

**VENDOR:**

DOUGLAS HUGH MCMECKAN,  
HILARY RUTH MCMECKAN &  
TINA RENNA MCMECKAN

**PROPERTY:**

43 – 53 NYE ROAD, SWAN BAY VIC 3225

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**CONTRACT OF SALE**

**and**

**VENDOR STATEMENT**

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WISEWOULD  
MAHONY

Level 8  
419-425 Collins Street  
MELBOURNE VIC 3000  
Tel: (03) 9629 8333  
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Ref: CMM:AWP:40107396



THE DIFFERENCE



# Contract of Sale of Land

**PROPERTY: 43 – 53 NYE ROAD, SWAN BAY VIC 3225**

## WISEWOULD MAHONY

Level 8, 419-425 Collins Street  
MELBOURNE VIC 3000  
Tel: (03) 9629 8333  
Fax: (03) 9629 4035  
E-mail: [awp@wisemah.com.au](mailto:awp@wisemah.com.au)  
Ref: CMM:AWP:40107396

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of Conveyancers (Victorian Division)



# Contract of sale of land

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## IMPORTANT NOTICE TO PURCHASERS – COOLING-OFF

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

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

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

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

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

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

## NOTICE TO PURCHASERS OF PROPERTY OFF-THE-PLAN

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

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

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

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

## Approval

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

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Like all precedent documents it does not attempt and cannot attempt to include all relevant issues or include all aspects of law or changes to the law. Users should check for any updates including changes in the law and ensure that their particular facts and circumstances are appropriately incorporated into the document to achieve the intended use.

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**WARNING TO ESTATE AGENTS**

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

# Contract of sale of land

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

The terms of this contract are contained in the –

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

in that order of priority.

## SIGNING OF THIS CONTRACT

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

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

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:**

#### **WHERE SIGNATORY IS AN INDIVIDUAL**

**SIGNED** on ...../...../.....

for and on behalf of:

.....  
Name of individual

.....  
Signature of individual

State nature of authority (if applicable): .....

#### **WHERE SIGNATORY IS AN INDIVIDUAL**

**SIGNED** on ...../...../.....

for and on behalf of:

.....  
Name of individual

.....  
Signature of individual

State nature of authority (if applicable): .....

**WHERE SIGNATORY IS A COMPANY**

**EXECUTED by** .....

ABN .....

in accordance with the requirements of s.127

*Corporations Act 2001 (Cth)* by:

.....  
Name of director

.....  
Signature of director

.....  
Name of director/secretary

.....  
Signature of director/secretary

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

**SIGNED BY THE VENDOR:**

**WHERE SIGNATORY IS AN INDIVIDUAL**

**SIGNED** on ...../...../.....

for and on behalf of:

*DOUGLAS HUGH MCMECKAN*

.....  
Name of individual

.....  
Signature of individual

State nature of authority (if applicable): .....

**SIGNED** on ...../...../.....

for and on behalf of:

*HILARY RUTH MCMECKAN*

.....  
Name of individual

.....  
Signature of individual

State nature of authority (if applicable): .....

**SIGNED** on ...../...../.....

for and on behalf of:

*TINA RENNA MCMECKAN*

.....  
Name of individual

.....  
Signature of individual

State nature of authority (if applicable): .....

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

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## Particulars of sale

### Vendor's estate agent

Name: ELDERS REAL ESTATE GEELONG / COLLIERS GEELONG.....  
 Address: Suite 15/400 Pakington Street, Newtown VIC 3220 / Level 5/100 Brougham Street, Geelong VIC 3220  
 Email: [peter.lindeman@elders.com.au](mailto:peter.lindeman@elders.com.au) / [jonathon.lumsden@colliers.com](mailto:jonathon.lumsden@colliers.com) .....

Tel: ..... Mob: ..... Ref: Peter Lindeman & Jonathon Lumsden.....

### Vendor

Name: DOUGLAS HUGH MCMECKAN, HILARY RUTH MCMECKAN & TINA RENNA MCMECKAN .....

Address: .....

ABN/ACN: .....

Email: .....

### Vendor's legal practitioner or conveyancer

Name: WISEWOULD MAHONY LAWYERS .....

Address: Level 8, 419 Collins Street, Melbourne VIC 3000 .....

Email: [awp@wisemah.com.au](mailto:awp@wisemah.com.au) .....

Tel: (03) 9629 8333 ..... Mob: ..... Ref: CMM/AWP:40107396..

### Purchaser

Name: .....

Address: .....

ABN/ACN: .....

Email: .....

### Purchaser's legal practitioner or conveyancer

Name: .....

Address: .....

Email: .....

Tel: ..... Mob: ..... Ref: .....

### Land (general conditions 7 and 13)

The land is described in the table below –

Certificate of Title reference	being lot	on plan
Volume 00851      Folio 125	1	TP586779T
Volume 04149      Folio 724	1	TP227667M
Volume 01517      Folio 244	Crown Allotment 17H, Section 2 Parish of Paywit	

If no title or plan references are recorded in the table, the land is as described in the section 32 statement or the register search statement and the document referred to as the diagram location in the register search statement attached to the section 32 statement.

The land includes all improvements and fixtures.

### **Property address**

The address of the land is: 43 – 53 NYE ROAD, SWAN BAY VIC 3225 .....

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

All fixed floor coverings, electric light fittings, window furnishings and all fixtures and fittings of a permanent nature, as inspected and including the items referred to at Annexure C .....

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### **Payment**

Price \$ .....

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

Balance \$ ..... payable at settlement

### **Deposit bond**

General condition 15 applies only if the box is checked

### **Bank guarantee**

General condition 16 applies only if the box is checked

### **GST** (general condition 19)

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

GST (if any) must be paid in addition to the price if the box is checked

### **Settlement** (general conditions 17 and 26.2)

is due on ..... / ..... /20.....

### **Lease** (general condition 5.1)

At settlement the purchaser is entitled to vacant possession of the property unless this box is checked.

### **Terms contract** (general condition 30)

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

### **Loan** (general condition 20)

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

Lender: .....

(or another lender chosen by the purchaser)

Loan amount: \$ ..... Approval date: ..... / ..... /20.....

### **Building report**

General condition 21 applies only if the box is checked

### **Pest report**

General condition 22 applies only if the box is checked

**GST Withholding** (general condition 25)

Vendor GST Withholding Notice to Purchaser

Pursuant to section 14-255 Schedule 1 *Taxation Administration Act 1953* (Cth)

The Purchaser is **not** required to make a payment under section 14-250 of Schedule 1 of the *Taxation Administration Act 1953* (Cth) in relation to the supply of the property.

# General conditions

## Contract signing

### 1. ELECTRONIC SIGNATURE

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

### 2. LIABILITY OF SIGNATORY

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

### 3. GUARANTEE

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

### 4. NOMINEE

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

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## Title

### 5. ENCUMBRANCES

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

### 6. VENDOR WARRANTIES

- 6.1 The vendor warrants that these general conditions 1 to 35 are identical to the general conditions 1 to 35 in the form of contract of sale of land published by the Law Institute of Victoria Limited and the Real Estate Institute of Victoria Ltd in the month and year set out at the foot of this page.
- 6.2 The warranties in general conditions 6.3 and 6.4 replace the purchaser's right to make requisitions and inquiries.
- 6.3 The vendor warrants that the vendor –
  - (a) has, or by the due date for settlement will have, the right to sell the land; and
  - (b) is under no legal disability; and
  - (c) is in possession of the land, either personally or through a tenant; and

- (d) has not previously sold or granted any option to purchase, agreed to a lease or granted a pre-emptive right which is current over the land and which gives another party rights which have priority over the interest of the purchaser; and
- (e) will at settlement be the holder of an unencumbered estate in fee simple in the land; and
- (f) will at settlement be the unencumbered owner of any improvements, fixtures, fittings and goods sold with the land.

6.4 The vendor further warrants that the vendor has no knowledge of any of the following –

- (a) public rights of way over the land;
- (b) easements over the land;
- (c) lease or other possessory agreement affecting the land;
- (d) notice or order directly and currently affecting the land which will not be dealt with at settlement, other than the usual rate notices and any land tax notices;
- (e) legal proceedings which would render the sale of the land void or voidable or capable of being set aside.

6.5 The warranties in general conditions 6.3 and 6.4 are subject to any contrary provisions in this contract and disclosures in the section 32 statement.

6.6 If sections 137B and 137C of the *Building Act 1993 (Vic)* 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 (Vic)* and regulations made under the *Building Act 1993 (Vic)*.

6.7 Words and phrases used in general condition 6.6 which are defined in the *Building Act 1993 (Vic)* have the same meaning in general condition 6.6.

## 7. IDENTITY OF THE LAND

7.1 An omission or mistake in the description of the property or any deficiency in the area, description or measurements of the land does not invalidate the sale.

7.2 The purchaser may not –

- (a) make any objection or claim for compensation for any alleged misdescription of the property or any deficiency in its area or measurements; or
- (b) require the vendor to amend title or pay any cost of amending title.

## 8. SERVICES

8.1 The vendor does not represent that the services are adequate for the purchaser's proposed use of the property and the vendor advises the purchaser to make appropriate inquiries. The condition of the services may change between the day of sale and settlement and the vendor does not promise that the services will be in the same condition at settlement as they were on the day of sale.

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

## 9. CONSENTS

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

## 10. TRANSFER & DUTY

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

## 11. RELEASE OF SECURITY INTEREST

- 11.1 This general condition applies if any part of the property is subject to a security interest to which the *Personal Property Securities Act 2009* (Cth) applies.
- 11.2 For the purposes of enabling the purchaser to search the Personal Property Securities Register for any security interests affecting any personal property for which the purchaser may be entitled to a release, statement, approval or correction in accordance with general condition 11.4, the purchaser may request the vendor to provide the vendor's date of birth to the purchaser. The vendor must comply with a request made by the purchaser under this condition if the purchaser makes the request at least 21 days before the due date for settlement.
- 11.3 If the purchaser is given the details of the vendor's date of birth under general condition 11.2, the purchaser must –
  - (a) only use the vendor's date of birth for the purposes specified in general condition 11.2; and
  - (b) keep the date of birth of the vendor secure and confidential.
- 11.4 The vendor must ensure that at or before settlement, the purchaser receives –
  - (a) a release from the secured party releasing the property from the security interest; or
  - (b) a statement in writing in accordance with section 275(1)(b) of the *Personal Property Securities Act 2009* (Cth) setting out that the amount or obligation that is secured is nil at settlement; or
  - (c) a written approval or correction in accordance with section 275(1)(c) of the *Personal Property Securities Act 2009* (Cth) indicating that, on settlement, the personal property included in the contract is not or will not be property in which the security interest is granted.
- 11.5 Subject to general condition 11.6, the vendor is not obliged to ensure that the purchaser receives a release, statement, approval or correction in respect of personal property –
  - (a) that –
    - (i) the purchaser intends to use predominantly for personal, domestic or household purposes; and
    - (ii) has a market value of not more than \$5000 or, if a greater amount has been prescribed for the purposes of section 47(1) of the *Personal Property Securities Act 2009* (Cth), not more than that prescribed amount; or
  - (b) that is sold in the ordinary course of the vendor's business of selling personal property of that kind.
- 11.6 The vendor is obliged to ensure that the purchaser receives a release, statement, approval or correction in respect of personal property described in general condition 11.5 if –
  - (a) the personal property is of a kind that may or must be described by serial number in the Personal Property Securities Register; or
  - (b) the purchaser has actual or constructive knowledge that the sale constitutes a breach of the security agreement that provides for the security interest.
- 11.7 A release for the purposes of general condition 11.4(a) must be in writing.
- 11.8 A release for the purposes of general condition 11.4(a) must be effective in releasing the goods from the security interest and be in a form which allows the purchaser to take title to the goods free of that security interest.
- 11.9 If the purchaser receives a release under general condition 11.4(a) the purchaser must provide the vendor with a copy of the release at or as soon as practicable after settlement.
- 11.10 In addition to ensuring that a release is received under general condition 11.4(a), the vendor must ensure that at or before settlement the purchaser receives a written undertaking from a secured party to register a financing change statement to reflect that release if the property being released includes goods of a kind that are described by serial number in the Personal Property Securities Register.
- 11.11 At least 21 days before the due date for settlement the purchaser must notify the vendor of any registered security interest which the purchaser reasonably requires to be released.
- 11.12 The vendor may delay settlement until 21 days after the purchaser notifies the vendor of the security interests that the purchaser reasonably requires to be released if the purchaser does not provide a notification under general condition 11.11.
- 11.13 If settlement is delayed under general condition 11.12 the purchaser must pay the vendor –

- (a) interest from the due date for settlement until the date on which settlement occurs or 21 days after the vendor receives the advice, whichever is the earlier; and
- (b) any reasonable costs incurred by the vendor as a result of the delay – as though the purchaser was in default.

11.14 The vendor is not required to ensure that the purchaser receives a release in respect of the land. This general condition 11.14 applies despite general condition 11.1.

11.15 Words and phrases which are defined in the *Personal Property Securities Act 2009* (Cth) have the same meaning in general condition 11 unless the context requires otherwise.

## **12. DOMESTIC BUILDING INSURANCE**

The vendor will provide any current domestic building insurance required pursuant to section 43B of the *Domestic Building Contracts Act 1995* (Vic), in the vendor's possession relating to the property, if requested in writing to do so at least 14 days before settlement.

## **13. GENERAL LAW LAND**

- 13.1 The vendor must complete a conversion of title in accordance with section 14 of the *Transfer of Land Act 1958* (Vic) before settlement if the land is the subject of a provisional folio under section 23 of that Act.
- 13.2 The remaining provisions of this general condition 13 only apply if any part of the land is not under the operation of the *Transfer of Land Act 1958* (Vic).
- 13.3 The vendor is taken to be the holder of an unencumbered estate in fee simple in the land if there is an unbroken chain of title starting at least 30 years before the day of sale proving on the face of the documents the ownership of the entire legal and equitable estate without the aid of other evidence.
- 13.4 The purchaser is entitled to inspect the vendor's chain of title on request at such place in Victoria as the vendor nominates.
- 13.5 The purchaser is taken to have accepted the vendor's title if –
  - (a) 21 days have elapsed since the day of sale; and
  - (b) the purchaser has not reasonably objected to the title or reasonably required the vendor to remedy a defect in the title.
- 13.6 The contract will be at an end if –
  - (a) the vendor gives the purchaser a notice that the vendor is unable or unwilling to satisfy the purchaser's objection or requirement and that the contract will end if the objection or requirement is not withdrawn within 14 days of the giving of the notice; and
  - (b) the objection or requirement is not withdrawn in that time.
- 13.7 If the contract ends in accordance with general condition 13.6, the deposit must be returned to the purchaser and neither party has a claim against the other in damages.
- 13.8 General condition 17.1 [settlement] should be read as if the reference to 'registered proprietor' is a reference to 'owner' in respect of that part of the land which is not under the operation of the *Transfer of Land Act 1958* (Vic).

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## **Money**

### **14. DEPOSIT**

- 14.1 The purchaser must pay the deposit –
  - (a) to the vendor's licensed estate agent; or
  - (b) if there is no estate agent, to the vendor's legal practitioner or conveyancer; or
  - (c) if the vendor directs, into a special purpose account in an authorised deposit-taking institution in Victoria specified by the vendor in the joint names of the purchaser and the vendor.
- 14.2 If the land sold is a lot on an unregistered plan of subdivision, the deposit –
  - (a) must not exceed 10% of the price; and

- (b) must be paid to the vendor's estate agent, legal practitioner or conveyancer and held by the estate agent, legal practitioner or conveyancer on trust for the purchaser until the registration of the plan of subdivision.
- 14.3 The stakeholder must pay the deposit and any interest to the party entitled when the deposit is released, the contract is settled, or the contract is ended.
- 14.4 The stakeholder may pay the deposit and any interest into court if it is reasonable to do so.
- 14.5 Where the purchaser is deemed by section 27(7) of the *Sale of Land Act 1962* (Vic) to have given the deposit release authorisation referred to in section 27(1), the purchaser is also deemed to have accepted title in the absence of any prior express objection to title.
- 14.6 Payment of the deposit may be made or tendered –
  - (a) in cash up to \$1,000 or 0.2% of the price, whichever is greater; or
  - (b) by cheque drawn on an authorised deposit-taking institution; or
  - (c) by electronic funds transfer to a recipient having the appropriate facilities for receipt.

However, unless otherwise agreed –

- (d) payment may not be made by credit card, debit card or any other financial transfer system that allows for any chargeback or funds reversal other than for fraud or mistaken payment, and
- (e) any financial transfer or similar fees or deductions from the funds transferred, other than any fees charged by the recipient's authorised deposit-taking institution, must be paid by the remitter.

- 14.7 Payment by electronic funds transfer is made when cleared funds are received in the recipient's bank account.
- 14.8 Before the funds are electronically transferred the intended recipient must be notified in writing and given sufficient particulars to readily identify the relevant transaction.
- 14.9 As soon as the funds have been electronically transferred the intended recipient must be provided with the relevant transaction number or reference details.
- 14.10 For the purpose of this general condition 'authorised deposit-taking institution' means a body corporate for which an authority under section 9(3) of the *Banking Act 1959* (Cth) is in force.

## 15. DEPOSIT BOND

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

## 16. BANK GUARANTEE

- 16.1 This general condition only applies if the applicable box in the particulars of sale is checked.
- 16.2 In this general condition –
  - (a) “bank guarantee” means an unconditional and irrevocable guarantee or undertaking by a bank in a form satisfactory to the vendor to pay on demand any amount under this contract agreed in writing, and
  - (b) “bank” means an authorised deposit-taking institution under the *Banking Act 1959* (Cth).
- 16.3 The purchaser may deliver a bank guarantee to the vendor's legal practitioner or conveyancer.
- 16.4 The purchaser must pay the amount secured by the bank guarantee to the vendor's legal practitioner or conveyancer on the first to occur of –
  - (a) settlement;
  - (b) the date that is 45 days before the bank guarantee expires;
  - (c) the date on which this contract ends in accordance with general condition 35.2 [default not remedied] following breach by the purchaser; and
  - (d) the date on which the vendor ends this contract by accepting repudiation of it by the purchaser.
- 16.5 The vendor must return the bank guarantee document to the purchaser when the purchaser pays the amount secured by the bank guarantee in accordance with general condition 16.4.
- 16.6 The vendor may claim on the bank guarantee without prior notice if the purchaser defaults under this contract or repudiates this contract and the contract is ended. The amount paid by the bank satisfies the obligations of the purchaser under general condition 16.4 to the extent of the payment.
- 16.7 Nothing in this general condition limits the rights of the vendor if the purchaser defaults under this contract or repudiates this contract except as provided in general condition 16.6.
- 16.8 This general condition is subject to general condition 14.2 [deposit].

## 17. SETTLEMENT

- 17.1 At settlement –
  - (a) the purchaser must pay the balance; and
  - (b) the vendor must –
    - (i) do all things necessary to enable the purchaser to become the registered proprietor of the land; and
    - (ii) give either vacant possession or receipt of rents and profits in accordance with the particulars of sale.
- 17.2 Where settlement is not conducted electronically, settlement must be conducted between the hours of 10.00 am and 4.00 pm unless the parties agree otherwise.
- 17.3 Where settlement is conducted electronically in accordance with the Electronic Conveyancing National Law, settlement must occur during the time available for settlement in the operating time of the settling ELNO.
- 17.4 The purchaser must pay all money other than the deposit in accordance with a written direction of the vendor or the vendor's legal practitioner or conveyancer.

## 18. ELECTRONIC SETTLEMENT

- 18.1 Settlement and lodgement of the instruments necessary to record the purchaser as registered proprietor of the land will be conducted electronically in accordance with the Electronic Conveyancing National Law. This general condition 18 has priority over any other provision of this contract to the extent of any inconsistency.
- 18.2 A party must immediately give written notice if that party reasonably believes that settlement and lodgement can no longer be conducted electronically. General condition 18 ceases to apply from when such a notice is given.
- 18.3 Each party must –
  - (a) be, or engage a representative who is, a subscriber for the purposes of the Electronic Conveyancing National Law;

- (b) ensure that all other persons for whom that party is responsible and who are associated with this transaction are, or engage, a subscriber for the purposes of the Electronic Conveyancing National Law; and
- (c) conduct the transaction in accordance with the Electronic Conveyancing National Law.

18.4 The vendor must open the electronic workspace ("workspace") as soon as reasonably practicable and nominate a date and time for settlement. The inclusion of a specific date and time for settlement in a workspace is not of itself a promise to settle on that date or at that time. For the purposes of any electronic transactions legislation (only) the workspace is an electronic address for the service of notices and for written communications.

18.5 This general condition 18.5 applies if there is more than one electronic lodgement network operator in respect of the transaction. In this general condition 18.5 "the transaction" means this sale and purchase and any associated transaction involving any of the same subscribers.

To the extent that any interoperability rules governing the relationship between electronic lodgement network operators do not provide otherwise –

- (a) the electronic lodgement network operator to conduct all the financial and lodgement aspects of the transaction after the workspace locks must be one which is willing and able to conduct such aspects of the transaction in accordance with the instructions of all the subscribers in the workspaces of all the electronic lodgement network operators after the workspace locks;
- (b) if two or more electronic lodgement network operators meet that description, one may be selected by purchaser's incoming mortgagee having the highest priority but if there is no mortgagee of the purchaser, the vendor must make the selection.

18.6 Settlement occurs when the workspace records that –

- (a) there has been an exchange of funds or value between the exchange settlement account or accounts in the Reserve Bank of Australia of the relevant financial institutions or their financial settlement agents in accordance with the instructions of the parties; or
- (b) if there is no exchange of funds or value, the documents necessary to enable the purchaser to become registered proprietor of the land have been accepted for electronic lodgement.

18.7 The parties must do everything reasonably necessary to effect settlement –

- (a) electronically on the next business day, or
- (b) at the option of either party, otherwise than electronically as soon as possible –

if, after the locking of the workspace at the nominated settlement time, settlement in accordance with general condition 18.6 has not occurred during the hours that the settling ELNO operates in the State of Victoria.

18.8 Each party must do everything reasonably necessary to assist the other party to trace and identify the recipient of any missing or mistaken payment and to recover the missing or mistaken payment.

18.9 The vendor must before settlement –

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

## 19. GST

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

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

- (a) the particulars of sale specify that GST (if any) must be paid in addition to the price; or

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

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

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

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

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

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

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

19.7 In these general conditions –

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

## **20. LOAN**

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

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

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

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

## **21. BUILDING REPORT**

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

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

- (a) obtains a written report from –
  - (i) a registered building surveyor;
  - (ii) a registered building inspector;
  - (iii) a registered domestic builder; or
  - (iv) an architect,which is –
  - (v) prepared in compliance with Australian Standard AS 4349.1-2007;
  - (vi) identifies a current defect in a structure on the land; and

the author states is a major defect.

- (b) gives the vendor a copy of the report and a written notice ending this contract; and
- (c) is not then in default.

21.3 All money paid must be immediately refunded to the purchaser if the contract ends in accordance with this general condition.

21.4 A notice under this general condition may be served on the vendor's legal practitioner, conveyancer or estate agent even if the estate agent's authority has formally expired at the time of service.

21.5 The registered building practitioner may inspect the property at any reasonable time for the purpose of preparing the report.

## **22. PEST REPORT**

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

22.2 The purchaser may end this contract within 14 days from the day of sale if the purchaser –

- (a) obtains a written report from a pest inspector which is prepared in accordance with the relevant Australian Standard approved on behalf of the Council of Standards Australia and which discloses a current pest infestation on the land and designates it as a major infestation affecting the structure of a building on the land;
- (b) gives the vendor a copy of the report and a written notice ending this contract; and
- (c) is not then in default.

22.3 All money paid must be immediately refunded to the purchaser if the contract ends in accordance with this general condition.

22.4 A notice under this general condition may be served on the vendor's legal practitioner, conveyancer or estate agent even if the estate agent's authority has formally expired at the time of service.

22.5 The pest control operator may inspect the property at any reasonable time for the purpose of preparing the report.

## **23. ADJUSTMENTS**

23.1 All periodic outgoings payable by the vendor, and any rent and other income received in respect of the property, must be apportioned between the parties on the settlement date and any adjustments paid and received as appropriate.

23.2 The periodic outgoings and rent and other income must be apportioned on the basis that 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

23.3 The purchaser must provide copies of all certificates and other information used to calculate the adjustments under general condition 23 if requested by the vendor.

23.4 For the purposes of general condition 23, the expression "periodic outgoings" does not include any amounts to which section 10G of the *Sale of Land Act 1962* (Vic) applies.

## **24. FOREIGN RESIDENT CAPITAL GAINS WITHHOLDING**

24.1 Words defined or used in Subdivision 14-D of Schedule 1 to the *Taxation Administration Act 1953* (Cth) (Tax Act) have the same meaning in this general condition unless the context requires otherwise.

24.2 Every vendor under this contract is a foreign resident for the purposes of this general condition unless the vendor gives the purchaser a clearance certificate issued by the Commissioner under section 14-220 (1) of Schedule 1 to the Tax Act. The specified period in the clearance certificate must include the actual date of settlement.

24.3 The remaining provisions of this general condition 24 only apply if the purchaser is required to pay the Commissioner an amount in accordance with section 14-200(3) or section 14-235 of Schedule 1 to the Tax Act ("the amount") because one or more of the vendors is a foreign resident, the property has or will have a market value not less than the amount set out in section 14-215 of the legislation just after the transaction, and the transaction is not excluded under section 14-215(1) of the legislation.

24.4 The amount is to be deducted from the vendor's entitlement to the contract consideration. The vendor must pay to the purchaser at settlement such part of the amount as is represented by non-monetary consideration.

24.5 The purchaser must –

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

24.6 The terms of the representative’s engagement are taken to include instructions to have regard to the vendor’s interests and instructions that the representative must –

- (a) pay, or ensure payment of, the amount to the Commissioner in the manner required by the Commissioner and as soon as reasonably and practicably possible, from moneys under the control or direction of the representative in accordance with this general condition if the sale of the property settles;
- (b) promptly provide the vendor with proof of payment; and
- (c) otherwise comply, or ensure compliance, with this general condition;

despite –

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

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

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

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

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

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

**25. GST WITHHOLDING**

25.1 Words and expressions defined or used in Subdivision 14-E of Schedule 1 to the Tax Act or in the GST Act have the same meaning in this general condition unless the context requires otherwise. Words and expressions first used in this general condition and shown in italics and marked with an asterisk are defined or described in at least one of those Acts.

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

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

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

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

25.6 The purchaser must –

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

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

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

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

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

25.9 The purchaser may at settlement give the vendor a bank cheque for the amount in accordance with section 16-30 (3) of Schedule 1 to the Tax Act, but only if –

- (a) so agreed by the vendor in writing; and
- (b) the settlement is not conducted through an electronic lodgement network.

However, if the purchaser gives the bank cheque in accordance with this general condition 25.9, the vendor must –

- (c) immediately after settlement provide the bank cheque to the Commissioner to pay the amount in relation to the supply; and
- (d) give the purchaser a receipt for the bank cheque which identifies the transaction and includes particulars of the bank cheque, at the same time the purchaser gives the vendor the bank cheque.

25.10 A party must provide the other party with such information as the other party requires to –

- (a) decide if an amount is required to be paid or the quantum of it, or
- (b) comply with the purchaser's obligation to pay the amount,

in accordance with section 14-250 of Schedule 1 to the Tax Act. The information must be provided within 5 business days of a written request. The party providing the information warrants that it is true and correct.

25.11 The vendor warrants that –

- (a) at settlement, the property is not new residential premises or potential residential land in either case falling within the parameters of section 14-250 of Schedule 1 to the Tax Act if the vendor gives the purchaser a written notice under section 14-255 to the effect that the purchaser will not be required to make a payment under section 14-250 in respect of the supply, or fails to give a written notice as required by and within the time specified in section 14-255; and
- (b) the amount described in a written notice given by the vendor to the purchaser under section 14-255 of Schedule 1 to the Tax Act is the correct amount required to be paid under section 14-250 of the legislation.

25.12 The purchaser is responsible for any penalties or interest payable to the Commissioner on account of non-payment or late payment of the amount, except to the extent that –

- (a) the penalties or interest arise from any failure on the part of the vendor, including breach of a warranty in general condition 25.11; or
- (b) the purchaser has a reasonable belief that the property is neither new residential premises nor potential residential land requiring the purchaser to pay an amount to the Commissioner in accordance with section 14-250(1) of Schedule 1 to the Tax Act.

The vendor is responsible for any penalties or interest payable to the Commissioner on account of non-payment or late payment of the amount if either exception applies.

## Transactional

### 26. TIME & CO OPERATION

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

### 27. SERVICE

- 27.1 Any document required to be served by or on any party may be served by or on the legal practitioner or conveyancer for that party.
- 27.2 A cooling off notice under section 31 of the *Sale of Land Act 1962* or a notice under general condition 20 [loan approval], 21 [building report] or 22 [pest report] may be served on the vendor's legal practitioner, conveyancer or estate agent even if the estate agent's authority has formally expired at the time of service.
- 27.3 A document is sufficiently served –
  - (a) personally; or
  - (b) by pre-paid post; or
  - (c) in any manner authorised by law or by the Supreme Court for service of documents, including any manner authorised for service on or by a legal practitioner, whether or not the person serving or receiving the document is a legal practitioner; or
  - (d) by email.
- 27.4 Any document properly sent by –
  - (a) express post is taken to have been served on the next business day after posting, unless proved otherwise;
  - (b) priority post is taken to have been served on the fourth business day after posting, unless proved otherwise;
  - (c) regular post is taken to have been served on the sixth business day after posting, unless proved otherwise;
  - (d) email is taken to have been served at the time of receipt within the meaning of section 13A of the *Electronic Transactions (Victoria) Act 2000*.
- 27.5 Any written communication in the workspace of the electronic lodgement network does not constitute service of a notice other than a notice for the purposes of any electronic transactions legislation.
- 27.6 In this contract 'document' includes 'demand' and 'notice', 'serve' includes 'give', and 'served' and 'service' have corresponding meanings.

### 28. NOTICES

- 28.1 The vendor is responsible for any notice, order, demand or levy imposing liability on the property that is issued or made before the day of sale and does not relate to periodic outgoings.
- 28.2 The purchaser is responsible for any notice, order, demand or levy imposing liability on the property that is issued or made on or after the day of sale and does not relate to periodic outgoings.
- 28.3 The purchaser may enter the property to comply with that responsibility where action is required before settlement.
- 28.4 General condition 28 does not apply to any amounts to which section 10G or 10H of the *Sale of Land Act 1962* (Vic) applies.

### 29. INSPECTION

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

### 30. TERMS CONTRACT

30.1 If this is a 'terms contract' as defined in the *Sale of Land Act 1962* (Vic) –

- (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* (Vic); and
- (b) the deposit and all other money payable under the contract (other than any money payable in excess of the amount required to so discharge the mortgage) must be paid to a legal practitioner or conveyancer or a licensed estate agent to be applied in or towards discharging the mortgage.

30.2 While any money remains owing and the purchaser is entitled to possession or receipt of the rents and profits, each of the following applies –

- (a) the purchaser must maintain full damage and destruction insurance of the property and public risk insurance noting all parties having an insurable interest with an insurer approved in writing by the vendor;
- (b) the purchaser must deliver copies of the signed insurance application forms, the policies and the insurance receipts to the vendor not less than 10 days before taking possession of the property or becoming entitled to receipt of the rents and profits;
- (c) the purchaser must deliver copies of any amendments to the policies and the insurance receipts on each amendment or renewal as evidence of the status of the policies from time to time;
- (d) the vendor may pay any renewal premiums or take out the insurance if the purchaser fails to meet these obligations;
- (e) insurance costs paid by the vendor under paragraph (d) must be refunded by the purchaser on demand without affecting the vendor's other rights under this contract;
- (f) the purchaser must maintain and operate the property in good repair (fair wear and tear excepted) and keep the property safe, lawful, structurally sound, weatherproof and free from contaminations and dangerous substances;
- (g) the property must not be altered in any way without the written consent of the vendor which must not be unreasonably refused or delayed;
- (h) the purchaser must observe all obligations that affect owners or occupiers of land;
- (i) the vendor and/or other person authorised by the vendor may enter the property at any reasonable time to inspect it on giving 7 days written notice, but not more than twice in a year.

### 31. LOSS OR DAMAGE BEFORE SETTLEMENT

31.1 The vendor carries the risk of loss or damage to the property until settlement.

31.2 The vendor must deliver the property to the purchaser at settlement in the same condition it was in on the day of sale, except for fair wear and tear.

31.3 The purchaser must not delay settlement because one or more of the goods is not in the condition required by general condition 31.2 but may claim compensation from the vendor after settlement.

### 32. BREACH

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

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

## Default

### 33. INTEREST

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

#### **34. DEFAULT NOTICE**

- 34.1 A party is not entitled to exercise any rights arising from the other party's default, other than the right to receive interest and the right to sue for money owing, until the other party is given and fails to comply with a written default notice.
- 34.2 The default notice must –
  - (a) specify the particulars of the default; and
  - (b) state that it is the offended party's intention to exercise the rights arising from the default unless, within 14 days of the notice being given –
    - (i) the default is remedied; and
    - (ii) the reasonable costs incurred as a result of the default and any interest payable are paid.

#### **35. DEFAULT NOT REMEDIED**

- 35.1 All unpaid money under the contract becomes immediately payable to the vendor if the default has been made by the purchaser and is not remedied and the costs and interest are not paid.
- 35.2 The contract immediately ends if –
  - (a) the default notice also states that unless the default is remedied and the reasonable costs and interest are paid, the contract will be ended in accordance with this general condition; and
  - (b) the default is not remedied and the reasonable costs and interest are not paid by the end of the period of the default notice.
- 35.3 If the contract ends by a default notice given by the purchaser:
  - (a) the purchaser must be repaid any money paid under the contract and be paid any interest and reasonable costs payable under the contract; and
  - (b) all those amounts are a charge on the land until payment; and
  - (c) the purchaser may also recover any loss otherwise recoverable.
- 35.4 If the contract ends by a default notice given by the vendor or acceptance by the vendor of a repudiation by the purchaser –
  - (a) the deposit up to 10% of the price is forfeited to the vendor as the vendor's absolute property, whether the deposit has been paid or not; and
  - (b) the vendor is entitled to possession of the property; and
  - (c) in addition to any other remedy, the vendor may within one year of the contract ending either:
    - (i) retain the property and sue for damages for breach of contract; or
    - (ii) resell the property in any manner and recover any deficiency in the price on the resale and any resulting expenses by way of liquidated damages; and
  - (d) the vendor may retain any part of the price paid until the vendor's damages have been determined and may apply that money towards those damages; and
  - (e) any determination of the vendor's damages must take into account the amount forfeited to the vendor.
- 35.5 The ending of the contract does not affect the rights of the offended party as a consequence of the default.

