

Application for Planning Permit

If you need help to complete this form, read [How to complete the Application for Planning Permit form](#).

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

⚠ 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.

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

⚠ If the space provided on the form is insufficient, attach a separate sheet.

The Land

① Address of the land. Complete the Street Address and one of the Formal Land Descriptions.

Street Address *

Unit No.:	St. No.:	St. Name:
<input type="text"/>	<input type="text"/>	<input type="text"/>
Suburb/Locality:		Postcode:
<input type="text"/>		<input type="text"/>

Formal Land Description *

Complete either A or B.

⚠ This information can be found on the certificate of title.

A Lot No.: Lodged Plan Title Plan Plan of Subdivision No.:

OR

B Crown Allotment No.: Section No.:

Parish/Township Name:

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

The Proposal

⚠ 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:

Select the focus of this application and describe below:

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.

③ 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 i

4 Describe how the land is used and developed now *

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

Existing vacant warehouse with 25 car parking spaces

 Provide a plan of the existing conditions. Photos are also helpful. included in planning report


Title Information i

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 restrictive 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.)
- No
- 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 i

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, provide the details of that person.

Please provide at least one contact phone number *

Name:

Contact person's details

Same as applicant (if so, go to 'contact information')

Name:

Title:

First Name:

Surname:

Organisation (if applicable):

Postal Address:

Unit No.:

St. No.:

If it is a P.O. Box, enter the details here:

St. Name:

Suburb/Locality:

State:

Postcode:

Contact information

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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.

Name:		Same as applicant <input type="checkbox"/>	
Title: <input type="text"/>	First Name: <input type="text"/>	Surname: <input type="text"/>	
<div style="background-color: black; height: 40px; width: 100%;"></div>			
Suburb/Locality: Mickleham	State: VIC <input type="text"/>	Postcode: 3064	
Owner's Signature (Optional): <input type="text"/>		Date: <input type="text"/>	
		day / month / year	

Declaration 

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 myself) has been notified of the permit application.	
Signature: <input type="text"/>	Date: 26/03/2026
	day / month / year

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Need help with the Application?

If you need help to complete this form, read [How to complete the Application for Planning Permit form](#)
General information about the planning process is available at www.delwp.vic.gov.au/planning

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

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

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:

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:

You can save this application form to your computer to complete or review later or email it to delwp@delwp.vic.gov.au

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

VOLUME 12480 FOLIO 003

Security no : 124133322285C
Produced 26/03/2026 05:41 PM

LAND DESCRIPTION

Lot 3 on Plan of Subdivision 848481B.
PARENT TITLE Volume 12475 Folio 021
Created by instrument PS848481B 07/06/2023

REGISTERED PROPRIETOR

Estate Fee Simple
Sole Proprietor



ENCUMBRANCES, CAVEATS AND NOTICES

MORTGAGE BA198830R 11/03/2026
AUSTRALIA AND NEW ZEALAND BANKING GROUP LTD

COVENANT AX063860V 19/07/2023

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
AG427732C 30/03/2009

AGREEMENT Section 173 Planning and Environment Act 1987
AN488752Q 24/01/2017

AGREEMENT Section 173 Planning and Environment Act 1987
AN578725S 21/02/2017

AGREEMENT Section 173 Planning and Environment Act 1987
AV056196L 25/11/2021

AGREEMENT Section 173 Planning and Environment Act 1987
AV056216H 25/11/2021

DIAGRAM LOCATION

SEE PS848481B FOR FURTHER DETAILS AND BOUNDARIES

ACTIVITY IN THE LAST 125 DAYS

NUMBER	DESCRIPTION	DATE
BA161475S (E)	CAVEAT	27/09/2026
BA198828C (E)	DISCHARGE OF MORTGAGE	11/03/2026
BA198829A (E)	TRANSFER	11/03/2026
BA198830R (E)	MORTGAGE	11/03/2026

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

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

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

Page 2 of 2

Street Address: 3 ECLIPSE DRIVE MICKLEHAM VIC 3064

ADMINISTRATIVE NOTICES

NIL

eCT Control 16165A AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED
Effective from 11/03/2026

DOCUMENT END

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Imaged Document Cover Sheet

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Document Type	Plan
Document Identification	PS848481B
Number of Pages (excluding this cover sheet)	5
Document Assembled	17/03/2026 01:20

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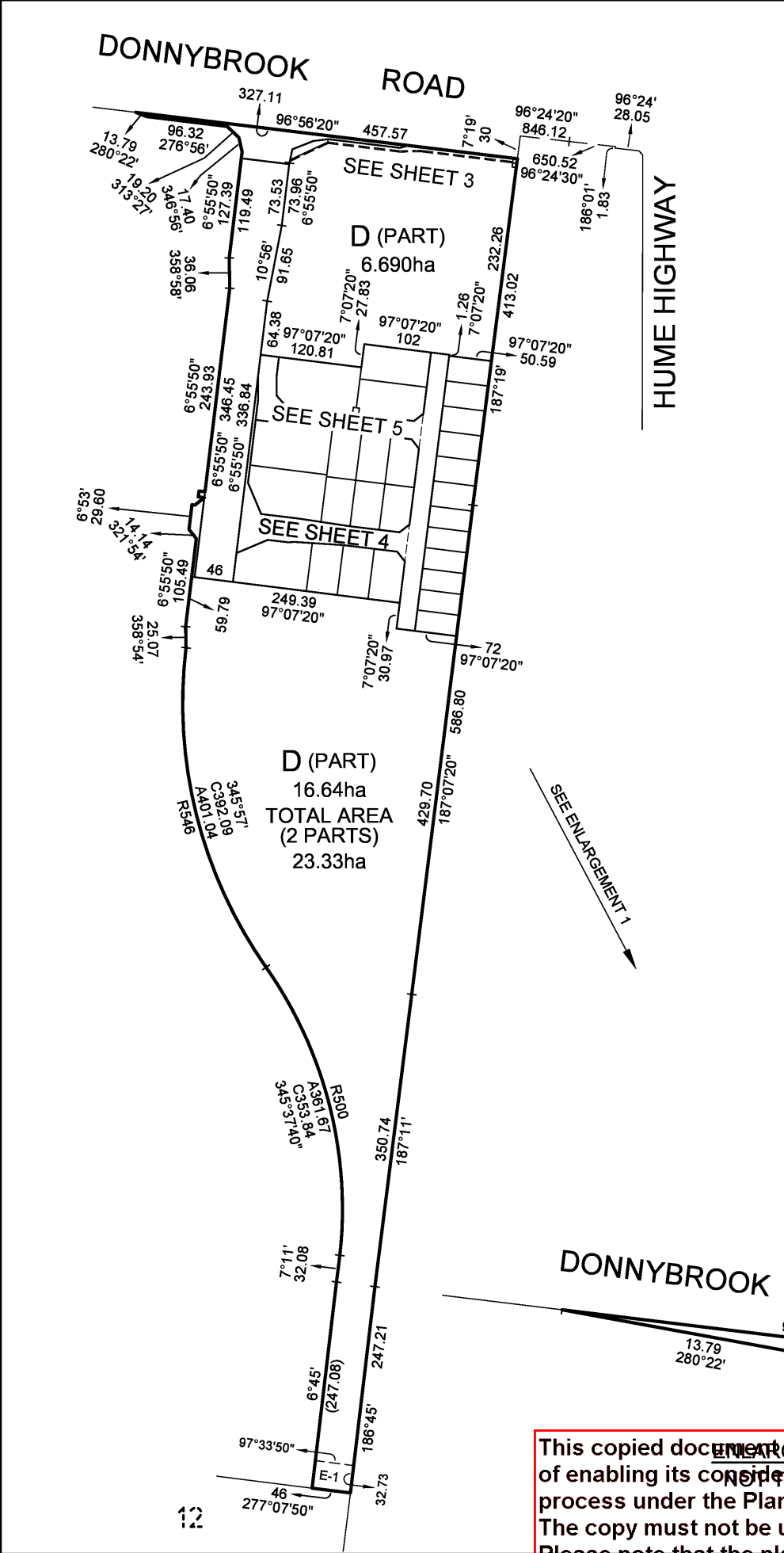
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PLAN OF SUBDIVISION		EDITION 1	PS848481B	
LOCATION OF LAND PARISH: MICKLEHAM TOWNSHIP: SECTION: 17 (PART) CROWN ALLOTMENT: CROWN PORTION: TITLE REFERENCE: Vol. Fol. LAST PLAN REFERENCE: Lot CC on PS839313A POSTAL ADDRESS: 225 - 285 Donnybrook Road (at time of subdivision) MICKLEHAM 3064 MGA 2020 CO-ORDINATES: E: 316 740 ZONE: 55 (of approx centre of land in plan) N: 5 842 980		Council Name: Hume City Council Council Reference Number: S009432 Planning Permit Reference: Planning permit not required SPEAR Reference Number: S169184S Certification This plan is certified under section 11 (7) of the Subdivision Act 1988 Date of original certification under section 6 of the Subdivision Act 1988: 07/12/2021 Statement of Compliance This is a statement of compliance issued under section 21 of the Subdivision Act 1988 Public Open Space A requirement for public open space under section 18 or 18A of the Subdivision Act 1988 has not been made Digitally signed by: Katrina Toogood for Hume City Council on 30/05/2023		
VESTING OF ROADS AND/OR RESERVES		NOTATIONS		
IDENTIFIER	COUNCIL/BODY/PERSON	Lots 20 to 22, 28, 29 and 32 to 63 have been omitted from this plan. OTHER PURPOSE OF PLAN To remove the whole of Carriageway easement E-3 on PS839313A. GROUND'S FOR REMOVAL: By provision in Schedule 5, Clause 14, Road Management Act 2004.		
Road R1	Head, Transport for Victoria			
Roads R2, R3 & R4	Hume City Council			
Reserve No. 1	Hume City Council			
Reserves Nos. 2, 3 & 4	Jemena Electricity Networks (Vic) Ltd			
NOTATIONS				
DEPTH LIMITATION: Does Not Apply				
SURVEY: This plan is based on survey. STAGING: This is not a staged subdivision. Planning Permit No. P23426 This survey has been connected to permanent marks no(s). In Proclaimed Survey Area no.74				
MERRIFIELD SOUTH INDUSTRIAL ESTATE - Release 2 Area of Release: 10.93ha No. of Lots: 27 Lots and Balance Lot D				
EASEMENT INFORMATION				
LEGEND: A - Appurtenant Easement E - Encumbering Easement R - Encumbering Easement (Road)				
Easement Reference	Purpose	Width (Metres)	Origin	Land Benefited/In Favour Of
E-1	Transmission of Electricity	See Diag.	Inst. E56008	State Electricity Commission of Victoria
E-2	Powerline	1.50	This Plan Section 88 Electricity Industry Act 2000	Jemena Electricity Networks (Vic) Ltd
E-3	Carriageway	See Diagram	This Plan	Jemena Electricity Networks (Vic) Ltd
	Powerline		This Plan Section 88 Electricity Industry Act 2000	
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 Urban Development Built Environments Infrastructure 8 / 270 Ferntree Gully Road, Notting Hill, Victoria, 3168 Tel: 61 3 9501 2800 Web: taylorss.com.au		SURVEYORS FILE REF: Ver. 12	ORIGINAL SHEET	SHEET 1 OF 5
		Digitally signed by: Damian Leo Slattery, Licensed Surveyor, Surveyor's Plan Version (12), 23/05/2023, SPEAR Ref: S169184S		PLAN REGISTERED TIME: 12:14PM DATE: 07/06/2023 J.QIN Assistant Registrar of Titles

PS848481B

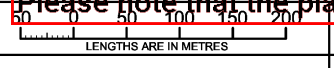


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SCALE
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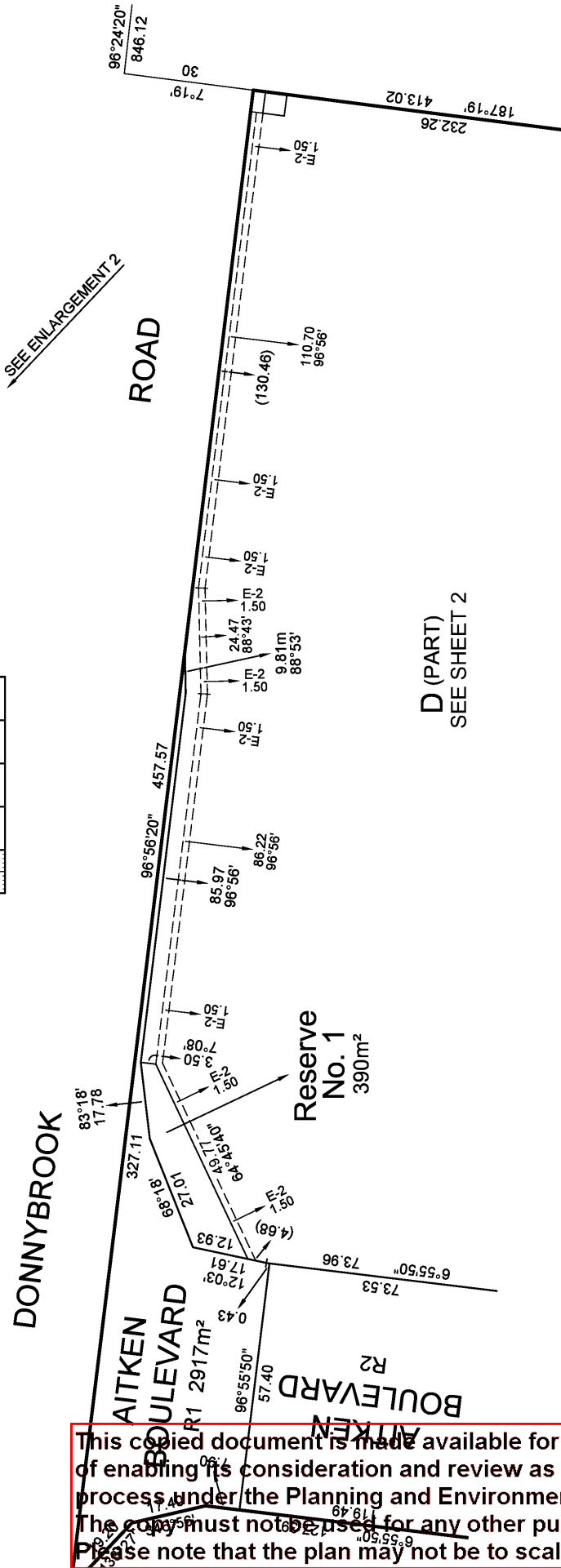
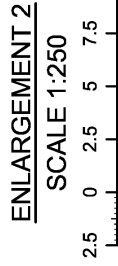
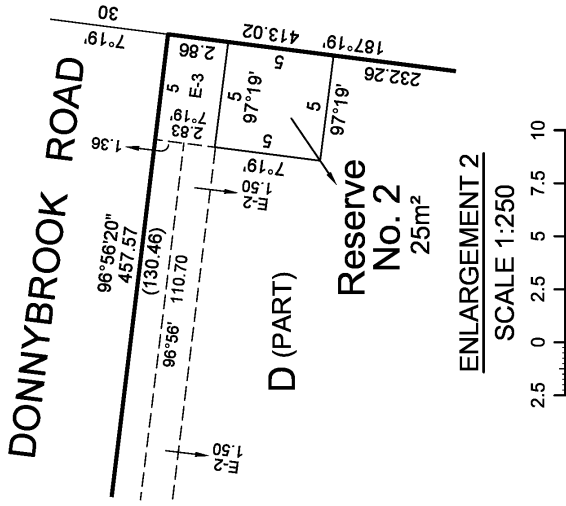


ORIGINAL SHEET Ref: 01081-IND-S2	SIZE: A3	Ver. 12	SHEET 2
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Digitally signed by: Damian Leo Slattery, Licensed Surveyor,
 Surveyor's Plan Version (12),
 23/05/2023, SPEAR Ref: S169184S

Digitally signed by:
 Hume City Council,
 30/05/2023,
 SPEAR Ref: S169184S

PS848481B



D (PART)
SEE SHEET 2

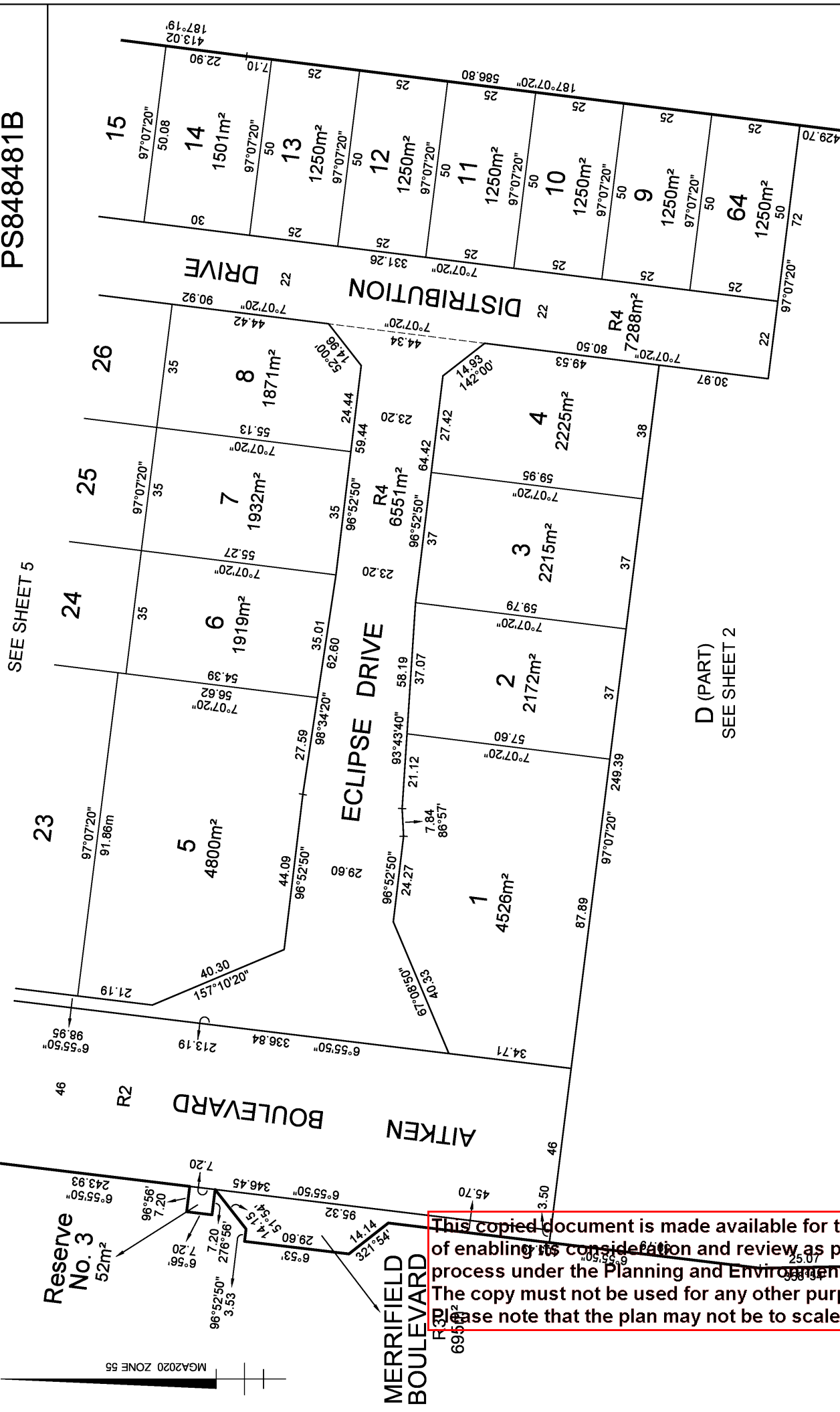
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MGA2020 ZONE 55

<p>TAYLORS Urban Development Environmental Planning Infrastructure 8 / 270 Ferntree Gully Road, Werribee (Vic), Victoria, 3168 Tel: 61 3 9501 2800 Web: taylorss.com.au</p>	<p>Scale: 1:1000</p> <p>Lengths are in metres</p> <p>10 0 10 20 30 40</p>	<p>Original Sheet Size: A3</p> <p>Ref: 01091-IND-S2 Ver. 12</p>	<p>Sheet 3</p>
	<p>Digitally signed by: Damian Leo Slattery, Licensed Surveyor, Surveyor's Plan Version (12), 23/05/2023, SPEAR Ref: S169184S</p> <p>Digitally signed by: Hume City Council, 30/05/2023, SPEAR Ref: S169184S</p>		

Amended by Damian Leo Slattery Licensed Surveyor 06/06/2023.

PS848481B



SEE SHEET 5

D (PART)
SEE SHEET 2

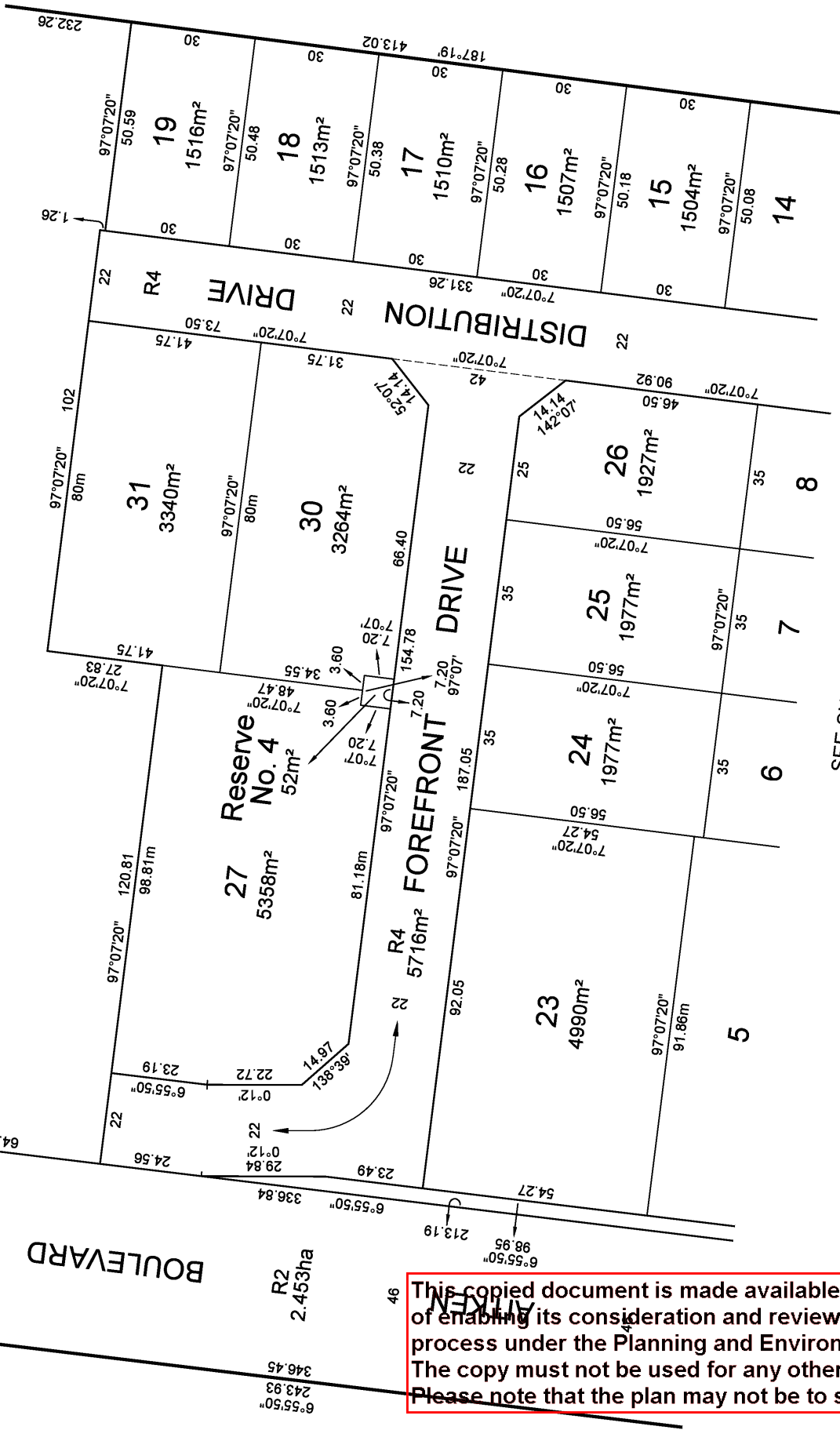
SCALE 1:1000 LENGTHS ARE IN METRES	ORIGINAL SHEET SIZE: A3	Ref. 01091-IND-S2 Ver. 12	SHEET 4
	Digitally signed by: Damian Leo Slattery, Licensed Surveyor, Surveyor's Plan Version (12), 23/05/2023, SPEAR Ref: S169184S		
TAYLORS Urban Development Built Environment Infrastructure 8 / 270 Ferntree Gully, Royston, Victoria, 3168 Tel: 61 3 9501 2800 Web: taylorss.com.au			Digitally signed by: Hume City Council, 30/05/2023, SPEAR Ref: S169184S

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D (PART)
SEE SHEET 2

MGA2020 ZONE 55



SEE SHEET 4

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TAYLORS
 Urban Development | Built Environment | Infrastructure
 8 / 270 Ferntree Gully Road, Ferntree Gully, Victoria, 3168
 Tel: 61 3 9501 2800 | Web: taylorss.com.au

Amended by Damian Leo Slattery Licensed Surveyor 06/06/2023.

