

COBAR SHIRE COUNCIL



ORDINARY MEETING SUPPLEMENTARY AGENDA

THURSDAY 23 AUGUST 2018

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**CLAUSE 7A – DEED OF LICENCE TO ALLOW COMMENCEMENT OF
MULTI PURPOSE FACILITY**

FILE: H1-1

AOP REFERENCE: 3.1

ATTACHMENT: YES

(PAGE 7- 15)

AUTHOR: *Director of Finance and Community Services, Kym Miller*

Purpose

To approve the signing of a Deed of Licence between Health Administration Corporation (HAC) and Cobarr Shire Council to allow commencement of works on the Multi-Purpose (Health) Service facility.

Background

This document allows access by HAC and its contractor to commence works prior to the vacant land being acquired by HAC. Whilst the spirit of the arrangement has been accepted by Council this particular document was not included in the documents previously approved by Council.

It is not required to be signed under seal.

RECOMMENDATION

That the Mayor and General Manager be authorised to sign the Deed of Licence which appears as an attachment to this report.

CLAUSE 8A – PURCHASE OF LAND FOR INDUSTRIAL ESTATE

FILE: A10-27 AOP REFERENCE: 3.1.1

ATTACHMENT: NO

AUTHOR: *Director of Finance and Community Services, Kym Miller*

Purpose

For Council to authorise the General Manager to negotiate to secure a portion of land suitable to develop an Industrial Estate.

Background

Resolution 297.11.2017 has in spirit endorsed the development of an Industrial Estate. The matter was further workshopped at the Councillor Workshop on Thursday, 12 July 2018.

A portion of land deemed suitable for the project has become available for purchase (DP 106450/170).

Given the sensitive nature of the information to be provided it is recommended that Council considers a further report in Committee of the Whole Closed Council with the press and public excluded.

RECOMMENDATION

That a further Report be considered in Committee of the Whole Closed Council with the press and public excluded in accordance with Section 10A (2) (d) (i) of the *Local Government Act 1993* as it contains commercial information of a confidential nature that would if disclosed in open Council would prejudice the commercial position of the person who supplied it.

ATTACHMENTS



ORDINARY MEETING SUPPLEMENTARY AGENDA

THURSDAY 23 AUGUST 2018

~ REFERENCE TO ATTACHMENTS ~

PART A – ACTION

Page Number

Clause 7A – Deed of Licence to Allow Commencement of Multi Purpose Facility. 7-15

DEED OF LICENCE

HEALTH ADMINISTRATION CORPORATION

ABN 45 100 538 161

AND

COBAR SHIRE COUNCIL

ABN 71 579 717 155

This Deed is made the day of 2018

PARTIES

Cobar Shire Council ABN 71 579 717 155 of 36 Linsley Street, Cobar NSW 2835 (**CSC**)

Health Administration Corporation ABN 45 100 538 161 (through its Health Infrastructure division ABN 45 100 538 161) of Level 14, 77 Pacific Highway, North Sydney NSW 2060 (**HAC**)

RECITALS

- A. CSC owns the Council Land.
- B. HAC wishes to acquire the Land for purposes relating to the design and construction of the new Cobar Health Service facility (**Facility**).
- C. CSC (as consent authority under the *Environmental Planning and Assessment Act 1979* (NSW)) has granted consent to Development Application No. 2017/LD-00051 (**Development Consent**) for the design and construction of the Facility and alterations/additions to an existing residential aged care facility owned by Council (**HAC Works**).
- D. Pending acquisition of the Land, CSC has agreed to grant a licence to HAC over the Land to use and occupy the Land for the Permitted Use, on the terms set out in this Deed.
- E. The licence will terminate on the date HAC acquires the Land.

OPERATIVE PROVISIONS

1. INTERPRETATION

1.1. Definitions

Business Day means a day that is not:

- (a) a Saturday, Sunday or public holiday in New South Wales; or
- (b) 27, 28, 29, 30 and 31 December.

Commencing Date means the date of this Deed.

Contractor means the main contractor engaged by HAC to carry out the HAC Works.

Council Land means the land described as Lot 102 in DP 615721, and Lot 111 following a proposed subdivision of the Council Land, located at 2 Nullamut Street, Cobar NSW 2835.

CSC's Representative means the person listed in Item 4 or as notified under clause 2.2(b).

Dispute means a dispute between the parties in connection with this Licence.

Dispute Notice means a written notice given under clause 8.1.

GST has the same meaning as GST means in the GST Law.

GST Law has the same meaning as GST law means in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

HAC's Representative means the person listed in Item 3 or as notified from time to time under clause 2.2(b).

Item means an item in the reference schedule set out in Schedule 1.

Land means part of the Council Land, comprising approximately 8,404 sqm, as shaded in purple on the Plan.

Law means any statute, regulation, proclamation, ordinance, by-law, local law, code or listing rule.

Licence Fee means \$1.00 (payable, if demanded).

Permitted Use means the use in Item 2.

Plan means the Plan attached at Annexure 1.

Term means the period from the Commencing Date until the Termination Date.

