

DATED 16 NOVEMBER 2011

BETWEEN

Land Development Agency ABN 20 419 925 579

AND

Canberra Estates Consortium No. 30 Pty Limited ACN 145 733 820

Deed of Variation to Contract for Sale



MEYER VANDENBERG
LAWYERS

Level 3, 1 Farrell Place
Canberra City 2601

Telephone: (02) 6279 4444
Facsimile: (02) 6279 4455
Email: email@meyervandenberg.com.au

THIS DEED made the 16 day of NOVEMBER 2011.

PARTIES

1. **Land Development Agency (ABN 20 419 925 579)** of Level 6 TransACT House, 470 Northbourne Avenue, Dickson ACT 2602
(Seller)
2. **Canberra Estates Consortium No. 30 Pty Limited (ACN 145 733 820) C/- Maxim Chartered Accountants Level 2, 59 Wentworth Avenue, Kingston ACT 2604**
(Buyer)

BACKGROUND

- A. The Seller and the Buyer entered into a Contract for Sale on 15 June 2011 for the right to the grant of the Crown Lease for the Land for \$36,250,000.00 ('Contract').
- B. On the date of the Contract, the Buyer paid a Deposit of \$3,625,000.00 with the Balance being due on the Date for Completion.
- C. The Buyer and Seller agree to vary the Contract with respect to the payment of the Balance in accordance with this Deed.

OPERATIVE PROVISIONS

1 DEFINITIONS & INTERPRETATION

1.1 Definitions

In this Deed, the following words have these meanings unless the context otherwise requires:

- (a) **Balance** means the balance of the Price in accordance with the Contract;
- (b) **Business Day** means a day which is not a Saturday, Sunday or public holiday in the ACT;
- (c) **Date for Completion** means the date for completion in the Contract;
- (d) **Deposit** means the deposit paid in accordance with the Contract;
- (e) **Land** means Block 132 Section 1 Ngunnawal;
- (f) **Notice to Complete** has the same meaning as in the Contract; and
- (g) **Price** means \$36,250,000.00 (GST inclusive).

1.2 Interpretation

In this Deed unless the contrary intention appears:

- (a) a reference to '\$' is to Australian currency;
- (b) words expressed in the singular include the plural and vice versa;
- (c) words expressed in one gender include the other genders, as is appropriate in the context;
- (d) a reference to a "person" includes a corporation;
- (e) a reference to a party includes that party's heirs, successors and permitted assigns;
- (f) headings to clauses are included for the sake of convenience only and do not affect the interpretation of the clauses to which they relate; and
- (g) references to any statute or statutory provision include that statute or statutory provision as amended, extended, consolidated or replaced by subsequent legislation and any orders, regulations, instruments or other subordinate legislation made under the relevant statute.

2 VARIATION TO CONTRACT

The Seller and the Buyer agree to vary the Contract as follows:

- (a) clause 2.6 is deleted and replaced with the following clause:

"The Balance of the Price must be paid to the Seller in Canberra by installments as follows:

- (a) \$6,375,000.00 on 11 October 2011 (**'First Installment'**); and
- (b) *the remainder of the Balance on Completion (**'Second Installment'**) by unendorsed bank cheque."*

- (b) clause 2.9 is inserted as follows:

"On Completion the Buyer must give the Seller an authority directing the Stakeholder to account to the Seller for the Deposit."

- (c) clause 20.3 is inserted as follows:

"If the Buyer does not comply with a Notice to Complete or a Default Notice or is otherwise in breach of an essential term then the Seller may by notice served on the Buyer terminate and may keep:

- (a) *the First Installment; and*
- (b) *the damages paid in accordance with clauses 23.1(a)(i) and 23.1(b)."*

- (d) clause 23.1 is deleted and replaced with the following clause:

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"If Completion does not occur by the Date for Completion, due to the default of the Buyer then the Buyer must pay the Seller as liquidated damages on Completion:

(a) *interest:*

(i) *on the Price at the rate of 10% per annum calculated on a daily basis from the Date for Completion until 11 October 2011; and*

(ii) *on the Second Installment at the rate of 10% per annum calculated on a daily basis from 12 October 2011 until Completion; and*

(b) *the amount of \$1,100 (GST inclusive) to be applied towards any legal costs and disbursements incurred by the Seller if Completion occurs later than 7 days after the Date for Completion."*

3 CONFIRMATION

Subject to the variations set out in clause 2 of this Deed, the parties confirm in all other respects the terms and conditions of the Contract. For the avoidance of any doubt, the parties agree as follows:

- (a) the Date for Completion of the Contract is 13 September 2011;
- (b) from 14 September 2011, the Seller has had a right to issue a Notice to Complete under clause 19 of the Contract but has agreed to refrain from exercising its right to issue a Notice to Complete until 8 December 2011. The Seller reserves its right to issue a Notice to Complete after 8 December 2011;
- (c) on 11 October 2011, the Buyer paid \$278,422.36 to the Seller being:
 - (i) the payment of interest in accordance with clause 23.1(a)(i) of the Contract (as amended by this Deed); and
 - (ii) the amount to be applied towards legal costs in accordance with clause 23.1(b) of the Contract (as amended by this Deed); and
- (d) the First Installment paid by the Buyer to the Seller on 11 October 2011 is not an increase in the amount of the Deposit.

4 LEGAL COSTS

The parties must each pay their own legal costs arising in connection with this Deed.

5 DATE OF THIS DEED

This Deed shall for all purposes be deemed to have been executed by all the parties on the date which it bears.

6 GOVERNING LAW

This Deed shall be governed by and construed pursuant to the laws of the Australian Capital Territory.

7 SEVERANCE

If any provision contained in this Deed is or becomes legally ineffective, under the general law or by force of legislation, the ineffective provision shall be severed from this Deed which otherwise continues to be valid and operative.

8 COUNTERPARTS

This Deed may consist of a number of counterparts and the counterparts taken together constitute one and the same instrument.

9 CONFIDENTIALITY

The parties agree not to disclose the terms of this Deed to any person, other than is necessary to comply with any statutory requirements.

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EXECUTED AS A DEED

Seller

Executed by an authorised delegate of
the Land Development Agency (ABN
20 419 925 579) in the presence of:)
)
)
)
)

Name:
Signature of Authorised Delegate

Name:
Signature of Witness

Buyer

Executed by Canberra Estates
Consortium No. 30 Pty Limited (ACN
accordance with the
Corporations Act:)
)
)
)

Name:
Signature of Director/Secretary

Name:
Signature of Director

DATED

2011

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Land Development Agency ABN 20 419 925 579

AND

Canberra Estates Consortium No. 30 Pty Limited ACN 145 733 820

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Telephone: (02) 6279 4444
Facsimile: (02) 6279 4455

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10
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EXECUTED AS A DEED

Seller

Executed by an authorised delegate of)
the **Land Development Agency (ABN)**
20 419 925 579 in the presence of:)
)
)

Name:
Signature of Authorised Delegate

Director Sales

Name:
Signature of Witness

Buyer

Executed by **Canberra Estates)**
Consortium No. 30 Pty Limited (ACN)
145 733 820 in accordance with the)
Corporations Act:)
)

Name:
Signature of Director/Secretary

Name:
Signature of Director

Forner, Julia

From: Nugent, Adam
Sent: Friday, 22 July 2011 2:53 PM
To: Forner, Julia
Cc: Polsen, Steve
Subject: FW: Sales office plans
Attachments: Scanned from MURRUMBA281 20/07/2011 10:22; Scanned from MURRUMBA281 20/07/2011 10:24; 4373_001.pdf; 4336_001.pdf

Julia,

In Clint's absence could you please take a look at the attached plans from Village. They want to put a temp sales suite on the Ngunnawal site. Their licence agreement can be amended if this proposal is acceptable.

Kind Regards

Adam

Adam Nugent | A/g Estate Manager
 Land Development Agency
 Level 6 TransACT House, 470 Northbourne Avenue, Dickson ACT 2602
 Phone: 02 6207 4754 | Fax: 02 6207 5101 | Web: www.la.act.gov.au

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From: i
Sent: Friday, 22 July 2011 1:01 PM
To: Nugent, Adam
Cc: 'steve.pulsen@act.gov.au'
Subject: FW: Sales office plans

am,

Please find attached plans indicating where we would like to locate a site/sales building. And details of the building
 Could you please as discussed amend the existing licence application

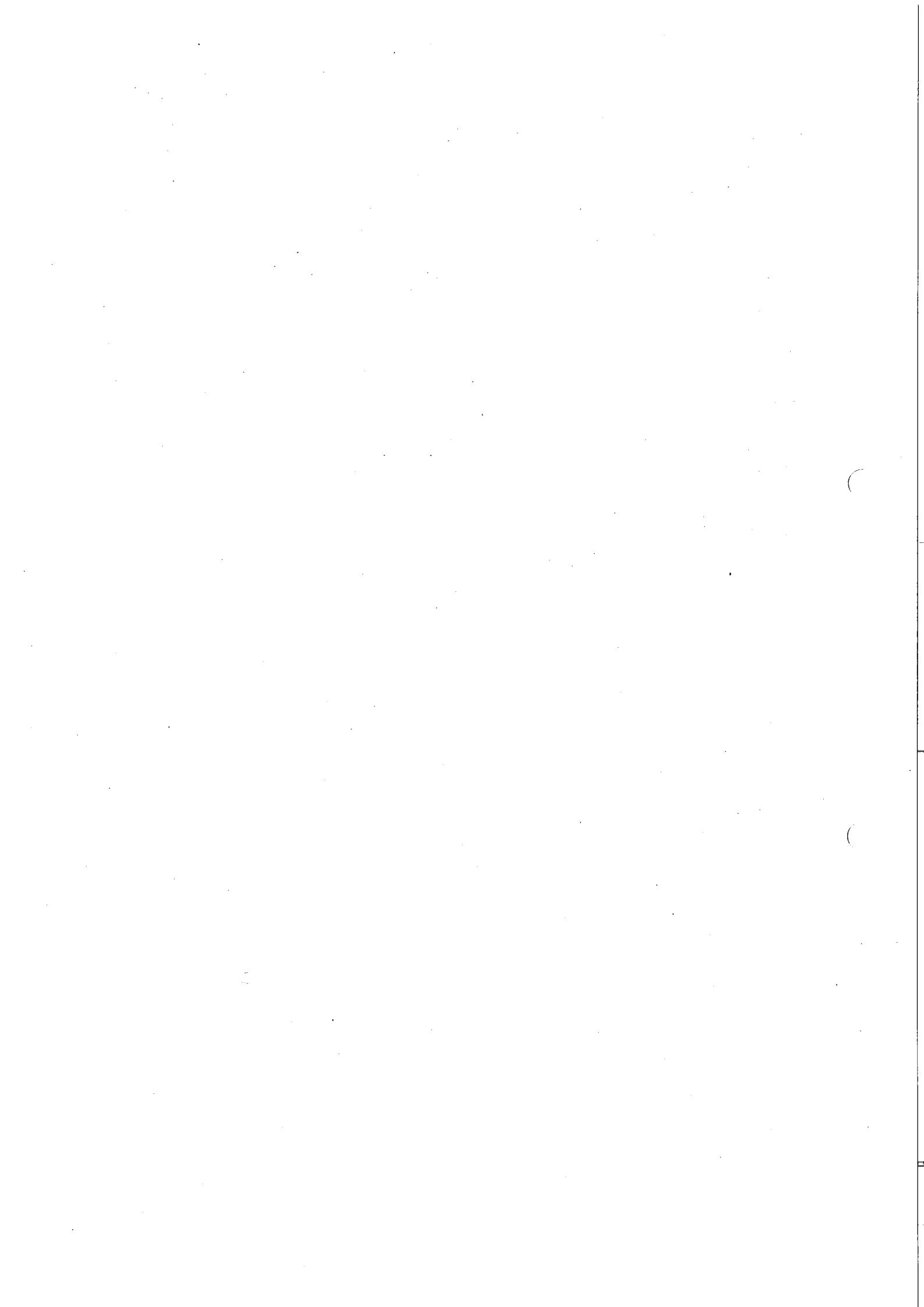
Thanks,

The Village Building Co. Limited

Level 10, 221 London Circuit, Canberra City ACT 2600 | P.O. Box 211 Civic Square ACT 2608
 Phone 62463407 | Fax 62463499
www.villagebuilding.com.au

Please consider the Environment before printing this email

The information contained in this email and any attachments is confidential and may be legally privileged.
 If you have received this email in error, please contact The Village Building Co Limited and delete this email.



From:
Sent: Friday, 22 July 2011 10:26 AM
To:
Cc:
Subject: FW: Sales office plans

Hi .

Attached are plans of the sales shed for Ngunnawal as requested. I have also attached a copy of the map that Ken gave us to demonstrate where it should be located on the site.

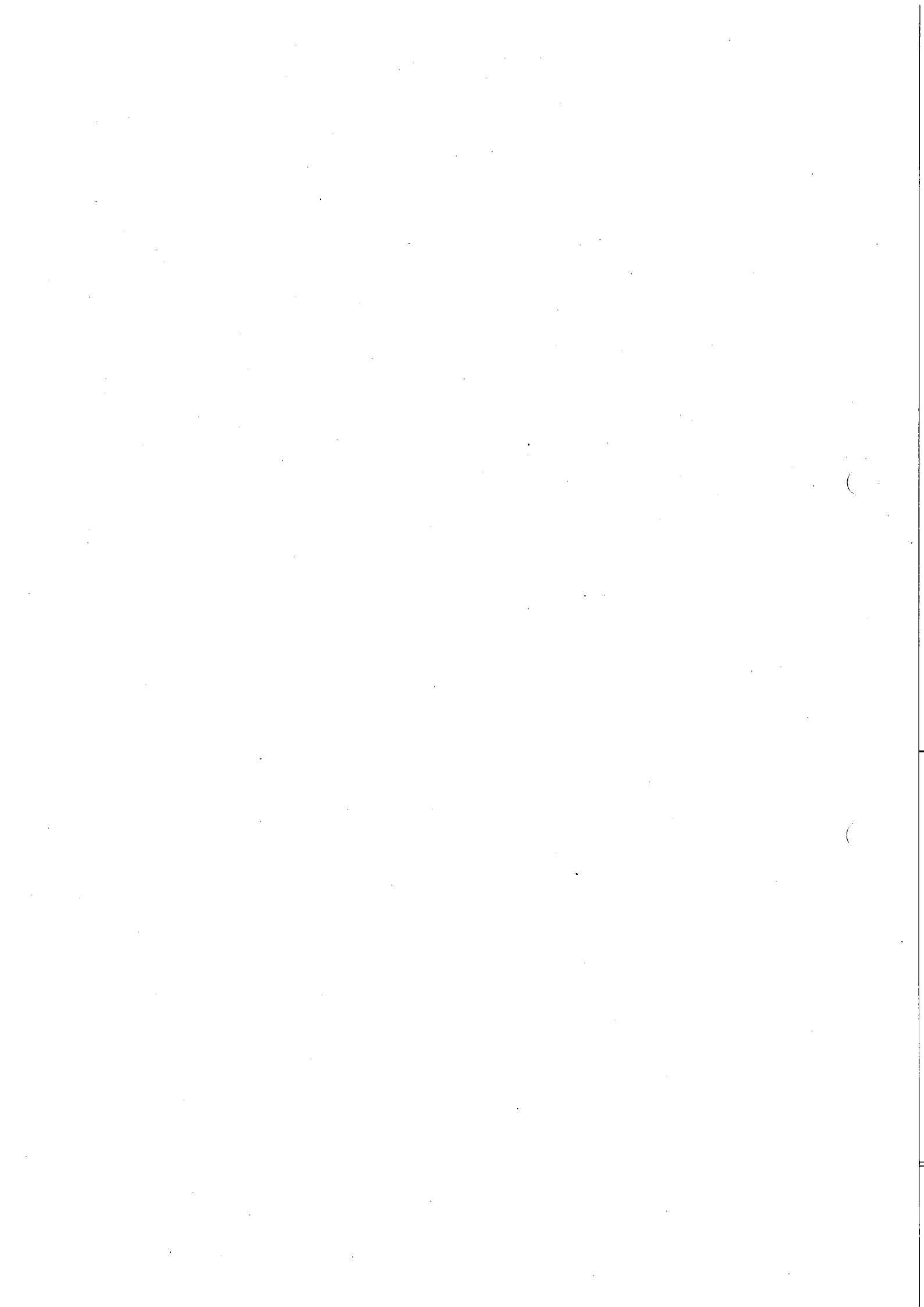
As for footings, in the past all we do is use timber blocks to level it. These buildings are designed to be used for this purpose.

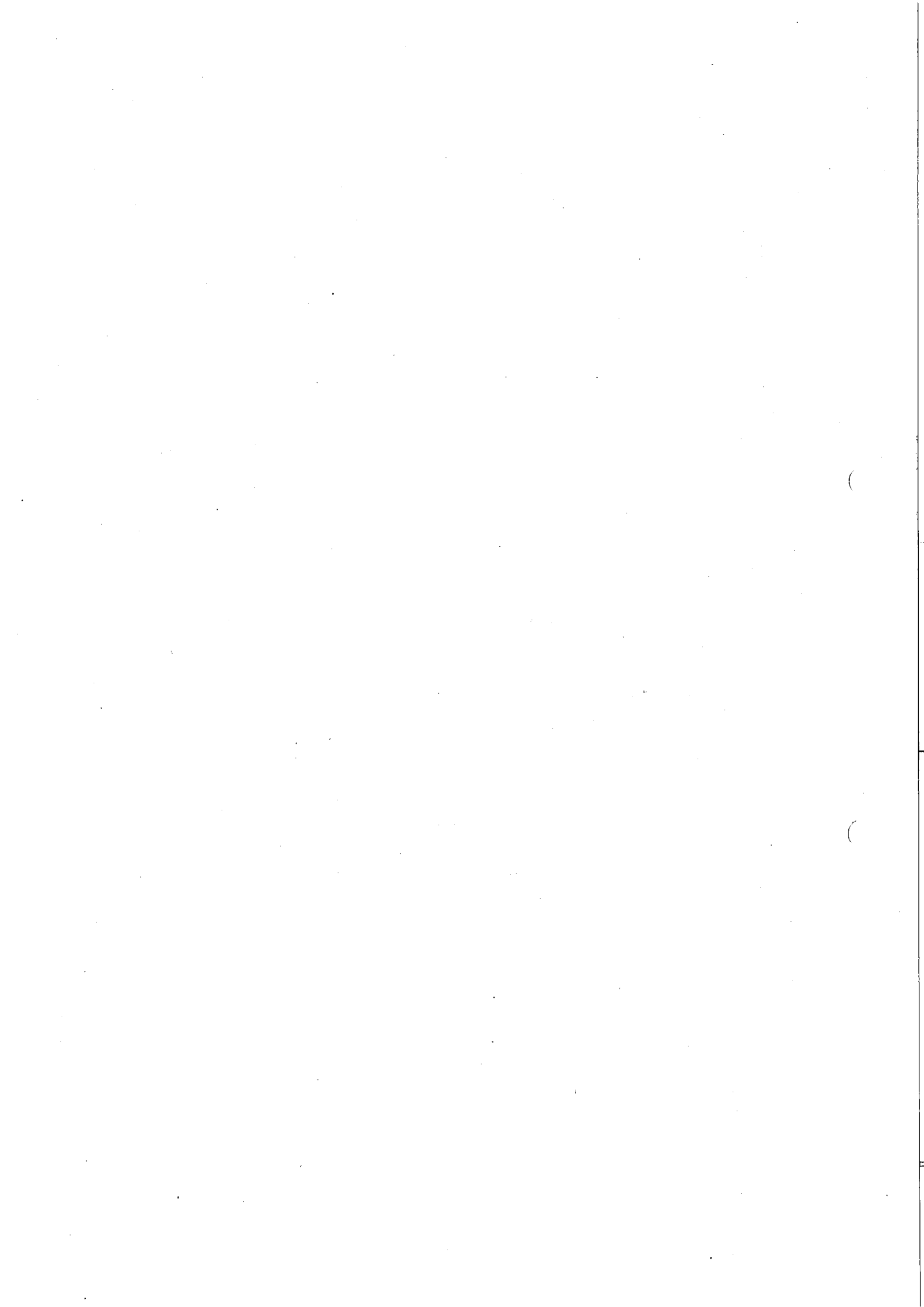
We are releasing land for sale on Saturday 30th July, if for some reason we can't use this sales office, we have a Village Building branded marquee that we can use. Before we can use the office, there will be minor repairs to it caused by transport (there always is), plus some landscaping and signage. This will take 2-3 days at the least – the more time the better.

