

Partnership Memorandum of Understanding

between

The City of Coffs Harbour

and

Friends of the North Coast Regional Botanic Garden Incorporated

Parties

City of Coffs Harbour
27 Gordon Street COFFS HARBOUR NSW 2450
ABN 79 126 214 487

City

Friends of the North Coast Regional Botanic Garden Inc
PO Box 648 COFFS HARBOUR NSW 2450
ABN 69 074 268 996

Friends

Background

- A. The North Coast Regional Botanic Garden (Garden) is approximately 21.8 hectares of Crown reserve bounded by the Coffs Creek and the Coffs Harbour Historic Cemetery in Coffs Harbour.
- B. The Garden was established for the combined purposes of conservation, education and community enrichment and provides regionally significant botanic resources and services.
- C. The Garden is managed under a Plan of Management with the land being categorised as a 'natural area' and 'park' and managed as community land in accordance with the core objectives of these categories.
- D. The Friends of the North Coast Regional Botanic Garden Inc (Friends) is an incorporated not-for-profit association that works in collaboration with the City of Coffs Harbour (City) to maintain and develop the Garden.
- E. The Friends are governed by their constitution, and the objects outlined within it.
- F. The City is a local government authority pursuant to the *Local Government Act 1993* and the Crown land manager for the Garden in accordance with *Crown Land Management Act 2016*.
- G. The City is responsible for the day-to-day management and use of the Garden in accordance with the Plan of Management and its responsibilities under the *Local Government Act 1993* and the *Crown Land Management Act 2016*.
- H. The Friends continue to play an important role in the collaborative management of the Garden with the City, actively participating in its maintenance and contributing to the strategic direction and delivery of programs and initiatives.
- I. The Friends continue to be highly valued and significant contributors to the Garden, through fundraising efforts, donations, and the dedication of volunteer hours.

1. Definitions

For this Memorandum of Understanding (**MoU**):

Constitution means the Constitution of the Friends of the North Coast Regional Botanic Garden Inc (December 2018).

Coordinator means the Maintenance Coordinator Botanic Gardens and Cemeteries employed by the City.

Garden means the North Coast Regional Botanic Garden (Crown land dedication reserve no. 540000 for environmental protection notified 22 May 1992).

Meeting rooms means the two indoor meeting rooms available for hire: Display and Cottage rooms.

MoU means this memorandum of understanding and any schedules to this document.

Plan of Management means the North Coast Regional Botanic Garden Plan of Management 2022 adopted by the City on 14 September 2023.

Licence means the Licence issued by the City to the Friends under the Crown Land Management Act 2016 for the use of the Gardens.

2. Purpose

- 2.1 This MoU establishes a framework of common understanding, cooperation and responsibility between the parties to jointly manage the Garden in accordance with the Plan of Management and advance its core objectives as a 'natural area' and 'park' as well as promoting conservation, education and community enrichment.
- 2.2 To set out a clear framework defining the roles and responsibilities of the parties, which supplements the overarching responsibilities outlined for the Friends in their Constitution and the Plan of Management.
- 2.3 This MoU is a voluntary statement of intent and contains the commitment of both parties at the time the MoU is signed and for the duration of the MoU.

3. Term of the MoU

- 3.1 This MoU commences when it has been executed by both parties and continues until the earlier of:
 - a) 3 months from the date of notice in writing from one of the parties to the other notifying of its intention to withdraw from this MoU; or
 - b) When this MoU is superseded; or

- c) The date upon which the parties mutually agree to withdraw from this MoU;
or
 - d) 5 years from the date of execution.
- 3.2 The parties will review this MoU on an annual basis or as otherwise agreed between the parties.

4. Amendment, variation or modification

- 4.1 This MoU may be amended, varied or modified by a further MoU in writing and signed by the parties.
- 4.2 Despite clause 4.1, any schedules to this MoU may be added, amended, varied or modified by the insertion of one or more new schedules signed by the parties.

5. Management of the Garden

- 5.1 The parties agree to the following:
- a) To maintain open communication and work cooperatively to advance the Garden's core objects and manage it in accordance with the Plan of Management.
 - b) The City is the Crown Land Manager for the Garden and has responsibility for the day-to-day management of the Garden in accordance with the reserve purpose and Plan of Management.
 - c) The City is responsible for the Garden's funding and the provision, maintenance, removal, upgrade, modification or replacement of facilities and infrastructure assets in the Garden.
 - d) The Friends provide volunteers to work under the direction and supervision of the Coordinator to assist with the maintenance of the Garden.
 - e) The Friends provide volunteers to collaborate with the City to promote the Garden and the visitation experiences available.
 - f) Funds raised by the Friends to assist with the operation and maintenance of the Gardens is managed and allocated at their discretion and in accordance with their Constitution and Schedule A.
 - g) The Friends will consult with the City regarding the use of funding to be provided by the Friends.
 - h) The City will consult with the Friends regarding its annual budget allocation to the Garden.

