

TISHER LINER FC LAW

Contract of Sale & Vendor Statement

Vendor: Tian Khiam Ong & Mui Hong Elizabeth Evelyn Yvonne Lim
& Joycelyn Yueh Ling Ong

Land: 5 Smyth Mews, North Melbourne

Ref: FT:KZ:220070

Contract of sale of land

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IMPORTANT NOTICE TO PURCHASERS – COOLING-OFF

Cooling-off period (Section 31 of the *Sale of Land Act 1962*)

You may end this contract within 3 clear business days of the day that you sign the contract if none of the exceptions listed below applies to you.

You must either give the vendor or the vendor's agent **written** notice that you are ending the contract or leave the notice at the address of the vendor or the vendor's agent to end this contract within this time in accordance with this cooling-off provision.

You are entitled to a refund of all the money you paid EXCEPT for \$100 or 0.2% of the purchase price (whichever is more) if you end the contract in this way.

EXCEPTIONS: the 3-day cooling-off period does not apply if:

- you bought the property at a publicly advertised auction or on the day on which the auction was held; or
- you bought the land within 3 clear business days before a publicly advertised auction was to be held; or
- you bought the land within 3 clear business days after a publicly advertised auction was held; or
- the property is used primarily for industrial or commercial purposes; or
- the property is more than 20 hectares in size and is used primarily for farming; or
- you and the vendor previously signed a contract for the sale of the same land in substantially the same terms; or
- you are an estate agent or a corporate body.

NOTICE TO PURCHASERS OF PROPERTY OFF-THE-PLAN

Off-the-plan sales (Section 9AA(1A) of the *Sale of Land Act 1962*)

You may negotiate with the vendor about the amount of the deposit moneys payable under the contract of sale, up to 10 per cent of the purchase price.

A substantial period of time may elapse between the day on which you sign the contract of sale and the day on which you become the registered proprietor of the lot.

The value of the lot may change between the day on which you sign the contract of sale of that lot and the day on which you become the registered proprietor

Approval

This contract is approved as a standard form of contract under section 53A of the *Estate Agents Act 1980* by the Law Institute of Victoria Limited. The Law Institute of Victoria Limited is authorised to approve this form under the *Legal Profession Uniform Law Application Act 2014*.

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WARNING TO ESTATE AGENTS
DO NOT USE THIS CONTRACT FOR SALES OF 'OFF THE PLAN' PROPERTIES
UNLESS IT HAS BEEN PREPARED BY A LEGAL PRACTITIONER

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Contract of sale of land

The vendor agrees to sell and the purchaser agrees to buy the property, being the land and the goods, for the price and on the terms set out in this contract.

The terms of this contract are contained in the –

- particulars of sale; and
- special conditions, if any; and
- general conditions (which are in standard form: see general condition 6.1)

in that order of priority.

SIGNING OF THIS CONTRACT

WARNING: THIS IS A LEGALLY BINDING CONTRACT. YOU SHOULD READ THIS CONTRACT BEFORE SIGNING IT.

Purchasers should ensure that they have received a section 32 statement from the vendor before signing this contract. In this contract, “section 32 statement” means the statement required to be given by a vendor under section 32 of the *Sale of Land Act 1962*.

The authority of a person signing –

- under power of attorney; or
 - as director of a corporation; or
 - as agent authorised in writing by one of the parties –
- must be noted beneath the signature.

Any person whose signature is secured by an estate agent acknowledges being given by the agent at the time of signing a copy of the terms of this contract.

SIGNED BY THE PURCHASER:
..... on/...../20.....

Print name(s) of person(s) signing:
.....

State nature of authority, if applicable:

This offer will lapse unless accepted within [] clear business days (3 clear business days if none specified)
In this contract, “business day” has the same meaning as in section 30 of the *Sale of Land Act 1962*

SIGNED BY THE VENDOR:
..... on/...../20.....

Print name(s) of person(s) signing:
.....

State nature of authority, if applicable:

The **DAY OF SALE** is the date by which both parties have signed this contract.

Particulars of sale

Vendor's estate agent

Name: **CD REAL ESTATE PTY LTD**
Address: Suite 103, 299 Toorak Road, South Yarra VIC 3141
Email: cdimasi@cdrealty.com.au
Tel: 9885 6545 Mob: 0416 950 188 Ref: Carmela Dimasi

Vendor

Name: **TIAN KHIAM ONG & MUI HONG ELIZABETH EVELYN YVONNE LIM
& JOYCELYN YUEH LING ONG**
Address: 26 Jalan Leban, Singapore

Vendor's legal practitioner

Name: **TISHER LINER FC LAW PTY LTD**
Address: Level 2, 333 Queen Street, Melbourne 3000
Email: ftisher@tlfc.com.au
Tel: 8600 9333 Ref: FT:KZ220070

Purchaser

Name:
Address:
ABN/ACN:
Email:

Purchaser's legal practitioner or conveyancer

Name:
Address:
Email:
Tel: Fax: DX Ref:

Land (general condition 7)

The land is described in the table below –

Certificate of Title reference	being lot	on plan
Volume 11153 Folio 774	49	PS622940F

The land includes all improvements and fixtures.

Property address

The address of the land is: **5 Smyth Mews, North Melbourne**

Goods sold with the land (general condition 6.3(f)) (list or attach schedule)

All fixed floor coverings, light fittings, window furnishings and all fixtures and fittings of a permanent nature

Payment

Price \$

Deposit \$ 10% payable by / /20.....
(of which \$ has been paid)

Balance \$ payable at settlement

Deposit bond

☐ General condition 15 applies only if the box is checked

Bank guarantee

☐ General condition 16 applies only if the box is checked

GST

Subject to general condition 19.2, the price includes GST (if any), unless the next box is checked

- ☐ GST (if any) must be paid in addition to the price if the box is checked
- ☐ This sale is a sale of land on which a 'farming business' is carried on which the parties consider meets the requirements of section 38-480 of the GST Act if the box is checked
- ☐ This sale is a sale of a 'going concern' if the box is checked
- ☐ The margin scheme will be used to calculate GST if the box is checked

Settlement (general conditions 17 & 26.2)

is due on / /20.....

Lease (general condition 5.1)

- ☐ At settlement the purchaser is entitled to vacant possession of the property unless the box is checked, in which case the property is sold subject to*:

(*only one of the boxes below should be checked after carefully reading any applicable lease or tenancy document)

- ☐ a lease for a term ending on / /20..... with [.....] options to renew, each of [.....] years

OR

- ☐ a residential tenancy for a fixed term ending on / /20.....

OR

- ☐ a periodic tenancy determinable by notice

Terms contract (general condition 30)

- ☐ This contract is intended to be a terms contract within the meaning of the Sale of Land Act 1962 if the box is checked. (Reference should be made to general condition 30 and any further applicable provisions should be added as special conditions)

Loan (general condition 20)

- ☐ This contract is subject to a loan being approved and the following details apply if the box is checked:

Lender:

(or another lender chosen by the purchaser)

Loan amount: no more than \$..... Approval date: / /20.....

Building report

☐ — General condition 21 applies only if the box is checked

Pest report

☐ — General condition 22 applies only if the box is checked

Special Conditions

1. DEFINITIONS & INTERPRETATION

1.1 Definitions

In this Contract, unless the contrary intention appears or the context otherwise required:-

1.1.1 **ATO** means the Australian Taxation Office.

1.1.2 **Authority** means any government or other governmental, semi-governmental, local government, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency, Minister, statutory body or entity.

1.1.3 **Balance** means the balance payable at Settlement as set out in the Particulars of Sale.

1.1.4 **Building Legislation** means the *Building Act 1993* (Vic), the Building Code of Australia or the requirements of any Authority in relation to any improvements erected on the Land or any alterations or additions to the improvements.

1.1.5 **Business Day** means any day on which trading banks (that expression is defined in section 5(1) of the *Banking Act 1959* (Cth)) are open in Melbourne for transaction of banking business.

1.1.6 **Completion** means completion of this Contract.

1.1.7 **Contaminant** means a solid, liquid, gas, odour, heat, sound, vibration, radiation or substance (including asbestos) which makes or may make the Land or the surrounding Environment:

- noxious or poisonous
- harmful or potentially harmful to the health, welfare or safety of human beings;
- poisonous, harmful or potentially harmful to animals, birds, wildlife, fish or other aquatic life;
- poisonous, harmful or potentially harmful to plants or vegetation;
- noxious, poisonous or offensive to these senses of human beings;
- otherwise environmentally degraded; or
- not comply with any Environmental Law.

1.1.8 **Contract** includes all parts of and schedules, annexures and exhibits to this Contract of Sale.

1.1.9 **Day of Sale** is the day by which both parties have signed this Contract.

1.1.10 **Deposit** means the amount described as the deposit in the Particulars of Sale.

1.1.11 **Environment** includes all aspects of the surroundings of human beings including:-

- the physical characteristics of those surroundings, such as the land, the waters and the atmosphere;

- the biological characteristics of those surroundings, such as the animals, plants and other forms of life; and
- the aesthetic characteristics of those surroundings, such as their appearance, sounds, smells, tastes and textures.

- 1.1.12 **Environmental Law** means a law (whether past, present or future) of any government agency (including statutes, orders, awards and decrees) regulating or otherwise relating to the Environment including, but not limited to, any law relating to land use, planning, heritage, coastal protection, water catchments, solid waste, use of dangerous goods and hazardous substances, hazardous waste, waste water discharges, water quality, drinking water, groundwater, air emissions, air quality, hazardous substances (including, but not limited to, the lease, storage, discharge, disposal, arranging for disposal or reporting hazardous substances) contaminated land, building regulations, public and occupational health and safety, noxious trades or any other aspect of protection of the Environment or persons or Land.
- 1.1.13 **Land** means the Land and all improvements including any construction on the land described in the Particulars of Sale as the land sold.
- 1.1.14 **Price** means the amount set out under the heading payment and next to the word Price in the Particulars of Sale.
- 1.1.15 **Property** means the property sold pursuant to this Contract. The terms Land and property are used intermittently throughout this Contract, however they all mean the Land.
- 1.1.16 **Purchaser** means the person so described in the Particulars of Sale and includes the personal representatives, successors and permitted assigns of the Purchaser.
- 1.1.17 **Purchaser's Legal Practitioner or Conveyancer** means the person so described in the Particulars of Sale.
- 1.1.18 **Settlement or Settlement Date** means the date specified in the Particulars of Sale under the heading Settlement.
- 1.1.19 **Vendor** means the person so described in the Particulars of Sale and includes the personal representatives, successors and permitted assigns of the Vendor.
- 1.1.20 **Vendor's Estate Agent** means the person so described in the Particulars of Sale.
- 1.1.21 **Vendor's Legal Practitioner** means the person so described in the Particulars of Sale.
- 1.1.22 **Vendor Statement** means the statement made by the Vendor under section 32 of the *Sale of Land Act 1962* (Vic) in accordance with Division 2 of Part II of that Act, a copy of which is attached.

1.2 Interpretation

Wherever appearing in this Contract:-

- 1.2.1 words importing persons shall include corporations;
- 1.2.2 words importing the singular include plural and vice versa;
- 1.2.3 words importing the masculine gender shall include all genders as the case may require;
- 1.2.4 references to statutes shall include any statutes amending consolidating or replacing the same;

- 1.2.5 any headings are for ease of reference only and shall not affect the construction of this Contract;
- 1.2.6 references to a party include that party's legal personal representatives and successors; and
- 1.2.7 references to section 32 statement and Vendor Statement are used intermittently throughout this Contract and both mean and refer to a statement required to be given by a Vendor under section 32 of the *Sale of Land Act 1962* (Vic) in accordance with Division 2 of Part II of that Act.

2. AMENDMENTS TO GENERAL CONDITIONS OF THE CONTRACT OF SALE

The parties agree as follows:-

2.1 General conditions 6.4(b), 6.4(c), 21, 22, 31.4, 31.5 and 31.6 are deleted.

2.2 General condition 19.3 is replaced with the following:

"19.3 If the vendor makes a taxable supply under this contract (that is not a margin scheme supply) and the purchaser is obliged to pay an amount for GST in addition to the price (because the particulars of sale specify that GST must be paid or under general condition 19.2(b), (c) or (d)), the purchaser is not obliged to pay the GST included in the price, or the additional amount payable for GST, until a tax invoice has been provided."

2.3 General condition 23.1 is deleted and replaced with:

"All periodic outgoings payable by the vendor, vacant residential land tax (in addition to land tax) and any rent and other income received in respect of the property must be apportioned between the parties on the settlement date and any adjustments paid and received as appropriate."

2.4 General condition 23.4 is added:

"The Purchaser must provide the statement of adjustments to the Vendor's Legal Practitioner not less than three (3) business days prior to Settlement. If the Purchaser fails to deliver the statement of adjustments to the Vendor's Legal Practitioner within this period, the Vendor will not be obligated to complete this Contract until the expiration of three (3) business days from the date of delivery of the statement of adjustments. In addition, the Purchaser shall be deemed to have made default in payment of the balance of the Price and shall be liable for payment of penalty interest until such time as Settlement is effected."

2.5 General condition 31.3 is amended by deleting the words "but may claim compensation from the Vendor after Settlement."

2.6 General condition 33 is amended by deleting the reference to "2%" and inserting "4%".

3. ACKNOWLEDGMENTS

3.1 The Purchaser acknowledges that prior to signing this Contract or any agreement or document in respect of the sale hereby made which is legally binding upon or intended legally to bind the Purchaser, the Purchaser has been given by the Vendor a Vendor Statement executed by the Vendor.

3.2 The parties hereto acknowledge and agree that no information representation or warranty prior to the execution of this Contract has been or will be relied upon and that any prior agreement (either oral or in writing) is hereby rescinded and that this Contract is the sole and full repository of the agreement between the Vendor and the Purchaser. Any subsequent agreement to the variation of the terms of this Contract may be made in writing with the consent of the Vendor and Purchaser only.

4. PURCHASER'S INSPECTION/WARRANTIES

- 4.1 The Purchaser acknowledges that he has inspected the Land hereby sold. The Purchaser warrants to the Vendor that, because of the Purchaser's own inspection and enquiries, the Purchaser:-
- 4.1.1 is satisfied as to the nature, quality, condition and state of repair of the Land and any Goods sold with the Land;
 - 4.1.2 accepts that all structures or improvements on the Land are contained wholly within the title boundaries of the Land and that no structure or improvements on any adjoining Land encroaches over or under the title boundaries to the Land;
 - 4.1.3 accepts the Land as it is and subject to all defects (latent or patent) and all dilapidation and infestation; and
 - 4.1.4 is satisfied about the purposes for which the Land may be used and about all restrictions and prohibitions on its development.
- 4.2 The Purchaser warrants that:-
- 4.2.1 except for any disclosure by the Vendor or the Vendor's Estate Agent to the Purchaser in accordance with the provisions of the *Sale of Land Act 1962* (Vic) (as amended), no information, representation or warranty by the Vendor or the Vendor's Estate Agent (apart from those statements contained in the Vendor Statement, a copy of which is annexed to this Contract) was supplied or made with the intention or knowledge that it would be relied upon by the Purchaser, and the Purchaser enters into this Contract solely on the basis of its own enquiries and investigations relating to the Land;
 - 4.2.2 no information, representation or warranty has been so relied upon;
 - 4.2.3 there is no other contract, agreement or collateral warranty existing at the time of execution of this Contract which relates to the Land or the purchase of the Land by the Purchaser;
 - 4.2.4 this Contract and the original Vendor's Statement are the sole and full repository of the agreement between the Vendor, the Vendor's Estate Agent and the Purchaser;
 - 4.2.5 without limitation, the Purchaser acknowledges that it has not relied upon any information contained in any information memorandum, marketing material, brochure or advertisement prepared by or on behalf of the Vendor in relation to the sale of the Land;
 - 4.2.6 it is empowered to enter this Contract and can do so without consent from any other person or has already obtained that consent;
 - 4.2.7 it is not prohibited by or under any law including without limitation the *Foreign Acquisitions and Takeovers Act 1975* (Cth) from entering into or completing this Contract;
 - 4.2.8 Settlement of this Contract is not conditional or dependent upon the Purchaser obtaining any consent or approval lawfully necessary in order to enable the Land or any part of it to be used or occupied by the Purchaser or any other person for any purpose whatsoever, and is not conditional upon any matter referred to in this special condition; and
 - 4.2.9 it will not make any requisition or objection or claim any compensation in respect of any non-compliance with any Building Legislation and must not call upon the Vendor to bear all or any part of the cost of complying with any Building Legislation.

4.3 The Vendor gives no warranty:-

- 4.3.1 that the improvements erected on the Land or any alterations or additions to the improvements comply with any Building Legislation;
- 4.3.2 as to the use to which the Land may be put; and/or
- 4.3.3 that the use to which the Vendor has previously put the Land is permissible or permissible only with the consent of any authority under or pursuant to any statute, ordinance, regulation, by-law, town planning scheme or interim development order or other enactment or order of the Court and the Purchaser must obtain any use consent at the Purchaser's own expense.

4.4 The Purchaser shall make no objection, claim compensation or delay payment of the Balance because of anything in connection with:-

- 4.4.1 any of the matters referred to in this special condition 4;
- 4.4.2 any loss, damage, dilapidation, infestation, defect (latent or patent) or mechanical breakdown which may affect the Land;
- 4.4.3 the roof or surface water drainage from the Land being connected to a sewerage service;
- 4.4.4 there being or not being an easement or other right in respect of a service for the Land being a joint service or passing through another Land, or any service for another Land passing through the Land ("service" includes air, communication, drainage, electricity, garbage, gas, oil, radio, sewerage, telephone, television or water service);
- 4.4.5 the condition or existence or non-existence of services; and/or
- 4.4.6 the presence of any Contaminant on the Land or in or on any structure on the Land.

5. ZONING

The Land is sold subject to any restriction as to user under any order, plan, scheme, regulation or by-law contained in or made pursuant to the provisions of any legislation. No such restriction shall constitute a defect in the Vendor's title and the Purchaser shall not make any requisition or objection nor be entitled to any compensation from the Vendor in respect thereof.

6. LAND & GOODS

- 6.1 Title to the Land and the Goods shall not pass to the Purchaser until payment in full of the Price is made by the Purchaser to the Vendor.
- 6.2 The Goods are sold without any warranties.

7. NOMINATION

General condition 4 shall be deleted and replaced with the following special condition:-

- 7.1 The Purchaser may nominate a substitute or additional Purchaser ("Nominated Purchaser") subject to compliance with the balance of this special condition, but the named Purchaser remains personally liable for the due performance of all the Purchaser's obligations under this Contract.
- 7.2 If the Purchaser nominates, such nomination can only occur if:-
 - 7.2.1 the Purchaser is not in default pursuant to this Contract;
 - 7.2.2 notice is given fourteen (14) days prior to the Settlement Date;

- 7.2.3 the Purchaser nominates a company, the directors must execute a Guarantee in the form attached to the Contract and provide the Vendor's Legal Practitioner with an original executed Guarantee simultaneously with the provision of the nomination documents;
- 7.2.4 the Nominated Purchaser notifies the Vendor's Legal Practitioner as to their residency status;
- 7.2.5 in the case where the Nominated Purchaser is a foreign purchaser, the Nominated Purchaser provides the Vendor's Legal Practitioner with a copy of FIRB approval obtained for the purchase of the Land;
- 7.2.6 the Nominated Purchaser provides payment to the Tisher Liner FC Law in the sum of \$440.00, which represents costs for advising the Vendor on compliance with special condition 7.

8. DEFAULT EXPENSES

- 8.1 If the Purchaser defaults in complying with any of its obligations as set out in this Contract, the Purchaser shall pay, in addition to any other moneys payable to the Vendor, any legal costs on a Solicitor own client basis incurred by the Vendor as a result of any such default by the Purchaser.
- 8.2 The Purchaser must pay to the Vendor all costs and expenses incurred by the Vendor due to any breach of this Contract by the Purchaser.
- 8.3 The Purchaser agrees that the reasonably foreseeable loss the Vendor may suffer due to the Purchaser's breach of this contract may include, without limitation, interest payable by the Vendor in relation to loans secured on the Land for the period from the date the Balance is payable under this Contract to the date the Balance is paid, interest incurred on any purchase by the Vendor which is incurred as a result of the Purchaser's default, interest on bridging finance obtained by the Vendor for the same period to cover the Vendor's intended use of the Price and the costs of that bridging finance and, if the Vendor is usually accommodated in the Land, accommodation costs incurred by the Vendor and the cost of storing the Vendor's property usually kept in the Land.

9. OBLIGATIONS JOINT AND SEVERAL

If there shall be more than one Purchaser the agreements and obligations of the Purchaser and the conditions under this Contract shall bind them and any two or more of them jointly and each of them severally.

10. STAMP DUTY - PURCHASERS BUYING UNEQUAL INTERESTS

- 10.1 If there is more than one Purchaser, it is the Purchaser's responsibility to ensure that the Contract correctly records at the date of sale the proportions in which they are buying the Land ("the proportions").
- 10.2 If the proportions recorded in the transfer of land differ from those recorded in the Contract, it is the Purchaser's responsibility to pay any additional stamp duty which may be assessed as a result of the variation.
- 10.3 The Purchaser/s fully indemnify (both jointly and severally) the Vendor, the Vendor's Estate Agent and the Vendor's Legal Practitioner against any claims or demands which may be made against any or all of them in relation to any additional stamp duty payable as a result of the proportions in the transfer of land differing from those in the Contract.
- 10.4 This special condition will not merge on Completion but shall enure for the benefit of the Vendor.

11. SAFETY

The Purchaser must not raise any requisition or objection or claim any compensation in relation to anything done by the Vendor which the Vendor considers necessary for the safety or protection of the Land or any person on or near the Land or for the protection of the interest of any occupier of the Land.

12. GUARANTEE OF COMPANY

- 12.1 If the Purchaser is a Company the Purchaser shall forthwith contemporaneous with the execution of this Contract procure the execution of guarantees of this Contract (incorporating indemnities) by all of its Directors and/or principal shareholders and/or the person or persons who sign this Contract on its behalf as the Vendor shall reasonably require. The said guarantees shall be in the form that is annexed hereto. In the event that such guarantees cannot be executed as at the date of signing this Contract then such further guarantee/s shall be executed within seven (7) days of same being requested by the Vendor. Any breach of this special condition shall be deemed to be a breach of the terms of this Contract and shall entitle the Vendor to exercise its rights pursuant to the provisions of this Contract.
- 12.2 If the Nominated Purchaser is a Company, such guarantee shall be executed by all of its Directors and/or principal shareholders and/or the person or persons who sign on behalf of the Nominated Purchaser as the Vendor shall reasonably require.

13. TRUST

If the Purchaser is buying the Property as trustee of a trust then the Purchaser:-

- 13.1 must not do anything to prejudice any right of indemnity the Purchaser may have under the trust;
- 13.2 warrants that the Purchaser has power under the trust to enter into this Contract;
- 13.3 is personally liable under this Contract;
- 13.4 warrants that the Purchaser has a right of indemnity under the trust; and
- 13.5 must not allow the variation of the trust or the advance or distribution of capital of the trust or resettlement of any property belonging to the trust.

14. ENVIRONMENTAL MATTERS

From the Settlement Date, the Purchaser:-

- 14.1 acknowledges that it assumes all risk of loss, damage, liability or injury to any person, corporation or Land resulting in any way from the use of the Land or existence or previous existence or the presence of any Contaminant which may be in or on the improvements or any fixtures, fittings or installation in, to or on the improvements or in, on or under the Land;
- 14.2 releases and discharge the Vendor and its successors, assigns, employees and agents from and against all claims, suits, demands and actions of every description whatsoever and whenever occurring which the Purchaser has, may have, or which may accrue in the future or which, but for the execution of this Contract, the Purchaser would or might have had against the Vendor as a result of the presence of any Contaminant in, on or under that Land and from and against all claims for costs and expenses in respect of such claims, suits, demands and actions; and
- 14.3 indemnifies and holds harmless the Vendor and its successors, assigns, employees and agents from and against all loss, damage, liability, claims, suits, demands, financial penalties and actions of every description whatsoever and whenever occurring resulting or arising from the presence of any Contaminant in, on or under the Land (including without limitation, any costs or expenses incurred in relation to any notice, direction or order issued or made under any Environmental Law) and from and against all claims for costs and expenses in respect of such loss, damage, liability, claims, suites, demands and action.

This special condition will not merge on Completion but shall enure for the benefit of the Vendor.

15. FOREIGN INVESTMENT LEGISLATION

The Purchaser (and nominee if a nominee is nominated):

- 15.1 warrants that it is not prohibited by the Foreign Acquisitions and Takeovers Act 1975 (Cth), the Foreign Acquisitions and Takeovers Regulations 1989 (Cth), the Foreign Acquisitions and Takeovers Regulations 2015 (Cth), or any other legislation (together, "Foreign Investments Legislation") or the Foreign Investments Review Board ("FIRB") from purchasing the Land;
- 15.2 warrants that it has obtained all necessary consents and authorisations required by the Foreign Investments Legislation and the FIRB to enter into this Contract (if applicable);
- 15.3 agrees to pay and be responsible for any fees, costs, payments, penalties or other expenses payable in accordance with the requirements of the Foreign Investments Legislation and the FIRB;
- 15.4 indemnifies and releases the Vendor and agrees to keep the Vendor indemnified and held harmless with respect to any breach of special condition 15.1, 15.2 and 15.3 or a breach of the Foreign Investments Legislation;
- 15.5 will within 7 days of the Day of Sale, provide to the Vendor's Legal Practitioner a copy of FIRB approval obtained for the purchase of Land, to satisfy the Vendor that the Purchaser has complied with this special condition 15; and
- 15.6 will within 7 days of the nomination, provide to the Vendor's Legal Practitioner a copy of FIRB approval obtained for the purchase of Land, to satisfy the Vendor that the Purchaser has complied with this special condition 15.

16. GST

- 16.1 The Purchaser acknowledges that the Property is Residential Premises (as that term is defined by Section 195-1 of the GST Act) and warrants that it will be used predominantly as a residence or for residential accommodation.
- 16.2 The parties agree that the supply of the Property by the Vendor to the Purchaser under this contract is Input Taxed (as that term is defined by section 195-1 of the GST Act).
- 16.3 In the event that the ATO determines that GST is payable under this contract, the Purchaser acknowledges and agrees that it is responsible for the payment of any GST (in addition to the Price) and any penalties and interest for the late payment of such GST. Furthermore, the Purchaser agrees, in such circumstances to pay the GST within 7 days of receiving a written demand and a copy of a relevant tax invoice from the Vendor.
- 16.4 This clause does not merge at Settlement but continues for the benefit of the Vendor.

17. GST WITHHOLDING

Pursuant to section 14-255 Schedule 1 of the Taxation Administration Act 1953 (Cth), the Vendor hereby provides notice that the Purchaser is not required to make a payment under section 14-250 of Schedule 1 of the Taxation Administration Act 1953 (Cth) in relation to the supply of the Property.

18. DUE DILIGENCE CHECKLIST

The Purchaser acknowledges that the Due Diligence Checklist as required by the *Sale of Land Act 1962* (Vic) was made available to the Purchaser at the time the Land was offered for sale.

19. SEVERABILITY

If any part of this Contract is or becomes void or unenforceable or is illegal then that part shall if possible be read down and construed as far as is necessary to be legal and enforceable or (if such is impossible) shall be severed from this Contract to the intent that all parts that shall not be or become void or unenforceable or illegal shall remain in full force and effect and be unaffected by such

severance. So far as may be legally permissible the provisions of any Act (Commonwealth or State present or future) shall not apply to this Contract so as to abrogate extinguish impair diminish fetter delay or otherwise detrimentally affect any rights remedies or powers of the Vendor.