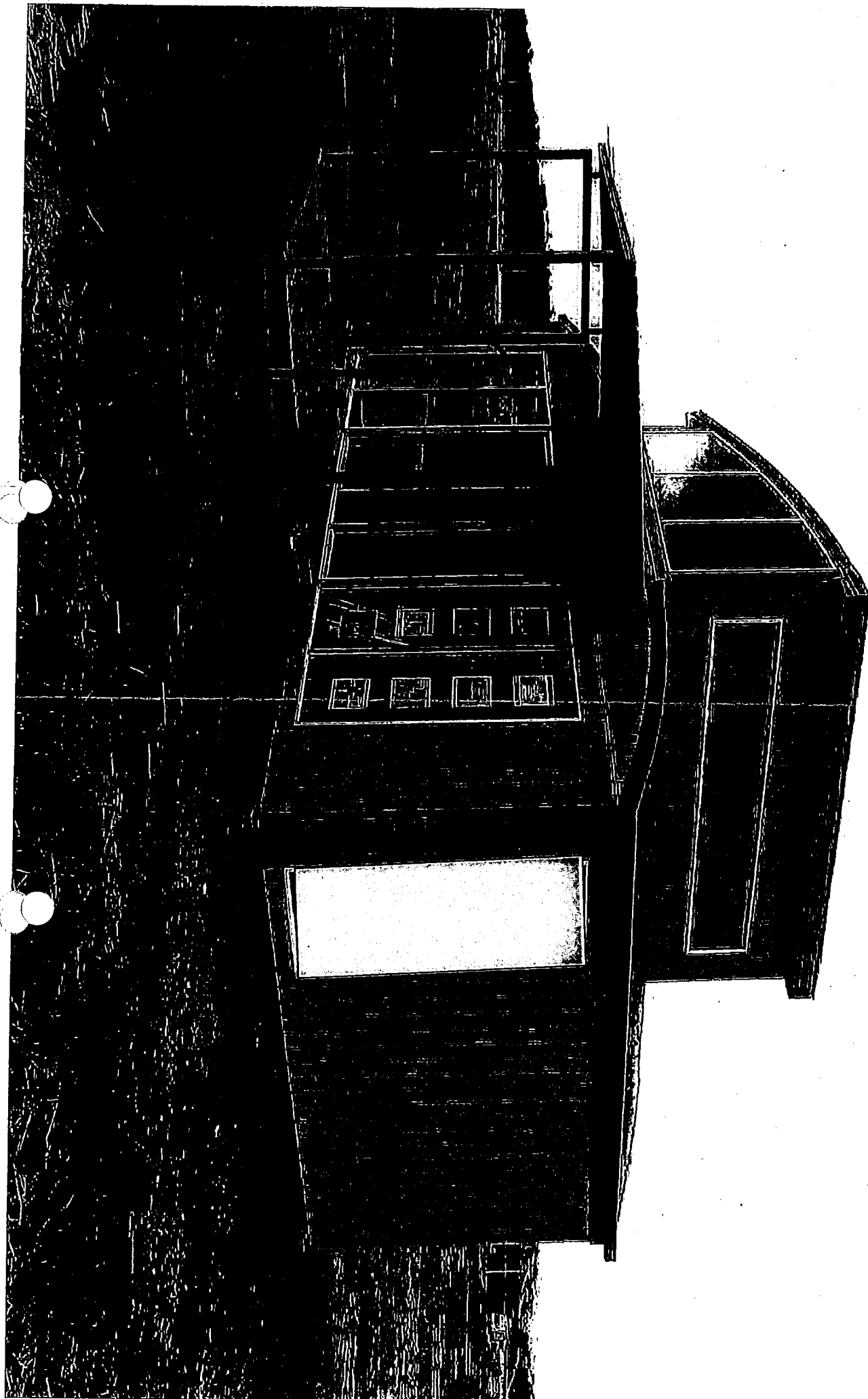
We have temporarily put the shed at Macgregor, with approval from

Please let me know when we can relocate this to Ngunnawal.

Cheers,

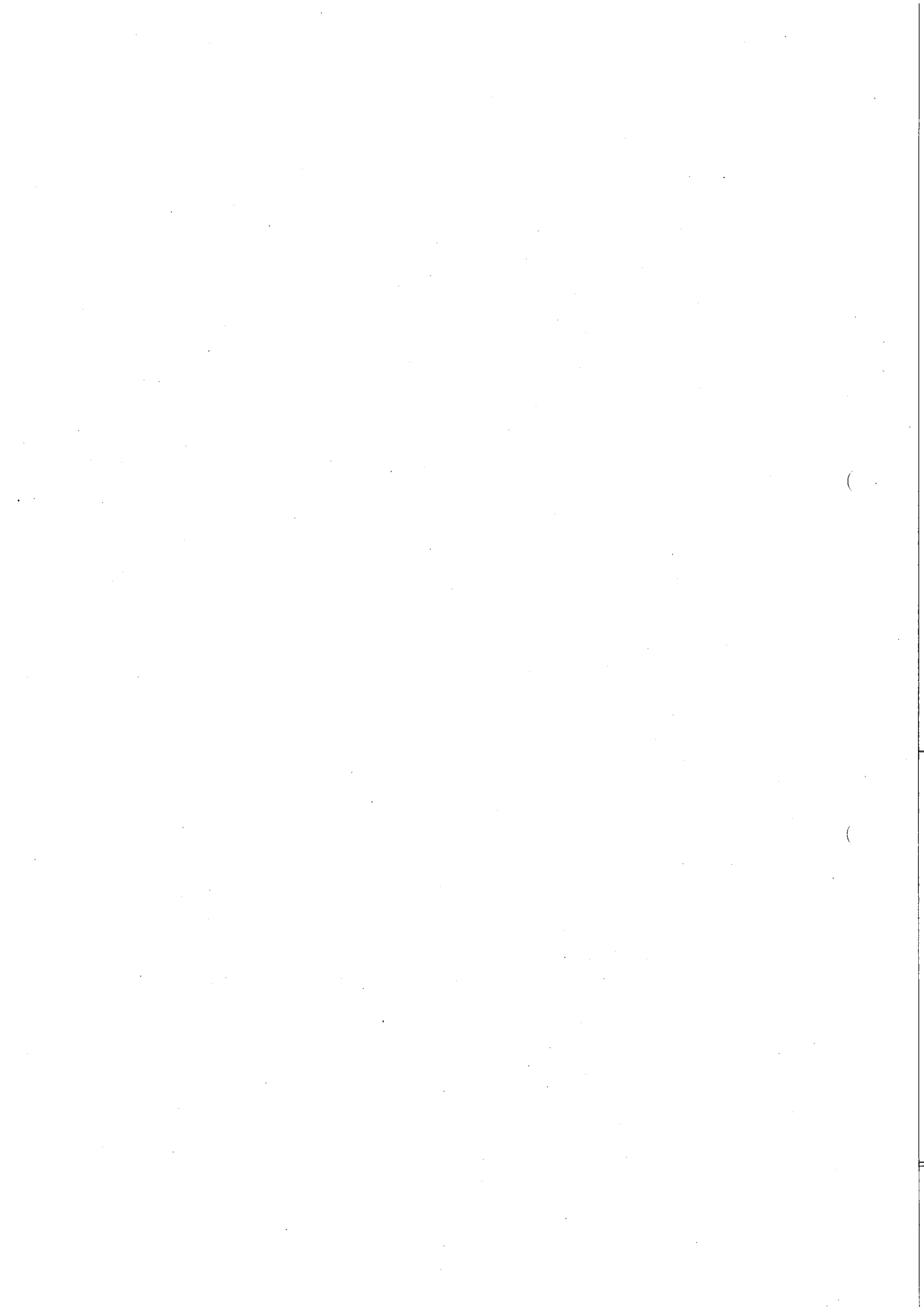






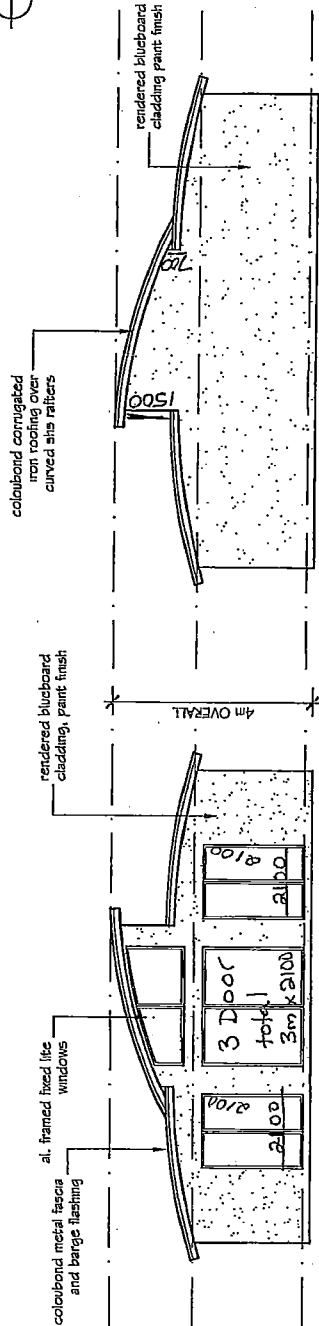
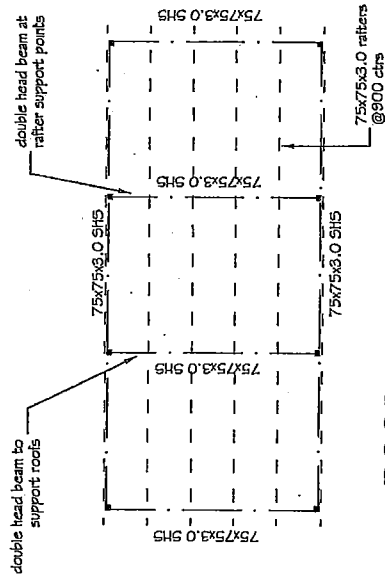
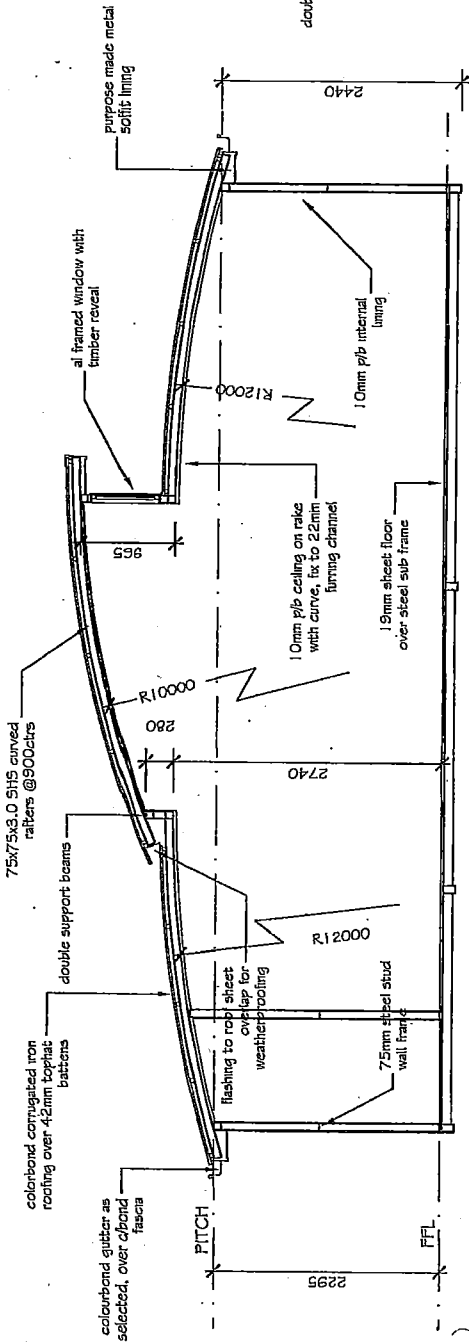
C

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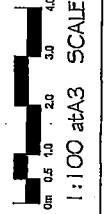


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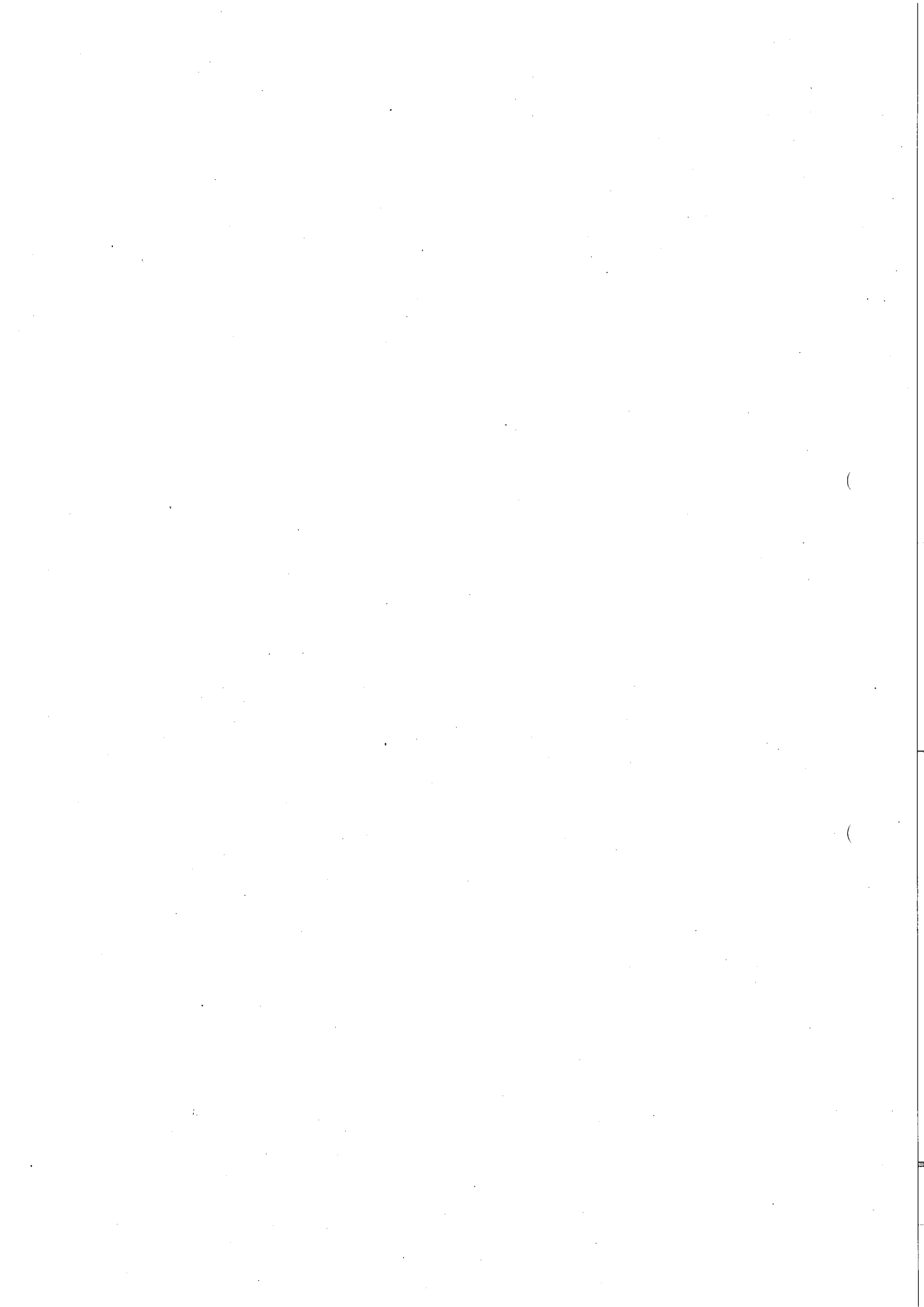


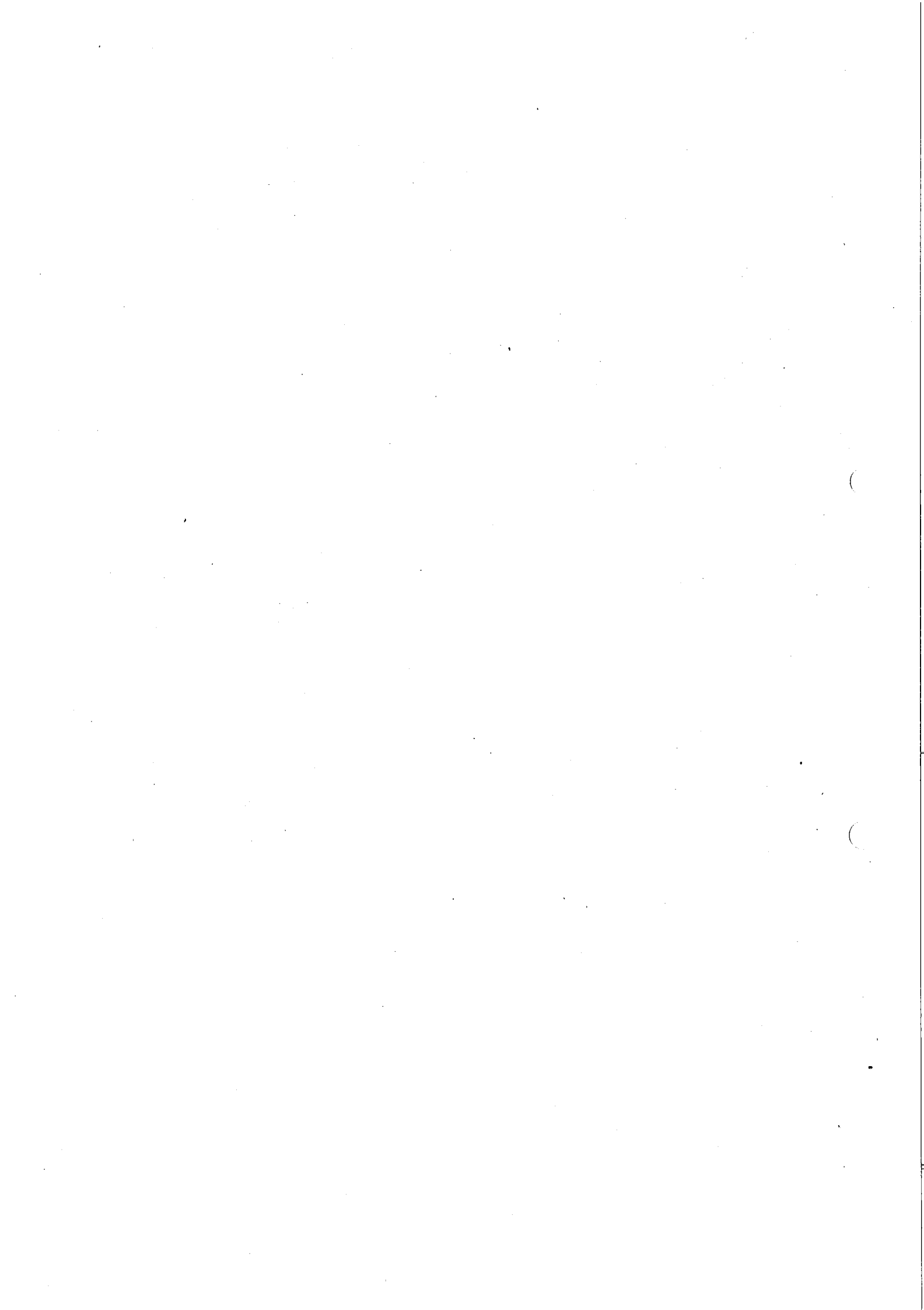
PH 1300 888 009
 PO BOX 1273
 EAGLE FARM Q 4009
 ABN: 90 072 761 812



"SORRENTO" 9.6x4.4 SALES SUITE ELEVATIONS 02

ALL WORK SHALL COMPLY WITH THE PROVISIONS OF THE BUILDING REGULATIONS AND THE LOCAL AUTHORITY'S REQUIREMENTS OF LOCAL AUTHORITY. USE DIMENSIONS ONLY. DO NOT SCALE. REPORT ANY DISCREPANCIES IMMEDIATELY ON SITE PRIOR TO ORDERING OR FABRICATION.

