup>**

I, the registered proprietor named at (D) or possessory applicant, for the purposes of section 74O only, consent to this caveat.

Signature of registered proprietor/possessory applicant \_\_\_\_\_

- A plan defining the boundaries of land in a limited folio of the Register. See Part IVB Real Property Act 1900.
- An application made by a person claiming title to land by virtue of adverse possession. See Part VIA Real Property Act 1900.
- As the services of a qualified witness cannot be provided as a judgment, this declaration should be signed and witnessed prior to lodging.<sup>5</sup> If made outside NSW, cross out the witness certification. If made in NSW, cross out the text which does not apply.
- Only one capacity can be selected, either registered proprietor or possessory applicant, cross out whichever does not apply.

A 3. HANDWRITING MUST BE IN BLOCK CAPITALS.

## Land Exchange Agreement

### SCHEDULE 4 - EARLY POSSESSION CONDITIONS

- 1.1 In these conditions:
- (a) "Approvals" means all approvals required to be obtained from the Council any other Government Authority to permit the Development to be lawfully undertaken.
  - (b) "Condition Precedent" means insuring the Property and the Development:
    - (i) against damage and destruction for the full reinstatement value from time to time of all materials and goods on the Property, including any unfixed materials or goods;
    - (ii) with a policy of public risk in an amount not less than \$20,000,000.00; and
    - (iii) with any other insurance required by law to be effected in order to undertake the Development.
  - (c) "Development" means construction upon the Property of the Improvements in accordance with the Plans and Specifications.
  - (d) "Plans and Specifications" means the approved plans and specifications for the Development.
  - (e) "Property" means the ICIP Lot.
- 1.2 The SMIP Lot Owner must satisfy the Condition Precedent before taking possession of the Property.
- 1.3 The SMIP Lot Owner must do everything necessary to ensure that they obtain at their own expense all Approvals.
- 1.4 Prior to taking possession of and occupying the Property the SMIP Lot Owner must satisfy Council, and provide to Council evidence to Council's satisfaction, that the SMIP Lot Owner has satisfied the Condition Precedent.
- 1.5 The Condition Precedent must remain satisfied by the SMIP Lot Owner at all times until completion of the SMIP Lot Contract.
- 1.6 The date the SMIP Lot Owner takes possession of the Property shall be the adjustment date for the purposes of clause 14 of the ICIP Lot Contract.
- 1.7 After the SMIP Lot Owner obtains all of the Approvals they must ensure that they commence and undertake to completion the Development as soon as practicable.

## Land Exchange Agreement

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- 1.8 The SMIP Lot Owner indemnifies Council and agree to keep Council indemnified against any liability, loss or costs arising out of exercise by the SMIP Lot owner of their rights under these conditions.
- 1.9 In the event that the SMIP Lot Contract is terminated (other than by reason of default by Council) or rescinded any improvements constructed upon the Property by the SMIP Lot Owner in the course of undertaking the Development shall immediately and thereupon vest in Council and Council will not be required to pay the SMIP Lot Owner any compensation in this regard.

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# Land Exchange Agreement

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## EXECUTED AS A DEED

THE COMMON SEAL of [COUNCIL NAME] [ACN/ABN] was affixed by authority of a resolution dated the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_ in the presence of:

.....  
Signature of Authorised Person

.....  
Signature of General Manager

.....  
Name of Authorised Person

.....  
Name of General Manager

EXECUTED for and on behalf of [SMIP LOT OWNER NAME] [ACN/ABN] in accordance with Section 127(1) of the *Corporations Act 2001* by authority of the Directors:

.....  
Signature of Director

.....  
Signature of Director/Secretary

.....  
Name of Director

.....  
Name of Director/Secretary

SIGNED by [GUARANTOR] in the presence of:

.....  
Signature of Witness

.....  
Signature

.....  
Name of Witness

Land Exchange Agreement

Stacks Law Firm

ANNEXURE A – SMP LOT CONTRACT

Stacks Law Firm is a registered real estate agent under the Real Estate (Agent) Act 2008 (NSW) and the Real Estate (Agent) Regulation 2009 (NSW). This contract is subject to the Real Estate (Agent) Act 2008 (NSW) and the Real Estate (Agent) Regulation 2009 (NSW). The Real Estate (Agent) Act 2008 (NSW) and the Real Estate (Agent) Regulation 2009 (NSW) are available at www.legislation.nsw.gov.au.

