

Loan Deed

[PARTY NAME]
(Lender)

Eco Villages Australia Ltd ACN 628 893 229
(Borrower)

Creo Legal creolegal.com.au

E hello@creolegal.com.au **M** +61 414 700 599

F +61 7 3103 4384 **P** GPO Box 5238, Brisbane QLD 4001

Liability limited by a scheme approved under professional standards legislation.

Table of Contents

1. Definitions and Interpretation	3
1.1. Definitions	3
1.2. Interpretation	5
2. Advance	6
2.1. Agreement	6
2.2. Drawdown Date	6
2.3. Repayment	6
2.4. Method of Payment	6
3. Purpose of Loan	6
4. Interest	7
5. Sale of Property	7
6. Lender May Request Early Repayment	8
7. Borrower May Extend Final Repayment Date	8
8. Borrower’s Undertakings	8
9. Default Events	8
9.1. Default Events	8
9.2. Lender’s Rights	9
10. Indemnity	9
10.1. Indemnity	9
10.2. Demand	9
11. General Provisions	9
11.1. Consents	9
11.2. Costs	9
11.3. Counterparts	9
11.4. Entire Agreement	9
11.5. Further Acts	10
11.6. Goods and Services Tax	10
11.7. Jurisdiction	10
11.8. No Assignment	10
11.9. No Merger	10
11.10. Notices	10
11.11. Power of Attorney	11
11.12. Severability	11
11.13. Time of the Essence	11
11.14. Trustee Provisions	11
11.15. Variations	11
11.16. Waiver	11
1. Reference Schedule	13

Loan Deed

Parties

Name:	[PARTY NAME] (Lender)
Address:	[INSERT]
Email:	[INSERT]
Contact:	[INSERT]

Name:	Eco Villages Australia Ltd ACN 628 893 229 (Borrower)
Address:	5 Wivenhoe Avenue, Albany Creek QLD 4035
Email:	bnev2020@gmail.com
Contact:	Andrew McLean and Claire Ogden

Background

- A. The Borrower requests the Lender to advance the Loan to the Borrower.
- B. The Lender has agreed to advance the Loan to the Borrower on the terms and conditions of this Deed.

Agreed Terms

1. Definitions and Interpretation

1.1. Definitions

In this Deed, unless the context otherwise requires, the following terms have the corresponding meanings:

- (a) **Business Day** means a day that is not a Saturday, Sunday, public holiday or bank holiday in the Jurisdiction.
- (b) **Claim** includes, in relation to a person, a demand, claim, action, dispute or proceeding made or brought by or against the person, however arising and whether present, unascertained, immediate, future or contingent.
- (c) **Deed** means this document and includes any annexure, schedule and appendix to it.
- (d) **Deed Date** means the date as shown on the signing page of this Deed, or if no date is stated then the date that the last party signed this Deed.
- (e) **Default Event** means an event described in clause 9.1.
- (f) **Drawdown Date** means the date specified in Schedule 1.
- (g) **Encumbrance** means any mortgage, charge, lien, pledge, trust, power, or other form of security or interest in the nature of a security interest and **Encumber** means granting or creating any of those things, or permitting them to exist.
- (h) **Final Payment Date** means the date specified in Schedule 1.