SCALE 1:1000
 LENGTHS ARE IN METRES
 10 0 10 20 30 40

Digitally signed by: Damian Leo Slattery, Licensed Surveyor, Surveyor's Plan Version (12), 23/05/2023, SPEAR Ref: S169184S

ORIGINAL SHEET SIZE: A3
 Ref. 01091-IND-S2 Ver. 12
 SHEET 5

Digitally signed by: Hume City Council, 30/05/2023, SPEAR Ref: S169184S



Department of Transport and Planning

Electronic Instrument Statement

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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.

Produced 26/03/2026 09:45:27 PM

Status	Registered	Dealing Number	AX063860V
Date and Time Lodged	19/07/2023 03:08:03 PM		

Lodger Details

Lodger Code	18440T
Name	MSA NATIONAL
Address	
Lodger Box	
Phone	
Email	
Reference	

TRANSFER

Jurisdiction	VICTORIA
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Privacy Collection Statement

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Land Title Reference

12480/003

Transferor(s)

Name	COPPERDUST PTY LTD
ACN	618875433

Name	ROSEDUST PTY LTD
ACN	618257686

Estate and/or Interest being transferred

Fee Simple

Consideration

\$AUD 1198774.50

Transferee(s)

Tenancy (inc. share)	Sole Proprietor
Given Name(s)	SADET
Family Name	YALCIN

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Department of Transport and Planning

Electronic Instrument Statement

Address

Unit Type	UNIT
Unit Number	1
Street Number	24
Street Name	GEACH
Street Type	STREET
Locality	DALLAS
State	VIC
Postcode	3047

Covenants

The registered proprietors of the burdened land covenant with the registered proprietors of the benefited land as set out in the restrictive covenant with the intent that the burden of the restrictive covenant runs with and binds the burdened land and the benefit of the restrictive covenant is annexed to and runs with the benefited land.

Burdened land	the Land
Benefited land	MCP: AA8526
Restrictive covenant	MCP: AA8526
Expiry Date	

Duty Transaction ID

5722897

The transferor transfers to the transferee their estate and/or interest in the land specified for the consideration, subject to any restrictive covenant set out or referred to in this transfer.

Execution

1. The Certifier has taken reasonable steps to verify the identity of the transferee 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	SADET YALCIN
of	
Signer Name	YETER ERIKOZU
Signer Organisation	MEADOW HEIGHTS CONVEYANCING SERVICES
Signer Role	CONVEYANCING PRACTICE
Execution Date	19 JULY 2023

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Department of Transport and Planning

Electronic Instrument Statement

Execution

1. The Certifier has taken reasonable steps to verify the identity of the transferor 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	ROSEDUST PTY LTD COPPERDUST PTY LTD
Signer Name	LEE WOLVERIDGE
Signer Organisation	LANDER & ROGERS
Signer Role	AUSTRALIAN LEGAL PRACTITIONER
Execution Date	19 JULY 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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Department of Transport and Planning

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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.

Produced 17/03/2026 01:20:25 AM

Status	Registered	Dealing Number	AV056216H
Date and Time Lodged	25/11/2021 12:04:30 PM		

Lodger Details

Lodger Code	18776H
Name	HARWOOD ANDREWS
Address	
Lodger Box	
Phone	
Email	
Reference	AL - 21903833

APPLICATION TO RECORD AN INSTRUMENT

Jurisdiction	VICTORIA
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Estate and/or Interest

FEE SIMPLE

Land Title Reference

9792/811
11872/789

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

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Department of Transport and Planning

Electronic Instrument Statement

Additional Details

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 legislation 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	25 NOVEMBER 2021

File Notes:

NIL

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Statement End.

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Document Type	Instrument
Document Identification	AV056216H
Number of Pages (excluding this cover sheet)	30
Document Assembled	17/03/2026 01:20

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Maddocks

Lawyers
140 William Street
Melbourne Victoria 3000 Australia

Telephone 61 3 9258 3555
Facsimile 61 3 9258 3666

info@maddocks.com.au
www.maddocks.com.au

DX 259 Melbourne

Agreement under section 173 of the Planning and Environment Act 1987

Subject Land: 225-285 Donnybrook Road, Mickleham

Purpose of agreement: contributions towards the construction of Aitken
Boulevard

Hume City Council
and

Head, Transport for Victoria
ABN 97 481 088 949
and

Rosedust Pty Ltd
ACN 618 257 686
and

Copperdust Pty Ltd
ACN 618 875 433

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Agreement under section 173 of the Planning and Environment Act 1987

Dated 4 August 2021

Parties

Name	Hume City Council
Address	1079 Pascoe Vale Road, Broadmeadows, Victoria
Short name	Council
Name	Head, Transport for Victoria ABN 97 481 088 949, a body corporate established under the <i>Transport Integration Act 2010</i>
Address	Level 21, 1 Spring Street Melbourne, Victoria 3000
Short name	Head, Transport for Victoria
Name	Rosedust Pty Ltd ACN 618 251 686 and Copperdust Pty Ltd ACN 618 875 433
Address	Level 5, 441 St Kilda Road, St Kilda, Victoria
Short name	Owner

Background

- A. Council is the responsible authority for the Planning Scheme.
- B. The Owner is or is entitled to be the registered proprietor of the Subject Land.
- C. The Amendment rezoned the Subject Land to facilitate the development of the Subject Land for urban purposes.
- D. The Owner has agreed to enter into this Agreement to record the terms and conditions by which the Owner will contribute to the delivery of the Projects and provision of the Project Land in consideration of Council supporting the Amendment
- E. The Owner entered into the Supplementary State Agreement pursuant to Section 173 of the Act with Council and Head, Transport for Victoria on [TBC] procuring its State Infrastructure road works contributions under the Primary Agreement.
- F. Under clause 4.3 of the Supplementary State Agreement, the Owner acknowledged and agreed that the Owner has obligations to contribute to the provision of Municipal Local Infrastructure .

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- (a) for Council, the address shown on page one of this Agreement, or any other address listed on Council's website;
- (b) for Head, Transport for Victoria, the address shown on page one of this Agreement, or any other address listed on Head, Transport for Victoria' website; and
- (c) for the Owner, the address shown on page one of this Agreement or any other address provided by the Owner to Council for any purpose relating to the Subject Land.

Current Email means:

- (a) for Council, contactus@hume.vic.gov.au, or any other email address listed on Council's website;
- (b) for Head, Transport for Victoria, any email address provided by Head, Transport for Victoria to Council for the express purpose of electronic communication regarding this Agreement; and
- (c) for the Owner, any email address provided by the Owner to Council for the express purpose of electronic communication regarding this Agreement.

Development Contributions Infrastructure Items Plan means the plan in Schedule 3 of this Agreement showing the development contribution infrastructures items for the Subject Land or such other plan approved by Council in writing from time to time.

Development Plan means a plan setting out the overall framework for the future urban development of the Subject Land approved by Council from time to time in accordance with clause 43.04 of the Planning Scheme.

Existing Agreement means the agreement Registered Number AN488752Q between Council, Head, Transport for Victoria (previously, Roads Corporation) and the previous owner of the Subject Land.

GAIC means the Growth Areas Infrastructure Charge under the Act.

GST Act means the *New Tax System (Goods and Services Tax) Act 1999* (Cth), as amended from time to time.

Head, Transport for Victoria means the Head, Transport for Victoria a body corporate established under the Transport Integration Act 2010

Inter Urban Break means the land reserved for Aitken Boulevard located south of the Subject Land and to the north of Mt Ridley Road that is at the date of this Agreement owned by Head, Transport for Victoria and shown in the Planning Scheme as being within the Rural Living Zone (RLZ).

Local Infrastructure (Future State) has the same meaning as under the Supplementary State Agreement (registered agreement No. xxxxxxxx).

Localised Infrastructure means works, services or facilities necessitated by the subdivision or development of land including but not limited to provision of utility services such as water supply, stormwater drainage, sewerage, gas and electricity services, telecommunications infrastructure and local roads, bridges, culverts and other water crossings, any required associated traffic control measures and devices.

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Lot means a lot created as a result of the subdivision of the Subject Land which in the opinion of Council is of a size and dimension such that it is intended to be developed without further subdivision.

Maintenance Period means a period of 3 months for all civil works and 2 years for all landscaping works from the date of the issue of the Certificate of Practical Completion, and for 12 months for Head, Transport for Victoria Infrastructure.

Mortgagee means the person registered or entitled from time to time to be registered as mortgagee of the Subject Land.

MNTNP has the same meaning as Transport Network Plan under the Supplementary State Agreement (registered agreement No. xxxxxxxxx).

Municipal Local Infrastructure has the same meaning as under the Supplementary State Agreement (registered agreement No. xxxxxxxxx) and includes Localised Infrastructure.

Owner means the person registered or entitled from time to time to be registered as proprietor of an estate in fee simple of the Subject Land and includes a mortgagee-in-possession.

Owner's obligations includes the Owner's specific obligations and the Owner's further obligations.

Party or Parties means the Parties to this Agreement but does not include a person who has transferred or otherwise disposed of all of their interests in the Subject Land.

Planning Scheme means the Hume Planning Scheme and any other planning scheme that applies to the Subject Land.

Primary Agreement means the section 173 agreement registered on the certificate of title to the Subject Land in Reference No. AG427732C dated 15 January 2009 between the previous owner of the Subject Land, Council, Head, Transport for Victoria (previously, Roads Corporation) and the previous purchaser of the Subject Land.

Project means an infrastructure project listed and described in Schedule 1 of this Agreement.

Project Land means the land to be transferred to or vested in Council and/or Head, Transport for Victoria as road, listed and described in Schedule 2 of this Agreement.

Project Plans means plans showing the design and specification details of a Project.

Residential or Industrial Lot means a lot created by subdivision of the Subject Land which, in the opinion of Council, is of a size and dimension intended to be developed as a housing or an industrial development without further subdivision.

Road Management Act means *Roads Management Act 2004*.

Schedule means the schedule to this Agreement.

State Infrastructure has the same meaning as under the Supplementary State Agreement (registered agreement No. xxxxxxxxx)

Supplementary State Agreement means the agreement between the Parties dated 15/01/2020.

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Statement of Compliance means a statement of compliance issued by Council under the *Subdivision Act 1988*.

Subject Land means the land situated at 225-285 Donnybrook Road, Mickleham being the land referred to in certificates of title volume 9792 folio 811 and volume 11872 folio 789 and any reference to the Subject Land includes any lot created by the subdivision of the Subject Land or any part of it.

Supervision Fee means a fee payable by the Owner to Council and/or Head, Transport for Victoria for each Project for supervising the construction of the Project payable:

- (a) at a rate of 2.75% of the actual cost of the Project; and
- (b) upon the handover of the Project to Council.

Tax Act means the *Taxation Administration Act 1953* (Cth) as amended from time to time.

2. Interpretation

In this Agreement unless the context admits otherwise:

- 2.1 the singular includes the plural and vice versa;
- 2.2 a reference to a gender includes all genders;
- 2.3 a reference to a person includes a reference to a firm, corporation or other corporate body and that person's successors in law;
- 2.4 any agreement, representation, warranty or indemnity by 2 or more persons (including where 2 or more persons are included in the same defined term) binds them jointly and severally;
- 2.5 a term used has its ordinary meaning unless that term is defined in this Agreement. If a term is not defined in this Agreement and it is defined in the Act, it has the meaning as defined in the Act;
- 2.6 a reference to an Act, regulation or the Planning Scheme includes any Act, regulation or amendment amending, consolidating or replacing the Act, regulation or Planning Scheme;
- 2.7 the Background forms part of this Agreement;
- 2.8 the Owner's obligations take effect as separate and several covenants which are annexed to and run at law and equity with the Subject Land; and
- 2.9 any reference to a clause, page, condition, attachment or term is a reference to a clause, page, condition, attachment or term of this Agreement.

3. Purposes of Agreement

The Parties acknowledge and agree that the purposes of this Agreement are to:

- 3.1 facilitate the future development of the Subject Land in accordance with an approved Development Plan;
- 3.2 provide satisfactory development contributions payable to the State of Victoria under the Supplementary Statute Agreement that the parties have entered into.

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Subject Land including recording the terms and conditions on which the Owner will carry out the Projects and provide the Project Land to Council and Head, Transport for Victoria; and

- 3.3 achieve and advance the objectives of planning in Victoria and the objectives of the Planning Scheme in respect of the Subject Land.

4. Reasons for Agreement

The Parties acknowledge and agree that Council has entered into this Agreement for the following reason:

- 4.1 Council would not have consented to the Amendment without requiring an Agreement to secure contributions towards local road infrastructure.
- 4.2 the Owner has elected to enter into this Agreement in order to procure Council's agreement to the Amendment.

5. Agreement required

The Parties agree that this Agreement will continue until the Owner has complied with all of the Owner's obligations under this Agreement.

6. Owner's specific obligations

6.1 Design and construction of the Projects

The Owner covenants and agrees that the Owner must, at its cost:

- 6.1.1 design and construct the Projects specified in Schedule 1;
- 6.1.2 prepare Project Plans for each Project to the satisfaction of Council and in accordance with any Head, Transport for Victoria requirements and submit the Project Plans to Council for approval prior the timeframe specified in Schedule 1 in respect of that Project;
- 6.1.3 commence construction of each Project prior to the timeframe specified in Schedule 1 in respect of that Project or such later date as agreed to by Council in writing in accordance with clause 6.6;
- 6.1.4 complete each Project:
 - (a) in accordance with the Project Plans approved by Council and in accordance with any Head, Transport for Victoria requirements in respect of that Project;
 - (b) prior to the earlier of the date specified in Schedule 1 in respect of that Project or such later date as agreed to by Council in writing in accordance with clause 6.6; and
 - (c) to the satisfaction of Council and/or Head, Transport for Victoria (as the case may be);

- 6.1.5 obtain all necessary permits and approvals from Council and/or Head, Transport for Victoria;

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- 6.1.6 ensure compliance with the Construction Procedures;
- 6.1.7 pay to Council and/or Head, Transport for Victoria (as the case may be), within 14 days after a request for payment, the Checking Fee and the Supervision Fee for each Project; and
- 6.1.8 provide land for interim intersections if the works are to be completed by a third party.

6.2 Additional Project obligations

The Owner acknowledges and agrees that:

- 6.2.1 Council has no responsibility for any costs incurred by the Owner in carrying out the Projects;
- 6.2.2 Head, Transport for Victoria has no responsibility for any costs incurred by the Owner in carrying out the Projects;
- 6.2.3 the Owner will carry out the Projects regardless of the Supplementary State Agreement; and
- 6.2.4 if the Owner fails to comply with any of its obligations in clause 6.1, Council may withhold issuing a Statement of Compliance in respect of any subdivision of the Subject Land until such time as the Owner has complied with such obligations.

6.3 Certificate of Practical Completion

The Owner covenants and agrees that:

- 6.3.1 the issue of a Certificate of Practical Completion is subject to compliance with this Agreement and the Construction Procedures; and
- 6.3.2 following the issue of the Certificate of Practical Completion for a Project the Owner:
 - (a) must provide Council and/or Head, Transport for Victoria with a copy of any maintenance information, operational manual or other material reasonably required for the ongoing operation and maintenance of the Project;
 - (b) must provide a copy of any certificate, consent or approval required by any authority for the carrying out, use or occupation of the Project;
 - (c) is responsible for the maintenance of the Project in good order, condition and repair to the satisfaction of Council and/or Head, Transport for Victoria for the Maintenance Period;
 - (d) is responsible for the repair of any defects during the Maintenance Period;
 - (e) pay Head, Transport for Victoria' costs to maintain signals and street-lighting (for which it is responsible) for the period of 10 years; and
 - (f) pay Head, Transport for Victoria' costs to maintain any road related infrastructure for which it is responsible for such period as Head, Transport for Victoria requires acting reasonably.

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6.4 Transfer of Project Land

- 6.4.1 Subject to clause 6.4.2, the Owner covenants and agrees that the Owner must at the full cost of the Owner, transfer or vest in Council or Head, Transport for Victoria (as the case may be) the Project Land described in Schedule 2:
- (a) unless otherwise agreed to by Council in writing, prior to the earlier of the date specified in Schedule 2 in respect of that Project Land; and
 - (b) in a condition that is to the satisfaction of Council and/or Head, Transport for Victoria.
- 6.4.2 The parties acknowledge that Council may, upon the written request of the Owner, consent in writing to a variation to the Owners obligations in clause (a).
- 6.4.3 The Owner acknowledges and agrees that if the Owner has failed to comply with any of its obligations in clause 6.4.1 including as varied in accordance with clause 6.4.2 or any variation consented to in writing by Council, Council may withhold issuing a Statement of Compliance in respect of any subdivision of the Subject Land until such time as the Owner has complied with such obligations.
- 6.4.4 The Owner will notify and send the duplicate title to the Council or relevant authorities where the land is vested on plans of subdivision.
- 6.4.5 The Owner acknowledges and agrees to pay Head, Transport for Victoria to complete the declaration of land vested in Head, Transport for Victoria as an arterial road under the *Road Management Act 2004*.
- 6.4.6 The Owner acknowledges and agrees to undertake or pay Head, Transport for Victoria to complete the Planning Scheme Amendment to rezone the declared Arterial Road under the *Road Management Act 2004* to Road Zone Category 1.

6.5 Localised Infrastructure

The Parties acknowledge and agree that:

- 6.5.1 compliance with the obligations in this Agreement does not relieve the Owner of any obligation imposed by Council or a Tribunal to provide Localised Infrastructure including any obligations imposed as a requirement in a planning permit for the subdivision or development of the Subject Land; and
- 6.5.2 for the purposes of this Agreement, Localised Infrastructure does not include the infrastructure required for the Projects or other infrastructure that is in the nature of regional or state infrastructure.

6.6 Extension of Time

Council acknowledges and agrees that if the Owner requests an extension of time under clause 6.1.3 or clause 6.1.4(b), Council will not unreasonably withhold its consent to the requested extension if it is satisfied that:

- 6.6.1 the extension is required as a result of a delay caused by events beyond the control of the Owner; and
- 6.6.2 the Owner has made and is making best efforts to shorten the same and an extension of time is required.

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6.7 Timing

The Parties acknowledge and agree that:

- 6.7.1 the timing for the provision of the Project Land and the Projects under this Agreement has the potential to affect third parties through the delivery of State roads under the MNTNP;
- 6.7.2 should Head, Transport for Victoria require, the parties to this Agreement agree to negotiate in good faith in relation to alternative timing arrangements to the arrangements currently specified in the Schedules to this Agreement; and
- 6.7.3 if as a result of those negotiations agreement is not reached, the parties agree to the appointment of a person who is qualified and skilled in dispute resolution by the President for the time being of Law Institute of Victoria to resolve the disagreement. The parties agree that person's decision will be final and binding on all the parties and the costs of that person's appointment, and the costs of the negotiations, will be borne by each party equally. This clause 6.7.3 applies only in relation to timing for the provision of Project Land and the Projects.

7. Owner's further obligations

7.1 Transaction costs

Where the Owner is required to transfer or vest land, the Owner is responsible for the payment of all costs and disbursements associated with that transfer or vesting as the case may be.

7.2 Notice and registration

The Owner must bring this Agreement to the attention of all prospective occupiers, purchasers, lessees, licensees, mortgagees, chargees, transferees and assigns.

7.3 Further actions

The Owner:

- 7.3.1 must do all things necessary to give effect to this Agreement;
- 7.3.2 consents to Council applying to the Registrar of Titles to record this Agreement on the certificates of title of the Subject Land in accordance with s 181 of the Act; and
- 7.3.3 agree to do all things necessary to enable Council to do so, including:
 - (a) sign any further agreement, acknowledgment or document; and
 - (b) obtain all necessary consents to enable the recording to be made.

7.4 Council and/or Head, Transport for Victoria' costs to be paid

The Owner must pay to Council and/or Head, Transport for Victoria within 30 days after a written request for payment, Council and/or Head, Transport for Victoria costs and expenses (including legal expenses) relating to this Agreement, including:

- 7.4.1 preparing, drafting, finalising, signing, recording and certifying this Agreement;
- 7.4.2 preparing, drafting, finalising and recording any amendment to this Agreement;

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11. General matters

11.1 Notices

A notice or other communication required or permitted to be served by a Party on another Party must be in writing and may be served:

- 11.1.1 personally on the other Party;
- 11.1.2 by leaving it at the other Party's Current Address;
- 11.1.3 by posting it by prepaid post addressed to the other Party at the other Party's Current Address; or
- 11.1.4 by email to the other Party's Current Email.

11.2 No waiver

Any time or other indulgence granted by Council or Head, Transport for Victoria to the Owner or any variation of this Agreement or any judgment or order obtained by Council or Head, Transport for Victoria against the Owner does not amount to a waiver of any of Council's or Head, Transport for Victoria rights or remedies under this Agreement.

11.3 Severability

If a court, arbitrator, tribunal or other competent authority determines that any part of this Agreement is unenforceable, illegal or void then that part is severed with the other provisions of this Agreement remaining operative.

11.4 No fettering of Council's or Head, Transport for Victoria's powers

This Agreement does not fetter or restrict Council's or Head, Transport for Victoria's power or discretion to make decisions or impose requirements or conditions in connection with the grant of planning approvals or certification of plans subdividing the Subject Land or relating to use or development of the Subject Land.

11.5 Inspection of documents

A copy of any planning permit, document or plan referred to in this Agreement is available for inspection at Council offices during normal business hours upon giving the Council reasonable notice.

11.6 Governing law

This Agreement is governed by and is to be construed in accordance with the laws of Victoria.

12. GST

12.1 In this clause words that are defined in the GST Act have the same meaning as their definition in that Act.

12.2 Except as otherwise provided by this clause, all consideration payable under this Agreement in relation to any supply is exclusive of GST.

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- 12.3 If GST is payable in respect of any supply made by a supplier under this Agreement, subject to clause 12.4 the recipient will pay to the supplier an amount equal to the GST payable on the supply at the same time and in the same manner as the consideration for the supply is to be provided under this Agreement.
- 12.4 The supplier must provide a tax invoice to the recipient before the supplier will be entitled to payment of the GST payable under clause 12.3.

13. GAIC

The Parties acknowledge and agree:

- 13.1 all land transferred to or vested in Council and/or Head, Transport for Victoria must have any liability for GAIC discharged prior to it being transferred to or vested in Council and/or Head, Transport for Victoria and to the extent it is not, the Owner will remain liable to Council and/or Head, Transport for Victoria for any GAIC liability incurred; and
- 13.2 this Agreement is not intended to operate to preclude the Owner from making an application under section 201TF of the Act in relation to the GAIC liability of the Owner or making road works contributions pursuant to the Supplementary State Agreement.

14. CGT

- 14.1 The Parties agree that the words defined or used in Subdivision 14-D of Schedule 1 of the Tax Act have the same meaning in this clause unless the context requires otherwise.
- 14.2 The Owner acknowledges and agrees that if Council or Head, Transport for Victoria is required to pay the Commissioner an amount in accordance with Subdivision 14-D of Schedule 1 of the Tax Act for any transfer to or vesting of land by the Owner in Council or Head, Transport for Victoria under this Agreement (the Amount);
 - 14.2.1 at least 60 days prior to the transfer to or vesting of such land in Council or Head, Transport for Victoria, the Owner must provide Council or Head, Transport for Victoria with a clearance certificate issued by the Commissioner under section 14-220 (1) of Schedule 1 to the Tax Act, which must be valid for the period within which the relevant land is to be vested in or transferred to Council or Head, Transport for Victoria and must be issued in the exact name of the Owner; or
 - 14.2.2 where a clearance certificate is not provided in accordance with clause 14.2.1:
 - (a) if the land is to be transferred or vested in Council or Head, Transport for Victoria in exchange for a cash payment to the Owner, then the Amount is to be deducted from the total cash payment;
 - (b) if the land is to be transferred or vested in Council or Head, Transport for Victoria in exchange for non-cash consideration, the Owner must pay the Amount to Council or Head, Transport for Victoria at least 30 days prior to the transfer to or vesting of the land in Council or Head, Transport for Victoria; and
 - (c) if the land is to be transferred or vested in Council or Head, Transport for Victoria in exchange for a payment to the Commissioner and part of the consideration is to be paid to the Commissioner.

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deducted from the total cash payment and to the extent that the total cash payment is less than the Amount, the Owner must pay the difference to Council or Head, Transport for Victoria at least 30 days prior to the transfer to or vesting of the land in Council.

- 14.3 The Owner acknowledges and agrees that it must provide Council or Head, Transport for Victoria with all information and assistance necessary to enable Council or Head, Transport for Victoria to comply with its obligation to make a payment under Subdivision 14-D of Schedule 1 of the Tax Act in respect to the transfer to or vesting of land in Council or Head, Transport for Victoria under this Agreement.
- 14.4 The Owner indemnifies Council or Head, Transport for Victoria against any interest, penalty, fine or other charge or expense incurred by Council or Head, Transport for Victoria arising from a failure by Council or Head, Transport for Victoria to pay the Amount in accordance with Subdivision 14-D of Schedule 1 of the Tax Act as a result of the Owner's failure to comply with its obligations under this clause of the Agreement.

15. Exchange of Counterparts

- 15.1 This Agreement may be executed in any number of counterparts.
- 15.2 All counterparts together constitute one agreement.
- 15.3 A party may execute this Agreement by signing any counterpart.
- 15.4 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:
 - 15.4.1 must be treated as an original counterpart;
 - 15.4.2 is sufficient evidence of the execution of the original; and
 - 15.4.3 may be produced in evidence for all purposes in place of the original.
- 15.5 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.

