



**KALUS KENNY
INTELEX**
LAWYERS. ADVISORS.

Contract of Sale

Vendor:

Alphington Developments Pty Ltd ACN 164 529 864

Property:

Lot _____ on proposed Plan of Subdivision No. 747685W, 801752K,
801753H, 801754F [##Insert/Delete as appropriate], Latrobe Avenue and
Parkview Road, ALPHINGTON 3078

Ref: HK:LF:160493

ADVICE. STRATEGY. OUTCOME MANAGEMENT.

CONTRACT OF SALE OF REAL ESTATE

The vendor sells and the purchaser buys the property, being the land and the goods, for the price and on the conditions set out in this contract.

The terms of this contract are contained in the:

- * Particulars of sale;
- * Special conditions, if any;
- * General conditions; and
- * Vendor's Statement

and in that order of priority.

SIGNING OF THIS CONTRACT

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

Purchasers should ensure that, prior to signing this contract, they have received:

- a copy of the section 32 statement required to be given by a vendor under section 32 of the **Sale of Land Act 1962** in accordance with Division 2 of Part II of the Act; and
- a copy of the full terms of this contract.

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 of person signing:

State nature of authority if applicable (e.g. 'director', "attorney under power of attorney")

SIGNED BY THE VENDOR on / /20

Print name of person signing:

State nature of authority if applicable (e.g. 'director', "attorney under power of attorney")

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

IMPORTANT NOTICE TO PURCHASERS

Cooling-off period (Section 31 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:

1. you bought the property at or within 3 clear business days **before or after** a publicly advertised auction;
2. the property is used mainly for industrial or commercial purposes;
3. the property is more than 20 hectares in size and is used mainly for farming;
4. you and the vendor previously signed a similar contract for the same property; or
5. you are an estate agent or a corporate body.

NOTICE TO PURCHASERS OF PROPERTY 'OFF THE PLAN'

Off-the-Plan Sales

Section 9AA(1A)

Sale of Land Act 1962

You may negotiate with the vendor about the amount of 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.

PARTICULARS OF SALE

**VENDOR'S
REPRESENTATIVE:**

Kalus Kenny Intelex
of Suite 3, Level 3 Como Centre
299 Toorak Road, SOUTH YARRA, 3141
DX 32802 COMO
Tel: 8825 4800 Fax: 9826 9909
Ref: Henry Kalus/Jessica Lee

**PURCHASER'S
REPRESENTATIVE:**

Tel: Fax: Ref:

VENDOR:

Alphington Developments Pty Ltd ACN 164 529 864
of 480 Church Street, CREMORNE 3121

PURCHASER:**LAND:**

Part of the Land described in the table below:

Certificate of Title Reference	Being Lot(s)	On Plan
Volume 4247 Folio 246		747685W,
Volume 3581 Folio 198		801752K,
Volume 4468 Folio 576		801753H,
Volume 4935 Folio 969		801754F
Volume 9189 Folio 426		[Insert/ delete as appropriate]
Volume 4602 Folio 366		
Volume 8250 Folio 161		
Volume 5108 Folio 460		
Volume 4475 Folio 803		
Volume 4804 Folio 659		
Volume 3869 Folio 662		
Volume 5851 Folio 168		
Volume 3586 Folio 197		
Volume 4159 Folio 798		
Volume 3738 Folio 583		
Volume 4282 Folio 337		
Volume 3653 Folio 527		
Volume 5308 Folio 499		
Volume 3780 Folio 842		
Volume 3888 Folio 511		
Volume 8519 Folio 930		
Volume 3744 Folio 714		
Volume 3599 Folio 653		
Volume 3900 Folio 920		
Volume 3910 Folio 988		
Volume 3910 Folio 989		
Volume 3679 Folio 793		
Volume 3796 Folio 141		
Volume 8636 Folio 106		

PROPERTY ADDRESS:

Lot _____ on proposed Plan of Subdivision No.
747685W, 801752K, 801753H, 801754F [##Insert/delete as appropriate], Latrobe Avenue and Parkview Road, ALPHINGTON 3078

GOODS (List or attach schedule)

Nil – vacant land

PURCHASE PRICE:

\$ _____

DEPOSIT:

\$ _____

being 10% of the Purchase Price payable on the date the Purchaser signs this Contract

BALANCE:

\$ _____

payable at settlement

GST

(refer to general condition 13):

The price includes GST (if any) unless the words **plus GST** appear in this box:

xxxxxxxxxxxxxxxxxxxxxx

If this is a sale of a “farming business” or “going concern” then add the words **“farming business”** or **“going concern”** in this box:

xxxxxxxxxxxxxxxxxxxxxx

If the margin scheme will be used to calculate GST then add the words **“margin scheme”** in this box:

Margin Scheme

SETTLEMENT:

is due on the later of the following:

- _____ / _ 201_ ; or
- fourteen (14) days after the Vendor's Solicitor notifies the Purchaser or the Purchaser's Legal Practitioner or Conveyancer of the procurement of the Planning Permit; or
- fourteen (14) days after the Vendor or the Vendor's Solicitor gives notice to the Purchaser or the Purchaser's Legal Practitioner or Conveyancer of registration of the Plan of Subdivision.

At settlement the purchaser is entitled to vacant possession of the property unless the words **“subject to lease”** appear in this box:

xxxxxxxxxxxxxxxxxxxxxx

If **“subject to lease”** then the particulars of the Lease are:

Not Applicable.

If this contract is intended to be a terms contract within the meaning of the Sale of Land Act 1962, then add the words "**terms contract**" in this box, and refer to general condition 23 and add any further provisions by way of special conditions:

Not Applicable

ENCUMBRANCES:

This sale is NOT subject to an existing mortgage unless the words "**subject to existing mortgage**" appear in this box:

Not Applicable

If the sale is "**subject to existing mortgage**" then particulars of the mortgage are:

Not Applicable.

SPECIAL CONDITIONS:

This contract does not include any special conditions unless the words "**special conditions**" appear in this box:

Special Conditions

CONTRACT OF SALE OF REAL ESTATE — GENERAL CONDITIONS

Part 2 of the standard form of contract prescribed by the *Estate Agents (Contracts) Regulations 2008*

TITLE

1. Encumbrances

- 1.1 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 in the crown grant; and
 - (c) any lease referred to in the particulars of sale.
- 1.2 The purchaser indemnifies the vendor against all obligations under any lease that are to be performed by the landlord after settlement.
- 1.3 In this general condition 'section 32 statement' means a statement required to be given by a vendor under section 32 of the **Sale of Land Act 1962** in accordance with Division 2 of part II of that Act.

2. Vendor Warranties

- 2.1 The vendor warrants that these general conditions 1 to 28 are identical to the general conditions 1 to 28 in the standard form of contract of sale of real estate prescribed by the *Estate Agents (Contracts) Regulations 2008* for the purposes of section 53A of the *Estate Agents Act 1980*.
- 2.2 The warranties in general conditions 2.3 and 2.4 replace the purchaser's right to make requisitions and inquiries.
- 2.3 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 lease or granted a preemptive 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.
- 2.4 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 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.
- 2.5 The warranties in general conditions 2.3 and 2.4 are subject to any contrary provisions in this contract and disclosures in the section 32 statement required to be given by the vendor under section 32 of the **Sale of Land Act 1962** in accordance with Division 2 of Part II of the Act.
- 2.6 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*.
- 2.7 Words and phrases used in general condition 2.6 which are defined in the *Building Act 1993* have the same meaning in general condition 2.6.

3. Identity of the land

- 3.1 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.
- 3.2 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.

4. Services

- 4.1 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.
- 4.2 The purchaser is responsible for the connection of all services to the property after settlement and the payment of any associated cost.

5. Consents

The vendor must obtain any necessary consent or licence required for the sale. 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.

6. Transfer

The transfer of land document must be prepared by the purchaser and delivered to the vendor at least 10 days before settlement. The delivery of the transfer of land document is not acceptance of title. The vendor must prepare any document required for assessment of duty on this transaction relating to matters that are or should be within the knowledge of the vendor and, if requested by the purchaser, must provide a copy of that document at least 3 days before settlement.

7. Release of security interest

7.1 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.

7.2 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 7.4, 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.

7.3 If the purchaser is given the details of the vendor's date of birth under condition 7.2, the purchaser must :

- (a) only use the vendor's date of birth for the purposes specified in condition 7.2; and
- (b) keep the date of birth of the vendor secure and confidential.

7.4 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.

7.5 Subject to general condition 7.6, the vendor is not obliged to ensure that the purchaser receives a release, statement, approval or correction in respect of any 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.

7.6 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 7.5 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.

7.7 A release for the purposes of general condition 7.4(a) must be in writing.

7.8 A release for the purposes of general condition 7.4(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.

7.9 If the purchaser receives a release under general condition 7.4(a), the purchaser must provide the vendor with a copy of the release at or as soon as practicable after settlement.

7.10 In addition to ensuring a release is received under general condition 7.4(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.

7.11 The purchaser must advise the vendor of any security interest that is registered on or before the day of sale on the Personal Properties Securities Register, which the purchaser reasonably requires to be released, at least 21 days before the due date for settlement.

7.12 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 7.11.

- 7.13 If settlement is delayed under general condition 7.12, 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.
- 7.14 The vendor is not required to ensure that the purchaser receives a release in respect of the land. This general condition 7.14 applies despite general condition 7.1.
- 7.15 Words and phrases which are defined in the **Personal Property Securities Act 2009 (Cth)** have the same meaning in general condition 7 unless the context requires otherwise.

8. **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.

9. **General Law Land**

- 9.1 This condition only applies if any part of the land is not under the operation of the *Transfer of Land Act 1958*.
- 9.2 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.
- 9.3 The purchaser is entitled to inspect the vendor's chain of title on request at such place in Victoria as the vendor nominates.
- 9.4 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.
- 9.5 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.
- 9.6 If the contract ends in accordance with general condition 9.5, the deposit must be returned to the purchaser and neither party has a claim against the other in damages.
- 9.7 General condition 10.1 should be read, in respect of that part of the land which is not under the operation of the *Transfer of Land Act 1958*, as if the reference to 'registered proprietor' is a reference to 'owner'.

MONEY

10. **Settlement**

- 10.1 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.
- 10.2 The vendor's obligations under this general condition continue after settlement.
- 10.3 Settlement must be conducted between the hours of 10.00 a.m. and 4.00 p.m. unless the parties agree otherwise.

11. **Payment**

- 11.1 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.
- 11.2 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 or 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;
- 11.3 The purchaser must pay all money other than the deposit:
 - (a) to the vendor, or the vendor's legal practitioner or conveyancer; or
 - (b) in accordance with a written direction of the vendor or the vendor's legal practitioner or conveyancer.
- 11.4 At settlement, payments may be made or tendered:
 - (a) in cash; or
 - (b) by cheque drawn on an authorised deposit-taking institution; or

- (c) if the parties agree, by electronically transferring the payment in the form of cleared funds.
- 11.5 For the purpose of this general condition 'authorised deposit-taking institution' means a body corporate in relation to which an authority under subsection 9(3) of the *Banking Act 1959* (Cth) is in force.
- 11.6 At settlement, the purchaser must pay the fees on up to three cheques drawn on an authorised deposit taking institution. If the vendor requests that any additional cheques be drawn on an authorised deposit taking institution, the vendor must reimburse the purchaser for the fees incurred.
- 12. Stakeholding**
- 12.1 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 do 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.
- 12.2 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.
- 12.3 The stakeholder may pay the deposit and any interest into court if it is reasonable to do so.
- 13. GST**
- 13.1 The purchaser does not have to pay the vendor any GST payable by the vendor in respect of a taxable supply made under this contract in addition to the price unless the particulars of sale specify that the price is 'plus GST'. However the purchaser must pay to the vendor any GST payable by the vendor:
- (a) 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
 - (b) if 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 a part of it) does not satisfy the requirements of section 38-480 of the GST Act; or
 - (c) if the particulars of sale specify that the supply made under this contract is a going concern and the supply (or part of it) does not satisfy the requirements of section 38-325 of the GST Act.
- 13.2 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 the particulars of sale specify that the price is 'plus GST'.
- 13.3 If the purchaser is liable to pay GST, the purchaser is not required to make payment until provided with a tax invoice, unless the margin scheme applies.
- 13.4 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.
- 13.5 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.
- 13.6 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.
- 13.7 This general condition will not merge on either settlement or registration.
- 13.8 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.
- 14. Loan**
- 14.1 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.
- 14.2 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 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.
- 14.3 All money must be immediately refunded to the purchaser if the contract is ended.
- 15. Adjustments**
- 15.1 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 adjustment paid and received as appropriate.

- 15.2 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.

TRANSACTIONAL

16. Time

- 16.1 Time is of the essence of this contract.
- 16.2 Time is extended until the next business day if the time for performing any action falls on a Saturday, Sunday or bank holiday.

17. Service

- 17.1 Any document sent by
 - (a) post is taken to have been served on the next business day after posting, unless proved otherwise;
 - (b) 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**.
- 17.2 Any demand, notice, or document required to be served by or on any party may be served by or on the legal practitioner or conveyancer for that party. It is sufficiently served if served on the party or on the legal practitioner or conveyancer -
 - (a) personally; or
 - (b) by pre-paid post; or
 - (c) in any manner authorised by law or the Supreme Court for service of documents, including any manner authorised for service on or by a legal practitioner; or
 - (d) by email.
- 17.3 This general condition applies to the service of any demand, notice or document by any party, whether the expression 'give' or 'serve' or any other expression is used.

18. Nominee

The purchaser may nominate a substitute or additional transferee, but the named purchaser remains personally liable for the due performance of all the purchaser's obligations under this contract.

19. 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 default by a proprietary limited company purchaser.

20. 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.

21. Notices

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 that does not relate to periodic outgoings. The purchaser may enter the property to comply with that responsibility where action is required before settlement.

22. 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.

23. Terms contract

- 23.1 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.
- 23.2 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.

24. Loss or damage before settlement

- 24.1 The vendor carries the risk of loss or damage to the property until settlement.
- 24.2 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.
- 24.3 The purchaser must not delay settlement because one or more of the goods is not in the condition required by general condition 24.2, but may claim compensation from the vendor after settlement.
- 24.4 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 24.2 at settlement.
- 24.5 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.
- 24.6 The stakeholder must pay the amounts referred to in general condition 24.5 in accordance with the determination of the dispute, including any order for payment of the costs of the resolution of the dispute.

25. 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

26. 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 on any money owing under the contract during the period of default, without affecting any other rights of the offended party.

27. Default notice

- 27.1 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.
- 27.2 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 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.

28. Default not remedied

- 28.1 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.
- 28.2 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.
- 28.3 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.
- 28.4 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.
- 28.5 The ending of the contract does not affect the rights of the offended party as a consequence of the default.

SPECIAL CONDITIONS

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Contract unless the context otherwise requires, the following expressions have the following meanings:

ADI has the meaning given to that term in the Legal Profession Uniform Law.

Adjacent Development means any proposed development to be carried out on any property adjacent or nearby or in the vicinity of the Land including, without limitation, any development or proposed development of the Adjacent Land, whether carried out by the Vendor or any other Adjacent Land Owner.

Adjacent Land means the land known as 626 Heidelberg Road, Alphington and 28 Parkview Road, Alphington which is more particularly described in the list of certificates of title attached to this Contract as Annexure E (but not including the Land or any part thereof) and any other property adjacent or nearby or in the vicinity of the Land.

Adjacent Land Owner means any owner from time to time of any of the Adjacent Land including, without limitation, the Vendor or a Related Body Corporate of the Vendor and includes the Adjacent Land Owners successors and assigns.

Authorised ADI has the meaning given to that term in the Legal Profession Uniform Law.

Builder means Glenvill Projects Pty Ltd ACN 147 526 074.

Building Act means the *Building Act 1993 (Vic)*.

Business Day means the day on which trading banks are open for business in the City of Melbourne.

Claim means and includes any injury, damage, loss, claim, action, proceeding or demand made against a person however arising.

Clearance Certificate means a clearance certificate issued by the Commissioner pursuant to section 14-220(1) of Schedule 1 to the Tax Act.

Commissioner means the Commissioner of Taxation.

Contamination means the presence of any substance:

- (a) which could result in a public authority issuing a notice requiring work to be done to the Property or investigations to be carried out on the Property and/or requiring the monitoring of the Property;
- (b) which is potentially harmful to human health or the environment;
- (c) which breaches any legislation or authorisation which relates to the environment; or
- (d) which, in the context in which it is found or proposed to be used or deposited (as the case may be), is detrimental to the beneficial use of the environment or the Property.

Contract means this Contract of Sale of Real Estate and includes the annexures and schedules to this Contract.

Controlled Money Account has the meaning given to that term in the Legal Profession Uniform Law.

Council means the Yarra City Council.

Day of Sale means the date by which both the Purchaser and the Vendor have signed this Contract.

Delivery Date has the meaning give to that term in Special Condition 23(a).

Deposit means the deposit specified in the Particulars of Sale.

Deposit Security means subject to Special Conditions 5.1(b), 5.1(c) and 5.1(d), an unconditional and irrevocable Bank Guarantee made out in favour of the Vendor's Solicitors in a form and issued by a bank approved by the Vendor's Solicitors in their absolute discretion with either no expiry date or an expiry date acceptable to the Vendor's Solicitors in their absolute discretion (see Annexure C).

Development means the development of the whole of the Land and any improvements which are constructed or proposed to be constructed on the Land.

Development Plan means the development plan relating to the Land and the Adjacent Land which was endorsed by Council on 27 May 2016, a copy of which is available at <http://bit.ly/Yarrabend> (password = YarraBend3078) and which is intended to guide all future development of the Land and the Adjacent Land.

Development Works means the construction and completion of all infrastructure works, installation of services and the subdivision of the Land and the creation of other lots on the Land and includes works of any kind necessary or incidental to establishing utility infrastructure and utility services, connections to such infrastructure and services, and including any excavation and general earthworks, but does not include the construction of a dwelling.

Due Date has the meaning given to that term in Special Condition 5.1(a).

Environmental Liability means any liability, obligation, costs, fees, charges, losses, damages, penalties, claims, actions or other demands, suffered or incurred as a consequence of Contamination of, or arising from, the Property (whether or not such Contamination is disclosed to the Purchaser in this Contract).

Electronic Transmission means the giving of a document by a party to the other party by:

- (a) transmitting the document by email; or
- (b) transmitting by email, notification that the document is given together with hyperlink at which the document can be viewed and downloaded or the web address where the document can be viewed or downloaded.

Fair Trading Amendment (Unfair Contract Terms) Act means the *Fair Trading Amendment (Unfair Contract Terms) Act 2010* (Vic) as amended from time to time.

FRCGW means foreign resident capital gains withholding payment.

Further Development means any further development of any part of the Adjacent Land and any Lot on the Plan of Subdivision (other than the Lot) and includes any Further Subdivision.

Further Subdivision means the further subdivision of the Lots on the Plan of Subdivision (other than the Lot) and any subdivision of any part of Adjacent Land (other than the Lot).

General Conditions means the General Conditions attached to this Contract, in the form set out in Part 2 of the *Estate Agents (Contracts) Regulations 2008* (Vic).

Guaranteee means the guarantee contained in Annexure B.

Land means either all or part of the land described in Certificates of Title Volume 4247 Folio 246, Volume 3581 Folio 198, Volume 4468 Folio 576, Volume 4935 Folio 969, Volume 9189 Folio 426, Volume 4602 Folio 366, Volume 8250 Folio 161, Volume 5108 Folio 460, Volume 4475 Folio 803, Volume 4804 Folio 659, Volume 3869 Folio 662, Volume 5851 Folio 168, Volume 3586 Folio 197, Volume 4159 Folio 798, Volume 3738 Folio 583, Volume 4282 Folio 337, Volume 3653 Folio 527, Volume 5308 Folio 499, Volume 3780 Folio 842, Volume 3888 Folio 511, Volume 8519 Folio 930, Volume 3744 Folio 714, Volume 3599 Folio 653, Volume 3900 Folio 920, Volume 3910 Folio 988, Volume 3910 Folio 989, Volume 3679 Folio 793, Volume 3796 Folio 141 and Volume 8636 Folio 106, and each of the Lots contained in the Plan of Subdivision and includes the Property.

Land Tax means an assessment of land tax pursuant to the *Land Tax Act 2005* (Vic) as amended from time to time.

Legal Profession Uniform Law means the *Legal Profession Uniform Law* (Victoria).

Latest Date for Registration means the date being thirty-six (36) months from the Day of Sale.

Lot or Lots means a lot or lots on the Plan of Subdivision and **the Lot** means the Lot specified in the Particulars of Sale.

Major Domestic Building Contract has the meaning given to those words in the *Domestic Building Contracts Act 1995*.

Occupancy Permit means an occupancy permit issued under the Building Act with respect to the Lot.

Particulars of Sale means the Particulars of Sale forming part of this Contract.

Permit means any planning or building permit issued or to be issued by the Council or other relevant authority and includes any amendments or variations thereof and includes, but is not limited to, the Planning Permit.

Permit Sunset Date means the date that is eighteen (18) months from the Day of Sale, or any extension thereof.

Plan of Subdivision means proposed Plan of Subdivision No. 747685W, 801752K, 801753H, 801754F [KKI Note: Insert/delete as appropriate] a copy of which is contained in Annexure A, and all its stages or a particular stage where the context requires and any modification thereof.

Planning and Building Controls means the Restrictions, this Contract and any other matters set out in Special Condition 33.