- (i) **Indebtedness** means any payment, repayment or other financial obligation existing or arising including, without limitation, any payment, repayment or other financial obligation:
- (i) in respect of monies borrowed (including interest and other charges in respect of monies borrowed);
 - (ii) under acceptance credits or like transactions involving the discounting of bills of exchange with banks or other financial institutions; and
 - (iii) under guarantees and indemnities against financial loss issued in respect of any payment, repayment or other financial obligations of another person which would come within this definition.
- (j) **Insolvency Event** means, in relation to a party, the occurrence of one of more of the following:
- (i) it suspends the payment of its debts;
 - (ii) an order for payment is made or judgment for an amount exceeding \$50,000 is entered or signed against it that is not satisfied within twenty-eight (28) days;
 - (iii) execution or other process of a court or authority or distress is levied for an amount exceeding \$50,000 on any of its property and is not satisfied, set aside or withdrawn within twenty-eight (28) days of its issue;
 - (iv) where it is a body corporate and:
 - (A) it is unable to pay its debts when they fall due; or
 - (B) it is (or states that it is) an insolvent under administration or insolvent (each as defined in the Corporations Act);
 - (C) it is taken to have failed to comply with a statutory demand within the meaning of section 459F of the Corporations Act; or
 - (v) where it is a natural person and:
 - (A) the person authorises a registered trustee or solicitor to call a meeting of the person's creditors or proposes or enters into a deed of assignment or deed of arrangement or a composition with any of its creditors;
 - (B) a person holding a security interest in any of the person's property enters into possession of or takes control of any of that property or takes any steps to enter into possession of or take control of any of that property; or
 - (C) the person commits an act of bankruptcy; or
 - (vi) anything having a substantially similar effect to any of the events or circumstances described in paragraphs above happens in connection with that body corporate or that person under any applicable law.
- (k) **Interest** means the interest accruing on the Loan at the Interest Rate in accordance with this Deed.
- (l) **Interest Rate** means the rate specified in Schedule 1.
- (m) **Jurisdiction** means Brisbane, Queensland.

- (n) **Loan** means the monies advanced by the Lender to the Borrower in accordance with this Deed, in the sum of the Principal Amount.
- (o) **Loss** includes any damage, loss, cost, liability or expense of any kind and however arising (including as a result of any Claim) including penalties, fines and interest whether prospective or contingent and any amounts that for the time being are not ascertained or ascertainable.
- (p) **Primary Lender** means any major bank or other financial institution.
- (q) **Principal Amount** means the amount specified in Schedule 1.
- (r) **Term** means the period commencing on the Drawdown Date and expiring on the Final Payment Date, being the date specified in Schedule 1.
- (s) **Total Funds Borrowed** means the total funds borrowed by the Borrower from the Lender and all third party lenders (excluding any Primary Lender) to establish its legal structure, business operations, and acquire the Property (or an alternate property, as the case may be).

1.2. Interpretation

In this Deed, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) words of any gender include all genders;
- (c) alternate grammatical forms of a defined term have a corresponding meaning;
- (d) a reference to a clause, paragraph, schedule, annexure, or appendix is a reference to a clause or paragraph of, and a schedule, annexure, or appendix to this Deed;
- (e) a reference to a document includes the document as novated, varied, or substituted from time to time;
- (f) a reference to a person includes a natural person, partnership, body corporate, association, joint venture, and governmental body, authority, agency or other entity;
- (g) a reference to a party is a reference to a party to this Deed and includes the party's executors, administrators, successors, permitted substitutes (including by novation) and permitted assigns;
- (h) a reference to two or more persons is to any of them together and each of them individually;
- (i) a reference to legislation or regulations includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them;
- (j) "including" and similar expressions do not limit the generality of any provision of this Deed;
- (k) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this Deed or any part of it;
- (l) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day;
- (m) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;

- (n) a word or expression defined in the *Corporations Act 2001* (Cth) (**Corporations Act**) has the meaning given to it in that Act; and
- (o) a reference to time is to time in the capital city of the Jurisdiction;
- (p) a reference to A\$, AUD\$, dollar or \$ is to Australian currency;
- (q) headings and table of contents are for ease of reference only and do not affect interpretation.

2. Advance

2.1. Agreement

- (a) The Borrower requests the Lender to advance the Loan to the Borrower.
- (b) The Lender agrees to advance the Loan to the Borrower on the terms and conditions of this Deed.

2.2. Drawdown Date

The Lender will advance the Loan to the Borrower on the Drawdown Date.

2.3. Repayment

- (a) The Borrower must repay the Loan to the Lender as follows:
 - (i) the Principal Amount will be repaid in the instalments described in Schedule 1; and
 - (ii) the balance on or before the Final Payment Date.
- (b) The Borrower may elect to repay any part of the Loan prior to the Final Payment Date, provided that the Borrower gives the Lender at least thirty (30) days' prior written notice.

