



Accreditation Model and Application Documents

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Plan Seal

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1.0 INTRODUCTION

The **Plan Right - Plan Seal** Initiative has been developed in an effort to address a number of issues present in the current assessment process. These issues include:

- lengthy assessment timeframes for relatively simple applications;
- a need to foster a better relationship between Council and external consultants;
- incomplete and/or incorrect application information quality; and
- inconsistent and unclear Council requirements for development industry.

Plan Right - Plan Seal allows suitably qualified professionals to prepare and endorse Plan Sealing applications as nominated in this Accreditation Kit. **Plan Right - Plan Seal** assessment by professional individuals and Consultancies relies on two specific processes to be in place to ensure its efficiency. These processes are as follows:

- The development of clear standards for all nominated works based on the planning scheme and its associated codes, and adopted Council Policies; and
- Creation of a system wherein Council could reasonably rely on a suitably qualified individual's application and undertake immediate assessment.

The aim of **Plan Right - Plan Seal** is to reduce timeframes and impacts on industry and Council, and to increase accountability and utilisation of professional individuals.

2.0 DESCRIPTION OF ACCREDITATION

The accreditation process, coupled with the clear standards and criteria, seeks to implement a more efficient mechanism for the sealing of development plans.

The accreditation of professional individuals and Consultancies is a voluntary process of being certified as meeting minimum requirements designated by an accrediting system. It provides a mechanism for Council to be able to reasonably rely upon an individual's professional qualifications. Its aim is to ensure the integrity of the process and qualify only individuals who, by reason of their expertise, experience and established integrity can be relied upon to properly use the **Plan Right - Plan Seal** process and to provide relevant documentation including all permits and associated reports and drawings to Council.

Random auditing will be undertaken to assess and monitor the competence of accredited professionals

Applicants lodging in this way are agreeing to follow and abide by a procedure laid down by Council.

To utilise such a process requires experience with lodging competent applications, knowledge of the *Planning Act 2016* (PA) and the *Land Title Act 1994* (LTA), familiarity with the Council's planning schemes and policies and an established reputation with Council that the user demonstrates a high level of reliability.

Consultancies wanting to undertake **Plan Right - Plan Seal** must achieve accreditation from Council. The Consultancy must then nominate a 'Representative' who is an experienced professional employed by the Consultancy who will be responsible for preparing applications for Plan endorsement. It is critical that the individual has demonstrated the required level of expertise and experience. The Representative must be nominated by the Consultancy seeking accreditation. Where a Representative moves from

one firm to another, the individual Representative is not required to reapply for accreditation provided they are moving from one accredited Consultancy to another.

3.0 ACCREDITATION CATEGORIES

A consultancy accredited for **Plan Right - Plan Seal** is eligible to submit applications for plan sealing in the following categories:

- Building Format Plans - Subdivision of Existing Buildings
- Building Format Plans - Subdivision of New Buildings
- Standard Format Plans - Realignment of Boundaries
- Standard Format Plans – Associated with reconfiguration of land

4.0 THE ACCREDITATION KIT

The Accreditation Kit contains all the relevant material to assist a **Consultancy** in obtaining accreditation and outlines Council's expectations. Outlined below are the documents contained in the Accreditation Kit:

- Accreditation Application Form for the Consultancy; and
- Deed of Agreement for Accredited Consultancy.

The Accreditation Kit adopted for the **Plan Right - Plan Seal** process is at Appendix A.

ACCREDITATION APPLICATION FORM

The ability to qualify as a Consultancy's nominated 'Representative' is available provided they meet the relevant specified criteria. The qualifications/experience includes criteria within the following categories

Demonstrated knowledge by the Representative of planning scheme provisions and plan sealing processes, and provisions held therein as well as the SPA, LTA and other legislation. This may be achieved through providing evidence of lodging a significant number of relevant applications to the Council, in a recent timeframe that demonstrates a detailed understanding of the relevant requirements and processes for plan sealing and bonding in Council. This includes, but is not limited to:

- Demonstrated ability to prepare Survey Plans to Council standard;
- Demonstrated ability to prepare Compliance Reports to certify that development conditions have been complied with;
- Demonstrated knowledge of bonding on uncompleted works;
- Demonstrated knowledge of preparation of legal documentation in relation to easements and covenants.

