

Office Use Only Application No.: Date Lodged:

## Application for

# **Planning Permit**

Planning Enquiries Phone: 03 9205 2200 Web: http://www.hume.vic.gov.au

If you need help to complete this form, read How to complete the Application for Planning Permit form.

Any material submitted with this application, including plans and personal information, will be made available for public viewing, including electronically, and copies may be made for interested parties for the purpose of enabling consideration and review as part of a planning process under the Planning and Environment Act 1987. If you have any concerns, please contact Council's planning department.

A Questions marked with an asterisk (\*) are mandatory and must be completed.

A If the space provided on the form is insufficient, attach a separate sheet. Clear Form The Land  $\left(1\right)$  Address of the land. Complete the Street Address and one of the Formal Land Descriptions. Street Address \* Unit No.: St. Name: Spavin Drive St. No.: 94 Suburb/Locality: Sunbury Postcode: 3429 Formal Land Description \* Lot No.: 2 Title Plan Plan of Subdivision No.: 915255P ( )Lodged Plan Complete either A or B. OR ⚠ This information can be found on the certificate of В Crown Allotment No.: Section No.: title

If this application relates to more than one address, please click this button and enter relevant details.

Parish/Township Name:

Add Address

The Proposal A You must give full details of your proposal and attach the information required to assess the application. Insufficient or unclear information will delay your application.

2) For what use, development or other matter do you require a permit? \*

> If you need help about the proposal, read:

How to Complete the Application for Planning Permit Form

Select the focus of this application and describe below:

Removal of 2 Trees on the that, 1 that is damaged and is diseased. The Other is leaning towards the dwelling at a severe angle and would be in contact with the dwelling and we are in a BAL area. So we would like to remove these small Tree's and plant some new ones in other locations on the property. I have attached a Plan and images to this application showing the locations.

Other

Provide additional information on the proposal, including: plans and elevations; any information required by the planning scheme, requested by Council or outlined in a Council planning permit checklist; and if required, a description of the likely effect of the proposal.

Estimated cost of development for which the permit is required \*

Cost \$

You may be required to verify this estimate. Insert `0' if no development is proposed.

If the application is for land within metropolitan Melbourne (as defined in section 3 of the Planning and Environment Act 1987) and the estimated cost of the development exceeds \$1 million (adjusted annually by CPI) the Metropolitan Planning Levy must be paid to the State Revenue Office and a current levy certificate must be submitted with the application. Visit www.sro.vic.gov.au for information.

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## Existing Conditions II

Describe how the land is used and developed now \*

eg. vacant, three dwellings, medical centre with two practitioners, licensed restaurant with 80 seats, grazing.

This is residential land that has 1 dwelling on it.

Provide a plan of the existing conditions. Photos are also helpful.

#### Title Information III



5 Encumbrances on title \*

If you need help about the title, read: How to complete the Application for Planning Permit **form** 

Does the proposal breach, in any way, an encumbrance on title such as a restrictrive covenant, section 173 agreement or other obligation such as an easement or building envelope?

Yes. (If 'yes' contact Council for advice on how to proceed before continuing with this application.)

( ) Not applicable (no such encumbrance applies).



Provide a full, current copy of the title for each individual parcel of land forming the subject site. (The title includes: the covering 'register search statement', the title diagram and the associated title documents, known as 'instruments', eg. restrictive covenants.)

## Applicant and Owner Details II

(6) Provide details of the applicant and the owner of the land.

Applicant \*

The person who wants the permit.

Where the preferred contact person for the application is different from the applicant,



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#### Owner \*

The person or organisation who owns the land

Where the owner is different from the applicant, provide the details of that person or organisation.



### Declaration II

7 This form must be signed by the applicant \*

Remember it is against the law to provide false or misleading information, which could result in a heavy fine and cancellation of the permit.

I declare that I am the applicant and that all the information in this application is true and correct; and the owner (if not reflection) has been notified of the permit application.

Signature:

Date: 1/10/2025

day / month / year

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## Need help with the Application? ii

If you need help to complete this form, read <u>How to complete the Application for Planning Permit form</u> General information about the planning process is available at <u>www.delwp.vic.gov.au/planning</u>

Contact Council's planning department to discuss the specific requirements for this application and obtain a planning permit checklist. Insufficient or unclear information may delay your application.

8 Has there been a pre-application meeting with a Council planning officer?

○ No	Yes	If 'yes', with whom?:		
		Date:	day / month / year	

### Checklist ii

9 Have you:

Filled in the form completely?						
Paid or included the application fee?  Most applications require a fee to be paid. Contact Council to determine the appropriate fee.						
Provided all necessary supporting information and documents?						
A full, current copy of title information for each individual parcel of land forming the subject site						
A plan of existing conditions.						
Plans showing the layout and details of the proposal						
Any information required by the planning scheme, requested by council or outlined in a council planning permit checklist.						
If required, a description of the likely effect of the proposal (eg traffic, noise, environmental impacts).						
If applicable, a current Metropolitan Planning Levy certificate (a levy certificate expires 90 days after the day on which it is issued by the State Revenue Office and then cannot be used). Failure to comply means the application is void.						
Completed the relevant Council planning permit checklist?						
Signed the declaration (section 7)?						

