

Item No	14.3
To	Council
Date	18 November 2025
Author	Nick Noack, Operations Business Manager
Subject	PROPOSED AGREEMENT FOR THE COMMUNITY-LED CONSTRUCTION OF A DOG PARK IN BUNGALA RESERVE
Attachments	A – Draft Agreement Bungala Park Dog Park
Previous Resolution	C25020 (18 February 2025)

Executive Summary

This report presents a proposed agreement between Council and the Friends of Normanville / Yankalilla Dog Park Committee which has been written to enable the construction of a community-led Dog Park at Bungala Reserve, Normanville.

The concept for this project, initiated by the Committee, aims to deliver a publicly accessible facility that promotes community wellbeing and responsible pet ownership, with minimal upfront or ongoing cost to Council.

Following Council's February 2025 resolution and subsequent community consultation, a Memorandum of Understanding (MoU) was identified as the preferred mechanism to formalise the partnership. The Committee has confirmed it will lead and fund the construction of the park, while Council will then assume responsibility for long-term maintenance and asset management.

Legal counsel has been engaged to draft the agreement, ensuring clarity around roles, responsibilities, and ongoing obligations.

Through the evolution of the project and consideration of the most appropriate delivery and management models, the 'cost neutral' language of an earlier resolution is being delivered for the upfront delivery of Park, with Council acknowledging that minor ongoing costs such as maintenance and insurance of the assets should and will be the responsibility of Council after asset handover.

These costs are considered reasonable in light of the significant upfront construction costs which will be borne by the committee together with the significant community benefit the project will deliver and the value of the asset which Council will inherit.

The agreement has been circulated to the Committee for their consideration and at the time of preparing this report, no concerns have been raised. The recommendation below allows further discussions prior to document execution.

The agreement provides the Committee with the formal backing needed to pursue further funding and to commence construction. It is recommended that Council adopt the agreement, enabling the project to proceed as this step also reaffirms the Council's commitment to supporting community-led initiatives.

Recommendation

1. That Council receives the Proposed Agreement for the Community-Led Construction of a Dog Park in Bungala Reserve report.
2. That Council supports the direction and detail provided in the draft agreement between Council and the Yankalilla Districts Residents Association (Friends of Normanville / Yankalilla Dog Park Committee) and authorises the Chief Executive Officer to continue to work with the Committee on any minor final amendments (if necessary) to execute the agreement with confirmation that minor ongoing costs such as maintenance, insurance, and administrative support sit with the Council as part of normal obligations for facilities on Council land.
3. That Council commend the Friends of Normanville / Yankalilla Dog Park Committee for the hard work, commitment and funds generated in preparation to deliver a Dog Park for Yankalilla/ Normanville.
4. That Council authorises the Chief Executive Officer (or appropriate delegate) to undertake minor administrative amendments to the agreement, including updating the correct legal names of the parties, and proceed to execute the agreement on behalf of Council.

Strategic Plan

1. The following DCY: VISION 2030 Strategic Pillars and Initiatives are relevant:



Strategic Pillar: Our Community	
TOPIC:	INITIATIVE:
1.2 Access & Inclusion	1.2.1 - Implement inclusive activities and services that support everyone to participate in community life. 1.2.3 - Deliver accessible and inclusive places and facilities that respond to diverse and evolving needs across the community.

Report Preparation

2. This report was prepared by:

Author	Time
Operations Business Manager	4.5 hrs
Director Assets and Environment	2 hrs

Governance and Policy Officer	0.5 hrs
Chief Executive Officer	1 hrs
Total	8 hrs

Discussion

3. The concept for a dedicated Dog Park in the District of Yankalilla was initiated by the Friends of Normanville / Yankalilla Dog Park Committee (the Committee) in recent years. This group has long advocated for a space that enhances community wellbeing and supports responsible pet ownership.
4. Their proposal to establish a Dog Park within Bungala Reserve in Normanville was brought forward with the aim of creating a valuable amenity at minimal upfront or ongoing cost to Council.
5. At its July 2025 Meeting a report was presented to Council where it was posed a Memorandum of Understanding (MoU) was a preferred mechanism to formalise collaboration with the Yankalilla Districts Residents Association subcommittee Friends of Normanville / Yankalilla Dog Park Committee. This decision was based on the need for a practical, flexible arrangement that clearly outlines roles, responsibilities, and expectations without the complexity of formal lease or licence agreements.
6. Under the Memorandum of Understanding:
 - The Committee will lead and fund the construction of the Dog Park infrastructure, including fencing, pathways, shelters, and other amenities.
 - Upon completion of each stage, assets will be formally transferred to Council ownership, ensuring they are legally recognised and incorporated into Council's Asset Register and insurance coverage.
 - Council will assume long-term responsibility for asset management, including routine maintenance, renewals, and compliance-related repairs.
 - The Committee will support early-stage establishment activities, such as watering and vegetation care, and intends to host volunteer working bees as needed.
7. This approach reflects a community-led delivery model, similar to that used for the local Community Garden near the Council's Library, and ensures the facility remains a publicly accessible, Council-managed asset that aligns with community expectations.
8. After considering the report at the July 2025 Meeting, Council resolved the following:

