



Graham Irvine

Herewith key pages in proposed Deed re "alienation of interest" and C.T. Their option to purchase expires next week at which point, as I understand it, they commit themselves to this Deed as purchasers of the property.

I have spoken with various of the members re the T in C option and alternatives and would like to discuss this with you.

Regards
Peter

p 1
5
6
7
14
15

rent

7/11

Peter There are a few further amendments I due
to our visit to Wroth on Monday - but I
don't yet have the newest version

THIS DEED made on the _____ day of _____, 1997

Liz

BETWEEN: **HELENA BERNARD** and **DAVID McKINLEY** both of 21
Sunrise Crescent, Lennox Head in the State of New South
Wales of the first part,

ANNETTE McKINLEY and **DAVID MILLEDGE** both of Upper
Coopers Creek Road, Rosebank in the said State of the second
part,

JENNIFER McLAUCHLAN of PO Box 161, Nimbin in the said
state, of the third part,

PETER LAMONT and **CAROLE SHERRINGHAM** of 2
Shipham Street, Concord in the said State of the fourth part,

MARY McBRIDE and **NEIL WILLIAMS** of 137 North Creek
Road, Lennox Head in the said state of the fifth part,

PAM CRAVEN and **MICHAEL KATZ** of PO Box 335, Nimbin in
the said State of the sixth part,

HOLLY NORTH of PO Box 337, Byron Bay in the said State of
the seventh part,

PETER GIBLIN and **ELIZABETH SUMMERFIELD** of 137
North Creek Road, Lennox Head in the said eighth part,

BRUCE BLACKFORD and **JUDITH BLACKFORD** of 30
Shelley Drive, Byron Bay in the said State of the ninth part,

ANTHONY BOSTON and **SUZANNE SOMMERVELLE** of
Minyon Falls Rd, via Rosebank in the said State of the tenth
part,

MARK McDERMID and **CATHERINE McDERMID** of 3
Tristania Place, Byron Bay in the said State of the eleventh
part,

ELIZABETH JENSEN of PO Box 136, Nimbin in the said State
of the twelfth part

WHEREAS

- A. The parties have entered into an option agreement to enable them to contract to become the registered proprietors as tenants in common in equal shares in all that piece or parcel of land in the shire of Byron, parish of Newrybar and county of Rous being Lot 1 in deposited plan 189704 and being the whole of the land comprised in Certificate of Title Folio Identifier 1/189704 and located at Broken Head Road, Broken Head in the said State (hereinafter referred to as "The Land").

- B. The parties intend to seek approval from Byron Shire Council for development of the land to be used for the purposes of a multiple occupancy so as to allow the erection of a maximum of twelve (12) dwelling houses thereon.
- C. The parties wish to reduce to writing the terms of agreement reached between them in relation to their ownership of the land.

NOW THIS DEED WITNESSES as follows:

INTERPRETATION

- 1.1 In the interpretation of the Deed the following expressions shall bear the meanings attributed thereto:-
- 1.2 Words implying the singular or plural number shall include the plural and singular number respectively; words importing the masculine gender shall include the feminine or neuter gender and vice versa, and "party" shall mean the owner of an interest in the land.
- 1.3 If any term, clause or provision of this Deed shall be deemed or judged to be invalid or void for any reason whatsoever such invalidity or voidability shall not affect the validity or operation of any other term, clause or provision of this Deed except only so far as maybe necessary to give affect to the construction of such invalidity or voidability;
- 1.4 References to statutes, ordinances or by-laws shall be deemed to extend to all statutes, regulations, ordinances or by-laws amending, consolidating or replacing the same;
- 1.5 The captions, headings, section numbers and clause numbers appearing in this Deed are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or extent of the sections or clauses of this Deed nor in any way effect this Deed;
- 1.6 The covenants binding more than one party shall be deemed to bind them and any two or greater number of them jointly and each of them severally;
- 1.7 "Forest Operations" shall have the meaning attributed to it by Section 6.1 of the Income Tax Assessment Act 1936.
- 1.8 "Management Committee" shall have the meaning attributed to it by Clause 9.1.
- 1.9 "Month" shall mean calendar month.
- 1.10 "Party" shall include parties to this deed and such other persons who shall acquire an interest in the land and comply with the provisions of clause 12.