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- i) An advisory group consisting of representatives from the Parties, as detailed in Schedule B, will meet quarterly to discuss the coordination of activities, delivery programs and other initiatives.
- j) The Coordinator is recognised as an ex officio, non-voting member of the Friends Committee, who facilitates regular operational matters.
- k) Schedule A of this MoU sets out the primary responsibilities of the parties for the management of the Garden and supplements the overarching responsibilities outlined for the Friends in the Plan of Management and the Licence.
- l) Both parties will seek to resolve disputes as per the process outlined in section 6 (Dispute Resolution) and will avoid making public communications which criticise or disparage the other party.

6. Dispute Resolution

- 6.1 The parties agree to cooperate and use their best endeavours to resolve any dispute in connection with this MoU.
- 6.2 Key personnel of the parties will try and resolve the dispute in good faith by direct negotiation within 10 business days of a party giving notice in accordance with this clause and hold good faith discussions to attempt to informally resolve the dispute.
- 6.3 If key personnel of the parties are unable to resolve the dispute by direct negotiation, both parties agree to submit the dispute to mediation administered by the Australian Disputes Centre (ADC).
- 6.4 The mediation will be conducted in accordance with the ADC Guidelines for Commercial Mediation in operation at the time the matter is referred to the ADC.
- 6.5 The Guidelines of the ADC are deemed to be incorporated into this MoU.
- 6.6 The parties must continue to perform their respective obligations under this MoU despite the existence of a Dispute.

7. Relationship

- 7.1 This MoU is not intended to create legally enforceable obligations between the parties.
- 7.2 The parties are not and are not to be taken to be in a legal partnership, joint venture, employment or fiduciary relationship. For the avoidance of doubt, the parties expressly agree that neither the City or Friends are responsible for the acts or omissions of the other.

7.3 Nothing in this MoU gives a party authority to bind the other party in any way.

8. Notices

Notices required during the performance of this MoU shall be served as follows:

To the Friends: Friends of the North Coast Regional Botanic Garden Incorporated

Attention: President

Address:

Email:

To the City: City of Coffs Harbour

Attention:

Address: 27 Gordon Street COFFS HARBOUR NSW 2450

Email: coffs.council@chcc.nsw.gov.au

Two handwritten signatures are present at the bottom right of the page. The first signature is a stylized, cursive mark, and the second is a circular mark containing the letters 'RN'.

Executed as an Agreement

Signed by a duly authorised officer for and on behalf of the **City of Coffs Harbour:**

Signature:

Name:

Position:

Date:


Natalie Cowley
GM
22/11/24

Signed by a duly authorised officer for and on behalf of the **Friends of the North Coast Regional Botanic Garden Incorporated:**

Signature:

Name:

Position: President

Date:


GRAHAM TUPPER
22 November 2024.

SCHEDULE A – Management and Operational Responsibility of the Parties

Task	The Friends	The City	Notes
Funding	Applying for grants available to community groups, collecting donations and generating revenue. The Friends will manage these funds at its discretion.	Applying for external grants available to local government. The City will manage these funds at its discretion.	
Public liability insurance	Maintain public liability insurance for a minimum value of \$20 million dollars that covers the Friends' activities at the Garden.	Maintain public liability insurance for a minimum value of \$20 million dollars.	
Insurance for volunteers	Maintain personal accident insurance or equivalent for volunteers working in or assisting with the Garden and who <i>do not</i> work under the sole direction and supervision of the Coordinator.	Maintain a personal accident insurance policy that covers volunteers assisting with the maintenance of the Garden and under the sole supervision and direction of the Coordinator and subject to any applicable insurance policy exclusions and limits.	
Workers' compensation insurance	Maintain workers' compensation insurance for any person employed by the Friends.	Maintain workers' compensation insurance for City employees.	
Asset insurance	Maintain insurance for Friends' assets to a value determined appropriate by the Friends and detailed within the Licence.	Maintain insurance for its assets to a value determined appropriate by the City.	Assets of the Friends are generally limited to goods insured within the Gift Shop.
Staff	Volunteers of the Friends will not direct City staff. Requests by the Friends for operational	City staff are managed by the City.	'Gifted assets' become property of the City.

Task	The Friends	The City	Notes
	support must be directed to the Coordinator.		
Volunteers	Recruit volunteers for activities in and associated with the Garden. Provide volunteer labour to the City to assist with the maintenance and improvement of both natural and cultivated areas.	Volunteers assisting with the maintenance of the Garden work under the direction and supervision of the Coordinator. Responsible for site induction, verification of licences and competencies, supervision, provision of training (and refresher training) and instruction, personal protective equipment and pre-work risk assessment and any other work health and safety requirements.	
Plan of Management	Participate and provide input into any draft plans of management for the Garden and future strategic reviews of the Plan of Management.	Prepare and adopt a Plan of Management for the Garden consistent with the <i>Crown Land Management Act 2016</i> and the <i>Local Government Act 1993</i> and conduct strategic reviews of the current Plan of Management.	
Approvals, licences and consents	Adhere to any approvals, licences or consent that apply to the Garden.	Applying for and obtaining approvals and consents relating to the Garden and any relevant activities under the applicable legislation. Notifying the Friends of any relevant approvals. Administration and management of licences, leases, and agreements for all Garden buildings. Setting fees and charges in collaboration with the Friends subject to the City's Policies.	