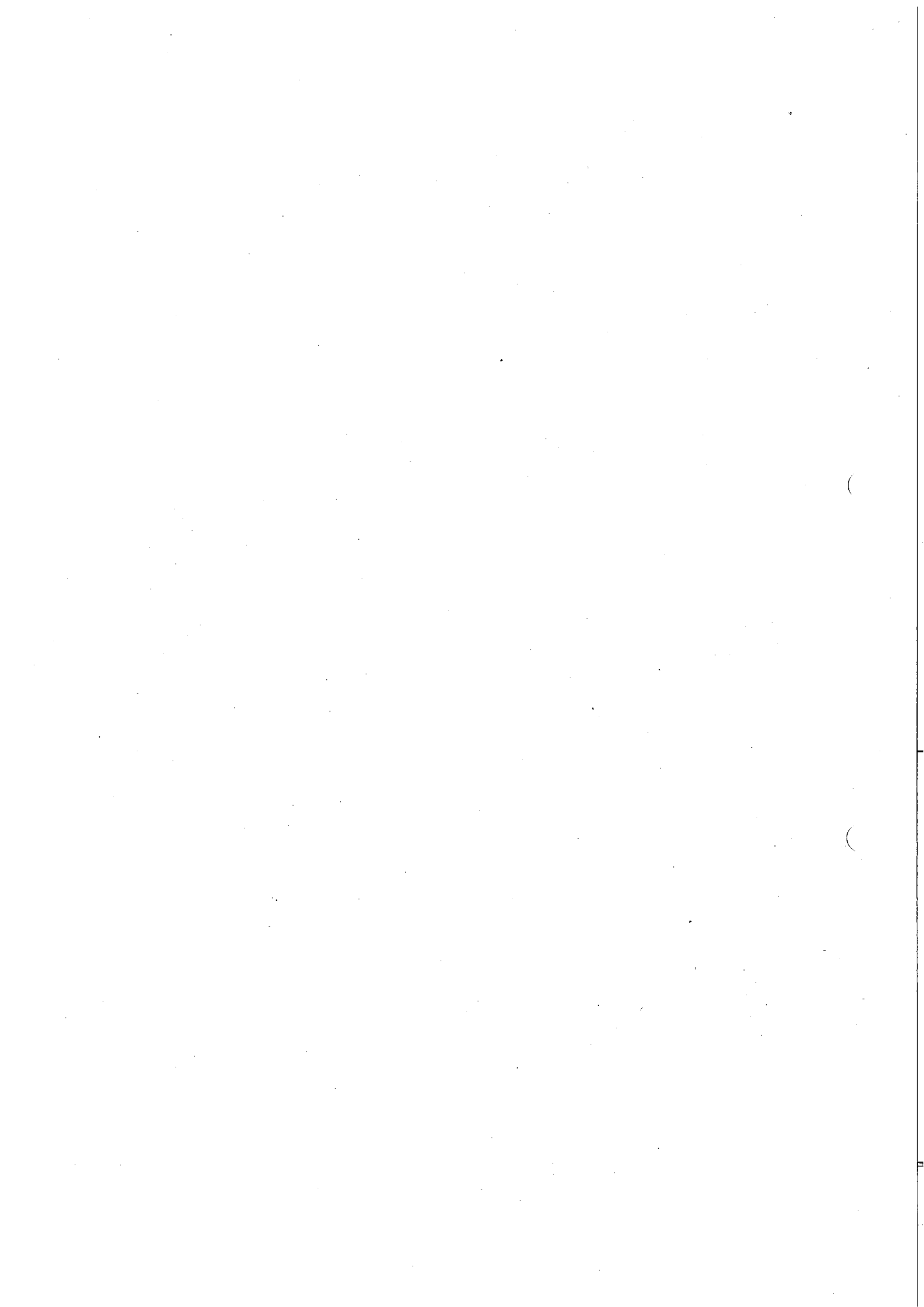




Google maps
Australia

To see all the details that are visible on the screen, use the Print link next to the map.





**LAND DEVELOPMENT AGENCY
COMMERCIAL CONTRACT FOR SALE
SCHEDULE**

DATE OF THIS CONTRACT		15 June 2011	
LEASE DETAILS			
LAND		Block	Section
		132	1
		Division/District Ngunnawal	
OCCUPANCY Vacant Possession			
CO-OWNERSHIP	Mark one	<input type="checkbox"/> Tenants in common (Show shares)	<input type="checkbox"/> Joint Tenants
SELLER DETAILS			
SELLER	Full name ACN/ABN Address	Land Development Agency 20 419 925 579 Level 6, TransACT House, 470 Northbourne Avenue, Dickson ACT 2602	
SELLER'S SOLICITOR	Firm	Meyer Vandenberg Lawyers	
	Ref	Stephanie Lynch	
	Phone	(02) 6279 4444	
	Fax	(02) 6279 4455	
	DX/Address	DX 6647 Canberra / Level 3, 1 Farrell Place, Canberra City ACT 2601	
BUYER DETAILS			
BUYER	Full Name ACN/ABN Address	CANBERRA ESTATES CONSORTIUM NO. 80 PTY LIMITED 145 733 820 MAXIM CHARTERED ACCOUNTANTS LVL 2, 59 WENTWORTH AVE KINGSTON ACT 2604	
BUYER'S SOLICITOR	Firm	O'CONNOR HARRIS	
	Ref	RUTH HARRIS	
	Phone		
	Fax		
	DX/Address		
PAYMENT DETAILS			
PRICE	Price Less Deposit Balance	\$ 36,250,000.00 \$ 3,625,000.00 \$32,625,000.00	(The Price is GST Inclusive) (10% of Price)
EARLIEST DATE OF EXPIRY DEPOSIT BOND OR BANK GUARANTEE	Expiration of bond or bank guarantee must not be earlier than this date	120 days from the Date of this Contract	
STAKEHOLDER	Name	Land Development Agency	
DATE FOR COMPLETION		90 days from the Date of this Contract	
ANNEXURES			
STANDARD ANNEXURES	Documents attached to this Contract	Annexure A – Draft Holding Lease (including Attachment A Draft Deed of Agreement) Annexure B – Deposited Plan Annexure C – Special Conditions Annexure D – EPBC Act Approval	
SPECIAL CONDITIONS	Indicate whether any special conditions apply	<input checked="" type="checkbox"/> Yes See Annexure C – Special Conditions	<input type="checkbox"/> No

READ THIS BEFORE SIGNING			
Before signing this contract you should ensure that you understand your rights and obligations. You should get advice from your solicitor.			
Authorised Delegate of the Land Development Agency signature:		Buyer signature:	
Delegate name:		Buyer name:	
Witness signature:		Buyer signature:	
Witness name:		Buyer name:	
		Witness signature:	
		Witness name:	

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1 GRANT OF THE LEASE

- 1.1 The Seller, as delegate of the Planning and Land Authority and on behalf of the Commonwealth of Australia will grant, or will procure the grant of, the Lease to the Buyer on Completion.
- 1.2 The Lease will be granted substantially upon the terms and conditions of the Draft Holding Lease.

2 TERMS OF PAYMENT

- 2.1 On the Date of this Contract, the Buyer must pay the Deposit to the Stakeholder.
- 2.2 The Deposit becomes the Seller's property on Completion.
- 2.3 The Deposit may be paid by cheque or cash but if it is not paid on time or, if it is paid by cheque which is not honoured on first presentation, the Buyer is in default.
- 2.4 If the Buyer is in default under clause 2.3, then immediately and without the notice otherwise necessary under clause 19, clause 20 applies.
- 2.5 Completion must take place in Canberra on the Date for Completion or as otherwise determined by the Contract and if not specified or determined, within a reasonable time.
- 2.6 On Completion the Buyer must:
 - (a) give the Seller an authority directing the Stakeholder to account to the Seller for the Deposit; and
 - (b) pay to the Seller in Canberra the Balance of the Price and the GST by unendorsed bank cheque, or in cash.
- 2.7 Any money payable to the Seller by the Buyer or the Stakeholder must be paid to the Seller or as the Seller's Solicitor directs in writing and payment in accordance with that direction will be sufficient discharge to the person paying.
- 2.8 The Price is paid in consideration for the grant of the Consequent Leases (as defined in the Draft Deed of Agreement) in accordance with the Lease.

3 SIGNING OF LEASE

- 3.1 The Buyer must, no later than 20 Working Days from the date the Seller serves the Lease on the Buyer:
 - (a) sign each copy of the Lease; and
 - (b) return the signed Lease to the Seller's Solicitor.

4 VARIATION TO LAND

- 4.1 The Buyer acknowledges that the Land, the Lease and any other plans in relation to the Land may be affected by:
 - (a) the requirements of legislation;
 - (b) variations to the Territory Plan; and/or
 - (c) the requirements of government authorities.

5 PLANNING CONDITIONS

- 5.1 The Buyer acknowledges that the Planning and Land Authority is responsible for any development consents and approvals sought by or on behalf of the Buyer in relation to the Land and the Buyer therefore releases the Seller from any liability, cause of

action or any other claim in relation to disturbance, loss or detriment caused by the Planning and Land Authority granting or denying any consent or approval in relation to the Land.

- 5.2 The Buyer acknowledges the obligation to make the Buyer's own enquiries and satisfy themselves as to the currency and accuracy of information contained in the Territory Plan.
- 5.3 The Buyer acknowledges that the Planning and Land Authority is responsible for the Territory Plan and the Buyer will make no claim against the Seller whatsoever in this regard.
- 5.4 The Buyer acknowledges that nothing in this Contract or the fact of Completion implies or means that any required approvals, consents or licences regarding planning, design, siting and any other matters relating to the Buyer's development of the Land will be granted by the regulatory authorities or other agencies of the Australian Capital Territory with or without conditions.

6 DEPOSIT BOND AND BANK GUARANTEE

- 6.1 The Deposit may be paid by a Deposit Bond or Bank Guarantee provided that at least 3 days prior to the Date of this Contract the Buyer:
- (a) informs the Seller of their intention to provide a Deposit Bond or Bank Guarantee; and
 - (b) provides the Seller with a copy of the proposed Deposit Bond or Bank Guarantee for approval.
- 6.2 The expiry date for the Deposit Bond or Bank Guarantee must not be earlier than the Earliest Date of Expiry of Deposit Bond or Bank Guarantee specified in the Schedule.
- 6.3 The Deposit Bond or Bank Guarantee must show the Seller as the beneficiary of the Deposit Bond or Bank Guarantee.
- 6.4 The Buyer must pay the amount stipulated in the Deposit Bond or Bank Guarantee to the Seller by unendorsed bank cheque on Completion.
- 6.5 The Buyer is in default if:
- (a) the Deposit Bond or Bank Guarantee has an expiry date prior to the Date for Completion and is not renewed to the satisfaction of the Seller at least 14 days prior to the expiry of the Deposit Bond or Bank Guarantee; or
 - (b) the provider of the Deposit Bond or Bank Guarantee is placed under external administration of any nature before Completion.
- 6.6 If the Buyer is in default under clause 6.5 it will be deemed to be a failure by the Buyer to pay the Deposit under clause 2.1 and immediately, and without the notice otherwise necessary under clause 19, clause 20 applies.

7 ENTIRE AGREEMENT

- 7.1 The Buyer agrees that this Contract sets out the entire agreement of the parties on the subject matter of this Contract and supersedes any prior agreement, advice, material supplied to the Buyer or understanding on anything connected with the subject matter of this Contract.

8 BUYER RELIES ON OWN ENQUIRIES

- 8.1 The Buyer acknowledges that it relies on its own enquiries in relation to the Land and warrants that in entering into this Contract the Buyer:

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- (a) has not relied on any express or implied statement, warranty or representation whether oral, written or otherwise made by or on behalf of the Seller to the Buyer in connection with the Land;
 - (b) has not relied on any documentation made available by or on behalf of the Seller to the Buyer in relation to the Land other than documentation forming part of this Contract; and
 - (c) is satisfied as to the nature, quality and condition of the Land and the purposes for which the Land may be used.

8.2 The Seller makes no warranty as to the accuracy or completeness of any document made available by or on behalf of the Seller to the Buyer in connection with the Land other than documentation forming part of this Contract.

9 BUYER RIGHTS AND LIMITATIONS

9.1 The Buyer is not entitled to make any requisitions on the title to the Land.

9.2 The Buyer cannot make a claim or objection or rescind or terminate or make a claim for compensation under clause 18 of this Contract in respect of:

- (a) a Utility Service for the Land being a joint service or passing through another property, or any Utility Service for another property passing through the Land;
- (b) a promise, representation or statement about this Contract, the Land or the Lease, not made in this Contract;
- (c) the size of any service ties for the supply of water on or to the Land;
- (d) the existence of regrading, fill or containment of or upon the Land, whether caused by the Commonwealth of Australia, the Seller, previous occupants of the Land or otherwise;
- (e) any soil classification in relation to the Land; and
- (f) anything disclosed in this Contract.

10 CONDITION OF THE LAND

10.1 The Seller gives no warranties as to the present state of repair of any of the Improvements or condition of the Land, except as required by law.

10.2 The Buyer acknowledges that the Seller makes no warranty or representation as to the environmental condition or state of the soil, ground water, contamination or the existence or non-existence of any Substance on or affecting the Land.

10.3 The Buyer acknowledges, understands and accepts that the existence of regrading, fill, contamination or a soil classification of or upon the Land may result in work for the construction of any development on the Land being more extensive and expensive than it may otherwise have been in the absence of such regrading, fill, contamination or soil classification.

11 SELLER WARRANTIES

11.1 The Seller warrants that at the Date of this Contract:

- (a) the Seller will be able to complete at Completion;
- (b) the Seller has no knowledge of any unsatisfied judgment, order or writ issued by a court or tribunal affecting the Land; and

- (c) the Seller has no knowledge of any current or threatened claims, notices or proceedings that may lead to a judgment, order or writ issued by a court or tribunal affecting the Land.

11.2 The Seller warrants that on Completion:

- (a) the Seller will have the capacity to complete;
- (b) there will be no unsatisfied judgment, order or writ issued by a court or tribunal affecting the Land;
- (c) the Seller has no knowledge of any current or threatened claims, notices or proceedings that may lead to a judgment, order or writ issued by a court or tribunal affecting the Land; and
- (d) the Seller is not aware of any encroachments by or upon the Land except as disclosed. This warranty does not extend to the location of any dividing fence.

12 CO OWNERSHIP

- 12.1 Where the Buyer consists of more than one person, as between themselves, they agree to buy the Land in the specified manner of Co-ownership or if one alternative is not marked, as joint tenants.

13 NON MERGER

- 13.1 If any term of this Contract may be given effect to after Completion that term will not merge but will continue in force for as long as necessary to give effect to it.

14 ADJUSTMENTS

- 14.1 The Lease will be granted on Completion. As a result, there will be no adjustments of Income or Land Charges.

15 TERMS OF POSSESSION

- 15.1 The Seller must give the Buyer vacant possession of the Land on Completion unless otherwise marked in the Schedule.

16 INSPECTION OF LAND

- 16.1 The Buyer may on reasonable notice to the Seller inspect the Land during the period 14 days prior to the Date for Completion.

17 ERRORS AND MISDESCRIPTIONS

- 17.1 The Buyer will be entitled to compensation on Completion (and the Price will be reduced accordingly) for an error of any kind or misdescription if the Buyer makes a claim for compensation before Completion.
- 17.2 This clause applies even if the Buyer did not take notice of or rely on anything in this Contract containing or giving rise to the error or misdescription.
- 17.3 The Buyer is not entitled to compensation to the extent the Buyer knew the true position before the Date of this Contract.

18 COMPENSATION CLAIMS BY BUYER

- 18.1 This clause 18 applies to claims for compensation arising out of this Contract made by the Buyer against the Seller including claims under clause 17.

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- 18.2 To make a claim for compensation the Buyer must give notice to the Seller before Completion specifying the amount claimed and;
- (a) the Seller can rescind if in the case of a claim that is not a claim for delay:
 - (i) the Seller gives notice to the Buyer of an intention to rescind; and
 - (ii) the Buyer does not give notice to the Seller waiving the claim within 14 days after receiving the notice; and
 - (b) if the Seller does not rescind under clause 18.2(a), the parties must complete and;
 - (i) the lesser of the total amount claimed and 10% of the Price must be paid out of the Price to, and held by, the Stakeholder until the claim is finalised or lapses;
 - (ii) the amount held is to be invested by the Stakeholder (at the risk of the party who becomes entitled to it) with an Australian bank in an interest bearing account at call in the name of the Stakeholder in trust for the Seller and the Buyer;
 - (iii) the claim must be finalised by an arbitrator appointed by the parties or, if an appointment is not made within 28 days of Completion, by an arbitrator appointed by the President of the Law Society of the Australian Capital Territory at the request of a party;
 - (iv) the decision of the arbitrator is final and binding;
 - (v) the costs of the arbitration must be shared equally by the parties unless otherwise determined by the arbitrator;
 - (vi) the Buyer is not entitled, in respect of the claim, to more than the total amount claimed and the costs of the Buyer;
 - (vii) interest on the amount held, after deduction of all taxes and bank charges, Stakeholder administration fee and other similar charges and expenses, must be paid to the parties equally or as otherwise determined by the arbitrator; and
 - (viii) the claim lapses if the parties do not appoint an arbitrator and neither party asks the President of the Law Society of the Australian Capital Territory to appoint an arbitrator within 90 days after Completion and the amount held by the Stakeholder must be paid immediately to the Seller without any further authority being necessary.