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## ANNEXURE A –

### SPECIAL CONDITIONS

#### 1. AMENDMENTS TO GENERAL CONDITIONS

##### 1.1 Guarantee (General Condition 3)

- (a) For the purpose of general condition 3, on the Day of Sale, if the Purchaser is, or includes, a proprietary limited company, the directors of the Purchaser (or a nominee purchaser company), must execute the guarantee in the form included at Annexure B.
- (b) If the Purchaser fails to deliver the Guarantee in accordance with general condition 3, special condition 1.1 (a) or special condition 1.2(b) the Purchaser is in default under this contract and the Vendor may end this contract by giving written notice to the Purchaser. General condition 34.1 (Default Notice) and general condition 35 (Default not remedied) do not apply to the Vendor's right to end this contract under this special condition 1.1(b).

##### 1.2 Nominee (General Condition 4)

If the Purchaser nominates a substitute or additional purchaser pursuant to general condition 4:

- (a) the Purchaser must provide to the Vendor a notice of nomination including an express undertaking by the Purchaser's nominee to comply with all obligations under this contract as if it were the Purchaser (duly and properly completed and executed by the Purchaser, the Purchaser's nominee and the guarantor for the Purchaser (if any));
- (b) the Purchaser must provide to the Vendor a completed guarantee executed by the directors of the nominee in accordance with special condition 1.1(a) and general condition 3, if the nominee is or includes a proprietary limited company;
- (c) any guarantors for the named purchaser also remain personally liable for the performance of all of the Purchaser's obligations under this contract; and
- (d) the named purchaser and its guarantors (if any) indemnify the Vendor against all Claims, demands, interest or penalties for stamp duty or other liabilities arising from the nomination;
- (e) the Purchaser must comply with special condition 13(c) by procuring the nominee's signature to an agreement with the Vendor confirming that the supply is the supply of a going concern; and
- (f) where the nominee covenants with the Vendor that by the settlement Date, the nominee will be registered for GST and, if required by the Vendor, it will provide evidence of such registration to the Vendor on or before the Settlement Date.

##### 1.3 Consents (General Condition 9)

General Condition 9 is deleted in its entirety.

#### **1.4 Transfer (General Condition 10) – applicable if settlement General Condition 18 (electronic settlement) does not apply**

- (a) The parties agree that if notice is given under general condition 18.2, this special condition applies.
- (b) If the paper transfer of land document is not delivered in accordance with general condition 10.1:
  - (i) the Vendor is not required to complete this contract or attend to settlement until 7 days after it receives the paper transfer of land document; and
  - (ii) the Purchaser is in default in payment of the balance of the Price and, if required by the Vendor, must pay default interest under general condition 33 from the Settlement Date until the expiry of the period of 7 days.

#### **1.5 Builder Warranty Insurance (General Condition 12)**

General condition 12 is deleted in its entirety.

#### **1.6 Money – Investment of Deposit (General Condition 14)**

General condition 14 is amended by inserting the following:

- "14.12 Each party authorises the stakeholder to invest the Deposit (at the risk of the party who becomes entitled to it) in an interest bearing account, at call with interest to be reinvested.*
- 14.13 Bank charges and government charges, fees and taxes are to be deducted from the interest earned on the Deposit before payment is made under general condition 14.*
- 14.14 The parties acknowledge that under the provisions of the Income Tax Assessment Act 1997 (Cth) if a tax file number or claim for exemption is not quoted to the Bank with which the Deposit is to be invested, the Bank will deduct tax from unattributed income being income from an investment for which an investor has not quoted a tax file number or informed the investment body of an exemption. Each party must provide its tax file number to the stakeholder on or by the Day of Sale.*
- 14.15 The parties agree that:*
  - (a) the stakeholder is authorised to provide the Vendor's and the Purchaser's tax file numbers to the bank holding the Deposit;*
  - (b) the parties will not be entitled to any compensation for loss of interest, costs, fees or other expenses arising out of the investment or non-investment of the Deposit, including interest or withholding tax if the parties fail to provide their tax file number to the stakeholder; and*
  - (c) neither the Vendor's estate agent or Vendor's Legal Practitioner are liable or responsible for any interest withholding costs or any loss or interest, costs, fees or other expenses of the Purchaser or any other party (whether or not such party provides its tax file number) for any matter referred to in this condition.*

**14.16** *The Purchaser releases the Vendor and the Vendor's Legal Practitioner from any claim concerning the investment or non-investment of the Deposit and any tax payable on any interest."*

### **1.7 Settlement (General Condition 17.2)**

If settlement takes place after 4:00pm, settlement will be regarded as having taken place on the next Business Day.

### **1.8 GST (General Condition 19)**

General condition 19 is deleted in its entirety.

### **1.9 Loan (General Condition 20)**

General condition 20 is deleted in its entirety.

### **1.10 Building Report (General Condition 21) and Pest Report (General Condition 22)**

General conditions 21 and 22 are deleted in their entirety.

### **1.11 Periodic Outgoings (General Condition 23)**

For the purposes of general condition 23 the expression "periodic outgoings" does not include any amounts to which section 10G of the Sale of Land Act 1962 applies.

### **1.12 Service (General Condition 27) – No service on estate agent**

General condition 27.2 is amended by deleting "or estate agent even if the estate agent's authority has formally expired at the time of service."

### **1.13 Notices (General Condition 28.3)**

- (a) General condition 28 does not apply to any amounts to which section 10G or 10H of the Sale of Land Act 1962 (Vic) applies.
- (b) If the Purchaser enters the Property for the purposes of general condition 28.3, the Purchaser:
  - (i) must provide the Vendor with reasonable prior notice and must minimise any nuisance caused to the Vendor; and
  - (ii) indemnifies the Vendor for any damage or loss caused by the Purchaser.

### **1.14 Inspection (General Condition 29)**

For the purposes of general condition 29:

- (a) the Purchaser may inspect the Property once by making an appointment with the Vendor or the Vendor's estate agent; and
- (b) the Vendor retains the right (acting reasonably):
  - (i) to set the time and date of the Purchaser's inspection appointment;

- (ii) to limit the time spent during an inspection appointment; and
- (iii) to limit the number of persons attending an inspection appointment.

### **1.15 Terms Contract (General Condition 30)**

General condition 30 is deleted in its entirety.

### **1.16 Loss or Damage before Settlement (General Condition 31.1)**

General conditions 31.4 to 31.6 are deleted.

## **2. RECEIPT OF VENDOR STATEMENT**

The Purchaser acknowledges having received a signed Vendor Statement before paying any money under this contract or signing this contract.

## **3. STAMP DUTY**

The Purchaser:

- (a) has made its own independent enquiries on all stamp duty matters and does not rely on anything stated by or on behalf of the Vendor;
- (b) is liable for all stamp duty payable on the transfer of land; and
- (c) indemnifies the Vendor against all liabilities, Claims, proceedings or penalties relating to any stamp duty payable concerning this contract, any transfer of land or any other matter under this special condition.

## **4. PURCHASER BUYING IN UNEQUAL SHARES**

- (a) If there is more than one Purchaser, the Purchaser must ensure that this contract records the proportions in which each Purchaser is buying the Property.
- (b) If the proportions recorded in the transfer of land document are different from those stated in this contract, the Purchaser must pay any additional stamp duty which is assessed as a result.
- (c) The Purchaser indemnifies and will at all times keep indemnified the Vendor against any loss, damage, cost, expense, Claim or demand that may be brought against the Vendor or which the Vendor may pay, sustain or incur in relation to any stamp duty payable because of the proportions stated in this contract or the transfer of land document.

## **5. CONDITION AND STATE OF REPAIR**

- (a) The Purchaser acknowledges that the Property is sold in its present condition and state of repair and subject to all faults and defects existing at the Day of Sale.
- (b) No warranty or representation (whether express or implied) is made by the Vendor (or anyone on behalf of the Vendor) about:
  - (i) the nature, condition, quality or state of repair of the Property;

- (ii) defects (latent or patent), dilapidation or infestation of the Property, (including without limitation its environmental condition);
- (iii) fitness of the Property for any purpose;
- (iv) any financial return or income that can be derived from the Property; or
- (v) any use permitted by law or any development to which the Property may be put.

(c) The Purchaser cannot make any requisition, objection, Claim, claim for compensation, delay payment of the Balance, rescind or terminate this contract (subject to any statutory overriding rights to the contrary available to the Purchaser) on the grounds that:

- (i) there are any defects whether latent or patent in the Land;
- (ii) the physical condition of the Land (including without limitation the airspace above the Land, the soil, groundwater and sub-strata):
  - A. may make the Property unsuitable or unfit for any use or development; or
  - B. may make the Property, the owner or any occupier liable for any compensation, order, notice, penalty, liabilities (including strict liability), encumbrances, liens, costs and expenses of investigation, fine or requirement under any law, regulation or ordinance for the content or presence of any Contaminant in the airspace above the Land, the soil, groundwater or sub-strata.

## **6. COMPLIANCE WITH LEGISLATION**

- (a) The Vendor makes no warranty or representation about:
  - (i) whether or not the Property complies with all statutes, ordinances and regulations applicable to the Property;
  - (ii) the use to which the Property may be put.
- (b) The Purchaser warrants that it has satisfied itself about all approvals or consents for the purposes for which the Property may be used, including, any proposals which the Purchaser may have for the subdivision, development or use of the Property.
- (c) The Purchaser must comply with all laws made on or from the Day of Sale in relation to the Property or the use of the Property by any Authority.
- (d) The Purchaser cannot make any requisition, objection, Claim or claim for compensation for any of the matters or things referred to in this special condition and (except where entitled by statute) is not entitled to rescind or terminate this contract because of any of the matters or things referred to in this special condition.

## **7. TITLE SUBJECT TO EXISTING SERVICES AND CONTRACTUAL ARRANGEMENTS**

- (a) The Purchaser takes title subject to:

- (i) the existing water, sewerage, gas, electric, telephone and other installations and services (if any) and the existing rights (if any) to use them and any system, apparatus, appliance or infrastructure in place at the Land in relation to the supply or provision of any service; and
- (ii) all the Vendor's contractual arrangements with the providers of water, sewerage, gas, electricity, telephone and other like facilities and any existing obligations in relation to these arrangements.

(b) Notwithstanding special condition 7(a), the Purchaser acknowledges that:

- (i) if there are any service and maintenance agreements for services and installations at the Property in existence at the Day of Sale, they may be terminated by the Vendor at or before the Settlement Date; and
- (ii) the Vendor is not obliged to assign any service and maintenance agreements for installations and services at the Property to the Purchaser.

(c) The Purchaser cannot make requisition, objection or claim for compensation because:

- (i) any connections are made through any other property and that no rights or easements for any installations and services exist;
- (ii) any rights or easements cannot be obtained or there are defects in any installations or services;
- (iii) any water or sewerage main or any underground or surface storm water drain or any gas or electric light or other installations or services pass through, over or under the Land;
- (iv) at the Day of Sale or at the Settlement Date any statutory easement for any of the services exists; or
- (v) at the Day of Sale or at the Settlement Date the Purchaser requires any contractual arrangement to be terminated or amended.

## 8. GOODS

(a) The Purchaser acknowledges that included in the sale are the Goods (if any), free from any encumbrance, in their present condition and state of repair and subject to all faults and defects existing at the Day of Sale.

(b) The Vendor is not responsible for any damage, loss or breakdown however arising from reasonable wear and tear in respect of any Goods occurring after the Day of Sale and the Purchaser must accept any Goods forming part of the Property in their condition at the Settlement Date provided that:

- (i) the Vendor will not permit any Goods to deteriorate or fall into a state of disrepair other than as a consequence of reasonable wear and tear; and
- (ii) the Vendor will not be required to replace any Goods between the Day of Sale and the Settlement Date.

- (c) The Vendor need not give formal delivery of the Goods but must leave the Goods at the Property on settlement.
- (d) The Purchaser is not entitled to and will not make any requisition, objection, Claim, claim for compensation, delay payment of the Balance, rescind or terminate this contract because any of the Goods otherwise does not comply with any law including any health or safety law, regulation or ordinance.

## **9. ENVIRONMENTAL CONDITION**

- (a) The Purchaser accepts the condition of the Land including, without limitation, the presence of any Contaminant in, on, under or emanating from the Land.
- (b) The Purchaser acknowledges that the Vendor makes no representation or warranty about compliance of the Land with Environmental Law.
- (c) The Purchaser cannot make any requisition, objection, Claim or claim for compensation, delay payment of the Balance or otherwise rescind or terminate this contract because:
  - (i) of the use, presence or escape of any Contaminant on or from the Land; or
  - (ii) the physical condition of the Land (including the soil, groundwater and sub-surface or any contamination of them):
    - A. renders the Land unsuitable or unfit for any use or development; or
    - B. renders the Land, the Vendor, the Purchaser, the owner, or the occupier liable for any Claim or requirement imposed by any person, competent body or Authority or under any legislation whether now or at any time in the future.
- (d) From the Day of Sale, the Purchaser will assume all liability and responsibility for any Contaminant in, on, under or emanating from the Property or any process or facility undertaken on the Property at any time whether before or after the Day of Sale and the Purchaser will be liable for and releases the Vendor from all liability and indemnifies the Vendor against:
  - (i) any Claim relating to the use, presence, removal, containment, treatment, storage, disposal or escape of or effect on human health of any Contaminant or Substance on or from the Property; or
  - (ii) any requirement imposed by any Authority or legislation:
    - A. relating to the use, presence or escape of any Contaminant or Substance on or from the Property,
    - B. requiring the remediation of the Property;
    - C. requiring the removal, containment or treatment of any Contaminant or Substance from the Property; or
    - D. requiring any works or treatment or activity to be carried out on the Property.

- (e) This special condition will not merge on settlement of this contract and each indemnity given continues after settlement. The Vendor can enforce any indemnity before incurring any cost or expense.

## **10. DUE DILIGENCE ENQUIRIES**

The Purchaser acknowledges that, prior to the Day of Sale, it has been provided the opportunity to carry out and has completed a due diligence exercise in respect of the Property. The Purchaser confirms it is satisfied with its due diligence of the Property in all respects and further acknowledges that:

- (a) it is deemed to have all knowledge of all issues, matters and things in respect of the Property; and
- (b) it cannot make any requisition, objection, Claim or claim compensation, delay payment of the Balance, rescind or terminate this contract in connection with this special condition 10.

## **11. FIRB ACT**

- (a) The Purchaser warrants that:
  - (i) it is not a foreign person within the meaning of the FIRB Act; or
  - (ii) it is a foreign person within the meaning of the FIRB Act and the Treasurer of the Commonwealth of Australia has advised in writing before the Settlement Date that the Treasurer has no objection to the acquisition of the Property by the Purchaser.
- (b) The Purchaser indemnifies the Vendor against any loss, damage, cost, expense, Claim or demand that may be brought against the Vendor or which the Vendor may pay, sustain or incur in relation to any breach by the Purchaser of this special condition.
- (c) The Purchaser must keep the Vendor informed at all times of all matters relating to the Purchaser's FIRB application and advise the Vendor within 2 Business Days of receipt by the Purchaser of any correspondence or oral communication with FIRB or the Treasurer (including providing copies of such correspondence or communication).

## **12. GST**

### **12.1 Definition**

Terms defined in the GST Act have the same meaning when used in this special condition 12 and this contract, unless expressly provided otherwise.

### **12.2 Consideration is GST exclusive**

The Purchaser expressly acknowledges that, unless indicated otherwise, the consideration payable or to be provided or amount used in the calculation of a sum payable under this contract is expressed on a GST-exclusive basis, and must be increased, on account of any GST payable under this special condition 12.

### **12.3 Payment of the GST Amount**

If GST is or becomes payable on a supply made under, by reference to or in connection with this contract, the recipient must pay the GST Amount to the Supplier:

(a) On the later of:

- (i) the same time that the consideration for the supply is provided; and
- (ii) the time when a tax invoice relating to the taxable supply is issued to the recipient; and

(b) In the manner as notified by the Supplier to the recipient in writing.

#### **12.4 Liability net of GST**

If either party is required to pay, reimburse or indemnify the other for, or otherwise contribute to, the whole or any part of any cost, expense, loss, liability or other amount that the other party has incurred or will incur in connection with this contract or the Property (including, by way of settlement adjustment) (**Reimbursable Expense**), the amount to be paid, reimbursed, indemnified or contributed will be the amount of the Reimbursable Expense (inclusive of GST) less the amount of any input tax credit or refund to which the other party is entitled (if any) in respect of the Reimbursable Expense.

#### **12.5 Adjustment events**

If at any time an adjustment is made between the Supplier or any other payer of GST and the relevant taxing authority on account of GST on any supply made or other matter or thing done under or in connection with this contract by the Supplier, a corresponding adjustment must be made as between the Supplier and the recipient and additionally, any payment required to give effect to that adjustment must be made within 21 days after the Supplier notifies the recipient in writing of the said adjustment. Further, the Supplier, if obligated to do so under the GST Act, must issue an adjustment note within the timeframe prescribed by the GST Act.

#### **12.6 No set off**

The recipient must pay any amount it is required to pay under this special condition in full and without deduction, set-off, withholding or counterclaim.

#### **12.7 No merger**

This special condition does not merge on settlement of this contract and continues to have full effect.

### **13. CONFIDENTIALITY**

- (a) The parties must not, and must procure that its representatives do not, without the prior written consent of the other, disclose:
  - (i) the existence, content or effect of this contract or any other agreement entered into in connection with this contract;
  - (ii) the fact or content of negotiations leading up to or relating to this contract; or
  - (iii) any information received or obtained by it or its representatives regarding any of the other parties or their representatives.
- (b) Despite the terms of special condition 13(a), the parties may make such disclosures in respect of this contract:

- (i) to employees, legal advisors, financial advisors, auditors and other consultants of the relevant party requiring the information for the purposes of this contract;
- (ii) if required by a law or a stock exchange; or
- (iii) if strictly and necessarily required in connection with legal proceedings relating to this contract.

#### **14. LIABILITY OF SIGNATORY**

- (a) Any person who executes this contract as or on behalf of the Purchaser is deemed to be personally liable for the due performance and observance of the Purchaser's obligations as if the signatory were the Purchaser, notwithstanding that the person may have executed the contract for and on behalf of the Purchaser or as an authorised person on behalf of the Purchaser.
- (b) Further to general condition 2, if a person signs this contract on behalf of a Purchaser which is a corporation (within the meaning of the Corporations Act), that person:
  - (i) warrants in a personal capacity to the Vendor that they have the authority to enter this contract on behalf of the Purchaser; and
  - (ii) if the warranty in special condition 14(b)(i) is false, acknowledges and agrees that they will be personally liable for the performance of the Purchaser's obligations.

#### **15. PURCHASER AS TRUSTEE**

If the Purchaser is buying the Property as the trustee of a trust (Purchaser Trust):

- (a) the Purchaser must not do anything to prejudice any right of indemnity the Purchaser may have under the Purchaser Trust;
- (b) the Purchaser warrants that the Purchaser has power under the trust deed or constitution of the Purchaser Trust to enter into this contract;
- (c) if the trustee is an individual, that signatory is personally liable under this Contract for the due performance of the Purchaser's obligations as if the signatory were the Purchaser in case of default by the Purchaser;
- (d) the Purchaser warrants that the Purchaser has a right of indemnity under the Purchaser Trust; and
- (e) the Purchaser must not allow the variation of the Purchaser Trust or the advance or distribution of capital of the Purchaser Trust or resettlement of any property belonging to the Purchaser Trust.

#### **16. ADJUSTMENTS**

Subject to special condition 17, the parties must adjust all outgoings as follows:

- (a) the parties must adjust any prepaid outgoings;
- (b) if, on the Settlement Date, any outgoing in relation to a period which includes the

Settlement Date is partly paid, the amount which is paid is applied towards the beginning of the period; and

- (c) if any outgoing referable to a period beginning before and ending after the Settlement Date is reassessed after the Settlement Date, the Vendor and Purchaser must adjust the reassessed amount under this special condition 17.

## 17. LAND TAX

- (a) All adjustments made in relation to land tax must be made based on a single holding basis (if applicable) and including any applicable surcharge or levy.
- (b) Notwithstanding this special condition 16 or any other provisions in this contract:
  - (i) special condition 16(a) does not apply; and
  - (ii) there shall be no adjustments made in relation to land tax,

if, and to the extent, the Vendor is prohibited by the Sale of Land Act 1962 (Vic) or the Property Law Act 1958 (Vic) from recovering any amounts for or towards land tax in respect of the Property for which the Vendor is or may become liable under the Land Tax Act 2005 (Vic).

## 18. WINDFALL GAINS TAX

- (a) In this special condition 22:
  - (i) **WGT event** has the meaning given to that term in the WGT Act;
  - (ii) **windfall gains tax** means the windfall gains tax imposed on land that is rezoned by a WGT event;
  - (iii) **WGT Act** means the Windfall Gains Tax Act 2021 (Vic); and
  - (iv) words and phrases in italics have the meanings as defined under the WGT Act,
- (b) The Purchaser acknowledges and agrees that:
  - (i) as of the Day of Sale, there is no existing windfall gains tax liability in respect of the Property; however,
  - (ii) a WGT event may occur after the Day of Sale, but before the Settlement Date, causing a taxable value uplift on the Property that may result in a windfall gains tax being imposed on or otherwise payable by the Vendor before settlement.
- (c) If a WGT event occurs after the Day of Sale but before settlement pursuant to the WGT Act causing a taxable value uplift then:
  - (i) the Purchaser must pay, as and when due, any and all monetary assessment of windfall gains tax and associated penalties, interest and costs relating to the WGT Act that apply to the Property;

- (ii) if requested in writing by the Purchaser, the Vendor must (at the Purchaser's cost) apply to the Commissioner of State Revenue (or other relevant Authority) for a deferral of the windfall gains tax within 7 days of the date of the Purchaser's request; and
- (iii) if requested in writing by the Purchaser, the Vendor must (at the Purchaser's cost) appeal or object to the assessment of windfall gains tax.

(d) The Purchaser must not, on and from the Day of Sale, without the consent of the Vendor in writing, do anything or permit anything to be done that would trigger or bring forward a liability to pay any contribution or levy or tax in respect of the Property (including the windfall gains tax).

(e) The parties agree that the Purchaser's obligations to pay the windfall gains tax and associated penalties, interest and costs under special condition 19(c)(i) is not an adjustment for the purposes of Section 10H of the *Sale of Land Act 1962 (Vic)* or Section 9 of the *Property Law Act 1958 (Vic)*.

(f) This special condition does not merge on settlement of this contract and continues to have full effect.

## 19. DEFAULT

### 19.1 Loss

Without limiting the effect of general conditions 32 and 33, the Purchaser is responsible for, and must indemnify the Vendor against, all loss incurred or suffered directly or indirectly by the Vendor that is caused or contributed by, or otherwise arises from, the Purchaser:

- (a) breaching any warranty in this contract;
- (b) failing to comply with this contract;
- (c) failing to settle the Property on or before due date for settlement, as stated in the Particulars of Sale; and
- (d) all or any combination of special conditions 19.1(a), 19.1(b) and 19.1(c),

including:

- (e) interest and other expenses payable by the Vendor under any existing loans secured over the Property or other property of the Vendor;
- (f) any commission or other expenses claimed by the Vendor's agents or other representatives of the Vendor relating to the sale of the Property;
- (g) loss incurred or suffered directly or indirectly under another contract of sale, financing arrangement, construction contract or other agreement relating to the Vendor's affairs;
- (h) legal costs on a full indemnity basis and any consultant's fees and expenses at the rates charged to the Vendor incurred in obtaining any advice or representation in relation to a breach or a failure to comply; and

- (i) additional costs and expenses, interest, discounts on bills and borrowing expenses which exceed interest payable under this contract.

## **19.2 Additional right**

Special condition 19.1 operates in addition to and does not in any way limit any other right or remedy of the Vendor under this contract or at law.

## **19.3 Default continues**

The Purchaser must pay to the Vendor upon demand all amounts under special condition 19.1, or any other amounts owing under this contract arising out of the default of the Purchaser, without the need for the Vendor to serve a notice and any default in respect of which those costs are incurred shall be deemed not to have been remedied unless and until such payment is made.

## **19.4 No merger**

This special condition will not merge on settlement of this contract and continues to have full effect.

# **20. GENERAL PROVISIONS**

## **20.1 Entire Agreement**

- (a) This contract contains the entire understanding and agreement between the parties as to its subject matter. All previous negotiations, understandings, representations, warranties (other than warranties set out in this contract), or commitments in relation to, or in any way affecting, the subject matter of this contract are superseded by this contract and are of no force or effect and neither party is liable to the other party in respect of those matters. No oral explanation or information provided by any party to another affects the meaning or interpretation of this contract or constitute any collateral agreement, warranty or understanding between any of the parties.
- (b) Without limiting the previous paragraph, the Purchaser acknowledges that no information, representation or warranty made by the Vendor or the Vendor's estate agent was supplied or made with the intention or knowledge that it would be relied upon by the Purchaser and that:
  - (i) no information (including any brochure, marketing information, investment report or advertisement), representation or warranty has in fact been relied upon; and
  - (ii) the Purchaser has made or procured its own inspections, investigations, examinations and enquiries in respect of all aspects of the Property including but without limitation the Property, planning restrictions, building regulations and the suitability of the Property for the purpose for which the Purchaser requires the Property.

## **20.2 Conflict with General Conditions**

If there is any conflict or inconsistency between the special conditions and the General Conditions, these special conditions will prevail.

### **20.3 Severability**

- (a) Each of the covenants, obligations and restrictions set out in this contract is separate, severable and independent.
- (b) If any part of this contract becomes void or unenforceable or is illegal then:
  - (i) it is to be read down or severed to the extent of the invalidity or unenforceability; and
  - (ii) that fact does not affect the validity or enforceability of the remaining provisions.
- (c) If any provision of this contract is void under s302 of the Bankruptcy Act 1966 (Cth), it is to be severed from this contract and that fact does not affect the validity or enforceability of the remaining provisions. If that provision cannot be severed, this contract takes effect as if it did not include that provision.

### **20.4 Further Assurances**

Each party must, at its own expense, whenever requested by the other party, promptly do or, to the extent reasonably practicable, arrange for others to do everything, including executing any documents, reasonably necessary to give full effect to this contract and the transactions contemplated by this contract.

### **20.5 Waiver**

- (a) The Purchaser's obligations under this contract and Vendor's right to enforce them are unaffected by any indulgence, forbearance or extension of time allowed or granted by the Vendor or by acceptance by the Vendor of money tendered by the Purchaser otherwise than in accordance with this contract.
- (b) No waiver of any breach of this contract or of 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.
- (c) No waiver of any breach operates as a waiver of any prior breach or subsequent breach. The failure or omission of a party at any time to enforce or require the strict observance of or compliance with any provision of this contract, or exercise any election or discretion under this contract, will not operate as a waiver of the rights of a party, whether express or implied, arising under this contract.

### **20.6 Governing Law**

This contract is governed by the laws of the State of Victoria and the parties irrevocably and unconditionally submit to the exclusive jurisdiction of the courts of Victoria.

### **20.7 Consents and Approvals**

Where anything depends on the consent or approval of the Vendor then, unless this contract states otherwise, that consent or approval may be given conditionally or unconditionally or withheld, in the absolute discretion of the Vendor.

### **20.8 Indirect or Consequential Loss**

To the maximum extent permitted by law, and despite anything else in this contract, the Vendor shall not, under any circumstances, be liable to the Purchaser for any loss of profits or goodwill,

economic, special, indirect or consequential loss or damage, whether in contract, tort (including negligence), for breach of warranty, under indemnity, in equity or otherwise.

## **20.9 Counterparts**

- (a) If this contract is executed in any number of counterparts, all counterparts when taken together are to be taken to constitute one instrument.
- (b) This contract is binding on the parties on the exchange of executed counterparts. A copy of an original executed counterpart sent by email:
  - (i) must be treated as an original counterpart;
  - (ii) is sufficient evidence of the execution of the original; and
  - (iii) may be produced in evidence for all purposes in place of the original.
- (c) A party may sign a soft copy of this contract electronically or through DocuSign and bind itself accordingly. This will satisfy any statutory or other requirements for this contract to be in writing and signed by that party. The parties intend that any soft copy so signed will constitute an executed original counterpart, and any print-out of the copy with the relevant signatures appearing will also constitute an executed original counterpart.

## **20.10 No Right of Set Off**

Unless this contract states otherwise, the Purchaser has no right of set-off against any payment or monies owed to the Vendor under the terms of this contract.

## **20.11 Operation of Indemnities**

Unless this contract states otherwise:

- (a) each indemnity in this contract survives Settlement or termination of this contract;
- (b) each indemnity is separate and independent from any other indemnities or obligations; and
- (c) the Vendor may recover payment under an indemnity in this contract before it makes the payment in respect of which the indemnity is given.

## **20.12 Insolvency/Incapacity**

If an Insolvency Event occurs in relation to the Purchaser, then the Purchaser will not have complied with this contract in an essential respect and will be in default under this contract. The Vendor may exercise any of its powers and/or remedies arising out of such default under this contract or otherwise at law including, the right to terminate this contract and retain the Deposit (and any accrued interest).

## **21. CROWN LAND LEASE**

- (a) The Vendor is the Licensee of the Crown Land Lease.
- (b) The Vendor will sign all documents prepared at the Purchaser's expense to enable the transfer of the Crown Land Lease to the Purchaser.

- (c) By entering into this contract, the Purchaser acknowledges that the Vendor has made no representation or warranty as to:
  - (i) the terms and conditions of the Crown Land Lease; or
  - (ii) the likelihood or otherwise of the Crown Land Lease being renewed and/or transferred to the Purchaser.
- (d) Any rates or rental payable pursuant to the Crown Land Lease must be apportioned as outgoings pursuant to general condition 23 and special condition 16.
- (e) The contract is not subject to or conditional upon the Crown Land Lease being transferred to the Purchaser or being reissued in the name of the Purchaser.
- (f) The Purchaser shall be responsible for applying for any transfer relating to the Crown Land Lease and meeting the requirements of the relevant authorities at their cost and expense and shall have no right to make any objection, requisition or claim any compensation in the event that the Crown Land Lease is not transferred or renewed.

## **22. LIQUOR LICENCE**

- (a) The Vendor is the Licensee of the Liquor Licence.
- (b) The Vendor does not warrant that it will renew the Liquor Licence for the period following 31 December 2026.
- (c) If requested to do so by the Purchaser, and provided that the Liquor Licence is active at the relevant time, the Vendor will sign all documents prepared at the Purchaser's expense to enable the transfer of the Liquor Licence to the Purchaser.
- (d) By entering into this contract, the Purchaser acknowledges that the Vendor has made no representation or warranty as to:
  - (i) the terms and conditions of the Liquor Licence; or
  - (ii) the likelihood or otherwise of the Liquor Licence being renewed and/or transferred to the Purchaser.
- (e) Any rates or rental payable pursuant to the Liquor Licence must be apportioned as outgoings pursuant to general condition 23 and special condition 16.
- (f) The contract is not subject to or conditional upon the Liquor Licence being transferred to the Purchaser or being reissued in the name of the Purchaser.
- (g) The Purchaser shall be responsible for applying for any transfer relating to the Liquor Licence and meeting the requirements of the relevant authorities at their cost and expense and shall have no right to make any objection, requisition or claim any compensation in the event that the Liquor Licence is not transferred or renewed.

## **23. DEFINITIONS AND INTERPRETATION**

### **23.1 Definitions**

In this contract, unless the context otherwise requires, the following expressions have the designated meanings.

**Authority** means any government or any public, statutory, governmental, semi-governmental, local governmental, municipal or judicial body, entity or authority and includes a Minister of the Crown (in any right), and any person, body, entity or authority exercising a power pursuant to an Act of Parliament.

**Business Day** means a day that is not a Saturday, Sunday, a public holiday or bank holiday in Melbourne.

**Claim** means any claim, action, proceeding, judgment, penalty, damage, loss, cost, expense or liability however incurred or suffered or brought or made or recovered against any person however arising (whether or not presently ascertained, immediate, future or contingent or in the nature of incidental, special, exemplary or consequential damages) including loss of profits or revenue, interference with business operations or loss of tenants, lenders, investors or buyers or inability to use the Property.

**Contaminant** means a solid, liquid, gas, odour, heat, sound, vibration, radioactive matter or substance or property of any substance which makes or may make the Land unsafe, unfit or harmful for habitation or occupation by any person or cause damage to the Land or which is or may be harmful to the Environment or which is such that it does not satisfy the contamination criteria or standards published or adopted by the relevant environmental Authority and Contamination has the same meaning.

**Corporations Act** means the Corporations Act 2001 (Cth).

**Crown Land Lease means** the Section 17D Crown Land (Reserves) Act 1978 Lease (Non Retail) between the Minister for Environment and Climate Change and William James McMeekan (deceased) and Tina Renna McMeekan for Crown Allotment 17J, Section 2, Parish of Paywit dated 23 April 2014

**Environment** includes the air, water, ground water, sub strata and the ground.

**Environmental Law** means a law regulating the Environment, including, without limitation, to the extent applicable, any law about the use of land, planning, heritage, pollution of air or water, noise, soil or ground water contamination or pollution, chemicals, use of dangerous goods, asbestos, building regulation, public and occupational health and safety, fire and safety, or the enforcement or administration of those laws whether that law arises under statute or the common law or under any permit, notice, decree, order or directive of any Authority or otherwise.

