

RAL/2024/1617 – Stage 4 Reis Road, Highfields QLD 4352 Management Agreement (Compensatory Environmental Works) 2024

Parties	TOOWOOMBA REGIONAL COUNCIL of 4 Little Street, Toowoomba, Queensland (Council)
	JETELD PTY LTD ACN 009 904 456 of Shop X09, Wilsonton Shopping Centre, 407 Bridge Street, Wilsonton, Queensland (Owner)

Recitals

- A. The Owner is the registered owner of the Land.
- B. The Owner has applied for the RAL Development Approval in relation to the Development Land.
- C. To mitigate impacts on areas of ecological significance on the Development Land, the Owner intends to provide the Compensatory Environmental Works on the Land.
- D. The parties acknowledge that the proposed Compensatory Environmental Works to be established in accordance with the RAL Development Approval are not trunk infrastructure.
- E. The parties have agreed that the Owner's delivery of the Compensatory Environmental Works does not give rise to an offset with respect to the ICN as per the terms of this Agreement.

Operative provisions

1. Definitions and Interpretation

1.1 Definitions

In this Agreement:

Act means the *Planning Act 2016* (QLD).

Agreement means this document, including schedules and annexures and any counterparts to it.

Business Day means a day that trading banks are open for business in the Council's local government area, but does not include a day between 25 December of a year, and 1 January of the following year.

Claim means an allegation, debt, cause of action, liability claim, proceeding, appeal, suit or demand of any nature at law or otherwise, whether present or future, fixed or unascertained, actual or contingent. This includes any legal proceeding in the Planning and Environment Court or Supreme Court of Queensland.

Commencement Date means the date the RAL Development Approval takes effect.

Compensatory Environmental Works means weed management and replanting works to be undertaken on the Land in accordance with the Revegetation Management Plan.

Compensatory Environmental Works Condition means a condition in the RAL Development Approval requiring the Owner to enter into or comply with this Agreement.

Council means the Toowoomba Regional Council.

Covenant Area means the area of the Land containing the Compensatory Environmental Works generally in accordance with the area identified in the proposed Covenant Extent Plan.

Covenant Extent Plan means Figure 1 Covenant Extent Plan to the Covenant Management Plan.

Covenant Management Plan means the Covenant Management Plan prepared by Range Environmental Consultants dated 17 May 2024 and attached as Annexure 4.

Development Land means Lot 1 on RP177108 (including Easement D on SP304253) and Lot 2 on SP274504 (including Easements C & E on SP304253).

Force Majeure means an event:

- (a) being a decree of the Commonwealth Government or the State Government, as an act of God, industrial disturbance, act of public enemy, war, international blockade, public riot, lightning, flood, earthquake, fire, storm or other event whether of a kind herein specified or otherwise; and
- (b) which is not within the control of the party claiming Force Majeure; and
- (c) which could not have been prevented by the exercise by that person of a standard of foresight, care and diligence consistent with that of a prudent and competent person under the circumstances.

Freehold Land Register means the register of freehold land maintained by the Registrar of Titles under the *Land Title Act 1994*.

ICN means any infrastructure charges notice issued with respect to the RAL Development Approval..

Infrastructure Charging Instrument means an instrument prepared for the levying of infrastructure charges under the Act, which at the date of execution of this Agreement, was the Toowoomba Regional Council Charges Resolution No. 5.

Land means Lot 17 on CH312559, Title Reference 50234719

Owner means the registered owner of the Land, which at the date of execution of this Agreement is Jeteld Pty Ltd ACN 009 904 456.

RAL Development Approval means any development permit that is granted by the Council in relation to the development application for reconfiguring a lot - reconfigure two (2) into forty-five (45) residential lots and a balance lot on the Development Land (given Council reference RAL/2024/1617).

Register, Registered and Registration means registration on the Freehold Land Register

Revegetation Management Plan means the Revegetation Management Plan prepared by Range Environmental Consultants dated 17 May 2024 and attached at Annexure 2.