- 1.11 "Secretary" shall mean the secretary of the management committee appointed pursuant to clause 9.4.1.

USE OF LAND

- 2.1 Subject to development consent from Byron Council and to the provisions hereinafter contained the parties shall each have the exclusive right to build and occupy a dwelling house on the land within the areas designated on the annexed plan. In the event that any house sites are not so nominated the parties shall agree upon the sites upon which each party shall be entitled to build and occupy a dwelling house provided that if there is no agreement such sites shall be designated by the management committee.
- 2.2.1 Any buildings or structures of any kind which are to be erected on the land specified in clause 2.1 after the date hereof must be approved in writing by the management committee whose consent shall not be unreasonably withheld **PROVIDED ALWAYS** that in considering the approval or otherwise of any proposed dwelling or structure as aforesaid the management committee may only consider the following matters:
- i. Conformity of proposed dwelling or structure with the architectural guidelines adopted by the management committee from time to time which for the purpose of this agreement shall be deemed to be by-laws within the meaning of clause 10 of this agreement. Initial architectural guidelines are annexed and marked "B".
 - ii. Conformity of proposed dwelling or structure with the conditions of development consent, the building regulations that are in force and sound building practices;
 - iii. The environmental impact of any such proposed dwelling or structure;
 - iv. The impact of such proposed dwelling or structure on other parties;
- 2.2.2 Any land not set aside in accordance with clause 2.1 hereof ("the common property") shall be used by the parties for no purpose other than the regeneration and preservation of native flora and fauna or for forestry operations or for such other purposes as the parties may unanimously agree.

ENVIRONMENTAL REPAIR AND REVEGETATION PLAN

The staged plan for revegetation is based upon progressive de-stocking of the property and the encouragement of natural regeneration.

Implementation as follows:

- i. *Stage 1 (year 1)*

- purchase electric fencing up to a value of \$3,000
- fence a 50 meters wide buffer along the eastern boundary of the property
- fence the entire south western corner (including 7 (j) zones) and plant acacias on the western boundary to provide protective buffer
- fence northern creek line and monitor natural regeneration to determine supplementary planting requirements
- fence approximately 2 hectares of land between Patch 4 and Patch 5b (see Figure 5) and undertake trial contour ripping and direct seeding
- monitor natural regeneration, including ongoing weed removal
- collect seed from local sources for nursery propagation and direct seeding purposes

ii. Stage 2 (years 2 and 3)

- extend the regeneration areas after evaluation of progress
- provide on-going maintenance of Stage 1 through weeding and additional seeding and planting
- establish a nursery on the property to propagate seedlings from local seed stock
- fence 50 metre wide western boundary corridor-combination of mixed planting and natural regeneration

iii. Stage 3 (year 4 and ongoing)

- plant corridors along the ridges and between dwelling sites to link regeneration areas
- fence along southern creek line to encourage regeneration
- supplementary planting using nursery stock
- construct weirs to facilitate the regeneration of wetlands
- implement final stages of the regeneration plan

3.2 Each shareholder will be required to pay an annual levy for the maintenance of infrastructure on the property of which 50 percent will be used towards the implementation of the revegetation program outlined in 3.1. in the first year. In subsequent years, 20 percent of the annual levy will be designated to the revegetation program outlined in 3.1.

- 3.3 Each shareholder will be required to contribute a minimum 10 working days each per annum towards the revegetation program.
- 3.4 Each shareholder will be required to contribute to a bond of \$12,000 which will be held in trust until the successful completion and evaluation of Stage 2 has occurred. This money will be used on specified projects in Stage 3 following consultation with the Strategic Planning Manager (Byron Shire Council).

