



FREE PARKING AREA AGREEMENT

BETWEEN

BYRON SHIRE COUNCIL

AND

BEACHBREAK DEVELOPMENTS PTY LTD

ACN 087 926 252

THIS FREE PARKING AREA AGREEMENT dated the day of March 2015.

BETWEEN

BYRON SHIRE COUNCIL of Station Street, Mullumbimby in the State of New South Wales (**'Council'**);

and

BEACHBREAK DEVELOPMENTS PTY LTD ACN 087 926 252 (**'Landowner'**)

(together, the **'Parties'**)

PREAMBLE

1. The **Landowner** operates a car park used by the public as part of the property at 90-96 Jonson Street, Byron Bay in the State of New South Wales, land described as Lot 5 DP 619224 ('the **Land**').
2. The portion of the **Land** subject to this free parking agreement is highlighted in red in the aerial photograph in Schedule 1 ('the **Parking Area**').
3. The *Local Government Act 1993* (NSW) ('the **Act**') section 650(6) provides for a free parking area agreement between Byron Shire Council (**'Council'**) and the **Landowner** in relation to the **Parking Area**.
4. The **Parties** have agreed by the terms of this agreement to enter a free parking area agreement (the **'Agreement'**) as per section 650(6) of the **Act**.

OPERATIVE PROVISIONS

1. PURPOSE

The **Parties** agree that the purpose of this **Agreement** is to:

- (a) Place the **Parking Area** under **Council** control only to the extent of allowing **Council** to manage permissive parking at the **Parking Area** as per section 650(6) of the **Act**.
- (b) Set out the terms on which **Council** will manage the **Parking Area** under the **Act**.

2. TERM

This **Agreement** commences from the date of this agreement and continues until 5PM on the business day immediately before the fifth anniversary of the commencement of the Agreement unless terminated earlier.

3. AGREEMENT RENEWAL

3.1 If this Agreement is not terminated then no later than six months prior to this Agreement ending the **Parties** may commence negotiations for a new free parking agreement that complies with the **Act**.

3.2 Any new agreement will be concluded at least three months prior to this **Agreement** ending.

3.3 The new agreement will commence immediately after this **Agreement** expires.

4. NO LEGAL INTEREST

Council acknowledges that the entering of this Agreement and the limited ceding of control as set out in clause 1(a) of this Agreement confers no legal interest in the **Parking Area** to Council.

5. AUTHORITY TO ENTER PROPERTY

The **Landowner** authorises **Council's** delegated officers to enter the **Parking Area** for the purpose of, and at all times necessary for, enforcing the **Road Rules 2014 (NSW)** ('**Road Rules**') regarding permissive parking.

6. ENFORCEMENT AND ADMINISTRATION OF PARKING FINES

6.1 The **Parties** agree that **Council**, at its sole discretion, will enforce permissive parking on the **Parking Area** in accordance with its Compliance Program – Priorities as determined from time to time.

6.2 This **Agreement** imposes no obligation on **Council** as to how frequently it will monitor compliance with the permissive parking restrictions on the **Land**.

6.3 **Council** will provide all administration necessary to process Penalty Notices issued under the **Road Rules** for breaches of permissive parking in the **Parking Area**, including dealing with all enquiries and requisitions by the State Debt Recovery Office ('**SDRO**') and dealing with applications for a withdrawal of a Penalty Notice and Court Elected Penalty Notices having regard to Council's Enforcement Policy as determined from time to time

7. RETENTION OF FINES AND COSTS

The **Parties** agree that **Council** will retain all monies received from the issue and recovery of Penalty Notices issued in relation to the **Parking Area**, as well as fines, penalties or costs awarded by the Court as a result of the Court election of any Penalty Notice.

8. RESPONSIBILITY FOR PARKING SIGNAGE

8.1 During this **Agreement**, **Council**, at its sole discretion and cost, will determine and install in the **Parking Area** signage in accordance with Division 7, Part 12 of the **Road Rules 2014 (NSW)** (**Road Rules**) indicating that the **Parking Area** is subject to 2P permissive parking for the period 9am to 6pm daily.

8.2 The discretion referred to in clause 8.1 above is subject to any proposed regulatory changes being referred to Council's Local Traffic Committee for consideration.

8.3 The **Landowner** must immediately notify Council whenever the signage is damaged or needs to be repaired or replaced.

8.4 During this **Agreement** Council will at its cost repair and maintain (including the removal of any graffiti) or replace the signage installed pursuant to clause 8.1 of this Agreement.

8.5 If the **Agreement** is terminated by Council pursuant to clauses 14.2 and 14.3 of the Agreement, or if the **Agreement** is terminated by the Landowner within one year of its commencement, all costs relating to the purchase, erection and removal of the signage are to be borne by the **Landowner**.

8.6 If the **Agreement** is terminated by Council other than pursuant to clauses 14.2 and 14.3 of the Agreement all costs relating to the purchase, erection and removal of the signage are to be borne by **Council**.

9. PARKING AREA MAINTENANCE

The **Landowner** will meet its normal costs of the **Parking Area**, including maintenance of sealed surfaces, ancillary assets and litter clean up.

10. PARKING SPACES AND MARKINGS

10.1 **Council**, in reasonable consultation with **the Landowner**, will determine and provide the number of parking spaces allocated for public use in the **Parking Area**.

10.2 **Council** will provide a reasonable number of public mobility parking spaces in accordance with Part 6 of the *Road Transport (General) Regulation 2013* (NSW) and having regard to the total number of public parking spaces.