Toowoomba Regional Planning Scheme means the Toowoomba Regional Planning Scheme Version 28 which commenced on 28 November 2022.

Vegetation Covenant means the Queensland Titles Registry Form 31 Covenant and Form 20 Conditions entered into pursuant to section 97A(3)(b) of the Land Title Act 1994 and attached at Annexure 3.

1.2 Other expressions

If a term is not defined in this Agreement it must, unless the context otherwise requires, have the meaning given to it by:

- (a) the Act; or
- (b) the Council's planning scheme in effect on the Commencement Date, in the absence of a definition in the documents stated in (a) above; or
- (c) the Macquarie Dictionary, in the absence of a definition in the documents stated in (a) and (b) above.

1.3 Interpretation

- (a) Reference to:
 - i. one gender includes the others;
 - ii. the singular includes the plural and the plural includes the singular;
 - iii. a person includes a body corporate, a firm, a corporation, an association and a body, whether incorporated or not and a government or statutory body or authority;
 - iv. a party includes the party's successors in title, executors, administrators, successors and permitted assigns;
 - v. a statute, regulation, code or other law or a provision of any of them includes:
 - 1. any amendment or replacement of it; and
 - 2. another regulation or other statutory instrument made under it, or made under it as amended or replaced;
 - vi. dollars means Australian dollars unless otherwise stated;
 - vii. a clause, schedule or annexure to a clause, schedule or annexure in this Agreement.
 - (b) Including and similar expressions are not words of limitation.
 - (c) If any words are italicised or otherwise printed differently, this has been done for convenience only and does not affect the construction of this Agreement.
 - (d) Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
 - (e) Headings and any tables of contents or index are for convenience only and do not form part of this Agreement or affect its interpretation.
 - (f) A provision of this Agreement must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of the Agreement or the inclusion of the provision in the Agreement.
 - (g) If an act must be done on a specified day which is not a Business Day, it must be done instead on the next Business Day.
 - (h) All schedules and annexures to this Agreement form part of this Agreement.
 - (i) This Agreement is in all respects to be interpreted in accordance with the laws of the State of Queensland, and the parties irrevocably and unconditionally submit to the non-exclusive jurisdiction of the courts of that state and any courts which have jurisdiction to hear appeals from them, and waive any right to object to proceedings being brought in those courts.
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- (j) Nothing contained in this Agreement affects, prejudices or derogates from the requirements of any statute or from the rights, powers and authorities of the Council under the provisions of any statute.
- (k) If a party consists of more than 1 person, this Agreement binds each of them separately and any two or more of them jointly.
- (l) An obligation, representation or warranty in favour of more than 1 person is for the benefit of them separately and jointly.
- (m) A party which is a trustee is bound both personally and in its capacity as a trustee.
- (n) If a clause in this Agreement is capable of more than one interpretation, the interpretation which is preferred is the one which:
 - viii. best meets the purpose of the Recitals at the beginning of this Agreement; and
 - ix. makes the clause lawful and enforceable.

2. Commencement

This Agreement commences on the Commencement Date.

3. Management Agreement

3.1 Management Agreement is an Agreement about development conditions

This Agreement constitutes an agreement about development conditions under section 67 of the Act.

3.2 Purpose of this Agreement

The purpose of this Agreement is to establish the parties' rights and obligations in relation to the Owner's delivery of the Compensatory Environmental Works, including the requirement for the Owner to grant to the Council the Vegetation Covenant.

3.3 Agreement to bind successors in title

The parties agree that:

- (a) the obligations under this Agreement will not be affected by a change in the ownership of the Development Land or the Land; and
- (b) the obligations under this Agreement do not depend on development entitlements that may be affected by a change to a planning instrument.

3.4 Relationship with other documents

Nothing in this Agreement precludes the Council from imposing development conditions under a subsequent development approval with respect to the Land.