19 NOTICE TO COMPLETE AND DEFAULT NOTICE

- 19.1 If Completion does not take place in accordance with clause 2.5, either party may, at any time after the Date for Completion, serve the other party a Notice to Complete.
- 19.2 A Notice to Complete must appoint a time during business hours and a date being not less than 14 days after service of the Notice to Complete (excluding the date of service) by which and a place in Canberra at which to complete this Contract.
- 19.3 At the time the Notice to Complete is served the party serving the Notice to Complete must:
- (a) not be in default; and
 - (b) be ready, willing and able to complete but for some default or omission of the other party.

- 19.4 Completion at the time, date and place specified in the Notice to Complete is an essential term.
- 19.5 Where one party is in default (other than failing to complete) the other party may at any time after the default serve the party in default a Default Notice.
- 19.6 A Default Notice must:
- (a) specify the default; and
 - (b) require the party served with the Default Notice to rectify the default within 14 days after service of the Default Notice (excluding the date of service)
- 19.7 At the time the Default Notice is served, the party serving the Default Notice must not be in default.
- 19.8 The time specified in a Default Notice to rectify the specified default is an essential term.
- 19.9 Clauses 20 or 21 will apply as appropriate where the party served does not comply with the Notice to Complete or the Default Notice which complies with this clause.
- 19.10 If the party serving a notice under this clause varies the time referred to in the notice at the request of the other party, the time agreed to in the variation remains an essential term. The consent to the variation must be in writing and be served on the other party.
- 19.11 The parties agree that the time referred to in clauses 19.2 and 19.6(b) is fair and reasonable.

20 TERMINATION – BUYER DEFAULT

- 20.1 If the Buyer does not comply with a Notice to Complete or a Default Notice or is otherwise in breach of an essential term then the Seller may by notice served on the Buyer terminate and may then keep, or recover and keep, the Deposit (except so much of it as exceeds 10% of the Price) and either:
- (a) sue the Buyer for breach; or
 - (b) resell the Land and any deficiency arising on the resale and all expenses of and incidental to the resale or attempted resale and the Buyer's default are recoverable by the Seller from the Buyer as liquidated damages provided the Seller has entered into a contract for the resale of the Land within 12 months of termination.
- 20.2 In addition to any money kept or recovered under clause 20.1, the Seller may retain on termination any other money paid by the Buyer as security for any damages awarded to the Seller arising from the Buyer's default provided that proceedings for the recovery of damages are commenced within 12 months of termination.

21 TERMINATION – SELLER DEFAULT

- 21.1 If the Seller does not comply with a Notice to Complete or a Default Notice or is otherwise in breach of an essential term the Buyer may by notice served on the Seller either:
- (a) terminate and seek damages; or
 - (b) enforce without further notice any other rights and remedies available to the Buyer.

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22 RESCISSION

22.1 If this Contract is rescinded, it is rescinded from the beginning, and unless the parties otherwise agree:

- (a) the Deposit and all other money paid by the Buyer must be refunded to the Buyer immediately without any further authority being necessary; and
- (b) neither party is liable to pay the other any amount for damages, costs or expenses.

23 DAMAGES FOR DELAY IN COMPLETION

23.1 If Completion does not occur by the Date for Completion, due to the default of the Buyer then the Buyer must pay the Seller as liquidated damages on Completion:

- (a) interest on the Price at the rate of 10% per annum calculated on a daily basis from the Date for Completion to Completion; and
- (b) the amount of \$1,100 (GST inclusive) to be applied towards any legal costs and disbursements incurred by the Seller if Completion occurs later than 7 days after the Date for Completion.

23.2 The Buyer agrees that:

- (a) the amount of any damages payable under clause 23.1(a) to the Seller is a genuine and honest pre-estimate of loss to that party for the delay in Completion, and
- (b) the damages must be paid on Completion.

24 FOREIGN BUYER

24.1 The Buyer warrants the Commonwealth Treasurer cannot prohibit and has not prohibited the transfer of the Lease under the *Foreign Acquisitions and Takeovers Act 1975*.

24.2 This clause is an essential term.

25 GST

25.1 The Buyer and Seller agree that the margin scheme applies to the supply of the Consequent Leases (as defined in the Draft Deed of Agreement) in accordance with the Lease.

25.2 The Seller warrants that it can use the margin scheme and promises that it will.

26 POWER OF ATTORNEY

26.1 Any party who signs this Contract or any document in connection with it under a power of attorney must, on request and without cost, provide the other party with a true copy of the registered power of attorney.

27 NOTICES CLAIMS AND AUTHORITIES

27.1 Notices, claims and authorities required or authorised by this Contract must be in writing.

27.2 To serve a notice a party must:

- (a) leave it at; or
- (b) send it by a method of post requiring acknowledgement of receipt by the addressee to,

the address of the person to be served as stated in the Schedule or as notified by that person to the other as that person's address for service under this Contract; or

- (c) serve it on that party's solicitor in any of the above ways; or
- (d) by delivering it to an appropriate place in the facilities of a document exchange system in which the recipient solicitor has receiving facilities (and in the latter case service is deemed effected on the Working Day following delivery); or
- (e) send it by facsimile to a party's solicitor, unless it is not received a notice is taken to have been received at the time shown in the transmission report that the whole facsimile was sent).

27.3 A party's solicitor may give a notice, claim or authority on behalf of that party.

27.4 If a notice is served in accordance with clause 27.2(a), the notice is taken to have been received on the day that it is delivered or, if not delivered before 5:00pm on a Working Day, on the next Working Day.

27.5 If a notice is served in accordance with clause 27.2(b), the notice is taken to have been received on the day 2 Working Days after it was posted.

27.6 In addition to the means stipulated in clause 27.2, the Seller may serve a notice by electronic mail to the Buyer's or the Buyer's Solicitor's email address (whether the Buyer's Solicitor's firm generally or specifically to the practitioner specified in the Schedule) as notified by the Buyer or the Buyer's Solicitor from time to time. A notice is taken to have been received on the day shown in the delivery receipt produced by the electronic mail system used to send the message and if not sent before 5:00pm on a Working Day, on the next Working Day.

28 DEFINITIONS

28.1 Definitions appear in the Schedule and as follows:

Agency means the Land Development Agency;

Balance of the Price means the Price less the Deposit;

Bank Guarantee means a bank guarantee issued by a bank operating in Australia in a form satisfactory to the Seller;

Completion means the time at which this Contract is completed;

Contract means the Schedule, terms and conditions and any annexure, additional clauses and attachments forming part of this Contract;

Deposit Bond means a deposit insurance bond issued to the Seller at the request of the Buyer in a form satisfactory to the Seller;

Default Notice means a notice in accordance with clauses 19.5 and 19.6;

Deposit means the deposit forming part of the Price;

Development has the meaning in the Planning Act;

Draft Deed of Agreement means the Deed of Agreement at Attachment A to the Draft Holding Lease;

Draft Holding Lease means the draft holding lease annexed to this Contract at Annexure A and includes the Draft Deed of Agreement;

GST has the meaning in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

Improvements means the buildings, structures and fixtures erected on and forming part of the Land;

Income means the rents and profits derived from the Land;

Land means the land described in the Schedule and to be the subject of the Lease;

Land Charges means rates, land rent, land tax and other taxes and outgoings of a periodic nature in respect of the Land;

Lease means the holding lease to be granted to the Buyer in accordance with clause 1 of this Contract;

Notice to Complete means a notice in accordance with clauses 19.1 and 19.2 requiring a party to complete;

Planning Act means the *Planning and Development Act 2007* (ACT);

Planning and Land Authority means the body corporate established in accordance with the Planning Act;

Stakeholder means the person referred to in the Schedule;

Substance means any substance or thing which is or may be an emission to the environment or harmful to the environment or the health or safety of any person or may cause damage to property and includes: asbestos, polychlorinated biphenyls, heavy metals, chemicals, contaminants and any other matter whether in solid, liquid or gaseous form, or whether naturally occurring or man-made;

Territory Plan means the Territory Plan 2008 as amended and varied from time to time;

Utility Service includes air, communication, drainage, electricity, garbage collection, gas, sewerage, telecommunications or water; and

Working Days has the meaning given to it by the *Legislation Act 2001* (ACT).

29 INTERPRETATION

29.1 In this Contract:

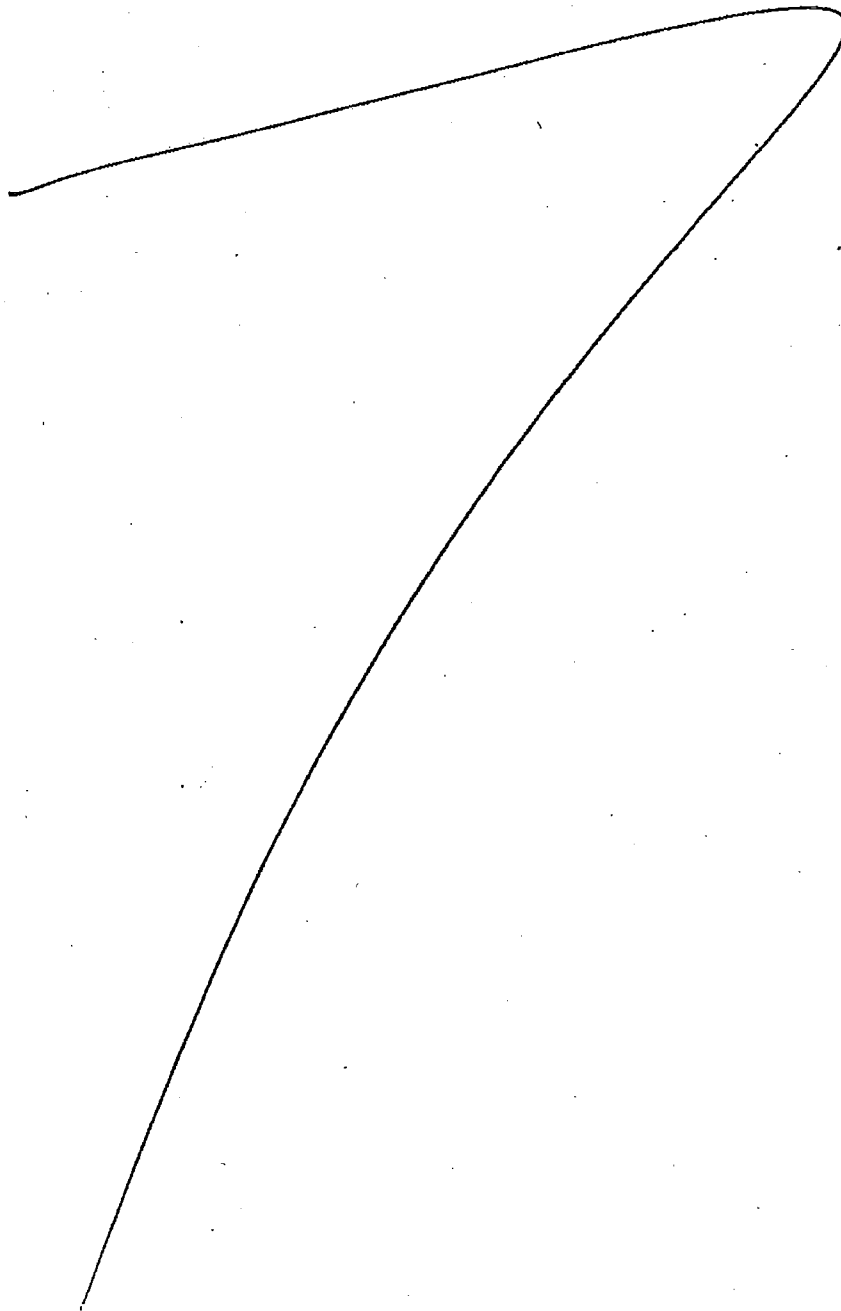
- (a) a reference to the Seller or to the Buyer includes the executors, administrators and permitted assigns of any of them, if an individual, and the successors or permitted assigns of any of them, if a corporation;
- (b) the singular includes the plural, and the plural includes the singular;
- (c) a reference to a person includes a body corporate;
- (d) a term not otherwise defined has the meaning in the *Legislation Act 2001* (ACT); and
- (e) a reference to an Act includes a reference to any subordinate legislation made under it or any Act which replaces it.

29.2 Headings are inserted for convenience only and are not part of this Contract.

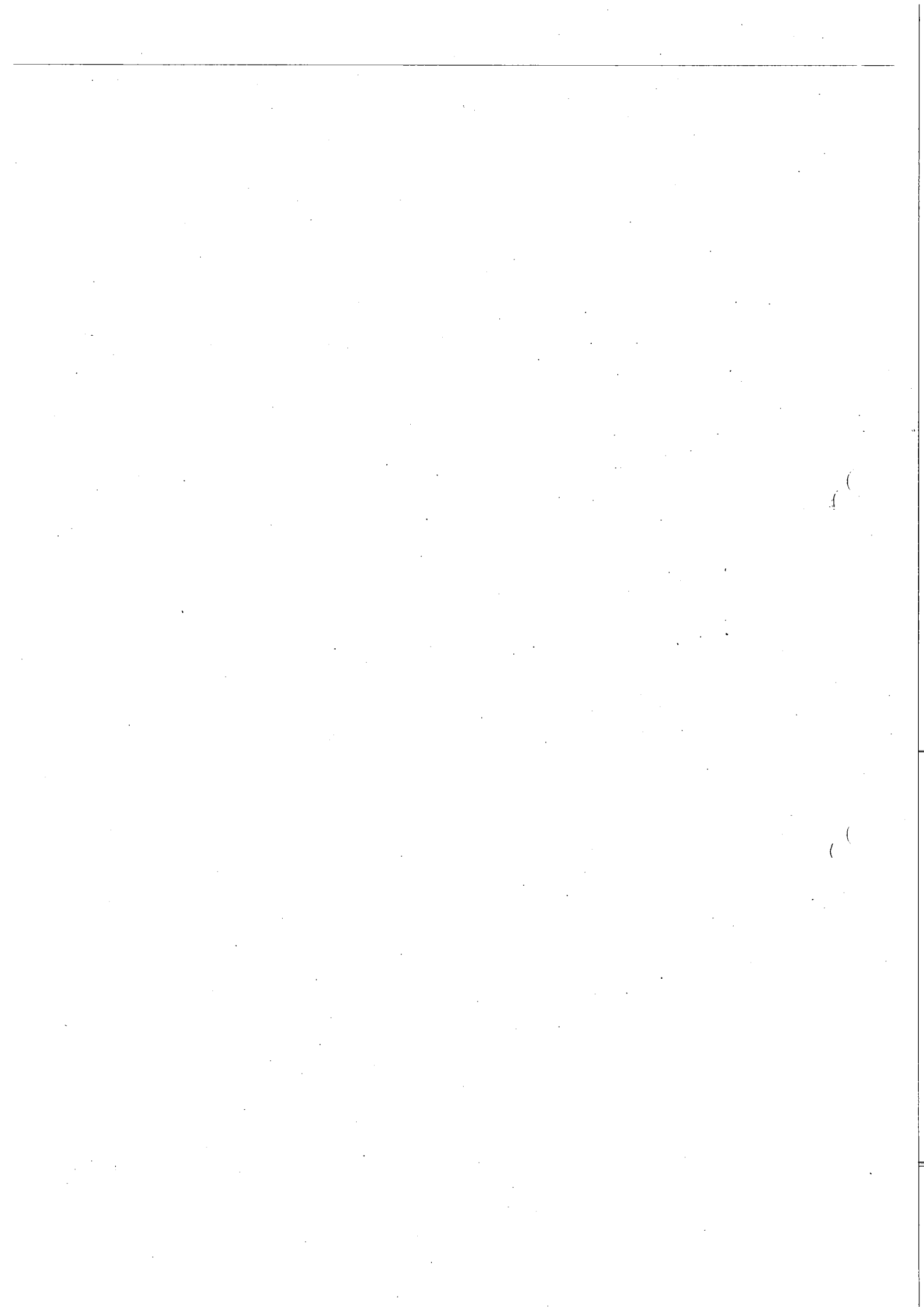
29.3 If the time for something to be done or to happen is not a Working Day, the time is extended to the next Working Day, except in the case of clause 2.1.

29.4 If there is more than one buyer or more than one seller the obligations which they undertake bind them jointly and individually.

ANNEXURE A – DRAFT HOLDING LEASE (INCLUDING ATTACHMENT A DEED OF AGREEMENT)



[Handwritten signature]



HOLDING LEASE

This is a market value lease - s238(2) (a) (ii) Planning and Development Act 2007, and

Section 251 Planning and Development Act 2007 applies

Entered in Register Book Vol

Folio

AUSTRALIAN CAPITAL TERRITORY

PLANNING AND DEVELOPMENT ACT 2007

Australian Capital Territory (Planning and Land Management) Act 1988 (C'th) (ss 29, 30 & 31)

LEASE GRANTED pursuant to the Planning and Development Act 2007 and the Regulations made under that Act on the _____ day of _____ Two thousand and eleven WHEREBY THE PLANNING AND LAND AUTHORITY ("the Authority") ON BEHALF OF THE COMMONWEALTH OF AUSTRALIA ("the Commonwealth") in exercising its functions grants to (DEVELOPER'S NAME)

LESSEE

PTY. LIMITED A.C.N. 000 000 000 having its registered office at (DEVELOPER'S REGISTERED ADDRESS) in the Australian Capital Territory

LAND

("the Lessee") ALL THAT piece or parcel of land situate in the Australian Capital Territory containing an area of 35.14 hectares or thereabouts and being Block 132 Section 1 Division of Ngunnawal as delineated on Deposited Plan Number 10780 in the Registrar-General's Office at Canberra in the said Territory ("the land") RESERVING unto the Territory all minerals and the right to the use, flow and control

TERM

COMMENCEMENT

of ground water under the surface of the land TO HOLD unto the Lessee for the term of sixty six months commencing on the _____ day of _____ Two thousand and eleven ("the date of the commencement of the lease") to be used by the Lessee for the purpose set out in Clause 2(f) of this lease only YIELDING AND PAYING THEREFOR rent in the amount and in the manner and at the times provided in this lease and UPON AND SUBJECT TO the covenants conditions and agreements in this lease.

