



## Invitation for Tenders

[Sale of Council's *Forestry Act* Sales Permit (to Get Cypress Sawlogs) only or in conjunction with sale of Tambo Sawmill]

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**KING &  
COMPANY**  
—SOLICITORS—

Level 7, 95 North Quay, Brisbane  
[G.P.O. Box 758, Brisbane, 4001]  
Telephone: (07) 3243 0000  
Facsimile: (07) 3236 1885

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## PART 1 TENDER DETAILS

### Item 1 Tender Description

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Tender Description:	Sale of Council's Sales Permit to Get Cypress Sawlogs only or in conjunction with sale of Tambo Sawmill.
Tender Validity Period:	90 days from Closure Time.
Page Limit:	150MB by email
Contact Officer	Name: Andrea Saunders Address: 6 Coronation Drive (PO Box 21) Blackall, Qld 4471 Telephone: (07) 4621 6600 Facsimile: (07) 4658 7755 Email: pa@btrc.qld.gov.au
Tender Briefing:	Nil
Tender Box:	1. For personal delivery or by post: Tender Box, Customer Service Centre, Blackall-Tambo Regional Council, 6 Coronation Drive, Blackall QLD 4472; or 2. For electronic lodgement to: tenders@btrc.qld.gov.au

### Item 2 Key Dates

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Invitation Issue Date:	Monday 6 February, 2023.
Closure Time:	Tuesday 7 March, 2023, 3:00pm Australian Eastern Standard Time.
Tender Award:	Upon Council decision.

### Item 3 Evaluation Criteria

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Evaluation Criteria	1. The Tenderer either: (a) is a current or previous holder of a sales permit under the <i>Forestry Act 1959 (Qld)</i> ; or (b) is a current or previous holder of a permit/licence/other entitlement issued by another Australian State (acting through a government department or authority) for the getting of forestry products situated in that Australian State; and/or (c) does not currently hold, and has not ever held, either a <i>Forestry Act</i> sales permit or a permit/licence/other entitlement issued by another Australian
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State (acting through a government department or authority) for the getting of forestry products situated in that Australian State.

2. Value for money.
  3. The Tenderer is a fit and proper person, and capable of complying with the terms and conditions of a *Forestry Act* sales permit.
  4. The Tenderer is capable and competent of Getting Cypress Sawlogs in compliance with a *Forestry Act* sales permit.
  5. The Tenderer is capable and competent of operating and managing a sawmill.
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## PART 2 INTERPRETING THE INVITATION FOR TENDERS

### 2.1 Interpretation Generally

- (1) This Invitation for Tenders is to be interpreted by reference to the provisions of this Part 2.
- (2) However, each such provision applies only to the extent that:
  - (a) a given context does not require otherwise; or
  - (b) a contrary intention is not apparent.

### 2.2 Structure

- (1) The Invitation for Tenders is composed of:
  - (a) the narrative provisions; and
  - (b) the appendices.
- (2) The narrative provisions are divided into Parts.
- (3) Part 1 is composed of Items and each subsequent Part is composed of numbered Clauses.
- (4) Some Clauses contain numbered component and sub-component provisions.

*Examples: Clause 2.1(1); Clause 2.2(1)(a).*
- (5) The following types of word begin with a capital letter:
  - (a) a word that is, or is part of, an expression defined in Clause 2.3 or in another provision;
  - (b) a word that begins a sentence;
  - (c) a proper noun.
- (6) The headings, any notes (including footnotes and endnotes), and the table of contents appear in the Invitation for Tenders for convenience only; they are not operative provisions.

### 2.3 Glossary

Each of the following expressions in bold to the left bears the meaning shown opposite or contained in the cross-referenced provision shown opposite:

<b>ABN</b>	Australian Business Number.
<b>Acceptance Notice</b>	A notice issued by Council to a successful Tenderer notifying Council's acceptance of the successful Tenderer's Tender.
<b>ACN</b>	Either of: <ol style="list-style-type: none"><li>(1) Australian Company Number; and</li></ol>

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	(2) Australian Registered Body Number.
<b>Act</b>	<p>(1) A legislative enactment of the Queensland Parliament or the Commonwealth Parliament.</p> <p>(2) Subordinate legislation made under the enactment.</p> <p>(3) A direction or requirement made by a competent entity under the enactment or subordinate legislation.</p> <p>(4) A licence, authorization, consent, approval, or exemption granted under the enactment or subordinate legislation.</p> <p>(5) A planning instrument.</p> <p>(6) A local law.</p>
<b>Allocated Sale Areas</b>	<p>In relation to Council's Current OHP, the following sale areas (identified by a unique sale unit identifier (<b>SUI</b>)) allocated by the DAF pursuant to the detailed harvesting plan for the Getting of Cypress Sawlogs:</p> <p>(1) SUI T001, bearing SUI common name of Kelpum, comprised of MUID C-AREM 157.</p> <p>(2) SUI T002, bearing SUI common name of Carwell, comprised of MUID C-AREM 154.</p>
<b>Appendix</b>	An appendix in this Invitation for Tenders.
<b>Business Day</b>	A day other than a Saturday, a Sunday, or a public holiday in Council's local government area.
<b>Clause</b>	A numbered clause or sub-clause in the Invitation for Tenders, other than in Part 1 or an Appendix.
<b>Closure Time</b>	Unless Council determines a later date and time, the date and time specified as the Closure Time in Item 2.
<b>Completed Deed</b>	Any one of the documents that comprise, or, if the context requires or permits, any one specific document that comprises, the Completed Deeds.
<b>Completed Deeds</b>	The Deeds completed by insertion of the details listed in Clause 6.7.
<b>Completed Tender</b>	The Tender Form completed by insertion of the details listed in Clause 4.4, and signed by the Tenderer.
<b>Confidentiality Deed</b>	The Confidentiality Deed in the form contained in Appendix 6 to be completed and executed by a proposed Tenderer in favour of Council and the DAF pursuant to Clause 3.3(2).

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<b>Contract</b>	<p>An agreement, upon the terms of the Contract Documents:</p> <ol style="list-style-type: none"><li>(1) between Council (as seller and novator), the successful Tenderer (as purchaser and novatee) and the DAF (as the Sales Permit authority) for the sale of Council's Sales Permit to Get Cypress Sawlogs; and</li><li>(2) if the successful Tender includes the acquisition of the Tambo Sawmill, between Council (as seller) and the successful Tenderer (as purchaser) for the sale of the Tambo Sawmill .</li></ol>
<b>Contract Documents</b>	<p>The collection comprising:</p> <ol style="list-style-type: none"><li>(1) the Completed Tender;</li><li>(2) the Completed Deeds; and</li><li>(3) any agreed amendment to the Tender or the Deeds.</li></ol>
<b>Controlling Interest</b>	<p>For a corporation: beneficial ownership or control of not less than 51% of the voting, or the income or capital participation rights.</p>
<b>Contact Officer</b>	<p>In relation to Council, either:</p> <ol style="list-style-type: none"><li>(1) the person Council nominates to liaise on its behalf with interested parties concerning the Tender;</li><li>(2) if nobody is nominated, Council's Chief Executive Officer.</li></ol>
<b>Council</b>	<p>Blackall-Tambo Regional Council.</p>
<b>Council's Current OHP</b>	<p>OHP for SUIs T001-T002, 01.01.2016, V. 20.02.2016, ending on 30 June 2023, issued under Council's Sales Permit, signed by Council on 14/02/2017 and the DAF on 20/07/2017, amended by OHP Form 5 signed by Council on 10/01/2022 and the DAF on 04/11/2021 and amended by OHP Form 6 signed by Council on 09/01/2023 and the DAF on 12/12/2022.</p>
<b>Council's Sales Permit</b>	<p>Sales Permit No. 201304400 to Get Cypress Sawlogs as varied by the deed of variation between Council and the DAF executed on 19 August 2021 and on 23 August 2021, respectively, and the deed of novation and variation dated 1 August 2016 between the DAF, Council, and the Millmerran Timbers Pty Ltd A.C.N. 009 690 788 (the retiring party), and as may be in the future amended or replaced as a result of the State's review pursuant to clause 23 of the Sales Permit (see Appendix 1, paragraphs (14) to (18)).</p>
<b>Current Period</b>	<p>Under Council's Sales Permit, the 5 year period fom 1 January 2023 to 31 December 2027.</p>
<b>DAF</b>	<p>The State of Queensland acting through the Department of Agriculture and Fisheries.</p>

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<b>Deeds</b>	<p>The collection comprising:</p> <ol style="list-style-type: none"><li>(1) Sale Agreement for Council's Sales Permit (including, if requested by the successful Tenderer but subject to the consent of the DAF, Council's Current OHP) in the form contained in Appendix 4; and</li><li>(2) to give effect to the Sale Agreement for Council's Sales Permit (and, if requested by the successful Tenderer and consented to by the DAF, includes the novation of Council's Current OHP), a deed of novation (and, if applicable, variation) prepared by the DAF on terms acceptable to the DAF; and</li><li>(3) if the successful Tenderer's Tender includes the acquisition of the Tambo Sawmill, amended REIQ Commercial Land and Building Contract in the form contained in Appendix 3.</li></ol>
<b>Evaluation Criteria</b>	<p>The evaluation criteria specified at Item 3.</p>
<b><i>FIRB Act (Cwlth)</i></b>	<p><i>Foreign Acquisitions and Takeovers Act 1975 (Cwlth).</i></p>
<b><i>Foreign Person</i></b>	<p>Has the meaning given to the expression in the FIRB Act (Cwlth).</p>
<b><i>Forestry Act</i></b>	<p><i>Forestry Act 1959 (Qld).</i></p>
<b>General Information</b>	<p>General information about Council's Sales Permit and the Tambo Sawmill, contained in Appendix 1.</p>
<b>Get</b>	<p>Has the meaning given to the expression in the <i>Forestry Act</i>, schedule 3 (Dictionary).</p>
<b>Invitation for Tenders</b>	<p>This document, which is comprised of:</p> <ol style="list-style-type: none"><li>(1) the Tender Details; and</li><li>(2) the Tender Conditions; and</li><li>(3) the Tender Form; and</li><li>(4) the Sale Agreement referred to in paragraph (1) of the <i>Deed</i> definition; and</li><li>(5) the Amended REIQ Commercial Land and Building Contract referred to in paragraph (3) of the <i>Deed</i> definition; and</li><li>(6) the Confidentiality Deed.</li></ol>
<b>Major Shareholder</b>	<p>For a corporation: a person who holds:</p> <ol style="list-style-type: none"><li>(1) in his/her own name; or</li><li>(2) via a Controlling Interest,</li><li>(3) not less than 20% of the voting, or the income or capital participation rights.</li></ol>



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<b>OHP</b>	In relation to a <i>Forestry Act</i> sales permit, a document developed as an operational harvesting plan as provided for, and in accordance with, the <i>Forestry Act</i> sales permit.
<b>Part</b>	A numbered part of this Invitation for Tenders, other than in an Appendix, containing one or more Clauses.
<b>Price</b>	<p>The monetary amount that the Tenderer (as purchaser) must pay to Council for the acquisition of:</p> <ol style="list-style-type: none"><li>(1) Council's Sales Permit; and</li><li>(2) if the Tenderer's Tender includes the offer to acquire the Tambo Sawmill, the Tambo Sawmill .</li></ol>
<b>Public Company</b>	<ol style="list-style-type: none"><li>(1) A corporation whose shares are listed on any of the Australian Associated Stock Exchanges.</li><li>(2) A foreign corporation whose securities are quoted for trade on a stock exchange or in a market for public dealing in securities.</li></ol>
<b>Remaining Sale Quantity</b>	The Sale Quantity of 85,500 Tonnes (bark on) of Cypress Sawlogs remaining to be Got under Council's Sales Permit during the 3 remaining 5 year Periods (including the Current Period).
<b>Separable Portion</b>	A discrete asset from the combination of Council assets described in this Invitation for Tenders for which a Tenderer may submit a Tender.
<b>State</b>	The State of Queensland.
<b>Supply Zone</b>	The area delineated as the Supply Zone, and further delineated into named former 'Allocation Zones', on the map contained in Appendix 2.
<b>Tambo Sawmill</b>	The land situated at lot 6 Dawson Development Road, Tambo, bearing real property description lot 6 on SP276172, together with the structures and other improvements on the land including, in particular, a 1,800m <sup>2</sup> open shed timber sawmill with concreted floor under roof, and machinery and other chattels present on the land.
<b>Tender</b>	<p>An offer to Council to purchase either:</p> <ol style="list-style-type: none"><li>(1) Council's Sales Permit and the Tambo Sawmill; or</li><li>(2) as a Separable Portion, Council's Sales Permit only,</li><li>(3) by entering the Completed Deeds, made:</li><li>(4) pursuant to this Invitation for Tenders; and</li><li>(5) by delivery of the Completed Tender.</li></ol>

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<b>Tenderer</b>	The person identified as such on the Tender Form.
<b>Tender Box</b>	The Tender Box identified at Item 1.
<b>Tender Conditions</b>	The conditions detailed in this document in Part 2 to Part 7, governing the tender process for: <ol style="list-style-type: none"><li>(1) the sale (pursuant to clause 22 of Council's Sales Permit) of Council's Sales Permit; and</li><li>(2) if the Tenderer's Tender includes the offer to acquire the Tambo Sawmill, the sale of the Tambo Sawmill .</li></ol>
<b>Tender Details</b>	The details for this Invitation for Tenders set out in Part 1.
<b>Tender Form</b>	The Tender Form comprising Appendix 5 to the Invitation for Tenders.
<b>Tender Validity Period</b>	The period specified at Item 1 for which the Tenderer's Tender remains valid and open for acceptance by Council.

## 2.4 Cognate Expressions

Derivatives of a defined expression bear meanings corresponding to and consistent with the definition.

## 2.5 Non-defined Expressions

A term not relevantly defined in the Invitation for Tenders carries the meaning that the Oxford Dictionary of English ascribes to it.

## 2.6 Persons

- (1) Reference to a person who is a natural person includes the person's personal representatives and permitted assigns.
- (2) Reference to a person that is a legal entity other than a natural person includes the entity's successors and permitted assigns.
- (3) For a Tenderer composed of two or more persons, each acknowledgement, representation, obligation, and entitlement binding or benefiting the Tenderer binds or benefits:
  - (a) all of those persons jointly; and
  - (b) each of them as an individual.

## 2.7 Durations and Block References

- (1) A period beginning upon a specified day begins at the beginning of that day.
- (2) A period ending on a specified day ends at the moment before midnight of that day.
- (3) A day is a continuous 24-hour period ending at midnight.
- (4) Reference to the period between two specified dates, days, times, periods, includes each of those two specified dates, days, times, or periods.

*Example: A reference to the period "from 1 January to 31 December" or "between 1 January and 31 December" is a reference to the period comprising each of those two dates and all of the days between them.*

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- (5) Reference to a number or quantity between two specified numbers or quantities includes each of those two specified numbers or quantities.

*Example: A reference to "items 10 to 20" is a collective reference to the item numbered 10, the item numbered 20, and the numbered items between them.*

## 2.8 Inclusive References

*Include* and its derivatives are not terms of limitation.

*Example: In a provision stating that A includes B, B is one of the things that A encompasses; it is not necessarily the only thing.*

## 2.9 References to Actions

Reference (direct or indirect) to a person's act:

- (1) encompasses an act of commission and an act of omission; and
- (2) includes the act of another person if the law deems the other person's act also to be the first-mentioned person's act because of the legal relationship between the two.

## 2.10 References to Acts

- (1) Reference to an Act includes an Act that amends, consolidates, or replaces it.
- (2) Reference to an Act not identified (by definition or otherwise) as an Act of the Commonwealth Parliament is to an Act of the Queensland Parliament.

## 2.11 Other References

- (1) Reference to the singular includes the plural, and vice-versa.
- (2) Reference to a gender includes each other gender.
- (3) Reference to a person encompasses a natural person, a corporation, any other type of legal entity (including a body politic), a firm, and a voluntary association.
- (4) Reference to money is to Australian dollars and cents (*vide Reserve Bank Act 1959 (Cwlth)* and *Currency Act 1965 (Cwlth)*).
- (5) Reference to a time of day is to Australian Eastern Standard Time.
- (6) Reference to writing is to reproduction of words, figures, symbols, and shapes in visible form, in English.

## PART 3 THRESHOLD ISSUES

### 3.1 Additional Information

The Tenderer acknowledges that:

- (1) it is responsible for obtaining any information it considers necessary to enable it to submit the Tender; and
- (2) Council will bear no responsibility to the Tenderer for having provided insufficient information.

### 3.2 Contact with Council

Any enquiries or dialogue the Tenderer wishes to make of, or pursue with, Council in relation to the Tender must be directed to or pursued with the Contact Officer.

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### 3.3 Provision of Council's Sales Permit and Council's Current OHP

- (1) Council recommends that a proposed Tenderer obtain a copy of Council's Sales Permit and Council's Current OHP and current associated communications from the DAF, to read and understand the governing terms and conditions.
- (2) Upon a proposed Tenderer submitting:
  - (a) an online request to Council via <http://www.btrc.qld.gov.au/economy-planning/tenders-quotes/current-tenders>; accompanied by
  - (b) the Confidentiality Deed contained in Appendix 6 completed and executed by the proposed Tenderer,

Council will provide the proposed Tenderer with an electronic copy of Council's Sales Permit and Council's Current OHP and current associated communications from the DAF for the proposed Tenderer to use only for the purposes of:

- (c) preparing and submitting a Tender in response to this Invitation to Tender; and
- (d) if the proposed Tenderer is the successful Tenderer, progressing and completing the novation of Council's Sales Permit to the successful Tenderer.

### 3.4 Inspection of Tambo Sawmill and Allocated Sale Area/s within Council's Current OHP

- (1) Council recommends that a proposed Tenderer inspect both:
  - (a) the Tambo Sawmill, to gain insight to its current state and condition; and
  - (b) one or more of the Allocated Sale Areas under Council's Current OHP, to gain an indication of the available Cypress trees and condition of access roads, etc.
- (2) Without limiting Clause 3.2, if a Tenderer wishes to undertake the inspections referred to in Clause 3.4(1), Council will permit the Tenderer to inspect the Tambo Sawmill and subject Allocated Sale Area/s, on the condition that the Tenderer must undertake the inspection accompanied by the Contact Officer, at a time mutually convenient to the Tenderer and the Contact Officer.
- (3) The Tenderer acknowledges and accepts that an inspection of the Allocated Sale Area/s may not be indicative (either specifically or generally) of the sale areas within the Supply Zone which may be allocated by the DAF to a successful Tenderer in a new OHP developed by the successful Tenderer and the DAF pursuant to the novated Council's Sales Permit.

### 3.5 Prohibited Approaches

- (1) The Tenderer must not approach, or otherwise seek to influence, with respect to the Tender any:
  - (a) Councillor; or
  - (b) Council employee other than the Contact Officer.
- (2) Council may reject a Tender submitted by a person who disobeys Clause 3.5(1), without prejudice to any other entitlement accruing to Council from the transgression.

### 3.6 Amendment of the Sale Agreement

- (1) The sale of Council's Sales Permit, by novation pursuant to clause 22 of Council's Sales Permit, is subject to the prior written consent of the DAF.
- (2) If the Completed Tender delivered by the Tenderer contains amendments, qualifications or additions proposed to the Sale Agreement made unilaterally by the Tenderer, the Tender will have, and be treated as having, failed to conform with the Tender Conditions.
- (3) Council may decline, in its absolute discretion, to consider a non-conforming Tender.
- (4) Without limiting Clause 3.6(3), if:
  - (a) the Tenderer requests an amendment to the Sale Agreement; and

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- (b) Council (acting in its absolute discretion) agrees to the request (which agreement may be subject to additional amendments to or conditions within the Sale Agreement); and
  - (c) the requested amendment impacts, or is likely to impact, the terms and conditions of novation of Council's Sales Permit, or the DAF giving its consent to the novation, the DAF (acting in its absolute discretion) in principle agrees to the request (which agreement may be subject to additional amendments to or conditions within the Sale Agreement or the Deed of novation with the DAF),
- then:
- (d) the Tenderer's offer to Council (vide Clause 5.1) will be deemed made on the basis of the amended Sale Agreement as agreed; and
  - (e) the Tender will be, and will be treated as, a Tender conforming with the Tender Conditions.
- (5) No amendment will be effectual for Clause 3.6(4) unless:
- (a) the agreement to amend is evidenced in writing; and
  - (b) Council has given to the Tenderer (or its solicitors) written notice of agreement.

### 3.7 Separable Portions

- (1) The sale of Council's Sales Permit is a Separable Portion in this Invitation to Tender.
- (2) The sale of the Tambo Sawmill is not a Separable Portion in this Invitation to Tender. The Invitation for Tenders to acquire the Tambo Sawmill is only in conjunction with the acquisition of Council's Sales Permit.
- (3) For clarity, a Tenderer must make an offer for either:
  - (a) the acquisition of both Council's Sales Permit and the Tambo Sawmill; or
  - (b) the acquisition of only Council's Sales Permit.

### 3.8 Tenderer Reliance

The Tenderer acknowledges that its Tender is submitted:

- (1) without reliance upon information of any description produced or provided by Council, or anybody on its behalf, concerning the Tender, the Supply Zone, or anything else; and
- (2) in reliance solely upon whatever inspections and investigations it has conducted upon any subject relevant to the Tender.

### 3.9 Alteration of Invitation for Tenders

Council reserves the right to alter this Invitation for Tenders.

### 3.10 Invitation to Amend Tenders

If Council alters the Invitation for Tenders, it may invite every Tenderer to amend its Tender to take account of the alteration.

## PART 4 SUBMISSION STAGE

### 4.1 Submission of Tender

- (1) The Completed Tender must be submitted to Council by submitting the Tender via the Tender Box prior to the Closure Time.
- (2) If the Tender Box is a website, by uploading it to the Tender Box.
- (3) If the Tender Box is an email address, by sending it as an attachment to an email to the Tender Box.

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- (4) If the Tender Box is a physical address:
  - (a) the Completed Tender must be placed in a securely sealed envelope marked:

"Tender Box – Tambo Sawmill and Sales Permit  
Blackall-Tambo Regional Council"; and
  - (b) if delivered personally, it must be placed in the box marked, "Tender Box", in the reception foyer of the customer service centre of the physical address during the opening hours of the customer service centre; or
  - (c) if posted, it must be posted by pre-paid mail to the physical address.
- (5) The Tenderer is entirely responsible for ensuring that the Completed Tender is received by Council before the Closure Time. Tenderers are reminded of postal delivery times. Tenderers accept all risks associated with the use of postal or parcel delivery or courier services.

### 4.2 Deemed Delivery

- (1) If delivered to the Tender Box website, the submitted Tender is deemed received at the time the Tender is successfully uploaded to the Tender Box, as indicated on the electronic receipt issued to the Tenderer.
- (2) If delivered to the Tender Box email address, the submitted Tender is deemed received at the time that an email attaching the Tender is successfully delivered to the Tender Box, as indicated on the email system on which the Tender Box is hosted.
- (3) If personally delivered to the Tender Box physical address, the submitted Tender is deemed received at the time of delivery.
- (4) If posted to the Tender Box physical address, the submitted Tender is deemed received at the time Council records the date and time it is received by post at the physical address.

### 4.3 Non-conforming Delivery

- (1) Council may decline to consider a Tender delivered otherwise than to the Tender Box.
- (2) Tenders received to the Tender Box after the Closure Time will not be accepted and will be returned unopened unless, in the judgement of Council (at its sole discretion), there are legitimate reasons for the late arrival of the Tender other than failure of the Tenderer to dispatch the Tender in reasonable time to ensure receipt of the Tender by Council before the Closure Time.

### 4.4 Tender Form

The Tender Form submitted to Council must contain:

- (1) all of the details of the Tenderer for which the form provides;
- (2) subject to Clause 4.5, the Price for the purchase of (as the case may be):
  - (a) both Council's Sales Permit and the Tambo Sawmill; or
  - (b) only Council's Sales Permit,that is offered to Council by the Tenderer;
- (3) information and documentation to support the details in the Tender Form completed by the Tenderer;
- (4) the completed enquiry authority, statements and declaration, made and declared as required in the Tender Form,

and must be signed by the Tenderer, or if a corporation, signed by the person/s who have authority to enter into contracts on its behalf.

## Invitation for Tenders

[Sale of Council's Forestry Act Sales Permit (to Get Cypress Sawlogs) only or in conjunction with sale of Tambo Sawmill]

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### 4.5 Price

- (1) The Price offered to Council in a Completed Tender must not be dependent on the DAF agreeing to allocate any particular sale area/s within the Supply Zone for the Getting of Cypress Sawlogs.
- (2) The Tenderer must specify the Price (each shown before the application of GST) offered to acquire each of:
  - (a) Council's Sales Permit; and
  - (b) If the Tenderer's Tender includes the offer to acquire the Tambo Sawmill, the Tambo Sawmill,  
  
And as a total monetary amount.
- (3) For clarity, the Price offered and payable by the Tenderer to Council to acquire Council's Sales Permit and, if applicable, the Tambo Sawmill is a separate and additional amount to the Value (i.e. royalties) payable by the successful Tenderer to the State (via the DAF) for the actual Getting of Cypress Sawlogs under Council's Sales Permit once novated from Council to the successful Tenderer.
- (4) The Tambo Sawmill:
  - (a) under Council's Sales Permit, is; and
  - (b) under Council's Sales Permit to be novated to the successful Tenderer, will continue to be, nominated as the location of the applicable sawmill for the purpose of the DAF determining the Value (royalties/price) payable by the successful Tenderer to the State under the novated Council Sales Permit for the Cypress Sawlogs actually Got, notwithstanding that:
    - (c) the DAF may allocate to the successful Tenderer sale areas from anywhere within the Supply Zone; and
    - (d) the DAF may permit or accept the successful Tenderer to utilize a sawmill at a different location from that of the Tambo Sawmill for hauling and milling of the Got Cypress Sawlogs.

### 4.6 Additional Material

- (1) The Tenderer must deliver to Council, in addition to the Completed Tender, the items specified in this Clause 4.6.
- (2) The Tenderer must deliver a (signed) written authority in favour of any financial institution with which the Tenderer maintains accounts, permitting an enquiry to be made of that financial institution by Council's banker.
- (3) A Tenderer who is an individual must deliver a solvency declaration.
- (4) Where the Tenderer is a corporation, it must deliver:
  - (a) a search extract issued by the Australian Securities and Investments Commission not later than 5 days before submission of the Tender, detailing at least the name of the corporation, its directors and shareholders, its paid capital, and particulars of any security interests that it has granted;
  - (b) a copy of its Constitution, certified correct by a director or company secretary; and
  - (c) a solvency declaration about the Tenderer by each director.
- (5) For this Clause 4.6, a *solvency declaration* is a person's statement declaring that:
  - (a) the person is able to pay their debts as and when they fall due; and
  - (b) there are no proceedings pending that might lead to the person's insolvency.

### 4.7 Closure of Tenders

The Tender must be in Council's possession by not later than the Closure Time.

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## 4.8 Unilateral Amendment by Tenderer

- (1) If the Tender Form delivered by the Tenderer contains amendments or additions made unilaterally by the Tenderer, the Tender will have, and be treated as having, failed to conform with the Tender Conditions.
- (2) Council may decline, in its absolute discretion, to consider a non-conforming Tender.

## 4.9 Extension of Closure Time

In its absolute discretion, Council may extend the Closure Time:

- (1) at any time or times; and
- (2) for any period or periods.

## 4.10 Supplementary Material

The Tenderer must comply promptly with any request from Council for material or information additional to what is in the Completed Tender.

## PART 5 CONSIDERATION STAGE

### 5.1 Character of Tender (Offer)

Submission of the Tender constitutes an offer to Council to acquire Council's Sales Permit and, if the Tenderer's Tender includes the offer to acquire the Tambo Sawmill, the Tambo Sawmill, upon the collective terms of:

- (1) the Tender Conditions;
- (2) the Completed Tender; and
- (3) the Completed Deeds.

### 5.2 Deemed Withdrawal of Tender

While the offer constituted by submission of the Tender remains open, it will not be affected, nor the Tender be deemed withdrawn or modified, by or through any discussions or negotiations between Council and the Tenderer.

### 5.3 Consideration of Tender (Council Entitlements)

The Tenderer acknowledges and accepts that:

- (1) If Council elects to accept any Tender, it will accept that which it considers most advantageous to it.
- (2) In considering the Tender most advantageous to it, Council may have regard to, but is not limited to, evaluating Tenders against the Evaluation Criteria.
- (3) Council will not be bound to accept any Tender, and may elect to accept none of the Tenders it receives.
- (4) Council may, at its discretion:
  - (a) reject or decline to consider a Tender that does not conform with the Tender Conditions; or
  - (b) accept a Tender despite a failure to conform with the Tender Conditions.

### 5.4 Disclosure of Tenderer's Tender and other information

The Tenderer acknowledges and accepts each of the following:

- (1) The sale of Council's Sales Permit will be effected by way of a novation by execution of the Completed Deeds that comprise:
  - (a) the Sale Agreement between Council and the successful Tenderer; and



## Invitation for Tenders

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- (b) a deed of novation (and, if applicable, variation) between Council, the successful Tenderer and the DAF, on terms acceptable to the DAF.
- (2) The novation under Clause 5.4(1)(b) is pursuant to clause 22 of Council's Sales Permit and is subject to:
  - (a) the prior consent in writing of the DAF; and
  - (b) Council demonstrating to the satisfaction of the DAF that the proposed novatee is a fit and proper person, and is capable of complying with the terms and conditions of a *Forestry Act* sales permit; and
  - (c) the proposed novatee will, by a deed, covenant with the DAF that the proposed novatee will duly perform and observe the terms and conditions of the novated Council's Sales Permit, and such other terms and conditions as the State may impose .
- (3) For the purpose of Council effecting satisfaction of the conditions of novation, and effecting completion of the sale of Council's Sales Permit, as outlined at Clauses 5.4(1) and (2), Council is entitled to disclose, and will be disclosing, to the DAF the Tenderer's Tender and any additional material and information provided by the Tenderer to Council in relation to the Tenderer's Tender, including all personal information contained in the subject documentation.
- (4) Council may disclose personal information and other information to relevant government authorities to verify information provided in, or as part of, the Tenderer's Tender.

### PART 6 ACCEPTANCE STAGE

#### 6.1 Acceptance of Tender

- (1) Subject to Clause 6.4, acceptance of the Tender will not be effective until the Tenderer receives an Acceptance Notice.
- (2) Prior to giving an Acceptance Notice, Council will seek the 'in principle' approval of the DAF to a Tenderer being awarded the Tender.
- (3) Once 'in principle' approval from the DAF is received, Council will issue an Acceptance Notice to the successful Tenderer.

#### 6.2 Delivery of Acceptance

The Acceptance Notice may be:

- (1) delivered personally to the Tenderer; or
  - (2) forwarded by post or facsimile transmission to the Tenderer; or
  - (3) sent by electronic mail (**e-mail**) to the Tenderer,
- at the Tenderer's address in the Completed Tender.