Contract for the sale and purchase of land 2019 edition

TERM MEANING OF TERM eCOS ID: 72278882 NSW DAN:
vendor's agent WITHOUT THE INTERVENTION OF AN AGENT Phone:
fax:
ref:
co-agent
vendor: 2/11 Macrossan Street, Sydney NSW 2000
2/11 Macrossan Street, Sydney NSW 2000
vendor's solicitor
date for completion See Special Condition E (to use 15) Email:
land: 2/11 Macrossan Street, Sydney NSW 2000
address, postal code and unit reference: 2/11 Macrossan Street, Sydney NSW 2000

improvements:
[ ] HOUSE [ ] garage [ ] rampart [ ] home unit [ ] car space [ ] storage space
[ ] none [x] other: Industrial Buildings
attached copies:
[x] documents in the List of Documents as marked or as numbered:
[ ] other documents:

A real estate agent is permitted by legislation to fill up the items in this box in a sale of residential property.
Inclusions:
[ ] bins [ ] dishwasher [ ] light fittings [ ] stove
[ ] built-in wardrobes [ ] fixed floor covering [ ] range hood [ ] pool equipment
[ ] clothes line [ ] insect screens [ ] solar panels [ ] TV antenna
[ ] curtains [ ] other
escrow agent:
purchaser: Tweed Shire Council
30-34 Tumbulgum Road Murwillumbah NSW 2464
purchaser's solicitor: Stacks Law Firm
Wharf Central Level 1, 75 Wharf Street Tweed Heads NSW 2485
Phone: 07 55361311
Fax: 07 5536 4555
Ref: T Mitchell
Email: tmitchell@stackslaw.com.au
price: \$ See Schedule 1
deposit: \$
balance: \$
contract date: (If not stated the date this contract was made)

buyer's agent
vendor: witness
GST AMOUNT (approx)
The price includes
GST at: \$
purchaser: [ ] JOINT TENANTS [ ] tenants in common [ ] in unequal shares witness
BREACH OF COPYRIGHT MAY RESULT IN LEGAL ACTION 200498 72278882

# Land Exchange Agreement

Stacks Law Firm

Land – 2019 edition

**2**  
Choices

vendor agrees to accept a *deposit-bond* (clause 3)  NO  YES

Nominated *Electronic Lodgment Network (ELN)* (clause 30) Pexa

*Electronic transaction* (clause 30)  no  YES

(If no, vendor must provide further details, such as the proposed applicable waiver, in the space below, or serve within 14 days of the contract date):

**Tax information (the parties promise this is correct as far as each party is aware)**

land tax is adjustable  NO  YES

GST: Taxable supply  NO  YES in full  YES to an extent

Margin scheme will be used in making the taxable supply  NO  YES

This sale is not a taxable supply because (one or more of the following may apply) the sale is:

- not made in the course or furtherance of an enterprise that the vendor carries on (section 9-5(b))
- by a vendor who is neither registered nor required to be registered for GST (section 9-5(d))
- GST-free because the sale is the supply of a going concern under section 38-325
- GST-free because the sale is subdivided farm land or farm land supplied for farming under Subdivision 38-0
- input taxed because the sale is of eligible residential premises (sections 40-65, 40-75(2) and 195-1)

Purchaser must make an *GSTRW* payment (residential withholding payment)  NO  YES (if yes, vendor must provide further details)

If the further details below are not fully completed at the contract date, the vendor must provide all these details in a separate notice within 14 days of the contract date.

**GSTRW payment (GST residential withholding payment) – further details**

Frequently the supplier will be the vendor. However, sometimes further information will be required as to which entity is liable for GST, for example, if the supplier is a partnership, a trust, part of a GST group or a participant in a GST joint venture.