**FIRB Act** means the Foreign Acquisition and Takeovers Act 1975 (Cth).

**Goods** means as described in the Particulars of Sale (if any).

**GST Act** means A New Tax System (Goods and Services Tax) Act 1999 (Cth).

**GST Amount** means, in respect of a taxable supply, the amount calculated by multiplying the GST-exclusive consideration payable by the recipient for the relevant taxable supply by the prevailing GST rate, plus any penalties and interest imposed on or payable by the supplier under the TAA or the GST Act in connection with that taxable supply.

**Insolvency Event** is limited to a situation where the Purchaser:

(a) goes into liquidation, whether voluntary or not;

- (b) is wound up;
- (c) is placed under the control of a liquidator, or receiver (whether provisional or otherwise);
- (d) is placed under official management under the Corporations Act;
- (e) enters into a composition or scheme of arrangement; or
- (f) otherwise enters into any insolvent administration of any kind under Chapter 5 of the Corporations Act.

**Liquor Licence** means Producer's Licence No. 32806795 issued by Liquor Control Victoria.

**Property** means the Land and the Goods (if any).

**Purchaser Trust** is defined in special condition 15.

**Settlement Date** means the date on which settlement of the Property occurs in accordance with this Contract.

**TAA** means the Taxation Administration Act 1953 (Cth).

**Vendor Statement** means the statement prepared in accordance with s32 of the Sale of Land Act 1962 (Vic).

Other definitions are included in the Particulars of Sale but if there is any conflict or inconsistency between these definitions and the definitions in the Particulars of Sale, these definitions will prevail to the extent of the conflict or inconsistency.

## 23.2 Interpretation

In this contract, unless the context requires another meaning:

- (a) the singular includes the plural and vice versa;
- (b) reference to a gender includes all genders;
- (c) headings are for guidance only and are to be ignored in interpreting the contract;
- (d) an agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and severally and an agreement, representation or warranty on the part of two or more persons binds them jointly and severally;
- (e) references to any law are references to that law as amended, consolidated, supplemented or replaced and includes reference to all regulations, ordinances, by laws and instruments made under it and amendments or replacements of any of them whether now or in the future;
- (f) a reference to a party to a document includes that party's successor and permitted assigns;
- (g) this contract cannot be interpreted against a party only because that party was responsible for preparing it;

- (h) a reference to this contract includes a reference to this contract and any annexures, schedules and exhibits;
- (i) a reference to a paragraph, clause, recital, schedule, annexure and exhibit is a reference to a paragraph and clause of, and recital, schedule, annexure and exhibit to this contract;
- (j) to a person (including a party) includes:
  - (i) an individual, company, other body corporate, association, partnership, firm, joint venture, trust or Authority;
  - (ii) the person's successors, permitted assigns, substitutes, executors and administrators; and
  - (iii) a reference to the representative member of the GST group to which the person belongs to the extent that the representative member has assumed rights, entitlements, benefits, obligations and liabilities which would remain with the person if the person were not a member of a GST group;
- (k) to 'Property' includes the whole or any part of the Property;
- (l) to a document includes:
  - (i) an amendment or supplement to, or replacement or novation of, that document; and
  - (ii) any contract in writing, or any building certificate, notice, deed, instrument or any other document of any kind;
- (m) to an agreement other than this contract includes an undertaking, deed, contract, or legally enforceable arrangement or understanding whether written or not;
- (n) to a body other than a party to this contract, (including an institute, association or authority), whether statutory or not:
  - (i) which ceases to exist; or
  - (ii) whose powers or functions are transferred to another body, is a reference to the body which replaces it or which substantially succeeds to its powers or functions;
- (o) to a thing includes the whole and each part of it;
- (p) to 'dollars' or '\$' means the lawful currency of Australia; and
- (q) the words 'include' (in any form) when introducing a list of items does not limit the meaning of words to which the list relates to those items or to items of a similar kind.

### **23.3 Construction**

- (a) Headings are for convenience only and do not affect interpretation of this contract.
- (b) Where a word or phrase is defined, its other grammatical forms have a corresponding meaning.

- (c) This contract may not be construed adversely to a party only because that party was responsible for preparing it.
- (d) A provision of this contract which:
  - (i) has not been complied with and has not been waived; or
  - (ii) is capable of having effect after settlement,does not merge on settlement and continues to have full effect.
- (e) Each party must do all things and execute all further documents necessary to give full effect to this contract.
- (f) Any notice or other communication given under this contract must be in legible writing and in English.
- (g) This contract may be amended only by a document signed by all parties.

**ANNEXURE B –**

**DEED OF GUARANTEE AND INDEMNITY**

**TO:** The Vendor named in the Schedule to this Deed ("the Vendor")

**The Guarantor** named in the Schedule to this Deed ("the Guarantor" which expression shall include and bind the guarantor and the Guarantor's heirs, executors, administrators and personal representatives and where a company its successors and permitted assigns)

**IN CONSIDERATION** of the Vendor having agreed at the request of the Guarantor to enter into the Contract of Sale attached to this Deed ("the Contract") for the sale of the property described in the Contract ("the Property") to the Purchaser named in the Schedule to this Deed ("the Purchaser") and for all other good and valuable consideration, **HEREBY ABSOLUTELY AND UNCONDITIONALLY GUARANTEES** the due and punctual payment by the Purchaser to the Vendor of all moneys due and payable or from time to time to become due and payable by the Purchaser to the Vendor under the Contract and any costs and damages which may become due and payable on any default repudiation or otherwise, and the due and punctual performance by the Purchaser of all obligations of the Purchaser to the Vendor under the Contract **AND** as a separate and independent obligation **HEREBY UNCONDITIONALLY INDEMNIFIES** the Vendor and agrees to keep the Vendor always indemnified against any loss which the Vendor may suffer arising out of or in relation to the Contract or because the aforesaid obligations under the Contract are unenforceable in whole or in part or because any moneys due and payable or from time to time become due and payable under the Contract are not recoverable for any reasons whatsoever (including but not limited to legal limitation, disability, immunity or incapacity) or having been recovered are repaid for any reason, including all costs charges or expenses which the Vendor may incur as a consequence of the non-performance or non-observance by the Purchaser of the aforesaid obligations or the Contract provisions and the Guarantor shall upon demand pay to the Vendor the aforesaid moneys or the amount of any loss which is the subject of this indemnity.

It is further declared that:

1. The liability of the Guarantor under this Deed shall not in any way be prejudiced or affected by any act matter or thing, failure or omission which, but for this provision, might operate to exclude the Guarantor from the aforesaid obligations, including, without limitation, by:
  - 1.1 the granting of time or other indulgence or concession to the Purchaser, the Guarantor, or any other person or corporation;
  - 1.2 compounding or compromising with or releasing or discharging the Purchaser, the Guarantor or any other person or corporation from liability under this Deed or from compliance with the provisions of the Contract as the same may be varied, amended, novated, replaced or renewed from time to time, or releasing, varying or renewing in whole or in part any security, document of title, asset or right held by the Vendor;
  - 1.3 the winding up, liquidation, bankruptcy, death, lunacy, disability or other incapacity of the Purchaser, the Guarantor or any other person or corporation;
  - 1.4 the Vendor or any other person or corporation taking or failing to take a guarantee or indemnity from any other person or corporation;
  - 1.5 a judgment obtained by the Vendor against the Purchaser or the Guarantor;

- 1.6 the moneys hereby guaranteed or any part thereof not being recoverable or that the Purchaser or Guarantor or any other person liable to pay such moneys being discharged from all or any of their respective obligations to make payment or for any reason other than that payment has been made;
- 1.7 the fact that the Contract or the obligations of the Purchaser thereunder or the obligations of the Guarantor under this Deed are or become wholly or partially illegal, void, voidable, defective or unenforceable;
- 1.8 any amendment to, novation or replacement, of the Contract or this Deed with or without the consent of the parties;
- 1.9 the failure by the Vendor to give notice to the Guarantor of any default by the Purchaser under the Contract;
- 1.10 the nomination of a substitute purchaser of the Property by the Purchaser;
- 1.11 the liability of the Purchaser under the Contract ceasing for any reason; or
- 1.12 the failure of any person named as Guarantor to execute this Guarantee and Indemnity.

2. The aforesaid obligations of the Guarantor are principal obligations and may be enforced against the Guarantor without the necessity of the Vendor first taking action against the Purchaser in respect of the Purchaser's obligations under the Contract, and notwithstanding the termination or completion of the Contract.
3. This Deed shall continue to be binding notwithstanding that the moneys secured thereby may be assigned or transferred to another person or that the Contract may be assigned or transferred to any person either at the time of or subsequent to the first mentioned assignment or transfer, and the Guarantor agrees to waive each and all of his rights as Guarantor whether legal, equitable, statutory or otherwise as surety which may at any time be inconsistent with the provisions of this Deed or which in any way restricts the Vendor's rights, remedies or recourse.
4. This Deed is a continuing guarantee and indemnity for the purpose of securing payment of the whole of the moneys hereby guaranteed and the due and punctual performance of the whole of the obligations of the Purchaser under the Contract and shall remain in full force and effect until those obligations have been met in full by the Purchaser.
5. The Guarantor shall not, during the term of this Deed, without first obtaining the Vendor's consent, take action to enforce any rights against the Purchaser for money paid by the Guarantor to the Vendor under this Deed, or prove in the liquidation of the Purchaser, or exercise any other rights, in competition with the Vendor.
6. If the Purchaser goes into liquidation the Guarantor authorises the Vendor to prove for all moneys which have been paid under this Deed or which are owing to the Vendor by the Purchaser and not paid and to retain and carry to a suspense account and appropriate at the Vendor's discretion any dividends and other moneys received until the Vendor has been paid in full in respect of the money owing by the Purchaser to the Vendor. The Guarantor waives in favour of the Vendor all rights against the Vendor and the Purchaser and any other person, corporation, estate and asset necessary to give effect to anything contained in this Deed.
7. Any failure, omission or delay by the Vendor in exercising its rights under the Contract or this Deed shall not be deemed to be a waiver of those rights. No waiver by the Vendor of one breach by the Purchaser or Guarantor of any covenant, obligation or provision contained or

implied in the Contract or this Deed shall operate as a waiver of another breach by the Purchaser or Guarantor of the same or any other covenant, obligation or provision contained or implied in the Contract or this Deed. The exercise of a right by the Vendor does not preclude the exercise of the same or any other right under the Contract or this Deed.

8. Any other guarantee, indemnity or security obtained or taken by the Vendor to secure the obligations provided by this Deed shall not in any way prejudice or affect this Deed but shall be deemed to be collateral thereto.
9. The Guarantor acknowledges and warrants to the Vendor that as a consequence of the Vendor entering into the Contract with the Purchaser there is a benefit flowing to the Guarantor.
10. The Guarantor further acknowledges and agrees that the Vendor shall not be liable for any loss or damage of any kind whatsoever suffered by the Guarantor due to a release or dealing with any guarantee or security.
11. The Guarantor must not assign the obligations or benefits of the Guarantor contained in this Deed without the prior written consent of the Vendor. The Vendor is not so restricted and may assign the whole or any part of its rights, benefits and obligations without the Guarantor's consent.
12. The Guarantor shall when required by the Vendor execute all documents and perform all acts as may be required by the Vendor to give effect to this Deed. The Vendor need not execute this Deed.
13. Any notice, demand, consent or communication required or to be given under this Deed must be:
  - 13.1 in writing;
  - 13.2 delivered personally or sent by prepaid post or by facsimile to the recipient at its address or facsimile number set out in the Schedule to this Deed or to such other address or facsimile number as the recipient may by written notice advise another party from time to time.
14. A notice, demand, consent or communication given as above is taken to be received:
  - 14.1 if hand delivered, on the day of delivery if delivered before 4.00 pm on a business day and otherwise on the business day next following;
  - 14.2 if sent by prepaid post, 3 days after the date of posting; or
  - 14.3 if sent by facsimile, on the day on which the message confirmation is received if received before 4.00 pm on a business day and otherwise on the business day next following.

"business day" means a day (other than a Saturday or Sunday) on which banks (as defined in the Banking Act 1959 (Cwlth)) are generally open for business in Melbourne.

These provisions are in addition to any other mode of service permitted by law.

A notice, demand, consent or communication made or given under this Deed shall be signed by the party making or giving the notice, or, in the case of a company by a director, secretary, chief executive officer or manager of the company or a person

authorised to do so, or the solicitors for a party. The authority of the person or solicitors signing the notice shall not be questioned by the recipient.

15. Where this Deed is executed by two or more persons as guarantors:
  - 15.1 the expression "the Guarantor" referred to herein shall include all of those persons and the liability of those persons is a joint liability of all of them and a several liability of each of them;
  - 15.2 each of those persons is not released from liability if this Deed ceases to bind any one or more of them as a continuing security; and
  - 15.3 a notice, demand, consent or communication under this Deed if given to any one or more of those persons is deemed to have been given to all of them.
16. A reference to winding up, liquidation or bankruptcy includes winding up, liquidation, bankruptcy, official management, receivership, administration, dissolution, scheme of arrangement, insolvency or anything having a substantially similar effect to any of those conditions or matters.

## SCHEDULE

**Vendor:**

Full Name: DOUGLAS HUGH MCMECKAN, HILARY RUTH MCMECKAN & TINA RENNA MCMECKAN

Address: C/- Wisewould Mahony, Level 8, 419 Collins Street, Melbourne VIC 3000

Facsimile Number: (03) 9629 4035

**Purchaser:**

Full Name:

Address:

**Guarantor:**

Full Name:

Address:

**Guarantor:**

Full Name:

Address:

**EXECUTED AS A DEED** and dated the

20

**SIGNED SEALED AND DELIVERED** by )  
in the presence of: ).....  
Signature of

.....  
Signature of Witness

.....  
Name of Witness (Block letters)

.....  
Address of Witness

**SIGNED SEALED AND DELIVERED** by )  
in the presence of: ).....  
Signature of

.....  
Signature of Witness

.....  
Name of Witness (Block letters)

.....  
Address of Witness

**ANNEXURE C –  
INVENTORY OF GOODS**

**15 x Indoor restuarnt tables**  
**100 x indoor restaurant chairs**  
**11 x outdoor commercial umbrellas**  
**18 x outdoor tables**  
**50 x outdoor chairs**  
**1 x wooden host station**  
**8 x empty decorative wine barrels**  
**1 x wooden bar, complete with shelving and 2 bittle regfrigerators**  
**1 x commercial dishwashing station**  
**1 x commercial walk in coolroom (located off kitchen)**  
**1 x caravan set up as outside bar**  
**Fully equiped commercial kitchen**  
**Glassware, crockery, plates and cutlery for 150 seat restaurant**

This document is prepared from a precedent intended solely for use by legal practitioners with the knowledge, skill and qualifications required to use the precedent to create a document suitable to meet the vendor's legal obligation to give certain statements and documents to a purchaser before the purchaser signs a contract to purchase the land. This document incorporates the requirements in section 32 of the *Sale of Land Act 1962* as at 30 October 2018.

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# Section 32 Statement

## Instructions for completing this document

Words in *italics* are generally for instruction or information only.

Where marked "+" below, the authority of a person signing under a power of attorney, as a director of a corporation or as an agent authorized in writing must be added in the vendor or purchaser's name or signature box. A corporation's ACN or ABN should also be included.

"Nil" may be written in any of the rectangular boxes if appropriate.

Additional information may be added to section 13 where there is insufficient space.

The vendor makes this statement in respect of the land in accordance with section 32 of the *Sale of Land Act 1962*.

This statement must be signed by the vendor and given to the purchaser before the purchaser signs the contract. The vendor may sign by electronic signature.

The purchaser acknowledges being given this statement signed by the vendor with the attached documents before the purchaser signed any contract.

### Land

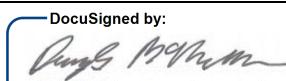
43 -53 NYE ROAD, SWAN BAY VIC 3225

+ Vendor's name

DOUGLAS HUGH MCMECKAN

Date 04-Dec-25  
/ /

+ Vendor's signature

DocuSigned by:  


954EFFD642DB434...

+ Vendor's name

HILARY RUTH MCMECKAN

Date 04-Dec-25  
/ /

+ Vendor's signature

Signed by:  


153527072B02479...

+ Vendor's name

TINA RENNA MCMECKAN

Date 03-Dec-25  
/ /

+ Vendor's signature

DocuSigned by:  


8F599D36CD13459...

+ Purchaser's name

Date  
/ /

+ Purchaser's signature

Date  
/ /

## Important information

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## 1. FINANCIAL MATTERS

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

Are contained in the attached certificate/s.

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

Not Applicable.

### 1.3 Terms Contract

This section 1.3 only applies if this section 32 statement is in respect of a terms contract where the purchaser is obliged to make 2 or more payments (other than a deposit or final payment) to the vendor after the execution of the contract and before the purchaser is entitled to a conveyance or transfer of the land.

Not Applicable.

### 1.4 Sale Subject to Mortgage

This section 1.4 only applies if this section 32 statement is in respect of a contract which provides that any mortgage (whether registered or unregistered), is NOT to be discharged before the purchaser becomes entitled to possession or receipts of rents and profits.

Not Applicable.

### 1.5. Commercial and Industrial Property Tax Reform Act 2024 (Vic) (CIPT Act)

(a) The Australian Valuation Property Classification Code (within the meaning of the CIPT Act) most recently allocated to the land is set out in the attached Municipal rates notice or property clearance certificate or is as follows	AVPCC No. 240.6
(b) Is the land tax reform scheme land within the meaning of the CIPT Act?	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
(c) If the land is tax reform scheme land within the meaning of the CIPT Act, the entry date within the meaning of the CIPT Act is set out in the attached Municipal rates notice or property clearance certificate or is as follows	Not Applicable.

## 2. INSURANCE

### 2.1 Damage and Destruction

This section 2.1 only applies if this section 32 statement is in respect of a contract which does NOT provide for the land to remain at the risk of the vendor until the purchaser becomes entitled to possession or receipt of rents and profits.

Not Applicable.

### 2.2 Owner-Builder

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

Not Applicable.

### 3. LAND USE

#### 3.1 Easements, Covenants or Other Similar Restrictions

(a) A description of any easement, covenant or other similar restriction affecting the land (whether registered or unregistered): -  
Is in the attached copies of title document/s.

(b) Particulars of any existing failure to comply with that easement, covenant or other similar restriction are:  
None to the knowledge of the Vendor.

#### 3.2 Road Access

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

#### 3.3 Designated Bushfire Prone Area

The land is in a designated bushfire prone area under section 192A of the *Building Act 1993* if the square box is marked with an "X"

#### 3.4 Planning Scheme

Attached is a certificate with the required specified information.

### 4. NOTICES

#### 4.1 Notice, Order, Declaration, Report or Recommendation

Particulars of any notice, order, declaration, report or recommendation of a public authority or government department or approved proposal directly and currently affecting the land, being a notice, order, declaration, report, recommendation or approved proposal of which the vendor might reasonably be expected to have knowledge:

Are contained in the attached certificates and/or statements.

#### 4.2 Agricultural Chemicals

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

Nil.

#### 4.3 Compulsory Acquisition

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

Nil.

### 5. BUILDING PERMITS

Particulars of any building permit issued under the *Building Act 1993* in the preceding 7 years (required only where there is a residence on the land):

Are contained in the attached certificate (if any).

### 6. OWNERS CORPORATION

This section 6 only applies if the land is affected by an owners corporation within the meaning of the *Owners Corporations Act 2006*.

Not Applicable.

### 7. GROWTH AREAS INFRASTRUCTURE CONTRIBUTION ("GAIC")

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

Not Applicable.

### 8. SERVICES

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

Electricity supply       Gas supply       Water supply       Sewerage       Telephone services

## 9. TITLE

Attached are copies of the following documents:

### Registered Title

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

## 10. SUBDIVISION

### 10.1 Unregistered Subdivision

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

Not Applicable.

### 10.2 Staged Subdivision

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

Not Applicable.

### 10.3 Further Plan of Subdivision

This section 10.3 only applies if the land is subject to a subdivision in respect of which a further plan within the meaning of the *Subdivision Act 1988* is proposed.

Not Applicable.

## 11. DISCLOSURE OF ENERGY INFORMATION

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

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

Not Applicable.

## 12. DUE DILIGENCE CHECKLIST

*(The Sale of Land Act 1962 provides that the vendor or the vendor's licensed estate agent must make a prescribed due diligence checklist available to purchasers before offering land for sale that is vacant residential land or land on which there is a residence. The due diligence checklist is NOT required to be provided with, or attached to, this section 32 statement but the checklist may be attached as a matter of convenience.)*

Is Attached.

## 13. ATTACHMENTS

*(Any certificates, documents and other attachments may be annexed to this section 13)*

*(Additional information may be added to this section 13 where there is insufficient space in any of the earlier sections)*

*(Attached is a Law Institute of Victoria published "Additional Section 32 Statement" if section 1.3 (Terms Contract) or section 1.4 (Sale Subject to Mortgage) applies)*

- 13.1 Title Search Volume 00851 Folio 125.
- 13.2 Title Plan TP586779T.
- 13.3 Title Search Volume 04149 Folio 724.
- 13.4 Title Plan TP227667M.
- 13.5 Title Search Volume 01517 Folio 244.
- 13.6 Title Plan TP792305S.
- 13.7 Section 244 Agreement AC959715T.
- 13.8 Land Information Certificate.
- 13.9 Land Tax Clearance Certificate.
- 13.10 Water Information Statement.
- 13.11 Planning Certificate.
- 13.12 Roads Certificate.
- 13.13 Building Regulations Certificates (1) & (2).

- 13.14 EPA Priority Sites Register Extract.
- 13.15 Due Diligence Checklist.
- 13.16 Section 17D Crown Land (Reserves) Act 1978 Lease (Non Retail) between Minister for Environment and Climate Change and William James McMeekan and Tina Renna McMeekan for Crown Allotment 17J, Section 2, Parish of Paywit dated 23 April 2014.
- 13.17 Management Plan for Crown Allotment 17J Section 2 Parish of Paywit, Nye Road, Swan Bay, VIC dated July 2015.
- 13.18 Producer's Licence Licence No. 32806795 issued by Liquor Control Victoria.
- 13.19 Planning Permit PP-1417-2012-C – 43-53 Nye Road, Swan Bay VIC 3225 – 21 March 2013.
- 13.20 Amendment to Planning Permit PP-1417-2012/D – 43-53 Nye Road, Swan Bay VIC 3225 – 30 November 2017.
- 13.21 Amendment to Planning Permit PP-1417-2012/D – 43-53 Nye Road, Swan Bay VIC 3225 – 15 August 2018.



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The Victorian Government acknowledges the Traditional Owners of Victoria and pays respects to their ongoing connection to their Country, History and Culture. The Victorian Government extends this respect to their Elders, past, present and emerging.

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

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VOLUME 00851 FOLIO 125

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### LAND DESCRIPTION

Lot 1 on Title Plan 586779T.  
PARENT TITLE Volume 00775 Folio 933  
Created by instrument 53657 18/05/1876

### REGISTERED PROPRIETOR

Estate Fee Simple  
Joint Proprietors

DOUGLAS HUGH MCMECKAN of UNIT 17 19 VICTORIA STREET FITZROY VIC 3065  
HILARY RUTH MCMECKAN of UNIT 601 132 SMITH STREET COLLINGWOOD VIC 3066  
TINA RENNA MCMECKAN of 15 RIVERSIDE ROAD IVANHOE VIC 3079  
AS080234U 10/04/2019

### ENCUMBRANCES, CAVEATS AND NOTICES

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

### DIAGRAM LOCATION

SEE TP586779T FOR FURTHER DETAILS AND BOUNDARIES

### ACTIVITY IN THE LAST 125 DAYS

NIL

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

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

Street Address: 43-53 NYE ROAD SWAN BAY VIC 3225

### ADMINISTRATIVE NOTICES

NIL

eCT Control 16667Y GADENS LAWYERS  
Effective from 20/10/2023

DOCUMENT END



# Imaged Document Cover Sheet

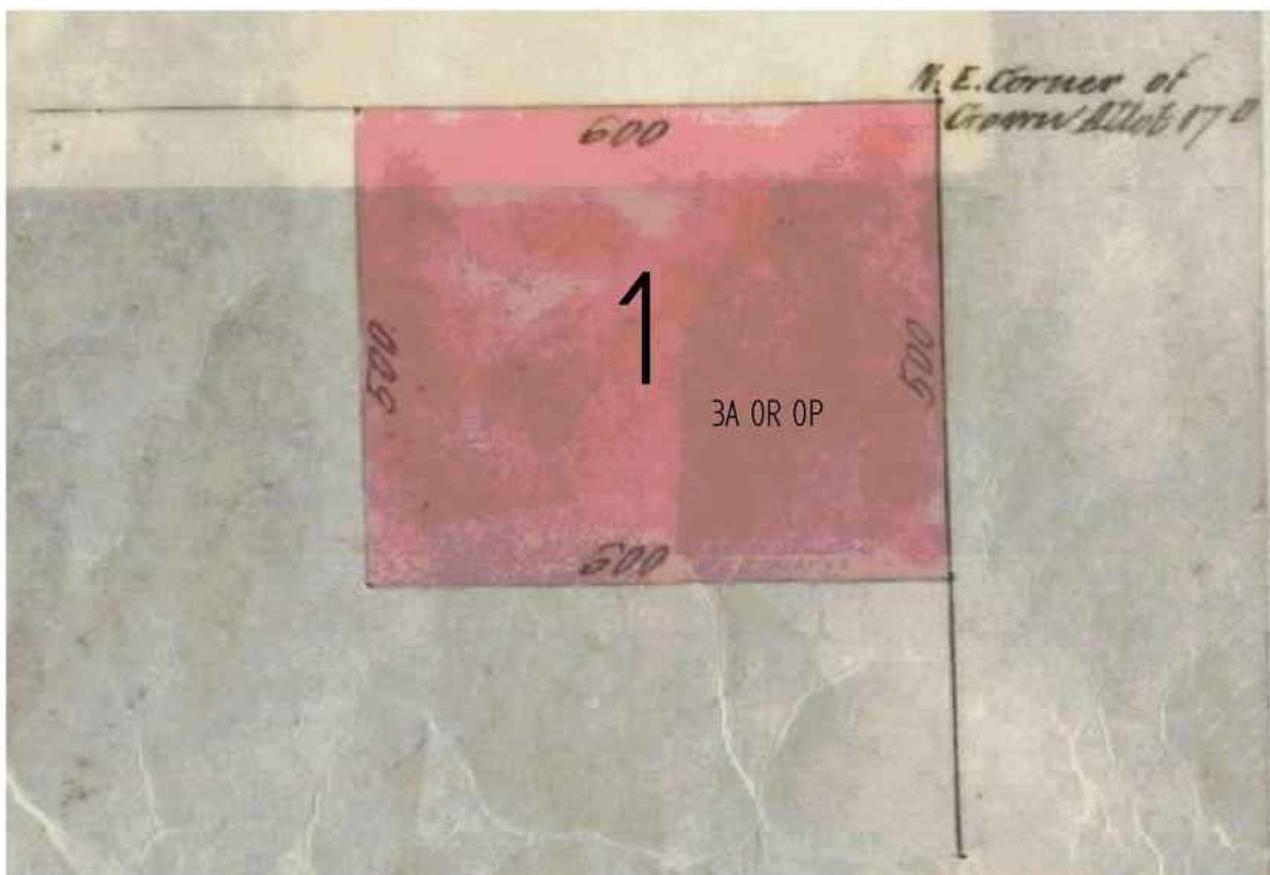
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Document Type	<b>Plan</b>
Document Identification	<b>TP586779T</b>
Number of Pages (excluding this cover sheet)	<b>1</b>
Document Assembled	<b>21/10/2025 11:02</b>

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TITLE PLAN		EDITION 1	TP 586779T												
Location of Land Parish: PAYWIT Township: Section: 2 Crown Allotment: 17D(PT) Crown Portion:  Last Plan Reference: Derived From: VOL 0851 FOL 125 Depth Limitation: NIL		Notations  ANY REFERENCE TO MAP IN THE TEXT MEANS THE DIAGRAM SHOWN ON THIS TITLE PLAN													
Description of Land / Easement Information		THIS PLAN HAS BEEN PREPARED FOR THE LAND REGISTRY, LAND VICTORIA, FOR TITLE DIAGRAM PURPOSES AS PART OF THE LAND TITLES AUTOMATION PROJECT COMPILED: 01/08/2000 VERIFIED: AD													
															
<table border="1"> <tr> <td colspan="4">TABLE OF PARCEL IDENTIFIERS</td> </tr> <tr> <td colspan="4">WARNING: Where multiple parcels are referred to or shown on this Title Plan this does not imply separately disposable parcels under Section 8A of the Sale of Land Act 1962</td> </tr> <tr> <td colspan="4">PARCEL 1 = CA 17D (PT)</td> </tr> </table>				TABLE OF PARCEL IDENTIFIERS				WARNING: Where multiple parcels are referred to or shown on this Title Plan this does not imply separately disposable parcels under Section 8A of the Sale of Land Act 1962				PARCEL 1 = CA 17D (PT)			
TABLE OF PARCEL IDENTIFIERS															
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PARCEL 1 = CA 17D (PT)															
LENGTHS ARE IN LINKS	Metres = 0.3048 x Feet Metres = 0.201168 x Links	Sheet 1 of 1 sheets													



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The Victorian Government acknowledges the Traditional Owners of Victoria and pays respects to their ongoing connection to their Country, History and Culture. The Victorian Government extends this respect to their Elders, past, present and emerging.

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

Page 1 of 1

VOLUME 04149 FOLIO 724

Security no : 124129170956Q  
Produced 21/10/2025 10:21 AM

### LAND DESCRIPTION

Lot 1 on Title Plan 227667M.  
PARENT TITLE Volume 01087 Folio 202  
Created by instrument 864336 06/09/1918

### REGISTERED PROPRIETOR

Estate Fee Simple  
Joint Proprietors

DOUGLAS HUGH MCMECKAN of UNIT 17 19 VICTORIA STREET FITZROY VIC 3065  
HILARY RUTH MCMECKAN of UNIT 601 132 SMITH STREET COLLINGWOOD VIC 3066  
TINA RENNA MCMECKAN of 15 RIVERSIDE ROAD IVANHOE VIC 3079  
AS080234U 10/04/2019

### ENCUMBRANCES, CAVEATS AND NOTICES

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

### DIAGRAM LOCATION

SEE TP227667M FOR FURTHER DETAILS AND BOUNDARIES

### ACTIVITY IN THE LAST 125 DAYS

NIL

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

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

Street Address: 43-53 NYE ROAD SWAN BAY VIC 3225

### ADMINISTRATIVE NOTICES

NIL

eCT Control 16667Y GADENS LAWYERS  
Effective from 20/10/2023

DOCUMENT END



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Document Type	<b>Plan</b>
Document Identification	<b>TP227667M</b>
Number of Pages (excluding this cover sheet)	<b>1</b>
Document Assembled	<b>21/10/2025 11:02</b>

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TITLE PLAN		EDITION 1	TP 227667M						
Location of Land Parish: PAYWIT Township: Section: 2 Crown Allotment: 17D (PT) Crown Portion:  Last Plan Reference: Derived From: VOL 4149 FOL 724 Depth Limitation: NIL		Notations  ANY REFERENCE TO MAP IN THE TEXT MEANS THE DIAGRAM SHOWN ON THIS TITLE PLAN							
Description of Land / Easement Information		THIS PLAN HAS BEEN PREPARED FOR THE LAND REGISTRY, LAND VICTORIA, FOR TITLE DIAGRAM PURPOSES AS PART OF THE LAND TITLES AUTOMATION PROJECT COMPILED: 22/06/2000 VERIFIED: C.L.							
<table border="1"> <tr> <td colspan="2">TABLE OF PARCEL IDENTIFIERS</td> </tr> <tr> <td colspan="2">WARNING: Where multiple parcels are referred to or shown on this Title Plan this does not imply separately disposable parcels under Section 8A of the Sale of Land Act 1962</td> </tr> <tr> <td colspan="2">PARCEL 1 = CA 17D (PT)</td> </tr> </table>				TABLE OF PARCEL IDENTIFIERS		WARNING: Where multiple parcels are referred to or shown on this Title Plan this does not imply separately disposable parcels under Section 8A of the Sale of Land Act 1962		PARCEL 1 = CA 17D (PT)	
TABLE OF PARCEL IDENTIFIERS									
WARNING: Where multiple parcels are referred to or shown on this Title Plan this does not imply separately disposable parcels under Section 8A of the Sale of Land Act 1962									
PARCEL 1 = CA 17D (PT)									
LENGTHS ARE IN LINKS	Metres = 0.3048 x Feet Metres = 0.201168 x Links.	Sheet 1 of 1 sheets							



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

Page 1 of 1

VOLUME 01517 FOLIO 244

Security no : 124129171726D  
Produced 21/10/2025 10:33 AM

CROWN GRANT

### LAND DESCRIPTION

Crown Allotment 17H Section 2 Parish of Paywit.

### REGISTERED PROPRIETOR

Estate Fee Simple  
Joint Proprietors

DOUGLAS HUGH MCMECKAN of UNIT 17 19 VICTORIA STREET FITZROY VIC 3065  
HILARY RUTH MCMECKAN of UNIT 601 132 SMITH STREET COLLINGWOOD VIC 3066  
TINA RENNA MCMECKAN of 15 RIVERSIDE ROAD IVANHOE VIC 3079  
AS080234U 10/04/2019

### ENCUMBRANCES, CAVEATS AND NOTICES

Any crown grant reservations exceptions conditions limitations and powers noted on the plan or imaged folio set out under DIAGRAM LOCATION below. For details of any other encumbrances see the plan or imaged folio set out under DIAGRAM LOCATION below.