Planning Permit means a Planning Permit issued by the Council on terms and conditions acceptable to the Vendor (in its sole discretion) for the carrying out of the Development and includes any amendments or variations thereof.

Property means the property described in the Particulars of Sale.

Purchase Price means the purchase price for the Lot specified in the Particulars of Sale.

Purchaser means the person so described in the Particulars of Sale or any Contract and includes the Purchaser's successors and permitted assigns.

Related Body Corporate has the meaning ascribed thereto in the *Corporations Act 2001* (Cth) as amended from time to time.

Registrar means the Registrar of Titles.

Registration means, in relation to the Plan of Subdivision, the issue by the Registrar of a notice stating the approval of the Plan of Subdivision.

Restrictions means the restrictions to be created on registration of the Plan.

Sale of Land Act means the *Sale of Land Act 1962* (Vic) as amended from time to time.

Section 173 Agreement means any agreement or agreements entered into (or to be entered into) by the Vendor and the Council pursuant to Section 173 of the *Planning and Environment Act 1987* (Vic).

Services has the meaning given to that term in Special Condition 15.5(a).

Settlement Date means the date specified in the Particulars of Sale, being the date upon which the whole of the Purchase Price will be paid and **Settlement** means the date upon which Settlement occurs.

Subdivision Act means the *Subdivision Act 1988* (Vic) as amended from time to time.

Statement of Compliance means a Statement of Compliance under the Subdivision Act.

Tax Act means the Tax Administration Act 1953 (Cth).

Vendor means the person described in the Particulars of Sale and includes its successors and permitted assigns.

Vendor's Agent means the agent specified in the Particulars of Sale (if any).

Vendor's Solicitors means Kalus Kenny Intelex.

1.2 Interpretation

(a) Headings

Headings and Special Condition headings have been inserted for guidance only and do not form part of the context of this Contract and are not to be taken into account when this Contract is interpreted.

(b) References to statutes

In this Contract, a reference to a statute, ordinance, code or other law includes any regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them occurring at any time before or after the date of this Contract.

(c) References to things

In this Contract, a reference to a thing (including an amount) is a reference to the whole and each part of it and a reference to a group of persons is a reference to all of them collectively, to any two or more of them collectively and to each of them individually.

(d) Persons

In this Contract, unless the contrary intention appears, the word person includes a firm, a body corporate, an unincorporated association or an authority.

(e) Genders

In this Contract, unless the contrary intention appears, words importing the masculine gender shall include the feminine and neuter genders and vice versa.

2. GENERAL

2.1 Further Acts

Each of the parties must sign, execute and deliver all such documents and instruments and must do all such acts and things as may be necessary or desirable to give effect to this Contract.

2.2 Non-Merger

None of the terms or conditions of this Contract or any act, matter or thing done under or in connection with this Contract will operate as a merger of any of the rights and remedies of the parties under this Contract, all of which rights and remedies will at all times continue in full force and effect.

2.3 Joint and Severable

Where the obligations and covenants given and undertaken herein are given by more than one person they will be deemed to have been given and undertaken jointly and severally.

2.4 Severability

If any of the provisions of this Contract are judged invalid, unlawful or unenforceable for any reason whatsoever by a Court of competent jurisdiction, including, but not limited to, due to the operation of the *Trade Practices Amendment (Australian Consumer Law) Act (No1) 2010* (Cth), such invalidity or enforceability or illegality (unless deletion of such provision or provisions would substantially alter the expressed or implied intent of the parties), will not effect the operation or interpretation of any other provisions of this Contract with the intent that the invalid, unenforceable or illegal provision or provisions would be treated for the purposes of this Contract as severed from this Contract.

2.5 Acknowledgment

The Purchaser acknowledges that prior to the execution of this Contract the Purchaser has received from the Vendor's Agent:

- (a) a statement pursuant to Section 51 of the *Estate Agents Act 1980* (Vic) (if applicable);
- (b) a copy of this Contract and a vendor's statement pursuant to Section 32 of the *Sale of Land Act*; and
- (c) the Due Diligence Checklist published by Consumer Affairs Victoria, a copy of which is attached to this Contract as Annexure D.

2.6 No Representation

The Purchaser agrees and acknowledges that:

- (a) this Contract contains and sets forth all the terms and conditions of and relating to the sale of the Lot by the Vendor to the Purchaser and that so far as is legally permissible there are no conditions, warranties or other terms affecting or relating to this sale other than those embodied herein and the Purchaser acknowledges that the Vendor has not given any warranty nor made any representation in relation to the Lot;
- (b) no servant or agent of the Vendor or, consultant, professional advisor or other person on behalf of the Vendor has made or has had any authority to make any representation, warranty, arrangement, condition, statement or agreement binding on the Vendor which is not embodied in this Contract;
- (c) the description of areas and measurements appearing in any marketing material with respect to the Development are approximations only and may differ from such actual areas and measurements upon completion of the Development and may vary depending on the methodology of measurement. Areas represented are not representative of floor areas and may not be representative of areas within the title boundaries of a lot;
- (d) the area and dimensions of any display suite or model of the Development by the Vendor are not representative of actual area or dimensions of the Lot or any part thereof;
- (e) the information contained in any promotional material is for illustration purposes only and is subject to change. Statements, figures, calculations, plans, images and representations are indicative only. Changes may be made during the further planning or development stages of the Development without notice. Whilst all reasonable care has been taken in providing this information, the Vendor and its Related Bodies Corporate and their representatives, consultants and agents accept no responsibility for the accuracy of any information contained in any promotional material or for any action taken in reliance thereon by any Purchaser;
- (f) the Purchaser has made its own enquiries to satisfy itself as to all aspects of the Development and has obtained independent legal and financial advice in relation to all of the information contained herein;
- (g) the information contained in promotional material is a guide only and does not constitute an offer, inducement, representation, warranty or contract; and
- (h) any proposed street naming and numbering contained in promotional material is subject to Council approval and may change without notice.

2.7 Waiver

No waiver of any breach of this Contract or any of the terms of this Contract will be effective unless that waiver is in writing and is signed by the party against whom the waiver is claimed. No waiver of any breach will operate as a waiver of any other breach or subsequent breach.

2.8 Business Days

Where any act, matter or thing is required by this Contract to be performed or carried out on a certain day and that day is not a Business Day, then that act, matter or thing shall be carried out on the next following Business Day.

2.9 Governing Law

This Contract shall be construed in accordance with and shall be governed by the laws for the time being in force in the State of Victoria and the parties submit to the jurisdiction of the Courts of the State of Victoria and all Courts of Appeal from those courts.

3. GENERAL CONDITIONS

3.1 General Conditions deleted

Without limitation to the operation of any Special Condition contained in this Contract, the following General Conditions do not apply to this Contract:

- (a) General Condition 5 (Consents);
- (b) General Condition 6 (Transfer);
- (c) General Condition 7 (Release of Security Interest);
- (d) General Condition 8 (Builder Warranty Insurance);
- (e) General Condition 15.2(b) (Adjustments);
- (f) General Condition 17 (Service);
- (g) General Condition 18 (Nominee);
- (h) General Condition 20 (Guarantee);
- (i) General Condition 22 (Inspection);
- (j) General Condition 23 (Terms Contract);
- (k) General Conditions 24.4, 24.5 and 24.6 (Loss or damage before settlement); and
- (l) General Condition 26 (Interest).

3.2 Inconsistency between General Conditions and Special Conditions

The Purchaser acknowledges that the General Conditions have been modified as contemplated in the Special Conditions, and in the event of any inconsistency between the General Conditions and the Special Conditions, the Special Conditions will prevail to the extent of any such inconsistency.

4. DEPOSIT

4.1 Amount of Deposit

- (a) The Deposit must not exceed 10% of the Purchase Price.
- (b) Notwithstanding anything contained in this Contract or the conduct of the parties, under no circumstances shall the Deposit exceed 10% of the Purchase Price. Any money purportedly paid on account of the Deposit, which is in excess of 10% of the Purchase Price shall not form part of the Deposit and shall be the property of and repayable to the Purchaser.

4.2 Payment

The Deposit must be paid:

- (a) to the Vendor's Solicitors (see Annexure C for details) to be held by the Vendor's Solicitors on trust for the Purchaser until Registration of the Plan of Subdivision; or
- (b) (if permitted by law) into a Controlled Money Account in an Authorised ADI in accordance with Special Condition 4.3 of this Contract in the joint names of the Purchaser and the Vendor until Registration of the Plan of Subdivision.

4.3 Investment

Subject to all applicable laws, the Purchaser and the Vendor authorise the Vendor's Solicitors to invest the Deposit paid in accordance with the provisions of Special Condition 4.2 in a Controlled Money Account which is an interest bearing trust account with an Authorised ADI as is nominated by the Vendor's Solicitors in accordance with the Sale of Land Act and the Legal Profession Uniform Law,

provided however that the Purchaser acknowledges that the Vendor's Solicitors are not obliged to invest the Deposit in an (or the) Controlled Money Account authorised by this Special Condition.

4.4 Interest

Any interest accruing on the Deposit (less costs, duties and expenses incurred in connection therewith) will be paid to the party to whom the Deposit is ultimately payable in accordance with this Contract.

4.5 Tax File Number

The Purchaser must give to the Vendor its tax file number within fourteen (14) days of the Day of Sale, failing which the Purchaser acknowledges that any bank into which the Deposit is banked may deduct tax therefrom, and the Vendor will not have any responsibility for any such tax so deducted.

4.6 Stakeholder

Upon Registration of the Plan of Subdivision, the Vendor's Solicitors will hold the Deposit as stakeholder pursuant to the provisions of section 24 of the Sale of Land Act.

4.7 Disbursement of Deposit

By signing this Contract, the parties authorise and direct the Vendor's Solicitors to disburse the Deposit in accordance with this Contract, but subject to the Sale of Land Act and the Legal Profession Uniform Law.

4.8 Release

The Purchaser releases the Vendor and the Vendor's Solicitors from any Claim concerning the investment of the Deposit and any tax payable on any interest on the Deposit, unless arising through some wrongful act or omission of the Vendor.

5. DEPOSIT SECURITY

5.1 Deposit Secured by Deposit Security

- (a) If the Purchaser elects to secure to the Vendor payment of the Deposit or part of the Deposit by way of Deposit Security and the Vendor agrees to accept such Deposit Security, the Deposit Security must be received by the Vendor's Solicitors within fourteen (14) days of the Day of Sale (**Due Date**).
- (b) A Deposit Security shall not be deemed:
 - (i) to have been accepted by the Vendor's Solicitors; or
 - (ii) constitute, form part of or secure the Deposit,until such time as the Vendor's Solicitors notify the Purchaser or the Purchaser's Representative in writing of their approval of the Deposit Security.
- (c) If the Vendor's Solicitors accept a Deposit Security which secures the full amount of the Deposit, any amount of Deposit received by way of cash prior to acceptance of the Deposit Security shall upon acceptance of the Deposit Security by the Vendor's Solicitors:
 - (i) become the property of the Purchaser;
 - (ii) be returned to the Purchaser as soon as practicable; and
 - (iii) not constitute, form part of, or secure the Deposit.
- (d) The Vendor's Solicitors shall not be obliged to agree to accept a Deposit Security.

5.2 Deposit Security not received by Due Date

If the Deposit Security is not received by the Vendor's Solicitors by the Due Date:

- (a) the Purchaser must pay interest (at the rate specified in this Contract for late payment) to the Vendor on the amount of the Deposit from the Due Date until the Deposit or the Deposit Security is received by the Vendor's Solicitors; and
- (b) the Vendor's Solicitors may by written notice to the Purchaser terminate this Contract and on such termination, the Deposit will immediately become due and payable to the Vendor's Solicitors without prejudice to any other rights the Vendor may have against the Purchaser. On such termination the Purchaser will have no claim against the Vendor.

5.3 Extension of Deposit Security

Where the Vendor has accepted Deposit Security with an expiry date (the Purchaser acknowledging that the Vendor is not obliged to do so):

- (a) if the term of the Deposit Security will expire on or before the estimated Settlement Date (as determined by the Vendor) the Purchaser must:

- (i) pay the Deposit (or that part of it as is secured by the Deposit Security) to the Vendor's Solicitors by bank cheque to be held in accordance with Special Condition 4; or
 - (ii) at its cost, extend or replace the Deposit Security, at least twenty-eight (28) days before the Deposit Security expires;
- (b) the replacement or extended Deposit Security must expire:
- (i) after the Settlement Date; or
 - (ii) if the Settlement Date is not known, at least twelve (12) months after the date it replaced or extended. If the new expiry date will expire before the Settlement Date, the Purchaser must provide a further replacement or extended Deposit Security under this Special Condition as the Vendor requires; and
- (c) if the Purchaser does not comply with this Special Condition 5.3 (time being of the essence), the Vendor's Solicitors may call on the Deposit Security and deal with the proceeds in accordance with Special Condition 5.5.

5.4 Payment on Settlement

On the Settlement Date, the Purchaser must pay to the Vendor (or as the Vendor directs), in addition to all of the moneys payable under this Contract, the amount stipulated under the Deposit Security either by way of cash or unendorsed bank cheque.

5.5 Default under this Contract

If the Purchaser defaults under any term of this Contract, the Vendor's Solicitors may draw upon the Deposit Security and the amount paid to the Vendor's Solicitors on drawing of the Deposit Security will (subject to Special Condition 5.6) either:

- (a) be paid by the Vendor's Solicitors and forfeited to the Vendor if the Vendor has lawfully rescinded this Contract in accordance with General Conditions 27 and 28; or
- (b) be applied towards payment of the Deposit to be held by the Vendor's Solicitors as stakeholder:
 - (i) to be held by the Vendor's Solicitors on trust for the Purchaser until Registration of the Plan of Subdivision; or
 - (ii) if permitted by law, to be paid into a Controlled Money Account in an Authorised ADI in the joint names of the Purchaser and the Vendor's Solicitors (or the Vendor) until Registration of the Plan of Subdivision.

5.6 Proceeds of Security Deposit

The parties acknowledge and agree that under no circumstances will the Vendor be entitled to the proceeds of the Deposit Security unless and until:

- (a) the Contract is lawfully rescinded in accordance with General Conditions 27 and 28; or
- (b) the Plan of Subdivision is registered and the Deposit is released to the Vendor in accordance with the Sale of Land Act; or
- (c) settlement occurs.

5.7 Change of Vendors' Solicitors

- (a) If a Deposit Security has been provided to the Vendor's Solicitors and the Vendor's Solicitors cease to act for the Vendor in respect of this Contract (or it is intended that the Vendor's Solicitors will cease to act for the Vendor in respect of this Contract) or the Vendor novates or assigns its interest under this Contract, the Purchaser must within 14 days of having been requested to do so by the Vendor, provide to the Vendor's new Solicitors (**New Solicitors**), a replacement Deposit Security in the name of the New Solicitors.
- (b) On providing the replacement Deposit Security, the Vendor's Solicitors must return the original Deposit Security.

6. PLAN OF SUBDIVISION

6.1 Sale of Land Act

This Contract is made in accordance with the provisions of Section 9AA of the Sale of Land Act.

6.2 Approval of Plan of Subdivision

The Vendor will, at its own expense, use its reasonable endeavours to have the Plan of Subdivision approved by the Registrar.

6.3 Contract subject to Registration of Plan of Subdivision

- (a) This Contract is subject to Registration of the Plan of Subdivision by the Latest Date for Registration.
- (b) If Registration of the Plan of Subdivision has not occurred by the Latest Date for Registration, then the Purchaser or the Vendor may at any time after the expiration of the Latest Date for Registration, but before Registration of the Plan of Subdivision, rescind this Contract.
- (c) If this Contract is rescinded under Special Condition 6.3(b), all rights conferred on the Purchaser pursuant to this Contract will immediately cease and the Purchaser will be entitled to the immediate return of the Deposit together with any interest (less costs, duties and expenses incurred in connection therewith) which may have accrued thereon but without any compensation whatsoever.

6.4 Vendor may rescind Contract

If, at any time prior to the Latest Date for Registration:

- (a) the Vendor is refused any Permit required by the Vendor whether to enable:
 - (i) the subdivision in accordance with the Plan of Subdivision to proceed; or
 - (ii) the Property to be used for the purposes contemplated by the Plan of Subdivision or this Contract; or
 - (iii) the Development to proceed; or
- (b) the Vendor is refused any amendment to any Permit which it requires; or
- (c) any Permit contains conditions which the Vendor, in its sole discretion, deems unsatisfactory or unacceptable; or
- (d) the Council fails for any reason to certify the Plan of Subdivision; or
- (e) Registration of the Plan of Subdivision becomes impractical or impossible by reason of some obstacle beyond the Vendor's control; or
- (f) any requirement imposed on Registration of the Plan of Subdivision is in the opinion of the Vendor too onerous to perform,

then the Vendor may, by notice in writing delivered to the Purchaser, rescind this Contract, whereupon the Deposit will be refunded together with any interest (less costs, duties and expenses incurred in connection therewith) which may have accrued thereon but without any compensation whatsoever.

6.5 Changes to the Plan of Subdivision

Subject to the provisions of Sections 9AC and 9AH of the Sale of Land Act, the Vendor reserves the right to vary, amend or alter the Plan of Subdivision in any manner whatsoever if:

- (a) necessary to procure the approval of the Council or the Registrar, whether or not the amendments are required by the Council or the Registrar; or
- (b) required for any reason by the Vendor.

6.6 Notification of Change to Purchaser

In accordance with Section 9AC of the Sale of Land Act, the Vendor will, within fourteen (14) days after the receipt of any requirement of Council, the Registrar or the making of a request by the Vendor to amend the Plan of Subdivision, advise the Purchaser in writing of the proposed amendment.

6.7 Minor Changes

The Purchaser agrees that it will not be entitled to make any requisition, objection or claim for compensation or rescind or determine this Contract on the grounds that the Plan of Subdivision as registered does not accord with the Plan of Subdivision in a manner which materially affects the Property if:

- (a) any minor variation or discrepancy between the Property as shown on the Plan of Subdivision and the Property as shown on the Plan of Subdivision when registered is not greater than five percent (5%) variation or discrepancy in area;
- (b) any minor variation or discrepancy between the number, size or location of any Lot as presently appearing on the Plan of Subdivision and as appears on the Plan of Subdivision when registered;
- (c) any alteration to Lots other than the Lot purchased under this Contract or any alteration to the number of Lots on the Plan of Subdivision;
- (d) any loss of amenity caused by the incomplete development of the Land in the Plan of Subdivision on the Settlement Date; or

- (e) any alteration that does not affect the Lot,

on the basis that the Purchaser agrees that such variation or discrepancy will not constitute a material variation or discrepancy.

6.8 Purchaser's right to rescind Contract

If the Purchaser is entitled to make a claim, objection, requisition or if the Purchaser is entitled to rescind this Contract pursuant to Section 9AC of the Sale of Land Act in relation to the amendment to the Plan of Subdivision, it must exercise any such right within fourteen (14) days of being advised of the proposed amendment by the Vendor.

7. ESTIMATED AREA OF THE LOT

The Purchaser acknowledges and agrees that:

- (a) any statement made by, or on behalf of, the Vendor regarding the area of the Property represents the best estimate of the area of the Lot;
- (b) measurements may be taken using various methodologies which may produce different outcomes; and
- (c) the Purchaser must rely on its own enquiries in relation to the areas and dimensions of the Property having regard to the Plan of Subdivision and any other information in this Contract and the Vendor's Statement.

8. PLANNING PERMIT

8.1 Planning Permit Application

- (a) The Purchaser acknowledges that as at the Day of Sale, there is no Planning Permit for the Development.
- (b) The Vendor will, at its own expense, pursue the Planning Permit.

8.2 Contract subject to Planning Permit

- (a) This Contract is subject to the Vendor procuring the Planning Permit by the Permit Sunset Date (or any extension thereof).
- (b) The Vendor may, by notice in writing to the Purchaser at any time prior to the Permit Sunset Date, extend the Permit Sunset Date by a period of up to twelve (12) months.
- (c) If:
 - (i) the Vendor is unable to obtain the Planning Permit by the Permit Sunset Date (or any extension thereof); or
 - (ii) the Vendor otherwise obtains a Planning Permit on conditions which are in the Vendor's sole opinion, too onerous to perform,then:
 - (iii) in respect of any of the events described in Special Conditions 8.2(c)(i) and 8.2(c)(ii), the Vendor may rescind this Contract by notice in writing to the Purchaser; and
 - (iv) in respect of the event described in Special Condition 8.2(c)(i), the Purchaser may (provided that the Purchaser is not otherwise in breach of its obligations under this Contract) rescind this Contract by notice in writing to the Vendor at any time before the Planning Permit is obtained.
- (d) If this Contract is rescinded under Special Condition 8.2(c)(iii) or Special Condition 8.2(c)(iv), all rights conferred on the Purchaser pursuant to this Contract will immediately cease and the Purchaser will be entitled to the immediate return of the Deposit together with any interest (less costs, duties and expenses incurred in connection therewith) which may have accrued thereon, but without any compensation whatsoever.
- (e) Neither party will have any action, right, claim or demand against the other arising out of the rescission of this Contract pursuant to this Special Condition 8.2.

9. SECTION 173 AGREEMENT

9.1 Vendor may enter Section 173 Agreement

- (a) The Purchaser acknowledges that Council may require the Vendor to enter into a Section 173 Agreement, the terms and details of which the Vendor currently has no knowledge or notice of (other than to the extent disclosed in clause 2.0 of Schedule 11 of the Development Plan Overlay of the Yarra Planning Scheme, a copy of which is attached to this Contract and marked Annexure F) but which may contain covenants and conditions which will be binding on the Purchaser and

the Purchaser's successors in title.