Supplier's name:

Supplier's ABN:

Supplier's GST branch number (if applicable):

Supplier's business address:

Supplier's email address:

Supplier's phone number:

Supplier's proportion of *GSTRW* payment: \$

If more than one supplier, provide the above details for each supplier.

Amount purchaser must pay – price multiplied by the *RW* rate (residential withholding rate): \$

Amount must be paid:  AT COMPLETION  at another time (specify):

Is any of the consideration not expressed as an amount in money?  NO  YES

If "yes", the GST inclusive market value of the non-monetary consideration: \$

Other details (including those required by regulation or the ATO forms):

BREACH OF COPYRIGHT MAY RESULT IN LEGAL ACTION 200498 72278382



# Land Exchange Agreement

Stacks Law Firm

3  
List of Documents

Land – 2019 edition

General	Strata or community title (clause 23 of the contract)
<input checked="" type="checkbox"/> 1 property certificate for the land	<input type="checkbox"/> 32 property certificate for strata common property
<input checked="" type="checkbox"/> 2 plan of the land	<input type="checkbox"/> 33 plan creating strata common property
<input type="checkbox"/> 3 unregistered plan of the land	<input type="checkbox"/> 34 strata by-laws
<input type="checkbox"/> 4 plan of land to be subdivided	<input type="checkbox"/> 35 strata development contract or statement
<input type="checkbox"/> 5 document that is to be lodged with a relevant plan	<input type="checkbox"/> 36 strata management statement
<input checked="" type="checkbox"/> 6 section 10.7(2) planning certificate under Environmental Planning and Assessment Act 1979	<input type="checkbox"/> 37 strata renewal proposal
<input type="checkbox"/> 7 additional information included in that certificate under section 10.7(5)	<input type="checkbox"/> 38 strata renewal plan
<input checked="" type="checkbox"/> 8 sewerage infrastructure location diagram (service location diagram)	<input type="checkbox"/> 39 leasehold strata - lease of lot and common property
<input checked="" type="checkbox"/> 9 sewer lines location diagram (sewerage service diagram)	<input type="checkbox"/> 40 property certificate for neighbourhood property
<input type="checkbox"/> 10 document that created or may have created an easement, profit à prendre, restriction on use or positive covenant disclosed in this contract	<input type="checkbox"/> 41 plan creating neighbourhood property
<input type="checkbox"/> 11 planning agreement	<input type="checkbox"/> 42 neighbourhood development contract
<input type="checkbox"/> 12 section 88G certificate (positive covenant)	<input type="checkbox"/> 43 neighbourhood management statement
<input type="checkbox"/> 13 survey report	<input type="checkbox"/> 44 property certificate for precinct property
<input type="checkbox"/> 14 building information certificate or building certificate given under legislation	<input type="checkbox"/> 45 plan creating precinct property
<input type="checkbox"/> 15 lease (with every relevant memorandum or variation)	<input type="checkbox"/> 46 precinct development contract
<input type="checkbox"/> 16 other document relevant to tenancies	<input type="checkbox"/> 47 precinct management statement
<input type="checkbox"/> 17 licence benefiting the land	<input type="checkbox"/> 48 property certificate for community property
<input type="checkbox"/> 18 old system document	<input type="checkbox"/> 49 plan creating community property
<input type="checkbox"/> 19 Crown purchase statement of account	<input type="checkbox"/> 50 community development contract
<input type="checkbox"/> 20 building management statement	<input type="checkbox"/> 51 community management statement
<input type="checkbox"/> 21 form of requisitions	<input type="checkbox"/> 52 document disclosing a change of by-laws
<input type="checkbox"/> 22 clearance certificate	<input type="checkbox"/> 53 document disclosing a change in a development or management contract or statement
<input type="checkbox"/> 23 land tax certificate	<input type="checkbox"/> 54 document disclosing a change in boundaries
<b>Home Building Act 1989</b>	<input type="checkbox"/> 55 information certificate under Strata Schemes Management Act 2015
<input type="checkbox"/> 24 insurance certificate	<input type="checkbox"/> 56 information certificate under Community Land Management Act 1989
<input type="checkbox"/> 25 brochure or warning	<input type="checkbox"/> 57 disclosure statement - off the plan contract
<input type="checkbox"/> 26 evidence of alternative indemnity cover	<input type="checkbox"/> 58 other document relevant to off the plan contract
<b>Swimming Pools Act 1992</b>	<b>Other</b>
<input type="checkbox"/> 27 certificate of compliance	<input type="checkbox"/> 59
<input type="checkbox"/> 28 evidence of registration	
<input type="checkbox"/> 29 relevant occupation certificate	
<input type="checkbox"/> 30 certificate of non-compliance	
<input type="checkbox"/> 31 detailed reasons of non-compliance	

