

THIS PERMIT is made this 4<sup>th</sup> day of August 2016.

Between: NOOSA SHIRE COUNCIL of 9 Pelican Street Tewantin in the State of Queensland

("the Council")

and: COOROY COMMUNITY GARDENS INC of 26 Emerald Street, Cooroy in the State of Queensland

("the Permittee")

## PRELIMINARIES

- A. The Land belongs to the State of Queensland and is the subject of a reserve.
- B. The Council has been appointed as the trustee of that reserve.
- C. The Premises are a part of the Land.
- D. The Permittee has requested the Council to grant it a permit to use the Premises for the Permitted Use, and the Council has agreed to grant such a permit subject to the conditions contained within this document and to the provisions of the *Land Act* and associated regulations.

## INTRODUCTION

### 1. Interpretation

"Commencement Date" means the commencement date specified in Item 1 of Schedule 1.

"Council" means the Noosa Shire Council, its successors and assigns, and any officer of the Noosa Shire Council authorised to administer the relevant provision of this Permit.

"Expenses" means—

- (a) water and sewerage access and consumption charges, state bulk water charges, water meter rental, environmental, tourism or heritage charges or levies, cleansing dues and other charges which the Council or any other authority may from time to time assess on the Premises;
- (b) fire service levies, rates, taxes, and other charges and levies, including all future rates, taxes, other charges and levies assessed on or payable in respect of the Premises;
- (c) costs for services (including electricity, gas and telephone) used on the Premises;
- (d) and in addition, any GST that may be imposed in relation to any item in (a), (b) or (c) above.

"GST" means a goods and services tax or other similar tax payable by the Council in respect of a supply under the Permit.

"Land" means the land described in Item 3 of Schedule 1.

"Land Act" means the *Land Act (Qld) 1994* and associated regulations as amended from time to time.

"Laws" means all statutes, regulations, ordinances, by-laws, industrial agreements, awards, determinations, orders, rules or requirements of any government authority, and any governmental standards which concern the Premises, the Permittees Chattels or the Permittees use and occupation of the Premises, including, without limitation, the *Land Act* and all environmental laws.

"Minister" means the Minister administering the *Land Act*.

"Premises" means that part of the Land shown as Area A on the plan in Schedule 4, together with all buildings, fixtures and improvements thereon.

"Permitted Use" means the permitted use described in Item 4 of 1.

"Permittees Chattels" means all movable chattels located on, but not affixed to, the Premises, which are owned by the Permittee, including, without limitation, signs, furniture, machines, equipment and computers.

"Term" means the period from the commencement date in Item 1 of Schedule 1 to the termination date in Item 1 of Schedule 1, or the date when this Permit is lawfully terminated, whichever happens first.

"Third Party Property" means all fixtures, fittings and chattels located on the Premises of which a person other than the Permittee or the Council, is and remains the owner.

## **2. Grant of Permit**

- 2.1 The Council grants to the Permittee a permit to use the Premises for the Permitted Use during the Term.
- 2.2 Because the Term is no more than 12 months, the Consent or approval of the Minister for this Permit is not required.

## **3. Consent of the Council**

Whenever the consent of the Council is required under this Permit—

- 3.1 the consent may be given or withheld in the Council's absolute discretion;
- 3.2 the consent must be in writing; and
- 3.3 the consent may be given subject to conditions.

## **PERMITTEES RIGHTS AND OBLIGATIONS**

### **4. Rent**

The Permittee will pay to the Council the annual rent set out in Item 2 of Schedule 1 in advance, on or before the Commencement Date.

### **5. Other Payments**

- 5.1 The Permittee must also pay—
- (a) the Expenses, subject to any policy of the Council, from time to time, to make payments or contributions towards the water and sewerage charges payable by eligible not for profit organisations; and
  - (b) the Council's costs of and incidental to the preparation of this permit, including legal costs, the costs of preparation of any plan attached hereto, valuation fees and any stamp duty, and
  - (c) the Council's costs (including legal and administrative costs) of enforcing this Permit against the Permittee.
- 5.2 The Permittee must make these payments—
- (a) by the due date for payment, if they are assessed against or payable directly by the Permittee; or
  - (b) to the Council on demand, if they are assessed against or payable by the Council.

### **6. Use of the Premises**

- 6.1 The Permittee must—
- (a) use the Premises only for the Permitted Use;
  - (b) comply with all Laws;
  - (c) at all times comply with all the current policies of the Council affecting the Premises and the Land;
  - (d) use the Premises in a manner consistent with the requirements of any management plan established for the Land under the *Land Act*;
  - (e) hold the Permit so that the Land may be used for the community purpose for which it was reserved or granted in trust without undue interruption or obstruction

- (f) control pests, plants and animals on the Premises during the Term in accordance with the *Land Protection (Pest and Stock Route Management) Act 2002* and any requirements of any policies of the Council.