16. Commencement of Agreement

This Agreement commences on the date specified on page one or if no date is specified on page one, the date Council executes this Agreement.

17. Ending of Agreement

- 17.1 This Agreement ends when:
 - 17.1.1 in respect of a Residential or Industrial Lot, upon the issue of a Statement of Compliance for the subdivision of the Residential or Industrial Lot.

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17.1.2 in respect of all other land this Agreement will end:

- (a) when the Owner has complied with all of the Owner's obligations; or
- (b) in accordance with the Act.

17.2 After this Agreement has ended, Council will apply to the Registrar of Titles under s 183(1) of the Act to cancel the record of this Agreement.

17.3 The Existing Agreement will end upon the commencement of this Agreement.

17.4 After the Existing Agreement has ended, Council will apply to the Registrar of Titles under s 183(1) of the Act to cancel the record of the Existing Agreement.

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Schedule 1 Projects

Project no.	MNTNP Project no.	Project name	Project description and extent	Date for submission of Project Plans	Date for commencement of Project	Date for completion of Project
1	IT03	Aitken Boulevard and Donnybrook Road Intersection	Construction of an interim signalised intersection at the intersection of Aitken Boulevard (2 lane divided road) and Donnybrook Road (south of Donnybrook Road), including localised widening of Donnybrook Road and Aitken Boulevard to 4 lane divided roads.	1 July 2021	31 January 2022	31 December 2022
2	IT07	Aitken Boulevard and English Street Intersection	Construction of an interim signalised intersection at the intersection of Aitken Boulevard (2 lane divided road) and English Street (2 lane divided road), including localised widening of Aitken Boulevard and English Street to 4 lane divided roads, within the subject land.	1 July 2028	31 January 2029	31 December 2029
3	IT08	Aitken Boulevard and Mt Ridley Road Intersection	Construction of an interim four leg signalised intersection at the intersection of Aitken Boulevard (2 lane divided road) and Mt Ridley Road (2 lane divided road), including localised widening of Aitken Boulevard and Mt Ridley Road to 4 lane divided roads.	1 July 2021	31 January 2022	31 December 2022
4	IT09	Aitken Boulevard: South of	Construction of the first carriageway (2 lanes) of Aitken Boulevard between Donnybrook Road and the Inter Urban	1 July 2021	31 January 2022	31 December 2022

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Project no.	MNTNP Project no.	Project name	Project description and extent	Date for submission of Project Plans	Date for commencement of Project	Date for completion of Project
5	RD06	Donnybrook Road Aitken Boulevard: Inter Urban Break	Break (approximately 1.6km in length), as shown on the Development Contributions Infrastructure Items Plan. Construction of the first carriageway (2 lanes) of Aitken Boulevard through the Inter Urban Break, between Mt Ridley Road and the southern boundary of Precinct 2 (approximately 1.6km in length), as shown on the Development Contributions Infrastructure Items Plan.	1 July 2021	31 January 2022	31 December 2022
6	DD08	English Street: Hume Freeway to Aitken Boulevard	Construction of the first carriageway (2 lanes) of English Street on the subject land shown on the Development Contributions Infrastructure Items Plan, or a monetary contribution in lieu of works.	1 July 2028	31 January 2029	31 December 2029

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Schedule 2 Project Land

Project Land no.	MNTNP Project no.	Project Land name	Project Land description	Road reserve width (metres)	Date for transfer or vesting of the Project Land or payment
1	IT03	Aitken Boulevard and Donnybrook Road Intersection	Land for the interim intersection.	Land for interim signalised intersection at Aitken Boulevard (2 lane divided road) and Donnybrook Road, including localised widening of Donnybrook Road and Aitken Boulevard to 4 lane divided roads.	31 December 2022.
2	IT07	Aitken Boulevard and English Street Intersection	Land for the ultimate intersection	Land for the ultimate signalised intersection at English Street and Aitken Boulevard, being the incremental land required to accommodate additional flaring of the intersection for the Aitken Boulevard 46m wide arterial road / PPTN condition (over and above the land required for the interim signalised intersection).	31 December 2022.
3	IT09	Aitken Boulevard and Mt Ridley Road Intersection	Land for the ultimate intersection.	Land acquisition for the ultimate signalised intersection at Aitken Boulevard and Mt Ridley Road, being the incremental land required to accommodate additional flaring of the intersection for the Aitken Boulevard 46m wide arterial road / PPTN condition (over and above the land required for the interim signalised intersection).	31 December 2022.
4	IT08	Aitken Boulevard: South of Donnybrook Road	Land for the interim road reservation (4 lanes).	34m	31 December 2022.

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Project Land no.	MNTNP Project no.	Project Land name	Project Land description	Road reserve width (metres)	Date for transfer or vesting of the Project Land or payment
5	RD05	Aitken Boulevard: South of Donnybrook Road	Additional land for the ultimate road reservation (additional 2 lanes), to be vested with Head, Transport for Victoria.	12m (to a 46m road reservation).	31 December 2022.
6	RD08	English Street: Hume Freeway to Aitken Boulevard	Land for the ultimate road reservation.	34m	31 December 2029.
7	RD06	Aitken Boulevard: Inter Urban Break	Provide monetary contribution to Head, Transport for Victoria for cost of land acquisition.	n/a	In accordance with clause 11(e) and 11(d) in the State Supplementary s173 Agreement.

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Schedule 3 Development Contributions Infrastructure Items Plan

Where the plan which is attached to Schedule 3 has been removed from this counterpart to the Agreement due to difficulties of the Titles Office with imaging for recording purposes, a copy is included in each of the counterparts to this Agreement held by:

- Council; and
- the Owner of the Subject Land as at the date the Agreement was executed.

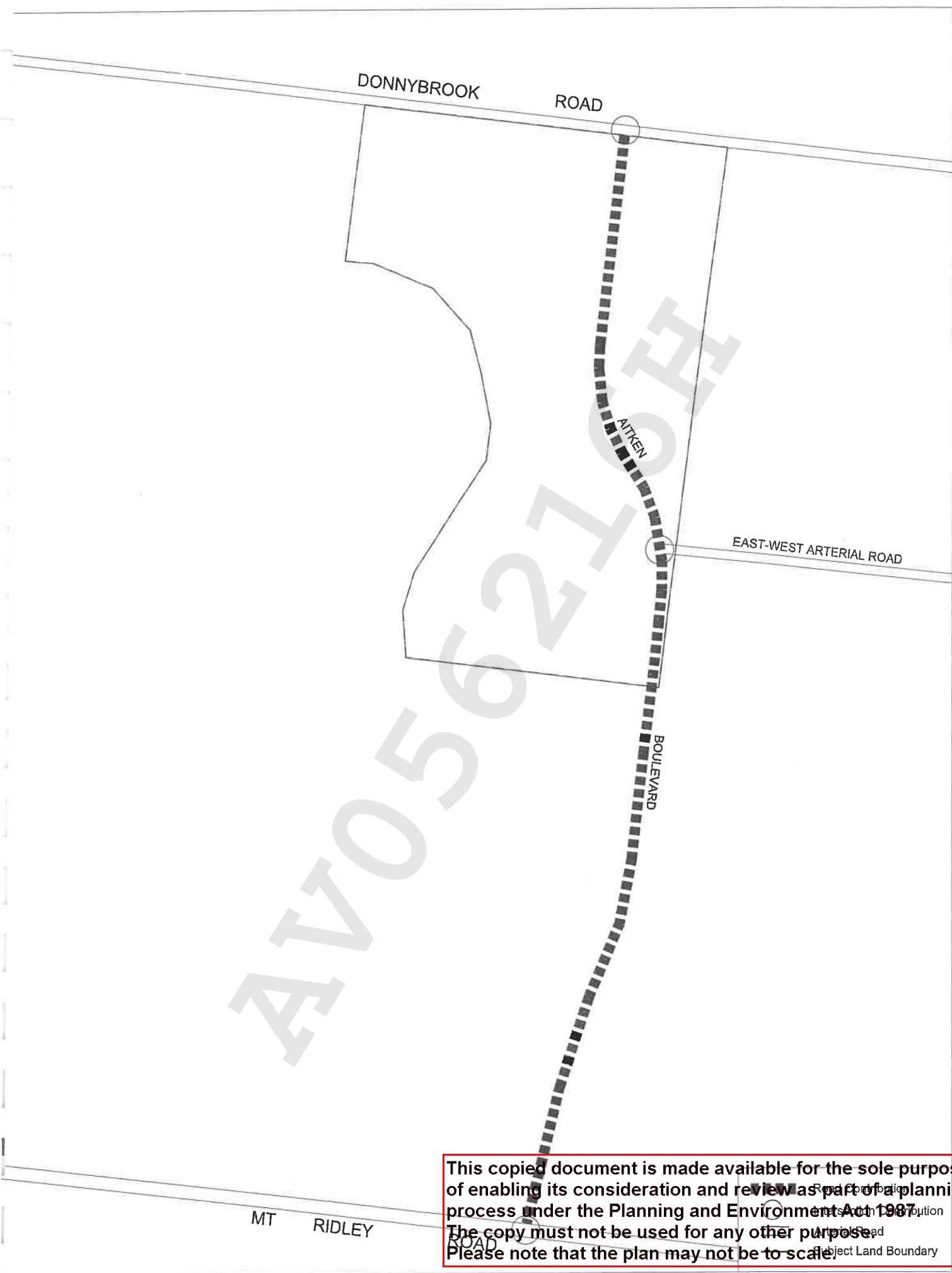
A copy of the counterpart Agreement together with Schedule 3 is available for inspection at Council's offices during normal hours upon giving Council reasonable notice.

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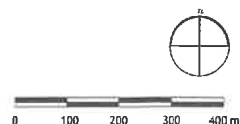
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Schedule 4 Construction Procedures

Procedure for issue of Certificate of Practical Completion

1. Upon the completion of the Project the Owner must notify Council and/or Head, Transport for Victoria or any other relevant authority.
2. Within 14 days of receiving notice of the completion of a Project from the Owner, Council and/or Head, Transport for Victoria or any other relevant authority must inspect the Project and determine whether or not to issue the Certificate of Practical Completion.
3. If Council is not satisfied with the Project, Council may refuse to issue a Certificate of Practical Completion provided Council:
 - 3.1 identifies in what manner or respect the Project is not satisfactorily completed; and
 - 3.2 what must be done to satisfactorily complete the Project.
4. If Head, Transport for Victoria is not satisfied with the Project, Head, Transport for Victoria must notify Council and:
 - 4.1 identify in what manner or respect the Project is not satisfactorily completed; and
 - 4.2 what must be done to satisfactorily complete the Project;and Council must refuse to issue a Certificate of Practical Completion.
5. Council and/or Head, Transport for Victoria may, notwithstanding the detection of a minor non-compliance determine to issue a Certificate of Practical Completion if Council is satisfied that the proper completion of the outstanding matter can be secured by the payment of a financial amount to Council or the provision of some other security for the proper completion of that outstanding matter.

Access

6. Before accessing land owned by Council and/or Head, Transport for Victoria or a third party for the purpose of constructing any Project, the Owner must satisfy Council and/or Head, Transport for Victoria or if requested by a third party that person, that the Owner has in place all proper occupational health and safety plans as may be required under any law of the State of Victoria and hold such insurance as the Council and/or Head, Transport for Victoria requires.
7. Subject to the satisfaction of Council in relation to all health and safety matters and any other regulatory requirements, Council will provide all reasonable access as may be required to its land in order to enable a Project to be completed and maintained in accordance with the Project Plans.

Quality of work

8. Apart from any other requirement contained in the Agreement, all work must:
 - 8.1 accord with Council's engineering standard drawings and specifications unless otherwise approved;
 - 8.2 use good quality materials, not involving asbestos and are suitable for the purpose for which they are required;
 - 8.3 be fit and structurally sound,

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- 8.4 not encroach on land other than the land shown in any plans or specifications approved by Council;
- 8.5 comprise best industry practice;
- 8.6 unless otherwise authorised comply with any relevant current Australian Standard;
- 8.7 accord with a construction management plan to be prepared to the satisfaction of Council;
- 8.8 accord with Head, Transport for Victoria' usual requirements.

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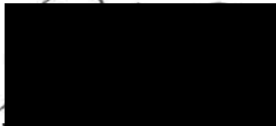


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Signing Page

Signed, sealed and delivered as a deed by the Parties.

Signed by and on behalf, and with the authority, of the Hume City Council by *Interim* *Domenic Isola* *Rolyn Hai*, Chief Executive Officer, in the exercise of a power conferred by an Instrument of Delegation, in the presence of:



Name of Witness (please print)



The Official seal of the Head, Transport for Victoria was hereunto affixed in the presence of:



Entity Head

Paul Younis
Head

Name of Entity Head

Transport for Victoria



OR

Signature of authorised officer

Signature of authorised officer

Name of authorised officer

Name of authorised officer

Title of authorised officer

Title of authorised officer

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Executed by Rosedust Pty Ltd ACN 618 251)
686 in accordance with s 127(1) of the)
Corporations Act 2001:)



Print full name

Print full name

Executed by Copperdust Pty Ltd ACN 618)
875 433 in accordance with s 127(1) of the)
Corporations Act 2001:)



Sign

y)

Print full name

Print full name

Mortgagee's Consent

Australia and New Zealand Banking Group Ltd. as Mortgagee under instrument of mortgage no. AQ971680U consents to the Owner entering into this Agreement and in the event that the Mortgagee becomes mortgagee-in-possession, agrees to be bound by the covenants and conditions of this Agreement.

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Maddocks

Executed by Rosedust Pty Ltd ACN 618 251)
686 in accordance with s 127(1) of the)
Corporations Act 2001:)
)

.....
Signature of Director

.....
Signature of Director (or Company Secretary)

.....
Print full name

.....
Print full name

Executed by Copperdust Pty Ltd ACN 618)
875 433 in accordance with s 127(1) of the)
Corporations Act 2001:)
)

.....
Signature of Director

.....
Signature of Director (or Company Secretary)

.....
Print full name

.....
Print full name

Mortgagee's Consent

Australia and New Zealand Banking Group Ltd. as Mortgagee under instrument of mortgage no. AQ971680U consents to the Owner entering into this Agreement and in the event that the Mortgagee becomes mortgagee-in-possession, agrees to be bound by the covenants and conditions of this Agreement.



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Application by a responsible authority for the recording of an agreement

Section 181 **Planning and Environment Act 1987**

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Form 21

Lodged by:

Name: MADDOCKS
 Phone: 9258 3555
 Address: Collins Square, Tower Two, Level 25, 727 Collins Street Melbourne, Victoria, 3008
 Ref: MHM:6216633
 Customer Code: 1167E

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

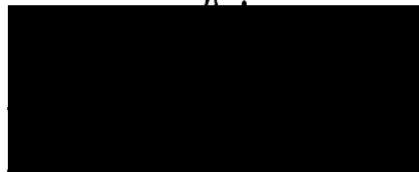
Land: Volume 9792 Folio 811 and Volume 9792 Folio 812

Responsible authority: Hume City Council of 1079 Pascoe Vale Road, Broadmeadows, Victoria

Section and Act under which agreement made: Section 173 of the *Planning and Environment Act 1987*

A copy of the agreement is attached to this application.

Signature for the Authority:



Name of officer:

Chief Executive Officer

Position Held:

Date:

15/02/17

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Telephone 61 3 9258 3555
Facsimile 61 3 9258 3666

info@maddocks.com.au
www.maddocks.com.au

DX 259 Melbourne

Agreement under section 173 of the Planning and Environment Act 1987

Subject Land: 225-285 Donnybrook Road, Mickleham

Purpose of agreement: development contributions

**Hume City Council
and**

**SPP No.2 (Mickleham) Pty Ltd
ACN 120 211 529**

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Agreement under section 173 of the Planning and Environment Act 1987

Dated 15 February 2017

Parties

Name	Hume City Council
Address	1079 Pascoe Vale Road, Broadmeadows, Victoria
Short name	Council
Name	SPP No.2 (Mickleham) Pty Ltd ACN 120 211 529
Address	33 Alfred Street, Sydney, New South Wales
Short name	Owner

Background

- A. Council is the responsible authority for the Planning Scheme.
- B. The Owner is or is entitled to be the registered proprietor of the Subject Land.
- C. The Proposed Amendment seeks to rezone the Subject Land to facilitate the development of the Subject Land for urban purposes.
- D. The Owner has agreed to enter into this Agreement in consideration of Council supporting the Proposed Amendment.
- E. The purpose of this Agreement is to:
 - E.1 facilitate the future development of the Subject Land in accordance with an approved Development Plan;
 - E.2 provide satisfactory development contributions arising from the development of the Subject Land including recording the terms and conditions on which the Owner will pay the Development Contribution, carry out the Projects and provide the Project Land to Council; and
 - E.3 achieve and advance the objectives of planning in Victoria and the objectives of the Planning Scheme in respect of the Subject Land.
- F. As at the date of this Agreement, part of the Subject Land is encumbered by a mortgage in favour of the Mortgagee.

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G. The Mortgagee consents to the Owner entering into this Agreement.

1. Definitions

In this Agreement unless the context admits otherwise:

Act means the *Planning and Environment Act 1987*.

Adjustment Index means the building price index published in the latest edition of Rawlinson's Australian Construction Handbook, or if the index ceases to exist, the nearest equivalent index.

Agreement means this Agreement and includes this Agreement as amended from time to time.

Certificate of Practical Completion means a certificate in writing prepared by Council stating that a Project has been completed to the satisfaction of Council.

Checking Fee means a fee payable by the Owner to Council for each Project for checking whether the Project has been undertaken to Council's satisfaction payable:

- (a) at a rate of 0.75% of the estimated cost of works; and
- (b) upon the approval of the Project Plans.

Current Address means:

- (a) for Council, the address shown on page one of this Agreement, or any other address listed on Council's website; and
- (b) for the Owner, the address shown on page one of this Agreement or any other address provided by the Owner to Council for any purpose relating to the Subject Land.

Current Email means:

- (a) for Council, contactus@hume.vic.gov.au, or any other email address listed on Council's website; and
- (b) for the Owner, any email address provided by the Owner to Council for the express purpose of electronic communication regarding this Agreement.

Development Area 1 means the north-western section of the Subject Land marked as 'Area 1 (Residential)' on the Development Areas Plan.

Development Area 2 means the central section of the Subject Land marked as 'Area 2 (Residential)' on the Development Areas Plan.

Development Area 3 means the southern section of the Subject Land marked as 'Area 3 (Residential)' on the Development Areas Plan.

Development Areas Plan means the plan in Schedule 3 of this Agreement showing the development areas on the Subject Land or such other plan approved by Council in writing from time to time.

Developable Land means the total area of land within the Subject Land that is made available for the development of housing (including all Residential Lots), all connectors and

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local streets and any small local parks defined at the subdivision stage but does not include land made available for open space (except small local parks defined at the subdivision stage), any Encumbered Land and arterial roads.

Development Contribution means the monetary levy payable for all Developable Land to be calculated at a rate of \$162,113.46 (as at 1 July 2011) per developable hectare with the rate to be indexed semi-annually on 1 January and 1 July each year by applying the Adjustment Index from 1 July 2011 to the date payment is received by Council.

Development Contributions Infrastructure Items Plan means the plan in Schedule 4 of this Agreement showing the development contribution infrastructure items for the Subject Land or such other plan approved by Council in writing from time to time.

Development Plan means a plan setting out the overall framework for the future urban development of the Subject Land approved by Council from time to time in accordance with clause 43.04 of the Planning Scheme.

Encumbered Land means any land which, due to environmental (including flooding, fauna and flora) or topographical constraints, is not made available for housing.

GAIC means the Growth Areas Infrastructure Charge under the Act.

GST Act means the *New Tax System (Goods and Services Tax) Act 1999* (Cth), as amended from time to time.

Localised Infrastructure means works, services or facilities necessitated by the subdivision or development of land including but not limited to provision of utility services such as water supply, stormwater drainage, sewerage, gas and electricity services, telecommunications infrastructure and local roads, bridges, culverts and other water crossings, any required associated traffic control measures and devices.

Maintenance Period mean a period of 3 months for all civil works and 2 years for all landscaping works from the date of the issue of the Certificate of Practical Completion.

Mortgagee means the person registered or entitled from time to time to be registered as mortgagee of the Subject Land.

Owner means the person registered or entitled from time to time to be registered as proprietor of an estate in fee simple of the Subject Land and includes a mortgagee-in-possession.

Owner's obligations includes the Owner's specific obligations and the Owner's further obligations.

Party or Parties means the parties to this Agreement but does not include a person who has transferred or otherwise disposed of all of their interests in the Subject Land.

Planning Scheme means the Hume Planning Scheme and any other planning scheme that applies to the Subject Land.

Project means an infrastructure project listed and described in Schedule 1 of this Agreement.

Project Land means the land to be transferred or vested in Council listed and described in Schedule 2 of this Agreement.

Project Plans means plans showing the design and specification details of a Project

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Proposed Amendment means proposed Amendment C194 proposing to rezone the Subject Land and change the overlays applying to the Subject Land.

Residential Development Area means the total area on the Subject Land proposed to be developed for residential purposes comprising Development Area 1, Development Area 2 and Development Area 3.

Residential Lot means a lot created by subdivision of the Subject Land which, in the opinion of Council, is of a size and dimension intended to be developed as a housing lot without further subdivision.

Schedule means the schedule to this Agreement.

Statement of Compliance means a statement of compliance issued by Council under the *Subdivision Act 1988*.

Subject Land means the land situated at 225-285 Donnybrook Road, Mickleham being the land referred to in certificates of title volume 9792 folio 811 and 812 and any reference to the Subject Land includes any lot created by the subdivision of the Subject Land or any part of it.

Supervision Fee means a fee payable by the Owner to Council for each Project for supervising the construction of the Project payable:

- (a) at a rate of 2.75% of the actual cost of the Project; and
- (b) upon the handover of the Project to Council.

Woodlands Conservation Park means the conservation park land located on the Subject Land marked as 'Area 5 (Woodlands)' on the Development Areas Plan and as 'Woodlands Conservation Park' on the Development Contributions Infrastructure Items Plan.

2. Interpretation

In this Agreement unless the context admits otherwise:

- 2.1 the singular includes the plural and vice versa;
- 2.2 a reference to a gender includes all genders;
- 2.3 a reference to a person includes a reference to a firm, corporation or other corporate body and that person's successors in law;
- 2.4 any agreement, representation, warranty or indemnity by 2 or more persons (including where 2 or more persons are included in the same defined term) binds them jointly and severally;
- 2.5 a term used has its ordinary meaning unless that term is defined in this Agreement. If a term is not defined in this Agreement and it is defined in the Act, it has the meaning as defined in the Act;
- 2.6 a reference to an Act, regulation or the Planning Scheme includes any Act, regulation or amendment amending, consolidating or replacing the Act, regulation or Planning Scheme;
- 2.7 the Background forms part of this Agreement;
- 2.8 the Owner's obligations take effect as if separate and several covenants which are annexed to and run at law and equity with the Subject Land, and

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2.9 any reference to a clause, page, condition, attachment or term is a reference to a clause, page, condition, attachment or term of this Agreement.

3. Purposes of Agreement

The Parties acknowledge and agree that the purposes of this Agreement are to:

- 3.1 facilitate the future development of the Subject Land in accordance with an approved Development Plan;
- 3.2 provide satisfactory development contributions arising from the development of the Subject Land including recording the terms and conditions on which the Owner will pay the Development Contribution, carry out the Projects and provide the Project Land to Council; and
- 3.3 achieve and advance the objectives of planning in Victoria and the objectives of the Planning Scheme in respect of the Subject Land.

4. Reasons for Agreement

The Parties acknowledge and agree that Council has entered into this Agreement for the following reasons:

- 4.1 Council would not have consented to the Proposed Amendment without requiring this Agreement; and
- 4.2 the Owner has elected to enter into this Agreement in order to procure Council's agreement to the Proposed Amendment.

5. Agreement required

The Parties agree that this Agreement will continue to be required until the Owner has complied with all of the Owner's obligations.

6. Owner's specific obligations

6.1 Payment of Development Contribution

- 6.1.1 The Owner covenants and agrees that the Owner will pay the Development Contribution prior to the issue of a Statement of Compliance creating a Residential Lot in the Residential Development Area.
- 6.1.2 The Owner acknowledges and agrees that if the Owner fails to pay the Development Contribution in accordance with clause 6.1.1, Council may withhold issuing a Statement of Compliance in respect of any subdivision on the Subject Land until such time as the Owner has paid the Development Contribution.

6.2 Design and construction of the Projects

The Owner covenants and agrees that the Owner must:

- 6.2.1 design and construct the Projects specified in Schedule 1;

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- 6.2.2 prepare Project Plans for each Project to the satisfaction of Council and submit the Project Plans to Council for approval prior to the commencement of a Project;
- 6.2.3 commence each Project in accordance with the timeframe specified in Schedule 1 in respect of that Project;
- 6.2.4 complete each Project:
 - (a) in accordance with the Project Plans approved by Council in respect of that Project;
 - (b) subject to clause 6.3.3, prior to the issue of a Statement of Compliance creating the number of Residential Lots specified in Schedule 1 in respect of that Project; and
 - (c) to the satisfaction of Council;
- 6.2.5 obtain all necessary permits and approvals for each Project at its own cost; and
- 6.2.6 pay to Council, within 14 days after a request for payment, the Checking Fee and the Supervision Fee for each Project.