## Lodgement II

Lodge the completed and signed form, the fee payment and all documents with:

**Hume City Council** 

PO Box 119 Dallas VIC 3047

Pascoe Vale Road Broadmeadows VIC 3047

#### Contact information:

Telephone: 61 03 9205 2200 Email: email@hume.vic.gov.au

DX: 94718

Translation: 03 9205 2200 for connection to Hume Link's multilingual telephone information service

#### Deliver application in person, by fax, or by post:

Print Form

Make sure you deliver any required supporting information and necessary payment when you deliver this form to the above mentioned address. This is usually your local council but can sometimes be the Minister for Planning or another body.

#### Save Form:

Save Form To Your

You can save this application form to your computer to complete or review later or email it to others to complete relevant sections.

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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,

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

Page 1 of 1

VOLUME 12529 FOLIO 419

Security no : 124128553330X Produced 01/10/2025 08:36 AM

#### LAND DESCRIPTION

Lot 2 on Plan of Subdivision 915255P. PARENT TITLE Volume 08650 Folio 747 Created by instrument PS915255P 04/02/2024

#### REGISTERED PROPRIETOR



#### ENCUMBRANCES, CAVEATS AND NOTICES

MORTGAGE AY835896M 31/01/2025 COMMONWEALTH BANK OF AUSTRALIA

COVENANT PS915255P 04/02/2024

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

AGREEMENT Section 173 Planning and Environment Act 1987 AW699670M 04/04/2023

#### DIAGRAM LOCATION

SEE PS915255P 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: 94 SPAVIN DRIVE SUNBURY VIC 3429

#### ADMINISTRATIVE NOTICES

NIL

eCT Control 15940N COMMONWEALTH BANK OF AUSTRALIA Effective from 31/01/2025

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Title 12529/419 Page 1 of 1



## **Imaged Document Cover Sheet**

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Document Identification	PS915255P
Number of Pages	3
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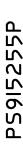
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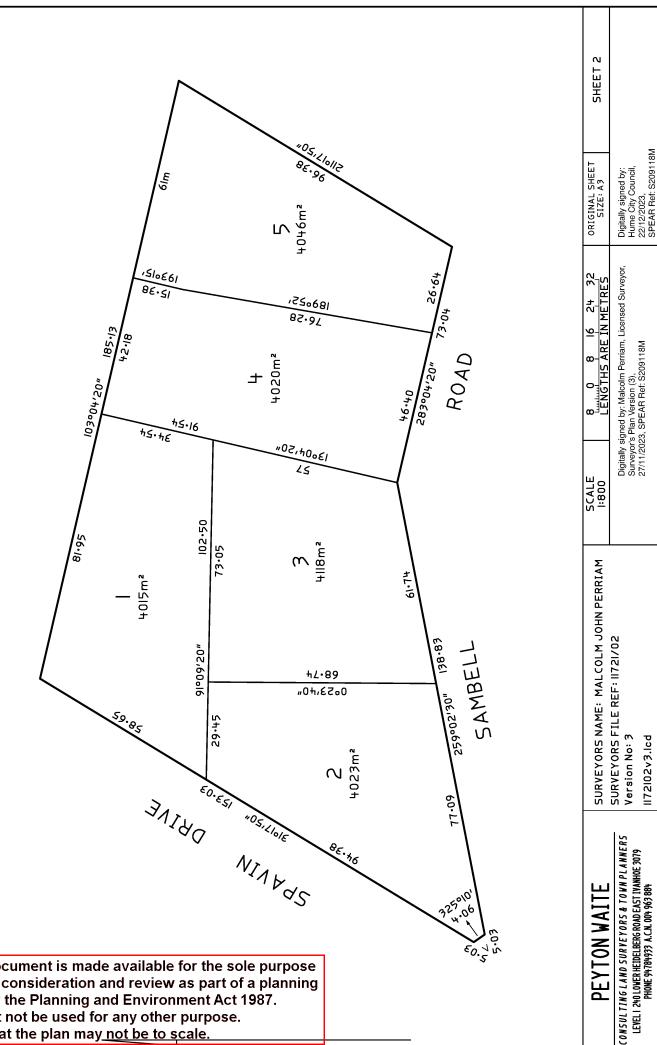
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Amended by: Malcolm Perriam, Licensed Surveyor 02/02/2024.