14.2 Proposed Bungala Reserve Dog Park – Agreement Report

C25151 *Moved Cr Gibbs*
Seconded Cr Quirke

That Council receives the Proposed Bungala Reserve Dog Park - Agreement Report.

That Council acknowledges that a number of paragraphs within the report, including options which would see Council incur ongoing insurance and maintenance costs do not align with Council's previous resolution of 18 February 2025.

That Council endorses the continued development of the proposed Dog Park at Bungala Reserve in partnership with the Friends of Normanville / Yankalilla Dog Park Committee.

That Council resolves to enter into an in-principle agreement with the Committee that outlines the general terms and understanding between parties during negotiations and to draft a Memorandum of Understanding (MoU).

That Council instructs the Chief Executive Officer (or appropriate delegate) to commence the preparation of a MoU (through engagement of legal counsel at Council's cost) which provides clarity on the Council's and the Committee's role in; initial site development, ongoing maintenance, future improvements, asset ownership, insurance and various other elements noting that Council's position is that the initial development and ongoing care of assets are to be at no cost to Council.

That the MoU be returned to Council for consideration and endorsement prior to execution.

That Council applauds the Committee's progress to date, including fundraising activities, draft design plans, and infrastructure proposals as outlined in Attachments A–E.

That Council formally expresses support for the Committee's efforts to seek external funding for the proposed accessible ramp, noting engineering advice and planning approval will be required prior to construction.

CARRIED

Cr Quirke called for a DIVISION

The Mayor declared the vote set aside

For: Cr Gibbs Cr Grocke Cr Hatch Cr Olsson Mayor Houston Cr Quirke Cr Moffat

Against: Cr Polomka

The Mayor declared the Motion CARRIED

9. To align with the resolution the administration commenced internal modelling to determine how the project could be delivered and maintained with minimal costs to Council. To initiate the preparation of an MoU legal counsel was engaged at Council's expense, to clearly define the roles and responsibilities of both parties.
10. Over recent months, Administration explored a range of delivery models to minimise Council's upfront and ongoing costs. These included a community-led model, where the Committee would undertake both the construction and ongoing maintenance of the Dog Park, as well as reimbursement-based models that would allow for partial financial support post-delivery. Each option was assessed for feasibility, sustainability, and alignment with Council's governance standards.
11. Administration also considered the risk implications associated with each model. This included evaluating potential liabilities related to insurance coverage, the management of volunteers and contractors, and the long-term compliance obligations that would arise from Council assuming ownership of the assets. These considerations were critical in shaping a framework that not only supports community involvement but also ensures that Council's legal, financial, and operational responsibilities are appropriately managed.

12. The delivery models were explored through an Information & Briefing Session in October 2025 where matters such as the management of insurance, volunteer and contractor management, and long-term asset responsibilities were discussed. Potential risks and the practical considerations involved were outlined, together with some input around what the 'normal' role of a Council could look like for such a partnered project.
13. The aim of the agreement (refer Attached) now drafted is to outline a delivery model which confirms the Friends of Normanville / Yankalilla Dog Park Committee will construct the facility, and Council then undertake its typical long-term care and upkeep. This approach provides a clear and practical pathway forward and it ensures the project remains community-driven while being supported by Council's operational capacity and governance standards.
14. In understanding the ongoing operational needs, information was sought from neighbouring councils regarding the labour hours they dedicate to maintaining Dog Parks of a similar scale to the one proposed by the Committee with some results provided below;