GUIDELINE FOR A 'CONSULTANCY'

In order to ensure compliance with the requirements of the accreditation process, guidelines have been developed that clearly articulate the roles and responsibilities of the 'Consultancy' and any other interested party. It is recognised that both parties (Council and the 'Consultancy') must possess a detailed understanding of the process to guarantee its success.

The Guideline for a 'Consultancy' clearly outlines a step-by-step process which:

- Identifies the requirements for the lodgement of an application under **Plan Right - Plan Seal** Assessment;
- Identifies the timeframe or indicative timeframe by which Council will issue an approval having relied on the accreditation;
- Identifies a probationary period where required; and

- Identifies an auditing process.

DEED OF AGREEMENT FOR ACCREDITED CONSULTANCY

The 'Consultancy' must agree to the terms and conditions of the process before Council can reasonably rely on their expert advice. This is achieved by documenting the roles and responsibilities of both the 'Consultancy' and the Council, and requiring a signature of acceptance of these terms. The documents that formalise this arrangement for individuals and Consultancies are titled the Deed of Agreement for Accredited Consultancy (the deed) and is attached in the Accreditation Kit.

The roles and responsibilities of the Consultancy participating in this accreditation process are clearly articulated within the deed. This insures that all have a clear understanding of their roles in the process and have no recourse for not following the rules set down through this process. Any non-compliance with the criteria and information provided to the Council may be grounds for removal of accreditation for the Consultancy. Council may also undertake proceedings to have any errors by the Representative on behalf of the Consultancy rectified.

The deeds are legally binding. It is the basis on which Council will rely on the expert advice provided by the Representative.

5.0 QUALIFYING REPRESENTATIVE AND CONSULTANCIES

MEETING THE ACCEPTED CRITERIA TO QUALIFY AS A CONSULTANCY

The Consultancy is required to submit an application to Council supported by documentation demonstrating how they meet the criteria outlined by Council. If a Consultancy achieves the acceptable criteria for accreditation, that Consultancy will

become accredited and will be able to participate in the **Plan Right - Plan Seal** Assessment process.

This accreditation may only apply to the specific compliance assessment of a document or work that the applicant is qualified in and does not allow the Representative to assess applications under **Plan Right - Plan Seal** Assessment in which they have not demonstrated the necessary competence.

Council may outline responsibilities and impose conditions on the accreditation of a Consultancy. If the Consultancy breaches the terms of the accreditation, Council may remove accreditation depending on the severity of the breach.

AGREEING TO BE BOUND TO THE GUIDELINES AND REQUIREMENTS OF THE ACCREDITING BODY

The Consultancy must sign the terms and conditions applied by the Council in the deed.

6.0 MONITORING THE PROCESS

MONITORING THE ACTIVITY OF THE CONSULTANCY AND ITS REPRESENTATIVE

In order to ensure that the Consultancy and its Representative/s are complying with requirements of the Council, a post-approval and post-construction audit process may be undertaken. This post-approval and post-construction audit allows Council to determine how well the process is working, any inconsistencies or issues with their criteria or process, and whether the Consultancy and the Representative/s are fulfilling the requirements of the process.

DISCIPLINARY ACTION FOR MINOR BREACHES

Any breach is grounds for the Council to undertake a detailed assessment of all plan sealing applications lodged by the Representative and the Consultancy and

thus for their removal from the list of Accredited Consultancies. Council may however, at its discretion, consider issues such as the severity of the alleged breach, the responsiveness of the Representative to the breach and history of the Representative and the Consultancy they represent in determining an appropriate course of action. In these cases, the severity of the breach will dictate the disciplinary action to be taken. Below are five primary disciplinary actions that a Council *may* take in order of severity (Note that the decision of what action to take resides with the Council):

- Notice to applicant for the first minor discrepancy;
- Return to a probation period for a set number of applications and subject to an extended approval timeframe;
- Removing the ability to lodge under **Plan Right - Plan Seal** Assessment for a set period of time (suspension);
- Cancellation of accreditation of the 'Accredited Consultancy'; and
- Development Compliance/Enforcement action if necessary.