INTERPRETATION

1. IN THIS LEASE unless the contrary intention appears:

- (a) "Authority" means the Planning and Land Authority established by section 10 of the Planning and Development Act 2007;
- (b) "building" means any building or structure, constructed or partially constructed or to be constructed, as the context permits or requires, on or under the land;
- (c) "deed" means the deed of agreement between the Lessee and the Authority a copy of which comprises Attachment A to this lease and which contains provisions as to planning, completion of the Works and associated activities;
- (d) "gross floor area" means the sum of the gross areas of the floor or floors of the building measured from the external faces of the exterior walls or from the centrelines of walls separating the building from any other building BUT EXCLUDING any areas

used solely for fixed mechanical plant essential for the operation of the building pedestrian walkways available at all times during business hours for unrestricted public access elevator shafts stairwells and basement carparking;

- (e) "Lessee" shall-
 - (i) where the Lessee consists of one person be deemed to include the Lessee and the executors administrators and assigns of the Lessee;
 - (ii) where the Lessee consists of two or more persons be deemed to include in the case of a tenancy in common the said persons and each of them and their and each of their executors administrators and assigns and in the case of a joint tenancy be deemed to include the said persons and each of them and their and each of their assigns and the executors administrators and assigns of the survivor of them; and
 - (iii) where the Lessee is a corporation be deemed to include such corporation and its successors and assigns;
- (f) "premises" means the land and any building or other improvements on the land;
- (g) "Territory" means:
 - (i) when used in a geographical sense the Australian Capital Territory; and
 - (ii) when used in any other sense the body politic established by section 7 of the Australian Capital Territory (Self-Government) Act 1988 (C'th);
- (h) "works" means all the works and activities which the Lessee is or may be required to execute or engage in under the deed and includes design, remedial work, temporary work and variations of work;
- (i) words in the singular include the plural and vice versa;
- (j) words importing one gender include the other genders;
- (k) a reference in this lease to any statute or statutory provision shall include a reference to any statute or statutory provision that amends, extends, consolidates or replaces the statute or statutory provision and to any other regulation, instrument or other subordinate legislation made under the statute.

2. THE LESSEE COVENANTS WITH THE COMMONWEALTH as follows:

RENT

- (a) That the Lessee shall pay to the Authority rent at the rate of five cents per annum if and when demanded payable within one month of the date of any demand made by the Authority relating thereto and served on the Lessee;

MANNER OF PAYMENT

- (b) That any rent or other moneys payable by the Lessee to the

- OF RENT Authority under this lease shall be paid to such person as may be authorised by the Authority for that purpose at Canberra without any deduction whatsoever;
- COMMENCEMENT OF WORKS (c) That the Lessee shall within twelve (12) months from the date of execution of the deed or within such time as may be approved in writing by the Authority for that purpose commence to construct the works;
- COMPLETION OF WORKS (d) That the Lessee shall within forty eight (48) months from the date of execution of the deed or within such further time as may be approved in writing by the Authority complete the construction of the works;
- APPLICATION FOR LEASES (e) That the Lessee shall within six months or within such further time as may be approved in writing by the Authority from the date of the issue of the Certificate of Practical Completion (as defined in the deed) in relation to the completion of construction of a stage of the works (as referred to in Clause 2(d)) apply to the Authority for the grant of leases under the provisions of the Planning and Development Act 2007 in accordance with Clause 3(b) of this lease;
- PURPOSE (f) To use the premises only for the purpose of subdivision and constructing the works and building in accordance with the requirements of the deed;
- INDUSTRIAL CONDUCT UNDERTAKING (g) That the Lessee shall at all times from the date of the commencement of the lease until the completion of the works comply with the terms and conditions of the Industrial Conduct Undertaking which forms Schedule 1 to this lease;
- ADVERTISEMENTS (h) That the Lessee shall not display or permit to be displayed on the premises any advertisement sign or hoarding without the previous consent in writing of the Authority;
- CLEAN AND TIDY (i) That the Lessee shall at all times keep the premises clean tidy and free from debris dry herbage rubbish and other unsightly or offensive matter PROVIDED ALWAYS THAT should the Lessee fail to do so the Authority may at the cost of the Lessee cause any matter or thing to be removed from the premises and restore the premises to a clean and tidy condition;
- ASSIGNMENT (j) That the Lessee shall not without the previous consent in writing of the Authority assign transfer or part with possession of the whole or any portion of the premises;
- SECURITY AND SAFETY (k) That the Lessee shall erect and maintain such barricades fencing signs and lighting as may be required in writing by the Authority to ensure the protection of the works and the safety and convenience of the general public;
- INDEMNITY AND INSURANCE (l) To indemnify and keep indemnified the Commonwealth, the Territory, the Authority, their officers servants and others employed in connection with this lease and the deed against all claims demands actions suits proceedings causes of action debts dues verdicts judgements costs and expenses in any way arising out of or by reason of anything done or omitted to be done by the Lessee its agents officers or employees including any contractor or contractors employed by the Lessee and any agent officer or employee of such a contractor pursuant to or as a consequence of the granting of this lease. The Lessee hereby undertakes to effect or cause to be

effected and keep effective the following policies of insurance at all times during the continuance of this lease:

- (i) a policy insuring every agent officer and employee of the Lessee including any contractor or contractors employed by the Lessee in connection with the lease and every agent officer and employee of any such contractor against all loss damage or injury to the person or property of any such officer employee or contractor arising out of anything done or omitted to be done by the Lessee and any agent officer or employee of such a contractor pursuant to or as a consequence of the granting of this lease;
- (ii) an all risks public liability insurance policy to provide insurance cover against all loss injury or damage to any person or property other than the person or property of any agent officer or employee of the Lessee including any contractor or contractors employed by the Lessee in connection with the construction of the works and building and every agent officer and employee of such contractor arising out of anything done or omitted to be done by the Lessee or any of its agents officers or employees including any contractor or contractors employed by the Lessee and any agent officer or employee of such a contractor pursuant to or as a consequence of the granting of this lease whether such loss injury or damage is due to the negligence of the Lessee including any contractor or contractors employed by the Lessee in connection with the lease and any agent officer or employee of any such contractor or otherwise;

The amount insured shall be to the satisfaction of the Authority and the Lessee shall whenever reasonably required produce evidence of the currency of insurance with an insurer approved for this purpose by the Authority;

BUILDING SUBJECT TO APPROVAL

- (m) That the Lessee shall not without the previous approval in writing of the Authority, except where exempt by law, erect any building on the premises or make any structural alterations to any building on the premises;

REPAIR

- (n) That the Lessee shall at all times during the term of this lease maintain repair and keep in repair to the satisfaction of the Authority the works and building constructed in accordance with this lease and the deed;

FAILURE TO REPAIR

- (o) That if the Lessee has satisfactorily complied with the deed and if and whenever the Lessee is in breach of the Lessee's obligations to maintain repair and keep in repair the works or building the Authority may by notice in writing to the Lessee specifying the repairs and maintenance needed require the Lessee to effect the necessary work in accordance with the notice. If the Authority is of the opinion that such works or building is beyond reasonable repair the Authority may by notice in writing to the Lessee require the Lessee to remove the works or building and may require the Lessee to construct new works or building in place of that removed within the time specified in the notice. If the Lessee does not carry out the required work within the time specified by the Authority any person or persons duly authorised by the Authority with such equipment as is necessary may enter the premises and carry out the necessary

work and all costs and expenses incurred by the Authority in carrying out the work will be paid by the Lessee to the Authority on demand and from the date of such demand until paid will for all purposes of this lease be a debt due and payable to the Authority by the Lessee;

RIGHT OF INSPECTION

- (p) Subject to the provisions of the Planning and Development Act 2007 to permit any person or persons authorised by the Authority (under the terms of the deed) to enter and inspect the premises at all reasonable times and in any reasonable manner and to permit any person or persons authorised by the Authority access to the premises for the purpose of carrying out work additional to that undertaken by the Lessee under the deed;

RATES AND CHARGES

- (q) That the Lessee shall pay all rates charges and other statutory outgoings assessed levied or payable in respect of the premises as and when they are due for payment;

PRESERVATION OF TREES

- (r) That the Lessee shall not, without the previous consent in writing of the Territory, remove any tree:
- (i) that has been identified in a development approval for retention during the period allowed for construction of the building; or
- (ii) to which the Tree Protection Act 2005, applies.

3. THE COMMONWEALTH COVENANTS WITH THE LESSEE as follows:

QUIET ENJOYMENT

- (a) That the Lessee paying the rent and all other money due and observing and performing the covenants and stipulations on the part of the Lessee to be observed and performed shall quietly enjoy the premises without interruption by the Authority or any person lawfully claiming from or under or in trust for the Authority;

SURRENDER

- (b) That when the Lessee has obtained a Certificate of Practical Completion (as defined in the deed) in relation to the completion of construction of a stage of the works as specified in the deed as a separable part of the works to the satisfaction of the Authority the Lessee shall in accordance with the requirements of clause 5.2 of the deed surrender to the Authority this lease insofar as it relates to that stage and the Authority will grant to the Lessee under the provisions of the Planning and Development Act 2007 the relevant and specified separate leases in a form consistent with the deed;

NO COMPENSATION

- (c) Upon the expiration, surrender or sooner termination of all or part of the lease the Lessee shall not be entitled to receive any compensation from the Authority in respect of any buildings, erections or improvements upon the land.

4. IT IS MUTUALLY COVENANTED AND AGREED as follows:

TERMINATION

- (a) That if -
- (i) any rent or other monies payable under this lease remains unpaid for three months next after the date appointed for payment thereof (whether such rent has been formally demanded or not); or

- (ii) the works in accordance with Clause 2(c) of this lease are not commenced within the period specified in the said Clause; or
- (iii) the works in accordance with Clause 2(d) of this lease are not completed within the period specified in the said Clause; or
- (iv) the Lessee defaults in the performance or observance of any covenant condition or stipulation in the deed and fails to remedy that default in accordance with the provisions of the deed; or
- (v) the Lessee commits a breach of Clause 2(j) of this lease; or
- (vi) the Lessee fails to observe or perform any other of the covenants herein contained on the part of the Lessee to be observed or performed and has failed to remedy such breach within a period of three months from the date of service on the Lessee of a notice in writing from the Authority specifying the nature of such breach

the Authority on behalf of the Commonwealth may terminate this lease but without prejudice to any claim which the Authority or the Commonwealth may have against the Lessee in respect of any breach of the covenants on the part of the Lessee to be observed or performed;

ACCEPTANCE OF RENT

- (b) That acceptance of rent or other monies by the Authority during or after any period or event referred to in Clause 4(a) will not prevent or impede the exercise by the Authority of the powers conferred upon it by the said Clause;

NOTICES

- (c) That any notice requirement demand consent or other communication to be given to or served upon the Lessee under this lease will be deemed to have been duly given or served if signed by or on behalf of the Authority and delivered to or sent in a prepaid letter addressed to the Lessee at the registered office of the Lessee in the said Territory BUT if for any reason the Lessee does not have a registered office in the said Territory then at the usual or last-known address of the Lessee or affixed in a conspicuous position on the premises;

EXERCISE OF POWERS

- (d) Any and every right, power or remedy conferred on the Commonwealth or Territory in this lease, by law or implied by law may be exercised on behalf of the Commonwealth or the Territory or as the case may be by:
 - (i) the Authority;
 - (ii) an authority or person for the time being authorised by the Authority or by law to exercise those powers or functions of the Commonwealth or Territory; or
 - (iii) an authority or person to whom the Authority has delegated all its powers or functions under the Planning and Development Act 2007.

SCHEDULE 1

INDUSTRIAL CONDUCT UNDERTAKING

(DEVELOPER'S NAME) PTY LIMITED ACN 000 000 000 having its registered office at (Developer's address) in the Australian Capital Territory hereby undertakes to the Authority that it will, while Lessee of the lease for Block 132 Section 1 Division of Ngunnawal, require any contractors and sub-contractors engaged in the undertaking of any works required to comply with the building and development covenant to be included in the lease for the Blocks to maintain a good industrial record and in particular undertake to:-

- a) comply with relevant awards, enterprise agreements and the National Employment Standards;
- b) prohibit "all in" or cash-in-hand payments;
- c) ensure good safety practices in accordance with the Work Safety Act 2008 and other relevant legislation; and
- d) comply with the Fair Work Act 2009 in dealing with claims for payments relating to periods of industrial action.

Signed by
(A.C.N.

) by:

.....
Signature

.....
Signature

.....
Name in full

.....
Name in full

.....
Director/Secretary

.....
Director/Secretary

IN WITNESS whereof the Authority on behalf of the Commonwealth and the Lessee have executed this Lease.

Signed by
a delegate authorised to execute this lease
on behalf of the Commonwealth in the
presence of)
)
)
)

.....
Delegate

.....
Witness

Signed by
(A.C.N.) by:)
)

.....
Signature

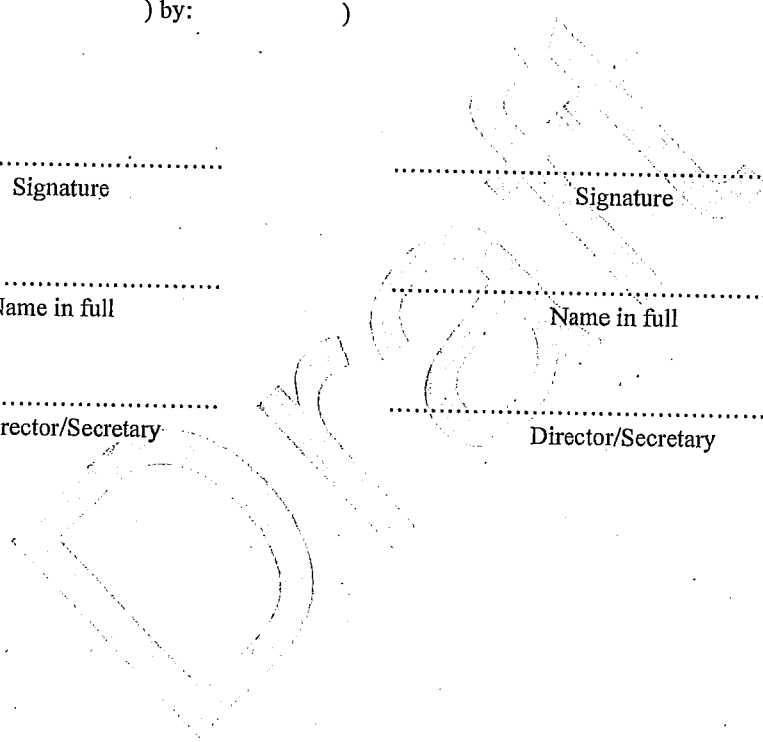
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Signature

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Name in full

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Name in full

.....
Director/Secretary

.....
Director/Secretary



**AUSTRALIAN CAPITAL TERRITORY
PLANNING AND LAND AUTHORITY**

AND

developer

A.C.N.

Ngunnawal 2C Estate

DEED OF AGREEMENT

- . Estate Planning
 - . Estate Development
-

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- “A2” Special Project Conditions
- “A3” Leases Plan and List
- “A4” Stages Plan with Program
- “A5” General

Draft

THIS DEED OF AGREEMENT made the _____ day of _____

BETWEEN

The **AUSTRALIAN CAPITAL TERRITORY PLANNING AND LAND AUTHORITY** ("the Authority")

AND

developer ("the Developer").

WHEREAS:

- A. The Authority was established as a body corporate under chapter 3, Part 3.1, of the *Planning and Development Act 2007* (ACT) and has the power to enter into this Deed,
- B. The Commonwealth is the owner of the Site, being land which is classified as Territory Land within the meaning of the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth).
- C. Under statutory powers and duties described by the Commonwealth, the Territory, through the Authority, and on behalf of the Commonwealth.
 - (i) has responsibility for the management of Territory Land, and
 - (ii) may grant, dispose of, acquire, hold and administer leasehold estates in Territory Land;
- D. The Authority and the Developer have agreed that an estate will be developed on the Land in the manner contemplated by this Deed and the Holding Lease.

NOW THIS DEED WITNESSETH:

PART 1

INTERPRETATION

1.1 Definitions

In this Deed, unless there is something in the subject or context inconsistent therewith, the following expressions shall have the following meanings:

“**ACTEW**” means ACTEW Corporation Limited (ACN 069 381 960);

“**ActewAGL**” means a joint venture company that owns, operates and maintains the electricity and gas services, and operates and maintains the water and sewage services on behalf of ACTEW;

“**ACTIA**” means the ACT Insurance Authority;

“**ACTPLA (ACT Planning & Land Authority)**” means Australian Capital Territory Planning and Land Authority and its successors;

“**Asset Acceptance**” means the Territory and Municipal Services (TAMS) Asset Acceptance Section or its successors;

“**Australian Capital Territory Planning & Land Authority**” means the Territory agency responsible for planning and approvals under the *Planning and Development Act 2007 (ACT)*

“**Authority**” means Australian Capital Territory Planning and Land Authority;

“**Block**” means a parcel of land designated in the proposed subdivision and for which a Lease will be sought in accordance with Clause 5.2 of this Deed;

“**Business Day**” means a day that is not a Saturday or Sunday, public holiday or bank holiday in the Territory;

“**Certificates**” means:

- (a) “Certificate of Final Design Acceptance” means written evidence that the respective Relevant Authorities design requirements have been met by the Developer prior to construction;
- (b) “Certificate of Operational Acceptance” means a certificate, given to the Developer by a Relevant Authority in respect of work to be handed over to that authority, certifying that the work is operational to the extent that it complies with the plans, specifications and requirements of that Relevant Authority;
- (c) “Certificate of Practical Completion” means a Certificate given by the Estate Manager to the Developer in accordance with the provisions of sub-clause 5.1.3; and

(d) "Final Certificate" means a Certificate given by the Estate Manager to the Developer in accordance with the provisions of sub-clause 5.1.3;

"Chartered Engineer" means an engineer who has the chartered status of Chartered Professional Engineer (CPEng) and/or is registered as such on the National Professional Engineers Register (NPER) administered by Engineers Australia. The Chartered Professional Engineer must also meet the requirements of the Relevant Authorities, be acceptable to the Territory and be suitably experienced in the type of engineering work involved in this Project;

"Commonwealth" means the Commonwealth of Australia;

"Consequent Leases" means a lease granted or proposed to be granted under the *Planning and Development Act 2007* (ACT) to the Developer in respect of an individual block;

"Deed" means this Deed and references to it include its appendices, annexures, schedules, attachments and any contracts, agreements and procedures for which provision is made in or by virtue of this Deed and also includes any Deed subsequently executed by the parties with the expressed intention that it is supplementary to this Deed;

"Defects Liability Period" means the period of time listed in Annexure A5;

"Design" means any design w [redacted] relevant to the requirements of the Deed and includes such plans, specifications and other material which constitute the full documentation necessary for the carrying out of those requirements or any of them;

"Developer" includes its employees, contractors, successors and agents;

"Estate" means the residential, commercial or industrial (or a combination of these) land development project contemplated by the Estate Development Plan in Annexure A1;

"Estate Manager" means the person or body nominated by the Territory in Annexure "A5" to the Deed or nominated from time to time in writing by the Territory to act on behalf of the Territory in accordance with the provisions of the Deed;

"Estate Development Plan" means the Estate Development Plan in Annexure A1;

"Final Design Certificate" means a certificate, given to the Developer by the Authority in respect of the design, certifying that the design is acceptable to the extent that it complies with the plans, specifications and requirements of that Relevant Authorities;

"General Performance Undertaking" means that security required under clause 6.4.1;

"Holding Lease" means the Lease granted by the Territory on behalf of the Commonwealth to the Developer under the *Planning and Development Act 2007* (ACT) being the Lease to which this Deed is annexed;

