



Variation Deed No. 2 - Pelican Waters Southern Lake Infrastructure Agreement 2011

Sunshine Coast Regional Council

Pelican Waters Heart Pty Ltd ACN 135 623 853

Version: 7 (4 February 2020)



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Dated

Parties

- Council** **Sunshine Coast Regional Council**
of PO Box 76, Nambour QLD 4560
- Proponent** **Pelican Waters Heart Pty Ltd ACN 135 623 853**
of PO Box 113, Golden Beach QLD 4551

Background

- A On 19 August 2011, Council and the Proponent entered into an infrastructure agreement in relation to the development of the Pelican Waters Southern Lakes master plan area.
- B On 9 November 2018, Council and the Proponent entered into Variation Deed No.1 to the Principal Agreement.
- C Council and the Proponent have now agreed to further amend the infrastructure agreement by:
- (i) including an amended Drawing 3 (*Pelican Waters Southern Lake Transport Infrastructure Network Sequencing*) to more accurately reflect the extent of land and water areas within the Development Land and refinements to the key transport infrastructure alignments to coincide with recent reconfiguration of a lot approvals;
 - (ii) including an amended Drawing 5 (*Pelican Waters Southern Lake Bicycle and Pedestrian Infrastructure Network Sequencing*) to more accurately reflect the extent of proposed land and water areas within the Development Land and refinements to the key transport infrastructure alignments to coincide with recent reconfiguration of a lot approvals, to remove the northern Pedestrian/Cycle Bridge, and to more accurately reflect the required external works;
 - (iii) including an amended Drawing 6 (*Pelican Waters Southern Lake Bicycle and Pedestrian Infrastructure Design Specifications*) to remove the northern Pedestrian/Cycle Bridge and to update the proposed specifications for the southern Pedestrian/Cycle Bridge;
 - (iv) including an amended Drawing 7 (*Pelican Waters Southern Lake Urban Open Space and District Community Facilities Infrastructure Network Sequencing*) to more accurately reflect the extent of proposed land and water areas within the Development Land, remove the northern Pedestrian/Cycle Bridge, reflect the proposed Village Park configuration (Village Park - Waterfront and Village Park - Central) and redefine the alignment of the proposed North-South Pedestrian and Cycle Cross Link (3m wide); and



- (v) amending Schedule 2, Table 2 Infrastructure Contributions (items 3.1.6, 5.1.3 and 6.1.1) of the Principal Agreement to reflect the abovementioned drawing changes and to clarify or amend the associated Development Obligations.

D This instrument records the agreed amendments.

Agreed terms

1 Definitions and interpretation

1.1 Definitions

In this document terms defined in the Principal Agreement have the same meanings when used in this document, and:

Term	Definition
Agreement	This instrument and the agreement it evidences.
Appendix	An appendix to this Agreement.
Clause	A numbered clause, subclause, or paragraph in this Agreement other than in an Appendix.
Council	Sunshine Coast Regional Council.
Formation Date	The date this Agreement is formed as a mutual deed. Absent evidence establishing a different date, that date is the date specified above the Parties on page 1.
Part	A numbered part or division of this Agreement, other than an Appendix, containing: (a) one or more Items; or (b) one or more clauses.
Party	A party to this Agreement.
Principal Agreement	The infrastructure agreement that: (a) is entitled 'Pelican Waters Southern Lake Infrastructure Agreement 2011; and (b) was entered between the Parties on 19 August 2011.
Proponent	Pelican Waters Heart Pty Ltd ACN 135 623 853.

1.2 Interpretation

- (a) **(Operative Provisions):**
 - (i) All provisions of the Agreement are operative provisions, other than:
 - (A) those in the background; and
 - (B) those expressly identified as non operative provisions.

- (ii) the background merely provides an introduction reciting (recording) the background to the operative provisions.
- (b) **(General Interpretation):**
 - (i) This Agreement is to be interpreted by reference to:
 - (A) the provisions of this Clause 1.2; and
 - (B) the Principal Agreement.
 - (ii) However, each such provision applies only to the extent that:
 - (A) a given context does not require otherwise; or
 - (B) a contrary intention is not apparent.
- (c) **(Contra Proferentem Interpretation):**
 - (i) A provision of the Agreement is not to be interpreted against the interest of a Party merely because the Agreement or provision was drawn by or on behalf of that Party.
- (d) **(Severance)**

A provision is to be treated as omitted from the Agreement if:

 - (i) the provision is void, unenforceable, or incomprehensible; or
 - (ii) retaining the provision would render the Agreement or part of the Agreement void, unenforceable, or incomprehensible.