ALIENATION OF INTEREST

- 4.1 In the event of any party desiring to dispose of that party's interest in the land, that party shall give to the Secretary written notice of that intention.
- 4.2.1 Upon receipt of the notice referred to in clause 4.1 hereof the secretary shall convene a meeting of the management committee as provided in clause 10.2 hereof for the purpose of determining whether to appoint a nominee to purchase the interest of the outgoing party (hereinafter called "the nominee").
- 4.2.2 If the management committee has failed to appoint a nominee in accordance with the preceding clause within 21 days of receipt of the notice referred to in clause 4.1 hereof such of the remaining parties who notify the management committee in writing of their intention to purchase the interest of the outgoing party shall be deemed to be the nominee and for the purposes of this provision if more than one such party so notifies the management committee each of such parties shall be entitled to purchase an equal share in the interest being sold.
- 4.3 The fair market value of the outgoing party's share will be determined, failing agreement between the outgoing party and the nominee, by a valuer who has practiced as a valuer for not less than five years, nominated by the president or principal officer for the time being of the New South Wales division of the Australian Institute of Valuers and Land Economists (Incorporated), such valuer to act as an expert and not as an arbitrator, the expert's determination being final and binding on the parties. Such valuation is to be conducted on the basis that the fair market value of the outgoing party's share is equivalent to the proportion of the land owned by that party multiplied by the fair market value of the land together with improvements thereon by the outgoing party.
- 4.4 The outgoing party shall co-operate with the nominee in implementing the provisions of this clause and to bear equally with the nominees the costs of determining the value in accordance with this clause.
- 4.5 The outgoing owner and the nominee will execute the required contract, transfer and other instruments and finalize the sale and purchase within

sixty 60 days after the value of the outgoing party's share has been agreed or determined.

- 4.6 In any event the outgoing party shall not be entitled to sell or transfer his or her interest in the land without having previously offered such interest to the nominee in writing on terms which are not less favorable and in particular at a price which is not less than the price previously offered in writing to the nominee, provided however that in the event that such interest is offered to the nominee and not accepted the outgoing party shall not be entitled to sell his or her interest in the land without having previously offered such interest to the nominee in writing upon terms which are not less favorable and in particular at a price which is not less than the price previously offered in writing to the nominee.

TRANSMISSION OF INTERESTS

- 5.1 Upon the death of a party herein called "the deceased party", his or her interest in the property shall be transferred in accordance with the deceased party's Will or upon the laws relating to intestacy. In the event of such transfer to any person hereof that other person shall unless permitted to retain such interest by the management committee offer the deceased party's interest in the property for sale upon the same terms and conditions as hereinbefore contained as if that other person were the deceased party desirous of selling his or her interest in the property.
- 5.2 In the event that any of the parties is declared bankrupt or their interest in the land is seized by any governmental authority or creditor then the interest of that party shall be offered for sale by the secretary at a price determined by agreement with that party or his trustee or failing agreement as determined by a valuer appointed by the President or principal officer for the time being of the New South Wales chapter of the Australian Institute of Valuers and Land Administrators.

POWER OF SALE OF LAND

6. None of the parties shall under any circumstances seek to exercise any rights of partition or sale conferred by Section 66G of the Conveyancing Act or otherwise unless and until: *i.e. subdivided*
- (a) A notice in accordance with clause 4.1 hereof has been served on the secretary.
- (b) If the interest subject to the notice served under clause 3.1 hereof is not sold in accordance with the provisions hereinbefore contained the party wishing to exercise such rights of partition or sale has marketed the interest conscientiously and with all due

diligence for a period of two (2) years from the date of the notice referred to in clause 4.1 above.

PARTING WITH POSSESSION

- 7.1 No party shall lease, license or any way part with possession of his or her interest in the property to any person without the consent of the management committee **PROVIDED THAT** such consent shall not be unreasonably withheld.
- 7.2 Any breach by any person in possession of any area which is the subject of exclusive rights of occupation and enjoyment shall be deemed to be a breach by the party parting with possession in respect of such area personally and the provisions of clause 9 hereof shall apply.
- 7.3 In any event any licensee or lessee shall be obliged to agree in writing to be bound by the terms of this Deed and any by-laws created pursuant thereto.
- 7.4 In the event that there is any breach by a licensee or lessee the management committee shall on behalf of the parties be entitled to serve upon such licensee or lessee a Notice to Quit Requiring Possession within a period of not less than seven (7) days or as required pursuant to the provision of the Residential Tenancies Act 1991 (as amended).