#### 6.3 Time of Receipt

The Acceptance Notice will be deemed received by the Tenderer:

- (1) if delivered personally, at the time of delivery;
- (2) if posted, at 5:00pm on the 4th Business Day after the date of posting;
- (3) if transmitted by facsimile, at the time specified in a transmission confirmation report produced by Council's facsimile machine, which report:
  - (a) contains the identification code of the Tenderer's facsimile machine; and
  - (b) indicates that the transmission was received without error;

## Invitation for Tenders

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- (4) if the transmission confirmation report indicates that the facsimile transmission was received without error after 5:00pm on the day the transmission was made, at 8.30am on the Business Day following the day of transmission;
- (5) if transmitted by e-mail:
  - (a) at the time specified in the delivery receipt generated by the recipient's e-mail server; or
  - (b) if no delivery receipt is generated but the sender has not received notification of non-delivery from the recipient's e-mail server, 30 minutes after the time of transmission recorded by the sender's e-mail server;
- (6) if the e-mail transmission is received after 5.00pm on the day the transmission was made, at 8.30am on the Business Day following the date of receipt.

### 6.4 Formation of Contract

- (1) The sale (by novation) of Council's Sales Permit, and, if applicable to the Tenderer's Tender, the sale of the Tambo Sawmill, are each subject to the following conditions precedent being satisfied:
  - (a) the DAF consents to Council novating Council's Sales Permit to the successful Tenderer; and
  - (b) Council, the successful Tenderer and the DAF enter a deed of novation (and, if applicable, variation) of Council's Sales Permit; and
  - (c) if the Tenderer's Tender includes the offer to acquire the Tambo Sawmill, and the successful Tenderer is a Foreign Person under the FIRB Act (Cwth), and the acquisition of the Tambo Sawmill by the successful Tenderer is a notifiable action under the FIRB Act, the successful Tenderer receives a no objection notification under the FIRB Act by the period specified in the Deed that is the Amended REIQ Commercial Land and Building Contract for the Tambo Sawmill.
- (2) Notwithstanding the receipt of an Acceptance Notice from Council, formation of a Contract with the successful Tenderer is not complete (effective) unless and until each of the Completed Deeds are fully executed by (as applicable) Council, the successful Tenderer and the DAF.
- (3) Each of Council and the successful Tenderer must act reasonably in negotiating and agreeing with the DAF the terms of the Completed Deed that is a deed of novation (and, if applicable, variation) of Council's Sales Permit to give effect to the Sale Agreement.
- (4) The DAF will prepare the Completed Deed that is a deed of novation (and, if applicable, variation) of Council's Sales Permit only if Council awards the Tender to a Tenderer.

### 6.5 Entire Agreement

The Contract will comprise the entire agreement between Council and the Tenderer.

### 6.6 Substitution of Corporate purchaser

- (1) If the Tenderer is a natural person, and, after the Tender is accepted, requests Council to enter the Deeds with a corporation in which the Tenderer holds the Controlling Interest or is a Major Shareholder, the following provisions of this Clause 6.6 will apply.
- (2) The Tenderer must give Council:
  - (a) such of the information detailed in Clauses 4.4 and 4.6, concerning the corporation, as has not been given to Council already; and
  - (b) any other information that Council requests.
- (3) Nevertheless, Council may decline to consider the Tenderer's request.
- (4) Council may refuse the request without giving reasons.

## Invitation for Tenders

*[Sale of Council's Forestry Act Sales Permit (to Get Cypress Sawlogs) only or in conjunction with sale of Tambo Sawmill]*

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- (5) Council may grant the request subject to conditions, without giving reasons for imposing the conditions or any particular conditions.

### 6.7 Completed Deeds

- (1) Based on the successful Tenderer's Completed Tender, Council will complete the Sale Agreement to contain each of the following:
- (a) at item 2 of part 1, the Tenderer's name, A.C.N., ABN, and its address for notices;
  - (b) at item 3 of part 1, the Price to the extent it relates to the sale of Council's Sales Permit required to be paid by the Tenderer to Council;
  - (c) in clauses 2.4, 2.5, 5.2(1) and 7.1, to reflect the successful Tenderer's Tender about the inclusion or exclusion of the Tambo Sawmill;
  - (d) consequential amendments to include or exclude the novation of Council's Current OHP to reflect the successful Tenderer's Tender and the DAF's in principle approval or rejection of the novation of Council's Current OHP;
  - (e) in clause 5.1(2), Council's bank account details;
  - (f) the execution block for the Tenderer.
- (2) To effect the sale under the Sale Agreement, the DAF has informed Council that it will prepare and complete a deed of novation (and, if applicable, variation) of Council's Sales Permit (and, if requested by the successful Tenderer in its Completed Tender, the novation of Council's Current OHP) for execution by Council, the successful Tenderer and Council.
- (3) If the successful Tenderer's Tender included the acquisition of the Tambo Sawmill, based on the successful Tenderer's Completed Tender, Council will complete the Reference Schedule in the Amended REIQ Commercial Land and Building Contract to contain each of the following:
- (a) at Item B, the Buyer's details;
  - (b) at Item C the Buyer's solicitors details;
  - (c) at Item M, the purchase price for the Tambo Sawmill;
  - (d) at Item O, the deposit holder's trust account;
  - (e) at Item R, the City or town for settlement.

### 6.8 Submission of Completed Deeds for Execution

After giving the Acceptance Notice, Council will deliver or send to the successful Tenderer the following Completed Deeds, for execution, in duplicate, by or on behalf of the successful Tenderer:

- (1) the Sale Agreement; and
- (2) if applicable to the successful Tenderer's Tender, the Amended REIQ Commercial Land and Building Contract.

### 6.9 Time of receipt of Completed Deeds

Clause 6.3 applies to the time of receipt of the relevant Completed Deeds by the successful Tenderer, as if the reference in that Clause to "Acceptance Notice" was a reference to "Completed Deed".

### 6.10 Execution of Completed Deeds

- (1) Within 14 days after receipt of the Completed Deeds that are the Sale Agreement and, if applicable, the Amended REIQ Commercial Land and Building Contract, the successful Tenderer must execute the subject Completed Deeds, each in duplicate, and return them to Council, either by personally delivering or posting to Council at its address for notices specified in the subject Completed Deeds.

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- (2) Promptly following receipt of each of the subject Completed Deeds, each in duplicate, executed by the successful Tenderer, Council must:
  - (a) properly execute, in duplicate, the subject Completed Deeds; and
  - (b) deliver a fully executed original of the subject Completed Deeds to the successful Tenderer at its address for notices specified in the subject Completed Deeds.
- (3) Council is required to, and will, provide to the DAF a copy of the fully executed Completed Deed that is the Sale Agreement.
- (4) Upon Council and the successful Tenderer fully and properly executing the subject Completed Deeds, and the successful Tenderer satisfying clause 5.1 of the Sale Agreement, each of Council and the successful Tenderer:
  - (a) must use reasonable endeavours to promptly negotiate and agree with the DAF, and execute in triplicate, the Completed Deed that is the deed of novation (and, if applicable, variation) of Council's Sales Permit, with the order of execution by the parties being, firstly the successful Tenderer, secondly Council, and lastly the DAF; and
  - (b) must promptly deliver the subject Completed Deed in triplicate once executed to the next party executing the Completed Deed to the relevant party's address for notices specified in the Completed Deed; and
  - (c) must promptly notify each of the other parties to the subject Completed Deed when it has executed and delivered the subject Completed Deed to the next executing party.
- (5) Also, in order to effect completion of the sale (by novation) of Council's Sales Permit, Council will use all reasonable endeavours to arrange for the DAF:
  - (a) to finalise and execute the relevant Completed Deed to which the DAF is a party; and
  - (b) to notify Council and the successful Tenderer that the DAF has executed the relevant Completed Deed to which the DAF is a party; and
  - (c) to deliver a fully executed copy of the respective Completed Deed to which the DAF is a party to the other parties to that Completed Deed.
- (6) A Completed Deed will be formed upon the last party to that deed executing the Completed Deed, and notifying the other party/parties of the execution.

## PART 7 MISCELLANEOUS

### 7.1 Indemnity

- (1) The Tenderer indemnifies and saves harmless Council, and every person acting in good faith on Council's behalf concerning the Invitation for Tenders, against any and all expense born of liability incurred for:
  - (a) negligence;
  - (b) misrepresentation; or
  - (c) misleading or deceptive conduct, or conduct likely to mislead or deceive, in contravention of the *Australian Consumer Law*,arising from:
  - (d) the production or provision of information; and
  - (e) any inspection of land,relating in any way to the Invitation for Tenders.

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### 7.2 Benefit of Tender Conditions

The Tenderer acknowledges that:

- (1) the Tender Conditions have been imposed solely for Council's benefit;
- (2) Council may waive any of the Tender Conditions, or any component sub-conditions, in its absolute discretion;
- (3) none of the Tender Conditions, and nothing done by Council in relation to inviting or considering Tenders, creates any collateral contract between Council and a Tenderer; and
- (4) (without limitation) Council will not be responsible for meeting any expense or loss incurred by the Tenderer in compiling or submitting its Completed Tender, or facilitating its consideration by Council.

### 7.3 Right to Information

- (1) The *Right to Information Act 2009* (Qld):
  - (a) provides members of the public with a legally enforceable right to access documents held by Queensland Government agencies (including Council); and
  - (b) requires that documents be disclosed upon request, unless the documents are exempt or on balance, disclosure is contrary to public interest.
- (2) Information contained in a Tender is potentially subject to disclosure to third parties, including information marked as confidential.
- (3) Any application for disclosure will be assessed in accordance with the terms of the *Right to Information Act*.
- (4) Council reserves the right to disclose, by means of media of its choosing, upon award of any contractual arrangement, details of:
  - (a) the name and address of the successful Tenderer;
  - (b) a description of the contractual arrangement;
  - (c) the date of award of the contractual arrangement;
  - (d) the contractual arrangement value;
  - (e) the procurement method used; and
  - (f) in limited circumstances, the contractual arrangement itself or a summary of information in regards to the contractual arrangement.

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[Appendices follow]

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# Invitation for Tenders

[Sale of Council's Forestry Act Sales Permit (to Get Cypress Sawlogs) only or in conjunction with sale of Tambo Sawmill]

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## APPENDIX 1

[General Information]

### Tambo Sawmill

- (1) In 1999, the Forestry Division of the then Queensland Government Department of Primary Industries invited expressions of interest for the purchase of 100,000 cubic metres of Cypress Sawlog from the Tambo region, both within Tambo Shire itself and Murweh Shire.
- (2) The volume of Cypress Sawlogs on offer of 100,000 cubic metres over a twelve year period was sufficient to justify the establishment of a Cypress sawmill in Tambo. It was identified that the establishment of such a mill and the long term employment generated would have a substantial impact on the economic wellbeing and the security of social infrastructure of both the town and the shire.
- (3) The then Tambo Shire Council subsequently invested in the basic infrastructure necessary to facilitate the establishment of a sawmilling facility and to attract a suitable sawmill operator. The Tambo Sawmill was opened in September 2001, by Henry Palaszczuk, who was the Minister at the time. N K Collins Industries Pty Ltd owned and operated the Tambo Sawmill from 2001-2011 directly employing 12-15 full-time workers. Due to a range of external circumstances, the mill ceased operations in 2011, the company went into liquidation, and the Tambo Sawmill was put up for sale by the receivers in February 2014.
- (4) Council purchased the Tambo Sawmill in July 2014, aiming to stimulate employment, industry and stimulate the regional economy in this remote area.
- (5) By novation effected on 1 August 2016, Council acquired from Millmerran Timbers Pty Ltd its *Forestry Act* sales permit No. 201304400 dated 28 February 2013 to Get Cypress Sawlogs.
- (6) Following a procurement process, in July 2017, Council arranged for a third party operator to Get Cypress Sawlogs under Council's Sales Permit and to operate the Tambo Sawmill, which arrangement ended on or around 3 September 2020. The Tambo Sawmill is currently not operating.

### Council's Sales Permit to Get Cypress Sawlogs

- (7) Council holds a sales permit under the *Forestry Act 1959 (Qld)* to Get Cypress Sawlogs from the Supply Zone (*Council's Sales Permit*). The term of Council's Sales Permit ends on 31 December 2037.
- (8) The Supply Zone is detailed on the map set out in Appendix 2.
- (9) From time to time, under and in accordance with the process in Council's Sales Permit, the DAF prepares a detailed harvesting proposal which details specified areas (*Sale Areas*) within the Supply Zone which the State proposes to allocate to a permit holder. From time to time, the State notifies the permit holder of the Allocated Sale Areas from which the permit holder may Get Cypress Sawlogs subject to an operational harvesting plan (*OHP*).
- (10) Following a procurement process undertaken in 2021, pursuant to clause 22 of Council's Sales Permit, Council assigned 25,000 Tonnes of the then Period Sale Quantity for the 5 year Period of 1 January 2018 to 31 December 2022 to a third party.
- (11) Following that assignment, there remained to be Got during the balance of that 5 year Period (which ended on 31 December 2022) a maximum of 9,144 Tonnes (*Council's Undercut Quantity*) of Cypress Sawlogs (bark on).
- (12) Clause 3.3(e) of Council's Sales Permit relevantly states that if the permit holder Gets in a Period less Cypress Sawlogs than the Period Sale Quantity, the permit holder will forfeit the right to the Undercut Quantity and the State will correspondingly reduce the permit holder's Sale Quantity by the Undercut Quantity.
- (13) The DAF has informed Council that:
  - (a) Council's Undercut Quantity for the 5 year Period which ended on 31 December 2022 will be forfeited, and the Sale Quantity will be correspondingly reduced by Council's Undercut Quantity pursuant to clauses 3.3(e) of Council's Sales Permit.

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- (b) The remaining Sale Quantity under Council's Sales Permit is 85,500 Tonnes (bark on), in respect of which the DAF intends to formally notify Council pursuant to clause 3.3 of Council's Sales Permit.
- (c) The Period Sale Quantity for each of the 3 remaining 5 year Periods (including the Current Period from 1 January 2023 to 31 December 2027) is 28,500 Tonnes (bark on) per Period.

### Current Review by the State of the terms of Council's Sales Permit

- (14) By letter dated 24 December, 2022, DAF informed Council that the State has elected to review the terms of Council's Sales Permit (excluding those relating to Sale Quantity, Compensation and the Expiry Date) pursuant to clause 23 of the permit.
- (15) Pursuant to clause 23 of Council's Sales Permit, Council as the permit holder agrees:
  - (a) to participate and work constructively with the State in undertaking the review; and
  - (b) to consider signing a deed of variation to give effect to any agreed changes to Council's Sales Permit as a result of the review.
- (16) The DAF anticipates undertake the review throughout 2023, with a view to distributing any new permit terms by 30 November 2023.
- (17) Accordingly, a Tenderer must consider the possibility, if not the probability, of the terms of Council's Sales Permit that is to be novated to the successful Tenderer being amended, or replaced by new permit terms, as a result of the review.
- (18) To the extent permitted by the DAF, Council will endeavour to inform Tenderers, and, in due course, consult with the successful Tenderer, of the progress of, and, if applicable, the outcomes from, the DAF's review of Council's Sales Permit during the clause 23 review process.

### Value payable to the State

- (19) Note, a successful Tenderer is responsible and liable to the DAF for the Value payable to the State (via the DAF) for the Getting of Cypress Sawlogs.
- (20) Pursuant to the annual Periodic Value Review under Council's Sales Permit, the Base Value, Haul/Haulage Allowance, Damage Adjustment Factor, for the purpose of calculating the Value payable to the State, for the Getting of Cypress Sawlogs from the Allocated Sale Areas, effective on and from 1 January 2023 to 31 December 2023, are as follows (amounts shown before the application of GST):

#### Council's Current OHP SUI T001-002 (ending on 30 June 2023)—

Base Value: West Pricing Zone: \$78.09/tonne

Haul Allowance(s): T001: \$32.66/tonne

T002: \$34.14/tonne

Damage Adjustment Factor(s): T001-002: \$1.00 (No Material Damage)

Value(s) Payable: T001: \$45.43 per tonne (bark on)

T002: \$43.95/tonne (bark on)

### Council's Current OHP to Get Cypress Sawlogs

- (21) To assist the successful Tenderer in Getting the Cypress Sawlogs without delay following the novation of Council's Sales Permit, Council is agreeable to novating Council's Current OHP to the successful Tenderer, if each of the following is satisfied:
  - (a) the successful Tenderer wish to be novated it; and
  - (b) the DAF (at its discretion) consents to the novation of Council's Current OHP to the successful Tenderer.
- (22) The novation of Council's Current OHP would allow the successful Tenderer to Get Cypress Sawlogs, from the Allocated Sale Areas, in accordance with the terms and conditions of the novated Council's Current OHP

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up to 30 June 2023 (at which time the Current OHP ends, unless the DAF and the successful Tenderer agree to extend the OHP end date).

- (23) Note, if the successful Tenderer does not wish to be novated Council's Current OHP or the DAF does not consent to the novation, or Council's Current OHP comes to an end, before the successful Tenderer can carry out harvesting operations or Get any quantity of Cypress Sawlogs, it will need to obtain its own OHP for the Getting of Cypress Sawlogs in accordance with the novated Council's Sales Permit, and the DAF will allocate sale areas from which the Cypress Sawlogs may be Got.

## Provision of Cover of Account (security)

- (24) A *Forestry Act* sales permit holder must provide a Cover of Account in the form of an unconditional bank guarantee to the State, on terms acceptable to the State to secure compliance with the sales permit, and in the amount determined by the State during the novation process. Refer to clause 8 of Council's Sales Permit.
- (25) Note, Council's Sales Permit may not specify the current monetary amount that the State will require the successful Tenderer (as the incoming party) to provide as the Cover of Account.
- (26) Further note, the State will not permit harvesting operations and/or the Getting of Cypress Sawlogs under the novated Council's Sales Permit until the required Cover of Account is provided to, and accepted by, the State.

## DAF eligibility criteria of a sales permit holder

- (27) A Tenderer must be able to demonstrate, in the Tenderer's Completed Tender, that the Tenderer:
- (a) is a fit and proper person; and
  - (b) is capable and competent of Getting Cypress Sawlogs under and in compliance with a *Forestry Act* sales permit.

## Form of contractual arrangement

- (28) Council's Invitation for Tenders is based on the agreement to sell (by novation) Council's Sales Permit to Get Cypress Sawlogs from the Supply Zone being in the form of the following Deeds:
- (a) Sale Agreement between Council and a successful Tenderer; and
  - (b) to give effect to the Sale Agreement, a deed of novation (and, if applicable, variation) prepared by and on terms satisfactory to the DAF between Council, the successful Tenderer and the DAF.
- (29) Note, upon completion of the sale (by novation) of Council's Sales Permit, the successful Tenderer (*the Purchaser*) is responsible and liable to the DAF for complying with all obligations for the Getting of Cypress Sawlogs in accordance with the novated Council's Sales Permit, including, in particular, the Value payable to the State (via the DAF) for the Getting of the Cypress Sawlogs, and complying with all applicable legislative requirements and codes of practice, including (for example) the following public facing codes available online from the following website links:
- (a) Environmental Code, available online at:  
[https://parks.des.qld.gov.au/\\_\\_data/assets/pdf\\_file/0012/160104/cop-native-forest-timber-production-qpws-estate.pdf](https://parks.des.qld.gov.au/__data/assets/pdf_file/0012/160104/cop-native-forest-timber-production-qpws-estate.pdf)
  - (b) Safety Code, available online at:  
[https://www.worksafe.qld.gov.au/\\_\\_data/assets/pdf\\_file/0014/18113/forest-harvesting-cop-2007.pdf](https://www.worksafe.qld.gov.au/__data/assets/pdf_file/0014/18113/forest-harvesting-cop-2007.pdf)
- (30) Also, if the successful Tenderer's Tender includes the acquisition of the Tambo Sawmill:
- (a) Upon or contemporaneously with the completion of the sale (by novation) of Council's Sales Permit to the successful Tenderer, the Completed Deed that is the Amended REIQ Commercial Land and Building Contract for the Tambo Sawmill will become unconditional.
  - (b) Completion of the sale of the Tambo Sawmill to the successful Tenderer will be completed in accordance with the provisions of the Amended REIQ Commercial Land and Building Contract.



## *Invitation for Tenders*

*[Sale of Council's Forestry Act Sales Permit (to Get Cypress Sawlogs) only or in conjunction with sale of Tambo Sawmill]*

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*[End of Appendix 1]*

# Invitation for Tenders

[Sale of Council's Forestry Act Sales Permit (to Get Cypress Sawlogs) only or in conjunction with sale of Tambo Sawmill]

## APPENDIX 2

[Supply Zone and Allocation Zones]



# *Invitation for Tenders*

*[Sale of Council's Forestry Act Sales Permit (to Get Cypress Sawlogs) only or in conjunction with sale of Tambo Sawmill]*

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## **APPENDIX 3**

[Amended REIQ Commercial Land and Building Contract]

# Contract for Commercial Land and Buildings

Eighth Edition

This document has been approved by The Real Estate Institute of Queensland Limited and the Queensland Law Society Incorporated as being suitable for the sale and purchase of Commercial Land and Buildings in Queensland.

The Seller and Buyer agree to sell and buy the Property under this contract.

## REFERENCE SCHEDULE

### A CONTRACT DATE

NOTE 1 | 2023

### B AGENT:

NAME: | NIL

ADDRESS: STREET: |

SUBURB: | STATE: | POSTCODE: |

PHONE: | FAX: | EMAIL: |

ABN/ACN: | LICENCE NO: |

### C SELLER:

NAME: | BLACKALL-TAMBO REGIONAL COUNCIL

ADDRESS: STREET: | 6 CORONATION DRIVE

SUBURB: | BLACKALL STATE: | QLD POSTCODE: | 4472

PHONE: | FAX: | MOBILE: | EMAIL: |

(07) 4621 6600 | (07) 4657 8855 | | ceo@btrc.qld.gov.au

ABN/ACN: | 42 062 968 922

### D SELLER'S SOLICITOR:

NAME: | KING & COMPANY SOLICITORS

ADDRESS: STREET: | LEVEL 7, QUAY CENTRAL

95 NORTH QUAY

SUBURB: | BRISBANE STATE: | QLD POSTCODE: | 4000

PHONE: | FAX: | MOBILE: | EMAIL: |

(07) 3243 0000 | (07) 3236 1885 | | Karyn.Wernham@kingandcompany.com.au

ABN/ACN: | 16 962 646 773

INITIALS (Note: Initials not required if signed with Electronic Signature)

**E BUYER:**

NAME:

ADDRESS:

STREET:

SUBURB:

STATE:

POSTCODE:

PHONE:

FAX:

MOBILE:

EMAIL:

ABN/ACN:

**F BUYER'S SOLICITOR:**

NAME:

ADDRESS:

STREET:

SUBURB:

STATE:

POSTCODE:

PHONE:

FAX:

MOBILE:

EMAIL:

ABN/ACN:

**G DEPOSIT HOLDER:**

NAME:

KING &amp; COMPANY SOLICITORS

PHONE:

(07) 3243 0000

**H LAND:**

Address:

LOT 6 DAWSON DEVELOPMENT ROAD

Suburb:

TAMBO

STATE:

QLD

POSTCODE:

4478

NOTE 2  
(See  
warning)

Present use: (if any)

TIMBER SAWMILL

Description:

LOT 6 ON SP276172

Title reference:

51006211

Area:

5.4 HECTARES

■ more or less

NOTE 3

Type of holding:

Lease No:

Local Government:

BLACKALL-TAMBO REGIONAL COUNCIL

**I IMPROVEMENTS INCLUDED IN SALE:**

NOTE 4

Nature of Buildings:

1,800M<sup>2</sup> OPEN SHED TIMBER SAWMILL WITH CONCRETED FLOOR UNDER ROOF, & A 300M<sup>2</sup> PARTIALLY ENCLOSED ZINCALUME STEEL SHEETING WALLED SHED WITH CONCRETE SLAB

Unless excluded below, the Purchase Price includes all partitions, stoves, hot water systems, wall-to-wall floor coverings, drapes and tracks, blinds, light fittings, clothes lines, hoists, fixed television or satellite antennae or dishes, in-ground shrubs and all fixtures as inspected by the Buyer.

Exclusions:

NIL

**J OTHER CHATTELS INCLUDED IN SALE: ■ Attach inventory if insufficient space**

SEE ANNEXURE B ATTACHED TO THIS CONTRACT

INITIALS (Note: Initials not required if signed with Electronic Signature)

**K THE LAND IS SOLD AS:**

- Choose which applies  Freehold ■ Subject to the reservations exceptions and conditions in the deed of grant
- Leasehold ■ Subject to the conditions of the Crown leasehold title

**L ENCUMBRANCES:**

Is the Property sold subject to any Encumbrances?  No  Yes, listed below

RIGHTS AND INTERESTS RESERVED TO THE CROWN BY DEED OF GRANT  
NO. 40027849 (LOT 2 ON SP136846)

■ **WARNING TO SELLER:** You are required to disclose all Title Encumbrances which will remain after settlement (for example, easements on your title and statutory easements for sewerage and drainage which may not appear on a title search). Failure to disclose these may entitle the Buyer to terminate the contract or to compensation. It is NOT sufficient to state "refer to title", "search will reveal", or similar.

**M LEASES AND SERVICE CONTRACTS:**

NOTE 5 See Lease Schedule and Service Contract Schedule.

**N PURCHASE PRICE:**

\$ (plus GST)

**O DEPOSIT:**

\$ (plus GST)

Initial Deposit payable on the day the Buyer signs this contract unless another time is specified below:

\$ Balance Deposit (if any) payable on:

Deposit Holder's Trust Account: King and Company Trust Account

Bank: BOQ

BSB: 124 001

Account No: 20424133

**P DEFAULT INTEREST RATE:**

CLAUSE 11 & NOTE 6  % ■ If no figure is inserted, the Contract Rate applying at the Contract Date published by the Queensland Law Society Inc will apply.

**Q SETTLEMENT DATE:**

SEE SPECIAL CONDITION 1 (DEFINITION) IN ANNEXURE A  
or the next Business Day if that is not a Business  
Day in the city or town in item R

**R CITY OR TOWN FOR SETTLEMENT:**

CLAUSES 25.1 & 25.2 BRISBANE

**FINANCE**

NOTE 7 **SUBJECT TO FINANCE:**  
If this Contract is subject to finance then Items S, T and U must be completed in every respect and Item V must be deleted and initialled.

CLAUSE 31 **NOT SUBJECT TO FINANCE:**  
If this Contract is not to be subject to finance then Items S, T and U must be deleted and initialled and Item V shall apply.

**S LENDER OR CLASS OF LENDER:**

INITIALS (Note: Initials not required if signed with Electronic Signature)

**T THE APPROVAL DATE:**

The \_\_\_\_\_ day of \_\_\_\_\_  
DAY MONTH YEAR

OR the next Business Day if that is not a Business Day in the city or town in item R

**U AMOUNT OF LOAN:**

\$ \_\_\_\_\_

**V**

THIS CONTRACT IS NOT SUBJECT TO FINANCE AND CLAUSE 31 OF THE STANDARD COMMERCIAL CONDITIONS DOES NOT APPLY.

**W NEIGHBOURHOOD DISPUTES (DIVIDING FENCES AND TREES) ACT 2011**

The Seller gives notice to the Buyer in accordance with Section 83 of the Neighbourhood Disputes (Dividing Fences and Trees) Act 2011 that the Land: (select whichever is applicable)

\*is not affected by any application to, or an order made by, the Queensland Civil and Administrative Tribunal (QCAT) in relation to a tree on the Land

\*is affected by an application to, or an order made by, QCAT in relation to a tree on the Land, a copy of which has been given to the Buyer prior to the Buyer signing the contract.

■ **WARNING:** Failure to comply with s83 Neighbourhood Disputes (Dividing Fences and Trees Act 2011) by giving a copy of an order or application to the Buyer (where applicable) prior to Buyer signing the contract will entitle the Buyer to terminate the contract prior to Settlement.

**X BUILDING AND/OR PEST INSPECTION DATE**

Inspection Date: NOT APPLICABLE

■ If 'Inspection Date' is not completed, the contract is not subject to an inspection report and clause 35 does not apply.

## GOODS AND SERVICES TAX – WARNING

**Marking the GST items in the GST Table may have significant consequences for the Seller and Buyer. The Seller and Buyer should seek professional advice about completion of the GST items and not rely on the Agent to complete the GST items.**

Notes to completion:

- A. Only 1 box in the selected item must be marked.
- B. If the Yes box in item GST1 is marked:
- items GST2 and GST3 must not be marked;
  - despite any markings of Items GST2 and GST3, Clauses 34.4, 34.5 and 34.6 do not apply.
- C. If the Yes box in item GST2 is marked:
- items GST1 and GST3 must not be marked;
  - despite any marking of Items GST1 and GST3, Clauses 34.4, 34.5 and 34.7 do not apply.

**GST1 Going Concern:**

Is this a sale of a Going Concern?  Yes  
 If Yes, clause 34.7 (If the Supply is a Going Concern) applies.  
 Otherwise clause 34.7 (If the Supply is a Going Concern) does not apply.  
 If the Yes box is marked, do not complete items GST2 and GST3.

■ **WARNING:** There are strict requirements for the sale of a Going Concern under the GST Act. If in doubt about complying with those provisions, seek professional advice before marking this item.

**GST2 Margin Scheme:**

Is the Margin Scheme to apply to the sale of the Property?  Yes  
 If Yes, clause 34.6 (Margin Scheme) applies.  
 Otherwise clause 34.6 (Margin Scheme) does not apply.  
 The Seller must not apply the Margin Scheme to the Supply of the Property if clause 34.6 does not apply.

■ If the Yes box is marked, do not complete Items GST1 and GST3.

**GST3 Inclusive or Exclusive Purchase Price:**

Does the Purchase Price include GST?

Mark 1 box only

Yes

If Yes, clause 34.4 (Purchase Price includes GST) applies.

No

If No, clause 34.5 (Purchase Price Does Not Include GST) applies

■ Do not complete Item GST3 if Item GST1 (Going Concern) or Item GST2 (Margin Scheme) are marked Yes.

If neither box is marked or if both boxes are marked, clause 34.4 (Purchase Price Includes GST) applies.

**GST WITHHOLDING OBLIGATIONS****Buyer Warranty**

Is the Buyer registered for GST and acquiring the Land for a creditable purpose?  
 (select whichever is applicable)

Yes

No

■ **WARNING:** the Buyer warrants in clause 4.5 that this information is true and correct.

[Note: If the Buyer selects [No] the Seller may be required to give a notice under section 14-255 of the Withholding Law prior to settlement]



**LEASE SCHEDULE\***

See Clause 32 of Standard Commercial Terms

**LEASE 1:**

Name of Tenant: \_\_\_\_\_

Use: \_\_\_\_\_

Location/Tenancy No: \_\_\_\_\_

Area of Tenancy (m<sup>2</sup> approx.): \_\_\_\_\_

Current Rent per Annum: \$ \_\_\_\_\_  inclusive of outgoings  exclusive of outgoings

Current Commencement Date: \_\_\_\_\_

Current Lease Term: \_\_\_\_\_

Remaining Options:

Option 1	Term	_____	-years
Option 2	Term	_____	-years
Option 3	Term	_____	-years

Tenant Car Park: No.: \_\_\_\_\_ Rate \$ \_\_\_\_\_  per annum  per month

**LEASE 2:**

Name of Tenant: \_\_\_\_\_

Use: \_\_\_\_\_

Location/Tenancy No: \_\_\_\_\_

Area of Tenancy (m<sup>2</sup> approx.): \_\_\_\_\_

Current Rent per Annum: \$ \_\_\_\_\_  inclusive of outgoings  exclusive of outgoings

Current Commencement Date: \_\_\_\_\_

Current Lease Term: \_\_\_\_\_

Remaining Options:

Option 1	Term	_____	-years
Option 2	Term	_____	-years
Option 3	Term	_____	-years

Tenant Car Park: No.: \_\_\_\_\_ Rate \$ \_\_\_\_\_  per annum  per month

\* Attach further Schedule if insufficient space.