2 Preliminary Assurances

2.1 Parties assurances

- (a) Each Party assures the other Party that:
 - (i) it possesses the power to enter this Agreement;
 - (ii) it possesses the power to perform all of its obligations under the Agreement;
 - (iii) all necessary authorising action has been taken to enable it to enter the Agreement and to perform its obligations (for example, the passage of any necessary resolutions); and
 - (iv) entering the Agreement does not contravene, and performing its agreed obligations will not contravene, any law by which it is bound.
- (b) Each Party acknowledges that the other enter this Agreement in reliance upon those assurances.

2.2 Representatives' Assurances

Each person signing the Agreement as an Officer or other representative of a Party assures the other Party that he possesses unrestricted authority to sign in that capacity.

3 Purpose of Agreement

3.1 Purpose of Agreement

- (a) The purpose of the Agreement is to vary the Principal Agreement by:
- (i) including an amended Drawing 3 (*Pelican Waters Southern Lake Transport Infrastructure Network Sequencing*) to more accurately reflect the extent of land and water areas within the Development Land and refinements to the key transport infrastructure alignments to coincide with recent reconfiguration of a lot approvals;
 - (ii) including an amended Drawing 5 (*Pelican Waters Southern Lake Bicycle and Pedestrian Infrastructure Network Sequencing*) to more accurately reflect the extent of proposed land and water areas within the Development Land and refinements to the key transport infrastructure alignments to coincide with recent reconfiguration of a lot approvals, to remove the northern Pedestrian/Cycle Bridge, and to more accurately reflect the required external road works;
 - (iii) including an amended Drawing 6 (*Pelican Waters Southern Lake Bicycle and Pedestrian Infrastructure Design Specifications*) to remove the northern Pedestrian/Cycle Bridge;
 - (iv) including an amended Drawing 7 (*Pelican Waters Southern Lake Urban Open Space and District Community Facilities Infrastructure Network Sequencing*) to more accurately reflect the extent of proposed land and water areas within the Development Land, remove the northern Pedestrian/Cycle Bridge, reflect the proposed Village Park configuration (Village Park – Waterfront and Village Park – Central) and redefine the alignment of the proposed North-South Pedestrian and Cycle Cross Link (3m wide); and
 - (v) amending Schedule 2, Table 2 Infrastructure Contributions (items 3.1.6, 5.1.3 and 6.1.1) of the Principal Agreement to reflect the abovementioned drawing changes and to clarify or amend the associated Development Obligations.

4 Variation of Principal Agreement

4.1 Clause 3.6

- (a) Clause 3.6 is to be varied by inserting a new subsection (3) as follows:
- (3) *For the avoidance of doubt, Drawings 1 to 7 (as amended from time to time), included in Schedule 3 to this document override an Approval for the Development Land, including any requirement to construct a pedestrian and cycle bridge as previously identified at Point B on earlier revisions of Drawing 5.*



4.2 Schedule 2, Table 2

- (a) Schedule 2, Table 2 of the Principal Agreement is to be varied by:
 (i) Item 3.1.6 is to be deleted and replaced with the following:

Column 1 Item	Column 2 Infrastructure Contribution	Column 3 Specification of the Infrastructure Contribution	Column 4 Timing of the Infrastructure Contribution	Column 5 Party responsible for the Infrastructure Contribution	Column 6 Other requirements
3.1.6	Work Contribution for modifications to road transport infrastructure from Point C to Point E (inclusive of Point D) and a roundabout at Point D and a changed priority T-intersection at Point E with raised median islands (with the southern Anning Avenue approach being the terminating leg) as indicatively identified on Drawing 3.	The Work Contribution is to comprise the provision of work for: (a) line marking of the existing road with a 6 metre central carriageway and on-road bike lanes in each direction to function as a Trunk Collector Road; (b) an external intersection at Point D as indicatively identified on Drawing 3, of a minimum diameter of 20 metres with a mountable central island and raised splitter islands constructed on the eastern and western approaches; (c) a changed priority T-intersection at Point E with raised median islands (with the southern Anning	Before the following: (a) the Approval of a Plan of Subdivision for Development of the Development Land; or (b) a later time specified by the Infrastructure Authority in an Approval.	Proponent.	This Infrastructure Contribution is not subject to an Infrastructure Offset.