Task Category	Activity	Estimated Annual Hours
Routine Grounds Maintenance	Mowing (20× @ 2 hrs)	40 hrs
Routine Grounds Maintenance	Brushcutting (20× @ 1 hr)	20 hrs
Routine Grounds Maintenance	Fence Line Spraying (4–6× @ 1.5 hrs)	6–9 hrs
Seasonal & Infrastructure	Broadleaf Spray (incl. admin)	3–4 hrs
Seasonal & Infrastructure	Irrigation (50% of park)	15–20 hrs
Seasonal & Infrastructure	Hard Structure Maintenance	30–40 hrs
Total Estimated Hours/Year		114–133 hrs

15. Following discussions with our relevant staff, it was determined that the Dog Park will only have a minor impact on existing maintenance operations. The area proposed for the Dog Park is already maintained by Council staff, and the introduction of the facility does not eliminate the need for ongoing grounds upkeep. As such, the projected increase in labour hours is modest and reflects normal and expected adjustments to accommodate the specific needs of a Dog Park environment.
16. It's important to note that the current estimates are based on routine maintenance activities and do not account for additional inputs such as irrigation system servicing, should one be installed, or reactive maintenance in response to vandalism or damage. In such cases, repairs may be covered under Council's insurance, provided they exceed the scope of minor or routine works. Based on current estimates, routine maintenance activities are expected to increase from 119–134 hours per year to 131–146 hours per year.

Task Category	Current estimates of Hours Spent		Change to include Dog Park	
	Activity	Estimated Annual Hours	Activity	Estimated Annual Hours
Routine Grounds Maintenance	Mowing (26× @ 2 hrs)	52 hrs	Mowing (20× @ 2.5 hrs)	50 hrs
Routine Grounds Maintenance	Brushcutting (26× @ 1 hr)	26 hrs	Brushcutting (20× @ 2 hr)	40 hrs
Routine Grounds Maintenance	Spraying (4–6× @ 2 hrs)	8–12 hrs	Fence Line Spraying (4–6× @ 2 hrs)	8–12 hrs

Seasonal & Infrastructure	Broadleaf Spray (incl. admin)	3–4 hrs	Broadleaf Spray (incl. admin)	3–4 hrs
Seasonal & Infrastructure	Hard Structure Maintenance	30–40 hrs	Hard Structure Maintenance	30–40 hrs
Total Estimated Hours/Year		119–134 hrs		131–146 hrs

17. This minor shift is considered reasonable for the Council to manage.
18. The proposed delivery pathway ensures that while Council remains responsible for long-term care, the upfront investment and construction are led by the community, resulting in a cost-effective and collaborative outcome.
19. The presentation of this agreement to Council represents a critical milestone for the Friends of Normanville / Yankalilla Dog Park Committee. The formal adoption of the agreement will provide the necessary authorisation for the Committee to begin construction of the Dog Park, subject to meeting the conditions outlined within the document which includes relevant approvals under the *Local Government Act 1993* and the *Planning, Development & Infrastructure Act 2016*.
20. The agreement allows Council’s clear directive to proceed with the project and empower the Committee to lead its delivery on the ground.
21. Endorsing the agreement will also strengthen the Committee’s ability to attract financial support, including sponsorships and grant funding. To date, the absence of a formalised agreement has limited opportunities for significant external contributions.
22. The pathway proposed through discussions at the Information & Briefing Session, and outlined in the MoU recognises community benefit through a social value uplift which enhances the local community. This significant community benefit that Dog Parks provide particularly when delivered through a community-led model.
23. Dog Parks foster social connection, support responsible pet ownership, and activate public spaces in meaningful ways. The partnership with the Friends of Normanville / Yankalilla Dog Park Committee exemplifies a collaborative approach that aligns with Council’s strategic objectives and commitment to empowering local communities.
24. In addition, there is also a significant upfront cash contribution by the association to deliver the project. Although there are some costs to Council, including ongoing maintenance, insurance coverage, and administrative support, these costs are considered minor, reasonable and expected for such an asset on Council land. These costs are able to be managed from an operational standpoint.

Conclusion

25. The Council has made numerous resolutions as part of the development of the overall delivery model for development of a Dog Park in the District. Substantial progress has been made across the year in advancing the proposed Dog Park at Bungala Reserve. Through ongoing collaboration with the Friends of Normanville / Yankalilla Dog Park Committee, a clear delivery model has been developed, supported by community engagement, design planning, and legal consultation.
26. Positive community support and momentum has been building towards this and endorsing the agreement sets the project up for successful implementation and allows scheduling to commence for construction.