20. NON-MERGER

Any provision of this Contract which is capable of taking effect after Settlement of this Contract shall not merge on Settlement but shall continue in full force and effect.

21. WAIVER

The non-exercise of or delay in exercising any power or right of a party does not operate as a waiver of that power or right, nor does any single exercise of the power or right preclude any other or further exercise of it or in the exercise of any other power or right. A power or right may only be waived in writing and signed by the party to be bound by the waiver.

22. READING DOWN

The conditions of this Contract shall be so construed as not to infringe the provision of any Act whether Commonwealth or State but if any such condition on its true interpretation does infringe any such provision or is otherwise void or unenforceable that condition shall be read down to such extent as may be necessary to ensure that it does not so infringe and as may be reasonable in all circumstances so as to give it a valid operation and in the event that the infringing condition cannot be so read down it shall be deemed to be void and severable and the remaining conditions of this Contract shall have full force and effect.

General Conditions

Contract signing

1. ELECTRONIC SIGNATURE

- 1.1 In this general condition "electronic signature" means a digital signature or a visual representation of a person's handwritten signature or mark which is placed on a physical or electronic copy of this contract by electronic or mechanical means, and "electronically signed" has a corresponding meaning.
- 1.2 The parties consent to this contract being signed by or on behalf of a party by an electronic signature.
- 1.3 Where this contract is electronically signed by or on behalf of a party, the party warrants and agrees that the electronic signature has been used to identify the person signing and to indicate that the party intends to be bound by the electronic signature.
- 1.4 This contract may be electronically signed in any number of counterparts which together will constitute the one document.
- 1.5 Each party consents to the exchange of counterparts of this contract by delivery by email or such other electronic means as may be agreed in writing.
- 1.6 Each party must upon request promptly deliver a physical counterpart of this contract with the handwritten signature or signatures of the party and all written evidence of the authority of a person signing on their behalf, but a failure to comply with the request does not affect the validity of this contract.

2. LIABILITY OF SIGNATORY

Any signatory for a proprietary limited company purchaser is personally liable for the due performance of the purchaser's obligations as if the signatory were the purchaser in the case of a default by a proprietary limited company purchaser.

3. GUARANTEE

The vendor may require one or more directors of the purchaser to guarantee the purchaser's performance of this contract if the purchaser is a proprietary limited company.

4. NOMINEE

The purchaser may no later than 14 days before the due date for settlement nominate a substitute or additional person to take a transfer of the land, but the named purchaser remains personally liable for the due performance of all the purchaser's obligations under this contract.

Title

5. ENCUMBRANCES

- 5.1 The purchaser buys the property subject to:
 - (a) any encumbrance shown in the section 32 statement other than mortgages or caveats; and
 - (b) any reservations, exceptions and conditions in the crown grant; and
 - (c) any lease or tenancy referred to in the particulars of sale.
- 5.2 The purchaser indemnifies the vendor against all obligations under any lease or tenancy that are to be performed by the landlord after settlement.

6. VENDOR WARRANTIES

- 6.1 The vendor warrants that these general conditions 1 to 35 are identical to the general conditions 1 to 35 in the form of contract of sale of land published by the Law Institute of Victoria Limited and the Real Estate Institute of Victoria Ltd in the month and year set out at the foot of this page.
- 6.2 The warranties in general conditions 6.3 and 6.4 replace the purchaser's right to make requisitions and inquiries.
- 6.3 The vendor warrants that the vendor:
 - (a) has, or by the due date for settlement will have, the right to sell the land; and
 - (b) is under no legal disability; and
 - (c) is in possession of the land, either personally or through a tenant; and
 - (d) has not previously sold or granted any option to purchase, agreed to a lease or granted a pre-emptive right which is current over the land and which gives another party rights which have priority over the interest of the purchaser; and
 - (e) will at settlement be the holder of an unencumbered estate in fee simple in the land; and
 - (f) will at settlement be the unencumbered owner of any improvements, fixtures, fittings and goods sold with the land.
- 6.4 The vendor further warrants that the vendor has no knowledge of any of the following:

- (a) public rights of way over the land;
 - (b) easements over the land;
 - (c) lease or other possessory agreement affecting the land;
 - (d) notice or order directly and currently affecting the land which will not be dealt with at settlement, other than the usual rate notices and any land tax notices;
 - (e) legal proceedings which would render the sale of the land void or voidable or capable of being set aside.
- 6.5 The warranties in general conditions 6.3 and 6.4 are subject to any contrary provisions in this contract and disclosures in the section 32 statement.
- 6.6 If sections 137B and 137C of the *Building Act 1993* apply to this contract, the vendor warrants that:
- (a) all domestic building work carried out in relation to the construction by or on behalf of the vendor of the home was carried out in a proper and workmanlike manner; and
 - (b) all materials used in that domestic building work were good and suitable for the purpose for which they were used and that, unless otherwise stated in the contract, those materials were new; and
 - (c) domestic building work was carried out in accordance with all laws and legal requirements, including, without limiting the generality of this warranty, the *Building Act 1993* and regulations made under the *Building Act 1993*.
- 6.7 Words and phrases used in general condition 6.6 which are defined in the *Building Act 1993* have the same meaning in general condition 6.6.

7. IDENTITY OF THE LAND

- 7.1 An omission or mistake in the description of the property or any deficiency in the area, description or measurements of the land does not invalidate the sale.
- 7.2 The purchaser may not:
- (a) make any objection or claim for compensation for any alleged misdescription of the property or any deficiency in its area or measurements; or
 - (b) require the vendor to amend title or pay any cost of amending title.

8. SERVICES

- 8.1 The vendor does not represent that the services are adequate for the purchaser's proposed use of the property and the vendor advises the purchaser to make appropriate inquiries. The condition of the services may change between the day of sale and settlement and the vendor does not promise that the services will be in the same condition at settlement as they were on the day of sale.
- 8.2 The purchaser is responsible for the connection of all services to the property after settlement and the payment of any associated cost.

9. CONSENTS

The vendor must obtain any necessary consent or licence required for the vendor to sell the property. The contract will be at an end and all money paid must be refunded if any necessary consent or licence is not obtained by settlement.

10. TRANSFER & DUTY

- 10.1 The purchaser must prepare and deliver to the vendor at least 7 days before the due date for settlement any paper transfer of land document which is necessary for this transaction. The delivery of the transfer of land document is not acceptance of title.
- 10.2 The vendor must promptly initiate the Duties on Line or other form required by the State Revenue Office in respect of this transaction, and both parties must co-operate to complete it as soon as practicable.

11. RELEASE OF SECURITY INTEREST

- 11.1 This general condition applies if any part of the property is subject to a security interest to which the *Personal Property Securities Act 2009 (Cth)* applies.
- 11.2 For the purposes of enabling the purchaser to search the Personal Property Securities Register for any security interests affecting any personal property for which the purchaser may be entitled to a release, statement, approval or correction in accordance with general condition 11.4, the purchaser may request the vendor to provide the vendor's date of birth to the purchaser. The vendor must comply with a request made by the purchaser under this condition if the purchaser makes the request at least 21 days before the due date for settlement.
- 11.3 If the purchaser is given the details of the vendor's date of birth under general condition 11.2, the purchaser must
- (a) only use the vendor's date of birth for the purposes specified in general condition 11.2; and
 - (b) keep the date of birth of the vendor secure and confidential.
- 11.4 The vendor must ensure that at or before settlement, the purchaser receives—
- (a) a release from the secured party releasing the property from the security interest; or

- (b) a statement in writing in accordance with section 275(1)(b) of the *Personal Property Securities Act 2009 (Cth)* setting out that the amount or obligation that is secured is nil at settlement; or
 - (c) a written approval or correction in accordance with section 275(1)(c) of the *Personal Property Securities Act 2009 (Cth)* indicating that, on settlement, the personal property included in the contract is not or will not be property in which the security interest is granted.
- 11.5 Subject to general condition 11.6, the vendor is not obliged to ensure that the purchaser receives a release, statement, approval or correction in respect of personal property—
 - (a) that—
 - (i) the purchaser intends to use predominantly for personal, domestic or household purposes; and
 - (ii) has a market value of not more than \$5000 or, if a greater amount has been prescribed for the purposes of section 47(1) of the *Personal Property Securities Act 2009 (Cth)*, not more than that prescribed amount; or
 - (b) that is sold in the ordinary course of the vendor's business of selling personal property of that kind.
- 11.6 The vendor is obliged to ensure that the purchaser receives a release, statement, approval or correction in respect of personal property described in general condition 11.5 if—
 - (a) the personal property is of a kind that may or must be described by serial number in the Personal Property Securities Register; or
 - (b) the purchaser has actual or constructive knowledge that the sale constitutes a breach of the security agreement that provides for the security interest.
- 11.7 A release for the purposes of general condition 11.4(a) must be in writing.
- 11.8 A release for the purposes of general condition 11.4(a) must be effective in releasing the goods from the security interest and be in a form which allows the purchaser to take title to the goods free of that security interest.
- 11.9 If the purchaser receives a release under general condition 11.4(a) the purchaser must provide the vendor with a copy of the release at or as soon as practicable after settlement.
- 11.10 In addition to ensuring that a release is received under general condition 11.4(a), the vendor must ensure that at or before settlement the purchaser receives a written undertaking from a secured party to register a financing change statement to reflect that release if the property being released includes goods of a kind that are described by serial number in the Personal Property Securities Register.
- 11.11 The purchaser must advise the vendor of any security interest that is registered on or before the day of sale on the Personal Property Securities Register, which the purchaser reasonably requires to be released, at least 21 days before the due date for settlement.
- 11.12 The vendor may delay settlement until 21 days after the purchaser advises the vendor of the security interests that the purchaser reasonably requires to be released if the purchaser does not provide an advice under general condition 11.11.
- 11.13 If settlement is delayed under general condition 11.12 the purchaser must pay the vendor—
 - (a) interest from the due date for settlement until the date on which settlement occurs or 21 days after the vendor receives the advice, whichever is the earlier; and
 - (b) any reasonable costs incurred by the vendor as a result of the delay—
 as though the purchaser was in default.
- 11.14 The vendor is not required to ensure that the purchaser receives a release in respect of the land. This general condition 11.14 applies despite general condition 11.1.
- 11.15 Words and phrases which are defined in the *Personal Property Securities Act 2009 (Cth)* have the same meaning in general condition 11 unless the context requires otherwise.

12. BUILDER WARRANTY INSURANCE

The vendor warrants that the vendor will provide at settlement details of any current builder warranty insurance in the vendor's possession relating to the property if requested in writing to do so at least 21 days before settlement.

13. GENERAL LAW LAND

- 13.1 The vendor must complete a conversion of title in accordance with section 14 of the *Transfer of Land Act 1958* before settlement if the land is the subject of a provisional folio under section 23 of that Act.
- 13.2 The remaining provisions of this general condition 13 only apply if any part of the land is not under the operation of the *Transfer of Land Act 1958*.

- 13.3 The vendor is taken to be the holder of an unencumbered estate in fee simple in the land if there is an unbroken chain of title starting at least 30 years before the day of sale proving on the face of the documents the ownership of the entire legal and equitable estate without the aid of other evidence.
- 13.4 The purchaser is entitled to inspect the vendor's chain of title on request at such place in Victoria as the vendor nominates.
- 13.5 The purchaser is taken to have accepted the vendor's title if:
- (a) 21 days have elapsed since the day of sale; and
 - (b) the purchaser has not reasonably objected to the title or reasonably required the vendor to remedy a defect in the title.
- 13.6 The contract will be at an end if:
- (a) the vendor gives the purchaser a notice that the vendor is unable or unwilling to satisfy the purchaser's objection or requirement and that the contract will end if the objection or requirement is not withdrawn within 14 days of the giving of the notice; and
 - (b) the objection or requirement is not withdrawn in that time.
- 13.7 If the contract ends in accordance with general condition 13.6, the deposit must be returned to the purchaser and neither party has a claim against the other in damages.
- 13.8 General condition 17.1 [settlement] should be read as if the reference to 'registered proprietor' is a reference to 'owner' in respect of that part of the land which is not under the operation of the *Transfer of Land Act 1958*.
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Money

14. DEPOSIT

- 14.1 The purchaser must pay the deposit:
- (a) to the vendor's licensed estate agent; or
 - (b) if there is no estate agent, to the vendor's legal practitioner or conveyancer; or
 - (c) if the vendor directs, into a special purpose account in an authorised deposit-taking institution in Victoria specified by the vendor in the joint names of the purchaser and the vendor.
- 14.2 If the land sold is a lot on an unregistered plan of subdivision, the deposit:
- (a) must not exceed 10% of the price; and
 - (b) must be paid to the vendor's estate agent, legal practitioner or conveyancer and held by the estate agent, legal practitioner or conveyancer on trust for the purchaser until the registration of the plan of subdivision.
- 14.3 The deposit must be released to the vendor if:
- (a) the vendor provides particulars, to the satisfaction of the purchaser, that either-
 - (i) there are no debts secured against the property; or
 - (ii) if there are any debts, the total amount of those debts together with any amounts to be withheld in accordance with general conditions 24 and 25 does not exceed 80% of the sale price; and
 - (b) at least 28 days have elapsed since the particulars were given to the purchaser under paragraph (a); and
 - (c) all conditions of section 27 of the *Sale of Land Act 1962* have been satisfied.
- 14.4 The stakeholder must pay the deposit and any interest to the party entitled when the deposit is released, the contract is settled, or the contract is ended.
- 14.5 The stakeholder may pay the deposit and any interest into court if it is reasonable to do so.
- 14.6 Where the purchaser is deemed by section 27(7) of the *Sale of Land Act 1962* to have given the deposit release authorisation referred to in section 27(1), the purchaser is also deemed to have accepted title in the absence of any prior express objection to title.
- 14.7 Payment of the deposit may be made or tendered:
- (a) in cash up to \$1,000 or 0.2% of the price, whichever is greater; or
 - (b) by cheque drawn on an authorised deposit-taking institution; or
 - (c) by electronic funds transfer to a recipient having the appropriate facilities for receipt.
- However, unless otherwise agreed:

- (d) payment may not be made by credit card, debit card or any other financial transfer system that allows for any chargeback or funds reversal other than for fraud or mistaken payment, and
 - (e) any financial transfer or similar fees or deductions from the funds transferred, other than any fees charged by the recipient's authorised deposit-taking institution, must be paid by the remitter.
- 14.8 Payment by electronic funds transfer is made when cleared funds are received in the recipient's bank account.
- 14.9 Before the funds are electronically transferred the intended recipient must be notified in writing and given sufficient particulars to readily identify the relevant transaction.
- 14.10 As soon as the funds have been electronically transferred the intended recipient must be provided with the relevant transaction number or reference details.
- 14.11 For the purpose of this general condition 'authorised deposit-taking institution' means a body corporate for which an authority under section 9(3) of the *Banking Act 1959 (Cth)* is in force.

15. DEPOSIT BOND

- 15.1 This general condition only applies if the applicable box in the particulars of sale is checked.
- 15.2 In this general condition "deposit bond" means an irrevocable undertaking to pay on demand an amount equal to the deposit or any unpaid part of the deposit. The issuer and the form of the deposit bond must be satisfactory to the vendor. The deposit bond must have an expiry date at least 45 days after the due date for settlement.
- 15.3 The purchaser may deliver a deposit bond to the vendor's estate agent, legal practitioner or conveyancer within 7 days after the day of sale.
- 15.4 The purchaser may at least 45 days before a current deposit bond expires deliver a replacement deposit bond on the same terms and conditions.
- 15.5 Where a deposit bond is delivered, the purchaser must pay the deposit to the vendor's legal practitioner or conveyancer on the first to occur of:
- (a) settlement;
 - (b) the date that is 45 days before the deposit bond or any replacement deposit bond expires;
 - (c) the date on which this contract ends in accordance with general condition 35.2 [default not remedied] following breach by the purchaser; and
 - (d) the date on which the vendor ends this contract by accepting repudiation of it by the purchaser.
- 15.6 The vendor may claim on the deposit bond without prior notice if the purchaser defaults under this contract or repudiates this contract and the contract is ended. The amount paid by the issuer satisfies the obligations of the purchaser under general condition 15.5 to the extent of the payment.
- 15.7 Nothing in this general condition limits the rights of the vendor if the purchaser defaults under this contract or repudiates this contract, except as provided in general condition 15.6.
- 15.8 This general condition is subject to general condition 14.2 [deposit].

16. BANK GUARANTEE

- 16.1 This general condition only applies if the applicable box in the particulars of sale is checked.
- 16.2 In this general condition:
- (a) "bank guarantee" means an unconditional and irrevocable guarantee or undertaking by a bank in a form satisfactory to the vendor to pay on demand any amount under this contract agreed in writing, and
 - (b) "bank" means an authorised deposit-taking institution under the *Banking Act 1959 (Cth)*.
- 16.3 The purchaser may deliver a bank guarantee to the vendor's legal practitioner or conveyancer.
- 16.4 The purchaser must pay the amount secured by the bank guarantee to the vendor's legal practitioner or conveyancer on the first to occur of:
- (a) settlement;
 - (b) the date that is 45 days before the bank guarantee expires;
 - (c) the date on which this contract ends in accordance with general condition 35.2 [default not remedied] following breach by the purchaser; and
 - (d) the date on which the vendor ends this contract by accepting repudiation of it by the purchaser.
- 16.5 The vendor must return the bank guarantee document to the purchaser when the purchaser pays the amount secured by the bank guarantee in accordance with general condition 16.4.

- 16.6 The vendor may claim on the bank guarantee without prior notice if the purchaser defaults under this contract or repudiates this contract and the contract is ended. The amount paid by the bank satisfies the obligations of the purchaser under general condition 16.4 to the extent of the payment.
- 16.7 Nothing in this general condition limits the rights of the vendor if the purchaser defaults under this contract or repudiates this contract except as provided in general condition 16.6.
- 16.8 This general condition is subject to general condition 14.2 [deposit].

17. SETTLEMENT

- 17.1 At settlement:
- (a) the purchaser must pay the balance; and
 - (b) the vendor must:
 - (i) do all things necessary to enable the purchaser to become the registered proprietor of the land; and
 - (ii) give either vacant possession or receipt of rents and profits in accordance with the particulars of sale.
- 17.2 Settlement must be conducted between the hours of 10.00 am and 4.00 pm unless the parties agree otherwise.
- 17.3 The purchaser must pay all money other than the deposit in accordance with a written direction of the vendor or the vendor's legal practitioner or conveyancer.

18. ELECTRONIC SETTLEMENT

- 18.1 Settlement and lodgement of the instruments necessary to record the purchaser as registered proprietor of the land will be conducted electronically in accordance with the Electronic Conveyancing National Law. This general condition 18 has priority over any other provision of this contract to the extent of any inconsistency.
- 18.2 A party must immediately give written notice if that party reasonably believes that settlement and lodgement can no longer be conducted electronically. General condition 18 ceases to apply from when such a notice is given.
- 18.3 Each party must:
- (a) be, or engage a representative who is, a subscriber for the purposes of the Electronic Conveyancing National Law,
 - (b) ensure that all other persons for whom that party is responsible and who are associated with this transaction are, or engage, a subscriber for the purposes of the Electronic Conveyancing National Law, and
 - (c) conduct the transaction in accordance with the Electronic Conveyancing National Law.
- 18.4 The vendor must open the electronic workspace ("workspace") as soon as reasonably practicable and nominate a date and time for settlement. The inclusion of a specific date and time for settlement in a workspace is not of itself a promise to settle on that date or at that time. The workspace is an electronic address for the service of notices and for written communications for the purposes of any electronic transactions legislation.
- 18.5 This general condition 18.5 applies if there is more than one electronic lodgement network operator in respect of the transaction. In this general condition 18.5 "the transaction" means this sale and purchase and any associated transaction involving any of the same subscribers.
- To the extent that any interoperability rules governing the relationship between electronic lodgement network operators do not provide otherwise:
- (a) the electronic lodgement network operator to conduct all the financial and lodgement aspects of the transaction after the workspace locks must be one which is willing and able to conduct such aspects of the transaction in accordance with the instructions of all the subscribers in the workspaces of all the electronic lodgement network operators after the workspace locks;
 - (b) if two or more electronic lodgement network operators meet that description, one may be selected by purchaser's incoming mortgagee having the highest priority but if there is no mortgagee of the purchaser, the vendor must make the selection.
- 18.6 Settlement occurs when the workspace records that:
- (a) there has been an exchange of funds or value between the exchange settlement account or accounts in the Reserve Bank of Australia of the relevant financial institutions or their financial settlement agents in accordance with the instructions of the parties; or
 - (b) if there is no exchange of funds or value, the documents necessary to enable the purchaser to become registered proprietor of the land have been accepted for electronic lodgement.
- 18.7 The parties must do everything reasonably necessary to effect settlement:
- (a) electronically on the next business day, or
 - (b) at the option of either party, otherwise than electronically as soon as possible –
- if, after the locking of the workspace at the nominated settlement time, settlement in accordance with general condition 18.6 has not occurred by 4.00 pm, or 6.00 pm if the nominated time for settlement is after 4.00 pm.
- 18.8 Each party must do everything reasonably necessary to assist the other party to trace and identify the recipient of any missing or mistaken payment and to recover the missing or mistaken payment.

18.9 The vendor must before settlement:

- (a) deliver any keys, security devices and codes ("keys") to the estate agent named in the contract,
- (b) direct the estate agent to give the keys to the purchaser or the purchaser's nominee on notification of settlement by the vendor, the vendor's subscriber or the electronic lodgement network operator;
- (c) deliver all other physical documents and items (other than the goods sold by the contract) to which the purchaser is entitled at settlement, and any keys if not delivered to the estate agent, to the vendor's subscriber or, if there is no vendor's subscriber, confirm in writing to the purchaser that the vendor holds those documents, items and keys at the vendor's address set out in the contract, and

give, or direct its subscriber to give, all those documents and items and any such keys to the purchaser or the purchaser's nominee on notification by the electronic lodgement network operator of settlement.

19. GST

19.1 The purchaser does not have to pay the vendor any amount in respect of GST in addition to the price if the particulars of sale specify that the price includes GST (if any).

19.2 The purchaser must pay to the vendor any GST payable by the vendor in respect of a taxable supply made under this contract in addition to the price if:

- (a) the particulars of sale specify that GST (if any) must be paid in addition to the price; or
- (b) GST is payable solely as a result of any action taken or intended to be taken by the purchaser after the day of sale, including a change of use; or
- (c) the particulars of sale specify that the supply made under this contract is of land on which a 'farming business' is carried on and the supply (or part of it) does not satisfy the requirements of section 38-480 of the GST Act; or
- (d) the particulars of sale specify that the supply made under this contract is of a going concern and the supply (or a part of it) does not satisfy the requirements of section 38-325 of the GST Act.

19.3 The purchaser is not obliged to pay any GST under this contract until a tax invoice has been given to the purchaser.

19.4 If the particulars of sale specify that the supply made under this contract is of land on which a 'farming business' is carried on:

- (a) the vendor warrants that the property is land on which a farming business has been carried on for the period of 5 years preceding the date of supply; and
- (b) the purchaser warrants that the purchaser intends that a farming business will be carried on after settlement on the property.

19.5 If the particulars of sale specify that the supply made under this contract is a 'going concern':

- (a) the parties agree that this contract is for the supply of a going concern; and
- (b) the purchaser warrants that the purchaser is, or prior to settlement will be, registered for GST; and
- (c) the vendor warrants that the vendor will carry on the going concern until the date of supply.

19.6 If the particulars of sale specify that the supply made under this contract is a 'margin scheme' supply, the parties agree that the margin scheme applies to this contract.

19.7 In this general condition:

- (a) 'GST Act' means *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*; and
- (b) 'GST' includes penalties and interest.

20. LOAN

20.1 If the particulars of sale specify that this contract is subject to a loan being approved, this contract is subject to the lender approving the loan on the security of the property by the approval date or any later date allowed by the vendor.

20.2 The purchaser may end the contract if the loan is not approved by the approval date, but only if the purchaser:

- (a) immediately applied for the loan; and
- (b) did everything reasonably required to obtain approval of the loan; and
- (c) serves written notice ending the contract, together with written evidence of rejection or non-approval of the loan, on the vendor within 2 clear business days after the approval date or any later date allowed by the vendor; and
- (d) is not in default under any other condition of this contract when the notice is given.

20.3 All money must be immediately refunded to the purchaser if the contract is ended.

21. BUILDING REPORT

21.1 This general condition only applies if the applicable box in the particulars of sale is checked.

21.2 The purchaser may end this contract within 14 days from the day of sale if the purchaser:

- (a) obtains a written report from a registered building practitioner or architect which discloses a current defect in a structure on the land and designates it as a major building defect;

- (b) gives the vendor a copy of the report and a written notice ending this contract; and
 - (c) is not then in default.
- 21.3 All money paid must be immediately refunded to the purchaser if the contract ends in accordance with this general condition.
- 21.4 A notice under this general condition may be served on the vendor's legal practitioner, conveyancer or estate agent even if the estate agent's authority has formally expired at the time of service.
- 21.5 The registered building practitioner may inspect the property at any reasonable time for the purpose of preparing the report.

22. PEST REPORT

- 22.1 This general condition only applies if the applicable box in the particulars of sale is checked.
- 22.2 The purchaser may end this contract within 14 days from the day of sale if the purchaser:
- (a) obtains a written report from a pest control operator licensed under Victorian law which discloses a current pest infestation on the land and designates it as a major infestation affecting the structure of a building on the land;
 - (b) gives the vendor a copy of the report and a written notice ending this contract; and
 - (c) is not then in default.
- 22.3 All money paid must be immediately refunded to the purchaser if the contract ends in accordance with this general condition.
- 22.4 A notice under this general condition may be served on the vendor's legal practitioner, conveyancer or estate agent even if the estate agent's authority has formally expired at the time of service.
- 22.5 The pest control operator may inspect the property at any reasonable time for the purpose of preparing the report.

23. ADJUSTMENTS

- 23.1 All periodic outgoings payable by the vendor, and any rent and other income received in respect of the property must be apportioned between the parties on the settlement date and any adjustments paid and received as appropriate.
- 23.2 The periodic outgoings and rent and other income must be apportioned on the following basis:
- (a) the vendor is liable for the periodic outgoings and entitled to the rent and other income up to and including the day of settlement; and
 - (b) the land is treated as the only land of which the vendor is owner (as defined in the *Land Tax Act 2005*); and
 - (c) the vendor is taken to own the land as a resident Australian beneficial owner; and
 - (d) any personal statutory benefit available to each party is disregarded in calculating apportionment.
- 23.3 The purchaser must provide copies of all certificates and other information used to calculate the adjustments under general condition 23, if requested by the vendor.