6.3 Additional Project obligations

The Owner acknowledges and agrees that:

- 6.3.1 Council has no responsibility for any costs incurred by the Owner in carrying out the Projects;
- 6.3.2 if the Owner fails to comply with any of its obligations in clause 6.2 including as varied in accordance with clause 6.3.3 or any variation consented to in writing by Council, Council may withhold issuing a Statement of Compliance in respect of any subdivision of the Subject Land until such time as the Owner has complied with such obligations; and
- 6.3.3 Council may, upon the written request of the Owner, consent in writing to a variation of the number of Residential Lots specified in Schedule 1.

6.4 Certificate of Practical Completion

The Owner covenants and agrees that:

- 6.4.1 the issue of a Certificate of Practical Completion by Council is subject to compliance with this Agreement; and
- 6.4.2 following the issue of the Certificate of Practical Completion for a Project the Owner:
 - (a) must provide Council with a copy of any maintenance information, operational manual or other material reasonably required for the ongoing operation and maintenance of the Project;
 - (b) must provide a copy of any certificate, consent or approval required by any authority for the carrying out of the Project;
 - (c) is responsible for the maintenance of the Project in good order, condition and repair to the satisfaction of Council for the Maintenance Period; and

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(d) is responsible for the repair of any defects during the Maintenance Period.

6.5 Transfer of the Project Land

6.5.1 Subject to clause 6.5.2, the Owner covenants and agrees that the Owner must at the full cost of the Owner, transfer or vest in Council the Project Land described in Schedule 2:

(a) prior to the issue of a Statement of Compliance creating the number of Residential Lots specified in Schedule 2 in respect of that land; and

(b) in a condition that is to the satisfaction of Council.

6.5.2 The Owner acknowledges that Council may, upon the written request of the Owner, consent in writing to a variation of the Residential Lots specified in Schedule 2.

6.5.3 The Owner acknowledges and agrees that if the Owner has failed to comply with any of its obligations in clause 6.5.1 including as varied in accordance with clause 6.5.2 or any variation consented to in writing by Council, Council may withhold issuing a Statement of Compliance in respect of any subdivision of the Subject Land until such time as the Owner has complied with such obligations.

6.6 Localised Infrastructure

The Parties acknowledge and agree that:

6.6.1 compliance with the obligations in this Agreement does not relieve the Owner of any obligation imposed by Council or a Tribunal to provide Localised Infrastructure including any obligations imposed as a requirement in a planning permit for the subdivision or development of the Subject Land; and

6.6.2 for the purposes of this Agreement, Localised Infrastructure does not include the infrastructure required for the Projects or other infrastructure that is in the nature of regional or state infrastructure.

6.7 Acknowledgement

6.7.1 The Parties acknowledge and agree that, upon compliance with clause 6, the Owner's obligations in relation to public open space and development contributions under the Planning Scheme and the Subdivision Act 1988 are fully discharged in relation to the Subject Land.

7. Owner's further obligations

7.1 Transaction costs

Where the Owner is required to transfer or vest land, the Owner is responsible for the payment of all costs and disbursements associated with that transfer or vesting as the case may be.

7.2 Notice and registration

The Owner must bring this Agreement to the attention of all prospective occupiers, purchasers, lessees, licensees, mortgagees, chargees, transferees and assigns.

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7.3 Further actions

The Owner:

- 7.3.1 must do all things necessary to give effect to this Agreement;
- 7.3.2 consents to Council applying to the Registrar of Titles to record this Agreement on the certificates of title of the Subject Land in accordance with s 181 of the Act; and
- 7.3.3 agree to do all things necessary to enable Council to do so, including:
 - (a) sign any further agreement, acknowledgment or document; and
 - (b) obtain all necessary consents to enable the recording to be made.

7.4 Council's costs to be paid

The Owner must pay to Council within 14 days after a written request for payment, Council's costs and expenses (including legal expenses) relating to this Agreement, including:

- 7.4.1 preparing, drafting, finalising, signing, recording and enforcing this Agreement;
- 7.4.2 preparing, drafting, finalising and recording any amendment to this Agreement;
- 7.4.3 determining whether any of the Owner's obligations have been undertaken to Council's satisfaction; and
- 7.4.4 preparing, drafting, finalising and recording any document to give effect to the ending of this Agreement.

7.5 Interest for overdue money

- 7.5.1 The Owner must pay to Council interest in accordance with s 227A of the *Local Government Act 1989* on any amount due under this Agreement that is not paid by the due date.
- 7.5.2 If interest is owing, Council will apply any payment made to interest and any balance of the payment to the principal amount.

7.6 Notification of compliance with Owner's obligations

The Owner must notify Council of its compliance with all of the Owner's obligations.

8. Agreement under s 173 of the Act

Without limiting or restricting the respective powers to enter into this Agreement, and insofar as it can be so treated, this Agreement is made as a deed in accordance with s 173 of the Act.

9. Owner's warranties

The Owner warrants that apart from the writing to this Agreement, no other person has any interest, either legal or equitable, in the Subject Land which may be affected by this Agreement.

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10. Successors in title

Until such time as a memorandum of this Agreement is recorded on the certificates of title of the Subject Land, the Owner must require successors in titles to:

- 10.1 give effect to this Agreement; and
- 10.2 enter into a deed agreeing to be bound by the terms of this Agreement.

11. General matters

11.1 Notices

A notice or other communication required or permitted to be served by a Party on another Party must be in writing and may be served:

- 11.1.1 personally on the other Party;
- 11.1.2 by leaving it at the other Party's Current Address;
- 11.1.3 by posting it by prepaid post addressed to the other Party at the other Party's Current Address; or
- 11.1.4 by email to the other Party's Current Email.

11.2 No waiver

Any time or other indulgence granted by Council to the Owner or any variation of this Agreement or any judgment or order obtained by Council against the Owner does not amount to a waiver of any of Council's rights or remedies under this Agreement.

11.3 Severability

If a court, arbitrator, tribunal or other competent authority determines that any part of this Agreement is unenforceable, illegal or void then that part is severed with the other provisions of this Agreement remaining operative.

11.4 No fettering of Council's powers

This Agreement does not fetter or restrict Council's power or discretion to make decisions or impose requirements or conditions in connection with the grant of planning approvals or certification of plans subdividing the Subject Land or relating to use or development of the Subject Land.

11.5 Inspection of documents

A copy of any planning permit, document or plan referred to in this Agreement is available for inspection at Council offices during normal business hours upon giving the Council reasonable notice.

11.6 Governing law

This Agreement is governed by and
Victoria.

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12. GST

- 12.1 In this clause words that are defined in the GST Act have the same meaning as their definition in that Act.
- 12.2 Except as otherwise provided by this clause, all consideration payable under this Agreement in relation to any supply is exclusive of GST.
- 12.3 If GST is payable in respect of any supply made by a supplier under this Agreement, subject to clause 12.4 the recipient will pay to the supplier an amount equal to the GST payable on the supply at the same time and in the same manner as the consideration for the supply is to be provided under this Agreement.
- 12.4 The supplier must provide a tax invoice to the recipient before the supplier will be entitled to payment of the GST payable under clause 12.3.

13. GAIC

All land transferred to or vested in Council must have any liability for GAIC discharged prior to it being transferred to or vested in Council and to the extent it is not, the Owner will remain liable to Council for any GAIC liability incurred by Council.

14. Commencement of Agreement

This Agreement commences on the date specified on page one or if no date is specified on page one, the date Council executes this Agreement.

15. Ending of Agreement

- 15.1 This Agreement ends when the Owner has complied with all of the Owner's obligations.
- 15.2 Notwithstanding clause 15.1, the Owner may request in writing Council's consent to end the Agreement in respect of Residential Lots in any Stage upon the issue of a Statement of Compliance in respect of that Stage.
- 15.3 Council will not unreasonably withhold its consent to a written request made pursuant to clause 15.2 if it is satisfied that the obligations in this Agreement are secured to its satisfaction.
- 15.4 On the issue of a Statement of Compliance for a plan of subdivision for Residential Lots created over the Subject Land or earlier by agreement with Council, the Agreement ends in respect of that part of the Subject Land in the plan of subdivision in accordance with section 177(2) of the Act provided that at all times, the Agreement must remain registered on the balance of the Subject Land.
- 15.5 Once this Agreement ends as to part of the Subject Land in accordance with clause 15.4 Council will, within a reasonable time, following a request from the Owner and at the cost of the Owner, execute all documents necessary to make application to the Registrar of Titles under section 183 of the Act to cancel the recording of this Agreement on the register as to that part of the Subject Land.
- 15.6 On completion of all the Owner's obligations in accordance with this Agreement, Council must as soon as practicable following the ending of this Agreement and at the request and

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the cost of the Owner, execute all documents necessary to make application to the Registrar of Titles under section 183 of the Act to cancel the recording of this Agreement on the register.

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Schedule 1 Projects

Project no.	Project name	Project description and extent	Location of Project	Timeframe for the commencement of the Project	Milestone for the completion of the Project
1	Neighbourhood Park A	Provision of a contiguous public park comprising 0.75ha including the works, services and facilities listed in Schedule 5.	In an approximate position to the 'Neighbourhood Park' marked 'A' on the Development Contributions Infrastructure Items Plan.	Prior to or concurrent with the creation of the Residential Lots in Development Area 1.	Prior to the issue of the Statement of Compliance creating the 80 th Residential Lot in Development Area 1.
2	Neighbourhood Park B	Provision of a contiguous public park comprising 0.75ha including the works, services and facilities listed in Schedule 5.	In an approximate position to the 'Neighbourhood Park' marked 'A' on the Development Contributions Infrastructure Items Plan.	Prior to or concurrent with the creation of the Residential Lots in Development Area 3.	Prior to the issue of the Statement of Compliance creating the 250 th Residential Lot in Development Area 3.
3	Shared Path A	Provision of a 2.5m linear shared path for walking and cycling.	On land comprising the Open Space Link A.	Prior to or concurrent with the creation of the Residential Lots in Development Area 2.	Prior to the issue of the Statement of Compliance creating the 60 th Residential Lot in Development Area 2.
4	Shared Path B	Provision of a 2.5m linear shared path for walking and cycling.	On land comprising the Open Space Link B.	Prior to or concurrent with the creation of the Residential Lots in Development Area 3.	Prior to the issue of the Statement of Compliance creating the 255 th Residential Lot in Development Area 3.

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Schedule 2 Project Land

Project Land no.	Project Land name	Project Land description	Project Land area	Milestone for transfer or vesting of the Project Land
1	Neighbourhood Park A	Land for a contiguous public park located in an approximate position to the 'Neighbourhood Park' marked 'A' on the Development Contributions Infrastructure Items Plan.	0.75ha	Prior to the issue of the Statement of Compliance creating the 80 th Residential Lot in Development Area 1.
2	Land for Neighbourhood Park B	Land for contiguous public park land located in an approximate position to the 'Neighbourhood Park' marked 'B' on the Development Contributions Infrastructure Items Plan.	0.75ha	Prior to the issue of the Statement of Compliance creating the 220 th Residential Lot in Development Area 3.
3	Open Space Link A	Land for a linear trail comprising a 15m wide cross section to form part of a contiguous 15m unencumbered open space link located adjacent to the Woodlands Conservation Park in an approximate position to the 'Open Space Link' marked 'A' on the Development Contributions Infrastructure Items Plan.	Approximately 1.41ha	Prior to the issue of the Statement of Compliance creating the 60 th Residential Lot in Development Area 2.
4	Open Space Link B	Land for a linear trail comprising a 15m wide cross section to form part of a contiguous 15m unencumbered open space link located adjacent to the Woodlands Conservation Park in an approximate position to the 'Open Space Link' marked 'B' on the Development Contributions Infrastructure Items Plan.	Approximately 0.84ha	Prior to the issue of the Statement of Compliance creating the 255 th Residential Lot in Development Area 3.

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Schedule 3 Development Areas Plan

Where the plan which is Schedule 3 has been removed from this counterpart to the Agreement due to difficulties of the Titles Office with imaging for recording purposes, a copy is included in each of the counterparts to this Agreement held by:

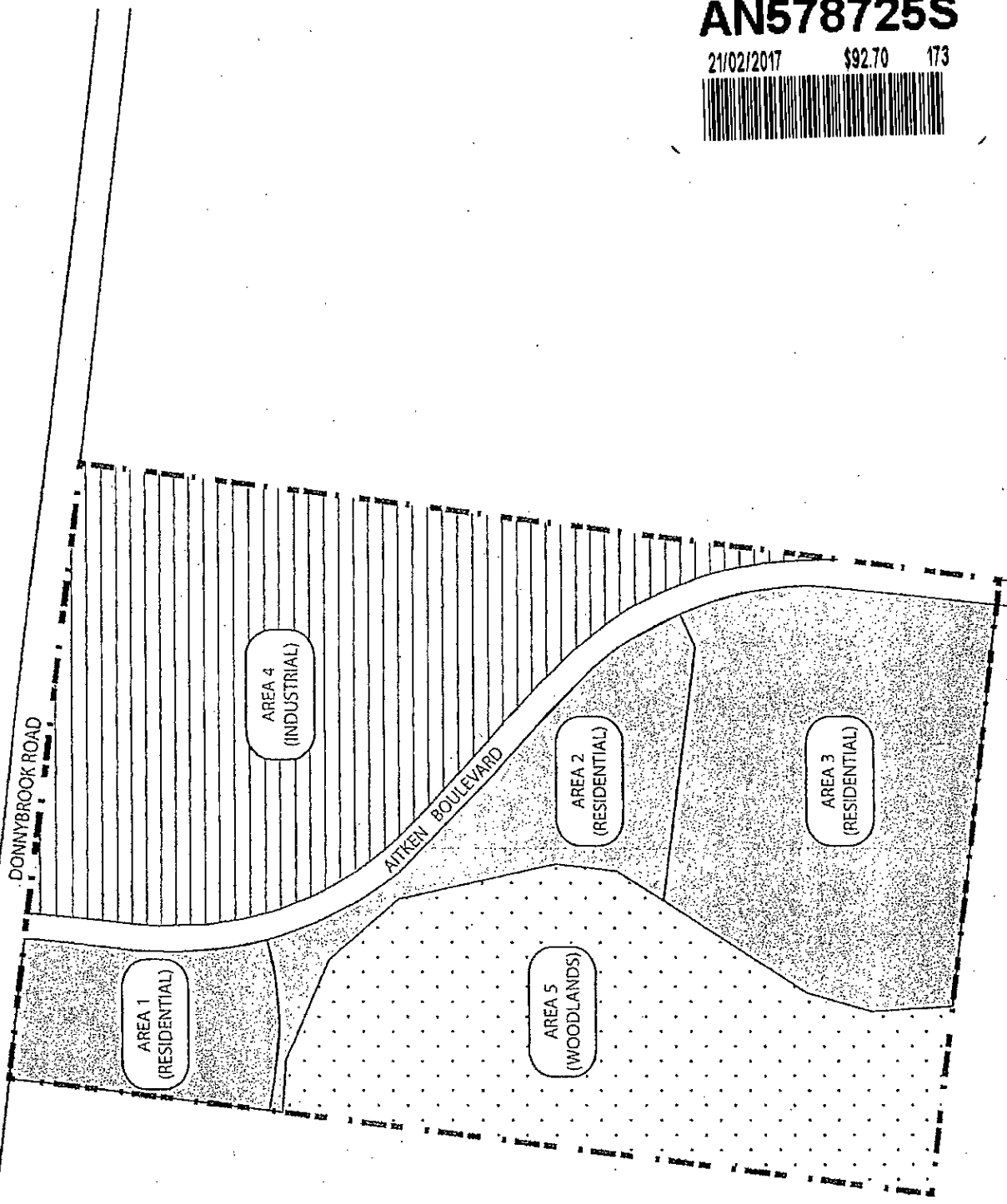
- the Minister for Planning;
- Council; and
- the Owner of the Subject Land as at the date the Agreement was executed.

A copy of the counterpart Agreement together with Schedule 3 is available for inspection at Council's offices during normal hours upon giving Council reasonable notice.

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Development Areas
 225 - 285 Donnybrook Rd, Mickleham Development Plan

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Schedule 4 Development Contributions Infrastructure Items Plan

Where the plan which is Schedule 4 has been removed from this counterpart to the Agreement due to difficulties of the Titles Office with imaging for recording purposes, a copy is included in each of the counterparts to this Agreement held by:

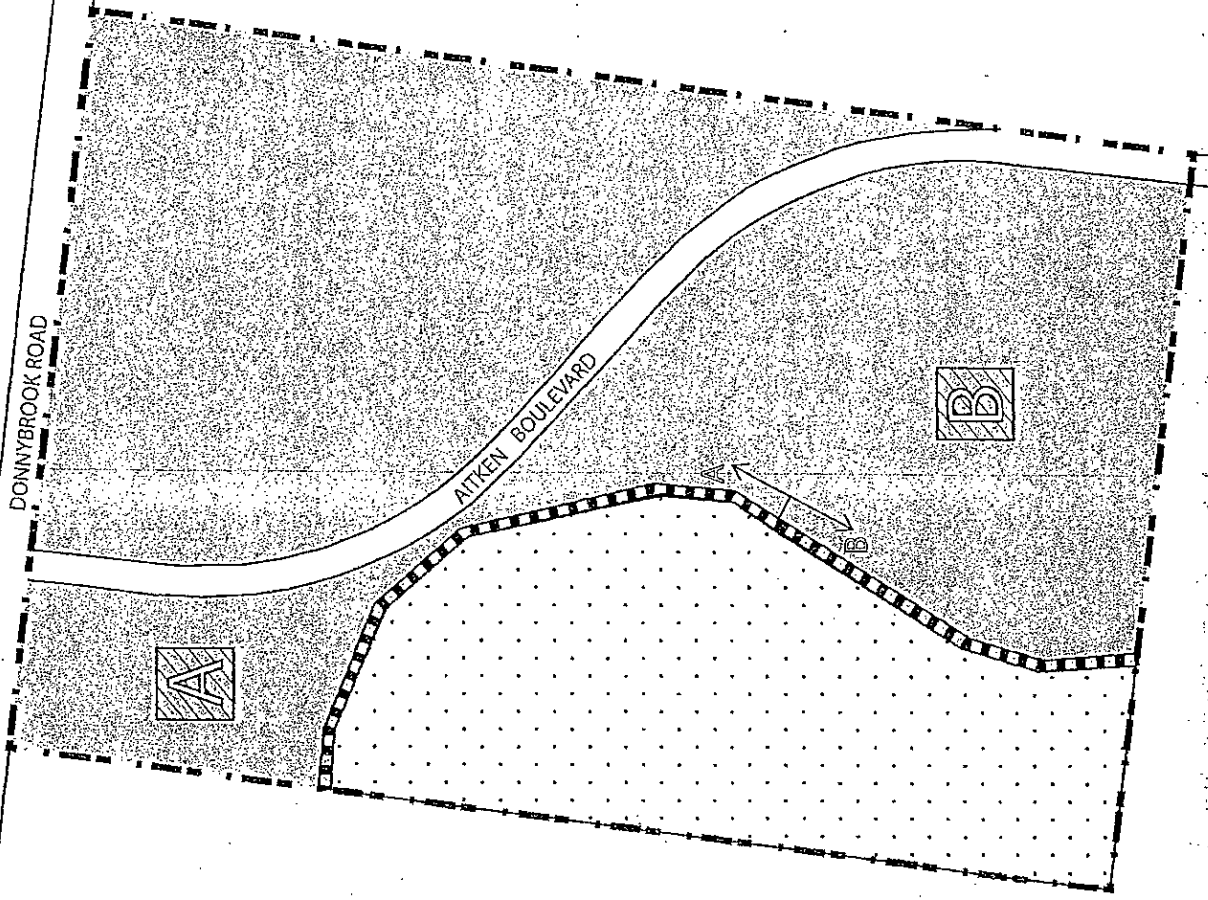
- the Minister for Planning;
- Council; and
- the Owner of the Subject Land as at the date the Agreement was executed.

A copy of the counterpart Agreement together with Schedule 4 is available for inspection at Council's offices during normal hours upon giving Council reasonable notice.

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Development Contributions Infrastructure Items
225 - 285 Donnybrook Rd, Mickleham Development Plan

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- Open space
- ▨ Neighbourhood park
- Woodlands Conservation Park
- Dedicated area

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Schedule 5 Neighbourhood park landscape works specifications

- Site preparation, including any necessary earthworks, basic levelling, weed control, topsoil and seeding.
- Provision for recreation facilities to the satisfaction of Council, which may include the following:
 - access for maintenance vehicles;
 - paths;
 - seating;
 - rubbish bins;
 - shade structures;
 - drinking fountains (including water tapping);
 - playground equipment;
 - fitness equipment;
 - courts (basketball, tennis etc.);
 - kickabout areas (including goals);
 - retaining and feature walls;
 - feature paving;
 - sculptural elements; and
 - landscaping (including trees, shrubs and groundcover planting).

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Signing Page

Signed, sealed and delivered as a deed by the Parties.

Signed by and on behalf, and with the authority, of the **Hume City Council** by Domenic Isola, Chief Executive Officer, in the exercise of a power conferred by an Instrument of Delegation, in the presence of:

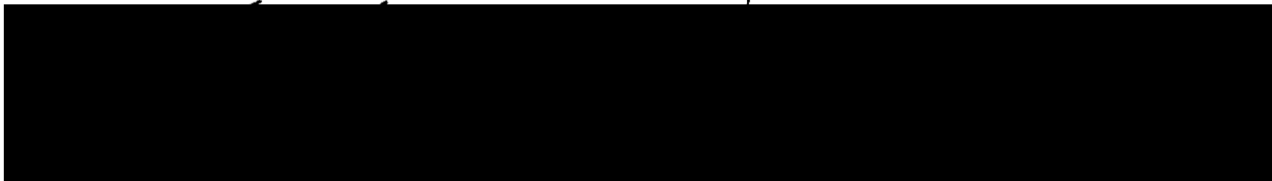
THE COMMON SEAL of HUME CITY COUNCIL
 was hereto affixed on the 15 day of February
 20..1..7
)
)
COUN
)
CHIEF EXECUTIVE OFFICER

.....
Witness

.....
Name of Witness (please print)



Executed by **SPP No.2 (Mickleham) Pty Ltd**
ACN 120 211 529 in accordance with s 127(1)
 of the *Corporations Act 2001*:
)
)
)
)

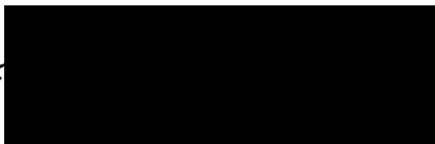


.....
Print full name

.....
Print full name

Mortgagee's Consent

Commonwealth Bank of Australia as Mortgagee under instrument of mortgage no. AJ402962X consents to the Owner entering into this Agreement and in the event that the Mortgagee becomes mortgagee-in-possession, agrees to be bound by the covenants and conditions of this Agreement.



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Application by a responsible authority for the recording of an agreement

Section 181 Planning and Environment Act 1987

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Form 21

Lodged by:

Name: MADDOCKS
 Phone: 9258 3555
 Address: Collins Square, Tower Two, Level 25, 727 Collins Street Melbourne, Victoria, 3008
 Ref: MHM:KZK: 6216633
 Customer Code: 1167E

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

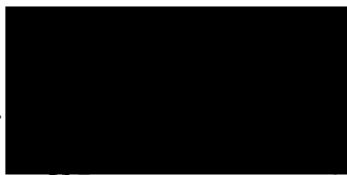
Land: Volume 9792 Folio 811 and Volume 9792 Folio 812

Responsible authority: Hume City Council of 1079 Pascoe Vale Road, Broadmeadows, Victoria

Section and Act under which agreement made: Section 173 of the *Planning and Environment Act 1987*

A copy of the agreement is attached to this application.

Signature for the Authority:



Name of officer:

Position Held:

Chief Executive Officer

Date:

17.1.17

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Telephone 61 3 9258 3555
Facsimile 61 3 9258 3666

info@maddocks.com.au
www.maddocks.com.au

DX 259 Melbourne

Agreement under section 173 of the Planning and Environment Act 1987

Subject Land: 225-285 Donnybrook Road, Mickleham

**Purpose of agreement: contributions towards the construction of Aitken
Boulevard**

**Hume City Council
and**

**Roads Corporation
ABN 61 760 960 480
and**

**SPP No. 2 (Mickleham) Pty Ltd
ACN 120 211 529**

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Agreement under section 173 of the Planning and Environment Act 1987

Dated 17.1.17

Parties

Name	Hume City Council
Address	1079 Pascoe Vale Road, Broadmeadows, Victoria
Short name	Council

Name	Roads Corporation ABN 61 760 960 480, Trading as VicRoads, a body corporate established under section 15 of the <i>Transport Act 1983</i> and continued under section 80 of the <i>Transport Integration Act 2010</i>
Address	60 Denmark Street, Kew, Victoria
Short name	VicRoads

Name	SPP No. 2 (Mickleham) Pty Ltd ACN 120 211 529
Address	33 Alfred Street, Sydney, New South Wales
Short name	Owner

Background

- A. Council is the responsible authority for the Planning Scheme.
- B. The Owner is or is entitled to be the registered proprietor of the Subject Land.
- C. The Proposed Amendment seeks to rezone the Subject Land to facilitate the development of the Subject Land for urban purposes.
- D. The Owner has agreed to enter into this Agreement to record the terms and conditions by which the Owner will contribute to the delivery of Aitken Boulevard in consideration of Council supporting the Proposed Amendment.
- E. There is an Existing Agreement applying to the Subject Land. The Existing Agreement sets out a number of obligations including that:
 - E.1 the Transport Network Plan will be prepared by VicRoads that identifies the arterial road network and the reserved area for arterial roads.
 - E.2 Upon VicRoads' written request, the Owner will enter into a written agreement pursuant to Section 173 of the Act to be used for any other purpose.