- (b) The Purchaser hereby consents and authorises the Vendor to enter into the Section 173 Agreement or any further agreements in whatever form the Council may require.
- (c) The Purchaser will not make any objection, requisition, claim any compensation or rescind or terminate this Contract due to:
 - (i) the Section 173 Agreement; or
 - (ii) any of the terms and conditions of the Section 173 Agreement.

9.2 Purchaser acknowledgements

The Purchaser acknowledges and understands that:

- (a) the Vendor is not under any obligation to carry out or complete any works detailed in or referred to in the Section 173 Agreement if such works:
 - (i) are not required to be carried out by or completed prior to a Statement of Compliance being issued by Council in respect of the Plan of Subdivision; or
 - (ii) do not form part of the Development Works;
- (b) the Purchaser cannot delay Settlement or withhold monies at Settlement if the works referred to in Special Condition 9.2(a) are not completed by Settlement; and
- (c) the Section 173 Agreement will be registered on the certificate of title for the Property and will be binding on the Purchaser and the Purchaser's successors in title.

9.3 Purchaser may request copy of Section 173 Agreement

At the written request of the Purchaser, and at the Purchaser's cost, the Vendor will, after it has entered into the Section 173 Agreement, provide a copy of the Section 173 Agreement to the Purchaser.

10. DESCRIPTION

10.1 Identity

The Purchaser acknowledges that:

- (a) the Property is identical with that described in the title particulars and the Plan of Subdivision; and
- (b) it purchases the Lot subject to the provisions of the Subdivision Act and to all the conditions attaching to or implied by the Registration of the Plan of Subdivision and in particular subject to:
 - (i) the easements expressed or implied which affect the Lot which arise pursuant to the Plan of Subdivision or which arise by virtue of the Subdivision Act;
 - (ii) any amendments to the Lot or any other Lot notified on the Plan of Subdivision by virtue of the provisions of the Subdivision Act or the requirements of Council or the Vendor;
 - (iii) the Planning and Building Controls;
 - (iv) the conditions of the Planning Permit; and
 - (v) the Development Plan; and
- (c) the address, including street numbering of the Development and the Property will be determined by the Council in accordance with all applicable laws and any policy regarding street numbering adopted by the Council from time to time, and that the street address of the Property as described in the Particulars of Sale is subject to change by the Council. The Vendor shall not be required by the Purchaser to take any action or make any representation to the Council in relation to the address of the Development or the Property. The Purchaser shall not be entitled to make any objection or requisition, or claim for compensation, or delay settlement or rescind or terminate this Contract in respect of any matter relating to the address or the Development or the Property including suburb, street, floor level and residence numbering as ultimately determined by the Council.

10.2 No objection or requisition

The Purchaser must not make any objection or requisition, or claim for compensation, or delay settlement or rescind or terminate this Contract in respect of any of the following matters:

- (a) anything relating to or arising from Special Conditions 10.1 and 10.3;
- (b) any water supply, sewerage or drain service to the Lot being a joint service with any other Lot, the water supply sewerage or drainage pipes or connection for the Lot passing through other land or water supplies through it or drainage pipes or connections for any other land (including mains or pipes of any water, sewerage or drainage authority) passing through the Lot;
- (c) any exception, reservation or condition contained in any relevant crown grant;

- (d) the existence of any other exception or reservation affecting the Lot;
- (e) the existence of any departure from the terms of any easement or restrictive covenant affecting the Lot;
- (f) the requirement of any municipal or public authority or the Council;
- (g) the conditions of the Planning Permit;
- (h) the provisions, conditions or requirements of the Development Plan;
- (i) the Planning and Building Controls;
- (j) the suburb and address of the Development or the Property as ultimately determined by the Council; and
- (k) any waste management plan entered into pursuant to the Planning Permit.

10.3

No representations

The Purchaser acknowledges that it has purchased the Property subject to all faults and defects, both latent or patent, and that the Vendor nor any person on its behalf has made any warranty or representation in relation to those matters.

10.4

Non merger

Special Conditions 10.1, 10.2 and 10.3:

- (a) are essential terms of this Contract;
- (b) do not merge on Settlement;
- (c) survive Settlement; and
- (d) are intended to run with the title to the Property for the benefit of the Vendor and its transferees, assignees and successors in title.

11.

ENCUMBRANCES

11.1

Purchaser accepts restrictions

The Purchaser buys the Property subject to:

- (a) any act, order regulation by-law and local law, restriction or condition imposed upon the Land and the Lot by or with the authority of any government or governmental or semi-governmental or judicial entity or authority;
- (b) any applicable planning scheme or any other scheme;
- (c) the conditions of any Permit whether issued before or after the date hereof;
- (d) the provisions, conditions or requirements of the Development Plan;
- (e) the Planning and Building Controls; and
- (f) any easements, reservations or like encumbrances affecting the Property.

11.2

No requisition

The Purchaser acknowledges and agrees that:

- (a) by independent investigations, it has read, understood and fully satisfied itself as to the contents of, and information contained in, the encumbrances and restrictions listed in Special Condition 11.1 including, without limitation, the Development Plan and the Planning and Building Controls; and
- (b) it must not make any requisition or objection, refuse to pay the Purchase Price or delay settlement because of any matter referred to in Special Condition 11.1.

11.3

Purchaser acknowledgements

The Purchaser acknowledges and understands that on the Day of Sale:

- (a) not all necessary permits may have been obtained as at the Day of Sale;
- (b) there have not been created all the easements restrictions on use and positive covenants;
- (c) there have not been entered into all leases, agreements, or arrangements; and
- (d) all rights and privileges may not have been created or granted,

which may be necessary or desirable for any municipal or public authority, Council or the Vendor to create, enter into, grant or dedicate.

11.4 Creation of further restrictions

If it is considered necessary or desirable by any municipal or public authority, Council or the Vendor to:

- (a) create easements, restrictions on use or positive covenants; or
- (b) enter into leases, agreements or arrangements; or
- (c) grant rights or privileges,

then, subject to Section 9AC of the Sale of Land Act, the Purchaser must not make any objection, requisition, claim or delay completion of or rescind or terminate this Contract due to the said creation, entry into, grant or dedication.

11.5 Section 10(1) of the Sale of Land Act

The Vendor and Purchaser agree that Section 10(1) of the Sale of Land Act does not apply to this Contract and that the Purchaser will not be entitled to avoid this Contract as a consequence of any change or alteration to the final location and size of any easements that may be created over the Land or the Property or on the Plan of Subdivision. The Vendor is entitled to amend the Plan of Subdivision without reference to the Purchaser where such amendment is with respect to the location and size of any easements over the Land or the Property.

12. SALE OF LAND ACT

- (a) If this Contract is properly rescinded pursuant to Section 9AE and 9AC and 9AH of the Sale of Land Act, the Purchaser will be entitled to the immediate return of the Deposit together with accrued interest (less costs, duties and expenses incurred in connection therewith) but without any compensation whatsoever.
- (b) Either party may refer any difference or dispute which arises between the Vendor and the Purchaser with respect to:
 - (i) the non-compliance by the party with requirements of Section 9AA to 9AF (inclusive) of the Sale of Land Act; or
 - (ii) a proposal by the Purchaser to rescind this Contract pursuant to Section 9AC or 9AE or 9AH of the Sale of Land Act,

to an arbitrator for determination.

13. ENVIRONMENTAL

13.1 Purchaser not to object

- (a) Prior to Settlement, the Vendor will, at its own cost, undertake any remediation works to the Land which are required for the Land to be developed and used for low density residential purposes in accordance with the Planning Permit.
- (b) The Purchaser must not make any objection or claim any compensation or refuse or delay payment of the whole or any part of the Purchase Price because of any of the presence of any Contamination in, on, under or affecting the Land provided that the Land can be developed and used for low density residential purposes in accordance with the Planning Permit.

13.2 Purchaser assumes liability

From the Settlement Date, the Purchaser:

- (a) assumes full liability and responsibility for all Environmental Liability;
- (b) indemnifies the Vendor and its officers, agents and employees from and against all Environmental Liability; and
- (c) releases and discharges the Vendor and its officers, agents and employees from and against all Environmental Liability to the Purchaser.

14. OUTGOINGS

14.1 Lot not separately assessed

In the event that the Lot is not separately assessed in respect of any rates, taxes, assessments, fire insurance premiums or other outgoings, then for the purposes of apportionment of such outgoings, the Purchaser will bear such proportion of the total outgoings as the area of the Lot bears to the total area of the Land.

14.2 Unpaid rates, outgoings and charges

The Vendor and the Purchaser agree that adjustments of rates, charges and like outgoings at Settlement Date must be made on the basis that the Purchaser accepts responsibility for all such unpaid rates, charges and like outgoings accruing following the Settlement Date.

14.3 Land tax

- (a) In the case of Land Tax, the Purchaser acknowledges that the Victorian State Revenue Office may group all Lots on the Plan of Subdivision and assess Land Tax against the Vendor based on the aggregate of the unimproved values of each Lot on the Plan of Subdivision.
- (b) Despite that on a single holding basis no Land Tax may be assessable for the Property, the Purchaser must pay to the Victorian State Revenue Office, or reimburse the Vendor for Land Tax on the Property according to the following formula:

$$A = \frac{L \times U}{T}$$

A = Land Tax payable by the Purchaser with respect to the Property

L = Land Tax assessed with respect of the Land

U = Area of the Property

T = Total area of the Land

14.4 Vendor's liability to pay outgoings

Notwithstanding General Condition 15, the Vendor is not obliged to pay any outgoings prior to the Settlement Date unless the time for payment of such outgoings expires before the Settlement Date. Settlement must not be delayed pending payment of any outgoings unless the Vendor has failed to make payment of any of the outgoings within the time required by the relevant notice or assessment issued to it.

15. DEVELOPMENT WORKS

15.1 Vendor's Works

- (a) The Purchaser acknowledges that:
 - (i) this Contract is not a building contract or a Major Domestic Building Contract; and
 - (ii) the Vendor is not a builder.
- (b) The works which the Vendor will procure to be undertaken by a nominated contractor are limited to the Development Works relating to the land in the Plan of Subdivision and which are necessary for the Registration of the Plan of Subdivision.

15.2 Completion of Works

The Development Works are to be taken to be completed and the Vendor is deemed to have discharged its obligations under this Special Condition upon producing to the Purchaser a Statement of Compliance issued by Council.

15.3 Access

- (a) The Purchaser acknowledges that:
 - (i) the Property is part of a development on which surveying, engineering, construction and rectification works may still be carried out after the Settlement Date;
 - (ii) the Vendor's contractor may access the Land for the purpose of carrying out the works referred to in Special Condition 15.3(a)(i); and
 - (iii) access may be required after Settlement through the Lots (other than the Lot) to complete works for other purchasers.
- (b) After Settlement, the Vendor and Purchaser must use reasonable endeavours to accommodate the need for access to the Land by the Vendor's contractors and their employees after Settlement.

15.4 Access prior to Settlement Date

The Purchaser acknowledges that the Purchaser will not prior to Settlement be entitled to access the Land other than with the written consent of the Vendor.

15.5 Connection of Services

The Purchaser acknowledges and agrees that:

- (a) the Purchaser will be liable for all costs associated with connection of electricity, water and telephone (**Services**) to the Property;
- (b) the Vendor is not under any obligation to arrange for connection of the Services; and
- (c) the Purchaser will not make any requisition, objection, claim any compensation, rescind or terminate this Contract in respect of any matter relating to the connection of the Services.

15.6 Purchaser Acknowledgements

Notwithstanding anything to the contrary contained in this Contract or any marketing material in relation to the Development, the Purchaser:

- (a) acknowledges that not all necessary permits may have been obtained as at the Day of Sale;
- (b) acknowledges that the conditions of any Permit or amendment thereto may necessitate changes to the Development Works and the Property; and
- (c) subject to Special Conditions 6.6, 6.7 and 6.8, consents to any changes to the Plan of Subdivision, the Development Works or the Property necessitated by any Permit (or amendment thereto).

16. COMMENCEMENT OF DEVELOPMENT WORKS

16.1 Commencement and completion of Development Works

The Purchaser acknowledges that:

- (a) the Vendor intends to proceed with and complete the Development Works in response to market demand and subject to obtaining all necessary Permits; and
- (b) the timing for commencement of the Development Works will be determined by the Vendor in its absolute and unfettered discretion.

16.2 Vendor may terminate Contract

- (a) If in the Vendor's opinion it is not viable or feasible for the Vendor to proceed with the Development Works, the Vendor may terminate this Contract by notice in writing to the Purchaser at any time.
- (b) If this Contract is terminated pursuant to Special Condition 16.2(a), the Deposit must be refunded to the Purchaser together with any interest (less costs, duties and expenses incurred in connection therewith) which may have accrued thereon but without any compensation whatsoever.

17. WORKS TO NATURAL SURFACE OF THE LAND

- (a) The Purchaser acknowledges and agrees that:
 - (i) there may be works that will affect the natural surface of the Land;
 - (ii) the Plan of Subdivision or the plan of existing surface levels included in the Vendor's Statement disclose the surface levels of the Land prior to the commencement of any works by or on behalf of the Vendor; and
 - (iii) the Vendor's contractors will carry out works after the Day of Sale that may affect the natural surface level of the land in the Plan of Subdivision or any land abutting it, including excavation works relating to the foundations, services and substations (if any).
- (b) The Purchaser will not rescind this Contract, make any objection, requisition, claim compensation or damages, refuse to pay the Purchase Price or delay Settlement due to any works contemplated by this Special Condition 17, if in accordance with section 9AB of the Sale of Land Act, the Vendor discloses to the Purchaser details of any such further works that may affect the natural surface level of the Land, as soon as practicable after those details come to the knowledge of the Vendor.

18. SUITABILITY FOR PURPOSE

- (a) The Vendor has not made any representation or warranty that:
 - (i) the Property and/or the improvements on the Property (if any) are suitable for any purpose other than low density residential housing; or
 - (ii) that any Permit of any nature whatsoever has been obtained or is available from any relevant authority.
- (b) Prior to entering into this Contract, the Purchaser acknowledges that it has made its own enquiries and investigation into the matters referred to in Special Condition 18(a) and relies entirely on the results of its own investigations and its own judgment.

19. NON-DEALING

19.1 No caveat

- (a) Until Registration of the Plan of Subdivision, the Purchaser must not:
 - (i) mortgage or otherwise encumber or in any other way whatsoever deal with the Land or the Lot or any part thereof or any of the Purchaser's rights or interest in or under this Contract

- without the prior written consent of the Vendor; and/or
- (ii) lodge nor allow any person claiming through the Purchaser or acting on the Purchaser's behalf to lodge any caveat over the Land or the Lot.
- (b) The Purchaser further acknowledges and agrees that the Vendor may claim compensation from the Purchaser if Special Condition 19.1(a) is breached.

19.2 Essential Term

This Special Condition 19 is an essential term of this Contract and will not be affected by the rescission of this Contract by either party and is in addition to any common law rights or other rights that of the Vendor.

20. RESALE

- (a) Until construction of a dwelling on the Lot and the issuance of an Occupancy Permit (or similar certification) for such construction the Purchaser must not sell the Property to another person unless the Purchaser first procures the execution by that other person ("the transferee") of:
 - (i) a deed on terms acceptable to the Vendor pursuant to which the transferee agrees to comply with all of the obligations of the Purchaser in this Contract which remain to be performed as at the date of the proposed transfer of the Property; and
 - (ii) a deed of assignment (to which the Builder is a party) from the Purchaser to the transferee of the Purchaser's rights and obligations under the Building Contract.
- (b) This Special Condition 20 will not merge on Settlement.

21. NOMINATION

Purchaser right to nominate

- (a) The Purchaser is expressly prohibited from nominating a substitute or additional purchaser under the Contract without the prior written consent of the Vendor which may be granted, granted subject to conditions or withheld by the Vendor in its absolute discretion. Such conditions may include a requirement for the Purchaser to deliver to the Vendor or the Vendor's Solicitors:
 - (i) an executed nomination form, executed by the Purchaser and the nominee;
 - (ii) a photocopy of a statutory declaration by the nominee in the form required by the Victorian State Revenue Office in respect of such nomination;
 - (iii) if the nominee is a company, a Guarantee duly executed by the directors of the nominee;
 - (iv) a direction that the Deposit is to be held on behalf of the nominee;
 - (v) if the Purchaser has provided a Deposit Security, a new Deposit Security noting the nominee; and
 - (vi) a deed of assignment (to which the Builder is a party) of the Purchaser's rights and obligations under the Building Contract (as that term is defined in Special Condition 30(a)), duly executed by the Purchaser and the nominee;
 - (vii) an acknowledgement from the nominee that it is bound by the 'Option' referred to in Special Condition 42; and
 - (viii) any other document, form or thing required by the Vendor.
- (b) If the Vendor consents to the nomination, the Purchaser remains liable to perform and observe the conditions herein to be performed and observed by the Purchaser.
- (c) Any purported nomination or assignment by the Purchaser contrary to the provisions of this Special Condition 21, will constitute a breach of this Contract entitling the Vendor to terminate this Contract by notice in writing to the Purchaser.
- (d) Despite anything to the contrary contained in this Contract, if this Contract is terminated under Special Condition 21.1(c):
 - (i) all rights conferred on the Purchaser pursuant to this Contract will immediately cease;
 - (ii) the Vendor shall be entitled to direct the Vendor's solicitors to release the Deposit to the Vendor; and
 - (iii) the Deposit (and any accrued interest) shall be forfeited to the Vendor pursuant to section 9AF(1)(a) of the Sale of Land Act.

21.2 Vendor makes no warranty or representation

The Vendor and the Vendor's Agents make no warranty, representation or promise as to whether any

nomination is dutiable or non-dutiable and in all other respects it is the responsibility of the Purchaser to determine and be informed as to the stamp duty consequences of any nomination.

22. FOREIGN ACQUISITIONS AND TAKEOVERS ACT 1975 (CTH)

- (a) The Purchaser warrants to the Vendor that:
 - (i) by entering into this Contract the Purchaser is not in breach of the Foreign Acquisitions and Takeovers Act 1975 (Cth); and
 - (ii) the Purchaser has obtained:
 - (A) any approval required from any authority under any law; and
 - (B) any authority of the Reserve Bank of Australia required under the Banking (Foreign Exchange) Regulations (Cth), to enter into this Contract.
- (b) If any of the warranties in this Special Condition are untrue then:
 - (i) the Purchaser will be in default under this Contract; and
 - (ii) the Purchaser will indemnify and keep indemnified the Vendor against any loss suffered by the Vendor as a result of the Vendor having relied on the warranty.

23. DELIVERY OF TRANSFER

- (a) The Purchaser must deliver to the Vendor's Solicitors the transfer required under General Condition 6 validly executed by the Purchaser no later than ten (10) days before the Settlement Date (**Delivery Date**).
- (b) If the Purchaser fails to deliver the transfer to the Vendor's Solicitors on or before the Delivery Date, then without prejudice to the Vendor's other rights:
 - (i) the Vendor may complete this Contract at any time between the Settlement Date and the date which is ten (10) days after the Purchaser delivers the transfer; and
 - (ii) the Purchaser must pay interest at the rate referred to in Special Condition 27.1(b) for the period from the Settlement Date until this Contract is completed.

24. SETTLEMENT

24.1 Time for Settlement

- (a) The Purchaser must settle before 3pm on the Settlement Date.
- (b) If the Purchaser does not comply with Special Condition 24.1(a), then the Purchaser is deemed to be in default in the payment of the balance of the Purchase Price.

24.2 Place for settlement

Settlement must take place at the offices of the Vendor's Solicitors or at any other place they nominate.

24.3 Payment of balance of Purchase Price

The Purchaser must pay to the Vendor the balance of the Purchase Price at the Settlement Date save for any adjustments, if any, provided in this Contract.

24.4 Settlement documents

- (a) The Purchaser acknowledges that the certificate of title for the Property may not issue from the Registrar by the Settlement Date.
- (b) At Settlement, if a separate certificate of title for the Property has not issued from the Registrar, the Purchaser will accept an order to register directing the Registrar to issue the certificate of title for the Property to the Purchaser or as the Purchaser directs.

24.5 Pre-settlement inspection

- (a) The Purchaser may inspect the condition of the Property once before the Settlement Date by making an appointment with the Vendor.
- (b) The Purchaser acknowledges that some or all of the Lots contained in the Plan of Subdivision may be settled at or about the same time as settlement of the Property. To ensure that inspection appointments by all purchasers of Lots in the Plan of Subdivision will be carried out in a safe and orderly manner, the Vendor retains the right to:
 - (i) set the time and date of the Purchaser's inspection of the Lot;
 - (ii) limit the time spent by a Purchaser inspecting the Lot; and

- (iii) limit the number of persons attending an inspection appointment.

24.6 No objection or requisition

The Purchaser must not make any objection or requisition, refuse to pay the Purchase Price or delay Settlement because of any matter referred to in this Special Condition 24.

25. SECURITY INTERESTS

The Purchaser acknowledges that in the event of a security interest registered against the Vendor, the Purchaser will accept a letter releasing the Property from the security interest at Settlement and the Purchaser will not require a formal release of charge document at Settlement, nor deduct any monies for such.

26. PROPERTY

Property in the Lot will not pass to the Purchaser until payment in full of the Purchase Price is made to the Vendor.