24. FOREIGN RESIDENT CAPITAL GAINS WITHHOLDING

- 24.1 Words defined or used in Subdivision 14-D of Schedule 1 to the *Taxation Administration Act 1953 (Cth)* have the same meaning in this general condition unless the context requires otherwise.
- 24.2 Every vendor under this contract is a foreign resident for the purposes of this general condition unless the vendor gives the purchaser a clearance certificate issued by the Commissioner under section 14-220 (1) of Schedule 1 to the *Taxation Administration Act 1953 (Cth)*. The specified period in the clearance certificate must include the actual date of settlement.
- 24.3 The remaining provisions of this general condition 24 only apply if the purchaser is required to pay the Commissioner an amount in accordance with section 14-200(3) or section 14-235 of Schedule 1 to the *Taxation Administration Act 1953 (Cth)* ("the amount") because one or more of the vendors is a foreign resident, the property has or will have a market value not less than the amount set out in section 14-215 of the legislation just after the transaction, and the transaction is not excluded under section 14-215(1) of the legislation.
- 24.4 The amount is to be deducted from the vendor's entitlement to the contract consideration. The vendor must pay to the purchaser at settlement such part of the amount as is represented by non-monetary consideration.
- 24.5 The purchaser must:
- (a) engage a legal practitioner or conveyancer ("representative") to conduct all the legal aspects of settlement, including the performance of the purchaser's obligations under the legislation and this general condition; and
 - (b) ensure that the representative does so.
- 24.6 The terms of the representative's engagement are taken to include instructions to have regard to the vendor's interests and instructions that the representative must:
- (a) pay, or ensure payment of, the amount to the Commissioner in the manner required by the Commissioner and as soon as reasonably and practicably possible, from moneys under the control or direction of the representative in accordance with this general condition if the sale of the property settles;
 - (b) promptly provide the vendor with proof of payment; and
 - (c) otherwise comply, or ensure compliance, with this general condition;

despite:

- (d) any contrary instructions, other than from both the purchaser and the vendor; and
- (e) any other provision in this contract to the contrary.

24.7 The representative is taken to have complied with the requirements of general condition 24.6 if:

- (a) the settlement is conducted through an electronic lodgement network; and
- (b) the amount is included in the settlement statement requiring payment to the Commissioner in respect of this transaction.

24.8 Any clearance certificate or document evidencing variation of the amount in accordance with section 14-235(2) of Schedule 1 to the *Taxation Administration Act 1953 (Cth)* must be given to the purchaser at least 5 business days before the due date for settlement.

24.9 The vendor must provide the purchaser with such information as the purchaser requires to comply with the purchaser's obligation to pay the amount in accordance with section 14-200 of Schedule 1 to the *Taxation Administration Act 1953 (Cth)*. The information must be provided within 5 business days of request by the purchaser. The vendor warrants that the information the vendor provides is true and correct.

24.10 The purchaser is responsible for any penalties or interest payable to the Commissioner on account of late payment of the amount.

25. GST WITHHOLDING

25.1 Words and expressions defined or used in Subdivision 14-E of Schedule 1 to the *Taxation Administration Act 1953 (Cth)* or in *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* have the same meaning in this general condition unless the context requires otherwise. Words and expressions first used in this general condition and shown in italics and marked with an asterisk are defined or described in at least one of those Acts.

25.2 The purchaser must notify the vendor in writing of the name of the recipient of the *supply for the purposes of section 14-255 of Schedule 1 to the *Taxation Administration Act 1953 (Cth)* at least 21 days before the due date for settlement unless the recipient is the purchaser named in the contract.

25.3 The vendor must at least 14 days before the due date for settlement provide the purchaser and any person nominated by the purchaser under general condition 4 with a GST withholding notice in accordance with section 14-255 of Schedule 1 to the *Taxation Administration Act 1953 (Cth)*, and must provide all information required by the purchaser or any person so nominated to confirm the accuracy of the notice.

25.4 The remaining provisions of this general condition 25 apply if the purchaser is or may be required to pay the Commissioner an *amount in accordance with section 14-250 of Schedule 1 to the *Taxation Administration Act 1953 (Cth)* because the property is *new residential premises or *potential residential land in either case falling within the parameters of that section, and also if the sale attracts the operation of section 14-255 of the legislation. Nothing in this general condition 25 is to be taken as relieving the vendor from compliance with section 14-255.

25.5 The amount is to be deducted from the vendor's entitlement to the contract *consideration and is then taken to be paid to the vendor, whether or not the vendor provides the purchaser with a GST withholding notice in accordance with section 14-255 of Schedule 1 to the *Taxation Administration Act 1953 (Cth)*. The vendor must pay to the purchaser at settlement such part of the amount as is represented by non-monetary consideration.

25.6 The purchaser must:

- (a) engage a legal practitioner or conveyancer ("representative") to conduct all the legal aspects of settlement, including the performance of the purchaser's obligations under the legislation and this general condition; and
- (b) ensure that the representative does so.

25.7 The terms of the representative's engagement are taken to include instructions to have regard to the vendor's interests relating to the payment of the amount to the Commissioner and instructions that the representative must:

- (a) pay, or ensure payment of, the amount to the Commissioner in the manner required by the Commissioner and as soon as reasonably and practicably possible, from moneys under the control or direction of the representative in accordance with this general condition on settlement of the sale of the property;
- (b) promptly provide the vendor with evidence of payment, including any notification or other document provided by the purchaser to the Commissioner relating to payment; and
- (c) otherwise comply, or ensure compliance, with this general condition;

despite:

- (d) any contrary instructions, other than from both the purchaser and the vendor; and
- (e) any other provision in this contract to the contrary.

25.8 The representative is taken to have complied with the requirements of general condition 25.7 if:

- (a) settlement is conducted through an electronic lodgement network; and
- (b) the amount is included in the settlement statement requiring payment to the Commissioner in respect of this transaction.

- 25.9 The purchaser may at settlement give the vendor a bank cheque for the amount in accordance with section 16-30 (3) of Schedule 1 to the *Taxation Administration Act 1953 (Cth)*, but only if:
- (a) so agreed by the vendor in writing; and
 - (b) the settlement is not conducted through an electronic lodgement network.
- However, if the purchaser gives the bank cheque in accordance with this general condition 25.9, the vendor must:
- (c) immediately after settlement provide the bank cheque to the Commissioner to pay the amount in relation to the supply; and
 - (d) give the purchaser a receipt for the bank cheque which identifies the transaction and includes particulars of the bank cheque, at the same time the purchaser gives the vendor the bank cheque.
- 25.10 A party must provide the other party with such information as the other party requires to:
- (a) decide if an amount is required to be paid or the quantum of it, or
 - (b) comply with the purchaser's obligation to pay the amount,
- in accordance with section 14-250 of Schedule 1 to the *Taxation Administration Act 1953 (Cth)*. The information must be provided within 5 business days of a written request. The party providing the information warrants that it is true and correct.
- 25.11 The vendor warrants that:
- (a) at settlement, the property is not new residential premises or potential residential land in either case falling within the parameters of section 14-250 of Schedule 1 to the *Taxation Administration Act 1953 (Cth)* if the vendor gives the purchaser a written notice under section 14-255 to the effect that the purchaser will not be required to make a payment under section 14-250 in respect of the supply, or fails to give a written notice as required by and within the time specified in section 14-255; and
 - (b) the amount described in a written notice given by the vendor to the purchaser under section 14-255 of Schedule 1 to the *Taxation Administration Act 1953 (Cth)* is the correct amount required to be paid under section 14-250 of the legislation.
- 25.12 The purchaser is responsible for any penalties or interest payable to the Commissioner on account of non-payment or late payment of the amount, except to the extent that:
- (a) the penalties or interest arise from any failure on the part of the vendor, including breach of a warranty in general condition 25.11; or
 - (b) the purchaser has a reasonable belief that the property is neither new residential premises nor potential residential land requiring the purchaser to pay an amount to the Commissioner in accordance with section 14-250 (1) of Schedule 1 to the *Taxation Administration Act 1953 (Cth)*.
- The vendor is responsible for any penalties or interest payable to the Commissioner on account of non-payment or late payment of the amount if either exception applies.

Transactional

26. TIME & CO OPERATION

- 26.1 Time is of the essence of this contract.
- 26.2 Time is extended until the next business day if the time for performing any action falls on a day which is not a business day.
- 26.3 Each party must do all things reasonably necessary to enable this contract to proceed to settlement, and must act in a prompt and efficient manner.
- 26.4 Any unfulfilled obligation will not merge on settlement.

27. SERVICE

- 27.1 Any document required to be served by or on any party may be served by or on the legal practitioner or conveyancer for that party.
- 27.2 A cooling off notice under section 31 of the *Sale of Land Act 1962* or a notice under general condition 20 [loan approval], 21 [building report] or 22 [pest report] may be served on the vendor's legal practitioner, conveyancer or estate agent even if the estate agent's authority has formally expired at the time of service.
- 27.3 A document is sufficiently served:
- (a) personally, or
 - (b) by pre-paid post, or
 - (c) in any manner authorized by law or by the Supreme Court for service of documents, including any manner authorised for service on or by a legal practitioner, whether or not the person serving or receiving the document is a legal practitioner, or
 - (d) by email.

- 27.4 Any document properly sent by:
- (a) express post is taken to have been served on the next business day after posting, unless proved otherwise;
 - (b) priority post is taken to have been served on the fourth business day after posting, unless proved otherwise;
 - (c) regular post is taken to have been served on the sixth business day after posting, unless proved otherwise;
 - (d) email is taken to have been served at the time of receipt within the meaning of section 13A of the *Electronic Transactions (Victoria) Act 2000*.
- 27.5 In this contract 'document' includes 'demand' and 'notice', 'serve' includes 'give', and 'served' and 'service' have corresponding meanings.

28. NOTICES

- 28.1 The vendor is responsible for any notice, order, demand or levy imposing liability on the property that is issued or made before the day of sale, and does not relate to periodic outgoings.
- 28.2 The purchaser is responsible for any notice, order, demand or levy imposing liability on the property that is issued or made on or after the day of sale, and does not relate to periodic outgoings.
- 28.3 The purchaser may enter the property to comply with that responsibility where action is required before settlement.

29. INSPECTION

The purchaser and/or another person authorised by the purchaser may inspect the property at any reasonable time during the 7 days preceding and including the settlement day.

30. TERMS CONTRACT

- 30.1 If this is a 'terms contract' as defined in the *Sale of Land Act 1962*:
- (a) any mortgage affecting the land sold must be discharged as to that land before the purchaser becomes entitled to possession or to the receipt of rents and profits unless the vendor satisfies section 29M of the *Sale of Land Act 1962*; and
 - (b) the deposit and all other money payable under the contract (other than any money payable in excess of the amount required to so discharge the mortgage) must be paid to a legal practitioner or conveyancer or a licensed estate agent to be applied in or towards discharging the mortgage.
- 30.2 While any money remains owing each of the following applies:
- (a) the purchaser must maintain full damage and destruction insurance of the property and public risk insurance noting all parties having an insurable interest with an insurer approved in writing by the vendor;
 - (b) the purchaser must deliver copies of the signed insurance application forms, the policies and the insurance receipts to the vendor not less than 10 days before taking possession of the property or becoming entitled to receipt of the rents and profits;
 - (c) the purchaser must deliver copies of any amendments to the policies and the insurance receipts on each amendment or renewal as evidence of the status of the policies from time to time;
 - (d) the vendor may pay any renewal premiums or take out the insurance if the purchaser fails to meet these obligations;
 - (e) insurance costs paid by the vendor under paragraph (d) must be refunded by the purchaser on demand without affecting the vendor's other rights under this contract;
 - (f) the purchaser must maintain and operate the property in good repair (fair wear and tear excepted) and keep the property safe, lawful, structurally sound, weatherproof and free from contaminations and dangerous substances;
 - (g) the property must not be altered in any way without the written consent of the vendor which must not be unreasonably refused or delayed;
 - (h) the purchaser must observe all obligations that affect owners or occupiers of land;
 - (i) the vendor and/or other person authorised by the vendor may enter the property at any reasonable time to inspect it on giving 7 days written notice, but not more than twice in a year.

31. LOSS OR DAMAGE BEFORE SETTLEMENT

- 31.1 The vendor carries the risk of loss or damage to the property until settlement.
- 31.2 The vendor must deliver the property to the purchaser at settlement in the same condition it was in on the day of sale, except for fair wear and tear.
- 31.3 The purchaser must not delay settlement because one or more of the goods is not in the condition required by general condition 31.2, but may claim compensation from the vendor after settlement.
- 31.4 The purchaser may nominate an amount not exceeding \$5,000 to be held by a stakeholder to be appointed by the parties if the property is not in the condition required by general condition 31.2 at settlement.
- 31.5 The nominated amount may be deducted from the amount due to the vendor at settlement and paid to the stakeholder, but only if the purchaser also pays an amount equal to the nominated amount to the stakeholder.

- 31.6 The stakeholder must pay the amounts referred to in general condition 31.5 in accordance with the determination of the dispute, including any order for payment of the costs of the resolution of the dispute.

32. BREACH

A party who breaches this contract must pay to the other party on demand:

- (a) compensation for any reasonably foreseeable loss to the other party resulting from the breach; and
- (b) any interest due under this contract as a result of the breach.

Default

33. INTEREST

Interest at a rate of 2% per annum plus the rate for the time being fixed by section 2 of the *Penalty Interest Rates Act 1983* is payable at settlement on any money owing under the contract during the period of default, without affecting any other rights of the offended party.

34. DEFAULT NOTICE

34.1 A party is not entitled to exercise any rights arising from the other party's default, other than the right to receive interest and the right to sue for money owing, until the other party is given and fails to comply with a written default notice.

34.2 The default notice must:

- (a) specify the particulars of the default; and
- (b) state that it is the offended party's intention to exercise the rights arising from the default unless, within 14 days of the notice being given -
 - (i) the default is remedied; and
 - (ii) the reasonable costs incurred as a result of the default and any interest payable are paid.

35. DEFAULT NOT REMEDIED

35.1 All unpaid money under the contract becomes immediately payable to the vendor if the default has been made by the purchaser and is not remedied and the costs and interest are not paid.

35.2 The contract immediately ends if:

- (a) the default notice also states that unless the default is remedied and the reasonable costs and interest are paid, the contract will be ended in accordance with this general condition; and
- (b) the default is not remedied and the reasonable costs and interest are not paid by the end of the period of the default notice.

35.3 If the contract ends by a default notice given by the purchaser:

- (a) the purchaser must be repaid any money paid under the contract and be paid any interest and reasonable costs payable under the contract; and
- (b) all those amounts are a charge on the land until payment; and
- (c) the purchaser may also recover any loss otherwise recoverable.

35.4 If the contract ends by a default notice given by the vendor:

- (a) the deposit up to 10% of the price is forfeited to the vendor as the vendor's absolute property, whether the deposit has been paid or not; and
- (b) the vendor is entitled to possession of the property; and
- (c) in addition to any other remedy, the vendor may within one year of the contract ending either:
 - (i) retain the property and sue for damages for breach of contract; or
 - (ii) resell the property in any manner and recover any deficiency in the price on the resale and any resulting expenses by way of liquidated damages; and
- (d) the vendor may retain any part of the price paid until the vendor's damages have been determined and may apply that money towards those damages; and
- (e) any determination of the vendor's damages must take into account the amount forfeited to the vendor.

35.5 The ending of the contract does not affect the rights of the offended party as a consequence of the default.

DEED OF GUARANTEE AND INDEMNITY

I/We,
of
for myself/ourselves, my/our executors, administrators legal personal representatives and successors
("the Guarantor")

RECITALS

- A. The within Contract of Sale of Real Estate ("the Contract") has been entered into between the within named Vendor ("the Vendor") and the within named Purchaser ("the Purchaser").
- B. The Guarantor agrees to guarantee to the Vendor the due and punctual payment by the Purchaser of all monies under the Contract and the Purchaser's performance of all obligations imposed on the Purchaser under the Contract.
- C. The Guarantor indemnifies and keeps indemnified the Vendor from any and all loss, damage, costs and/or expenses arising from or in any way connected with the default by the Purchaser of the Contract.

NOW THIS DEED WITNESSES AS FOLLOWS:

1. The Guarantor gives this guarantee and indemnity in consideration of the Vendor agreeing to enter into the Contract. The Guarantor acknowledges the receipt of valuable consideration from the Vendor for it incurring obligations and giving rights under this guarantee and indemnity.
2. The Guarantor unconditionally and irrevocably guarantees to the Vendor that the Purchaser will perform all of its obligations (contained or implied) under the Contract and guarantees the due and punctual payment by the Purchaser of the deposit, purchase price, interest, balance and all other monies under the Contract.
3. As a separate and primary undertaking, the Guarantor unconditionally and irrevocably indemnifies and keeps indemnified the Vendor against all loss, damage, costs (on a solicitor client own basis) and expenses arising from or in any way connected with or resulting from:
 - (a) A default by the Purchaser of the terms of the Contract; and/or
 - (b) The Vendor's inability to enforce performance of obligations under the Contract if any of the Purchaser's obligations in the Contract are void, voidable or unenforceable against the Purchaser.The Guarantor must pay the Vendor the amount of the loss, damage, costs (on a solicitor client own basis) and expenses resulting from the matters in (a) and (b) above.
4. It is not necessary for the Vendor to incur expenses or make payment before enforcing its right of indemnity in this Deed.
5. The Guarantor waives any right it has of first requiring the Vendor to commence proceedings, serve any demand first on the Purchaser or enforce any other right against the Purchaser or any other person before claiming under this guarantee and indemnity.
6. This guarantee and indemnity is a continuing guarantee and indemnity and:
 - (a) Is not discharged by any one payment, and does not merge on termination of the Contract;
 - (b) Shall not be released by any neglect or forbearance on the part of the Vendor in enforcing payment of any of the moneys payable under the Contract; or
 - (c) Is not discharged or released by the performance or observance of any of the agreements, obligations or conditions contained in the Contract or by time being given to the Purchaser for any such payment performance or observance or by any other thing which under the law relating to sureties would but for this provision have the effect of releasing the guarantor/s, executors or administrators.
7. The Guarantor's liability under this guarantee and indemnity is as an indemnifier or principal debtor and the rights of a party under this guarantee and indemnity are not affected by anything which might otherwise affect them at law or in equity including, without limitation, one or more of the following:
 - (a) The Vendor granting time or other indulgence to, compounding or compromising with or releasing in any way the Purchaser or agreeing not to sue the Purchaser or any other party or another Guarantor;
 - (b) Acquiescence, delay, acts, omissions or mistakes on the part of any party;
 - (c) Any novation of a right of a party;
 - (d) Any variation of the Contract including but not limited to any amendment to the deposit monies, purchase price, settlement date or other particulars or conditions of the sale of the within named property under the Contract or the nomination of the Purchaser;
 - (e) The invalidity or unenforceability of an obligation or liability of a person under the Contract or this Deed including but not limited to the Contract not being properly signed by the any party;
 - (f) Any judgment or decision by a court, arbitrator or other person in favour of the Purchaser;
 - (g) The failure by any Guarantor to sign this Deed or the insolvency or death of a Guarantor; or
 - (h) Any rights, claims, actions or setoffs which the Purchaser may have against the Vendor or any other party.
8. The Guarantor may not, without the consent of the Vendor:

- (a) Raise a defence, set off or counterclaim available to it or the Purchaser against the Vendor or another party in reduction of its liability under this guarantee and indemnity;
- (b) Claim to be entitled by way of contribution, indemnity, subrogation, marshalling or otherwise to the benefit of any security or guarantee held by the Vendor in connection with the Contract; or
- (c) Prove in competition with the Vendor if a liquidator, provisional liquidator, receiver, official manager or trustee in bankruptcy is appointed in respect of the Purchaser or if the Purchaser is otherwise unable to pay its debts when they fall due;

From the date of this Deed until all obligations and liabilities of the Guarantor under or in connection with this Deed and the Purchaser under or in connection with the Contract are satisfied.

9. If a claim that a payment or transfer to the Vendor by the Purchaser in connection with the Contract is void or voidable (including, but not limited to, a claim under laws relating to liquidation, insolvency or protection of creditors) is upheld, conceded or compromised then the Vendor will be entitled immediately as against the Guarantor to the rights to which it would have been entitled under this guarantee and indemnity if the payment or transfer had not occurred.
10. The Guarantor must pay the Vendor all money which the Vendor refunds to the Purchaser's liquidator as preferential payments received from the Purchaser.
11. If there is more than one Guarantor, then this Deed binds them separately, together and in any combination.
12. Nothing in this Deed will prejudice the Vendor's rights to proceed against any one or more of the Guarantor. The Vendor shall be at liberty to proceed against any Guarantor or more of them as the Vendor wants. In the event that the Vendor compromises or accepts any amount from any one Guarantor, this does not prejudice the rights of the Vendor against any other of the Guarantor pursuant to this Deed.
13. The parties agree that this Deed may be executed, witnessed and exchanged electronically which may include any manner of signing permitted by Part 3 of the Corporations (Coronavirus Economic Response) Determination (No 1) 2020 (Cth) and/or the COVID-19 Omnibus (Emergency Measures) (Electronic Signing and Witnessing) Regulations 2020 (Vic) (as applicable to the signatory) or as otherwise permitted by the Electronic Transactions (Victoria) Act 2000 (Vic).
14. Each party may execute this Deed in physical paper format or electronically or a combination of both. In each case, this Deed will be legally binding on the parties.
15. By executing this Deed, the party intends to be immediately bound by this Deed. Nothing in this clause 13 and 14 is to be taken to exclude any statutory or common law principle applicable to the proper execution and delivery of a deed.

EXECUTED AS A DEED ON THE

DAY OF

20

SIGNED SEALED AND DELIVERED BY THE FIRST-NAMED GUARANTOR IN THE PRESENCE OF:

)
).....
) FIRST-NAMED GUARANTOR

WITNESS:

Full Name:

Address:.....

If this document was electronically signed, it was signed in accordance with the Electronic Transactions (Victoria) Act 2000 (Vic) as amended by the Justice Legislation Amendment (System Enhancements and Other Matters) Act 2021 (Vic)

SIGNED SEALED AND DELIVERED BY THE SECOND-NAMED GUARANTOR IN THE PRESENCE OF:

)
).....
) SECOND-NAMED GUARANTOR

WITNESS:

Full Name:

Address:.....

If this document was electronically signed, it was signed in accordance with the Electronic Transactions (Victoria) Act 2000 (Vic) as amended by the Justice Legislation Amendment (System Enhancements and Other Matters) Act 2021 (Vic)

TISHER LINER FC LAW

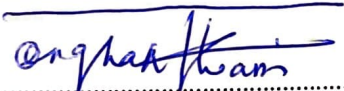
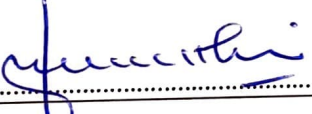

Vendor Statement

The Vendor makes this statement in respect of the land in accordance with section 32 of the *Sale of Land Act 1962 (Vic)*.

This statement must be signed by the Vendor and given to the Purchaser before the Purchaser signs the Contract of Sale ("the Contract"). The Vendor may sign by electronic signature.

The Purchaser acknowledges being given this statement signed by the Vendor with the attached documents before the Purchaser signed any Contract.

LAND:	5 SMYTH MEWS, NORTH MELBOURNE
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VENDOR'S NAME:	TIAN KHIAM ONG	Date: 16 / 02 / 2022
VENDOR'S SIGNATURE		
VENDOR'S NAME:	MUI HONG ELIZABETH EVELYN YVONNE LIM	Date: 16 / 02 / 2022
VENDOR'S SIGNATURE		
VENDOR'S NAME:	JOYCELYN YUEH LING ONG	Date: 16 / 02 / 2022
VENDOR'S SIGNATURE		

PURCHASER'S NAME:		Date: / /
PURCHASER'S SIGNATURE		
PURCHASER'S NAME:		Date: / /
PURCHASER'S SIGNATURE		

1. FINANCIAL MATTERS

1.1 Particulars of any Rates, Taxes, Charges or Other Similar Outgoings (and any interest on them)

- (a) Are contained in the certificates and documents attached to this Vendor Statement;
- (b) There are NO amounts for which the Purchaser may become liable as a consequence of the sale of which the Vendor might reasonably be expected to have knowledge¹, other than any amounts described in the attached certificates and documents attached or referred to in this Vendor Statement.

1.2 Particulars of any Charge (whether registered or not) imposed by or under any Act to secure an amount due under that Act, including the amount owing under the charge:

Unless otherwise disclosed in the attached certificates and documents, none to the knowledge of the Vendor²

1.3 Terms Contract

This section 1.3 only applies if this Vendor Statement is in respect of a Terms Contract where the Purchaser is obliged to make 2 or more payments to the Vendor after the execution of the Contract and before the Purchaser is entitled to a conveyance or transfer of the Land.

Not Applicable

1.4 Sale Subject to Mortgage

This section 1.4 only applies if this Vendor Statement is in respect of a Contract which provides that any mortgage (whether registered or unregistered), is NOT to be discharged before the Purchaser becomes entitled to possession or receipt of rents and profits.

Not Applicable

2. INSURANCE

2.1 Damage and Destruction

This section 2.1 only applies if this Vendor Statement is in respect of a Contract which does NOT provide for the land to remain at the risk of the Vendor until the Purchaser becomes entitled to possession or receipt of rents and profits.

Not Applicable

¹ Other than any GST payable in accordance with the Contract (if applicable)

² Other than in respect to any charges under the PPS Act (if any, where the Purchaser should make its own enquiries)

2.2 Owner - Builder

This section 2.2 only applies where there is a residence on the land that was constructed by an owner builder within the preceding 6 years and section 137B of the *Building Act 1993 (Vic)* applies to the residence.

Not Applicable

Note: There may be additional legislative obligations in respect of the sale of land on which there is a building, or on which building work has been carried out.

3. LAND USE

3.1 Easements, Covenants or Other Similar Restrictions

- (a) A description of any easement, covenant or other similar restriction affecting the land (whether registered or unregistered) is in the attached copy documents referred to in item 13 of this Vendor Statement.
- (b) Particulars of any existing failure to comply with that easement, covenant or other similar restriction are:

As far as the Vendor is aware, there are none.

3.2 Road Access

There is NO access to the property by road if the square box is marked with an "X" ☐

3.3 Designated Bushfire Prone Area

The land is in a designated bushfire prone area within the meaning of regulations made under the *Building Act 1993 (Vic)* if the box is marked with an "X" ☐

3.4 Planning Scheme

The required specified information is as follows:

(a)	Name of Planning Scheme	Melbourne Planning Scheme
(b)	Name of Responsible Authority	Melbourne City Council
(c)	Zoning of the Land	Mixed Use Zone
(d)	Name of Planning Overlay	Design & Development Overlay – Schedule 63 (Area 2) Design & Development Overlay – Schedule 66 Development Contributions Plan Overlay – Schedule 2 Environmental Audit Overlay Development Plan Overlay – Schedule 9

The Purchaser is referred to the Planning Certificate for further details including the Proposed Amending Planning Scheme C384melb and shows the property is within a Special Building Overlay – Schedule 3 – C384melb.

4. NOTICES

4.1 Notice, Order, Declaration, Report or Recommendation

Particulars of any notice, order, declaration, report or recommendation of a public authority or government department or approved proposal directly and currently affecting the land, being a notice, order, declaration, report, recommendation or approved proposal of which the Vendor might reasonably be expected to have knowledge are contained in the attached certificates and/or statements and/or documents and if no certificates, statements or documents are attached then none to the Vendor's knowledge

4.2 Agricultural Chemicals

There are NO notices, property management plans, reports or orders in respect of the land issued by a government department or public authority in relation to livestock disease or contamination by agricultural chemicals affecting the ongoing use of the land for agricultural purposes. However, if this is not the case, the details of any such notices, property management plans, reports or orders are as follows:

None to the knowledge of the Vendor

4.3 Compulsory Acquisition

The particulars of any notices of intention to acquire that have been served under section 6 of the *Land Acquisition and Compensation Act 1986 (Vic)* are as follows:

None to the knowledge of the Vendor

5. BUILDING PERMITS

Particulars of any building permit issued under the *Building Act 1993 (Vic)* in the preceding 7 years (required only where there is a residence on the Land) are contained in the attached certificate.