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- E.2.1 the amount of road works contribution the owner is required to pay, as assessed by VicRoads;
 - E.2.2 whether the Road Works Contribution is to be made in whole or in part by payment or undertaking specified works; and
 - E.2.3 the timing of the provision of those additional roadworks and of the Owner's contributions.
- F. As at the date of this Agreement:
- F.1 the MNTNP has been prepared by VicRoads; and
 - F.2 there is no supplementary agreement between the Owner and VicRoads.
- G. The Transport Network Plan includes a number of road projects, including the Projects to be undertaken by the Owner in accordance with this Agreement for the construction of Aitken Boulevard, however it is acknowledged that some of the projects will also be included in the supplementary agreement and might be suitable for the Owner to make an application under Section 201TF of the Act to obtain a GAIC liability reduction.
- H. The purpose of this Agreement is to:
- H.1 facilitate the future development of the Subject Land in accordance with an approved Development Plan;
 - H.2 provide satisfactory development contributions arising from the development of the Subject Land including recording the terms and conditions on which the Owner will carry out the Projects and provide the Project Land to Council and VicRoads (as the case may be) in order to provide a contribution towards the construction of Aitken Boulevard; and
 - H.3 achieve and advance the objectives of planning in Victoria and the objectives of the Planning Scheme in respect of the Subject Land.
- I. Insofar as this Agreement relates to the Projects, the Projects will be primarily administered by the Council, however at a point in the future some Projects will be upgraded to the ultimate treatment and accordingly VicRoads also has an interest in the administration of the Projects under this Agreement.
- J. The purpose of this Agreement is not to set out the supplementary agreement between the Owner and VicRoads required by the Existing Agreement.
- K. As at the date of this Agreement, part of the Subject Land is encumbered by a mortgage in favour of the Mortgagee. The Mortgagee consents to the Owner entering into this Agreement.

The Parties agree

1. Definitions

In this Agreement unless the context admits otherwise:

Act means the *Planning and Environment Act 1987*

Agreement means this Agreement as amended from time to time.

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Certificate of Practical Completion means a certificate in writing prepared by Council and/or VicRoads (as the case may be) stating that a Project has been completed to the satisfaction of Council and/or VicRoads.

Checking Fee means a fee payable by the Owner to Council and/or VicRoads (as the case may be) for each Project for checking whether the Project has been undertaken to Council's/VicRoads' satisfaction, payable:

- (a) at a rate of 0.75% of the estimated cost of the Project works; and
- (b) upon the approval of the Project Plans.

Construction Procedures means the procedures set out in Schedule 5 of this Agreement.

Current Address means:

- (a) for Council, the address shown on page one of this Agreement, or any other address listed on Council's website;
- (b) for VicRoads, the address shown on page one of this Agreement, or any other address listed on VicRoads' website; and
- (c) for the Owner, the address shown on page one of this Agreement or any other address provided by the Owner to Council for any purpose relating to the Subject Land.

Current Email means:

- (a) for Council, contactus@hume.vic.gov.au, or any other email address listed on Council's website;
- (b) for VicRoads, any email address provided by VicRoads to Council for the express purpose of electronic communication regarding this Agreement; and
- (c) for the Owner, any email address provided by the Owner to Council for the express purpose of electronic communication regarding this Agreement.

Development Area 1 means the north-western section of the Subject Land marked as 'Area 1 (Residential)' on the Development Areas Plan.

Development Area 2 means the central section of the Subject Land marked as 'Area 2 (Residential)' on the Development Areas Plan.

Development Area 3 means the southern section of the Subject Land marked as 'Area 3 (Residential)' on the Development Areas Plan.

Development Area 4 means the eastern section of the Subject Land marked as 'Area 4 (Industrial)' on the Development Areas Plan.

Development Area 5 means the western section of the Subject Land marked as 'Area 5 (Woodlands)' on the Development Areas Plan.

Development Areas Plan means the plan in Schedule 3 of this Agreement showing the development areas on the Subject Land or such other plan approved by Council in writing from time to time.

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Development Contributions Infrastructure Items Plan means the plan in Schedule 4 of this Agreement showing the development contribution infrastructures items for the Subject Land or such other plan approved by Council in writing from time to time.

Development Plan means a plan setting out the overall framework for the future urban development of the Subject Land approved by Council from time to time in accordance with clause 43.04 of the Planning Scheme.

Existing Agreement means the section 173 agreement registered on the certificate of title to the Subject Land in Reference No. AG427732C dated 15 January 2009 between the previous owner of the Subject Land, Council, VicRoads and the purchaser of the Subject Land.

GAIC means the Growth Areas Infrastructure Charge under the Act.

GST Act means the *New Tax System (Goods and Services Tax) Act 1999* (Cth), as amended from time to time.

Inter Urban Break means the land reserved for Aitken Boulevard located south of the Subject Land and to the north of Mt Ridley Road that is at the date of this Agreement owned by VicRoads and shown in the Planning Scheme as being within the Rural Living Zone (RLZ).

Localised Infrastructure means works, services or facilities necessitated by the subdivision or development of land including but not limited to provision of utility services such as water supply, stormwater drainage, sewerage, gas and electricity services, telecommunications infrastructure and local roads, bridges, culverts and other water crossings, any required associated traffic control measures and devices.

Lot means a lot created as a result of the subdivision of the Subject Land which in the opinion of Council is of a size and dimension such that it is intended to be developed without further subdivision.

Maintenance Period means a period of 3 months for all civil works and 2 years for all landscaping works from the date of the issue of the Certificate of Practical Completion, and for 12 months for VicRoads Infrastructure.

Mortgagee means the person registered or entitled from time to time to be registered as mortgagee of the Subject Land.

MNTNP means the Mickleham North Transport Network Plan version 3.0 endorsed by George Mavroyeni, Executive Director, Metropolitan Operations, VicRoads, on 13 October 2014, or such other version of that document as is endorsed and approved by VicRoads from time to time.

Owner means the person registered or entitled from time to time to be registered as proprietor of an estate in fee simple of the Subject Land and includes a mortgagee-in-possession.

Owner's obligations includes the Owner's specific obligations and the Owner's further obligations.

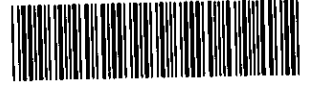
Party or Parties means the Parties to this Agreement but does not include a person who has transferred or otherwise disposed of all or their interests in the Subject Land.

Planning Scheme means the Hume Planning Scheme and any other planning scheme that applies to the Subject Land.

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Project means an infrastructure project listed and described in Schedule 1 of this Agreement.

Project Land means the land to be transferred to or vested in Council and/or VicRoads as road, listed and described in Schedule 2 of this Agreement.

Project Plans means plans showing the design and specification details of a Project.

Proposed Amendment means proposed Amendment C194 proposing to rezone the Subject Land and change the overlays applying to the Subject Land.

Residential Lot means a lot created by subdivision of the Subject Land which, in the opinion of Council, is of a size and dimension intended to be developed as a housing lot without further subdivision.

Road Management Act means *Roads Management Act 2004*.

Schedule means the schedule to this Agreement.

Statement of Compliance means a statement of compliance issued by Council under the *Subdivision Act 1988*.

Subject Land means the land situated at 225-285 Donnybrook Road, Mickleham being the land referred to in certificates of title volume 9792 folio 811 and 812 and any reference to the Subject Land includes any lot created by the subdivision of the Subject Land or any part of it.

Supervision Fee means a fee payable by the Owner to Council and/or VicRoads for each Project for supervising the construction of the Project payable:

- (a) at a rate of 2.75% of the actual cost of the Project; and
- (b) upon the handover of the Project to Council.

2. Interpretation

In this Agreement unless the context admits otherwise:

- 2.1 the singular includes the plural and vice versa;
- 2.2 a reference to a gender includes all genders;
- 2.3 a reference to a person includes a reference to a firm, corporation or other corporate body and that person's successors in law;
- 2.4 any agreement, representation, warranty or indemnity by 2 or more persons (including where 2 or more persons are included in the same defined term) binds them jointly and severally;
- 2.5 a term used has its ordinary meaning unless that term is defined in this Agreement. If a term is not defined in this Agreement and it is defined in the Act, it has the meaning as defined in the Act;
- 2.6 a reference to an Act, regulation or the Planning Scheme includes any Act, regulation or amendment amending, consolidating or replacing the Act, regulation or Planning Scheme;
- 2.7 the Background forms part of this Agreement.

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- 2.8 the Owner's obligations take effect as separate and several covenants which are annexed to and run at law and equity with the Subject Land; and
- 2.9 any reference to a clause, page, condition, attachment or term is a reference to a clause, page, condition, attachment or term of this Agreement.

3. Purposes of Agreement

The Parties acknowledge and agree that the purposes of this Agreement are to:

- 3.1 facilitate the future development of the Subject Land in accordance with an approved Development Plan;
- 3.2 provide satisfactory development contributions arising from the development of the Subject Land including recording the terms and conditions on which the Owner will carry out the Projects and provide the Project Land to Council and VicRoads; and
- 3.3 achieve and advance the objectives of planning in Victoria and the objectives of the Planning Scheme in respect of the Subject Land.

4. Reasons for Agreement

The Parties acknowledge and agree that Council has entered into this Agreement for the following reasons:

- 4.1 Council would not have consented to the Proposed Amendment without requiring this Agreement; and
- 4.2 the Owner has elected to enter into this Agreement in order to procure Council's agreement to the Proposed Amendment.

5. Agreement required

The Parties agree that this Agreement will continue to be required until the Owner has complied with all of the Owner's obligations under this agreement.

6. Owner's specific obligations

6.1 Design and construction of the Projects

The Owner covenants and agrees that the Owner must, at its cost:

- 6.1.1 design and construct the Projects specified in Schedule 1;
- 6.1.2 prepare Project Plans for each Project to the satisfaction of Council and in accordance with any VicRoads requirements and submit the Project Plans to Council for approval prior to the timeframe specified in Schedule 1 in respect of that Project;
- 6.1.3 commence each Project prior to the timeframe specified in Schedule 1 in respect of that Project;

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- 6.1.4 complete each Project:
 - (a) in accordance with the Project Plans approved by Council and in accordance with any VicRoads requirements in respect of that Project;
 - (b) prior to the earlier of the date specified in Schedule 1 in respect of that Project or the issue of a Statement of Compliance creating the number of Residential Lots specified in Schedule 1 in respect of that Project; and
 - (c) to the satisfaction of Council and/or VicRoads (as the case may be);
- 6.1.5 obtain all necessary permits and approvals for each Project at its own cost;
- 6.1.6 ensure compliance with the Construction Procedures;
- 6.1.7 pay to Council and/or VicRoads (as the case may be), within 14 days after a request for payment, the Checking Fee and the Supervision Fee for each Project; and
- 6.1.8 provide land for interim intersections if the works are to be completed by a third party.

6.2 Additional Project obligations

The Owner acknowledges and agrees that:

- 6.2.1 Council has no responsibility for any costs incurred by the Owner in carrying out the Projects;
- 6.2.2 VicRoads has no responsibility for any costs incurred by the Owner in carrying out the Projects;
- 6.2.3 the Owner will carry out the Projects regardless of any future agreements (such as any supplementary agreements to the Existing Agreement) between the Owner and the State Government or the Owner and VicRoads requiring the provision of State infrastructure or funds or contributions under the MNTNP; and
- 6.2.4 if the Owner fails to comply with any of its obligations in clause 6.1, Council may withhold issuing a Statement of Compliance in respect of any subdivision of the Subject Land until such time as the Owner has complied with such obligations.

6.3 Certificate of Practical Completion

The Owner covenants and agrees that:

- 6.3.1 the issue of a Certificate of Practical Completion is subject to compliance with this Agreement and the Construction Procedures; and
- 6.3.2 following the issue of the Certificate of Practical Completion for a Project the Owner:
 - (a) must provide Council and/or VicRoads with a copy of any maintenance information, operational manual or other material reasonably required for the ongoing operation and maintenance of the Project;
 - (b) must provide a copy of any certificate, consent or approval required by any authority for the carrying out, use or occupation of the Project;

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- (c) is responsible for the maintenance of the Project in good order, condition and repair to the satisfaction of Council and/or VicRoads for the Maintenance Period;
- (d) is responsible for the repair of any defects during the Maintenance Period;
- (e) pay VicRoads' costs to maintain signals and street-lighting (for which it is responsible) for the period of 10 years; and
- (f) pay VicRoads' costs to maintain any road related infrastructure for which it is responsible for such period as VicRoads requires acting reasonably.

6.4 Transfer of Project Land

6.4.1 Subject to clause 6.4.2, the Owner covenants and agrees that the Owner must at the full cost of the Owner, transfer or vest in Council or VicRoads (as the case may be) the Project Land described in Schedule 2:

- (a) prior to the issue of a Statement of Compliance creating the number of Residential Lots specified in Schedule 2 in respect of that land; and
- (b) in a condition that is to the satisfaction of Council and/or VicRoads.

6.4.2 The Owner acknowledges that Council may, upon the written request of the Owner, consent in writing to a variation of the Residential Lots specified in Schedule 2.

6.4.3 The Owner acknowledges and agrees that if the Owner has failed to comply with any of its obligations in clause 6.4.1 including as varied in accordance with clause 6.4.2 or any variation consented to in writing by Council, Council may withhold issuing a Statement of Compliance in respect of any subdivision of the Subject Land until such time as the Owner has complied with such obligations.

6.4.4 The Owner will notify and send the duplicate title to the Council or relevant authorities where the land is vested on plans of subdivision.

6.4.5 The Owner acknowledges and agrees to pay VicRoads to complete the declaration of land vested in VicRoads as an arterial road under the *Road Management Act 2004*.

6.4.6 The Owner acknowledges and agrees to undertake or pay VicRoads to complete the Planning Scheme Amendment to rezone the declared Arterial Road under the *Road Management Act 2004* to Road Zone Category 1.

6.5 Localised Infrastructure

The Parties acknowledge and agree that:

6.5.1 compliance with the obligations in this Agreement does not relieve the Owner of any obligation imposed by Council or a Tribunal to provide Localised Infrastructure including any obligations imposed as a requirement in a planning permit for the subdivision or development of the Subject Land; and

6.5.2 for the purposes of this Agreement, Localised Infrastructure does not include the infrastructure required for the Projects or other infrastructure that is in the nature of regional or state infrastructure.

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6.6 Timing

The Parties acknowledge and agree that:

- 6.6.1 the timing for the provision of the Project Land and the Projects under this Agreement has the potential to affect third parties through the delivery of State roads under the MNTNP;
- 6.6.2 should VicRoads require, the parties to this Agreement agree to negotiate in good faith in relation to alternative timing arrangements to the arrangements currently specified in the Schedules to this Agreement; and
- 6.6.3 if as a result of those negotiations agreement is not reached, the parties agree to the appointment of a person who is qualified and skilled in dispute resolution by the President for the time being of Law Institute of Victoria to resolve the disagreement. The parties agree that person's decision will be final and binding on all the parties and the costs of that person's appointment, and the costs of the negotiations, will be borne by each party equally. This clause 6.6.3 applies only in relation to timing for the provision of Project Land and the Projects.

7. Owner's further obligations

7.1 Transaction costs

Where the Owner is required to transfer or vest land, the Owner is responsible for the payment of all costs and disbursements associated with that transfer or vesting as the case may be.

7.2 Notice and registration

The Owner must bring this Agreement to the attention of all prospective occupiers, purchasers, lessees, licensees, mortgagees, chargees, transferees and assigns.

7.3 Further actions

The Owner:

- 7.3.1 must do all things necessary to give effect to this Agreement;
- 7.3.2 consents to Council applying to the Registrar of Titles to record this Agreement on the certificates of title of the Subject Land in accordance with s 181 of the Act; and
- 7.3.3 agree to do all things necessary to enable Council to do so, including:
 - (a) sign any further agreement, acknowledgment or document; and
 - (b) obtain all necessary consents to enable the recording to be made.

7.4 Council and/or VicRoads' costs to be paid

The Owner must pay to Council and/or VicRoads within 30 days after a written request for payment, Council and/or VicRoads costs and expenses (including legal expenses) relating to this Agreement, including:

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- 7.4.1 preparing, drafting, finalising and recording any amendment to this Agreement;
- 7.4.2 preparing, drafting, finalising and recording any amendment to this Agreement;

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7.4.3 determining whether any of the Owner's obligations have been undertaken to Council's/or VicRoads' satisfaction; and

7.4.4 preparing, drafting, finalising and recording any document to give effect to the ending of this Agreement.

7.5 Interest for overdue money

7.5.1 The Owner must pay to Council interest in accordance with s 227A of the *Local Government Act 1989* on any amount due under this Agreement that is not paid by the due date.

7.5.2 The Owner must pay to VicRoads interest at the rate fixed under section 2 of the *Penalty Interest Rates Act 1983* on any amount due under this Agreement that is not paid by the due date.

7.5.3 If interest is owing, Council and/or VicRoads will apply any payment made to interest and any balance of the payment to the principal amount.

7.6 Notification of compliance with Owner's obligations

The Owner must notify Council of its compliance with all of the Owner's obligations.

8. Agreement under s 173 of the Act

Without limiting or restricting the respective powers to enter into this Agreement, and insofar as it can be so treated, this Agreement is made as a deed in accordance with s 173 of the Act.

9. Owner's warranties

The Owner warrants that apart from the Owner and any other person who has consented in writing to this Agreement, no other person has any interest, either legal or equitable, in the Subject Land which may be affected by this Agreement.

10. Successors in title

Until such time as a memorandum of this Agreement is recorded on the certificates of title of the Subject Land, the Owner must require successors in titles to:

10.1 give effect to this Agreement; and

10.2 enter into a deed agreeing to be bound by the terms of this Agreement.

10.3 It is acknowledged that the road projects continue with the various development area as detailed in Schedule 1 & 2, unless a third party wants to complete the project at their own costs.

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11. General matters

11.1 Notices

A notice or other communication required or permitted to be served by a Party on another Party must be in writing and may be served:

- 11.1.1 personally on the other Party;
- 11.1.2 by leaving it at the other Party's Current Address;
- 11.1.3 by posting it by prepaid post addressed to the other Party at the other Party's Current Address; or
- 11.1.4 by email to the other Party's Current Email.

11.2 No waiver

Any time or other indulgence granted by Council or VicRoads to the Owner or any variation of this Agreement or any judgment or order obtained by Council or VicRoads against the Owner does not amount to a waiver of any of Council's or VicRoads rights or remedies under this Agreement.

11.3 Severability

If a court, arbitrator, tribunal or other competent authority determines that any part of this Agreement is unenforceable, illegal or void then that part is severed with the other provisions of this Agreement remaining operative.

11.4 No fettering of Council's or VicRoads' powers

This Agreement does not fetter or restrict Council's or VicRoads' power or discretion to make decisions or impose requirements or conditions in connection with the grant of planning approvals or certification of plans subdividing the Subject Land or relating to use or development of the Subject Land.

11.5 No fettering of VicRoads' powers

This Agreement does not fetter or restrict VicRoads' power or discretion to make decisions or impose requirements or conditions in connection with the grant of planning approvals or certification of plans subdividing the Subject Land or relating to use or development of the Subject Land.

11.6 Inspection of documents

A copy of any planning permit, document or plan referred to in this Agreement is available for inspection at Council offices during normal business hours upon giving the Council reasonable notice.

11.7 Governing law

This Agreement is governed by and is to be construed in accordance with the laws of Victoria.

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12. GST

- 12.1 In this clause words that are defined in the GST Act have the same meaning as their definition in that Act.
- 12.2 Except as otherwise provided by this clause, all consideration payable under this Agreement in relation to any supply is exclusive of GST.
- 12.3 If GST is payable in respect of any supply made by a supplier under this Agreement, subject to clause 12.4 the recipient will pay to the supplier an amount equal to the GST payable on the supply at the same time and in the same manner as the consideration for the supply is to be provided under this Agreement.
- 12.4 The supplier must provide a tax invoice to the recipient before the supplier will be entitled to payment of the GST payable under clause 12.3.

13. GAIC

The Parties acknowledge and agree:

- 13.1 all land transferred to or vested in Council and/or VicRoads must have any liability for GAIC discharged prior to it being transferred to or vested in Council and/or VicRoads and to the extent it is not, the Owner will remain liable to Council and/or VicRoads for any GAIC liability incurred by Council; and
- 13.2 this Agreement is not intended to operate to preclude the Owner from making an application under section 201TF of the Act in relation to the GAIC liability of the Owner.

14. Commencement of Agreement

This Agreement commences on the date specified on page one or if no date is specified on page one, the date Council executes this Agreement.

15. Ending of Agreement

- 15.1 This Agreement ends when the Owner has complied with all of the Owner's obligations.
- 15.2 After this Agreement has ended, Council will, at the Owner's written request, apply to the Registrar of Titles under s 183(1) of the Act to cancel the record of this Agreement.

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Schedule 1 Projects

Project no.	Mickleham North Transport Network Plan Project no.	Project name	Project description and extent	Date for submission of Project Plans	Date for commencement of Project	Date for completion of Project	Lot trigger for completion of Project
1	IT04	Aitken Boulevard and Donnybrook Road Intersection	Construction of an interim signalised intersection at the intersection of Aitken Boulevard (2 lane divided road) and Donnybrook Road (south of Donnybrook Road), including localised widening of Donnybrook Road to a 4 lane divided road.	1 July 2020	1 January 2021	1 December 2021	Prior to Council issuing the Statement of Compliance creating the 1 st Residential Lot in Development Area 1.
2	IT07	Aitken Boulevard and East-West Arterial Intersection	Construction of an interim signalised intersection at the intersection of Aitken Boulevard (2 lane divided road) and East-West Arterial (2 lane divided road) within Subject Land.	1 July 2020	1 January 2021	1 December 2021	Prior to Council issuing the Statement of Compliance creating the 80 th Residential Lot in Development Area 3.
3	IT08	Aitken Boulevard and Mt Ridley Road Intersection	Construction of an interim four leg signalised intersection at the intersection of Aitken Boulevard (2 lane divided road) and Mt Ridley Road (2 lane divided road) within the inter-urban break..	1 July 2020	1 January 2021	1 December 2021	Prior to Council issuing the Statement of Compliance creating the 150 th Residential Lot in Development Area 3.
4	IT09	Aitken Boulevard (E14): Donnybrook Road - South: Stage 1	Construction of the first carriageway (2 lanes) of Aitken Boulevard between Donnybrook Road and the Inter Urban Break shown as 'Stage 1' on the Development Contributions Infrastructure Items Plan.	1 July 2020	1 January 2021	1 December 2021	Prior to Council issuing the Statement of Compliance creating the 1 st Residential Lot in Development Area 1.

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Project no.	Mickleham North Transport Network Plan Project no.	Project name	Project description and extent	Date for submission of Project Plans	Date for commencement of Project	Date for completion of Project	Lot trigger for completion of Project
5	RD05	Aitken Boulevard (E14): Donnybrook Road - South: Stage 2	Construction of the first carriageway (2 lanes) of Aitken Boulevard between Donnybrook Road and the Inter Urban Break shown as 'Stage 2' on the Development Contributions Infrastructure Items Plan.	1 July 2020	1 January 2021	1 December 2021	Prior to Council issuing the Statement of Compliance creating the 80 th Residential Lot in Development Area 2.
6	RD05	Aitken Boulevard (E14): Donnybrook Road - South: Stage 3A	Construction of the first carriageway (2 lanes) of Aitken Boulevard between Donnybrook Road and Mt Ridley Road shown as 'Stage 3A' on the Development Contributions Infrastructure Items Plan.	1 July 2020	1 January 2021	1 December 2021	Prior to Council issuing the Statement of Compliance creating the 150 th Residential Lot in Development Area 3.
7	RD05	Aitken Boulevard (E14): Donnybrook Road - South: Stage 3B	Construction of the first carriageway (2 lanes) of Aitken Boulevard between Donnybrook Road and Mt Ridley Road shown as 'Stage 3B' on the Development Contributions Infrastructure Items Plan.	1 July 2020	1 January 2021	1 December 2021	Prior to Council issuing the Statement of Compliance creating the 150 th Residential Lot in Development Area 3.
8	RD05	East West Arterial Road	Construction of the first carriageway (2 lanes) of the East West Arterial Road on the subject land shown on the Development Contributions Infrastructure Items Plan, or a monetary contributions in lieu of works.	1 July 2020	1 January 2021	1 December 2021	Prior to Council issuing the Statement of Compliance creating the 1 st Lot in Development Area 3.