Note that all disciplinary actions imposed on a particular Representative will also be imposed on the Consultancy they represent. The expectation is that the participating Consultancy develops their quality assurance process regarding **Plan Right - Plan Seal** Assessment.

GLOSSARY

ACCREDITED CONSULTANCY

A Consultancy that has demonstrated sufficient competency to be considered 'accredited' for the purposes of this accreditation process, the accreditation is valid for an Consultancy whilst an experienced professional Representative is under their employment. In the event of the Representative ceasing employment with the accredited Consultancy or the accredited Consultancy's inability to demonstrate sufficient competency, the accreditation shall be suspended or removed until such time as an

experienced professional Representative is working for the Consultancy.

COMPLIANCE REPORT

A compliance report is a detailed report submitted with a Plan Right Plan Sealing Application which clearly details that the applicant of the subject development approval has complied with all conditions of the approval, and all conditions of any related approval, that are required to be completed prior to Council's endorsement of the plan of survey. Where the relevant conditions require works to be completed, the applicant may bond uncompleted works to allow earlier sealing of the plan of survey in accordance with Council's Bonding Policy.

The compliance report may be in the form of a table/and or written statements, and include all necessary evidence of compliance with the relevant conditions.

DA Rules

The **Development Assessment Rules** (DA Rules) is a statutory instrument that sets out a standardised development assessment process.

PA

The **Planning Act 2016** (formerly the Sustainable Planning Act 2009)

RELEVANT LEGISLATION

Queensland

Planning Act 2016 (Qld) (PA)

Sustainable Planning Act 2009 (SPA)

Land Title Act 1994 (Qld) (LTA)

Local Government Act 1993 (Qld) (LGA)

Available for viewing at:
<http://www.legislation.qld.gov.au>

Appendix A: Accreditation Kit

Note: an individual Representative applying for accreditation is required to complete and submit the following forms:

- A1 Accreditation Application Form

- A2 Deed of Agreement for Accreditation for Consultancy

ATTACHMENT 1

ACCREDITATION DOCUMENTS

A consultancy applying for accreditation must submit fully completed

- A1 Accreditation Application Form
- A2 Deed of Agreement for Accreditation for Consultancy

A1 Application Form for Accreditation of Consultancy

Consultancy

Name of Consultancy: _____

Signature of Director: _____

Date: _____

Representative/s

Name of Representative: _____

Signature of Representative: _____

Date: _____

Name of Representative: _____

Signature of Representative: _____

Date: _____

Name of Representative: _____

Signature of Representative: _____

Date: _____

To qualify for Accreditation for **Plan Right - Plan Seal** Assessment, the following must be submitted and complied with:

- A Consultancy should submit a covering letter which, explicitly outlines their and their Representative has the necessary experience/knowledge of the following:
 - Demonstrated ability to prepare Survey Plans to Council standard
 - Demonstrated ability to prepare Compliance Reports
 - Demonstrated knowledge of bonding on uncompleted works
 - Demonstrated knowledge of preparation of legal documentation in relation to easements and covenants.
 - Applicable Council standards/policies
 - Applicable State Planning Regulatory Provisions
 - Applicable State Planning Policies
 - Applicable Australian Standards.
- Accreditation will not be attained until three (3) plan sealing applications have been lodged and approved and have demonstrated the following:
 - Details of the Compliance Report and the general completeness of the applications (e.g. sufficient details stating compliance with all conditions of approval).
 - The payment of all fees and charges including but not limited to rates, infrastructure and inspections; and
 - Demonstration that no Action Notices have been issued requiring the provision of outstanding information to enable the endorsement of the plan.

Process Following Application

An initial one-on-one session with the Council officer coordinating **Plan Right - Plan Seal** Assessment will occur following application to:

- Introduce the Representative(s) to the Standards and Criteria;
- Reaffirm general expectations; and
- Discuss queries from the Representative(s).

It is the responsibility of the Representative, following assessment of an application, to submit the necessary information to Council to endorse the survey plan. Council will seek to approve the survey plan within 5 working days of lodgement if all Council requirements are completed.