10.3 The cost of creating public parking spaces on the **Parking Area** will be borne by **Council**.

11. NO PRIVATE ENFORCEMENT

During this Agreement, the **Landowner** will not employ any private means of parking enforcement in the **Parking Area**, including fines, vehicle detention, immobilisation, wheel-clamping or towing.

12. CHANGE OF LANDOWNER OR LANDOWNER STATUS OR MANAGING AGENTS

12.1 If ownership of the **Parking Area** changes within the Agreement period, this Agreement will terminate on the day of settlement between the purchaser and **Landowner** and **Council** will seek an agreement with the new landowner.

12.2 During the term of this **Agreement** the **Landowner** must not assign their interest in the **Parking Area** unless:

- (a) Council consents to the assignment, acting reasonably; and
- (b) The proposed assignee enters into an agreement to the satisfaction of Council under which the assignee agrees to be bound by the terms of this agreement.

12.3 Where applicable during this Agreement, the **Landowner** will provide **Council** with the details of any managing agent for the **Land**, as well as written notice of any change in the managing agent within seven days of the changes taking place.

13. DISPUTE RESOLUTION

13.1 Should any dispute arise under this **Agreement**, the **Parties** via their nominated representatives will meet within 14 days notice of the dispute with a view to resolving the dispute in good faith.

13.2 Where the dispute cannot be resolved within a reasonable period, the **Agreement** will be terminated by one party providing the other party with 28 notice or the dispute may be submitted to mediation by a mediator selected by the parties.

13.3 Should **Council** be the terminating party pursuant to clause 13.2 of the Agreement the provisions of clause 8.5 of the Agreement will apply to the costs relating to the purchase, direction and removal of the signage.

14. TERMINATION OF AGREEMENT

14.1 This **Agreement** may be terminated by either party upon giving the other party six months notice in writing of the intention to terminate. If notice pursuant to this clause is given by **the Landowner** and the notice is to become effective within the first year of the operation of the Agreement the provisions of clause 8.5 of the Agreement apply in respect of all costs relating to the purchase, erection and removal of the signage.

14.2 This **Agreement** may be terminated by a **Party** for breach where:

- (a) The other party breaches this agreement;
- (b) The Party notifies the other party of the breach as per clause 14;
- (c) The other party fails to rectify the breach within 28 days of the notice.

14.3 A **Party** can terminate the **Agreement** immediately for breach after the conditions in 14.2 are met.

14.4 **Council** will not be liable for any costs, damages or liabilities incurred by the **Landowner** where the **Landowner** terminates this **Agreement** for any reason.

15. NOTICES

All written communications between the **Parties** for the purposes of this **Agreement**:

- (a) Must be in writing;
- (b) Must be signed, in the case of a company, by its authorised officer, and in the case of Council, by its Director Infrastructure Services; and
- (c) Will be taken to be duly given or made when delivered, received or left at the address for service of the recipient on a business day, otherwise it will be taken to have been duly given or made at the commencement of the next business day.

16. ADDRESSES FOR SERVICE

Council	Landowner
The General Manager Byron Shire Council PO Box 219 MULLUMBIMBY NSW 2482	Beachbreak Developments Pty Limited Level 1 1 Jamieson St. BALLINA NSW 2478

17. LAW

17.1 The law relating to this **Agreement** is the law of New South Wales.

17.2 If a change in the **Act** impacts on this **Agreement**, this agreement will be deemed to be automatically amended to reflect that change in the Act.

17.3 If a change in the law makes this **Agreement** impossible to discharge, or renders this agreement radically different to the terms agreed upon, then this agreement may be terminated by either party by notice in writing to the other party.

18. INDEMNITY AND RELEASE

Each of the **Parties** will indemnify and keep indemnified the other party from and against any claim arising in connection with:

- (a) Any breach of this **Agreement** or contravention of any law by that party or that party's agent or representative; and
- (b) Any negligent or wilful act or omission by that party or that party's agent or representative, except to the extent that such a claim is caused or contributed to by the negligence, wilful act or wilful omission, any contravention of any law or breach of this agreement by the other party or its agent or representative.

19. COSTS

Each of the **Parties** must bear their own legal costs incurred in relation to the negotiation, preparation and execution of this **Agreement**.

20. ENTIRE AGREEMENT

This **Agreement** is the entire agreement of the parties on the subject matter. All representations, communications and prior agreements in relation to the subject matter are merged in and superseded by this agreement.

21. COUNTERPARTS

This **Agreement** may be executed in any number of counterparts and all of those counterparts taken together constitute one and the same instrument.

EXECUTED AS AN AGREEMENT

Authorised for and on behalf of

BYRON SHIRE COUNCIL by the General Manager in accordance with Council resolution 15-070 and the *Interpretation Act 1987* section 50 and *Local Government Act 1993* section 683

Signature:

Name: Ken Gainger

Executed for and on behalf of

BEACHBREAK DEVELOPMENTS PTY LTD ACN 087 926 252 in accordance with the *Corporations Act 2001* (Cth) section 127(1)

Signature of sole director:

Name of sole director: Stephen Leonard Agnew

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FLETCHER STREET
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CARLYLE STREET
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Disclaimer: While all reasonable care has been taken to ensure the information contained on this map is up to date and accurate, no warranty is given that the information contained on this map is free from error or omission. Any reliance placed on such information shall be at the sole risk of the user. Please verify the accuracy of the information prior to using it.

Note: The information shown on this map is a copyright of the Byron Shire Council and the NSW Department of Lands.

Scale = 1:1,273

Metres 20 40 60

(Scale correct at A4 size)



27/02/2015