**SERVICE CONTRACT SCHEDULE\***

See Clause 32 of Standard Commercial Terms

**CONTRACT 1:**

Contractor: \_\_\_\_\_

Service Performed: \_\_\_\_\_

Cost: \$ \_\_\_\_\_  per annum  per quarter  per month

**CONTRACT 2:**

Contractor: \_\_\_\_\_

Service Performed: \_\_\_\_\_

Cost: \$ \_\_\_\_\_  per annum  per quarter  per month

**CONTRACT 3:**

Contractor: \_\_\_\_\_

Service Performed: \_\_\_\_\_

Cost: \$ \_\_\_\_\_  per annum  per quarter  per month

INITIALS (Note: Initials not required if signed with Electronic Signature)

**CONTRACT 4:**

Contractor:

\_\_\_\_\_

Service Performed:

\_\_\_\_\_

Cost:

\$ \_\_\_\_\_

per annum  per quarter  per month

**CONTRACT 5:**

Contractor:

\_\_\_\_\_

Service Performed:

\_\_\_\_\_

Cost:

\$ \_\_\_\_\_

per annum  per quarter  per month

*\*Attach further Schedule if insufficient space.*

## **SPECIAL CONDITIONS**

SEE SPECIAL CONDITIONS CONTAINED IN ANNEXURE A TO THIS CONTRACT.

The approval by The Real Estate Institute of Queensland Limited and the Queensland Law Society Inc does not extend to any alterations to the printed text of the Standard Commercial Terms or to any Special Conditions of this Contract. The Standard Commercial Terms may need to be added to or varied by inserting specifically prepared Special Conditions in this Contract. If the printed text of the Standard Commercial Terms is altered, or Special Conditions are included, it is recommended that the Seller and the Buyer consult their respective legal advisers prior to signing this Contract.

INITIALS (Note: Initials not required if signed with Electronic Signature)

**SIGNATURES:**

**BUYER'S SIGNATURE:** \_\_\_\_\_ **SEE ANNEXURE C FOR EXECUTION PROVISIONS** By signing this contract I warrant that I am the Buyer named in the Reference Schedule or authorised by the Buyer to sign.

**NAME OF PERSON SIGNING:** \_\_\_\_\_ **SEE ANNEXURE C FOR EXECUTION PROVISIONS**  
(INSERT IN BLOCK LETTERS)

**WITNESS:** \_\_\_\_\_ **[Note: No witness is required if the Buyer signs using an Electronic Signature]**

**WITNESS NAME:** \_\_\_\_\_

**BUYER'S SIGNATURE:** \_\_\_\_\_ By signing this contract I warrant that I am the Buyer named in the Reference Schedule or authorised by the Buyer to sign.

**NAME OF PERSON SIGNING:** \_\_\_\_\_  
(INSERT IN BLOCK LETTERS)

**WITNESS:** \_\_\_\_\_ **[Note: No witness is required if the Buyer signs using an Electronic Signature]**

**WITNESS NAME:** \_\_\_\_\_

**SELLER'S SIGNATURE:** \_\_\_\_\_ **SEE ANNEXURE C FOR EXECUTION PROVISIONS** By signing this contract I warrant that I am the Seller named in the Reference Schedule or authorised by the Seller to sign.

**NAME OF PERSON SIGNING:** \_\_\_\_\_ **SEE ANNEXURE C FOR EXECUTION PROVISIONS**  
(INSERT IN BLOCK LETTERS)

**WITNESS:** \_\_\_\_\_ **[Note: No witness is required if the Seller signs using an Electronic Signature]**

**WITNESS NAME:** \_\_\_\_\_

**SELLER'S SIGNATURE:** \_\_\_\_\_ By signing this contract I warrant that I am the Seller named in the Reference Schedule or authorised by the Seller to sign.

**NAME OF PERSON SIGNING:** \_\_\_\_\_  
(INSERT IN BLOCK LETTERS)

**WITNESS:** \_\_\_\_\_ **[Note: No witness is required if the Seller signs using an Electronic Signature]**

**WITNESS NAME:** \_\_\_\_\_

**DEPOSIT HOLDER'S ACKNOWLEDGEMENT:**

NOTE 8 The Deposit Holder acknowledges having received \$ \_\_\_\_\_ as the Deposit or on account of the Deposit and agrees to hold that amount and any balance of the Deposit when received as Deposit Holder for the parties as provided in this Contract.

**Deposit Holder's Signature:** \_\_\_\_\_ **Licence No.:** \_\_\_\_\_

INITIALS (Note: Initials not required if signed with Electronic Signature)

# Standard Commercial Terms | Commercial Land and Buildings

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## 1. DEFINITIONS

1.1 In this Contract, terms in **bold** in the Reference Schedule have the meanings shown opposite them and unless the context otherwise indicates:

- (a) **“Agent”** means the person named in Item B and includes auctioneer;
  - (b) **“ATO”** means the Australian Taxation Office;
  - (c) **“ATO Clearance Certificate”** means a certificate issued under section 14-220(1) of the Withholding Law which is current on the date it is given to the Buyer;
  - (d) **“Bond”** includes any security for payment of rent or other monies or performance of any obligation pursuant to any Lease;
  - (e) **“Business Day”** means a day other than:
    - (i) a Saturday or Sunday;
    - (ii) a public holiday in the city or town named in Item R; or
    - (iii) a day in the period 27 to 31 December (inclusive)
  - (f) **“Buyer”** means the party named in Item E;
  - (g) **“CGT Withholding Amount”** means the amount determined under section 14-200(3)(a) of the Withholding Law or, if a copy is provided to the Buyer prior to settlement, a lesser amount specified in a variation notice under section 14-235;
  - NOTE 6 (h) **“Contract Rate”** means the rate of interest at the Contract Date published by the Queensland Law Society Incorporated for the purposes of clause 11;
  - (i) **“Deposit”** means the sum stated in Item O;
  - (j) **“Deposit Holder”** means the person named in Item G or, where no person is named in Item G, the Agent;
  - (k) **“Electronic Signature”** means an electronic method of signing that identifies the person and indicates their intention to sign the contract;
  - (l) **“Encumbrances”** includes but is not limited to:
    - (i) unregistered encumbrances;
    - (ii) statutory encumbrances; and
    - (iii) Security Interests.
  - (m) **“Enterprise”** means the enterprise (as the term is defined in the GST Act) carried on using the Property;
  - (n) **“Financial Institution”** means a bank, building society or credit union;
  - (o) **“GST”** means the goods and services tax under the GST Act;
  - (p) **“GST Act”** means A New Tax System (Goods and Services Tax) Act and includes other GST related legislation;
  - (q) **“GST Withholding Amount”** means the amount (if any) determined under section 14-250 of the Withholding Law required to be paid to the Commissioner of Taxation;
  - (r) **“Guarantee”** means a guarantee or an undertaking in relation to any tenant or occupier under a Lease;
  - (s) **“ITAA”** means the Income Tax Assessment Act 1936 and the Income Tax Assessment Act 1997;
  - (t) **“Item”** means an item of particulars in the Reference Schedule;
  - (u) **“Keys”** means implements or instruments necessary for the purposes of fastening or unfastening:
    - (i) the lock on any gate, door, grille, shutter or lift which secures any means of entrance to or exit from the Land (whether or not such gate, door, grille, shutter or lift forms part of the Property);
    - (ii) any other lock attached to or included in the property; and includes electronic devices and written records of all codes and combinations necessary for the purposes of fastening or unfastening any such lock;
  - (v) **“Land”** means the land described in Item H;
  - (w) **“Lease”** means all leases, subleases, agreements for lease, agreements for sublease and tenancy agreements whether oral or in writing, and as the context admits, licences and rights to occupy, and which are set out in the Lease Schedule;
  - (x) **“Local Government”** means the relevant local government (and includes the Brisbane City Council);
  - (y) **“PPSR”** means the Personal Property Securities Register established under *Personal Property Securities Act 2009 (Cth)*.
  - (z) **“Property”** means the property listed in Items H, I and J and includes any part of the Property;
    - (aa) **“Purchase Price”** means the sum stated in Item N;
    - (bb) **“Rent”** means base rent, turnover rent, percentage rent, contributions to outgoings and any money payable by a tenant to the Seller.
    - (cc) **“Security Interests”** means all security interests registered on the PPSR over the Property;
    - (dd) **“Seller”** means the party named in Item C;
    - (ee) **“Service Contract”** for the purposes of clause 32 of this Contract means any contract between the Seller and another party pertaining to services performed for the benefit of the Property, which are capable of assignment, and which are set out in the Service Contract Schedule and **“Service Contractor”** means any party performing those services;
    - (ff) **“Settlement Date”** means the date stated in Item Q or such other date as may be agreed in writing by the parties or fixed pursuant to the conditions of this Contract;
    - (gg) **“Site Value”** means:
      - (i) in the case of non-rural land, site value under the *Land Valuation Act 2010*; or
      - (ii) in the case of rural land, the *unimproved* value of the Land under the *Land Valuation Act 2010*;
    - (hh) **“Solicitor”** means a solicitor currently entitled to practice in Australia whether acting as principal or agent;
    - (ii) **“Transport Infrastructure”** has the meaning in the *Transport Infrastructure Act 1994*; and
    - (jj) **“Withholding Law”** means Schedule 1 to the *Taxation Administration Act 1953 (Cth)*.
- 12 Unless the contrary is shown, the contract shall be deemed to have been formed on the date of this Contract and the date of this Contract shall be deemed to be the date stated in Item A.
- 13 Any reference in this Contract to a statute includes:
- (a) any statute amending, consolidating or replacing the statute; and
  - (b) Orders in Council, proclamations, regulations, rules, by-

INITIALS (Note: Initials not required if signed with Electronic Signature)

laws and ordinances made under the statute.

- 14 In this Contract, unless inconsistent with the context or subject matter, where the term “Item” is used in conjunction with a particular letter of the alphabet, it is a reference to the Item set opposite the letter referred to.
- 15 Any defined terms used in any part of this Contract shall have the same meaning when used in any other part of this Contract.
- 16 The marginal notes in the Reference Schedule are references to clauses or notes, as the case may be, in the Standard Commercial Terms.
- 17 This Contract shall be governed by the laws of Queensland.
- 18 Headings and notes have been included for ease of reference and guidance and this Contract shall be construed without reference to them.

## 2. BUSINESS DAYS

- 21 If anything is required to be done on a day that is not a Business Day, it must be done instead on the next Business Day.

## 3. DEPOSIT

- 31 The Deposit shall be paid by the Buyer to the Deposit Holder at the times stated in Item O.

- 32 If the Buyer:

- (a) fails to pay the Deposit as provided in clause 3.1;
- (b) pays the Deposit by cheque which is post-dated; or
- (c) pays the Deposit by cheque which is not honoured on presentation;

then, the Buyer shall be in substantial breach of this Contract and the Seller may:

- (i) affirm this Contract and exercise the rights expressed in clause 13.2; or
- (ii) terminate this Contract and exercise the rights expressed in clause 13.3.

- 33 The rights and powers conferred by clause 3.2 are in addition to any other rights the Seller may have at law or in equity.
- 34 The Deposit shall be retained by the Deposit Holder until settlement or earlier termination of this Contract whereupon the Deposit Holder shall pay the Deposit to the person entitled to it.
- 35 If this Contract is terminated pursuant to the provisions of clauses 7.6, 9.3(a), 19, 20.1, 21.1, 31.2(a), 32.2, 32.3(b) or 35.4, the Deposit and other moneys paid under this Contract shall be refunded to the Buyer by the Seller or the Deposit Holder as the case may be but without interest, costs or damages and the same shall be accepted by the Buyer in full and final satisfaction of all claims.

## 4. SETTLEMENT AND POSSESSION

- 41 The balance of the Purchase Price shall be paid on the Settlement Date as the Seller or the Seller’s Solicitor directs in exchange for:

- (a) possession of the Property (such possession to be vacant except for any Lease);
- NOTE 9 (b) a properly executed transfer for the Land in favour of the Buyer capable of immediate registration (after stamping) in the appropriate office free from Encumbrances (other than those set out in Item L) and title to the Property (other than the Land) free from Encumbrances (other than those set out in Item L) but subject to the conditions of this Contract;
- (c) any declaration required, by the *Duties Act 2001* to be furnished to procure the stamping of the transfer;
- (d) such other instruments or declarations as are required by law to be signed by the Seller to procure the stamping and/or registration of the transfer;
- (e) except as otherwise provided in this Contract, any instrument of title for the Land required to register the transfer;
- (f) notices of assignment issued pursuant to clause 16.5;

- (g) all other instruments (which shall be duly stamped) in the possession or control of the Seller evidencing estates and interests affecting the Property and which are exclusive to the Property;
- (h) true copies of all other instruments (which shall be duly stamped) in the possession or control of the Seller evidencing estates and interests affecting the Property but which are not exclusive to the Property;
- (i) the Certificate of Classification pursuant to the *Building Act 1975* appropriate to the uses stated in Item H (if the improvements on the Land may not be lawfully occupied unless such certificate has issued);
- (j) all plans and drawings relating to the construction of the improvements on the Land in the possession or control of the Seller; and
- (k) all documents in the possession or control of the Seller which the Buyer would reasonably require to enable the Buyer to manage the Property and to prepare returns under the ITAA.

- 42 If both of the following apply:

- (a) the sale is not an excluded transaction under section 14-215 of the Withholding Law; and
- (b) the Seller has not given the Buyer on or before settlement for each person comprising the Seller either:
  - (i) an ATO Clearance Certificate; or
  - (ii) a variation notice under section 14-235 of the Withholding Law which remains current at the Settlement Date varying the CGT Withholding Amount to nil,

then:

- (c) for clause 4.1, the Seller irrevocably directs the Buyer to draw a bank cheque for the CGT Withholding Amount in favour of the Commissioner of Taxation or, if the Buyer’s Solicitor requests, the Buyer’s Solicitor’s Trust Account;
- (d) the Buyer must lodge a *Foreign Resident Capital Gains Withholding Purchaser Notification Form* with the ATO for each person comprising the Buyer and give copies to the Seller with the payment reference numbers (PRN) on or before settlement;
- (e) the Seller must return the bank cheque in paragraph (c) to the Buyer’s Solicitor (or if there is no Buyer’s Solicitor, the Buyer) at settlement; and
- (f) the Buyer must pay the CGT Withholding Amount to the ATO in accordance with section 14-200 of the Withholding Law and give the Seller evidence that it has done so within 2 Business Days of settlement occurring.

- 43 For clause 4.2 and section 14-215 of the Withholding Law, the market value of the CGT asset is taken to be the Purchase Price less any GST included in the Purchase Price for which the Buyer is entitled to an input tax credit unless:

- (a) the Property includes items in addition to the Land and Improvements; and
- (b) no later than 2 Business Days prior to the Settlement Date, the Seller gives the Buyer a valuation of the Land and Improvements prepared by a registered valuer,

in which case the market value of the Land and Improvements will be as stated in the valuation.

- 44 If the Buyer is required to pay the GST Withholding Amount to the Commissioner of Taxation at settlement pursuant to section 14-250 of the Withholding Law:

- (a) the Seller must give the Buyer a notice in accordance with section 14-255(1) of the Withholding Law;
- (b) prior to settlement the Buyer must lodge with the ATO:
  - (i) a *GST Property Settlement Withholding Notification form* (“Form 1”); and

- (ii) a *GST Property Settlement Date Confirmation* form ("Form 2");
  - (c) on or before settlement, the Buyer must give the Seller copies of:
    - (i) the Form 1;
    - (ii) confirmation from the ATO that the Form 1 has been lodged specifying the Buyer's lodgement reference number and payment reference number;
    - (iii) confirmation from the ATO that the Form 2 has been lodged; and
    - (iv) a completed ATO payment slip for the Withholding Amount;
  - (d) the Seller irrevocably directs the Buyer to draw a bank cheque for the GST Withholding Amount in favour of the Commissioner of Taxation and deliver it to the Seller at settlement; and
  - (e) the Seller must pay the GST Withholding Amount to the ATO in compliance with s 14-250 of the Withholding Law promptly after settlement.
- 4.5** The Buyer warrants that the statements made by the Buyer in the Reference Schedule under GST Withholding Obligations are true and correct.

## 5. KEYS

- 5.1** Immediately on settlement, the Seller shall deliver all Keys, which are in the possession or under the control of the seller, in accordance with any notice given in writing by the Buyer to the Seller and failing such notice, the Seller shall deliver the Keys:
- (a) to the Buyer, if the Buyer is present personally at settlement;
  - (b) to the Buyer's solicitor at settlement, if the Buyer is not present personally;
  - (c) to the Seller's Agent at the address shown in Item B, if neither the Buyer nor any solicitor acting for the Buyer is present personally at settlement;
  - (d) to and will leave the keys at the Property if none of the provisions of clauses 5.1(a), 5.1(b) or 5.1(c) are applicable.
- 5.2** At or prior to settlement, the Seller shall make a written record of all codes and combinations necessary for the purposes of fastening or unfastening any lock referred to in the definition of Keys.

## 6. INVESTMENT OF DEPOSIT

- 6.1** If either party directs by notice in writing to the Deposit Holder to invest the Deposit then (where the Deposit Holder is lawfully able) the Deposit Holder shall invest the Deposit with any Financial Institution permitted by law for the investment of trust monies until the Settlement Date.
- 6.2** If this Contract is completed, all interest accruing on the investment of the Deposit shall be shared equally between the Seller and the Buyer. If this Contract is not completed for any reason, the interest accruing on the Deposit shall be paid to the party entitled to the Deposit upon termination of this Contract.
- 6.3** The Deposit and any accrued interest shall be invested at the risk of the party to whom the Deposit and accrued interest is ultimately payable and the Deposit Holder shall not be liable for any loss suffered by the parties in consequence of an investment pursuant to clause 6.1.
- 6.4** To facilitate investment of the Deposit, each party shall notify its tax file number to the Deposit Holder within 4 Business Days following the date of this Contract.
- 6.5** The parties authorise the Deposit Holder to prepare and lodge any taxation return necessary in respect of the Deposit and interest and to pay any tax assessed out of the Deposit and interest and indemnify the Deposit Holder against any taxation assessed in respect of such interest.
- 6.6** The Seller and the Buyer shall be deemed to be presently entitled in equal shares to any interest accrued for the purposes of ITAA.

## 7. SELLER'S STATEMENT

- 7.1** The Buyer is not entitled to deliver to the Seller requisitions or enquiries on or to the Seller's title to the Property.
- 7.2** The Seller states that, except as disclosed in this Contract, each of the following statements is accurate at the time the Seller executes this Contract:
- (a) the Seller has free and unqualified capacity and power to contract and to complete this Contract;
  - (b) the Seller is not under any legal disability which affects the Seller's capacity to contract and to complete this Contract; and
  - (c) if the Seller is a trustee, the Seller has free and unqualified power of sale under the instrument creating the trust, and that instrument does not require the consent or authority of any person to the entering into of this Contract or the settlement of this Contract.
- 7.3** The Seller states that, except as disclosed in this Contract, each of the following statements will be accurate at the Settlement Date:
- (a) there is no current litigation by any person claiming an estate or interest in the Property;
  - (b) there is no unsatisfied judgment, order or writ of execution which affects the Property;
  - (c) no order has been made under Part 11 of the *Property Law Act 1974* which would operate as a charge on the Land;
  - (d) there is no order of a Court or other competent authority affecting the ability of the Seller to complete this Contract;
  - (e) no notice has been issued by a competent authority or proceedings instituted in a Court pursuant to any statute whereby the interest of the Seller in the Property may be rendered liable to forfeiture to the Crown;
  - (f) if the Land is Crown leasehold title, the Crown leasehold title is not rendered liable to forfeiture by reason of the non-observance or non-performance of the covenants or conditions of the lease;
  - (g) if the Seller is a natural person, the Seller is not a bankrupt nor has the Seller signed any authority under section 188 of the *Bankruptcy Act 1966* (Cth);
  - (h) if the Seller is a corporation within the meaning of the *Corporations Act 2001* (Cth):
    - (i) the Seller is not in liquidation;
    - (ii) no action has been taken by or against the Seller which could lead to the winding up of the Seller;
    - (iii) an administrator, controller or managing controller has not been appointed to the Seller or in respect of the whole or any part of the Property; and
    - (iv) a compromise or arrangement has not been proposed between the Seller and its members or creditors nor agreed to by the members or creditors nor sanctioned by a Court; and
  - (i) the Seller is the registered owner or the lessee of the Land (according to the title expressed or implied in this Contract).
- 7.4** If a statement contained in either clause 7.2 or clause 7.3 is not accurate then the Buyer may terminate this Contract by notice in writing to the Seller.
- 7.5** If this Contract is terminated pursuant to clause 7.4, the Deposit and other moneys paid under this Contract shall be refunded to the Buyer by the Seller or the Deposit Holder as the case may be and the Seller shall be liable by way of damages as compensation for the loss suffered by the Buyer in such sum as at the time this Contract was made was reasonably foreseeable as the loss liable to result, and which does in fact result from a termination of this Contract due to a statement contained in either clause 7.2 or clause 7.3 not being accurate.
- 7.6** (1) The Seller warrants that, except as disclosed in this Contract or a notice given by the Seller to the Buyer under the *Environmental Protection Act 1994* ("EPA"), at the date of this

Contract:

- (a) there is no outstanding obligation on the Seller to give notice to the administering authority under EPA of a notifiable activity being conducted on the Land; and
  - (b) the Seller is not aware of any facts or circumstances that may lead to the Land being classified as contaminated land within the meaning of EPA.
- (2) If the Seller breaches a warranty in clause 7.6(1), the Buyer may:
- (a) terminate this Contract by notice in writing to the Seller given 14 days after the date of this Contract; or
  - (b) complete this Contract and claim compensation, but only if the Buyer claims it in writing before settlement of this Contract.
- 77 If requested by the Buyer, the Seller within 14 days of such request shall:
- (a) produce to the Buyer all unregistered documents relating to the Property and full and proper particulars of all unregistered dealings that so relate; and
  - (b) deliver to the Buyer photocopies of such documents or dealings (if the dealings are in writing) certified by the Seller or the Seller's solicitor as being true copies.

## 8. ERRORS AND MISDESCRIPTIONS

- 81 If there is any immaterial mistake or error in the description or particulars of the Property or as to title, the Buyer shall not be entitled to terminate this Contract but shall be entitled to such compensation (if demanded in writing on or before the Settlement Date) as the case may require. The Buyer shall not be entitled to delay settlement or to withhold any part of the Purchase Price by reason of any such claim for compensation.
- 82 If there is any material mistake or error in the description or particulars of the Property or as to title and the Buyer does not exercise any right which the Buyer has at law to terminate this Contract, the Buyer shall be entitled to such compensation (if demanded in writing on or before the Settlement Date) as the case may require. The Buyer shall not be entitled to delay settlement or to withhold any part of the Purchase Price by reason of any such claim for compensation.

## 9. SURVEY AND INSPECTION

- 91 The Buyer shall be entitled to conduct a survey of the Land to ascertain the boundaries and area of the Land and to establish the location of structures purporting to be on the Land or on adjoining land.
- 92 If there is any immaterial error in the boundaries or area of the Land or any immaterial encroachment, the Buyer shall not be entitled to terminate this Contract but shall be entitled to such compensation (if demanded in writing on or before the Settlement Date) as the case may require. The Buyer shall not be entitled to delay settlement or to withhold any part of the Purchase Price by reason of any such claim for compensation.
- 93 If there is any material error in the boundaries or area of the Land or any material encroachment, the Buyer shall be entitled to elect by notice in writing to the Seller given on or before the Settlement Date either:
- (a) to terminate this Contract; or
  - (b) to complete this Contract with compensation, in which event the Buyer shall be entitled to such compensation as the case may require and shall not be entitled to delay settlement or to withhold any part of the Purchase Price by reason of any such claim for compensation.

## 10. EXECUTION AND PRODUCTION OF DOCUMENTS

- 101 Subject to compliance by the Buyer with the Buyer's obligations under or by virtue of this Contract and subject to clause 10.2, the Seller shall as required do all acts and execute all documents necessary for the purpose of completing the sale and ensuring that the Buyer obtains a good and valid title to the Property.
- 102 All transfer documents, any declaration required pursuant to clause

4.1(c), and all instruments or declarations required pursuant to clause 4.1(d) shall be prepared by and at the expense of the Buyer and delivered to the Seller within a reasonable time prior to the Settlement Date.

- 103 If so requested by the Buyer, the Seller shall deliver to the Buyer, prior to the Settlement Date, photocopies of the documents executed by the Seller.
- 104 After execution of the transfer, if so requested by the Buyer and upon payment of the usual production fee by the Buyer, the Seller shall cause the transfer to be tendered to the Office of State Revenue for stamping, together with any declaration referred to in clause 4.1(c) and thereupon the Seller shall be deemed to have complied with the Seller's obligations under clause 4.1(c).
- 105 If an instrument of title is required to register a transfer of the Land and the instrument of title relating to the Land also relates to other land, the Seller shall not be obliged to deliver it to the Buyer but shall enter into such reasonable covenants with the Buyer as the Buyer may require for production of the instrument of title.
- 106 If the instrument of title is partially cancelled the Seller shall not be obliged to produce a separate instrument of title on settlement.
- 107 Where either clause 10.5 or clause 10.6 applies, the Buyer shall bear the cost of any new instrument of title relating to the Land.

## 11. INTEREST ON LATE PAYMENTS

- 111 The Buyer must pay interest at the annual rate in Item P:
- (a) on any amount payable under this contract which is not paid when due; and
  - (b) on any judgement for money payable under this contract.
- 112 Interest continues to accrue:
- (a) under clause 11.1(a), from the date it is due until paid; and
  - (b) under clause 11.1(b), from the date of judgement until paid.
- 113 Any amount payable under clause 11.1(a) in respect of a period prior to settlement must be paid by the Buyer at settlement. If this contract is terminated or if any amount remains unpaid after settlement, interest continues to accrue.
- 114 Nothing in this clause affects any other rights of the Seller under this contract or at law.

## 12. DIVIDING FENCES

Notwithstanding any provision in the *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011*, the Seller need not contribute to the cost of construction of any dividing fence between the Land and any adjoining land owned by it. The Buyer waives any right to claim contribution from the Seller.

## 13. BUYER'S DEFAULT

- 131 If the Buyer:
- (a) fails to pay the balance of the Purchase Price as provided in clause 4; or
  - (b) fails to comply with any of the terms or conditions of this Contract;
- then the Seller may:
- (i) affirm this Contract; or
  - (ii) terminate this Contract.
- 132 If the Seller affirms this Contract pursuant to clause 3.2 or clause 13.1, the Seller may:
- (a) sue the Buyer for damages for breach or for specific performance and damages in addition to or instead of damages for breach; and
  - (b) recover from the Buyer as a liquidated debt the Deposit or any part of it which the Buyer has failed to pay and shall pay the Deposit or any part of the Deposit which is recovered to the Deposit Holder.
- 133 If the Seller terminates this Contract pursuant to clause 3.2 or clause 13.1, the Seller may elect to:
- (a) declare the Deposit (or so much of it as shall have been paid) forfeited and/or sue the Buyer for breach; or



- (b) declare the Deposit (or so much of it as shall have been paid) forfeited and/or resell the Property and if the resale is completed within 2 years from the date of termination any deficiency and any expense arising from such resale shall be recoverable by the Seller from the Buyer as liquidated damages;

and in either case the Seller may recover from the Buyer as a liquidated debt the Deposit or any part of it which has not been paid by the Buyer.

- 134** The rights and powers conferred upon the Seller by this clause 13 are in addition to any other right or power which the Seller may have at law or in equity.

#### 14. PARTICULARS OF ADJUSTABLE ITEMS

- 141** Within a reasonable time after written request by the Buyer prior to the Settlement Date, the Seller shall deliver to the Buyer:

- (a) a written statement of all rates, taxes, outgoing, rents and profits not capable of discovery by search or enquiry in any office of public record or pursuant to the provisions of any statute in respect of the Property; and
- (b) (where the Land is subject to a Lease) a written statement disclosing to the extent the same is not disclosed in the Lease Schedule:
- (i) the names and postal addresses of any tenant or other occupier of the Land;
- (ii) the amounts, the due days for and the manner of payment of all periodic sums payable in respect of the Lease;
- (iii) the date to which the same shall have been paid; and
- (iv) the amounts of any Bond held from any such tenant or other occupier and the identity of the party holding such Bond.

- 142** If the Seller becomes aware of any information at any time between the date of delivering any such statement and settlement the effect of which is or may be to render such statement untrue in a material respect the Seller shall immediately disclose that information to the Buyer by notice in writing.

- 143** The Seller warrants that every such statement shall be true at the Settlement Date.

#### 15. ADJUSTMENTS

- 151** The Seller shall pay or discharge all rates, taxes (including land tax) and other outgoing (except insurance premiums on insurances effected by the Buyer) with respect to the Property up to and including the date of possession.
- 152** The Buyer shall pay or discharge all rates, taxes (including land tax) and other outgoing with respect to the Property from the date of possession.
- 153** Except for water charges based on the quantity of water used all rates, taxes and outgoing shall be apportioned:
- (a) in the case of those paid by the Seller, on the amount actually paid;
- (b) in the case of those levied but unpaid, on the amount payable disregarding any discount for early payment;
- (c) in the case of those not levied but the amount can be ascertained by advice from the relevant rating and taxing authority, on the amount advised by the relevant rating and taxing authority disregarding any discount for early payment; and
- (d) in the case of those not levied and not ascertainable from the relevant rating and taxing authority and where a separate assessment was issued for the Land for the assessment period immediately prior to the date of possession, on the amount payable in that separate assessment disregarding any discount for early payment.
- 154** Any rates in the nature of water rates and which are not determined by reference to water usage shall be apportioned in accordance with clause 15.3. Any water charges based on the quantity of water used shall be adjusted in accordance with the following provisions:

- (a) the Buyer, at the expense of the Buyer, shall read or procure the reading of any water meter installed on the Land no more than 5 days and no less than 3 days prior to the date of possession, and shall inform the Seller of the results of the water meter reading;
- (b) the deemed water usage in litres for the whole of the current rating period for water charges ("the deemed water usage") shall be calculated as the amount which is directly proportionate to the water usage between the date of commencement of the current rating period for water charges and the date of the water meter reading referred to in clause 15.4(a) (no allowance being made for seasonal or other factors);
- (c) the likely assessment of water charges for the deemed water usage shall be calculated by using the method and rates then being used by the Local Government or other water supplier ("the likely assessment");
- (d) the likely assessment shall then be apportioned.

- 155** Land tax shall be apportioned

- (a) on the assessment that the Office of State Revenue would issue for the land tax year current at the Settlement Date if the Seller was one natural person resident in Queensland and the Land was the Seller's only land; or
- (b) If there is no separate Site Value for the Land, on a notional Site Value equal to:

$$\text{Site Value of the parcel} \times \frac{\text{Area of the Land}}{\text{Area of the parcel}}$$

- 156** If land tax is unpaid at the Settlement Date and the Office of State Revenue advises that it will issue a final clearance for the Land on payment of a specified amount, then the Buyer may deduct the specified amount from the balance of the Purchase Price at settlement and must pay it promptly to the Office of State Revenue. If an amount is deducted under this clause, then land tax will be treated as paid at the Settlement Date for the purposes of clause 15.3.