3.5 No appeal rights

The Owner must not commence any Claim in relation to the imposition of a Compensatory Environmental Works Condition on the RAL Development Approval.

4. Parties' Obligations

4.1 Owner's Obligations

The Owner must:

- (a) prior to submitting a survey plan for reconfiguration of the Development Land in accordance with the RAL Development Approval:
 - (i) cause the Compensatory Environmental Works to be carried out in accordance with the Revegetation Management Plan;
 - (ii) cause a survey plan to be prepared of the Covenant Area;
 - (iii) execute the Vegetation Covenant and cause the Vegetation Covenant and the survey plan prepared under clause (ii) to be Registered; and
- (b) following the Registration of the Vegetation Covenant, continue to provide ongoing maintenance of the Covenant Area in accordance with the terms of the Covenant Management Plan.

4.2 Council's Obligations

Upon the Owner causing the Compensatory Environmental Works to be completed, the Council must execute the Vegetation Covenant.

4.3 Restriction on Sealing

The Owner must not submit a survey plan for the reconfiguration of the Development Land in relation to the RAL Development Approval prior to the completion of the Owner's obligations under clause 4.1(a) .

4.4 Acknowledgement

The parties acknowledge that the Compensatory Environmental Works carried out by the Owner and the ongoing maintenance of the Covenant Area mitigate the loss of native vegetation values within areas of environmental significance and environmental significance buffer on the Development Land under the RAL Development Approval, as depicted by the Vegetation Clearing Plan in Annexure 1.

5. Offsets, Refunds and Conversions

The parties agree that the compliance by the Owner with the Compensatory Environmental Works Condition and the performance of the Owner's obligations under this Agreement do not give rise to an offset against the ICN.

6. Entry by Council

6.1 Power of Entry

Council (including its officers, agents and contractors/sub-contractors) may enter the Land with all necessary vehicles, plant and equipment at all times, for the following purposes:

- (a) examining, inspecting, testing and monitoring the state and condition of the Covenant Area and the Compensatory Environmental Works;
 - (b) ascertaining whether the:
 - (i) Compensatory Environmental Works have been provided in accordance with the Revegetation Management Plan;
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- (ii) Covenant Area has been maintained in accordance with the Covenant Management Plan; and
- (c) remedying any breach of the Owner's obligation to provide the Compensatory Environmental Works, in accordance with clause 6.5 ("Council may Remedy Breach").

6.2 Notice of Entry

Council must give reasonable notice to the Owner of its intention to enter the Land under clause 6.1 ("Power of Entry"), except:

- (a) in a case of emergency; or
- (b) if Council believes on reasonable grounds that delay associated with giving notice would be prejudicial to Council's rights or obligations under this Agreement or otherwise at law.

6.3 Notice to Remedy

If Council believes on reasonable grounds that there has been a breach of the Owner's obligations in clause 4.1, then Council may give notice to the Owner:

- (a) identifying the alleged breach of the Owner's obligations; and
- (b) setting out those works that Council believes are required to remedy the breach of the Owner's obligations.

6.4 Response to Notice to Remedy

Upon receipt of a notice given by Council under clause 6.3 ("Notice to Remedy"), the Owner must:

- (a) perform the works identified by Council in the notice within a reasonable period of receiving the notice; or
- (b) give notice under clause 9.2 ("Notification and discussion of dispute") that the Owner disputes the notice.

6.5 Council may Remedy Breach

The Council may carry out, at the Owner's cost and expense:

- (a) the works identified in the notice given to the Owner under clause 6.3 ("Notice to Remedy"), if the Owner has not carried out those works within a reasonable time of receiving the notice and has not given a notice of dispute under clause 6.4 ("Response to Notice to Remedy"); or
- (b) the works identified on the determination of a dispute referred under clause 6.4(b), if those works are not completed by the Owner within a reasonable period.