#### PLAN OF SUBDIVISION **EDITION I** PS915255P Location of Land Council Name: Hume City Council Council Reference Number: S010120 Parish: BUTTLEJORRK Planning Permit Reference: P24912 SPEAR Reference Number: S209118M W.J.T. CLARKES CROWN SPECIAL SURVEY (PART) Certification This plan is certified under section 6 of the Subdivision Act 1988 Statement of Compliance Title Reference: Vol. 8650 Fol. 747 This is a statement of compliance issued under section 21 of the Subdivision Act 1988 Public Open Space Last Plan Reference: LOT 50 LP58624 A requirement for public open space under section 18 or 18A of the Subdivision Act 1988 has been made and the requirement has been satisfied Postal Address: IOO SPAVIN ROAD, SUNBURY, 3429 Digitally signed by: Ingrid Martinez for Hume City Council on 22/12/2023 (at time of subdivision) MGA2020 Co-ordinates: E:298600 Zone:55 (of approx centre of land N:58141400 in plan) VESTING OF ROADS AND/OR RESERVES NOTATIONS Council/Body/Person Identifier Number of lots: 5 Nil Nil Area of stage: 2.023ha OTHER PURPOSE OF PLAN: CREATION OF RESTRICTION (SEE SHEET 3) NOTATIONS Depth Limitation does not apply SURVEY: This plan is based on survey. STAGING: This is not a staged subdivision. Planning Permit No. P24912 WARNING: The restrictive covenant(s)/restriction(s) in this This survey has been connected to permanent marks No(s). plan may have been varied or removed. For current information, please refer to the relevant folio(s) In Proclaimed Survey Area No. of the Register, noting section 88(3) of the Transfer of Land Act 1958 EASEMENT INFORMATION A - Appurtenant Easement LEGEND: E - Encumbering Easement R - Encumbering Easement (Road) Easement Width Land Benefited/In Favour Of Purpose Origin Reference (Metres) SURVEYORS NAME: MALCOLM JOHN PERRIAM of enathing his consideration and review 3823 art of a planning process undepthe Phanning कार्य Environment Act 1987. ORIGINAL SHEET SHEET I OF 3 517F: A3 UST NOT be used for any other purpose. TING LAND SURVEYORS & TOWN PLANNERS DIGHTAIN OF THE PROPERTY OF THE TOWN PLANNERS BUNNEY BLANNERS AC N. DOLL 053 9994. 27/11/20/23, SPEAR HET: S209118M The copy m PLAN REGISTERED Please ਮਹਿੰਦ TIME: 12:23 PM DATE: 04/02/2024 C.A.G. PHONE 94784933 A.C.N. 004 963 884 Assistant Registrar of Titles





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WGA2020 ZONE 55

Upon registration of this plan the following Restriction shall be created:

PS915255P

1. The registered proprietors of the burdened land covenant without the registered proprietors of the benefited land as set out in the restriction with the intent that the burden of the restriction runs and binds the burdened land and the benefit of the restriction is annexed to and runs with the benefited land.

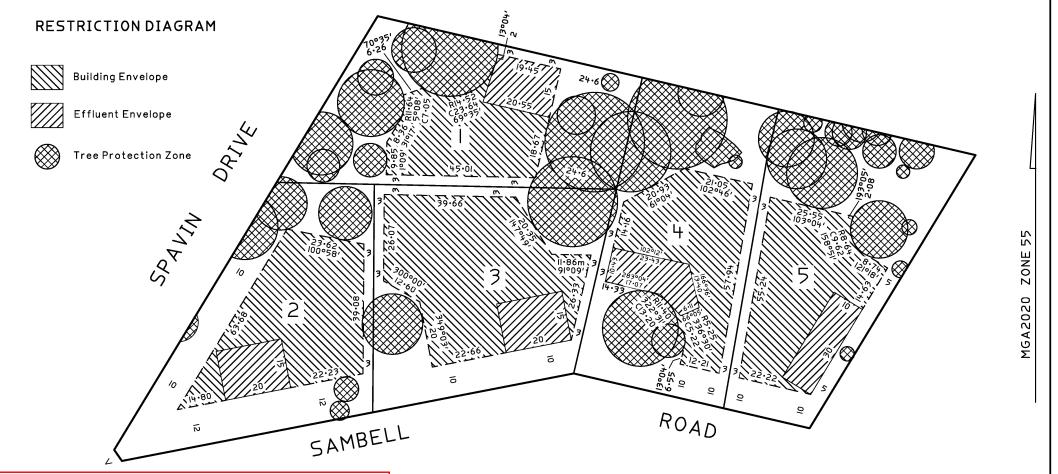
Benefited Land:

Lots I to 5

Burdened Land: Lots I to 5

Restriction: I. No dwellings or associated outbuildings on each lot shall be constructed outside the designated building envelope as shown on the Restriction Diagram below without the written consent of the Responsible Authority
2. No effluent disposal system for each lot shall be located outside the designated effluent envelope and no buildings and works are permitted within the designated effluent envelope as shown on the Restriction Diagram below

- 3. No trees within the Tree Protection Zone as shown on the Restriction Diagram below are to be lopped, destroyed or removed without the written consent of the Responsible Authority
  4. No buildings or construction works nor the storage of machinery or equipment are permitted to occur within the Tree Protection Zone



THE PLATINGS OF THE PROPERTY O Please note that the plan may not be to scale

SCALE 16 24 32 1:800 LENGTHS ARE IN METRES

Surveyor's Plan Version (3),

27/11/2023, SPEAR Ref: S209118M

Digitally signed by: Malcolm Perriam, Licensed Surveyor,

Digitally signed by: Hume City Council, 22/12/2023.

ORIGINAL SHEET

SIZE: A3

SHEET 3

SPEAR Ref: S209118M



# Department of Environment, Land, Water & Planning

#### **Electronic Instrument Statement**

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Status Registered Dealing Number AW699670M

Date and Time Lodged 04/04/2023 11:11:49 AM

**Lodger Details** 

Lodger Code 18776H

Name HARWOOD ANDREWS

Address Lodger Box Phone Email

Reference

AL - 22300816

#### APPLICATION TO RECORD AN INSTRUMENT

Jurisdiction VICTORIA

#### **Privacy Collection Statement**

The information in this form is collected under statutory authority and used for the purpose of maintaining publicly searchable registers and indexes.

#### **Estate and/or Interest**

FEE SIMPLE

#### **Land Title Reference**

8650/747

#### Instrument and/or legislation

RECORD - AGREEMENT - SECTION 173 Planning & Environment Act - section 173

Applicant(s)

Name HUME CITY COUNCIL

Address

Street Number 1079

Street Name PASCOE VALE

Street Type ROAD

Locality BROADMEADOWS

State VIC Postcode 3047

**Additional Details** 

VICTORIA State Government



# Department of Environment, Land, Water & Planning

#### **Electronic Instrument Statement**

Refer Image Instrument

The applicant requests the recording of this Instrument in the Register.

#### **Execution**

- 1. The Certifier has taken reasonable steps to verify the identity of the applicant or his, her or its administrator or attorney.
- 2. The Certifier holds a properly completed Client Authorisation for the Conveyancing Transaction including this Registry Instrument or Document.
- 3. The Certifier has retained the evidence supporting this Registry Instrument or Document.
- 4. The Certifier has taken reasonable steps to ensure that this Registry Instrument or Document is correct and compliant with relevant law and any Prescribed Requirement.

Executed on behalf of HUME CITY COUNCIL

Signer Name CLARE MARGARET MCKENNA

Signer Organisation THE LANTERN LEGAL GROUP PTY LTD

Signer Role LAW PRACTICE Execution Date 04 APRIL 2023

File Notes:

NIL

This is a representation of the digitally signed Electronic Instrument or Document certified by Land Use Victoria.

Statement End.





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# SECTION 173 AGREEMENT PLANNING AND ENVIRONMENT ACT 1987

#### **HUME CITY COUNCIL**

Council

- and -

#### KENIRYA MANUFACTURING PTY LTD ACN 110 959 414

Registered Land Owner

in relation to land at:

100 SPAVIN DRIVE, SUNBURY

4AKT:22300816

Harwood Andrews
ABN 98 076 868 034
Tower 2|Collins Square
Level 22, 727 Collins Street
Melbourne 3008, Victoria, Australia
DX 30970 Stock Exchange
PO Box 633 Collins Street West Vic 8007

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THIS AGREEMENT is made the

day of April 2023

#### **PARTIES**:

1. **Hume City Council** of 1079 Pascoe Vale Road, Broadmeadows 3047

(Council)

2. Kenirya Manufacturing Pty Ltd ACN 110 959 414 of 14 Horne Street, Sunbury 3429

(Owner)

#### **RECITALS:**

- R.1. The Owner is the registered proprietor of the Land.
- R.2. Council is responsible for the administration and enforcement of the Planning Scheme pursuant to the provisions of the Act.
- R.3. Council issued the Permit allowing the subdivision of the Land into 5 lots and removal of native vegetation in accordance with the Endorsed Plans.
- R.4. Conditions 9 and 16 of the Permit provide as follows:
  - Prior to Statement of Compliance, the permit holder must enter into and execute an agreement under Section 173 of the Planning and Environment Act 1987 which provides for:
    - a) Construction of all dwellings and associated outbuildings within the building envelopes approved under this permit except with the prior written consent of the Responsible Authority.
    - b) Surface of access for Lot 2 must remain gravel to ensure retention and ongoing viability of Tree 114 Long-leaved Box Eucalyptus goniocalyx.
    - c) All trees identified for retention on the plans endorsed under this permit to be protected from removal, destruction or lopping except with the prior written consent of the Responsible Authority.
    - d) The prevention of any buildings or works as well as the storage of any machinery or equipment within the designated tree protection zones at any time.
    - e) The installation of fencing around the designated protection zones of all trees identified for retention under this permit. The fencing is to be installed and inspected by suitably qualified Council officers no later than one month prior to the commencement of any dwelling construction on corresponding allotments. The protective fencing is not to be removed until all building and works associated with the construction of any dwelling and outbuilding are completed.