Deed of Works and Construction Licence

Bungala Reserve, Normanville

The District Council of Yankalilla

Yankalilla District Residents Association Inc

DATE

PARTIES

The District Council of Yankalilla of 1 Charles Street, Yankalilla SA 5203 (Council)

Yankalilla District Residents Association Inc of [insert] (Association)

BACKGROUND

- A. Council is the owner or has the care control and management of Bungala Reserve.
- B. The Association wishes to establish and maintain a dog park within Bungala Reserve for the ongoing use of the general public.
- C. Council has resolved to grant the Association a licence to perform the Works in accordance with section 202 of the *Local Government Act 1999* (SA).
- D. The Association will be responsible for procuring, funding and completing the Works.
- E. Once the Works are completed, Council will own the Works and will be responsible for the ongoing maintenance and repair of the Works.
- F. This deed documents the terms of the parties' agreement with respect to the Works.

AGREED TERMS

1. INTERPRETATION

1.1 Acknowledgement of background

The background recitals are correct and form part of this deed.

1.2 Introductory

In this deed, unless the contrary intention appears:

- 1.2.1 a reference to this deed is a reference to this document;
- 1.2.2 words beginning with capital letters are defined in clause 1.3;
- 1.2.3 a reference to a clause is a reference to a clause in this deed;
- 1.2.4 a reference to an Item is a reference to an item in the Schedule;
- 1.2.5 a reference to the Schedule is a reference to the schedule to this deed; and
- 1.2.6 a reference to an Annexure is a reference to an annexure to this deed.

1.3 Defined terms

In this deed:

Approved Plans has the meaning given to it in clause 3.2.

Association means the party described as “Association” in this deed and where the context permits includes the members, employees, contractors, agents, volunteers and other invitees of the Council.

Bungala Reserve means the land described in item 1 of the Schedule.

Business Day means a day that is not a Saturday, Sunday or public holiday in Adelaide.

Commencement Date means the date this deed is fully executed.

Complaint Notice means the notice issued by a party pursuant to clause 15.1 of this deed.

Concept Plans means the concept plans for the establishment of a dog park attached at Annexure B.

Council means the party described as “Council” in this deed and where the context permits includes the employees, contractors, agents and other invitees of the Council.

Defect in relation to the Works includes any damage to or deterioration of the Works other than any damage or deterioration caused by normal aging or ordinary wear arising from the normal use of the Works concerned for their intended purpose.

Defects Liability Period means 12 months from the date of Council’s confirmation of Practical Completion of the Works.

Independent Expert means the expert as agreed by the parties or appointed pursuant to clause 15.2 of this deed.

Legislation includes any relevant Statute or Act of Parliament (whether State or Federal) and any regulation or by-law including by-laws issued by any Statutory Authority.

Licence Fee means the fee described in Item 3.

PDI Act means the *Planning, Development and Infrastructure Act 2016* (SA).

Practical Completion means the state of being substantially complete and fit for purpose by the public, all performance or structural tests required by Council having been satisfactorily completed and omissions and defects being limited to items:

- the immediate making good of which by the Association is accepted by Council as not being practicable; and
- that Council accepts do not cause impediment to the use or enjoyment of the Works or the Works Area by the public.

Statutory Authority means any government or semi-government authority or any authority created by or under Legislation and includes Council in its separate capacity as a Statutory Authority.

Statutory Requirements means all relevant and applicable Legislation and all lawful approval, authorisation, agreement, licence, permit, consent, qualification, accreditation, registration, certificate, declaration or exemption,

conditions, requirements, notices and directives issued or applicable under any such Legislation or by any Statutory Authority.

Term means a period commencing on the Commencement Date and expiring in accordance with this deed.

Works means the works described in Item 3.

Works Area means the area described in Item 2.

1.4 Interpretation

In this deed, unless the context otherwise requires:

- 1.4.1 headings do not affect interpretation;
- 1.4.2 singular includes plural and plural includes singular;
- 1.4.3 words of one gender include any gender;
- 1.4.4 a reference to a party includes its executors, administrators, successors and permitted assigns;
- 1.4.5 a reference to a person includes a partnership, corporation, association, government body and any other entity;
- 1.4.6 an agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- 1.4.7 an agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- 1.4.8 a reference to legislation includes any amendment to it, any legislation substituted for it, and any subordinate legislation made under it;
- 1.4.9 a provision is not construed against a party only because that party drafted it;
- 1.4.10 an unenforceable provision or part of a provision may be severed, and the remainder of this deed continues in force, unless this would materially change the intended effect of this deed; and
- 1.4.11 the meaning of general words is not limited by specific examples introduced by 'including', 'for example' or similar expressions.