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Task	The Friends	The City	Notes
Standards	Consulted via the Advisory Group.	All designs and capital works will comply with the City's minimum standards, design and construction specifications.	
Assets	Consulted via the Advisory Group.	Including Garden assets in the City asset register and the open spaces asset management plan. (This plan informs the long-term financial plan for capital works and makes provision for actions to provide minimum technical and community expected levels of service.)	
Policies	Consulted via the Advisory Group.	Management of the Garden, including maintenance and construction of infrastructure, will be undertaken in accordance with the City's policies.	
Works	Consulted via the Advisory Group.	Scheduling and implementing maintenance and capital works in accordance with its Delivery Program and Operational Plan. Consultation and notification with the Friends (where appropriate) regarding maintenance and capital works.	

Task	The Friends	The City	Notes
Design, plant replacement and species selection	Contribute to the planning and maintenance of the cultivated display area.	Primary responsibility to specify, design and select new plantings and species for the Garden. The City will consult and notify the Friends (where appropriate) on design and selection of new plantings and species for the Garden.	
Garden curation and botanical services	Assist in maintaining the living plant collections database (Hortis) and the plant labelling system by providing volunteers and funding as required.	Primary responsibility for subscription and management of the living plant collections database (Hortis).	
Herbarium and Seedbank	Provision of volunteers and funds to assist in maintaining the Herbarium and Seedbank and the services provided. Assist by collaborating with other botanic gardens, herbaria, seedbanks, and other organisations with shared goals in botanical conservation.	Primary responsibility for managing fire protection and security of the Herbarium and Seedbank buildings, including the provision of all utility services.	The Friends have identified there may need to be additional resources provided to support the growth of the Herbarium and Seedbank.
Café		The café is not currently operating and with no existing licence in place. The café requires upgrading before it can become operational. Opportunities will exist within the Licence for the Friends to operate under sub-licence the café with licencing fees and other conditions subject to negotiation between the parties.	

Task	The Friends	The City	Notes
Nursery	Provision of volunteers and funding of equipment and materials needed for propagating and maintaining plants for sale at the Garden shop or for other needs in the Garden. Provision of volunteers for the maintenance of plants, under the direction of the Coordinator, in the plant nursery, orchid and bromeliad nurseries and other plants which are grown for or interchange with plants in the glasshouse and other garden beds.	Responsibility for maintaining the buildings and equipment in the plant propagation and nursery areas with the support of the Friends.	
Workplace Safety and Security	Comply with all reasonable directions of the City in relation to workplace safety and security and as detailed within the Licence. Ensure volunteers working under the Friends' direction and supervision of appropriately induced in workplace safety, site induction and evacuation procedures.	Primary responsibility for safety of the workplace including site security, site induction, parking, safe vehicle movement, evacuation procedures, building maintenance and overall cleanliness unless as detailed within the Licence.	
Education	Assist in developing educational resources, general visitor information and guided tours to support the development of a school education program at the Garden. Work with the City to produce Garden interpretive material and initiatives to optimise the visitor experiences.	Provision of an Education Officer resource, in accordance with the conditions of the Environmental Levy Program, to develop a school education program at the Garden and to maintain educational signage.	

Task	The Friends	The City	Notes
Garden Promotion and Visitor Experiences	Work with the City to promote the Garden and the types of visitation experiences it can provide	Promotion of the Garden as a key attraction in the Coffs Coast Region and to maintain promotional and visitor signage within it.	
Visitor Information Centre and Shop	Operate the Information Centre and Shop, including any applicable and relevant training. (Income generated from this activity will be retained by the Friends and applied as determined by the Friends Committee). Responsibility for the induction, supervision and any work health and safety requirements of volunteers working in the visitor information centre and shop.	Licence of the information centre, shop, and storage room at no cost to the Friends unless as stipulated by City policy.	
Garden website	The Garden website is funded and administered by the Friends.		
Media	Prior to the release of any public statement about the Garden, each party will inform the other on statements to be provided to the media.	Prior to the release of any public statements about the Garden, each party will inform the other on statements to be provided to the media. The City does not delegate any authority to the Friends to make any announcements/communications on behalf of the City.	

Task	The Friends	The City	Notes
Venue Hire	The Meeting Rooms are licenced to the Friends by the City at no cost. The Friends are responsible for the hire of the meeting rooms and retain the hire fee. The Friends are responsible for the cleaning and maintenance of the facilities in the Meeting Rooms.	Responsibility for booking outdoor Garden venues, in consultation with the Friends. The Friends to invoice and retain hire fees.	
Intellectual Property	The Intellectual Property rights of material and programs developed solely by the Friends will remain the property of the Friends unless explicitly transferred, by agreement of the Friends Committee, to be the property of the City. Examples including guiding or learning resources.	All other Intellectual Property for materials and programs generated for the benefit of the garden, including any materials generated collaboratively, will be the property of the City.	

Schedule B Advisory Group Members

The Friends	The City
President	Group Leader Transport and Open Space Services
Committee Members x 2	Representation from the City's Economic Development and Tourism Team
	Maintenance Coordinator Botanic Gardens and Cemeteries