HOLDER OF STRATA OR COMMUNITY TITLE RECORDS – Name, address, email address and telephone number

# Land Exchange Agreement

## SPECIAL CONDITIONS

**THIS IS THE ANNEXURE MARKED "A" TO THE CONTRACT FOR SALE OF LAND BETWEEN ~~XX~~ AS VENDOR AND TWEED SHIRE COUNCIL AS PURCHASER BEING LOT ~~XXXXXXXXXXXX~~**

- 1. In this Contract:
  - 1.1 "Land Exchange Agreement" means the document titled "Land Exchange Agreement and dated \_\_\_\_\_ between the Vendor and the Purchaser.
  - 1.2 Words and expressions used in these special conditions that are also used in the Land Exchange Agreement shall have the same meaning as in the Land Exchange Agreement.
- 2. No objection, requisition or claim for compensation shall be made by the Purchaser in respect of the following:
  - 2.1 any deficiency in the area of the Property; or
  - 2.2 any boundary discrepancy.
- 3. The Purchaser warrants that the Purchaser was not introduced to the Vendor or the Property by any real estate agent and the Purchaser agrees to indemnify and keep indemnified the Vendor against any claim for commission which might be made by any agent resulting from an introduction constituting a breach of such warranty. It is agreed that this indemnity shall be a continuing indemnity and shall not merge on completion.
- 4. If completion does not take place by the Completion Date then either party may serve on the other party at any time after the Completion Date a notice stipulating a date for completion being not less than 14 days after the date of service of the notice and stipulating that time is of the essence in respect of the time and date specified in the notice. The parties acknowledge that not less than 14 days is a reasonable and sufficient period for compliance with the terms of any notice to complete.
- 5. Completion of this Contract is conditional upon contemporaneous completion of the IOP Lot Contract.
- 6. Completion of this Contract is to occur on the day determined by reference to clause 3.3 of the Land Exchange Agreement.
- 7. The Vendor must prior to Completion undertake at the cost of the Vendor to the satisfaction of the Purchaser remediation (as defined in section 4 of the Contaminated Land Management Act 1997 (NSW)) of the Property in accordance with the recommendation contained in paragraph 9.0 of the Revised Report on Tier-1 Site Characterisation Petroleum Hydrocarbons & Heavy Metals Impacted Site prepared by Maiden Geotechnics and dated June 2020 a copy of which report comprises Schedule 2 to this Contract and in so doing obtain and comply with the requirements of all necessary consents and approvals.
- 8.
  - (a) The Vendor must prior to Completion at the cost of the Vendor and to the satisfaction of the Purchaser remove all improvements from the Property all improvements that are upon the Property on the Exchange Date and in so doing obtain and comply with the requirements of all necessary consents and approvals.
  - (b) In the event that the Vendor has removed all improvements from the Property prior to the Exchange Date then for the purposes of the Land Exchange Agreement the Property shall not be considered to be vacant land and clauses 3.2 and 3.5 of the Land Exchange Agreement shall nevertheless apply.