McCullough
 Robertson
 Lawyers

Column 1 Item	Column 2 Infrastructure Contribution	Column 3 Specification of the Infrastructure Contribution	Column 4 Timing of the Infrastructure Contribution	Column 5 Party responsible for the Infrastructure Contribution	Column 6 Other requirements
		Avenue approach being the terminating leg); and (d) accommodating the roundabout at Point D and changed priority T-intersection at Point E by: (i) restructuring and realigning existing kerbs; and (ii) designing approach works and the roundabouts to minimise impacts on on-street parking and maintain unimpeded vehicle access to existing driveways wherever possible.			

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(ii) Item 5.1.3 is to be deleted and replaced with the following:

Column 1 Item	Column 2 Infrastructure Contribution	Column 3 Specification of the Infrastructure Contribution	Column 4 Timing of the Infrastructure Contribution	Column 5 Party responsible for the Infrastructure Contribution	Column 6 Other requirements
5.1.3	<p>Work Contribution for bicycle and pedestrian infrastructure from Point A to Point D and a bridge at Point C as indicatively identified on Drawing 5.</p> <p><i>[Note: the bicycle and pedestrian bridge previously identified at Point B of Drawing 5 included in the Principal Agreement is not required]</i></p>	<p>The Work Contribution is to comprise the provision of work for:</p> <p>(a) a 3 metre wide shared bicycle and pedestrian pathway from Point A to Point D as indicatively identified on Drawing 5; and</p> <p>(b) a bicycle and pedestrian bridge across the waterway at Point C, as indicatively identified on Drawing 5 and Drawing 6.</p>	<p>Before the earlier of the following:</p> <p>(a) the timing specified by the Infrastructure Authority in an Approval; or</p> <p>(b) the Approval of a Plan of Subdivision for Development of the Land.</p>	Proponent.	This Infrastructure Contribution is not subject to an Infrastructure Offset.



(iii) Item 6.1.1.1 is to be deleted and replaced with the following:

Column 1 Item	Column 2 Infrastructure Contribution	Column 3 Specification of the Infrastructure Contribution	Column 4 Timing of the Infrastructure Contribution	Column 5 Party responsible for the Infrastructure Contribution	Column 6 Other requirements
6.1	Land Contribution and Work Contribution for urban open space infrastructure				
	Village Parks				
6.1.1	Central Park Land Contribution and Work Contribution for urban open space infrastructure being a Village Park at points A1 and A2 as indicatively identified on Drawing 7.	The Infrastructure Contribution is to comprise the provision of the following for urban open space infrastructure being a Village Park: (a) a 2.0 hectare Village Park (Central Park – Heart) at Point A1 and a 1.0 hectare Village Park (Central Park – Waterside) at Point A2, as indicatively indicated on Drawing 7; (b) embellishments are provided in accordance with the minimum requirements for a District Recreation Park as identified in column 2 (Public park - development setting) of Table 2.2F (Typical embellishments for public parks) of the <i>Caloundra City Plan 2004 Planning Scheme Policy No. 11.24 (Infrastructure Contributions for Open Space Network Infrastructure) 2009</i> .	Before the timing specified by the Infrastructure Authority in an Approval.	Proponent.	The Infrastructure Contribution for the Village Park (Central Park – Heart) is subject to an Infrastructure Offset.

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(iv) Schedule 2, Calculation of Planned Estimate, Item 1 (Planned Estimate of an Infrastructure Contribution stated in the Infrastructure Contributions Schedule for which an Infrastructure Offset applies) is to be deleted and replaced with the following:

Planned Estimate of an Infrastructure Contribution stated in the Infrastructure Contribution Schedule for which an Infrastructure Offset applies