For the purpose of this clause 6.5 ("Council may Remedy Breach"), the term "works" does not include the execution of the Vegetation Covenant under clause 4.1(a)(iii).

6.6 Compliance with reasonable directions

Council must comply with any reasonable directions of the Owner (including any principal contractor of the Owner) while on the Covenant Area under this clause 6 ("Entry by Council").

6.7 Indemnity

- (a) Subject to clause (b), this clause 6 ("Entry by Council") is of no effect unless Council agrees to indemnify the Owner from and against all Claims, losses, damages, costs or expenses which may be suffered by Council in respect of Council's entry of the Covenant Area, where occurring as a consequence of Council's negligent acts or omissions, or breach of clause 6.3 ("Notice to Remedy").
- (b) Council is not required to indemnify the Owner under clause (a) to the extent that:
 - (i) the relevant Claim, loss, damage, cost or expense results from any act or omission of the Owner; or
 - (ii) the Owner has failed to take all reasonable steps to mitigate the Claim, loss, damage, cost or expense.

7. Proposed transfers of land

7.1 Restriction on the right to sell the Development Land and the Land

The Owner must not, prior to the completion of the Owner's obligations under clause 4.1(a), sell or transfer:

- (a) the whole of the Development Land; or
- (b) the whole or any part of the Land,

unless the Owner has first obtained:

- (c) written consent from the proposed transferee that this Agreement will continue to apply to the Development Land or the relevant part of the Land; and
- (d) written consent from Council to the proposed transferee becoming subject to the Owner's obligations under clause 4.1.

7.2 No unreasonable refusal of consent

Council must not unreasonably refuse to enter into a deed of novation sought to be entered into under clause 7.1.

7.3 Owner to remain liable

In the event that the whole of the Development Land or any part of the Land being sold or transferred other than in accordance with clause 7.1, the Owner (immediately prior to the sale or transfer) must perform and fulfil each of its obligations under this Agreement that have not been performed and fulfilled immediately or at such other time as Council stipulates in a Notice, even if the time otherwise appointed for the performance and fulfilment of that obligation has not yet then arrived.

8. Default

- (a) In the event of non-compliance by a party ('Defaulting Party') with any of its obligations, a party other than the Defaulting Party may issue a written notice ('Default Notice') to the Defaulting Party, to remedy the non-compliance.
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- (b) The Defaulting Party must comply with the Default Notice within the time period (as is reasonable) specified in the Default Notice, which must not be less than 10 Business Days.

9. Dispute resolution generally

9.1 Governing law

This Agreement is governed by and must be construed according to the laws of Queensland and the parties submit to the exclusive jurisdiction of the State and Commonwealth Courts of Queensland.

9.2 Notification and discussion of dispute

- (a) Any dispute as to the performance of this document or arising out of this document that cannot be resolved between the parties must be clearly identified in a **Dispute Notice**.
- (b) Within ten Business Days of the date of the Dispute Notice, the parties must meet to discuss the dispute and its possible resolution.

9.3 Agreement to mediate

- (a) The parties may, within five Business Days of meeting in accordance with clause 9.2(b), agree to refer the dispute to mediation.

9.4 Appointment of mediator

If the parties agree to mediate in accordance with clause 9.3, then the parties may either:

- (a) appoint a mediator; or
- (b) where the parties fail to agree to the appointment of an applicable mediator, the Queensland Law Society must appoint an independent mediator.

9.5 Costs of mediator

The costs of any mediator (including the costs of appointment) must be shared equally between the parties.

9.6 Determination of dispute

- (a) If any dispute notified under clause 9.2(a) is not resolved:
 - (i) if the dispute was referred to mediation, within twenty Business Days of the date of the mediation; or
 - (ii) if the dispute was not referred to mediation, within twenty Business Days of the date of the Dispute Notice;the parties may agree, within a further five Business Days, to seek independent resolution by a determinator.
- (b) Where the parties fail to agree to the appointment of an appropriate determinator, the determinator will be nominated by the Queensland Law Society.