6.2 The Permittee must not, without the prior written consent of the Council—

- (a) allow any activity or thing on or near the Premises which may be illegal, or a nuisance, disturbance or annoyance to any person;
- (b) use any form of light, power or heat other than electric current or gas supplied through meters (except auxiliary power or lighting, other than an exposed flame, during power failures or restrictions) on the Premises;
- (c) use any flammable or dangerous substance on the Premises, except in the normal course of the Permittees activities;
- (d) interfere with any services to the Premises;

6.3 The Permittee acknowledges that the Council will maintain a Register for the purpose of recording noise complaints made to it in relation to the Permittee's use of the Premises to assist with the assessment of any breach by the Permittee of clause 6.2 (a).

## **7. Maintenance and Development of the Premises**

7.1 The Permittee must keep the Premises in good and substantial repair (including structural repairs) at all times during the term of this Permit and otherwise so long as the Permittee is in possession or occupation of the Premises, at the Permittee's expense.

7.2 The Permittee must notify the Council in writing of any structural repairs to be undertaken to the Premises prior to the commencement of such repairs.

7.3 Any repairs carried out to the Premises must have relevant legislative approvals and be undertaken by a duly qualified repairer in a workmanlike manner and to the satisfaction of the Council.

7.4 At all times, the Permittee must:

- (a) keep the Premises clean and tidy; and
- (b) keep the Premises free from weeds and pests; and
- (c) store and keep all trade refuse and trade garbage in proper containers; and
- (d) dispose of all refuse and trade garbage regularly and hygienically at any approved rubbish dump without causing pollution or damage to the Land, a water course or the sea; and
- (e) use all reasonable endeavours to overcome and minimise any harmful effects on the environment arising from its use of the Premises; and
- (f) rehabilitate the Premises, any water course, the sea, the Land and any other land (the "affected areas") if there is any damage caused to the Premises or the affected areas by its use of the Premises or any other area of the Land.

7.5 Further, the Permittee must not, without the prior written consent of the Council:

- (a) damage the Premises
- (b) alter the Premises, or do any building work on the Premises;
- (c) fence the Premises
- (d) display any lit signs or notices on the Premises;
- (e) carry out any earthworks on the Premises;
- (f) destroy, damage or remove any tree or shrub on the Premises;

- (g) dispose of, or allow to be disposed of, any substance or thing (including refuse, garbage, oil or chemical) into any water course, the sea or onto the Land

7.6 The Permittee is required to comply with the provisions of the Vegetation Management Act 1999.

## **8. Permittee Responsibilities**

8.1 The Permittee will maintain-

- (a) a post office box during the Term and will inform the Council of full details of the post office box;
- (b) A current key register containing details of all persons who have keys to any lockable building on the Premises, for inspection by the Council on request.

8.2 Each year, the Permittee will provide to the Council within 30 days of the holding of the Permittees Annual General Meeting the following—

- (a) A current copy of the Certificate of Incorporation of the Permittee;
- (b) The names and addresses of each office bearer; and
- (c) A copy of the key register referred to in Clause 8.1(b).

## **9. Assignment, Subletting and Mortgaging**

9.1 The Permittee—

- (a) may not assign, transfer, sublet, mortgage or charge the Permittees rights to use the Premises; and
- (b) must not attempt to assign, transfer, sublet, or mortgage the Permittees rights to use the Premises.

## **10. Damage or Destruction**

10.1 If the Premises are damaged by an event beyond the reasonable control of the Permittee so that the Permittee cannot gain access to them or use them for the Permitted Use, either party may terminate this Permit by one month's written notice to the other party.

10.2 Subject to this clause, neither the Council nor the Permittee is obliged to reinstate the Premises if they or the means of access to them are damaged by an event beyond the reasonable control of the Permittee so that the Permittee cannot gain access to them or use them for the Permitted Use.

10.3 Termination under this clause does not affect either party's accrued rights before termination.

## **11. Alcohol and Gambling**

11.1 The Permittee must not store, sell or supply or allow to be stored, sold or supplied, any liquor on or from the Premises:

- (a) except with the prior written consent of the Council and the Minister; and
- (b) other than in accordance with any required licence or other authority under the *Liquor Act 1992*.

11.2 If the Permittee is granted a licence or permit under the *Liquor Act 1992*, the Permittee:

- (a) must give the Council a copy of any return filed by the Permittee under the Liquor Act 1992 in respect of such licence or permit within 7 days of filing the return;
- (b) must ensure that the Council is registered as the owner of the Premises with the authority that regulates that licence or permit;
- (c) must pay all fees required in respect of that licence or permit;
- (d) authorises, and will do all things necessary to enable, the Council to inspect and obtain copies of all documents filed under the Liquor Act 1992 which relate to such licence or permit;
- (e) will only allow alcohol to be sold and consumed on the Premises during the hours permitted under such licence or permit;

- (f) must obtain the prior written consent of the Council before;
  - (i) making an application to vary the licence or permit or;
  - (ii) making any application for a different type of licence or permit, including an extended hours permit.