MAINTENANCE AND OUTGOINGS

- 8.1 Subject to the provisions hereinafter contained the parties shall contribute equally towards the outgoings and maintenance of the land.
- 8.2 The outgoings for the land herein referred to shall include but not be limited to:
 - (a) Council rates and charges levied on the whole of the land;
 - (b) accounting and management fees incurred for the benefit of the land;
 - (c) cost of construction and maintenance of roadways and associated drainage works and other services constructed or erected upon the land for the benefit of the whole of the land;
 - (d) the cost of complying with any government or semi-governmental authority's notices including weed eradication;
 - (e) insurance premiums payable in accordance with Clause 14.1;
 - (f) the cost of purchase, lease and maintenance of any plant and equipment used on that part of the land which is not subject to the rights confirmed by clause 2.1 hereof;

- (g) wages payable to any employees;
- (h) treeplanting expenses;
- (i) liabilities from previous years incurred in respect of the land; and
- (j) any other costs and expenses incurred pursuant to the provisions of this Deed and related to such other matters as the management committee may decide including the creation of any contingency fund to meet anticipated outgoings.

DEFAULT PROVISIONS

9.1 In the event that a party shall be:

- (a) In default for a period of six (6) months in the payment of any amounts due by him or her for the maintenance and outgoings as hereinbefore provided and notwithstanding that no demand therefore shall have been made; or
- (b) In default of the performance of any covenant or provision of this Deed or the by-laws (other than the covenant to pay outgoings and maintenance) as hereinbefore provided and where such party has failed to remedy such default within ninety (90) days of being notified in writing to do so or persistently continues to default in the performance of any such covenant or provision after notice has been given as aforesaid **THEN** in either of such cases the secretary shall subject to the authority of the management committee have the right to sell the interest of the defaulting party in the land for a fair market value thereof as determined by agreement between the management committee and the defaulting party or failing agreement, as determined by a valuer appointed by the New South Wales Chapter of the Australian Institute of Valuers and Land Economists (Incorporated). To give effect to the provision of this clause each party irrevocably appoints the secretary for the time being as his or her attorney in his or her name and his or her behalf to sell, his or her interest in the land and to execute all documents and do all things as may be necessary to give effect to this clause **PROVIDED THAT** this power of sale shall not be exercised until the Secretary has given the defaulting party at least ten (10) days notice of a meeting of the management committee which shall be convened for the purpose of making a determination as to whether such power of sale is to be exercised and **FURTHER PROVIDED THAT** such defaulting party shall be entitled to attend at such meeting to show reason why such power of sale should not be exercised.

9.2 In the event of a party's interest in the property being sold pursuant to this clause then:

- (a) The defaulting party shall immediately upon being given notice by the secretary vacate the land and remove therefrom all his or her chattels and personal property; and
- (b) Upon completion of such sale the secretary shall account for the proceeds of sale of the defaulting party's interest to that party and shall pay the net proceeds of sale as follows:
 - i. In payment of costs and disbursements associated with the sale and the defaulting party's default in due performance of the covenants and conditions herein and in the by-laws herein referred to; and
 - ii. In payment of any outstanding contributions payable pursuant to clause 8 hereof; and
 - iii. The balance (if any) shall be paid to the defaulting party.

MANAGEMENT COMMITTEE

- 10.1 For the purposes of this Deed it is agreed that the parties shall constitute a management committee which shall be comprised of all of the parties referred to in this Deed and such other parties as acquire an interest in the land who have acknowledged that they are bound by the terms of this Deed.
- 10.2 Except as provided in clause 4.2.1 hereof the management committee shall be convened by at least two (2) parties providing written notice of a meeting to all other parties at least seven (7) days prior to the proposed meeting and such notice shall specify:
- i. The notice of intention to hold the meeting;
 - ii. The proposed agenda of the meeting;
 - iii. The place of such meeting, provided that such meeting can be effected by way of a conference telephone call; and
 - iv. The date and time of such meeting.
- 10.3.1 For the purposes of this deed each of the parties in the land shall be entitled to two votes whether or not the interest of such party is jointly owned.
- 10.3.2 (a) Provided that the management committee is constituted by a quorum of at least eight (8) parties, the management committee shall have the power to make decisions which are

binding on all the parties in respect of the matters specified in clauses 2.2.1, 4.2, 10.3.3, 10.3.4 and 10.3.5 **PROVIDED THAT** at least seventy five per cent (75%) of those present at any management committee meeting vote in favour of any such decision.