#### 16. RENTS AND PROFITS GUARANTEES AND BONDS

- 161** The rents and profits with respect to the Property shall benefit the Seller up to and including the date of possession and thereafter shall benefit the Buyer and shall be dealt with as follows:
- (a) all unpaid rents and profits in respect of any period terminating on or prior to the date of possession shall not be apportioned between the parties on settlement but shall be recoverable by the Seller in accordance with clause 16.3;
- (b) all rents and profits paid in advance of the date of possession shall be apportioned between the parties on settlement;
- (c) all rents and profits payable in respect of any period current at the date of possession which have not been paid at the Settlement Date shall be apportioned when received by either party.
- 162** If on settlement a deduction is made in respect of any Bond, the Buyer shall following settlement keep the Seller indemnified in that respect.
- 163** The Seller assigns to the Buyer, subject to the settlement of this Contract and with effect from the Settlement Date:
- (a) the benefit of all conditions contained in any Leases on the part of the tenant or other occupier of the Land given in favour of the Seller or any predecessors in title of the Seller;
- (b) the benefit of all terms and conditions contained in the Service Contracts (subject to the consent of the Service Contractor); and
- (c) the benefit of all Guarantees or Bonds held by the Seller in respect of the Leases which are capable of assignment, provided that all unpaid rents and profits in respect of any period terminating on or prior to the date of possession not apportioned

upon settlement shall not be assigned to the Buyer but be recoverable by the Seller and to that extent Section 117 of the *Property Law Act 1974* shall not apply.

**164** The Buyer agrees to retain records relating to the Leases and to produce the Leases and any records relating to the Leases in any proceedings commenced by the Seller to recover any unpaid rents and profits.

**165** The Seller shall prepare and execute appropriate notices to give effect to the assignments in clause 16.3.

## **17. LIABILITY OF BUYER**

**17.1** The Property shall be at the risk of the Seller until 5:00pm on the next Business Day after the date of this Contract and then the risk shall pass to the Buyer. The Seller whilst continuing in possession will use the Property with reasonable care.

**17.2** From the date of this Contract until settlement, the Seller shall use best endeavours to administer the Property and properly enforce the Leases in accordance with the usual practice of the Seller. Should any matter or circumstance arise which may materially affect the proper performance of the terms of any Lease by any party, the Seller shall immediately notify the Buyer in writing.

**17.3** In addition to the obligations contained in clause 17.2, the Seller shall not without the prior written consent of the Buyer which shall not be unreasonably withheld:

- (a) accept or agree to accept a surrender of any Lease;
- (b) grant any Lease for any part of the Property which is vacant at the date of this Contract or which may become vacant prior to settlement;
- (c) consent to the variation of any Lease, proposed assignment or any other dealing concerning any Lease; or
- (d) negotiate or set new rent.

## **18. ACCESS**

**18.1** The Seller shall permit the Buyer or any person authorised by the Buyer to enter the Property on the Settlement Date for the purpose of checking the inventory of chattels (if any) and ascertaining the existence and state of repair of the Property.

**18.2** The Seller shall permit any person authorised by the Buyer in writing upon reasonable written notice to enter the Property on one occasion for the purposes of reading any water, gas, electricity or other meter.

## **19. CONSENTS**

If any consent is required by statute to the sale or the performance of any obligation under or by virtue of this Contract, this Contract is subject to such consent being given and the party who is required, by the statute, to obtain such consent ("**Applicant**") shall apply for the consent and pursue the application. The Applicant shall pay all costs and fees (other than the other party's solicitor's) in respect of the application. The other party shall if and when required by the Applicant immediately join in the application and/or shall supply such information as shall be reasonably required in support of the application. If the consent is refused or not granted by the Settlement Date then either party may by notice in writing to the other terminate this Contract.

## **20. REQUIREMENTS OF AUTHORITIES**

**20.1** If it is established that at the date of this Contract the Local Government has given to the Seller or some other person a notice in writing pursuant to sections 247 and 248 of the *Building Act 1975* or sections 167 or 168 of the *Planning Act 2016* in respect of any building or structure on the Land and the notice is current at the Settlement Date the Buyer may by notice in writing to the Seller given on the Settlement Date terminate this Contract.

**20.2** Except for any notice referred to in clause 20.1 or a tree order disclosed under s 83 of the *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011*, any valid notice or order issued pursuant to any statute or by any Local Government or Court necessitating the doing of work or the expenditure of money on or in relation to the Property or any path or road adjoining the Land:

(a) if issued before the date of this Contract shall be fully complied with by the Seller in a proper and workmanlike manner on or before the Settlement Date; or

(b) if issued on or after the date of this Contract shall be fully complied with by the Buyer who shall indemnify the Seller in respect of the compliance with the notice or order.

If without default of the Buyer this Contract is terminated, the Seller shall pay to the Buyer on demand any amount expended by the Buyer in complying with any notice or order which was of the nature of a capital expenditure or has resulted in a benefit to the Seller.

## **21. PROPERTY ADVERSELY AFFECTED**

**21.1** If at the Contract Date:

**NOTE 2** (a) the Present Use is not lawful under the relevant town planning scheme;

(b) the Land is affected by a proposal of any competent authority to alter the dimensions of any Transport Infrastructure or locate Transport Infrastructure on the Land;

(c) access or any service to the Land passes unlawfully through other land;

(d) any competent authority has issued a current notice to treat, or notice of intention to resume, regarding any part of the Land;

(e) there is an outstanding condition of a development approval attaching to the Land under section 73 of the *Planning Act 2016* or section 96 of the *Economic Development Queensland Act 2012* which, if complied with, would constitute a material mistake or error as to the Seller's title to the Property;

(f) the Property is affected by the *Queensland Heritage Act 1992* or is included in the World Heritage List;

(g) the Property is declared acquisition land under the *Queensland Reconstruction Authority Act 2011*;

(h) there is a charge against the Land under s104 of the *Foreign Acquisitions and Takeovers Act 1975*, and that has not been disclosed in this contract, the Buyer may terminate this contract by notice to the Seller given on or before settlement.

**21.2** If no notice is given under clause 21.1, the Buyer will be treated as having accepted the Property subject to all of the matters referred to in that clause.

**21.3** The Seller authorises the Buyer to inspect records held by any authority, including Security Interests on the PPSR relating to the Property.

**21.4** Before the Settlement Date, the Seller must give the Buyer:

- (a) copies of all documents relating to any unregistered interests in the Property; and
- (b) further copies of details if those previously given cease to be complete or accurate.
- (c) if requested by the Buyer, copies of all Security Interests or sufficient details of the Security Interests to enable the Buyer to undertake a search of the PPSR.

## **22. NO WARRANTY ON PRESENT USE**

No warranty is implied that the use of the Property as described in Item H is permissible under any town planning scheme and no compensation is payable if the particulars stated in Item H are not correct.

## **23. COSTS**

The parties shall pay their own costs of and incidental to the sale and purchase but all stamp duty on this Contract and any duty in respect of the conveyance by the Seller to the Buyer shall be paid by the Buyer and if not paid by the Buyer may be paid by the Seller and recovered from the Buyer as a liquidated debt.

## **24. MERGER**

Despite settlement and despite the registration of the transfer in favour of the Buyer, any general or special condition (or any part

or parts thereof) to which effect is not given by settlement or registration and which is capable of taking effect after settlement or registration shall remain in full force and effect.

## 25. TIME AND PLACE FOR SETTLEMENT

25.1 Settlement shall be effected at such time and place as may be agreed upon by the parties. The time for settlement shall be between the hours of 9:00am and 4:00pm AEST on the Settlement Date.

25.2 In the absence of agreement as to place, settlement shall be effected in the city or town named in Item R at:

- (a) the office of a solicitor or financial institution nominated by the Seller; or
- (b) if the Seller does not make a nomination at the land registry office in or nearest to the city or town in Item R.

25.3 Despite clause 25.2 if a mortgage is to be discharged on settlement the Seller may by notice in writing to the Buyer given not less than 2 Business Days prior to the Settlement Date require settlement to take place at the office of the Seller's mortgagee in the city or town named in Item R or if such mortgagee does not have an office in that city or town at the office of such mortgagee in Queensland nearest to that city or town.

## 26. TIME OF THE ESSENCE

26.1 Time is of the essence of this contract, except regarding any agreement between the parties on a time of day for settlement and except as otherwise provided in this Contract.

26.2 Clauses 26.2 to 26.8 apply if a party is unable to perform a Settlement Obligation solely as a consequence of a Delay Event but does not apply where the inability is attributable to:

- (i) damage to, destruction of or diminution in value of the Property or other property of the Seller or Buyer; or
- (ii) termination or variation of any agreement between a party and another person whether relating to the provision of finance, the release of an Encumbrance, the sale or purchase of another property or otherwise.

26.3 Time for the performance of the parties' Settlement Obligations is suspended and ceases to be of the essence of the contract and the parties are deemed not to be in breach of their Settlement Obligations.

26.4 An Affected Party must take reasonable steps to minimise the effect of the Delay Event on its ability to perform its Settlement Obligations.

26.5 When an Affected Party is no longer prevented from performing its Settlement Obligations due to the Delay Event, the Affected Party must give the other party a notice of that fact, promptly.

26.6 When the Suspension Period ends, whether notice under clause 26.5 has been given or not, either party may give the other party a Notice to Settle.

26.7 A Notice to Settle must be in writing and state:

- (i) that the Suspension Period has ended; and
- (ii) a date, being not less than 5 nor more than 10 Business Days after the date the Notice to Settle is given, which shall become the Settlement Date;
- (iii) that time is of the essence.

26.8 When Notice to Settle is given, time is again of the essence of the contract.

26.9 In this clause 26:

- (i) "**Affected Party**" means a party referred to in clause 26.2;
- (ii) "**Delay Event**" means:
  - (a) a tsunami, flood, cyclone, earthquake, bushfire or other act of nature;
  - (b) riot, civil commotion, war, invasion or a terrorist act;
  - (c) an imminent threat of an event in paragraphs (a) or (b); or
  - (d) compliance with any lawful direction or order by a Government Agency;

(iii) "**Government Agency**" means the government of the Commonwealth of Australia or an Australian State, Territory or local government and includes their authorities, agencies, government owned corporations and authorised officers, courts and tribunals;

(iv) "**Settlement Obligations**" means, the obligations of the buyer and Seller under clause 4;

(v) "**Suspension Period**" means the period during which the Affected Party (or if both the Buyer and Seller are Affected Parties, either of them) remains unable to perform a Settlement Obligation solely as a consequence of a Delay Event.

## 27. NOTICES, COMMUNICATIONS, AUTHORITY DIRECTIONS, ETC

27.1 Notices under this contract must be in writing.

27.2 Notices under this contract or notices required to be given by law may be given and received by the party's solicitor.

27.3 Notices under this contract or required to be given by law may be given by:

- (a) delivering or posting to the other party or its solicitor; or
- (b) sending it to the facsimile number of the other party or its solicitor stated in the Reference Schedule (or another facsimile number notified by the recipient to the sender); or
- (c) sending it to the email address of the other party or its solicitor stated in the Reference Schedule (or another email address notified by the recipient to the sender).

27.4 Subject to clause 27.5, a notice given after this contract is entered into in accordance with clause 27.3 will be treated as given:

- (a) 5 Business Days after posting;
- (b) if sent by facsimile, at the time indicated on a clear transmission report; and
- (c) if sent by email, at the time it is sent.

27.5 Notices given by facsimile, by personal delivery or by email between 5pm on a Business Day (the "first Business Day") and 9am on the next Business Day (the "second Business Day") will be treated as given or delivered at 9am on the second Business Day.

27.6 If two or more notices are treated as given at the same time under clause 27.5, they will be treated as given in the order in which they were sent or delivered.

27.7 Notices or other written communications by a party's solicitor (for example, varying the Inspection Date, Finance Date or Settlement Date) will be treated as given with that party's authority.

27.8 For the purposes of clause 27.3(c) and clause 36.2 the notice or information may be contained within an email, as an attachment to an email or located in an electronic repository accessible by the recipient by clicking a link in an email.

## 28. REMOVAL OF FIXTURES FITTINGS AND CHATTELS

28.1 Unless otherwise agreed between the parties any property not sold under this Contract (other than property of any tenant or other occupier of the Land) shall be removed from the Land prior to delivery of possession.

28.2 The Seller shall at the Seller's own expense reinstate and make good prior to delivery of possession any damage done to the improvements in removing that property and if the Seller fails to do so the Buyer may do so and recover the costs of so doing from the Seller as a liquidated debt.

28.3 Any of that property not so removed shall be deemed abandoned by the Seller and the Buyer may without prejudice to any other remedy complete this Contract and appropriate or remove or otherwise dispose of that property as the Buyer thinks fit.

28.4 Any costs incurred by the Buyer in removing that property or in making good any damage done to the improvements in such removal may be recovered by the Buyer from the Seller and the Seller shall indemnify and hold indemnified the Buyer from and against all claims, demands, actions, costs, judgments and expenses which the Buyer may suffer or incur by reason of any other person claiming any interest in that property.

## 29. CHATTELS

- 29.1** Title to any chattels agreed to be sold by or under this Contract shall pass at settlement.
- 29.2** The Seller assigns to the Buyer subject to the settlement of this Contract and with effect from the Settlement Date, the benefit of all warranties capable of assignment held by the Seller in respect of the chattels agreed to be sold. The Seller shall deliver to the Buyer at settlement all documents in the possession or control of the Seller evidencing the warranties referred to in this clause which would be sufficient to enable the Buyer to enforce those warranties.

## 30. APPOINTMENT OF AGENT

In the absence of any specific appointment the Seller by executing this Contract confirms the appointment of the Seller's Agent (jointly with any other agent in conjunction with whom the Seller's Agent has sold) as the agent of the Seller to introduce a buyer.

## 31. FINANCE CLAUSE

- 31.1** If Items S, T and U are not deleted, this Contract is subject to the Buyer obtaining approval of a loan from the lender or class of lender specified in Item S on or before the approval date specified in Item T not less than the amount of loan specified in Item U on terms satisfactory to the Buyer. The Buyer must take reasonable steps to obtain the approval.

### NOTE 7

- 31.2** The Buyer may give notice to the Seller that:
- (a) approval has not been obtained by the approval date and the Buyer terminates this contract; or
  - (b) the finance condition has been either satisfied or waived by the Buyer.
- 31.3** The Seller may terminate this contract by notice to the Buyer if notice is not given under clause 31.2 by 5pm on the approval date. This is the Seller's only remedy for the Buyer's failure to give notice.
- 31.4** The Seller's right under clause 31.3 is subject to the Buyer's continuing right to give written notice to the Seller of satisfaction, termination or waiver pursuant to clause 31.2.

## 32. PROPERTY SOLD SUBJECT TO LEASES AND SERVICE CONTRACTS

### 32.1 Seller's Statement

Where the Property is sold subject to any Lease or Service Contract, the Seller states that, except as disclosed in this Contract, each of the following statements shall be accurate at the Settlement Date:

- (a) the particulars in the Lease Schedule and the Service Contract Schedule are true and correct;
- (b) that no circumstances exist as far as the Seller is aware that would render any Lease liable to forfeiture nor has the Seller agreed to a surrender of any Lease;
- (c) that all Leases and Service Contracts have been disclosed to the Buyer prior to execution of this Contract;
- (d) the Seller is not aware of any breach by the Seller of any Lease or Service Contract;
- (e) where any of the Leases are subject to the application of the *Retail Shop Leases Act 1994* ("Act"), the following further statements by the Seller apply:
  - (i) as far as the Seller is aware the Seller has in all respects complied with the Act in relation to the Leases;
  - (ii) no Lease is subject to an existing or renewed retail tenancy dispute within the meaning of the Act;
  - (iii) there are no mediation agreements, Queensland Civil and Administrative Tribunal proceedings or orders in existence in respect of any Lease;
  - (iv) no tenant has notified the Seller requesting the right to

renew any Leases for a further period;

- (v) no tenant has made a claim upon the Seller to pay compensation for loss or damage suffered by the tenant by virtue of sections 43, 46G or 46K of the Act nor are there any circumstances existing to the Seller's knowledge which might give rise to a claim for such compensation.

### 32.2 Inaccurate Statement

If a statement contained in clause 32.1 is not accurate then the Buyer may terminate this Contract by notice in writing to the Seller.

### 32.3 Acceptance of Lease and Service Contract Terms

- (a) Within 7 days of the date of this Contract, the Seller will deliver to the Buyer or the Buyer's solicitor true copies of all Leases and Service Contracts together with a written statement that they constitute the whole of every agreement or arrangement with each of the tenants stated in those Leases or with each of the Service Contractors in those Service Contracts.

### (b) If:

- (i) the Seller does not deliver to the Buyer or the Buyer's solicitor true copies of all Leases and Service Contracts pursuant to clause 32.3(a); or
- (ii) true copies of all Leases and Service Contracts have been delivered pursuant to clause 32.3(a) and the Buyer is not satisfied with any of the terms and conditions of any Lease or Service Contract,

then in the case of clause 32.3(b)(i) the Buyer shall be entitled to terminate this Contract by notice in writing to the Seller or in the case of clause 32.3(b)(ii) the Buyer shall be entitled to terminate this Contract by written notice to the Seller within 7 days from the date upon which all Leases and Service Contracts have been delivered.

- (c) If the Buyer does not give written notice to the Seller pursuant to clause 32.3(b)(i) or 32.3(b)(ii), the Buyer agrees to be bound by the terms and conditions of each Lease and Service Contract disclosed by the Seller in the Lease Schedule and the Service Contract Schedule from the Settlement Date as if the Buyer were named as lessor in such Lease or as a contracting party in such Service Contract in substitution for the Seller.

- (d) With respect to Service Contracts, clause 32.3(c) will apply subject to the consent of the Service Contractor.

- (e) The amounts paid or payable in respect of the Service Contracts shall be outgoing for the purposes of clause 15 and shall be apportioned accordingly.

## 33. FOREIGN BUYER APPROVAL

**NOTE 10** The Buyer warrants that either:

- (1) the Buyer's purchase of the Property is not a notifiable action; or
- (2) the Buyer has received a no objection notification, under the *Foreign Acquisitions and Takeovers Act 1975*.

## 34. GOODS AND SERVICES TAX

### 34.1 Definitions

Words and phrases defined in the GST Act have the same meaning in this Contract unless the context indicates otherwise.

### 34.2 Reference Schedule and Notes

The Reference Schedule and the Notes to Completion are part of this clause 34.

### 34.3 Taxable Supply

This clause 34 applies where the transaction is:

- (a) a Taxable Supply; or
- (b) not a Taxable Supply because it is the Supply of a Going Concern.

### 34.4 Purchase Price Includes GST

If this clause 34.4 applies, the Purchase Price includes the Seller's liability for GST on the Supply of the Property. The Buyer is not obliged to pay any additional amount to the Seller on account of GST on the Supply of the Property.

#### 345 Purchase Price Does Not Include GST

If this clause 34.5 applies, the Purchase Price does not include the Seller's liability for GST on the Supply of the Property. The Buyer must on the Settlement Date pay to the Seller in addition to the Purchase Price an amount equivalent to the amount payable by the Seller as GST on the Supply of the Property.

#### 346 Margin Scheme

**Warning:** The Seller is warranting that the Margin Scheme can apply. If in doubt about using the Margin Scheme you should seek professional advice.

If this clause 34.6 applies:

- (a) the Purchase Price includes the Seller's liability for GST on the Supply of the Property. The Buyer is not obliged to pay any additional amount to the Seller on account of GST on the Supply of the Property;
- (b) the Seller:
  - (i) must apply the Margin Scheme to the Supply of the Property; and
  - (ii) warrants that the Margin Scheme is able to be applied;
- (c) if the Seller breaches clause 34.6(b)(i) or its warranty under clause 34.6(b)(ii) then:
  - (i) the Buyer may terminate this Contract if it becomes aware of the breach prior to the Settlement Date.
  - (ii) if the Buyer does not terminate this Contract under clause 34.6(c)(i) or does not become aware of the breach until after the Settlement Date, it must pay to the Seller an amount equal to the Input Tax Credit which the Buyer will receive for GST payable for the Supply of the Property. Payment must be made when the Buyer receives the benefit of the Input Tax Credit;
  - (iii) the Buyer is entitled to compensation from the Seller if there is a breach of clause 34.6(b).

#### 347 If the Supply is a Going Concern

**Warning:** The parties are providing certain warranties under this clause. If there is doubt about whether there is a Supply of a Going Concern you should seek professional advice.

If this clause 34.7 applies:

- (a) the Purchase price does not include any amount for GST;
- (b) the parties agree the Supply of the Property is a Supply (or part of a Supply) of a Going Concern;
- (c) the Seller warrants that:
  - (i) between the date of this Contract and the Settlement Date the Seller will carry on the Enterprise; and
  - (ii) the Property (together with any other things that must be provided by the Seller to the Buyer at the Settlement Date under a related agreement for the same Supply) is all of the things necessary for the continued operation of the Enterprise;
- (d) the Buyer warrants that at the Settlement Date it is Registered or Required to be Registered under the GST Act;
- (e) if either of the warranties in clause 34.7(c) is breached:
  - (i) the Buyer may terminate this Contract if it becomes aware of the breach prior to the Settlement Date;
  - (ii) if the Buyer does not terminate this Contract then, at the Settlement Date, the Buyer must pay to the Seller the amount payable by the Seller as GST on the Supply of the Property;
  - (iii) if the Buyer does not become aware of the breach until after the Settlement Date, it must pay to the Seller an amount equal to the Input Tax Credit which the Buyer will

receive for GST payable in respect of the Supply of the Property. Payment must be made when the Buyer receives the benefit of the Input Tax Credit;

(iv) the Buyer is entitled to compensation from the Seller if there is a breach of the warranty;

- (f) if the warranty in clause 34.7(d) is not correct the Buyer must pay to the Seller an amount equal to the GST payable in respect of the Supply of the Property. Payment must be made at the Settlement Date or, if settlement has occurred, immediately on demand;
- (g) if for any reason other than a breach of a warranty by the Seller or the Buyer this transaction is not a Supply of a Going Concern, the Buyer must pay to the Seller the amount payable by the Seller as GST on the Supply of the Property. Payment must be made at the Settlement Date or, if settlement has occurred, immediately on demand.

#### 348 Adjustments

Where this Contract requires an adjustment or apportionment of outgoings or rent and profits of the Property, that adjustment or apportionment must be made on the amount of the outgoing, rent or profit exclusive of GST.

#### 349 Tax Invoice

Where GST is payable on the Supply of the Property, the Seller must give to the Buyer a Tax Invoice at the Settlement Date.

#### 3410 No Merger

To avoid doubt, the clauses in this clause 34 do not merge on settlement.

#### 3411 Remedies

The remedies provided in clauses 34.6(c), 34.7(e) and 34.7(f) are in addition to any other remedies available to the aggrieved party.

### 35. BUILDING AND PEST INSPECTION REPORTS

**35.1** This contract is conditional on the Buyer obtaining a written building report and a written pest report (which may be a single report) on the Property by the Inspection Date on terms satisfactory to the Buyer. The Buyer must take all reasonable steps to obtain the reports (subject to the right of the Buyer to elect to obtain only one of the reports).

**35.2** The Buyer must give notice to the Seller that:

- (1) a satisfactory report under clause 35.1 has not been obtained by the Inspection Date and the Buyer terminates this contract. The Buyer must act reasonably; or
- (2) clause 35.1 has been either satisfied or waived by the Buyer.

**35.3** If the Buyer terminates this contract and the Seller asks the Buyer for a copy of the building and pest reports, the Buyer must give a copy of each report to the Seller without delay.

**35.4** The Seller may terminate this contract by notice to the Buyer if notice is not given under clause 35.2 by 5pm on the Inspection Date. This is the Seller's only remedy for the Buyer's failure to give notice.

**35.5** The Seller's right under clause 35.4 is subject to the Buyer's continuing right to give written notice to the Seller of satisfaction, termination or waiver pursuant to clause 35.2

### 36. ELECTRONIC SETTLEMENT

#### 36.1 Application of Clause

- 36.1.1. Clause 36 applies if the Buyer, Seller and each Financial Institution involved in the transaction agree to an Electronic Settlement using the same ELNO System and overrides any other provision of this Contract to the extent of any inconsistency.
- 36.1.2. Acceptance of an invitation to an Electronic Workspace is taken to be an agreement for clause 36.1.1.
- 36.1.3. Clause 36 (except clause 36.5.3) ceases to apply if either party gives notice under clause 36.5 that settlement will not be an Electronic Settlement.

### 36.2 Completion of Electronic Workspace

- 36.2.1. The parties must:
- (a) ensure that the Electronic Workspace is completed and all Electronic Conveyancing Documents and the Financial Settlement Schedule are Digitally Signed prior to settlement; and
  - (b) do everything else required in the Electronic Workspace or otherwise to enable settlement to occur on the Settlement Date.
- 36.2.2. If the parties cannot agree on a time for settlement, the time to be nominated in the Workspace is 4pm AEST.
- 36.2.3. If any part of the Purchase Price is to be paid to discharge an Outgoing:
- (a) the Buyer may, by notice in writing to the Seller, require that the amount is paid to the Buyer's Solicitor's trust account and the Buyer is responsible for paying the amount to the relevant authority;
  - (b) for amounts to be paid to destination accounts other than the Buyer's Solicitor's trust account, the Seller must give the Buyer a copy of the current invoice for the Outgoing to enable the Buyer to verify the destination account details in the Financial Settlement Schedule.
- 36.2.4. If the Deposit is required to discharge any Encumbrance or pay an Outgoing at settlement:
- (a) the Deposit Holder must, if directed by the Seller at least 2 Business Days prior to Settlement, pay the Deposit (and any interest accrued on investment of the Deposit) less commission as clear funds to the Seller's Solicitor;
  - (b) the Buyer and the Seller authorise the Deposit Holder to make the payment in clause 36.2.4(a);
  - (c) the Seller's Solicitor will hold the money as Deposit Holder under the Contract; and
  - (d) the Seller and Buyer authorise the Seller's Solicitor to pay the money as directed by the Seller in accordance with the Financial Settlement Schedule.

### 36.3 Electronic Settlement

- 36.3.1. Clauses 10.2, 10.3, 25.2 and 25.3 do not apply.
- 36.3.2. Payment of the balance of the Purchase Price electronically as directed by the Seller's Solicitor in the Financial Settlement Schedule satisfies the Buyer's obligation in clause 4.1.
- 36.3.3. The Seller and Buyer will be taken to have complied with:
- (a) clause 4.2(c),(e) and (f); and
  - (b) clause 4.4(d) and (e),
- (as applicable) if at settlement the Financial Settlement Schedule specifies payment of the relevant amount to the account nominated by the Commissioner of Taxation.
- 36.3.4. The Seller will be taken to have complied with clauses 4.1(b), (c), (d), (f), (g) (h), (i), (j) and (k) and clause 5 if:
- (a) in relation to documents which are suitable for Electronic Lodgement in the Land Registry at settlement, the documents are Digitally Signed within the Electronic Workspace; and
  - (b) in relation to any other document or thing, the Seller's Solicitor:
    - (i) confirms in writing prior to settlement that it holds all relevant documents which are not suitable for Electronic Lodgement and all Keys in escrow on the terms contained in the QLS E-Conveyancing Guidelines; and
    - (ii) gives a written undertaking to send the documents and Keys (if applicable) to the Buyer or Buyer's Solicitor no later than the Business Day after settlement; and
    - (iii) if requested by the Buyer, provides copies of documents in the Seller's Solicitors possession.
- 36.3.5. A party is not in default to the extent it is prevented from complying with an obligation because the other party or the other party's Financial Institution has not done something in the Electronic Workspace.
- 36.3.6. Any rights under the contract or at law to terminate the contract may not be exercised during the time the Electronic Workspace is locked for Electronic Settlement.

- 36.3.7. Electronic Settlement is taken to occur when Financial Settlement is effected, whether or not Electronic Lodgement has occurred.

### 36.4 Computer System Unavailable

If settlement fails and cannot occur by 4pm AEST on the Settlement Date because a computer system operated by the Land Registry, Office of State Revenue, Reserve Bank, a Financial Institution or the relevant ELNO System is inoperative, neither party is in default and the Settlement Date is deemed to be the next Business Day. Time remains of the essence.

### 36.5 Withdrawal from Electronic Settlement

- 36.5.1. Either party may elect not to proceed with an Electronic Settlement by giving written notice to the other party.
- 36.5.2. A notice under clause 36.5.1 may not be given later than 5 Business Days before the Settlement Date unless an Electronic Settlement cannot be effected because:
- (a) the transaction is not a Qualifying Conveyancing Transaction; or
  - (b) a party's solicitor is unable to complete the transaction due to death, a loss of legal capacity or appointment of a receiver or administrator (or similar) to their legal practice or suspension of their access to the ELNO System; or
  - (c) the Buyer's or Seller's Financial Institution is unable to use the relevant ELNO System to effect Electronic Settlement.
- 36.5.3. If clause 36.5.2 applies:
- (a) the party giving the notice must provide satisfactory evidence of the reason for the withdrawal; and
  - (b) the Settlement Date will be extended to the date 5 Business Days after the Settlement Date.

### 36.6 Costs

Each party must pay its own fees and charges of using the relevant ELNO System for Electronic Settlement.

### 36.7 Definitions for clause 36

In clause 36:

"Digitally Sign" and "Digital Signature" have the meaning in the ECNL.

"ECNL" means the Electronic Conveyancing National Law (Queensland).

"Electronic Conveyancing Documents" has the meaning in the *Land Title Act 1994*.

"Electronic Lodgement" means lodgement of a document in the Land Registry in accordance with the ECNL.

"Electronic Settlement" means settlement facilitated by an ELNO System.

"Electronic Workspace" means a shared electronic workspace within an ELNO System that allows the Buyer and Seller to effect Electronic Lodgement and Financial Settlement.

"ELNO" has the meaning in the ECNL.

"ELNO System" means a system provided by the ELNO for facilitating Financial Settlement and Electronic Lodgement.

"Financial Settlement" means the exchange of value between Financial Institutions facilitated by an ELNO System in accordance with the Financial Settlement Schedule.

"Financial Settlement Schedule" means the electronic settlement schedule within the Electronic Workspace listing the source accounts and destination accounts.

"Qualifying Conveyancing Transaction" means a transaction that is not excluded for Electronic Settlement by the rules issued by the relevant ELNO, Office of State Revenue, Land Registry, or a Financial Institution involved in the transaction.

## 37. ELECTRONIC CONTRACT AND DISCLOSURE

### 37.1 Electronic Signing

If this contract is signed by any person using an Electronic Signature, the Buyer and the Seller:

- (a) agree to enter into this contract in electronic form; and
- (b) consent to either or both parties signing the contract using an Electronic Signature.

### 372 Pre-contract Disclosure

The Buyer consents to the Seller's use of electronic communication to give any notice or information required by law to be given to the Buyer and which was given before the Buyer signed this contract.

### 38. COUNTERPARTS

- (1) This contract may be executed in two or more counterparts, all of which will together be deemed to constitute one and the same contract.
- (2) A counterpart may be electronic and signed using an Electronic Signature.

## NOTES AND WARNINGS

**NB. where any specific items are not required delete and initial**

**NOTE 1** Insert, in Item A, the date of signing by the last party to sign.

**NOTE 2** Describe, in Item H, the actual use presently being made of the Land and/or the improvements, e.g. commercial etc.