9.7 Involvement of the determinator

- (a) Where any dispute is referred for determination under clause 9.6, the determinator must be a member of an institution or association as is appropriate in the circumstances.
- (b) The decision of a determinator on any dispute is final and binding on the parties.
- (c) The costs of any determinator are to be shared equally by the parties.

9.8 Unresolved disputes

- (a) If any dispute notified under clause 9.2 remains unresolved, then at any time after forty-five Business Days of the date of a Dispute Notice, a party may institute proceedings for determination of the dispute.
- (b) Where a party has, pursuant to clause 9.8(a), instituted proceedings, the reference of the dispute to the determinator under clause 9.6, must be terminated and the dispute must be dealt with by the appropriate court or tribunal.

9.9 Parties may extend time

The parties may agree in writing to extend any time period specified in this clause 9.

10. GST

10.1 Interpretation

In this clause 10:

- (a) Expressions which are not defined but which have a defined meaning in GST Law have the same meaning as in the GST Law;
- (b) 'GST Law' has the meaning given to that expression in *A New Tax System (Goods and Services Tax) Act 1999* (Cth); and
- (c) 'GST Amount' means the amount referred to in clause 10.3.

10.2 Consideration GST exclusive

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this Agreement are exclusive of GST.

10.3 Payment of GST

If GST is payable by a supplier on any supply made under this Agreement, the recipient will pay to the supplier an amount equal to the GST payable on the supply.

10.4 Timing of GST payment

The GST Amount will be paid by the recipient on the same date the consideration for the supply is to be provided under this Agreement.

10.5 Tax invoices

The recipient is not required to pay the GST Amount until the supplier has provided the recipient with a tax invoice in respect of the taxable supply. If the supplier has not provided the recipient with a tax invoice prior to the time that the GST Amount is otherwise payable under this clause, the recipient must pay the GST Amount within five days of the receipt of the tax invoice.

10.6 Adjustment events

If at any time an adjustment event arises in respect of a taxable supply made by a supplier under this Agreement, the supplier will provide the recipient with an adjustment note for the adjustment immediately upon becoming aware of the adjustment. Where such an adjustment event arises, a corresponding adjustment will be made to the GST Amount and a payment will be made by the recipient to the supplier or the supplier to the recipient as the case requires.

10.7 Reimbursements

Where a party is required under this Agreement to pay for or reimburse an expense or outgoing of another party, the amount to be paid by the first party is the sum of:

- (a) the amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing that the other party is entitled to; and
- (b) if the payment by the first party is consideration for a taxable supply, an amount equal to the GST payable by the other party in respect of the payment.

10.8 Representatives

In the event that liability for payment of GST in respect of a supply under this Agreement is imposed upon a representative of a supplier, this clause 10 shall be calculated in all respects as if the supplier was liable for the GST imposed on such supply and entitled to input tax credits properly allocated to the making of that supply.

11. Notices

11.1 How communications may be given

- (a) In addition to the methods of service of notices set out in the *Property Law Act 1974* (Qld), a communication in connection with this Agreement, including a Notice:
 - (i) must be in writing; and
 - (ii) may be:
 - left at the address of each addressee party;
 - sent by prepaid ordinary post to the address of each addressee party; or
 - sent by email to the contact of each addressee party.
- (b) The parties may from time to time provide a Notice to each other party specifying a new contact person, email or address for the purposes of this clause.

11.2 Deemed receipt

- (a) Unless a later time is specified in it, a communication takes effect from the earlier of the time it is actually received or is taken to be received.
 - (b) A communication delivered by hand or sent by post or by email is taken to be received:
 - (i) in the case of delivery by hand, on the day of delivery if delivered by 5.00 pm on a Business Day, otherwise on the next Business Day;
 - (ii) in the case of delivery by post, on the day when, by the ordinary course of post, it would have been delivered; or
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- (iii) in the case of an email, in accordance with section 24 of the Electronic Transactions (*Queensland*) Act 2001 (Qld).