27. DEFAULT

27.1 Default interest

If the Purchaser defaults in payment of the Purchase Price or part thereof then the Purchaser must pay upon demand:

- (a) all reasonable expenses incurred by the Vendor as a result of the breach (including, without limitation, legal costs);
- (b) interest at the rate equivalent to 16% per annum accruing daily and capitalised monthly; and
- (c) compensation to the Vendor for any reasonably foreseeable loss of the Vendor resulting from such default,

without prejudice to any other rights that the Vendor may have against the Purchaser in relation to such default and in particular without prejudice to the rights of the Vendor to terminate this Contract.

27.2 Failure to tender purchase price

If the Purchaser fails to tender the whole of the balance of the Purchase Price payable on the Settlement Date or purports to make any retention or withholding of the balance of the Purchase Price payable at the Settlement Date for any reason whatsoever, the Purchaser shall be in substantial breach of this Contract and without prejudice to any other rights of the Vendor contained in this Contract:

- (a) the Vendor may terminate this Contract and the Deposit (and any accrued interest) shall be forfeited to the Vendor;
- (b) the Purchaser is liable to pay the amounts set out in Special Condition 27.1;
- (c) the Purchaser must pay to the Vendor at settlement an administration fee of \$750 in addition to all other amounts owing to the Vendor under this Contract; and
- (d) outgoings shall be adjusted on the basis settlement had taken place on the Settlement Date specified in the Particulars of Sale.

28. ORDERS

The Purchaser assumes liability for compliance with any notices or orders relating to the Lot (other than those referring to apportionable outgoings) which are made or issued on or after the Settlement Date and indemnifies and will keep indemnified the Vendor against all Claims thereunder.

29. STAMP DUTY

- (a) The Purchaser must pay all stamp duty assessed in respect of this Contract and the transfer consequent upon this Contract.
- (b) If there is more than one purchaser, it is the purchasers' responsibility to ensure the Contract correctly records at the date of sale the proportions in which they are buying the Property (**the Proportions**).
- (c) If the Proportions recorded in the transfer differ from those recorded in this Contract, it is the Purchasers' responsibility to pay any additional duty which may be assessed as a result of the variation.
- (d) The Purchaser indemnifies the Vendor, the Vendor's Agent and the Vendor's Solicitors against any claims or demands which may be made against any or all of them in relation to any additional duty payable as a result of the proportions in the transfer differing from those in this Contract.
- (e) This Special Condition will not merge on settlement.

30. BUILDING CONTRACT

- (a) On or around the date of this Contract, the Purchaser entered into or intends to enter into a building contract with the Builder (**Building Contract**).
 - (b) If:
 - (i) the Purchaser does not enter into the Building Contract; or
 - (ii) the Building Contract is terminated or ends for any reason whatsoever,
the Vendor may (but shall not be obligated to) at any time prior to Settlement, terminate this Contract with immediate effect by notice in writing to the Purchaser.
 - (c) If this Contract is terminated under Special Condition 30(b), all rights conferred on the Purchaser pursuant to this Contract will immediately cease and unless Special Condition 30(d) applies, the Purchaser shall be entitled to the return of the Deposit together with any interest (less costs, duties and expenses incurred in connection therewith) which may have accrued thereon, but without any compensation whatsoever.
 - (d) If:
 - (i) the Building Contract ends or is terminated as a result of the Purchaser being at fault under the Building Contract; and
 - (ii) this Contract is terminated by the Vendor under Special Condition 30(b),
then the Deposit (and all interest earned thereon) shall be forfeited to the Vendor for its benefit absolutely.
 - (e) Neither party will have any action, right, claim or demand against the other arising out of the termination of this Contract pursuant to Special Condition 30(b).
 - (f) For the sake of clarity, this Special Condition 30 is for the benefit of the Vendor only.

31. RETAINING WALL

- (a) The Purchaser acknowledges and agrees that it may be required to construct a retaining wall on the boundary of the Land.
- (b) The Purchaser may not make any objection, requisition or claim, delay completion of or rescind or terminate this Contract because of this Special Condition 31.

32. EVIDENCE OF FINANCE

- (a) By no earlier than 45 days prior to the Settlement Date and by no later than 7 days prior to the Settlement Date, the Purchaser must provide satisfactory evidence to the Vendor of its ability to obtain land acquisition finance and construction finance, including, without limitation, a letter from the Purchaser's bank or other financial institution confirming that the necessary funds are available.
- (b) If the Purchaser fails to provide such evidence to the satisfaction of the Vendor (acting reasonably), the Purchaser shall be in breach of this Contract and the Vendor may (but shall not be obligated to), subject to complying with General Condition 27.1, terminate this Contract by notice in writing to the Purchaser.
- (c) If this Contract is terminated by the Vendor pursuant to Special Condition 32(b), then the Purchaser will be entitled to the immediate return of the Deposit (excluding any interest earned thereon).

33. PLANNING AND BUILDING CONTROLS

33.1 Restrictions

- (a) The Purchaser hereby covenants and agrees with the Vendor to be bound by the Restrictions.
- (b) The Purchaser must not do anything or allow anything to be done on the Property before registration of the Plan of Subdivision which would not be allowed by the Restrictions.
- (c) If the Purchaser breaches its obligations under Special Condition 33.1(a) or 33.1(b), the Purchaser:
 - (i) grants to the Vendor an irrevocable licence to enter the Property and do whatever is required to rectify the Purchaser's breach; and
 - (ii) indemnifies the Vendor for all expenses incurred in undertaking such rectification.

33.2 Amendment of Restrictions

- (a) The Purchaser acknowledges that the Restrictions are current as at the Day of Sale and are accurate for the land contained only in the Plan of Subdivision and that the Vendor reserves the

right to amend the Restrictions (including to comply with the terms of the Planning Permit or otherwise) as reasonably necessary from time to time for the land contained in the Plan of Subdivision, or for other parts of the Land at its absolute discretion.

- (b) If the Vendor amends the Restrictions in accordance with Special Condition 33.2(a), the Purchaser must not make any requisition or objection or be entitled to any compensation from the Vendor in respect of any such amendment.

33.3 Alternative Controls

- (a) The Purchaser acknowledges and agrees that the Vendor may, at any time prior to Settlement, substitute or introduce alternative or additional forms of planning and building controls (including but not limited to memoranda of common provisions, restrictive covenants and design guidelines) to implement and enforce additional controls which are consistent with the Planning and Building Controls.
- (b) The Purchaser may not make any objection, requisition or claim, delay completion of or rescind or terminate this Contract because of any such additional planning and building controls.

33.4 Waiver or Variation

- (a) The Purchaser acknowledges that where permitted by law to do so, the Vendor may, at its absolute discretion, consent to variation or waiver of any of the Planning and Building Controls for any Lots.
- (b) The Purchaser may not make any objection, requisition or claim, delay completion of or rescind or terminate this Contract because of any such consent.

33.5 Purchaser Covenants

The Purchaser:

- (a) acknowledges that the Vendor, being responsible for the Development, has an interest in ensuring the overall quality of the subdivision and the Development;
- (b) covenants with the Vendor to fully observe and comply with the Planning and Building Controls;
- (c) agrees that the Planning and Building Controls:
- (i) will not merge on completion of this Contract; and
 - (ii) will bind the Purchaser, its successors-in-title, its heirs, executors, administrators and assigns; and
- (d) must comply with, and do all reasonable things (at the expense of the Purchaser) to give effect to the Planning and Building Controls and without limitation, if the Purchaser sells or transfers the Property, the Purchaser must ensure that any contract for sale by the Purchaser (as vendor) includes a special condition in the form of this Special Condition.

33.6 Conflict in Planning and Building Controls

In the event of any conflict between the Planning and Building Controls, then the various controls shall be ranked in priority as follows:

- (a) first, the Restrictions; and
- (b) second, these Special Conditions.

33.7 Vendor Access

The Vendor has the right to access the Property after Settlement on provision of prior written notice to ensure compliance with this Special Condition 33.

33.8 No merger

This Special Condition 33 shall not merge on Settlement.

34. CONSTRUCTION

34.1 Purchaser's Works

The Purchaser must ensure that the construction of a dwelling on the Lot (**Purchaser's Works**) is:

- (a) commenced by no later than six (6) months after Settlement;
- (b) completed by no later than eighteen (18) months after Settlement; and
- (c) carried out:
- (i) in a proper and workmanlike manner;
 - (ii) in accordance with the Planning and Building Controls;

- (iii) in accordance with the Planning Permit, if relevant;
- (iv) in accordance with all necessary permits, approvals and certifications from all relevant authorities and all applicable laws;
- (v) expeditiously and continuously once commenced; and
- (vi) in such a manner as to minimise inconvenience, nuisance and damage of any kind to owners, occupiers or users of other Lots, including, but not limited to, the creation of dust, dirt, noise or environmental hazard.

34.2 Permits and Approvals

- (a) The Purchaser must (or must procure that the Builder) apply for and obtain all necessary permits and approvals and certifications from all relevant authorities to enable the Purchaser to carry out the Purchaser's Works.
- (b) The Purchaser must procure its Builder to apply for all permits, approvals and certifications in respect of the Purchaser's Works by the date of commencement of construction under the Building Contract.
- (c) The Purchaser must not object to any application for a permit, consent or certification made in relation to another Lot, if the subject matter of the application is consistent with the requirements of the Planning Permit and the Restrictions.

34.3 Meaning of Completed

For the purposes of Special Condition 34.1, the Purchaser's Works will not be deemed to be "complete" or "completed" unless and until, without limitation:

- (a) a building (including all external finishes), all external structures (including fencing, paths and driveways) are completed in accordance with the Planning and Building Controls to the reasonable satisfaction of the Vendor;
- (b) all rubbish and building materials have been removed from the Lot; and
- (c) all necessary approvals have been obtained to enable the Lot to be used and occupied for its intended purpose.

34.4 Non Merger

The Purchaser acknowledges that:

- (a) this Special Condition 34 will not merge on Settlement and will continue to bind the Purchaser and the Purchaser's successors in title; and
- (b) the Purchaser must not sell, transfer or otherwise dispose of its interest in the Lot or under this Contract unless it first procures the purchaser, transferee, donee or grantee and their successors in title agree to enter into a deed with the Vendor whereby the purchaser, transferee, donee or grantee agree to be bound by and comply with the Purchaser's obligations pursuant to this Special Condition 34.

34.5 No Warranty

The Vendor does not warrant that the Lot can be used for any particular purpose or that permits or approvals for the Purchaser's Works will be granted.

35. JOINT RECREATIONAL FACILITIES

- (a) The Purchaser acknowledges and agrees that as at the Day of Sale, the Vendor intends to provide (as part of the Adjacent Development) recreational facilities for use by owners or occupiers as the case may be (at their cost) of the Land and the Adjacent Land.
- (b) The Vendor makes no representation or warranty as to:
 - (i) the nature of the recreational facilities;
 - (ii) the timing for delivery of the recreational facilities or that the recreational facilities will be delivered at all;
 - (iii) the fees to be imposed on owners (or occupiers as the case may be) for the use of the recreational facilities; or
 - (iv) the conditions (if any) to be attached to the use of the recreational facilities.
- (c) The Purchaser acknowledges and agrees that it has not, in entering into this Contract, relied on any information contained in any brochure, advertisement or other marketing material prepared by or on behalf of the Vendor in respect of any recreational facilities and further acknowledges

and agrees that recreational facilities may not be provided.

(d) The Purchaser may not:

- (i) prior to Settlement, make any objection, requisition or Claim, delay completion of or rescind or terminate this Contract; or
- (ii) after Settlement, make any Claim against the Vendor,

because of anything in connection with the recreational facilities, including, without limitation, the delivery or non-delivery of the recreational facilities or the conditions attached to the use of the recreational facilities.

(e) Special Condition 35(d)(ii) will not merge on Settlement.

36. NATIONAL BROADBAND NETWORK AND FIBRE-TO-THE-PREMISES

(a) The Purchaser acknowledges and agrees that:

- (i) the Purchaser is solely responsible for, and must ensure that, any construction and works on the Property include conduits, cabling and housing and comply with the NBN Co Limited (NBN Co) In-Home Wiring Guide as available at <http://www.nbnco.com.au/assets/documents/new-developments-wiring-guide.pdf> (or any other substantially similar document as approved by NBN Co from time to time) so that the Purchaser can connect, on an open-access basis, to a fibre-to-the-premises or other network such as the National Broadband Network and the network infrastructure constituting the National Broadband Network (NBN) and/or any service provider operating via the NBN, if it chooses to; and
- (ii) any failure to comply with the NBN In-Home Wiring Guide in construction and works on the Property will prevent the Purchaser from connecting to the NBN or will require the Purchaser to incur additional costs in order to connect to the NBN.

(b) The Purchaser further acknowledges and agrees that:

- (i) the Vendor is only responsible for, and will enter into an agreement with Telstra or any other telecommunications provider (Telco) for, the provision of pit and pipe infrastructure on the Land and the Vendor is not responsible for actual connection of the Property to any services through the NBN; and
- (ii) the Purchaser must make no requisition or objection, nor claim compensation or refuse or delay payment of the Price on account of any matter in this Special Condition 36.

(c) The Purchaser acknowledges that the Vendor makes no representation nor gives any warranties in respect of any NBN services offered or supplied to the Property by any Telco or other service provider, and that the Purchaser must make its own inquiries as to the eligibility criteria, timing, capacity, suitability for intended use, terms and conditions which apply to such offers.

(d) The Purchaser agrees that the Vendor may disclose the Purchaser's name, contact details and the Lot in this Contract to NBN Co or any Telco or service provider who offers, or is considering offering, services via the NBN to or at the Property so that NBN Co or the Telco or service provider can provide details of offers for such services to the Purchaser.

37. POWER OF ATTORNEY

37.1 Vendor appointed as attorney

The Purchaser hereby irrevocably appoints the Vendor (and each director of the Vendor) as its attorney to do any act or thing:

- (a) to enter any Section 173 Agreement under Special Condition 9;
- (b) to remove any caveat lodged by the Purchaser in breach of Special Condition 19.1(a);
- (c) that the Purchaser is required to do under Special Condition 20;
- (d) that the Purchaser is required to do under Special Condition 34; and
- (e) that the Purchaser is required to do under Special Condition 39.

37.2 Purchaser to ratify

The Purchaser will ratify and confirm all the Vendor (or its directors) lawfully does or causes to be done pursuant to the power of attorney referred to in Special Condition 37.1.

37.3 Indemnity

The performance by the Vendor (or its directors) of any act matter or thing pursuant to the power of attorney is as agent of the Purchaser and neither the Vendor (nor its directors) will be liable to the Purchaser in respect thereof. The Purchaser will indemnify and keep the Vendor (and its directors) indemnified as to all Claims, suits or actions arising out of or in connection with anything done by the Vendor (or its directors) pursuant to the power of attorney.

38. SELLING AND COMPLETION ACTIVITIES

The Purchaser acknowledges and agrees that:

- (a) both before and after the Settlement Date the Vendor and persons authorised by the Vendor are entitled to and may:
 - (i) conduct marketing, leasing and selling activities in and on the Development in such manner as the Vendor in its sole discretion determines; and
 - (ii) place and maintain in, on and about the Development signs in connection with those marketing, leasing and selling activities and conduct sales by public auction;
- (b) Settlement may take place prior to completion of the Development and works may be ongoing after Settlement in respect of the Development (other than the Lot hereby sold);
- (c) while the Vendor is the registered proprietor or entitled to be registered proprietor of a Lot, any sale transfer or disposition of the Property will include a condition whereby the purchaser or transferee agrees (by entering into a deed with the Vendor) to be bound by this Special Condition 38; and
- (d) this Special Condition 38 will not merge on Settlement.

39. ADJACENT DEVELOPMENT

- (a) The Purchaser acknowledges and understands that:
 - (i) the Adjacent Land Owner may, but is not obliged to, carry out any Adjacent Development;
 - (ii) the Adjacent Land Owner may carry out any Adjacent Development for any purpose or use permitted by law and the Adjacent Land Owner may seek to apply for or to amend any planning permit or seek a new planning permit or building permit with respect to the Adjacent Development; and
 - (iii) the Purchaser will if required to do so by the Adjacent Land Owner, Council or any other relevant municipal or public authority within seven (7) days of being required to so provide all necessary consents or authorities that may be needed or required by the Adjacent Land Owner to obtain any planning permit or any amendment to any planning permit for any Adjacent Development.
- (b) The Purchaser will not lodge any objection or make any complaint or do any act that will in any way delay, obstruct, disrupt, hinder or prevent the Adjacent Land Owner from proceeding with the Adjacent Development, or construction works in order to carry out the Adjacent Development.
- (c) The Purchaser shall not delay the Settlement Date or refuse to settle as a result of any matter relating in any way whatsoever to the Adjacent Development.
- (d) If the Purchaser does any act or thing in breach of this Special Condition prior to the Settlement Date, the Vendor, if it so elects, may (in addition to any rights it may have to claim damage for any loss suffered) terminate this Contract by giving the Purchaser notice that the Vendor (as the case may be) is terminating this Contract pursuant to this Special Condition and General Conditions 27 and 28 will apply.
- (e) The Purchaser acknowledges that in purchasing the Property, the Purchaser has not relied on any representation by the Vendor in relation to any Adjacent Development or any part of the Adjacent Land nor is the Purchaser expecting the Adjacent Land Owner to proceed with any Adjacent Development.
- (f) The Purchaser shall co-operate with the Adjacent Land Owner and its consultants and contractors.
- (g) The Purchaser acknowledges that its use and enjoyment of the Property and the Land on the Plan of Subdivision may be disrupted due to the carrying out of the Adjacent Development and the Purchaser shall not make any objection, requisition or claim against the Adjacent Land Owner in respect of such interruption or interference.
- (h) The Purchaser acknowledges that this Special Condition shall bind the Purchaser and Purchaser's successors in title and any sale, transfer or disposition of the Property must include a

condition whereby the purchaser, the transferee or grantee and their successors in title agree to be bound by this Special Condition.

- (i) The Purchaser will not sell, transfer, assign or dispose of the Property or agree to sell, transfer, assign or dispose of the Property unless it is an essential and fundamental term of such transfer, assignment, sale or disposition that the purchaser, assignee or transferee agrees to abide by and is bound by the provisions of this Special Condition and such purchaser, assignee or transferee further agrees to ensure that any sale, transfer or disposition of the Property by it will contain conditions identical to those contained in this Special Condition so as to bind its transferees and successors in title.
- (j) This Special Condition 39 is an essential term of this Contract does not merge on Settlement. This Special Condition shall survive Settlement and is intended to run with the title to the Property for the benefit of the Vendor and its transferees, assignees, and successors in title.

40. MARGIN SCHEME GST

Notwithstanding any other provision of this Contract, the parties agree as follows:

- (a) the consideration or price payable for any supply made or to be made under this Contract is determined and expressed to be on a GST inclusive basis; and
- (b) to the extent permitted by the GST Act, the Vendor will, in determining its liability to pay GST on any supply made or to be made under this Contract (if any), apply the margin scheme as outlined in Division 75 of the GST Act.

41. GUARANTEE

If a company purchases the Property:

- (a) any person who signs this Contract will be personally responsible to comply with the terms of this Contract, and
- (b) the directors of the company must sign the Guarantee and deliver it to the Vendor on or prior to the Day of Sale.

42. OPTION

42.1 Option

On and from Settlement, the Purchaser grants and is deemed to have granted to the Vendor an irrevocable option (**Option**) to purchase the Property from the Purchaser on the following terms:

- (a) the Option may be exercised by the Vendor or the Vendor's nominee if:
 - (i) the Purchaser is in breach of any of Special Conditions 20, 33, 34, 38 and 39; or
 - (ii) the Building Contract ends or is terminated for any reason whatsoever after Settlement;
- (b) the Option may be exercised by the Vendor or the Vendor's nominee at any time after the date that the Vendor becomes aware of:
 - (i) the Purchaser's breach of any of Special Conditions 20, 33, 34, 38 and 39; or
 - (ii) the ending or termination of the Building Contract;
- (c) the Option must be exercised by the Vendor or the Vendor's nominee by notice in writing to the Purchaser;
- (d) if the Vendor or its nominee exercises the Option (which it is not obliged to do), the following shall apply:
 - (i) Price: an amount equal to the Purchase Price (as specified in the Particulars of Sale pages of this Contract):
 - (A) less all costs, expenses and fees paid by the Vendor under and in connection with this Contract; and
 - (B) less all reasonable costs, expenses, fees, stamp duty and Land Victoria registration fees payable by the Vendor (or the Vendor's nominee) in connection with the purchase of the Property from the Purchaser pursuant to this Special Condition 42;
 - (ii) Deposit: nil;
 - (iii) Day of Sale: the date of the Vendor or the Vendor's nominee written notice to the Purchaser pursuant to Special Condition 42.1(c);
 - (iv) Settlement Date: sixty (60) days from the date that the Vendor (or the Vendor's nominee)

serves a written notice on the Purchaser of its election to purchase (or nominate another person or entity to purchase) the Property pursuant to the provisions of this Special Condition 42; and

- (v) Other Terms of Contract: Other than those contained in the General Conditions, Nil.