Before the issue of the Statement of Compliance, application must be made to the Registrar of Titles to register the Section 173 Agreement on the title to the land under section 181 of the Act. The permit holder must pay the reasonable costs of the preparation, execution and registration of this Section 173 Agreement.

- 16. Prior to the issue of a Statement of Compliance, the permit holder must enter into and execute an agreement under Section 173 of the Planning and Environment Act 1987 which provides for:
  - a) The construction of a dwelling and any outbuildings all lots to be located wholly within the designated building envelope except with the prior written consent of the responsible authority.
- b) The location of the effluent disposal systems for all lots within the designated effluent envelope and the exclusion of any buildings and works within these are like with the sole purpose.

of enabling its consideration and review as part of a planning process under the Planning and Environment Act 1987.

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#14982830v1 © Harwood Andrews

- c) All discharge flows from the subdivision to be treated in accordance with current industry practice with the treatment process to be maintained by the owners of each individual allotment.
- d) All discharge flows from the subdivision are to be treated and retarded back to pre- development flows to the satisfaction of the Responsible.
- e) All dwellings must include 3000L rainwater tanks.

Before the issue of the Statement of Compliance, application must be made to the Registrar of Titles to register the Section 173 Agreement on the title to the land under Section 181 of the Act. The permit holder must pay the reasonable costs of the preparation, execution and registration of this Section 173 Agreement.

R.5. This Agreement is entered into between Council and the Owner pursuant to section 173 of the Act in order to meet the requirements of conditions 9 and 16 of the Permit and to achieve the objectives of planning in Victoria.

#### IT IS AGREED AS FOLLOWS:

#### 1. **DEFINITIONS**

In this Agreement unless inconsistent with the context or subject matter:

- 1.1. **Act** means the *Planning and Environment Act 1987* (Vic).
- 1.2. **Agreement** means this Agreement and any agreement executed by the Parties varying or expressed to be supplemental to this Agreement.
- 1.3. **Building Envelope** means the areas identified and shown on the Endorsed Plan as "Proposed Development Envelope".
- 1.4. **Council** means Hume City Council in its capacity as:
  - 1.4.1. the authority responsible for administering and enforcing the Planning Scheme; and
  - 1.4.2. a municipal council within the meaning of the *Local Government Act 2020* (Vic).

and includes its agents, officers, employees, servants, workers and contractors and any subsequent person or body which is the responsible authority or municipal council.

#### 1.5. Current Address for Service

- 1.5.1. for Council means the address shown under the heading "Parties" in this Agreement, or any other principal office address listed on the website of Council; and
- 1.5.2. for Council means the address shown under the heading "Parties" in this Agreement or any other address provided by the Owner to Council for any purpose or purposes relating to the Land.

#### 1.6. Current Email Address for Service

- 1.6.1. for Council means any email address listed on the website of Council; and
- 1.6.2. for the Owner means any email address provided by the Owner to Council for the express purpose of electronic communication regarding this Agreement.