AGREEMENT Section 244 Water Act 1989  
AC959715T 05/07/2004

### DIAGRAM LOCATION

SEE TP792305S FOR FURTHER DETAILS AND BOUNDARIES

### ACTIVITY IN THE LAST 125 DAYS

NIL

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

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

Street Address: 43-53 NYE ROAD SWAN BAY VIC 3225

### ADMINISTRATIVE NOTICES

NIL

eCT Control 16667Y GADENS LAWYERS  
Effective from 20/10/2023

DOCUMENT END



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Document Type	<b>Plan</b>
Document Identification	<b>TP792305S</b>
Number of Pages (excluding this cover sheet)	<b>2</b>
Document Assembled	<b>21/10/2025 11:02</b>

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TITLE PLAN		EDITION 1	TP 792305S
Location of Land Parish: PAYWIT Township: Section: 2 Crown Allotment: 17H Crown Portion:  Last Plan Reference: Derived From: VOL 1517 FOL 244 Depth Limitation: NIL		Notations SUBJECT TO THE RESERVATIONS EXCEPTIONS CONDITIONS AND POWERS CONTAINED IN CROWN GRANT VOL. 1517 FOL. 244 AND NOTED ON SHEET 2 OF THIS PLAN  ANY REFERENCE TO MAP IN THE TEXT MEANS THE DIAGRAM SHOWN ON THIS TITLE PLAN	
Description of Land / Easement Information A-1 = WATER SUPPLY EASEMENT APPURTEnant TO THE WITHIN LAND VIDE NOTIFICATION AP120750H A-2 = WATER SUPPLY EASEMENT APPURTEnant TO THE WITHIN LAND VIDE NOTIFICATION AP120736B		THIS PLAN HAS BEEN PREPARED FOR THE LAND REGISTRY, LAND VICTORIA, FOR TITLE DIAGRAM PURPOSES AS PART OF THE LAND TITLES AUTOMATION PROJECT COMPILED: 30/06/2003 VERIFIED: L.S.	
LENGTHS ARE IN METRES	Metres = 0.3048 x Feet Metres = 0.201168 x Links	Sheet 1 of 2 sheets	

TITLE PLAN		TP 792305S
<h2 style="margin: 0;">LAND DESCRIPTION INCLUDING RESERVATIONS EXCEPTIONS</h2> <h2 style="margin: 0;">CONDITIONS AND POWERS SHOWN ON THE CROWN GRANT</h2>		
<p style="text-align: center; font-style: italic; margin: 0;">All THAT PIECE OF LAND in the said Colony</p> <p style="text-align: center; font-style: italic; margin: 0;"><u>Seventeen H of Section Two in the Parish of Paywile County of Grant.</u></p> <p style="text-align: right; margin: 0;">Being Attachment</p> <hr/> <p style="text-align: center; margin: 0;">delineated with the measurements and abutments thereof in the map drawn in the margin of these presents and therein colored yellow</p> <hr/> <p style="text-align: center; margin: 0;">EXCEPTING however unto us our heirs and successors all gold and auriferous earth or stone and all mines containing gold within the boundaries of the said land. AND ALSO RESERVING to us our heirs and successors free H e-ty and authority for us our heirs and successors and our and their agents and servants at any time or times hereafter to enter upon the said land and to search and mine therein for gold and to extract and remove therefrom any gold and any auriferous earth or stone and for the purposes aforesaid to sink shafts erect machinery carry on any works and do any other things which may be necessary or usual in mining PROVIDED ALWAYS that it shall be lawful for us our heirs and successors at any time on paying full compensation to the said GRANTEE</p> <p style="text-align: center; margin: 0;">to heirs executors administrators or assigns for the full value other than auriferous of the said piece of land or so much thereof as may be resumed as hereinafter mentioned and of the improvements upon the said piece of land or the part so resumed such value in case of disagreement to be ascertained by arbitration to resume the said piece of land or any part thereof for mining purposes</p> <p style="text-align: center; margin: 0;">AND THAT the terms conditions and events upon which such land may be resumed and the manner in which such arbitration may be conducted may be determined by regulations in such manner as the Governor in Counell may from time to time direct or if at any time no such regulations shall be in force then by the regulations concerning the resumption of land for mining purposes in force at the date of this Grant unless Parliament shall otherwise determine.</p>		
LENGTHS ARE IN METRES	Metres = 0.3048 x Feet Metres = 0.201168 x Links	Sheet 2 of 2 sheets

SUBSTITUTE

**AC959715T**

05/07/2004 \$59

244



Application to register a community agreement  
Section 244 Water Act 1989



Lodged by:

Name: Phillips Fox  
Phone: 9274 5503  
Address: 120 Collins Street, Melbourne  
Ref: NPP:0017987  
Customer Code: 1390B

The owners of the land affected by a community agreement apply for registration of the agreement in the Register for the land.

Land: Certificate of title Volume 10815 Folio 335 (Lot 1 on PS505382T).  
Certificate of title Volume 10815 Folio 336 (Lot 2 on PS505382T).  
Certificate of title Volume 10815 Folio 337 (Lot 3 on PS505382T).

Certificate of title volume 1517-folio-244.

Applicant Owners: House On The Hill Gallery Pty Ltd of 1480 Queenscliff-Portarlington Rd, Point Lonsdale

Jane Helene Rodwell and Sean Martin Rodwell of 41 and 43-53 Nye Road, Swan Bay.

Date of Agreement: 30 June 2004

The agreement is attached to this application.

Dispensation is requested from production of the certificates of title.

Date: 4 October 2004

Signed:



AC959715T-1-9

X244

97. V.10815 F.335 (2)

V.10815 F.336 (2)

V.10815 F.337 (2)

V.1517 F.244

ML 20/10/04

Nigel Preston for Phillips Fox.

Current practitioners for House On The Hill Gallery Pty Ltd

*Solicitors & Co Sydney*

Current practitioners for Jane Helene Rodwell and Sean Martin Rodwell

AC959715T

05/07/2004 \$59

244

Application to register an agreement  
Under Section 234 of the Water Act 1989  
Section 236 Water Act 1989

Lodged by:

Name: Phillips Fox  
Phone: 9274 5503  
Address: 120 Collins Street, Melbourne  
Ref: NPP:0017987  
Customer Code: 1390B

This application is now being  
made pursuant to section  
244 of the Water Act 1989  
as an application to register a  
community agreement.  
Please see the attached form.

D. Adams  
Legal Branch 6.10.04

The owner of the land in favour of which/over which a right of access has been created applies  
for registration of the agreement in the Register as to the land affected.

Land over which right is created:

Those parts of certificates of title volume 9148  
folio 571, volume 8158 folio 696 and volume  
8158 folio 697 marked E-1 and E-3 on Lot 3 of  
attached Plan of Subdivision No. PS505382T

Those parts of certificates of title volume 9148  
folio 571, volume 8158 folio 696 and volume  
8158 folio 697 marked E-1 on Lot 2 of  
attached Plan of Subdivision No. PS505382T

That part of certificates of title volume 9148  
folio 571, volume 8158 folio 696 and volume  
8158 folio 697 marked E-4 on Lot 3 of  
attached Plan of Subdivision No. PS505382T

Those parts of certificates of title volume 9148  
folio 571, volume 8158 folio 696 and volume  
8158 folio 697 described as Lot 1 and Lot 2 on  
attached Plan of Subdivision No. PS505382T.

Those parts of certificates of title volume 9148  
folio 571, volume 8158 folio 696 and volume  
8158 folio 697 described as Lot 1 on attached  
Plan of Subdivision No. PS505382T.

Those parts of certificates of title volume 9148  
folio 571, volume 8158 folio 696 and volume  
8158 folio 697 described as Lot 1 and Lot 2 on  
attached Plan of Subdivision No. PS505382T.

Certificate of title volume 1517 folio 244.

Applicant Owner:

House On The Hill Gallery Pty Ltd of 1480 Queenscliff-  
Portarlington Rd, Point Lonsdale.

Date of Agreement:

30 June 2004

The agreement is attached to this application.

Dispensation is requested from production of the certificates of title.

Date:

1 July 2004

Signed:

Phillip Fox

X 234

C/7, V. 8158 F. 696 (P7)

V. 8158 F. 691 (P7)

# 8158 F. 6

V. 9148 F. 571 (P7)

W/ 19/7/04



DAC959715T-2-7

CURRENT LEGAL PRACTITIONER  
UNDER THE LEGAL PRACTICES ACT 1996.

120 Collins Street  
Melbourne VIC 3000  
PO Box 4301PP  
Melbourne VIC 3001  
Australia  
DX 147 Melbourne  
Tel +61 3 9274 5000  
Fax +61 3 9274 5111  
[www.phillipsfox.com](http://www.phillipsfox.com)

Adelaide  
Brisbane  
Canberra  
Melbourne  
Perth  
Sydney  
Auckland  
Wellington  
Hanoi  
Ho Chi Minh City



DAC959715T-3-5

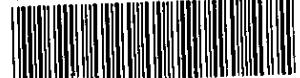
**Community water supply agreement  
Made under Part 12 of the Water Act 1989**



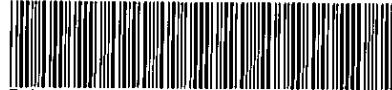
**AC959715T**

05/07/2004 \$59

244



Community water supply agreement



DAC959715T-4-3

**phillips**  
**fox**

This Agreement is made on the 30th day of June 2004.

The parties are named in column 1 of schedule 2.

### Operative provisions

- A. The landowners have agreed to establish a community water supply scheme, whose primary purpose is to supply water to farms and to distribute the water supply in accordance with this Agreement.
- B. The Committee is established under the agreement to act on behalf of the landowners. The Committee holds (or is entitled to be granted) a supply by agreement from the Authority to divert water from a stated point of diversion, for the purpose of supplying water to the landowners in accordance with this Agreement.
- C. The Council have agreed to part of the proposed works being constructed in or along its road reserves.
- D. The landowners have agreed that the supply of water and the proposed works will benefit all of the landowners.
- E. The adjoining landowner is a party to an existing agreement for the supply of water by the Authority by means of the existing works and is a party to this Agreement in order to facilitate the water supply to the landowners.
- F. The landowners and the adjoining landowner are aware that this Agreement will have force and effect upon registration under the *Transfer of Land Act 1958* as provided for in section 244 of the Act.

**AC959715T**

05/07/2004 \$59 244



### NOW IT IS HEREBY AGREED:-

#### DEFINITIONS

- 1.1 In this Agreement unless the context otherwise indicates the following phrases have the following meanings:-
  - “Act” means the *Water Act 1989*.
  - ‘**Adjoining Landowner**’ means the persons named in column 1 of table 2 of the Second Schedule, together with their respective personal representatives, transferees and assigns. The number allocated to the **adjoining landowner** in column 1 of table 2 of the Second Schedule may be used in this Agreement to describe the adjoining landowner.
  - “**Annual charge**” means the charge set by the Committee each year as provided in clause 8.3.
  - “**Authority**” means the Barwon Water Authority and its successors including (where applicable) any successor or licensee under the *Water Industry Act 1994*.



DAC959715T-5-1

**phillips**  
**fox**

Community water supply agreement

**"Committee"** means the Committee as from time to time constituted under clause 2.

**"Council"** means the relevant Municipal Council or its successors.

**"Entitlement"** means the unlimited volume of water as from time to time measured by a landowner's meter and used exclusively for domestic and stock purposes.

**"Eligible representative"** means a spouse, de facto spouse or child of a landowner or a director or manager of a corporate landowner who is appointed by that landowner in writing addressed to the Committee and who is, with regard to the land described in column 2 of table 1 of the Second Schedule of that landowner, actively involved in working or farming that land. For the purposes of this definition "actively involved" shall include the physical working of that land or the financial and administrative management of that land.

**"Existing Works"** means those works on property (iii) and property (iv) which existed immediately prior to the installation of the proposed works for the purpose of the supply of water from the Authority to the adjoining landowner. This includes:

- (a) The existing works more particularly described in the Fourth Schedule; but
- (b) does not include private works or proposed works.

**"Financial year"** means the year ending 30 June, unless the Committee determines otherwise.

**"Landowner"** means the persons named in column 1 of table 1 of the Second Schedule or in column 1 of the Third Schedule (as the case may be), together with their respective personal representatives, transferees and assigns. For the purposes of this agreement it also means a person who has an enforceable right to own any **Land affected by the scheme**. The number allocated to each landowner in column 1 of table 1 of the Second Schedule may be used in this Agreement to describe that landowner.

**"Land affected by the scheme"** means the respective lands owned by the landowners and which at the date of this Agreement are described in column 2 of table 1 of the Second Schedule or are otherwise described or required to be described, in the Register.

**"Maintain"** includes to repair, alter and replace and "maintenance" has a similar meaning.

**"Maintenance expenses"** means the costs and expenses relating to the operation and maintenance of the works, administration expenses, insurance premiums and other necessary and incidental expenses relating to the implementation of the Agreement including any costs and expenses incurred by the Committee pursuant to section 245 of the Act after implementation of this Agreement.

**"Point of supply"** means the point on the landowner's land to which the Committee shall supply the water.

AC959715T

114175049 \ 0017987 \ BBM01

05/07/2004 \$59 244

2



Community water supply agreement

**"Private works"** means the internal works that are required to convey a landowner's water from the point of supply to the landowner's land affected by the scheme and includes any storage dams or tanks necessary to store the water.

**"Proposed Works"** means the works required to deliver the water supply and includes:

- (a) the proposed works more particularly described in the Fourth Schedule; and
- (b) the plant and machinery necessary to allow the proposed works and the existing works to function as a water supply system; but

does not include private works or existing works.



DAC959715T-6-0

**"Tapping point"** means the point at which the proposed works will tap into the existing works to facilitate the water supply to the landowners. This is the point described as 'tapping' in detail (i) in the plan which is annexed to the Seventh Schedule.

**"Unanimous resolution"** means a resolution, proposed as a unanimous resolution and passed by either all of the landowners or all of the landowners and the adjoining landowner, as required by this Agreement.

**"Water supply"** means the volume of water supplied by the Authority to the Committee.

- 1.2 Words in bold type, unless the context otherwise indicates, are to be construed according to the meaning of them given by this Agreement.
- 1.3 This Agreement is to be interpreted as including any agreements varying this Agreement and registered under the *Transfer of Land Act 1958*.
- 1.4 The singular includes the plural and vice versa.
- 1.5 A word denoting any gender includes all genders.
- 1.6 A reference to a person includes a reference to a firm, corporation or other corporate body and vice versa.
- 1.7 If a party consists of more than one person this Agreement binds them jointly and each of them severally.
- 1.8 A reference to a statute shall include any statutes amending, consolidating or replacing same and shall also include any regulations made under such statutes as those regulations are in force from time to time.
- 1.9 All headings are for ease of reference only and shall not be taken into account in the construction or interpretation of this Agreement.
- 1.10 This Agreement is entered into by the landowners and the adjoining landowner as a mutual and co-operative agreement to facilitate a supply of the landowner's entitlements to their lands affected by the scheme and to preserve the supply of

AC959715T

05/07/2004 \$59 244



## Community water supply agreement

water to the adjoining landowner. The consideration given by all and each of the landowners and the adjoining landowner for this agreement are the mutual covenants given by each to each other for the purposes of providing the supply of water to their respective lands. In the interpretation of this agreement the landowners and the adjoining landowner agree that any court, tribunal, arbitrator, expert or other person adjudicating on the construction of or the interpretation of this Agreement must take into account the mutual objectives of the landowners and the adjoining landowner as set out in this clause and the Agreement generally, and that each landowner and the adjoining landowner benefits from the supply of the water, and that each landowner and the adjoining landowner carries the obligation of facilitating, within the terms of this Agreement, other landowners receiving their entitlements.

## THE COMMITTEE



### *Members of the Committee*

DAC959715T-7-8

- 2.1 There shall be a governing committee which shall consist of all landowners and persons with an enforceable right to own land identified by this agreement or their eligible representatives.
- 2.2 A landowner who has appointed an eligible representative may at any time in writing addressed to the Committee revoke the appointment and in such circumstances the eligible representative shall thereupon cease to be a member of the Committee or be eligible to be nominated as a member of the Committee.
- 2.3 The persons described in the 1st schedule shall be initial members of the Committee and any person described therein as an eligible representative shall be deemed to be so appointed by virtue of this Agreement.

## MEETINGS OF LANDOWNERS

- 3.1 The landowners may hold general meetings for the purposes of exercising any powers under this Agreement or the Act and the provisions of the Fifth Schedule shall apply to such meetings of landowners.

AC959715T

## ACCESS OVER LAND

05/07/2004 \$59 244

### *Access by the Committee*

- 4.1 The landowners agree to permit any person appointed by the Committee, including that person's servants and agents, together with vehicles and machinery, the right to enter upon each of their respective lands affected by the scheme for the purpose of constructing, operating, maintaining or removing the proposed works or the existing works.

## CONSTRUCTION AND MAINTENANCE OF PROPOSED WORKS AND EXISTING WORKS

### *Construction*

- 5.1 The parties responsible for the construction of the proposed works are contained in the Fourth Schedule.



## Community water supply agreement

### **Maintenance**

- 5.2 The parties responsible for the maintenance of the proposed works and the existing works are contained in the Fourth Schedule.
- 5.3 The Committee shall be entitled to maintain the proposed works and the existing works and be reimbursed by the landowner, in the event that the landowner does not comply with its responsibilities.
- 5.3 The Committee must cause maintenance works to be carried out upon the proposed works and the existing works if so directed at any time by a general meeting of landowners.
- 5.4 Each landowner shall be responsible for the construction and maintenance of that landowner's private works.

### **Compliance with conditions imposed by affected bodies**

- 5.5 The Committee and the landowners must at all times comply with any directions given by any public statutory authority relating to the maintenance or use of the proposed works or the existing works.

### **Interference with the proposed works or the existing works**

- 5.6 Except as provided by the Act, a landowner or the adjoining landowner must not, without first obtaining the consent of the Committee:-
  - (i) construct any obstruction in or across the proposed works or the existing works;
  - (ii) interfere with the proposed works or the existing works or the flow of water within the proposed works or the existing works;
  - (iii) interfere with access to the proposed works or the existing works; or
  - (iv) intentionally cause any other water to enter in, or flow along the proposed works or the existing works.

## **SUPPLY OF WATER SUPPLY**

### **Supply**



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- 6.1 Subject to clause 6.3, the Committee in any financial year must supply to each of the landowners so entitled, their entitlement.

### **Conditions on supply**

- 6.2 (a) The Committee may by unanimous resolution impose, by notice, terms and conditions on a landowner in respect of:-
  - (i) the supply of water from the proposed works and the existing works;
  - (ii) the time of supply;

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(b) The Committee may impose by notice, terms and conditions on a landowner in respect of:

- (i) the construction or maintenance of any private works in accordance with the obligations of the landowners pursuant to this Agreement; or
- (ii) any other matter regulated by this Agreement.

***Reduction, restriction or discontinuance of supply***

6.3 The Committee may reduce or restrict the quantity of the entitlement to any landowners or discontinue the supply of the entitlement to any landowner if

- (a) to do otherwise would be a breach of the law; or
- (b) the landowner refuses or fails to pay any moneys properly due to the Committee pursuant to this Agreement.

***Landowner and adjoining landowner obligations***

6.4 A landowner or an adjoining landowner must not, and must ensure that the occupier of a landowner's land does not:-

- (a) interfere with any works of the Authority or the Committee;
- (b) interfere with the taking by another landowner of his entitlement;
- (c) interfere with the supply of water to the adjoining landowner.

**DUTY OF SECRETARY**

***Secretary to be the contact person***

7.1 Unless otherwise unanimously agreed by the landowners the secretary shall be the contact person for dealing with the Authority.

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***Obligations of secretary***

7.2 The secretary must:-

- (a) pay on behalf of the Committee all monies owing to the Authority;
- (b) carry out all other dealings with the Authority.

***Reading of meter***

7.3 The secretary may, at any time, read and record any meter/s to determine the supply of water to the Committee or any landowner.

***Measurement of water taken***

7.4 Should at any time there be no metering device to record the volume of water delivered by the Authority to the Committee, or by the Committee to a landowner or should



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such meter malfunction the **Secretary** shall calculate the amount of water supplied to the landowner according to the methods usually adopted by the **Authority** to calculate water supplied by it when the volume of water has not been or properly ~~been~~ measured by a metering device.

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**FINANCIAL MATTERS*****Capital charge***

- 8.1 Subject to the Fourth Schedule the Committee ~~will impose on each of the landowners~~ a capital charge for the purposes of any future construction, installation or replacement of all or any of the proposed works or the existing works.
- 8.2 Where the Committee is responsible for any part of the proposed works or the existing works the Committee shall determine the capital charge as an amount between the landowners calculated on a pro rata basis of the number of lots owned by each landowner as set out in the Second Schedule.

***Annual charge***

- 8.3 In each financial year, the Committee must prepare an estimate of the expenses of administering and supplying an entitlement and must set an annual charge in respect of each landowner. In setting the annual charge the Committee must include the cost of any charges imposed by the Authority and the Committee must also take into account, the maintenance expenses relating to the Committees responsibilities, the reasonable costs and expenses of administering this Agreement and the supplying of each landowner's entitlement.
- 8.4 The Committee must give notice to each landowner of the annual charge payable by that landowner.

***Payment for water used***

- 8.5 Each landowner shall pay to the Committee, the amount fixed by the Committee, according to the volume of water that each landowner has received, for a period fixed by the Committee. Such payment to be made within 14 days of the landowner being notified by the Committee.

***Payment and recovery of monies***

- 8.6 The Committee may require payment of money due under this Agreement at such time and in such manner as the Committee may determine. If the time for payment of any amount is not stipulated by the Committee, then such amount must be paid within 30 days of notice being given. In particular the Committee may require a landowner to pay to it the cost per litre of water charged by the Authority to the Committee before supplying to the landowner any entitlement.
- 8.7 Any money due to the Committee under this Agreement bears interest, calculated on a daily basis, from the date that the money becomes due to the date that the money is paid, at the rate fixed by the Committee not exceeding the rate fixed from time to time under the Act or the *Water Industries Act 1994* (as the case may be) for unpaid fees imposed under tariffs.



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8.8 The **landowners** authorise the **Committee** to sue any **landowner** to recover payment of any monies due under this Agreement in any Court of competent jurisdiction. The **offending landowner** be responsible for all court costs incurred by the **Committee** in obtaining outstanding balance owing.

#### **Accounts**

8.9 (a) The **secretary** must keep proper books of accounts in relation to the moneys received and expended by the **Committee**.

(b) The **secretary** must present a statement of receipts and expenditure at the annual general meeting of **landowners**. The statement must be audited if previously requested by a meeting of **landowners**.

#### **Requests for information**

8.10 At the request of any person, the **secretary** must provide the person with a statement of any monies owing by a **landowner** under this Agreement, and a copy of, or an extract from, the Register insofar as it affects the land **affected by the scheme** of the **landowner** inquired of. The **Committee** may from time to time fix a fee for carrying out the provisions of this clause, provided that such fee shall not exceed the fee from time to time prescribed under section 158 of the Act for Information Statements.

#### **ADJOINING LANDOWNER**

9.1 The adjoining landowner consents to the landowners entering this Agreement.

9.2 The adjoining landowner will not prevent, obstruct or hinder in any way the water supply by the Authority to the Committee or the landowners and agrees to maintain the existing works as described in the Fourth Schedule.

9.3 In consideration for the adjoining landowner's consent and agreement herein contained, the Committee and the landowners must not prevent, obstruct or hinder in any way with the supply of water by the Authority to the adjoining landowner and the landowners release the adjoining landowner against all claims by the landowners in relation to the proposed works and the use thereof. This release shall not apply to the extent the claims are caused or contributed to by the negligent act, default or omission of the adjoining landowner or its employees, agents, invitees and contractors.

9.4 In further consideration of the adjoining landowner's consent and agreement herein contained:

(a) the landowner named i in column 1 of table 1 of the Second Schedule indemnifies the adjoining landowner against all claims from third parties in relation to the proposed works or the use thereof arising under arrangements existing between third parties and the adjoining landowner as at the date of this Agreement to the extent caused or contributed to by that landowner;

(b) the landowner named ii in column 1 of table 1 of the Second Schedule indemnifies the adjoining landowner against all claims from third parties in relation to the proposed works or the use thereof arising under

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Community water supply agreement

arrangements existing between third parties and the adjoining landowner as at the date of this Agreement to the extent caused or contributed to by that landowner;

- (c) the landowner named iii in column 1 of table 1 of the Second Schedule indemnifies the adjoining landowner against all claims from third parties in relation to the proposed works or the use thereof arising under arrangements existing between third parties and the adjoining landowner as at the date of this Agreement to the extent caused or contributed to by that landowner;
- (d) each of the landowners covenant that they will not join the adjoining landowner in any claims by any one or more of them against the other or others of the landowners in relation to the proposed works or the use thereof;
- (e) the indemnities contained in sub-clauses (a), (b) and (c) and the covenant contained in sub-clause (d) shall not apply to the extent that the claims are caused or contributed to by the negligent act, default or omission of the adjoining landowner or its employees, agents, invitees or contractors.

9.5 The landowners must pay any costs reasonably incurred by the adjoining landowner in relation to the installation of the proposed works described in details (i), (ii) and (ii) in the plan which is annexed to the Seventh Schedule, and the negotiation, preparation and completion of this Agreement.

9.6 Each landowner and adjoining landowner is responsible for any damage caused by that landowner or adjoining landowner to the existing works.

9.7 The adjoining landowner must do all things necessary to enable registration of this Agreement on the title of the adjoining landowner.

#### ADDITIONAL METER

10.1 Subject to the approval of the Authority, the landowner named iii in column 1 of table 1 of the Second Schedule agrees to install an additional meter on the existing works between the tapping point and property (iv) at its cost.

10.2 The landowner named iii in column 1 of table 1 of the Second Schedule is to arrange and control the installation of the additional meter and all matters which are incidental to the installation including the additional meter's design and engineering. The landowners named i and ii in column 1 of table 1 of the Second Schedule and the adjoining landowner agree to accept such installation including design and engineering of the additional meter as is proposed by the landowner named iii in column 1 of table 1 of the Second Schedule and is approved by the Authority.



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## GENERAL

### Register

11.1 The Committee must keep a Register in the form or its like of the Third Schedule and ensure that it shows any changes in the ownership of land affected by the scheme

### Disputes

11.2 Disputes between the landowners arising under this Agreement shall be determined by the Committee or a person or persons appointed by the Committee to act in its stead. The Committee or any persons appointed must act according to the principles of natural justice and their decision shall be final and binding on all parties.

11.3 Clause 11.2 does not apply to disputes in respect of which part 12 of the Act provides a method of resolution or confers a right of appeal on a party to the dispute.

### Mediation

11.4 Notwithstanding clauses 11.2 and 11.3, the parties to a dispute may agree to determine their dispute by mediation. In such an event any agreement reached by mediation shall be final and binding on both parties. The mediator shall set the rules governing the mediation.

### Victorian laws apply

11.5 This Agreement shall be governed by the law relating to the State of Victoria.

### Committee members indemnified

11.6 The landowners jointly and severally indemnify each member of the Committee for all costs, expenses, losses and liabilities which such members may incur or have imposed in the execution of his or her position as a Committee member.

### Changes to Agreement

11.7 The landowners and the adjoining landowner may, by unanimous resolution, authorise the Committee to sign an agreement for the purposes of section 245 of the Act to vary or revoke this Agreement provided however, that no such alteration shall operate so as to vitiate any agreement with or conditions imposed by the Council or any other public statutory Authority.

11.8 The landowners appoint the Committee to be their joint and several lawful attorneys for the purposes of signing any variation or revocation of this Agreement pursuant to section 245 of the Act as agreed to by a unanimous resolution of landowners.

### Transfer of committee functions

11.9 The Committee must, if directed by a unanimous resolution of the landowners request the Authority or the Council to perform the functions and exercise the powers of the Committee as provided for in section 246 of the Act.

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11.10 Where the Agreement provides for notice to be given to a person or party then, unless the Agreement provides otherwise, notice must be in writing and may be given:-

- (a) by delivering it personally to the person to whom it is to be given;
- (b) by pre-paid post, addressed to the person to whom it is to be given at that person's last known address;
- (c) by facsimile to the facsimile number of the addressee; or
- (d) by any other method of electronic service or communication approved at law.

11.11 A notice or other communication is deemed served:

- (a) if delivered, upon delivery;
- (b) if posted, on the expiration of 2 business days after the date of posting;
- (c) if sent by facsimile prior to 5.00 pm on a business day - that day;
- (d) if sent by facsimile after 5.00 pm - at 9.00 am on the next business day at the place where it is received;
- (e) if sent by any other method of electronic service or communication - at the time the notice or communication is communicated to the person concerned.

**Severance**

11.12 If any provision of this Agreement is either held void or unenforceable by any arbitrator, court or tribunal, then to the extent possible at law that provision shall be struck out and the balance of this Agreement shall continue to apply.

**Waiver**

11.13 No failure to exercise nor any delay in exercising any right, power or remedy by a party in relation to this Agreement operates as a waiver. A single or partial exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless made in writing.

**Power of Attorney**

11.14 For the purposes of facilitating registration of this Agreement at the Land Titles Office pursuant to section 244 of the Act the landowners jointly and severally appoint Phillips Fox Lawyers of 120 Collins Street, Melbourne, to be their lawful attorney.

This Power of Attorney shall cease and be automatically revoked upon registration of this Agreement at the Land Titles Office.

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**Termination of Agreement**

**11.15 If the landowners and the adjoining landowner, by unanimous resolution, resolve to terminate this Agreement, then, subject to any contrary terms in the resolution:-**

- (a) The landowners appoint the Committee to act as their agent pursuant to section 245 (2) of the Act; and**
- (b) the Committee shall:**
  - (i) execute and register at the Land Titles Office an agreement terminating this Agreement;**
  - (ii) after payment of all expenses, costs and fees necessary to complete the termination of this Agreement, divide any monies left between the landowners.**



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SIGNED AS A DEED by the landowners and the adjoining landowners

Signed, sealed and delivered by Jane Helene  
Rodwell in the presence of:

Signature of witness

Signature of Jane Helene Rodwell

Name of witness (print)

Signed, sealed and delivered by Sean Martin  
Rodwell in the presence of:

Signature of witness

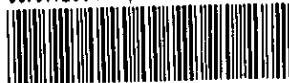
Signature of Sean Martin Rodwell

Name of witness (print)

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Signed sealed and delivered by House On  
The Hill Gallery Pty Ltd (ACN 099 560 488)  
acting by the following persons or, if the seal  
is affixed, witnessed by the following persons:

Signature of director

Signature of director/secretary

Full name of director (print)

Full name of director/secretary (print)

1480 QUEENSCLIFF - PORT ARTHUR ROAD  
Address of director P.O. BOX 3225 Address of director/secretary

J & V Crowley - Clough  
BRACKEN HILL FARM  
P O Box 195  
QUEENSCLIFF 3225

J & V Crowley - Clough  
BRACKEN HILL FARM  
P O Box 195  
QUEENSCLIFF 3225

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**fax**

## FIRST SCHEDULE

### ***Initial members of Committee* (clause 2.3)**

Name

John Crowley-Clough .....

.....  
Name

David Gordon Inglis.....

.....  
Name



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## SECOND SCHEDULE

### Table One

#### Description of Landowners and land affected by the Scheme

Column 1		Column 2					
No	Name & Address	Lot	Plan No.	Crown Allot.	Section	Parish	Vol/ Folio
i	House on the Hill Gallery Pty Ltd 1412 - 1510 Queenscliff Rd. Swan Bay	1	P/S LP505382T	Pts 9 & 10		Paywit	
ii	House on the Hill Gallery Pty Ltd 1412-1510 Queenscliffe Road, Swan Bay.	2	P/S LP505382T	Pts. 9 & 10		Paywit	
iii	House on the Hill Gallery Pty Ltd 1412 - 1510 Queenscliffe Road, Swan Bay	3	P/S LP505382T	Pts 9 & 10		Paywit	

### Table Two

#### Description of Adjoining Landowner

Column 1		Column 2					
No	Name & Address	Lot	Plan No.	Crown Allot.	Section	Parish	Vol/ Folio
iv	Jane Helene Rodwell and Sean Martin Rodwell  41 and 43-53 Nye Road, Swan Bay 3225			17H	2	Paywit	Part of 1517/ 244

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### THIRD SCHEDULE

#### *Form of Register*

Column 1	Column 2
Name & Address	Description of land affected by scheme
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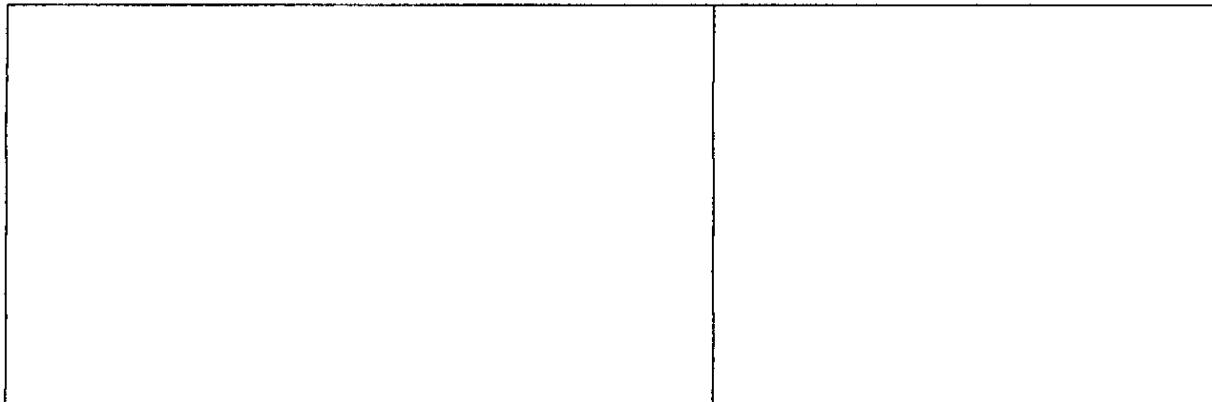


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**FOURTH SCHEDULE****Installation and maintenance of proposed works and existing works****1 Installation**

1.1 The **landowners** of properties (i), (ii) and (iii) will be jointly responsible for installation of the **proposed works** described in details (i), (ii) and (iii) in the plan which is annexed to the Seventh Schedule.

**2 Maintenance**

2.1 Subject to clause 10.5, the **landowners** of properties (i), (ii) and (iii) and the **adjoining landowner** will be jointly responsible for the maintenance of all of that part of the **existing works** which extends from the **tapping point** to the point of supply of water by the **Authority**.

2.2 Subject to clause 10.5, the **landowners** of properties (i), (ii) and (iii) will be jointly responsible for the maintenance of the **proposed works** on a pro rata basis on the number of lots owned by each **landowner** as set out in table 1 of the Second Schedule.