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Schedule 2 Project Land

Project Land no.	Mickleham North Transport Network Plan Project no.	Project Land name	Project Land description	Road reserve width (metres)	Milestone for transfer or vesting of the Project Land
1	IT04	Aitken Boulevard and Donnybrook Road Intersection	Land for the ultimate intersection.	Land for ultimate intersection for 46m wide road with additional land required to accommodate additional flaring of the intersection (over and above the land required for the interim signalised intersection)	Prior to Council issuing the Statement of Compliance creating the 1 st Residential Lot in Development Area 1 or prior to the 1 st of December 2021, whichever is the earlier.
2		Aitken Boulevard and East-West Arterial Intersection	Land for the ultimate intersection.	Land for ultimate intersection for 46m wide road with additional land required to accommodate additional flaring of the intersection (over and above the land required for the interim signalised intersection)	Prior to Council issuing the Statement of Compliance creating the 80 th Residential Lot in Development Area 2 or prior to the 1 st of December 2021, whichever is the earlier.
3		Aitken Boulevard and Mt Ridley Road Intersection	Land for the ultimate intersection.	Land for ultimate intersection for 46m wide road with additional land required to accommodate additional flaring of the intersection (over and above the land required for the interim signalised intersection)	Prior to Council issuing the Statement of Compliance creating the 150 th Residential Lot in Development Area 3 or prior to the 1 st of December 2021, whichever is the earlier.

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Project Land no.	Mickleham North Transport Network Plan Project no.	Project Land name	Project Land description	Road reserve width (metres)	Milestone for transfer or vesting of the Project Land
4	RD05	Aitken Boulevard (E14): Donnybrook Road - South: Stage 1	Land for the interim road reservation (4 lanes).	36m	Prior to Council issuing the Statement of Compliance creating the 1 st Residential Lot in Development Area 1, or prior to the 1 st of December 2021, whichever is the earlier.
5	RD05	Aitken Boulevard (E14): Donnybrook Road - South: Stage 1	Additional land for the ultimate road reservation (additional 2 lanes), to be vested with VicRoads.	12m	Prior to Council issuing the Statement of Compliance creating the 1 st Residential Lot in Development Area 1, or prior to the 1 st of December 2021, whichever is the earlier.
6	RD05	Aitken Boulevard (E14): Donnybrook Road - South: Stage 2	Land for the interim road reservation (4 lanes).	36m	Prior to Council issuing the Statement of Compliance creating the 80 th Residential Lot in Development Area 2.
7	RD05	Aitken Boulevard (E14): Donnybrook Road - South: Stage 2	Additional land for the ultimate road reservation (additional 2 lanes), to be vested with VicRoads.	12m	Prior to Council issuing the Statement of Compliance creating the 80 th Residential Lot in Development Area 2.
8	RD05	Aitken Boulevard (E14): Donnybrook Road - South: Stage 3A	Additional land for the ultimate road reservation (additional 2 lanes), to be vested with VicRoads..	36m	Prior to Council issuing the Statement of Compliance creating the 150 th Residential Lot in Development Area 3.
9	RD05	Aitken Boulevard (E14): Donnybrook Road - South: Stage 3A	Additional land for the ultimate road reservation (additional 2 lanes), to be vested with VicRoads.	12m	Prior to Council issuing the Statement of Compliance creating the 150 th Residential Lot in Development Area 3.

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Project Land no.	Mickleham North Transport Network Plan Project no.	Project Land name	Project Land description	Road reserve width (metres)	Milestone for transfer or vesting of the Project Land
10	RD06	East West Arterial Road	Land for the ultimate road reservation.	34m	Prior to the 1 st of December 2021.
11	RD05	Aitken Boulevard (E14): Donnybrook Road - South: Stage 3B	Provide monetary contribution to VicRoads for cost of land.	n/a	Prior to Council issuing the Statement of Compliance creating the 150 th Residential Lot in Development Area 3.

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Schedule 3 Development Areas Plan

Where the plan which is attached to Schedule 3 has been removed from this counterpart to the Agreement due to difficulties of the Titles Office with imaging for recording purposes, a copy is included in each of the counterparts to this Agreement held by:

- Council; and
- the Owner of the Subject Land as at the date the Agreement was executed.

A copy of the counterpart Agreement together with Schedule 3 is available for inspection at Council's offices during normal hours upon giving Council reasonable notice.

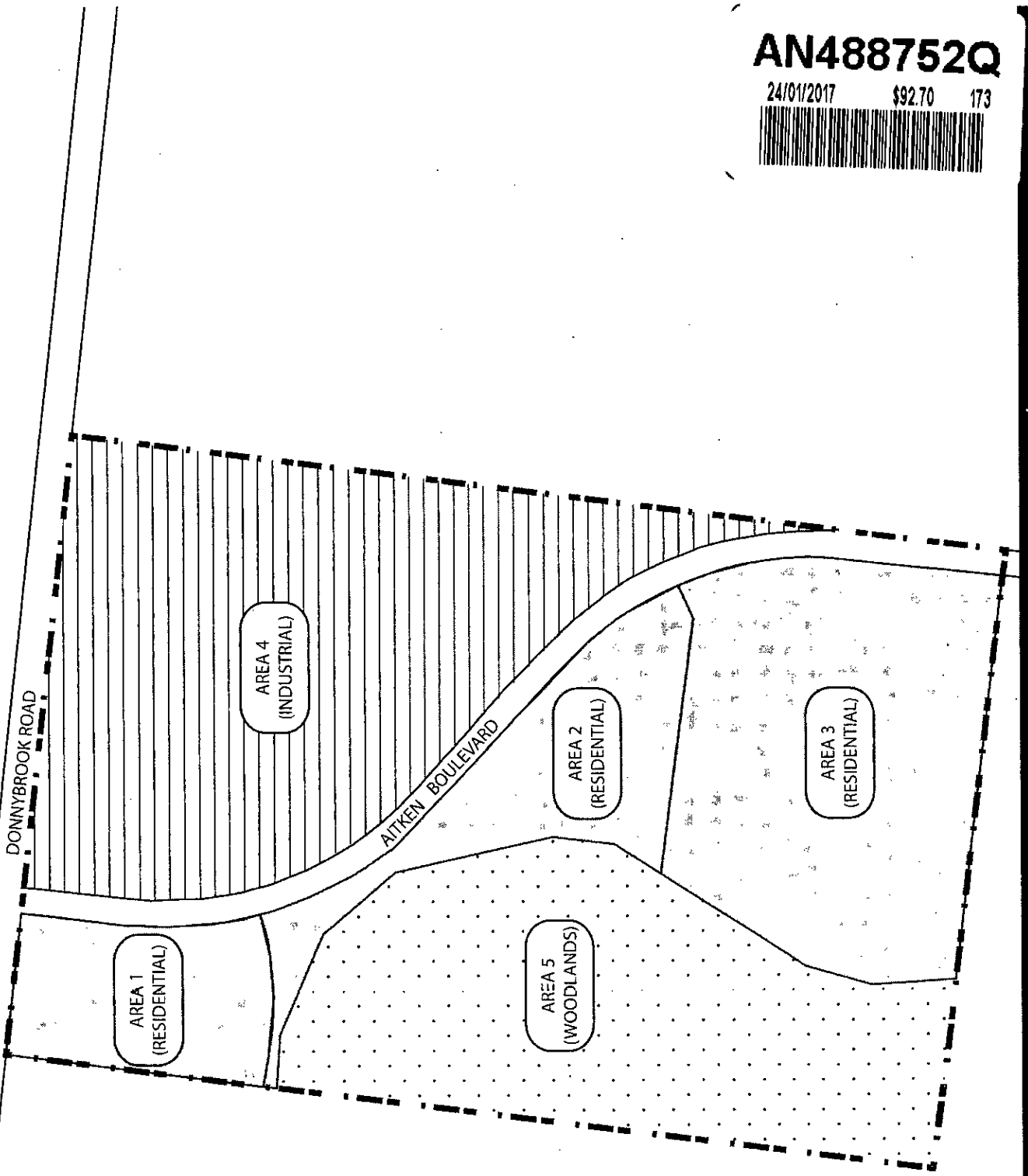
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Schedule 4 Development Contributions Infrastructure Items Plan

Where the plan which is attached to Schedule 4 has been removed from this counterpart to the Agreement due to difficulties of the Titles Office with imaging for recording purposes, a copy is included in each of the counterparts to this Agreement held by:

- Council; and
- the Owner of the Subject Land as at the date the Agreement was executed.

A copy of the counterpart Agreement together with Schedule 4 is available for inspection at Council's offices during normal hours upon giving Council reasonable notice.

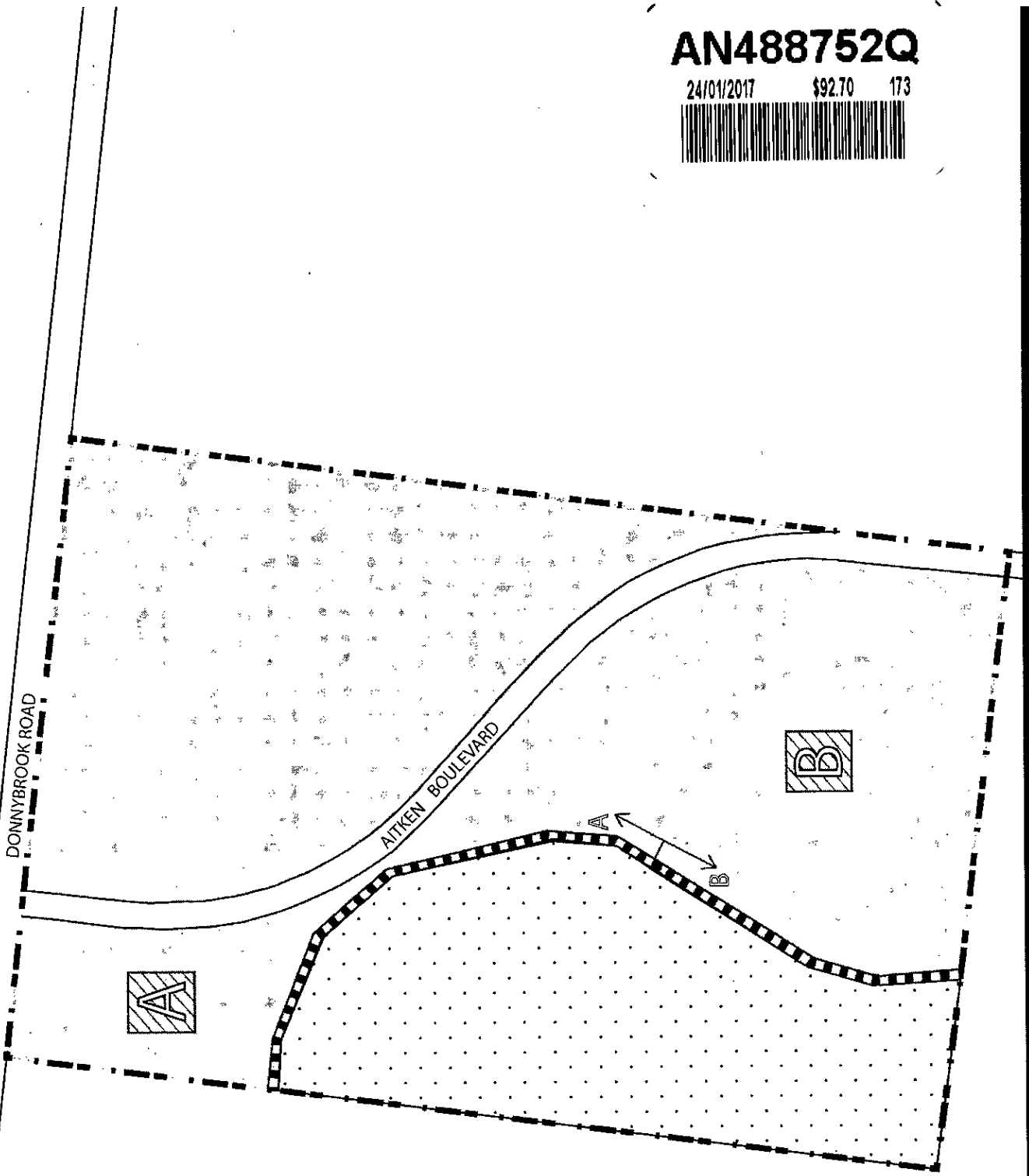
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- Open Space
- Neighbourhood Park
- Woodlands/Conservation Park
- Development Land

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Schedule 5 Construction Procedures

Procedure for issue of Certificate of Practical Completion

1. Upon the completion of the Project the Owner must notify Council and/or VicRoads or any other relevant authority.
2. Within 14 days of receiving notice of the completion of a Project from the Owner, Council and/or VicRoads or any other relevant authority must inspect the Project and determine whether or not to issue the Certificate of Practical Completion.
3. If Council is not satisfied with the Project, Council may refuse to issue a Certificate of Practical Completion provided Council:
 - 3.1 identifies in what manner or respect the Project is not satisfactorily completed; and
 - 3.2 what must be done to satisfactorily complete the Project.
4. If VicRoads is not satisfied with the Project, VicRoads must notify Council and:
 - 4.1 identify in what manner or respect the Project is not satisfactorily completed; and
 - 4.2 what must be done to satisfactorily complete the Project;
 and Council must refuse to issue a Certificate of Practical Completion.
5. Council and/or VicRoads may, notwithstanding the detection of a minor non-compliance determine to issue a Certificate of Practical Completion if Council is satisfied that the proper completion of the outstanding matter can be secured by the payment of a financial amount to Council or the provision of some other security for the proper completion of that outstanding matter.

Access

6. Before accessing land owned by Council and/or VicRoads or a third party for the purpose of constructing any Project, the Owner must satisfy Council and/or VicRoads or if requested by a third party that person, that the Owner has in place all proper occupational health and safety plans as may be required under any law of the State of Victoria and hold such insurance as the Council and/or VicRoads requires.
7. Subject to the satisfaction of Council in relation to all health and safety matters and any other regulatory requirements, Council will provide all reasonable access as may be required to its land in order to enable a Project to be completed and maintained in accordance with the Project Plans.

Quality of work

8. Apart from any other requirement contained in the Agreement, all work must:
 - 8.1 accord with Council's engineering standard drawings and specifications unless otherwise approved;
 - 8.2 use good quality materials, not involving asbestos and are suitable for the purpose for which they are required;
 - 8.3 be fit and structurally sound.

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- 8.4 not encroach on land other than the land shown in any plans or specifications approved by Council;
- 8.5 comprise best industry practice;
- 8.6 unless otherwise authorised comply with any relevant current Australian Standard;
- 8.7 accord with a construction management plan to be prepared to the satisfaction of Council;
- 8.8 accord with VicRoads' usual requirements.

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Signing Page

Signed, sealed and delivered as a deed by the Parties.

Signed by and on behalf, and with the authority, of the **Hume City Council** by Domenic Isola, Chief Executive Officer, in the exercise of a power conferred by an Instrument of Delegation, in the presence of:

Witness

Name of Witness (please print)



The official seal of the **Roads Corporation** was hereunto affixed in the presence of:



Name of authorised officer

Michael Kyriakidis
Principal Lawyer
Name of authorised officer

BILL GLASGOW
EXECUTIVE DIRECTOR REGIONAL SERVICES

THE COMMON SEAL of HUME CITY COUNCIL was hereto affixed on the 17th day of JANUARY, 2017..... in the presence of:

COUNCILLOR [Redacted]

CHIEF EXEC [Redacted]



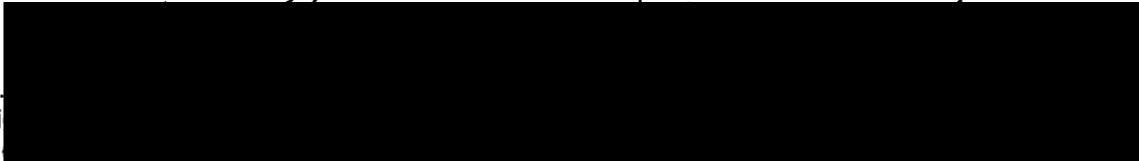
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Executed by SPP No. 2 ACN 120 211 529 in accordance with s 127(1) of the Corporations Act 2001:



LN

Si

ADRIAN ARTHUR WILLIAMS

Print full name

Print full name

Mortgagee's Consent

Commonwealth Bank of Australia as Mortgagee under instrument of mortgage no. AJ402962X consents to the Owner entering into this Agreement and in the event that the Mortgagee becomes mortgagee-in-possession, agrees to be bound by the covenants and conditions of this Agreement.



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Application by a responsible authority for the making of a recording of an agreement

Section 181 **Planning and Environment Act 1987**

Form 18

Lodged by:

Name: Russell Kennedy

Phone: 03 9609 1555

Address: Level 12, 469 La Trobe Street, Melbourne 3000

Ref: ADC:120097-01611

Customer Code: 1513M



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

Land: *(insert Volume and Folio reference) (if part only, define the part)*

Volume 9682 folio 591, volume 9792 folio 811, volume 9792 folio 812.

Authority: *(name and address)*

Hume City Council of 1079 Pascoe Vale Road, Broadmeadows Vic 3047

Section and Act under which agreement made:

Section 173 of the *Planning and Environment Act 1987*

A copy of the Agreement is attached to this Application:

Signature for the

Name of Office



Date: 20/3/2009

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HUME CITY COUNCIL

Council

- and -

ROADS CORPORATION

VicRoads

- and -

ROCCO and FRANCESCA LUPPINO

Owner

- and -

FOLKESTONE (BAYSIDE) PTY LTD

Purchaser

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

Subject Land: 135,225,285 Donnybrook Road, Mickleham

**Minter Ellison
Lawyers
Rialto Towers
525 Collins Street
MELBOURNE VIC 3000**

Ref: PAXB_JKC 30-5455154

Tel: 03 9594 1300

Fax: 03 9594 1306

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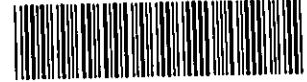


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PLANNING AND ENVIRONMENT ACT 1987

SECTION 173 AGREEMENT

THIS AGREEMENT is made the 15 day of JANUARY

2009
2008

BETWEEN:

HUME CITY COUNCIL
of 1079 Pascoe Vale Road, Broadmeadows in the State of Victoria
("Council")

- and -

ROADS CORPORATION
of 60 Denmark Street, Kew in the State of Victoria
("VicRoads")

- and -

ROCCO and FRANCESCA LUPPINO
of 15 Greig Street, Reservoir



- and -

FOLKESTONE (BAYSIDE) PTY LTD
ACN 120 211 529
of Level 24, 360 Collins Street, Melbourne in the State of Victoria
("Purchaser")

INTRODUCTION

- A. The Council is the Responsible Authority pursuant to the Act for the Planning Scheme.
- B. The Purchaser has entered into a Contract of Sale to purchase the Subject Land from the Owner.
- C. The Purchaser has requested the Council to rezone the Subject Land from Farming Zone - Schedule 1 to part Business 3 zone, part Business 1 zone and part Public Conservation and Resource Zone which is the subject of the Planning Scheme Amendment.
- D. VicRoads as the co-ordinating road authority for the arterial road network servicing the Subject Land wishes to secure a contribution towards additions

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to the declared arterial road network directly servicing the Subject Land on an area of developable land basis proportional to the other lands to contribute to those road work additions.

- E. The Owner and the Purchaser have agreed to enter into this Agreement with Council and VicRoads as a mechanism to formalise its contribution to additions to the declared arterial road network required to service the development of the Subject Land.
- F. As at the date of this Agreement, it is anticipated that the Subject Land will be encumbered by a Mortgage in favour of the Mortgagee. The anticipated Mortgagee has consented to the Purchaser entering into this Agreement with respect to the Subject Land.
- G. The parties enter into this Agreement in anticipation of the Purchaser becoming the Registered Proprietor of the Land and to achieve and advance the objectives of planning in Victoria and the objectives of the Planning Scheme in respect of the Subject Land.

IT IS AGREED:

1. DEFINITIONS

In this Agreement the words and expressions set out in this clause have the following meanings unless the context admits otherwise -

- 1.1 **"the Act"** means the *Planning and Environment Act 1987* (Vic).
- 1.2 **"this Agreement"** means this agreement and any agreement executed by the parties expressed to be supplemental to this Agreement.
- 1.3 **"Council"** means Hume City Council as the Responsible Authority for the Planning Scheme and any subsequent person or body which is the Responsible Authority for the Planning Scheme.
- 1.4 **"Lot"** means a lot on the Subject Land including any proposed lot to be created by a plan of subdivision relating to the Subject Land.
- 1.5 **"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 Subject Land or any part of it. The anticipated Mortgagee at the date of this Agreement is Capital Finance Australia Ltd.
- 1.6 **"Owner"** means the person or persons registered or entitled from time to time to be registered by the Registrar of Titles as proprietor or proprietors of an estate in fee simple of the Subject Land or any part of it and includes a Mortgagee-in-possession.
- 1.7 **"party or parties"** means the Owner, VicRoads and Council under this Agreement as appropriate.

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- 1.8 **“Planning Scheme”** means the Hume Planning Scheme and any other planning scheme which applies to the Subject Land.
- 1.9 **“Planning Scheme Amendment”** means proposed Amendment C98 to the Planning Scheme.
- 1.10 **“Road Works Contribution”** means the contribution to be made by the Owner as set out in Clauses 3.1, 3.2 and 3.3.
- 1.11 **“Subject Land”** means the land situated at 135, 225 and 285, Donnybrook Road, Mickleham being the land comprised in Certificates of Title Volume 9682 Folio 591, Volume 9792 Folio 811, and Volume 9792 Folio 812 and any reference to the Subject Land in this Agreement will include a reference to any lot created by the subdivision of the Subject Land or any part of it.
- 1.12 **“Transport Network Plan”** means the plan to be prepared by VicRoads for the purpose of identifying the future arterial road network including predicted traffic volumes, cross sections and reservation widths in the area surrounding the Subject Land.
- 1.13 **“VicRoads”** means the Roads Corporation.

2. INTERPRETATION

In this Agreement unless the context admits otherwise:

- 2.1 The singular includes the plural and vice versa.
- 2.2 A reference to a gender includes a reference to each other gender.
- 2.3 A reference to a person includes a reference to a firm, corporation or other corporate body and that person’s successors in law.
- 2.4 If a party consists of more than one person this Agreement binds them jointly and each of them severally.
- 2.5 A reference to an Act, Regulation or the Planning Scheme includes any Acts, Regulations or amendments amending, consolidating or replacing the Act, Regulation or Planning Scheme.
- 2.6 The introductory clauses to this Agreement are and will be deemed to form part of this Agreement.
- 2.7 A term used in this Agreement has its ordinary meaning unless that term is defined in this Agreement. If a term is not defined in this Agreement and it is defined in the Act it has the same meaning as defined in the Act.
- 2.8 The obligations of the Owner under this Agreement will take effect as separate and several covenants which are annexed to and run at law and equity with the Subject Land.

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3. SPECIFIC OBLIGATIONS OF THE OWNER

The Owner covenants and agrees that:

3.1 Road Works Contribution

It will make the Road Works Contribution, by payment to VicRoads or undertaking specified works, for the purpose of road construction and/or improvements to the declared arterial road network directly serving the Subject Land.

3.2 The Road Works Contribution will be assessed by VicRoads:

3.2.1 in accordance with the Transport Network Plan;

3.2.2 on the basis of the Subject Land's net developable area; and

3.2.3 proportional to the other developable lands in the areas.

3.3 The amount of the Road Works Contribution and timing of that contribution is to be to the satisfaction of VicRoads and recorded in an Agreement as is required by Clause 4.2 following the preparation of a Transport Network Plan by VicRoads.

3.4 Council's Costs to be Paid

The Owner must pay to the Council, the Council's reasonable costs and expenses (including legal expenses) of and incidental to the preparation, drafting, review, finalisation, engrossment, execution and registration of this Agreement and until those reasonable costs are paid they will remain a debt of the Owner to the Council.

3.5 VicRoads' Cost to be Paid

Prior to the execution of this Agreement, the Owner must pay to VicRoads, VicRoads' reasonable costs and expenses (including legal expenses) of and incidental to the preparation, drafting, review, finalisation, engrossment, execution and registration of this Agreement and until those reasonable costs are paid they will remain a debt of the Owner to VicRoads.

4. AGREEMENTS BY THE PARTIES

4.1 The Parties agree that VicRoads will prepare a Transport Network Plan in consultation with the Owner and the Council identifying the arterial road network and the reservation width for arterial roads in the area.

4.2 The Transport Network Plan is to be to the satisfaction of VicRoads. Upon VicRoads' written request, the Parties will enter into a supplementary agreement pursuant to Section 173 of the Act specifying:

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- 4.2.1 the amount of the Road Works Contribution that the Owner is required to pay, as assessed by VicRoads in accordance with Clause 3.2;
- 4.2.2 whether the Road Works Contribution is to be made in whole or in part by payment or undertaking specified works;
- 4.2.3 the timing of the provision of those additional roadworks and of the Owner's contributions; and
- 4.2.4 that the Owner must pay Council's and VicRoads' reasonable costs and expenses (including legal expenses) of and incidental to the preparation, drafting, review, finalisation, engrossment, execution and registration of this supplementary agreement and until such time as those reasonable costs are paid they will remain a debt of the Owner to Council and VicRoads.

all to the satisfaction of VicRoads.

5. OBLIGATIONS OF THE PURCHASER

The Purchaser covenants and agrees that:

- 5.1 for so long as the Contract of Sale, referred to in Recital B, remains valid, it will perform all the obligations of the Owner required by clauses 3 and 4; and
- 5.2 upon becoming the registered proprietor of the Subject Land, it will assume any and all rights and obligations of the Owner pursuant to this Agreement.

6. ACKNOWLEDGMENT AND COVENANTS OF COUNCIL

The Council covenants that it will forthwith apply to register this Agreement pursuant to Section 181 of the Act.