6. OWNERS CORPORATIONS

This Section 6 only applies if the land is affected by an Owners Corporation within the meaning of the *Owners Corporations Act 2006 (Vic)*.

Not Applicable

7. GROWTH AREAS INFRASTRUCTURE CONTRIBUTION (GAIC)

Words and expressions in this section 7 have the same meaning as in Part 9B of the *Planning and Environment Act 1987 (Vic)*.

7.1 Work-in-Kind Agreement

This section 7.1 only applies if the Land is subject to a work-in-kind agreement.

(a) The Land is NOT to be transferred under the agreement unless the square box is marked with an "X" ☐

The Land is NOT land in respect of which a GAIC is imposed unless the square box is marked with an "X" ☐

7.2 GAIC Recording

This section 7.2 only applies if there is a GAIC recording.

Any of the following certificates or notices must be attached if there is a GAIC recording. The accompanying boxes marked with an "X" indicate that such a certificate or notice is attached.

(a) Any certificate of release from liability to pay a GAIC ☐

(b) Any certificate of deferral of the liability to pay the whole or part of a GAIC ☐

(c) Any certificate of exemption from liability to pay GAIC ☐

(d) Any certificate of staged payment approval ☐

(e) Any certificate of no GAIC liability ☐

(f) Any notice providing evidence of the grant of a reduction of the whole or part of the liability for a GAIC or an exemption from that liability ☐

(g) A GAIC certificate or notice issued under Part 9B of the *Planning and Environment Act 1987 (Vic)* must be attached if there is no certificate or notice issued under any of sub-sections 7.2 (a) to (f) above. ☐

Not Applicable

8. SERVICES

The services which are marked with an "X" in the accompanying square box are NOT connected to the Land:

☐ Electricity supply

- ☐ Gas supply
- ☐ Water supply
- ☐ Sewerage
- ☒ Telephone

9. TITLE - INFORMATION ABOUT THE VENDOR'S TITLE

Attached are copies of the following documents:

- 9.1 A Register Search Statement and the document, or part of a document referred to as the "diagram location" in that statement which identifies the land and its location.

10. SUBDIVISION

10.1 Unregistered subdivision

This section 10.1 only applies if the Land is subject to a subdivision which is not registered.

Not Applicable

10.2 Staged Subdivision

This section 10.2 only applies if the Land is part of a staged subdivision within the meaning of section 37 of the *Subdivision Act 1988 (Vic)*.

Not Applicable

10.3 Further Plan of Subdivision

Not Applicable

11. DISCLOSURE OF ENERGY EFFICIENCY INFORMATION

(Disclosure of this information is not required under section 32 of the Sale of Land Act 1962 (Vic) but may be included in this Vendor Statement for convenience.)

Details of any energy efficiency information required to be disclosed regarding a disclosure affected building or disclosure affected area of a building as defined by the Building Energy Efficiency Disclosure Act 2010 (Cth)

- (a) to be a building or part of a building used or capable of being used as an office for administrative, clerical, professional or similar based activities including any support facility; and
- (b) which has a net lettable area of at least 1,000m², (but does not include a building under a strata title system or if an occupancy permit was issued less than 2 years before the relevant date);

Not Applicable

12. DUE DILIGENCE CHECKLIST

The *Sale of Land Act 1962 (Vic)* provides that the Vendor or the Vendor's licensed Estate Agent must make a prescribed due diligence checklist available to the Purchasers before offering land for sale that is vacant residential land or land on which there is a residence. The due diligence checklist is NOT required to be provided with, or attached to, this Vendor Statement but the checklist may be attached as a matter of convenience, especially for auction sales or where the Vendor has not appointed an Estate Agent.

13. ATTACHMENTS

Copies of the following title documents are attached:

- 13.1 Register Search Statement - Volume 11153 Folio 774
- 13.2 Plan of Subdivision No PS922940F
- 13.3 Agreement pursuant to Section 173 contained in Instrument AG562517A
- 13.4 Agreement pursuant to Section 173 contained in Instrument AG607063T
- 13.5 Planning Certificate
- 13.6 Melbourne City Council Land Information Certificate
- 13.7 City West Water Information Statement
- 13.8 Land Tax Certificate
- 13.9 Roads Certificate
- 13.10 Melbourne City Council Building Approval Certificate
- 13.11 Property Report which includes Bushfire Prone Area Report
- 13.12 EPA Certificate

Due diligence checklist

What you need to know before buying a residential property

Before you buy a home, you should be aware of a range of issues that may affect that property and impose restrictions or obligations on you, if you buy it. This checklist aims to help you identify whether any of these issues will affect you. The questions are a starting point only and you may need to seek professional advice to answer some of them. You can find links to organisations and web pages that can help you learn more, by visiting the <http://www.consumer.vic.gov.au/duediligencechecklist> (consumer.vic.gov.au/duediligencechecklist).

Urban living

Moving to the inner city?

High density areas are attractive for their entertainment and service areas, but these activities create increased traffic as well as noise and odours from businesses and people. Familiarising yourself with the character of the area will give you a balanced understanding of what to expect.

Is the property subject to an owners corporation?

If the property is part of a subdivision with common property such as driveways or grounds, it may be subject to an owners corporation. You may be required to pay fees and follow rules that restrict what you can do on your property, such as a ban on pet ownership.

Growth areas

Are you moving to a growth area?

You should investigate whether you will be required to pay a growth areas infrastructure contribution.

Flood and fire risk

Does this property experience flooding or bushfire?

Properties are sometimes subject to the risk of fire and flooding due to their location. You should properly investigate these risks and consider their implications for land management, buildings and insurance premiums.

Rural properties

Moving to the country?

If you are looking at property in a rural zone, consider:

- Is the surrounding land use compatible with your lifestyle expectations? Farming can create noise or odour that may be at odds with your expectations of a rural lifestyle.
- Are you considering removing native vegetation? There are regulations which affect your ability to remove native vegetation on private property.
- Do you understand your obligations to manage weeds and pest animals?

Can you build new dwellings?

Does the property adjoin crown land, have a water frontage, contain a disused government road, or are there any crown licences associated with the land?

Is there any earth resource activity such as mining in the area?

You may wish to find out more about exploration, mining and quarrying activity on or near the property and consider the issue of petroleum, geothermal and greenhouse gas sequestration permits, leases and licences, extractive industry authorisations and mineral licences.

Soil and groundwater contamination

Has previous land use affected the soil or groundwater?

You should consider whether past activities, including the use of adjacent land, may have caused contamination at the site and whether this may prevent you from doing certain things to or on the land in the future.

(04/10/2016)

Land boundaries

Do you know the exact boundary of the property?

You should compare the measurements shown on the title document with actual fences and buildings on the property, to make sure the boundaries match. If you have concerns about this, you can speak to your lawyer or conveyancer, or commission a site survey to establish property boundaries.

Planning controls

Can you change how the property is used, or the buildings on it?

All land is subject to a planning scheme, run by the local council. How the property is zoned and any overlays that may apply, will determine how the land can be used. This may restrict such things as whether you can build on vacant land or how you can alter or develop the land and its buildings over time.

The local council can give you advice about the planning scheme, as well as details of any other restrictions that may apply, such as design guidelines or bushfire safety design. There may also be restrictions – known as encumbrances – on the property's title, which prevent you from developing the property. You can find out about encumbrances by looking at the section 32 statement.

Are there any proposed or granted planning permits?

The local council can advise you if there are any proposed or issued planning permits for any properties close by. Significant developments in your area may change the local 'character' (predominant style of the area) and may increase noise or traffic near the property.

Safety

Is the building safe to live in?

Building laws are in place to ensure building safety. Professional building inspections can help you assess the property for electrical safety, possible illegal building work, adequate pool or spa fencing and the presence of asbestos, termites, or other potential hazards.

Building permits

Have any buildings or retaining walls on the property been altered, or do you plan to alter them?

There are laws and regulations about how buildings and retaining walls are constructed, which you may wish to investigate to ensure any completed or proposed building work is approved. The local council may be able to give you information about any building permits issued for recent building works done to the property, and what you must do to plan new work. You can also commission a private building surveyor's assessment.

Are any recent building or renovation works covered by insurance?

Ask the vendor if there is any owner-builder insurance or builder's warranty to cover defects in the work done to the property.

Utilities and essential services

Does the property have working connections for water, sewerage, electricity, gas, telephone and internet?

Unconnected services may not be available, or may incur a fee to connect. You may also need to choose from a range of suppliers for these services. This may be particularly important in rural areas where some services are not available.

Buyers' rights

Do you know your rights when buying a property?

The contract of sale and section 32 statement contain important information about the property, so you should request to see these and read them thoroughly. Many people engage a lawyer or conveyancer to help them understand the contracts and ensure the sale goes through correctly. If you intend to hire a professional, you should consider speaking to them before you commit to the sale. There are also important rules about the way private sales and auctions are conducted. These may include a cooling-off period and specific rights associated with 'off the plan' sales. The important thing to remember is that, as the buyer, you have rights.

REGISTER SEARCH STATEMENT (Title Search) Transfer of Land Act 1958

Page 1 of 1

VOLUME 11153 FOLIO 774

Security no : 124095008130W
Produced 21/01/2022 03:03 PM

LAND DESCRIPTION

Lot 49 on Plan of Subdivision 622940F.
PARENT TITLE Volume 11153 Folio 754
Created by instrument PS622940F Stage 3 21/08/2009

REGISTERED PROPRIETOR

Estate Fee Simple
TENANTS IN COMMON
As to 1 of a total of 2 equal undivided shares
Joint Proprietors
TIAN KHIAM ONG
MUI HONG ELIZABETH EVELYN YVONNE LIM both of 26 JALAN LEBAN SINGAPORE 577563
As to 1 of a total of 2 equal undivided shares
Sole Proprietor
JOYCELYN YUEH LING ONG of 26 JALAN LEBAN SINGAPORE 577563
AG787206N 01/10/2009

ENCUMBRANCES, CAVEATS AND NOTICES

Any encumbrances created by Section 98 Transfer of Land Act 1958 or Section 24 Subdivision Act 1988 and any other encumbrances shown or entered on the plan set out under DIAGRAM LOCATION below.

AGREEMENT Section 173 Planning and Environment Act 1987
AG562517A 15/06/2009

AGREEMENT Section 173 Planning and Environment Act 1987
AG607063T 02/07/2009

DIAGRAM LOCATION

SEE PS622940F FOR FURTHER DETAILS AND BOUNDARIES

ACTIVITY IN THE LAST 125 DAYS

NIL

-----END OF REGISTER SEARCH STATEMENT-----

Additional information: (not part of the Register Search Statement)

Street Address: 5 SMYTH MEWS NORTH MELBOURNE VIC 3051

DOCUMENT END

Imaged Document Cover Sheet


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Document Type	Plan
Document Identification	PS622940F
Number of Pages (excluding this cover sheet)	7
Document Assembled	21/01/2022 15:10

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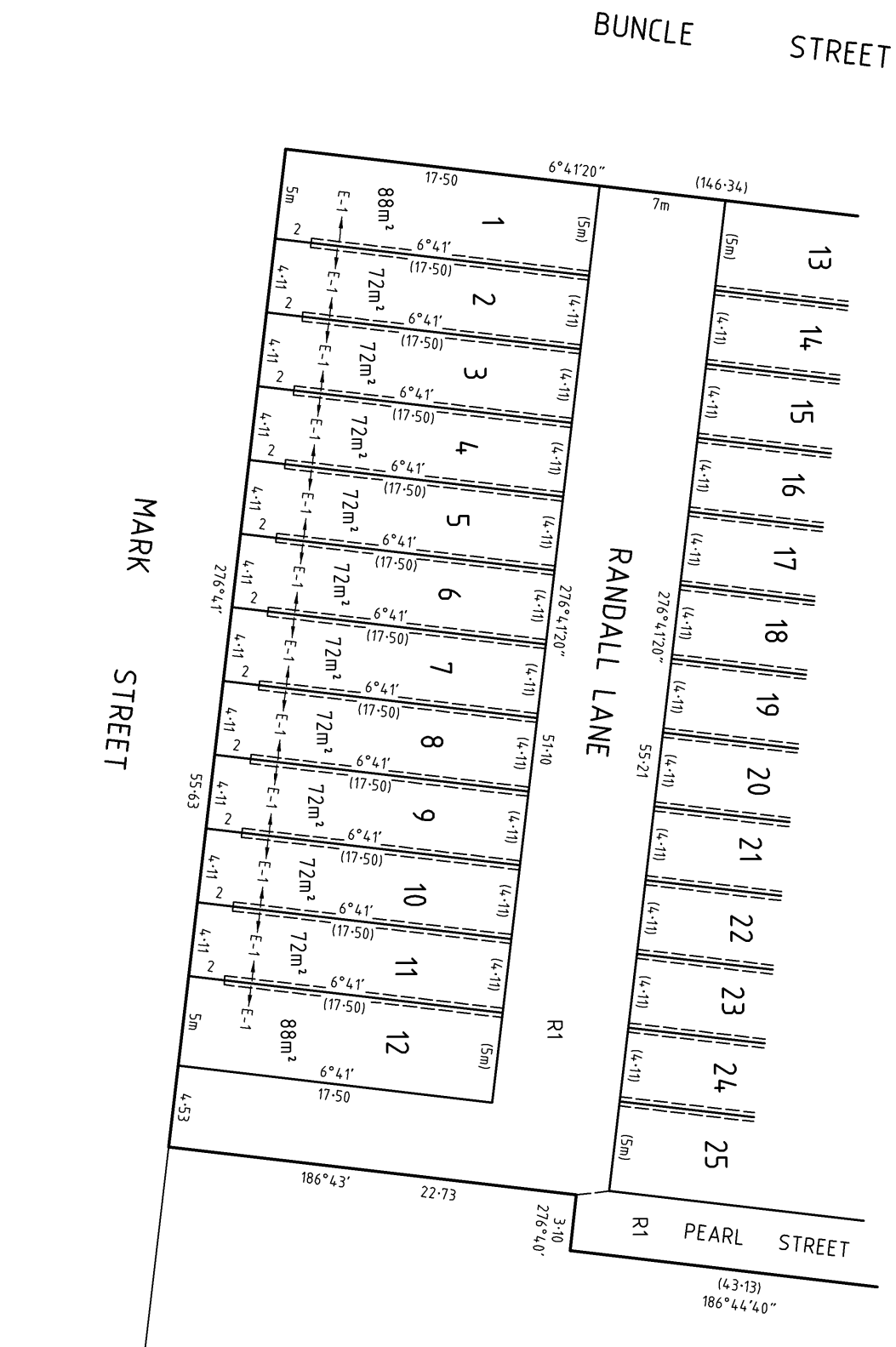
PLAN OF SUBDIVISION		EDITION 2		Plan Number PS 622940F	
Location of Land Parish: JIKA JIKA Section: 93 Crown Allotments: 14, 18, 19, 22, 23, 26, 27, 24 (PT), 25 (PT) & 28 (PT) Title Reference: VOL 10984 FOL 958 & 959 Last Plan Reference: PS543369U LOTS A & B Postal Address: 52-76 BUNCLE STREET NORTH MELBOURNE 3051 MGA Co-ordinates E 318 700 Zone: 55 (of approx. centre of land N 5815 150 in plan)			Council Certification and Endorsement Council Name: MELBOURNE Ref: 1. This plan is certified under section 6 of the Subdivision Act 1988. 2. This plan is certified under section 11(7) of the Subdivision Act 1988. Date of original certification under section 6 / / 3. This is a statement of compliance issued under section 21 of the Subdivision Act 1988. OPEN SPACE (i) A requirement for public open space under section 18 of the Subdivision Act 1988 has/has not been made. (ii) The requirement has been satisfied. (iii) The requirement is to be satisfied in Stage..... Council delegate Date / / Re-certified under section 11(7) of the Subdivision Act 1988 Council Delegate Date / /		
Vesting of Roads and Reserves					
Identifier	Council/Body/Person				
ROAD R1,R2,R3	MELBOURNE CITY COUNCIL		Notations Staging This is a staged subdivision. Planning Permit No. TP-2008-912 Depth Limitation : DOES NOT APPLY <div style="border: 1px solid black; padding: 5px; text-align: center; margin: 10px auto; width: fit-content;">THIS IS A SPEAR PLAN</div> <p>OTHER PURPOSE OF PLAN - REMOVAL OF THE DRAINAGE EASEMENT CREATED IN C/E195445 AND DENOTED E-1 ON PS543369U. <u>GROUND FOR REMOVAL</u> - MELBOURNE CITY COUNCIL PLANNING PERMIT NO. TP-2008-912</p>		
Survey This plan is based on survey. This survey has been connected to permanent marks no(s) --- In Proclaimed Survey Area No. ---					
Easement Information					LRS use only
Legend: E - Encumbering Easement or Condition in Crown Grant in the Nature of an Easement or other Encumbrance A - Appurtenant Easement R - Encumbering Easement (Road)					Statement of Compliance/ Exemption Statement Received FORM 24 DATE 5 / 08 / 2009
Subject Land	Purpose	Width (Metres)	Origin	Land Benefited/In Favour Of	<div style="text-align: center; border: 1px solid black; padding: 10px; margin: 10px auto; width: 80%;"> THIS IS A LAND VICTORIA COMPILED PLAN FOR DETAILS SEE MODIFICATION TABLE HEREIN </div> <div style="text-align: center; border: 1px solid black; padding: 5px; margin: 10px auto; width: 80%;"> SHEET 1 OF 5 SHEETS </div>
E-1	PARTY WALL	0.15	THIS PLAN	RELEVANT ADJOINING LOTS ON THIS PLAN	
<div style="display: flex; justify-content: space-between;"> <div style="width: 30%;">  <p>MILLAR & MERRIGAN PTY. LTD. ACN 005 541 668 126 MERRINDALE DRIVE, CROYDON Telephone (03) 8720 9500 Facsimile (03) 8720 9501 Email survey@millermerrigan.com.au PO BOX 247 CROYDON VIC 3136</p> </div> <div style="width: 40%; text-align: center;"> LICENSED SURVEYOR Bradley Terjesen SIGNATURE DIGITALLY SIGNED REF 13535S1 VERSION 6: 7/7/2009 </div> <div style="width: 25%; text-align: center;"> COUNCIL DELEGATE SIGNATURE Original sheet size A3 </div> </div>					

PLAN OF SUBDIVISION

Stage No.

Plan Number

PS 622940F



Sheet 2

MILLAR & MERRIGAN PTY. LTD.

ACN 005 541 668

126 MERRINDALE DRIVE, CROYDON

Telephone (03) 8720 9500

Facsimile (03) 8720 9501

Land Development Consultants

ORIGINAL

SCALE SHEET

1:250

SCALE

LENGTHS ARE IN METRES

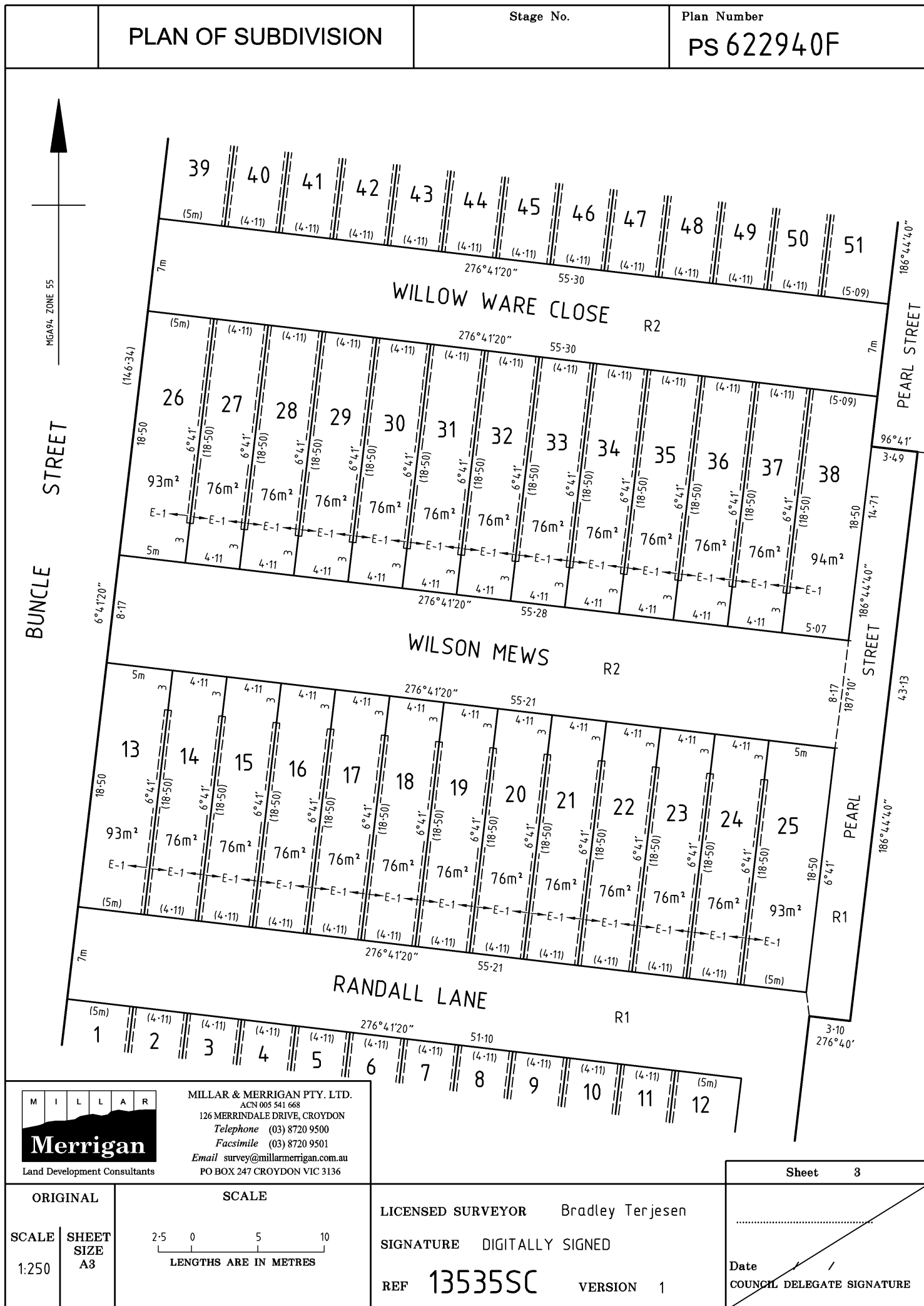
LICENSED SURVEYOR Bradley Terjesen

SIGNATURE **DIGITALLY SIGNED**

REF 135355C VERSION 1

Date _____

~~COUNCIL~~ DELEGATE SIGNATURE



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 ACN 005 541 668
 126 MERRINDALE DRIVE, CROYDON
 Telephone (03) 8720 9500
 Facsimile (03) 8720 9501
 Email survey@millermerrigan.com.au
 PO BOX 247 CROYDON VIC 3136

Land Development Consultants

ORIGINAL

SCALE

SCALE
1:250

SHEET
SIZE
A3

2.5 0 5 10
LENGTHS ARE IN METRES

LICENSED SURVEYOR Bradley Terjesen

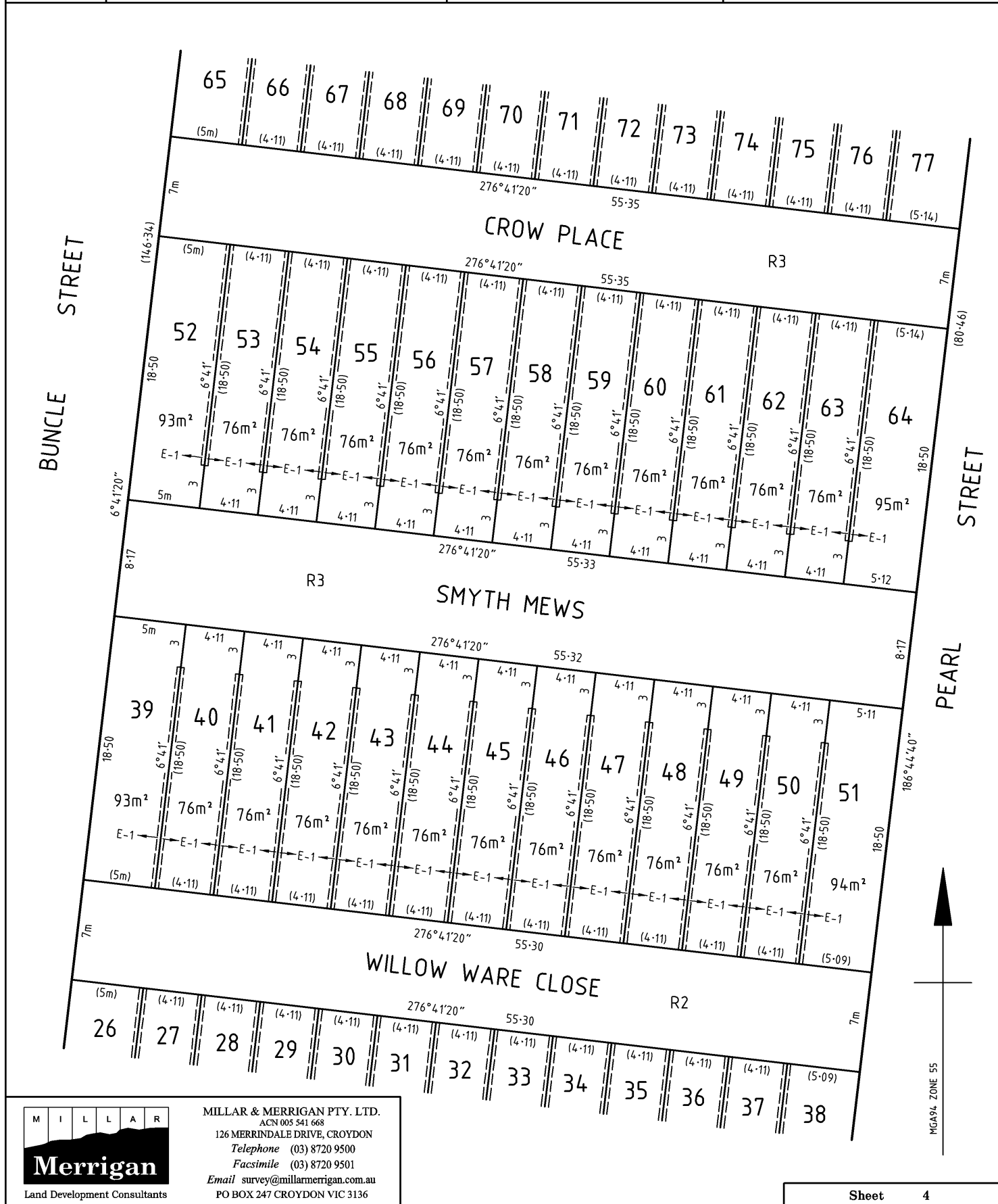
SIGNATURE DIGITALLY SIGNED

REF **13535SC** VERSION 1

Sheet 3

Date /
COUNCIL DELEGATE SIGNATURE

	PLAN OF SUBDIVISION	Stage No.	Plan Number PS 622940F
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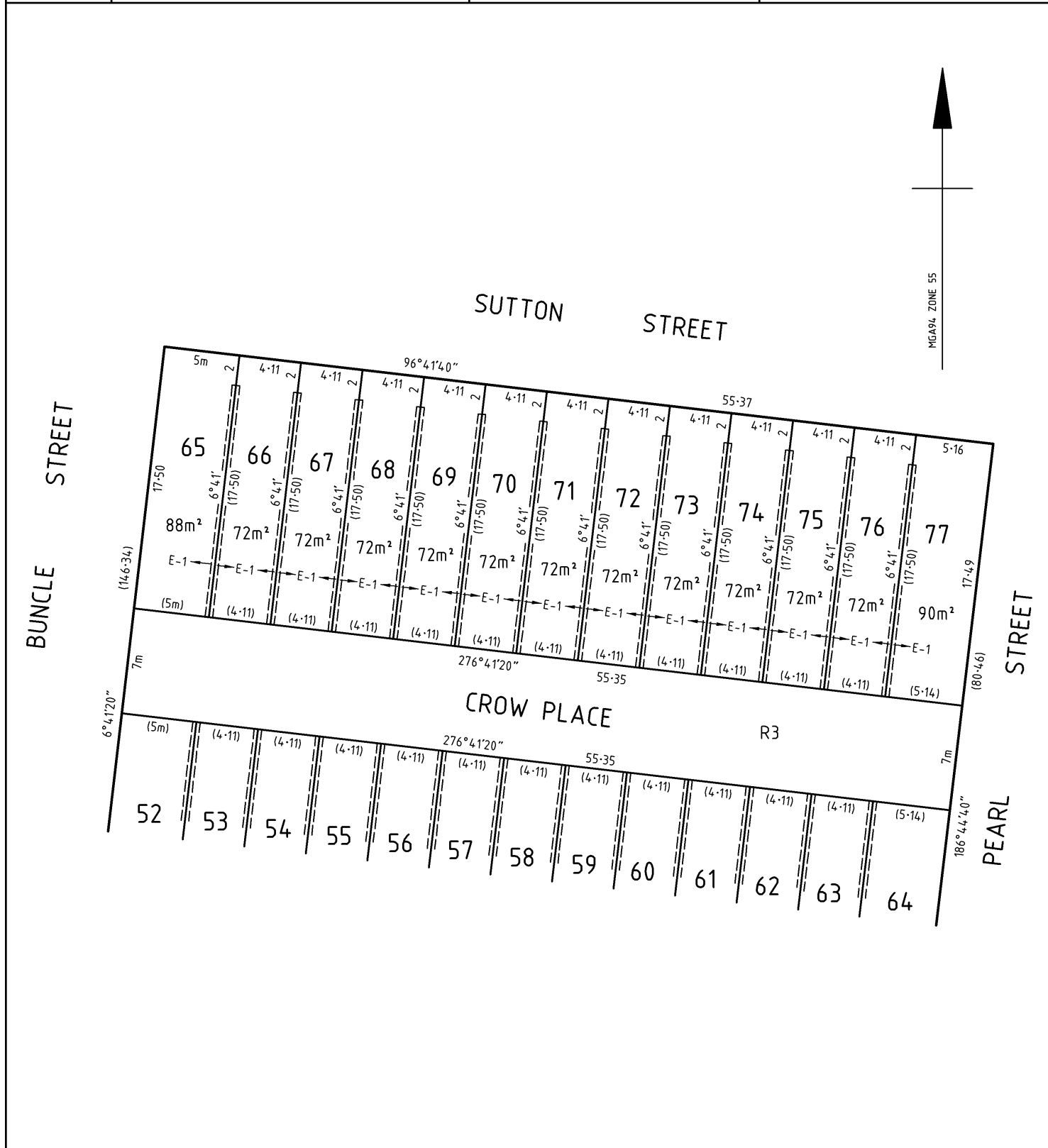