2.3 Subject to clause 10.5, the **adjoining landowner** will be solely responsible for the maintenance of that part of the **existing works** which extends from the **tapping point** to property (iv).



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## FIFTH SCHEDULE

*Meetings of landowners*

1. The Committee may at any time, or the secretary upon the request in writing of at least 25% of the landowners, must call a general meeting of all landowners. Any such meeting called by the landowners shall be held upon such date determined by the Committee but as soon as possible after receipt by the secretary of such request. Twenty one (21) days notice of the date, place and business of the meeting shall be given to the landowners.
2. A quorum for a general meeting shall be 50% of landowners entitled to be present and vote.
3. Except in the case of joint landowners or tenants in common, all landowners shall be entitled to one vote at any meeting. Where there are joint landowners or tenants in common only one of them may vote in person or by proxy and if both or more than one vote then only the vote of the person whose name is the first name in the Agreement or on the Register can be counted.
4. The Chairperson of the Committee shall be the chairperson of the annual general meeting or any general meeting of landowners or in the Chairperson's absence the meeting shall elect one of the landowners to chair such meeting.
5. Unless otherwise stated in this Agreement a question arising at a meeting shall be determined by a majority of votes of members present and voting on that question, and if voting is equal, the person presiding has a casting as well as a deliberative vote.
6. A landowner can appoint in writing another person to act as a proxy at any meeting.
7. The secretary shall be responsible for keeping minutes of any general meeting of the landowners.
8. The Chairperson of the meeting can otherwise determine procedures at any meeting of landowners.



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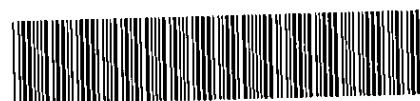
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**SIXTH SCHEDULE*****Membership and Proceedings of Committee***

1. The members of the **Committee** shall hold office from the time of their election or appointment until the next annual general meeting.
2. A member of the **Committee** shall cease to hold office if the member no longer owns any land supplied by the scheme or land affected by the scheme over which rights of access have been granted or if that member is an eligible representative, the landowner appointing such eligible representative no longer owns any land or has an enforceable right to own land supplied by the scheme or land affected by the scheme over which rights of access have been granted. Any casual vacancy shall be filled by the appointment by the **Committee** of a landowner or eligible representative who is not represented as a result of that casual vacancy occurring.
3. Any landowner or eligible representative shall be eligible to be nominated to be a member of the **Committee**. In the event of there being more nominations than vacancies, a ballot shall be conducted by the Chairperson for the time being at the annual general meeting.
4. All eligible retiring members of the **Committee** shall be eligible for re-election of the **Committee** unless in the case of an eligible representative the appointment has been revoked.
5. The **Committee** must elect one of its members as a Chairperson and one of its members as a secretary to the **Committee**.
6. Unless provided otherwise in this Agreement a question arising at a meeting shall be determined by a majority of votes of members present and voting on that question, and if voting is equal, the person presiding has a casting as well as a deliberative vote.
7. The secretary shall be responsible for keeping minutes of meetings of the **Committee**.
8. The **Committee** can otherwise determine its own procedures.



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## **SEVENTH SCHEDULE**

### **DESCRIPTION OF THE PROPOSED WORKS**

**As set out in the plan attached.**



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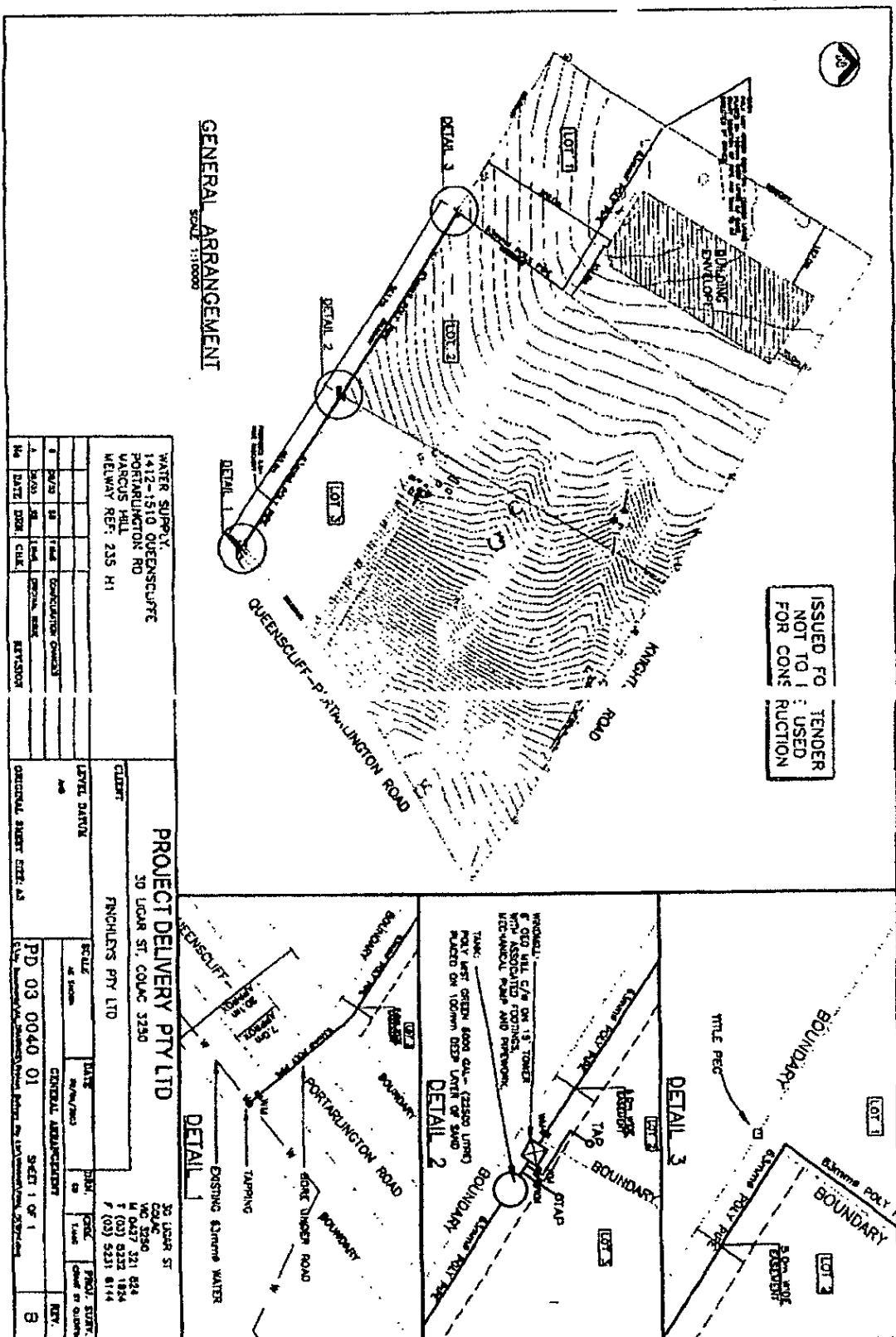
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**CITY OF GREATER GEELONG**

WADAWURRUNG COUNTRY  
PO Box 104, Geelong VIC 3220  
P: 03 5272 5272  
E: [contactus@geelongcity.vic.gov.au](mailto:contactus@geelongcity.vic.gov.au)  
[www.geelongaustralia.com.au](http://www.geelongaustralia.com.au)

**2025-2026 LAND INFORMATION CERTIFICATE**

In accordance with Section 121 of the Local Government Act 2020

Date of Issue: **21-Oct-2025**Certificate No: **238035**

Applicants Ref:

**78494320-025-2:210539***Assessment Number:* **64094**

Property Address: **43-53 Nye Road, SWAN BAY VIC 3225**  
 Property Description: **8979m2 CA 17H Sec 2, 11259m2 Lot 1 TP  
586779, 8135.6m2 Lot 1 TP 227667**  
 AVPCC / Land Use: **240.6 - Restaurant**

Applicant:

**Secure Electronic Registries Victoria Pty Ltd  
PO BOX 500  
EAST MELBOURNE VIC 8002**

Operative Valuation Date:	<b>01-Jul-2025</b>
Level of Valuation Date:	<b>01-Jan-2025</b>
Capital Improved Value:	<b>1,150,000</b>
Site Value:	<b>925,000</b>
Net Annual Value:	<b>57,500</b>

**This certificate provides information regarding Valuation, Rates, Charges, other monies owing and any orders and notices made under the Local Government Act 1958, Local Government Act 1989, Local Government Act 2020 or under a local law or By-Law of the Council.**

**This certificate is not required to include information regarding Planning, Building, Health, Land Fill, Land Slip, other Flooding Information or Service Easements. Information regarding these matters may be available from the Council or the relevant Authority. A fee may be charged for such information.**

Particular of Rates & Charges, Outstanding Notices and Works for which a charge has been made:

- ♦ The **current rating year** is for the period **01/07/2025** to **30/06/2026**. Lump sum payment – due by **15/02/2026** or by instalment **30/09/2025, 30/11/2025, 28/02/2026** and **31/05/2026**. Interest is chargeable after these dates on any outstanding amount.
- ♦ Interest on outstanding charges and additional payments or charges may have affected the balance, please check with this office at time of settlement for an update amount. Telephone **03 5272 5272**.

**Please Note: Council has no involvement in the settlement process. On request any overpayment of rates at settlement will be refunded to the payee.**

Confirmation of any variation to this certificate will only be given for up to 90 days from the date of issue (ie. **19-Jan-2026**) and within the current financial year.

**The Local Government Act 2020 requires a Notice of Acquisition be submitted to ensure Purchasers correct name and address details are held by Council. Council cannot accept liability for incorrect addresses when notification in writing has not been supplied.**

*Notice can be emailed to:* **[transfers@geelongcity.vic.gov.au](mailto:transfers@geelongcity.vic.gov.au)**

**2025-2026 LAND INFORMATION CERTIFICATE (cont.)**In accordance with Section 121 of the  
Local Government Act 2020Date of Issue: **21-Oct-2025****eService**Certificate No: **238035**Property Address: **43-53 Nye Road, SWAN BAY VIC 3225**Assessment Number: **64094.6**

<b>Rate, Charges &amp; Other Monies</b>		<b>Amount \$</b>
<b>Arrears:</b>	Balance Brought Forward	0.00
	Legal Fees Arrears	0.00
<b>Current:</b>	General Rates	4,286.80
	State Government Levies	1,804.50
	Waste Management	0.00
	Municipal Charge	0.00
	Refunds	0.00
	Concession Rebates	0.00
	Interest Arrears	0.00
	Interest Current	0.00
	Legal Fees	0.00
<b>Other:</b>	Special Charges ( <i>subject to Final Costs</i> )	0.00
	Sundry Charges	0.00
<b>Payment:</b>	Amount Received	0.00
	Overpayment	0.00

All Overdue amounts should be paid at settlement. The purchaser is liable for all outstanding rates and charges after transfer and settlement.

**Total Due: 6,091.30**

**General Notes:** Supplementary Valuations are conducted by Council when a property's characteristics change. Examples of this (but not exclusive) are: A building is altered, erected, or demolished. A property is amalgamated, subdivided, rezoned, part sold, or affected by road construction. As a result of this, an Adjusted Valuation may be returned in due course and a subsequent rate adjustment may be levied within the financial year.

**Condition:**

I hereby certify that as the date of issue, the information given in this certificate is a correct disclosure of the rates, charges, interest and other monies payable to the **City of Greater Geelong** together with any Notices pursuant to the Local Government Act 1989, Local Laws or any other legislation.


**Authorised Officer**

Biller Code: 17475

Reference: 100000640946

Payment via internet or phone banking,  
from your cheque or savings account.

# Property Clearance Certificate

## Land Tax



HANNAH CUCINOTTA

Your Reference:	LD:78494320-022-1.40107396
Certificate No:	93814288
Issue Date:	21 OCT 2025
Enquiries:	MXC15

Land Address: 43 -53 NYE ROAD SWAN BAY VIC 3225

Land Id	Lot	Plan	Volume	Folio	Tax Payable
33777654	1	586779	1517	244	\$0.00
	1	227667	851	125	

Vendor: TINA MCMECKAN, HILARY MCMECKAN &amp; 1 OTHER(S)

Purchaser: FOR INFORMATION PURPOSES

Current Land Tax	Year Taxable Value (SV)	Proportional Tax	Penalty/Interest	Total
MCMECKAN TESTAMENTARY TRUST	2025	\$925,000	\$3,335.38	\$0.00

**Comments:** Land Tax of \$3,335.38 has been assessed for 2025, an amount of \$3,335.38 has been paid. Property is 50% exempt: LTX primary production land.

Current Vacant Residential Land Tax	Year Taxable Value (CIV)	Tax Liability	Penalty/Interest	Total

Comments:

Arrears of Land Tax	Year	Proportional Tax	Penalty/Interest	Total

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

Paul Broderick  
Commissioner of State Revenue

CAPITAL IMPROVED VALUE (CIV):	\$1,150,000
SITE VALUE (SV):	\$925,000
<b>CURRENT LAND TAX AND VACANT RESIDENTIAL LAND TAX CHARGE:</b>	<b>\$0.00</b>

# Notes to Certificate - Land Tax

**Certificate No:** 93814288

## Power to issue Certificate

- Pursuant to section 95AA of the *Taxation Administration Act 1997*, the Commissioner of State Revenue must issue a Property Clearance Certificate (Certificate) to an owner, mortgagee or bona fide purchaser of land who makes an application specifying the land for which the Certificate is sought and pays the application fee.

## Amount shown on Certificate

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

## Land tax is a first charge on land

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

## Information for the purchaser

- Pursuant to section 96 of the *Land Tax Act 2005*, if a purchaser of the land described in the Certificate has applied for and obtained a certificate, the amount recoverable from the purchaser by the Commissioner cannot exceed the amount set out in the certificate, described as the "Current Land Tax Charge and Vacant Residential Land Tax Charge" overleaf. A purchaser cannot rely on a Certificate obtained by the vendor.

## Information for the vendor

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

## Apportioning or passing on land tax to a purchaser

- A vendor is prohibited from apportioning or passing on land tax including vacant residential land tax, interest and penalty tax to a purchaser under a contract of sale of land entered into on or after 1 January 2024, where the purchase price is less than \$10 million (to be indexed annually from 1 January 2025, as set out on the website for Consumer Affairs Victoria).

## General information

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

## For Information Only

### LAND TAX CALCULATION BASED ON SINGLE OWNERSHIP

Land Tax = \$4,200.00

Taxable Value = \$925,000

Calculated as \$2,250 plus (\$925,000 - \$600,000) multiplied by 0.600 cents.

### VACANT RESIDENTIAL LAND TAX CALCULATION

Vacant Residential Land Tax = \$11,500.00

Taxable Value = \$1,150,000

Calculated as \$1,150,000 multiplied by 1.000%.

## Land Tax - Payment Options



Biller Code: 5249  
Ref: 93814288

### Telephone & Internet Banking - BPAY®

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

[www.bpay.com.au](http://www.bpay.com.au)



Ref: 93814288

### Visa or Mastercard

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

[sro.vic.gov.au/paylandtax](http://sro.vic.gov.au/paylandtax)

# Property Clearance Certificate

## Commercial and Industrial Property Tax



HANNAH CUCINOTTA

Your Reference: LD:78494320-022-1.40107396

Certificate No: 93814288

Issue Date: 21 OCT 2025

Enquires: MXC15

**Land Address:** 43 -53 NYE ROAD SWAN BAY VIC 3225

Land Id	Lot	Plan	Volume	Folio	Tax Payable
33777654	1	586779	1517	244	\$0.00
	1	227667	851	125	\$0.00
AVPCC	Date of entry into reform	Entry interest	Date land becomes CIPT taxable land	Comment	
240.6	N/A	N/A	N/A	The AVPCC allocated to the land indicates a qualifying use. The land may enter the reform if an entry transaction occurs in respect of the land.	

This certificate is subject to the notes found on the reverse of this page. The applicant should read these notes carefully.

**Paul Broderick**  
Commissioner of State Revenue

CAPITAL IMPROVED VALUE:	\$1,150,000
SITE VALUE:	\$925,000
<b>CURRENT CIPT CHARGE:</b>	<b>\$0.00</b>

# Notes to Certificate - Commercial and Industrial Property Tax

**Certificate No:** 93814288

## Power to issue Certificate

- Pursuant to section 95AA of the *Taxation Administration Act 1997*, the Commissioner of State Revenue must issue a Property Clearance Certificate (Certificate) to an owner, mortgagee or bona fide purchaser of land who makes an application specifying the land for which the Certificate is sought and pays the application fee.

## Amount shown on Certificate

- The Certificate shows any commercial and industrial property tax (including interest and penalty tax) that is due and unpaid on the land described in the Certificate at the date of issue.

## Australian Valuation Property Classification Code (AVPCC)

- The Certificate may show one or more AVPCC in respect of land described in the Certificate. The AVPCC shown on the Certificate is the AVPCC allocated to the land in the most recent of the following valuation(s) of the land under the *Valuation of Land Act 1960*:
  - a general valuation of the land;
  - a supplementary valuation of the land returned after the general valuation.
- The AVPCC(s) shown in respect of land described on the Certificate can be relevant to determine if the land has a qualifying use, within the meaning given by section 4 of the *Commercial and Industrial Property Tax Reform Act 2024* (CIPT Act). Section 4 of the CIPT Act Land provides that land will have a qualifying use if:
  - the land has been allocated one, or more than one, AVPCC in the latest valuation, all of which are in the range 200-499 and/or 600-699 in the Valuation Best Practice Specifications Guidelines (the requisite range);
  - the land has been allocated more than one AVPCC in the latest valuation, one or more of which are inside the requisite range and one or more of which are outside the requisite range, and the land is used solely or primarily for a use described in an AVPCC in the requisite range; or
  - the land is used solely or primarily as eligible student accommodation, within the meaning of section 3 of the CIPT Act.

## Commercial and industrial property tax information

- If the Commissioner has identified that land described in the Certificate is tax reform scheme land within the meaning given by section 3 of the CIPT Act, the Certificate may show in respect of the land:
  - the date on which the land became tax reform scheme land;
  - whether the entry interest (within the meaning given by section 3 of the Duties Act 2000) in relation to the tax reform scheme land was a 100% interest (a whole interest) or an interest of less than 100% (a partial interest); and
  - the date on which the land will become subject to the commercial and industrial property tax.
- A Certificate that does not show any of the above information in respect of land described in the Certificate does not mean that the land is not tax reform scheme land. It means that the Commissioner has not identified that the land is tax reform scheme land at the date of issue of the Certificate. The Commissioner may identify that the land is tax reform scheme land after the date of issue of the Certificate.

## Change of use of tax reform scheme land

- Pursuant to section 34 of the CIPT Act, an owner of tax reform scheme land must notify the Commissioner of certain changes of use of tax reform scheme land (or part of the land) including if the actual use of the land changes to a use not described in any AVPCC in the range 200-499 and/or 600-699. The notification

must be given to the Commissioner within 30 days of the change of use.

## Commercial and industrial property tax is a first charge on land

- Commercial and industrial property tax (including any interest and penalty tax) is a first charge on the land to which the commercial and industrial property tax is payable. This means it has priority over any other encumbrances on the land, such as a mortgage, and will continue as a charge even if ownership of the land is transferred. Therefore, a purchaser may become liable for any unpaid commercial and industrial property tax.

## Information for the purchaser

- Pursuant to section 27 of the CIPT Act, if a bona fide purchaser for value of the land described in the Certificate applies for and obtains a Certificate in respect of the land, the maximum amount recoverable from the purchaser is the amount set out in the Certificate. A purchaser cannot rely on a Certificate obtained by the vendor.

## Information for the vendor

- Despite the issue of a Certificate, the Commissioner may recover a commercial and industrial property tax liability from a vendor, including any amount identified on this Certificate.

## Passing on commercial and industrial property tax to a purchaser

- A vendor is prohibited from apportioning or passing on commercial and industrial property tax to a purchaser under a contract of sale of land entered into on or after 1 July 2024 where the purchase price is less than \$10 million (to be indexed annually from 1 January 2025, as set out on the website for Consumer Affairs Victoria).

## General information

- Land enters the tax reform scheme if there is an entry transaction, entry consolidation or entry subdivision in respect of the land (within the meaning given to those terms in the CIPT Act). Land generally enters the reform on the date on which an entry transaction occurs in respect of the land (or the first date on which land from which the subject land was derived (by consolidation or subdivision) entered the reform).
- The Duties Act includes exemptions from duty, in certain circumstances, for an eligible transaction (such as a transfer) of tax reform scheme land that has a qualifying use on the date of the transaction. The exemptions apply differently based on whether the entry interest in relation to the land was a whole interest or a partial interest. For more information, please refer to [www.sro.vic.gov.au/CIPT](http://www.sro.vic.gov.au/CIPT).
- A Certificate showing no liability for the land does not mean that the land is exempt from commercial and industrial property tax. It means that there is nothing to pay at the date of the Certificate.
- An updated Certificate may be requested free of charge via our website, if:
  - the request is within 90 days of the original Certificate's issue date, and
  - there is no change to the parties involved in the transaction for which the Certificate was originally requested.

# Property Clearance Certificate

## Windfall Gains Tax



HANNAH CUCINOTTA

Your Reference: LD:78494320-022-1.40107396

Certificate No: 93814288

Issue Date: 21 OCT 2025

**Land Address:** 43 -53 NYE ROAD SWAN BAY VIC 3225

Lot	Plan	Volume	Folio
1	586779	1517	244
1	227667	851	125

**Vendor:** TINA MCMECKAN, HILARY MCMECKAN & 1 OTHER(S)

**Purchaser:** FOR INFORMATION PURPOSES

WGT Property Id	Event ID	Windfall Gains Tax	Deferred Interest	Penalty/Interest	Total
		\$0.00	\$0.00	\$0.00	\$0.00

**Comments:** No windfall gains tax liability identified.

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

**Paul Broderick**  
Commissioner of State Revenue

**CURRENT WINDFALL GAINS TAX CHARGE:**

**\$0.00**

# Notes to Certificate - Windfall Gains Tax

**Certificate No:** 93814288

## Power to issue Certificate

- Pursuant to section 95AA of the *Taxation Administration Act 1997*, the Commissioner of State Revenue must issue a Property Clearance Certificate (Certificate) to an owner, mortgagee or bona fide purchaser of land who makes an application specifying the land for which the Certificate is sought and pays the application fee.

## Amount shown on Certificate

- The Certificate shows in respect of the land described in the Certificate:
  - Windfall gains tax that is due and unpaid, including any penalty tax and interest
  - Windfall gains tax that is deferred, including any accrued deferral interest
  - Windfall gains tax that has been assessed but is not yet due
  - Windfall gains tax that has not yet been assessed (i.e. a WGT event has occurred that rezones the land but any windfall gains tax on the land is yet to be assessed)
  - Any other information that the Commissioner sees fit to include such as the amount of interest accruing per day in relation to any deferred windfall gains tax.

## Windfall gains tax is a first charge on land

- Pursuant to section 42 of the *Windfall Gains Tax Act 2021*, windfall gains tax, including any accrued interest on a deferral, is a first charge on the land to which it relates. This means it has priority over any other encumbrances on the land, such as a mortgage, and will continue as a charge even if ownership of the land is transferred. Therefore, a purchaser may become liable for any unpaid windfall gains tax.

## Information for the purchaser

- Pursuant to section 42 of the *Windfall Gains Tax Act 2021*, if a bona fide purchaser for value of land applies for and obtains a Certificate in respect of the land, the maximum amount recoverable from the purchaser by the Commissioner is the amount set out in the certificate, described as the "Current Windfall Gains Tax Charge" overleaf.
- If the certificate states that a windfall gains tax is yet to be assessed, note 4 does not apply.
- A purchaser cannot rely on a Certificate obtained by the vendor.

## Information for the vendor

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

## Passing on windfall gains tax to a purchaser

- A vendor is prohibited from passing on a windfall gains tax liability to a purchaser where the liability has been assessed under a notice of assessment as at the date of the contract of sale of land or option agreement. This prohibition does not apply to a contract of sale entered into before 1 January 2024, or a contract of sale of land entered into on or after 1 January 2024 pursuant to the exercise of an option granted before 1 January 2024.

## General information

- A Certificate showing no liability for the land does not mean that the land is exempt from windfall gains tax. It means that there is nothing to pay at the date of the Certificate.
- An updated Certificate may be requested free of charge via our website, if:
  - The request is within 90 days of the original Certificate's issue date, and
  - There is no change to the parties involved in the transaction for which the Certificate was originally requested.
- Where a windfall gains tax liability has been deferred, interest accrues daily on the deferred liability. The deferred interest shown overleaf is the amount of interest accrued to the date of issue of the certificate.

## Windfall Gains Tax - Payment Options

### BPAY



Biller Code: 416073  
Ref: 93814283

### Telephone & Internet Banking - BPAY®

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

[www.bpay.com.au](http://www.bpay.com.au)

### CARD



Ref: 93814283

### Visa or Mastercard

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

[sro.vic.gov.au/payment-options](http://sro.vic.gov.au/payment-options)

### Important payment information

Windfall gains tax payments must be made using only these specific payment references.

Using the incorrect references for the different tax components listed on this property clearance certificate will result in misallocated payments.

## Information Statement Part A

*In accordance with Section 158 of the Water Act 1989  
(Should be Read in Conjunction with Part B)*

**INSTALLATION NUMBER.** 18257404      **APPLICATION NUMBER:** 507659      **DATE:** 21/10/2025  
**PROPERTY ADDRESS:** 43-53 NYE RD, SWAN BAY, VIC 3225  
**YOUR REFERENCE:** 40107396  
**OWNER:** T R & H R & D H McMeekan  
**COMMENTS:** *Comments*

*The following service charges are applicable for the abovenamed property for the period 01/10/2025 to 31/12/2025. These charges are itemised separately to allow a pro-rata adjustment, and will not appear as due and payable below if they have already been paid.*

	<b>Value</b>	<b>GST</b>	<b>Price</b>
Water Service Charge	31.55	0.00	31.55
<b>Total Service Charge</b>	<b>\$ 31.55</b>	<b>0.00</b>	<b>31.55</b>

*Barwon Region Water Corporation hereby certifies that the following Charges and Interest are due and payable to it in respect of the abovenamed property.*

### **Charges Due & Payable**

	<b>Value</b>	<b>GST</b>	<b>Price</b>
Water Service Charge	31.55	0.00	31.55
Water Volume	1,061.77	0.00	1,061.77
Water Service Charge	31.55	0.00	31.55
<b>TOTAL DUE</b>	<b>\$ 1,124.87</b>	<b>0.00</b>	<b>1,124.87</b>

### **Important Information**

Account Not Yet Issued For Service And Volume Charges.

*The supply of water/sewer to this property is "By Agreement"*

*The water meter for this property was last read on 15/09/2025. In order to ensure accurate water volume charges are able to be adjusted at the time of settlement, you will need to make application for a special meter reading. This can be requested via [Property enquiry application](#) or by visiting the Properties and development section of our website. You should allow 5 working days for this to be completed and the certificate to be sent to you.*

*The information statement will also provide details of other charges, including any unpaid amounts. In order to ensure this is accurate close to the time of settlement, you can request an Information Statement update by going to [Information statement update](#) or by visiting Properties and development – Information statement update page on our website or by calling 1300 656 007.*

*In accordance with Section 275 of the Water Act 1989, a person who becomes the owner of a property must pay to Barwon Water at the time the person becomes the owner of the property, any amount that is due to Barwon Water as a charge on that property.*

*To effect a change of ownership, details of the sale are required by Notice of Disposition or Acquisition to Barwon Water, P.O. Box 659, Geelong Vic 3220.*

**\* PLEASE NOTE:** *Verbal confirmation will not be given after 20/12/2025. Barwon Water will not be held responsible for information provided verbally. For settlement purposes another certificate should be obtained after 20/12/2025 and a fee will be payable.*

*If the property to be purchased is vacant land, any proposed building will attract connection fees and/or contribution fees. To find out more detail on these please contact Barwon Water on 1300 656 007.*

Hannah Cucinotta C/- GXS  
Two Melbourne Quarter, Level 13, 697 Collins Street Docklands



Biller Code: 585224

Ref Code: 6900 0001 0014 9854 5



## Information Statement Part A

*In accordance with Section 158 of the Water Act 1989  
(Should be Read in Conjunction with Part B)*

**INSTALLATION NUMBER.** 18257404      **APPLICATION NUMBER:** 507659      **DATE:** 21/10/2025  
**PROPERTY ADDRESS:** 43-53 NYE RD, SWAN BAY, VIC 3225  
**YOUR REFERENCE:** 40107396  
**OWNER:** T R & H R & D H McMeekan  
**COMMENTS:** *Comments*

*The following service charges are applicable for the abovenamed property for the period 01/10/2025 to 31/12/2025. These charges are itemised separately to allow a pro-rata adjustment, and will not appear as due and payable below if they have already been paid.*

	<b>Value</b>	<b>GST</b>	<b>Price</b>
Water Service Charge	31.55	0.00	31.55
<b>Total Service Charge</b>	<b>\$ 31.55</b>	<b>0.00</b>	<b>31.55</b>

*Barwon Region Water Corporation hereby certifies that the following Charges and Interest are due and payable to it in respect of the abovenamed property.*

### **Charges Due & Payable**

	<b>Value</b>	<b>GST</b>	<b>Price</b>
Water Service Charge	31.55	0.00	31.55
Water Volume	1,061.77	0.00	1,061.77
Water Service Charge	31.55	0.00	31.55
<b>TOTAL DUE</b>	<b>\$ 1,124.87</b>	<b>0.00</b>	<b>1,124.87</b>

### **Important Information**

Account Not Yet Issued For Service And Volume Charges.

*The supply of water/sewer to this property is "By Agreement"*

*The water meter for this property was last read on 15/09/2025. In order to ensure accurate water volume charges are able to be adjusted at the time of settlement, you will need to make application for a special meter reading. This can be requested via [Property enquiry application](#) or by visiting the Properties and development section of our website. You should allow 5 working days for this to be completed and the certificate to be sent to you.*

*The information statement will also provide details of other charges, including any unpaid amounts. In order to ensure this is accurate close to the time of settlement, you can request an Information Statement update by going to [Information statement update](#) or by visiting Properties and development – Information statement update page on our website or by calling 1300 656 007.*

*In accordance with Section 275 of the Water Act 1989, a person who becomes the owner of a property must pay to Barwon Water at the time the person becomes the owner of the property, any amount that is due to Barwon Water as a charge on that property.*

*To effect a change of ownership, details of the sale are required by Notice of Disposition or Acquisition to Barwon Water, P.O. Box 659, Geelong Vic 3220.*

**\* PLEASE NOTE:** *Verbal confirmation will not be given after 20/12/2025. Barwon Water will not be held responsible for information provided verbally. For settlement purposes another certificate should be obtained after 20/12/2025 and a fee will be payable.*

*If the property to be purchased is vacant land, any proposed building will attract connection fees and/or contribution fees. To find out more detail on these please contact Barwon Water on 1300 656 007.*



## **Information Statement Part B**

*In accordance with Section 158 of the Water Act 1989  
(Should be Read in Conjunction with Part A)*

21-10-2025

Hannah Cucinotta C/- GXS  
Two Melbourne Quarter, Level 13, 697 Collins Street  
Docklands

Property: 43-53 NYE ROAD SWAN BAY 3225

I refer to your application received at this office on 21/10/2025. I wish to advise no encumbrances or easements related to Barwon Water works exist in respect of the above property, other than those that may be revealed by normal Title search, and no Notices or Orders presently remain outstanding relative to the connection of water supply and/or sewerage services.

Please note that this property is subject to a Water Supply By Agreement. Please refer to the attached document for details.

Should you have any inquiries, please contact Barwon Water on 1300 656 007.

**Our Ref:** EC507659

**Your Ref:** 40107396

**Agent Ref:** 78494320-037-5

Yours faithfully.

Manager Customer Centre

## **Information Statement Part B**

*In accordance with Section 158 of the Water Act 1989  
(Should be Read in Conjunction with Part A)*

21-10-2025

Hannah Cucinotta C/- GXS  
Two Melbourne Quarter, Level 13, 697 Collins Street  
Docklands

Property: 43 NYE RD SWAN BAY 3225

I refer to your application received at this office on 21/10/2025. I wish to advise no encumbrances or easements related to Barwon Water works exist in respect of the above property, other than those that may be revealed by normal Title search, and no Notices or Orders presently remain outstanding relative to the connection of water supply and/or sewerage services.

Please note that this property is subject to a Water Supply By Agreement. Please refer to the attached document for details.

Should you have any inquiries, please contact Barwon Water on 1300 656 007.

**Our Ref:** EC507659

**Your Ref:** 40107396

**Agent Ref:** 78494320-037-5

Yours faithfully.

Manager Customer Centre

17

Nye Rd

Nye Rd

1

43-53

TP227667

1

Barwon Water



## 43-53 NYE RD SWAN BAY

Scale: 1:500

Created: 21/10/2025

DISCLAIMER: Barwon Water does not provide any warranty, express or implied, as to the accuracy, completeness, currency or reliability of plans provided. Furthermore, Barwon Water does not provide a warranty that the scale of the plans is accurate, or that they are suitable for a specific purpose. These plans are intended for general information only. Barwon Water is not responsible and does not accept liability for any loss, expense or damage (direct or indirect) which has arisen from reliance on any plans provided by Barwon Water. It is the responsibility of users of the plans to ensure the accuracy of the plans by independent means and to take care when undertaking works that have the potential to damage Barwon Water assets.

### Legend

Gravity Sewer	
Pressure Sewer	
Portable Water	
Recycled Water	



# WATER BY AGREEMENT

Hannah Cucinotta C/- GXS  
Two Melbourne Quarter, Level 13, 697 Collins Street  
Docklands

21-10-2025

Dear Sir/Madam

**Re: Water Supply 'By Separate Written Agreement' to:**

**43 - 53 NYE RD SWAN BAY 3225**

Our records indicate that this property is not within our declared serviced area.

It is currently subject to a [water by agreement](#) with Barwon Water.

## What you need to do

If you have acquired or leased a property with an existing agreement, you must apply to transfer the agreement to your name.