**WARNING -** Refer to clause 21.1(a). **Before this Contract is signed the Seller should** ensure that the present use described in Item H is a lawful use.

For example, if a business is being carried on at a dwelling house in a residential zone, that use may be unlawful unless town planning consent exists. This **warning applies whether the Buyer intends to continue the use stated in Item H or not.** If the use is not lawful or if there is a doubt about the use, this should be drawn to the Buyer's attention and, if the Buyer agrees, a special condition should be inserted in this Contract so as to modify or avoid the operation of clause 21.1(a).

**NOTE 3** If freehold, do not complete "Type of Holding" or "Lease No".

**NOTE 4** Describe in general terms, e.g. factory, warehouse etc.

**NOTE 5** Particulars should be inserted in the Lease Schedule and the Service Contract Schedule.

**NOTE 6** The Contract Rate is published each month in "The Proctor".

**NOTE 7** If this Contract **is to be subject to finance** then Items S, T and U must be completed in every respect and Item V must be deleted and initialled.

If this Contract **is not to be subject to finance** Items S, T and U must be deleted and initialled and Item V shall apply.

If known, state name of lender in Item S. If not known, state class, e.g. trading bank, savings bank, building society, insurance company, credit union, or other class of lending institution. Do not insert the words "finance company" but insert the specific name (or names) of a finance company.

The date in Item T should be at least 14 days prior to the Settlement Date.

The dollar amount of the loan being sought must be inserted in Item U. Do not insert the words "sufficient to complete this purchase" or words of a similar effect.

**NOTE 8** The Deposit Holder should sign with his or her personal signature.

If the Deposit Holder is a partnership, a member of the partnership should sign in the partnership name.

If the Deposit Holder is a company, the acknowledgment should be signed in accordance with the *Corporations Act 2001*, s 127 or by a person duly authorised to sign acknowledgments of Deposit Holder on behalf of the company.

**NOTE 9** A Seller which is a corporation should note that to ensure the Property is free from Encumbrances it may be necessary to provide evidence at settlement that the Property has been released from or is not subject to a security interest given by the Seller.

**NOTE 10** If this Contract is to be made subject to the approval of the Commonwealth Treasurer being obtained, a special condition should be inserted in this Contract so as to modify or avoid the operation of clause 33.





**ANNEXURE A**  
**BLACKALL-TAMBO REGIONAL COUNCIL (SELLER) – ## A.C.N. ## (BUYER)**  
**[SPECIAL CONDITIONS TO CONTRACT OF SALE]**

**1. DEFINITIONS**

In these Special Conditions:

**Contract Date** means the date specified in Item A of the Reference Schedule to the Contract, and, if no date is specified in Item A, the date the Contract is delivered by the parties and formed as a contract.

**DAF** means the Queensland Department of Agriculture and Fisheries or if no longer in existence, the department most closely replacing that department.

**Sale Agreement** means the sale agreement entered into, or to be entered into, contemporaneously with this Contract for the novation of the Sales Permit, between the Seller and the Buyer.

**Sales Permit** means the Sales Permit No. 201304400 issued under the *Forestry Act 1959* (Qld) held by the Seller, the subject of the Sale Agreement.

**Settlement Date** means 15 Business Days after the Sale Date of the Sales Permit under the Sale Agreement, subject to the conditions precedent in special conditions 6.1 and 7 being met.

**Standard Terms** means the REIQ Standard Commercial Terms | Commercial Land and Buildings Eighth Edition.

**2. OMISSIONS, SUBSTITUTIONS AND AMENDMENTS TO STANDARD TERMS**

**2.1 Omitted Standard Terms**

The following clauses of the Standard Terms are omitted:

- (1) clause 4.1(f) to (k) (SETTLEMENT AND POSSESSION);
- (2) clause 6 (INVESTMENT OF DEPOSIT);
- (3) clause 7.7 (SELLER'S STATEMENT);
- (4) clause 16 (RENT AND PROFITS GUARANTEES AND BONDS);
- (5) clause 17.2 (LIABILITY OF BUYER);
- (6) clause 21.1, 21.2 and 21.4 (PROPERTY ADVERSELY AFFECTED);
- (7) clause 29.2 (CHATTELS);
- (8) clause 30 (APPOINTMENT OF AGENT);
- (9) clause 31 (FINANCE CLAUSE);
- (10) clause 32 (PROPERTY SOLD SUBJECT TO LEASES AND SERVICE CONTRACTS);
- (11) clause 33 (FOREIGN BUYER APPROVAL);
- (12) clause 35 (BUILDING AND PEST INSPECTION REPORTS);

**ANNEXURE A**  
**BLACKALL-TAMBO REGIONAL COUNCIL (SELLER) – ## A.C.N. ## (BUYER)**  
**[SPECIAL CONDITIONS TO CONTRACT OF SALE]**

(13) clause 36.5 (WITHDRAWAL FROM ELECTRONIC SETTLEMENT).

2.2 Substituted Standard Terms

(1) Standard Term clause 7.5 (SELLER'S STATEMENTS) is omitted and the following is substituted:

*7.5 If this Contract is terminated pursuant to Clause 7.4, the Deposit and other monies paid under this Contract shall be refunded to the Buyer by the Seller or the Deposit Holder as the case may be, and the Seller is not liable by way of damages as compensation for any loss suffered by the Buyer as a result from a termination of this Contract due to a statement contained in either Clause 7.2 or Clause 7.3 not being accurate.*

(2) Standard Term clause 7.6(2)(b) is omitted and the following is substituted:

*(b) complete this Contract, however the Buyer is not entitled to claim compensation from the Seller.*

(3) Standard Term clause 8 (ERRORS AND MISDESCRIPTIONS) is omitted and the following is substituted:

**8. ERRORS AND MISDESCRIPTIONS**

*If there is any immaterial or material mistake or error in the description or particulars of the Property or as to title, the Buyer shall not be entitled to:*

- (a) terminate this Contract, or claim or receive compensation; or*
- (b) delay settlement or withhold any part of the Purchase Price, by reason of such mistake or error.*

(4) Standard Terms clause 9.2 and 9.3 (SURVEY AND INSPECTION) are omitted and the following is substituted:

*9.2 If there is:*

- (a) any immaterial or material error in the boundaries or area of the Land; or*
- (b) any immaterial or material encroachment by the Land onto adjoining land or by any structure on adjoining land onto the Land,*

*the Buyer shall not be entitled to:*

- (c) terminate this Contract, or claim or receive compensation; or*
- (d) delay settlement or withhold any part of the Purchase Price, by reason of such error or encroachment.*

(5) Standard Term clause 20 (REQUIREMENTS OF AUTHORITIES) is omitted and the following is substituted:

*20.1 If it is established that at the date of this Contract the Local Government has given to the Seller or some other person a notice in writing pursuant to sections 247 and 248 of the Building Act 1975 or sections 167 or 168 of the*

**ANNEXURE A**  
**BLACKALL-TAMBO REGIONAL COUNCIL (SELLER) – ## A.C.N. ## (BUYER)**  
**[SPECIAL CONDITIONS TO CONTRACT OF SALE]**

*Planning Act 2016 in respect of any building or structure on the Land and the notice is current at the Settlement Date:*

- (a) the Seller shall give a copy of the notice to the Buyer at or before settlement; and*
- (b) the Buyer is not entitled to terminate this Contract or claim or receive compensation from the Seller, or delay settlement of the Contract or withhold any part of the Purchase Price.*

*20.2 Any valid notice or order issued pursuant to any statute or by any Local Government or Court (including any notice referred to in clause 20.1) necessitating the doing of work or the expenditure of money on or in relation to the Property or any path or road adjoining the Land, whether issued before or after the date of this Contract, shall be fully complied with by the Buyer who shall indemnify the Seller in respect of the compliance with the notice or order.*

*20.3 If without default of the Buyer this Contract is terminated, the Buyer acknowledges and accepts that the Seller is not liable to pay to the Buyer any amount expended by the Buyer in complying with any notice or order including, without limitation, any expenditure which was of the nature of a capital expenditure or has resulted in a benefit to the Seller.*

- (6) Standard Term clauses 28.2 and 28.4 (REMOVAL OF FIXTURES, FITTINGS AND CHATTELS) are omitted and the following is substituted:

*28.2 Neither the Seller nor the Seller's personnel is liable to reinstate or make good any damage done to the improvements in removing the Seller's personal property, or to reimburse the Buyer for costs incurred by the Buyer to make good any damage done to the improvements in such removal.*

- (7) Standard Term clause 29.1 (CHATTELS) is omitted and the following is substituted:

*29.1 Title to any chattels agreed to be sold by or under this Contract together with any other chattels present on the Property at the Settlement Date shall pass to the Buyer at settlement.*

- (8) Standard Term clause 36.1 (APPLICATION OF CLAUSE) is omitted and the following is substituted:

**36.1 Application of Clause**

**36.1.1** Clause 36:

- (a) applies if the form of transfer under the Land Title Act 1994 required to transfer title in the Land to the Buyer is a required instrument to which section 5(1) of the Land Title Regulation 2022 applies;*
- (b) continues to apply even if section 5(2)(a)(ii) of the Land Title Regulation 2022 applies; and*
- (c) overrides any other provision of this contract to the extent of any inconsistency.*

**ANNEXURE A**  
**BLACKALL-TAMBO REGIONAL COUNCIL (SELLER) – ## A.C.N. ## (BUYER)**  
**[SPECIAL CONDITIONS TO CONTRACT OF SALE]**

36.1.2 *The Seller must nominate the ELNO System to be used for the Electronic Settlement. Despite clause 27.9, the Seller may nominate the ELNO System by sending or accepting an invitation to an Electronic Workspace in an ELNO System.*

2.3 Amended Standard Terms

- (1) Standard Term clause 17.1 (LIABILITY OF BUYER) is amended by omitting the words '5.00pm on the next Business Day after the date of this Contract', and replacing with 'Settlement'.
- (2) Standard Term clause 34 (GOODS AND SERVICES TAX) is amended by inserting a new subclause, clause 34.12, which reads as follows:

**34.12 GST Liability Adjustment**

- (a) *This clause 34.12 applies if an adjustment event or a determination of the Commissioner of the Australian Taxation Office (ATO) occurs concerning a taxable supply made under this Contract.*
  - (b) *The consideration for the supply will be recalculated to reflect the adjustment event or the ATO Commissioner's determination, and the Buyer shall be liable to pay, and shall pay within the required time, any additional GST liability to the Seller.*
  - (c) *As the case requires:*
    - (i) *the Buyer must pay the resultant GST shortfall to the Seller; or*
    - (ii) *the Seller must refund the resultant GST overpayment to the Buyer.*
  - (d) *The Seller must give the Buyer an adjustment note:*
    - (i) *in exchange for payment of a GST shortfall; or*
    - (ii) *in conjunction with the payment of a GST refund.*
- (3) Standard Term clause 27 (NOTICES, COMMUNICATIONS, AUTHORITY DIRECTIONS, ETC) is amended by inserting a new subclause, clause 27.9, which reads as follows:

*27.9 A communication given using a messaging system in an ELNO System is not a notice for the purposes of this contract.*

**3. NO WARRANTIES BY SELLER**

The Buyer acknowledges that, in entering into this Contract, the Buyer has not relied on any statement, representation or warranty by or on behalf of the Seller whether express or implied as to:

- (1) the Property;
- (2) the neighbourhood in which the Property is situated;

**ANNEXURE A**  
**BLACKALL-TAMBO REGIONAL COUNCIL (SELLER) – ## A.C.N. ## (BUYER)**  
**[SPECIAL CONDITIONS TO CONTRACT OF SALE]**

- (3) the state and condition of the Property (including the existence or not of any contamination or asbestos);
  - (4) the suitability for any purpose of the Property or any improvements on the Property;
  - (5) compliance with the requirements of any statute or orders, requisitions, or requirements of any competent authority having jurisdiction over the Property;
  - (6) the future development or feasibility of any proposed development of the Property;
  - (7) any business conducted from the Property;
  - (8) any matter having or which might have an effect beneficial or otherwise on the Property; and
  - (9) the rights and privileges, if any, pertaining to the Property,
- other than the statements, representations and warranties expressly set out in this Contract.

**4. CONDITION AND USE OF PROPERTY**

- 4.1 The Buyer acknowledges that the Property, including all improvements and chattels on the Property, is purchased in an “as is” condition.
- 4.2 Without limiting special condition 4.1, the Buyer accepts the Property:
  - (1) in its condition and state of repair as at the Contract Date;
  - (2) subject to the requirements of all relevant competent authorities requiring performance of work or payment of money in connection with the Property whether that requirement arose before or after entry into this Contract;
  - (3) subject to all obligations under any infrastructure agreement or outstanding infrastructure charges attaching to the Property;
  - (4) subject to all restrictions on use of the Property whether under the relevant town planning scheme or otherwise;
  - (5) subject to the conditions of any consents or approvals issued by any competent authority in respect of the Property whether or not those conditions have been performed (or are due for performance);
  - (6) subject to the rights and interests reserved to the Crown in the deed of grant;
  - (7) subject to all statutory rights relating to water supply, sewerage, drainage, electricity, telephone and other services passing through or over the Land whether or not protected by registered easement; and
  - (8) subject to any unregistered statutory rights or interests that may adversely affect the Property including combine drains, sewerage, water or drainage pipes traversing the Property.
- 4.3 The Buyer must not make any requisition, objection, claim for compensation, delay settlement, or purport to rescind or terminate this Contract, in respect of that condition or any damage or depreciation occurring between the Contract Date and the Settlement Date.

**ANNEXURE A**  
**BLACKALL-TAMBO REGIONAL COUNCIL (SELLER) – ## A.C.N. ## (BUYER)**  
**[SPECIAL CONDITIONS TO CONTRACT OF SALE]**

**5. PARTICULAR MATTERS AFFECTING PROPERTY**

**5.1 Local Government Services**

The Buyer:

- (1) acknowledges that local government sewer mains and stormwater pipes and ancillary infrastructure (**Local Government Services**), which are not subject to registered easements, may traverse the Property; and
- (2) accepts the Land subject to the Local Government Services.

**6. CONDITIONS PRECEDENT – DAF CONSENT AND NOVATION**

6.1 Subject to special condition 6.3, this Contract is conditional on each of the conditions precedent in clause 7.1 of the Sale Agreement being met and the completion of the novation of the Sales Permit being effected in accordance with the Sale Agreement.

6.2 The Buyer acknowledges that a novation of the Sales Permit requires the DAF to be satisfied that the Buyer, as the proposed novatee:

- (1) is a fit and proper person; and
- (2) is capable of complying with the Sales Permit.

6.3 This Contract terminates if:

- (1) all of the conditions precedent in clause 7.1 of the Sale Agreement are not met and the completion of the novation of the Sales Permit is not effected in accordance with the Sale Agreement within a reasonable period (being a period that is not less than 15 weeks after Council's notice is given under Clause 5.1(4) of the Sale Agreement or such longer period as the parties to that Agreement agree in writing); and
- (2) either party to the Sale Agreement terminates the Sale Agreement pursuant to clause 5.1(5) of the Sale Agreement.

6.4 If this Contract terminates pursuant to special condition 6.3, neither party is liable to the other party for any costs, expenses and loss incurred or sustained by the other party in connection with this Contract or its termination.

6.5 In the event this Contract is terminated pursuant to special condition 6.3, the Deposit will be refunded to the Buyer and neither party will have any continuing right against the other.

**7. CONDITIONS PRECEDENT – FIRB ACT**

7.1 In this special condition 7:

**FIRB Act** means *the Foreign Acquisitions and Takeovers Act 1975 (Cwth)*;

**FIRB No Objection Date** means the date that is 56 days after the Contract Date; and

**Foreign Person** has the meaning given in the FIRB Act.

7.2 If at the Contract Date the Buyer is not a Foreign Person and the acquisition of the Property by the Buyer is not a notifiable action under the FIRB Act, by no later than

**ANNEXURE A**  
**BLACKALL-TAMBO REGIONAL COUNCIL (SELLER) – ## A.C.N. ## (BUYER)**  
**[SPECIAL CONDITIONS TO CONTRACT OF SALE]**

2 Business Days after the Contract Date, the Buyer must warrant in writing to the Seller that:

- (1) the Buyer is not a Foreign Person; and
- (2) the acquisition of the Property by the Buyer is not a notifiable action under the FIRB Act.

7.3 If at the Contract Date the Buyer is a Foreign Person and the acquisition of the Property by the Buyer is a notifiable action under the FIRB Act:

- (1) by no later than 2 Business Days after the Contract Date, the Buyer must notify the Seller that the Buyer is a Foreign Person and the acquisition of the Property by the Buyer is a notifiable action under the FIRB Act; and
- (2) this Contract is conditional upon the Buyer receiving a no objection notification under the FIRB Act for the Buyer's acquisition of the Property by the FIRB No Objection Date; and
- (3) the Buyer must give notice of the notifiable action under the FIRB Act by no later than 10 days after the Contract Date, and must use its best endeavours to obtain the no objection notification from the Treasurer for the Buyer's acquisition of the Property; and
- (4) the Buyer must notify in writing the Seller of the outcome of the notification process under the FIRB Act by no later than 2 Business Days of the Buyer being notified of the outcome under the FIRB Act to the Buyer's notifiable action; and
- (5) in the event that the Buyer does not receive a no objection notification under the FIRB Act by the FIRB No Objection Date, either party may terminate this Contract by written notice to that effect, in which case the Deposit will be refunded and neither party will have any continuing right against the other.

*[End Annexure A, Annexures B and C follow]*

**ANNEXURE B**  
**BLACKALL-TAMBO REGIONAL COUNCIL (SELLER) – ## A.C.N. ## (BUYER)**  
**[Other chattels included in sale]**  
**(see Item J of the Reference Schedule)**

Machinery:

1. Log in feed deck
2. Mitre twin saw
3. Saw benches
4. Round stacking table
5. Saw sharpening centre
6. Air compressor
7. Thicknessers
8. Sawdust extraction units.



**ANNEXURE C**  
**BLACKALL-TAMBO REGIONAL COUNCIL (SELLER) – ## A.C.N. ## (BUYER)**  
**[EXECUTION PROVISIONS]**

Executed by the Parties

Seller:

**Executed** on behalf of **BLACKALL-TAMBO REGIONAL COUNCIL**

- pursuant to *Local Government Act 2009* section 236;
- by a Council delegate, who certifies their authority to sign;
- on the                    day of                    2023;
- in the presence of a witness:

..... Delegate		..... Witness
..... Full name [ <i>Print</i> ]		..... Full name [ <i>Print</i> ]

Buyer:

**Executed** by **##TO BE INSERTED##**:

- under *Corporations Act* sections 127(1) and 127(3);
- by the signatures of a director and a second director/the secretary;
- on the                    day of                    , 2023:

..... Director		..... Director/Secretary
..... Full name [ <i>Print</i> ]		..... Full name [ <i>Print</i> ]

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# *Invitation for Tenders*

*[Sale of Council's Forestry Act Sales Permit (to Get Cypress Sawlogs) only or in conjunction with sale of Tambo Sawmill]*

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## **APPENDIX 4**

[Sale Agreement]

# Sale Agreement

[Sales Permit No. 201304400 to Get Cypress Sawlogs]

## PART 1 REFERENCE INFORMATION

### Item 1 Formation

Date: \_\_\_\_\_, 2023.

### Item 2 Parties

Name: Blackall-Tambo Regional Council  
ABN 42 062 968 922.

Description in Agreement: Council

Address for Notices:

*Delivery:* 6 Coronation Drive, Blackall QLD 4472

*Post:* PO Box 21 Blackall QLD 4472

*Facsimile:* (07) 4657 8855

*E-mail:* ceo@btrc.qld.gov.au

Name: ##  
##

Description in Agreement: Purchaser.

Address for Notices:

*Delivery:* ##

*Post:* ##

*Facsimile:* ##

*E-mail:* ##

### Item 3 Details

Price: \$ ## (plus GST)

Remaining Sale Quantity: 85,500 tonnes (bark on).

Current Period: 1 January 2023 to 31 December 2027

Period Sale Quantity 28,500 tonnes (bark on)

## PART 2 BACKGROUND

2.1 Council is the holder of a sales permit issued under the *Forestry Act* to get Cypress Sawlogs.

- 2.2** By clause 22 of Council's Sales Permit, Council may assign or novate an interest in its sales permit with the prior consent in writing from the DAF.
- 2.3** Council invited tenders for the sale of either:
- (1) both Council's Sales Permit and the Tambo Sawmill; or
  - (2) as a separable portion, only Council's Sales Permit.
- 2.4** The Purchaser submitted a tender to Council, and Council accepted the Purchaser's tender, to acquire Council's Sales Permit ##[[if applicable – insert “and the Tambo Sawmill”]]##, subject to a deed of novation (and, if applicable, variation) being executed by Council, the Purchaser and the DAF.
- 2.5** This Agreement records the terms of the sale of Council's Sales Permit pursuant to clause 22 of Council's Sales Permit. ##[[if applicable – insert “The acquisition arrangement for the Tambo Sawmill is recorded in a separate instrument.”]]##

### **PART 3 FORMAT AND INTERPRETATION**

#### **3.1 Configuration and Conventions**

- (1) The configuration and conventions detailed in this Part 3 have been adopted in drawing this Agreement.
- (2) The Agreement is separated into Parts, an Appendix, and the Attestations (in that order).
- (3) Part 1 is separated into Items.
- (4) Each subsequent Part is separated into Clauses.
- (5) Some Clauses are separated into numbered component and sub-component provisions.  
*Examples: Clause 3.2(1); Clause 3.2(2)(a).*
- (6) The following types of word begin with a capital letter:
  - (a) a word that is, or is part of, an expression defined in Clause 3.3 or another Clause;
  - (b) a word that begins a sentence;
  - (c) a proper noun.

#### **3.2 General Interpretation**

- (1) This Agreement is to be interpreted by reference to the provisions of this Part 3.
- (2) However, each such provision applies only to the extent that:
  - (a) a given context does not require otherwise; or
  - (b) a contrary intention is not apparent.

### 3.3 Definitions

Each of the following expressions in bold to the left bears the meaning shown opposite or contained in the cross-referenced provision shown opposite:

---

**Act**

- (1) A legislative enactment of the Queensland Parliament or the Commonwealth Parliament.
- (2) Subordinate legislation made under the enactment.
- (3) A direction or requirement made by a competent entity under the enactment or subordinate legislation.
- (4) A licence, authorization, consent, approval, or exemption granted under the enactment or subordinate legislation.
- (5) A planning instrument.
- (6) A local law.

---

**Address for Notices**

For each Party:

- (1) its address for delivery, post, facsimile, or e-mail shown in Part 1;
- (2) such other address for delivery, post, facsimile, or e-mail as it has notified to the Party giving it a notice as its address or facsimile number for notices under this Agreement; or
- (3) if it is not at either such address or facsimile number, its last principal place of business, or facsimile or e-mail address, known to the Party giving it a notice.

---

**Agreement**

This instrument and the agreement it evidences.

---

**Allocated Sale Areas**

In relation to Council's Current OHP, the following sale areas (identified by a unique sale unit identifier (**SUI**)) allocated by the DAF pursuant to the detailed harvesting plan for the Getting of Cypress Sawlogs:

- (1) SUI T001, bearing SUI common name of Kelpum, comprised of MUID C-AREM 157.
- (2) SUI T002, bearing SUI common name of Carwell, comprised of MUID C-AREM 154.

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**Appendix**

An appendix to this Agreement.

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**Business Day**

- (1) For giving notice or satisfying an obligation other than an obligation to make a payment: a day other than a Saturday, a Sunday, or a public holiday:
  - (a) in the locality to which the notice is to be sent; or
  - (b) in the locality in which the obligation is to be satisfied.
- (2) For making a payment: a day, other than a Saturday, a Sunday, or a public holiday, upon which banks are open for business in the locality of the recipient's Address for Notices.
- (3) For this definition, a bank is a trading bank licensed to conduct banking business, and conducting banking business, under an Act regulating banking

---

**Chief Executive Officer**

Council's chief executive officer, including:

- (1) a person acting in the position at a relevant time; and
- (2) a person to whom the chief executive officer's power has been delegated at a relevant time for a relevant purpose concerning this Agreement.<sup>1</sup>

---

**Claim**

An assertion of entitlement to a remedy arising from, or otherwise relating to, an act or an occurrence, in which respect the assertion is one made by any means, including:

- (1) a demand; or
- (2) the pursuit of a cause of action before a court, a tribunal, or any other body (whether judicial, quasi-judicial, or administrative).

---

**Clause**

A numbered clause, sub-clause, or paragraph in this Agreement other than in an Appendix.

---

**Completed Deed**

Any one of the documents that comprise, or, if the context requires or permits, any one specific document that comprises, the Completed Deeds.

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**Completed Deeds**

The collection of the following documents containing all relevant particulars in terms agreed by the respective parties to the relevant documents:

- (1) this Agreement; and
- (2) to give effect to this Agreement, a deed of novation (and, if applicable, variation) of Council's Sales Permit (and, if requested by the Purchaser and consented to by the DAF, includes the novation of Council's Current OHP), between Council, the Purchaser and the DAF, prepared by the DAF on terms acceptable to the DAF.

---

**Cost**

Includes loss, damage, liability, and expense.

---

**Council**

Blackall-Tambo Regional Council. Refer to Item 2.

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**Council's Current OHP**

OHP for SUIs T001-T002, 01.01.2016, V. 20.02.2016, ending on 30 June 2023, issued under Council's Sales Permit, signed by Council on 14/02/2017 and the DAF on 20/07/2017, amended by OHP Form 5 signed by Council on 10/1/2022 and the DAF on 04/11/2021 and amended by OHP Form 6 signed by Council on 09/01/2023 and the DAF on 12/12/2022.

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<sup>1</sup> Local Government Act 2009, section 259 empowers the chief executive officer of a local government, with certain exceptions, to delegate his/her responsibilities, generally or particularly, to another appropriately qualified employee of the local government.

**Council's Sales Permit**

Sales Permit No. 201304400 to Get Cypress Sawlogs as varied by the deed of variation between Council and the DAF executed on 19 August 2021 and on 23 August 2021, respectively, and the deed of novation and variation dated 1 August 2016 between the DAF, Council, and the Millmerran Timbers Pty Ltd A.C.N. 009 690 788 (the retiring party), and as may be in the future amended or replaced as a result of the State's review pursuant to clause 23 of the Sales Permit (refer to Clause 4.3).

**Current Period**

The period specified at Item 3.

**DAF**

The State of Queensland acting through the Department of Agriculture and Fisheries.

***Forestry Act***

*Forestry Act 1959* (Qld).

**Formation Date**

- (1) The date this Agreement is unconditionally delivered by the Parties and formed as a contract.
- (2) Absent evidence establishing a different date, that date is the date specified at Item 1.

**Get**

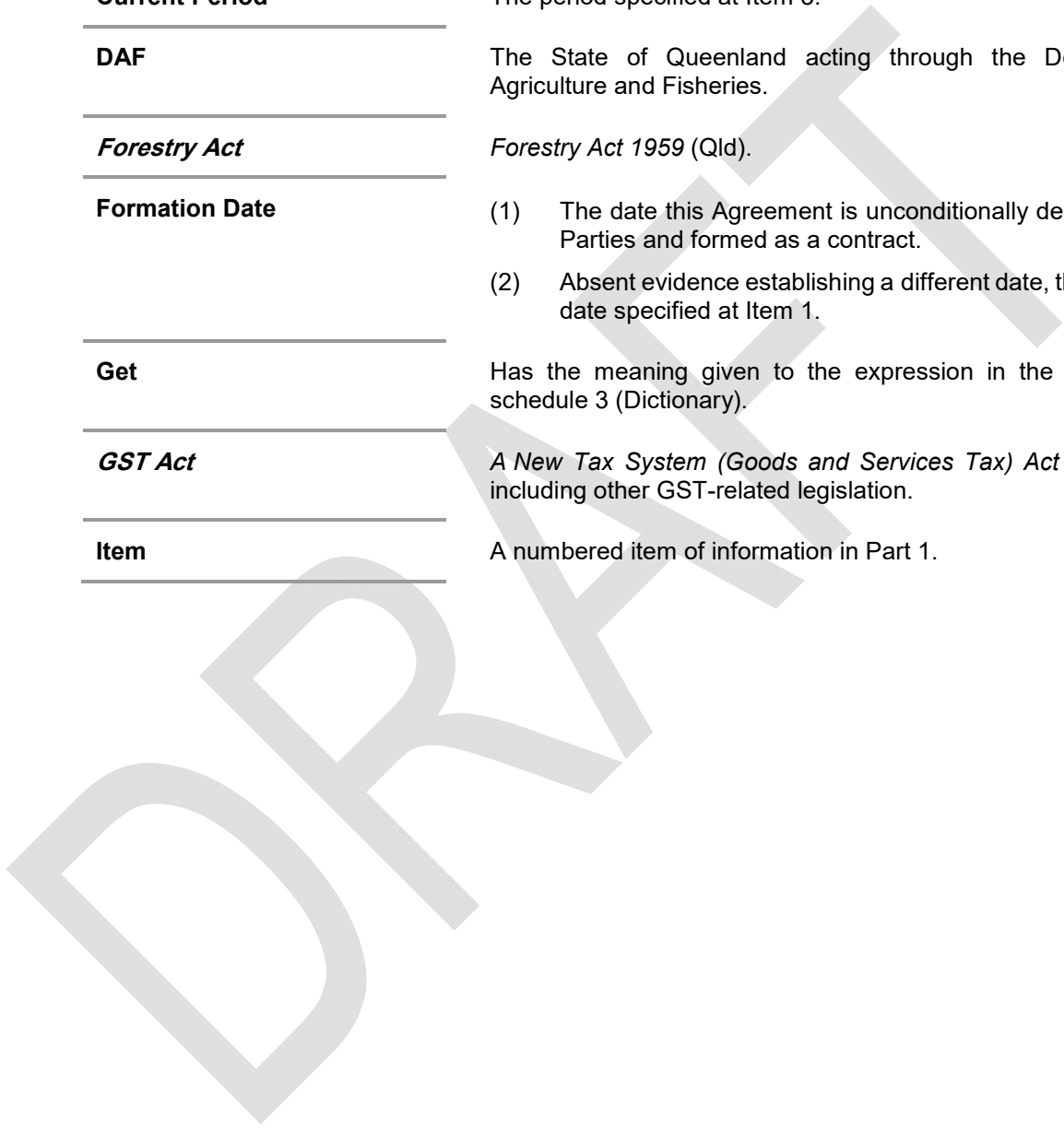
Has the meaning given to the expression in the *Forestry Act*, schedule 3 (Dictionary).

***GST Act***

*A New Tax System (Goods and Services Tax) Act 1999* (Cwlth), including other GST-related legislation.

**Item**

A numbered item of information in Part 1.



**Officer**

- (1) For the Purchaser, if a corporation: a director, a company secretary, or an attorney or other authorized person.
- (2) For the Purchaser, if a natural person:
  - (a) the person themselves;
  - (b) their attorney (for a relevant purpose); or
  - (c) their lawfully appointed guardian or administrator, if (s)he suffers impaired capacity (for example, a guardian or administrator appointed under the *Guardianship and Administration Act 2000*).
- (3) For Council, when concerning the signature of a document (for example, a notice or an agreement):
  - (a) its mayor;
  - (b) a councillor or employee duly authorized by the mayor to sign the document, or documents of a class encompassing the document; or
  - (c) a person to whom it has delegated the power to sign the document or a class of document (including, if the delegate is its Chief Executive Officer, the Chief Executive Officer's subdelegate).
- (4) For Council, when concerning the performance of an act other than the signature of a document:
  - (a) a person to whom it has delegated the power to perform the act;
  - (b) if it has delegated the power to its Chief Executive Officer: the Chief Executive Officer's lawful subdelegate for the purpose.
- (5) For either Party: its solicitor.