42.2 Attorney

- (a) If the Option is exercised, the Vendor (and each director of the Vendor) shall be deemed to have been appointed as the Purchaser's attorney for the purposes of:
- (i) signing the statutory declaration, transfer of land and any other documents necessary to effect the registration of the transfer of the Property to the Vendor or the Vendor's nominee; and
 - (ii) liaising with the Purchaser's lender (if any) and signing any authorities or documents required by the Purchaser's lender to discharge the Property from any registered security.
- (b) The Purchaser will ratify and confirm all the Vendor lawfully does or causes to be done pursuant to the power of attorney referred to in Special Condition 42.2(a).
- (c) The performance by the Vendor of any act matter or thing pursuant to the power of attorney is as agent of the Purchaser and the Vendor will not be liable to the Purchaser in respect thereof. The Purchaser will indemnify and keep the Vendor indemnified as to all Claims, suits or actions arising out of or in connection with anything done by the Vendor pursuant to the power of attorney.

42.3 Vendor's Caveat

The Purchaser hereby authorises the Vendor to lodge a caveat over the title to the Property to secure the Vendor's rights pursuant to this Special Condition 42.

42.4 Vendor's Costs

Notwithstanding anything to the contrary in law or anything contained in this Contract, the Purchaser shall pay all costs associated with the sale of the land to the Vendor pursuant to this Special Condition 42 including, without limitation, stamp duty and registration fees on the transfer.

42.5 Acknowledgement

The Purchaser acknowledges and agrees that the purpose of this Special Condition 42 is to ensure that:

- (a) the ability of the Vendor and any Adjacent Land Owner to complete the Development and the Adjacent Development shall not be hindered, impeded, restricted or limited by the Purchaser in any way whatsoever;
- (b) a consistent development outcome is achieved on the Land;
- (c) certainty of development outcome (in terms of appearance, quality and expediency) is achieved on the Land; and
- (d) the Land and the Adjacent Land is developed in strict accordance with the requirements of the Development Plan and the Planning Permit.

42.6 No merger

This Special Condition 42 will not merge on Settlement and will continue to bind the Purchaser and the Purchaser's successors in title.

43. FOREIGN RESIDENT CAPITAL GAINS WITHHOLDING PAYMENT

- (a) For the purpose of this Special Condition 43, words which are defined or used in Subdivision 14-D of Schedule 1 to the Tax Act have the same meaning in this Special Condition unless the context requires otherwise.
- (b) The Purchaser acknowledges and agrees that:
- (i) the Purchaser received a Clearance Certificate on or before the Day of Sale;
 - (ii) if required by law, the Vendor shall deliver an updated Clearance Certificate to the Purchaser prior to Settlement;
 - (iii) the Purchaser is not entitled to withhold from the settlement proceeds due to the Vendor at Settlement any amount on account of FRCGW; and
 - (iv) the Purchaser shall have no right to require the Vendor to pay to the Purchaser any amount on account of FRCGW at Settlement.

44. NOVATION BY VENDOR

44.1 Vendor may novate

The Purchaser acknowledges and agrees that, notwithstanding any other provision in this Contract, the Vendor may novate or assign its rights and obligations pursuant to this Contract to any third party without reference to and without the consent of the Purchaser.

44.2 Third party's assumption of rights and obligations

Provided that the third party agrees to assume the rights and obligations of the Vendor pursuant to this Contract:

- (a) the Vendor will from the date of such agreement be released from its obligations under this Contract; and
- (b) the Purchaser agrees to accept the fulfilment of the obligations of the Vendor by the nominated third party and acknowledges that this Contract remains binding on the Purchaser in accordance with its terms.

44.3 Assignment of Deposit Security

If the Vendor assigns its rights under this Contract or in the Land to a third party, the Purchaser must, at the Vendor's reasonable cost, do whatever is reasonably necessary to give the third party assignee the benefit of any Deposit Security. This includes the Purchaser providing:

- (a) any necessary consent to allow a transfer of any Deposit Security to the solicitors for the third party assignee; or
- (b) a replacement Deposit Security in the name of the solicitors for the third party assignee, as directed by the Vendor.

45. VENDOR DEALING WITH PROPERTY

The Vendor may at any time after the Day of Sale, mortgage, charge or encumber the assets of the Vendor, or any part of the Land.

46. NOTICES

46.1 Notices to be in writing

All notices or other communications to be served or given to any party to this Contract must be in writing and may be sent either by personal delivery, prepaid mail, facsimile transmission or Electronic Transmission to the address of the party, the party's solicitor or a duly authorised representative of that party as detailed in the Particulars of Sale (as varied from time to time).

46.2 Notices deemed received

Any notice given pursuant to this Contract is deemed received by the party to whom it is addressed when:

- (a) in the case of any notice delivered by hand, it is delivered;
- (b) it is sent by prepaid post, on the third clear day after the date of posting;
- (c) in the case of any notice sent by facsimile transmission upon the issue to the sender of a transmission report from the despatching facsimile machine which shows the relevant number of pages comprised in the notice to have been sent and the result of the transmission is "OK" provided always that in the case of a facsimile notice the notice is deemed to have been duly signed if the name of the person or company giving the notice is affixed by a mechanical means or device on the said notice; and
- (d) if sent by Electronic Transmission, the time of receipt under the *Electronic Transactions (Victoria) Act 2000*.

47. PERSONAL INFORMATION

47.1 Definitions

In this Special Condition "personal information" has the same meaning as is defined in the *Privacy Act 1988 (Cth)*.

47.2 Purchaser consents

The Purchaser consents to:

- (a) the Vendor and the Vendor's Solicitors collecting personal information from the Purchaser, including the personal information contained in the Particulars of Sale, information collected by the Vendor's Agent and information which must be provided by the Purchaser pursuant to this

Contract;

- (b) the use and disclosure by the Vendor and the Vendor's Solicitors of that personal information for the purposes of:
 - (i) confirming the Purchaser's identity; and
 - (ii) enabling the Vendor to comply with its obligations under, associated with or arising in connection with this Contract, including any obligations to third parties, such as the Vendor's financiers or to any authority;
- (c) the disclosure to, and use by, any third party contractors and service providers engaged by the Vendor of that personal information for the purpose of:
 - (i) enabling the Vendor to comply with and fulfil the Vendor's obligations under, associated with or arising in connection with this Contract; and
 - (ii) procuring the provision to the Purchaser of products and services contemplated by this Contract; and
 - (iii) engagement by the Vendor or any related entity of the Vendor in direct marketing activities; and
- (d) use and disclosure by the Vendor of that personal information for the purpose of enabling the Vendor to enforce its rights under this Contract.

47.3 Purchaser acknowledgement

The Purchaser acknowledges and agrees that:

- (a) the personal information collected is held by the Vendor subject to the requirements of the *Privacy Act 1988* (Cth) and the Purchaser may request access to that information at any time;
- (b) within a reasonable time of the Purchaser's personal information changing, it will provide to the Vendor details of any updated/amended personal information; and
- (c) the Purchaser may request that the personal information be corrected.

48. INSOLVENCY EVENT

- (a) The Purchaser is in fundamental breach of this Contract if:
 - (i) an order or resolution is made that the Purchaser be wound up; or
 - (ii) application is made for the appointment of a provisional liquidator or receiver to the Purchaser; or
 - (iii) a scheme or arrangement or composition with the creditors is made, or an assignment for the benefit of the creditors is made, by or on behalf of the Purchaser; or
 - (iv) the Purchaser or a guarantor is unable to pay its debts when they fall due or commits an act of bankruptcy; or
 - (v) the Purchaser makes a statement or conducts itself in a manner from which it may be reasonably determined that the Purchaser is unable to pay its debts when they fall due or meet its obligations under this Contract.
- (b) The Vendor may elect to end this Contract for breach of Special Condition 48(a) by notice to the Purchaser with immediate effect and General Condition 27.1 does not apply to this Special Condition.
- (c) If any of the circumstances referred to in Special Condition 48(a) arise in relation to the Vendor, such events shall not constitute a breach of this Contract by the Vendor and the Purchaser shall have no right or entitlement to delay, postpone or avoid any of its obligations under this Contract.

49. PROVISION UNENFORCEABLE, ILLEGAL, INVALID OR VOID

If any provision or a part of a provision in this Contract is rendered illegal, invalid, void, voidable or unenforceable by the provisions of the Fair Trading Amendment (Unfair Contract Terms) Act or any other Act whatsoever, then:

- (a) that provision, or the relevant part of that provision, must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable;
- (b) if it is not possible to so read down the provision, or the relevant part of the provision, that provision, or the relevant part of that provision, is severable without affecting the validity or enforceability of the remainder of this Contract; and
- (c) each of the parties covenants in good faith that they will execute all such further documents and

do all such further acts matters and things as are requisite, necessary or desirable for giving effect to the provisions and intent of this Contract.

50. INDEPENDENT LEGAL ADVICE

The Purchaser acknowledges and covenants that it obtained independent legal advice prior to entering into this Contract.

Annexure "A"

Plan of Subdivision

PLAN OF SUBDIVISION**EDITION 1**

PLAN NUMBER

PS 747685W**LOCATION OF LAND**

PARISH: JIKA JIKA AT ALPHINGTON

TOWNSHIP:

SECTION:

CROWN ALLOTMENT:

CROWN PORTION: 118 AND 119 (PARTS)

TITLE REFERENCES: SEE BELOW

LAST PLAN REFERENCE: LP6414 LOTS 22 TO 36 (BOTH INCLUSIVE),
LP5677 LOTS 15 TO 19 AND 22 TO 30 (B.I.)
TP175057C LOTS 1 & 2, TP225392M LOT 1
PS734842F LOTS V & WPOSTAL ADDRESS: LATROBE AVENUE AND PARKVIEW ROAD
(at time of subdivision) ALPHINGTON 3078MGA CO-ORDINATES: E 326 397 ZONE: 55
(of approximate centre of N 5 816 303 GDA 94 land in plan)

COUNCIL NAME: CITY OF YARRA

VESTING OF ROADS OR RESERVES

IDENTIFIER COUNCIL / BODY / PERSON

ROADS, R-1 CITY OF YARRA

PARK PRECINCT

NUMBER OF LOTS IN THIS PLAN: 19

TOTAL AREA OF LAND IN THIS PLAN: 3.070ha

DEPTH LIMITATION: DOES NOT APPLY

NOTATIONS**SCHEDULE OF TITLE REFERENCES**

VOL. 3900 FOL. 920 VOL. 3679 FOL. 793 VOL. FOL.
 VOL. 3910 FOL. 988 VOL. 3796 FOL. 141 VOL. FOL.
 VOL. 3910 FOL. 989 VOL. 8636 FOL. 106
 VOL. 4247 FOL. 246 VOL. 3581 FOL. 198
 VOL. 4468 FOL. 576 VOL. 3599 FOL. 653
 VOL. 4935 FOL. 969 VOL. 9189 FOL. 426
 VOL. 4602 FOL. 366 VOL. 8250 FOL. 161
 VOL. 5108 FOL. 460 VOL. 4475 FOL. 803
 VOL. 4804 FOL. 659 VOL. 3869 FOL. 662
 VOL. 5851 FOL. 168 VOL. 3586 FOL. 197
 VOL. 4159 FOL. 798 VOL. 3738 FOL. 583
 VOL. 4282 FOL. 337 VOL. 3653 FOL. 527
 VOL. 5308 FOL. 499 VOL. 3780 FOL. 842
 VOL. 3888 FOL. 511
 VOL. 8519 FOL. 930
 VOL. 3744 FOL. 714

OTHER PURPOSE OF THIS PLAN - REMOVAL OF EASEMENT:
EASEMENT TO BE REMOVED1. THE DRAINAGE AND SEWERAGE EASEMENTS SHOWN ON
VOL. 8250 FOL. 161 AND VOL. 9189 FOL. 426,**GROUNDS FOR REMOVAL**

BY DIRECTION OF YARRA CITY COUNCIL PLANNING PERMIT No.....

WARNING
THIS PLAN IS AN UNREGISTERED PLAN OF
SUBDIVISION. DIMENSIONS AND LAYOUT MAY
VARY PRIOR TO FINAL APPROVAL OF PLAN

EASEMENT INFORMATION

LEGEND: A - APPURTEMENT EASEMENT E - ENCUMBERING EASEMENT R - ENCUMBERING EASEMENT (ROAD)

SECTION 12(2) OF THE SUBDIVISION ACT 1988 APPLIES TO LOTS 37-43 (B.I.) AND 64-70 (B.I.) IN THIS PLAN
AND IS LIMITED TO SUPPORT ONLY

EASEMENT REFERENCE	PURPOSE	WIDTH (METRES)	ORIGIN	LAND BENEFITED /IN FAVOUR OF	THIS IS A SPEAR PLAN
E-1	DRAINAGE	2m	THIS PLAN	YARRA CITY COUNCIL	<p>STAGING: THIS IS NOT A STAGED SUBDIVISION PLANNING PERMIT No.</p> <p>SURVEY: THIS PLAN IS BASED ON SURVEY BP2916Y</p> <p>THIS SURVEY HAS BEEN CONNECTED TO PERMANENT MARKS No(s). -----</p> <p>IN PROCLAIMED SURVEY AREA No. -----</p>

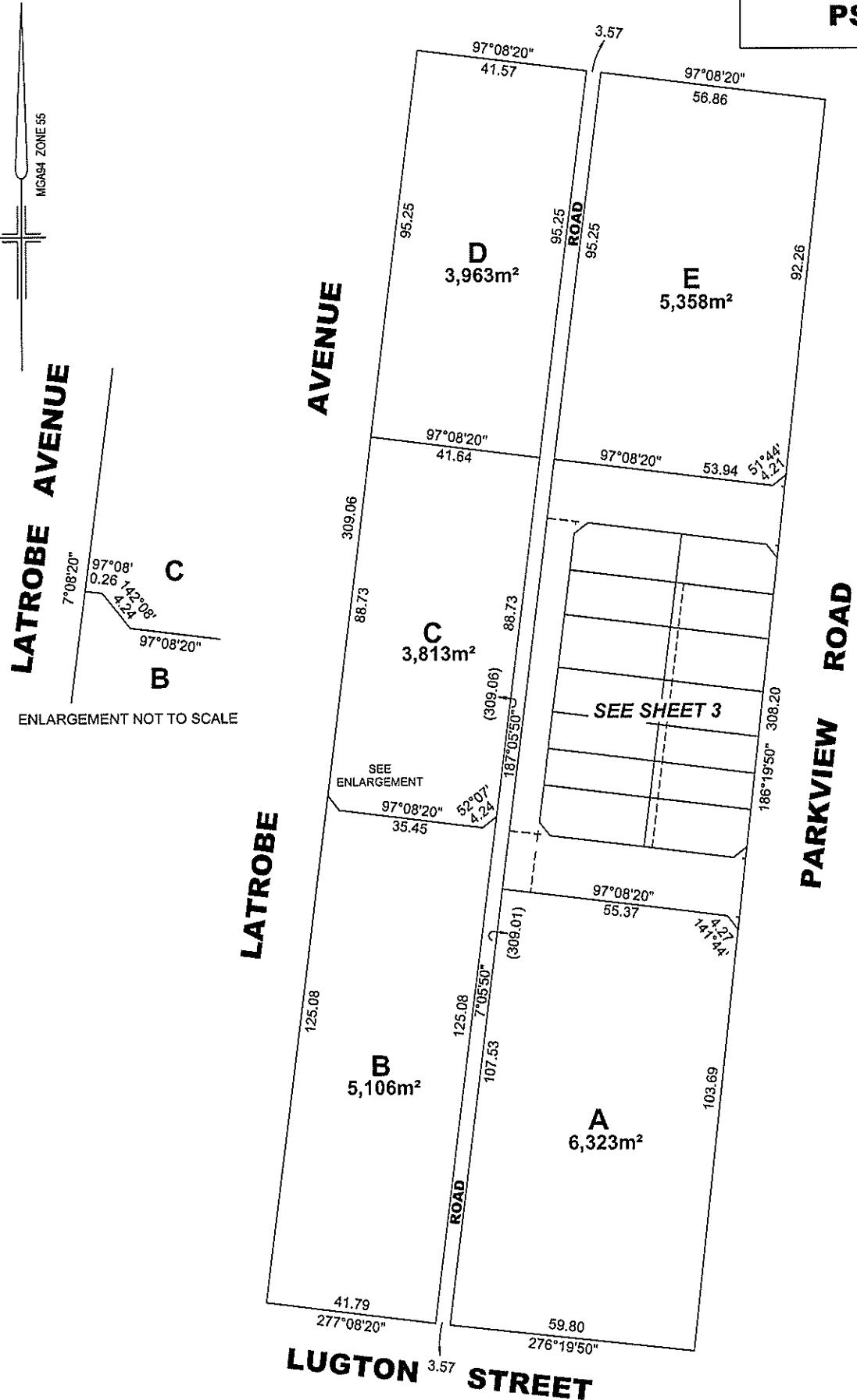
REF: VERSION: DATE: 25/07/16
22185-G/PP G 22185G-PP1-PS-M-G.DGNORIGINAL SHEET
SIZE A3

SHEET 1 OF 4 SHEETS



Reeds Consulting Pty Ltd
Lvl 6, 440 Elizabeth Street
Melbourne Victoria 3000
P (03) 8649 3000
www.reedsconsulting.com.au
survey@reedsconsulting.com.au

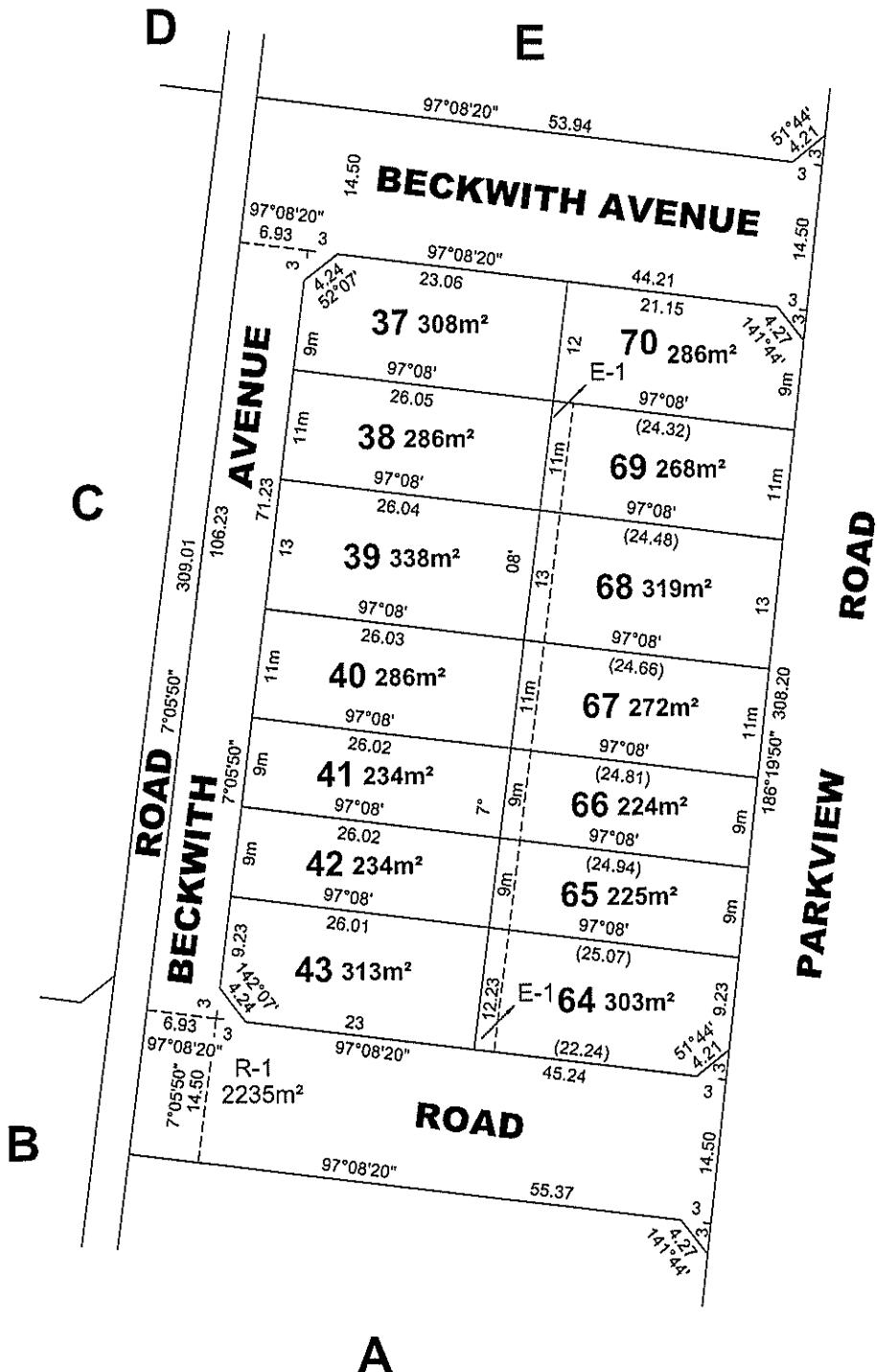
LICENSED SURVEYOR
ALAN DAVID NORMAN



WARNING
THIS PLAN IS AN UNREGISTERED PLAN OF
SUBDIVISION. DIMENSIONS AND LAYOUT MAY
VARY PRIOR TO FINAL APPROVAL OF PLAN

REF:	VERSION:	DATE: 25/07/16	SCALE 1:750	ORIGINAL SHEET SIZE A3	SHEET 2
22185-G/PP	G	22185G-PP1-PS-M.G.DGN	10 0 10 20 30 [Scale bar: 1mm = 750m] LENGTHS ARE IN METRES		
REEDS CONSULTING					
Reeds Consulting Pty Ltd Lot 6, 440 Elizabeth Street Melbourne Victoria 3000 p (03) 8640 3000 www.reedsconsulting.com.au survey@reedsconsulting.com.au					
LICENSED SURVEYOR ALAN DAVID NORMAN					

MGA94 ZONE 55



WARNING
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SUBDIVISION. DIMENSIONS AND LAYOUT MAY
VARY PRIOR TO FINAL APPROVAL OF PLAN

REF: 22185-G/PP	VERSION: G	DATE: 25/07/16 22185G-PP1-PS-M.G.DGN	SCALE 1:500	LENGTHS ARE IN METRES	ORIGINAL SHEET SIZE A3	SHEET 3
REEDS C O N S U L T I N G	Reeds Consulting Pty Ltd Lvl 6, 440 Elizabeth Street Melbourne Victoria 3000 p (03) 8640 3000 www.reedsconsulting.com.au survey@reedsconsulting.com.au	LICENSED SURVEYOR ALAN DAVID NORMAN				

SUBDIVISION ACT 1988

CREATION OF RESTRICTION A

The following Restriction is to be created upon Registration of this plan:

For the purposes of this restriction:

- (a) "Minimum Front Boundary Setback" means, in respect of each lot, the distance between the Front Boundary and the building facade at ground level,
- (b) "Front Boundary" means:
 - (i) In the case of any lot where only one boundary of that lot abuts a road, the boundary which abuts the road; and
 - (ii) In the case of any lot where two boundaries of that lot each abut a road, the shorter boundary which abuts the road and where there is a splayed corner on a lot, that part of the boundary which is created by the splay shall be disregarded.
- (c) "Facade" means any front wall of a dwelling, excluding verandahs, porches, balconies, decks, landings or steps.
- (d) All distances are to be measured at right angles to the respective boundary.