If we do not receive your application within **14 days**, we may stop your water supply.

[Apply for water and sewer by agreement](#)

## About the agreement

The agreement is between the property owner or tenant and Barwon Water, and includes the following conditions:

- there is no guarantee of ongoing water supply to your property
- you may need to meet new conditions due to changes in safe drinking water regulations
- you may need to pay for changes like new meters or moving pipes
- if a third-party owns the supply system, you will need to arrange access with them.

## Terms and conditions

You can find our standard terms and conditions in the Barwon Water [Customer Charter](#).

## Questions?

If you have any questions, please email [info@barwonwater.vic.gov.au](mailto:info@barwonwater.vic.gov.au) or call [1300 656 007](tel:1300656007) we're here to help.

**Our Ref:** EC507659

**Your Ref:** 40107396

**Agent Ref:** 78494320-037-5

Yours faithfully,

Manager Customer Centre



# Planning Certificate



## PROPERTY DETAILS

Property Address: 43-53 NYE ROAD SWAN BAY VIC 3225  
 Title Particulars: Vol 4149 Fol 724  
 Vendor: DOUGLAS MCMECKAN, HILARY MCMECKAN, TINA MCMECKAN  
 Purchaser: N/A

Certificate No: OR-1BHCAFPADB2UN..  
 Date: 21/10/2025  
 Matter Ref: 40107396  
 Client: Wisewould Mahony



## MUNICIPALITY

GREATER GEELONG



## PLANNING SCHEME

GREATER GEELONG PLANNING SCHEME



## RESPONSIBLE AUTHORITY FOR ADMINISTERING AND ENFORCING THE SCHEME

GREATER GEELONG CITY COUNCIL / REFER TO RESPONSIBLE AUTHORITY INFORMATION PAGE



## ZONES

FARMING ZONE



## ABUTTAL TO A TRANSPORT ZONE / PUBLIC ACQUISITION OVERLAY FOR A PROPOSED ROAD OR ROAD WIDENING

NOT APPLICABLE



## APPLICABLE OVERLAYS

PART ENVIRONMENTAL SIGNIFICANCE OVERLAY - SCHEDULE 2

PART LAND SUBJECT TO INUNDATION OVERLAY - SCHEDULE 2

SIGNIFICANT LANDSCAPE OVERLAY - SCHEDULE 12

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Disclaimer: Information within this certificate has been obtained via the Landchecker Platform. Strategies, policies and provisions detailed in these sections of the Planning Scheme may affect the development and use of the land. Due diligence checks should be undertaken to understand other factors that may impact the use of the property.

**PROPOSED PLANNING SCHEME AMENDMENTS**

NOT APPLICABLE

**ADDITIONAL INFORMATION**

THE SUBJECT PROPERTY IS OUTSIDE THE URBAN GROWTH BOUNDARY

STATE-WIDE PROVISIONS IF AN APARTMENT DEVELOPMENT - SEE PLANNING SCHEME CLAUSE 55.07 AND CLAUSE 58

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Disclaimer: Information within this certificate has been obtained via the Landchecker Platform. Strategies, policies and provisions detailed in these sections of the Planning Scheme may affect the development and use of the land. Due diligence checks should be undertaken to understand other factors that may impact the use of the property.

## GREATER GEELONG PLANNING SCHEME

### RESPONSIBLE AUTHORITY FOR ADMINISTERING AND ENFORCING THE SCHEME

The Minister for Planning is the responsible authority for matters under Divisions 1, 1A, 2 and 3 of Part 4 of the Planning and Environment Act 1987 and matters required by a permit or the planning scheme to be endorsed, approved or done to the satisfaction of the responsible authority, for land within the Minister for Planning Responsible Authority Area identified in Map 1 in this schedule in relation to development of land as part of a single project or multiple related projects, if it involves:

- The construction of a new building or buildings containing a total gross floor area exceeding 5,000 square metres.
- The construction of a building or the construction or carrying out of works (including extensions, alterations or additions to an existing building or buildings) that create an additional gross floor area exceeding 5,000 square metres.
- The construction of a new building or buildings containing five or more storeys, excluding a basement.
- The construction of a building or the construction or carrying out of works (including extensions, alterations or additions to an existing building or buildings) that create additional storeys to or above an existing building containing five or more storeys or would result in a building of five or more storeys upon completion, excluding a basement.
- The construction of a building or the construction or carrying out of works for 50 or more dwellings.
- Any provision of this planning scheme which requires a permit to be obtained for a matter, if that matter forms part of an application that includes development within the meaning of one or more of sub-paragraphs above.

This does not apply to:

- The use or development of land that is undertaken in accordance with a building permit that was issued under the Building Act 1993 before the commencement of Amendment C419ggee to this planning scheme.
- The use or development of land that is undertaken in accordance with a planning permit that was issued before the commencement of Amendment C419ggee to this planning scheme. In such instances, the responsible authority which issued the planning permit will remain the responsible authority in relation to the use and development of the land pursuant to that permit.
- An application made before the commencement of Amendment C419ggee to this planning scheme. For applications made before the commencement of Amendment C419ggee to this planning scheme, the requirements of this schedule as they were in force immediately before the commencement of Amendment C419ggee, continue to apply.


**PLANNING ZONES MAP**

**ZONING**

- FZ - FARMING ZONE
- PCRZ - PUBLIC CONSERVATION AND RESOURCE ZONE

This map extract is sourced from data maintained by the State of Victoria and is provided for information purposes only. No representation is made as to the accuracy of the content, and Dye & Durham Property Pty Ltd does not accept any liability to any person for the information provided.

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Disclaimer: Information within this certificate has been obtained via the Landchecker Platform. Strategies, policies and provisions detailed in these sections of the Planning Scheme may affect the development and use of the land. Due diligence checks should be undertaken to understand other factors that may impact the use of the property.



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

## ROADS PROPERTY CERTIFICATE

The search results are as follows:

Hannah Cucinotta  
Level 8, 419 Collins Street  
MELBOURNE 3000

Client Reference: 40107396

NO PROPOSALS. As at the 21th October 2025, VicRoads has no approved proposals requiring any part of the property described in your application. You are advised to check your local Council planning scheme regarding land use zoning of the property and surrounding area.

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

43-53 NYE ROAD, SWAN BAY 3225  
CITY OF GREATER GEELONG

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

Date of issue: 21th October 2025

Telephone enquiries regarding content of certificate: 13 11 71

[Vicroads Certificate] # 78494320 - 78494320103518 '40107396'

## CITY OF GREATER GEELONG

WADAWURRUNG COUNTRY  
PO Box 104, Geelong VIC 3220  
P: 03 5272 5272  
E: [contactus@geelongcity.vic.gov.au](mailto:contactus@geelongcity.vic.gov.au)  
[www.geelongaustralia.com.au](http://www.geelongaustralia.com.au)



Secure Electronic Registries Victoria  
Pty Ltd  
PO BOX 500  
EAST MELBOURNE VIC 8002

**Date of Issue:** 31 October 2025  
**Council Reference:** BIR-2025-8811  
**Your Reference:** 78494320-026-9

## BUILDING INFORMATION CERTIFICATE

This certificate is issued pursuant to regulation 51(1) of the *Building Regulations 2018* and contains information relevant to building permits, certificates, orders and/or notices issued **within the preceding 10 years**, as of **31 October 2025**.

## PROPERTY INFORMATION

Property Address	<b>43-53 Nye Road, SWAN BAY VIC 3225</b>		
	11259m2 Lot 1 TP		
	5867798135.6m2 Lot 1		
Title Information	TP 2276678979m2 CA	Volume / Folio	CT-1517/244CT-4149/724CT-851/125
	17H Sec 2		

## DETAILS OF PERMITS AND CERTIFICATES

*Contains information relating to any Building Permits, Certificates of Final and/or Certificates of Occupancy, pursuant to Building Regulation 2018.*

Permit Description **Alterations and change of use**

Issue Date **10/06/2016** Permit Number **1242/008108**

Council Reference Number **PBPC-2016-2548**

Certificate of Final/Occupancy Issue Date **01/07/2016**

## DETAILS OF CURRENT STATEMENTS

*Contains information relating to any statements issued under Regulation 64 (Combined Allotments) and/or Regulation 231 (Subdivision of Existing Buildings), pursuant to Building Regulation 2018.*

Combined Allotment Issue Date	<b>N/A</b>	Subdivision of Existing Buildings Date	<b>N/A</b>
-------------------------------	------------	--	------------

## DETAILS OF CURRENT NOTICE OR ORDERS

*Contains information relating to any Notice(s) and Order(s) issued by the Relevant Building Surveyor under the Building Act 1993.*

Notice/Order Type **N/A**

Description **N/A**

Council Reference Number **N/A** Issue Date **N/A**

## DETAILS OF POOL AND/OR SPA REGISTRATION

*Contains information relating to any records recorded within Council's Pool and Spa Register under the Building Act 1993 and Building Regulations 2018.*

Pool/Spa Type **N/A**

Current Status **N/A**

Compliance Due Date **N/A**

Council Reference Number **N/A**

## PLEASE NOTE

- Information provided within this certificate is current only on the date of issue, as the details included are subject to change.
- This exclusion of any permits dated more than 10 years prior to the issuance of this certificate may not be included due to limitations in the periods records have been kept and/or documentation not received by Council.
- The inclusion and/or exclusion of permits or certificates does not indicate whether all buildings and construction work is compliant with the relevant legislative approvals.

If you have any questions or concerns relating to this certificate, please contact us at [bir@geelongcity.vic.gov.au](mailto:bir@geelongcity.vic.gov.au) or on (03) 5272 4450.

**BUILDING SERVICES**  
**137-149 MERCER STREET,**  
**GEELONG VIC 3220**

## CITY OF GREATER GEELONG

WADAWURRUNG COUNTRY  
PO Box 104, Geelong VIC 3220  
P: 03 5272 5272  
E: [contactus@geelongcity.vic.gov.au](mailto:contactus@geelongcity.vic.gov.au)  
[www.geelongaustralia.com.au](http://www.geelongaustralia.com.au)



Secure Electronic Registries Victoria  
Pty Ltd  
PO BOX 500  
EAST MELBOURNE VIC 8002

**Date of Issue:** 23 October 2025  
**Council Reference:** BIR-2025-8557  
**Your Reference:** 78494320-028-3

## BUILDING INFORMATION CERTIFICATE

This certificate is issued pursuant to regulation 51(2) of the *Building Regulations 2018* and contains information relevant to buildings and/or land identified as designated special areas, current as of **23 October 2025**.

## PROPERTY INFORMATION

<b>Property Address</b>	43-53 Nye Road, SWAN BAY VIC 3225 11259m2 Lot 1 TP 5867798135.6m2 Lot 1 TP 2276678979m2 CA 17H Sec 2	<b>Volume / Folio</b>	CT-1517/244CT-4149/724CT-851/125
<b>Title Information</b>			

## DESIGNATED SPECIAL AREA INFORMATION

<b>Regulation 51.2(a)</b>	Land Liable to Flooding	YES
<b>Regulation 51.2(b)</b>	Subject to Termite Attack	NO
<b>Regulation 51.2(c)</b>	Land with Specified Bushfire Attack Level	NO
<b>Regulation 51.2(d)</b>	Land Liable to Significant Snowfall	NO
<b>Regulation 51.2(e)</b>	Designated Land	NO
<b>Regulation 51.2(f)</b>	Designated Works	NO

## ADDITIONAL INFORMATION

**Community Infrastructure Levy** NO

## IMPORTANT NOTE

- Information provided within this certificate is current only on the date of issue, as the details included are subject to change.
- Please refer to the [Greater Geelong Planning Scheme](#) for further details and information relating to any Zones and Overlay(s) that may be applicable to the abovementioned property.
- Parcels of land within the City of Greater Geelong municipality identified as termite prone are nominated due to heightened likelihood and/or risk of termite presence. This does not guarantee that land parcels outside this nominated area of heightened likelihood do not have termites present. Should a conclusive determination be required, an independent site survey is recommended for confirmation of termite presence.

If you have any questions or concerns relating to this certificate, please contact us at [bir@geelongcity.vic.gov.au](mailto:bir@geelongcity.vic.gov.au) or (03) 5272 5272.

**BUILDING SERVICES**  
137-149 MERCER STREET

**GEELONG VIC 3220**

## Extract of EPA Priority Site Register

Page 1 of 1

### PROPERTY INQUIRY DETAILS:

STREET ADDRESS: 43-53 NYE ROAD

SUBURB: SWAN BAY

MUNICIPALITY: GREATER GEELONG

MAP REFERENCES: Melways 40th Edition, Street Directory, Map 486 Reference E4  
Melways 40th Edition, Street Directory, Map 486 Reference D4

DATE OF SEARCH: 21st October 2025

### ACKNOWLEDGMENT AND IMPORTANT INFORMATION ABOUT THE PRIORITY SITES REGISTER AND THIS EXTRACT:

A search of the Priority Sites Register for the above map reference (Melways), corresponding to the street address provided above, has indicated there is no Priority Site within the same map reference based on the most recent file provided to LANDATA by the Environment Protection Authority, Victoria (EPA).

The Priority Sites Register is not an exhaustive or comprehensive list of contaminated sites in Victoria. A site should not be presumed to be free of contamination just because it does not appear on the Priority Sites Register. Persons intending to enter into property transactions should be aware that EPA may not have information regarding all contaminated sites. While EPA has published information regarding potentially contaminating land uses, local councils and other relevant planning authorities may hold additional records or data concerning historical land uses. It is recommended that these sources of information should also be consulted in addition to this Extract.

Prospective buyers or parties to property transactions should undertake their own independent investigations and due diligence. This Extract should not be relied upon as the sole source of information regarding site contamination.

To the maximum extent permitted by law:

- Neither LANDATA, SERV nor EPA warrants the accuracy or completeness of the information in this Extract. Any person using or relying upon such information does so on the basis that LANDATA, SERV and EPA assume no liability whatsoever for any errors, faults, defects or omissions in the information in this Extract. Users are advised to undertake independent due diligence and seek professional advice before relying on this information
- Users of this Extract accept all risks and responsibilities for losses, damages, costs or other consequences resulting directly or indirectly from reliance on the information in this Extract or any related information; and
- LANDATA, SERV and EPA expressly disclaim all liability to any person for any claims arising from the use of this Extract or information therein. In circumstances where liability cannot be excluded, the total liability of LANDATA, SERV and EPA is limited to the payment made by you for the supply by LANDATA of this Extract.

For sites listed on the Priority Sites Register, copies of the relevant Notices, including reasons for issuance and associated management requirements, is available on request from EPA through the contact centre via 1300 EPA VIC (1300 372 842). For more information relating to the Priority Sites Register, refer to the EPA website at: <https://www.epa.vic.gov.au/for-community/environmental-information/land-groundwater-pollution/priority-sites-register>

[Extract of Priority Sites Register] # 78494320 - 78494320103518  
'40107396'

## 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](http://consumer.vic.gov.au/duediligencechecklist) (consumer.vic.gov.au/duediligencechecklist).

## Urban living

### Moving to the inner city?

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

### Is the property subject to an owners corporation?

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

## Growth areas

### Are you moving to a growth area?

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

## Flood and fire risk

### Does this property experience flooding or bushfire?

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

## Rural properties

### Moving to the country?

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

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

### Can you build new dwellings?

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

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

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

## Soil and groundwater contamination

### Has previous land use affected the soil or groundwater?

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

(04/10/2016)

## Land boundaries

### Do you know the exact boundary of the property?

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

## Planning controls

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

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

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

### Are there any proposed or granted planning permits?

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

## Safety

### Is the building safe to live in?

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

## Building permits

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

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

### Are any recent building or renovation works covered by insurance?

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

## Utilities and essential services

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

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

## Buyers' rights

### Do you know your rights when buying a property?

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

(04/10/2016)

**MINISTER FOR ENVIRONMENT AND CLIMATE CHANGE**

**AND**

**WILLIAM JAMES MCMECKAN**

**AND**

**TINA RENNA MCMECKAN**

**Section 17D *Crown Land (Reserves) Act 1978*  
Lease  
(Non Retail)**

**DEPARTMENT OF  
ENVIRONMENT AND PRIMARY INDUSTRIES**

**File 0704073**

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THIS LEASE is made and commences on **23 APR 2016**

**BETWEEN THE MINISTER** whose name appears in Item 1 (Minister)

**AND THE TENANT** whose name appears in Item 2 (Tenant)

**RECITALS**

- A** The Land is reserved pursuant to Section 4 of the Act for the purpose set out in Item 13.
- B** The Minister has agreed to lease the Land to the Tenant pursuant to section 17D of the Act subject to the conditions, covenants, reservations, restrictions and exceptions and at the Rent set out in this Lease.

**OPERATIVE PROVISIONS**

**1 PART 1 – DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

In this document:

**Act** means the *Crown Land (Reserves) Act 1978*

**Authority** includes any government, local government, statutory, public or other Person, authority, instrumentality or body having jurisdiction over the Land, the Premises or any part of it or anything in relation to it;

**Bank Guarantee** means an unconditional and irrevocable undertaking in a form acceptable to the Minister given by a bank authorised under the provisions of the Banking Act 1959 (Cth.) or an Act of the Parliament of Victoria;

**Business Day** means any day (except a Saturday, Sunday or public holiday) on which banks are open for business in Melbourne, Victoria;

**Claim** includes any claim, demand, remedy, suit, injury, damage, loss, Cost, liability, action, proceeding and right of action;

**Clause** means a clause of this Lease; ("sub-clause" has a similar meaning); a reference to a Clause followed by a number refers to the relevant Clause in this Lease;

**Commencement Date** means the date set out in Item 4;

**Cost** includes any cost, charge, expense, outgoing, payment or other expenditure of any nature whatever;

**Crown** means the Crown in right of the State of Victoria;

**Default Rate** means the rate for the time being fixed under section 2 of the *Penalty Interest Rates Act 1983*; if that rate ceases to be published then it means any rate substituted in its place;

**Further Obligations** means any obligations set out in Schedule 3;

**Further Term** means the further term or terms set out in Item 8;

**GST** means any consumption, goods and services or value added tax, by whatever name called, imposed, levied or collected by any Federal or State Government which operates at any time or times during the Term or any renewal or overholding of the Lease including, without limitation, GST as defined in the GST Act and any replacement tax;

**GST Act** means *A New System (Goods and Services Tax) Act 1999*;

**Guaranteed Sum** means the amount set out in Item 9;

**Hazardous Materials** includes any substance, material, thing, component or element which is hazardous, a contaminant or a pollutant to persons or property;

**Her Majesty** means Her Majesty Queen Elizabeth II and her heirs and successors;

**Insured Sum** means the amount set out in Item 12;

**Item** means the relevant item in Schedule 1 to this Lease;

**Land** means the land described in Item 3 to a depth of 15 metres below the surface and all rights, easements and appurtenances usually and normally enjoyed with that land;

**Law** includes any requirement of any statute, rule, regulation, proclamation, ordinance or local law, present or future, and whether State, Federal or otherwise;

**Minister** means the Minister having responsibility for the administration of the Act or such other Minister of the Crown or Authority to whom responsibility for this Lease may at any time be given;

**Minister's Agents and Officers** includes any person, committee or delegate (including any statutory authority or statutory body corporate or committee for the time being responsible for the administration, care and management of the Land) from time to time responsible for carrying out functions, including the functions of the Minister, under this Lease;

**Name and Notice Address** means the name and address in Item 11 as it may be changed from time to time;

**Notice** means any notice or other written communication;

**Party** means a party to this Lease and includes any Guarantor;

**Permitted Use** means the permitted use of the Land set out in Item 7;

**Person** includes any corporation and vice versa;

**Premises** means the Land and the Tenant's Improvements;

**Proposed Work** means the construction, alteration, addition, renovation, refurbishment, demolition, removal of or to any improvement on the Land;

**Rates and Taxes** means all existing and future rates (including any special rates or levies) taxes (including land tax on a single holding basis), duties, charges, assessments,

impositions and outgoings whatsoever now or at any time imposed, charged or assessed on or against the Land or the Minister or the Tenant or payable by the owner or occupier of the Land;

**Rent** means the annual Rent set out in Item 6;

**Requirement** includes any lawful Notice, order or direction received from or given by any Authority or pursuant to any Law, in writing or otherwise, and notwithstanding to whom such Requirement is addressed or directed but if not addressed to the Tenant then the Tenant must be given a copy;

**Review Date** means at the date or dates set out in Item 10.

**Services** means all services installed or to be installed and connected to the Premises including, without limitation, gas, electricity, telephone and telecommunication, water, sewerage and drainage;

**Supply** means the supply of any good, service or thing by either Party under this Lease.

**Tenant** means the Tenant named in this Lease and includes in the case of a:

- (a) corporation the Tenant, its successors and permitted assigns;
- (b) natural Person the Tenant, his executors, administrators and permitted assigns;

**Tenant's Employees** means each of the Tenant's employees, agents, contractors, invitees or others (whether with or without invitation), sublessees, licensees and concessionaires or others (whether expressly or impliedly) who may at any time be in or upon the Land;

**Tenant's Improvements** means those items listed in Item 15 of Schedule 1 and all buildings, structures, fixtures, fittings, plant, equipment, partitions, signs or other material or articles and chattels of all kinds which are at any time erected or installed by the Tenant in or on the Land;

**Term** means the term of this Lease set out in Item 5 commencing from and including the Commencement Date; and

**this Lease or "the Lease"** means this lease and includes all schedules, appendices, attachments, plans and specifications, annexures and exhibits to it.

#### **Interpretation**

- (a) The singular includes the plural and vice versa;
- (b) A gender includes all genders;
- (c) An obligation imposed by this Lease on more than one Person binds them jointly and severally;
- (d) Every covenant by the Tenant includes a covenant by the Tenant to procure compliance with the covenant by each of the Tenant's Employees;

- (e) A reference to legislation includes a modification or re-enactment of it, a legislative provision substituted for it or amendment of it and a regulation, rule or statutory instrument issued under it;
- (f) This Lease must be interpreted so that it complies with all Laws applicable in Victoria. Any provision must be read down so as to give it as much effect as possible. If it is not possible to give a provision any effect at all, then it must be severed from the rest of the Lease. If any provision or part of it cannot be so read down, such provision or part shall be deemed to be void and severable and the remaining provisions of this Lease shall not in any way be affected or impaired;
- (g) Unless otherwise stated, no provision of this Lease limits the effect of any other provision of this Lease. "Including" and similar expressions are not and must not be treated as words of limitation;
- (h) A reference to the Land, Premises or any thing includes the whole and each part of it;
- (i) The Minister and the Tenant agree that:
  - (i) the terms contained in this Lease constitute the whole of the agreement in respect of the Land and Premises between the Minister and the Tenant and all previous negotiations and agreements are negatived;
  - (ii) no further terms are be implied or arise between the Minister and the Tenant by way of collateral or other agreement made by or on behalf of the Minister or by or on behalf of the Tenant on or before or after the execution of this Lease, and any implication or collateral or other agreement is excluded and negatived;
  - (iii) no information, representation or warranty by the Minister or the Minister's agents was supplied or made with the intention or knowledge that it would be relied on by the Tenant in entering into this Lease; and
  - (iv) no information, representation or warranty has been relied on by the Tenant in entering into this Lease.
- (j) Headings and the index to this Lease are for guidance only and do not affect the interpretation of this Lease;
- (k) If a reference is made to any Person, body or Authority and that person, body or Authority has ceased to exist, then the reference is deemed to be a reference to the Person, body or Authority that then serves substantially the same or equivalent objects as the Person, body or Authority that has ceased to exist;
- (l) Reference to the President of a Person, body or Authority must, in the absence of a President, be read as a reference to the senior officer or equivalent employee for the time being of the Person, body or Authority or such other Person fulfilling the duties of President;
- (m) A reference to "writing" or "written" and any words of similar import include printing, typing, lithography and any other means of reproducing characters in tangible and visible form, including any communication effected through any

electronic medium if such communication is subsequently capable of reproduction in tangible or visible form;

- (n) A reference to "corporation" and any other words or expressions used or defined in the *Corporations Act 2001*, unless the context otherwise requires, has the same meaning that is given to them in the *Corporations Act 2001*;
- (o) This Lease is governed by Victorian law. The Parties irrevocably submit to the non-exclusive jurisdiction of the courts of that State and courts of appeal from them. Except as expressly agreed in writing by both Parties or for an action required at a federal level, each Party waives any right it has to object to an action being brought in any court outside Victoria including, without limitation, by claiming that the action has been brought in an inconvenient forum or that those courts do not have jurisdiction;
- (p) If the day or last day for doing anything or on which an entitlement is due to arise is not a Business Day, the day or last day for doing the thing or date on which the entitlement arises for the purposes of this Lease shall be the next Business Day;
- (q) Each provision of this Lease continues to have full force and effect until it is satisfied or completed;
- (r) Where a word or phrase is defined, its other grammatical forms have a corresponding meaning; and
- (s) A reference to an agreement or a document is to that agreement or document as amended, novated, supplemented, varied or replaced from time to time except to the extent prohibited by this Lease.

## 1.2 Minister's delegations

- (a) Wherever this Lease refers to an action, consent, approval or other thing to be done by, or matter to be considered by the Minister, the reference to the Minister shall be deemed to include a reference to the Minister's Agents and Officers.
- (b) The Minister may appoint any person as the Minister's delegate to exercise all powers conferred by this Lease on the Minister expressly, including without limitation, the power to give any consent or approval pursuant to this Lease.
- (c) The Minister may change the appointment at any time.

## 2 PART 2 - EXCLUSION OF STATUTORY PROVISIONS

### 2.1 Moratorium

To the extent permitted by law, the application to this Lease or to any Party of any Law or any Requirement or any moratorium having the effect of extending or reducing the Term, reducing or postponing the payment of Rent or any part of it or otherwise affecting the operation of the terms of this Lease or its application to any Party is excluded and negated.

## **2.2 Exclusion of Statutory Provisions**

The covenants, powers and provisions implied in leases by virtue of the *Transfer of Land Act 1958* are expressly negated.

## **3 PART 3 - LEASE OF LAND**

### **3.1 Lease of Land for Term**

The Minister leases the Land to the Tenant for the Term.

### **3.2 Minister's Reservations**

The Minister reserves the right for the Minister and the Minister's Agents and Officers to:

- (a) carry out any works that may be required to comply with any applicable Law or Requirement; and
- (b) create any registered or unregistered easement or other right over the Land as long as it does not adversely affect the Tenant's rights under this Lease;
- (c) enter the Land and the Premises for the purposes set out in this Clause.

### **3.3 Other Reservations**

This Lease is granted subject to the following reservations:

- (a) the reservation to the Crown of all gold and minerals within the meaning of the *Mineral Resources Development Act 1990* and petroleum within the meaning of the *Petroleum Act 1958*, all of which are described as the "reserved minerals";
- (b) the reservation to the Crown of the rights of access for the purpose of searching for and obtaining the reserved minerals in any part of the Land;
- (c) the reservation to the Crown of the rights of access for any pipeline works and other purposes necessary for obtaining and conveying on and from the Land any of the reserved minerals obtained in any part of the Land; and
- (d) the right to resume the Land for mining purposes under Section 205 of the *Land Act 1958*.

### **3.4 Minister's Exercise of Rights**

Except in an emergency, the Minister must give the Tenant reasonable notice of the Minister's intended exercise of the rights set out in this Clause. The Minister must only exercise the rights at reasonable times and must minimise interference to the Tenant when doing so.

### **3.5 Ownership of Tenant's Improvements**

The Tenant owns all of the Tenant's Improvements unless the Act requires any buildings and structures erected on the Land by the Tenant to be and to remain the property of the Minister.

## **4 PART 4 - RENT**

### **4.1 Tenant to pay Rent**

The Tenant covenants to pay the Rent:

- (a) at the times and in the manner set out in Item 6 without demand by the Minister;
- (b) without any abatement, deduction or right of set-off;
- (c) to the Minister at the address set out in this Lease or to any other address or in any other way the Minister directs the Tenant by Notice.

### **4.2 Apportionment of Rent**

If the Commencement Date is not the first day of a rent period, the first and last instalments of Rent will be apportioned on a pro-rata daily basis for the periods from:

- (a) the Commencement Date to the first day of the next rent period;
- (b) the first day of the last rent period of the Term until the date on which the Term expires.

## **5 PART 5 - RATES AND TAXES AND GST**

### **5.1 Tenant to pay Rates and Taxes**

The Tenant must pay the Rates and Taxes:

- (a) to the assessing Authority on time if assessed directly against the Tenant or the Land; but otherwise
- (b) to the Minister by the date which is 10 Business Days before the due date for payment if the Minister must pay the Rates and Taxes and has given the Tenant a copy of the notice at least 10 Business Days before then.

### **5.2 Tenant to Produce Receipts**

The Tenant must produce receipts to the Minister evidencing payment of the Rates and Taxes by the due date for payment if the Tenant is required to pay them to the assessing Authority.

### **5.3 Pro-rata apportionment**

If necessary, the Rates and Taxes will be apportioned on a pro-rata daily basis at the beginning and at the end of the Term.

### **5.4 Goods and Services Tax**

- (a) If GST is or will be or is purported to be payable on any Supply the Party receiving the Supply must pay the Party making the Supply a sum equal to any GST payable by the supplier for that Supply.

- (b) To the extent that one Party is required to reimburse the other Party for costs incurred by the other Party, those costs do not include any amount in respect of GST for which the Party is entitled to claim an input tax credit.
- (c) A Party's obligation to pay an amount under this Clause is subject to a valid tax invoice being delivered to that Party. For the avoidance of any doubt, the Rent and all other payments under this Lease are exclusive of GST.

## **6 PART 6 - COST OF SERVICES**

The Tenant must pay Costs for all Services (including any special, additional or unusual Services separately supplied, metered, consumed or connected as appropriate in, to or on the Land or the Premises):

- (a) by direct payment on or before the due date if assessed directly against the Land or the Premises; but otherwise
- (b) by reimbursing the Minister by the date which is 5 Business Days before the due date for payment if the Minister has given a copy of the Notice to the Tenant at least 10 Business Days before then.

## **7 PART 7 - COSTS**

The Tenant must pay to the Minister all the Minister's reasonable legal and other Costs by the Minister including the Costs of valuers, quantity surveyors and other consultants engaged of and incidental to:

- (a) the negotiation, preparation and execution of this Lease;
- (b) any consent required under this Lease;
- (c) any assignment or subletting for which the Minister's consent is required by this Lease;
- (d) any variation, extension, surrender or termination of this Lease otherwise than by effluxion of time;
- (e) any default by the Tenant or the Tenant's Employees in observing or performing any covenants contained or implied in this Lease.

## **8 PART 8 - INTEREST**

### **8.1 Payment**

The Tenant must pay on demand interest at the Default Rate on any Rent or other moneys which the Tenant has not paid within 30 days of the due date for payment.

### **8.2 Calculation**

Interest is to be calculated daily from the due date and is to continue until the overdue money is paid. The interest will be capitalised on the last day of each month and may be recovered in the same way as Rent in arrears.

### **8.3 No Prejudice**

If the Minister requires a Tenant to pay interest, it is without prejudice to any other rights, powers and remedies which the Minister may have under this Lease or at law.

## **9 PART 9 - USE OF PREMISES**

### **9.1 Tenant's Permitted Use and negative covenants**

The Tenant must not:

- (a) use the Land or the Premises for any purpose other than the Permitted Use;
- (b) do anything in or on the Premises which in the reasonable opinion of the Minister causes or may cause nuisance, damage, disturbance or danger to the Minister or the occupiers or owners of any other property;
- (c) use or allow the use of any radio, television or other sound producing equipment at a volume that can be heard outside the Premises except with the prior written consent of the Minister which is not to be unreasonably withheld but may be given conditionally;
- (d) affix any television or radio mast or antennae, satellite dish or any other communication device to any part of the Premises except with the prior written consent of the Minister which is not to be unreasonably withheld but may be given conditionally;
- (e) write, paint, display, hang or affix any sign, advertisement, placard, name, flagpole, flag or notice on any part of the Premises except with the prior written consent of the Minister which is not to be unreasonably withheld but may be given conditionally;
- (f) overload the floor, walls, roof or any other part of the Premises, or, bring onto or remove from the Premises any plant or heavy equipment which by reason of its weight or vibration in its operation or in any way is likely in the reasonable opinion of the Minister to cause damage to any part of the Premises or the Services;
- (g) except to the extent that they are necessary for the Permitted Use and then only in compliance with any Law or Requirement and in such quantities as are reasonably appropriate, store Hazardous Materials on or in the Premises;
- (h) install any equipment or system in the Premises that overloads or may overload the electrical or other Services to the Premises;
- (i) use the Premises as a residence;
- (j) use the Premises for an illegal purpose;
- (k) burn any rubbish or waste on the Land or the Premises other than the burning of vegetation in accordance with all necessary permits.

## 9.2 Tenant's positive covenants

The Tenant at its Cost must:

- (a) at all times carry out the Permitted Use in a business like and reputable manner;
- (b) keep the Premises clean and not permit any accumulation of useless property or rubbish in them;
- (c) keep the Premises free of pests, insects and vermin;
- (d) provide the Minister (and keep updated when it changes) with the name, postal address, e-mail address and telephone numbers of a person or persons to contact during and after business hours if an emergency arises which affects the Premises;
- (e) comply with the Minister's reasonable operational requirements for the Services and not interfere with the Services;
- (f) on vacating the Premises, remove all lettering, signs, flagpoles, flags, and other distinctive marks from the Premises and make good any damage caused by the removal;
- (g) obtain, maintain and comply with all consents or approvals from all Authorities which from time to time are necessary or appropriate for the Permitted Use. The Tenant must not by any act or omission cause or permit any consent or approval to lapse or be revoked;
- (h) maintain documented risk management identification and treatment programs for the Premises and the Services;
- (i) arrange for the regular and efficient removal from the Premises of its refuse and rubbish;
- (j) the Tenant must if a notifiable infectious illness occurs in the Premises promptly give Notice to the Minister and all relevant Authorities and thoroughly fumigate and disinfect the Premises to the satisfaction of the Minister and all relevant Authorities;
- (k) undertake all fire protection works on the Land required by Law to the satisfaction of the Minister and all relevant Authorities;
- (l) permit the Minister or the Minister's servants or agents with or without vehicles and equipment, workmen or others at all times to enter the Land for fire protection and suppression purposes.
- (m) comply with the Further Obligations, if any, set out in Schedule 3.