11.3 The Permittee must not operate from the Premises any gambling facilities without the written consent of the Council and the Minister.

## **12. Smoke Free Environment**

12.1 Council's properties are smoke free zones intended to provide the community with a safe and healthy environment. Council encourages the Permittee to adopt a Smoke-Free policy with respect to the Premises.

12.2 The Permittee acknowledges that any building on the Premises may be regarded as an "enclosed place" in terms of the Tobacco and Other Products (Prevention of Supply to Children) Act 1998 and agrees to abide by the terms of that Act with respect to the smoking by people in such enclosed place.

## **13. Good Neighbour Processes**

13.1 The Permittee will appoint a Community Liaison Officer to represent the Permittee in dealings with the public and will notify the Council of the name and contact phone numbers of this person within 7 days of signing the permit. The Permittee will keep this information current.

13.2 The Permittee agrees to observe the Good Neighbour Processes set out in Schedule 2, as varied or replaced from time to time by the Council.

13.3 All directions and instructions of the Council in respect of the Good Neighbour Process shall be obeyed and followed by the Permittee in the course of its occupancy of the said Premises. In the event of the Permittee considering such actions and/or instructions unreasonable then the Permittee shall be entitled to refer the same to the Council for determination whose decision shall be final and binding upon the parties.

## **14. Town planning application**

14.1 The granting of this Permit does not, of itself, grant the Permittee permission to use the Premises in any particular way.

14.2 If any town planning application is required for the use of the Premises under this Permit the Permittee will pay all costs in connection with obtaining any necessary approval of the Council as local authority.

14.3 If the Permittee undertakes any activity on the Premises that reasonably requires the Permittee to make a Development Application under the Sustainable Planning Act 2009, the Permittee will—

- (a) Make that application prior to undertaking that activity; and
- (b) Comply with all lawful requests of Council.

## **15. Bikeway/Road Surrender**

15.1 The Council may serve a notice on the Permittee requiring it to surrender its Permit in respect of any part of the Premises which is required by the Council for bikeway or road widening purposes.

15.2 If the Council serves such a notice on the Permittee, the Permittee will do everything necessary to comply with that notice as soon as possible, after receipt.

15.3 The Council will not pay the Permittee or any other person any compensation for any surrender of the Permit or any part of the Premises under this clause.

## **16. Quiet Enjoyment**

16.1 If the Permittee performs all its obligations under this Permit, the Permittee may use the Premises during the Term without any interruption by the Council, subject to the Council's rights under this Permit.

## **COUNCIL'S RIGHTS AND OBLIGATIONS**

### **17. Council's right to enter**

17.1 The Council officers may enter on the Premises at any reasonable time after giving notice to the Permittee to—

- (a) make repairs to the Premises;
- (b) carry out alterations, additions or structural works on the Premises;
- (c) carry out any obligations of the Permittee which the Permittee has not done;
- (d) view the condition of the Premises; or
- (e) check the Permittee's compliance with this Permit.

17.2 In an emergency or potential emergency, the Council and the Local State Emergency Service (SES), their employees, contractors and agents, may occupy the building and the Premises with the Permittee, upon receipt by the Permittee of notice from the executive of the Noosa Shire Council Local Disaster Management Group. If advance notice is unable to be given, the Council and the SES shall still have the right to enter and occupy the Premises during the co-ordination and delivery of disaster/emergency functions. Any damage caused to the Premises during the disaster/emergency activity shall be made good by the Council;

17.3 The Council will not interfere with the Permittees use and occupation of the Premises more than is reasonably necessary, in the opinion of the Council.

17.4 The Council will not be liable to the Permittee for any inconvenience or loss suffered by the Permittee because of the Council's entry on to the Premises.

### **18. Reservations to the Council and the Minister**

18.1 The Council reserves the right to—

- (a) install, maintain, use and replace any pipes, ducts, conduits and wires passing through the Premises;
- (b) run water, air, electricity, sewerage or any other services through those pipes, ducts, conduits or wires; and
- (c) grant easements or other rights over the Premises.

18.2 The Council shall not be liable for any inconvenience or loss suffered by the Permittee because of the exercise by the Council of its rights under this clause.

### **19. Availability to other organisations**

19.1 The Council reserves the right to direct the Permittee by at least 30 days written notice to;

- (a) Enter into a sub-permit of the Premises or part of the Premises; or
- (b) Enter into a licence of the Premises or part of the Premises, with a person nominated by the Council, on terms and conditions approved in writing by the Council.

19.2 The Permittee may impose further reasonable conditions, including the charging of a reasonable fee, upon the sub-Permittee or licensee nominated by the Council under this clause.

19.3 If any dispute arises between the Permittee and any sub-Permittee or licensee under this clause, it must be referred by the Permittee to the Council, whose decision on the matter is final.

19.4 The Council will not use its powers under this clause so as to substantially detract from the rights granted to the Permittee under the permit.