Column 1 Item in the Infrastructure Contributions Schedule	Column 2 Description of the Infrastructure Contribution	Column 3 Planned Estimate of the Infrastructure Contribution				Maximum Infrastructure Offset available (\$)
		Financial Contribution (\$)	Land and Works Contribution - Unit Rate (\$ / hectare)	Works Contribution - Unit Rate (\$ / unit)	Land Contribution - Unit Rate (\$ / hectare)	
Bicycle and Pedestrian Infrastructure						
5.1.1	Coastal Pathway	-	-	673,000	-	673,000
Urban open space infrastructure						
6.1.1	District Recreational Park (Central Park - Heart) (2ha)	-	1,220,600/hectare	-	-	2,441,200
6.1.2	District Recreational Park (Jensen Park) (2.315ha)	-	1,220,600/hectare	-	-	2,825,689
6.1.3	Sporting Fields (4ha)	4,367,864	-	-	-	4,367,864
Land for local community facilities infrastructure						
7.1.1	District community facilities	-	-	-	1,118,333/hectare	671,000

4.3 Schedule 3, Drawing 3

- (a) Schedule 3 of the Principal Agreement is varied by:
 - (i) removing Drawing 3 *Pelican Waters Southern Lake Transport Infrastructure Network Sequencing*; and
 - (ii) inserting the drawing reproduced at Appendix 1.

4.4 Schedule 3, Drawing 5

- (a) Schedule 3 of the Principal Agreement is varied by:
 - (i) removing Drawing 5 *Pelican Waters Southern Lake Bicycle and Pedestrian Infrastructure Network Sequencing*; and
 - (ii) inserting the drawing reproduced at Appendix 2.

4.5 Schedule 3, Drawing 6

- (a) Schedule 3 of the Principal Agreement is varied by:
 - (i) removing Drawing 6 *Pelican Waters Southern Lake Bicycle and Pedestrian Infrastructure Design Specifications*; and
 - (ii) inserting the drawing reproduced at Appendix 3.

4.6 Schedule 3, Drawing 7

- (a) Schedule 3 of the Principal Agreement is varied by:
 - (i) removing Drawing 7 *Pelican Waters Southern Lake Urban Open Space and District Community Facilities Infrastructure Network Sequencing*; and
 - (ii) inserting the drawing reproduced at Appendix 4.

5 Miscellaneous

5.1 Variation of Agreement

A purported variation of this Agreement is ineffective unless contained in a deed.

5.2 Survival of Provisions

A provision of the Agreement capable of continued application after the Agreement has terminated will remain enforceable despite termination.



5.3 Character of Instrument

This instrument is an agreement made by deed, binding each Party:

- (a) irrespective of its terminology (for example, referencing 'Clauses' and 'Paragraphs' rather than 'covenants'); and
- (b) irrespective of whether it is contractual.

5.4 Delivery

Each Party delivers this instrument as its deed conditionally upon both Parties:

- (a) executing the instrument; and
- (b) notifying one another that they have done so.

5.5 Council's Costs

- (a) The Developer must pay to Council the reasonable expenses Council incurs in preparing, negotiating and documenting this Agreement, not exceeding \$10,000.00 (excluding GST).
- (b) The Developer must make that payment not later than 14 days after Council gives it a tax invoice detailing those expenses.

Execution

EXECUTED as a Deed

Council

Signed sealed and delivered on behalf of **SUNSHINE COAST REGIONAL COUNCIL**:

- as a deed;
- pursuant to *Local Government Act 2009* section 236;
- by a Council delegate, who certifies his authority to sign;
- in the presence of a witness:

..... Delegate Witness
..... Full name [<i>Print</i>] Full name [<i>Print</i>]

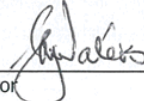
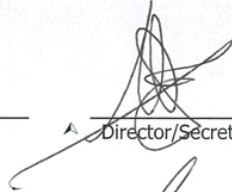
Proponent

Signed sealed and delivered

by

PELICAN WATERS HEART PTY LTD (ACN 135 623 853):

on / /2020 by:

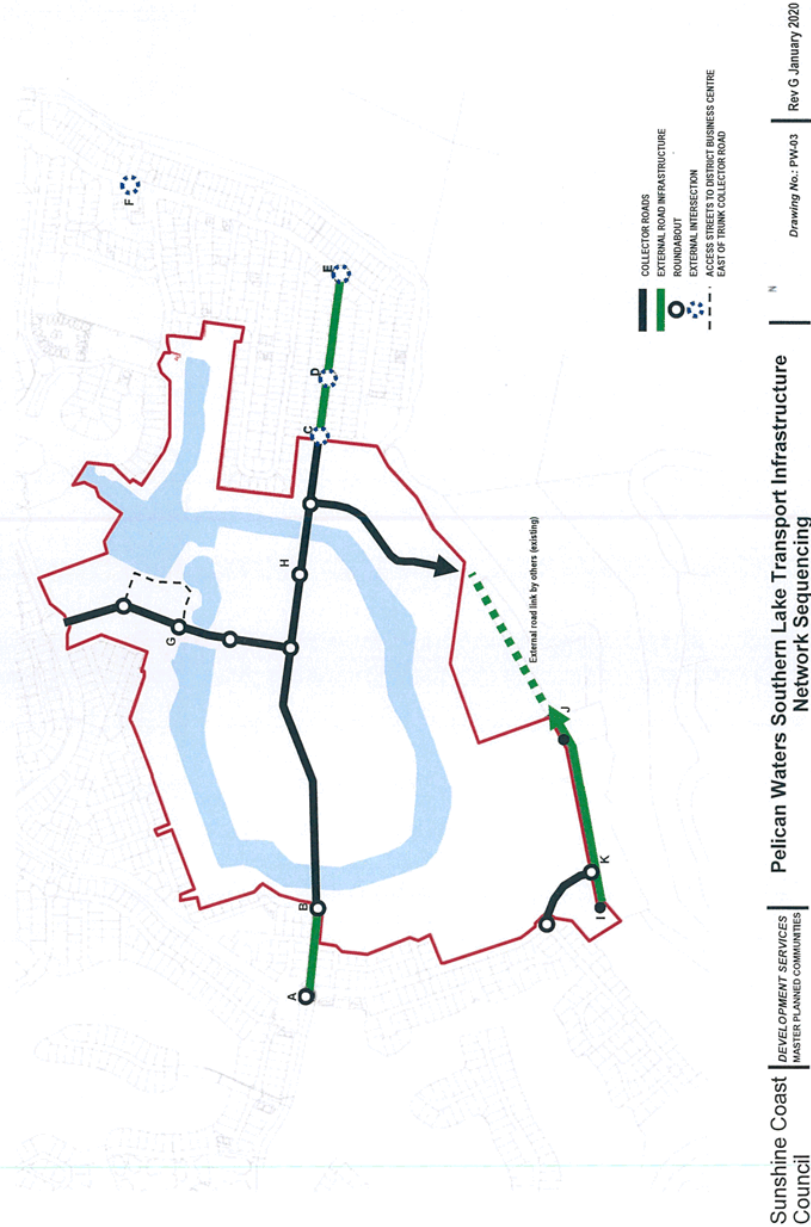
^	 _____ Director	^	 _____ Director/Secretary
^	GARRY RICHARD WATERS _____ Full name of Director	^	Roy Howell _____ Full name of Director/Secretary