11.3 Form of Notice

- (a) A Notice given by a party must be in writing and signed by the party.
- (b) A Notice given by a party may be signed by an officer of that party or the solicitor for that party.
- (c) A party receiving a Notice is not obliged to enquire as to the authority of the person signing the Notice.

12. General

12.1 Cost and Outlays

- (a) The parties must pay their own costs and incidental to the negotiation, preparation and execution of this Agreement.
- (b) The Owner must pay any government duty or tax payable on this Agreement.

12.2 Counterparts

This Agreement may be executed in any number of counterparts. Each counterpart is an original, but the counterparts together are one and the same agreement.

12.3 Entire Understanding

This Agreement:

- (a) is the entire agreement and understanding between the parties on everything connected with the subject matter of this Agreement; and
- (b) supersedes any prior agreement or understanding on anything connected with that subject matter.

12.4 Further Assurance

Each party must promptly at its own cost, do all things (including executing and if necessary, delivering all documents) necessary or desirable to give full effect to this Agreement.

12.5 No Merger

The rights and obligations of the parties under this Agreement do not merge on completion of any transaction completed by this Agreement.

12.6 Place for payment of monies

All monies payable to a party under this Agreement are payable free from all deductions and at the address of the party specified in this Agreement or such other address notified by that party to the other parties for the purposes of this clause.

12.7 Severance

If any provision of this Agreement cannot be given effect or full force and effect by reason of invalidity, that provision shall be severed or read down but so as to maintain and uphold so far as possible the remaining provisions of this Agreement.

12.8 Time of the essence

- (a) Time is of the essence of this Agreement.
- (b) If the parties agree to vary a time requirement, the time requirement so varied is of the essence of this Agreement.
- (c) An agreement to vary a time requirement must be in writing.

12.9 Force Majeure

- (a) If a party is unable by reason of an event of Force Majeure to carry out its obligations under this document, the party must give a Notice to the other party advising of the event of Force Majeure as soon as it is reasonably practicable after the event of the Force Majeure.
- (b) If a party gives a Notice advising of an event of Force Majeure, that party's obligations will be suspended during the period for which the event of Force Majeure or its effect extends.
- (c) Where the obligations of a party are dependent upon the occurrence of specified circumstances, then that party will be relieved of its obligations for so long as there is a change or deviation or non-occurrence of those circumstances arising from a matter beyond that party's control.

12.10 Warranties as to capacity

In addition to and despite all other warranties, express or implied, in this Agreement, the parties warrant and covenant that:

- (a) they are empowered to enter into this Agreement and do all things that will be required by this Agreement; and
- (b) all things have been done or will be done as may be necessary to render this Agreement legally enforceable in accordance with its terms and fully valid and binding on it.

12.11 Variation

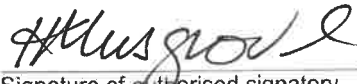
An amendment or variation to this Agreement is not effective unless it is in writing and signed by the parties.

Signed as an Agreement.

Signed for and on behalf of **TOGWOOMBA
REGIONAL COUNCIL** by
a person duly authorised to act in this behalf in
the presence of


Signature of witness

Elliott Barber
Full name of witness


Signature of authorised signatory

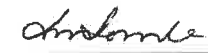
Kari MUSGROVE
Full name of authorised signatory

6.11.2024
Date

Signed for and on behalf of **JETELD PTY LTD
ACN 009 904 456** by
a person duly authorised to act in this behalf in
the presence of