## INSURANCE AND INDEMNITIES

### 20. Public Liability and other Insurance

- 20.1 The Permittee must effect a public liability insurance policy with an insurer authorised under the *Insurance Act 1973* (Cth) naming the Permittee as the insured covering legal liability for any loss of or damage to any property and for the injury (including death) to any person arising out of anything done or omitted on or about the Premises and against all claims, demands, proceedings, costs, charges and expenses whatsoever in respect to the terms and condition of the insurance policy.

Such policy must:

- (a) be for an amount of not less than twenty million (\$20,000,000.00) in respect of all claims arising out of a single event.
  - (b) be effected on a 'claim occurring' basis so that any claim made by the Permittee under the policy after the expiration of the period of policy cover but relating to an event occurring during the currency of the policy will be covered by the policy subject to the claim meeting the policies other terms and conditions; and
  - (c) be maintained at all times during the currency of this Permit, and upon receipt of any Notice of Cancellation, the Permittee must immediately effect another public liability insurance policy in accordance with the terms and conditions of the Permit.
- 20.2 The Permittee must effect such other insurance policies as may be reasonably specified by the Council from time to time including:
- (a) a policy under which the Permittee's Chattels are insured for their full replacement value for damage, loss or theft of those chattels; and
  - (b) a policy for the replacement of broken or damaged glass in the Premises.
- 20.3 The Permittee must forward to the Council a copy of a certificate of currency for any of the policies referred to in this clause within 14 days of request by the Council.
- 20.4 If the Permittee at any time fails to maintain the insurances referred to in clause 20.1 the Council may do everything necessary to effect and maintain such insurances and all moneys paid or expense incurred by the Council in this regard will be payable by the Permittee on demand.

### 21. Indemnity by Permittee

- 21.1 The Permittee indemnifies and agrees to keep indemnified the Council, the Minister and the State of Queensland ("the Indemnified Parties") against all action, suits, proceedings, claims, demands, costs, losses, damages, and expenses ("Claim") arising out of or in any way connected to or resulting from the granting, termination or cancellation of this Permit to the Permittee or which is connected to or resulting from the Permittees use and occupation of the Premises (all of which are referred to as "the indemnified acts or omissions") save to the extent that the Claim arises as a result of any negligent act or omission of the Indemnified Parties, however, any negligent act or omission of one of the Indemnified Parties does not negate the indemnity to any of the other Indemnified Parties.
- 21.2 The Permittee hereby releases and discharges the Indemnified Parties from any Claim relating to the indemnified acts or omissions which may be made against the Indemnified Parties, save to the extent that the Claim arises as a result of any negligent act or omission of the Indemnified Parties, however, any negligent act or omission of one of the Indemnified Parties does not negate the release and discharge in favour of any of the other Indemnified Parties.
- 21.3 To remove doubt, the Permittee specifically agrees that the indemnity provided by the Permittee in this clause 21 extends to any Claim (as defined by this clause 21) arising from the use of any other part of the Land by the Permittee.

## **22. Building Insurance**

- 22.1 The Permittee shall not be responsible for the insurance of buildings on the Premises.
- 22.2 The Council shall effect and maintain building insurance (but not contents insurance) in respect of the Premises at the Council's cost. Such building insurance may be effected as part of a global insurance policy taken out by the Council in respect of buildings and other premises in addition to the buildings on the Premises.
- 22.3 The Council may apply the proceeds of any claim on any insurance policy taken out in accordance with this clause at the Council's absolute discretion and the Council shall be under no obligation to use the proceeds of such insurance to reinstate any damage which may occur to the Premises.
- 22.4 The Permittee must not:
- (a) without the Council's consent, do or permit anything to be done on the Premises which increases or may increase the premium payable for any insurance in connection with the Premises or result in such insurance becoming void or voidable; or
  - (b) store or use inflammable, volatile or explosive substances on the Premises unless their storage or use is required for the Permitted Use, the Council is notified of that requirement and the Permittee complies with the Council requirements in connection with their storage and use; or
  - (c) do or permit anything which prejudices any insurance claim or potential insurance claim in connection with the Premises,
  - (d) do anything which may conflict with requirements or orders of authorities or any law in connection with fire safety or fire prevention; or
  - (e) disburse any insurance money recovered other than for the purpose of reinstating or repairing the damage in respect of which a damage claim under any of the insurance policies were made.
- 22.5 If the Council consents to a proposal by the Permittee which causes an increase in the premium payable by the Council for insurance in respect of the Premises, then the Permittee must pay the Council, on demand from the Council, for each period of insurance in which the premium is higher than it would have been if the Council had not consented to the proposal, the difference between the premium payable if the Council had not consented and the premium payable because the Council has consented.
- 22.6 The Permittee must comply with the requirements of any insurer in relation to the position of anything placed or intended to be placed by the Permittee on the Premises and the position of alarms, sprinklers and other fire prevention equipment in or around the Premises.