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## Land Exchange Agreement

Stacks Law Firm

### SCHEDULE 1

The consideration is the performance by the parties of their respective obligations pursuant to the Land Exchange Agreement (as defined in the Special Conditions)

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Land Exchange Agreement

Stacks Law Firm

ANNEXURE B – ICIP LOT CONTRACT

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Contract for the sale and purchase of land 2019 edition

Contract details including:
TERM: WITHOUT THE INTERVENTION OF AN AGENT
MEANING OF TERM: See Special Condition 8 (clause 15)
VENDOR: Tweed Shire Council
VENDOR'S SOLICITOR: Stacks / Weed Heads
DATE FOR COMPLETION: See Special Condition 8 (clause 15)
INCLUSIONS: VACANT POSSESSION, Subject to existing tenancies, HOUSE, garage, carport, home unit, strip, storage space, none, other: Vacant Land

Inclusions and Exclusions section:
Inclusions: blinds, dishwasher, light fittings, stove, built-in wardrobe, fixed floor coverings, range hood, pool equipment, clothes line, insect screens, solar panels, TV antenna, curtains, other
Exclusions: None
PURCHASER'S OFFER: \$1,000,000
PURCHASER'S DEPOSIT: \$100,000 (10% of price)
DATE: (if not stated, the date this contract was made)

Buyer's agent and Vendor sections:
BUYER'S AGENT:
VENDOR:
WITNESS:
GST AMOUNT (optional): The price includes GST @ 15%

Purchaser section:
PURCHASER:
JOINT TENANTS
SHARED IN COMMON
UNEQUAL SHARES
WITNESS

# Land Exchange Agreement

Stacks Law Firm

2  
Choices Land – 2019 edition

vendor agrees to accept a *deposit-bond* (clause 3)  NO  YES

Nominated *Electronic Lodgment Network (ELN)* (clause 30) PEXA

*Electronic transaction* (clause 30)  no  YES

(If no, vendor must provide further details, such as the proposed applicable waiver, in the space below, or serve within 14 days of the contract date):

**Tax information (the parties promise this is correct as far as each party is aware)**

land tax is adjustable  NO  YES

GST: Taxable supply  NO  YES in full  YES to an extent

Margin scheme will be used in making the taxable supply  NO  YES

This sale is not a taxable supply because (one or more of the following may apply) the sale is:

- not made in the course or furtherance of an enterprise that the vendor carries on (section 9-5(b))
- by a vendor who is neither registered nor required to be registered for GST (section 9-5(d))
- GST-free because the sale is the supply of a going concern under section 38-325
- GST-free because the sale is subdivided farm land or farm land supplied for farming under Subdivision 38-0
- input taxed because the sale is of eligible residential premises (sections 40-65, 40-75(2) and 195-1)

Purchaser must make an *GSTRW payment* (residential withholding payment)  NO  YES (if yes, vendor must provide further details)

If the further details below are not fully completed at the contract date, the vendor must provide all these details in a separate notice within 14 days of the contract date.

**GSTRW payment (GST residential withholding payment) – further details**

Frequently the supplier will be the vendor. However, sometimes further information will be required as to which entity is liable for GST, for example, if the supplier is a partnership, a trust, part of a GST group or a participant in a GST joint venture.

Supplier's name:  
Supplier's ABN:  
Supplier's GST branch number (if applicable):  
Supplier's business address:  
Supplier's email address:  
Supplier's phone number:  
Supplier's proportion of *GSTRW payment*: \$

If more than one supplier, provide the above details for each supplier.

Amount purchaser must pay – price multiplied by the *RW rate* (residential withholding rate): \$

Amount must be paid:  AT COMPLETION  at another time (specify):

Is any of the consideration not expressed as an amount in money?  NO  YES

If "yes", the GST inclusive market value of the non-monetary consideration: \$

Other details (including those required by regulation or the ATO forms):

BREACH OF COPYRIGHT MAY RESULT IN LEGAL ACTION

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72283118

# Land Exchange Agreement

3  
List of Documents

Land – 2019 edition

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<input type="checkbox"/> 10 document that created or may have created an easement, profit à prendre, restriction on use or positive covenant disclosed in this contract	<input type="checkbox"/> 41 plan creating neighbourhood property
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<input type="checkbox"/> 26 evidence of alternative indemnity cover	<input type="checkbox"/> 58 other document relevant to off the plan contract
<b>Swimming Pools Act 1992</b>	<b>Other</b>
<input type="checkbox"/> 27 certificate of compliance	<input type="checkbox"/> 59
<input type="checkbox"/> 28 evidence of registration	
<input type="checkbox"/> 29 relevant occupation certificate	
<input type="checkbox"/> 30 certificate of non-compliance	
<input type="checkbox"/> 31 detailed reasons of non-compliance	