Appendix 1

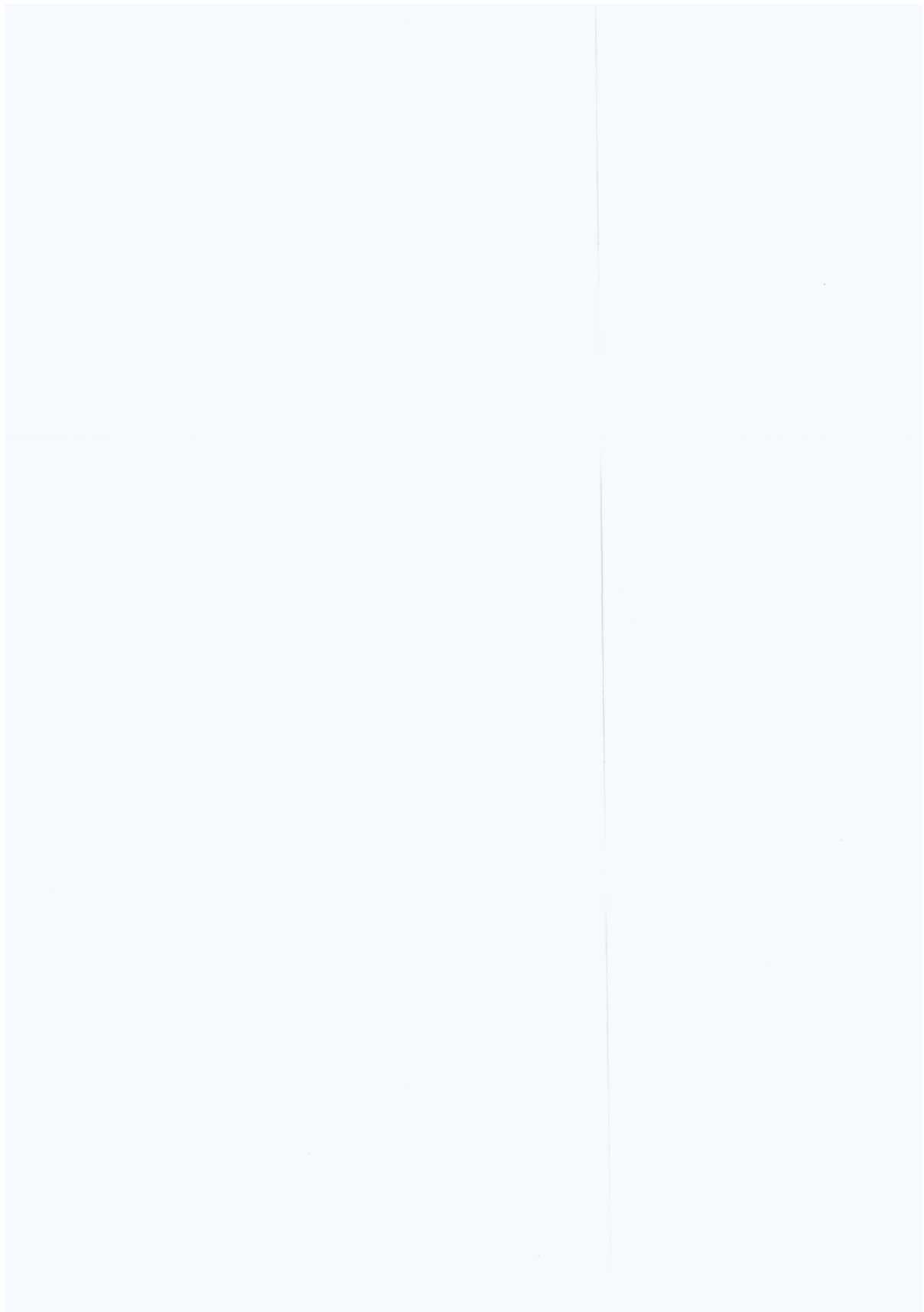
Drawing 3 *Pelican Waters Southern Lake Transport Infrastructure Network Sequencing*

Pelican Waters Southern Lake Infrastructure Agreement 2011

Drawing 3 Pelican Waters Southern Lake Transport Infrastructure Network Sequencing