## **23. Exclusion of Liability**

- 23.1 The Council does not warrant that the Premises—
- (a) are suitable for any purpose; or
  - (b) may be used for the Permitted Use.
- 23.2 The Permittee uses the Premises at its own risk. The Council will not be liable to the Permittee or any other person for any loss, damage or injury caused directly or indirectly by any non-negligent act or omission of the Council.
- 23.3 The Council will not be liable to the Permittee or any other person for any loss, damage or injury because of the failure of the electricity or water supply or other services or facilities enjoyed by the Permittee on the Premises.

## **TERMINATION**

### **24. Major and Minor Breaches**

- 24.1 Breaches of the following clauses are major breaches of this Permit, which enable the Council to terminate the Permit—
- (i) 4: Rent
  - (ii) 5: Other Payments



- (iii) 6: Use of the Premises
- (iv) 7: Maintenance and Development
- (v) 8: Good Neighbouring Processes
- (vi) 12: Alcohol and Gambling
- (vii) 20: Public Liability Insurance; and
- (viii) 22: Building Insurance.

All breaches which are not major breaches are minor breaches.

24.2 If a minor breach occurs, the Council may—

- (a) serve a notice on the Permittee requiring it to remedy the minor breach within 14 days of the date of the notice; and
- (b) sue the Permittee for any damages suffered by Council as a result of the minor breach.

24.3 If a minor breach is capable of being remedied but is not remedied within 14 days of notice of the minor breach being served on the Permittee, the Council may elect to treat that minor breach as a major breach.

24.4 If three minor breaches occur, of which the Council has served notice under clause 24.2, the Council may treat the third minor breach as a major breach.

24.5 If a major breach occurs, the Council may—

- (a) serve a notice on the Permittee requiring it to remedy the major breach within a reasonable time;
- (b) if the major breach is not remedied within that time, terminate the Permit under clause 25.2; and/or
- (c) sue the Permittee for damages caused by the major breach.

## **25. Termination of Permit**

25.1 Council or the Minister may cancel the Permit at any time on providing 28 days' notice, without reason given.

25.2 Without limiting the generality of the preceding clause, Council may immediately terminate the Permit if—

- (a) the Permittee enters into any form of liquidation, is wound up or dissolved, enters into a scheme of arrangement for creditors, is placed under official management or external administration, or a receiver and/or manager of any of its assets is appointed;
- (b) the interest of the Permittee under this Permit is taken in execution;
- (c) the Permittee is declared insolvent by a court of competent jurisdiction; or
- (d) the Permittee commits a major breach of this Permit and that major breach is not remedied within the time specified in the Council's notice served on the Permittee to remedy the major breach.

25.3 The Council may terminate the Permit under Clause 25.2 by—

- (a) giving the Permittee written notice that it is terminating the Permit; or
- (b) re-entering the Premises (with force if necessary), ejecting the Permittee and any other persons from the Premises; or
- (c) doing both.

## **26. Damages**

26.1 If the Council terminates this Permit under clause 25.2 [Termination of Permit], the Council may recover all money payable by the Permittee under this Permit up to the Termination Date in item 1 of Schedule 1, however, the Council must minimise its loss.

26.2 The Council's entitlement to damages is not limited or affected if—

- (a) the Permittee abandons the Premises;
- (b) the Council accepts any repudiation by the Permittee of this Permit; or
- (c) the conduct of the Council and the Permittee constitutes a surrender by operation of law.

26.3 The Council's rights under clause 24, 25 and 26 are in addition to any of its other legal rights.

## **27. Removal of Permittee's Chattels and condition of Premises on termination**

27.1 On the expiration or earlier determination of this Permit (for this clause, referred to as "Termination").

27.2 The Permittee will vacate the Premises and leave them clean and tidy and in good repair.

27.3 The Permittee must remove all Permittee's Chattels within 14 days of the Termination of the Permit.

27.4 The Permittee will repair any damage done to the Premises in removing the Permittee's Chattels and will leave the Premises clean and tidy and in good repair.

27.5 If the Permittee does not remove the Permittee's Chattels or if the Council terminates the Permit and re-enters the Premises, the Council may choose to—

- (a) have the Permittee's Chattels removed and stored as the Council thinks fit at the Permittee's cost; or
- (b) treat the Permittee's Chattels as if the Permittee had abandoned them and they had become the property of the Council, without being liable to account to the Permittee.

## **MISCELLANEOUS**

### **28. Default Interest**

28.1 The Permittee will pay the Council interest, calculated daily, at the rate set out in Item 6 of Schedule 1 on any money due and payable but unpaid under this Permit.

### **29. Dispute Resolution**

29.1 If a dispute arises, other than a resident dispute under the Good Neighbour Processes in Schedule 2, the Permittee and the Council, agree to be bound by the dispute resolution procedures in Schedule 3.