LAND TO BENEFIT: LOTS 37 TO 43 AND 64 TO 70 (BOTH INCLUSIVE)

LAND TO BE BURDENED: LOTS 37 TO 43 AND 64 TO 70 (BOTH INCLUSIVE)

Description of Restriction:

Without the consent of the Responsible Authority, the registered proprietor or proprietors for the time being of any burdened lot shall not:

- 1 Build or permit more than one dwelling house to be built or remain on the burdened lot.
- 2 Build or permit any dwelling house to be built or remain on the burdened lot that is greater than two storeys in height.
- 3 Build or permit any dwelling house to be built or remain on the burdened lot whose front facade is set back less than the Minimum Front Boundary Setback as specified below:
 - (i) for lots fronting Parkview Road: 3 metres;
 - (ii) for all other lots: 2 metres.
- 4 Erect or cause to be erected:
 - (i) any fence along the front boundary;
 - (ii) any fence on the burdened lots between the Front Boundary and the Minimum Front Boundary Setback of a height greater than 1.2 metres and which is less than 50% transparency.
- 5 Construct or cause or permit to be constructed on any burdened lots on this plan any:
 - (i) verandah with lacework;
 - (ii) window constructed from lead light;
 - (iii) letterbox constructed from materials other than rendered masonry with metal insert and greater than 1.2 metres in height;
 - (iv) carport.
- 6 At any time keep, place or maintain any rubbish bins on any burdened lots so as to be visible from any street adjacent to or abutting that lot.
- 7 Build or permit any garage to be built or remain on the burdened lot that is setback less than 1 metre behind the front building facade.
- 8 Erect, display or exhibit or allow to be erected, displayed or exhibited or to remain erected, displayed or exhibited any satellite dish, antennae or roof mounted air conditioning or heating unit visible from the Front Boundary.
- 9 Build or permit to build any structure to be built or remain on the burdened lots that reduces the private open space to an area of less than 25m² with a minimum width of 3.0 metres.

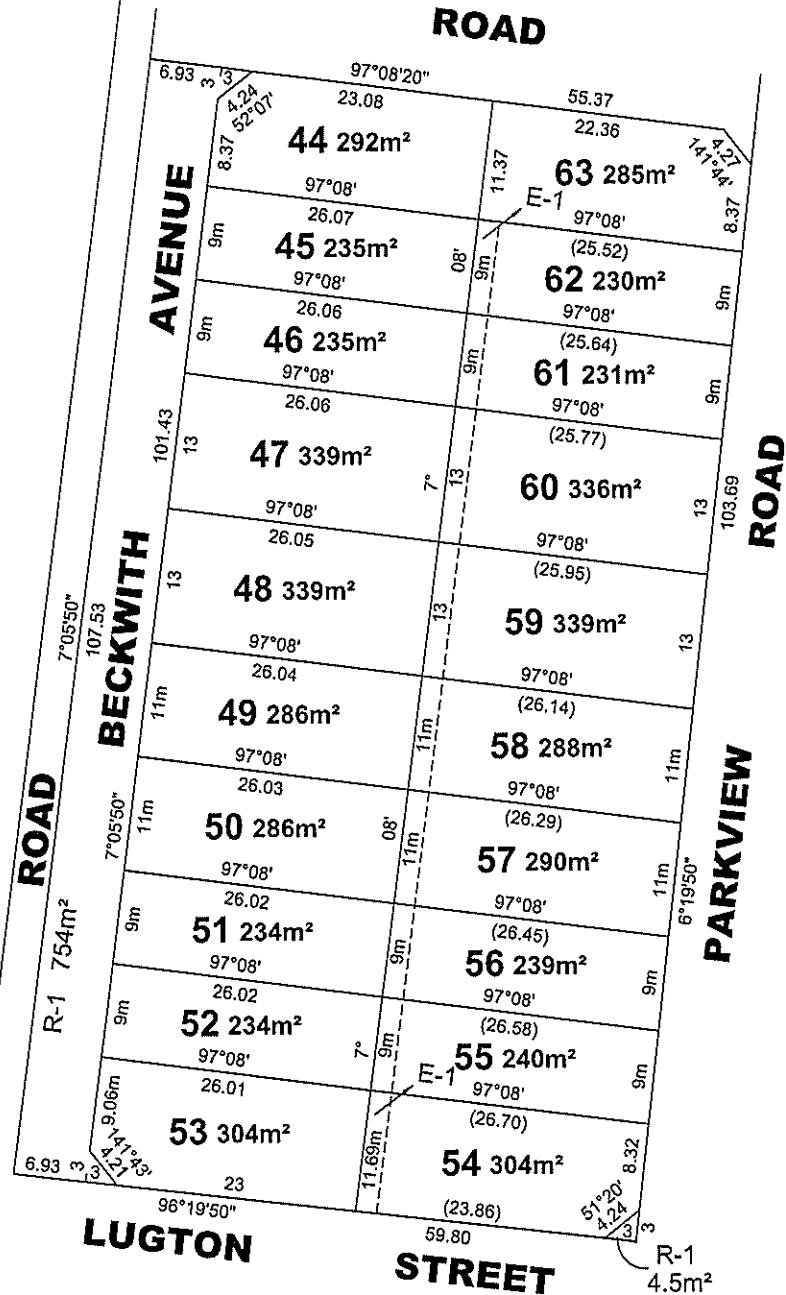
These restrictions shall expire on the 31st of December 2026.

WARNING
THIS PLAN IS AN UNREGISTERED PLAN OF
SUBDIVISION. DIMENSIONS AND LAYOUT MAY
VARY PRIOR TO FINAL APPROVAL OF PLAN

REF: 22185-G/PP	VERSION: G	DATE: 25/07/16 22185G-PP1-PS-M.G.DGN	SCALE 1:500	10  0 10 20 LENGTHS ARE IN METRES	ORIGINAL SHEET SIZE A3	SHEET 4
REEDS C O N S U L T I N G	Reeds Consulting Pty Ltd Lvl 6, 440 Elizabeth Street Melbourne Victoria 3000 p (03) 8660 3000 www.reedsconsulting.com.au survey@reedsconsulting.com.au	LICENSED SURVEYOR ALAN DAVID NORMAN				

SUBDIVISION ACT 1988 PLAN OF SUBDIVISION		EDITION 1	PLAN NUMBER PS 801752K				
LOCATION OF LAND PARISH: JIKA JIKA AT ALPHINGTON TOWNSHIP: SECTION: CROWN ALLOTMENT: CROWN PORTION: 118 AND 119 (PARTS) TITLE REFERENCES: VOL. FOL. LAST PLAN REFERENCE: PS747685W LOT A		COUNCIL NAME : CITY OF YARRA					
POSTAL ADDRESS: LUGTON STREET AND PARKVIEW ROAD (at time of subdivision) ALPHINGTON 3078 MGA CO-ORDINATES: E 326 397 ZONE: 55 (of approximate centre of N 5 816 303 GDA 94 land in plan)							
VESTING OF ROADS OR RESERVES <table border="1"> <tr> <td>IDENTIFIER</td> <td>COUNCIL / BODY / PERSON</td> </tr> <tr> <td>ROADS, R-1</td> <td>CITY OF YARRA</td> </tr> </table>		IDENTIFIER	COUNCIL / BODY / PERSON	ROADS, R-1	CITY OF YARRA	PARK PRECINCT NUMBER OF LOTS IN THIS PLAN: 20 TOTAL AREA OF LAND IN THIS PLAN: 6,324m ² DEPTH LIMITATION: DOES NOT APPLY	
IDENTIFIER	COUNCIL / BODY / PERSON						
ROADS, R-1	CITY OF YARRA						
NOTATIONS							
<div style="border: 1px solid black; padding: 2px; font-size: small;">WARNING THIS PLAN IS AN UNREGISTERED PLAN OF SUBDIVISION. DIMENSIONS AND LAYOUT MAY VARY PRIOR TO FINAL APPROVAL OF PLAN.</div>							
EASEMENT INFORMATION					THIS IS A SPEAR PLAN STAGING: THIS IS NOT A STAGED SUBDIVISION PLANNING PERMIT No. SURVEY: THIS PLAN IS BASED ON SURVEY BP2916Y THIS SURVEY HAS BEEN CONNECTED TO PERMANENT MARKS No(s). _____ IN PROCLAIMED SURVEY AREA No. _____		
LEGEND: A - APPURTENANT EASEMENT E - ENCUMBERING EASEMENT R - ENCUMBERING EASEMENT (ROAD) SECTION 12(2) OF THE SUBDIVISION ACT 1988 APPLIES TO LOTS 44-63 (B.I.) IN THIS PLAN AND IS LIMITED TO SUPPORT ONLY							
EASEMENT REFERENCE	PURPOSE	WIDTH (METRES)	ORIGIN	LAND BENEFITED /IN FAVOUR OF			
E-1	DRAINAGE	2m	THIS PLAN	YARRA CITY COUNCIL			
REF: 22185-G/PP VERSION: G		DATE: 25/07/16 22185G-PP2-PS-M.G.DGN		ORIGINAL SHEET SIZE A3	SHEET 1 OF 3 SHEETS		
		Reeds Consulting Pty Ltd Lvl 6, 440 Elizabeth Street Melbourne Victoria 3000 p (03) 8660 3000 www.reedsconsulting.com.au survey@reedsconsulting.com.au		LICENSED SURVEYOR ALAN DAVID NORMAN			

MGA4 ZONE 55



WARNING
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VARY PRIOR TO FINAL APPROVAL OF PLAN

REF:	VERSION:	DATE:	SCALE:	ORIGINAL SHEET SIZE	SHEET 2
22185-G/PP	G	25/07/16	1:500	10 0 10 20 LENGTHS ARE IN METRES	
REEDS CONSULTING					
Reeds Consulting Pty Ltd Lvl 6, 440 Elizabeth Street Melbourne Victoria 3000 p (03) 8660 3000 www.reedsconsulting.com.au survey@reedsconsulting.com.au					
LICENSED SURVEYOR ALAN DAVID NORMAN					

SUBDIVISION ACT 1988

CREATION OF RESTRICTION A

The following Restriction is to be created upon Registration of this plan:

For the purposes of this restriction:

- (a) "Minimum Front Boundary Setback" means, in respect of each lot, the distance between the Front Boundary and the building facade at ground level.
- (b) "Front Boundary" means:
 - (i) in the case of any lot where only one boundary of that lot abuts a road, the boundary which abuts the road; and
 - (ii) in the case of any lot where two boundaries of that lot each abut a road, the shorter boundary which abuts the road and where there is a splayed corner on a lot, that part of the boundary which is created by the splay shall be disregarded.
- (c) "Facade" means any front wall of a dwelling, excluding verandahs, porches, balconies, decks, landings or steps.
- (d) All distances are to be measured at right angles to the respective boundary.

LAND TO BENEFIT: LOTS 44 TO 63 (BOTH INCLUSIVE)

LAND TO BE BURDENED: LOTS 44 TO 63 (BOTH INCLUSIVE)

Description of Restriction:

Without the consent of the Responsible Authority, the registered proprietor or proprietors for the time being of any burdened lot shall not:

- 1 Build or permit more than one dwelling house to be built or remain on the burdened lot.
- 2 Build or permit any dwelling house to be built or remain on the burdened lot that is greater than two storeys in height.
- 3 Build or permit any dwelling house to be built or remain on the burdened lot whose front facade is set back less than the Minimum Front Boundary Setback as specified below:
 - (i) for lots fronting Parkview Road: 3 metres;
 - (ii) for all other lots: 2 metres.
- 4 Erect or cause to be erected:
 - (i) any fence along the front boundary;
 - (ii) any fence on the burdened lots between the Front Boundary and the Minimum Front Boundary Setback of a height greater than 1.2 metres and which is less than 50% transparency.
- 5 Construct or cause or permit to be constructed on any burdened lots on this plan any:
 - (i) verandah with lacework;
 - (ii) window constructed from lead light;
 - (iii) letterbox constructed from materials other than rendered masonry with metal insert and greater than 1.2 metres in height;
 - (iv) carport.
- 6 At any time keep, place or maintain any rubbish bins on any burdened lots so as to be visible from any street adjacent to or abutting that lot.
- 7 Build or permit any garage to be built or remain on the burdened lot that is setback less than 1 metre behind the front building facade.
- 8 Erect, display or exhibit or allow to be erected, displayed or exhibited or to remain erected, displayed or exhibited any satellite dish, antennae or roof mounted air conditioning or heating unit visible from the Front Boundary.
- 9 Build or permit to build any structure to be built or remain on the burdened lots that reduces the private open space to an area of less than 25m² with a minimum width of 3.0 metres.

These restrictions shall expire on the 31st of December 2026.

WARNING
THIS PLAN IS AN UNREGISTERED PLAN OF
SUBDIVISION. DIMENSIONS AND LAYOUT MAY
VARY PRIOR TO FINAL APPROVAL OF PLAN

REF: 22185-G/PP	VERSION: G	DATE: 25/07/16 22185G-PP2-PS-M-G.DGN	SCALE 1:750	10 0 10 20 30 LENGTHS ARE IN METRES	ORIGINAL SHEET SIZE A3	SHEET 3
REEDS CONSULTING	Reeds Consulting Pty Ltd Lvl 6, 440 Elizabeth Street Melbourne Victoria 3000 p (03) 8660 3000 www.reedsconsulting.com.au survey@reedsconsulting.com.au	LICENSED SURVEYOR ALAN DAVID NORMAN				

SUBDIVISION ACT 1988

PLAN OF SUBDIVISION**EDITION 1**

PLAN NUMBER

PS 801753H**LOCATION OF LAND**

PARISH: JIKA JIKA AT ALPHINGTON

TOWNSHIP:

SECTION:

CROWN ALLOTMENT:

CROWN PORTION: 118 AND 119 (PARTS)

TITLE REFERENCES: VOL. FOL.

LAST PLAN REFERENCE: PS747685W LOT B

POSTAL ADDRESS: LATROBE AVENUE AND LUGTON STREET
(at time of subdivision) ALPHINGTON 3078MGA CO-ORDINATES: E 326 397 ZONE: 55
(of approximate centre of N 5 816 303 GDA 94 land in plan)

COUNCIL NAME : CITY OF YARRA

VESTING OF ROADS OR RESERVES

IDENTIFIER COUNCIL / BODY / PERSON

ROADS, R-1 CITY OF YARRA

PARK PRECINCT

NUMBER OF LOTS IN THIS PLAN: 20

TOTAL AREA OF LAND IN THIS PLAN: 5,107m²

DEPTH LIMITATION: DOES NOT APPLY

NOTATIONS

WARNING
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 SUBDIVISION. DIMENSIONS AND LAYOUT MAY
 VARY PRIOR TO FINAL APPROVAL OF PLAN

EASEMENT INFORMATION

LEGEND: A - APPURTEAN EASEMENT E - ENCUMBERING EASEMENT R - ENCUMBERING EASEMENT (ROAD)

SECTION 12(2) OF THE SUBDIVISION ACT 1988 APPLIES TO LOTS 9-28 (B.I.) IN THIS PLAN
AND IS LIMITED TO SUPPORT ONLY

EASEMENT REFERENCE	PURPOSE	WIDTH (METRES)	ORIGIN	LAND BENEFITED /IN FAVOUR OF	THIS IS A SPEAR PLAN
					STAGING: THIS IS NOT A STAGED SUBDIVISION PLANNING PERMIT No. SURVEY: THIS PLAN IS BASED ON SURVEY BP2916Y THIS SURVEY HAS BEEN CONNECTED TO PERMANENT MARKS No(s). ----- IN PROCLAIMED SURVEY AREA No. -----

REF: VERSION: DATE: 25/07/16
22185-G/PP G 22185G-PP3-PS-M.G.DGN

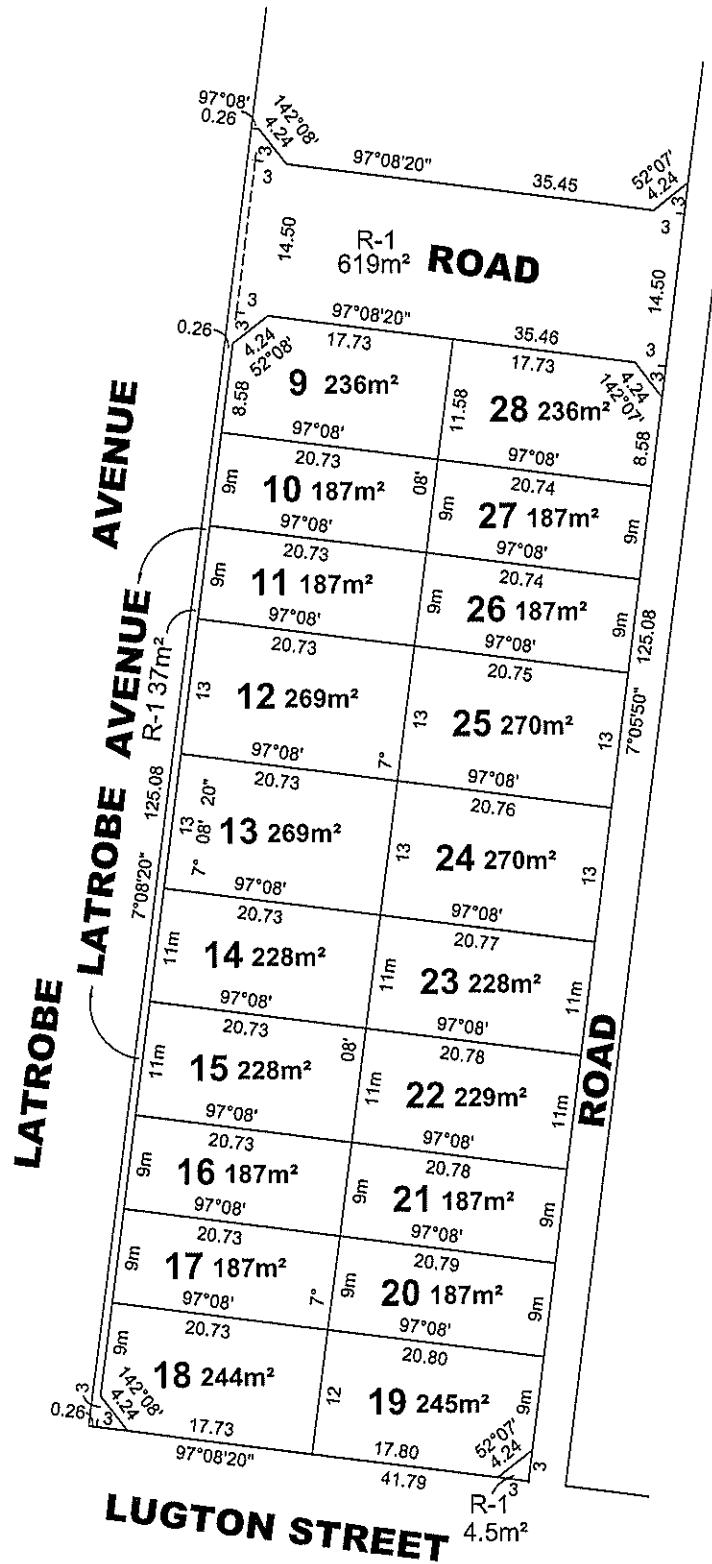
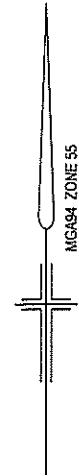
ORIGINAL SHEET SIZE A3

SHEET 1 OF 3 SHEETS



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 Lv 6, 440 Elizabeth Street
 Melbourne Victoria 3000
 p (03) 8660 3000
www.reedsconsulting.com.au
survey@reedsconsulting.com.au

LICENSED SURVEYOR
ALAN DAVID NORMAN



WARNING
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REF:	VERSION:	DATE: 25/07/16	SCALE 1:500	ORIGINAL SHEET SIZE A3	SHEET 2
22185-G/PP	G	22185G-PP3-PS-M-G.DGN	10 0 10 20 L L L L L L L L L L LENGTHS ARE IN METRES		
REEDS CONSULTING	Reeds Consulting Pty Ltd Lvl 6, 440 Elizabeth Street Melbourne Victoria 3000 p (03) 8660 3000 www.reedsconsulting.com.au survey@reedsconsulting.com.au	LICENSED SURVEYOR ALAN DAVID NORMAN			

SUBDIVISION ACT 1988

CREATION OF RESTRICTION A

The following Restriction is to be created upon Registration of this plan:

For the purposes of this restriction:

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- (b) "Front Boundary" means:
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 - (ii) in the case of any lot where two boundaries of that lot each abut a road, the shorter boundary which abuts the road and where there is a splayed corner on a lot, that part of the boundary which is created by the splay shall be disregarded.
- (c) "Facade" means any front wall of a dwelling, excluding verandahs, porches, balconies, decks, landings or steps.
- (d) All distances are to be measured at right angles to the respective boundary.