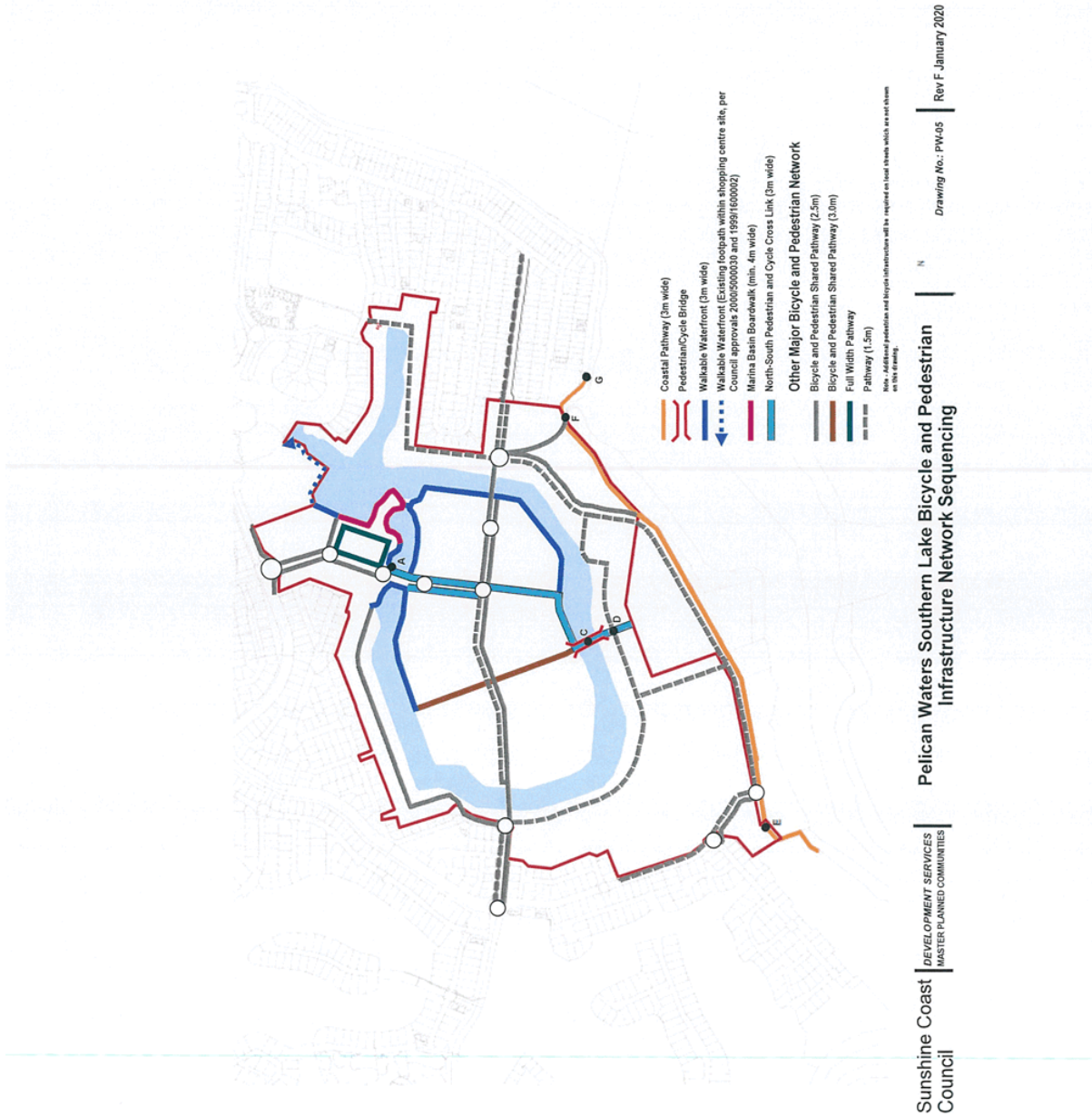


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Pelican Waters Southern Lake Infrastructure Agreement 2011

Drawing 5 Pelican Waters Southern Lake Bicycle and Pedestrian Infrastructure Network Sequencing



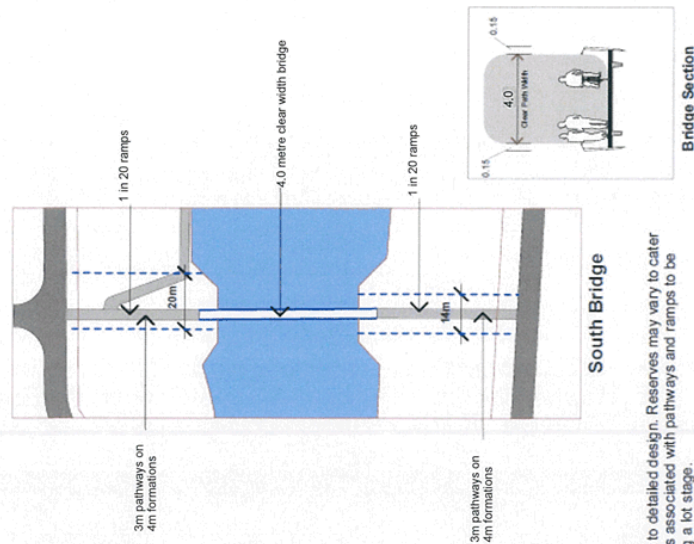


Appendix 3

Drawing 6 *Pelican Waters Southern Lake Bicycle and Pedestrian Infrastructure Design Specifications*

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Drawing 6 Pelican Waters Southern Lake Bicycle and Pedestrian Infrastructure Design Specifications



Note: Dimensions may vary subject to detailed design. Reserves may vary to cater for embankment and/or batter works associated with pathways and ramps to be determined at relevant reconfiguring a lot stage.