Signature of witness

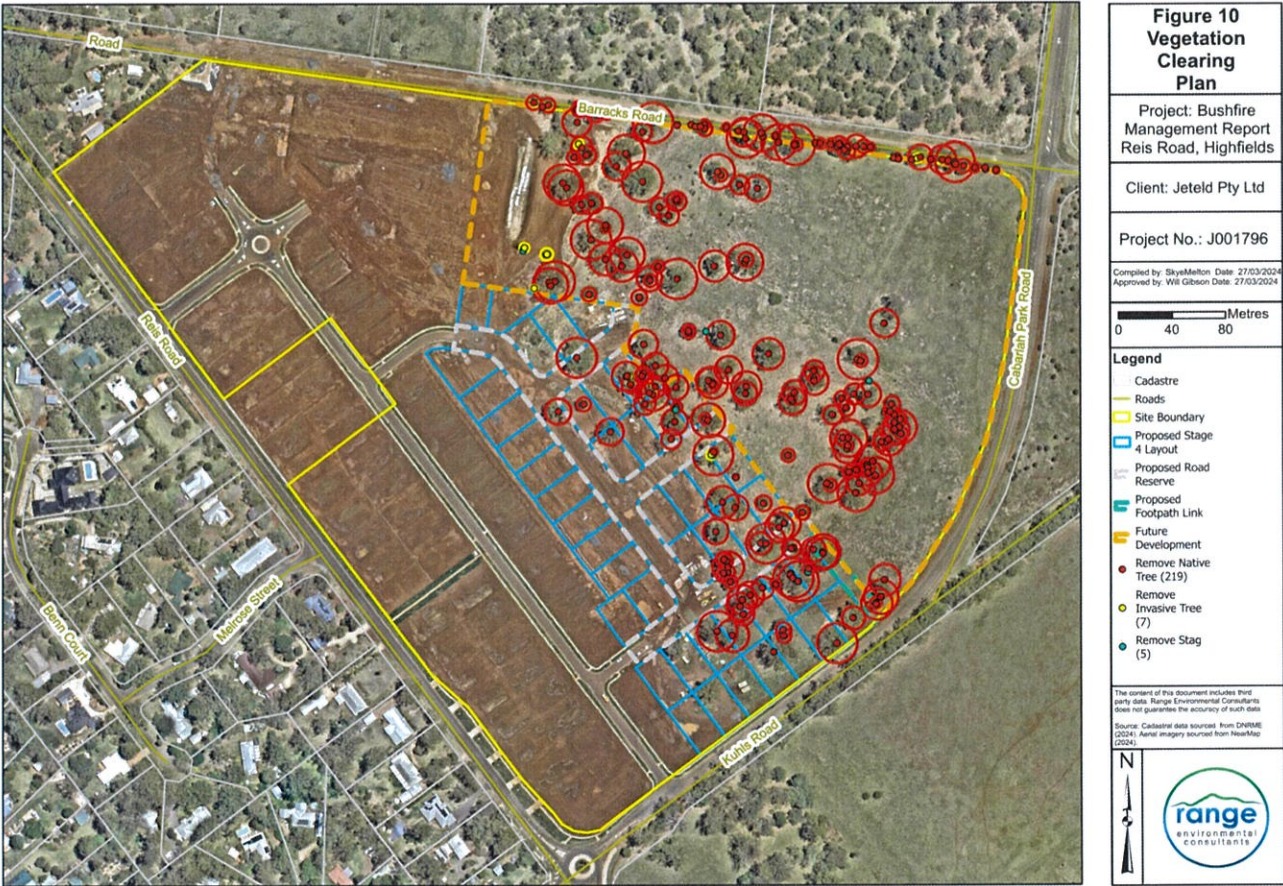
Lynne Maree Lamb
Full name of witness


Signature of authorised signatory

LYNNE MARIE LAMB
Full name of authorised signatory

5/11/24
Date

Annexure 1 – Vegetation Clearing Plan



Annexure 2 – Revegetation Management Plan

Annexure 3 – Vegetation Covenant

Annexure 4 – Covenant Management Plan