<p>ORIGINAL</p> <p>SCALE</p> <p>1:250</p>	<p>SCALE</p> <p>2.5 0 5 10</p> <p>LENGTHS ARE IN METRES</p>	<p>LICENSED SURVEYOR Bradley Terjesen</p> <p>SIGNATURE DIGITALLY SIGNED</p> <p>REF 13535SC VERSION 1</p>	<p>Sheet 4</p> <p>Date /</p> <p>COUNCIL DELEGATE SIGNATURE</p>
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Email survey@millermerrigan.com.au
PO BOX 247 CROYDON VIC 3136

	PLAN OF SUBDIVISION	Stage No.	Plan Number PS 622940F
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 <p>Merrigan Land Development Consultants</p>		<p>MILLAR & MERRIGAN PTY. LTD. ACN 005 541 668 126 MERRINDALE DRIVE, CROYDON Telephone (03) 8720 9500 Facsimile (03) 8720 9501 Email survey@millermerigan.com.au PO BOX 247 CROYDON VIC 3136</p>		<p>Sheet 5</p>
<p>ORIGINAL</p> <p>SCALE</p> <p>1:250</p>	<p>SHEET SIZE A3</p> <p>SCALE</p> <p>2.5 0 5 10</p> <p>LENGTHS ARE IN METRES</p>	<p>LICENSED SURVEYOR Bradley Terjesen</p> <p>SIGNATURE DIGITALLY SIGNED</p> <p>REF 13535SC VERSION 1</p>		<p>Date /</p> <p>COUNCIL DELEGATE SIGNATURE</p>

Plan of Subdivision PS622940F

Certification by Council (Form 5)

SUBDIVISION (PROCEDURES) REGULATIONS 2000

SPEAR Reference Number: S002434B

Plan Number: PS622940F

Council Name: Melbourne City Council

Council Reference Number 1: TP-2008-912

Council Reference Number 2: SA-2008-23

Surveyor's Plan Version: 6

Certification

This plan is certified under section 6 of the Subdivision Act 1988

Public Open Space

A requirement for public open space under section 18 of the Subdivision Act 1988

Has been made and the requirement has not been satisfied

Digitally signed by Council Delegate: Christopher Neil Blackwood

Organisation: Melbourne City Council

Date: 20/07/2009

APPLIES TO MASTER PLAN (STAGE 1) ONLY

[illegible]

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Section 181

Form 18

**APPLICATION BY A RESPONSIBLE AUTHORITY FOR THE
MAKING OF A RECORDING OF AN AGREEMENT**

Planning and Environment Act 1987

Lodged by:

Name:

Mallesons Stephen Jaques

Phone:

Code : 1177B



Address:

Ref:

Customer Code: 1177B

The Authority having made an agreement referred to in section 181(1) of the **Planning and Environment Act 1987** requires a recording to be made in the Register for the land.

Land: *Lot A and Lot B on plan of subdivision No. PS543369U being the land described in
Certificates of Title Volume 10984 Folios 958 and 959.*

Authority:

**Melbourne City Council
Town Hall
90 Swanston Street
Melbourne, Victoria, 3000**

Section and Act under which agreement made:

Section 173 of the Planning and Environment Act 1987.

A copy of the Agreement is attached to this Application.

Signature for the Authority:

Name of Officer:

Kim Wood

Title of Officer:

Manager Legal Services

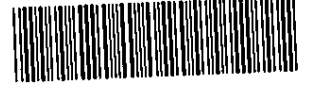
Date:

15 June 2009

SECTION 173 AGREEMENT

AG562517A

15/06/2009 \$99.90 173



Dated the 12th day of June, 2009

MELBOURNE CITY COUNCIL

and

NORTH NORTH MELBOURNE PTY LTD ACN (103 762 563)

Agreement under Section 173 of the *Planning and Environment Act 1987*

Land Lots A and B on registered plan of subdivision PS543369U, being held under Certificates of Title Vol. 10984 Fols. 958 & 959 at Nos. 52-76 BUNCLE STREET, NORTH MELBOURNE

MELBOURNE CITY COUNCIL
Legal Services Branch
3rd Floor Town Hall
90 Swanston Street
MELBOURNE VIC 3000

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15/06/2009 \$99.90 173



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AG562517A



DATE: 12 June 2009

PARTIES: MELBOURNE CITY COUNCIL of Town Hall, Swanston Street,
Melbourne, Victoria 3000 ("Council")

The Party referred to in Item 1 of the Schedule ("Owner")

RECITALS:

- A. The Council is the responsible authority for the administration of the Melbourne Planning Scheme pursuant to the provisions of the *Planning and Environment Act 1987*.
- B. The Owner is or is entitled to be the registered proprietor of the land referred to in Item 2 of the Schedule.
- C. The Council issued the permit referred to in Item 3 of the Schedule.
- D. The permit allows the use or development referred to in Item 4 of the Schedule.
- E. The permit is conditional on the Owner entering into an Agreement under Section 173 of the *Planning and Environment Act 1987* with the responsible authority. The Agreement must provide for the matters referred to in Item 5 of the Schedule.
- F. The subject land is encumbered by a Mortgage, details of which are referred to in Item 6 of the Schedule.

OPERATIVE PROVISIONS:

1. DEFINITIONS

In this Agreement the terms and words set out in this clause shall have the following meanings unless otherwise indicated by the context:

- 1.1. "Act" means the *Planning and Environment Act 1987*.
- 1.2. "Commencement Date" means the date on which this Agreement commences and referred to in Item 7 of the Schedule.
- 1.3. "Council's Representative" means the person referred to in Item 8 of the Schedule.
- 1.4. "Development Permit" means planning permit no. TP-2008-639/A as amended from time to time by Council
- 1.5. "Land" means the land described in Item 2 of the Schedule.
- 1.6. "Lot" means a lot on the Plan.
- 1.7. "Owner" means the person or persons entitled from time to time to be registered by the Registrar of the Land Titles Office as proprietor or proprietors of an estate in fee simple of the Land or any part of it.



- 1.8. **"Permit"** means the Planning Permit referred to in Item 3 of the Schedule.
- 1.9. **"Plan"** means the Plan of Subdivision referred to in Item 9 of the Schedule.
- 1.10. **"Planning Approval"** shall mean and include any planning permit issued in accordance with the Act.
- 1.11. **"Scheme"** means the Melbourne Planning Scheme.
- 1.12. **"Termination Date"** means the date or specified event referred to in Item 10 of the Schedule on which this Agreement shall end in accordance with Section 177 of the Act.
- 1.13. **"Works"** means the works specified in Item 11 of the Schedule.

2. INTERPRETATION

- 2.1. Unless the context provides otherwise, the singular includes the plural and the plural includes the singular.
- 2.2. A reference to a gender includes a reference to each other gender.
- 2.3. A reference to a person includes a reference to a firm, corporation or other corporate body.
- 2.4. If the Owner is more than one person this Agreement binds them jointly and each of them severally.
- 2.5. A reference to legislation includes a modification or re-enactment of it, a legislative provision substituted for it or amendment of it, and a regulation or statutory instrument issued under it.
- 2.6. All headings are for ease of reference only and shall not be taken into account in the construction or interpretation of this Agreement.
- 2.7. The recitals to this Agreement are and will be deemed to form part of this Agreement.
- 2.8. Any reference in this Agreement to the Council includes its agents, officers, employees, servants, workers and contractors.

3. AGREEMENT UNDER SECTION 173 OF THE ACT

The Council and the Owner agree that without limiting or restricting their respective powers to enter into this Agreement and insofar as it can be so treated, this Agreement is made pursuant to Section 173 of the Act.

4. EFFECT OF AGREEMENT

4.1. Agreement runs with the Land

This Agreement shall be deemed to come into force and effect as from the date of commencement of the Agreement and the benefit and burden of this Agreement shall run with and be annexed to the Land.

4.2. Planning Objectives

The parties acknowledge that the provisions of this Agreement are intended to achieve or advance the objectives of planning in Victoria and the objectives of the Scheme and any matters incidental thereto.

4.3. Binding Covenants

The obligations of the Owner under this Agreement will take effect as separate and several covenants which shall be annexed to and run at law and equity with the Land to bind the Owner and each successor, assign or transferee of the Owner, the registered proprietor, the mortgagee in possession and the beneficial owner for the time being of the Land and every part of the Land.

5. SUCCESSORS IN TITLE

Without limiting the operation or effect which this Agreement has, the Owner shall until such time as a memorandum of this Agreement is registered on the title to the Land ensure that the Owner's successors in title:

- 5.1. give effect to and do all acts and sign all documents which will require those successors to give effect to this Agreement; and
- 5.2. execute under seal a deed agreeing to be bound by the terms of this Agreement and upon such execution this Agreement shall continue as if executed by such successors as well as by the parties to this Agreement as if the successor's name appeared in each clause in which the name of the Owner appears and in addition to the name of the Owner.

6. COVENANTS OF OWNER

The Owner covenants and agrees that:

- 6.1. works approved under the Development Permit will be carried out in accordance with the Development Permit including the endorsed plans of the Development Permit (as amended from time to time by Council);
- 6.2. once the buildings and works approved under the Development Permit have commenced, construction must continue to the reasonable satisfaction of the Council until all buildings and works have been completed. Alternatively, the buildings and works approved under the Development Permit may be completed in stages, as shown in the plan attached as Appendix A of this Agreement, which may only be altered with the written approval of the Council.
- 6.3. there are no mortgages, liens charges or other encumbrances or leases or any rights inherent in any person other than the Owner affecting the Land not disclosed by the usual searches or notified to the Council; and
- 6.4. no part of the Land is subject to any rights obtained by adverse possession or subject to any easements or rights described or referred to on Section 42 of the *Transfer of Land Act 1958*; and
- 6.5. it will do all things necessary including the signing of any further agreements, undertakings, covenants and consents, approvals or other documents necessary for the purpose of ensuring that the Owner carries out the Owner's covenants, agreements and obligations under this Agreement and to enable the Council to enforce the performance by the Owner of such covenants and undertakings; and
- 6.6. it consents to the Council making application to the Registrar of the Land Titles Office to make a recording of this Agreement in the Register on the folio of the Register which relates to the Land in accordance with Section 181 of the Act and do all things necessary to enable the Council to do so including signing any further agreement, acknowledgment or document or procuring the consent to this Agreement of any mortgagee or caveator to enable the recording to be made in the Register under that Section;
- 6.7. it will indemnify and keep indemnified the Council and the Council's agents in relation to all costs, expenses, losses or damages whatsoever which the Council or its agents may sustain, incur or suffer or be or become liable for in respect of any suit, action, proceeding, judgment

AG562517A



or claim brought by any person whatsoever arising from or referable to the matters referred to in this Agreement or any breach of this Agreement.

- 6.8. The Owner is, or is entitled to be, the registered proprietor of the Land.

7. COSTS

- 7.1. The Owner shall forthwith pay on demand to the Council the Council's costs and expenses including legal expenses of and incidental to:

7.1.1. the negotiation, preparation, execution registration and enforcement of this Agreement including all moneys, costs (including charges for consultants, architects and legal advice and assistance) charges and expenses for which the Council may pay, incur or expend, in consequence of any default in the performance and observance of any covenant, proviso, condition or agreement herein contained or implied and on the Owner's part to be performed and observed or under or in exercise or enforcement or attempted exercise or enforcement of any right, power or remedy herein contained;

7.1.2. administration and supervision costs of the Council properly and reasonably incurred in relation to this Agreement except for administration and supervision which the Council is obliged to undertake pursuant to its statutory duties; and

7.1.3. any request by the Owner for the Council's consent or approval where such consent or approval is required under any covenant, proviso, condition or agreement herein contained or implied immediately the Council shall have expended or incurred the same.

8. DEFAULT OF OWNER

In the event of the Owner defaulting or failing to perform any of the Owner's obligations under this Agreement, the Council may without prejudice to any other remedies rectify such default and the cost of any works undertaken by the Council to rectify any default shall be borne by the Owner and any such costs shall be capable of being recovered by the Council in any Court of competent jurisdiction as a civil debt recoverable summarily.

9. COUNCIL'S POWERS

9.1. Default Notice

9.1.1. Should the Owner fail or neglect to carry out or complete the Works in accordance with the Permit, the Council's Representative may cause to be served on the Owner a notice in writing ("the notice") specifying the works in respect of which the Owner is in default.

9.1.2. Should the default continue for a period of 14 days after the service of the notice the Council may enter upon the Land and cause the works to be constructed or completed and made good or cause any faults defects or failures in the works which have developed appeared or occurred within a period of six months from the date of completion of construction of the works to be maintained repaired or made good and for any such purpose the Council may employ a contractor or contractors and professional advisers.

9.1.3. The notice may set out the cost as estimated by the Council's Representative of constructing or completing the construction of the works. If the Owner does not comply with the notice to remedy the default the Council's Representative may cause to be served on the Owner a demand in writing ("the demand") for the amount of the costs specified in the notice.

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- 9.1.4. The costs specified in the demand shall be paid forthwith by the Owner to the Council and the Council may exercise its rights under any Bank Guarantees provided by the Owner to the Council in order to recover the costs.

9.2. Completion of Works

- 9.2.1. As soon as practicable after the completion of the work the Council's Representative shall certify the actual costs of the work to the Council. The certificate of the Council's Representative shall be final, binding and conclusive as between the parties to this Agreement. The difference between the actual cost and the estimated cost paid to the Council pursuant to this Clause shall be paid by the Owner to the Council or by the Council to the Owner as the case may require.
- 9.2.2. If the notice does not require the Owner to pay the estimated costs, the actual costs of any works carried out by or on behalf of the Council pursuant to this Clause of this Agreement shall be paid on demand by the Owner to the Council.
- 9.2.3. If any Bank Guarantee referred to above is insufficient to recover the actual cost of the work carried out by or on behalf of the Council pursuant to this Clause such cost shall be capable of being recovered by the Council in any Court of competent jurisdiction as a civil debt recoverable summarily.
- 9.2.4. The Owner covenants and agrees that the Owner will indemnify and keep indemnified the Council from and against all costs, expenses, losses or damages whatsoever which they may sustain, incur or suffer or be or become liable for or in respect of any suit, action, proceeding, judgment or claim brought by any person whatsoever arising from or referable to the carrying out of works referred to in this Clause.

10. INTEREST AND CHARGE

- 10.1. If any of the monies payable pursuant to this Agreement are not paid by the due date, the amount then due and unpaid shall attract interest from the relevant due date until the date when such money is paid at the rate of interest from time to time which the Council may be authorised by legislation to charge as interest on any unpaid rates and charges.
- 10.2. Any payments made for the purposes of this Agreement shall be appropriated first in payment of any interest and unpaid costs and expenses of the Council and shall then be applied in repayment of the unpaid sum.

11. NOTICES

- 11.1. A notice or other communication required or permitted to be served by a party on another party shall be in writing and may be served at the address, telephone or facsimile details of the parties are set out in the Schedule,
- 11.1.1. by delivering it personally to that party;
- 11.1.2. by sending it by prepaid post; or
- 11.1.3. by sending it by facsimile provided that a communication sent by facsimile shall be confirmed immediately in writing by the sending party by hand delivery or prepaid post,
- 11.2. and notice or other communication is deemed served:
- 11.2.1. if delivered, on the next following business day;
- 11.2.2. if posted, on the expiration of two business days after the date of posting; or



11.2.3. if sent by facsimile, at the time recorded by the facsimile machine of the party receiving the transmission provided always that if the time recorded is after business hours, the time will be deemed to be 9.00am on the business day following the transmission.

12. FURTHER ASSURANCE

Each of the parties to this Agreement shall respectively sign and execute all further documents and deeds and do all acts and things as shall reasonably be required to effect the terms and conditions contained in this Agreement.

13. OWNER'S ACKNOWLEDGMENT

The Owner expressly acknowledges and agrees that nothing in this Agreement nor the performance by the Owner of any of its obligations under this Agreement does or will restrain, limit or otherwise fetter the exercise by the Council of the powers, duties and discretions which the Council has or may have under the scheme and the Subdivision Act 1988 to consider, approve, amend or require in respect of future subdivision/s of the Land or any part/s thereof.:

14. NO WAIVER

Any time or other indulgence granted by the Council to the Owner or any variation of the terms and conditions of this Agreement or any judgment or order obtained by the Council against the Owner will not in any way amount to a waiver of any of the rights or remedies of the Council in relation to the terms of this Agreement.

15. SEVERABILITY

If a court, arbitrator, tribunal or other competent authority determines that a word, phrase, sentence, paragraph or clause of this Agreement is unenforceable, illegal or void then it shall be severed and the other provisions of this Agreement shall remain operative.

16. MORATORIUM

To the fullest extent to which it may from time to time be lawful so to do the provisions of all statutes (including moratorium statutes) whether now existing or hereafter to come into force and operating directly or indirectly to lessen or otherwise modify or vary or affect in favour of any party the obligation of that party or stay, postpone or otherwise prevent or prejudicially affect the exercise by a party of all or any to the rights, powers and remedies conferred on the party by this Agreement are hereby expressly negated and excluded from this Agreement.

17. COUNTERPARTS

This Agreement may be executed in any number of counterparts each of which when so executed shall be deemed to be an original and such counterparts shall together constitute but one agreement.

18. GOVERNING LAW

This Agreement takes effect, is governed by and shall be construed in accordance with the laws from time to time in force in the State of Victoria.

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19. ENDING OF AGREEMENT

- 19.1. This Agreement shall cease to operate on the termination date or otherwise as contemplated in Item 10 of the Schedule.
- 19.2. As soon as reasonably practicable after the Agreement has ended the Council will at the request and at the cost of the Owner make application to the Registrar of Titles under Section 183 (2) of the Act to cancel the recording of this Agreement on the Register.

EXECUTED as a DEED

SIGNED SEALED AND DELIVERED by Chris
Blackwood, Team Leader Land Survey
pursuant to an Instrument of Delegation
authorised by Resolution of Council.

)
)
)
)

Witness

EXECUTED by NORTH NORTH MELBOURNE
PTY LTD (formerly known as Princewell Pty
Ltd) in accordance with section 127 of the
Corporations Act 2001 (Cth) in the presence of:

)
)
)
)

Director

Director/Secretary

EXECUTED for and on behalf of **AUSTRALIAN AND
NEWZEALAND BANKING GROUP** ABN 11 005 357
522 under Power of Attorney dated
18/11/2002 a certified copy of which is filed in
Permanent Order Book No. 277 at Page 19 Item
5 by its
attorney Mandy Yuen [attorney
name] who certifies that he/she is a
Manager [Manager/Senior
Executive] and that he/she has not received notice of
revocation of that Power in the presence of

)
)

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**SCHEDULE**

ITEM NO.	ISSUE	SPECIFICATION
1.	Owner	North North Melbourne Pty Ltd (ACN 103 762 563)
2.	Land description by address and Certificate of Title details	Lots A and B on registered plan of subdivision PS543369U, being held under Certificates of Title Vol. 10984 Fols. 958 & 959 at Nos. 52-76 Buncle Street, North Melbourne
3.	Permit Number and date issued	TP-2008-912 as amended from time to time by Council)
4.	What the Permit allows	Subdivision in stages in accordance with PS622940F and the removal of the drainage easement created in C/E 195445 and Denoted as E-1 on PS543369U
5.	What the condition requiring the Agreement provides for	The works approved under City of Melbourne Planning Permit TP-2008-639/A or subsequent updated permit ("the development permit"), must occur to the satisfaction of the Responsible Authority prior to the issuing of a statement of compliance for the subdivision. Alternatively a legally binding agreement under Section 173 of the Planning and Environment Act 1987 shall be entered into between the land owner and the Responsible concerning the further development of the lots. The agreement must ensure that the lots are developed in accordance with the latest endorsed plans of the development permit and that the building and other works associated with that permit must be carried out "as one" or in stages/grouping as and if agreed to by the responsible authority. Further more the agreement must indemnify Council against any claims on the matter and must also contain such other conditions as may be required by Council's solicitors. The owner of the land being subdivided must pay all of Council's reasonable legal costs and other expenses regarding the agreement, including Land Registry registration fees.
6.	Mortgage details including name and address of Mortgagee, date mortgage and registered number (if applicable)	Australia and New Zealand Banking Group Limited ABN 11 005 357 522 Level 10, 530 Collins Street Melbourne VIC 3000
7.	Commencement date	The date of this agreement
8.	Council's Representative is:	Chris Blackwood, Team Leader Land Survey
9.	Plan of Subdivision Reference Number	PS622940F

SECTION 173 AGREEMENT

10.	Termination date or specified event	<p>By agreement between the parties,</p> <p>Or to Council's satisfaction</p> <p>that the Owner's obligations under Clauses 6.1 and 6.2 have been met</p> <p>and</p> <p>the subdivision process(which may be staged) of the Land has been completed</p>
11.	Works to be carried out under the Permit	Not applicable
12.	Address, phone and facsimile of Council	<p>Melbourne City Council</p> <p>Town Hall, Swanston Street</p> <p>Melbourne</p> <p>Ph: 9658 8581</p> <p>Facsimile: 9658 9179</p>
13.	Address, phone and facsimile of Owner	<p>North North Melbourne Pty Ltd</p> <p>Level 10, 650 Chapel Street</p> <p>South Yarra VIC 3141</p> <p>Ph: 9825 5000</p> <p>Facsimile: 9827 0522</p>



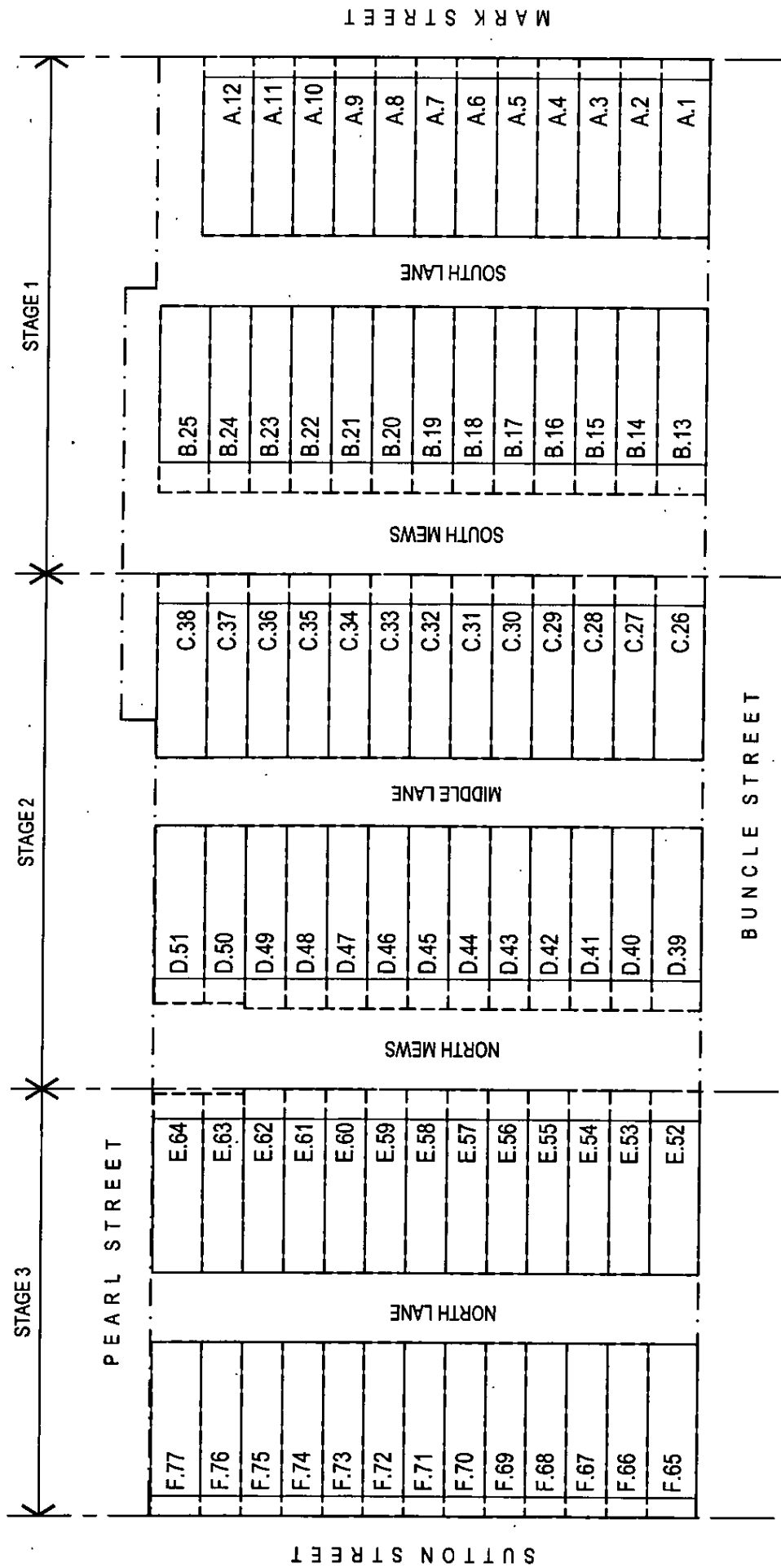
SECTION 173 AGREEMENT

APPENDIX A

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conrad architects

Preliminary - Not for Construction. Copyright conrad architects
Studio 8, Level 8, 180 Russell St, Melbourne VIC 3000
T +61 3 9850 0507 studio@conradarchitects.com

Project: Park Terraces (52-76 Buncle St, North Melbourne)
Title: Construction Staging Plan
Date: June '09 Scale: NTS
Drawing: SK50 rev A

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Section 181

Form 18

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**APPLICATION BY A RESPONSIBLE AUTHORITY FOR THE
MAKING OF A RECORDING OF AN AGREEMENT**

Planning and Environment Act 1987

Lodged by:

Name:

Mallesons Stephen Jaques

Phone:

Code : 1177B

Address:



Ref:

Customer Code: 1177B

The Authority having made an agreement referred to in section 181(1) of the **Planning and Environment Act 1987** requires a recording to be made in the Register for the land.