**Operational Harvesting Plan or OHP**

In relation to a *Forestry Act* sales permit, a document developed as an operational harvesting plan as provided for, and in accordance with, the *Forestry Act* sales permit.

**Part**

A numbered part or division of this Agreement, other than an Appendix, containing:

- (1) one or more Items; or
- (2) one or more Clauses.

**Party**

A party to this Agreement.

**Period Sale Quantity**

For each of the remaining Periods under Council's Sales Permit (including the Current Period), the quantity specified at Item 3 as the Period Sale Quantity.



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<b>Personnel</b>	For a Party, each of: (1) its Officers; (3) its employees; (4) its agents and other service providers, and each of their officers, employees, agents, and other service providers, and all other persons claiming under or through the Party; but excluding persons properly characterized as trespassers.
<b>Price</b>	The monetary amount specified at Item 3 (before the application of GST) the Purchaser must pay to Council for the Sale.
<b>Queensland Court</b>	Refer to Clause 12.12(1).
<b>Remaining Sale Quantity</b>	The quantity specified at Item 3 as the Sale Quantity of Cypress Sawlogs remaining to be Got under Council's Sales Permit during the 3 remaining 5 year Periods (including the Current Period).
<b>Sale</b>	Sale (by novation) of Council's Sales Permit (and, if requested by the Purchaser in its Tender, includes Council's Current OHP).
<b>Sale Date</b>	The Business Day immediately following the day: (1) the last party executes the last of the Completed Deeds; and (2) either (whichever is the earlier): (a) the last party executing notifies the other parties of the execution; or (b) a copy of each fully executed Completed Deed is provided to the other party/parties to the respective Completed Deed.
<b>Supply Zone</b>	The area delineated as the Supply Zone, and subdelineated into named former 'Allocation Zones', on the map contained in the Appendix.

### 3.4 GST-related Expressions

Each of the following expressions bears the meaning the *GST Act* ascribes to it:

- (1) adjustment event;
- (2) adjustment note;
- (3) Commissioner;
- (4) consideration;
- (5) creditable acquisition;
- (6) GST;
- (7) GST group;
- (8) input tax credit;
- (9) recipient;
- (10) recipient created tax invoice;
- (11) registered;
- (12) representative member;

- (13) supplier;
- (14) taxable supply;
- (15) tax invoice.

**3.5 Forestry Act and Council's Sales Permit Expressions**

An expression used in this Agreement which is defined in the *Forestry Act* or Council's Sales Permit bears the meaning the *Forestry Act* or Council's Sales Permit respectively ascribes to it.

**3.6 Cognate Expressions**

Derivatives of a defined expression bear meanings corresponding to and consistent with the definition.

**3.7 Non-defined Expressions**

A term not relevantly defined in the Agreement carries the meaning that the Oxford Dictionary of English ascribes to it.

**3.8 Parties**

- (1) Reference to a Party who is a natural person includes the person's personal representatives and permitted assigns (transferees).
- (2) Reference to a Party that is a legal entity other than a natural person includes the entity's successors and permitted assigns (transferees).

*Examples of a legal entity other than a natural person:*

- (a) a corporation; and
- (b) a body politic.

**3.9 Concurrent Responsibility**

For a Party composed of two or more persons, each item of agreement by the Party binds:

- (1) all of those persons collectively; and
- (2) each of them as an individual.<sup>2</sup>

**3.10 Durations and Block References**

- (1) A period beginning upon a specified day begins at the beginning of that day.
- (2) A period ending upon a specified day ends at the end of that day.
- (3) A day is a continuous 24-hour period ending at midnight.
- (4) Reference to the period between two specified dates, times, or periods includes each of those two dates, times, or periods.

*Example: A reference to the period "from 1 January to 31 December" or "between 1 January and 31 December" is a reference to the period comprising each of those two dates and all of the days between them.*

- (5) Reference to the items between two specified items (in this or another instrument) includes each of those two specified items.

*Example: A reference to "the items numbered 10 to 20" is a collective reference to the item numbered 10, the item numbered 20, and the numbered items between them.*

**3.11 Inclusive References**

- (1) "Include" and its derivatives are not expressions of limitation.

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<sup>2</sup> This collective and individual responsibility is otherwise known as joint and several responsibility.

- (2) For clarity, where a provision states that a given thing includes another specified thing or other specified things, the other specified thing or things must be treated as:
  - (a) merely exemplifying what the given thing may encompass;
  - (b) not as stating everything (or the only thing/s) that it does encompass.
- (3) Obversely (and also for clarity), where a provision states that a given thing is, or given things are, included in something else, that given thing or those given things must be treated as:
  - (a) merely exemplifying what may be encompassed by that something else;
  - (b) not as stating everything (or the only thing/s) encompassed by it.

*Example: A provision might state that the expression, "service provider", includes an employee and a contractor. That does not mean that a person who is neither an employee nor an independent contractor is not or cannot be a service provider in terms of the provision. An unpaid volunteer also might be a service provider.*

### **3.12 Examples**

- (1) Irrespective of whether it appears within the body of the provision or as a discrete statement that follows the provision, an example of a provision's operation or effect is part of the provision and is not to be disregarded when interpreting the Agreement.
- (2) The example is not exhaustive.
- (3) The example does not limit the meaning of the provision but it may extend that meaning.
- (4) The example and the provision are to be read:
  - (a) relative to one another; and
  - (b) in the context of all provisions of the Agreement.
- (5) If, so read, the example and the provision are inconsistent, the provision prevails.

### **3.13 References to Acts/Statutory Provisions**

- (1) Reference to an Act includes an Act that amends, consolidates, or replaces an Act.
- (2) Reference to a section or other provision of an Act includes a section or provision that amends, consolidates, or replaces the section or provision.
- (3) Reference to an Act not identified (by definition or otherwise) as an Act of the Commonwealth Parliament is to an Act of the Queensland Parliament.

### **3.14 Miscellaneous References**

- (1) Reference to the singular includes the plural, and vice-versa.
- (2) Reference to a gender includes each other gender.
- (3) Reference to a person encompasses a natural person, a corporation, any other type of legal entity (including a body politic), a firm, and a voluntary association.
- (4) Reference to an entity that has ceased to exist, or has reconstituted, amalgamated, reconstructed, or merged, is to be treated as a reference to the entity:
  - (a) established or constituted in its stead; or
  - (b) succeeding, as nearly as may be, to its power or function.
- (5) Reference to an office or a position includes an office or a position:
  - (a) established or constituted in lieu of that office or position; or
  - (b) as nearly as may be, succeeding to its power or function.
- (6) Reference to an agreement or other instrument is to that agreement or instrument as amended, supplemented, replaced, or novated.

- (7) Reference to termination of this Agreement is a reference to termination by any means (for example, by expiry or merger, by frustration, or by termination for breach).
- (8) Reference to money is a reference to Australian dollars and cents.
- (9) Reference to a time of day is a reference to Australian Eastern Standard Time.
- (10) Reference to writing is a reference to reproduction of words, figures, symbols, and shapes in visible form, in English.

### **3.15 Headings and Notes**

The table of contents, the headings, and any notes (including footnotes and endnotes):

- (1) appear for convenience only; and
- (2) are not operative provisions of the Agreement.

### **3.16 Actions**

- (1) Reference to person's act encompasses:
  - (a) an act of commission; and
  - (b) an act of omission.
- (2) Reference (whether direct or indirect) to a person's act includes the act of another person, if the law deems the other person's act also to be the first-mentioned person's act because of the legal relationship between the two.

*Example: The act of an employee, in the performance of that person's duties as employee, is imputed to their employer; that is, it is deemed by law also to be the act of the employer.*

- (3) If a provision states that a person must not do something, the obligation requires the person also to prevent others over whom he has control or dominion from doing that thing.
- (4) An obligation not to refuse its consent unreasonably does not require a Party, when deciding a request for that consent:
  - (a) to consider the interests of the Party seeking the consent or those of any other person; or
  - (b) to act against its own interests.

### **3.17 Contra Proferentem Interpretation**

A provision of the Agreement is not to be interpreted against the interest of a Party merely because the Agreement or provision was drawn by or on behalf of that Party.

### **3.18 Severance**

A provision is to be treated as omitted from the Agreement if:

- (1) the provision is void, unenforceable, or incomprehensible; or
- (2) retaining the provision would render the Agreement or part of the Agreement void, unenforceable, or incomprehensible.

### **3.19 Determining Intent of Agreement**

The intent of the Agreement is to be determined by reference at least to:

- (1) the subject of the Agreement;
- (2) the background as recited in Part 2;
- (3) the express provisions of the Agreement as originally made (including those omitted pursuant to Clause 3.18);
- (4) the nature of the provision/s omitted pursuant to Clause 3.18; and
- (5) the practicality of effectuating the Agreement net of the omitted provisions.

## PART 4 PRELIMINARY ASSURANCES

### 4.1 Parties' Assurances

- (1) Each Party assures the other Party that:
  - (a) it possesses the power to make and deliver this Agreement;
  - (b) it possesses the power to perform all of its obligations under the Agreement;
  - (c) all necessary authorizing action has been taken to enable it to make and deliver the Agreement and to perform its obligations (*for example, the passage of any necessary resolutions*);
  - (d) making and delivering the Agreement does not contravene, and performing its agreed obligations will not contravene, any law by which it is bound.
- (2) Each Party acknowledges that the other Party makes and delivers this Agreement in reliance upon those assurances.

### 4.2 Representatives' Assurances

Each person signing the Agreement as an Officer or other representative of a Party assures the other Party that they possess unrestricted authority to sign in that capacity.

### 4.3 The State's review of the Terms of Council's Sales Permit

The Purchaser acknowledges and accepts that:

- (1) The DAF on behalf of the State is undertaking a review of the terms of Council's Sales Permit (excluding those relating to Sale Quantity, Compensation and the Expiry Date), pursuant to clause 23 of Council's Sales Permit, which review the DAF anticipates will be undertaken throughout 2023, and new permit terms distributed to the permit holder by 30 November 2023.
- (2) Pursuant to clause 23 of Council's Sales Permit, Council as the existing permit holder agrees:
  - (a) to participate and work constructively with the State in undertaking the review; and
  - (b) to consider signing a deed of variation to give effect to any agreed changes to Council's Sales Permit as a result of the review.
- (3) To the extent permitted by the DAF, Council will endeavour to inform, and consult with, the Purchaser of the progress of, and, if applicable, the outcomes from, the DAF's review of Council's Sales Permit during the clause 23 review process.
- (4) The Purchaser agrees, to the extent the DAF permits:
  - (a) to participate and work constructively with the State (acting through the DAF) in undertaking the review; and
  - (b) to consider signing a deed of variation to give effect to any agreed changes to Council's Sales Permit as a result of the review.

## PART 5 SALE

### 5.1 Payment of Price

- (1) By no later than 10 Business Days after the Formation Date, Council will issue a valid tax invoice for payment of the Price that the Purchaser must pay to Council for the Sale.
- (2) By no later than 10 Business Days after receiving the valid tax invoice from Council, the Purchaser must pay the Price to Council by electronic funds transfer into Council's bank account specified below:

Bank: Bank of Qld

BSB: 124 962

Account Number: ##

Account name: Blackall-Tambo Regional Council

Reference: Sales Permit

- (3) The Purchaser must give prompt notice to Council of the effective electronic funds transfer of the Price into Council's bank account specified in Clause 5.1(2).
- (4) Upon receipt of the Price into Council's bank account, Council must forthwith notify the Purchaser of its receipt.
- (5) If:
  - (a) completion of the Sale is not effected under Clause 5.2; and
  - (b) all the conditions precedent in Clause 7.1 are not met, within a reasonable period (being a period that is not less than 15 weeks after Council's notice is given under Clause 5.1(4) or such longer period as the Parties agree in writing),either Party is entitled to give to the other Party, and to the DAF, notice of termination of this Agreement.
- (6) Upon termination of this Agreement under Clause 5.1(5):
  - (a) any Party who has executed a Completed Deed to which the DAF is a party, may give to the DAF notice to terminate the Completed Deed and request the DAF to give written notice acknowledging the effectiveness of the termination of the Completed Deed executed by the Party; and
  - (b) upon the Party receiving the notice from the DAF under Clause 5.1(6)(a) and providing a copy of the DAF notice to the other Party, Council will repay the Price to the Purchaser; and
  - (c) neither Party will have any Claim against the other Party in connection with or relating to the Agreement terminating pursuant to Clause 5.1(5).

## 5.2 Effecting Completion of the Sale

- (1) In exchange for the Purchaser paying the Price to Council, and subject to the ###[insert as applicable – "condition precedent in Clause 7.1(1)" OR "conditions precedent in Clause 7.1(1) and (3)"]###[being met, to effect completion of the Sale, Council will use reasonable endeavours to have the DAF prepare for execution by the respective parties, the Completed Deed that is a deed of novation (and, if applicable, variation) of Council's Sales Permit, and, if requested by the Purchaser in its Tender and consented to by the DAF, Council's Current OHP.
- (2) Each of Council and the Purchaser must:
  - (a) use reasonable endeavours to promptly negotiate and agree with the DAF, and execute in triplicate, the Completed Deed that is the deed of novation (and, if applicable, variation) of Council's Sales Permit and, if requested by the Purchaser in its Tender and consented to by the DAF, Council's Current OHP, with the order of execution being, firstly the Purchaser, secondly Council, and lastly the DAF; and
  - (b) must promptly deliver the Completed Deed in triplicate once executed to the next party executing the Completed Deed to the relevant party's address for notices specified in the Completed Deed; and
  - (c) must promptly notify each of the other parties to the Completed Deed when it has executed and delivered the Completed Deed (in triplicate) to the next executing party.
- (3) Further, to effect completion of the Sale, Council will use all reasonable endeavours to arrange for the DAF:
  - (a) to finalise and execute the relevant Completed Deed to which the DAF is a party; and
  - (b) to notify Council and the Purchaser that it has done so; and
  - (c) to deliver a fully executed copy of the Completed Deed to each of the Parties.
- (4) The Sale is effective on the Sale Date.

- (5) For clarity, upon the Sale being effected, the Purchaser is responsible and liable to the DAF for complying with all obligations for the Getting of Cypress Sawlogs in accordance with the novated Council's Sales Permit, including, in particular (but without limitation):
  - (a) (if applicable) Getting the Cypress Sawlogs from the Allocated Sale Areas under, and in accordance with, the novated Council's Current OHP;
  - (b) paying to the State of Queensland the Value payable for the Getting of Cypress Sawlogs; and
  - (c) (if applicable) remediating and rehabilitating the Allocated Sale Areas after Getting the Cypress Sawlogs before the end of the Current Period, to the satisfaction of the DAF.
- (6) Neither the Purchaser nor Council may assign or novate any of its entitlements or obligations under this Agreement.

##[[Insert sub-clauses (7) and(8) if successful Tenderer is only acquiring Council's Sales Permit, and thus hauling and milling to another sawmill:

- (7) Subject to Clause 5.2(8), the Purchaser will use reasonable endeavours to promptly negotiate and agree with the DAF a variation to the novated Council's Sales Permit for inclusion in the Completed Deed to which the DAF is a party, that the DAF permits or accepts the Purchaser hauling and milling the Cypress Sawlogs Got under the novated Council's Sales Permit to a sawmill at a location different from the Tambo Sawmill.
- (8) The Purchaser acknowledges and accepts (including acknowledging and accepting in the Completed Deed to which the DAF is a party) that hauling and milling Got Cypress Sawlogs to a sawmill at a different location from the Tambo Sawmill does not (and will not) alter the process that the DAF will continue to nominate and apply the location of the Tambo Sawmill as the location of the applicable sawmill for Cypress Sawlog Value (royalties/price) determination purposes for the Getting of Cypress Sawlogs under the novated Council's Sales Permit, and notwithstanding that the DAF may allocate to the Purchaser sale areas from anywhere within the Supply Zone. ]##

### **5.3 Remaining Sale Quantity and Period Sale Quantity**

- (1) Clause 3.3(e) of Council's Sales Permit relevantly states that if the permit holder Gets in a Period less Cypress Sawlogs than the Period Sale Quantity, the permit holder will forfeit the right to the Undercut Quantity and the State will correspondingly reduce the permit holder's Sale Quantity by the Undercut Quantity.
- (2) The Purchaser acknowledges that:
  - (a) The Sale Quantity of Cypress Sawlogs remaining to be Got under Council's Sales Permit is the Remaining Sale Quantity.
  - (b) The consequence of clause 3.3(e) of Council's Sales Permit is that it will be important for the Purchaser to manage the Getting of the Period Sale Quantity of Cypress Sawlogs during each Period (including the Current Period), so that the State does not reduce the Sale Quantity.
- (3) Council gives no warranty or guarantee, and makes no representation, about:
  - (a) the achievability or otherwise of Getting the Period Sale Quantity during each Period (including the Current Period); or
  - (b) whether the DAF would be willing or unwilling to forego or waive or otherwise deal with the exercise of the DAF's entitlements under clause 3.3 of Council's Sales Permit.

## PART 6 INDEMNITY AND RELEASE

### 6.1 Purchaser's Indemnity

On and from the Sale Date, the Purchaser indemnifies and holds harmless Council against whatever Cost Council suffers, sustains, or incurs, in connection with any of the following:

- (1) any failure of, or breach by, the Purchaser or any of the Purchaser's Personnel to Get Cypress Sawlogs in accordance with the novated Council's Sales Permit, and, if applicable, the novated Council's Current OHP;
- (2) any failure of, or breach by, the Purchaser or any of the Purchaser's Personnel to comply with the Purchaser's obligations under this Agreement;
- (3) any Claim made against Council due to or arising out of the Purchaser Getting the Cypress Sawlogs under the novated Council's Sales Permit, and, if applicable, the novated Council's Current OHP;
- (4) any Claim made against Council due to or arising out of the Purchaser (including any of the Purchaser's Personnel) breaching the terms of this Agreement.

### 6.2 Purchaser's Release and Discharge

On and from the Formation Date, the Purchaser releases and discharges Council against whatever Cost the Purchaser suffers, sustains, or incurs, in connection with any failure of the Purchaser or the Purchaser's Personnel to Get a Period Sale Quantity of Cypress Sawlogs before the end of a Period (including the Current Period).

## PART 7 COMPLETED DEEDS AND FOREIGN PERSON ACQUISITION

### 7.1 Conditions Precedent

The following are each a condition precedent to effecting completion of the Sale:

- (1) the DAF consents to Council novating Council's Sales Permit to the Purchaser, on such terms and subject to such conditions as the DAF may impose on the parties to the novation; and
- (2) the Completed Deed that is the deed of novation (and, if applicable, variation) of Council's Sales Permit (and, if requested by the Purchaser in its Tender and consented to by the DAF, Council's Current OHP) between Council, the Purchaser and the DAF, prepared by the DAF on terms satisfactory to the DAF, is fully and properly executed by, and delivered to, the respective parties to the subject Completed Deed.###[ insert if Tambo Sawmill is being acquired by the Purchaser – “; and
- (3) if the Purchaser is a foreign person under the *Foreign Acquisitions and Takeovers Act 1975* (Cwth) (*FIRB Act*) and the acquisition of the Tambo Sawmill by the Purchaser is a notifiable action under the FIRB Act, the Purchaser receives a no objection notification under the FIRB Act by the period specified in the contractual arrangement for the Tambo Sawmill entered into between Council the Purchaser.”]###

### 7.2 The DAF's Consent

The DAF's consent to the Sale by Council to the Purchaser under this Agreement, pursuant to clause 22 of Council's Sales Permit, is evidenced by the DAF entering the subject Completed Deed to which it is a party.

## PART 8 TRUSTEE COVENANTS

### 8.1 Application of Part

This Part 8 applies if the Purchaser makes the Agreement as a trustee.

### 8.2 Personal Liability

The Purchaser acknowledges that it is personally liable upon its covenants under the Agreement.



### 8.3 Trustee Warranties

The Purchaser declares that:

- (1) it is the sole trustee of the trust;
- (2) it has fully disclosed to Council the terms of the trust;
- (3) it possesses unqualified power under the trust to make and deliver this Agreement;
- (4) it possesses unqualified power under the trust to assume all of the obligations under this Agreement;
- (5) it possesses unqualified entitlement to exoneration and recoupment from the trust assets for the liabilities it incurs in the exercise of its trustee powers;
- (6) it makes and delivers the Agreement in the proper exercise of its trustee powers;
- (7) it is not in breach of trust when delivering the Agreement, except as disclosed in writing to Council;
- (8) it will not breach the trust.

### 8.4 Prohibited Dealings

- (1) The Purchaser must not engage in a prohibited dealing without Council consent.
- (2) Council must not withhold consent unreasonably.
- (3) The Purchaser engages in a prohibited dealing if:
  - (a) it amends or revokes the trust, or permits amendment or revocation;
  - (b) it retires, or suffers removal, as trustee of the trust;
  - (c) it appoints a new or additional trustee of the trust, or permits the appointment;
  - (d) it accelerates vesting or termination of the trust, or permits accelerated vesting or termination to occur;
  - (e) it encumbers a trust asset; or
  - (f) it does anything that will or might result in the diminution of its entitlement to indemnity from the trust assets or the beneficiaries;
  - (g) it commits a breach of trust.

### 8.5 Remedies upon Trustee Default

- (1) If it incurs a liability to Council for default under this Agreement, the Purchaser must exercise, upon demand by Council, all exoneration and recoupment entitlements it possesses against the trust assets and the beneficiaries, to discharge the liability.
- (2) The Purchaser grants Council a security interest over all of those exoneration and recoupment entitlements, to assure the payment of all amounts that become owing to Council under the Agreement.
- (3) The Purchaser irrevocably appoints Council's Chief Executive Officer its attorney to do in its name, on its behalf, anything Council's Chief Executive Officer considers necessary to exercise those exoneration and recoupment entitlements pursuant to the security interest.

## PART 9 GOODS & SERVICES TAX

### 9.1 GST Grouping

References to a supplier, a recipient, a payer, or a payee who is a member of a GST group<sup>3</sup> include the representative member for that person's GST group.

<sup>3</sup> Companies within a 90%-owned group, and in some cases other entities (such as non-profit bodies), can be approved by the Commissioner as a GST group. One member of the group then deals with all the GST liabilities and entitlements of the group (excepting GST on most taxable importations), and (in most cases) intra-group transactions are excluded from GST.

## 9.2 Character of Payments

- (1) Non-monetary consideration for a taxable supply under this Agreement is GST-inclusive.
- (2) However, unless the Agreement states otherwise, monetary consideration for a taxable supply under the Agreement is GST-exclusive.

## 9.3 Responsibility for Payment

The recipient must:

- (1) bear the GST upon a taxable supply under the Agreement;
- (2) pay the tax to the supplier with the consideration for the supply.

## 9.4 Input Credits Adjustment (Reimbursements)

- (1) If the Agreement requires a recipient to reimburse a supplier the cost of a creditable acquisition, the cost is to be net of the input tax credit to which the supplier is entitled for the cost.
- (2) If the Agreement requires the reimbursement of a percentage of the cost of a creditable acquisition, the percentage is to be net of an equivalent percentage of the input tax credit to which the supplier is entitled for the cost.
- (3) If the reimbursement of all or part of the cost of a creditable acquisition constitutes consideration for a taxable supply, the recipient must pay the supplier, in conjunction with the reimbursement payment, the GST referable to the supply.
- (4) If the Agreement obliges a Party to indemnify the other Party against a Cost the other incurs or sustains, the Cost will be net of all input tax credits the payee is entitled to claim concerning that Cost.
- (5) For clarity, if the net Cost to be indemnified constitutes the consideration for a taxable supply, the payer must bear the GST for the taxable supply.

## 9.5 Adjustments

- (1) This Clause 9.5 applies if an adjustment event occurs concerning a taxable supply made under this Agreement.
- (2) The consideration for the supply will be recalculated to reflect the adjustment event.
- (3) As the case requires:
  - (a) the recipient must pay the resultant GST shortfall to the supplier; or
  - (b) the supplier must refund the resultant GST overpayment to the recipient.

## 9.6 Tax Invoices and Adjustment Notes

- (1) The supplier need not give the recipient a tax invoice or adjustment note for a taxable supply under the Agreement if:
  - (a) the Commissioner has issued a written determination or ruling permitting the recipient to issue a recipient created tax invoice for the supply; and
  - (b) the recipient gives the supplier a recipient created tax invoice or an adjustment note (as the case requires) for that supply.
- (2) Otherwise, however, the supplier must give the recipient, when it makes the taxable supply or in exchange for the consideration, a tax invoice for the supply.
- (3) The supplier also must give the recipient an adjustment note:
  - (a) in exchange for payment of a GST shortfall; or
  - (b) in conjunction with the payment of a GST refund.
- (4) If the consideration for a taxable supply is non-monetary, the tax invoice for the supply, and a relevant adjustment note, must state as the consideration the GST-inclusive market value of the supply.

- (5) A Party that has been issuing recipient created tax invoices for taxable supplies under the Agreement must notify the other Party promptly if it loses its entitlement to issue such invoices.

#### **9.7 Registration**

- (1) Each Party declares that it is registered for GST.
- (2) A Party must notify the other promptly if it ceases to be registered.

### **PART 10 DISPUTE RESOLUTION**

#### **10.1 Restriction upon Court Proceedings**

Unless the requirements of this Part 10 have been met, no Party may institute a court proceeding (other than a proceeding for urgent interlocutory relief) to resolve a Dispute.

#### **10.2 Exclusion of Debt Disputes**

This Part 10 does not apply to Disputes over debts.

#### **10.3 Notice of Dispute**

- (1) If a dispute arises between the Parties in connection with the Agreement (*Dispute*), either Party may deliver notice of the Dispute to the other.
- (2) The notice (*Dispute Notice*) must identify and adequately detail the Dispute.
- (3) Subject to this Part 10, the Parties must continue to perform their obligations under the Agreement irrespective of the Dispute.

#### **10.4 Response Notice to other Party**

Not later 5 Business Days after the day it receives a Dispute Notice, the Party served may give its response notice (if any) to the other Party.

#### **10.5 Negotiation**

- (1) Within 10 Business Days after a Dispute Notice is given, the Parties' representatives (at least one per Party) must confer, in person or by telephone, and endeavour to resolve a Dispute by negotiation.
- (2) Any agreement reached between the representatives must be reduced to writing and signed by or on behalf of each Party, and the signed agreement will bind the Parties contractually.
- (3) If the Parties cannot agree the time and place for a conference, or the time for a teleconference, the following provisions apply.
- (4) A meeting room at Council's Blackall administration office (Council chambers) building will be the conference venue.
- (5) The conference is to begin at 10:00am on the earliest Business Day upon which Council can accommodate it following expiry of the 10 Business Day period.
- (6) The Party that gives the Dispute Notice (the *Initiating Party*) must make the arrangements necessary to enable the conference to proceed, and the other Party must give the Initiating Party whatever assistance the latter reasonably requires to facilitate that outcome.
- (7) For clarity, the conference under this Clause 10.5 is not to be a mediated negotiation.
- (8) If the Parties resolve the Dispute at the conference (or afterwards), the Parties must reduce the agreement to writing and sign it, and the signed agreement will constitute a supplementary contract between the Parties.

## 10.6 Mediation

- (1) If the negotiation conducted under Clause 10.5 fails to resolve the Dispute, the Parties may refer the Dispute to mediation, by one Party (the *Initiating Party*) giving to the other Party a notice (*Mediation Notice*) of intention to refer the Dispute for mediation.
- (2) A Party (other than the Initiating Party) is not obliged to participate in a mediated conference. However, by no later than 5 Business Days after it receives a Mediation Notice, a recipient must inform the Initiating Party of whether the recipient intends to participate in the mediated conference. If it fails to give the notification within the 5 Business Days, the recipient will be deemed to have declined to participate.
- (3) The Parties participating in a mediated conference (the *participants*) must:
  - (a) confer promptly and endeavour to agree:
    - (i) a mediator who is a Queensland Law Society Incorporated-approved mediator, who is independent of the Parties, and who possesses the qualifications and experience necessary and appropriate to facilitate efficient and effective mediation of the Dispute; and
    - (ii) the mediation venue;
  - (b) engage the agreed mediator by instrument signed by each of them.
- (4) If the participants fail to agree the mediator within 5 Business Days after they agree to the mediated conference, the mediator will be a person nominated by the president of the Queensland Law Society Incorporated.
- (5) The mediation shall be conducted:
  - (a) unless the participants and the mediator agree otherwise, at a meeting room at Council's Blackall administration office (Council chambers) building;
  - (b) in accordance with the Australian Disputes Centre Guidelines and subject to the laws of the Queensland.
- (6) The Parties are entitled to be represented by a qualified legal practitioner at any mediation.

## 10.7 Costs of Resolving Dispute

- (1) Subject to Clause 10.7(2), each Party must bear its own costs in connection with:
  - (a) convening and participating in the non-mediated negotiation conference, including the cost of preparing and serving a Dispute Notice and, if applicable, a response notice;
  - (b) convening and participating in a mediated negotiation conference, including the cost of preparing and serving the Mediation Notice and the cost of agreeing and engaging the mediator.
- (2) The Parties must share equally:
  - (a) the fee payable for use of the venue at which a negotiation conference (non-mediated or mediated) is conducted; and
  - (b) the mediator's fee.

## PART 11 NOTICES

### 11.1 Formal Requirements

- (1) This Part 11 governs notices under the Agreement save to the extent another provision of the Agreement expressly provides otherwise.
- (2) A notice must be in writing, and is ineffective unless given in writing.

- (3) The Party giving the notice, or one of its Officers, must sign the notice.
- (4) For a Party composed of more than one person:
  - (a) a notice by that Party need not be signed by all of those persons if it expressly states that the signatory is, or signatories are, authorized by all of those persons to sign the notice; and
  - (b) the recipient of the notice need not enquire into the validity of the authorization.

## **11.2 Service of Notices**

A Party must give a notice:

- (1) by delivering it to the intended recipient's Address for Notices; or
- (2) by posting it to the intended recipient at its Address for Notices; or
- (3) by transmitting it via facsimile or electronic mail (*e-mail*) to the intended recipient at its Address for Notices.

## **11.3 Receipt of Notices**

- (1) A notice delivered or posted is deemed received:
  - (a) if delivered at or before 4:30pm: at the moment of delivery;
  - (b) if delivered after 4:30pm: at 8:30am on the Business Day following the day of delivery;
  - (c) if posted to an address in Australia: 5 Business Days after posting;
  - (d) if posted to an address outside Australia: 8 Business Days after posting.
- (2) A notice sent by facsimile transmission is deemed received at the time of receipt specified in a confirmation report, if the report discloses that the transmission was received at or before 4:30pm.
- (3) If the confirmation report discloses receipt of the transmission after 4:30pm, the notice is deemed received at 8:30am on the Business Day following the date of receipt disclosed in the report.
- (4) A confirmation report is, for a facsimile transmission, a transmission confirmation report produced by the sender's facsimile machine:
  - (a) containing the identification code of the intended recipient's facsimile machine; and
  - (b) indicating that the transmission was received without error.
- (5) A notice transmitted by e mail is deemed received:
  - (a) at the time specified in the delivery receipt generated by the recipient's e mail server; or
  - (b) if no delivery receipt is generated but the sender has not received notification of non-delivery from the recipient's e mail server, 15 minutes after the time of transmission recorded by the sender's e mail server.
- (6) If the e-mail transmission is received after 4:30pm, the notice will be deemed received at 8:30am on the Business Day following the date of receipt.
- (7) A notice received upon a day that is not a Business Day is deemed received at 8:30am on the Business Day following the day of receipt.