2.4. Method of Payment

The Borrower must make all payments by electronic funds transfer to the Lender's nominated bank account, or as otherwise directed by the Lender from time to time.

3. Purpose of Loan

- (a) The purpose of the Loan will be to provide the Borrower with financial assistance to:
 - (i) establish its legal structure;
 - (ii) establish its business operations; and
 - (iii) purchase the Property.
- (b) If the Property is not purchased by the Borrower by 30 June 2019 (**Sunset Date**), the Borrower must, within fourteen (14) days, repay:
 - (i) the Loan; plus
 - (ii) all accrued Interest; less

- (iii) a proportion of any legal fees incurred by the Borrower, whether incurred before or after the Drawdown Date, which is reasonably determined by the Borrower having regard to the Total Funds Borrowed.
- (c) The parties may agree in writing for the Borrower not to be required to repay the Loan under clause 3(b) if the Borrower proposes to purchase an alternate property, in which case the parties will agree on a new Final Repayment Date and such other terms as are required.

4. Interest

- (a) Interest accrues on the Loan at the Interest Rate from and including the Drawdown Date up to but not including the earlier of:
 - (i) the Final Payment Date; and
 - (ii) such earlier date on which the Loan is repaid in full.
- (b) Interest under this clause:
 - (i) accrues on a daily basis; and
 - (ii) is calculated on the basis of the actual number of days on which interest has accrued based on a 365-day year.
- (c) The Borrower must pay Interest:
 - (i) in the instalments described in Schedule 1; and
 - (ii) the balance on the earlier of:
 - (A) the Final Payment Date; and
 - (B) such earlier date on which the Loan is repaid in full.
- (d) The Borrower must pay Interest calculated at the Interest Rate on any amount which is not paid on its due date for payment, for the period from and including the date on which it fell due to but excluding the date on which the unpaid amount is paid in full. The Lender may treat any failure to pay any amount on its due date as a Default Event even if it accepts the payment of Interest under this clause.
- (e) Despite any other provision of this Deed, if the Borrower, acting reasonably, determines that it does not have the financial capacity to pay Interest under this Deed, then the Borrower may avoid its obligation to pay such Interest by notifying the Lender in writing.

5. Sale of Property

- (a) In this clause, **Operational Costs** means all costs incurred by the Borrower in establishing its legal structure, business operations, and undertaking a sale of the Property, including but not limited to real estate agent's commission, legal costs, furniture/waste/debris removal costs, and land remediation costs.
- (b) Despite any other provision of this Deed, if the Property is purchased and subsequently sold by the Borrower, the Borrower will repay to the Lender, within thirty (30) days of the completion of the sale:

- (i) if the sale price, less all Operational Costs, is more than the Total Funds Borrowed, then the Borrower will repay to the Lender the Loan, together with all accrued Interest; or
- (ii) if the sale price, less all Operational Costs, is less than the Total Funds Borrowed, then the Borrower will only be required to repay to the Lender a proportion of the Loan and accrued Interest which will be calculated by reference to the Total Funds Borrowed, so that the Lender and each other third party lender will share in the deficiency of funds pro-rata.

6. Lender May Request Early Repayment

If the Lender wishes for the Borrower to repay the Loan prior to the Final Repayment Date, the Lender may submit a written request to the Borrower which will determine, in its absolute discretion, whether the Borrower will agree to the Lender's request, having regard to the financial condition of the Borrower and the sustainability of its business operations.

7. Borrower May Extend Final Repayment Date

- (a) Despite any other provision of this Deed, the Borrower may, in its absolute discretion, extend the Final Repayment Date if the Borrower considers, acting reasonably, that repayment of the Loan will adversely effect its financial condition and the sustainability of its business operations.
- (b) The Borrower may exercise its right to extend the Final Repayment Date as many times as it chooses.