### **30. General**

30.1 If any provision of this Permit is unenforceable for any reason, that provision will be severed from this Permit and the enforceability of the remaining provisions will not be affected.

30.2 Failure by the Council to require strict compliance with a provision of this Permit - including the obligation to pay any money by a certain date - will not be a waiver of the Council's rights to enforce that provision later. Any waiver by the Council of any breach of this Permit must be in writing.

30.3 A demand for rent or other money owing by the Permittee or the subsequent acceptance of rent or other money does not constitute a waiver by the Council of any earlier default by the Permittee.

30.4 Any obligations of the Permittee to be performed after termination of this Permit survive that termination.

30.5 If the Permittee does not perform any obligation under this Permit, the Council may perform that obligation. The cost of performing that obligation will be a debt due to the Council from the Permittee.

30.6 All covenants implied in this Permit by sections 105, 107 and 109 of the Property Law Act 1974 are negated. All other covenants implied by the Land Title Act 1994 and Property Law Act 1974 are modified to the extent that they are inconsistent with any of the terms of the Permit.

30.7 This Permit contains the entire agreement between the parties in relation to the Premises. The Permittee acknowledges that it has not been induced to enter into this Permit by any promise, warranty or representation by or on behalf of the Council which is not in this Permit.

30.8 A reference in this Permit to any Law includes a reference to any Law which amends, repeals or replaces that Law.

**31. Notices****31.1 All notices given under this Permit—**

- (a) may be signed by an authorised officer of the party giving the notice;
- (b) must be in writing;
- (c) may be given by being delivered, or sent by facsimile transmission or prepaid post to the address for service of the party to whom the notice is addressed;
- (d) if addressed to the Permittee, may be given by being left at the Premises;
- (e) if sent by mail, are deemed to be given on the third day after mailing, and if sent by facsimile, are deemed to be given on the day after they are dispatched.

**31.2 The address for service of each party is the address set out in Item 7 of Schedule 1 or any other address which the party specifies in writing to the other party.****32. Council's reserved Rights****32.1 The Permittee acknowledges that the Council may from time to time allow a person or entity other than the Permittee to use the Premises for a Permitted Use consistent with the purpose but in a way that is likely to cause as little disruption as practicable to the Permittee's use of the Premises.****33. Holding Over and Other Dealings**

The Permittee may not:

- (a) hold over, possess or occupy the Premises after the expiry, cancellation or termination of this Permit;
- (b) renew this Permit;
- (c) convert this Permit to another form of tenure; or
- (d) buy the Premises.

**34. GST****34.1 If the Permittee continues to occupy the Premises after the Term with the consent of the Council, then the Permittee does so on the same terms as those applicable on the last day of the Term.****34.2 In this clause, the expressions "consideration", "GST", "Input tax credit", "supply", "tax invoice", "recipient" and "taxable supply" have the meanings given to those expressions in the A New Tax System (Goods and Services Tax) Act 1999.****34.3 Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under or in accordance with this Permit are exclusive of GST.****34.4 If GST is imposed on any supply made under or in accordance with this Permit, the recipient of the taxable supply must pay to the supplier an additional amount equal to the GST payable on or for the taxable supply subject to the recipient receiving a valid tax invoice in respect of the supply at or before the time of payment. Payment of the additional amount will be made at the same time as payment for the taxable supply is required to be made in accordance with this Permit.****34.5 If this Permit requires a party to pay for, reimburse or contribute to any expense, loss or outgoing ("reimbursable expense") suffered or incurred by another party, the amount required to be paid, reimbursed or contributed by the first party will be the sum of:**

- (a) the amount of the reimbursable expense net of input tax credits (if any) to which the other party is entitled in respect of the reimbursable expense ("net amount"); and
- (b) if the other party's recovery from the first party is a taxable supply, any GST payable in respect of that supply;

such that after the other party meets the GST liability, it retains the net amount.

**35. Special Conditions**

- 35.1 Upon termination of this Permit, the Permittee must, at the Permittee's cost, remove all structures and improvements and chattels from the Premises and make the ground level to allow for regrowth of grasses.
- 35.1 The Permittee must ensure that any storage containers or temporary structure placed on the Premises are:
- (a) of good quality, waterproof and with no defects;
  - (b) be aesthetically complimentary with the surrounding areas.

**SCHEDULE 1: PERMIT DETAILS****Item 1: Term**

Commencement Date of lease: 15 /06 /2016

Expiry Date of lease: 15 /06/2017

\*Note: The Term must not be greater than 12 months.

**Item 2: Payment of rent**

The annual rent: The annual rent for the first year of the term shall be an amount equal to 1 unit/s of the annual licence fee or other charge prescribed by the Council from time to time for leases and permits to not for profit organisations, commencing at \$262.90

\*Note: For 2015/16 1 unit = \$262.90.