- (b) For the purpose of this clause, if there are less than eight parties a quorum shall be constituted by all but one of the parties and all but one of those present must vote in favour of any decision for such decision to be made by the management committee.

- 10.3.3 The management committee shall have the power to fix a levy payable by the parties in accordance with the provisions of clause 8 hereof, provided however the management committee shall be entitled to reduce the levy payable by such parties who may be absent from the property for prolonged periods.
- 10.3.4 The management committee shall have the power to fix by-laws with regard to the keeping of animals, the destruction of feral animals, the eradication of noxious weeds, the standard of roadways and other access ways on the property, the construction of water storage facilities on common land, fire prevention and fire fighting, the planting and felling of trees (both alive and dead) and plants on common property, use of firearms, use of off road vehicles, use of chemicals and poisons, the use of commonly owned plant and equipment, the preservation of native flora and fauna; the orderly management of the land and governing aspects of the behaviour of the parties to the extent that it could reasonably affect the peace, prosperity and security of the parties.
- 10.3.5 The management committee shall have the power to fix by-laws and make decisions in relation to day to day activities on the land including the employment of a farm manager and other staff.
- 10.4.1 The management committee shall elect a chairperson and secretary and such offices shall be held until determined by a meeting of the management committee.
- 10.4.2 The functions of the secretary shall include:
 - i. Preparation and distribution of minutes of meetings;
 - ii. Answering communications addressed to the parties as registered proprietors for the land and the management committee;
 - iii. Performing administrative and secretarial functions on behalf of the parties and the management committee;

- iv. Receiving, acknowledging, banking and accounting for any moneys paid to the parties as a whole or the management committee;
 - v. Preparing and submitting to all parties every year not later than 30 June or otherwise as directed by the management committee, a detailed financial statement showing all means and expenditure for the preceding year together with an estimate of expenses and outgoings for the current year.
 - vi. Subject to the authority of management committee signing and submitting a development and building application for improvements or works on the land and for this purpose the parties hereby appoint the Secretary as their Agent and Attorney.
 - vii. Performing the duties specified in this deed.
- 10.5.1 Before taking a vote on any matter the management committee shall attempt to reach consensus.
- 10.5.2 At any meeting voting shall be by a show of hands and every party or parties of each interest present in person shall have voting rights in accordance with clause 10.3(a).
- 10.5.3 Votes may be given personally or by proxy. A proxy may but need not be a party and in the case of a party being a corporation the proxy may be an officer of the corporation.
- 10.5.4 In the case of joint registered owners of an interest in the land both of such joint owners may vote either personally or by proxy.
- 10.5.5 Every instrument of proxy shall be in the following form or in such other form as may be approved by the management committee and shall be deposited with the management committee at the time of holding the meeting at which the person named in such instrument proposes to vote:
- "I,
- of
- being an owner of the land contained in Certificate of Title Folio Identifier 1/189704
- hereby appoint
- of
- or failing him of
- as my/our proxy to vote for me/us on my/our behalf at the meeting of owners of the said land to be held on the

day of 199

and at any adjournment thereof.

This form is to be used in favour of/against the resolution".

- 10.5.6 Minutes of such meetings shall be kept properly and shall be held by the secretary.
- 10.6.1 The management committee shall cause to be opened in the names of all of the parties such account or accounts as it deems appropriate with such Bank or other financial institution as may be nominated by the management committee, which shall also designate the signatories to such account and records.
- 10.6.2 All moneys received from, by or on behalf of the parties shall be paid to the credit of such account and all cheques drawn on the account shall be signed by the secretary and one other party.