8. Borrower's Undertakings

Until the Loan has been repaid in full, the Borrower undertakes with the Lender to do the following:

- (a) **(Default Event)** notify the Lender immediately of the occurrence of any Default Event or event which, with the giving of notice or the lapse of time or both, would become a Default Event, which either would, or might, adversely affect the ability of the Borrower fully and promptly to perform its obligations under this Deed;
- (b) **(Insurance)** take out and maintain insurance against such risks and in such amounts as a prudent person in the position of the Borrower would take out; and
- (c) **(Litigation)** notify the Lender immediately of any litigation or administrative or other proceedings initiated or threatened against the Borrower or any of the Borrower's assets where the amount involved is, or could reasonably be expected to be, five thousand dollars (\$5,000) or its equivalent in any other currency, or more.

9. Default Events

9.1. Default Events

The following events (whether or not within the control of the Borrower) are Default Events for the purposes of this Deed:

- (a) the Borrower fails to repay the Loan or any Interest when due;
- (b) an Insolvency Event occurs in relation to the Borrower;

- (c) the Borrower breaches any term of this Deed.

9.2. Lender's Rights

If a Default Event occurs, the Lender may do any or all of the following:

- (a) terminate this Deed; and/or
- (b) demand and require the Borrower to immediately pay to the Lender:
 - (i) the entire outstanding balance of the Loan;
 - (ii) any accrued Interest; and
 - (iii) all other amounts payable by the Borrower under this Deed,

and take any action necessary or desirable to recover those amounts from the Borrower.

10. Indemnity

10.1. Indemnity

The Borrower indemnifies the Lender, and agrees to keep the Lender indemnified, from and against all Claims and Losses arising in relation to, or in connection with, whether directly or indirectly:

- (a) the occurrence of a Default Event; or
- (b) any person exercising, or not exercising, rights under this Deed.

10.2. Demand

The Borrower must pay all amounts due under clause 10.1 immediately on demand by the Lender.

11. General Provisions

11.1. Consents

Unless otherwise provided in this Deed, a party may give or withhold its consent under this Deed and impose conditions of the giving of its consent. All consents must be in writing to be effective.

11.2. Costs

- (a) Each party will pay their own costs and expenses of and incidental to the negotiation, preparation, and execution of this Deed.
- (b) All stamp or transfer duty, including any interest or penalties assessed and payable on or in respect of this Deed is payable by the Borrower.

11.3. Counterparts

This Deed may be executed by the parties exchanging executed counterparts. A copy of an original executed counterpart sent by facsimile or email must be treated as an original.

11.4. Entire Agreement

This Deed contains the entire agreement between the parties about its subject matter. Any previous representation, understanding, arrangement, agreement, or warranty relating to that subject matter is superseded by this Deed.

11.5. Further Acts

Each party must do all acts and things (including executing and delivering any documents) which are necessary to give full effect to this Deed.

11.6. Goods and Services Tax

- (a) Terms defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning in this clause, unless the context otherwise requires.
- (b) With the exception of any amount payable under this clause, unless otherwise expressly stated, all amounts payable under this Deed are exclusive of goods and services tax (**GST**).
- (c) If GST is payable on any supply made under this Deed, then any party (**Recipient**) required to provide consideration to another party (**Supplier**) for that supply must pay to the Supplier an additional amount equal to the GST payable on the taxable supply. GST must be paid at the same time as payment of the consideration for the taxable supply, subject to the Supplier providing a tax invoice to the Recipient.
- (d) If this Deed requires a party to pay for, reimburse or contribute to any expense, loss, indemnity or outgoing (**Reimbursable Expense**) suffered or incurred by another party, the amount required to be paid, reimbursed or contributed by the first party will be the sum of:
 - (i) the amount of the Reimbursable Expense less the input tax credits (if any) to which the other party is entitled in respect of the Reimbursable Expense; and
 - (ii) if the other party's recovery from the first party is a taxable supply, any GST payable in respect of that supply.

11.7. Jurisdiction

This Deed is governed by the laws of the Jurisdiction and each party submits to the non-exclusive jurisdiction of the courts of the Jurisdiction.