2. GRANT OF LICENCE

- 2.1 Council grants to the Association a licence over the Works Area during the Term for the purpose of undertaking the Works pursuant to this deed.
- 2.2 The Association may only enter and use the Works Area and bring machinery, plant and equipment onto the Works Area to the extent reasonably necessary for the purposes of carrying out the Works.
- 2.3 The rights conferred by this deed shall rest in contract only and shall not create or confer upon the Association any tenancy, estate or interest in or over the

Works Area and the rights of the Association under this deed do not comprise or include any further or other rights.

2.4 The Association must pay the Licence Fee on demand.

3. CONSTRUCTION PLANS AND AUTHORISATIONS

3.1 The Association must prepare detailed construction plans for the Works (including landscaping and materials) and submit them to Council (in its capacity as the owner of Bungala Reserve and not as a Statutory Authority) for approval prior to commencing any Works or lodging a development application for the Works under the PDI Act.

3.2 Council must advise the Association whether it approves the detailed construction plans. If Council approves the detailed construction plans those plans will constitute the **Approved Plans** for the purposes of this deed. If it does not approve the detailed construction plans the Association must amend and re-submit them until approval is granted.

3.3 The Association must obtain and comply with all authorisations, consents and approvals required from any Statutory Authority for the construction of the Works, including any separate development approval required under the PDI Act.

3.4 The Association acknowledges that Council is not bound to check any of the plans or Works for errors, omissions, or compliance with the requirements of this deed and Council's receipt or assessment of any documentation and inspection of any work pursuant to this clause does not relieve the Association from responsibility for meeting its obligations under this deed.

4. USE OF WORKS AREA

4.1 Permitted use

The Association must only access and use the Works Area for the purposes of undertaking the Works.

4.2 Works by Association

The Association must undertake and complete the Works:

- 4.2.1 at the Association's cost;
- 4.2.2 in accordance with the Approved Plans;
- 4.2.3 as soon as reasonably practicable following the Commencement Date;
- 4.2.4 in a proper and professional manner and using licensed trades where required; and
- 4.2.5 in accordance with all Statutory Requirements.

4.3 Council may inspect the Works at any time before Practical Completion of the Works.

4.4 Without limiting the foregoing, in carrying out the Works, the Association must:

- 4.4.1 use reasonable endeavours to ensure that in carrying out the Works, the Association causes minimum disruption to the users of Bungala Reserve and does not damage the Works Area; and
- 4.4.2 ensure that in carrying out the Works and otherwise accessing the Works Area, the Association does not cause or permit any public or private nuisance on the Works Area, Bungala Reserve or any adjacent land owned by the Council.

4.5 **Alterations and additions**

The Association must not make or allow any permanent alterations or additions to the Works Area, other than those approved by Council in the Approved Plans.

4.6 **Safety requirements**

The Association must:

- 4.6.1 fence the Works Area from commencement of the Works until Practical Completion;
- 4.6.2 maintain in and around the Works Area suitable signs warning the public of the carrying on of the Works and will keep all machinery and other obstructions or traps created by the Works adequately illuminated and fenced for the protection of the public (including during the Defects Liability Period);
- 4.6.3 give Council prompt notice of any circumstance or event that the Association should reasonably be aware might cause danger, risk or hazard to the any person using or in the vicinity of the Works Area; and
- 4.6.4 if required, take all reasonable steps to promptly rectify any Defect or want of repair to make the Works Area safe from any danger, risk or hazard.

4.7 **Work Health and Safety**

- 4.7.1 The parties acknowledge and agree that in undertaking the Works the Association will have management and control of the Works Area and is the person conducting a business or undertaking for the purposes of the *Work Health and Safety Act 2012*.
- 4.7.2 Without limiting clause 4.2.5, the Association has a primary duty of care for the health and safety of all members, volunteers, contractors, subcontractors and invitees during the Works.
- 4.7.3 The Association must maintain appropriate records of all visitors to the Works Area.

5. **INSURANCE**

Before commencing Works, the Association must have or effect (in relation to the Works Area and the Works) for the benefit of Council, the Association and all contractors and sub-contractors a policy of public risk insurance for cover of not less than \$20 million in respect of any one claim with a registered insurer in South Australia

until the end of the Defects Liability Period and must provide to Council a copy of such policy and evidence of its currency.