It is the responsibility of the Representative to ensure all conditions of development have been met and that the development does not have any outstanding issues, and where negotiated, all uncompleted works are bonded.

Council's Plan Right Unit may be contacted on the details below:

Telephone: 47 279556 Email: plan.right@townsville.qld.gov.au

The purpose of this practice guideline is to inform the Representative & Consultancy of the operational nature of **Plan Right - Plan Seal** Assessment.

This approach offers an opportunity to advance partnerships, assist in delivering services to the community, and provide an innovative approach to service delivery. The process offers a means of fostering a stronger relationship with industry colleagues by quickly deciding applications considered straightforward. It achieves this by effectively allowing a Council to rely upon information from a Representative & Consultancy, whilst retaining the decision-making powers, thus avoiding any duplication of effort. In terms of benefits to industry, it is envisaged that the application assessment period will be significantly reduced, and the Representative & Consultancy is more closely involved in the development process.

The Representative & Consultancy is responsible for the following:

- Preparing, or arranging the preparation of, Survey Plans that addresses Council standards;
- Preparing 'Compliance Reports' to demonstrate compliance with relevant conditions of approval, and Council Policies, Council Local Laws, Codes and/or Australian Standards, as reasonably relevant to the plan sealing application;
- Accurately completing the Plan Right - Plan Seal Check Sheet, Council's Plan Sealing Application Check Sheet and all other relevant documents to be attached with the plan sealing application;
- The early request for Council's legal service provider to prepare any easement documents requiring Council's endorsement. These easement documents shall be executed by all parties prior to lodgement of the Plan Sealing Application, (Note: A preliminary Survey Plan is required to be submitted with all easement documents);
- The early request for Council's review and acceptance of CCTV footage of sewer and/or stormwater infrastructure. CCTV footage shall be reviewed and accepted by Council to allow the "on maintenance" period to commence; and
- Payment of all relevant fees and Infrastructure Charges;
- Lodging application with Council.

Before Council will seal a plan, the plan must comply with all conditions of a lot reconfiguration, operational works or material change of use approval, for example payment of outstanding rates or completion of any conditions requiring works.

Council will endeavour to make a decision on a Plan sealing application within 5 working days of lodgement.

Note: Plan Right - Plan Seal Assessment transfers responsibility to the Consultancy to ensure supporting reports and plans are accurate and contain sufficient detail as would otherwise be required by Council for review. If issues arise in future, Council may take legal steps against the Consultancy to rectify the issue or matter.

The Consultancy must sign a Deed of Agreement with Council, which confirms the roles and responsibilities of the Consultancy and is the basis on which Council and the Consultancy will participate in the **Plan Right - Plan Seal** process.

The **Plan Right - Plan Seal Assessment** process is outlined below:

• **Stage 1 – Accredited Consultancy**

- Consultancy complete Accreditation Kit including Deed of Agreement;
- Council nominates conditions on an approval or by written agreement to confirm the certification of the Consultancy.

• **Stage 2 – Prepare Documentation**

- Representative prepares survey plans on behalf of accredited Consultancy
- Representative prepares any other relevant documentation on behalf of accredited Consultancy such as easement and bonding documentation (N.B. Council's processes regarding the preparation of easements over Council infrastructure and Administrative Policy for Bonding of Works which sit outside this document);
- Representative prepares a comprehensive Compliance Report, including evidence that all

relevant conditions of approval have been met. The Accredited Consultancies are required and entrusted with the responsibility to ensure all conditions of development have been addressed and completed and that all other outstanding issues have been resolved, including bonding of uncompleted works;

- Accurately complete the Plan Right - Plan Seal Check Sheet and provide all relevant documentation;

- **Stage 3 - Lodge Preliminary Application**

- Accredited Consultancy lodges a Preliminary Plan Sealing Application to trigger the calculation of Infrastructure Charges and the preparation of easement documents (where necessary).
- Council issues a quotation for the current Infrastructure Charges to the Accredited Consultancy within five business (5) Days. This quotation is current for a maximum period of 30 days (subject to any indexing or policy changes).
- Council will initiate preparation of any easement documents over Council infrastructure and return to the Accredited Consultancy.
- Easements are to be executed by both parties before lodgement of **Plan Right - Plan Seal** Plan Sealing Application.