## 9.3 No warranty as to use

- (a) The Minister gives no warranty (either present or future) that the Land or the Premises are fit for the Permitted Use.

- (b) The Tenant has entered into this Lease with full knowledge of and subject to any prohibitions or restrictions contained in any Law or any Requirement on how the Land or the Premises may be used.

#### **9.4 To Let Signs and Inspection**

The Minister may after giving reasonable notice and at reasonable times:

- (a) place advertisements and signs on those parts of Land and Premises as are reasonable having regard to the interests of the Minister and the Tenant where the Premises are available for lease if the Tenant does not exercise any option to renew this Lease for a Further Term;
- (b) by appointment with the Tenant, show prospective tenants through the Land and the Premises.

The Minister in exercising rights under this Clause must endeavour to minimise any inconvenience to the Tenant.

#### **9.5 Cost of alteration**

Pay to the Minister on demand the Cost reasonably incurred by the Minister of any alteration to any Services, sprinkler or fire prevention equipment and installations (including alarms) which may become necessary because of the non-compliance of the Tenant or of the Tenant's Employees with any Requirements, including those of any Tenant's insurer of the Premises or any Tenant's fittings within the period required or, if no period is required, within a reasonable period to meet those requirements.

### **10 PART 10 - COMPLIANCE WITH LAWS AND REQUIREMENTS**

#### **10.1 Compliance with Laws**

- (a) The Tenant at its Cost must comply with and observe all Laws and Requirements relating to the Land, the Premises, the Services and the Permitted Use. If the Tenant receives any Notice from an Authority, the Tenant must immediately provide a complete copy of it to the Minister;
- (b) Before complying with any Law or Requirement, the Tenant must:
  - (i) obtain the written consent of the Minister which is not to be unreasonably withheld and;
  - (ii) observe the provisions of this Lease.

#### **10.2 Minister may comply with Laws if Tenant defaults**

If the Tenant fails to do so, the Minister may comply with any Law or Requirement referred to in this Clause either in part or whole. If the Minister does this:

- (a) any Costs incurred by the Minister must be paid or reimbursed to the Minister by the Tenant;
- (b) it is without prejudice to any of the Minister's other rights in respect of non-compliance by the Tenant with its obligations under this Lease.

## **11 PART 11 - MAINTENANCE REPAIRS ALTERATIONS AND ADDITIONS**

### **11.1 General repairing obligation**

- (a) The Tenant at its Cost during the Term and any extension or holding over must keep the Premises and the Services in good repair and condition and clean and tidy. For the avoidance of doubt, the Tenant acknowledges that the Minister will have no responsibility for any repairs and maintenance to the Premises or the Services.
- (b) Before carrying out any repairs or maintenance to the Premises, the Tenant must obtain the written approval of the Minister and all relevant Authorities but the Tenant will not be required to obtain written or any form of approval from the Minister for maintenance of a non-structural nature.

### **11.2 Minister's right of inspection**

The Minister or the Minister's Agents and Officers may enter the Premises and view the state of repair and condition of the Premises and Services:

- (a) in the presence of the Authorised Officer of the Tenant if required by the Tenant;
- (b) at reasonable times on giving to the Tenant reasonable notice in writing (except in the case of emergency when no notice is required).

### **11.3 Enforcement of repairing obligations**

The Minister may serve on the Tenant a Notice:

- (a) specifying any failure by the Tenant to carry out any repair, replacement or cleaning of the Premises or the Services which the Tenant is required to do under this Lease; and/or
- (b) require the Tenant to carry out the repair, replacement or cleaning within a reasonable time. If the Tenant does not comply with the Notice, the Minister may elect to carry out such repair, replacement or cleaning and any Costs incurred must be paid by the Tenant when demanded by the Minister.

### **11.4 Minister may enter to repair**

The Minister, the Minister's Agents and Officers and others authorised by the Minister may at all reasonable times after giving the Tenant reasonable notice (except in the case of emergency when no notice is required) enter the Land and the Premises to carry out any works and repairs in the circumstances set out below. In doing so, the Minister must endeavour not to cause undue inconvenience to the Tenant.

- (a) The circumstances for entry are:
  - (i) to carry out any repairs on or to the Premises or the Services, which the Minister considers necessary or desirable or which relate to anything which the Minister is obliged or entitled to do under this Lease;
  - (ii) if an Authority requires any repair or work to be undertaken on or to the Premises or the Services which the Minister is either required or in the

Minister's discretion elects to do and for which the Tenant is not liable under this Lease; and/or

- (iii) if the Minister elects to carry out any repair work which the Tenant is required or liable to do under this Lease by any Law or by any Requirement but fails to do so within the time specified or otherwise allowed for that work to be done.

#### **11.5 Alterations to Premises**

- (a) The Tenant must not and must not permit any other person to carry out any Proposed Work without the Minister's prior written consent which must not be unreasonably withheld or delayed;
- (b) In seeking the Minister's consent the Tenant must submit plans and specifications of the Proposed Work for the approval of the Minister together with a list of the Persons (if any) from or to whom the Tenant proposes to call a tender or award a contract for the Proposed Work;
- (c) the Minister may give consent subject to the Tenant satisfying the following requirements:
  - (i) any Proposed Work must be supervised by a Person approved by the Minister;
  - (ii) any Proposed Work must be executed promptly and continuously in a proper and workmanlike manner, using the materials and by contractors or tradesmen approved by the Minister, in accordance with all Laws and Requirements;
  - (iii) the Tenant must pay on demand all Costs incurred by the Minister in considering or inspecting the Proposed Work and its supervision, including the reasonable fees of architects, engineers or other building consultants reasonably engaged by or on behalf of the Minister;
  - (iv) the Tenant must obtain and keep current and comply with all necessary approvals or permits from all Authorities necessary to enable any Proposed Work to be lawfully effected, and must on request by the Minister produce for inspection by the Minister copies of all such approvals and permits;
  - (v) on completion of the Proposed Work the Tenant must immediately obtain and produce to the Minister, any unconditional certificates of compliance or of satisfactory completion issued by relevant Authorities and, a certificate by a consultant approved by the Minister that the Proposed Work has been carried out in accordance with the plans and specifications approved by the Minister.

#### **11.6 Notice to Minister of damage, accident etc**

The Tenant must immediately give Notice to the Minister of any:

- (a) damage however caused, accident to or defects in the Premises or the Services;

- (b) circumstances likely to cause any damage or injury occurring within the Premises of which the Tenant has actual or constructive notice;
- (c) any fault in the Services; or
- (d) Notice from any Authority.

## **12 PART 12 - ASSIGNMENT AND SUBLETTING**

### **12.1 No disposal of Tenant's interest**

The Tenant must not without the prior written consent of the Minister:

- (a) assign, transfer, sub-let, grant any licence, mortgage, encumber, charge or part with or share the possession of or otherwise deal with or dispose of the Tenant's estate or interest in the Land or any part of the Land or the Premises;
- (b) declare itself trustee of the Land or any part of the Land or of any legal or equitable estate or interest in the Land or the Premises.

### **12.2 Deemed assignment on change of shareholding**

There is a deemed assignment under this Clause if the Tenant is a corporation (other than an incorporated association) and there is any change in any of the following which results in a change in the effective control of the Tenant:

- (a) the membership of the corporation or any holding company of the corporation;
- (b) the beneficial ownership of any shares in the capital of the corporation or any holding company of the corporation; or
- (c) the beneficial ownership of the business or assets in the corporation or part of it.

If any of these events occur then the Tenant must obtain the Minister's written consent under this Clause. This does not apply in relation to the sale of shares in the Tenant or the Tenant's holding company that is listed on a recognised stock exchange.

### **12.3 Acceptance of Rent by Minister**

The acceptance by the Minister of any Rent or other payment from any Person other than the Tenant does not constitute an acknowledgment by the Minister that it recognises that person as the authorised assignee or sub tenant.

### **12.4 S.144 excluded**

Section 144 of the *Property Law Act 1958* does not apply to this Lease.

## **13 PART 13 - INSURANCE AND INDEMNITIES**

### **13.1 Insurances to be taken out by Tenant**

The Tenant must effect and maintain at the Tenant's Cost:

- (a) a standard public liability insurance policy endorsed to extend the indemnity under the policy to include the Tenant's liability under Clause 13.5. The policy must:
  - (i) be for an amount of not less than the Insured Sum or such higher amount as the Minister may reasonably require in respect of any single occurrence; and
  - (ii) be on terms that the insurer waives all rights of subrogation against the Minister;
- (b) insurance for all Tenant's Improvements and all Tenant's property; and
- (c) any other insurance reasonably required by the Minister.

### **13.2 Tenant's insurance obligations**

The Tenant must:

- (a) ensure that all policies of insurance effected by the Tenant pursuant to this Clause are taken out with an insurance office or company authorised by the Australian Prudential Regulation Authority to conduct new or renewal insurance business in Australia including policies underwritten by Lloyd's of London or otherwise approved by the Minister.
- (b) by 30 July in each year of the Term and if requested by the Minister, produce to the Minister a certificate of currency; and
- (c) pay all premiums and other money payable in respect of the insurance policies when they become due and payable.

### **13.3 Non-vitiation of policies**

The Tenant must not do anything in, to or on the Premises and must use its best endeavours not to allow anything to be done which may vitiate or render void or voidable any Tenant's insurances or any condition of any insurance taken out by the Minister of which the Tenant has been made aware in respect of the Premises or any property in or on it.

### **13.4 Exclusion of Minister's liability**

- (a) In the absence of any negligence or deliberate act or omission or material breach of this Lease by the Minister or the Minister's Agents and Officers, the Tenant acknowledges that all property which may be in or on the Premises will be at the sole risk of the Tenant and the Minister will not be liable for any Claim that the Tenant or the Tenant's Employees or any Person claiming by, through or under the Tenant may incur or make or any which arises from:
  - (i) any fault in the construction or state of repair of the Premises or any part of it; or
  - (ii) the collapse of the Premises irrespective of the cause; or
  - (iii) any defect in any Services; or

- (iv) the flow, overflow, leakage, condensation or breakdown of any water, air-conditioning, gas, oil or other sources of energy or fuel, whether from the roof, walls, gutter, downpipes or other parts of the Premises.
- (b) In the absence of any negligence or deliberate act or omission or material breach of this Lease by the Minister or the Minister's Agents and Officers, the Tenant agrees that the Minister will not be responsible for and releases the Minister, the Crown and the Minister's Agents and Officers from liability in respect of any:
  - (i) Claim relating to any property of the Tenant or any other Person in or on the Premises or any part of it however occurring; or
  - (ii) death, damage or injury to any Person or property in on or under the Premises or on any land near it suffered as a direct consequence of the construction, operation, presence or maintenance of the Premises and including, without limitation, damage or injury to any person or property resulting from any collision with or the collapse of the Premises.

### 13.5 Indemnities

In the absence of any negligence or deliberate act or omission or material breach of this Lease by the Minister or the Minister's Agents and Officers and despite:

- (a) any Claims having resulted from anything which the Tenant may be authorised or obliged to do under this Lease; and/or
- (b) at any time any waiver or other indulgence having been given to the Tenant in respect of any obligation of the Tenant under this Clause,

the Tenant will indemnify and keep indemnified the Minister, the Minister's Agents and Officers and the Crown from and against all Claims for which any of them will or may be or become liable, during or after the Term, in respect of or arising from:

- (i) any cause whatever in respect of damage or injury to the Premises, to any property or to any Person or the death of any Person inside or outside the Premises caused or contributed to by any neglect or default of the Tenant or the Tenant's Employees under this Lease or by the use of the Premises by the Tenant or by the Tenant's Employees including, without limitation, injury or death to any Person or property resulting from any collision with or collapse of the Premises;
- (ii) the negligent or careless use or neglect of the Services and facilities of the Premises by the Tenant or the Tenant's Employees or any other Person claiming through or under the Tenant or of any trespasser while such trespasser is in or on the Premises caused or contributed to by any default or negligent act or omission of the Tenant;
- (iii) overflow or leakage of water (including rain water) or from any Services whether originating inside or outside the Premises caused or contributed to by any act or omission on the part of the Tenant or the Tenant's Employees or other Person claiming through or under the Tenant;

- (iv) failure of the Tenant to give Notice to the Minister of any defect in any of the mechanical or any other Services in the Premises within a reasonable time of the Tenant becoming aware of it; and
- (v) damage to plate, float and other glass caused or contributed to by any act or omission on the part of the Tenant or the Tenant's Employees.

## **14 PART 14 - DAMAGE AND DESTRUCTION**

### **14.1 Damage to Tenant's Improvements**

If the Tenant's Improvements or any part of them are at any time damaged or destroyed by any disabling cause then the Tenant must either:

- (a) expeditiously re-instate the Tenant's Improvements and make them fit for the occupation and use by the Tenant as if it was Proposed Work; or
- (b) remove any remaining Tenant's Improvements and reinstate the surface of the Premises to its condition as at the Commencement Date.

### **14.2 Rent and Rates and Taxes**

The Tenant must continue to pay the Rent and the Rates and Taxes even if the Tenant's Improvements are destroyed or damaged.

## **15 PART 15 - MINISTER'S COVENANT**

### **15.1 Quiet Enjoyment**

If the Tenant pays the Rent and observes and performs in a timely fashion the covenants and conditions on its part contained in this Lease, the Tenant may occupy and enjoy the Land during the Term without any interruption by the Minister or by any Person claiming through the Minister except as provided in this Lease.

## **16 PART 16 - TERMINATION AND DEFAULT**

### **16.1 Events of Default**

The following are Events of Default:

- (a) if the Rent or any other money payable under this Lease is not paid within 30 days of the due date for payment whether legally demanded or not;
- (b) if the Tenant at any time fails to perform or observe any of its obligations under this Lease;
- (c) if the Tenant or the Guarantor are companies then if either the Tenant or the Guarantor:
  - (i) enter into any compromise or arrangement with any of its creditors or if an application is made to any court for an order summoning a meeting of creditors; or

- (ii) has a receiver or receiver and manager or administrator or controller appointed of any of its assets; or
- (iii) is wound up or dissolved or notice is given of intention to propose a resolution for winding up or an order is made or resolution passed or an application is made for winding up or dissolution; or
- (iv) has a resolution of the directors passed that in their opinion the company can no longer continue its business; or
- (v) calls a meeting of its creditors pursuant to the *Corporations Act 2001*; or
- (vi) is placed under official management or if the members determine to convene a meeting of creditors for the purpose of placing the company under official management; or
- (vii) has an inspector appointed pursuant to the *Australian Securities and Investments Commission Act 2001*; or
- (viii) is unable to pay its debts as and when they fall due; or
- (ix) makes an assignment for the benefit of or enters into an arrangement or composition or a moratorium whether formal or informal with its creditors or financiers; or
- (x) has a provisional liquidator or a liquidator by any means appointed;

- (d) if any execution exceeding ten thousand dollars is issued, levied or enforced against the Tenant or the Guarantor or on any of the assets of the Tenant or the Guarantor unless such execution is fully paid or satisfied within seven days from the date of the issue, levy or enforcement, or appropriate legal proceedings to invalidate the execution are taken within seven days of the issue, levy or enforcement; and
- (e) if the Tenant or the Guarantor is a natural person and becomes or is made bankrupt or makes any assignment of his estate or any part of it for the benefit of creditors or otherwise seeks relief under or takes advantage of any Law for the time being in force relating to bankruptcy or insolvent debtors or causes or permits his goods to be levied on or under any execution or other legal process.

## 16.2 Forfeiture of Lease

If an Event of Default occurs the Minister may, without prejudice to any other Claim which the Minister has or may have against the Tenant or any other Person at any time re-enter into and upon the Land or any part of it in the name of the whole and thereupon this Lease will be absolutely determined.

## 16.3 Re-entry

The right of re-entry for breach of any covenant or condition to which section 146(1) of the *Property Law Act 1958* applies must not be exercised until the expiration of 30 days after the Minister has served on the Tenant the notice required pursuant to that section.

**16.4 Minister may rectify**

If the Tenant is in default under this Lease and fails to commence to rectify that default within 7 days of the Minister notifying the Tenant in writing of that default and requiring its rectification or, having commenced, fails to expeditiously complete that rectification within a reasonable time, the Minister may, but will not be obliged to, remedy at any time without further notice any default by the Tenant under this Lease. If the Minister so elects all reasonable Costs incurred by the Minister (including legal costs and expenses) in remedying the default will constitute a liquidated debt and must be paid by the Tenant to the Minister on demand.

**16.5 Waiver**

- (a) The Minister's failure to take advantage of any default or breach of covenant by the Tenant will not be or be construed as a waiver of it, nor will any custom or practice which may grow up between any of the Parties in the course of administering this Lease be construed to waive or to lessen the right of the Minister to insist upon the timely performance or observance by the Tenant of any covenant or condition of this Lease or to exercise any rights given to the Minister in respect of any such default;
- (b) A waiver by the Minister of a particular breach is not deemed to be a waiver of the same or any other subsequent breach or default;
- (c) The demand by the Minister for, or subsequent acceptance by or on behalf of the Minister of, Rent or any other money payable under this Lease will not constitute a waiver of any earlier breach by the Tenant of any covenant or condition of this Lease, other than the failure of the Tenant to make the particular payment or payments of Rent or other moneys so accepted, regardless of the Minister's knowledge of any earlier breach at the time of acceptance of such Rent or other moneys.

**16.6 Tender after determination**

If the Minister accepts money from the Tenant after the Minister ends this Lease the Minister may (in the absence of any express election of the Minister) apply it:

- (a) first, on account of any Rent and other moneys accrued and due under this Lease but unpaid at the date the Lease is ended; and
- (b) secondly, on account of the Minister's Costs of re-entry.

**16.7 Essential terms**

The Minister and the Tenant agree that each of the following covenants by the Tenant are essential terms of this Lease:-

- (a) to pay the Rent;
- (b) to keep the Premises open for use;
- (c) to carry on the Permitted Use;
- (d) to comply with Laws and Requirements;

- (e) subject to this Lease, to repair and maintain and, if necessary, reinstate or demolish the Tenant's Improvements;
- (f) not to assign this Lease or sub-let the Land or any part of it, except in accordance with Clause 12;
- (g) to take out and keep current those insurances required to be taken out by the Tenant;
- (h) to pay or reimburse Rates and Taxes.

#### **16.8 Damages for Breach**

The Tenant covenants to compensate the Minister for any breach of an essential term of this Lease. The Minister may recover damages from the Tenant for such breaches. The Minister's entitlement under this Clause is in addition to any other remedy or entitlement to which the Minister is entitled (including to terminate this Lease).

#### **16.9 Repudiation by Tenant**

- (a) The Tenant covenants to compensate the Minister for any loss or damage suffered by reason of the Tenant's conduct (whether acts or omissions):
  - (i) constituting a repudiation of this Lease or of the Tenant's obligations under this Lease; or
  - (ii) breaching any Lease covenants.
- (b) The Minister may recover damages against the Tenant in respect of repudiation or breach of covenant for the loss or damage suffered by the Minister during the entire term of this Lease.

#### **16.10 Acts by the Minister not to constitute forfeiture**

The Minister's entitlement to recover damages shall not be affected or limited if any of the following events occur:-

- (a) the Tenant abandons or vacates the Land; or
- (b) the Minister elects to re-enter the Land or to terminate the Lease; or
- (c) the Minister accepts the Tenant's repudiation; or
- (d) the Parties' conduct (or that of any of their servants or agents) constitutes a surrender by operation of law.

#### **16.11 Mitigation**

Nothing in this Clause will operate to relieve the Minister of any obligation which would otherwise apply to mitigate any loss or damage suffered by the Minister.

**17 PART 17 - DETERMINATION OF TERM**

**17.1 Tenant to yield up**

When this Lease ends the Tenant at its Cost unless the Minister directs otherwise must demolish and remove the Tenant's Improvements in a proper and workmanlike manner in compliance with the requirements of all Authorities and to the satisfaction of the Minister.

**17.2 Tenant to continue pay rent etc**

The Tenant must continue to pay the Rent, the Rates and Taxes and all other money payable under this Lease until it has demolished and removed the Tenant's Improvements.

**17.3 Tenant not to cause damage**

- (a) The Tenant must not cause or contribute to any damage to the Land in the demolition and removal of the Tenant's Improvements.
- (b) If the Tenant causes any such damage in the demolition and removal of the Tenant's Improvements, the Tenant must make good any such damage and must leave the Land in a condition that is acceptable to the Minister and all Authorities.
- (c) If the Tenant fails to do so within a reasonable time, the Minister may make good any such damage at the Cost of and as agent for the Tenant and recover from the Tenant the reasonable cost to the Minister of doing so as a liquidated debt payable on demand.

**17.4 Failure by Tenant to remove the Tenant's Improvements**

If the Tenant fails to remove the Tenant's Improvements in accordance with this Clause or if the Minister re-enters the Land, the Minister at the Minister's option (without prejudice to any action or other remedy which the Minister has) may:

- (a) demolish and remove the Tenant's Improvements; and
- (b) without being guilty of any manner of trespass, cause any of the Tenant's property to be removed and stored in such manner as is reasonable at the risk and at the Cost of Tenant and/or at the option of the Minister sell it as the attorney of the Tenant and appropriate the proceeds of sale in payment of any Rent or other money owing by the Tenant to the Minister and pay any residue without interest to the Tenant; or
- (c) treat the Tenant's property as if the Tenant had abandoned its interest in it and it had become the property of the Minister, and deal with it in such manner as the Minister thinks fit without being liable in any way to account to the Tenant for them.

**17.5 Tenant to indemnify and pay Minister's Costs**

The Tenant must:

- (a) indemnify and keep indemnified the Minister in respect of the reasonable cost of the removal and storage of the Tenant's property, the cost of demolishing and removing the Tenant's Improvements and also in respect of all Claims which the

Minister may suffer or incur at the suit of any Person (other than the Tenant) claiming an interest in the Premises or the Tenant's property by reason of the Minister acting in any manner permitted in this Clause; and

- (b) pay to the Minister as a liquidated debt payable on demand any reasonable Costs incurred by the Minister in exercising its rights pursuant to this Clause, including any excess of Costs over moneys received in disposal of the Tenant's property pursuant to the Minister's rights contained in Clause 17.4 except to the extent caused by any negligent act or omission of the Minister.

#### **17.6      Earlier breaches**

The ending of this Lease does not prejudice or affect any rights or remedies of the Minister against the Tenant in respect of any earlier breach by the Tenant of any Lease covenants and conditions.

### **18            PART 18 – MISCELLANEOUS**

#### **18.1      Notices**

- (a) Any Notice served or given by either Party pursuant to this Lease will be valid and effectual if signed by either Party or by any director, alternate director, secretary, executive officer, attorney, managing agent, Authorised Officer or solicitors for the time being of that Party or any other Person nominated from time to time by that Party.
- (b) Each Party must immediately provide the other Party with a Notice containing full particulars of the address and telephone number of the Party giving the Notice and must update such notice in the event of any change.
- (c) Any Notice required to be served or which the Minister may elect to serve on the Tenant shall be sufficiently served if:
  - (i) served personally
  - (ii) forwarded by prepaid security post to the Tenant at its address in this Lease.
- (d) Any Notice required to be served on the Minister shall be sufficiently served if:
  - (i) served personally
  - (ii) forwarded by prepaid security post addressed to the Minister to the Name and Notice Address.

All such Notices must be addressed to the Minister at that address or at such other address as the Minister from time to time nominates.

- (e) Any Notice is deemed to have been duly served if given:-
  - (i) by post, two Business Days after the day it was posted;
  - (ii) personally, on the date of service.

#### **18.2 Overholding**

If the Tenant continues in occupation of the Land after the Term has expired without objection by the Minister:

- (a) the Tenant will be deemed a tenant on the terms of this Lease from month to month for a period not exceeding that permitted by the Act (if any) at a rent to be agreed and failing agreement at a rent to be determined by the Valuer General Victoria acting as an expert and not as an arbitrator and his costs must be paid equally by the Parties;
- (b) either Party may end the Lease by giving to the other Party at any time one month's Notice.

#### **18.3 Set-Off**

If the Tenant defaults in the payment of the Rent, the Rates and Taxes or any other money payable under this Lease to the Minister or any Authority, the Minister may set-off that amount against any moneys which may from time to time be payable by the Minister to the Tenant on any account whatsoever but any set-off will not relieve the Tenant from its default for any non-payment of the Rent, the Rates and Taxes or other moneys under this Lease.

#### **18.4 Easements**

The Minister may grant rights of support and enter into any arrangement or agreement with any party with an interest in any adjacent land or with any Authority as the Minister thinks fit for the purpose of:

- (a) public or private access to the Land; or
- (b) support structures erected on adjoining land;
- (c) the provision of Services.

The Minister must not exercise any rights under this Clause if it substantially and permanently derogates from the enjoyment of the rights of the Tenant under this Lease.

#### **18.5 Guarantee**

If a Guarantee and Indemnity is annexed to this Lease, the Tenant must on the same date as the execution of this Lease procure its execution by the Guarantors named in it and deliver the executed Guarantee and Indemnity to the Minister. If that Minister elects, this Lease will not take effect until the Guarantee and Indemnity has been properly executed by the Guarantors and delivered to the Minister.

#### **18.6 Waiver**

No waiver by one Party of a breach by or on behalf of the other Party of any obligation, provision or condition of this Lease expressed or implied shall operate as a waiver to or of any other breach of the same or any other obligation, provision or condition of this Lease expressed or implied.

## **19 PART 19 – FURTHER TERM**

### **19.1 Option for new lease**

The Minister must grant the Tenant and the Tenant must take a new lease for the next Further Term if:

- (a) the Tenant gives the Minister a renewal Notice not more than six months or less than three months before the Term expires;
- (b) there is no unremedied default of which the Minister has given the Tenant written notice;
- (c) the Tenant has not persistently defaulted under this Lease throughout its Term and the Minister has not given the Tenant Notices of the defaults; and
- (d) the Tenant does not default under this Lease after giving the Minister the renewal Notice.

### **19.2 Terms of new lease**

The new lease will:

- (a) commence on the day after the Term expires;
- (b) be at an initial annual Rent from the commencement of the Further Term determined in the manner set out in this Lease and the Second Schedule; and
- (c) be on the terms and conditions contained in this Lease including any provision for the review of Rent but not including any provision for renewal if there are no Further Terms.

### **19.3 Execution of extension of lease**

The Minister and the Tenant, at the option of the Minister, must either execute a new lease or an extension of lease to be prepared at the direction of the Minister and at the Tenant's Cost.

### **19.4 Guarantor to execute extension of lease or guarantee**

- (a) If the Tenant is a corporation, then the Tenant must procure the Guarantor to execute a guarantee of the Tenant's obligations under the new lease.
- (b) The Minister does not have to grant the new lease if the Tenant does not procure the Guarantor to execute the guarantee in accordance with the preceding sub-Clause.

## **20 PART 20 – BANK GUARANTEE**

### **20.1 Tenant to provide Bank Guarantee**

If asked to do so by the Minister, in order to secure the performance of the obligations of the Tenant under this Lease the Tenant must procure in favour of the Minister a Bank

Guarantee for the Guaranteed Sum. The following provisions apply to the Bank Guarantee:-

- (a) The Bank Guarantee will remain in force until the bank is notified in writing by the Minister that it is no longer required.
- (b) The Bank Guarantee must be provided to the Minister and come into effect on the Commencement Date;
- (c) If the Tenant is in breach of or fails to perform its obligations under this Lease the Minister may, without prejudice to all other rights and remedies available to it, draw down the whole or any part of the Bank Guarantee and apply the proceeds drawn down to remedy or assist in remedying and to compensate the Minister for that default and to assist the Minister in exercising any or all of the Minister's rights and remedies under this Lease;
- (d) If the Minister is entitled to exercise any rights and remedies under this Lease the whole of the Bank Guarantee or such of it remaining may be drawn down and the amount deposited in an interest bearing bank account in the name and under the control of the Minister and the amount together with interest applied to remedy or assist in remedying the default and to compensate the Minister for the reasonable loss, cost, expense and damage resultant upon the Tenant's default and the Minister having to exercise its rights and remedies and to assist in the exercise of any rights and remedies under this Lease;
- (e) The Bank Guarantee must require the bank to pay to the Minister the Guaranteed Sum or such part of the Guaranteed Sum which has not already been paid to the Minister without any form of deduction, counterclaim or set off whatsoever on receipt by the bank of a copy of a notice of default certified by or on behalf of the Minister or its solicitors and without reference or regard to the Tenant or any communication or direction given by the Tenant to the bank to the contrary. The bank must have no responsibility to investigate the entitlement of the Minister to terminate or seek specific performance of this Lease or demand the payment of any money under this Lease.

#### **20.2 Return of Bank Guarantee**

The Minister must return the Bank Guarantee to the Tenant when this Lease comes to an end and the Tenant has no outstanding obligations under this Lease or liability or potential liability in damages for any breach or non-performance of any obligations under this Lease.

#### **20.3 Assignment or sale does not affect guarantee**

The Minister will not be deemed to have waived or relinquished any right under the Bank Guarantee if the Tenant assigns this Lease. If that occurs, the Bank Guarantee will remain in full force and effect as if it had been provided by the assignee and it will be read accordingly. The Minister may, as a condition of assignment, require the assignee to provide an equivalent replacement Bank Guarantee and if that occurs, the Minister must return the Bank Guarantee provided by the Tenant assigning this Lease.

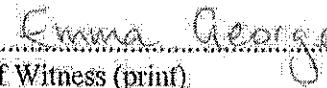
**EXECUTED** as a deed.

**EXECUTED** by Peter Beaumont, Executive Director – Land Management Policy, as delegate for the Minister for Environment and Climate Change, in the presence of:



PETER BEAUMONT

  
Witness

  
Name of Witness (print)

**EXECUTED** by William James McMeekan in the presence of:



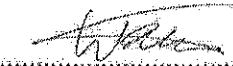
WILLIAM JAMES MCMECKAN

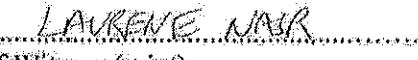
  
Witness

  
Name of Witness (print)

**EXECUTED** by Tina Renna McMeekan in the presence of:

  
TINA RENNA MCMECKAN

  
Witness

  
Name of Witness (print)

## SCHEDULE 1

<b>1</b>	<b>MINISTER:</b>	MINISTER FOR ENVIRONMENT AND CLIMATE CHANGE of 8 Nicholson Street, East Melbourne, Victoria 3002.
<b>2</b>	<b>TENANT:</b>	WILLIAM JAMES MCMECKAN and TINA RENNA MCMECKAN both of 15 Riverside Road, Ivanhoe, Victoria 3079.
<b>3</b>	<b>LAND:</b>	All that land being Crown Allotment 17J, Section 2, Parish of Paywit as defined on Crown Diagram PP3380_17J_2 attached at Appendix 1.
<b>4</b>	<b>COMMENCEMENT DATE:</b>	The date that this Lease is executed by the Minister, as identified on Page 1.
<b>5</b>	<b>TERM:</b>	21 years.
<b>6</b>	<b>RENT:</b>	\$270.00 plus GST per annum payable annually in advance.
		The Rent shall be revised on the Rent Review Dates in accordance with the Schedule Two.
<b>7</b>	<b>PERMITTED USE:</b>	Revegetation, conservation and environmental management and associated activities.
<b>8</b>	<b>FURTHER TERM:</b>	Nil.
<b>9</b>	<b>GUARANTEED SUM:</b>	Nil.
<b>10</b>	<b>REVIEW DATE(S):</b>	On the third anniversary of the Commencement Date and then every three years thereafter throughout the Term.
<b>11</b>	<b>NAME AND NOTICE ADDRESS:</b>	<b>Minister:</b> Executive Director – Land Management Policy Department of Environment and Primary Industries PO Box 500, East Melbourne VIC 3002.
		<b>Tenant:</b> William James McMeckan and Tina Renna McMeckan C/- David King Kings Lawyers PO Box 270, Geelong VIC 3220.
<b>12</b>	<b>INSURED SUM:</b>	\$20 Million

**SCHEDULE 2**  
**(RENT REVIEW)**

The Minister may review the annual rent on each Review Date as follows;

- 1 Not earlier than three months before the Review Date and not later than sixty days after the Review Date the Minister must give the Tenant notice of the new rental it proposes be paid by the Tenant during that period or part thereof.
- 2 Time shall not be of the essence in respect of the Minister's rent review notice and any delay by the Minister in giving notice will not affect the Minister's rights.
- 3 Within twenty eight days of being notified in writing of the proposed new rent the Tenant may give to the Minister written notice of objection to the proposed new rent and within a further thirty days from the notice of objection supply the Minister with a rent valuation from a qualified valuer. If no notice of objection is given or if notice is given and no rent valuation is supplied the new rent will be the new rent as proposed in the Minister's notice.
- 4 If within thirty days from the lodgment with the Minister of the Tenant's rent valuation the Minister and the Tenant are unable to agree on the new rent and a conference of the Minister's and Tenant's valuer's has failed to result in agreement on the rent the new rent shall be determined by a valuer nominated by the President for the time being of the Australian Property Institute (the **nominated valuer**) who in making a determination, must accept representations from either Party received within twenty one days of the appointment.
- 5 The decision of the nominated valuer will be final and binding and the nominated valuer's costs and fees must be paid by the parties equally.
- 6 Until the new rent is agreed or determined the Tenant must pay rent at the rate applicable immediately prior to the date fixed for review until such time as the new rent is determined.
- 7 After the new rent is determined the Tenant must pay the difference if any between the amount of the new rent paid since the date fixed for review.

**Method of Determination:**

- 1 In determining a new rent for the Premises the nominated valuer must as nearly as possible determine the open market rent value on the date when that rent is to apply for the Premises having regard to the following matters:
  - (a) act as an expert and not as an arbitrator and his decision will be final and binding on the parties;
  - (b) there is a reasonable period within which to negotiate the new rent having regard to the nature of the property and the state of the market;
  - (c) the Minister and the Tenant are well acquainted with the Premises and aware of any factors which might affect its value.
- (d) The length of the Term and the period between rent reviews.