6. PRACTICAL COMPLETION OF THE WORKS

- 6.1 When the Association is of the opinion that it has achieved Practical Completion of the Works it shall give written notice to Council accordingly whereupon Council shall either:
- 6.1.1 give to the Association written notice confirming that the Association has achieved Practical Completion of the Works to the satisfaction of Council and specifying those omissions or defects that the Association is required to attend to (**Works Notice**) prior to the expiry of the Defects Liability Period or within such lesser period as may be specified in the Works Notice; or
 - 6.1.2 give to the Association written notice advising that Council is not satisfied that the Association has achieved Practical Completion of the Works and specifying those omissions or defects that the Association is required to attend to before Council will issue its Works Notice in respect of the Works.
- 6.2 If Council fails to give to the Association either a Works Notice pursuant to clause 6.1.1 or a notice pursuant to clause 6.1.2 within 14 days after receipt of the notice from the Association pursuant to clause 6.1 then the Association shall be entitled to give to Council a further written notice requiring Council to issue a Works Notice pursuant to clause 6.1.1 or a notice pursuant to clause 6.1.2 within 14 days of receipt of such further notice from the Association and if Council fails to do so then and in such case Council shall be deemed for all purposes to have given a Works Notice pursuant to clause 6.1.1 upon the expiration of 14 days.
- 6.3 The Association may give a notice to Council pursuant to clause 6.2 on more than one occasion.
- 6.4 The Association will gift the Works and the Works will vest in Council for no consideration upon Council's confirmation of Practical Completion of the Works pursuant to clause 6.1.1.

7. COMPLETION OF THE WORKS, RECTIFICATION OF DEFECTS AND MAINTENANCE OF THE WORKS AFTER PRACTICAL COMPLETION

- 7.1 During the Defects Liability Period the Association must:
- 7.1.1 complete those minor omissions or Defects in the Works identified by the Association or Council; and
 - 7.1.2 rectify and make good any Defects in the Works arising from faulty materials and/or workmanship during the Defects Liability Period,
- as soon as reasonably practicable.
- 7.2 If any such Defect exists or becomes apparent during the Defects Liability Period and Council gives written notice to the Association within the Defects Liability Period specifying the nature of such Defect and requiring the rectification and making good of the same, the Association must comply with the requirements of such notice within any period reasonably specified in that

notice or, if no period is specified, within 28 calendar days after receipt of that notice.

- 7.3 Clauses 7.1 and 7.2 again apply with any modifications appropriate in the circumstances in respect of the Practical Completion of the rectification and making good of any Defect by the Association pursuant to clause 7.2. The Association must maintain and must rectify and make good any Defect in any further work carried out pursuant to clause 7.2 for the further period of six calendar months commencing on the date of acceptance by Council of Practical Completion for the Works.
- 7.4 Council will be responsible for the general maintenance and repair of the Works following Practical Completion at Council's cost in accordance with Council's standards for the maintenance of public space from time to time.

8. DAMAGE TO COUNCIL INFRASTRUCTURE

8.1 If at any time during the construction of the Works or during the Defects Liability Period (as applicable), any damage is caused to:

- 8.1.1 any part of the Works; or
- 8.1.2 any infrastructure vested in Council or under Council's care, control and management on Bungala Reserve or on any land adjacent to the Works,

by the Association or any agent or contractor of the Association, Council may by notice in writing to the Association providing reasonable particulars of the damage require the Association at Council's discretion to either:

- 8.1.3 take such steps as Council may reasonably require to repair the damage within a period stated in the notice (which period must be reasonable in the circumstances); or
- 8.1.4 pay to Council an amount representing a reasonable cost of repairing the damage on or before a date specified in the notice (being no earlier than 10 Business Days after the giving of the notice).

8.2 If the Association do not comply with a notice given to the Association under clause 8.1 Council may recover an amount representing a reasonable cost of repairing the damage from the Developer as a debt.

8.3 For the avoidance of doubt, the dispute resolution procedures set out in clause 15, will not apply to a dispute between the parties in relation to this clause 8.

9. END OF LICENCE

9.1 The licence granted by Council to the Association for the purposes of undertaking the Works commences on the Commencement Date and will expire at the end of the Defects Liability Period.