Land: *Lot A and Lot B on plan of subdivision No. PS543369U being the land described in
Certificates of Title Volume 10984 Folios 958 and 959.*

Authority:

**Melbourne City Council
Town Hall
90 Swanston Street
Melbourne, Victoria, 3000**

Section and Act under which agreement made:

Section 173 of the Planning and Environment Act 1987.

A copy of the Agreement is attached to this Application

Signature for the Authority:

Name of Officer:

Kim Wood

Title of Officer:

Manager Legal Services

Date:

15 June 2009

SECTION 173 AGREEMENT

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Dated the 12th day of June, 2009

MELBOURNE CITY COUNCIL

and

**WILLOW WARE AUSTRALIA PTY LTD
(ACN 004 316 027)**

and

**NORTH NORTH MELBOURNE PTY LTD
(ACN 103 762 563)**

Agreement under Section 173 of the *Planning and
Environment Act 1987*

Land 52 – 76 Buncle Street, North Melbourne

**MELBOURNE CITY COUNCIL
Legal Services Branch
3rd Floor Town Hall
90 Swanston Street
MELBOURNE VIC 3000**

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DATE: 12 June 2009

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PARTIES: MELBOURNE CITY COUNCIL of Town Hall, Swanston Street,
Melbourne, Victoria 3000 ("Council")

The Party referred to in Item 1 of the Schedule ("Willow Ware Australia Pty Ltd
(ACN 004 316 027)")

The Party referred to in Item 1A of the Schedule ("Developer")

RECITALS:

- A. The Council is the responsible authority for the administration of the Melbourne Planning Scheme pursuant to the provisions of the *Planning and Environment Act 1987*.
- B. Willow Ware is or is entitled to be the registered proprietor of the land referred to in Item 2 of the Schedule.
- C. Willow Ware has entered into a contract of sale of the Land, with the Developer.
- D. The Council issued the permit referred to in Item 3 of the Schedule.
- E. The permit allows the use or development referred to in Item 4 of the Schedule.
- F. The permit is conditional on Willow Ware and the Developer entering into an Agreement under Section 173 of the *Planning and Environment Act 1987* with the responsible authority. The Agreement must provide for the matters referred to in Item 5 of the Schedule.
- G. The subject land is encumbered by a Mortgage, details of which are referred to in Item 6 of the Schedule.

OPERATIVE PROVISIONS:

1. DEFINITIONS

In this Agreement the terms and words set out in this clause shall have the following meanings unless otherwise indicated by the context:

- 1.1. "Act" means the *Planning and Environment Act 1987*.
- 1.2. "Environmental Auditor" means a person appointed under the *Environment Protection Act 1970* (Vic), as defined in section 4 of this act.
- 1.3. "Clean" means not Contaminated.
- 1.4. "Commencement Date" means the date on which this Agreement commences and referred to in Item 7 of the Schedule.
- 1.5. "Contaminated" or "Contamination" means the presence in, on or under land of a substance (whether a solid, liquid or gas) at a concentration above the concentration at which the substance is normally present in, on or under (respectively) land in the same locality, being a presence that presents a risk of harm to human health or to any other aspect of the Environment. For the purpose of this definition a substance may present a risk of harm either

on its own or by reason of the presence of or interaction with another substance, structure or other matter.

- 1.6. **"Council's Representative"** means the person referred to in Item 8 of the Schedule.
- 1.7. **"Developer"** means the company referred to in Item 1A of the Schedule, or such other person as may carry out the Development in respect of some or all of the Land.
- 1.8. **"Development"** means the buildings and works to be carried out pursuant to the Permit.
- 1.9. **"Environment"** means all components of the earth, including:
 - a) land, air and water;
 - b) any layer of the atmosphere;
 - c) any organic or inorganic matter;
 - d) sound and odours;
 - e) any living organism; and
 - f) natural or manmade or modified features or structures,and includes ecosystems and all elements of the biosphere.
- 1.10. **"Environmental Auditor"** means a person who is accredited as an environmental auditor in accordance with the *Environment Protection Act 1970* (Vic).
- 1.11. **"Environmental Notice"** means any direction, order, demand, licence or other requirement from a government agency to take any action or refrain from taking any action in respect of the Land.
- 1.12. **"Existing Contamination"** means the presence in, on or under land of a substance (whether a solid, liquid or gas) at a concentration above the concentration at which the substance is normally present in, on or under (respectively) land in the same locality, being a presence that presents a risk of harm to human health or to any other aspect of the Environment and which existed as at the date of issue of the Statement of Environmental Audit. For the purpose of this definition a substance may present a risk of harm either on its own or by reason of the presence of or interaction with another substance, structure or other matter.
- 1.13. **"Future Owner"** means a registered proprietor of the Land or any part of the Land (from time to time) other than Willow Ware, the Developer or the Council.
- 1.14. **"Groundwater"** means any water contained in or occurring in a geological structure or formation.
- 1.15. **"Groundwater Management Plan"** means the groundwater management plan prepared by Willow Ware in accordance with the Statement of Environmental Audit, a copy of which is Attachment B of this Agreement, which forms part of Environmental Management Plan: Willow Ware Australia Pty Ltd, 52.76 Buncle Street, North Melbourne, Victoria (Coffey Environments Ref: ENVIABTF08367DA-R04; May 2009).
- 1.16. **"Groundwater Quality Restricted Use Zone"** means a zone as in Clause 19 of the *State Environment Protection Policy (Groundwaters of Victoria)*.
- 1.17. **"Land"** means the land described in Item 2 of the Schedule.
- 1.18. **"Lot"** means a lot on the Plan.

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- 1.19. **"Owner"** means the person or persons entitled from time to time to be registered by the Registrar of the Land Titles Office as proprietor or proprietors of an estate in fee simple of the Land or any part of it.
- 1.20. **"Permit"** means the Planning Permit referred to in Item 3 of the Schedule.
- 1.21. **"Plan"** means the Plan of Subdivision referred to in Item 9 of the Schedule.
- 1.22. **"Planning Approval"** shall mean and include any planning permit issued in accordance with the Act.
- 1.23. **"Pollution"** means the deposit, release, emission or discharge into the Environment of a substance so that the condition of the Environment is so changed as to make or be reasonably expected to make the Environment noxious or poisonous, and/or is directly or indirectly harmful or potentially harmful to any aspect of the Environment, and includes:
 - a) pollution of water;
 - b) pollution of air; and
 - c) pollution of land.
- 1.24. **"Scheme"** means the Melbourne Planning Scheme.
- 1.25. **"Statement of Environmental Audit"** means the Statement of Environmental Audit prepared by Richard Graham of Sinclair Knight Merz, in relation to the Land, a copy of is Attachment A of this Agreement and which forms part of the Summary Environmental Audit Report: 52-76 Bunclie Street, North Melbourne, Victoria (May 2009).
- 1.26. **"Termination Date"** means the date or specified event referred to in Item 10 of the Schedule on which this Agreement shall end in accordance with Section 177 of the Act.
- 1.27. **"Willow Ware"** means Willow Ware Australia Pty Ltd (ACN 004 316 027) and includes its agents, officers, employees, servants, workers and contractors.
- 1.28. **"Works"** means the works referred to in Item 11 of the Schedule to be carried out pursuant to the Permit.

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2. INTERPRETATION

- 2.1. Unless the context provides otherwise, the singular includes the plural and the plural includes the singular.
- 2.2. A reference to a gender includes a reference to each other gender.
- 2.3. A reference to a person includes a reference to a firm, corporation or other corporate body.
- 2.4. If the Owner is more than one person this Agreement binds them jointly and each of them severally.
- 2.5. A reference to legislation includes a modification or re-enactment of it, a legislative provision substituted for it or amendment of it, and a regulation or statutory instrument issued under it.
- 2.6. All headings are for ease of reference only and shall not be taken into account in the construction or interpretation of this Agreement.
- 2.7. The recitals to this Agreement are and will be deemed to form part of this Agreement.

- 2.8. Any reference in this Agreement to a party includes that party's agents, officers, employees, servants, workers and contractors.

3. AGREEMENT UNDER SECTION 173 OF THE ACT

The Council and the Owner agree that without limiting or restricting their respective powers to enter into this Agreement and insofar as it can be so treated, this Agreement is made pursuant to Section 173 of the Act.

4. EFFECT OF AGREEMENT

4.1. Agreement runs with the Land

This Agreement shall be deemed to come into force and effect as from the date of commencement of the Agreement and the benefit and burden of this Agreement shall run with and be annexed to the Land.

4.2. Planning Objectives

The parties acknowledge that the provisions of this Agreement are intended to achieve or advance the objectives of planning in Victoria and the objectives of the Scheme and any matters incidental thereto.

4.3. Binding Covenants

The obligations of the Owner under this Agreement will take effect as separate and several covenants which shall be annexed to and run at law and equity with the Land to bind the Owner and each successor, assign or transferee of the Owner, the registered proprietor, the mortgagee in possession and the beneficial owner for the time being of the Land and every part of the Land.

5. SUCCESSORS IN TITLE

Without limiting the operation or effect which this Agreement has, the Owner shall until such time as a memorandum of this Agreement is registered on the title to the Land ensure that the Owner's successors in title:

- 5.1. give effect to and do all acts and sign all documents which will require those successors to give effect to this Agreement; and
- 5.2. execute under seal a deed agreeing to be bound by the terms of this Agreement and upon such execution this Agreement shall continue as if executed by such successors as well as by the parties to this Agreement as if the successor's name appeared in each clause in which the name of the Owner appears and in addition to the name of the Owner.

6. RESTRICTIONS ON USE AND DEVELOPMENT OF THE LAND

The Parties acknowledge and agree that:

- 6.1. the Statement of Environmental Audit places restrictions and conditions on the use of the Land for residential purposes;
- 6.2. at the Commencement Date of the Agreement, the Land contains Contaminated soil and has been identified as being within a Groundwater Quality Restricted Use Zone; and
- 6.3. at the commencement of the Development, the Developer will place, and maintain throughout the period of the Works, a barrier layer comprising either concrete floor slabs, another form of



permanent paving material, or a minimum 0.5 metre depth of Clean soil over the Land in order to isolate Contaminated soil or fill (including aesthetically objectionable soil or fill) from occupants or users of the Land; and

- 6.4. the integrity of the barrier layer referred to in clause 6.3 must be maintained at all times by the Developer and Future Owners, and in the event that it is temporarily breached (for installation or maintenance of services or other purposes) the exposure to persons of contaminated soils or groundwater must be limited or managed to prevent potentially unacceptable health risks; and
- 6.5. the Developer and Future Owners must ensure that sub-surface structures (including building footings and utility services) on the Land are placed in trenches that are backfilled with Clean soil or other Clean material to ensure that a minimum 0.5 metre Clean fill or other Clean material is maintained beneath and to either side of sub-surface structures; and
- 6.6. in addition to the barrier layer referred to in clause 6.3, buildings on the northern half of the Land shall be provided with a vapour venting and membrane barrier beneath the concrete floor slabs in accordance with the plans and specifications contained in the *Environmental Management Plan: Willow Ware Australia Pty Ltd, 52.76 Buncle Street, North Melbourne, Victoria* (Coffey Environments Ref: ENVIABTF08367DA-R04, May 2009), which may only be amended with the agreement of an Environmental Auditor or the Environment Protection Authority;
- 6.7. Groundwater on the Land requires monitoring and management and the Developer and Future Owners may not abstract Groundwater from the Land for any purpose other than clean up or monitoring, unless the Land is no longer identified as being within a Groundwater Quality Restricted Use Zone by the Environment Protection Authority; and
- 6.8. the Developer and Future Owners may not construct a basement or other useable underground structures on the Land.

7. WILLOW WARE'S OBLIGATIONS

7.1. Willow Ware agrees that:

- 7.1.1. it enters into this Agreement in its own right and in its capacity as the Owner, and it acknowledges that its obligations under this clause 7 are owed by it personally and survive the transfer of its interest in the Land;
- 7.1.2. its obligations pursuant to this clause 7 (except sub-clauses 7.1.6, 7.1.7 and 7.1.8) will end once the Environment Protection Authority determines that Groundwater management is no longer necessary and notice of this determination has been provided in writing to the Council. A decision that Groundwater management may cease shall follow an environmental audit conducted in accordance with section 53V of the *Environment Protection Act 1970* (Vic).
- 7.1.3. it will install, operate and maintain all Groundwater monitoring and other environmental remediation equipment or apparatus recommended in the Statement of Environmental Audit;
- 7.1.4. it will manage Groundwater in accordance with the Groundwater Management Plan (incorporated within *Environmental Management Plan: Willow Ware Australia Pty Ltd, 52.76 Buncle Street, North Melbourne, Victoria* (Coffey Environments Ref: ENVIABTF08367DA-R04, May 2009), as may be amended or substituted with the agreement of an Environmental Auditor or the Environment Protection Authority; and
- 7.1.5. if requested to do so by Council, Willow Ware will, at its own cost:

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- (i) provide Council with the results of any monitoring conducted in accordance with the Groundwater Management Plan or Statement of Environmental Audit;
- (ii) remedy any contamination if monitoring results reveal that Contamination has increased to levels above the trigger points set out in the Ground Water Management Plan; and
- (iii) comply with any reasonable direction of Council in relation to Contamination on, or which has emanated from, the Land or any other matter that relates to the subject matter of clause 7 of this Agreement providing the direction does not require the breach of any condition of the Statement of Environmental Audit and is consistent with the Groundwater Management Plan.

7.1.6. If requested to do so by the Council, Willow Ware will, at its own cost:

- (i) remedy any breach by Willow Ware of any law that is occurring on, within, or in relation to, the Land;
- (ii) remedy any breach of this Agreement by Willow Ware;
- (iii) comply with any Environmental Notice issued in relation to Existing Contamination on, or which has emanated from, the Land that relates to the subject matter of clause 7 of this Agreement; and
- (iv) comply with any recommendations of an Environmental Auditor in relation to Existing Contamination on, or which has emanated from, the Land that relates to the subject matter of clause 7 of this Agreement.

7.1.7. it will indemnify and keep indemnified the Council from and against any claim, loss, or order, made against or incurred by the Council, as a result of :

- (i) any breach of this Agreement by Willow Ware;
- (ii) complying with any Environmental Notice in accordance with clause 7.1.6 of this Agreement;
- (iii) any Contamination, Pollution or environmental hazard on or caused by, or emanating from, the Land, including any Contamination that has migrated from the Land onto any adjacent or nearby land but not including Contamination, Pollution or environmental hazard that has been caused by a person other than Willow Ware; and
- (iv) the existence of Groundwater monitoring bores and any other environmental remediation equipment or apparatus, whether on the Land or on adjacent or nearby land.

7.1.8. to the extent permitted by law, Willow Ware releases the Council from any claims arising from or in respect of:

- (i) any Existing Contamination on, under or migrating from the Land or any structures on or within the Land to the extent that the claims relate to the subject matter of clause 7.1 of this Agreement;
- (ii) any loss or expense incurred by Willow Ware as a result of a Groundwater monitoring bore or any other environmental remediation equipment or apparatus installed by Willow Ware on the Land, or on nearby or adjacent land, being damaged in any way (including by a garden maintenance or roads contractor of the Council) or stolen.



- 7.2. there are no mortgages, liens charges or other encumbrances or leases or any rights inherent in any person other than the Owner affecting the Land not disclosed by the usual searches or notified to the Council; and
- 7.3. no part of the Land is subject to any rights obtained by adverse possession or subject to any easements or rights described or referred to on Section 42 of the *Transfer of Land Act 1958*; and
- 7.4. it will do all things necessary including the signing of any further agreements, undertakings, covenants and consents, approvals or other documents necessary for the purpose of ensuring that the Owner carries out the Owner's covenants, agreements and obligations under this Agreement and to enable the Council to enforce the performance by the Owner of such covenants and undertakings; and
- 7.5. it consents to the Council making application to the Registrar of the Land Titles Office to make a recording of this Agreement in the Register on the folio of the Register which relates to the Land in accordance with Section 181 of the Act and do all things necessary to enable the Council to do so including signing any further agreement, acknowledgment or document or procuring the consent to this Agreement of any mortgagee or caveator to enable the recording to be made in the Register under that Section.

8. DEVELOPER'S OBLIGATIONS

- 8.1. The Developer must provide to prospective Future Owners of any part of the Land, a plain English summary of this Agreement and the Statement of Environmental Audit, and their implications for the use of the Land by a Future Owner;
- 8.2. The Developer will indemnify and keep indemnified the Council from and against any claim, loss, or order, made against or incurred by Council as a result of any breach of this Agreement by the Developer.

9. LICENCE

Subject to Willow Ware and the Developer complying at all times with the terms and conditions of this Agreement, the Council grants to Willow Ware and the Developer a licence to access and maintain Groundwater monitoring bores and associated equipment on and within any part of the Land that vests in the Council upon the registration of the Plan.

10. COSTS

- 10.1. The Developer shall pay on demand to the Council the Council's costs and expenses including legal expenses of and incidental to:
 - 10.1.1. the negotiation, preparation, execution, registration and enforcement of this Agreement.
 - 10.1.2. the administration and supervision costs of the Council properly and reasonably incurred in relation to this Agreement except for administration and supervision which the Council is obliged to undertake pursuant to its statutory duties; and
 - 10.1.3. any request by the Owner and/or Developer for the Council's consent or approval where such consent or approval is required under any covenant, proviso, condition or agreement herein contained or implied immediately the Council shall have expended or incurred the same.

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SECTION 173 AGREEMENT

**11. DEFAULT**

In the event of the Owner or the Developer defaulting or failing to perform any of their respective obligations under this Agreement, the Council may, without prejudice to any other remedies it may have, rectify such default. The cost of any works undertaken by the Council to rectify any default shall be borne by whichever of the Owner or the Developer was in default, and any such costs shall be capable of being recovered by the Council in any Court of competent jurisdiction as a civil debt recoverable summarily.

12. COUNCIL'S POWERS**12.1. Default Notice**

- 12.1.1. Should the Owner or the Developer fail or neglect to carry out or complete the works in accordance with the Permit, the Council's Representative may cause to be served on the Owner or the Developer, as appropriate, a notice in writing ("the notice") specifying the works in respect of which the Owner and the or Developer is in default.
- 12.1.2. Should the default continue for a period of 14 days after the service of the notice the Council may enter upon the Land and cause the works to be constructed or completed and made good or cause any faults defects or failures in the works which have developed appeared or occurred within a period of six months from the date of completion of construction of the works to be maintained repaired or made good and for any such purpose the Council may employ a contractor or contractors and professional advisers.
- 12.1.3. The notice may set out the cost as estimated by the Council's Representative of constructing or completing the construction of the works. If the Owner or the Developer does not comply with the notice to remedy the default the Council's Representative may cause to be served on the Owner or the Developer a demand in writing ("the demand") for the amount of the costs specified in the notice.
- 12.1.4. The costs specified in the demand shall be paid forthwith by the Owner or the Developer to the Council and the Council may be recovered as a debt due and payable in a Court of competent jurisdiction.

12.2. Completion of Works

- 12.2.1. As soon as practicable after the completion of the work the Council's Representative shall certify the actual costs of the work to the Council. The certificate of the Council's Representative shall be final, binding and conclusive as between the parties to this Agreement. The difference between the actual cost and the estimated cost paid to the Council pursuant to this clause shall be paid by the Owner and/or Developer to the Council or by the Council to the Owner and/or Developer as the case may require.
- 12.2.2. If the notice does not require the Owner and or the Developer to pay the estimated costs, the actual costs of any works carried out by or on behalf of the Council pursuant to this clause of this Agreement shall be paid on demand by the Owner or the Developer to the Council and if unpaid may be recovered as a debt due and payable in a Court of competent jurisdiction.
- 12.2.3. The Owner and Developer covenant and agree that the Owner and Developer will each indemnify and keep indemnified the Council from and against all costs, expenses, losses or damages whatsoever which they may sustain, incur or suffer or be or become liable for or in respect of any suit, action, proceeding, judgment or claim brought by any person whatsoever arising from or referable to the carrying out of works referred to in this clause as a result of a default by that party.

13. INTEREST AND CHARGE

- 13.1. If any of the monies payable pursuant to this Agreement are not paid by the due date, the amount then due and unpaid shall attract interest from the relevant due date until the date when such money is paid at the rate of interest from time to time which the Council may be authorised by legislation to charge as interest on any unpaid rates and charges.
- 13.2. Any payments made for the purposes of this Agreement shall be appropriated first in payment of any interest and unpaid costs and expenses of the Council and shall then be applied in repayment of the unpaid sum.

14. FUTURE OWNERS

To the extent permitted by law, each and every Future Owner of the Land releases the Council, and the Developer from any claims arising from or in respect of any Contamination on, under or migrating from the Land or any structures on or within the Land.

15. NOTICES

- 15.1. A notice or other communication required or permitted to be served by a party on another party shall be in writing and may be served at the address, telephone or facsimile details of the parties are set out in the Schedule,
- 15.1.1. by delivering it personally to that party;
- 15.1.2. by sending it by prepaid post; or
- 15.1.3. by sending it by facsimile provided that a communication sent by facsimile shall be confirmed immediately in writing by the sending party by hand delivery or prepaid post,
- 15.2. and notice or other communication is deemed served:
- 15.2.1. if delivered, on the next following business day;
- 15.2.2. if posted, on the expiration of two business days after the date of posting; or
- 15.2.3. if sent by facsimile, at the time recorded by the facsimile machine of the party receiving the transmission provided always that if the time recorded is after business hours, the time will be deemed to be 9.00am on the business day following the transmission.

16. FURTHER ASSURANCE

Each of the parties to this Agreement shall respectively sign and execute all further documents and deeds and do all acts and things as shall reasonably be required to effect the terms and conditions contained in this Agreement.

17. OWNER AND DEVELOPER'S ACKNOWLEDGMENT

The Owner and Developer expressly acknowledges and agrees that nothing in this Agreement nor the performance by the Owner and the Developer of any of its obligations under this Agreement does or will restrain, limit or otherwise fetter the exercise by the Council of the powers, duties and discretions which the Council has or may have under the Scheme to consider, approve, amend or to require further information in respect of any plans or applications relating to the use or development allowed by the Permit or the Land generally.



18. NO WAIVER

Any time or other indulgence granted by the Council to the Owner, Willow Ware or the Developer or any variation of the terms and conditions of this Agreement or any judgment or order obtained by the Council against the Owner, Willow Ware or the Developer will not in any way amount to a waiver of any of the rights or remedies of the Council in relation to the terms of this Agreement.

19. SEVERABILITY

If a court, arbitrator, tribunal or other competent authority determines that a word, phrase, sentence, paragraph or clause of this Agreement is unenforceable, illegal or void then it shall be severed and the other provisions of this Agreement shall remain operative.

20. MORATORIUM

To the fullest extent to which it may from time to time be lawful so to do the provisions of all statutes (including moratorium statutes) whether now existing or hereafter to come into force and operating directly or indirectly to lessen or otherwise modify or vary or affect in favour of any party the obligation of that party or stay, postpone or otherwise prevent or prejudicially affect the exercise by a party of all or any to the rights, powers and remedies conferred on the party by this Agreement are hereby expressly negated and excluded from this Agreement.

21. COUNTERPARTS

This Agreement may be executed in any number of counterparts each of which when so executed shall be deemed to be an original and such counterparts shall together constitute but one agreement.

22. GOVERNING LAW

This Agreement takes effect, is governed by and shall be construed in accordance with the laws from time to time in force in the State of Victoria.

23. ENDING OF AGREEMENT

23.1. This Agreement (or a part of it) shall cease to operate on the termination date or otherwise as contemplated in Item 10 of the Schedule.

23.2. As soon as reasonably practicable after the Agreement has ended the Council will at the request and at the cost of the Owner make application to the Registrar of Titles under Section 183 (2) of the Act to cancel the recording of this Agreement on the Register.

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SECTION 173 AGREEMENT

EXECUTED as a DEED

SIGNED SEALED AND DELIVERED by Martin Williams, Executive Officer, Planning, pursuant to an Instrument of Delegation authorised by Resolution of Council.

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..... Williams

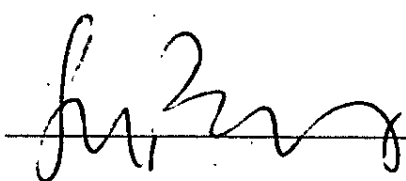
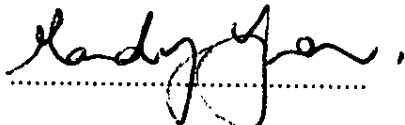
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Australia + New Zealand Business Group Ltd

as Mortgagee under Instrument of Mortgage No. ~~4455346~~ dated 27/5/09 which encumbers the Land consents to the Owner entering into this Agreement and agrees to be bound by the terms and conditions of this Agreement.