**HOLDER OF STRATA OR COMMUNITY TITLE RECORDS – Name, address, email address and telephone number**

## Land Exchange Agreement

Stacks Law Firm

### SPECIAL CONDITIONS

**THIS IS THE ANNEXURE MARKED "A" TO THE CONTRACT FOR SALE OF LAND  
BETWEEN TWEED SHIRE COUNCIL AS VENDOR AND ~~XXXXXXXXXXXXXXXXXXXX~~  
~~XXXXXXXXXXXXXXXXXXXX~~ AS PURCHASER**

1. In this Contract:
  - 1.1 "Land Exchange Agreement" means the document titled "Land Exchange Agreement" and dated \_\_\_\_\_ between the Vendor and the Purchaser.
  - 1.2 Words and expressions used in these special conditions that are also used in the Land Exchange Agreement shall have the same meaning as in the Land Exchange Agreement.
2. No objection, requisition or claim for compensation shall be made by the Purchaser in respect of the following:
  - 2.1 any deficiency in the area of the Property; or
  - 2.2 any boundary discrepancy.
3. The Purchaser warrants that the Purchaser was not introduced to the Vendor or the Property by any real estate agent and the Purchaser agrees to indemnify and keep indemnified the Vendor against any claim for commission which might be made by any agent resulting from an introduction constituting a breach of such warranty. It is agreed that this indemnity shall be a continuing indemnity and shall not merge on completion.
4. If completion does not take place by the Completion Date then either party may serve on the other party at any time after the Completion Date a notice stipulating a date for completion being not less than 14 days after the date of service of the notice and stipulating that time is of the essence in respect of the time and date specified in the notice. The parties acknowledge that not less than 14 days is a reasonable and sufficient period for compliance with the terms of any notice to complete.
5. Completion of this Contract is conditional upon contemporaneous completion of the SMIP Lot Contract.
6. Completion of this Contract is to occur on the day determined by reference to clause 3.3 of the Land Exchange Agreement.
7. Clause 28 of the Standard Conditions of this Contract is varied as follows:
  - 7.1 in clause 28.2 "within 6 months after the contract date" is replaced with "by the Plan Registration Date (as defined in the Land Exchange Agreement)";

737762

## Land Exchange Agreement

- 7.2 clause 28.5 is deleted and replaced with:  
"The date for completion is determined by reference to clause 3.3 of the Land Exchange Agreement".
8. 8.1 The Purchaser acknowledges that at the date of this Contract the Vendor has not:
- (a) created, or identified, all the easements, restrictions on use and positive covenants;
  - (b) entered into all agreements and arrangements;
  - (c) granted all the rights and privileges;
  - (d) dedicated all the land; and
  - (e) created the roads or any services;
- which may be considered necessary or desirable for the Vendor to enter into, grant or dedicate.
- 8.2 To the extent permitted by law, the Purchaser must accept title to the Property subject to any easement, restriction on use or positive covenant through or over the Property which may be necessary to satisfy any condition of approval of any Government Authority or which the Vendor in its absolute discretion elects to create and the Purchaser shall not make any requisition, objection, claim for compensation, or delay settlement or rescind or terminate this Contract in this regard.
9. The Purchaser may not make any objection, requisition, claim for compensation, rescind or terminate this Contract or delay settlement due to there existing upon the Property at settlement any Improvements constructed by the Purchaser pursuant to clause 3.2 of the Land Exchange Agreement.

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## Land Exchange Agreement

Stacks Law Firm

### SCHEDULE 1

The consideration is the performance by the parties of their respective obligations pursuant to the Land Exchange Agreement (as defined in the Special Conditions)

747033







# TWEED

SHIRE COUNCIL

Customer Service | 1300 292 872 | (02) 6670 2400

[tsc@tweed.nsw.gov.au](mailto:tsc@tweed.nsw.gov.au)

[www.tweed.nsw.gov.au](http://www.tweed.nsw.gov.au)



PO Box 816

Murwillumbah NSW 2484