LAND TO BENEFIT: LOTS 9 TO 28 (BOTH INCLUSIVE)

LAND TO BE BURDENED: LOTS 9 TO 28 (BOTH INCLUSIVE)

Description of Restriction:

Without the consent of the Responsible Authority, the registered proprietor or proprietors for the time being of any burdened lot shall not:

- 1 Build or permit more than one dwelling house to be built or remain on the burdened lot.
- 2 Build or permit any dwelling house to be built or remain on the burdened lot that is greater than two storeys in height.
- 3 Build or permit any dwelling house to be built or remain on the burdened lot whose front facade is set back less than the Minimum Front Boundary Setback as specified below:
 - (i) for lots fronting Parkview Road: 3 metres;
 - (ii) for all other lots: 2 metres.
- 4 Erect or cause to be erected:
 - (i) any fence along the front boundary;
 - (ii) any fence on the burdened lots between the Front Boundary and the Minimum Front Boundary Setback of a height greater than 1.2 metres and which is less than 50% transparency.
- 5 Construct or cause or permit to be constructed on any burdened lots on this plan any:
 - (i) verandah with lacework;
 - (ii) window constructed from lead light;
 - (iii) letterbox constructed from materials other than rendered masonry with metal insert and greater than 1.2 metres in height;
 - (iv) carport.
- 6 At any time keep, place or maintain any rubbish bins on any burdened lots so as to be visible from any street adjacent to or abutting that lot.
- 7 Build or permit any garage to be built or remain on the burdened lot that is setback less than 1 metre behind the front building facade.
- 8 Erect, display or exhibit or allow to be erected, displayed or exhibited or to remain erected, displayed or exhibited any satellite dish, antennae or roof mounted air conditioning or heating unit visible from the Front Boundary.
- 9 Build or permit to build any structure to be built or remain on the burdened lots that reduces the private open space to an area of less than 25m² with a minimum width of 3.0 metres.

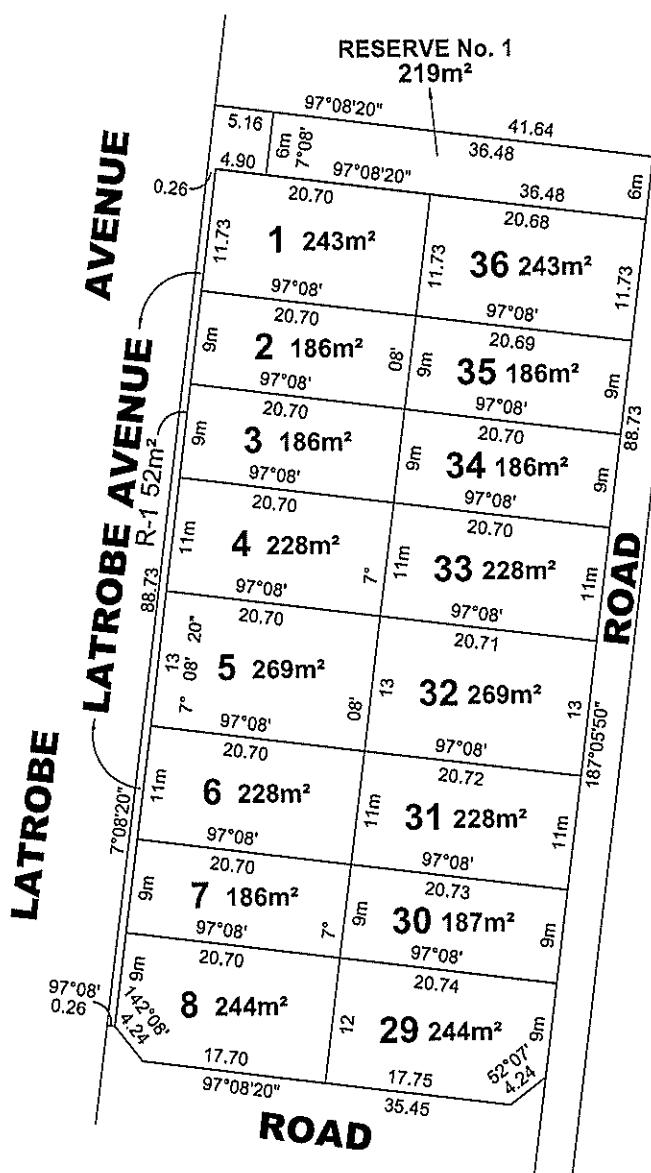
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WARNING
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REF: 22185-G/PP	VERSION: G	DATE: 25/07/16 22185G-PP3-PS-M-G.DGN	SCALE 1:750	10 [mm] 0 10 20 30 LENGTHS ARE IN METRES	ORIGINAL SHEET SIZE A3	SHEET 3
REEDS CONSULTING	Reeds Consulting Pty Ltd Lvl 4, 440 Elizabeth Street Melbourne Victoria 3000 p (03) 8660 3000 www.reedsconsulting.com.au survey@reedsconsulting.com.au	LICENSED SURVEYOR ALAN DAVID NORMAN				

SUBDIVISION ACT 1988 PLAN OF SUBDIVISION		EDITION 1	PLAN NUMBER PS 801754F				
LOCATION OF LAND PARISH: JIKA JIKA AT ALPHINGTON TOWNSHIP: SECTION: CROWN ALLOTMENT: CROWN PORTION: 118 AND 119 (PARTS) TITLE REFERENCES: VOL. FOL. LAST PLAN REFERENCE: PS747685W LOT C POSTAL ADDRESS: LATROBE AVENUE (at time of subdivision) ALPHINGTON 3078 MGA CO-ORDINATES: E 326 397 ZONE: 55 (of approximate centre of N 5 816 303 GDA 94 land in plan)		COUNCIL NAME : CITY OF YARRA					
VESTING OF ROADS OR RESERVES <table border="1"> <tr> <th>IDENTIFIER</th> <th>COUNCIL / BODY / PERSON</th> </tr> <tr> <td>ROADS, R-1 RESERVE No. 1</td> <td>CITY OF YARRA CITY OF YARRA</td> </tr> </table>		IDENTIFIER	COUNCIL / BODY / PERSON	ROADS, R-1 RESERVE No. 1	CITY OF YARRA CITY OF YARRA	PARK PRECINCT NUMBER OF LOTS IN THIS PLAN: 16 TOTAL AREA OF LAND IN THIS PLAN: 3,813m ² DEPTH LIMITATION: DOES NOT APPLY	
IDENTIFIER	COUNCIL / BODY / PERSON						
ROADS, R-1 RESERVE No. 1	CITY OF YARRA CITY OF YARRA						
NOTATIONS							
<div style="text-align: right; border: 1px solid black; padding: 2px;"> <small>WARNING THIS PLAN IS AN UNREGISTERED PLAN OF SUBDIVISION. DIMENSIONS AND LAYOUT MAY VARY PRIOR TO FINAL APPROVAL OF PLAN.</small> </div>							
EASEMENT INFORMATION							
LEGEND: A - APPURTEANANT EASEMENT E - ENCUMBERING EASEMENT R - ENCUMBERING EASEMENT (ROAD)							
SECTION 12(2) OF THE SUBDIVISION ACT 1988 APPLIES TO LOTS 1-8 (B.I.) AND 29-36 (B.I.) IN THIS PLAN AND IS LIMITED TO SUPPORT ONLY							
EASEMENT REFERENCE	PURPOSE	WIDTH (METRES)	ORIGIN				
			LAND BENEFITED /IN FAVOUR OF				
REF: 22185-G/PP		VERSION: G	DATE: 25/07/16				
		22185G-PP4-PS-M.G.DGN					
		Reeds Consulting Pty Ltd Lvl 6, 440 Elizabeth Street Melbourne Victoria 3000 p (03) 8660 3000 www.reedsconsulting.com.au survey@reedsconsulting.com.au					
		LICENSED SURVEYOR ALAN DAVID NORMAN					
		ORIGINAL SHEET SIZE A3					
		SHEET 1 OF 3 SHEETS					

MGA94 ZONE 55



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REF:	VERSION:	DATE:	SCALE	ORIGINAL SHEET SIZE	SHEET 2
22185-G/PP	G	25/07/16	1:500	A3	
			10 0 10 20 L L L L L L L L L L LENGTHS ARE IN METRES		

REEDS
CONSULTING

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Level 6, 440 Elizabeth Street
Melbourne Victoria 3000
P (03) 8460 3000
www.reedsconsulting.com.au
survey@reedsconsulting.com.au

LICENSED SURVEYOR
ALAN DAVID NORMAN

SUBDIVISION ACT 1988

CREATION OF RESTRICTION A

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- (c) "Facade" means any front wall of a dwelling, excluding verandahs, porches, balconies, decks, landings or steps.
- (d) All distances are to be measured at right angles to the respective boundary.

LAND TO BENEFIT: LOTS 1 TO 8 AND 29 TO 36 (BOTH INCLUSIVE)

LAND TO BE BURDENED: LOTS 1 TO 8 AND 29 TO 36 (BOTH INCLUSIVE)

Description of Restriction:

Without the consent of the Responsible Authority, the registered proprietor or proprietors for the time being of any burdened lot shall not:

- 1 Build or permit more than one dwelling house to be built or remain on the burdened lot.
- 2 Build or permit any dwelling house to be built or remain on the burdened lot that is greater than two storeys in height.
- 3 Build or permit any dwelling house to be built or remain on the burdened lot whose front facade is set back less than the Minimum Front Boundary Setback as specified below:
 - (i) for lots fronting Parkview Road: 3 metres;
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- 5 Construct or cause or permit to be constructed on any burdened lots on this plan any:
 - (i) verandah with lacework;
 - (ii) window constructed from lead light;
 - (iii) letterbox constructed from materials other than rendered masonry with metal insert and greater than 1.2 metres in height;
 - (iv) carport.
- 6 At any time keep, place or maintain any rubbish bins on any burdened lots so as to be visible from any street adjacent to or abutting that lot.
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These restrictions shall expire on the 31st of December 2026.

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REF: 22185-G/PP	VERSION: G	DATE: 25/07/16 22185G-PP4-PS-M.G.DGN	SCALE 1:750	10 0 10 20 30 LENGTHS ARE IN METRES	ORIGINAL SHEET SIZE A3	SHEET 3
REEDS CONSULTING	Reeds Consulting Pty Ltd Lvl 6, 440 Elizabeth Street Melbourne Victoria 3000 p (03) 8460 3000 www.reedsconsulting.com.au survey@reedsconsulting.com.au	LICENSED SURVEYOR ALAN DAVID NORMAN				

Annexure "B"

Guarantee

The following Guarantee and Indemnity shall be executed by each person who executes this Contract for and on behalf of the Purchaser (if not the same person) and by each Director of the Purchaser (if a corporation):

I / We

of
and

of

(hereinafter called "the Guarantors") IN CONSIDERATION of the within named Vendor(s) selling to the within named Purchaser(s) at our request the land described in the within Contract for the price and upon the terms and conditions therein set forth DO HEREBY for ourselves and our respective executors and administrators JOINTLY AND SEVERALLY COVENANT with the said Vendor(s) and their assigns that if at any time default shall be made in payment of the Deposit or Residue of Purchase Price or interest or other monies payable by the Purchaser(s) to the Vendor(s) under the within Contract or in the performance or observance of any term or condition of the within Contract to be performed or observed by the Purchaser(s) we will forthwith on demand by the Vendor(s) pay to the Vendor(s) the whole of such deposit residue of purchase money interest or other monies which shall then be due and payable to the Vendor(s) and hereby indemnify and agree to keep the Vendor(s) indemnified against all loss of Purchase Price interest and other monies payable under the within Contract and all losses costs charges and expenses whatsoever which the Vendor(s) may incur by reason of any default as aforesaid on the part of the Purchaser(s). This Guarantee and Indemnity shall be a continuing Guarantee and Indemnity and shall not be released by:

- 1 any neglect or forbearance on the part of the Vendor(s) in enforcing payment of any of the monies payable under the within Contract;
- 2 the performance or observance of any of the agreements obligations or conditions under the within Contract;
- 3 by time being given to the Purchaser(s) for any such payment performance or observance;
- 4 by reason of the Vendor assigning its rights under the said contract;
- 5 by any other thing which under the law relating to sureties would but for this provision have the effect of releasing us our executors or administrators.

IN WITNESS our hands and seals the day of

201

SIGNED SEALED AND DELIVERED by the said)
In the presence of:)
)

.....
Signature of Witness

.....
Signature

.....
Full Name (*please print*)

SIGNED SEALED AND DELIVERED by the said)
In the presence of:)
)

.....
Signature of Witness

.....
Signature

.....
Full Name (*please print*)

Annexure "C"

Trust Account Details and Bank Guarantee Checklist

(a) Trust Details:

Name: Kalus Kenny Intelex Law Practice Trust Account
Bank: National Australia Bank
Branch: 271 Collins Street, Melbourne 3000
BSB No.: 083-155
Account No.: 863106070
SWIFT CODE: NATAAU3303M

PLEASE USE LOT NO. & SURNAME AS REFERENCE

(b) Bank Guarantee Checklist

Beneficiary	The Partners of the firm trading as Kalus Kenny Intelex (ABN: 53 292 470 996)
Address of Beneficiary	Suite 3, Level 3, The Como Centre, 299 Toorak Road, South Yarra, Victoria, 3141
Customer	Full name of purchaser/s as written in Contract of Sale. Note: If there are two or more purchasers described in Contract of Sale, both or all must be listed in the Bank Guarantee.
Agreement	Contract of Sale dated _____ to purchase Lot _____ on Proposed Plan of Subdivision PS747685W, 801752K, 801753H, 801754F [Insert/delete as appropriate] Latrobe Avenue and Parkview Avenue, Alphington VIC 3078
Amount	Amount of Deposit.
Termination Date	There should be no termination date.
Other Terms	The Bank Guarantee must be unconditional and irrevocable and payable on demand by the Bank at the request of the Beneficiary without reference to the Purchaser.

NB: THE BANK MUST BE ACCEPTABLE TO THE VENDOR'S SOLICITOR

Annexure "D"

Due Diligence Checklist

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 [Due diligence checklist page on the Consumer Affairs Victoria website](#) (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.

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.

Annexure "E"

Adjacent Land

- (1) Certificate of Title Volume 8552 Folio 425;
- (2) Certificate of Title Volume 4041 Folio 177;
- (3) Certificate of Title Volume 3924 Folio 663;
- (4) Certificate of Title Volume 4116 Folio 033;
- (5) Certificate of Title Volume 7792 Folio 141;
- (6) Certificate of Title Volume 8607 Folio 563;
- (7) Certificate of Title Volume 5420 Folio 941;
- (8) Certificate of Title Volume 4057 Folio 310;
- (9) Certificate of Title Volume 3834 Folio 660;
- (10) Certificate of Title Volume 4602 Folio 367;
- (11) Certificate of Title Volume 4282 Folio 335;
- (12) Certificate of Title Volume 5420 Folio 942;
- (13) Certificate of Title Volume 3860 Folio 804;
- (14) Certificate of Title Volume 3839 Folio 682;
- (15) Certificate of Title Volume 8548 Folio 712;
- (16) Certificate of Title Volume 8548 Folio 711;
- (17) Certificate of Title Volume 6544 Folio 638;
- (18) Certificate of Title Volume 8038 Folio 426;
- (19) Certificate of Title Volume 7006 Folio 155;
- (20) Certificate of Title Volume 3827 Folio 275;
- (21) Certificate of Title Volume 8474 Folio 547;
- (22) Certificate of Title Volume 3656 Folio 072;
- (23) Certificate of Title Volume 4164 Folio 682;
- (24) Certificate of Title Volume 4602 Folio 365;
- (25) Certificate of Title Volume 3839 Folio 680;
- (26) Certificate of Title Volume 3839 Folio 681;
- (27) Certificate of Title Volume 6526 Folio 018;
- (28) Certificate of Title Volume 3866 Folio 025;
- (29) Certificate of Title Volume 4514 Folio 612;
- (30) Certificate of Title Volume 3900 Folio 920;

- (31) Certificate of Title Volume 3910 Folio 988;
- (32) Certificate of Title Volume 3910 Folio 989;
- (33) Certificate of Title Volume 4247 Folio 246;
- (34) Certificate of Title Volume 4468 Folio 576;
- (35) Certificate of Title Volume 4935 Folio 969;
- (36) Certificate of Title Volume 4602 Folio 366;
- (37) Certificate of Title Volume 5108 Folio 460;
- (38) Certificate of Title Volume 4804 Folio 659;
- (39) Certificate of Title Volume 5851 Folio 168;
- (40) Certificate of Title Volume 4159 Folio 798;
- (41) Certificate of Title Volume 4282 Folio 337;
- (42) Certificate of Title Volume 5308 Folio 499;
- (43) Certificate of Title Volume 6493 Folio 443;
- (44) Certificate of Title Volume 3733 Folio 446;
- (45) Certificate of Title Volume 3790 Folio 872;
- (46) Certificate of Title Volume 3679 Folio 793;
- (47) Certificate of Title Volume 3796 Folio 141;
- (48) Certificate of Title Volume 8636 Folio 106;
- (49) Certificate of Title Volume 3599 Folio 653;
- (50) Certificate of Title Volume 9189 Folio 426;
- (51) Certificate of Title Volume 8250 Folio 161;
- (52) Certificate of Title Volume 4475 Folio 803;
- (53) Certificate of Title Volume 3869 Folio 662;
- (54) Certificate of Title Volume 3586 Folio 197;
- (55) Certificate of Title Volume 3738 Folio 583;
- (56) Certificate of Title Volume 3653 Folio 527;
- (57) Certificate of Title Volume 3780 Folio 842;
- (58) Certificate of Title Volume 3888 Folio 511;
- (59) Certificate of Title Volume 8519 Folio 930; and
- (60) Certificate of Title Volume 3744 Folio 714.

Annexure "F"

Schedule 11 of the Development Plan Overlay

18/07/2013
C200**SCHEDULE 11 TO THE DEVELOPMENT PLAN OVERLAY**Shown on the planning scheme map as **DPO11**.**AMCOR SITE, HEIDELBERG ROAD, ALPHINGTON**

This schedule applies to the Amcor site which is bounded by Heidelberg Road, Parkview Road (including No 28 Parkview Road) Chandler Highway and the Yarra River.

1.018/07/2013
C200**Requirements before a permit is granted**

A permit may be granted before a development plan has been approved for the following:

- Earthworks and site preparation works provided the works are carried out in accordance with a Construction Management Plan prepared in accordance with this Schedule;
- The removal or demolition of any building provided the demolition or works are carried out in accordance with a Construction Management Plan prepared in accordance with this Schedule;
- The construction of minor buildings or works provided the buildings or works are carried out in accordance with a Construction Management Plan prepared in accordance with this Schedule;
- Consolidation or subdivision of land; and
- Removal or creation of easements or restrictions.

Before granting a permit the responsible authority must be satisfied that the permit will not prejudice the future use and development of the land in an integrated manner and will contribute to the vision for the Amcor site.

The land may be developed in stages.

2.018/07/2013
C200**Conditions and requirements for permits**

Except for a permit issued as provided for under Clause 1.0, a permit must contain conditions or requirements which give effect to the provisions and requirements of the approved Development Plan.

Before granting any permit in accordance with an approved development plan, the owner/s of the land must enter into an agreement with the responsible authority under Section 173 of the Planning and Environment Act 1987 which must provide, to the satisfaction of the responsible authority that the owners will:

- Provide 5% of the total number of dwellings for the purpose of affordable housing developed in association with an accredited housing association;
- Provide the first 30 metres of land from the Yarra River, measured from the edge of the river bank, to maintain ongoing public access, protect riparian vegetation and maintain landscape values along the Yarra River; and
- Construct a pedestrian and bicycle path along the Yarra River frontage of the site connecting with existing pedestrian and bicycle accessways.

The cost of preparing and lodging the agreement, including any Land Titles Office registration fees, must be paid for in full by the owner(s).