9.2 The Council may grant subsequent licences or authorisations to the Association from time to time allowing the Association to undertake minor maintenance of the Works.

10. **ASSIGNMENT**

The Association must not assign, sublicense or otherwise deal with its interest in the Works Area or this deed.

11. **TERMINATION BY A PARTY**

11.1 **Termination**

A party may terminate this deed with immediate effect by giving notice to another party if:

- 11.1.1 a party fails to pay any sum of money within 10 Business Days after the date such payment fell due under this deed;
- 11.1.2 a party breaches any other provision of this deed and fails to remedy the breach within 10 Business Days after receiving notice requiring it to do so, in accordance with clause 13 of this deed;
- 11.1.3 a party breaches a material provision of this deed where that breach is not capable of remedy; or
- 11.1.4 any event referred to in the following clause 11.2 happens to a party.

11.2 **Notification of events**

A party must notify another party immediately if:

- 11.2.1 there is any change in the direct or indirect beneficial ownership or control of a party;
- 11.2.2 it disposes of the whole or any part of its assets, operations or business other than in the ordinary course of business;
- 11.2.3 it ceases to be able to pay its debts as they become due;
- 11.2.4 any step is taken by a mortgagee to take possession or dispose of the whole or any part of its assets, operations or business;
- 11.2.5 any step is taken to enter into any arrangement between a party and its creditors; or
- 11.2.6 any step is taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a liquidator, a provisional liquidator, an administrator or other like person of the whole or any part of its assets or business.

11.3 **Accrued rights and remedies**

Termination of this deed under this clause does not affect any accrued rights or remedies of either party.

12. **INDEMNITY AND RELEASE**

12.1 **Risk**

The Association accesses and uses the Works Area at the Association's risk.

12.2 **No warranty**

Council does not warrant that the Works Area is suitable to undertake the Works.

12.3 **Indemnity**

The Association shall indemnify Council against all actions, liabilities, penalties, claims or demands for any loss, damage, injury or death to person or property incurred or suffered directly or indirectly and arising out of or in connection with the Works, a breach of this deed by the Association or the Association's use of or access to the Works Area.

12.4 **Release**

The Association releases Council from all actions, liabilities, penalties, claims or demands for any damage, loss, injury or death occurring on the Works Area except to the extent they are caused by the Council's negligence.

13. **NOTICES**

13.1 A notice, demand, consent, approval or communication under this deed (**Notice**) must be:

13.1.1 in writing, in English and signed by a person authorised by the sender; and

13.1.2 hand delivered or sent by pre-paid post or electronic mail to the recipient's address specified, as varied by any Notice given by the recipient to the sender.

13.2 A Notice is deemed to be received:

13.2.1 if sent by prepaid mail, five Business Days after posting (or seven Business Days after posting if posting to or from a place outside Australia);

13.2.2 if sent by electronic mail, at the time and on the day shown in the sender's mail box as having been sent,

however if the Notice is deemed to be received on a day that is not a Business Day or after 5:00pm, the Notice is deemed to be received at 9:00am on the next Business Day.

13.3 If two or more persons comprise a party, Notice to one is effective Notice to all.

14. **GST**

14.1 **Definitions**

In this clause 14:

14.1.1 **GST** has the same meaning as given to that term in the GST Legislation;

14.1.2 **GST Legislation** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any similar or ancillary legislation; and

14.1.3 **GST Rate** means 10% or such other percentage equal to the rate of GST imposed from time to time under the GST Legislation.

14.2 **Consideration**

If a GST applies to impose tax on the any goods, services or other things supplied under this deed then:

14.2.1 the consideration for that supply is exclusive of GST;

14.2.2 the supplying party may increase the consideration of the relevant part of the consideration by a percentage amount that is equal to the GST Rate; and

14.2.3 the receiving party shall pay the increased consideration on the due date for payment by the receiving party of the consideration.

14.3 **Tax invoice**

Where the consideration is to be increased to account for GST under this clause 14, the supplying party shall, on or before the date on which the consideration is payable, issue a tax invoice to the receiving party.

14.4 **Liability for penalties**

If the receiving party does not comply with their obligations under this deed or with their obligations under the GST Legislation in connection with this deed and as a result the supplying party becomes liable for penalties or interest for late payment of GST, then the receiving party must pay the supplying party on demand an amount equal to the amount of the penalties and interest.