- **Stage 4 – Lodge Application**

- Accredited Consultancy lodges complete and assessed application with Council;
- Council will endeavour to decide the application within 5 business days upon receiving an application that meets the following criteria:
 - The application is Properly Made (inclusive of IDAS forms, applicable fees and portable long service levy);
 - The Infrastructure Charges are paid prior to or on the day of lodgement in accordance with the quotation.

- Is supported by the necessary documentation outlines in the **Plan Right - Plan Seal** Check Sheet;
- Any other material that has been used in order to determine the application.

Note: Council will charge an administration fee for the receipt of this information as outlined in the fees and charges schedule.

Probation Program

- The probationary period is generally for the first three (3) applications lodged for plan sealing and construction and design as part of the **Plan Right - Plan Seal** Assessment process. Under probation, Council will undertake an audit of the application prior to its approval and construction certification. The probation program is to provide Council and the Consultancy with an understanding of the **Plan Right - Plan Seal** Assessment process. The decision timeframes during the probationary period will be longer to allow for council audits and review.

Auditing

- Auditing will be performed by Council, at the Council's discretion, to assess the adequacy of the process and the performance of the Accredited Consultancy;
- Council may contact the Accredited Consultancy during an audit process for information or assistance.

Miscellaneous

- Any omissions, errors or misdirections will be discussed with the Consultancy and are grounds for removal from the **Plan Right - Plan Seal** Assessment process. Council may also undertake legal steps to rectify said errors or misdirections.
- All standard templates, forms, criteria and conditions will be available on-line and can also be obtained from the Plan Right Unit.

Declaration:

I, _____
insert name here]

an owner/director of _____
insert name of employer/company here including ACN

have read the above and agree to adhere to these guidelines.

 (signature)

 (date)

ATTACHMENT 2

A2 ACCREDITATION DEED FOR CONSULTANCY

MADE AS A DEED

This deed is made on the _____ day of _____ 20_____

BETWEEN:

Townsville City Council

PO Box 1268
Townsville Qld 4810
Townsville City Council"

AND:

Company Name, ACN and Address

("Accredited Consultancy")

IN RELATION TO THE ACCREDITED CONSULTANCY PERFORMING **PLAN RIGHT - PLAN SEAL** ASSESSMENT SERVICES FOR
THE [TOWNSVILLE CITY COUNCIL]

RECITALS:

- A The Accredited Consultancy has achieved accreditation for provision of **Plan Right - Plan Seal** Assessment Services and wishes to enter into an agreement with the Townsville City Council to provide that service.
- B Townsville City Council agrees to the Accredited Consultancy providing those services on the terms set out in this Deed.
- C The process and services relevant to **Plan Right - Plan Seal** Assessment Services are set out in the Guidelines for Accredited Consultancy.
- D The Director Planning and Development is authorised to sign this deed on behalf of the Townsville City Council.

TERMS AND CONDITIONS**1 Definitions and Interpretation**

The following terms shall have the following meaning for the purpose of this Deed:

‘Accredited Consultancy’ means the body corporate named in the Accreditation Application Form completed by the Representative for the Accreditation Process

‘Accreditation Process’ means the process and assessment procedures for becoming an Accredited Consultancy, as specified by Townsville City Council and which has been completed by the Accredited Consultancy.

‘Confidential Information’ means the confidential information of Townsville City Council and includes any documents or information provided by Townsville City Council: (a) that are marked as confidential; (b) that are provided by Townsville City Council under circumstances or communications that are confidential; or (c) which the Accredited Consultancy ought to know is confidential but (in respect of any of the information in (a), (b) and (c) of this definition), does not include any information that is or becomes part of the public domain, other than as a result of a breach of an obligation of confidence or any information that is required to be disclosed by law.

‘Deed’ means this Accreditation Deed.

‘Guidelines for Accredited Consultancy’ means the guidelines titled “Guidelines for Accredited Representative/Consultancy” which are attached to this Deed, as amended by Townsville City Council from time to time.