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EXECUTED by WILLOW WARE AUSTRALIA PTY LTD in accordance with section 127 of the Corporations Act 2001 (Cth):

M. Nozmoyle
 Signature of director
MICHAEL NOZMOYLE
 Name of director (print)

← J. Ramack →
 Signature of director/company secretary
 (Please delete as applicable)
JOHN RAMACK
 Name of director/company secretary (print)

SECTION 173 AGREEMENT

EXECUTED by NORTH NORTH
MELBOURNE PTY LTD (formerly known as
Princewell Pty Ltd) in accordance with
section 127 of the Corporations Act 2001
(Cth):

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Signature of director/company secretary who states that
he is the sole director and company secretary of the
company

Andrew Mitchell Rettig

Name of director (print)

Level 10, 650 Chapel Street, South Yarra, 3141

Usual address

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SECTION 173 AGREEMENT

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**SCHEDULE**

ITEM NO.	ISSUE	SPECIFICATION
1.	Owner	Clause 1.19
1A.	Developer	North North Melbourne Pty Ltd
2.	Land description by address and Certificate of Title details	52-76 Buncle Street, North Melbourne <i>LOTS A+B PS 543369U GTS V. 10984 FS 958+959</i>
3.	Permit Number and date issued	TP-2008-639/A; 10 December 2008
4.	What the Permit allows	Buildings and works associated with the staged construction of multi dwellings, associated landscaping and reduction in car parking requirements in accordance with the endorsed plans
5.	What the condition requiring the Agreement provides for	<p>Prior to the commencement of the development, the developer and Willow Ware Australia Pty Ltd must enter into a section 173 agreement under the Planning & Environment Act 1987 with the Responsible Authority in order to give effect to any condition or restriction on the use or development of any part of the land, set out in the Certificate or Statement of Environmental Audit. The agreement must provide for Willow Ware Australia Pty Ltd and the developer to indemnify the Responsible Authority in relation to any liability or costs that the Responsible Authority may incur as a result of the contamination of the land, including as a result of any part of the land vesting in the Responsible Authority, at any time in the future.</p> <p>Once executed, the agreement must be registered on the certificate of title for the land. The developer must meet all costs associated with the drafting, execution and registration of the agreement, including those incurred by the Responsible Authority.</p>
6.	Mortgage details including name and address of Mortgagee, date of mortgage and registered number (if applicable)	Australia and New Zealand Banking Group Limited ABN 11 005 357 522 Level 10, 530 Collins Street Melbourne VIC 3000
7.	Commencement date	Date shown on page 1 of this Agreement
8.	Council's Representative is:	Martin Williams, Executive Officer, Planning
9.	Plan of Subdivision Reference Number	PS622940F

SECTION 173 AGREEMENT

10.	Termination date or specified event	Clause 7.1.2
11.	Works to be carried out under the Permit	Not applicable
12.	Groundwater Management Plan	Attachment B
13.	Statement of Environmental Audit	Attachment A
14.	Address, phone and facsimile of Council	Melbourne City Council Town Hall, Swanston Street Melbourne VIC 3000 Ph: 9658 9658 Facsimile: 9654 4854
15.	Address, phone and facsimile of Willow Ware	Willow Ware Australia Pty Ltd ACN 004 316 027 60 Annandale Road Melbourne Airport VIC 3045 Ph: 8346 0406 Facsimile: 9338 6742
16.	Address, phone and facsimile of Developer	North North Melbourne Pty Ltd ACN 103 762 563 Level 10, 650 Chapel Street South Yarra VIC 3141 Ph: 9825 5000 Facsimile: 9827 0522

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ATTACHMENT A

**Statement of Environmental Audit: 52-76 Buncle Street, North Melbourne, Victoria (May 2009),
Sinclair Knight Merz**

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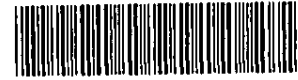
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Summary Environmental Audit Report
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May 2009

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**ENVIRONMENT PROTECTION ACT 1970
STATEMENT OF ENVIRONMENTAL AUDIT**

52 – 76 Buncle Street, North Melbourne

I, RICHARD ALAN GRAHAM of Sinclair Knight Merz Pty Ltd, 590 Orrong Road, Armadale, Victoria 3143, a person appointed by the Environment Protection Authority (“the Authority”) under the Environment Protection Act 1970 (“the Act”) as an environmental auditor for the purposes of the Act, having:-

1. been requested by Tjip Faber of T M Faber & Associates, on behalf of Willow Ware Australia Pty Ltd, to issue a Certificate of Environmental Audit in relation to the site located at 52 – 76 Buncle Street, North Melbourne, Victoria, comprising Lots A and B on Plan of Subdivision PS543369U, defined by Certificates of Title Volume 10984 Folio 958 and Volume 10984 Folio 959 respectively (“the site”), owned/occupied by Willow Ware Australia Pty Ltd;
2. had regard to, among other things,
 - (i) guidelines issued by the Authority for the purposes of Part IXD of the Act;
 - (ii) the beneficial uses that may be made of the site; and
 - (iii) relevant State environment protection policies/industrial waste management policies, namely the State Environment Protection Policies for the Prevention and Management of Contamination of Land, Groundwaters of Victoria, Waters of Victoria, Ambient Air Quality and Air Quality Management

in making a total assessment of the nature and extent of any harm or detriment caused to, or the risk of any possible harm or detriment which may be caused to, any beneficial use made of the site by any industrial processes or activity, waste or substance (including any chemical substance); and
3. completed an environmental audit report in accordance with section 53X of the Act, a copy of which has been sent to the Authority and the relevant planning and responsible authority.

HEREBY STATE that I am of the opinion that:

The site is suitable for the beneficial uses associated with the land uses of high-density residential, commercial or industrial, subject to the following conditions attached thereto:

- a) A barrier layer comprising either concrete floor slabs, other form of “permanent” paving material or a minimum 0.5 metre depth of clean soil shall be placed and maintained over the entire site to effectively isolate contaminated or potentially contaminated soil (including aesthetically objectionable soil) from occupants or users of the site;
- b) In the event that the barrier layer is temporarily breached (for installation or maintenance of services or other purposes), the exposure of persons to contaminated soils or groundwater shall be limited or managed to prevent potentially unacceptable health risks;

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- c) In addition to the barrier layers referred to in Condition (a) above, buildings on the northern half of the site shall be provided with a vapour venting and membrane barrier beneath the concrete floor slabs in accordance with the plans and specifications contained in the *Environmental Management Plan: Willow Ware Australia Pty Ltd, 52-76 Buncle Street, North Melbourne, Victoria* (Coffey Environments Ref. ENVIABTF08367DA-R04, May 2009) which has been approved by the auditor and as may be amended with the agreement of an environmental auditor or the Authority;
- d) Sub-surface services anywhere on the site shall be placed in trenches which are to be backfilled with clean fill or other clean material to provide a minimum 0.5m clean fill or other clean material beneath and to either side of the service pipe or line;
- e) The future development of the site shall not include construction or use of a basement;
- f) Groundwater shall not be abstracted from the site for purposes other than clean up or monitoring, unless it is determined by the Authority that the groundwater at the site is not polluted and that the site is no longer identified as within a Groundwater Quality Restricted Use Zone;
- g) Groundwater at the site shall be managed in accordance with the following requirements:
 - (i) Groundwater at the site shall be managed until such time that the Authority determines that management may cease. A decision that groundwater management may cease shall follow an environmental audit conducted in accordance with section 53V of the Environment Protection Act 1970;
 - (ii) Management shall be undertaken in accordance with the Groundwater Quality Management Plan (incorporated within the *Environmental Management Plan: Willow Ware Australia Pty Ltd, 52-76 Buncle Street, North Melbourne, Victoria* (Coffey Environments Ref. ENVIABTF08367DA-R04, May 2009), as may be amended). The Groundwater Quality Management Plan contains a groundwater monitoring program, trigger levels for groundwater contaminant concentrations, a contingency plan for groundwater remediation in the event that groundwater conditions change such that trigger levels are exceeded, controls on groundwater extraction and use and a program for review of the Groundwater Quality Management Plan;
 - (iii) Responsibility for implementation of the Groundwater Quality Management Plan shall be maintained by the current owner of the site (Willow Ware Australia Pty Ltd), unless otherwise agreed; and
- h) The high density residential development allowed by Planning Permit No. TP-2008-639, issued by Melbourne City Council on 10 December 2008, is a suitable land use for this site subject to conditions (a) to (g) above.

The condition of the site is detrimental or potentially detrimental to any (one or more) beneficial uses of the site. Accordingly, I have not issued a Certificate of Environmental Audit for the site in its current condition, the reasons for which are presented in the environmental audit report. The terms and conditions that need to be complied with before a Certificate of Environmental Audit

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may be issued are set out as follows:

- a) Contaminated soil at the site would need to be remediated, so that all beneficial uses associated with all feasible land uses (including standard low density residential and other sensitive uses) are protected, in accordance with the State environment protection policy (Prevention and Management of Contamination of Land); and
- b) Polluted groundwater at the site would need to be cleaned up so that all protected beneficial uses for the relevant groundwater segment are restored. The Authority would need to determine that the groundwater at the site is no longer polluted and that the site is no longer identified as being within a Groundwater Quality Restricted Use Zone.

Other Related Information:

Contaminated or potentially contaminated soils or fill which are excavated during site development or maintenance works are to be managed in accordance with relevant policies, in particular the Industrial Waste Management Policy (Prescribed Industrial Waste) and guidelines, in particular EPA Victoria (May 2007) Publication 448.3 *Classification of Wastes*, and consistent with the conditions of this Statement and the approved Environmental Management Plan (Coffey Environments May 2009). Waste soils or fill may be reused on-site (in a location and depth consistent with the conditions of this Statement) or disposed off-site at an appropriate disposal location. Any soil imported onto the site shall be only uncontaminated, non-odorous Fill Material (in accordance with EPA May 2007).

Groundwater at the site remains polluted with hydrocarbons after treatment. The Authority has determined that groundwater at the site subject to this audit has been cleaned up to the extent practicable and the Authority has identified the site as being within a Groundwater Quality Restricted Use Zone, pursuant to Clause 19 of the State environment protection policy (Groundwaters of Victoria). Groundwater at the site is not suitable for any beneficial uses of groundwater that may be realised at the site.

This Statement forms part of the *Report of Environmental Audit: 52 – 76 Buncle Street, North Melbourne, Victoria*, Sinclair Knight Merz report Ref. WC03044ragR01.doc, May 2009. Further details regarding the condition of the site may be found in the environmental audit report.

DATED: 11 May 2009

R A Graham
ENVIRONMENTAL AUDITOR
(appointed pursuant to the Environment Protection Act 1970)

ATTACHMENT B

Environmental Management Plan: Willow Ware Australia Pty Ltd, 52.76 Buncle Street, North Melbourne, Victoria (Coffey Environments Ref: ENVIABTF08367DA-R04, May 2009)

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ATTACHMENT B

Groundwater Management Plan: Willow Ware Australia Pty Ltd, 52.76 Buncle Street, North Melbourne, Victoria (Coffey Environments Ref: ENVIABTF08367DA-R04, May 2009)

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Environmental Management Plan
Willow Ware, 52-76 Buncle Street, North Melbourne, Victoria

SECTION B - POST CONSTRUCTION EMP (INCORPORATING GROUNDWATER QUALITY MANAGEMENT PLAN)

7 POST CONSTRUCTION GROUNDWATER MONITORING PLAN

Following the completion of the construction phase of the development and during the initial stages of occupation, groundwater monitoring will need to be undertaken at regular intervals. This section details the ongoing management requirements that are required to address the residual groundwater contamination at the site.

Given that groundwater beneath the site is polluted by hydrocarbons in relation to several of the beneficial uses of groundwater, the EPA has determined that the site is within a Groundwater Quality Restricted Use Zone (GQRUZ). Please note, groundwater is not to be abstracted from the site for any purpose other than clean up or monitoring.

Ongoing groundwater management of the residual polluted groundwater includes monitoring of 23 groundwater monitoring wells at the site. These wells are divided into two categories; sentinel wells and hot-spot wells. Table 7.1 summarises these groundwater monitoring wells which are also shown in Figure 3.

Table 7.1 - Summary of Monitoring Wells to be Sampled

Sentinel Wells	MW45, MW46, MW11, MW48, MW49*, MW55*, MW35, MW25, MW04, MW23, MW24, MW26, MW28, MW53* and MW54*
Hot Spot Wells	MW12, MW19, MW20, MW29, MW47, MW50*, MW51* and MW52*

* Denotes wells not yet installed

Access to these 23 groundwater monitoring wells (including the wells not yet installed) at the site must be maintained by Willow Ware Australia for groundwater monitoring purposes.

The wells must be protected from damage at all times and maintained in good condition, in a state that enables their use for groundwater monitoring. If any of the wells becomes unserviceable they must be reinstated (repaired or reinstalled) by Willow Ware Australia at a location as close as practicable to the unserviceable well. It is recommended that consultation with an environmental auditor regarding any new bore locations be conducted prior to installation.

7.1 Responsibility for On-going Groundwater Monitoring

Responsibility for implementation of the Groundwater Management Plan shall be maintained by the current owner of the site (Willow Ware Australia Pty Ltd).

7.2 Groundwater sampling methodology

Table 7.2 outlines the groundwater sampling methodology to be employed.

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Environmental Management Plan
Willow Ware, 52-76 Buncle Street, North Melbourne, Victoria

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SECTION B - POST CONSTRUCTION EMP (INCORPORATING GROUNDWATER QUALITY MANAGEMENT PLAN)

Table 7.2 - Summary of Groundwater Sampling Methodology

Frequency of Monitoring	<p>Six monthly for the first two years from the completion of the environmental audit (i.e. June 2009, December 2009, June 2010, December 2010).</p> <p>Following a review of the groundwater monitoring data by an EPA auditor after two years, the monitoring frequency can change to annual (with the approval of the auditor).</p>
Method of Monitoring	<p>Gauging of all groundwater monitoring wells (both sentinel and hot-spot) is to be conducted prior to groundwater sampling to assess the presence of phase separated hydrocarbons and collect data to assess groundwater flow directions.</p> <p>Low-Flow Sampling techniques using disposable equipment are to be employed for sampling the groundwater monitoring wells. Sampling is to be conducted in accordance with EPA 'Groundwater Sampling Guidelines' (EPA, 2000).</p>
Analysis Schedule	<p>All wells are to be analysed for Total Petroleum Hydrocarbons, Benzene, Toluene, Ethyl Benzene, Xylenes and Polycyclic Aromatic Hydrocarbons</p> <p>Hot-spot wells and wells MW25 and MW46 are to be analysed for dissolved oxygen, nitrate, ferrous iron and sulfate.</p> <p>Wells MW35, MW50 and MW54 are to be analysed for chlorinated hydrocarbons</p>
QA/QC	<p>Sufficient QC samples should be analysed to comply with Australian Standard AS4482.1-2005 to ensure the quality of the data.</p>

7.3 Groundwater Trigger Levels

Trigger levels have been developed to allow comparison of monitoring data against a reference to allow assessment of the potential risks posed by residual contamination, and to set action points at which additional works are to be undertaken. The trigger levels were adopted based on relevant guidelines, recent data and findings of the health risk assessment. In addition, different trigger levels have been developed for wells that previously had phase separated hydrocarbons (hot-spot wells) and those which are to monitor the extent of the residual hydrocarbon contamination (sentinel wells). Table 7.3 outlines the trigger levels adopted for the site.

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SECTION B - POST CONSTRUCTION EMP (INCORPORATING GROUNDWATER QUALITY MANAGEMENT PLAN)

Table 7.3 - Groundwater Trigger Levels

Contaminant	Trigger Levels			
	Sentinel Wells	Hot-Spot Wells	MW35	MW50
TPH	Measurable presence of LNAPL	Increasing Thickness of LNAPL using three point moving average	Measurable presence of LNAPL	Increasing Thickness of LNAPL using three point moving average
TPH C ₁₀ -C ₃₆	1,000 µg/L	-	1,000 µg/L	-
Benzene	700 µg/L	Increasing Trend using three point moving average	700 µg/L	Increasing Trend using three point moving average
Naphthalene	16 µg/L	Increasing Trend using three point moving average	16 µg/L	Increasing Trend using three point moving average
Trichloroethylene	30 µg/L	Not Specified	30 µg/L	30 µg/L
Tetrachloroethylene	10 µg/L	Not Specified	10 µg/L	10 µg/L

7.3.1 Application of Trigger Levels

Following collection of groundwater results as a part of the ongoing groundwater monitoring program, results are to be compared against the trigger levels outlined in the table above.

For the **Sentinel Wells**, a trigger level will be considered to have been breached if:

1. A one hundred percent increase in contaminants of concern is reported in any single well between two groundwater monitoring events; or
2. An increasing trend in groundwater contaminant concentrations (measured as a three-point moving average); or
3. Concentrations exceed the trigger levels provided in Table 7.3 above.

Should the trigger level be exceeded in a sentinel well, it will be deemed as an indication that the groundwater contamination is moving and may pose an unacceptable risk to health or the environment (either onsite or offsite). Consequently, following the breach of a trigger level, groundwater monitoring is to be conducted within two months of the initial breach to confirm the concentrations and/or trends reported. Following the additional round of groundwater monitoring, a review of the groundwater data is to be undertaken and the environmental auditor notified as to the magnitude and potential implications

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SECTION B - POST CONSTRUCTION EMP (INCORPORATING GROUNDWATER QUALITY MANAGEMENT PLAN)

of the trigger level breach. This notification may include information such as potential risks to human health or the environment, a technology feasibility review, and recommendations regarding the continued frequency of groundwater monitoring (i.e. retain two monthly monitoring or return to six monthly monitoring), potential additional monitoring and potential remedial actions that may be required.

Following receipt of this notification, the auditor will notify the EPA within two months regarding the nature of the breach of the groundwater trigger levels and the anticipated course of action.

For the **Hot-Spot Wells**, a trigger level will be considered to have been breached if:

1. An increasing trend in groundwater contaminant concentrations (measured as a three-point moving average) is reported in a monitoring well; or
2. A one hundred percent increase in contaminants of concern is reported in any single well; or
3. An increasing trend in the thickness of light non-aqueous phase liquids (measured as a three-point moving average) is reported in a monitoring well.

Should the trigger level be exceeded in a hot-spot well it may be an indication that hydrocarbon contamination is rebounding in groundwater beneath the site. Given that a passive vapour barrier is present at the site, it is considered that an increase in the hydrocarbon concentrations is unlikely to increase the risk to onsite users to an unacceptable level. However, it may potentially pose an unacceptable risk to offsite users. Consequently, following breach of a trigger level, groundwater monitoring is to be conducted within two months of the initial breach to confirm the concentrations and/or trends reported. Following the additional round of groundwater monitoring, a review of the groundwater data is to be undertaken and the environmental auditor notified as to the magnitude and potential implications of the trigger level breach. This notification may include information such as potential risks to human health or the environment, a technology feasibility review, and recommendations regarding the continued frequency of groundwater monitoring (i.e. retain two monthly monitoring or return to six monthly monitoring), potential additional monitoring and potential remedial actions that may be required.

Following receipt of this notification, the auditor will notify the EPA within two months regarding the nature of the breach of the groundwater trigger levels and the anticipated course of action.

7.4 Groundwater Quality Restricted Use Zone

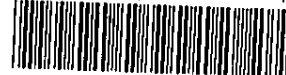
The CUTEF determination by EPA notes that the site is within a Groundwater Quality Restricted Use Zone (GQRUZ). Hydrocarbon contamination extends offsite to the east of the northern portion of the site and impacts on the potential beneficial uses of groundwater beneath the property to the east of Pearl Street.

Figure 5 shows the proposed extent of the GQRUZ which includes the Willow Ware title boundary, Pearl Street, part of Sutton Street and the entire City of Melbourne property and includes areas where the contamination is likely to preclude beneficial uses. It is considered unlikely that an extraction bore will be located within Pearl Street or Sutton Street.

Environmental Management Plan
Willow Ware, 52-76 Buncle Street, North Melbourne, Victoria

AG607063T

02/07/2009 \$102.90 173



SECTION B - POST CONSTRUCTION EMP (INCORPORATING GROUNDWATER QUALITY MANAGEMENT PLAN)

7.5 Reporting and Review

A report documenting the results of the groundwater monitoring must be provided to an EPA appointed auditor after two years of monitoring as part of the review of the site environmental management plan operation. A summary report and review of the environmental management plan status must be provided to EPA by an EPA appointed auditor after two years and subsequently every three years until cessation of monitoring.

The cessation of the ongoing groundwater monitoring and management plan (as detailed in Section 7 of this Environmental Management Plan) may only occur if an Environmental Audit conducted in accordance with Section 53v of the Environment Protection Act (1970) concludes that it is appropriate to cease monitoring and management of groundwater.

There must be a periodic review of the feasibility of groundwater cleanup to the extent practical while this environmental management plan remains in effect. A feasibility review should be conducted when new technology becomes available or becomes more cost effective, to determine if further groundwater cleanup is practical. If groundwater monitoring has ceased (via the completion of a Section 53V audit) prior to 31 January 2011, no groundwater cleanup feasibility review is required. If groundwater monitoring continues into 2011, or has ceased without the written agreement of an EPA appointed environmental auditor, a groundwater cleanup feasibility review shall be completed by 30 April 2011.

Willow Ware Australia (or the site owner as of 31 January 2011) is responsible for commissioning and completing this groundwater clean up feasibility review. This review should be conducted by a suitably qualified environmental consultant and the review findings be endorsed by an EPA appointed environmental auditor. EPA and the City of Melbourne must be advised in writing of the findings of the feasibility review.

Following collection of groundwater results as a part of the ongoing groundwater monitoring program, results are to be compared against the trigger levels outlined in Table 7.3 above.

Environmental Management Plan
Willow Ware, 52-76 Buncle Street, North Melbourne, Victoria

AG607063T

02/07/2009 \$102.90 173



SECTION B - POST CONSTRUCTION EMP (INCORPORATING GROUNDWATER QUALITY MANAGEMENT PLAN)

8 POST CONSTRUCTION SOIL MANAGEMENT

As outlined in Section 6, remediation at the site removed the majority of impacted soils such that the residual soils had concentrations of the above contaminants commensurate with national soil quality guidelines for a high-density residential development. However, based on the highly heterogeneous nature of fill soils at the site, it is considered that there is a potential for isolated pockets of soils containing ashy materials and concentrations of contaminants that may exceed the adopted soil quality guidelines. Consequently, soil management measures have been included in this environmental management plan to mitigate potential risks arising from such contamination.

Section 6 detailed the management measures that need to be undertaken during the construction phase of the development. This section details the management measures that need to be undertaken following the completion of construction at the site.

8.1 Service Trenches

Sub-surface services at the site are to have been installed into trenches backfilled with clean fill to ensure that any maintenance workers conducting maintenance are not potentially exposed to impacted soils.

Following any sub-surface maintenance works, service trenches are to be backfilled with clean fill (either the soils excavated from the trench, or soils confirmed to be clean via laboratory analysis for new service trenches). In the event that new service trenches are installed at the site following completion of construction, the new service trenches are to be backfilled with clean fill to provide a minimum 0.5m clean fill beneath and to either side of the service pipe or line.

8.2 Garden Areas

As outlined in Section 6, all areas of garden at the development are to have had at least 0.5m of clean soil (with contaminant concentrations commensurate with Table 2 of EPA publication 448.3 'Classification of Wastes') installed to provide a barrier layer between site users and any underlying contaminated soils.

In the event that maintenance works are conducted in garden areas, or new areas of garden are to be installed at the site, a 0.5m barrier layer (of clean fill) must be maintained over the underlying potentially impacted soils at the site.

8.3 Outside of Garden Areas

It is considered that a separation barrier between soils and site users will be maintained outside of garden areas by the installation of roadways, pavements and building footprints. Any penetrations through pavements, roadways and/or building footprints must be reinstated as soon as practicable to maintain the barrier layer between the potentially contaminated soils and site users.

Additionally, any maintenance works conducted beneath the barrier layers installed at the site (i.e. garden barrier layers, pavements, roadways or building footprints) must be conducted in accordance with the management measures included in Section 4 of this environmental management plan.

Environmental Management Plan
Willow Ware, 52-76 Buncle Street, North Melbourne, Victoria

AG607063T



SECTION B - POST CONSTRUCTION EMP (INCORPORATING GROUNDWATER QUALITY MANAGEMENT PLAN)

9 REFERENCES

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ANZECC (2000). 'Australian and New Zealand guidelines for fresh and marine water quality', National Water Quality Management Strategy Paper No 4, Australian & New Zealand Environment and Conservation Council & Agriculture and Resource management Council of Australia and New Zealand, October 2000.

APHA (2005). 'Standard Methods for the Examination of Water and Wastewater', 19th edn, publ by American Public Health Association (APHA), American Water Works Association, Water Pollution Control Federation.

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Coffey (2009c). 'Groundwater Monitoring Summary Report Willow Ware Australia Pty Ltd 52-76 Buncle Street, North Melbourne, Victoria, Australia', report, ref: ENVIABTF08367DA-R02 Rev1, dated 23 January 2009, Coffey Environments Pty Ltd

Coffey (2009d). 'Clean Up To The Extent Practicable Report, Willow Ware Australia, 52-76 Buncle Street, North Melbourne' report, ref: ENVIABTF08367DA-R01 Rev2, dated 2 February 2009, Coffey Environments Pty Ltd

EPA Victoria (1996) Environmental Guidelines for Major Construction Sites, Publication No. 480, EPA Victoria (February 1996).

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Environmental Management Plan
Willow Ware, 52-76 Buncle Street, North Melbourne, Victoria

AG607063T

02/07/2009 \$102.90 173



SECTION B - POST CONSTRUCTION EMP (INCORPORATING GROUNDWATER QUALITY MANAGEMENT PLAN)

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State Government of Victoria (1998) State Environment Protection Policy (Waters of Victoria), 23/2/1988, Gazette 26/2/1988, 15/3/1998 – and relevant amendments.

State Government of Victoria (1999) Industrial Waste Management Policy (Waste Acid Sulfate Soils) No. S125, Gazette 18/08/1999.

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WorkSafe Victoria (2005) Industry Standard Contamination Construction Sites, First Edition, June 2005.

PLANNING CERTIFICATE

Official certificate issued under Section 199 Planning & Environment Act 1987
and the Planning and Environment Regulations 2005

CERTIFICATE REFERENCE NUMBER

811305

APPLICANT'S NAME & ADDRESS

TISHER LINER FC LAW C/- INFOTRACK (AFFINITY) C/-
LANDATA

MELBOURNE

VENDOR

ONG, TIAN KHIAM

PURCHASER

N/A, N/A

REFERENCE

448410

This certificate is issued for:

LOT 49 PLAN PS622940 ALSO KNOWN AS 5 SMYTH MEWS NORTH MELBOURNE
MELBOURNE CITY

The land is covered by the:

MELBOURNE PLANNING SCHEME

The Minister for Planning is the responsible authority issuing the Certificate.

The land:

- is included in a MIXED USE ZONE
- is within a DESIGN AND DEVELOPMENT OVERLAY - SCHEDULE 63 (AREA 2)
- and a DESIGN AND DEVELOPMENT OVERLAY - SCHEDULE 66
- and a DEVELOPMENT CONTRIBUTIONS PLAN OVERLAY - SCHEDULE 2
- and a ENVIRONMENTAL AUDIT OVERLAY
- and a DEVELOPMENT PLAN OVERLAY - SCHEDULE 9

A Proposed Amending Planning Scheme C384melb has been placed on public exhibition which shows this property :

- is within a SPECIAL BUILDING OVERLAY - SCHEDULE 3 - C384melb

A detailed definition of the applicable Planning Scheme is available at :
<http://planningschemes.dpcd.vic.gov.au/schemes/melbourne>

Historic buildings and land protected under the Heritage Act 1995 are recorded in the Victorian
Heritage Register at:

<http://vhd.heritage.vic.gov.au/>

24 January 2022

Hon. Richard Wynne MP
Minister for Planning

Additional site-specific controls may apply.
The Planning Scheme Ordinance should be
checked carefully.

The above information includes all
amendments to planning scheme maps
placed on public exhibition up to the date
of issue of this certificate and which are
still the subject of active consideration

Copies of Planning Schemes and
Amendments can be inspected at the
relevant municipal offices.