15. **DISPUTE RESOLUTION**

15.1 **Resolution by negotiation**

If there is a dispute between the parties, the aggrieved party must serve a notice on the other party setting out the nature of the dispute (**Complaint Notice**). The parties must then make every effort to resolve the dispute by negotiation.

15.2 **Reference to Independent Expert**

15.2.1 If the dispute cannot be resolved within 10 Business Days of service of the Complaint Notice the parties may refer the matter to a mutually agreed expert for determination.

15.2.2 If the parties cannot agree upon an Independent Expert, then either party may request that one of the following be appointed to resolve the dispute:

- (a) in the case of a dispute concerning a legal matter, a practising barrister or solicitor having at least seven years current and continuous practice in South Australia appointed by the President for the time being of the Law Society of South Australia; or

- (b) in any other case, any other suitably qualified expert appointed by the President for the time being of the Law Society of South Australia.

15.3 **Written submission**

The written submission of the dispute to the Independent Expert must state the specific matter to be determined together with all other reasonably relevant matters and must be accompanied by a copy of this deed.

15.4 **Procedures**

The Independent Expert must give due weight to any representations put forward by a party within any time limit prescribed by the Independent Expert. The Independent Expert must give written reasons for their determination. The parties must supply the Independent Expert with any requested information, assistance and cooperation.

15.5 **Costs**

Unless the Independent Expert determines otherwise in their absolute discretion, the fees and expenses of the Independent Expert must be borne by the parties in equal shares.

15.6 **Conclusiveness of determination**

The Independent Expert acts as an independent expert and not an arbitrator. The Independent Expert's determination is conclusive and final and binding on the parties (except in the case of fraud or manifest error).

15.7 **Urgent relief**

Nothing in this clause prevents a party from seeking urgent injunctive and/or equitable relief in an appropriate court.

16. **GENERAL**

16.1 **Costs**

The parties bear their own costs and expenses (including legal costs and expenses) of negotiating, preparing, executing and stamping this deed.

16.2 **Alteration**

This deed may be altered by agreement or deed in writing between Council and the Association.

16.3 **Approvals and consents**

Unless otherwise provided, a party may in its discretion give (conditionally or unconditionally) or withhold any approval or consent under this deed.

16.4 **Entire agreement**

This deed:

- 16.4.1 constitutes the entire agreement between the parties about its subject matter; and

16.4.2 supersedes any prior understanding, agreement, condition, warranty, indemnity or representation about its subject matter.

16.5 Waiver

A waiver of a provision of or right under this deed:

16.5.1 must be in writing signed by the party giving the waiver;

16.5.2 is effective only to the extent set out in the written waiver.

16.6 Exercise of power

16.6.1 The failure, delay, relaxation or indulgence by a party in exercising a power or right under this deed is not a waiver of that power or right.

16.6.2 An exercise of a power or right under this deed does not preclude a further exercise of it or the exercise of another right or power.

16.7 Survival

Each indemnity, obligation of confidence and other term capable of taking effect after the expiration or termination of this deed, remains in force after the expiration or termination of this deed.

16.8 Governing law

16.8.1 This deed is governed by the law in South Australia.

16.8.2 The parties irrevocably submit to the non-exclusive jurisdiction of the courts in South Australia.

EXECUTED as a deed

COUNCIL

The common seal of The District Council of Yankalilla was affixed in the presence of:

.....
Signature of Mayor

.....
Signature of Chief Executive Officer/City Manager/Town Clerk
(Please delete as applicable)

.....
Name of Mayor (print)

.....
Name of Chief Executive Officer/City Manager/Town Clerk (print)

Association

The common seal of Yankalilla District Residents Association Inc was affixed in the presence of:
Check Constitution

.....
Signature of Committee/Board Member
(Please delete as applicable)

.....
Signature of Committee/Board Member
(Please delete as applicable)

.....
Name (print)

.....
Name (print)

OR

Executed by Yankalilla District Residents Association Inc:
Check Constitution

.....
Signature of Committee/Board Member
(Please delete as applicable)

.....
Signature of Committee/Board Member
(Please delete as applicable)

.....
Name (print)

.....
Name (print)

DRAFT



Schedule

Item 1 Bungala Reserve	The whole of the land comprised in Certificate of Title Volume # Folio #
Item 2 Works Area	Portion of Bungala Reserve delineated # in the plan attached at Annexure A
Item 3 Works	Establishment of a dog park substantially in accordance with the Concept Plans
Item 4 Licence Fee	\$1.00 (exclusive of GST) payable on demand

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