## **PART 12 MISCELLANEOUS**

### **12.1 Communications between Parties**

- (1) Neither an approval nor a consent or permission given under the Agreement binds the Party giving it unless that Party gives it in writing.
- (2) An appointment or direction made or given under the Agreement is ineffective unless made or given in writing.
- (3) A statement the Agreement obliges a Party to give is ineffective unless given in writing.

- (4) A request made under the Agreement is deemed neither made nor received if not made in writing.

## 12.2 Character of Instrument

- (1) This instrument takes effect as a deed<sup>4</sup> when all of the following requirements have been satisfied:
- (a) each Party has executed the instrument; and
  - (b) each Party has notified the other that it has executed the instrument.
- (2) For clarity, a Party is taken to have notified its execution of the instrument to the other Party if its legal representative has given the notification, whether:
- (a) directly to the other party; or
  - (b) to the other party's legal representative.
- (3) Further, the instrument takes effect as a deed:
- (a) whether or not it is contractual;
  - (b) whether or not it contains provisions not commonly encapsulated in deeds or that do not require encapsulation in a deed to be effective;
  - (c) irrespective of its provisions (or any of them) describing it as an agreement; and
  - (d) irrespective of its provisions (or any of them) being termed clauses or paragraphs.

## 12.3 Effectuation of Purpose

- (1) Each Party must act honestly in the discharge of its obligations and the exercise of its entitlements under this Agreement.
- (2) A Party does not act honestly if:
- (a) it knowingly acts to frustrate the Agreement or to prevent performance of an obligation or of obligations by the other Party; for example, by wilfully withholding from that Party information it knows that Party needs to enable it to make a properly-informed decision upon action it may or must take pursuant to the Agreement;
  - (b) it knowingly acts to lull the other Party into a false belief concerning the Agreement;
  - (c) it gives the other Party, or arranges for that Party to be given, false information upon which it knows, or ought reasonably to know, the Party will rely.
- (3) For clarity, however, unless a given provision of the Agreement expressly states otherwise:
- (a) the obligation to act honestly is not fiduciary;
  - (b) in particular, that obligation does not oblige a Party to subordinate its interests to those of the other in exercising an entitlement (including a discretion); for example, a Party does not become disentitled to exercise a discretion or power the Agreement has given it merely because the exercise will or might have an adverse consequence for the other Party; and
  - (c) the honest exercise of an entitlement need not be objectively defensible as being reasonable.

## 12.4 Endeavours Obligations

- (1) An endeavours obligation does not require a Party to act against its own interests.
- (2) An endeavours obligation is an obligation that requires a Party, whether expressly or in effect:
- (a) to make a reasonable effort to achieve a given outcome; or
  - (b) to use reasonable endeavours to achieve a given outcome; or

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<sup>4</sup> *Relevantly, an agreement made by deed is a special form of written agreement, which might or might not constitute a contract. An agreement made by deed binds the parties irrespective of whether consideration passes between them, i.e. irrespective of whether a party does or promises something in return for what the other, or another, party does or promises. A deed that provides for the passage of consideration between the parties functions also as a contract.*

- (c) to use its best endeavours to achieve a given outcome.

**12.5 Cumulative Entitlements**

- (1) The remedies and other entitlements the Agreement gives a Party are cumulative, not alternative.
- (2) Moreover, no remedy or entitlement is exclusive of other remedies or entitlements that the Party possesses (whether under an Act or at general law).

**12.6 Withholding Tax**

- (1) If an Act obliges a Party (the *payer*) to withhold from a payment to another Party (the *payee*) under this Agreement a sum representing tax or prospective tax, the payer may withhold the sum and pay it to the taxation authority.
- (2) Withholding and paying the sum as the Act requires will discharge the payer's obligation to pay the sum to the payee.
- (3) The payer undertakes to give the payee all reasonable assistance:
  - (a) to recover the sum from the taxation authority; or
  - (b) to ensure the taxation authority acknowledges receipt of the sum in discharge or reduction of the payee's taxation liability.

**12.7 Waiver/Abandonment of Entitlement**

- (1) The mere fact that a Party does not exercise an entitlement under or concerning this Agreement when the entitlement accrues:
  - (a) does not deprive it of the entitlement; and
  - (b) does not deprive it of similar entitlements that accrue at other times.
- (2) The mere fact that a Party grants an indulgence under or concerning the Agreement on a given occasion does not entitle the recipient to the same or a similar indulgence on another occasion.
- (3) The mere fact that a Party grants an indulgence under or concerning the Agreement in a given circumstance does not entitle the recipient to the same or a similar indulgence in a similar circumstance.
- (4) The waiver of an entitlement under the Agreement is not binding unless effected in writing.

**12.8 Variation of Agreement**

A purported variation of this Agreement is ineffective unless encapsulated in a deed.

**12.9 Survival of Provisions**

A provision of the Agreement capable of continued application after the Agreement has terminated will remain enforceable despite termination.

**12.10 Legal Costs**

- (1) Each Party bears its own costs in the negotiation, preparation, execution and stamping of this Agreement and the other Completed Deeds.
- (2) The Purchaser must have the Agreement stamped.

**12.11 Governing Law**

- (1) Queensland law governs the Agreement.
- (2) For clarity, Queensland law includes Commonwealth Acts to the extent that they bind Queensland.

**12.12 Jurisdiction (Adjudication of Disputes)**

- (1) For this Clause 12.12, a *Queensland Court* is:
  - (a) a court or tribunal, constituted under Queensland legislation and empowered to adjudicate a dispute arising under this Agreement; and
  - (b) the High Court of Australia (as the final forum of appeal from the decision of any such court or tribunal).
- (2) The Parties submit exclusively to the jurisdiction of the Queensland Courts for the adjudication and resolution of disputes under the Agreement.
- (3) Each Party waives all entitlement to object to a Party bringing action upon the Agreement before a Queensland Court, including entitlement to claim that:
  - (a) the Queensland Court is an inconvenient forum; or
  - (b) no Queensland Court has jurisdiction.
- (4) Each Party undertakes to refrain from bringing action upon the Agreement in a forum other than a Queensland Court.

---

*[Appendices and Attestations follow]*

---

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APPENDIX

[Supply Zone and Allocation Zones]



ATTESTATIONS

Purchaser

Executed by **##company Name##**:

- as a deed;
- pursuant to *Corporations Act 2001 (Cwlth)* sections 127(1) and 127(3);
- by the signatures of a director and a second director/the secretary;
- on the \_\_\_\_\_ day of \_\_\_\_\_ 2023:

..... Director	..... Director/Secretary
..... Full name [Print]	..... Full name [Print]

Executed by **##if an individual, name of individual##**:

- as **his/her** deed;
- in the presence of a witness;
- on the \_\_\_\_\_ day of \_\_\_\_\_ 2023:

..... Signatory	..... Witness
	..... Full name [Print]

Council

Executed and delivered on behalf of **Blackall-Tambo Regional Council**:

- as a deed;
- pursuant to *Local Government Act 2009* section 236;
- by a Council delegate, who certifies his authority to sign;
- in the presence of a witness;
- on the \_\_\_\_\_ day of \_\_\_\_\_ 2023:

..... Delegate	..... Witness
..... Full name [Print]	..... Full name [Print]

[End of Instrument]

# *Invitation for Tenders*

*[Sale of Council's Forestry Act Sales Permit (to Get Cypress Sawlogs) only or in conjunction with sale of Tambo Sawmill]*

---

## **APPENDIX 5**

[Tender Form]

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## **Sale Agreement**

[Sales Permit No. 201304400 to get Cypress Sawlogs]

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**KING &  
COMPANY**  
—SOLICITORS—

Level 7, 95 North Quay, Brisbane  
[G.P.O. Box 758, Brisbane, 4001]  
Telephone: (07) 3243 0000  
Facsimile: (07) 3236 1885

SP Final Sale Agreement for Sales Permit(2020355.4)

# *Invitation for Tenders*

*[Sale of Council's Forestry Act Sales Permit (to Get Cypress Sawlogs) only or in conjunction with sale of Tambo Sawmill]*

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## **APPENDIX 5**

[Tender Form]

# Tender Form

[Sale of Council's Sales Permit (to Get Cypress Sawlogs) only or in conjunction with sale of Tambo Sawmill]

---

## PART 1 GENERAL

### 1.1 Interpretation

Expressions in this Tender Form that are defined in the Invitation for Tenders bear in this Tender Form the meanings ascribed in the Invitation for Tenders.

### 1.2 Completing the Tender Form

In completing this form, the Tenderer is not limited to the space upon the form. The Tenderer may include additional text via annexures to the schedules. So long as the Tenderer includes all information required by the Invitation for Tenders, the Tenderer may include any additional information the Tenderer considers relevant to the Tender.

## PART 2 DETAILS OF TENDERER

[The following details must be completed by the Tenderer:]

ITEM	DETAILS IN BLOCK LETTERS
Tenderer's Full Name or Company Name	
Trading Name	
Registered Office Address	
Mailing Address	
Postcode	
ABN	
ACN	
Whether incorporated in Queensland	YES / NO ( <del>strikethrough which is not applicable</del> )
Contact Person	
Contact Person Title	
Office Telephone	
Mobile Telephone	
Facsimile Number	
Email Address	



# Tender Form

[Sale of Council's Sales Permit (to Get Cypress Sawlogs) only or in conjunction with sale of Tambo Sawmill]

---

**Legal Entity of Tenderer** - Is the Tenderer a sole trader, partnership, company limited by shares or other form of body corporate?

If an **individual**; please provide surname and given name(s):

Given Name(s)	Surname

If a **firm or partnership** - please give names and addresses of members:

Full Name	Address

If a **company** – please give names, addresses and positions of directors and company secretaries:

Full Name	Address	Position

If a company, does it sign with or without a company seal? Please indicate below which is the preferred method of signing (SELECT ONE):

**With a company seal (witnessed)**

*A company with a common seal may execute a document if the seal is affixed to the document and the affixation is authenticated by signatures of (a) 2 x directors of the company, (b) 1 x director and a company secretary, or (c) for a proprietary company that has a sole director who is also the sole company secretary—that director.*

**OR**

**Without a company seal (signed)**

*A company may execute a document without a common seal if the document is signed by (a) 2 x directors of the company, (b) 1 x director and a company secretary, or (c) for a proprietary company that has a sole director who is also the sole company secretary—that director.*

# Tender Form

[Sale of Council's Sales Permit (to Get Cypress Sawlogs) only or in conjunction with sale of Tambo Sawmill]

## If the Tenderer's Tender includes an offer to acquire the Tambo Sawmill:

Is the Tenderer a Foreign Person under the FIRB Act (Cwlth), and is the acquisition of the Tambo Sawmill by the Tenderer a notifiable action under the FIRB Act (Cwlth) ?

[Mark the relevant box applicable to the Tenderer's status under the FIRB Act]

- Yes, the Tenderer is a Foreign Person, and the acquisition of the Tambo Sawmill by the Tenderer is a notifiable action under the FIRB Act (Cwlth).
- Yes, the Tenderer is a Foreign Person, but the acquisition of the Tambo Sawmill by the Tenderer is not a notifiable action under the FIRB Act (Cwlth).
- No, the Tenderer is not a Foreign Person, and the acquisition of the Tambo Sawmill by the Tenderer is not a notifiable action under the FIRB Act (Cwlth).

## PART 3 OFFER

**3.1** The Tenderer offers to purchase the following asset/s of Council, in accordance with representations contained in this Tender and by entering the applicable Deeds, with the modifications (if any) specified in the Addenda identified in the Table of Addenda in this Part 3 and completed in accordance with Clause 6.7 of the Tender Conditions:

[Mark the applicable box]

- both Council's Sales Permit and the Tambo Sawmill
- Council's Sales Permit only

**Table of Addenda (issued by Council to Tenderers)**

Addendum No.	Addendum Date	Subject of Addendum

**3.2** The Tenderer acknowledges and accepts that:

- (1) The DAF on behalf of the State is undertaking a review of the terms of Council's Sales Permit (excluding those relating to Sale Quantity, Compensation and the Expiry Date), pursuant to clause 23 of Council's Sales Permit, which review the DAF anticipates will be undertaken throughout 2023, and new permit terms distributed to the permit holder by 30 November 2023.
- (2) Pursuant to clause 23 of Council's Sales Permit, Council as the existing permit holder agrees:
  - (a) to participate and work constructively with the State in undertaking the review; and

# Tender Form

[Sale of Council's Sales Permit (to Get Cypress Sawlogs) only or in conjunction with sale of Tambo Sawmill]

---

- (b) to consider signing a deed of variation to give effect to any agreed changes to Council's Sales Permit as a result of the review.
- (3) To the extent permitted by the DAF, Council will endeavour to inform the Tenderer, and, in due course, consult with the successful Tenderer, of the progress of, and, if applicable, the outcomes from, the DAF's review of Council's Sales Permit during the clause 23 review process.
- (4) If the Tenderer is the successful Tenderer, to the extent the DAF permits, the Tenderer agrees:
  - (a) to participate and work constructively with the State in undertaking the review; and
  - (b) to consider signing a deed of variation to give effect to any agreed changes to Council's Sales Permit as a result of the review.

**3.3** If the Tenderer is offering to acquire, as a Separable Portion, Council's Sales Permit only, subject to section 4.4 of this Tender Form, the Tenderer notifies that it will be hauling and milling the Cypress Sawlogs it Gets under the novated Council's Sales Permit to the following sawmill:

Sawmill name:

Sawmill land street address:

Sawmill land real property description:

Owner of the sawmill land:

Operator of the sawmill:

**3.4 Council's Current OHP**

Mark the relevant box applicable to the inclusion or exclusion of the novation of Council's Current OHP, as part of the novation of Council's Sales Permit:

- Yes, the Tenderer requests that, subject to the consent of DAF, Council include the novation of Council's Current OHP, as part of the novation of Council's Sales Permit.

# Tender Form

[Sale of Council's Sales Permit (to Get Cypress Sawlogs) only or in conjunction with sale of Tambo Sawmill]

---

- No, the Tenderer DOES NOT request that Council include the novation of Council's Current OHP, as part of the novation of Council's Sales Permit.

## PART 4 GENERAL

### 4.1 Price

- (1) Schedule 1 specifies the Price that the Tenderer offers to pay to Council, for Clause 4.4(2) of the Tender Conditions, to acquire (as the case may be):
  - (a) each of Council's Sales Permit and the Tambo Sawmill; or
  - (b) only Council's Sales Permit.
- (2) In completing Schedule 1 to this Tender, the Tenderer has made the offer in Schedule 1 in compliance with, and the Tenderer accepts, Clause 4.5 of the Tender Conditions.

### 4.2 Tenderer's *Forestry Act* Sales Permit or equivalent interstate sales permit

Schedule 2 specifies:

- (1) details of any *Forestry Act* sales permit previously or currently held by the Tenderer; or
- (2) if the Tenderer has never held a *Forestry Act* sales permit, but has held or currently holds an equivalent permit, licence, or entitlement to get timber in another Australian State, details of such equivalent permit, licence, or entitlement to get timber in the other Australian State; and/or
- (3) if neither subsection (1) nor subsection (2) above applies, that the Tenderer does not currently hold, and has not ever held, either a *Forestry Act* sales permit or a permit/licence/other entitlement issued by another Australian State (acting through a government department or authority) for the getting of forestry products situated in that Australian State.

### 4.3 Tenderer's Fitness, Capability and Competency

- (1) Schedule 3 specifies the details about the Tenderer that demonstrates that:
  - (a) the Tenderer is a fit and proper person; and
  - (b) the Tenderer is capable of complying with the terms and conditions of a *Forestry Act* sales permit; and
  - (c) the Tenderer is capable and competent in Getting forestry products from sale areas within the Supply Zone allocated by the DAF, in compliance with a *Forestry Act* sales permit; and
  - (d) the Tenderer is capable and competent in operating and managing a timber sawmill, and, if applicable, the Tambo Sawmill.
- (2) The Tenderer confirms that it understands, and agrees that, if it is the successful Tenderer, it will comply with the terms and conditions of the novated Council's Sales Permit.

# Tender Form

[Sale of Council's Sales Permit (to Get Cypress Sawlogs) only or in conjunction with sale of Tambo Sawmill]

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## 4.4 Tenderer's Confirmation of Nomination of Tambo Sawmill for Value Determination

The Tenderer understands, accepts, and confirms, that the Tambo Sawmill:

- (1) under Council's Sales Permit, is; and
- (2) under Council's Sales Permit to be novated to the successful Tenderer, will continue to be, nominated as the location of the applicable sawmill for the purpose of the DAF determining the Value (royalties/price) payable by the successful Tenderer to the State under the novated Council Sales Permit for the Cypress Sawlogs actually Got, notwithstanding that under the novated Council Sales Permit:
- (3) the DAF may allocate to the successful Tenderer sale areas from anywhere within the Supply Zone; and
- (4) the DAF may permit or accept the successful Tenderer to utilize a sawmill at a different location from that of the Tambo Sawmill for hauling and milling of the Got Cypress Sawlogs.

## 4.5 Statements and Declarations by the Tenderer

The Tenderer makes the statements and declaration contained in the following completed and signed schedules:

- (1) Schedule 4 - Collusive Tendering/Statutory Declaration;
- (2) Schedule 5 - Conflict of interest.

## 4.6 Provision of Cover of Account (security)

- (1) If the Tenderer is the successful Tenderer, the Tenderer agrees to obtain from its financial institution the Cover of Account in favour of the State in the amount as required by the DAF under the Completed Deed to which the DAF is a party, and thereafter provide the Cover of Account to the DAF, for the purpose of giving effect to clause 8.1(a) of the (to be novated) Council's Sales Permit including as may be amended by the Completed Deed.
- (2) The Tenderer acknowledges and accepts that Council's Sales Permit may not specify the current monetary amount that the State will require the successful Tenderer (as the incoming party) to provide as the Cover of Account.
- (3) The Tenderer acknowledges and accepts that harvesting operations and the Getting of Cypress Sawlogs under the novated Council's Sales Permit is not permitted unless and until the required Cover of Account is provided to, and accepted by, the State.

## 4.7 Provision of Insurances

- (1) If the Tenderer is the successful Tenderer, the Tenderer agrees to have and maintain the following insurances that satisfy the requirements of clause 16 of the (to be novated) Council's Sales Permit, subject to such other amounts as the DAF requires in the Completed Deed to which the DAF is a party, to cover the successful Tenderer's operations under the (to be novated) Council's Sales Permit:
  - (a) workers' compensation insurance as required by law; and
  - (b) public liability insurance covering legal liability to third parties for bodily injury or property damage, for an amount not less than \$20,000,000.00 arising from any one

# Tender Form

[Sale of Council's Sales Permit (to Get Cypress Sawlogs) only or in conjunction with sale of Tambo Sawmill]

---

event, or such other amount as may be reasonably required by the State in the Completed Deed to which the DAF is a party.

- (2) The Tenderer acknowledges and accepts that harvesting operations and the Getting of Cypress Sawlogs under the novated Council's Sales Permit is not permitted unless and until evidence of such insurances is provided to, and accepted by, the State.

#### 4.8 Authority to Financial Institution and Additional Material

As required by Clause 4.6 of the Tender Conditions, accompanying this Tender Form are:

- (1) a signed financial institution enquiry authority in the form set out in Schedule 6, for Clause 4.6(2) of the Tender Conditions; and
- (2) the additional material identified in Clause 4.6(3) and (4) of the Tender Conditions as applicable to the Tenderer.

If signed on behalf of the Tenderer, the signatory warrants that he or she has the authority of the Tenderer to sign this Tender on its behalf, and enter the Deeds on its behalf.

<b>NAME OF TENDERER</b>	
<b>NAME OF SIGNATORY IN BLOCK LETTERS</b>	
<b>SIGNATURE</b>	
<b>POSITION HELD WITH TENDERER</b>	
<b>DATE</b>	

<b>NAME OF WITNESS</b>	
<b>SIGNATURE</b>	
<b>ADDRESS OF WITNESS</b>	

# Tender Form

[Sale of Council's Sales Permit (to Get Cypress Sawlogs) only or in conjunction with sale of Tambo Sawmill]

## SCHEDULE 1

[Tendered Price and Council's Current OHP]

[Tenderers are required to submit this schedule, fully completed and signed, as part of their Tender.]

1. The Tenderer offers to pay Council the following Price for acquiring each of the Tambo Sawmill and Council's Sales Permit to Get Cypress Sawlogs:

*Important Note:* In acquiring Council's Sales Permit, the permit holder, as and when it Gets Cypress Sawlogs, is responsible, and liable, for paying the Value payable (namely, the royalties) to the State of Queensland (via the DAF) for the Getting of the Cypress Sawlogs. For more information, see General Information contained in Appendix 1 of the Invitation for Tenders document.

**For acquisition of both Council's Sales Permit and the Tambo Sawmill:**

For acquisition of Council's Sales Permit and the Tambo Sawmill	\$Price (amounts shown before the application of GST)
Price for the Tambo Sawmill	\$
Price for Council's Sales Permit	\$
Total tendered Price	\$
Deposit (10% of the Price for the Tambo Sawmill)	\$

**For acquisition of Council's Sales Permit only, as a Separable Portion:**

For acquisition of Council's Sales Permit only, as a Separable Portion	\$Price (amounts shown before the application of GST)
Price for Council's Sales Permit	\$
Total tendered Price	\$

<b>NAME OF TENDERER</b>	
<b>SIGNATURE</b>	
<b>DATE</b>	

# Tender Form

[Sale of Council's Sales Permit (to Get Cypress Sawlogs) only or in conjunction with sale of Tambo Sawmill]

---

## SCHEDULE 2

[The Tenderer's *Forestry Act* sales permit/s or equivalent interstate permit/licence/entitlement Details]

[Tenderers are required to submit this schedule, completed as applicable, and signed, as part of their Tender.]

### PART 1: FORESTRY ACT SALES PERMIT

1. If the Tenderer has a current *Forestry Act* sales permit:

(a) Each currently held *Forestry Act* sales permit no., date and associated forestry product:

Sales permit no.	Date of sales permit	Forestry Product

(b) Mark the box for the circumstance/s that applies to the Tenderer in relation to each of its currently held *Forestry Act* sales permit:

[If the Tenderer has more than one current *Forestry Act* sales permit, the Tenderer is to insert reference to an annexure to its Completed Tender Form that sets out the below details for each currently held *Forestry Act* sales permit.]

For the Tenderer's current *Forestry Act* sales permit no. \_\_\_\_\_ :

- As at the Tender submission date, the Tenderer is continuing to exercise its operational rights under, and in accordance with, the sales permit.
- As at the Tender submission date, the Tenderer has ceased exercising its operational rights under the sales permit, for the following period and for the following reason/s:

Cessation Period:.....

Reason/s: .....

.....

.....

.....

.....



# Tender Form

[Sale of Council's Sales Permit (to Get Cypress Sawlogs) only or in conjunction with sale of Tambo Sawmill]

---

As at the Tender submission date, the Tenderer (voluntarily or otherwise) has suspended exercising its operational rights under the sales permit, for the following period and for the following reason/s:

Suspension Period:.....

Reason/s: .....

.....

.....

.....

.....

(c) At any time during the period of 5 years prior to the Tender submission date, the Tenderer (voluntarily or otherwise) ceased exercising its operational rights under the following currently held sales permit, for the following period and for the following reason/s:

*[If there is more than 1 operational cessation under the same, or different, currently held Forestry Act sales permit, the Tenderer is to insert reference to an annexure to its Completed Tender Form that sets out the below details for each currently held Forestry Act sales permit to which an operational cessation occurred.]*

For the Tenderer's current Forestry Act sales permit no. :

Cessation Period:.....

Reason/s: .....

.....

.....

.....

.....

(d) At any time during the period of 5 years prior to the Tender submission date, the Tenderer (voluntarily or otherwise) suspended exercising its operational rights under the following currently held sales permit, for the following period and for the following reason/s:

*[If there is more than 1 suspension under the same, or different, currently held Forestry Act sales permit, the Tenderer is to insert reference to an annexure to its Completed Tender Form that sets out the below details for each currently held Forestry Act sales permit to which a suspension occurred.]*

For the Tenderer's current Forestry Act sales permit no. :

Suspension Period:.....

Reason/s: .....

# Tender Form

[Sale of Council's Sales Permit (to Get Cypress Sawlogs) only or in conjunction with sale of Tambo Sawmill]

.....  
 .....  
 .....  
 .....

**2. If the Tenderer has previously held a *Forestry Act* sales permit:**

(a) Each of the Tenderer's previously *Forestry Act* sales permit details:

Sales permit no.	Date of sales permit	Forestry Product	End date

(b) Mark the box for the circumstance/s that apply to the Tenderer in relation to each of its previously held *Forestry Act* sales permit:

*[If the Tenderer has more than one previously held Forestry Act sales permit, the Tenderer is to insert reference to an annexure to its Completed Tender Form that sets out the below details for each previously held Forestry Act sales permit.]*

For the Tenderer's previously held *Forestry Act* sales permit no. \_\_\_\_\_ :

- The Tenderer, in its exercise of its operational rights under the sales permit, complied with the conditions of the sales permit.
- During the period of the sales permit, the Tenderer ceased exercising its operational rights under the sales permit, for the following period/s and for the reason/s:

Cessation Period:.....

Reason/s: .....

.....  
 .....  
 .....  
 .....

# Tender Form

[Sale of Council’s Sales Permit (to Get Cypress Sawlogs) only or in conjunction with sale of Tambo Sawmill]

- During the period of the sales permit, the Tenderer (voluntarily or otherwise) suspended exercising its operational rights under the sales permit, for the following periods and for the following reason/s:

Suspension Period:.....

Reason/s: .....

.....

.....

.....

.....

## PART 2: EQUIVALENT INTERSTATE PERMIT/LICENCE/OTHER ENTITLEMENT TO GET TIMBER

1. If the Tenderer currently holds from another Australian State a permit/licence/other entitlement to Get forestry products situated in that Australian State (which is that State’s equivalent to a *Forestry Act* sales permit):

- (a) Each currently held interstate permit/licence/entitlement details:

Description of interstate permit/licence/other entitlement	Permit/licence/other entitlement number and date	Australian State, including name of issuing State Government department and contact details	Forestry Product the subject of the interstate permit/licence/other entitlement

- (b) Mark the box for the circumstance/s that apply to the Tenderer in relation to each of its currently held interstate permit/licence/other entitlement:

*[If the Tenderer has more than one current interstate permit/licence/other entitlement, the Tenderer is to insert reference to an annexure to its Completed Tender Form that sets out the below details for each currently held interstate permit/licence/other entitlement.]*

For the Tenderer’s current *interstate permit/licence/other entitlement* no. \_\_\_\_\_ :

- As at the Tender submission date, the Tenderer is continuing to exercise its operational rights under, and in accordance with, the interstate permit/licence/other entitlement.

# Tender Form

[Sale of Council's Sales Permit (to Get Cypress Sawlogs) only or in conjunction with sale of Tambo Sawmill]

---

As at the Tender submission date, the Tenderer has ceased exercising its operational rights under the interstate permit/licence/other entitlement, for the following period and for the following reason/s:

Cessation Period:.....

Reason/s: .....

.....  
.....  
.....  
.....

As at the Tender submission date, the Tenderer (voluntarily or otherwise) has suspended exercising its operational rights under the interstate permit/licence/other entitlement, for the following period and for the following reason/s:

Suspension Period:.....

Reason/s: .....

.....  
.....  
.....  
.....

(e) At any time during the period of 5 years prior to the Tender submission date, the Tenderer (voluntarily or otherwise) ceased exercising its operational rights under the following currently held interstate permit/licence/other entitlement, for the following period and for the following reason/s:

*[If there is more than 1 operational cessation under the same, or different, currently held interstate permit/licence/other entitlement, the Tenderer is to insert reference to an annexure to its Completed Tender Form that sets out the below details for each currently held interstate permit/licence/other entitlement to which an operational cessation occurred.]*

For the Tenderer's current interstate permit/licence/other entitlement no. \_\_\_\_\_ :

Cessation Period:.....

Reason/s: .....

.....  
.....  
.....  
.....

---

# Tender Form

[Sale of Council’s Sales Permit (to Get Cypress Sawlogs) only or in conjunction with sale of Tambo Sawmill]

---

- (f) At any time during the period of 5 years prior to the Tender submission date, the Tenderer (voluntarily or otherwise) suspended exercising its operational rights under the following currently held interstate permit/licence/other entitlement, for the following period and for the following reason/s:

*[If there is more than 1 suspension under the same, or different, currently held interstate permit/licence/other entitlement, the Tenderer is to insert reference to an attachment to its Completed Tender Response Form that sets out the below details for each currently held interstate permit/licence/other entitlement to which a suspension occurred.]*

For the Tenderer’s current interstate permit/licence/other entitlement no. . . . . :

Suspension Period:.....

Reason/s: .....

.....  
 .....  
 .....

2. If the Tenderer has previously held an interstate permit/licence/other entitlement:

- (a) Each of the Tenderer’s previously interstate permit/licence/other entitlement details:

Description of interstate permit/licence/other entitlement	Permit/licence/other entitlement number and date	Australian State, including name of issuing State Government department and contact details	Forestry Product the subject of the interstate permit/licence/other entitlement	End date

# Tender Form

[Sale of Council's Sales Permit (to Get Cypress Sawlogs) only or in conjunction with sale of Tambo Sawmill]

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(b) Mark the box for the circumstance/s that apply to the Tenderer in relation to each of its previously held interstate permit/licence/other entitlement:

*[If the Tenderer has more than one previously held interstate permit/licence/other entitlement, the Tenderer is to insert reference to an annexure to its Completed Tender Form that sets out the below details for each previously held interstate permit/licence/other entitlement.]*

For the Tenderer's previously held interstate permit/licence/other entitlement no. . . . . :

The Tenderer, in the exercise of its operational rights under the interstate permit/licence/other entitlement, complied with the conditions of the interstate permit/licence/other entitlement.

During the period of the interstate permit/licence/other entitlement, the Tenderer ceased exercising its operational rights under the interstate permit/licence/other entitlement, for the following period/s and for the reason/s:

Cessation Period:.....

Reason/s: .....

.....  
.....  
.....  
.....

During the period of the interstate permit/licence/other entitlement, the Tenderer (voluntarily or otherwise) suspended exercising its operational rights under the interstate permit/licence/other entitlement, for the following periods and for the following reason/s:

Suspension Period:.....

Reason/s: .....

.....  
.....  
.....  
.....