LANDATA®
T: (03) 9102 0402
E: landata.enquiries@victorianlrs.com.au

The attached certificate is issued by the Minister for Planning of the State of Victoria and is protected by statute.

The document has been issued based on the property information you provided. You should check the map below - it highlights the property identified from your information.

If this property is different to the one expected, you can phone (03) 9102 0402 or email landata.enquiries@victorianlrs.com.au

Please note: The map is for reference purposes only and does not form part of the certificate.



Copyright © State Government of Victoria. Service provided by maps.land.vic.gov.au

Choose the authoritative Planning Certificate

Why rely on anything less?

As part of your section 32 statement, the authoritative Planning Certificate provides you and / or your customer with the statutory protection of the State of Victoria.

Order online before 4pm to receive your authoritative Planning Certificate the same day, in most cases within the hour. Next business day delivery, if further information is required from you.

Privacy Statement

The information obtained from the applicant and used to produce this certificate was collected solely for the purpose of producing this certificate. The personal information on the certificate has been provided by the applicant and has not been verified by LANDATA®. The property information on the certificate has been verified by LANDATA®. The zoning information on the certificate is protected by statute. The information on the certificate will be retained by LANDATA® for auditing purposes and will not be released to any third party except as required by law.

CITY OF MELBOURNE
LAND INFORMATION CERTIFICATE
(SECTION 121 LOCAL GOVERNMENT ACT 2020)

CERTIFICATE NO: 180045
DATE OF ISSUE: 25-Jan-2022
YEAR ENDING: 30-Jun-2022

- 1) This certificate provides information regarding Valuations, Rates, other monies owing and any orders and notices made under the Local Government Act 1958, Local Government Act 1989, Local Government Act 2020 or under a local law or by-law of the council.
- 2) This certificate is not required to include information regarding Planning, Health, Land Fill, Land Slip, flooding information or service easements. Information regarding these matters may be available from the council or relevant authority. A fee may be charged for such information.

Property situated at: 5 Smyth Mews, NORTH MELBOURNE VIC 3051

Legal Description: Lot 49 PS622940F CT-11153/774

Valuation Date: 01-Jul-2021

Assessment No: 93779 7

Net Annual Value: 38,750 **Capital Improved Value:** 775,000 **Site Value:** 425,000

Owner recorded by Council: Mui Hong Elizabeth Evelyn Lim and Yueh Ling Joycelyn Ong and Tian Khiam Ong

RATES AND CHARGES

	Balance Owing
Town Rate 1/07/2021 to 30/6/2022	\$ 1,634.75
Fire Services Levy 01/07/2021 to 30/06/2022	\$ 159.73
Total Rebates	\$ -24.52
SUB TOTAL	\$ 1,769.96
Town Rate Arrears	\$ 394.58
Interest on overdue amounts	\$ 0.00
Legal Costs	\$ 0.00
Total Payments	\$ -1279.54

Payment in full due by 15th February 2022.

TOTAL DUE \$ 885.00

The total due as shown on this certificate may change prior to settlement

Please note: After settlement, the responsibility for payment of outstanding rates rests with the purchaser. Please advise your client accordingly.

How to Pay

By Mail

To GPO Box 2158
Melbourne Vic 3001

In person

Melbourne Town Hall
Business Hours
Monday to Friday
Cash Payments not
accepted. Card payment
available.

Phone and Internet

Mastercard or Visa only

Tel: Call 1300 130453
Internet: www.melbourne.vic.gov.au/rates




Billers code: 79616
Ref: 10937797

OTHER INFORMATION

Local Government (General) Regulations

13(1)(d)(v)	Money owed for works under the Local Government Act 1958	Nil
13(1)(d)(vi)	Potential liability for rates under the Cultural and Recreational Lands Act 1963	N/A
13(1)(d)(vii)	Potential liability for land to become rateable under section 173 or 174A of the act	N/A
13(1)(d)(viii)	any money owed in relation to land under section 94(5) of the Electricity Industry act 2000	N/A
13(1)(d)(ix)	Any outstanding amount required to be paid for recreational purposes or any transfer of land to the council for recreational purposes under Section 18 of the Subdivision Act 1988 or LGA 1958.	Nil
13(1)(d)(x)	Money owed under Section 227 of the Local Government Act 1989	Nil
13(1)(d)(xi)	any environmental upgrade charge in relation to the land which is owed under section 27O of the City of Melbourne Act 2001	N/A
13(1)(e)	any notice or order on the land has continuing application under the Act, the Local Government Act 1958 or under a local law of the Council and, if so, the details of the notice or order	N/A



Applicants Reference 60708758-015-1:169526

Authorised Officer _____

Updates on this certificate will only be provided for a period of 90 days

For inquiries regarding this certificate:

Phone: 9658 9759
Email: rates@melbourne.vic.gov.au

To lodge Notice of Acquisition/Disposition

Mail: GPO Box 2158, Melbourne, VIC 3001
Email: propertydata@melbourne.vic.gov.au



City West Water

ABN 70 066 902 467

Information Statement & Certificate

SECTION 158 WATER ACT 1989

ENQUIRIES
131691

REFERENCE NO.

1251 8314 8114

DATE OF ISSUE - 24/01/2022

APPLICATION NO.

1012010

LANDATA COUNTER SERVICES

YOUR REF.
60708758-025-0

SOURCE NO. 99904685210

PROPERTY: 5 SMYTH MEWS NORTH MELBOURNE VIC 3051

Statement & Certificate as to Waterways & Drainage, Parks Service and City West Water Charges

The sum of one hundred and thirty three dollars and ninety two cents is payable in respect of the property listed above to the end of the financial year.

Service Charge Type	Annual charge 1/07/2021 - 30/06/2022	Billing Frequency	Date Billed To	Year to Date Billed Amount	Outstanding Amount
WATERWAYS AND DRAINAGE CHARGE - RES	105.56	Quarterly	31/12/2021	52.78	0.00
PARKS SERVICE CHARGES	80.20	Annually	30/06/2022	80.20	0.00
WATER NETWORK CHARGE RESIDENTIAL	207.56	Quarterly	31/12/2021	103.78	0.00
SEWERAGE NETWORK CHARGE RESIDENTIAL	222.56	Quarterly	31/12/2021	111.28	0.00
TOTAL	615.88			348.04	0.00

Service charges owing to 30/06/2021 0.00

Service charges owing for this financial year 0.00

Adjustments -133.92

Current amount outstanding -133.92

Plus remainder service charges to be billed 267.84

BALANCE including unbilled service charges 133.92

City West Water property settlement payments can be made via BPAY. If using BPAY please use the BPAY Biller code and reference below.

Biller Code: 8789
Reference: 1251 8314 8114



City West Water

ABN 70 066 902 467

Information Statement & Certificate

SECTION 158 WATER ACT 1989

ENQUIRIES
131691

REFERENCE NO.

1251 8314 8114

DATE OF ISSUE - 24/01/2022

APPLICATION NO.

1012010

This statement does not include any volumetric charges from 12/02/2021. This property was recorded as having been occupied by a tenant from this date.

Where applicable, this statement gives particulars of City West Water service charges as well as Parks Service and Waterways & Drainage service charges. Parks Service and Waterways & Drainage service charges are levied and collected on behalf of Parks Victoria and Melbourne Water Corporation respectively.

Section 274(4A) of the Water Act 1989 provides that all amounts in relation to this property that are owed by the owner are a charge on this property.

Section 275 of the Water Act 1989 provides that a person who becomes the owner of a property must pay to the Authority at the time the person becomes the owner of the property any amount that is, under Section 274(4A), a charge on the property.



City West Water

ABN 70 066 902 467

Information Statement & Certificate

SECTION 158 WATER ACT 1989

ENQUIRIES
131691

REFERENCE NO.

1251 8314 8114

DATE OF ISSUE - 24/01/2022

APPLICATION NO.

1012010

Information given pursuant to section 158 of the Water Act 1989

Information available at Melbourne Water indicates that this property is not subject to flooding from Melbourne Water's drainage system, based on a flood level that has a probability of occurrence of 1% in any one year.

Sewer & or Water Assets if available are shown on the attached Plan. Should this plan not display all of the requested property please contact City West Water on 131691.

AUTHORISED OFFICER:

ROHAN CHARRETT
GENERAL MANAGER
CUSTOMER EXPERIENCE
CITY WEST WATER CORPORATION

Unless prior consent has been obtained from both CITY WEST WATER and MELBOURNE WATER (Section 148 Water Act 1989), the erection and/or replacement of any structure or filling over or under any easement, sewer or drain, any interference with, any sewer, drain or watercourse, or any connection to any sewer drain or watercourse is PROHIBITED.

City West Water provides information in this statement relating to waterways and drainage pursuant to Section 158 of the Water Act 1989, as an agent for Melbourne Water.

Please contact City West Water prior to settlement for an update on these charges and remit payment to City West Water immediately following settlement. Updates of rates and other charges will only be provided for up to three months from the date of this statement.

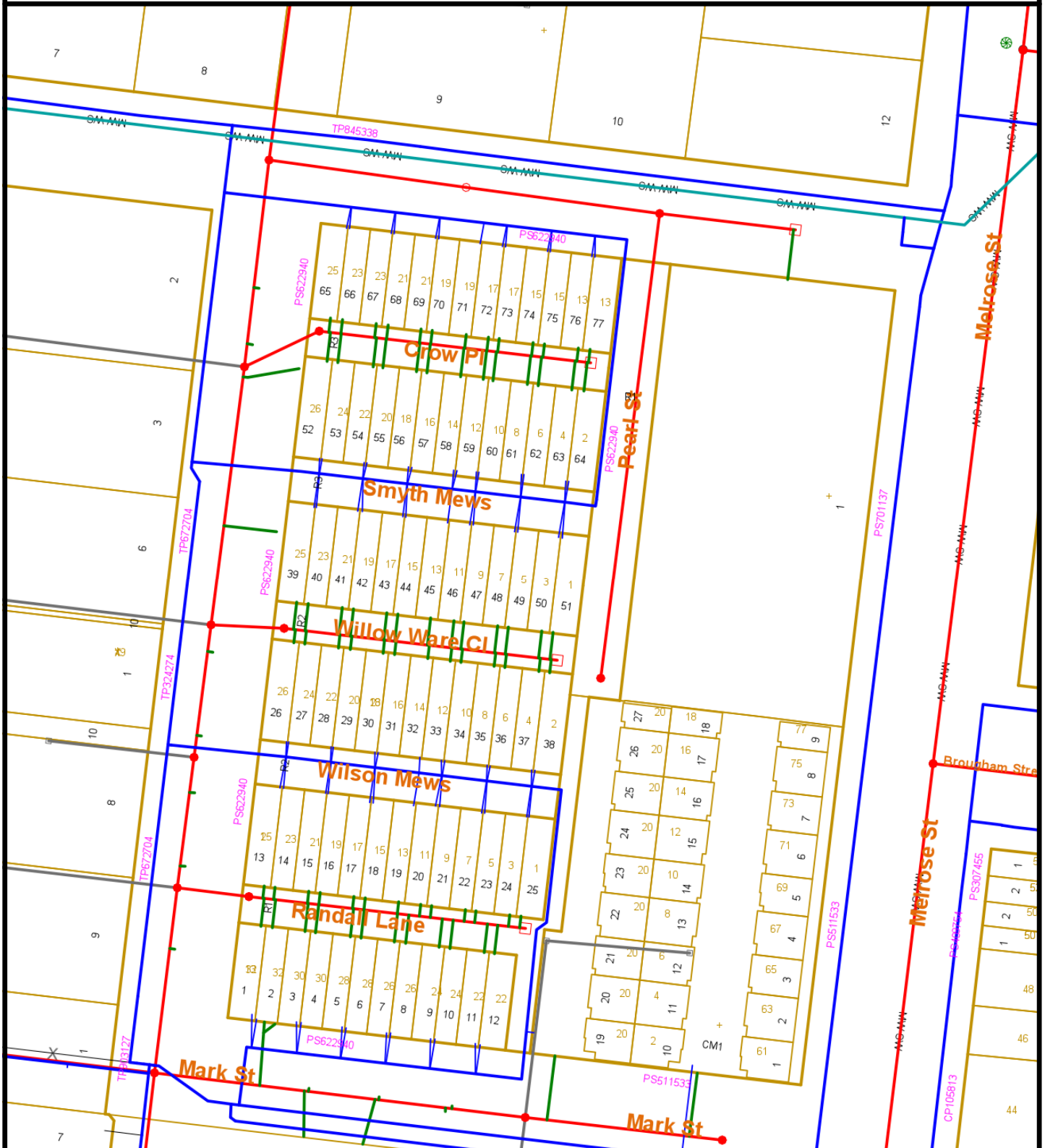


Greater
Western
Water

Encumbrance Plan

5 SMYTH MEWS NORTH MELBOURNE 3051

Application No. 1012010



LEGEND

	Circular Manhole		Recycled Water Main		MW Sewer Main
	Inspection Shaft		MW Channel		MW Abandoned Sewer Main
	Sewer Main		MW Abandoned Channel		MW Water Main
	Abandoned Sewer Main		MW Natural Waterway		MW Abandoned Water Main
	Water Main		MW Underground Drain		MW Manhole
	Abandoned Water Main		MW Abandoned Underground Drain		MW Abandoned Manhole



Date: 24/01/2022

Disclaimer: The location of assets must be proved in the field prior to the commencement of work. A separate plan showing asset labels should be obtained for any proposed works. These plans do not indicate private services. Greater Western Water does not guarantee and makes no representation or warranty as to the accuracy or scale of this plan. This corporation accepts no liability for any loss, damage or injury by any person as a result of any inaccuracy in this plan.

Property Clearance Certificate
Taxation Administration Act 1997



INFOTRACK / TISHER LINER FC LAW

Your Reference:	220070
Certificate No:	50358895
Issue Date:	24 JAN 2022
Enquiries:	ESYSPROD

Land Address: 5 SMYTH MEWS NORTH MELBOURNE VIC 3051					
Land Id	Lot	Plan	Volume	Folio	Tax Payable
37474622	49	622940	11153	774	\$9,125.00

Vendor: JOYCELYN YUEH L ONG, MUI HONG ELIZAB LIM & 1 OTHER(S)
Purchaser: FOR INFORMATION PURPOSES

Current Land Tax	Year	Taxable Value	Proportional Tax	Penalty/Interest	Total
MR TIAN KHIAM ONG	2022	\$425,000	\$9,125.00	\$0.00	\$9,125.00

Comments: Land Tax will be payable but is not yet due - please see note 6 on reverse.

Current Vacant Residential Land Tax	Year	Taxable Value	Proportional Tax	Penalty/Interest	Total

Comments:

Arrears of Land Tax	Year	Proportional Tax	Penalty/Interest	Total

This certificate is subject to the notes that appear on the reverse. The applicant should read these notes carefully.


Paul Broderick
Commissioner of State Revenue

CAPITAL IMP VALUE:	\$775,000
SITE VALUE:	\$425,000
AMOUNT PAYABLE:	\$9,125.00



Notes to Certificates Under Section 95AA of the *Taxation Administration Act 1997*

Certificate No: 50358895

Power to issue Certificate

1. The Commissioner of State Revenue can issue a Property Clearance Certificate (Certificate) to an owner, mortgagee or bona fide purchaser of land who makes an application specifying the land for which the Certificate is sought and pays the application fee.

Amount shown on Certificate

2. The Certificate shows any land tax (including Vacant Residential Land Tax, interest and penalty tax) that is due and unpaid on the land described in the Certificate at the date of issue. In addition, it may show:
 - Land tax that has been assessed but is not yet due,
 - Land tax for the current tax year that has not yet been assessed, and
 - Any other information that the Commissioner sees fit to include, such as the amount of land tax applicable to the land on a single holding basis and other debts with respect to the property payable to the Commissioner.

Land tax is a first charge on land

3. Unpaid land tax (including Vacant Residential Land Tax, interest and penalty tax) is a first charge on the land to which it relates. This means it has priority over any other encumbrances on the land, such as a mortgage, and will continue as a charge even if ownership of the land is transferred. Therefore, a purchaser may become liable for any such unpaid land tax.

Information for the purchaser

4. If a purchaser of the land described in the Certificate has applied for and obtained a Certificate, the amount recoverable from the purchaser cannot exceed the 'amount payable' shown. A purchaser cannot rely on a Certificate obtained by the vendor.

Information for the vendor

5. Despite the issue of a Certificate, the Commissioner may recover a land tax liability from a vendor, including any amount identified on this Certificate.

General information

6. A Certificate showing no liability for the land does not mean that the land is exempt from land tax. It means that there is nothing to pay at the date of the Certificate.
7. An updated Certificate may be requested free of charge via our website, if:
 - The request is within 90 days of the original Certificate's issue date, and
 - There is no change to the parties involved in the transaction for which the Certificate was originally requested.

For Information Only

LAND TAX CALCULATION BASED ON SINGLE OWNERSHIP

Land Tax = \$625.00

Taxable Value = \$425,000

Calculated as \$375 plus (\$425,000 - \$300,000) multiplied by 0.200 cents.

Property Clearance Certificate - Payment Options

BPAY



Billers Code: 5249
Ref: 50358895

Telephone & Internet Banking - BPAY®

Contact your bank or financial institution to make this payment from your cheque, savings, debit or transaction account.

www.bpay.com.au

CARD



Ref: 50358895

Visa or Mastercard

Pay via our website or phone 13 21 61.
A card payment fee applies.

sro.vic.gov.au/paylandtax



**** Delivered by the LANDATA® System, Department of Environment, Land, Water & Planning ****

ROADS PROPERTY CERTIFICATE

The search results are as follows:

Tisher Liner FC Law C/- InfoTrack (Affinity)
475-495 Victoria Avenue
CHATSWOOD 2067
AUSTRALIA

Client Reference: 448410

NO PROPOSALS. As at the 24th January 2022, VicRoads has no approved proposals requiring any part of the property described in your application. You are advised to check your local Council planning scheme regarding land use zoning of the property and surrounding area.

This certificate was prepared solely on the basis of the Applicant-supplied address described below, and electronically delivered by LANDATA®.

5 SMYTH MEWS, NORTH MELBOURNE 3051
CITY OF MELBOURNE

This certificate is issued in respect of a property identified above. VicRoads expressly disclaim liability for any loss or damage incurred by any person as a result of the Applicant incorrectly identifying the property concerned.

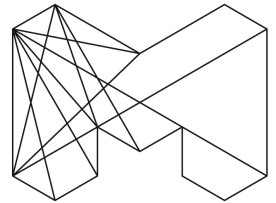
Date of issue: 24th January 2022

Telephone enquiries regarding content of certificate: 13 11 71

[Vicroads Certificate] # 60708758 - 60708758103247 '448410'

Property Information

Building Act 1993, Building Regulations 2018, Regulation 51.



CITY OF MELBOURNE

27 January 2022

Landata
PO Box 500
EAST MELBOURNE VIC 3002

GPO Box 1603
Melbourne VIC 3001
Phone (03) 9658 9658
www.melbourne.vic.gov.au

DX210487
ABN 55 370 219 287

5 Smyth Mews, NORTH MELBOURNE VIC 3051

Thank you for your building property application received 24 Jan 2022. Please find below the relevant information relating to your property enquiry.

Building Permits issued within the last 10 years

There are no Building Permits issued within the last 10 years.

Outstanding Building Notices or Orders

There are no outstanding Building Notices or Orders on this property.

Should the property be the subject of a current subdivision application, Council's requirements for approval of such may not have been met if the plan has not been registered at Land Victoria.

Please contact us if you have any queries or require any further information.

Building Team – Planning and Building Branch

Telephone (03) 9658 9658
Email building@melbourne.vic.gov.au
Web www.melbourne.vic.gov.au

Your Ref 60708758-016-8
Our Ref 169527

Notes:

1. This Branch is only required to forward information in respect of an application for a Property Enquiry as set out in Regulation 51 of the *Building Regulations 2018*.
2. **Swimming pool and spa safety barriers**
Properties with swimming pools and/or spas must have suitable barriers to prevent young children from drowning.
3. **Self contained smoke alarms**
Certain residential buildings must have smoke alarms to protect the occupants in the event of a fire.

For further information please contact Council's Building Control team on 9658 9658.

Please note that Council will be able to expedite any future requests if a legible copy of the relevant Certificate of Title is included. The subject property should be clearly identified on the Certificate.

PROPERTY REPORT

From www.planning.vic.gov.au at 21 January 2022 03:01 PM

PROPERTY DETAILS

Address: **5 SMYTH MEWS NORTH MELBOURNE 3051**

Lot and Plan Number: **Lot 49 PS622940**

Standard Parcel Identifier (SPI): **49\PS622940**

Local Government Area (Council): **MELBOURNE**

Council Property Number: **624235**

Directory Reference: **Melway 2A E4**

www.melbourne.vic.gov.au

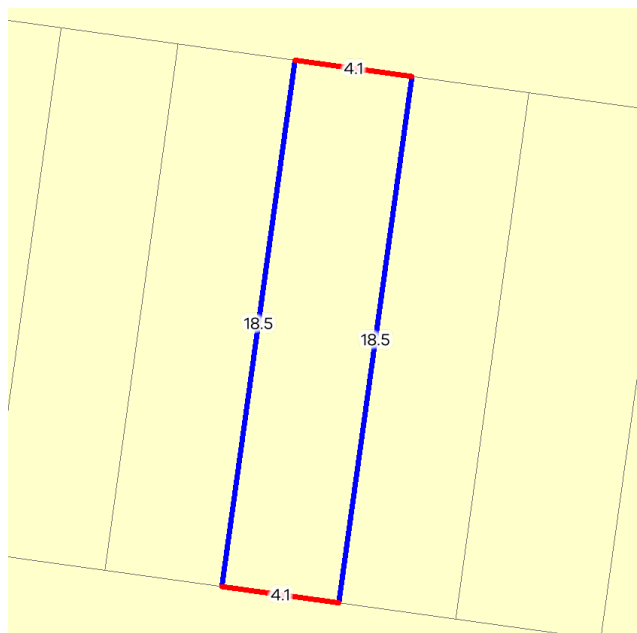
This property is not in a designated bushfire prone area.

No special bushfire construction requirements apply. Planning provisions may apply.

Further information about the building control system and building in bushfire prone areas can be found on the Victorian Building Authority website <https://www.vba.vic.gov.au>

SITE DIMENSIONS

All dimensions and areas are approximate. They may not agree with those shown on a title or plan.



UTILITIES

Rural Water Corporation: **Southern Rural Water**

Melbourne Water Retailer: **City West Water**

Melbourne Water: **Inside drainage boundary**

Power Distributor: **CITIPOWER**

STATE ELECTORATES

Legislative Council: **NORTHERN METROPOLITAN**

Legislative Assembly: **MELBOURNE**

PROPERTY REPORT

PLANNING INFORMATION

Planning Zone: [MIXED USE ZONE \(MUZ\)](#)

[SCHEDULE TO THE MIXED USE ZONE \(MUZ\)](#)

Planning Overlay: [DESIGN AND DEVELOPMENT OVERLAY \(DDO\)](#)

[DESIGN AND DEVELOPMENT OVERLAY - SCHEDULE 66 \(DDO66\)](#)

[DESIGN AND DEVELOPMENT OVERLAY - SCHEDULE 63 \(AREA 2\) \(DDO63-A2\)](#)

[DEVELOPMENT CONTRIBUTIONS PLAN OVERLAY \(DCPO\)](#)

[DEVELOPMENT CONTRIBUTIONS PLAN OVERLAY - SCHEDULE 2 \(DCPO2\)](#)

[DEVELOPMENT PLAN OVERLAY \(DPO\)](#)

[DEVELOPMENT PLAN OVERLAY - SCHEDULE 9 \(DPO9\)](#)

[ENVIRONMENTAL AUDIT OVERLAY \(EAO\)](#)

Planning scheme data last updated on 20 January 2022.

A **planning scheme** sets out policies and requirements for the use, development and protection of land. This report provides information about the zone and overlay provisions that apply to the selected land. Information about the State and local policy, particular, general and operational provisions of the local planning scheme that may affect the use of this land can be obtained by contacting the local council or by visiting <https://www.planning.vic.gov.au>

This report is NOT a **Planning Certificate** issued pursuant to Section 199 of the **Planning and Environment Act 1987**. It does not include information about exhibited planning scheme amendments, or zonings that may affect the land. To obtain a Planning Certificate go to Titles and Property Certificates at Landata - <https://www.landata.vic.gov.au>

For details of surrounding properties, use this service to get the Reports for properties of interest.

To view planning zones, overlay and heritage information in an interactive format visit <https://mapshare.maps.vic.gov.au/vicplan>

For other information about planning in Victoria visit <https://www.planning.vic.gov.au>

Area Map



Selected Property

Extract of EPA Priority Site Register

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**** Delivered by the LANDATA® System, Department of Environment, Land, Water & Planning ****

PROPERTY INQUIRY DETAILS:

STREET ADDRESS: 5 SMYTH MEWS

SUBURB: NORTH MELBOURNE

MUNICIPALITY: MELBOURNE

MAP REFERENCES: Melways 40th Edition, Street Directory, Map 2A Reference E4
Melways 40th Edition, Street Directory, Map 43 Reference C2

DATE OF SEARCH: 24th January 2022

PRIORITY SITES REGISTER REPORT:

A search of the Priority Sites Register for the above map references, corresponding to the address given above, has indicated that this site is not listed on, and is not in the vicinity of a site listed on the Priority Sites Register at the above date.

IMPORTANT INFORMATION ABOUT THE PRIORITY SITES REGISTER:

You should be aware that the Priority Sites Register lists only those sites for which:

Priority Sites are sites for which EPA has issued a:

- Clean Up Notice pursuant to section 62A) of the Environment Protection Act 1970
- Pollution Abatement Notice pursuant to section 31A or 31B (relevant to land and/or groundwater) of the Environment Protection Act 1970
- Environment Action Notice pursuant to Section 274 of the Environment Protection Act 2017
- Site Management Order (related to land and groundwater) pursuant to Section 275 of the Environment Protection Act 2017
- Improvement Notice (related to land and groundwater) pursuant to Section 271 of the Environment Protection Act 2017
- Prohibition Notices (related to land and groundwater) pursuant to Section 272 of the Environment Protection Act 2017 on the occupier or controller of the site to require active management of these sites, or where EPA believes it is in the community interest to be notified of a potential contaminated site and this cannot be communicated by any other legislative means. Sites are removed from the Priority Sites Register once all conditions of a Notice have been complied with.

The Priority Sites Register does not list all sites known to be contaminated in Victoria. A site should not be presumed to be free of contamination just because it does not appear on the Priority Sites Register. Persons intending to enter into property transactions should be aware that many properties may have been contaminated by past land uses and EPA may not be aware of the presence of contamination. EPA has published information advising of potential contaminating land uses. Council and other planning authorities hold information about previous land uses, and it is advisable that such sources of information should also be consulted.



Extract of EPA Priority Site Register

**** Delivered by the LANDATA® System, Department of Environment, Land, Water & Planning ****

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For sites listed on the Priority Sites Register, a copy of the relevant Notice, detailing the reasons for issue of the Notice, and management requirements, is available on request from EPA through the contact centre (details below). For more information relating to the Priority Sites Register, refer to the EPA website at: <https://www.epa.vic.gov.au/for-community/environmental-information/land-groundwater-pollution/priority-sites-register>

Environment Protection Authority Victoria
200 Victoria Street
Carlton VIC 3053
1300 EPA VIC (1300 372 842)