BY-LAWS

- 11.1 Each of the parties shall at all times comply with the by-laws set out in the first schedule hereto which have been created for the management and control of the land and the by-laws shall be in all respects subject to this Deed and each of the parties shall at all times obey such by-laws and see that they are faithfully observed by their family, tenants and invitees and employees it being understood that such by-laws shall apply to and be binding upon all the parties.
- 11.2 The by-laws set out in the first schedule hereto may from time to time be altered, amended, repealed or added to by the management committee in accordance with clause 10.3.4 hereof.

DISPUTE RESOLUTION

- 12.1 Except in circumstances where urgent or interlocutory relief is sought in the event of any dispute arising between the parties referred to in this deed in respect of or in connection with the agreement (including the validity, breach or termination of it) the parties shall, without prejudice to any other right or entitlement they may have pursuant to the agreement or otherwise, explore whether the dispute can be resolved by agreement between them using informal dispute resolution techniques such as negotiation, mediation, independent expert appraisal or any other alternative dispute resolution technique.
- 12.2 In the event the dispute is not resolved by such agreement within ten (10) days of written notice by one party to the other of the dispute (or such further period agreed in writing between the parties), any party may refer the dispute to arbitration. The arbitrator shall be agreed between the parties within ten (10) days of written notice of the referral by the referring party to the other or failing agreement appointed by the President of the Law Society of New South Wales. In either case the

arbitrator shall not be a person who has participated in an informal dispute resolution procedure in respect of the dispute.

INCOMING PARTIES

- 13.1 The parties acknowledge that the number of persons who shall become parties to this deed shall be determined by the management committee which shall have regard to the terms of development consent issued by Byron Shire Council. The Management Committee shall be required to approve in writing any person who proposes to acquire any interest in the land.
- 13.2 No party shall sell, assign, transfer, mortgage, lease, or otherwise dispose of his or her interest in the land to any person or corporation without first obtaining from such purchaser, assignee, mortgagee, lessee or disponee a written acknowledgment in a form acceptable to the management committee that the purchaser, assignee, mortgagee, lessee or disponee as the case may be shall agree to be bound by the provisions of this Deed as though he or it were an original party hereto.

INSURANCE AND INDEMNITIES

- 14.1 The parties shall affect a public risk policy in relation to the land in the sum of \$2,000,000 and policies in relation to any common buildings, plant and equipment and the premiums for such policy shall be and form part of the maintenance requirements referred to in clause 8 hereof.
- 14.2.1 Each party shall be individually responsible for affecting adequate insurances over the improvements on that part of the land designated for his or her use, occupation and enjoyment.
- 14.2.2 In the event that any of the parties permits or suffers anything to be done or kept upon the land which has the effect of increasing the rate of fire insurance payable on buildings or contents thereof by the other parties, the other parties may recover any additional premium from the party that causes the increase.
- 14.2.3 No party shall start any fires or cause to be left any unattended fire on the land which could or may cause damage to any improvements erected upon the land or the natural flora and fauna thereon. In the event of any owner breaching this clause he shall be responsible for and shall indemnify the other parties against any damage caused by such breach to the property and affects of the other owners or owners of neighbouring land and adjoining lands.
- 14.2.4 No party shall start any fires without obtaining a permit if required by law to do so and no party shall light any fires in the open, without first

ensuring that there is an adequate water supply and without first notifying other parties.

- 14.2.5 Whenever an party does light a fire on the land that party must ensure that it is completely extinguished.
- 14.3 Each party will comply with all the requirements of the Council of Byron and all other governmental authorities and with all laws, ordinances, rules and regulations with respect to the land.
- 14.4 Each party shall be personally responsible for his or her own acts or omissions upon the land which are or may amount to an offence at law whether by statute (State or Commonwealth) or otherwise and shall indemnify and hold indemnified the other parties in relation to any damage or penalties which may arise therefrom.
- 14.5 The parties shall eradicate noxious weeds in the areas of curtilage to his or her or their house site and if a result of failing to do so the other parties incur any costs or expense such amount shall be recoverable from the first party in like manner as rates unpaid by that party under Clause 8.