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- 1.7. **Dwelling** has the same meaning as in the Planning Scheme.
- 1.8. **Effluent Disposal System** means the system installed on each Lot in accordance with the Permit to dispose of effluent.
- 1.9. **Effluent Envelope** means the the areas identified and shown on the Endorsed Plan as "Indicative effluent field size and siting within development envelope".
- 1.10. **Endorsed Plan** means the plan described as the Subdivision Concept Plan prepared by Urban Design and Management endorsed under the Permit on 24 February 2023, as amended from time to time.
- 1.11. **Engineering Design and Construction Manual** means the Engineering Design and Construction Manual prepared by the Victorian Planning Authority dated December 2019 as amended from time to time.
- 1.12. Land means the land contained in Certificate of Title Volume 8650 Folio 747 being Lot 50 on Plan of Subdivision 058624 also known at as 100 Spavin Drive, Sunbury and any reference to the Land includes any lot created by the subdivision of the Land or any part of it.
- 1.13. Lot means a lot created from the subdivision of the Land pursuant to the Permit.
- 1.14. Lot 2 means the lot marked '2' on the Endorsed Plan.
- 1.15. **Mortgagee** means the person or persons registered or entitled from time to time to be registered by the Registrar of Titles as Mortgagee of the Land or any part of it.
- 1.16. **Owner** means the person or persons registered or entitled from time to time to be registered by the Registrar of Titles as the proprietor or proprietors of an estate in fee simple of the Land or any part of it, and includes a Mortgagee in possession.
- 1.17. **Owner's Obligations** means the covenants, promises, agreements, indemnities, undertakings and warranties given by the Owner under this Agreement including the specific obligations imposed under clause 3.
- 1.18. Party or Parties means the Owner and Council under this Agreement as appropriate.
- 1.19. **Permit** means Planning Permit no. P24912 issued by Council on 24 February 2023 (corrected 14 March 2023) as described in Recital R.3 including the plans endorsed under it and as amended from time to time.
- 1.20. **Planning Scheme** means the Hume Planning Scheme and any successor instrument or other planning scheme which applies to the Land.
- 1.21. **Protected Trees** means:
  - (a) the trees identified and shown on the Endorsed Plan as "Indigenous Trees to be retained"; and
  - (b) the patches of vegetation shown on the Endorsed Plan as "Vegetation patches to be retained".
- 1.22. **Rainwater Tanks** means on-site rainwater tanks designed and installed to collect and detain all stormwater runoff from the rooftops of all Dwellings prior to off-site discharge and /or on-site reuse.
- 1.23. **Register** and **Registrar** have the same meaning as in the *Transfer of Land Act 1958* (Vic).

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- 1.24. **Tree 114** means the Long-leaved Box *Eucalyptus goniocalyx* marked '114' on the Endorsed Plan.
- 1.25. **Tree Protection Zone** means the tree protection zones shown on the Endorsed Plan.

#### 2. INTERPRETATION

In the interpretation of this Agreement unless inconsistent with the context or subject matter:

- 2.1. The singular includes the plural and the plural includes the singular.
- 2.2. A reference to a gender includes a reference to all other genders.
- 2.3. Words (including defined expressions) denoting persons will be deemed to include all trusts, bodies and associations, corporate or unincorporated, and vice versa.
- 2.4. A reference to a person includes a reference to a firm, corporation, association or other entity and their successors in law.
- 2.5. A reference to a statute includes any statute amending, consolidating or replacing that statute and includes any subordinate instruments made under that statute.
- 2.6. The Recitals to this Agreement are and will be deemed to form part of this Agreement including any terms defined within the Recitals.
- 2.7. References to the Parties will include their transferees, heirs, assigns, and liquidators, executors and legal personal representatives as the case may be.
- 2.8. Reference to a document or agreement includes reference to that document or agreement as changed, novated or replaced from time to time.
- 2.9. Where a word or phrase is given a definite meaning in this Agreement, a part of speech or other grammatical form for that word or phrase has a corresponding meaning.
- 2.10. Where a word or phrase is not defined in this Agreement, it has the meaning as defined in the Act, or, if it is not defined in the Act, it has its ordinary meaning.

#### 3. SPECIFIC OBLIGATIONS OF THE OWNER

#### 3.1. Building Envelopes

Unless with the prior written consent of Council, the Owner agrees that any Dwelling, including any outbuilding and any buildings and works associated with the Dwelling must be located within the Building Envelope.

#### 3.2. Effluent Disposal

The Owner agrees that:

- 3.2.1. the Effluent Disposal System must be located within the Effluent Envelope;
- 3.2.2. any Dwelling, including any outbuilding and any buildings and works associated with the Dwelling must not be located within an Effluent Envelope.

#### 3.3. Tree Protection

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- 3.3.1. Protected Trees must not be removed, destroyed, lopped or otherwise damaged.
- 3.3.2. All buildings and works on the Land must be located outside Tree Protection Zones.
- 3.3.3. Any machinery or equipment must be stored outside Tree Protection Zones.
- 3.3.4. The vehicle accessway for Lot 2 must be constructed and maintained with a gravel surface to protect long term viability of Tree 114 on the Endorsed Plan.

#### 3.4. Tree Protection Fencing

- 3.4.1. Before any building and works start on a Lot, a temporary fence must be constructed around the Tree Protection Zone of all Protected Trees on that Lot to the satisfaction of Council.
- 3.4.2. No later than one month before the construction of a Dwelling starts, any temporary fence required to be constructed around a Tree Protection Zone must be inspected and approved Council.
- 3.4.3. Any temporary fence required to be constructed around a Tree Protection Zone must remain in place until the buildings and works associated with the construction of a Dwelling are complete.

#### 3.5. Stormwater discharge

The Owner agrees that:

- 3.5.1. All stormwater discharge from the Land must be:
  - 3.5.1.1. managed and treated in accordance with the Engineering Design and Construction Manual and current best practice water sensitive urban design; and
  - 3.5.1.2. treated and retarded to pre-development flows;

to the satisfaction of Council.