‘Intellectual Property Rights’ means all intellectual and industrial property rights and interests in Australia and throughout the world, whether registered or unregistered and whether created before on or after the date of this Deed, including trademarks, designs, patents, inventions, circuit layouts, copyright and analogous rights, confidential information, know how, trade secrets and all other intellectual property rights.

‘List of Accredited Consultancies’ means the list of Representatives and accredited Consultancies as from time to time may be published by Townsville City Council and in the manner of publication or disclosure determined by Townsville City Council.

‘

‘Plan sealing’ has the same meaning as given to it under the *Planning Act 2016* (Qld).

‘Representative’ is the individual considered ‘accredited’ for the purposes of **Plan Right - Plan Seal** Assessment. The individual Representative must demonstrate the required level of expertise and experience to be nominated by the Consultancy.

‘Term’ means the term of this Deed, as determined by clause 5.1.

‘Plan Right - Plan Seal Assessment’ means the **Plan Right - Plan Seal** Accredited Consultancy Assessment services, which Townsville City Council specifies from time to time including, but not limited to, preparation of **Plan Right - Plan Seal** Assessment compliant Plan sealing applications.

2 Accredited Consultancy’s obligations

2.1 The Accredited Consultancy represents and warrants to Townsville City Council that the Accredited Consultancy:

- 2.1.1 provided information to Townsville City Council during the Accreditation Process that was true, accurate and correct and will continue to provide information during its performance of the **Plan Right - Plan Seal** Assessment

- Services that is true, accurate and correct;
- 2.1.2 has disclosed to Townsville City Council the locations of all the Accredited Consultancy's business premises;
 - 2.1.3 will immediately inform Townsville City Council in writing of any changes to the Accredited Consultancy's business addresses; business, company or trading names and any other information provided or disclosed by the Accredited Consultancy during the Accreditation Process;
 - 2.1.4 will keep itself informed of any changes made by Townsville City Council to the Guidelines for Accredited Consultancy;
 - 2.1.5 will carry out the **Plan Right - Plan Seal** Assessment Services safely, securely and in a professional manner;
 - 2.1.6 will carry out the **Plan Right - Plan Seal** Assessment Services in accordance with the standards specified by Townsville City Council from time to time including in the Guidelines for Accredited Representative or Consultancy and as required by law; and
 - 2.1.7 will comply with the lawful advice and directions of Townsville City Council made in connection with the **Plan Right - Plan Seal** Assessment Services.
- 2.2 Other than as expressly set out in this Deed, this Deed does not licence, assign or transfer to the Accredited Consultancy any Intellectual Property Rights of Townsville City Council or any goodwill in the same.
 - 2.3 The Accredited Consultancy acknowledges that benefits, rights and privileges attached to the accreditation of the Accredited Consultancy are limited to the type of use the Accredited Consultancy is qualified and demonstrates competency in, as determined by Townsville City Council. The Accredited Consultancy must not perform any **Plan Right - Plan Seal** Assessment Services that, in the opinion of Townsville City Council, fall outside the limitations of the accreditation of the Accredited Consultancy.
 - 2.4 The Accredited Consultancy acknowledges that any non-compliance with or serious breach of the Guidelines for the Accredited Consultancy or the terms of this Deed in the conduct or operation of **Plan Right - Plan Seal** Assessment Services by the Accredited Consultancy will provide Townsville City Council with the option to elect to immediately cancel the accreditation of the Accredited Consultancy.
 - 2.5 Prior to performing any Compliance Assessment Services, the Accredited Consultancy must:
 - 2.5.1 take out and maintain from a reputable insurance company, professional indemnity insurance that applies to the performance of **Plan Right - Plan Seal** Assessment Services by the Accredited Consultancy (whether performed by employees or contractors of the Accredited Consultancy) for an amount of cover of no less than \$5 million per claim; and
 - 2.6 The Accredited Consultancy indemnifies Townsville City Council from and against any loss or damage suffered or incurred by Townsville City Council in connection with Townsville City Council relying upon any errors or omissions caused or contributed to by the Accredited Consultancy (including but not limited to claims by third parties) in connection with the **Plan Right - Plan Seal** Assessment Services performed by the Accredited Consultancy. This clause 2.6 survives termination or expiry of this Deed.
 - 2.7 The Accredited Consultancy must not provide or disclose any Confidential Information to any **Plan Right - Plan Seal** application without the prior written consent of Townsville City Council. If the Accredited Consultancy becomes aware of an unauthorised disclosure of any Confidential Information, it must immediately inform Townsville City Council of the disclosure. These provisions shall not restrict the Accredited Consultancy from:
 - a) Disclosing information to third parties (including its sub-Representatives or sub-contractors) which is necessary for the

performance of Services provided that any such disclosure is on terms which include a confidentiality clause identifiable to the Accredited Consultancy's obligations under this Clause