**Item 3: Land**

Part of Lot 234 on MCH4082 known as 26 Emerald Street, Cooroy, Queensland

**Item 4: Permitted Use****Item 5: Insurance**

Amount of public liability insurance: Twenty million dollars (\$20,000,000.00)

**Item 6: Interest on overdue payments**

Interest Rate: 11% per annum compounding daily, unless some other rate is prescribed and published by the Council from time to time as the rate of interest payable to the Council in respect of amounts not paid to the Council by their due date, in which event such other interest rate shall apply.

**Item 7: Addresses for notices**

Noosa Shire Council  
Attention: Property and Land Management  
PO Box 141, Tewantin QLD, 4565  
Ph: 07 5329 6500

Permittee: Cooroy Community Gardens  
PO Box 65, Cooroy Qld 4563

## SCHEDULE 2: GOOD NEIGHBOUR PROCESSES

### Introduction

1. The Council and the Permittee wish to work together to minimise inconvenience to, and complaints from, residents in the neighbourhood of the Premises who are affected by the Permittees use of the Premises ("residents"), including residents affected by noise coming from, or traffic connected with, the Permittees use of the Premises, and to follow a procedure to resolve residents' complaints in a way which satisfies the Permittee, the Council and the residents.

### General Good Neighbour Processes



2. The Permittee will use its best endeavours to work together with residents to minimise inconvenience to residents caused by the Permittee use of the Premises, and to develop close links between residents and the Permittee.
3. Examples of the way in which the Permittee will put Good Neighbour processes into practice include:
  - 3.1 notifying residents in the neighbourhood of the Premises of the activities of the Permittee, especially of any major events to be held at the Premises;
  - 3.2 appointing parking monitors to ensure that the Permittee members, invitees and licensees do not create undue noise when entering and leaving the Premises, or in neighbouring streets, and to ensure that resident access to driveways etc is not obstructed;
  - 3.3 circulating details of the Community Liaison Officer to residents and asking them to contact that person with any concerns or question;
  - 3.4 attending any seminars or meetings organised by the Council about community leasing generally.

### Complaint Handling Procedures

4. The Permittee agrees to participate in any course of action proposed by the Council under this Schedule.
5. If any person ("the complainant") makes a complaint to the Council which arises from the Permittees use of the Premises, the Council will refer the complainant to the Permittees Community Liaison Officer and will record that a "resident notification" has been made in relation to the Permittee.
6. The Council will contact the complainant to find out the result of the referral.
7. If, in the reasonable opinion of the Council, the complaint has not been resolved by the Permittees Community Liaison Officer within 14 days of the complainant contacting the Community Liaison Officer, the Council will record that a "resident dispute" has arisen and may propose a method of solving the resident dispute to the complainant and the Permittee.

(For example, the method chosen may involve:

- a meeting between the Permittee, the complainant and the Council;
- mediation (including a programme provided by the Community Justice Programme of the Department of Justice and Attorney General);
- referral of the resident dispute to the appropriate statutory authority (for example, in the case of a resident dispute in relation to lights used on the Premises, to the Community Health Branch of the Council ); or
- any other method determined by the Council.