11.8. No Assignment

A party cannot assign, novate or otherwise dispose of any of its rights or obligations under this Deed without the prior written consent of each other party.

11.9. No Merger

No right or obligation of any party will merge on completion of any transaction contemplated by this Deed. Any indemnity given in this Deed survives the expiry or termination of this Deed and a party may enforce a right of indemnity at any time, including before it has suffered loss.

11.10. Notices

Any notice given in relation to this Deed:

- (a) must be:
 - (i) in English and in legible writing;

- (ii) addressed to the recipient's address as noted in this Deed, or as otherwise notified by the recipient in writing from time to time;
 - (iii) signed by or on behalf of the party giving the notice;
- (b) must be delivered, sent by pre-paid mail, transmitted by facsimile, or sent by email to the recipient's email address, and to that end the parties consent to sending and receiving electronic communications pursuant to the *Electronic Transactions (Queensland) Act 2001* (Qld);
- (c) will be deemed to be received by the recipient:
- (i) if delivered by hand, at the time of delivery;
 - (ii) if sent by post, on the third Business Day after the day on which it is posted (including the day of posting);
 - (iii) if sent by facsimile, on the Business Day on which the notice is received by the recipient's facsimile receiving facility, and a correct and complete transmission report is received; or
 - (iv) if sent by email, at the time that would be the time of receipt under the *Electronic Transactions (Queensland) Act 2001* (Qld).

11.11. Power of Attorney

Each person who executes this Deed on behalf of a party under a power of attorney declares to each of the parties that they are not aware of any fact or circumstance that might affect their authority to do so under that power of attorney.

11.12. Severability

Any provision of this Deed that is illegal, void or unenforceable will be read down or severed so as to preserve the remainder of this Deed which will continue in full force and effect.

11.13. Time of the Essence

Time is of the essence in respect of each parties' obligations under this Deed.

11.14. Trustee Provisions

If a party (**Trustee**) enters into this Deed as a trustee of a trust, the Trustee warrants to each other party that:

- (a) it is the sole trustee of the trust;
- (b) it enters into this Deed personally and as trustee of the trust;
- (c) it has full power under the relevant trust deed to enter into and perform this Deed including any transactions contemplated by it; and
- (d) all necessary resolutions have been duly passed and all authorisations obtained to enable it to enter into this Deed personally and as trustee of the trust.

11.15. Variations

This Deed may only be varied by a further written agreement signed by or on behalf of each of the parties.

11.16. Waiver

A failure or delay in the exercise or enforcement of any right, power or remedy available by law or under this Deed by any party will not in any way preclude, or operate as a waiver of, any exercise or enforcement of that or any other right, power or remedy. All waivers must be expressly given in writing to be effective and binding. No waiver of a breach of any provision of this Deed will operate as a waiver of another breach of that provision or of a breach of any other provision of this Deed.

1. Reference Schedule

Drawdown Date	[INSERT]
Principal Amount	\$(INSERT)
Principal Repayments	<p>\$(INSERT) on each 31 May</p> <p>OR</p> <p>Not applicable (i.e. Principal Amount is not repayable until the Final Repayment Date)</p>
Final Payment Date	[INSERT]
Interest Rate	[INSERT]%
Interest Payments	<p>\$(INSERT) on each 31 May</p> <p>OR</p> <p>Not applicable (i.e. all Interest is payable on the Final Repayment Date)</p>
Property	271 Austinville Road, Austinville, QLD 4213

Signing Page

Executed as a Deed on ____/____/20____

SIGNED, SEALED AND DELIVERED by)
[INSERT] in the presence of:)
)

Signature

Signature of Witness

Name (print)

Name of Witness (print)

EXECUTED by **Eco Villages Australia Ltd**)
ACN 628 893 229 in accordance with)
section 127 of the *Corporations Act 2001*)
(Cth):

Signature of Director

Signature of Director / Secretary

Name of Director (print)

Name of Director / Secretary (print)