Termination Date means the date HAC acquires the Land.

WHS Act means the *Work Health and Safety Act 2011* (NSW).

WHS Regulation means the *Work Health and Safety Regulation 2017* (NSW).

1.1. Rules for interpreting this Deed

- (a) Headings are for convenience only and do not affect interpretation.
- (b) A reference to:
 - (i) legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation made under it;
 - (ii) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated from time to time;
 - (iii) a party to this Deed or to any other document or agreement includes a permitted substitute or a permitted assign of that party;
 - (iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person;
 - (v) a body (including an institute, association or authority), whether statutory or not which ceases to exist or whose powers or functions are transferred to another body, is a reference to the body which replaces it or substantially succeeds to its powers or functions; and
 - (vi) anything (including a right, obligation or concept) includes each part of it.

- (c) A singular word includes the plural, and vice versa.
- (d) A word which suggests one gender includes the other genders.
- (e) If a word is defined, another part of speech has a corresponding meaning.
- (f) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
- (g) **"Includes"** in any form is not a word of limitation.
- (h) A reference to an **Item** is to the relevant Item in the Reference Schedule.
- (i) In the interpretation of this Deed, no rule of construction applies to the disadvantage of one party on the basis that the party put forward or drafted this Licence or any provision in it.
- (j) A reference to an Annexure is to an Annexure to this Deed.
- (k) Words defined in the GST Law have the same meaning in clauses about GST.

1.2. Business Days

If the day on or by which a party must do something under this Deed is not a Business Day, the party will do it on or by the next Business Day.

2. GRANT OF LICENCE

2.1. Licence

- (a) CSC grants to HAC, and HAC accepts the grant of, a licence for the Term to use and occupy the Land for the Permitted Use.
- (b) The parties acknowledge that the Land is vacant at the date of this Deed.
- (c) CSC must not allow any other person to use the Land during the Term, without the prior written consent of the HAC.
- (d) HAC must pay the Licence Fee, if demanded by CSC.
- (e) Nothing contained in this Deed is intended to or will confer on the HAC any rights as a tenant of any part of the Land, or creates the relationship of landlord and tenant between CSC and HAC.

2.2. Representatives

- (a) Any notice, direction or other communication given between the parties in relation to this Deed must be given to CSC's Representative or HAC's Representative (as applicable).
- (b) Each party to this Deed may, at any time by written notice to the other party, replace the person nominated as its representative.

3. TERM OF LICENCE

3.1. Term

- (a) The Term begins on the Commencing Date and ends on the Termination Date, or at such other times that the parties agree (acting reasonably).
- (b) HAC and its employees, agents and contractors may use and occupy the Land in accordance with this Deed at all times during the Term.

4. HAC'S OBLIGATIONS

4.1. Use and occupation of the Land

HAC will:

- (a) use and occupy the Land during the Term only for the Permitted Use;
- (b) not, during the Term, use the Land for any noxious, offensive or dangerous trade or permit any nuisance to be committed on or from the Land, unless expressly contemplated by the Permitted Use.

4.2. WHS

- (a) The parties acknowledge that:
 - (i) HAC will appoint the Contractor as principal contractor under Chapter 6 of the WHS Regulation in relation to the HAC Works to the extent they are a construction project; and
 - (ii) on and from the Commencing Date, CSC authorises HAC to grant the Contractor management and control of the Land.
- (b) In this clause 4.2, the terms 'principal contractor' and 'construction project' have the same meaning given to those terms under the WHS Regulation;

5. INDEMNITY AND RELEASE

5.1. Indemnity

- (a) HAC indemnifies CSC against any actions, demands, costs or claims that CSC incurs or is liable for in connection with:
 - (i) any damage, loss, death or injury to property or person in connection with the Land to the extent caused by the HAC or HAC's employees, contractors and agents; and
 - (ii) the use or occupation by HAC or HAC's employees, contractors and agents of the Land,

except to the extent caused or contributed to by the wilful act or omission, negligence or default of CSC, its officers, employees, contractors or agents.

- (b) The indemnity in clause 5.1(a) does not apply to the extent caused by or contributed to by:
 - (i) a failure by CSC to perform any of its obligations under this Deed; or

- (ii) any unlawful, negligent, wilful or fraudulent act or omission or default of CSC or any of its officers, employees, agents or contractors

5.2. Governing law and jurisdiction

- (a) This Deed is governed by the law in force in New South Wales.
- (b) Each party submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in New South Wales, and any court that may hear appeals from any of those courts, for any proceedings in connection with this Licence, and waives any right it might have to claim that those courts are an inconvenient forum.

5.3. Variations and amendment

This Deed can only be varied, amended, supplemented, replaced or novated by another document signed by the parties.