3.5.2. Prior to the issue of an Occupancy Permit for any Dwelling on a Lot, the Owner must install a Rainwater Tank for that Dwelling.

#### 4. FURTHER COVENANTS OF THE OWNER

The Owner warrants and covenants with Council that:

- 4.1. It is the registered proprietor (or entitled to be so) of the Land.
- 4.2. Save as shown in the certificate of title to the Land, there are no mortgages, liens, charges, easements or other encumbrances or any rights inherent in any person affecting the Land or any part of it and not disclosed by the usual searches.
- 4.3. Neither the Land nor any part of it is subject to any right obtained by adverse possession or subject to any easements, rights or encumbrances mentioned in section 42 of the *Transfer of Land Act* 1958 (Vic).

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- 4.4. It will not sell, transfer, dispose of, assign, mortgage or otherwise part with possession of the Land or any part of it without first providing to its successors a copy of this Agreement.
- 4.5. It will within 28 days of written demand pay to Council the Council's reasonable costs (including legal or other professional costs) and expenses of and incidental to the:
  - 4.5.1. negotiation, preparation, execution and recording of this Agreement;
  - 4.5.2. assessment, negotiation, preparation, execution and recording of any proposed amendment to this Agreement; and
  - 4.5.3. determination of whether any of the Owner's obligations have been undertaken to the satisfaction of Council or to give consent to anything under this Agreement.

To the extent that such costs and expenses constitute legal professional costs, Council may at its absolute discretion have these costs assessed by the Law Institute of Victoria and in that event the Parties will be bound by the amount of that assessment, with any fee for obtaining such an assessment being borne equally by Council and the Owner. Such costs payable by the Owner will include the costs and disbursements associated with the recording, cancellation or alteration of this Agreement in the Register.

- 4.6. It will do all that is necessary to enable Council to make application to the Registrar of Titles to record this Agreement in the Register in accordance with the Act, including the signing of any further agreement, acknowledgment or other document.
- 4.7. Until such time as this Agreement is recorded in the Register, the Owner must ensure that successors in title will give effect to this Agreement, and do all acts and sign all documents which will require those successors to give effect to this Agreement, including executing a deed agreeing to be bound by the terms of this Agreement.

#### 5. FURTHER ASSURANCE

The Parties to this Agreement will do all things necessary (including signing any further agreement, acknowledgement or document) to give full effect to the terms of this Agreement and to enable this Agreement to be recorded in the Register in accordance with the Act.

#### 6. AMENDMENT

This Agreement may be amended only in accordance with the requirements of the Act.

#### 7. NO WAIVER

No waiver by any Party of any default in the strict and literal performance of or compliance with any provision, condition or requirement in this Agreement will be deemed to be a waiver of strict and literal performance of and compliance with any other provision, condition or requirement of this Agreement nor to be a waiver of or in any way release any Party from compliance with any provision, condition or requirement in the future nor will any delay or omission of any Party to exercise any right under this Agreement in any manner impair the exercise of such right accruing to it thereafter.

#### 8. NO FETTERING OF COUNCIL'S POWERS

The Parties acknowledge and agree that this Agreement does not fetter or restrict the power or discretion of Council to make any decision or impose any requirements or conditions in

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connection with the granting of any planning approval or certification of any plans of subdivision applicable to the Land or relating to any use or development of the Land.

#### 9. INTEREST ON OVERDUE MONEYS

Any amount due under this Agreement but unpaid by the due date incurs interest at the rate prescribed under section 120 of the *Local Government Act 2020* (Vic) and any payment made shall be first directed to payment of interest and then principal amount owning.

#### 10. NOTICES

All notices and other communications under this Agreement will be sent by prepaid mail, by hand delivery, email or by facsimile to the Current Addresses for Service or the Current Email Address for Service of the Parties, and may be sent by an agent of the Party sending the notice. Each notice or communication will be deemed to have been duly received:

- 10.1. not later than two business days after being deposited in the mail with postage prepaid;
- 10.2. when delivered by hand; or
- 10.3. if sent by email, at the time of receipt in accordance with the *Electronic Transactions* (*Victoria*) *Act 2000* (Vic).

#### 11. COSTS ON DEFAULT

If the Owner defaults in the performance of any obligations under this Agreement it will pay to Council its reasonable costs of action taken to achieve compliance with this Agreement.

#### 12. INVALIDITY OF ANY CLAUSE

Notwithstanding anything to the contrary in this Agreement, if any provision of this Agreement will be invalid and not enforceable in accordance with its terms, all other provisions which are self-sustaining and capable of separate enforcement without regard to the invalid provisions will be and continue to be valid and enforceable in accordance with those terms.