LIABILITIES OF PARTIES

- 15.1 In the event that the parties incur any liability in relation to the land or this agreement in respect of which there is joint and several liability as between the parties each of the parties agrees with the others of them that he or she will pay and make contribution in respect of any sum paid or payable under any such liability by, and recoverable from any one or none of them claiming contribution exceeding in amount the prescribed share of him or her or them of the maximum liability or so much thereof as the parties shall be ultimately liable for, provided that the prescribed share shall mean such share of the said liability which bears the same properties to the total liability as does the interest of the party in the land bears to the total ownership of the land.
- 15.2 In the event of any one or more of the parties becoming bankrupt or otherwise unable to satisfy in full his or their share of the common liability, the amount of contribution payable by the others shall be regulated by the number of solvent parties provided however that the parties agree that any such share of liability shall form a charge upon the interest of such party in the land.

ENCUMBRANCE OF INTEREST

- 16.1 Subject to the provisions hereinafter contained the parties may each encumber their interest in the land **PROVIDED THAT** no party may encumber his or her interest so as to adversely affect the interests of any other party of the land without the written consent of the management committee. In any event no party shall mortgage or encumber his or her interest in the land unless such mortgage or

encumbrancee has previously agreed in writing to be bound by the terms of this deed.

FUTURE SUBDIVISION

- 17.1 The parties expressly agree and declare that they are aware that subdivision of the land under the provisions of the Community Land Development Act 1989 may become possible in the future. In the event that subdivision pursuant to the provisions of that legislative scheme becomes possible and that such subdivision will entitle each of the parties to a freehold title of an allotment on the land, then the parties agree that the management committee shall be entitled to lodge with Byron Shire Council all necessary development applications and documentation and plans to effect the subdivision into separate allotments.
- 17.2 Such application shall be in accordance with the plan which is annexed hereto and marked 'A'. It is acknowledged that it is intended that each of the sites will comprise hectares and be the same as the sites referred to in clause 2.1 hereof. The parties agree to employ a licensed surveyor to draw the boundaries. If any of the parties dispute the boundaries so fixed then the provisions of clause 12 hereof shall be invoked to resolve such dispute.
- 17.3 The Community Title development shall incorporate a Management Statement in accordance with the document annexed hereto and marked 'B'. The parties agree that the Management Statement may need to be amended in accordance with the requirements of Byron Shire Council, the Land Titles office and other statutory authorities. The individual parties shall not make any objection to any requirement for amendment of the Management Statement by any such authorities provided however that the provisions of this clause shall not prevent any of the parties from voting in a particular manner in proceedings of the management committee.
- 17.4 The parties acknowledge that it may be necessary to amend certain provisions in the Management Statement if any of the parties required such an amendment and all of the parties are not in agreement to such proposed amendment, the provisions of clause 12(b) shall immediately apply.
- 17.5 The cost of effecting the subdivision under the provisions of the Community Lands Development Act shall be borne by the parties in the same proportion as their interest in the land bears to the total ownership of the land.

MISCELLANEOUS

18. This Deed constitutes the entire agreement between the parties and supersedes all prior representations, negotiations, writings and agreements with respect thereto and also any legal obligations which attach to co-owners of land as tenants in common or joint tenants. No modification, variation or amendment of this Deed shall be of any force or affect unless it is in writing and signed by all the parties.
19. This Deed shall be binding on the parties, their heirs, executors, administrators and assigns.

NOTICES

- 20.1 Any notice to a party shall be deemed to be duly given if enclosed in a prepaid envelope addressed to the other party at the address set out opposite his or her name herein or at such other address as maybe designated by that party in writing to the other parties or otherwise shall be effected by personal service, by facsimile transmission, or as provided in Section 170 of the Conveyancing Act, 1919.
- 20.2 Any notice may be served on a party by facsimile transmission provided that the recipient of such notice has previously notified the other parties thereto in writing of a facsimile number at which that party may accept service of notices and further provided that service in such circumstances shall be deemed to be effected on the next business day after it has been transmitted.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals on the day and year first hereinbefore written.

SIGNED SEALED AND DELIVERED)
 by the said **HELENA BERNARD**)
 in the presence of:)

.....

.....

SIGNED SEALED AND DELIVERED)
 by the said **DAVID McKINLEY**)
 in the presence of:)

.....

.....

SIGNED SEALED AND DELIVERED)
 by the said **ANNETTE McKINLEY**)
 in the presence of:)

)

 .