# Tender Form

[Sale of Council's Sales Permit (to Get Cypress Sawlogs) only or in conjunction with sale of Tambo Sawmill]

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## PART 3: IF NEITHER PART 1 NOR PART 2 OF THIS SCHEDULE 2 APPLIES TO THE TENDERER

If the following circumstance applies to the Tenderer, mark the box:

- The Tenderer does not currently hold, and has not ever held, either:
- (a) a *Forestry Act* sales permit; or
  - (b) a permit/licence/other entitlement issued by another Australian State (acting through a government department or authority) for the getting of forestry products situated in that Australian State

<b>NAME OF TENDERER</b>	
<b>SIGNATURE</b>	
<b>DATE</b>	

# Tender Form

[Sale of Council's Sales Permit (to Get Cypress Sawlogs) only or in conjunction with sale of Tambo Sawmill]

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## SCHEDULE 3

[Details of Tenderer's Fitness, Capabilities and Competencies]

[Tenderers are required to submit this schedule, fully completed and signed, as part of their Tender. The Tenderer should provide with (and if there is insufficient space, as an annexure to) the Completed Tender relevant documents to support the information provided by the Tenderer.]

### Tenderer's Present Business

1. (a) How many years has the Tenderer been in business under its present business name and organisational structure?

No. of Years	.....
--------------	-------

- (b) If the Tenderer (either as an individual, or through a 'related entity' as defined in the *Corporations Act 2001* (Cwlth) section 9) was in business under a different business name or different legal entity prior to its current business name or organisational structure, provide details of the prior business name or legal entity, the nature of the operations and why the Tenderer ceased operating under that business name or legal entity.

### Capabilities and Competencies in Getting Forestry Products

2. Detail the experience the Tenderer has had in Getting Cypress Sawlogs under a *Forestry Act* sales permit:

No. of years experience	
Location of forestry operation	
Tenure of the land on which the forestry operation was undertaken	
The harvesting system used in that forestry operation	
The haulage system used in that forestry operation	



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The codes of practice applied in that forestry operation	
The safe work systems applied in that forestry operation	
Details, and status, of any notices of non-compliances, or show cause notices, issued to the Tenderer by the DAF, the Department of Environment and Science or any other government regulatory authority, regarding that forestry operation	

3. Detail the experience the Tenderer has had in Getting forestry products (other than Cypress Sawlogs) under a *Forestry Act* sales permit:

No. of years experience	.....
The type of forestry product/s Got	
Location of forestry operation	
Tenure of the land on which the forestry operation was undertaken	
The harvesting system used in that forestry operation	
The haulage system used in that forestry operation	
The codes of practice applied in that forestry operation	
The safe work systems applied in that forestry operation	
Details, and status, of any notices of non-compliances, or show cause notices, issued to the Tenderer by the DAF, the Department of Environment and Science or any other government regulatory authority, regarding that forestry operation	

# Tender Form

[Sale of Council's Sales Permit (to Get Cypress Sawlogs) only or in conjunction with sale of Tambo Sawmill]

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4. Detail the experience the Tenderer has had in Getting Cypress Sawlogs under an equivalent interstate permit/licence/other entitlement:

No. of years experience	.....
Location of forestry operation	
Tenure of the land on which the forestry operation was undertaken	
The harvesting system used in that forestry operation	
The haulage system used in that forestry operation	
The codes of practice applied in that forestry operation	
The safe work systems applied in that forestry operation	
Details, and status, of any notices of non-compliances, or show cause notices, issued to the Tenderer by any government authority in the applicable Australian State, regarding that forestry operation	

5. Detail the experience the Tenderer has had in Getting forestry products (other than Cypress Sawlogs) under an equivalent interstate permit/licence/other entitlement:

No. of years experience	.....
The type of forestry product/s Got	
Location of forestry operation	
Tenure of the land on which the forestry operation was undertaken	
The harvesting system used in that forestry operation	
The haulage system used in that forestry operation	

# Tender Form

[Sale of Council's Sales Permit (to Get Cypress Sawlogs) only or in conjunction with sale of Tambo Sawmill]

The codes of practice applied in that forestry operation	
The safe work systems applied in that forestry operation	
Details, and status, of any notices of non-compliances, or show cause notices, issued to the Tenderer by any government authority in the applicable Australian State, regarding that forestry operation	

### Getting Cypress Sawlogs the subject of this Tender

6. Detail anticipated quantities of getting Cypress Sawlogs for remaining term of novated Council's Sales Permit:

<b>Period</b>	<b><i>Period Sale Quantity (clause 1.1 of Council's Sales Permit)(Tonnes bark on)</i></b>	<b>Tenderer's anticipated quantity to be Got (Tonnes bark on) during a Period</b>
5 year period from 1 Jan 2023 to 31 Dec 2027( <b>Current Period</b> )	28,000 Tonnes (bark on)	Tonnes (bark on)
5 year period from 1 Jan 2028 to 31 Dec 2032	28,000 Tonnes (bark on)	Tonnes (bark on)
5 year period from 1 Jan 2033 to 31 Dec 2037	28,000 Tonnes (bark on)	Tonnes (bark on)
Nominal Annual Sale Quantity	5,700 Tonnes (bark on)	Tonnes (bark on)

7. Detail how the Tenderer proposes to harvest the Cypress Sawlogs the subject of this Tender:
8. For the harvesting of Cypress Sawlogs the subject of this Tender, detail the harvesting operator's full legal name and principal place of business, names of directors and company secretaries, names of key

# Tender Form

[Sale of Council's Sales Permit (to Get Cypress Sawlogs) only or in conjunction with sale of Tambo Sawmill]

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employees and contractors (and contractor's employees) involved in the harvesting operation. If the harvesting operator is a company, include as part of the Tenderer's Completed Tender a copy of a recent ASIC current company search for the harvesting operator.

9. Detail how the Tenderer proposes to haul the Cypress Sawlogs the subject of this Tender:
10. For the hauling of Cypress Sawlogs the subject of this Tender, detail the hauling operator's full legal name and principal place of business, names of directors and company secretaries, names of key employees and contractors (and contractor's employees) involved in the haulage operation. If the haulage operator is a company, include as part of the Tenderer's Completed Tender a copy of a recent ASIC current company search for the harvesting operator.
11. Detail whether the Tenderer, or any directors or company secretaries or shareholders/members of the Tenderer, or any key employees or contractors (or key employees of a contractor) of the Tenderer who will be involved in the Getting of Cypress Sawlogs the subject of this Tender, has committed any offences which concern or relate to the Tenderer undertaking the business operations and activities the Tenderer has detailed in this schedule:

<b>Name of person</b>	<b><i>Details of the Offence</i></b>	<b>Business operation or activity to which the offence concerned or related</b>

12. Detail whether the Tenderer, or any directors or company secretaries or shareholders/members of the Tenderer, or any key employees or contractors (or key employees of a contractor) of the Tenderer who
-

# Tender Form

[Sale of Council's Sales Permit (to Get Cypress Sawlogs) only or in conjunction with sale of Tambo Sawmill]

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will be involved in the Getting of Cypress Sawlogs the subject of this Tender, has been determined by either:

- (a) the DAF to be not a 'fit and proper person' under a *Forestry Act* sales permit:

Name of person	<i>Forestry Act</i> sale permit no.	Date of DAF notice determining person to be not a 'fit and proper person'

- (b) an interstate government department/authority to be not a 'fit and proper person' under that State's legislative regime for the getting of forestry products:

Name of person	Interstate permit/licence/other entitlement description and number	Date of the interstate government department/authority's notice determining person to be not a 'fit and proper person'

## Capabilities and Competencies in Operating a Timber Sawmill

13. Provide details that demonstrate the Tenderer's experience with operating and managing a sawmilling business (or equivalent type of business).

14. For operating the Tambo Sawmill, or the sawmill notified at section 3.2 of Part 3 of this Tender Form, as the case may be, if the sawmill operator is not to be the Tenderer, provide the following details:

Sawmill operator's full legal name and A.C.N. and ABN:

Sawmill operator's principal place of business:

# Tender Form

[Sale of Council's Sales Permit (to Get Cypress Sawlogs) only or in conjunction with sale of Tambo Sawmill]

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Names of the sawmill operator's directors and company secretary:

Names of the sawmill operator's key employees who will be involved in the sawmill operation:

Names of the sawmill operator's key contractors (and contractor's key employees) who will be involved in the sawmill operation:

If the sawmill operator is a company, include as an attachment to the Tenderer's Completed Tender a copy of a recent ASIC current company search for the sawmill operator.

- 15.** For operating the Tambo Sawmill, or the sawmill notified at section 3.2 of Part 3 of this Tender Form, as the case may be, if the sawmill operator is not to be the Tenderer, provide details that demonstrate the sawmill operator's experience with operating and managing a sawmilling business or equivalent type of business.
  
- 16.** Provide details that demonstrate the Tenderer's experience with the marketing and selling of sawn timber and/or other timber products, particularly Cypress Sawlogs, or equivalent types of products.

# Tender Form

[Sale of Council's Sales Permit (to Get Cypress Sawlogs) only or in conjunction with sale of Tambo Sawmill]

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- 17.** Provide details of the Tenderer's proposed markets for the sawn Cypress timber to be produced at the Tambo Sawmill.
- 18.** Detail the Tenderer's financial history and capacity to pay accounts on time:  
*[The Tenderer should provide, as part of the Tenderer's Completed Tender, copies of the Tenderer's financial statements for the previous 3 financial years.]*
- 19.** Provide details that demonstrate that the Tenderer knows and understands the obligations of being a permit holder of a *Forestry Act* sales permit:
- 20.** Explain what makes the Tenderer consider it is capable of complying with a *Forestry Act* sales permit:  
*[The Tenderer must provide details below or annex to its Completed Tender Form evidence that demonstrates that the Tenderer is capable of complying with the terms and conditions of a Forestry Act sales permit ]*

# Tender Form

[Sale of Council's Sales Permit (to Get Cypress Sawlogs) only or in conjunction with sale of Tambo Sawmill]

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**21. Tenderer's List of Referees**

Provide names and business hours telephone numbers of at least two referees who the proposed Tenderer has dealt with in the course of their business experiences detailed in this schedule 3 in the preceding 3 years.

<b>Name:</b>	<b>Telephone:</b>
<b>Name:</b>	<b>Telephone:</b>
<b>Name:</b>	<b>Telephone:</b>

**22. In the below table, the Tenderer must disclose any relationship, which may exist between:**

- (a) the Tenderer or any of the Tenderer's directors, members/shareholders, partners, employees, agents or contractors; and
- (b) the staff, agents or contractors of the Blackall-Tambo Regional Council.


<b>NAME OF TENDERER</b>	
<b>SIGNATURE</b>	
<b>DATE</b>	



# Tender Form

[Sale of Council's Sales Permit (to Get Cypress Sawlogs) only or in conjunction with sale of Tambo Sawmill]

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## SCHEDULE 4

[Collusive Tendering/Statutory Declaration]

I, \_\_\_\_\_  
\_\_\_\_\_

solemnly and sincerely declare that:

### Definitions

1. In this Statutory Declaration:

"bidders" means any tenderers for the acquisition of the Tendered Council Asset, and includes the Tenderer;

"Industry Association" means any organisation of which bidders are members;

"the Tenderer" means [insert full legal name of company, other body corporate, firm, or individual]; and

"Tender Price" means the Price indicated by a bidder as the highest amount for which that bidder is prepared to enter into the acquisition of the Tendered Council Asset.

"Tendered Council Asset" means, as applicable to each bidder's tender, either:

- (a) both Council's Sales Permit and the Tambo Sawmill; or
- (b) only Council's Sales Permit.

### \*Introduction

2. I am the Tenderer and make this declaration on my own behalf.

### \*Introduction

2.1 I hold the position of

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***[insert Managing Director or other title]***

with the Tenderer and am duly authorised by the Tenderer to make this declaration on its behalf.

2.2 I make this declaration on behalf of the Tenderer and on behalf of myself.

*[\*Delete alternative which is not applicable.]*

### No Knowledge of Tender Price

3. Prior to the Tenderer submitting its tender for the acquisition of the Tendered Council Asset, neither the Tenderer, nor any of its employees or agents, had knowledge of the Tender Price or proposed Tender

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# Tender Form

[Sale of Council's Sales Permit (to Get Cypress Sawlogs) only or in conjunction with sale of Tambo Sawmill]

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Price of any other bidder who submitted, or of any person, company, other body corporate or firm that proposed to submit, a tender for the acquisition.

## **Disclosure of Tender Price**

4. Prior to the close of tenders for the acquisition of the Tendered Council Asset, neither the Tenderer, nor any of its employees or agents, disclosed the Tenderer's Tender Price to:
  - 4.1 any other bidder who submitted a tender for the acquisition of the Tendered Council Asset;
  - 4.2 any person, company, other body corporate or firm proposing to submit a tender for the acquisition of the Tendered Council Asset; or
  - 4.3 any person or organisation connected or associated with a bidder person, company, other body corporate or firm of a kind referred to in subsections 4.1 or 4.2 above.

## **Provision of Information**

5. Neither the Tenderer, nor any of its employees or agents, has provided information to:
  - 5.1 any other bidder who has submitted a tender for the acquisition of the Tendered Council Asset;
  - 5.2 any person, company, other body corporate or firm proposing to submit a tender for the acquisition of the Tendered Council Asset; or
  - 5.3 any other people, company, other body corporate or firm for the purpose of assisting in the preparation of a tender for the acquisition of the Tendered Council Asset.

## **Genuine Competition**

6. The Tenderer is genuinely competing for the acquisition of the Tendered Council Asset.

## **Industry Association Agreements**

7. Neither the Tenderer, nor any of its employees or agents, has entered into any contract, agreement, arrangement or understanding, other than as disclosed to Council in the Tenderer's tender, that the successful bidder for the acquisition of the Tendered Council Asset will pay any money to, or provide any other benefit or other financial advantage to, an Industry Association in respect of the acquisition of the Tendered Council Asset.

## **Unsuccessful Tenderer's Fees**

8. Neither the Tenderer, nor any of its employees or agents, has entered into any contract, agreement, arrangement or understanding that the successful bidder for the acquisition of the Tendered Council Asset will pay any money to, or provide any other benefit or other financial advantage to, any other bidder who unsuccessfully tendered for the acquisition of the Tendered Council Asset.

## **Qualifications to Tenders**

9. Neither the Tenderer, nor any of its employees or agents, has entered into any contract, agreement, arrangement or understanding that bidders for the acquisition of the Tendered Council Asset would include an identical or similar condition or qualification in their tenders for the acquisition of the Tendered Council Asset.

# Tender Form

[Sale of Council's Sales Permit (to Get Cypress Sawlogs) only or in conjunction with sale of Tambo Sawmill]

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I acknowledge that this declaration is true and correct, and I make it in the belief that a person making a false declaration is liable to the penalties of perjury.

**DECLARED** by .....  
*(Signature of person making declaration)*

at ..... in the State of Queensland this ..... day of ..... 20 .....

Before Me:

**Signature:** .....

**Full Name:** .....

**Address:** .....

**Qualifications:** .....

# Tender Form

[Sale of Council's Sales Permit (to Get Cypress Sawlogs) only or in conjunction with sale of Tambo Sawmill]

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## WHO CAN WITNESS STATUTORY DECLARATIONS?

These persons are authorised to witness statutory declarations under Section 107A of the Evidence Act:

- A Justice of the Peace or a Bail Justice
- A Notary Public
- A barrister and solicitor of the Supreme Court
- A clerk to a barrister and solicitor of the Supreme Court
- The Prothonotary or a Deputy Prothonotary of the Supreme Court
- The Registrar or a Deputy Registrar of the County Court
- The Principal Registrar of the Magistrates' Court
- The Registrar or a Deputy Registrar of the Magistrates' Court
- The Registrar of Probates or an Assistant Registrar of Probates
- The Associate to a Judge of the Supreme Court or of the County Court
- The Secretary of a Master of the Supreme Court or of the County Court
- A person registered as a Patent Attorney under Part XV of the Patents Act 1952 of the Commonwealth
- A member of the Police Force
- The Sheriff or a Deputy Sheriff
- A member or former member of either House of the Parliament of Queensland
- A member or former member of either House of the Parliament of the Commonwealth
- A councillor of a municipality
- A senior officer of a Council as defined in the Local Government Act 2009
- A registered medical practitioner within the meaning of the Medical Practice Act 1994
- A dentist
- A veterinary surgeon
- A pharmacist
- A principal in the teaching service
- The manager of a bank
- A member of the Institute of Chartered Accountants in Australia or the Australian Society of Accountants or the National Institute of Accountants
- The secretary of a building society
- A minister of religion authorised to celebrate marriages
- A person who holds an office in the public service or in a statutory authority that is prescribed as an office to which this section applies
- A fellow of the Institute of Legal Executives (Queensland)

# Tender Form

[Sale of Council's Sales Permit (to Get Cypress Sawlogs) only or in conjunction with sale of Tambo Sawmill]

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## SCHEDULE 5 [Conflict of Interest]

I have/We have/The Tenderer has

considered the implications of making this Tender and of acquiring Council's Sales Permit to Get Cypress Sawlogs and, if applicable to the Tenderer's Tender, the Tambo Sawmill, the subject to this Tender, and

either:

(a) am/are satisfied that no relationships exist between the Tenderer and any other company, body, association or like organisation or any individual or group of individuals who might have an interest in the subject of this Tender.

or

(b) have identified the following relationships, which might be considered as possible conflicts of interest:

(insert a statement of the relationships)

***In the event of such relationships arising in the course of preparing a Tender or after having submitted a Tender, the parties will immediately inform the Council Contact Officer, who may take such action as necessary to ensure that the outcome of the tender process is not compromised.***

NAME OF TENDERER	
AUTHORISED SIGNATURE	
DATE	

# Tender Form

[Sale of Council's Sales Permit (to Get Cypress Sawlogs) only or in conjunction with sale of Tambo Sawmill]

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## SCHEDULE 6

[Tenderer's Enquiry Authority to its Financial Institution]

##insert date##

##insert name of financial institution##

##insert financial institution address##

**AUTHORITY TO FINANCIAL INSTITUTION TO INFORM AND DISCLOSE INFORMATION ABOUT THE CUSTOMER,  
##INSERT NAME OF TENDERER##**

.....[name of Tenderer] (the **Customer**)

authorises the financial institution

.....[name of financial institution]:

to respond to, and disclose, fully and candidly, all information (with relevant supporting documentation) to answer enquiries made by Blackall-Tambo Regional Council's banker.

Signature: .....

Name of signatory: .....

Position: .....

Dated: .....

\_\_\_\_\_ *[End of Instrument]* \_\_\_\_\_

# *Invitation for Tenders*

*[Sale of Council's Forestry Act Sales Permit (to Get Cypress Sawlogs) only or in conjunction with sale of Tambo Sawmill]*

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## **APPENDIX 6**

[Confidentiality Deed]

# CONFIDENTIALITY DEED

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**THIS DEED IS MADE BY:** .....

*[insert full legal name of entity including A.C.N. or ABN]*

Of .....

*[street and postal addresses for service of notices]*

(the **Tenderer**)

**IN FAVOUR OF:**

Blackall-Tambo Regional Council ABN 42 062 968 922, of 6 Coronation Drive, Blackall, Qld 4472;  
PO Box 21, Blackall Qld 4472

(**Council**)

**AND:**

The State of Queensland acting through the Department of Agriculture and Fisheries  
ABN 66 934 348 189, of Court House Building, Cnr Drayton & Cunningham Streets, Dalby QLD 4405;  
PO Box 993, Dalby QLD 4405

(**DAF**)

## PART 1 BACKGROUND

- 1.1** Council issued an invitation for tenders for the sale of either:
- (1) both Council's *Forestry Act* sales permit to get Cypress Sawlogs and the Tambo Sawmill;  
or
  - (2) as a separable portion, only Council's *Forestry Act* sales permit to get Cypress Sawlogs.
- 1.2** To enable a potential tenderer to prepare its tender in response to Council's invitation, Council considers it will be beneficial for the potential tenderer to be able to access:
- (1) Council's *Forestry Act* sales permit to get Cypress Sawlogs; and
  - (2) Council's current operational harvesting plan (OHP) for Council's current allocated sale areas,  
*(the stated documentation)*.
- 1.3** Council considers the stated documentation to contain commercially sensitive information.
- 1.4** The Tenderer requests access to the stated documentation for the purpose of preparing its tender in response to Council's invitation *(the stated purpose)*.
- 1.5** Prior to Council permitting the Tenderer access to the stated documentation for the stated purpose, Council requires, and the Tenderer agrees, that the Tenderer will keep the stated documentation confidential.
- 1.6** This Deed records the Tenderer's promise and obligations in relation to keeping the stated documentation confidential.



# CONFIDENTIALITY DEED

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## PART 2 DEFINITIONS AND INTERPRETATIONS

### 2.1 Definitions

Each of the following expressions in bold to the left bears the meaning shown opposite or contained in the cross-referenced provision shown opposite:

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<b>Confidential Information</b>	<ul style="list-style-type: none"><li>(1) Information stated by or on behalf of a Party to be confidential.</li><li>(2) Information that a reasonable person in the position of a Party acquiring it would consider:<ul style="list-style-type: none"><li>(a) commercially or politically sensitive; or</li><li>(b) otherwise not intended for dissemination to any third person.</li></ul></li><li>(3) However, information is not confidential if:<ul style="list-style-type: none"><li>(a) it is already public knowledge; or</li><li>(b) it is obvious or trivial.</li></ul></li><li>(4) In particular, for this Deed, the information contained in the following documents is Confidential Information:<ul style="list-style-type: none"><li>(a) Council's Sales Permit;</li><li>(b) Council's Current OHP;</li><li>(c) DAF letter to Council dated 06/12/2022 notifying new Values applicable for the period from 01/01/2023 to 31 December 2023;</li><li>(d) DAF letter to Council dated 27/07/2022 about application of clauses 3.3(d) and 3.3(e) of Council's Sales Permit;</li><li>(e) DAF letter to Council dated 01/02/2022 about the detailed harvesting proposal for the period 0/01/2022 to 31/12/2023;</li><li>(f) DAF letter to Council dated 24/12/2022 about the State's election to review the terms and conditions of Council's Sales Permit pursuant to clause 23 of the permit.</li></ul></li></ul>
<b>Council's Current OHP</b>	In relation to Council's Sales Permit, operational harvesting plan for SUIs T001 and T002.
<b>Council's Sales Permit</b>	Sales Permit No. 201304400 to Get Cypress Sawlogs issued under the <i>Forestry Act 1959</i> (Qld).
<b>DAF</b>	The State of Queensland acting through the Department of Agriculture and Fisheries.
<b>Deed</b>	This instrument.

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# CONFIDENTIALITY DEED

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<b>Intellectual Property Rights</b>	<p>The proprietary rights (of every description) in and concerning, ideas, know how, inventions, copyright literary works, registered and unregistered designs, registered and unregistered trademarks, patents and patent applications:</p> <ol style="list-style-type: none"><li>(1) whether created before or after the formation of this Deed;</li><li>(2) whether existing in Australia or elsewhere;</li><li>(3) including registration entitlements; but</li><li>(4) excluding moral rights and similar non assignable personal rights in a work.</li></ol>
<b>Invitation for Tenders</b>	<p>The invitation for tenders issued by Council for the sale of either:</p> <ol style="list-style-type: none"><li>(1) both Council's Sales Permit and the Tambo Sawmill; or</li><li>(2) as a Separable Portion, only Council's Sales Permit.</li></ol>
<b>Purpose</b>	<p>For the Tenderer to use:</p> <ol style="list-style-type: none"><li>(3) to prepare and submit a tender in response to the Invitation for Tenders; and</li><li>(4) if the Tenderer is the successful Tenderer, to progress and complete the novation of Council's Sales Permit to the Tenderer.</li></ol>
<b>Representative</b>	<p>In relation to the Tenderer, a director, officer or an employee, consultant or advisor of the Tenderer</p>

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## 2.2 Expressions defined in the Invitation for Tenders

Except for the expressions defined in clause 2.1, expressions in this Deed that are defined in the Invitation for Tenders bear in this Deed the meanings ascribed in the Invitation for Tenders.

## 2.3 Interpretation

In this Deed, except where the context otherwise requires:

- (1) a word importing the singular includes the plural and vice versa;
- (2) a word of any gender includes other genders;
- (3) another grammatical form of a defined word or expression has a corresponding meaning;
- (4) a reference to a clause, paragraph, recital, schedule or annexure is to a clause, paragraph or recital of, or schedule or annexure to, this Deed, and a reference to this Deed includes any schedule or annexure;
- (5) a reference to a document or instrument includes the document or instrument as varied, novated, altered, supplemented or replaced from time to time;
- (6) all references to time and date are to time and date in Barcaldine, Queensland;
- (7) a reference to a party is to a party to this Deed, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes, and in the case of a trustee, includes any substituted or additional trustee;
- (8) a reference to a person includes a natural person, the estate of an individual, a partnership, a company, another body corporate, the trustee for a trust (in the trustee's capacity as trustee for the trust), association, governmental or local authority or agency or other entity;

# CONFIDENTIALITY DEED

- 
- (9) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
  - (10) the meaning of general words is not limited by specific examples introduced by 'including, for example' or similar expressions;
  - (11) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this Deed or any part of it;
  - (12) headings are for ease of reference and do not affect interpretation;
  - (13) a promise or covenant on the part of 2 or more persons binds them jointly and severally; and
  - (14) where the day on or by which any thing is to be done is not a business day, that thing must be done on or by the next business day.

## PART 3 USE AND NON-DISCLOSURE

### 3.1 No disclosure without consent

The Tenderer undertakes to:

- (1) keep and maintain the confidential nature of the Confirmation Information;
- (2) not disclose or grant access to the Confidential Information to any person (except to the Tenderer's Representatives in accordance with clause 3.2) without the prior written consent of Council (acting in its absolute discretion);
- (3) not use or disclose the Confidential Information other than for the Purpose.

### 3.2 Permitted disclosure

The Tenderer may disclose the Confidential Information to its Representatives who, having regard to the Purpose:

- (1) have a need to know (and only to the extent that each has a need to know) the Confidential Information; and
- (2) are under an obligation (which may include obligations under applicable professional rules of conduct) to maintain the confidentiality of the Confidential Information.

### 3.3 Restriction of use

- (1) The Tenderer must use the Confidential Information solely for the Purpose.
- (2) Other than as expressly stated in this Deed, the Tenderer is granted no right, title or interest in the Confidential Information.
- (3) The Tenderer must take reasonable steps to secure the Confidential Information from unauthorised access or disclosure.

### 3.4 Obligations survive this Deed

The obligations of the Tenderer contained in this Deed survive the Tenderer's completion of the Purpose.

## PART 4 DESTRUCTION OF CONFIDENTIAL INFORMATION

### 4.1 Application of Part 4

Clause 4.2 applies in the following circumstances:

- (1) the Tenderer decides not to, or fails to, lodge a tender submission in response to the Invitation for Tenders by the Closing Time of the Invitation for Tenders; or

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- (2) the Tenderer lodges a tender submission in response to the Invitation for Tenders but is notified by Council that the Tenderer was not successful in being awarded the tender.

## 4.2 Destruction

By no later than 10 Business Days after the occurrence of the relevant circumstance specified in clause 4.1, the Tenderer must:

- (1) destroy; and
- (2) if applicable, permanently and, to the extent technically possible to do so, irretrievably delete from any and all storage media (digitally or electronic or otherwise),

the original and all copies (physical, electronic and digital) of the Confidential Information and all materials embodying any Confidential Information (except, if applicable, to the extent reasonably and necessarily contained in the Tenderer's tender submission lodged in response to Council's Invitation for Tenders).

## 4.3 Evidence of Destruction

If requested by Council, the Tenderer must provide a sworn statement verifying it has complied with the obligations set out in clause 4.2.

## PART 5 INDEMNITY AND RELEASE

### 5.1 Indemnity

The Tenderer indemnifies and saves harmless Council and DAF against any loss or expense incurred, suffered or sustained by Council or DAF in connection with the Tenderer's breach or non-observance of its obligations under this Deed.

### 5.2 Release

- (1) Neither Council nor DAF is liable to the Tenderer in any way for any loss or expense that the Tenderer may suffer, incur or sustain arising from:

- (a) any error, inaccuracy, incompleteness or other similar defect in the Confidential Information; or
- (b) the use or disclosure of, or reliance upon, any of the Confidential Information by the Tenderer or any person acting through the Tenderer,

whether or not the loss or expense results from, or arises out of, or in connection with, any negligence, misrepresentation or default of Council or DAF.

- (2) The Tenderer unconditionally and irrevocably releases and holds harmless Council and DAF from any liability to the Tenderer or any person acting through the Tenderer, for any loss or expense the Tenderer or any person acting through the Tenderer may suffer, incur or sustain, arising from:

- (a) any error, inaccuracy, incompleteness or other similar defect in the Confidential Information; or
- (b) the use or disclosure of, or reliance upon, any of the Confidential Information by the Tenderer or any person acting through the Tenderer,

whether or not the loss or expense results from, or arises out of, or in connection with, any negligence, misrepresentation or default of Council or DAF.

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## PART 6 NOTICES

### 6.1 Giving Notices

Any notice (Notice) required to be given or made under this Deed must be:

- (1) in writing and signed by the sender or a person duly authorised by the sender;
- (2) directed to the intended recipient at the address or email address specified at the beginning of this Deed or as advised or varied by any Notice; and
- (3) hand delivered or sent by prepaid post to that address,

and may be given by:

- (4) the party;
- (5) the solicitor for the party; or
- (6) a director, secretary, authorised officer or attorney of the party; or
- (7) in the case of Council, a delegate of Council.

### 6.2 Receipt of Notice

A Notice given under clause 6.1 will be taken to have been received:

- (1) if hand delivered, on delivery;
- (2) if sent by post, 5 Business Days after posting,

however, if a Notice is received after 4.30pm in the place of receipt or on a day that is not a business day in that place, it is taken to be received by the recipient at 8.30am on the next business day in that place.

## PART 7 MISCELLANEOUS

### 7.1 Costs and expenses

The Tenderer pays its own costs and other expenses of and incidental to the negotiation, preparation, execution and implementation of this Deed.

### 7.2 Approvals and Consents

Except where this Deed expressly states otherwise, a party may, in its discretion, give conditionally or unconditionally, or withhold, any approval or consent under this Deed.

### 7.3 Waivers and Delays

- (1) A party's failure or delay to exercise a right, power or remedy does not operate as a waiver of that right, power or remedy.
- (2) The exercise of a right, power or remedy does not preclude either its exercise in the future or the exercise of any other right, power or remedy.
- (3) A waiver of a right, power or remedy is not effective unless it is in writing signed by the party giving it.
- (4) A waiver of a right, power or remedy is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given.

### 7.4 Invalidity

To the extent that any provision of this Deed is found by any court or competent authority in the applicable jurisdiction to be invalid, unlawful or unenforceable, that provision shall be deemed

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not to be a part of this Deed, and its severance from this Deed shall not affect the enforceability of the remainder of this Deed.

## 7.5 Governing law and jurisdiction

- (1) The Deed and any dispute, claim or obligation arising out of or in connection with it, its subject matter or formation will be governed and construed in accordance with the laws of Queensland.
- (2) Each of the parties irrevocably submits to the exclusive jurisdiction of courts exercising jurisdiction of Queensland and courts of appeal from them in respect of any proceedings arising out of or in connection with this Deed.

## 7.6 Passage of Consideration

Irrespective of whether it records the passage of consideration between the parties, this instrument is a deed.

### EXECUTED by

as its deed, in accordance with section 127(1) and (3) of the *Corporations Act 2001* (Cth), by the signatures of a director and second director/company secretary, on the        day of 2023:

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Signature of Director

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Signature of second Director/Company Secretary

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Full Name of Signatory

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Full Name of Signatory