“Interdependent Work” means that part of the Works that is designated in the Deed as being Interdependent Work;

“Land Agency” means the Land Development Agency, a corporation established by Chapter 4 Part 4.1 of the *Planning and Development Act 2007 (ACT)*;

“Lease and Development Conditions” means lease and development conditions applicable to consequent leases;

“Leased Land” means land over which a lease has been issued by the ACT Planning & Land Authority;

“Lessee” means the party to whom a Lease has been granted;

“Minister” means the Territory Minister with responsibility for land development, management and leasing, unless otherwise expressed within the Deed;

“Notice to Commence Construction Work” means a notice given under clause 4.4;

“Plan of Survey” means a plan prepared by the Developer in accordance with the current Survey Practice Directions and the current associated Standards and Specifications for Deposited Plans as added to or varied from time to time;

“Practical Completion” means that point of time in the execution of a Stage when Certificates of Operational Acceptance for that Stage have been issued to the Developer by all Relevant Authorities and the Estate Manager has certified that there has been compliance with the relevant requirements of the Deed;

“Programme” means the Programme annexed to the Stages Plan (Annexure A4);

“Project” means the proposal to develop the works in accordance with this Deed;

“Relevant Authority” means, an authority, body or unit, whether corporate or not, having administrative or statutory responsibilities for, or nominated within the Deed to be responsible for, particular work or activities referred to in this Deed;

“Security for Interdependent and Scheduled Engineering Services” means the security require under clause 6.4.2;

“Security for Uncompleted Work” means that security set out in clause 6.4.3.1;

“Separable part of the Works” means a part of the Works specified in the Deed, or designated in writing from time to time by the Estate Manager, to be a separable part of the Works;

“Scheduled Engineering Services” means that part of the Works that is designated to be completed in accordance with a stipulated schedule in Annexure A4;

"Site" means the area containing the extent of works as shown in the Estate Development Plan at Annexure A1;

"Special Project Conditions" mean the Special Project Conditions in Annexure A2;

"Specifications" include:

- (a) standard specifications, special specifications and guidelines listed or referred to in the Deed; and
- (b) detailed specifications to be prepared by the Developer as a requirement of the Deed;

"Stage" means a separable part of the Works identified as a Stage in Annexure A4;

"SSD" means the ACTPLA Surveying and Spatial Data Section or its successors;

"Standard Practices and Guidelines" means the Standard Practices and Guidelines and Acts of the Territory as amended or added to from time to time and set out in Appendix (i) of the Deed;

"TAMS" means Territory and Municipal Services;

"Territory" means:

- (a) when used in a geographical sense, the Australian Capital Territory; and
- (b) when used in any other sense, the body politic established by section 7 of the Australian Capital Territory (Self-Government) Act 1988 (C'th);

"Utilities" means a Relevant Authority responsible for the supply of utility services of electricity, gas, water, sewerage, and telecommunications and the infrastructure associated with these services;

"Works" means all the Works and activities which the Developer is or may be required to execute and engage in under the Deed and includes all design, variations, remedial work and temporary work as specified in Annexure A1.1 and Annexure A2;

"Works-as-Executed Plans" means records to the satisfaction of the Territory accurately describing the constructed form of the Works.

1.2 Interpretation

In this Agreement, except where the context otherwise requires:

- the singular includes the plural and vice versa, and a gender includes other genders;
- another grammatical form of a defined word or expression has a corresponding meaning;
- a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this Agreement, and a reference to this Agreement includes any schedule or annexure;
- a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- a reference to A\$, \$A, dollar or \$ is to Australian currency;
- a reference to time is to time in the ACT;
- a reference to a Party is to a Party to this Agreement, and a reference to a Party to a document includes the Party's executors, administrators, successors and permitted assigns and substitutes;
- a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- a word or expression defined in the *Corporations Act* has the meaning given to it in the *Corporations Act 2001*;
- the meaning of general words is not limited by specific examples introduced by 'including', 'for example' or similar expressions;
- any agreement, representation, warranty or indemnity by two or more Parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- any agreement, representation, warranty or indemnity in favour of two or more Parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- a rule of construction does not apply to the disadvantage of a Party because the Party was responsible for the preparation of this Agreement or any part of it;
- if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day;
- clause headings and sub-clause headings in this Deed shall not be deemed to be part thereof and shall not be used in the interpretation or construction thereof.

1.3 Governance

This Deed shall be governed by and construed with reference to the laws for the time being in force in the Territory.

PART 2

GENERAL OBLIGATIONS

2.1 General

The Developer acknowledges that it has read the background information (if any) issued by the Land Agency for release of the Site.

Upon compliance with the requirements of the Holding Lease and the Deed, the Authority will grant, stage by stage to the Developer, consequent Leases (under the *Planning and Development Act 2007* (ACT), the Holding Lease being progressively surrendered for that purpose.

Where the Developer or its assignee, or associates, sells, transfers or assigns rights to any land within the Estate without the land being identified by Block and Section number in an approved Subdivision such action is unacceptable to the Territory unless the form of contract or document is acceptable to the legal profession or a member thereof.

PART 3

ESTATE PLANNING

3.1 Estate Development Plan

The parties acknowledge that Annexure A1 (Estate Development Plan) and the associated Annexures A3 and A4 are indicative only. The Developer shall immediately and at its own cost prepare and submit to the Estate Manager for approval substitute Annexures A1, A3 and A4 in compliance with the requirements of the Deed and subject to conformity with the provisions of Annexure A2.

3.2 Substitution of Annexures

The Developer is entitled from time to time to submit to the Estate Manager for approval further proposals to vary each or any of Annexures A1, A3 and A4 subject to conformity with the provisions of Annexure A2. All costs of such a submission shall be borne by the Developer.

The Estate Manager may, at any time and from time to time direct the Developer to prepare and submit at its own cost to the Estate Manager a substitute Annexure A4.

3.3 Procedures for Substitution of Annexure A1

Proposals submitted by the Developer for substitution of Annexure A1 shall be submitted for approval by the Estate Manager in accordance with the requirements of:

1. The provisions of Clause 3.5 of this Deed of Agreement; and
2. The provisions of the "Guidelines for the Preparation of Estate Development Plans" or its successors.

Upon receipt of endorsement of the substitute Annexure A1 by the Estate Manager, the Developer shall submit the proposed substitute Annexure A1 to the Authority as a formal Development Application for approval in accordance with the provisions of Chapter 7 of the *Planning and Development Act 2007 (ACT)*.

The Developer shall pay all fees and charges associated with the Development Application. In the event that consent is given to any substitution proposal, a Deed of Variation prepared by the Territory and duly executed by both parties shall be physically attached to the Deed.

3.4 Procedures for Substitution of Annexures A3 and A4

Proposals submitted by the Developer for substitution of Annexures A3 & A4 shall be considered by the Estate Manager. In the event that consent is given to any substitution

proposal to Annexure A3 and A4, a Deed of Variation prepared by the Territory and duly executed by both parties shall be physically attached to the Deed.

3.5 Project Planning Conditions

3.5.1 Standard and Special Planning Practices and Guidelines

The Developer shall comply with:

- (a) the Standard Practices and Guidelines; and
- (b) the Special Project Conditions;

provided that in the event of conflict between the provisions of sub-clauses (a) and (b) the latter sub-clause shall prevail to the extent of the conflict or inconsistency.

3.6 Survey Requirements

New surveys arising from proposed planning changes in respect of road, block or other boundaries shall be undertaken at the Developer's cost as directed by the Estate Manager and the Surveyor-General.

PART 4

ESTATE DEVELOPMENT

4.1 Works

4.1.1 General

The Developer shall, at its own cost and in accordance with the requirements of this Deed and the Holding Lease, undertake the design, construction and completion of the Works listed in Annexure A1, to the satisfaction of the Estate Manager.

Notwithstanding any approvals, endorsements, consents, comments or certificates made, given or issued by the Territory to the Developer in respect of design, there shall be no waiver or diminution of the continuing responsibilities of the Developer in respect of the efficiency and sufficiency of design.

To the extent that they are incidental and can be reasonably inferred as necessary for the full and proper compliance with the requirements of the Deed, the Developer shall at its own cost do all things and supply all materials.

4.1.2 Standard and Special Practices and Guidelines

Without diminishing any of the Developer's responsibility specified in 4.1.1 above, the Developer shall design, construct and complete the Works in accordance with:

- (a) the separate Standard Practices and Guidelines;
- (b) the Special Project Conditions; and
- (c) the regulations, standard practices and other requirements of the Relevant Authorities;

provided that in the event of conflict between the provisions of sub-clauses (a) and (b) or (c) the latter sub-clauses shall prevail to the extent of the conflict or inconsistency.

4.2 Chartered Engineer

After the execution of the Deed the Developer shall submit to the Estate Manager in writing the name of the Chartered Engineer whom he proposes to engage to undertake and provide on behalf of the Developer all engineering design, supervision of construction and certificates required under the Deed.

Evidence shall be supplied by the Developer to the Estate Manager that the proposed Chartered Engineer is within the criteria of a Chartered Engineer as defined in Part 1 of this Deed. The Developer is to ascertain the requirements of the Relevant Authorities in regards to the qualifications of the Chartered Engineer prior to submission of this evidence.

The Estate Manager shall have the right and power to accept or reject the nomination and will convey its written decision to the Developer within three (3) weeks from the date of the receipt by the Estate Manager of the proposal.

Upon engagement by the Developer of the Chartered Engineer, the Developer shall produce to the Estate Manager evidence that the Chartered Engineer holds a current professional indemnity insurance policy that covers design, construction and supervision responsibilities.

The Developer shall ensure that the Chartered Engineer carries out on his behalf all design, supervision of construction and certification requirements of the Deed and in this regard pays particular attention to the provisions of Part 4 of this Deed and to the provisions of the Standard Practices Guidelines and Acts of the Territory listed in Appendix (i) to the Deed.

In addition to any other certifications required by the Deed, the Developer shall ensure that the Chartered Engineer provides certifications that:

- (a) the Design is in accordance with the Deed requirements, as a pre-requisite to issue of a Final Design Certificate;
- (b) the Works have been properly constructed in accordance with the approved plans and specifications and Deed requirements, as a pre-requisite to issue of a Certificate of Practical Completion; and
- (c) the Work-as-Executed Plans are a true and accurate record of the Works as constructed.

The Estate Manager and representatives of Relevant Authorities may communicate directly with the Chartered Engineer, and any such communication shall be deemed to be with the Developer.

In the event that the Developer wishes to engage more than one Chartered Engineer he shall seek the approval of the Estate Manager. If the approval is granted the Developer shall, in respect of each proposed Chartered Engineer, follow all the above prescribed procedures.

4.3 Approvals

4.3.1 Engineering and Landscape

Where engineering or landscape Design is required under the Deed, the Developer shall submit appropriate designs to all Relevant Authorities and the Estate Manager, and obtain all necessary approvals in accordance with:

- (a) the Deed including the Standard Practices and Guidelines; and
- (b) any oral or written directions given by the Estate Manager.

Notwithstanding any approval to a Design given by others, the Developer shall obtain final or conditional Design approval from the Estate Manager.

4.3.2 Buildings

No construction of buildings shall be commenced until the following approvals have been given:

- (a) approval by the Authority of a Development Application; and
- (b) plan approval by the Authority under the Building Act 2004.

4.4 Commencement of Construction Work

The Developer shall be deemed to have been given access to the site of the Works on the date of execution of this Deed by both parties (or the date the last party executes this Deed where the parties do not execute this Deed on the same day). However, construction work, including site clearing and stripping of topsoil, shall not commence in respect of a Stage until the Estate Manager has issued to the Developer a written Notice to Commence Construction Work in respect of that Stage.

A Notice to Commence Construction Work will be issued by the Estate Manager when:

- (a) there is in existence a current Development Application approved by the ACT Planning & Land Authority;
- (b) the Developer has lodged with the Estate Manager a General Performance Undertaking in accordance with Clause 6.4.1;
- (c) the Developer has, where required by the Estate Manager, lodged an additional Security for Interdependent and Scheduled Engineering Services in accordance with Clause 6.4.2 and Annexures A2 & A5;
- (d) the Developer has lodged with the Estate Manager written evidence of compliance with the insurance requirements set out in Clause 6.3 and Clause 4.2;
- (e) the Developer has received a final design approval from the Estate Manager as required by clause 4.3 above; and
- (f) the developer has received approval of a construction access plan from the Estate Manager.

The issue of the relevant Certificate of Practical Completion will not occur without the presentation by the Developer of a relevant Final Design Certificate and a Notice to Commence Construction Work issued by the Estate Manager.

In the event of failure by the Developer to obtain a Notice to Commence Construction Work prior to commencement of construction, the Territory may withhold all approvals and

suspend supervisory functions of the Estate Manager and any Relevant Authority during the term of the breach.

4.5 Extent of Activities

The Developer shall to the extent possible confine its activities to the Site unless prior approval is obtained from the Estate Manager to extend beyond the Site. In the event that the Developer believes it is necessary to occupy adjacent land, the Developer shall negotiate with all affected owners for suitable rights of occupation to that land. Upon agreement with all affected owners for rights of occupation to the adjacent land, the Developer shall present adequate documentation to the Estate Manager outlining the Developer's rights and conditions of such occupancy. The Developer must comply with all conditions of occupancy.

In the event that it requires a temporary licence to occupy adjacent unleased public land, the Developer shall obtain the approval of the Relevant Authority and then contact the Estate Manager with adequate documentation outlining the Developer's rights and conditions of such occupancy. The Developer must comply with all conditions of occupancy.

No undertaking is given by the Territory that adjacent unleased public land will be made available to the Developer.

The site compound, topsoil stockpiles and all other stockpiles shall be located to avoid damage to existing flora in areas approved by the Relevant Authorities.

Upon completion of the final stage of the Works or immediately after vacating the subject parcel of land, all disturbed areas shall be fully restored, seeded and straw mulched at the Developer's cost to the satisfaction of the Relevant Authority.

4.6 Set Out of the Works

The Surveyor-General will provide fixed survey reference points in the field and information on their level and co-ordinates. All costs associated with the provision of further survey reference points shall be borne by the Developer.

All other surveying work including engineering and boundary surveys shall be the responsibility of the Developer.

The Developer shall, at its own cost, install and level benchmarks to the requirements of the Surveyor-General.

The works shall be set out by the Developer in accordance with the requirements of the Surveyor-General.

4.7 Survey Bench and Reference Mark Disturbance

The Developer shall not disturb Survey Bench and Reference Marks without the specific consent of the Surveyor-General and compliance with the conditions of any consent.

4.8 Disposal of Spoil

The Developer shall dispose of spoil within his development area in accordance with the approved design. Excess spoil shall be transported to one of the major land-fill areas or to an area made available by the Territory.

4.9 Liaison with Relevant Authorities

4.9.1. Preliminary Engineering Design

In planning the Estate the Developer shall examine all Utility master plans to ascertain the impact of the proposed development on the Utilities existing and future infrastructure. The Developer shall obtain from each Utility written confirmation that arrangements where applicable have been made for servicing the development prior to final planning approval.

4.9.2. Liaison with Utilities

The Developer shall confirm with the Utilities providing water, sewerage electricity, gas and telecommunications services their individual requirements for provision of servicing of the Development.

Confirmation must be sought from the Utilities on the provision of installation of the following:

- (a) street lighting;
- (b) electricity reticulation;
- (c) gas reticulation;
- (d) telecom munications reticulation;
- (e) under road conduits; and
- (f) connection to existing water supply and sewerage networks.

The Developer shall confirm the design and construction phase requirements in order to enable an agreed development program to be established between the Utilities and the Developer prior to construction.

TAMS promote the provision of services via the use of shared trenching to enable rationalisation of trenching and construction practices. The following Utilities have developed a Shared Trench Agreement for use within developments:

- Jemena (Gas)
- ActewAGL Electricity Networks
- TransACT Communications
- Telstra Corporation

Where required the Developer shall provide a trench for the purpose of "Shared Trenching" as required by the relevant Utilities.

4.9.3. Construction Program

The Developer shall liaise directly with each Utility to confirm the following construction program:

- (a) Project scope;
- (b) Construction sequences and timing;
- (c) Responsibilities of all parties involved;
- (d) Project contact officers and principal contractors;
- (e) Site servicing requirements (including construction documentation and commissioning requirements);
- (f) Standards, specification and procedures applicable to the project; and
- (g) Utility resource availability and response times.

4.9.4. Access by Others

The Developer shall permit access to the Site by the Utilities for the purpose of carrying out works additional to that required to be undertaken by the Developer.

4.9.5. Statements from Utilities

The Developer shall obtain at the appropriate stages of the development the following certificates *from the Utilities*:

- a) Certificate of Final Design Acceptance - written evidence that the respective Utilities design requirements have been met by the Developer prior to construction; and
- b) Certificates of Operational Acceptance - written evidence that the respective Utilities requirements have been met, which has allowed the Utility to successfully reticulate and commission its services in association with the Development.

4.9.6 Utility Contacts

The following numbers are Utility contacts as the date of this Deed. The Territory takes no responsibility for any change of numbers.

ActewAGL (Water & Sewerage)	(02) 6242 1499
Jemena (Gas)	(02) 6203 0640
ActewAGL Electricity Networks	(02) 6293 5738
Telstra Corporation	(02) 9397 2090
TransACT	(02) 6229 8047

4.10 Blasting

The Developer shall not, without the prior consent of the Estate Manager, carry out blasting or permit blasting to occur:

In the event that the Estate Manager gives consent to blasting it shall be carried out in accordance with the Standard Practices and Procedures and any direction of the Territory.

4.11 Material and Work to be Subject to Examination and Testing

Any material used or any work forming part of the Works under the Deed may at any time and from time to time be examined or tested by the Relevant Authorities to ensure that the material or work complies with this Deed and with the requirements of the Relevant Authorities.

4.12 Statements from Relevant Authorities

Prior to applying for the issue of Certificate of Practical Completion for any Stage, the Developer shall obtain a statement from each of the Relevant Authorities indicating that their requirements have been met.

These statements shall be lodged with the Estate Manager in accordance with clause 5.2 of the Deed.

4.13 Street Names, Numbers and Signposting

The Developer shall obtain from the ACT Planning and Land Authority the name of each gazetted street or place and provide street name signs in accordance with the ACT Planning and Land Authority's requirements. All street signs shall be in place prior to the issue of a Certificate of Practical Completion.

All street numbering shall be carried out in consultation with the ACT Planning and Land Authority.

PART 5

CERTIFICATES AND ISSUE OF CONSEQUENT LEASES

5.1 CERTIFICATES

5.1.1 Certificate of Final Design Acceptance

A certificate issued by the Estate manager upon receipt of all written evidence that the respective Relevant Authorities design requirements have been met by the Developer prior to construction;

5.1.2 Certificate of Operational Acceptance

In respect of each Stage the Developer shall obtain a Certificate of Operational Acceptance from each Relevant Authority.

5.1.3 Certificate of Practical Completion

After the Developer has received Certificates of Final Design Approval and Certificates of Operational Acceptance from all Relevant Authorities for all Works within a Stage, the Developer shall apply to the Estate Manager for a Certificate of Practical Completion for that Stage and attach to the application copies of the Certificates of Final Design Approval and the Certificates of Operational Acceptance issued by the Relevant Authorities.