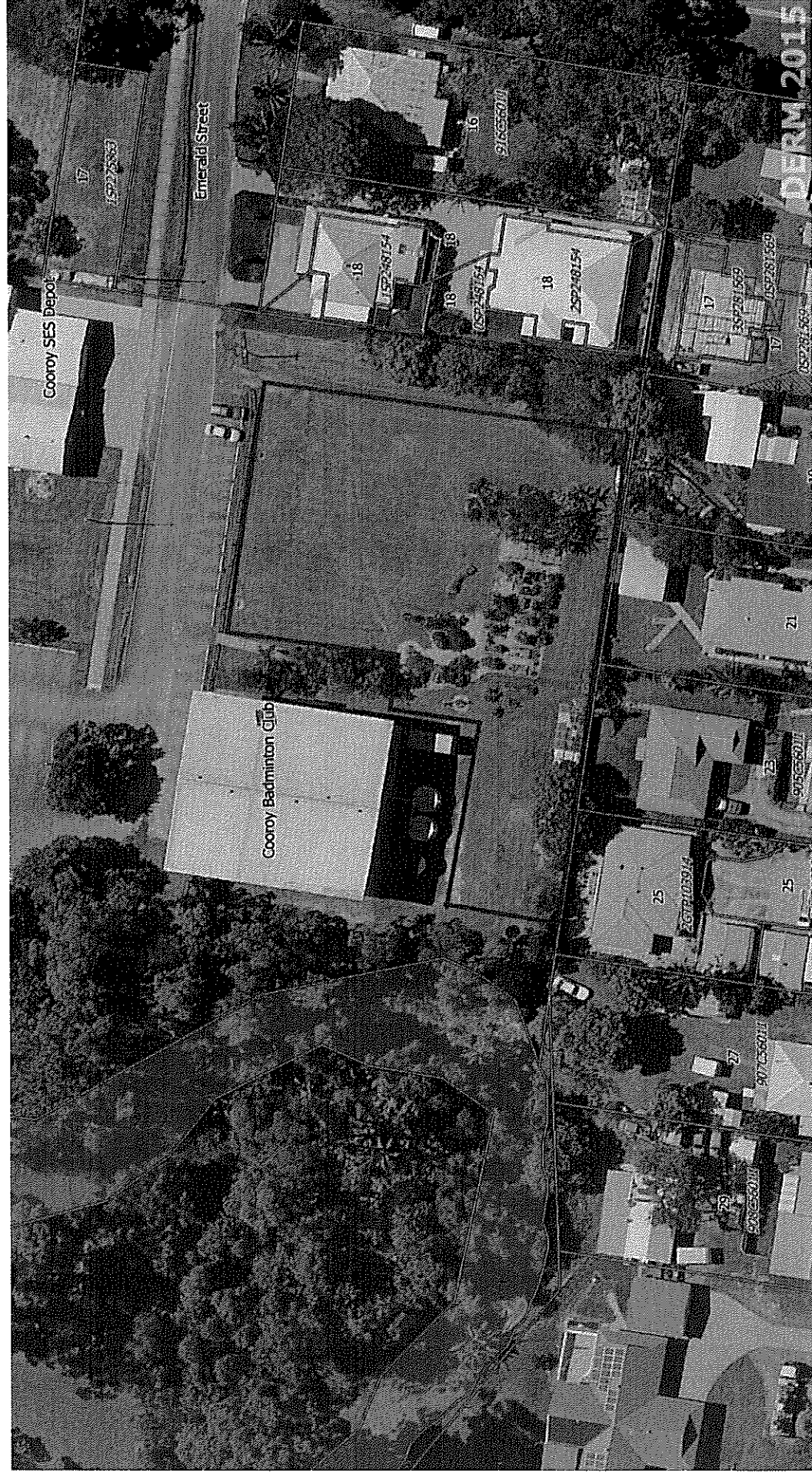
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8. The Permittee agrees to be bound by the outcome of any method of solving the resident dispute chosen by the Council.
  9. If, in the reasonable opinion of the Council, the method does not resolve the resident dispute, the Council may require the Permittee to participate in further attempts to resolve the resident dispute.
  10. If, in the reasonable opinion of the Council, the resident dispute is resolved, the Council may require the Permittee to enter into a legally enforceable agreement in a form satisfactory to the Council.
  11. Nothing in this Schedule affects any rights of the Council under the permit to terminate the permit or take any other action.

### SCHEDULE 3: DISPUTE RESOLUTION PROCEDURE

1. If the Permittee or the Council thinks that a dispute - other than a resident dispute under the Good Neighbour Processes in Schedule 2 - has arisen under this permit, that party may serve a notice upon the other party (a "Dispute Notice") requiring it to follow this procedure and nominating a representative of that party with authority to settle the dispute.
2. Within 7 days of receiving the notice, the party receiving the Dispute Notice must serve a notice on the other party (a "Reply Notice"), nominating a representative with authority to settle the dispute.
3. The representatives of each party will meet within 7 days of the receipt of the Reply Notice and will use their best endeavours to resolve the dispute.
4. If the dispute is not resolved to the satisfaction of both parties within 14 days of the receipt of the Reply Notice, the parties will refer the dispute to the Council.
5. The Council will decide the method of dispute resolution and the procedure to be adopted to solve the dispute. For example, without limitation, the Council may decide to:
  - refer the dispute to arbitration under the Commercial Arbitration Act 1990;
  - refer the matter to the Community Justice Programme;
  - appoint an expert (whose decision will be final and binding on the parties) to decide the dispute; or
  - refer the dispute to mediation.
6. Each party will continue to perform its obligations under this permit during any dispute.



## SCHEDULE 4: PLAN





## **SCHEDULE 5: MAINTENANCE SCHEDULE**

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**GRANT/EXECUTION**

The Council permits the premises described in item 5 to the Permittee for the term stated in item 6 subject to the covenants and conditions contained in the schedule.

Delegated Officer  
Of the Noosa Shire Council

Signature

full name

qualification

**Witnessing Officer**

(Witnessing officer must be in accordance with Schedule 1  
of Land Title Act 1994 eg Legal Practitioner, JP, C Dec)

/ /  
Execution Date

.....  
Permitter's Signature

**ACCEPTANCE/EXECUTION**

The Permittee accepts the trustee permit and acknowledges the amount payable or other considerations for the permit.

The Common Seal of

was hereunto affixed

by the President being

*N.M. Hodgson* (NICHOLAS HODGSON)  
.....

and the Secretary being

.....  
SELINA TOOHEY

who both are members of the Management

Committee and certify that they are the proper

Officers to affix the Seal in the presence of:

*N.M. Hodgson* (NICHOLAS HODGSON)  
.....

Signature - President

*S. Toohey*  
.....  
Signature - Secretary

4 18 16  
Execution Date