.....

SIGNED SEALED AND DELIVERED)
 by the said **DAVID MILLEDGE**)
 in the presence of:)

.....

.....

SIGNED SEALED AND DELIVERED)
 by the said **JENNIFER McLAUCHLAN**)
 in the presence of:)

.....

.....

SIGNED SEALED AND DELIVERED)
 by the said **PETER LAMONT**)
 in the presence of:)

.....

.....

SIGNED SEALED AND DELIVERED)
 by the said **CAROLE SHERRINGHAM**)
 in the presence of:)

.....

SIGNED SEALED AND DELIVERED)
 by the said **MARY McBRIDE**)
 in the presence of:)

.....

SIGNED SEALED AND DELIVERED)
 by the said **NEIL WILLIAMS**)
 in the presence of:)

.....

SIGNED SEALED AND DELIVERED)
 by the said **PAM CRAVEN**)
 in the presence of:)

.....

SIGNED SEALED AND DELIVERED)
 by the said **MICHAEL KATZ**)
 in the presence of:)

.....

SIGNED SEALED AND DELIVERED)
 by the said **HOLLY NORTH**)
 in the presence of:)

.....

.....

SIGNED SEALED AND DELIVERED)
 by the said **ELIZABETH JENSEN**)
 in the presence of:)

.....

.....

SIGNED SEALED AND DELIVERED)
 by the said **BRUCE BLACKFORD**)
 in the presence of:)

.....

.....

SIGNED SEALED AND DELIVERED)
 by the said **JUDITH BLACKFORD**)
 in the presence of:)

.....

.....

SIGNED SEALED AND DELIVERED)
by the said **ELIZABETH SUMMERFIELD**)
in the presence of:)

.....

SIGNED SEALED AND DELIVERED)
by the said **PETER GIBLIN**)
in the presence of:)

.....

SIGNED SEALED AND DELIVERED)
by the said **ANTHONY BOSTON**)
in the presence of:)

.....

SIGNED SEALED AND DELIVERED)
by the said **SUZANNE SOMMERVELLE**)
in the presence of:)

.....

SIGNED SEALED AND DELIVERED)
by the said **CATHERINE McDERMID**)
in the presence of:)

.....

SIGNED SEALED AND DELIVERED)
by the said **MARK McDERMID**)
in the presence of:)

.....

.....

**THE FIRST SCHEDULE HEREINBEFORE REFERRED TO
CURRENT BY-LAWS**

1. No party shall make or permit any disturbing noises upon his or their area or do or permit anything to be done thereon which will interfere with the rights, comforts or conveniences of the other parties.
2. Each party shall endeavour to keep his or their area in a clean state and free from vermin, rubbish and noxious weeds.
3. The parties and each one of them shall ensure at all times there is no unnecessary waste of water or other services provided upon the land.
4. No party shall do or cause to be done any act matter or thing which may or could cause damage to or breakdown of any water, electrical, telephone or other services provided to the land for the common use and benefit of all owners or any individual owner.
5. No motor vehicle or other carriages belonging to a party or to any member of the family, guest, tenant or employee of a party shall be parked in such a manner as to impede or prevent ready access to the land by other parties.
6. No chemicals or poisons containing 245T or 24D or any similar or derivative or compounds shall be sprayed, used, stored or otherwise kept on the land.
7. The parties and each one of them shall ensure that the area occupied by them if to be used for grazing purposes, are securely fenced so as to prevent any cattle or other animals grazing on the area from escaping.
8. No party shall without the consent of the management committee:
 - (a) Cut down, lop, ringbark or otherwise damage, destroy or remove from the land any native flora (including dead trees);
 - (b) Destroy any native fauna on the land;
 - (c) employ a bulldozer, back hoe, grader, blade or any other form of earth moving machinery or embark upon earthworks;
 - (d) place, discharge or allow soap, detergents, urine, excreta, rubbish or any other pollutant to enter the waterways on or adjacent to the land;

(g) place any pump, windmill, generator, gravity line or other appliance in a waterway.

(h) No party shall keep or permit to remain on the land any cats or dogs.