SCHEDULE 1
REFERENCE SCHEDULE

Item 1	Land	Not used
Item 2	Permitted Use	All purposes in connection with and incidental to the design, construction and completion of the HAC Works on the Land in accordance with the Development Consent.
Item 3	HAC's Representative	Name: Rebecca Wark, Executive Director, Regional & Rural Phone: 0412 719 620
Item 4	CSC 's Representative	Name: Kym Miller Phone: [#]
Item 5	HAC's Notice Details	Health Administration Corporation (through its Health Infrastructure division) Address: PO Box 1060, North Sydney NSW 2059 Email: rebecca.wark@health.nsw.gov.au Attention: Rebecca Wark
Item 6	CSC's Notice Details	Cobar Shire Council Address: 36 Linsley Street Cobar NSW 2835 Email: kym.miller@cobar.nsw.gov.au Attention: Kym Miller

EXECUTION PAGE

Executed by the parties as a Deed

Signed by the **Health Administration Corporation** by its authorised delegate, in the presence of:

Signature of delegate

Signature of witness

Name of delegate

Name of witness

Signed by the **Cobar Shire Council ABN 71 579 717 155** by an authorised officer pursuant to a resolution of Council in the presence of:

Signature of authorised officer

Signature of witness

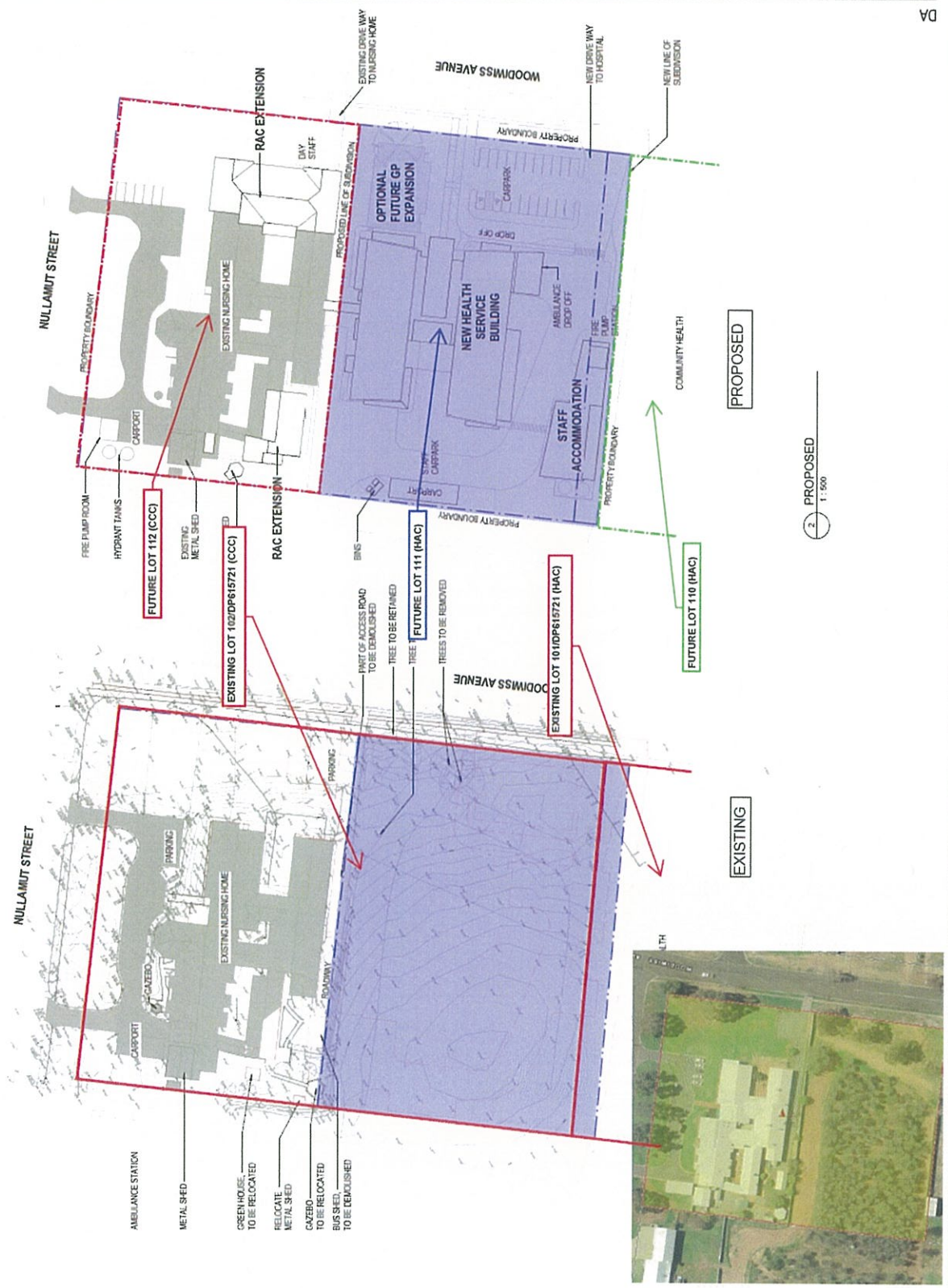
Name of authorised officer

Name of witness

10	EXISTING BUILDING	100
11	EXISTING DRIVE	100
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SITE AND DEMOLITION
 PLANS
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ANNEXURE 1 – Plan