This clause 2.7 survives termination or expiry of this Deed.

- 2.8 The terms of the Guidelines for the Accredited Consultancy form part of the terms of this Deed. In the event of inconsistency, the terms of this Deed prevail over the terms of the Guidelines for the Accredited Consultancy to the extent of the inconsistency.

3 Townsville City Council's obligations

- 3.1 Subject to the terms of this Deed, Townsville City Council shall:

3.1.1 carry out the Accreditation Process with due care and skill;

3.1.2 promptly after the execution of this Deed, add the name of the Accredited Consultancy to the List of Accredited Representatives (for clarity, the name of the Accredited Consultancy may be removed from that list in accordance with this Deed);

3.1.3 during the Term, grant a limited, revocable, non-exclusive licence (without any right to sublicense) to the Accredited Consultancy to use Townsville City Council Accredited Representative Graphic specified by Townsville City Council (Trade Mark) to perform the **Plan Right - Plan Seal** Assessment Services, provided that:

3.1.3.1 without limiting any other restrictions on use of the Trade Mark by the Accredited Consultancy under this Deed, the Accredited Consultancy must not exercise any rights that it may have as an Authorised User under section 26(1) of the Trade Marks Act 1995 (Cth) without

the prior written consent of Townsville City Council; and

3.1.3.2 the Accredited Consultancy may only use the Trade Mark only in accordance with the directions given from time to time by Townsville City Council.

3.2 The Accredited Consultancy acknowledges and agrees that:

3.2.1 it has not relied on any statement, representation, warranty, conduct or undertaking made or given by Townsville City Council or any person on its behalf; and

3.2.2 it has relied on its own skill and judgement in agreeing to enter into this Deed.

- 3.3 Townsville City Council is not liable to pay to the Accredited Consultancy any fees, expenses or other costs in connection with the Accreditation Process, **Plan Right - Plan Seal** Assessment Services or for any other work performed by the Accredited Consultancy in connection with this Deed.

4 Suspension and or removal

- 4.1 The Accredited Consultancy agrees that Townsville City Council may, by notice in writing to the Accredited Consultancy, suspend the right of the Accredited Consultancy to perform **Plan Right - Plan Seal** Assessment Services if, in the opinion of Townsville City Council:

4.1.1 the Accredited Consultancy's breaches of any of its obligations and/or warranties in clause 2; or

4.1.2 Townsville City Council becomes aware by whatever means of any fraud perpetrated, or allegedly perpetrated by the Accredited Consultancy, its directors, employees, agents, contractors or any of its Senior Management.

- 4.2 The Accredited Consultancy must cease providing **Plan Right - Plan Seal** Assessment Services on and from the date of suspension

and for the period of time specified in the notice given by Townsville City Council under clause 4.1, or if no date is specified in that notice, immediately upon receipt of that notice by the Accredited Consultancy.

- 4.3 Townsville City Council may remove the name of the Accredited Consultancy from the List of Accredited Representatives during the period of any suspension under this clause 4.

5 Expiry and Termination

- 5.1 This Deed commences on the date that it is signed by both parties and continues for a period of five years, unless terminated earlier (including but not limited to termination under clauses 5.2 and 5.3).

- 5.2 Townsville City Council, may by notice in writing to the Accredited Consultancy, immediately terminate this Deed if:

5.2.1 Townsville City Council determines that it is not reasonable for the Accredited Consultancy to remain accredited because of the nature or extent of conduct which led to Townsville City Council issuing a notice to the Accredited Consultancy under clause 4.1;

5.2.2 the Accredited Consultancy breaches the terms of this Deed, including any failure to comply with the Accredited Consultancy's obligations or warranties in clause 2; or

5.2.3 the Accredited Consultancy becomes the subject of any insolvency, bankruptcy or winding-up proceedings of any kind (as determined by Townsville City Council).