#### 13. AGREEMENT BINDING ON SUCCESSORS OF OWNERS

This Agreement will extend to and bind the Owner's successors, assigns, administrators, transferees and legal personal representatives and the obligations imposed upon them will also be binding on their successors, transferees, purchasers, mortgagees and assigns as if each of them had separately executed this Agreement.

#### 14. JOINT OBLIGATIONS

In the case of each Party that consists of more than one person (including in that expression any corporation) each of those persons covenants, agrees and declares that all of the covenants, agreements, declarations and consents contained in this Agreement and made and given by that Party have been entered into, made and given and are binding upon that person both severally and also jointly with the other person or persons constituting that Party.

#### 15. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the Parties in connection with its subject matter and supersedes all previous agreements or understandings between the Parties in connection with its subject matter.

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#### 16. EXCHANGE OF COUNTERPARTS BY EMAIL OR FAX

- 16.1. This Agreement may be executed in any number of counterparts.
- 16.2. All counterparts together constitute one agreement.
- 16.3. A Party may execute this Agreement by signing any counterpart.
- 16.4. This Agreement is binding on the Parties on the exchange of executed counterparts. A copy of an original executed counterpart sent by email or by facsimile machine:
  - 16.4.1. must be treated as an original counterpart;
  - 16.4.2. is sufficient evidence of the execution of the original; and
  - 16.4.3. may be produced in evidence for all purposes in place of the original.
- 16.5. A Party which has executed a counterpart of this Agreement or its legal representative may exchange it with another Party by sending a copy of that original executed counterpart by email or facsimile machine to that other Party or its legal representative and if requested by that other Party or its legal representative must promptly deliver that original by hand or post. Failure to make that delivery does not affect the validity of this Agreement.

#### 17. COMMENCEMENT AND ENDING OF AGREEMENT

- 17.1. This Agreement will commence:
  - 17.1.1. on the date that it bears; or
  - 17.1.2. if it bears no date, on the date it is recorded in the Register.
- 17.2. This Agreement will end by agreement between the Parties or otherwise in accordance with the provisions of the Act.

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#### **EXECUTED AS A DEED**

SIGNED for and on behalf of HUME CITY COUNCIL by James McNulty, Manager Statutory Planning & Building Control Services, in the exercise of a power delegated conferred by an Instrument of Delegation in the presence of:

James McNulty

Witness

Harry Valentine

Name of witness (please print)

By witnessing this Agreement, the witness confirms that either:

- this Agreement was signed physically in their presence; or
- where this Agreement was witnessed via audio-visual link, the requirements for witnessing by audio-visual link under section 12 of the Electronic Transactions (Victoria) Act 2000 (Vic) have been met.

**EXECUTED** by **KENIRYA MANUFACTURING PTY LTD ACN 110 959 414** in accordance with Section 127 of the Corporations Act 2001:

Kenneth John Egan, Director

Date: 36-3-23

Karen Margaret Egan, Secretary

Date: 30/3/23

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BUSHFIRE CONSTRUCTION NOTE: The property has been designated as bushfire prone, refer to report for bushfire attack level rating. All construction methods and building materials are to be selected to comply with the requirements as stipulated by AS 3959. Refer to Bushfire Construction Guide' specification summary supplied for requirements neede prior to commencement of any works progressing.

#### TERMITE REQUIREMENTS

This site is assessed as being termite prone. Termite barrier(s) / management construction requirements are to be provided in accordance with NCC. Part 3.4 # A53660.1 TERMITE PRONE

**BUSHFIRE REQUIREMENTS** 

The site is in a designated bushfire prone area and has been assessed as:

BAL-12.5

Refer to bushfire report for further details and bushfire specifications where applicable.

BUILDING REGULATION PART 10: SITING CHECKLIST				
150	Termite Risk Area	-:Y <i>e</i> s		
151	Construction in termite risk area	-⊹Yes		
152	Significant enowfall areas	-: No		
153	Building areas liable for flooding	-: No		
154	Construction to designed land or designated works	-: No		

#### BUILDING REGULATION PART 5 : SITING CHECKLIST 73 Maximum Street Setbacks 74 Minimum Street Setback -: Complies -: Complies -: Not applicable 75 Building Height 76 Site Coverage 76A Minimum Garden Area -: Complies 78 Car Parking

79 Side and Rear Setbacks 80 Walls and Carport on Bounda -: Not applicable 31 Daylight to Existing Habitable Room Windows

Solar Access to Existing North-Facing Habitable Room Windows Overshadowing of Recreation Private Open Space

85 Daylight to Habitable Room Windows -: Complies

SITE PLAN 26 Prod Tris Copied document is made available for the sole purpose of enabling its consideration and review as part of a planning process under the Planning and Environment Act 1987.

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