**13 RESERVATION:** Crown Allotment 17J, Section 2, Parish of Paywit temporarily reserved for Conservation of Water (vide Victoria Government Gazette No. 125 of 1 December 1882, page 2791).

**14 PAYMENT ADDRESS:** Department of Environment and Primary Industries PO Box 500, East Melbourne VIC 3002.

**15 TENANT'S IMPROVEMENTS:** As defined in Clause 1.1 of this Lease.

- (e) The terms and obligations of the Lease.
- (f) The Permitted Use.
- (g) The rental of comparable premises
- (h) Rents paid to the Tenant under any sub leases or licences

but must disregard the value of any improvements on the Land regardless of who owns those improvements.

## SCHEDULE 3

### FURTHER OBLIGATIONS

The Tenant further covenants with the Minister that:

#### **1. PUBLIC AND EMERGENCY ACCESS:**

- 1.1 The Tenant must keep the Land open for the use and enjoyment of the public, except for limited closures in emergencies and when Proposed Work is being conducted which would pose a risk to the public or where the Tenant must temporarily close the Land to comply with a Law or Requirement.
- 1.2 The Tenant must enable access to the Land by the Minister, the Minister's Agents and Officers, and any relevant Authority at any time for the purposes of emergency management of the Land or surrounding land.

#### **2. NO GRAZING ACTIVITIES WITHOUT CONSENT:**

- 2.1 The Tenant must not undertake any grazing activities on the Land without the prior written consent of the Minister, which may be withheld or provided subject to conditions.

#### **3. MANAGEMENT PLAN:**

- 3.1 Within 12 months of the Commencement Date, the Tenant at its Cost must prepare a management plan, in consultation with the Minister, to detail the agreed management practices for the Land (the Management Plan).

- 3.2 The Management Plan will provide for:

- management of public access and enjoyment;
- revegetation and remediation works;
- protection of environmentally significant species of flora and fauna;
- management and removal of weed and pest species;
- conservation of cultural and heritage values;
- fire protection works;
- maintenance of driveways and tracks;
- waterway management;
- boundary management;
- risk mitigation and management strategies;
- emergency procedures; and
- other management practices as agreed.

- 3.3 The Tenant must submit the Management Plan for approval in writing by the Minister and the approved Management Plan will form part of the Further Obligations of this Lease.
- 3.4 Any amendments to the Management Plan must be approved in writing by the Minister.
- 3.5 The Tenant at its Cost must undertake the agreed management practices within the Management Plan either directly or by an appropriate contractor.

**4. VEGETATION MANAGEMENT:**

- 4.1 The Tenant must follow the directions of the Minister in relation to management of environmentally significant species of flora and fauna on the Land.
- 4.2 The Tenant must not injure or remove any living or dead indigenous vegetation on the Land without the prior written approval of the Minister.
- 4.3 The Tenant must not change or alter the vegetation species grown on the Land without the prior written approval of the Minister.

**5. LAWS AND REQUIREMENTS:**

- 5.1 In accordance the provisions of this Lease, the Tenant at its Cost must comply with any Law and Requirement and all directions from any relevant Authority in undertaking the Permitted Use and prior to undertaking any Proposed Work on the Land, including but not limited to:
  - City of Greater Geelong regarding planning permit requirements under the *Planning and Environment Act 1987*;
  - The Minister regarding use and development of coastal Crown land under the *Coastal Management Act 1995*;
  - Corangamite Catchment Management Authority regarding works in a watercourse under the *Water Act 1989*;
  - Barwon Region Water Corporation regarding use of water under the *Water Act 1989*.

**APPENDIX ONE**  
**(PLAN OF LAND)**

CROWN DIAGRAM		PP3380_17J_2
<b>Location of Land</b> Parish : PAYMT Section : 2 Allotment : 17J		This plan has been created to assist in locating a Crown land parcel Warning. No warranty is given as to the accuracy or completeness of this plan Any derived dimensions are approximate
Standard Parcel Identifier (SPI) : 17J-2VPP3380 Vicmap Parcel PFI : 41014925		Coordinate Position MGA : 293280, 6765220 (65) Metways Directory Reference : 486 E4 (ed. 35)
		Compiled from VICMAP® cadastral mapping data Date: 22/05/2009
		Sheet 1 of 1 Sheets



# Department of Environment, Land, Water & Planning

2/8 Nicholson Street  
East Melbourne VIC 3002

Mr Jim McMeekan  
15 Riverside Road  
Ivanhoe VIC 3079

Ref: 0704073

Dear Mr McMeekan

## **MANAGEMENT PLAN: CROWN ALLOTMENT 17J, NYE ROAD, SWAN BAY**

Thank you for submitting the Management Plan for Crown Allotment 17J Section 2 Parish of Paywit, Nye road, Swan Bay. As delegate for the Minister for Environment, Climate Change and Water, I hereby endorse the Management Plan and attach a copy for your records.

As stipulated in the Further Conditions of the Crown lease, you must at your cost undertake the agreed management practices within the Management Plan either directly or by an appropriate contractor. Furthermore, any amendment to this Management Plan must be approved by the Minister or Minister's delegate.

Should you require any further information or clarification regarding this matter, please call Ms Rose Waters on (03) 9637 8520 or via email [rose.waters@delwp.vic.gov.au](mailto:rose.waters@delwp.vic.gov.au)

Yours sincerely

for **Nina Cullen**  
Acting Executive Director Land Management Policy Division

4 / 1 / 16

### **Privacy Statement**

Any personal information about you or a third party in your correspondence will be protected under the provisions of the Privacy and Data Protection Act 2014. It will only be used or disclosed to appropriate Ministerial, Statutory Authority, or departmental staff in regard to the purpose for which it was provided, unless required or authorised by law. Enquiries about access to information about you held by the Department should be directed to the Privacy Coordinator, Department of Environment, Land, Water and Planning, PO Box 500, East Melbourne, Victoria 3002





# **Management Plan for Crown Allotment 17J Section 2 Parish of Paywit, Nye Road, Swan Bay.**

Prepared for Mr J and Mrs T McMeekan  
By PB Watkinson Consulting

July 2015

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## 1. Introduction

This management plan has been prepared for Crown Allotment 17J Section 2 Parish of Paywit, temporarily reserved for Water Conservation (the reserve) and in accordance with the requirements specified in Schedule 3 to the Crown land lease for the reserve. The reserve is located at 9-41 Nye Road, Swan Bay.

The former Minister for Environment and Climate Change leased this parcel of Crown land to Mr and Mrs J McMeekan (the Lessee) on 23 April 2014 for a period of twenty-one years. This plan has been submitted to the Department of Environment, Land, Water and Planning (DELWP) for endorsement as the Minister's delegate.

The reserve is partly coastal Crown land and adjoins Swan Bay which forms part of the Port Phillip Heads Marine National Park and the Port Phillip Bay (Western Shoreline) and Bellarine Peninsula Ramsar Site.

The reserve is zoned Public Resource and Conservation (PCRZ) with overlays for Environmental Significance (ESO2), Significant Landscape (SLO) and Vegetation Protection (VPO).

Under the requirements of PCRZ a planning permit is required for works on the reserve. In accordance with clause 36.03-03 of the planning scheme consent from DELWP as the public land manager must be sought to make an application for a planning permit. Any use and development of the reserve which is coastal Crown land will require consent under the *Coastal Management Act 1995*.

## 2. Management of Public Access, Fencing and Tracks

In accordance with the lease requirements the Lessee will allow pedestrian access by the public to the reserve via a gate on Nye Road, Swan Bay. Vehicles and bicycles will only be permitted in the existing Car Park (private land), which will be improved and expanded and within the constructed Reserve Car Park (see Appendix 2).

The reserve will be closed to all visitors on Severe, Extreme and Code Red fire danger rated days. Emergency services crews and emergency vehicles engaging in an emergency response and fire suppression will be permitted at all times.

Visitors to the reserve must stay on formed tracks to avoid damaging revegetation areas and environmentally sensitive areas. The Lessee will maintain all internal access paths to ensure they are safe and meet the standards required for public use.

Access to the coastal saltmarsh and shoreline will be prohibited to protect sensitive coastal vegetation and bird roosting habitat.

The boundary of the property is fenced, other than the eastern boundary (Swan Bay), and will be maintained to ensure fences are kept in good order. The lack of fencing on the Swan Bay frontage is to allow the unrestricted access to the site by roosting water birds that inhabit Swan Bay.

### Management Actions

- Provide pedestrian access to the reserve for the public except along the shoreline and in coastal saltmarsh areas to protect sensitive coastal vegetation and bird roosting habitat.
- Close the reserve, other than the Reserve Car Park, to all visitors on Severe, Extreme and Code Red fire danger rated days.
- Install signage to advise all visitors of the reserves closure on Severe, Extreme and Code Red fire danger rated days.

- Maintain walking tracks so that they are safe and meet the standards required for public use.
- Maintain vehicle access to the reserve to allow access by emergency vehicles.

### **3. Revegetation and Protection of Environmentally Significant Flora and Fauna**

The reserve has been revegetated with native species by the Lessee. These works commenced in 1996 and have been at the Lessee's expense. The revegetation program has enhanced the environmental values of the reserve and were undertaken in accordance with a plan produced by Bellarine Land Protection Services.

These works were recognised by DELWP when the public land values of the reserve were assessed in 2011. The Lessee will continue to revegetate the reserve to improve the environmental values of the reserve.

The reserve was mapped in 2005 by DELWP and the native vegetation within the reserve is predominantly "Coastal Saltmarsh/Mangrove Shrubland Mosaic EVC 19 in the north-east corner and Plains Grassy Woodland EVC 55 along the riparian zone of the un-named waterway. Both vegetation classes are of significance in the bioregion.

The reserve adjoins the Port Phillip Bay (Western Shoreline) and Bellarine Peninsula Ramsar Site and provides habitat for migratory shore birds. Birds recorded within the reserve include the Royal Spoonbill and the Eastern Great Egret. The reserve also includes potential habitat for the Orange-bellied Parrot. Vegetation management within the reserve should be consistent with the Orange-bellied Parrot Action Statement 1993.

The Lessee will at all times be observant when on the property and if any significant flora or fauna species are observed, the Lessee will ensure that any activity, which may affect the area is ceased and the area protected.

#### **Management Actions**

- Undertaken revegetation works using species of indigenous provenance.
- Restrict access to the coastal saltmarsh and the shoreline to protect sensitive vegetation and bird roosting habitat.
- Protect significant flora and fauna in accordance with any relevant conservation statements.
- Notify the DELWP and seek advice on how to manage any significant flora or fauna that are sighted.

### **4. Management of Weed and Pest Species**

The Lessee recognises that the Crown land abuts Swan Bay, which is of high environmental value and is protected as a marine national park and internationally recognised as a RAMSAR site. Management of weed and pests species is required to ensure the values of the adjoining protected area are not affected.

The Lessee will undertake annual weed and pest programs (or as required) to control any pest or weed species.

The use of chemicals or other actions to eradicate or remove any pest or weed species will be taken in a controlled manner and advice will be obtained prior to the

use of any chemicals to ensure that there is no adverse impact on the water quality of the waterways, marine national park or the RAMSAR area.

Appropriate signage will be displayed during any period of pest or weed eradication period to ensure the public is fully informed.

If required the reserve will be closed while the eradication program is undertaken.

#### **Management Actions**

- Undertake pest plant and animal control programs as required.
- Consult DELWP or a suitable qualified person prior to the use of chemicals to protect the waterway and adjoining marine national park.
- Display signage to notify visitors of the weed and pest control programs and close the reserve while undertaking these programs if required.

### **5. Conservation of Cultural and Heritage Values**

The reserve and the shoreline of Swan Bay is an area of cultural heritage sensitivity as described in the *Aboriginal Heritage Regulations 2007* and is recognised as an area where indigenous habitation occurred and has the potential to have indigenous artefacts.

There are no recorded indigenous cultural or heritage values associated with the Crown land parcel. The *Aboriginal Heritage Act 2006* requires that all Aboriginal sites, places and objects in Victoria whether known or unknown are protected and cannot be disturbed or destroyed without authorisation.

Prior to undertaking any works the lessee will determine whether a cultural heritage management plan is required (<http://www.aav.nrms.net.au/aavQuestion1.aspx>). The Lessee must comply with the provisions of the *Aboriginal Heritage Act 2006* in the event that any Aboriginal cultural heritage is disturbed or uncovered during works.

The reserve may be subject to requirements under the *Native Title Act (Cth) 1993* any requirements under this act will need to be met prior to works being undertaken.

It is noted that the site was used for stock watering purposes in the 1880's and is listed with Heritage Victoria as H7821/0040 'Waterholes Reserves, Queenscliff to Portarlington Road' A permit under the *Heritage Act 1995* may be required to undertake works.

#### **Management Actions**

- Protect all cultural and heritage values on the reserve.
- Ensure all approvals under the *Aboriginal Heritage Act 2006* and the *Heritage Act 1995* are sought prior to the commencement of works.
- Ensure any requirements under *Native Title Act (Cth) 1993* are met prior to works being undertaken.

### **6. Dam and Waterway Management**

A dam and an unnamed waterway are located on the reserve. The lessee is responsible for the maintenance of the dam and any emergency response as a result of a dam safety incident including failure of the dam wall.

To improve the health of the waterway the riparian zone will be revegetated and maintained to ensure that weed infestation is controlled. Revegetation of the riparian zone will reduce bank erosion and reduce sediment inputs into Swan Bay.

The waterway will also be maintained to ensure that any water flows are not impeded.

As required the dam embankment will be monitored and if required remedial works will be undertaken by a suitably qualified person to ensure the stability of the dam structure.

### **Management Actions**

- Revegetate and maintain the waterway to improve waterway health and reduce erosion and impacts on the marine national park.
- Regularly inspect and maintain the dam wall to ensure its integrity.
- Install appropriate signage to identify the location of the dam for public safety purposes.
- Undertake works to control erosion as appropriate and in accordance with planning approvals.

## **7. Fire and Risk Mitigation**

The Lessee will maintain the reserve to ensure that fire risk is minimised. The lessee will consult with DELWP and the CFA to assess the fire risk within the reserve and identify appropriate methods to reduce the fuel load and associated risk. Fuel reduction burns must only be undertaken by DELWP and CFA staff.

Public access and the use of machinery in the reserve, other than the Reserve Car Park, will be prohibited on Severe, Extreme and Code Red fire danger rated days to reduce the risk of a potential fire.

Hazardous trees can pose a risk to public safety. An assessment of the trees on the reserve should be undertaken by a suitable qualified person identify any hazardous trees.

Weed and fire management controls will be established along the boundary area to ensure that no issues arise with adjoining properties. Every effort will be made to ensure that no wind-blown material is allowed to leave the reserve including dust or weed material.

### **Management Actions**

- Develop a fire management plan in consultation with DELWP and the CFA.
- Maintain the reserve in accordance with a fire management plan to ensure that any fire risk is minimised.
- Undertake a risk assessment of the reserve including a hazardous tree assessment and implement risk mitigation procedures to ensure that the reserve is properly maintained so to reduce risk to public safety and the values of the reserve.

## **8. Emergency Procedures**

The reserve, other than the Reserve Car Park, will be closed to all visitors on Severe, Extreme and Code Red fire danger rated days. Emergency services crews and emergency vehicles engaging in an emergency response and fire suppression will be permitted at all times. 24/7 and if gates need to be locked for security purposes, the Lessee will ensure that access keys are available to emergency services.

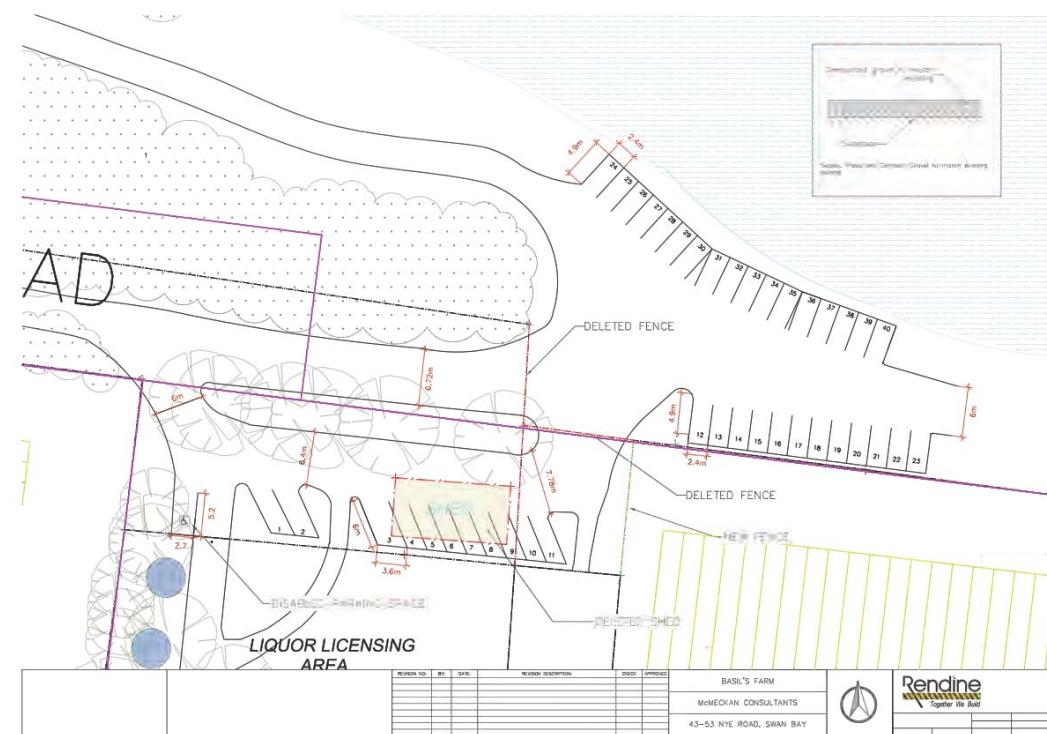
### **Management Actions**

- Develop an emergency response and evacuation plan.
- Close the reserve, other than the Reserve Car Park, to all visitors on Severe, Extreme and Code Red fire danger rated days.

## APPENDIX 1. Locality Plan



## APPENDIX 2. Reserve Car Park



DRAWN: - REVISION : -

## PRODUCER'S LICENCE

Licence No. 32806795

Subject to the provisions of the Liquor Control Reform Act 1998 and any conditions specified in the licence, the licensee is authorised to supply liquor up to and including 31 December 2025

Licensee	TINA RENNA MCMECKAN		
Address for service of notices	PO BOX 17 QUEENSCLIFF 3225	Licensed premises address	BASILS FARM 43-53 NYE ROAD SWAN BAY 3225
Trading as	BASILS FARM		

## GENERAL INFORMATION

A liquor licence does not override local laws, planning schemes and conditions on planning permits. It is the responsibility of the licensee to ensure they comply with these and all conditions of a planning permit above what is specified on the liquor licence. Where the trading hours on your planning permit are less than the trading hours on this liquor licence, you must comply with the hours on the planning permit.

Any reference to the Liquor Regulator below is a reference to the Victorian Liquor Commission, or any successor statutory office, body or officer however named, under the Liquor Control Reform Act 1998 or successor legislation, that has powers and carries out regulatory functions equivalent to the Victorian Liquor Commission.

## TYPE OF LICENCE

This licence is a producer's licence and authorises the licensee to supply liquor that is the licensee's product at any time and on any premises to a person who holds a licence under the Liquor Control Reform Act 1998.

This licence also authorises the licensee during the trading hours specified below to:

- supply liquor that is the licensee's product for consumption on or off the licensed premises; and
- supply liquor that is not the licensee's product for consumption on the licensed premises.

## AMENITY

The licensee shall not cause or permit undue detriment to the amenity of the area to arise out of or in connection with the use of the premises to which the licence relates during or immediately after the trading hours authorised under this licence.

## TRANSFER OF LICENCE

This licence is only transferable to the holder of the renewable limited licence in respect of these premises.

## TRADING HOURS

Monday to Saturday	Between 9am and 11pm
Good Friday & ANZAC Day	Between 12noon and 10pm
Sunday and other Public Holidays	Between 10am and 10pm

## AUTHORISATION TO SUPPLY LICENSEE'S PRODUCT AT EVENTS OFF THE LICENSED PREMISES

The licensee may supply liquor that is the licensee's product in sealed containers, bottles or cans and sales by the glass at events that are conducted off the licensed premises and that are not a major event within the meaning of Section 14B of the Liquor Control Reform Act 1998 and are not a horse racing event, subject to the following conditions:

- the licensee must keep a register of all events at which it has supplied its product and produce the records for inspection upon request by an authorised person.
- the licensee must have the consent of the event organisers to supply liquor at the event.
- any persons supplying liquor at a promotional event must have completed a responsible service of alcohol course approved by the Commission.
- liquor may be supplied at a promotional event between the hours of 7am and 8pm

End of Conditions - Printed on 17/12/2024

# PLANNING PERMIT

Permit No.	1417/2012/C
Planning Scheme	Greater Geelong Planning Scheme
Responsible Authority	Greater Geelong City Council

**ADDRESS OF THE LAND** 43-53 NYE ROAD, SWAN BAY

**THE PERMIT ALLOWS** USE OF THE LAND FOR WINERY (CELLAR DOOR SALES), RESTAURANT AND A REPLACEMENT DWELLING, BUILDINGS AND WORKS ASSOCIATED WITH THE EXTENSION OF EXISTING BUILDINGS AND REDUCTION OF CAR PARKING GENERALLY IN ACCORDANCE WITH THE ENDORSED PLANS

**THE FOLLOWING CONDITIONS APPLY TO THIS PERMIT:**

**Endorsed Plans**

1. The use and development as shown on the endorsed plan(s) must not be altered without the written consent of the Responsible Authority.

**Prior to the Commencement of Development**

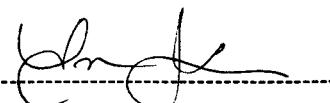
2. Prior to the development commencing a report is to be submitted to the Responsible Authority for approval that shall include evidence that the lot is capable of containing an appropriate waste treatment system by providing either a Soil Percolation Test in accordance with Appendix B of the Code of Practice – Septic Tanks On-Site Domestic Wastewater Management, EPA Publication No 451, March 1996 (or as amended); or an “Approval of Waste Treatment System” form completed by an Environmental Health Officer.
3. An approved septic disposal system must be installed concurrently with the erection of the (dwelling/restaurant/building/development) and all waste must be disposed of within the curtilage of the property in accordance with the approved land capability assessment report to the satisfaction of the Responsible Authority.

**Cellar Door Sales**

4. All wine sold on site via cellar door sales must be produced with grapes predominantly grown on site.

Date Issued: 21 March 2013

Signature of the  
Responsible Authority:



**City of Greater Geelong**  
PO Box 104, Geelong 3220  
Ph: (03) 5272 4456 Fax: (03) 5272 4486

## **IMPORTANT INFORMATION ABOUT THIS NOTICE**

### **WHAT HAS BEEN DECIDED?**

The Responsible Authority has issued a permit

**Note:** This is not a permit granted under Division 5 or 6 of Part 4 of the **Planning and Environment Act 1987**.

### **CAN THE RESPONSIBLE AUTHORITY AMEND THIS PERMIT?**

The Responsible Authority may amend this permit under Division 1A of Part 4 of the Planning and Environment Act 1987.

### **WHEN DOES A PERMIT BEGIN?**

A permit operates:

- \* from the date specified in the permit; or
- \* if no date is specified, from—
  - i) the date of the decision of the Victorian Civil and Administrative Tribunal, if the permit was issued at the direction of the Tribunal; or
  - ii) the date on which it was issued, in any other case.

### **WHEN DOES A PERMIT EXPIRE?**

- 1) A permit for the development of land expires if—
  - \* the development or any stage of it does not start within the time specified in the permit; or
  - \* the development requires the certification of a plan of subdivision or consolidation under the **Subdivision Act 1988** and the plan is not certified within two years of the issue of the permit, unless the permit contains a different provision; or
  - \* the development or any stage is not completed within the time specified in the permit, or, if no time is specified, within two years after the issue of the permit or in the case of a subdivision or consolidation within 5 years of the certification of the plan of subdivision or consolidation under the **Subdivision Act 1988**.
- 2) A permit for the use of land expires if—
  - \* the use does not start within the time specified in the permit, or if no time is specified, within two years after the issue of the permit; or
  - \* the use is discontinued for a period of two years.
- 3) A permit for the development and use of land expires if—
  - \* the development or any stage of it does not start within the time specified in the permit; or
  - \* the development or any stage of it is not completed within the time specified in the permit, or, if no time is specified, within two years after the issue of the permit; or
  - \* the use does not start within the time specified in the permit, or, if no time is specified, within two years after the completion of the development; or
  - \* the use is discontinued for a period of two years.
- 4) If a permit for the use of land or the development and use of land or relating to any of the circumstances mentioned in section 6A(2) of the **Planning and Environment Act 1987**, or to any combination of use, development or any of those circumstances requires the certification of a plan under the **Subdivision Act 1988**, unless the permit contains a different provision—
  - \* the use or development of any stage is to be taken to have started when the plan is certified; and
  - \* the permit expires if the plan is not certified within two years of the issue of the permit.
- 5) The expiry of a permit does not affect the validity of anything done under that permit before the expiry.

### **WHAT ABOUT APPEALS?**

- \* The person who applied for the permit may apply for a review of any condition in the permit unless it was granted at the direction of the Victorian Civil and Administrative Tribunal, in which case no right of review exists.
- \* An application for review must be lodged within 60 days after the permit was issued, unless a Notice of Decision to grant a permit has been issued previously, in which case the application for review must be lodged within 60 days after the giving of that Notice.
- \* An application for review is lodged with the Victorian Civil and Administrative Tribunal.
- \* An application for review must be made on an Application for Review form which can be obtained from the Victorian Civil and Administrative Tribunal, and be accompanied by the applicable fee.
- \* An application for review must state the grounds upon which it is based.
- \* An application for review must also be served on the Responsible Authority.
- \* Details about applications for review and the fees payable can be obtained from the Victorian Civil and Administrative Tribunal.

**Victorian Civil and Administrative Tribunal, 7<sup>th</sup> Floor, 55 King Street, MELBOURNE, 3000 Ph (03) 9628 9777**

## CONDITIONS OF PLANNING PERMIT NUMBER 1417/2012/C CONTINUED

### Operating Hours

5. The cellar door sales and restaurant may only operate between:

Monday – Saturday 9:00am – 11:00pm  
Sunday and Public Holidays 10:00am – 10:00pm

to the satisfaction of the Responsible Authority.

### Amenity

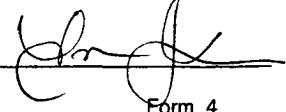
6. The amenity of the area must not be detrimentally affected by the use or development through the:
  - a) Transport of materials, goods or commodities to or from the land;
  - b) Appearance of any building, works or materials;
  - c) Emission of noise, artificial light, vibration, odour, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil;
  - d) Presence of vermin;to the satisfaction of the Responsible Authority.
7. No permanently fixed sound amplification equipment, juke boxes or loud speakers may be used for the purpose of announcements, broadcasts, playing of music (whether recorded or otherwise) or similar purposes so as to be audible on adjoining public or private land to the satisfaction of the Responsible Authority.
8. A notice to the satisfaction of the Responsible Authority shall be fixed in a prominent position visible to all patrons as they leave the premises. The notice shall be clearly legible and draw attention to the requirements for considerate and quiet behaviour of patrons on departing from the premises as there are nearby residents.
9. Bottles shall be bagged during operation times and shall not be emptied into any external refuse bins between the hours of 11pm and 8am.
10. Exterior lights must be installed in such positions so as to effectively illuminate all pertinent public areas, without spilling onto the road reserve or adjoining land, and must be connected to a time clock switch or other approved system to the satisfaction of the Responsible Authority.
11. Outdoor lighting must be designed, baffled and located to the satisfaction of the Responsible Authority to prevent any adverse effect on adjoining land or road reserve.

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Date Issued: 21 March 2013

Planning and Environment Amendment Regulations 2013

Signature of the  
Responsible Authority:



Form 4

## CONDITIONS OF PLANNING PERMIT NUMBER 1417/2012/C CONTINUED

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### Car Parking and Access

12. Before the use starts, areas set aside for parked vehicles and access lanes as shown on the endorsed plans must be:
  - a) Constructed to the satisfaction of the Responsible Authority;
  - b) Properly formed to such levels that they can be used in accordance with the plans;
  - c) Surfaced with an approved material for all weather use to the satisfaction of the Responsible Authority.
  - d) Drained and maintained to the satisfaction of the Responsible Authority.

Parking areas and access lanes must be kept available for these purposes at all times and maintained to the satisfaction of the Responsible Authority.

13. Prior to the commencement of use, the developer must seal Nye Road with an all-weather sealed coat to the satisfaction of the Responsible Authority.

### Expiry

14. This permit will expire if one of the following circumstances applies:
  - a) The development is not commenced within two (2) years of the date of this permit.
  - b) The use has not commenced or the development is not completed within four (4) years of the date of this permit.

The Responsible Authority may extend the periods referred to if a request is made in writing before the permit expires; or

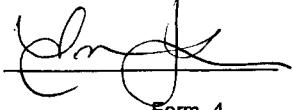
- a) within six (6) months after the permit expires where the use or development has not yet started; or
- b) within twelve (12) months after the permit expires, where the development allowed by the permit has lawfully commenced before the permit expiry.

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Date Issued: 21 March 2013

Planning and Environment Amendment Regulations 2013

Signature of the  
Responsible Authority:



Form 4

**CONDITIONS OF PLANNING PERMIT NUMBER 1417/2012/C CONTINUED****THIS PERMIT HAS BEEN AMENDED AS FOLLOWS:**

Date of amendment	Brief description of amendment
10 May 2013	<p>The permit has been amended to allow</p> <ul style="list-style-type: none"> <li>• Changes to the endorsed plans including           <ul style="list-style-type: none"> <li>• Internal alterations to cellar door</li> <li>• Construction of a deck and verandah to cellar door</li> <li>• New windows and doors to cellar door</li> </ul> </li> </ul>
28 February 2014	<ul style="list-style-type: none"> <li>• Increased operating hours.</li> </ul>
23 September 2015	<ul style="list-style-type: none"> <li>• Change permit preamble to include restaurant and Replacement dwelling, buildings and works and reduction of car parking.</li> <li>• Re-numbering of existing conditions and inclusion of new conditions.</li> </ul>

**Note 1:** Under Part 4, Division 1A of the Planning and Environment Act, 1987, a permit may be amended. Please check with the responsible authority that this permit is the current permit and can be acted upon.

**Note 2:** The words "date of this permit" in any expiry condition of this permit refers to the date of issue of the "original" permit (and not the date of the amendment of this permit).

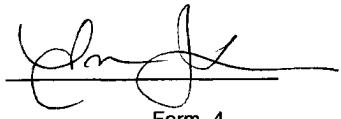
**On the 5 June, 2013 this Planning Permit has been corrected pursuant to Section 71 (1) (a) of the Planning and Environment Act 1987 to correct a clerical error in that:**

- Condition 2 has been reworded to include the word predominantly
- Operating hours amended to those requested (start time to 9.00am from 11.00am).

Date Issued: 21 March 2013

Planning and Environment Amendment Regulations 2013

Signature of the  
Responsible Authority:



Form 4



Basil's Farm Wines  
PO BOX 434  
IVANHOE VIC 3079

30-Nov-2017

PI: 256937  
PP: PP-1417-2012/D  
Your Ref:

Dear Sir/Madam

Re: **Planning Permit No.: PP-1417-2012/D**  
Address: **43-53 Nye Road, SWAN BAY**  
Proposal: **Use of the land for Winery (Cellar Door Sales), Restaurant and a Replacement Dwelling, Buildings and Works Associated with the Extension of Existing Buildings and Reduction of Car Parking**

I am writing in regards to the abovementioned planning permit, specifically the minor alterations sought to the plans. As a result, the following changes have been consented to via secondary consent as allowed by condition 1 of this permit:

Altered car park layout

Consequently, the following plans have been given consent:

Proposed Car Parking Stage 2 – DCA Design

**Please Note: These plans are to be kept in conjunction with the endorsed plans and will form part of the abovementioned permit.**

Should you require any further information please contact **Erin Jones** on **03 5272 4766** or **ejones@geelongcity.vic.gov.au**

Yours sincerely

A handwritten signature in black ink, appearing to read 'Erin Jones'.

**ERIN JONES**  
STATUTORY PLANNER

**STATUTORY PLANNING**  
**100 BROUGHAM STREET, GEELONG**

CITY OF GREATER  
**GEELONG**

PO BOX 104  
GEELONG VIC 3220  
DX 22063 GEELONG

TELEPHONE 03 5272 5272  
FACSIMILE 03 5272 4486  
[www.geelongaustralia.com.au](http://www.geelongaustralia.com.au)

Basil's Farm  
43-53 Nye Road  
SWAN BAY VIC 3225

15-Aug-2018

PI: 256937  
PP: PP-1417-2012/D  
Your Ref.

Dear Sir/Madam

Re: **Planning Permit No.: PP-1417-2012/D**  
Address: **43-53 Nye Road, SWAN BAY**  
Proposal: **Use of the land for Winery (Cellar Door Sales), Restaurant and a Replacement Dwelling, Buildings and Works Associated with the Extension of Existing Buildings and Reduction of Car Parking**

I am writing in regards to the abovementioned planning permit, specifically the minor alterations sought to the plans. As a result, the following changes have been consented to via secondary consent as allowed by condition 1 of this permit:

- New covered deck.

Consequently, the following plans have been given consent:

- Byrne Architects – Proposed Site Plan – BF01 – 09/05/18
- Byrne Architects – Proposed Floor Plan – BF01 – 09/05/18
- Byrne Architects – Proposed South and East Elevations – BF01 – 09/05/18
- Byrne Architects – Proposed North and West Elevations – BF01 – 09/05/18

**Please Note: These plans are to be kept in conjunction with the endorsed plans and will form part of the abovementioned permit.**

Should you require any further information please contact **Erin Jones** on **03 5272 4766** or [ejones@geelongcity.vic.gov.au](mailto:ejones@geelongcity.vic.gov.au)

Yours sincerely



**ERIN JONES**  
STATUTORY PLANNER  
  
**STATUTORY PLANNING**  
**100 BROUHAM STREET, GEELONG**