Upon receipt of the above application, the Estate Manager will, if he is satisfied that there has been compliance with the terms of the Deed and the procedures referred to in Appendix (i), issue to the Developer a Certificate of Practical Completion for that Stage.

5.1.4 Final Certificate

After the Defects Liability Period has expired and if the Estate Manager is satisfied that the Works have been satisfactorily completed by the Developer in accordance with the terms of the Deed, including any remedial work required, and clearances have been obtained from all Relevant Authorities, the Estate Manager will issue to the Developer a Final Certificate, provided that if there are a number of Stages of the Works a separate Final Certificate shall issue in respect of each Stage.

5.2 Issue of Consequent Leases

The Developer shall, within six months (or within such further time as may be approved by the Estate Manager) from the date of issue of the Certificate of Practical Completion for the relevant Stage, apply to the Territory for the issue of Consequent Leases as specified in Annexure A3 to itself.

Applications to the Territory for the Consequent Leases shall be made by the Developer and at the Developers cost through the Estate Manager, and will require lodgement at the Developer's expense with the Estate Manager of the following:

- (a) as required by the Estate Manager, further statements from the Relevant Authorities that their requirements have been met;
- (b) for the relevant stage, an electronic version of:
 - (i) a Plan of Survey showing clearly the land being surrendered from the current holding lease, and the land intended to remain in the Holding Lease; and
 - (ii) a Plan of Survey of the blocks intended to be the subject of individual consequent Leases, in accordance with the Leases Plan;
 - (iii) once the examination process is finalised, the surveyor will receive instruction to plot the Plan of Survey on film and submit for the Surveyor-General's signature.
- (c) a completed Memorandum of Surrender of Crown Lease for the Land in the Holding Lease being surrendered in the relevant Stage;
- (d) a Security for Uncompleted Works or contribution in accordance with the requirements and provisions of sub-clause 6.4.3;
- (e) certification from a registered surveyor that all the bench and survey marks are in place to the Surveyor-Generals specifications; and
- (f) a Certificate of Occupancy of Use in respect of any building required to be constructed by the Developer under the Deed.

PART 6**GENERAL****6.1 Assignment**

The Developer shall not, without the prior written approval of the Territory, which will not be unreasonably withheld, assign, mortgage, charge or encumber its interests in this Deed and/or the Holding Lease.

6.2 Partnership

Nothing in this Deed shall be deemed to create the relationship between the parties of a partnership or of principal and agent.

6.3 Insurance**6.3.1 Work not to commence without Insurance**

The Developer shall not commence any activity on the site until it has produced to the Estate Manager, who in turn has received approval from the ACT Insurance Authority (hereafter for the purposes of clause 6.3 called the "ACTIA"), and received approval of;

1. insurance policies required by the succeeding sub-clauses and by Clause 4.2; and
2. evidence as to their currency.

6.3.2 Nature of Insurance

The Developer shall take out and keep current insurance policies in respect of all the normal risks involved in its development and construction of the Works.

Such risks shall include risks relative to:

- (a) public risk;
- (b) loss or damage to Works;
- (c) workers compensation;
- (d) indemnities given by the Developer;

but may except risks relative to:

- (a) war, invasion, act of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power, martial law or confiscation by order of any Government or public authority; or
- (b) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel not caused by the Developer or its employees or agents or contractors.

6.3.3 Names of Insured

The insurance policies shall be taken out in the name of the Developer or primary contractor, and the interests of the Commonwealth, ACTEW Corporation and the Territory noted on the policies.

6.3.4 Amounts and Terms of Policies

The amounts and terms of the Policies shall be acceptable to the ACTIA. Any matters or changes affecting the Policies shall be referred in writing to the Estate Manager for approval by the ACTIA.

6.4 Security/Performance Undertakings and Contributions

6.4.1 General Performance Undertaking

The Developer shall lodge a General Performance Undertaking with the Estate Manager prior to seeking a Notice to Commence Construction Work from the Estate Manager.

The General Performance Undertaking shall be an Unconditional Deed of Undertaking by a bank, building society or financial institution approved in writing by the Territory and shall be:

- a) in the form approved in writing by the Territory; and
- b) for the amount specified in Annexure A5.

After the issue Certificate of Practical Completion for a Stage of the Works, the Developer may apply for a reduction in the level of security specified in Annexure A5 to a level equal to 5% of the security held against the Works in that Stage, plus the value of any outstanding works multiplied by the appropriate multiplying factor in Appendix (ii).

The Territory shall take the necessary action to release the General Performance Undertaking, or part thereof, within fourteen days (14) of the date of expiration of the Defects Liability Period for the particular stage of the works to which the whole undertaking, or part thereof, applies.

6.4.2 Security for Interdependent Work and Scheduled Engineering Services

Where the list of Works contained in Annexure A1 contains work designated as Interdependent Works or Scheduled Engineering Services, the Developer shall lodge a Security for Interdependent and Scheduled Engineering Services with the Estate Manager prior to seeking a Notice to Commence Construction Work from the Estate Manager.

The Security for Interdependent and Scheduled Engineering Services work shall be an Unconditional Deed of Undertaking by a bank, building society or financial institution, or other security approved by the Territory, and shall be:

- a) in the form approved in writing by the Territory; and
- b) for the amount specified in Annexure A5.
- c) The Territory shall take the necessary action to relinquish the Security for these works within fourteen (14) days of the issue of the Certificate of Practical Completion for the final Stage containing the Interdependent Works.
- d) Notwithstanding anything to the contrary in this Deed the Territory will not relinquish the security unless, in addition to other requirements, the Developer has satisfactorily remedied any outstanding work defects.

6.4.3 Security or Contribution for Uncompleted Works

For the purposes of this sub-clause 'Uncompleted Work' means work required by this Deed for which a Certificate of Practical Completion has not been issued.

Prior to the issue of a Certificate of Practical Completion within each Stage the Developer shall lodge with the Territory either:

- (a) a Security for Uncompleted Work in accordance with the requirements and provisions of sub-clause 6.4.3.1; or
- (b) a contribution to the Territory for all Uncompleted Work in accordance with the requirements and provisions of sub-clause 6.4.3.2.

6.4.3.1 Security for Uncompleted Works

The Security for Uncompleted Works shall be an Unconditional Deed of Undertaking by a bank, building society or financial institution approved in writing by the Territory, and shall be:

- (a) in the form approved in writing by the Territory/Authority; and
- (b) for an amount equal to the amount derived from the application of the sliding scale in the document headed "Security Scale for Assessing Security for Uncompleted Works" in APPENDIX (ii).

Where a Security for Uncompleted Works has been lodged by the Developer for a particular Stage, the Territory/Authority shall take the necessary action to relinquish the Security for Uncompleted Work within fourteen (14) days of the issue of the Final Certificate for that Stage of the Works.

Notwithstanding anything to the contrary in this Deed the Territory/Authority will not relinquish the security unless, in addition to other requirements, the Developer has satisfactorily remedied any outstanding work defects.

6.4.3.2 Contributions for Uncompleted Work.

Subject to the approval in writing by the Estate Manager, the Developer may lodge a contribution to the Territory for an amount determined by the Estate Manager to be equal to the value of any Uncompleted Work. The acceptance of this contribution by the Territory shall release the Developer of its obligations and responsibilities under the Deed in respect to the work to which the contribution relates.

6.4.4 Liquidated Damages

In the event that the Developer fails to complete the Interdependent Works specified in Annexure A2 within the time specified in Annexure A4, and the Estate Manager refuses an application for an extension of time or otherwise refuses to grant an extension of time under the provisions of clause 6.5.2 and (or) clause 6.5.3 of this Deed, the Developer shall be liable to the Territory, by way of pre estimated and liquidated damages and not as a penalty, for the amount or amounts stated in Annexure A5 of this Deed for the period that the works remain incomplete.

6.5 Times for Commencement and Completion

6.5.1 Program

The Developer shall undertake the development of the Estate in accordance with the order and time provisions of the Stages Plan with Programme (Annexure A4) and in accordance with the commencement and completion dates specified in Annexure A5.

6.5.2 Extensions of Time - Rights of Developer

Any application by the Developer for a variation or extension of time shall be made under the provisions of clause 3.4 of this Deed. The Developer shall not be entitled to an extension of time for delays by Relevant Authorities where, in the opinion of the Estate Manager, the Developer did not provide the Relevant Authorities with adequate notice. The Developer will be entitled to extensions of time where delay is caused by matters beyond the reasonable control of the Developer. The Authority will not unreasonably withhold its approval to an application by the Developer for a variation or extension of time arising from such delay.

6.5.3 Extensions of Time - Powers of Estate Manager

Notwithstanding that the Developer has not made an application for a variation or extension of time, the Estate Manager may at any time and from time to time and for any reason it thinks sufficient, by written notice addressed to the Developer, extend time by nominating a date specified in the notice as the new and substituted date for completion of the Works.

6.6 Defects Liability and Liquidated Damages

6.6.1 Times of Commencement and Periods

The time of commencement for the Defects Liability Period under this Deed shall be the date of the issue of the Certificate of Practical Completion for the relevant Stage. The Defects Liability Period under this Deed for each stage of the Works shall be that stipulated in Annexure A5.

6.6.2 The Developer's Responsibility

- (a) Any omissions and defects which existed at the commencement of a Defects Liability Period and which are notified to the Developer in writing during the Defects Liability Period shall be rectified by the Developer as directed irrespective of who is responsible for the defects.
- (b) Any omissions and defects referred to in the preceding paragraph of this sub-clause which are not rectified by the Developer and any other defects which become apparent during a Defects Liability Period which are due to any cause, including design, workmanship or materials for which the Developer is responsible shall be rectified by the Developer when directed to do so by the Estate Manager which, in that direction, shall state the omissions or defects or in what respect the relevant stage of the Works is otherwise defective and the date by which the rectification shall be completed, but no such direction shall be given by the Territory later than fourteen days after the expiration of that Defects Liability Period.
- (c) If any omission or defect is not rectified within the reasonable time stipulated in the direction given by the Estate Manager, the Estate Manager may rectify the omission or defect at the Developer's expense but without prejudice to any other rights that the Territory has against the Developer in respect of that omission or defect and the cost incurred by the Territory in so rectifying the omission or defect shall be a debt due from the Developer to the Territory which may be deducted or recovered by the Territory pursuant to clause 6.11 of the Deed.
- (d) If it becomes necessary for the Developer to execute any remedial work, the provisions of the Deed relating to the relevant stage of the Works shall apply to the remedial work as if it were the relevant stage of the Works and the Defects Liability Period for such remedial work shall be the Defects Liability Period that applies to the relevant stage of the Works and shall commence on the day on which the

remedial work is completed, but the Estate Manager may approve, in respect of any remedial work, a shorter Defects Liability Period.

6.6.3 Tests on Remedial Work

If any remedial work is of such a character as may affect the efficiency of the Works or a part thereof the Estate Manager may, within one month after completion of that remedial work, notify the Developer that further tests are to be made in accordance with the provisions of the Deed. The costs of such further tests shall be borne by the Developer.

6.7 Service of Documents

6.7.1 Service of Documents on the Developer

Any document which is to be or may be issued or given to or served upon the Developer under the Deed shall be deemed to have been sufficiently issued or given to or served upon the Developer if it is handed to or is sent by prepaid post to or is left at the address of the Developer stated in the Deed or at such other address as is notified in writing by the Developer to the Estate Manager.

6.7.2 Service of Documents on the Territory

Any document which is to be or may be issued or given to or served upon the Territory under the Deed shall be deemed to be sufficiently issued or given to or served upon the Territory if it is handed to the Estate Manager or is sent by prepaid post to or is left at the address of the Estate Manager stated in Annexure A5.

6.7.3 Service by Post

Any document sent by registered post shall be deemed to have been issued or given to or served upon the Territory, as the case may be, at the time at which it would normally arrive in the ordinary course of the post at the address to which it is directed.

6.7.4 Service by Instantaneous Means

Any document sent by instantaneous means shall be deemed to have been issued to or served upon the Developer or given to or served upon the Territory, as the case may be, at the time and place of receipt of the document. Instantaneous means shall include email, facsimile, telegraph and telex or any other means of instantaneous communication.

6.8 Documents

6.8.1 Drawings and Specification

Where any discrepancy exists between figured dimensions and scaled dimensions, the figured dimensions shall prevail.

Drawings made to larger scales and those showing details of particular parts of any work shall be taken as correct in preference to those made to smaller scales and for more general purposes.

6.8.2 Availability of Documents

During the execution of the Works under the Deed, one copy of the Deed shall be kept by the Developer at the Site or other location approved in writing by the Estate Manager and shall be available at all times for reference by the Estate Manager and any persons nominated in writing by the Estate Manager.

6.9 Developer to Inform Itself

The Developer shall be deemed to have:

- (a) examined carefully and to have acquired proper knowledge of the contents of the Deed;
- (b) examined all information relevant to the risks, contingencies and other circumstances relevant to the Works and which is obtainable by the making of reasonable enquiries;
- (c) examined all relevant standards and guidelines referred to in the Deed;
- (d) examined the Site and its surroundings;
- (e) satisfied itself as to its ability to comply with all its obligations under this Deed and of all matters and things necessary for the due and proper performance and completion of the Deed;
- (f) satisfied itself of the adequacy or otherwise of all planning and design requirements specified in the Deed;
- (g) ascertained the requirements of ActewAGL Electricity Networks regarding the provision of ducts, conduits etc to facilitate installation of its services, and contributions for installation of electricity reticulation and street lighting; and
- (h) ascertained from all other Relevant Authorities information regarding the provision of ducts, conduits and other requirements to enable and facilitate proper installation of the respective services.

Failure by the Developer to do all or any of the things in (a) to (h) inclusive it is deemed to have done under this clause shall not relieve the Developer of its liability to perform and complete the Deed in accordance with the terms and conditions thereof at its own cost.

6.10 Indemnity

The Developer shall indemnify and keep indemnified the Territory, and ACT Planning and Land Authority against all costs, loss or damage from and against any claim, demand, action, suit or proceeding that may be made or brought by any person against the Territory and ACT Planning and Land Authority, its agents or officers, or any Relevant Authorities, their agents, or officers in respect of damage to persons or property arising out of the Developers performance or lack of performance of its obligations under this Deed.

The indemnification in the preceding paragraph shall not extend to loss or damage which is the direct result of negligence of the Territory, ACT Planning and Land Authority, its agents, officers or the Relevant Authorities.

6.11 Recovery of Moneys

Without limiting the right of the Territory under any other provision in the Deed, the amount of any debt due from the Developer to the Territory under or by virtue of any provision of the Deed may be deducted by the Territory from the security provided by the Developer under the Deed. Nothing in this clause shall affect the right of the Territory to recover from the Developer the whole amount of the debt or any balance that remains owing after deduction.

6.12 Failure by the Developer

In the event that the Developer fails to comply with clause 6.4 of the Deed relating to the lodgement of security or with clause 6.3 of the Deed relating to the production of satisfactory evidence as to the currency of insurance cover, the Territory may by notice in writing inform the Developer that it will within seven (7) days of the date of the notice treat the failure as a default by the Developer within the meaning of clause 6.13 of the Deed.

6.13 Default by the Developer

6.13.1 Procedures

If the Developer defaults in the performance or observance of any covenant, condition or stipulation in the Deed, the Territory may call upon the Developer, by notice in writing, to show cause within a reasonable period specified in the notice why the powers hereafter contained in this clause should not be exercised.

The notice in writing shall state that it is a notice under the provision of this clause and shall specify the default or neglect on the part of the Developer upon which it is based.

If the Developer fails within the period specified in the notice in writing to show cause to the satisfaction of the Territory why the powers hereafter contained should not be exercised, the Territory, without prejudice to any other rights that it may have under the Deed against the Developer, may take any or any combination of the following actions:

- (a) entry by the Territory and its representatives upon the Site and the carrying out by it of that work and those remedial measures it considers necessary.
- (b) implementation by the Territory of its powers and rights relative to the security provided by the Developer under the provisions of clause 6.4.

6.13.2 Engagement of Others

If the Territory elects to exercise the power conferred on it by sub-paragraph (a) of sub-clause 6.13.1 it may let Contracts to others and employ persons other than the Developer to carry out activities on the Site.

6.13.3 Preservation of Rights

Any action taken by the Territory under sub-clauses 6.13.1 or 6.13.2 or both shall not diminish any of its powers or rights under the remaining provisions of this Deed.

6.14 Disputes

Excepting those disputes or differences that arise from planning decisions of the Territory or Authority, or which relate to the interpretation of the provisions of this Deed, all disputes or differences arising out of the Deed or concerning the performance or the non-performance by either party of its obligations under the Deed shall be decided as follows:

- (a) the Developer shall not later than fourteen (14) Business Days after the dispute or difference arises, submit the matter at issue in writing, with detailed particulars, to the Estate Manager for decision and the Estate Manager shall, as soon as practicable thereafter, give its decision to the Developer in writing;
- (b) if the Developer is dissatisfied with the decision given by the Estate Manager pursuant to the preceding paragraph, it may, not later than 28 days after the decision of the Estate Manager is given to it pursuant to paragraph (a), give notice in writing to the Estate Manager requiring that the matter at issue be referred to an expert for determination. If the Territory and the Developer cannot agree on an expert within 56 days after the dispute or difference arises, either party may request the President of the Law Society of the ACT to appoint an expert. The expert must have reasonable qualifications and commercial and practical experience in the matters in dispute and have no interest or duty which conflicts with their role as an expert.
- (c) The expert will be instructed to:
 - (i) promptly fix a reasonable date, time and place for receiving submissions or information from the parties or from any other persons as he or she thinks fit;
 - (ii) accept oral or written submissions from the parties as to the subject matter of the dispute within 14 days of being appointed;
 - (iii) not be bound by the rules of evidence; and

- (iv) make a determination in writing with appropriate reasons for that determination within 35 days of being appointed.
- (d) The expert will be required to keep confidential matters coming to the expert's knowledge by reason of the performance of his or her duties.
- (e) The expert will have the following powers:
 - (i) to obtain information independently as to facts and if necessary technical or financial matters to which the dispute relates;
 - (ii) to receive written submissions, sworn and unsworn written statements and photocopy documents and to act on those submissions;
 - (iii) to consult with such other professionally qualified persons as he or she thinks fit; and
 - (iv) to take such measures as he or she thinks fit to expedite the completion of the resolution of the dispute.
- (f) Any person appointed as an expert will not be an arbitrator and the law relating to arbitration will not apply to him or her or to a determination reached or the procedures by which a determination is reached.
- (g) In the absence of manifest error, the decision of the expert will bind the parties.
- (h) The costs of the expert and any advisers are to be borne by one or both parties as determined at the discretion of the expert taking into account the expert's decision in the dispute.
- (i) Each party must give the expert all information and assistance that the expert may reasonably require. Each party will be entitled to be legally represented in respect of any representations that they may wish to make to the expert, whether orally or in writing.
- (j) Each party must bear their own costs in relation to a dispute under this clause.