7. FURTHER OBLIGATIONS OF THE OWNER

The Owner further covenant and agree that:

7.1 Notice and Registration

the Owner will bring this Agreement to the attention of all prospective purchasers, mortgagees, transferees and assigns;

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7.2 Further actions

- 7.2.1 the Owner will do all things necessary, including signing any further agreements, undertakings, covenants and consents, approvals or other documents necessary for the purpose of ensuring that the Owner carry out the Owner's covenants under this Agreement and to enable the Council and VicRoads to enforce the performance by the Owner of such covenants and undertakings;
- 7.2.2 the Owner will consent to the Council making application to the Registrar of Titles to make a recording of this Agreement in the Register on the Certificate of Title of the Subject Land in accordance with Section 181 of the Act and do all things necessary to enable the Council to do so including signing any further agreement, acknowledgment or document or procuring the consent to this Agreement of any mortgagee or caveator to enable the recording to be made in the Register under that Section;
- 7.2.3 The Purchaser covenants and agrees that it will pay any costs required to be paid by the Owner pursuant to clauses 3.4,3.5 and 4.2 until such time as it becomes the registered proprietor of the Subject Land or it advises the Owner in writing, that it does not intend to become the registered proprietor.

8. AGREEMENT UNDER SECTION 173 OF THE ACT

The Parties agree that this Agreement is made pursuant to Section 173 of the Act and when registered on the title will take effect as a covenant on title and will bind all successors in title including their assigns, transferees and mortgagees.

9. OWNER'S WARRANTIES

Without limiting the operation or effect which this Agreement has, the Owner warrants that apart from the Owner and any other person who has consented in writing to this Agreement, no other person has any interest, either legal or equitable, in the Subject Land which may be affected by this Agreement.

10. SUCCESSORS IN TITLE

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

- 10.1 give effect to and do all acts and sign all documents which will require those successors to give effect to this Agreement; and
- 10.2 execute a deed agreeing to be bound by the terms of this Agreement.

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11. GENERAL MATTERS

11.1 Notices

A notice or other communication required or permitted to be served by a party on another party must be in writing and may be served:

- 11.1.1 by delivering it personally to that party;
- 11.1.2 by sending it by prepaid post addressed to that party at the address set out in this Agreement or subsequently notified to each party from time to time; or
- 11.1.3 by sending it by facsimile provided that a communication sent by facsimile shall be confirmed immediately in writing by the sending party hand delivery or prepaid post.

11.2 A notice or other communication is deemed served:

- 11.2.1 if delivered, on the next following business day;
- 11.2.2 if posted, on the expiration of two business days after the date of posting; or
- 11.2.3 if sent by facsimile, on the next following business day unless the receiving party has requested retransmission before the end of that business day.

11.3 No Waiver

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

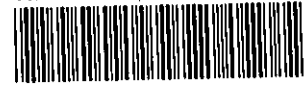
11.4 Severability

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

11.5 No Fettering of the Council's Powers

It is acknowledged and agreed that this Agreement does not fetter or restrict the power or discretion of Council any decision or impose any requirements or conditions in connection with the granting of any planning approval or certification of any plans of subdivision applicable to the Subject Land or relating to any use or development of the Subject Land.

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12. COMMENCEMENT OF AGREEMENT

This Agreement commences upon the date of the gazettal of the Planning Scheme Amendment.

13. ENDING OF AGREEMENT

13.1 This Agreement ends when the Owner has complied with all of the covenants by the Owner under the Agreement to the satisfaction of the Council and VicRoads.

13.2 This Agreement may be ended by agreement between Council, VicRoads and the Purchaser and the Owner.

13.3 As soon as reasonably practicable after the Agreement has ended, Council will at the request and at the cost of the Owner make application to the Registrar of Titles under Section 183(1) of the Act to cancel the recording of this Agreement on the Register.

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EXECUTED by the parties on the date set out at the commencement of this Agreement.

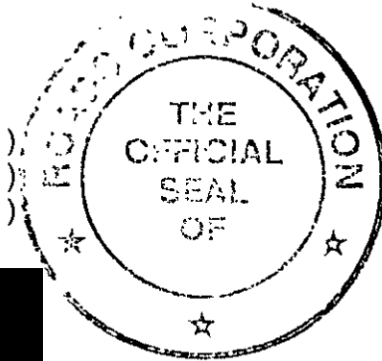
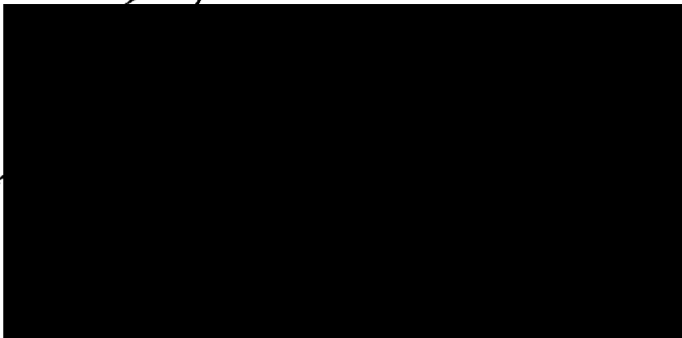
THE COMMON SEAL of HUME CITY COUNCIL was hereto affixed on the 4 March 2009 in the presence of:



Chief Executive Officer



THE OFFICIAL SEAL of ROADS CORPORATION was hereto affixed in the presence of:



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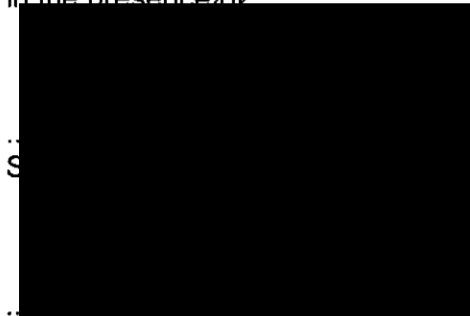
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Signed by **ROCCO LUPPINO**

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in the presence of:

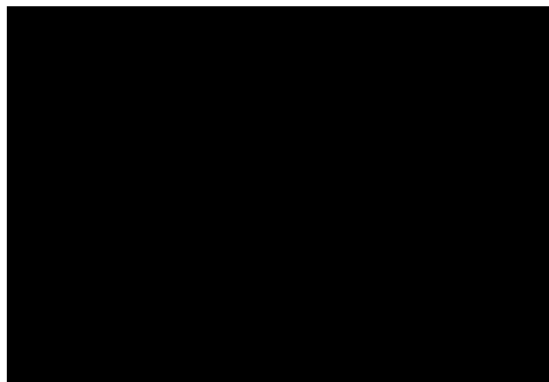


Name of Witness (Print)

Name of Witness

Signed by **FRANCESCA LUPPINO**

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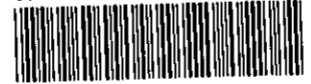
Name of witness (Print)

Name of Witness

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Executed by FOLKESTONE (BAYSIDE))
PTY LTD pursuant to section 127 of the)
Corporations Act.)
)
)
)
)



Director

Full name

Usual address

h.v.



Director/Secretary

Full name

Usual address

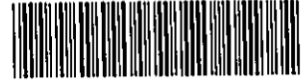
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Intended Mortgagee's Consent

Capital Finance Australia Ltd as intended Mortgagee, consents to the Owner entering into this Agreement and in the event that it becomes the Mortgagee and Mortgagee-in-possession, agrees to be bound by the covenants and conditions of this Agreement.

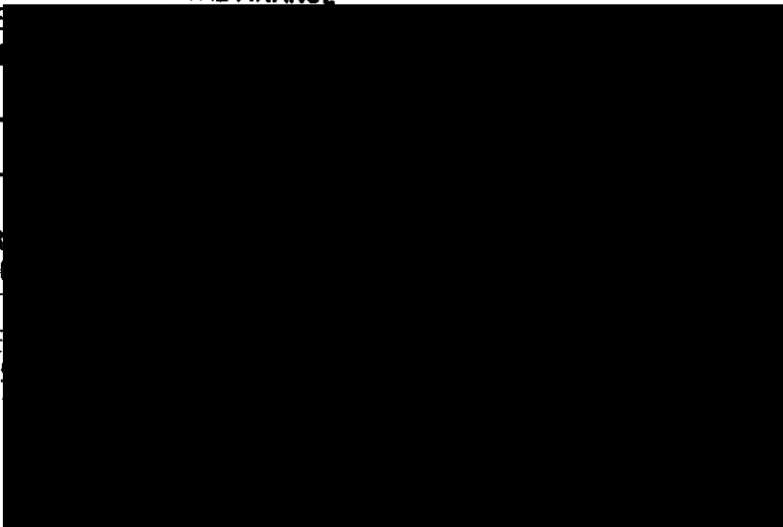
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For and on behalf of the Mortgagee.

EXECUTED BY CAPITAL FINANCE

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Planning Report

*Proposal to change use the land to an
Indoor Recreation Facility at
3 Eclipse Drive Mickleham - 3064*



Prepared by: [REDACTED]
Prepared for: Mickleham Indoor Sports Centre
Draft: 25 March 2026
FINAL: 26 March 2026

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Report prepared by the Project Coordinator

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Disclaimer:

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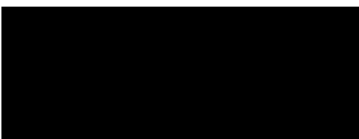
Acknowledgement of Country:

We acknowledge the Traditional Custodians of the land on which this report was prepared and pay our respects to Elders past, present and emerging.

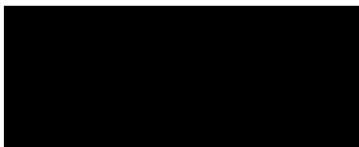
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OVERVIEW	
ITEM	PARTICULARS
Subject Land	3 Eclipse Drive Mickleham Lot 3 on PS 848481B Vol 12480 Folio 003
Existing Use and Development	The land has been developed with a warehouse and 27 car parking spaces.
Proposed Use and Development	It is proposed to change the use of the land to Indoor Recreation Facility
Zone	Industrial 1 Zone (IN1Z)
Overlay(s)	Development Plan Overlay - Schedule 31 (DPO31)
Municipal Planning Strategy	Clause 02.03-7 – Economic Development Clause 02.04-2 – Strategic Framework Plan
Planning Policy Framework	Clause 13.07-1S - Land use compatibility

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	<p>Clause 17.03-1S - Industrial land supply Clause 17.03-1L – Industrial land supply Clause 17.03-2S - Sustainable industry Clause 17.03-3S - Significant industrial land</p>
Particular Provisions	<p>Clause 52.05 - Signs Clause 52.06 – Car Parking Clause 52.34 – Bicycle Facilities</p>
General Provisions	<p>Clause 65.01 - Approval of an Application or Plan</p>
Permit Triggers	<p>Pursuant to Clause 33.01-1, a planning permit is required to use the land for an Indoor Recreation Facility.</p> <p>Pursuant to Clause 52.05-12 Office and industrial, an internally illuminated sign with display area exceeding 1.5 sqm requires a planning permit.</p>
Restrictive Covenants, Agreements & Easements	<p>The following S173 Agreements apply</p>



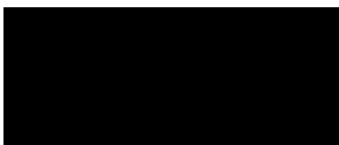
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	<p>Instrument no AN578725S – Development Contributions</p> <p>Instrument no AV056216H – Contributions towards the construction of Aitkens Boulevard</p> <p>Instrument no AN488752Q – Contributions towards the construction of Aitkens Boulevard</p> <p>Instrument no AG427732C</p> <p>All agreements pertain to the subdivision and development stages, and do not impose any obligations for the current proposal.</p>
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1.0 EXECUTIVE SUMMARY

The proposal seeks approval for

- Change the use of the land at 3 Eclipse Drive Mickleham to an Indoor Recreation Facility, and
- Installation of two internally illuminated signs each with a total display area of 6 square meter.

A planning permit P25423 was issued for the development of a warehouse which has already been completed on the site. A total of 25 car spaces have been provided onsite in accordance with the permit. The development provides for rainwater tanks, landscaping and nominates location of bins and advertising area, consistent with the permit conditions.

The proposed Indoor Recreation facility will provide for Seven (7) indoor pitches for cricket practice/training and three (3) badminton courts for leisure. Four (4) basketball hoops for training are proposed as a secondary, alternative use when the badminton courts are not in use. The facility will mostly operate outside business hours of the surrounding industrial land uses. The maximum of two (2) employees will be employed on a roster basis.

The subject site is located within Merrifield Business Park located to the south of Donnybrook Road and east of Aitkens Boulevard which is currently a car dependent area. The proposal provides satisfactory car parking and bicycle facility.

This report provides an assessment of the proposal against relevant policies and provisions of Hume Planning Scheme. The report demonstrates that compatibility of

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the use within an industrial precinct with net community benefit of employment generation promoting active living.

2.0 INTRODUCTION

2.1 Background

- 1) A planning permit P25423 was issued by Hume City Council on 18 January 2024 (**the dev. Permit**). The permit allows for Development of the land for a Warehouse. The permit has been acted upon, and the development has been completed.



Photo 1 shows view of the warehouse (as constructed)

(Source: Author, Date 4/03/2026)

2.2 Site and its surroundings

- 2) The subject site is located on the southern side of Eclipse Drive in Mickleham, approximately 150 metres east of the intersection of Aitken Boulevard and Eclipse Drive. The site is rectangular in configuration, with a frontage of approximately 37 metres to Eclipse Drive and a depth of approximately 60 metres, resulting in a total site area of approximately 2,215 square metres

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- 3) Vehicular access to the site is provided via two industrial-standard crossovers from Eclipse Drive, facilitating vehicle ingress and egress and providing connection to the on-site parking and maneuvering areas. A total of 25 car parking spaces including one accessible car space have been provided onsite complemented by landscaping along the front and side boundaries.
- 4) The site is developed with a 37 m wide, square-form warehouse incorporating a double-storey ancillary office component. The building attains an overall height of 7.9 m above finished floor level. The second-storey office element projects forward of the main building, enhancing articulation and visual interest while providing weather protection to the entry and adjacent car parking, including the accessible space.



Photo 2 shows aerial view of the subject site

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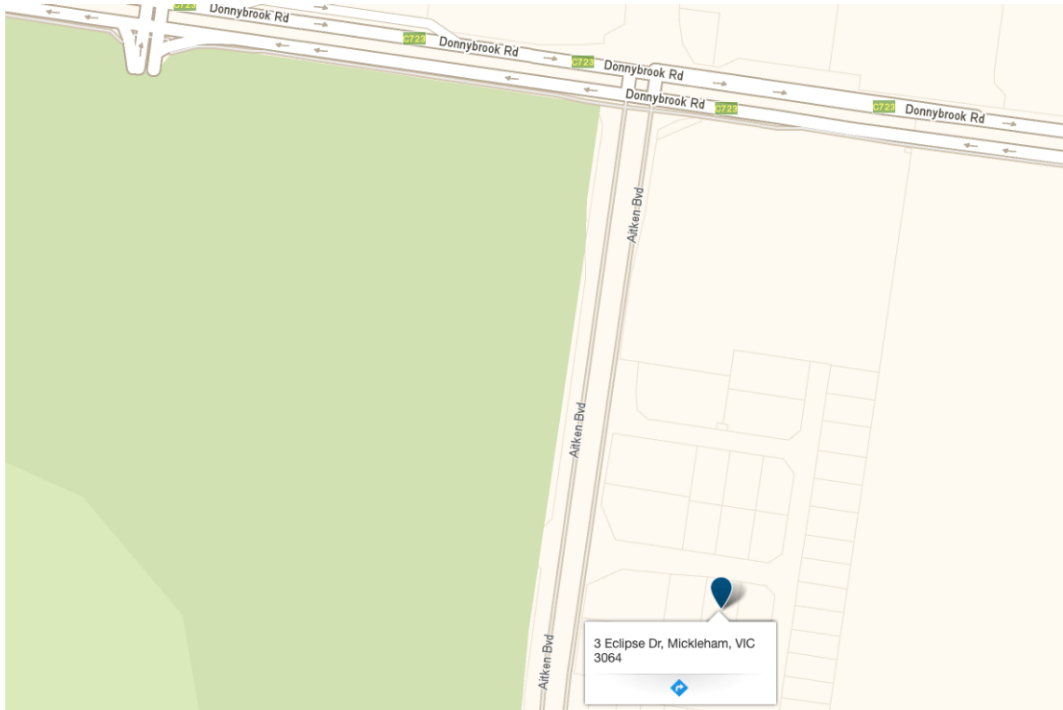


Figure 1 shows the site location and its immediate context
(Source: whereis.com)

- 5) The office building comprises a reception area, foyer, kitchen, and two toilets (including one accessible and one unisex facility with shower) at ground floor level. The first floor accommodates an office area, a storeroom, and bathroom facilities.
- 6) Roller shutter doors and dedicated personnel access doors are provided on both sides of the building, facilitating efficient vehicle loading and unloading operations, as well as safe and convenient pedestrian access. *(refer photo 1)*
- 7) The streetscape exhibits the typical character of an emerging industrial area, comprising a mix of partially constructed and fully developed warehouse buildings. It

developed warehouse buildings. It is the sole purpose of enabling its consideration and review as part of a planning process under the Planning and Environment Act 1987. The copy must not be used for any other purpose. Please note that the plan may not be to scale.

is supported by a footpath and nature strip with young street tree planting, industrial-standard vehicle crossovers, and on-street parking provided on both sides of Eclipse Drive. The developed properties feature visually permeable 2 m high galvanised steel fencing, finished in black, along the front and side boundaries, complemented by a landscaped strip within the front setback.



Photo 3 above shows front landscaping and adjoining property to the east (Source: Author Date 4/03/2026)

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Photo 4 below shows the adjoining property to the west



- 8) The adjoining property to the west of the site is occupied by a Timber roof truss and wall frames Manufacturers. To the east, the warehouse is currently under construction. The other businesses on the northern side of Eclipse Drive opposite to the site include a Construction Company and a caravan manufacturer. The property directly opposite to the site is currently under development.
- 9) In a broader context, the subject site is located within the Merrifield Business Park, a key employment precinct within Melbourne's Northern Growth Corridor. The area benefits from strong connectivity to Donnybrook Road

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and the Hume Freeway, providing convenient access to the broader metropolitan network. The land is included within the Merrifield Business Park, which supports a range of employment-generating uses within a well-planned industrial setting.

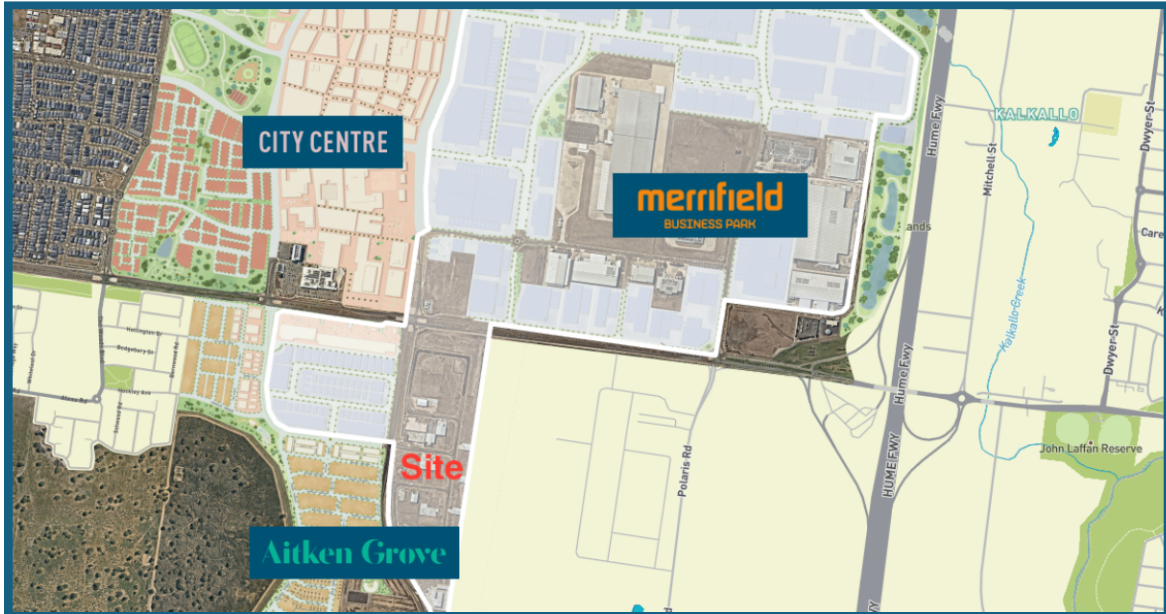


Figure 2 shows the site location and its context

(Source: Merrifield Masterplan, Mapbox & Open Street map)

- 10) Access to the subject site is currently car-dependent, with limited public transport availability. The nearest railway station is located in Donnybrook, approximately 5 km from the site, and is serviced by V/Line. Bus Route 525 operates within the broader area, providing connections to both Craigieburn and Donnybrook train stations; however, the nearest bus stop is located more than 1 km from the site along Donnybrook Road, equating to a walking distance of over 20 minutes.

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- 11) No buildings and works are proposed. The only works involved will be limited to internal fit outs.

2.3 The proposal

2.3.1 Use and Activities

- 12) The proposal seeks to change the approved warehouse use of the existing building to an Indoor Recreation Facility (**IRF**) which will operate as a year-round, weatherproof training venue as well as leisure destination, promoting active lifestyles and serving the needs of the surrounding residential and employment communities.

- 13) The proposed IRF will include the following:

- A total of seven (7) cricket practice pitches, comprising:
 - Four (4) full-length practice net pitches, each measuring 33 m in length and 3 m in width, providing adequate run-up areas for bowlers and incorporating standard creases at both ends.
 - Three (3) shorter practice net pitches, each measuring 24 m in length and 3 m in width, to be fitted with automatic bowling machines and incorporating a standard crease at the batsman end.

All pitches will be surfaced with synthetic turf enclosed by 4 m high perimeter netting.

- Three (3) Badminton Courts.
- Four (4) basketball hoops.

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Basketball hoops are proposed as a secondary, alternative use when the badminton courts are not in use. Where courts are unoccupied, the corresponding area may be used for basketball practice. At any given time, use will be managed to avoid conflict between activities, with only compatible or partial concurrent use occurring where appropriate. The basketball hoops are intended for training and practice purposes only, and no formal matches are proposed.

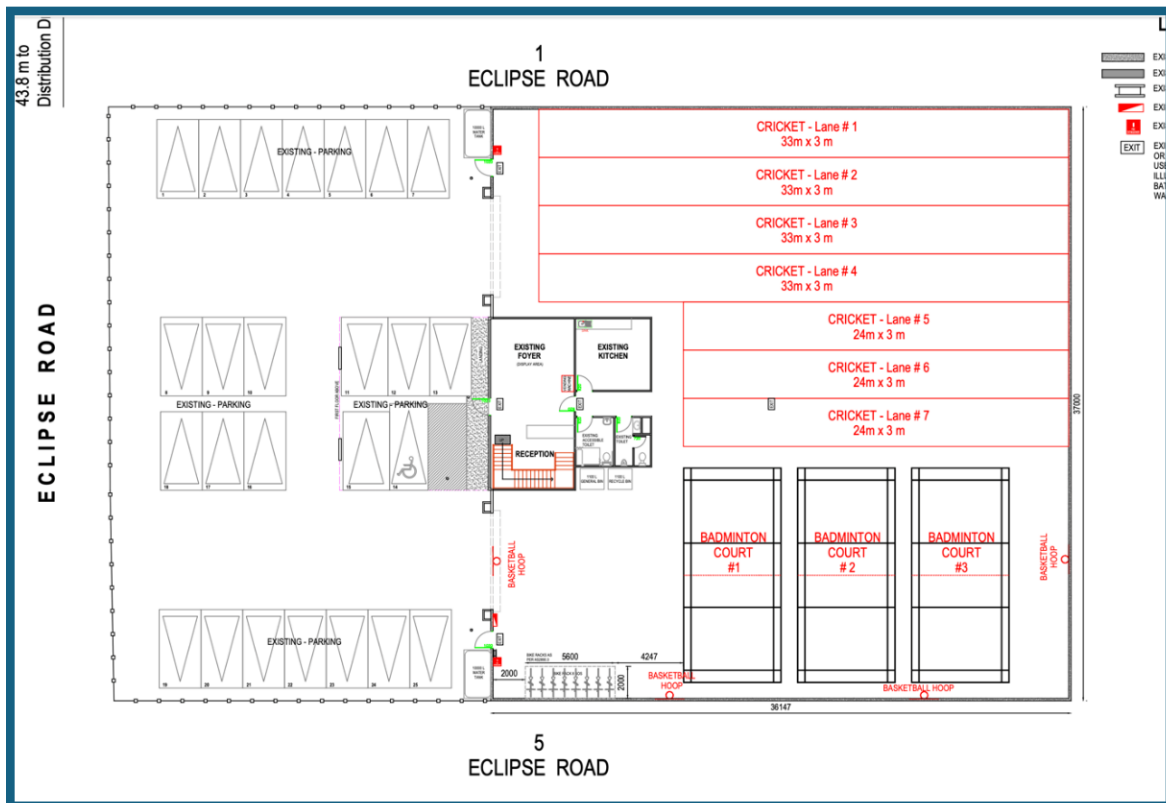


Figure 3 shows the proposed layout

(Refer Proposed plan DWG no SH-02 dated 13/03/2026)

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2.3.2 Hours of Operation

14) The following hours of operation are proposed:

- Weekdays (Monday to Friday) - 3:00 pm to 10:00 pm
- Saturday: 10:00 am to 7:00 pm
- Sundays and Public Holidays: 11:00 am to 5:00 pm

2.3.3 Patrons and Employees

15) At full occupancy, a total number of twenty-five (25) patrons are proposed as per the following configuration:

Activity	Occupancy	Total no of Patrons
Full length pitches	2 players / pitch X 4 A maximum of 2 Coaches	10
Short length pitches	1 player	3
Badminton Courts	4 players/ Court	12*
Total Patrons		25

* *Basketball hoops are unlikely to exceed the occupancy rate of badminton courts.*

Table 1 shows patron configuration

16) The maximum of two (2) employees will be employed on a roster basis. The facility will be managed based on prior online reservations.