Prior to the commencement of any permitted demolition, buildings or works, a detailed Construction Management Plan as relevant demolition or those buildings or works must be prepared to the satisfaction of the responsible authority. In considering the Construction

Management Plan, the responsible authority must take into account any comments received from VicRoads and Public Transport Victoria within 21 days of the date of referral of the Construction Management Plan to the relevant authorities. The Construction Management Plan must include, but is not limited to, the following:

- Staging of construction;
- Protection of heritage fabric consistent with any conditions attached to any permit or exemption issued for the relevant demolition, subdivision, buildings or works;
- Protection of identified significant vegetation;
- Management of public access and linkages around the site during construction;
- Site access, parking and traffic management;
- Any works within the Heidelberg Road, Chandler Highway, LaTrobe Avenue, Lugton Street or Parkview Road road reserve;
- Sediment control and site drainage;
- Hours of construction;
- Control of noise, dust and soiling of roadways;
- Discharge of polluted waters;
- Demolition & excavation;
- Storage of construction materials;
- Location of site offices, & cranes;
- Public safety;
- Management of potentially contaminated materials;
- Collection and disposal of building and construction waste;
- Methodology for responding to complaints associated with the construction works; and
- Site manager contact details.

All development must be carried out in accordance with the approved Construction Management Plan to the satisfaction of the responsible authority.

3.0

18/07/2013
C200

Requirements for development plan

A development plan must be generally in accordance with the *Indicative Framework Plan* as shown in Figure 1 to the satisfaction of the responsible authority.

The development plan must be consistent with the following vision for the site:

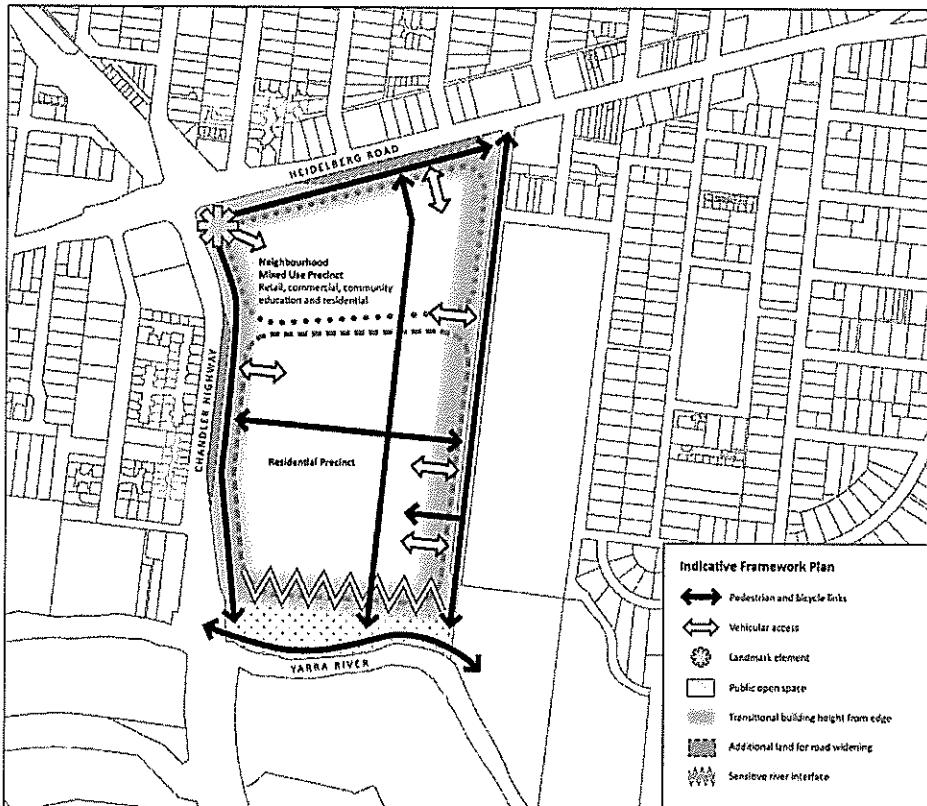
Vision

- The Amcor site will become a sustainable, predominantly residential community.
- The Amcor site will be redeveloped to provide a predominantly medium to higher density residential development, providing homes for a diversity of households including affordable housing, supported by convenience retailing services and community facilities, with employment opportunities in offices and showrooms along the Heidelberg Road frontage.
- The development will provide a transition in the scale of buildings from Heidelberg Road and Chandler Highway stepping down to the Yarra River in the south and Parkview Road as appropriate.

- The development will demonstrate a high quality architectural response, implement innovative ESD features, provide opportunities for best practice in environmental management, and provide a high standard of internal amenity.
- The development will protect and enhance the Yarra River environs.
- The development will create a cohesive community across south Alphington and south Fairfield.
- The development will retain some links to the site's industrial past.

The development plan may be prepared in stages.

Figure 1 Indicative Framework Plan



The development plan must include the following documents, reports, guidelines and plans, prepared to the satisfaction of the responsible authority:

Planning Report

A planning report that includes:

- A site analysis that identifies the key attributes of the land, its context, the surrounding area and its relationship with existing or proposed uses on adjoining land;
- A context analysis identifying the surrounding area, existing or proposed uses on adjoining land, and other neighbourhood features such as public transport, neighbourhood centres, walking and cycling connections;
- Identification of important views to be protected and enhanced, including views of the site and views from the site;
- Details of any known contamination (a certificate or statement of environmental audit for the land covered by the Environmental Audit Overlay will be required to be prepared by a suitably qualified environmental auditor before any construction associated with a sensitive use can commence);

- Demonstrates how the recommendations of the Conservation Management Plan, Housing Diversity Report, Community Infrastructure Report, ESD Strategy, and Site Remediation Strategy have been incorporated into the proposed development of the land; and
- An assessment of any air emissions and odour buffer requirements affecting the site.

Site Master Plan

A site master plan must be provided that includes, but is not limited to:

- The proposed uses of each building and estimated floor area for each use;
- An indication of the approximate residential yield for the site, comprising a range of residential development densities and dwelling types as identified in the Housing Diversity Report, and including affordable housing;
- The location of a neighbourhood based community hub consisting of a range of community uses including meeting rooms and community spaces and facilities;
- The location of neighbourhood retail facilities to service new and existing residents, and small offices/commercial development to generate employment opportunities;
- An interface with the Yarra River that:
 - Enhances the bushland character of the river corridor;
 - Protects significant stands of remnant and native vegetation present in various locations abutting the site; and
 - Integrates with planting along the Yarra River wetlands;
- The location of open space and recreation facilities to be provided on the site, including areas available to the public; and.
- The location of heritage buildings and significant vegetation.

Design Guidelines

Design guidelines and principles for the site (or part of the site) must include, but are not limited to:

- Development concept plans including indicative:
 - Building heights and setbacks;
 - Elevations and cross sections;
 - Building materials, treatments, including reflectivity details, and architectural styles throughout the site;
 - Siting and orientation of buildings having regard to passive energy efficiency techniques and spacing between buildings;
 - Treatments for key interface areas – between open space areas and proposed development, within existing streetscapes, and between residential and non-residential land uses and the proposed development; and
 - Viewlines from the Yarra River (north side from the portion of the path in Willsmere Park opposite the Amcor Site), Chandler Highway, Heidelberg Road and Parkview Road.
- Shadow diagrams internal and external to the site for the equinox between 11.00am and 2.00pm based on the building envelopes or arrangement shown in the proposed Development Plan;
- Indicative waste storage and collection points;
- Interfaces between the site and adjacent sites and streets;

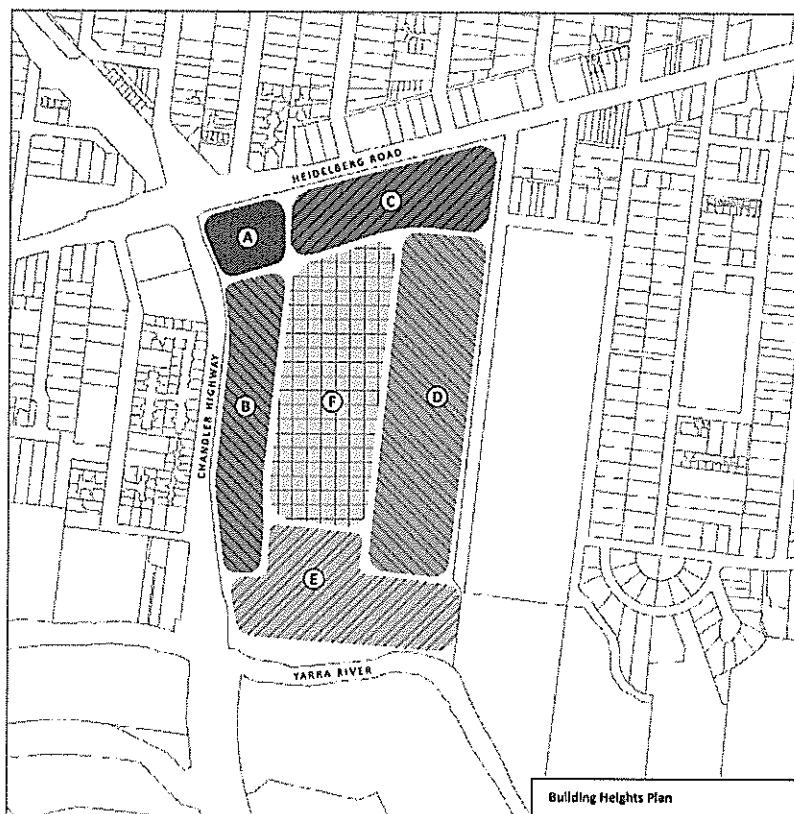
- Any particular and relevant design measures recommended by the Activity Centre Design Guidelines (DSE 2005), the Design Guidelines for Higher Density Residential Development (DSE 2004) and Safer Design Guidelines for Victoria (Crime Prevention Victoria and DSE 2005); and
- Any particular and relevant design measure recommended by the Heritage Plan, ESD Strategy, Transport Management Plan and the Site Remediation Strategy, as appropriate.

The Guidelines must be consistent with the Vision for the site and the following objectives:

- To promote urban legibility and public access to and through the site;
- To ensure new buildings are well spaced and offset to distribute access to outlook and sunlight between built forms and manage overlooking between habitable room windows where possible;
- To provide for diverse built form;
- To demonstrate high quality built form outcomes that contribute to the built form character of the neighbourhood and its surrounds;
- To ensure that building heights consider and respond to the over shadowing effects within the site and on adjoining land;
- To ensure that building heights provide an appropriate transition to site interfaces;
- To incorporate a landmark building element which displays design excellence to mark the Heidelberg Road and Chandler Highway intersection;
- To ensure street level interface treatments contribute to high levels of pedestrian amenity and safety;
- To provide wind climate design to ameliorate adverse wind conditions at street level, public spaces, balconies and adjoining properties;
- To provide acoustic design treatments that addresses the impact of existing and potential noise particularly from road traffic;
- To collectively form a coherent and identifiable precinct;
- To provide for safe and convenient vehicular and pedestrian access;
- To minimise, where practical, the impact of vehicles on public space;
- To ensure that above ground parking is suitably concealed by appropriate building features such as active podium frontages or within buildings that display a high level of architectural resolution;
- To improve the amenity of and accessibility to the Yarra River frontage of the site; and
- To incorporate recognised and proven ESD measures to aid in the reduction of energy and water consumption, the generation of waste and greenhouse emissions.

The following requirements must be reflected in the design guidelines:

- Building heights for new buildings must not exceed the maximum building heights specified in the Building Heights Plan (Figure 2) and the AMCOR Building heights (Table 1);

Figure 2 Building Heights Plan**Table 1 AMCOR Building Heights**

Precinct	Maximum building height	Preferred building heights	Street wall
A		14 storeys	3 storeys
B		5 storeys	3 storeys
C		6 -8 storeys	6 storeys
D	4 storeys		3 storeys, setback from Parkview Road
E	3 storeys		2 storey river interface, setback from crest line of the Yarra River
F	4 storeys		2-3 storeys

- Buildings along major roads to be generally of medium height as appropriate, stepping down to a lower height along the Yarra River interface and Parkview Road;
- Development should generally not extend above the tree line when viewed from the path in Willsmere-Chandler Park and the Yarra River;
- Built form and articulation should avoid long and continuous facades;
- Building setbacks along Parkview Road should be a minimum of 3 metres;
- Development in the residential precinct at the southern edge of the site near the Yarra River should be appropriately sited and designed and in particular:

- Visually dominant buildings must be avoided through the use of discontinuous forms, well articulated facades, and natural or recessive materials;
- Buildings must be set within a landscaped garden setting which allows for visual connections to the river corridor;
- Buildings must be oriented to front the Yarra River to provide visually interesting facades to and passive surveillance of the open space corridor and
- Buildings must be setback 10 metres from the river crest line to provide protection of the tree canopy and reduce the visual impact of the buildings;
- Treatment of the interface with the Yarra River and environs must demonstrate:
 - Maintenance and enhancement of the natural landscape and native vegetation along the river edge; and
 - Continuation of the public linear parkland and walking and cycling linkages along the river corridor.

Heritage Conservation Management and Interpretation

A Heritage Assessment Report must assess the cultural heritage of the site and identify any sites, buildings or structures of significance. The plan must include consideration of aboriginal heritage.

A Conservation Management Plan, including a Heritage Interpretation Plan must:

- Identify sites, buildings or structures which have been assessed as significant;
- Assess the extent to which a significant site, building or structure can be incorporated in the site's redevelopment;
- Identify how the site's industrial heritage is interpreted in the future development of the site; and
- Provide guidance on the on-going maintenance and management of the heritage places to be retained.

Landscape Concept Plan

A Landscape Concept Plan must be prepared for the site that includes:

- An assessment of existing vegetation on the land by a suitably qualified arborist;
- opportunities to retain mature trees with adequate setbacks to development;
- Appropriate treatment of the interface with the Yarra River;
- Opportunities for revegetation of the river bank and interface with the development;
- Typical street cross-sections;
- An overall landscape master plan for the site that complements the neighbourhood character and is in accordance with the proposed staging plan in the Development Plan;
- The management of landscaped areas, including sustainable irrigation treatments such as water sensitive urban design opportunities; and
- Details of how the Landscape Concept Plan responds to any requirements of the site remediation strategy for the land.

Economic Assessment Report

An Economic Assessment Report must be prepared which identifies viable employment generating uses for the site and assesses the value to the local economy of these proposed uses.

The report must also provide an economic assessment of proposed land uses for the site, and the viability of a neighbourhood activity centre on the site.

Housing Diversity Report

A Housing Diversity Report must be prepared explaining the mix of housing on the site including how it is proposed to provide 5% of the overall housing stock as affordable housing. The report must also include criteria for determining affordable housing stock.

Community Infrastructure Report

A Community Facilities Audit and Analysis must be prepared which identifies the following:

- Existing and planned services in the surrounding area and the impact the development of the site will have on these services;
- The need to provide additional community facilities on site or whether any existing community facilities in the local area should be upgraded or extended;
- The location of any new community facilities on site or in the surrounding area;
- Funding and implementation mechanisms for the provision of appropriate community infrastructure including developer contributions (monetary or building) towards the upgrading or extension of existing community facilities; or provision of new facilities in the surrounding local area; and
- Timing of the provision of any required community facilities coordinated with the overall development of the site.

Ecologically Sustainable Development (ESD) Strategy

An Ecologically Sustainable Design Strategy (ESD Strategy) must be prepared which considers and responds to the major components of the proposed development and construction processes and:

- Demonstrates the incorporation of recognised technologies and best practice;
- Demonstrates how compliance with all relevant statutory obligations in environmental sustainability is achieved;
- Identifies and nominates the level of sustainability performance standards to be adopted;
- Assesses options by which the agreed level of sustainable performance standards will be achieved.

The ESD Strategy must be based upon the following principles:

- Energy conservation with the objective of contributing to industry standards of national and international efforts to reduce energy usage and greenhouse gas emissions;
- Water conservation, ensuring that water resources are managed in a sustainable way;
- Water sensitive urban design and options ensuring the reduction of the impacts of stormwater on bays and catchments;
- Transport planning with the aim of encouraging walking, cycling and use of public transport;
- Land use and transport planning and infrastructure provision to contribute where practical to improved air quality;
- Options to reduce the amount of waste generated and encourage increased reuse and recycling of waste materials;
- Building materials conservation;

- Sustainability options in demolition and construction practices;
- Landscaping considering the provision of habitat, green spaces, and climate control as appropriate; and
- Indoor environmental quality.

The ESD Strategy must have regard to the following:

- Whether it is appropriate for individual plans to be prepared dealing with different aspects of the use and development;
- The need to clearly identify responsibilities for implementation, review, monitoring and maintenance;
- New resident awareness and education to promote the objectives of sustainability.

Site Remediation Strategy

Unless a Certificate or Statement of Environmental Audit has been issued, a Site Remediation Strategy must be prepared to the satisfaction of the responsible authority.

The Site Remediation Strategy must address and make recommendations in relation to:

- Potential impacts of any land or ground water contamination(including the potential for vapour intrusion or gas migration) on the proposed land use, the arrangement of land use across the land and any particular design requirement the development may be subject to;
- Heritage issues relevant to the remediation strategy;
- Options and a preferred approach to the testing and remediation of soil and groundwater;
- Proposed pattern of land uses across the site;
- Targeted condition of the site as required and specified by the Auditor to suit the proposed range of land uses or development;
- An indicative site map showing locations across the site of any identified contamination and any proposed clean up work;
- Options for remediation technologies taking into account logistics, technology options currently available and likely effectiveness;
- A schedule of proposed remediation activities;
- Expected pattern/staging and indicative timeframes for signed Certificates or Statements of Environmental Audit across the site following the clean up of the site;
- Indicative site management and monitoring controls that will be necessary following each clean up activity; and
- Identifying the parties responsible for key activities and for subsequent site management and monitoring.

The Site Remediation Strategy may be prepared in stages where the development plan is prepared in stages.

The Site Remediation Strategy will be amended as required to reflect the recommendation or requirement of the Certificate or Statement of Environment Audit.

Traffic Management Plan

A Traffic Management Plan (TMP) must be prepared which provides the following details:

- The likely traffic generation by residents, staff and visitors, and for deliveries and service vehicles to the site;

- The likely traffic impacts of the proposed development on the land and the broader road network;
- A road safety audit of the design and proposed traffic management measures and incorporating the recommendations;
- Road layouts, widths and reserves and site access;
- The design of the footpaths, bicycle paths and shared pathways network;
- Traffic management measures and signalisation;
- Public transport routes and stops within the site and surrounds;
- Recommended car parking and bicycle parking rates and the location of on-site car and bicycle parking; and
- Loading bays.

Integrated Transport Plan

An Integrated Transport Plan (ITP) must be prepared based on the transport analysis and impact assessment which includes appropriate measures to address the transport, traffic, pedestrian and bicycle access needs of the development, and impacts on the existing road network, in particular:

- An indicative hierarchy of internal local roads proposed for the site that:
 - Complements the form and structure of the surrounding network;
 - Recognises the primacy of pedestrian and bicycle access within the site;
 - Provides a high level of amenity and connectivity, whilst managing the movement of vehicles travelling between Heidelberg Road and Chandler Highway through the site;
 - Allows for appropriate levels of manoeuvrability for emergency and service vehicles; and
 - Are of sufficient width to accommodate wide footpaths, new trees and bicycle lanes;
- The provision of a network of safe and convenient pedestrian and bicycle accessways through the site and connecting with the surrounding area, and encouraging the use of sustainable travel modes to local amenities;
- The location and layout of all car and bicycle parking areas and access to and from them;
- Opportunities for the provision of a car share system;
- Provision for loading and unloading of vehicles and means of access to them, including waste collection and delivery vehicles;
- Green Travel Plan initiatives, including a new resident awareness and education program;
- The means proposed to address the impacts of traffic generated by the development on the surrounding road network including any required upgrades or modifications, including road widening, parking restrictions, traffic and pedestrian signals and public transport improvements; and
- Opportunities for providing improved public transport services and facilities.

Acoustic Report

An Acoustic Report is required to be prepared by a suitably qualified person(s) to the satisfaction of the Responsible Authority after seeking and considering the views of the Environment Protection Authority and VicRoads. The report must identify:

- Whether the proposed use and development of the site is likely to be affected by noise from nearby uses or abutting roads;
- The likely effect of non-residential uses on the site on the amenity of nearby residential uses; and
- Methods to address the issues identified.

Services and Engineering Infrastructure Report

The Services and Engineering Infrastructure Report must be prepared and include:

- An assessment of the existing engineering infrastructure servicing the site and its capacity to service the proposed development;
- A description of the proposed provision of all appropriate utility services to development parcels;
- Preparation of a stormwater drainage master plan, including measures to ensure appropriate protection of the Yarra River adjacent to the land; and
- The identification of the location of any on-site drainage retention facilities.

Development Staging

A Staging Plan to provide an indication of the likely staging and anticipated timing of the development of the land, specifically:

- The proposed sequencing of development;
- Vehicle access points, road infrastructure works and traffic management for each stage of development; and
- Interface / access treatments.

Community Engagement Strategy

A Community Engagement Strategy which establishes the mechanisms by which the community will be provided with information and opportunities for feedback in relation to the prepared development plan.

The development plan shall be available for public inspection for 28 days prior to its consideration by the responsible authority.

4.0 Decision guidelines

18/07/2013
C200

Before deciding on a request to approve or amend a Development Plan, the responsible authority must consider as appropriate:

- any written comments received in response to the display of the development plan;
 - any views of Public Transport Victoria;
 - any views of VicRoads;
 - any views of the Department of Education and Early Childhood Development;
 - any views of Parks Victoria;
 - any views of Melbourne Water; and
 - any views of the Cities of Banyule, Boroondara and Darebin;
- that are received by the responsible authority.