- 5.3 If Townsville City Council chooses to discontinue the **Plan Right - Plan Seal** Plan Sealing Process for any reason, the Accredited Representative will be given no less than 60 days notice of the discontinuance.

- 5.4 In exercising any of its rights under clause 5, Townsville City Council has no obligation to consider the impact of the termination on the Accredited Consultancy and has no liability to the Accredited Consultancy for any loss or damage suffered or incurred by the Accredited Consultancy as a result of the termination.

6 Effect of Suspension, Termination and Completion of Term

Immediately upon suspension or termination of this Deed under clauses 4 and/or 5, all rights granted by Townsville City Council to the Accredited Consultancy end and:

- 6.1 the Accredited Consultancy must immediately cease using the Trade Mark and must (at the election of Townsville City Council) return or destroy any documentation, signage or other materials that feature the Trade Mark or any other Intellectual Property Rights at all licensed by Townsville City Council;

- 6.2 Townsville City Council shall remove the Accredited Consultancy from the List of Accredited Representatives;

- 6.3 the Accredited Consultancy must cease providing any **Plan Right - Plan Seal** Assessment Services;

- 6.4 the Accredited Consultancy must cease to represent or refer to itself as an "Accredited Consultancy" of Townsville City Council; and

- 6.5 the Accredited Consultancy must immediately return any documents and confidential information of Townsville City Council and must provide written undertakings that it has done so, upon request by Townsville City Council. Nothing in this Deed prevents the Accredited Representative from retaining one copy of any document solely for the purpose of its own records and upon the continuing duty of confidence set out in this Deed.

7 Waiver and Forbearance

The waiver or forbearance of Townsville City Council in the face of any breach of this Deed by the Accredited Consultancy shall not be construed as a waiver or relinquishment of Townsville City Council's rights to future performance of such provision and the

Accredited Consultancy's obligations in respect of such future performance shall continue in full force and effect.

8 Limitation of Liability

Notwithstanding anything to the contrary in this Deed, Townsville City Council excludes all liability to the Accredited Consultancy in connection with any loss or damage (including consequential loss and indirect loss, loss of profits, loss of revenue, loss of opportunity, loss of bargain and damage to reputation) suffered or incurred by the Accredited Consultancy in connection with this Deed but not to the extent that such loss or damage has resulted from the negligent actions or omissions of Townsville City Council.

9 Entire Agreement

These terms and conditions of this Deed contain the entire understanding between the parties and any variation of the provisions of this Deed shall have no effect unless in writing and signed by the parties.

10 Notices

Any notice to be served under this Deed shall be in writing and served upon the recipient at its principal business address as notified under this Deed, by hand, regular post or facsimile and shall be deemed served 48 hours after posting if sent by post, on delivery if delivered by hand, and on completion of transmission if sent by facsimile.

11 Jurisdiction and Law

This Deed is governed by and is to be construed in accordance with the laws applicable in Queensland. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in Queensland and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

12 Consent and approval

If Townsville City Council has a right to approve, consent, decide, determine, form an opinion or make any other decision of any kind under this Deed, it may exercise that right at its absolute discretion and, in exercising the right, it may do so conditionally or unconditionally, is not obliged to give reasons or

consult with the Accredited Consultancy in exercising that right and has no obligation to exercise the right within any particular period of time or a within reasonable period of time.

13 Amendment

This Deed may only be varied or replaced by a document executed by the parties.

14 Contra proferentem

No rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it.

15 Counterparts

This Deed may consist of a number of counterparts and, if so, the counterparts taken together constitute one document.

EXECUTED AS A DEED

Signed and Delivered

on the _____ day of _____ 20__

by

(for and on behalf of Townsville City Council

Signature

In the presence of

Signature

Date:

Signed and Delivered

on the _____ day of _____ 20__

by

Insert name and ACN of Consultancy

by

Signature

Company Secretary/Director

and

Signature

Director