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2.3.4 Advertising Signs

17) A total of two (2) internally illuminated signs are proposed on the front elevation, each measuring 5 m in length and 1.2 m in height, positioned above the roller doors on either side. The signs will display identical content and are designed to integrate proportionately with the building façade, complemented by the glazed office windows.

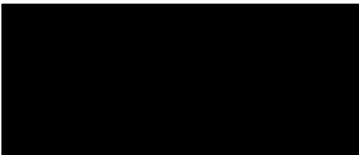
The design and location of the proposed signs are shown below:



**Figure 4 shows details of the proposed signs
(Refer Front Elevation plan DWG no SH-03 dated
13/03/2026)**

2.3.5 Other details

18) No food and drinks will be served. A vending machine will be installed at the premises for patrons to buy water and other energy drinks.



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- 19) The waste will be privately collected onsite as per planning permit P25423 issued by Hume City Council. The waste collection will occur outside operational hours when the facility is not in use.
- 20) Loading and unloading bays will be removed as unlike an industrial operation, the proposed use will not warrant traditional deliveries to the site.
- 21) The proposal retains existing 25 car parking spaces. The proposal does not reduce or vary the required number of car parking spaces as discussed in the later section of this report.



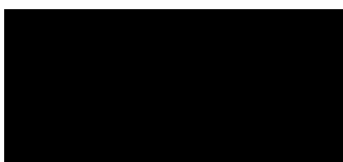
Photo 5 shows internal view of onsite carparking looking south (Source: Author, Date 4/03/2026)

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22) Two (2) additional bicycle spaces have been provided for the proposed use in addition to the six (6) spaces approved by the existing planning permit, totalling a total of eight (8) bicycle spaces. These spaces have been relocated for better functionality, circulation and movement within the building.

3.0 PLANNING CONTROLS

Control	Particulars	Permit Trigger
Clause 33.01 – Industrial 1 Zone (IN1Z)	A planning permit is required to use the land for an Indoor Recreation Facility.	Yes
Development Plan Overlay – Schedule 31 (DPO 31)	A development plan for <i>Merrifield South Development Plan 225-285 Donnybrook Road, Mickleham</i> has already been approved for the subject site. The DPO itself does not trigger any planning permit requirements if a development p	No
Clause 52.06 Car Parking	The proposal does not seek to reduce or vary the car parking requirements.	No



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<p>Clause 52.34 Bicycle Facilities</p>	<p>The proposal provides two (2) additional bicycle spaces in accordance with the requirements.</p>	<p>No</p>
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Figure 5 shows zoning of the property (Source: VicPlan)

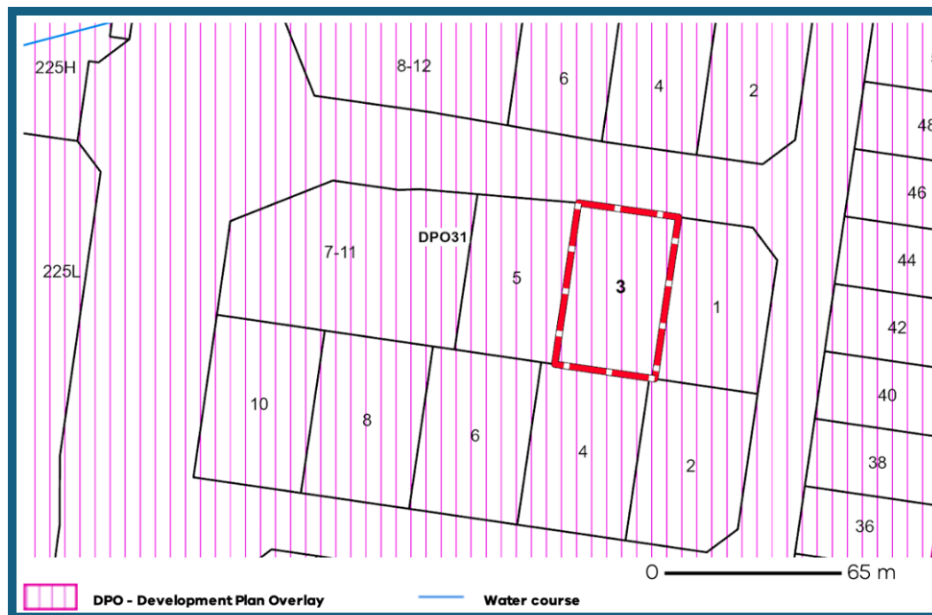
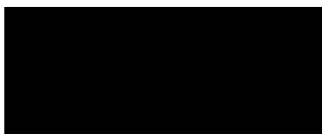


Figure 6 shows DPO31 (Source: VicPlan)

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4.0 PLANNING ASSESSMENT

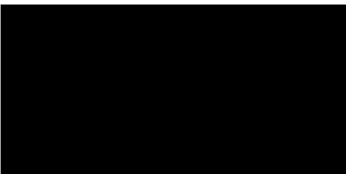
4.1 Strategic Assessment

4.1.1 Municipal Planning Strategy (MSP)

- 23) Clause 02.04-2 – Strategic Framework Plan nominates the site as future employment area. This is affirmed by Plan for Victoria (pages 36 &37) which identifies the subject site as part of State Significant Industrial Precinct.
- 24) Clause 02.03-7 (Strategic Direction: Economic Development) seeks to protect the supply of industrial land from encroachment from non-industrial uses.

4.1.2 Planning Policy Framework

- 25) Policies within the Planning Policy Framework ('PPF') applicable to this proposal include:
- Clause 13.07-1S (Land use compatibility) seeks to protect amenity and safety while facilitating appropriate industrial uses with potential off-site impacts.
 - Clause 17.03-1S (Industrial land supply) contains a strategy to protect and plan existing industrial estates to facilitate further industrial development.
 - Clause 17.03-1L (Industrial land supply in Hume) has a strategy to discourage non-industrial uses that have a negative impact on the operation of industrial uses or would be more appropriately located within a Commercial 1 Zone.



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- Clause 17.03-2S (Sustainable industry) has an objective to facilitate the sustainable operation of industry by protecting industrial activity in industrial zones from encroachment of commercial and other sensitive uses that would adversely affect industry viability.
- Clause 17.03-3S (Significant industrial land) contains strategies to ensure the protection of significant industrial estates.

4.1.3 Response

26) The proposed Indoor Recreation Facility is not a sensitive use which would have any adverse impact on the operation of the surrounding industrial operations, nor does it result in loss of the industrial land as the existing warehouse facility can be returned to industrial operations at any time if the proposed use were to cease at the subject site.

27) The proposed use is not considered inconsistent with the objectives of MSP and PPF and enhances diversified employment opportunities within the precinct. Uses such as the subject use are considered compatible and appropriate in industrial precincts. In *Lim v Wyndham CC [2022] VCAT 267*, the tribunal affirmed acceptability of such uses in industrial precincts while referring to previous tribunal decisions. The tribunal member stated at para 7:

"The previous Tribunal, in PCRDM Pty Ltd v Wyndham CC [2019] VCAT 1029, found that the badminton and table tennis centre land use is generally in accordance with the

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Truganina Employment Area Precinct Structure Plan (PSP). In other words, the Indoor Recreation Facility has already been found to be an acceptable land use outcome in this location."

4.2 Statutory Assessment

4.2.1 Clause 33.01 Industrial 1 Zone (IN1Z)

Purpose

28) The purpose of the zone is to implement the MPS and PPF while providing for manufacturing industry. As discussed in the earlier section of this report, the proposal aligns with strategies of MPS and PPF.

Use

29) Clause 33.01-1 Table of uses nominates the proposed use as a Section 2 use which requires a planning permit. The proposed use is not prohibited in the zone.

Decision Guidelines

30) Clause 33.01-2 specifies decision guidelines that the responsible authority must consider before deciding on an application. The relevant decision guidelines of the clause are outlined below:

- The Municipal Planning Strategy and the Planning Policy Framework.
- The effect that the use may have on nearby existing or proposed residential areas or other uses which are sensitive to industrial off-site effects, having regard to any comments or directions of the referral authorities.

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- The effect that nearby industries may have on the proposed use.
- The drainage of the land.
- The availability of and connection to services.
- The effect of traffic to be generated on roads.

Response

31) The proposed use complies with the intent of zone. The proposed use will have minimal or no conflict with the other neighbouring industries due to minimal overlap of operational hours.

32) The subject site due to its proximity to Merrifield Town Centre and residential areas will offer excellent training and leisure opportunities to the local community. Moreover, the local employees from the nearby industrial area could use the facility outside their normal working hours. This is consistent with the following strategic documents:

- **Council Plan 2025-2029** identifies vision for Hume as a *"A healthy community that is inclusive and Proud"* as one of its priorities. Under this priority Strategic Objective 3.2 (Page 64) seeks for *"A healthy community with access to opportunities."* This objective includes the following relevant strategic indicator:

"Strategy 3.2a Increase in percentage of community accessing leisure facilities."

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- Council's ***Draft Active Living Plan*** envisions to enhance community's physical activity and thereby, supporting general wellbeing.

33) Additionally, the proposed use creates employment opportunities for local community closer to home. It is likely that the proposed IRF would create passive employment opportunities for local coaches/trainers, in addition to the general employees. This aligns with "Accessible jobs and services"; one of the five pillars of Plan for Victoria.

34) It is considered that waiver of loading/unloading bays is justified in this instance as the proposed IRF does not warrant any deliveries or pickups by heavy vehicles other than office-based supplies which would be serviced by normal courier services by cars/vans. The se deliveries can be easily managed within the existing car parking.

35) For the reasons above, it is considered that the proposed use of the site for an IRF is a compatible land use which can co-exist within the industrial precinct and results in an acceptable outcome.

4.2.2 Clause 43.04 Development Plan Overlay – Schedule 31 (DPO31)

36) Planning Scheme Amendment VC247 inserted a new schedule 31 to the DPO - Merrifield South Development Plan. The approved development plan nominates the subject site and its surrounds as part of the Merrifield Business Park. The proposal does not contravene the intent of the nominated land use for the precinct.

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37) Clause 3 Conditions and requirements for permits of DPO31 outlines requirements which should be complied with before a permit could be granted. These requirements and conditions apply to the broader development of and within the precinct. The proposal does not warrant any assessment against provisions of this clause.

4.2.3 Clause 52.05 Advertising signs


38) Clause 33.01-5 Signs of IN1Z identifies the subject zone as Category 2 area for advertising signs which applies to Office and Industrial areas. Category 2 impose low limitations on the signs.

39) The development planning permit P25423 (**the dev. Permit**) issued by Hume City Council considered the default advertising area for business identification signs.

40) Pursuant to clause 52.05-12, an internally illuminated exceeding display area of 1.5 sqm requires a planning permit. The proposal includes installation of two internally illuminated signs as explained in para 15 of this report.

41) The proposed signs are unlikely to cause any adverse impact on amenity of the area. The subject site is not located within immediate vicinity of residential zoned land. Any impact on the safety of pedestrians and vehicles is not anticipated. On the other hand, these internally illuminated signs would facilitate potential patrons to identify and locate the business during late hours.

42) Location of the proposed signs responds positively to the building design and is consistent with the plans endorsed by previous planning permit.



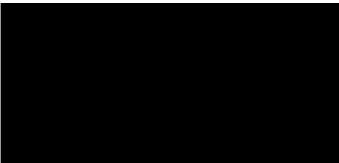
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4.2.4 Clause 52.06 Car parking

- 43) A total of twenty-five (25) car spaces has been provided onsite in accordance with the dev. permit considering “warehouse” as the approved land use.
- 44) Table 1 of Clause 52.06-5 stipulates car parking requirements if a new use commences on the site. The proposed IRF use is not nominated in the table. Further, Clause 52.06-6 states that where a use of land is not specified in Table 1 or where a car parking requirement is not specified for the use in another provision of the planning scheme, car parking spaces must be provided to the satisfaction of the responsible authority.
- 45) It is a general practice to refer and use car parking requirements of “Place of Assembly” for land uses like Restricted Recreation Facility or Indoor Recreation Facility. The subject site is located in Category 1 for the purpose of Table 1.
- 46) Based upon the above, the proposed IRF complies with the standard as described below:

No. of patrons	Min. Requirement	Car spaces required	Provision
25	0.3 car spaces per patron	25 X 0.3 = 7.5 = 7	25 car spaces

Table 2 shows the car parking provisions



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47) Moreover, it is anticipated that young age group patrons would predominantly get dropped off and picked up as per their training sessions. The proposal is consistent with Clause 52.06-9 Design Standards for car parking.

4.2.5 Clause 52.34 Bicycle Facilities

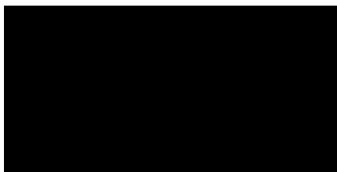
48) Table 1 of Clause 52.34-5 stipulates the following bicycle requirements for “Minor sports and recreation facility” which is an umbrella land use term for an IRF. The bicycle requirements are described below:

Use	Bicycle space requirements	Car spaces required	Provision
Minor sports and recreation facility	1 per 4 employees For patrons 1/ 200 sqm of net floor area	1 1460/ 200 = 7.3 = 7	8

Table 3 shows the bicycle provisions

49) Eight (8) bicycle spaces have been provided satisfying the requirements. The bicycle spaces have been designed in accordance with Clause 52.34-6 Design of bicycle spaces.

50) The bicycle spaces have been conveniently located near the western entry inside the building. This location differs from the plans endorsed by the dev. permit. The new



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location results in better access to bicycle spaces and improves internal circulation for pedestrians/patrons.

4.2.6 Clause 65 Decision Guidelines

- 51) Key considerations of Clause 65.01 pertain to orderly planning of the area including compatibility and appropriateness of the proposed use which have been evidently addressed in the earlier sections of this report. The proposal responds positively to the policy framework with minimal or no adverse impact on the amenity of the area.
- 52) The proposal is considered an acceptable outcome which should satisfy the responsible authority as stated by the tribunal in para 9 of *Owners Corporation – Plan No. 444603 v Kingston CC [2025] VCAT 820* :

“Planning does not seek ideal outcomes, or outcomes which respond positively to every relevant policy. Rather, acceptable outcomes are the measure by which planning decisions are to be made.”

5.0 CONCLUSION

Having regard to the relevant policies and provisions in the scheme and based upon the planning merits of net community benefits, it is recommended that the proposal should be supported by the responsible authority.

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ARCHITECTURAL DRAWINGS

FOR PROPOSED

*PROPOSED INDOOR SPORT CENTRE IN EXISTING WAREHOUSE
BUILDING*

ADDRESS:

LOT 3- 3 ECLIPSE DR, MICKLEHAM, VIC 3064

PAGE 1: LOCATION

PAGE 2: PROPOSED PLAN

PAGE 3: ELEVATION

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1. CONTRACTORS to check all dimensions on site prior to commencing works.
2. DO NOT SCALE from this drawing.
3. Use given dimensions

SHEET
SIZE
A3

PROPOSAL:

**PROPOSED INDOOR SPORT
CENTRE IN EXISTING
WAREHOUSE BUILDING**

NORTH:

CLIENT:

**MICKLEHAM
INDOOR
CENTER**

DRAWING NO:

SH - 00 , 0 of 0

SITE ADDRESS:

LOT 3
3 ECLIPSE DR,
MICKLEHAM, VIC 3064

DATE: 13 MAR 2026

SCALE: 1 : 100

DRAWN: SS

CHECKED:

REV DATE:

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GRAPHIC DESIGN NOTE

NOMINATED BUILDER TO CONSULT IN-HOUSE GRAPHIC DESIGNER PRIOR FINALISATION OF QUOTATION AND CONSTRUCTION.

1. DESIGNER TO NOMINATE GRAPHIC FILM PRINTER AND OBTAIN PRINT QUOTATION. FILM / ARTWORK PRINTING SHALL BE EXCLUDED FROM BUILDER'S QUOTE. ALL OTHER ITEMS TO BE QUOTED BY BUILDER INCLUDING GRAPHIC FILM INSTALLTION ON-SITE
2. BUILDER TO ENSURE THAT ALL SURFACES ARE PROPERLY PREPARED FOR GRAPHIC APPLICATION. SURFACES WHERE A GRAPHIC APPLICATION IS TO OCCUR ARE TO BE COMPLETELY FLAT AND SMOOTH AND FREE FROM ANY INCONSISTENCIES.
3. BUILDER/ CONTRACTOR TO ENSURE THAT WALLS TO BE FINISHED WITH VINYL GRAPHICS ARE PREPARED WITH HIGH GLOSS ACRYLIC PAINT WITH NO INHIBITORS SUCH AS TEFLON.
4. BUILDER/ CONTRACTOR TO ENSURE THAT WALLS TO BE FINISHED WITH SANDEX LAMINATION (WALL PAPER GRAPHICS) ARE PREPARED WITH AN ESTAPOL CLEAR FINISH.

CONTRACTOR TAKE NOTE

CONTRACTORS MUST REFER TO CURRENT SITE CONSTRUCTION PLANS FOR AMENDMENTS PRIOR TO PERFORMING WORKS. THESE DRAWINGS SHALL BE READ IN CONJUNCTION WITH ALL OTHER DRAWINGS ON THIS PROJECT, WITH THE SPECIFICATIONS AND WITH SUCH OTHER DRAWINGS AND / OR INSTRUCTIONS AS MAY BE ISSUED DURING THE COURSE OF CONTRACT. ANY DISCREPANCIES SHALL BE REFERRED TO THE ARCHITECT AND / OR ENGINEERS FOR SOLUTION PRIOR PROCEEDING WITH WORK. THE CONTRACTOR AND / OR SUBCONTRACTORS SHALL BE RESPONSIBLE FOR ALL LEVELS AND DIMENSIONS, INCLUDING SET OUT DIMENSIONS, PRIOR TO COMMENCING ON SITE AND OFF SITE CONSTRUCTION AND / OR FABRICATION.

BUILDER TO CONFIRM ALL EXISTING ITEMS WITH CLIENT PRIOR ANY DEMOLITION WORK. ALL DAMAGES RESULTING FROM REMOVAL WORK ARE TO BE MADE GOOD, USE MATCHING MATERIALS TO PATCH.

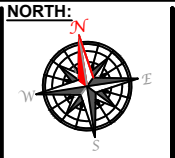
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SITE LOCATION

1. CONTRACTORS to check all dimensions on site prior to commencing works.
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PROPOSAL:
PROPOSED INDOOR SPORT CENTRE IN EXISTING WAREHOUSE BUILDING



CLIENT:
MICKLEHAM INDOOR CENTER

DRAWING NO:
SH - 01 , 1 of 3

SITE ADDRESS:
 LOT 3
 3 ECLIPSE DR,
 MICKLEHAM, VIC 3064






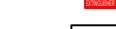
DATE:	13 MAR 2026
SCALE:	1 : 500
DRAWN:	SS
CHECKED:	
REV DATE:	

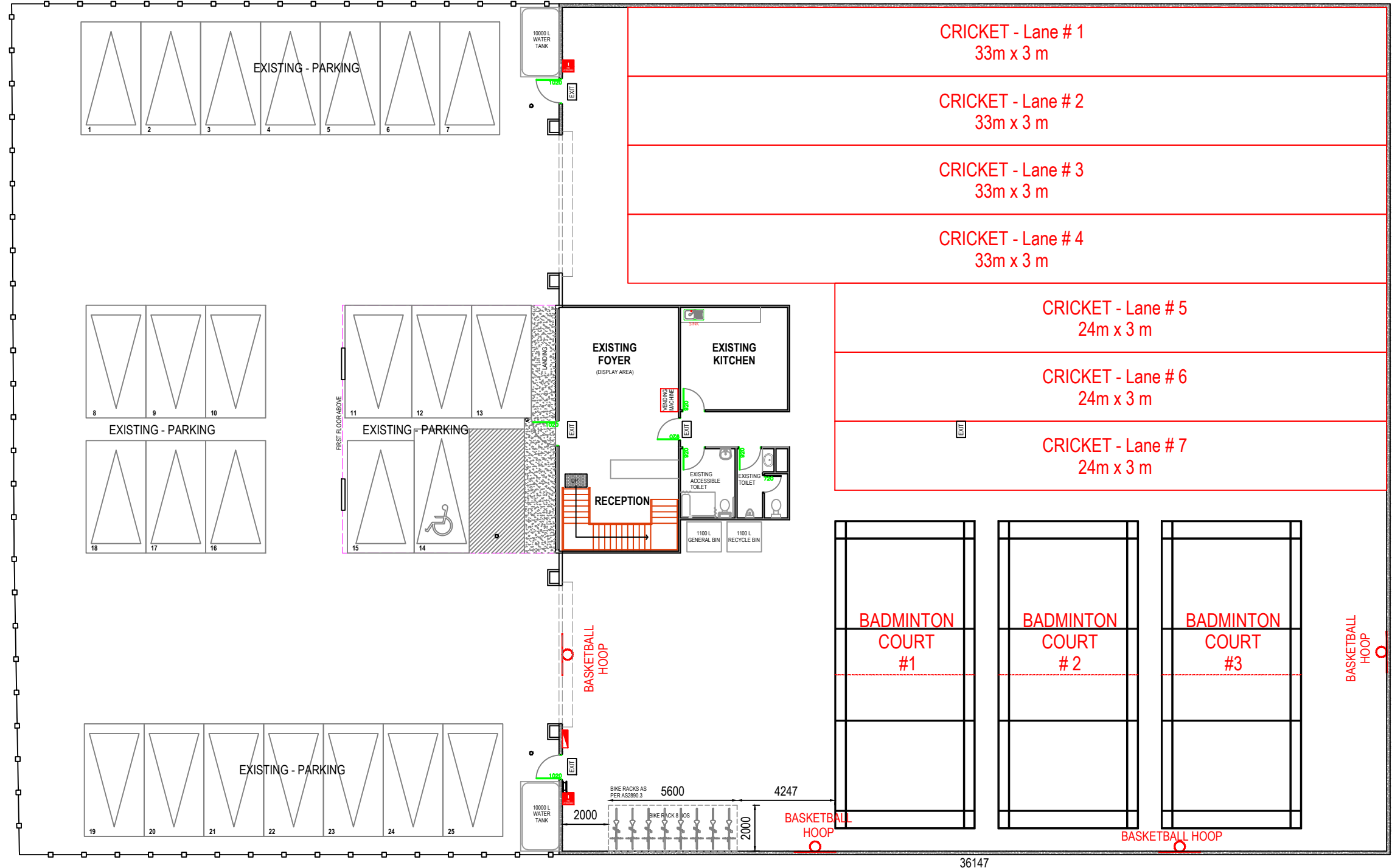
43.8 m to
Distribution Drive

ECLIPSE ROAD

1
ECLIPSE ROAD

LEGENDS:

-  EXISTING PRECAST CONCRETE PANEL WALL
-  EXISTING PLASTER WALL
-  EXISTING FIRE HOSE REEL
-  EXISTING DISTRIBUTION BOARD
-  EXISTING FIRE EXTINGUISHER
-  EXISTING - EXIT SIGNEXIT SIGN ABOVE DOOR OR BESIDE 2200 - 2500MM ABOVE FLOOR. USE MINITRONICS TYPE "LEX 10/25" AND TO ILLUMINATED AT ALL TIMES AND HAVE A BATTERY POWERED BACK UP SYSTEM OF 25 WATTS



5
ECLIPSE ROAD

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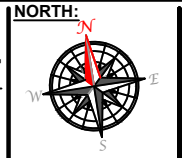
PROPOSED PLAN

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3. Use given dimensions

SHEET SIZE
A3

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PROPOSAL:
PROPOSED INDOOR SPORT CENTRE IN EXISTING WAREHOUSE BUILDING



CLIENT:
MICKLEHAM INDOOR CENTER

DRAWING NO:
SH - 02 , 2 of 3

SITE ADDRESS:
LOT 3
3 ECLIPSE DR,
MICKLEHAM, VIC 3064

DATE: 13 MAR 2026
SCALE: 1 : 200
DRAWN: SS
CHECKED:
REV DATE:



FRONT ELEVATION

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ELEVATIONS

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3. Use given dimensions

SHEET SIZE
A3

PROPOSAL:
PROPOSED INDOOR SPORT CENTRE IN EXISTING WAREHOUSE BUILDING

NORTH:

CLIENT:
MICKLEHAM INDOOR CENTER

DRAWING NO:
SH - 03 , 1 of 3
SITE ADDRESS:
LOT 3
3 ECLIPSE DR,
MICKLEHAM, VIC 3064

DATE:	13 MAR 2026
SCALE:	1 : 100
DRAWN:	SS
CHECKED:	
REV DATE:	

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