Bridge Section

South Bridge

Rev D Dec 2019
 Drawing No.: PM06

Sunshine Coast Council | DEVELOPMENT SERVICES | MASTER PLANNED COMMUNITIES | Pelican Waters Southern Lake Bicycle and Pedestrian Bridge Design Specifications

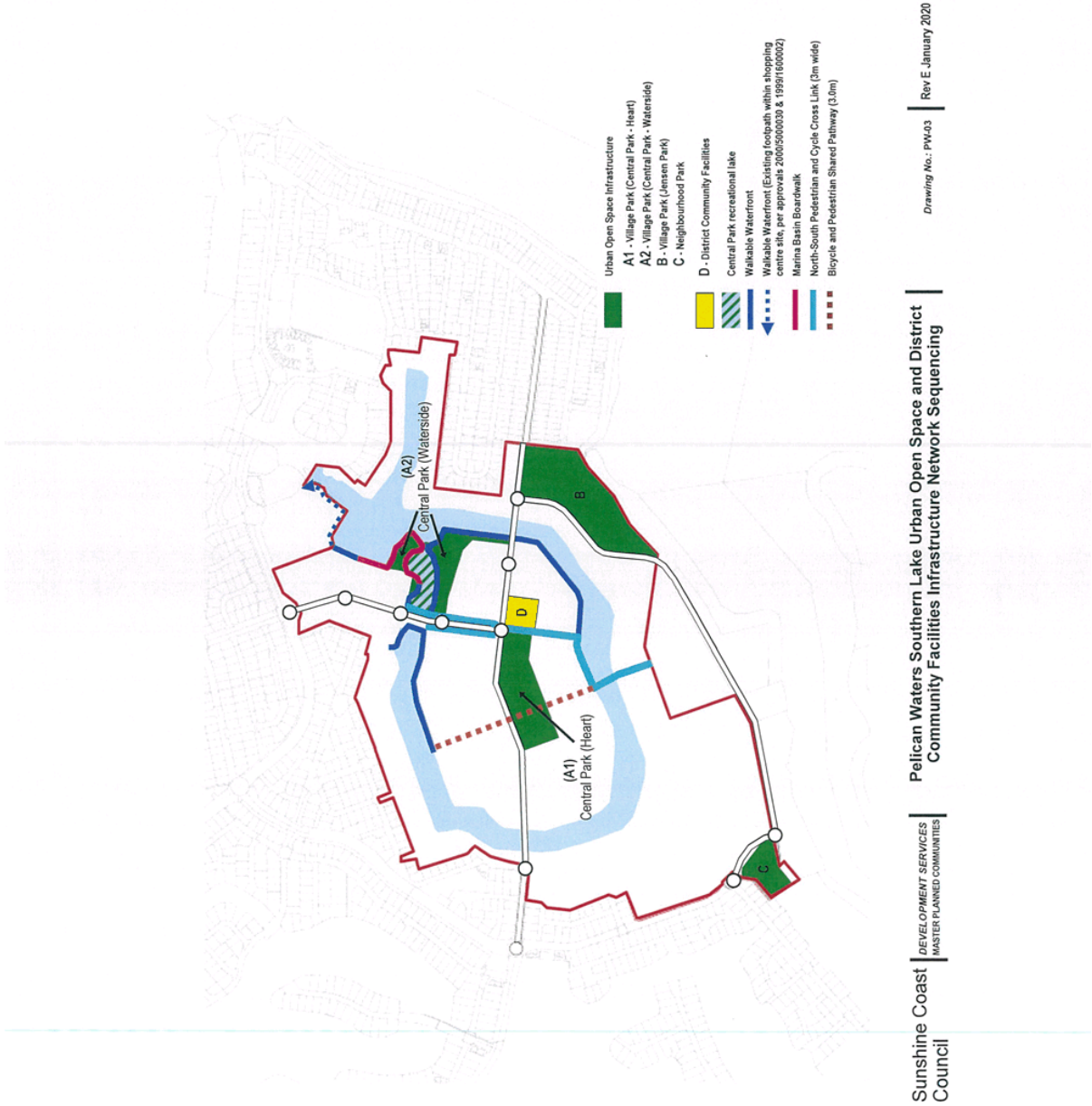


Appendix 4

*Drawing 7 Pelican Waters Southern Lake Urban Open Space and District Community Facilities
Infrastructure Network Sequencing*

Pelican Waters Southern Lake Infrastructure Agreement 2011

Drawing 7 Pelican Waters Southern Lake Urban Open Space and District Community Facilities Infrastructure Network Sequencing



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