6.15 Suspension of the Works

6.15.1 Suspension by the Territory

Whenever the suspension of the whole or any part of the Works becomes necessary:

- (a) because of an act, default or omission of:
 - (i) the Territory or a Relevant Authority, or an employee or professional consultant or agent of the Territory; or

- (ii) the Developer or an employee or agent of the Developer; or
 - (iii) a contractor or an employee or agent of that contractor; or
- (b) for the protection or safety of:
- (i) the employees or agents of the Developer or of a contractor or the employees, professional consultants or agents of the Territory, ACT Planning and Land Authority, the Land Agency or a Relevant Authority or any other person concerned in the performance of the whole or any part of the Works;
 - (ii) executed Works or any part of the executed Works; or
 - (iii) the public or any property;

The Estate Manager shall direct the Developer in writing to suspend the progress of the whole or any part of the Works specified in the order for such time or times as the Estate Manager may think fit.

6.15.2 Suspension by the Developer

Should the Developer wish to suspend the progress of the whole or any part of the Works it shall so notify the Estate Manager in writing and explain the reasons for the suspension.

The Estate Manager shall thereupon, if it thinks it necessary or reasonable so to do, grant permission for a suspension of the whole or any part of the Works for such time or times as it may think fit.

6.15.3 Recommencement of Work

The Estate Manager shall, when the reason for any suspension no longer exists, direct the Developer to recommence work on the relevant part of the Works and the Developer shall comply with the direction.

6.15.4 Cost of Suspension

The extra cost, if any, of completing a separable part of the Works incurred by the Developer by reason of any suspension under sub-clause 6.15.1 or sub-clause 6.15.2 shall be borne and paid for by the Developer provided however that if the suspension is due to an act, default or omission of the Territory, ACT Planning and Land Authority, the Land Agency or a Relevant Authority or an employee, professional consultant or agent of the Territory, ACT Planning and Land Authority, the Land Agency or a Relevant Authority then without prejudice to its other remedies the Developer shall be entitled to payment of the amount of the aforesaid extra cost incurred by it that is attributable to such an act, default or omission.

6.15.5 Obligation of Developer

The suspension of the progress of the whole or any part of the Works under the Deed in pursuance of this clause shall not affect the obligation of the Developer to perform the activities required by the Deed within the prescribed period or within an extended period allowed by the Territory under the provisions of clause 6.5.

6.16 Governing Law

This Deed shall be governed by and construed with reference to the laws for the time being in force in the Territory.

6.17 Requirements of Statutes and Subordinate Legislation

6.17.1 Compliance with Statutory Requirements

The Developer shall at its own cost do all things necessary to comply with the requirements of all Acts and Ordinances of the Parliament of the Commonwealth and all Acts of the Australian Capital Territory and with the requirements of all Ordinances, Regulations, by-laws and proclamations made or issued under any such Act or Ordinance and with the lawful requirements of public and other authorities in any way affecting or applicable to the Works.

6.17.2 Surrender of Documents Evidencing Approval of Authorities

Upon demand in writing made by the Estate Manager at any time and from time to time the Developer shall surrender to the Estate Manager certified copies of the originals of any documents in its possession issued by or evidencing the approval of Relevant Authorities in connection with the relevant separable part of the Works.

6.18 Variations (Works)

6.18.1 Variations to the Works

If, at any time during the progress of a Stage of the Works the Territory reasonably determines that the form, quality or quantity of such Work should be varied, the Estate Manager may direct the Developer to do all or any one or more of the following things:

- (a) increase, decrease or omit any part of the said Stage of the Works;
- (b) change the character or quality of any material or work;
- (c) change the levels, lines, positions or dimensions of any part of the said Stage of the Works; or
- (d) execute additional work.

No variations to the Work shall be made by the Developer if it has not received a specific written request or consent from the Estate Manager.

6.18.2 Valuation of Variations and Procedures

If the variation of Works is required under clause 6.18.1 is, in the reasonable opinion of the Territory, of a minor nature, no monetary or other adjustment shall be made in respect of or affecting either party.

If the variation specified is greater than a variation of a minor nature, and if the parties agree upon a valuation, payment shall be made in accordance with the provisions of (c) and (d) below within thirty days of notification in writing to the Developer by the Estate Manager.

If the variation specified is greater than a variation of a minor nature and if the parties cannot agree upon a valuation, the variation shall be referred in writing by the parties to a valuer. The valuer shall be selected by the Developer from three persons nominated by the Territory. The decision of the valuer shall be final, binding and conclusive. The cost of any such valuation shall be borne equally between the parties.

In respect of the procedures in the preceding paragraph, the matter at issue shall be decided by a decision of the valuer for the payment by one of the parties to the other of a sum of money decided upon as follows:

- (a) firstly a decision shall be made as to whether the variation affects the Developer in a detrimental or disadvantageous manner or whether the variation affects the Developer in a beneficial or advantageous manner;
- (b) secondly the variation shall be valued in terms of advantage or disadvantage to the Developer;
- (c) in the event that the variation is of disadvantage to the Developer, the decision shall be for payment by the Territory to the Developer of 100% of the value of the disadvantage; and
- (d) in the event that the variation is of advantage to the Developer, the decision shall be for payment by the Developer to the Territory of 100% of the value of the advantage.

Where sums are payable under this sub-clause they shall be paid within thirty days after the date the decision of the valuer is issued by the valuer to the parties.

6.19 Other Variations

6.19.1 Other Variations Deemed Necessary by the Territory

If at any time during the currency of the project the Territory is of the opinion that, for the reasons of good planning and land management, other variations, not elsewhere provided

for within this Deed, should be made, the Territory may deem these variations as necessary and by written notice delivered to the Developer specify in detail the nature of the variation and the consequential alterations in the content of the Annexures to the Deed.

6.19.2 Valuation of Variations and Procedures

The procedures for determining the valuation of variations specified in sub-clause 6.18.2 shall also be used to determine the valuation of variations made under sub-clause 6.19.1.

6.20 Estate Manager

The Estate Manager shall be responsible for the general administration of this Deed on behalf of the Territory.

The Works shall be executed by the Developer in accordance with the Deed and in accordance with any written direction of the Estate Manager pursuant to the provisions of the Deed. For the purposes of this sub-clause, "direction" includes any agreement, approval, authorisation, certification, decision, demand, determination, explanation, instruction, notice, notification, order, permission, rejection, request or requirements which the Estate Manager may make, give or issue pursuant to the provisions of the Deed.

In the event that the Developer fails, as a result of its own fault, to comply with a written direction of the Estate Manager or the Estate Manager's representative, the Territory shall have the right and the power, by written notice signed by the Estate Manager or the Estate Manager's Representative, to cease carrying out the normal approval and supervisory processes required by Deed until the failure has been remedied. The use of the power shall not diminish the rights of the Territory under Clause 6.15 of the Deed.

6.21 Estate Manager's Representatives

The Estate Manager may from time to time in writing nominate and appoint persons to exercise such of the powers, duties, discretions and authorities vested in the Estate Manager as seen fit and shall give notice to the Developer of the name of each person so appointed and the extent of the powers, duties, discretions and authorities referred to in the notice.

The Estate Manager shall not at any time appoint more than one person to exercise a particular power, duty, discretion or authority vested in him.

An appointment under this clause does not prevent the exercise of a power, duty, discretion or authority by the Estate Manager and the Estate Manager may at any time revoke any such appointment by written notice to the Developer.

Where the word "Estate Manager" is used in the Deed it shall, so far as concerns the powers, discretions and authorities exercisable by the Estate Manager's Representative by virtue of his appointment under the clause, are deemed to include the Estate Manager's Representative.

6.22 Developer's Representatives

The Developer shall have during the currency of the Deed a technically and otherwise competent representative acceptable to the Estate Manager present on the Site at all periods during which there are any activities relating to the execution of the Works and of any subsequent changes.

Any direction as defined in clause 6.20 shall:

- (a) if given to the representative on the Site in respect of the execution of the Works on the Site be deemed to be issued or given to or served upon the Developer in respect of the execution of the Works on the site; or
- (b) if given to the representative at any other place in respect to the execution of part of the Works in that place shall be deemed to be issued or given to or served upon the Developer in respect to the execution of that part of the Works at that place.

6.23 Territory's Right of Access

At all times during the currency of this Deed the Estate Manager, his authorised Representative, Officers of the Territory and all Relevant Authorities, their delegates, nominees and agents shall have the right of entry and access to the Site.

6.24 Access by Others

The Developer shall permit access to the Site by persons and bodies for the purpose of the carrying out of work additional to that required to be undertaken by the Developer.

6.25 Vesting of Pipes and Materials

No pipes or material found on the land, irrespective of who placed such pipes or material, shall vest in the Developer or a subsequent Lessee, excepting such existing sewer and stormwater pipes and structures specified in writing by the Territory and ActewAGL as abandoned.

6.26 Royalties, Patent and Other Industrial Property Rights and Fees

6.26.1 Payments

Unless otherwise provided for in the Deed or this clause, all payments (whether or not accrued due and payable at the date of the Deed) for royalties and patent rights, registered designs, trade marks or names, copyright and other protected rights and all fees then or thereafter to become payable for or in connection with any land, matter or thing used or required to be used in performance of this Deed or to be supplied under the Deed, shall be the responsibility of the Developer which shall make the payments at the times they become due.

6.26.2 Indemnity

The Developer hereby indemnifies the Commonwealth, the Territory, ACT Planning and Land Authority, the Land Agency and all Relevant Authorities against any action, suit, proceeding or claim or demand, in respect of all costs or expenses arising, whether directly or indirectly, from or incurred by reason of any infringement or alleged infringement of letters patent, registered design, trade mark or name, copyright or other protected rights in respect of any machine, equipment, work, material or thing, system or method of using, fixing of or working, or any arrangement used or fixed or supplied by the Developer for the purposes of this Deed.

6.26.3 Exceptions to Indemnity

The indemnity shall not extend to any infringement or alleged infringement of any letters patent, registered design, trade mark or name, copyright or other protected right:

- (a) due to the use by the Territory of the Works or part thereof otherwise than in accordance with this Deed; or
- (b) resulting from the necessity of the compliance by the Developer with the provision of this Deed unless:
 - (i) the Territory has clearly indicated that such compliance will result in an infringement if the appropriate permission or licence is not obtained from the person lawfully able to grant the same; or
 - (ii) the Developer was aware at any time prior to compliance that such compliance would result in an infringement.

6.26.4 Claims against the Territory and ACT Planning and Land Authority

In the event of any claim or demand being made or action, suit or proceeding being brought against the Territory, or ACT Planning and Land Authority in respect of any matters covered by the indemnity in clause 6.26.2, the Estate Manager shall immediately notify the Developer in writing thereof, and the Developer shall, with the assistance of the Territory, if it makes a request in writing for such assistance, but at the sole expense of the Developer, conduct any litigation that may arise therefrom and all negotiations for the settlement of the claim, demand, action, suit or proceeding. The Developer shall not make any settlement or consent to any judgement order or verdict against the Territory, or ACT Planning and Land Authority without first obtaining the written consent of the Territory, or ACT Planning and Land Authority.

6.26.5 Admissions by the Territory

The Territory shall not make any admission in relation to any claim, demand, action, suit or proceeding against the Territory with respect to any matter covered by the indemnity unless within seven days after the date of the receipt by it of the notification in writing from the Territory referred to in the preceding paragraph of this clause the Developer fails to open negotiations for the settlement of the claim, demand, action, suit or proceeding or

to take all reasonably necessary and proper steps to defend any claim, demand, action, suit or proceeding.

The Developer may be required to furnish to the Territory a signed statement or a statutory declaration that all payments and all fees referred to in sub-clause 6.26.1 have been paid or satisfied.

6.27 Protection of Persons and Property

The Developer shall provide, erect and maintain all barricades, guards, fencing, temporary roadways, footpaths, signs and lighting and provide and maintain all surveillance and traffic flagging lawfully required by the Territory or any other Relevant Authority or necessary for the protection of the Works or of other property or for the safety and convenience of the public and others and shall remove the same when no longer required.

The Developer shall unless otherwise permitted by the Relevant Authority avoid obstruction or damage to roadways and footpaths, drains, watercourses, public utilities and other services on or adjacent to the site which are visible or the location of which can be ascertained by the Developer from the Relevant Authority or from the Deed and shall have any obstruction removed immediately and at its own cost shall have made good all damage caused by it, its employees, agents or contractors or the employees of any such agents or contractors to the satisfaction of the Relevant Authority.

The Developer shall avoid interference with or damage to all property on or adjacent to the Site, provide temporary protection therefore and shall carry out repair and reinstating work in respect of all damage caused by it, its employees, agents or subcontractors, either directly or indirectly.

The Developer shall take all reasonable steps to prevent nuisance to the owners, tenants or occupiers of properties adjacent to the Site and to the public generally.

Where upon notification in writing the Developer does not comply with the above clauses, the Territory reserves the right to rectify, protect or otherwise make good the Works or part thereof at the Developer's expense.

6.28 Arrangements with Relevant Authorities

Unless there are contrary provisions in the Specifications of Relevant Authorities the Developer shall, at its own cost and in accordance with any requirements set out in the Deed arrange and provide, after liaison with and subject to the requirements of the Relevant Authorities:

- (a) for the supply of electricity, telecommunications and gas services to individual Blocks within stages of the Works the Developer is required to complete hereunder;
- (b) connection to existing water supply and sewer mains; and

- (c) for the installation of lights in the proposed streets and the proposed public places within the aforesaid stages.

6.29 Care of the Works

The Developer shall be liable for the care of separable parts of the Works, the temporary works and all material and plant brought on to the Site by or on behalf of the Developer.

6.30 Materials and Work

6.30.1 Quality of Materials and Work

Materials used in the Works and standards of workmanship shall be in conformity with the requirements of the Relevant Authorities and the provisions of this Deed. In the absence of any such requirements or provisions in respect of any material or standard of workmanship, that material or standard of workmanship, as the case may be, shall be of a kind which is suitable for its purpose and is consistent with the nature and character of the Works.

Unless otherwise specified by the Relevant Authorities, or in the Deed, any materials to be incorporated in the Works shall be new and, where applicable, materials and workmanship shall be in accordance with the relevant Australian standards of Standards Australia.

6.30.2 Materials or Work not Complying with the Deed

The Estate Manager, either on instruction from and on behalf of the Relevant Authorities or on its own behalf, may at any time during the currency of this Deed reject any material or work forming part of the relevant Stage of the Works which is not in accordance with the requirements of the Relevant Authorities or the Deed and may direct its replacement, correction or removal and such rejection or direction shall be made or given as soon as possible after the discovery by the Estate Manager or the Relevant Authorities of its non-compliance with the requirements of the Relevant Authorities or the Deed. If the Estate Manager directs the Developer to replace or correct any material or work, the Developer shall commence the work promptly and to the satisfaction of the Relevant Authorities and the Estate Manager. If the Estate Manager directs the Developer to remove from the Site any material which is not in accordance with the requirements of the Relevant Authorities or the Deed, the Developer shall do so promptly. All such replacements, corrections and removals shall be at the Developer's expense.

6.31 Protection of the Environment

The Developer shall avoid damage to the environment and shall comply carefully with the requirements of the Relevant Authority and the Deed. When in doubt as to any action it should take in respect of the environment it shall seek and obtain the direction of the Estate Manager.

6.32 Urgent Repairs

If at any time the Territory determines that any remedial, protective, repair or other like work is urgently necessary to prevent loss of or damage to the Works or to any property or to prevent personal injury to or the death of any person, the Territory shall as soon as practicable thereafter notify the Developer of that determination and the Developer shall carry out the work immediately on receipt of that notice. If the Developer is unable or unwilling to do the work immediately, the Territory may arrange for the work to be carried out by others.

If the work carried out by others on behalf of the Territory is work which the Territory determines that the Developer was liable to do at its own expense under the Deed, all costs and charges properly incurred by the Territory in doing the work shall be a debt due from the Developer to the Territory which may deduct the sum due from moneys derived from the security held by the Territory.

6.33 Consents and Approvals

Where a party is required to give consent or approval under this Deed, that party agrees that its consent or approval will not be unreasonably withheld.

6.34 Confidentiality

All material, information and documents made available by one party to the other in relation to the Project shall be treated as confidential and must not be disclosed to any person unless required by law or unless the disclosure is required to a parties legal or accounting advisors.

6.35 Works as Executed Information

The Developer shall, with or before the issue of a Certificate of Practical Completion for the Works, or a Stage of the Works, provide Works as Executed Plans to the following Authorities as follows:

- (a) Surveying and Spatial Data Section ("SSD") (through the Estate Manager) to the satisfaction of SSD:
 - (i) two sets of microfilms of all drawings;
 - (ii) One CD of all drawings in digital format; and
 - (iii) One set of full size prints relating to hydraulic services and also the easement requirements for electrical reticulation, water and sewerage.
- (b) TAMS Asset Acceptance to the satisfaction of Asset Acceptance:
 - (i) Works as Executed Plans in accordance with Quality System – Standard Requirements for Documentation Doc. 0028 issue 1 revision 0 of October 2001.
- (c) ActewAGL Hydraulics to the satisfaction of ActewAGL:

- (i) One set of Works as Executed Plan in the form of transparencies detailing hydraulic services as per requirements of ACTEW WS&S standards
- (ii) One CD of all drawings in digital format (as per SSD above)

Failure to provide accurate Works as Executed Plans may lead to the withholding of the release of bonds and the approval of plans for further stages.

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IN WITNESS WHEREOF the parties hereto have executed this Deed of Agreement the day and year first hereinbefore written.

SIGNED by)
)
 a person duly authorised by the)
 Australian Capital Territory Planning and)
 Land Authority)
 in the presence of:) _____

SIGNED by)
developer ACN)
 in accordance with s.127(1) of the)
Corporations Act 2001 by authority)
 of the Board in the presence of:)

Signature

Signature

Name in full

Name in full

Director/Secretary

Director/Secretary

APPENDIX (i)**STANDARD PRACTICES, GUIDELINES AND ACTS OF THE TERRITORY
(not exhaustive)****Part 1 - Planning**

Territory Plan

National Capital Plan

Planning and Development Act 2007 (ACT)

Environment Protection Act 1997

Part 2 - Engineering, Environmental and Building

ActewAGL: Water and Sewerage Service and Installation Rules

ActewAGL: Building over or near ACTEW Corporation water and sewer pipes

Environment Protection Guidelines for Construction and Land Development in the ACT 2007

Guide to Traffic Engineering Practice (All current Parts), Austroads

Design Standards for Urban Infrastructure Works – TAMS

Building Code of Australia

ACTEW Water Supply and Sewer Standards Release 2 (July 2000) and subsequent amendments

Land Capability Guidelines

Community Safety Guidelines

ACT Parking and Vehicular Access Guidelines

Nature Conservation Act, 1980

Assessment of Site Contamination, National Environment Protection measures

TAMS - Requirements for Submission Requesting Design Acceptance

TAMS - Landscape Management and Protection Plans (LMPP) - Requirements for the Protection of Public Landscape Assets Adjacent to Development Works

TAMS - Requirements for Submission Requesting Operational Acceptance of Hard Public Infrastructure Works

TAMS - Requirements for Works as Executed Quality Records

TAMS - Requirements for Submission Requesting Final Acceptance of Hard Landscape Assets and Civil Works

Part 3 - Landscape

Design Standards for Urban Infrastructure Works – TAMS

ACTEW Water Supply and Sewer Standards Release 2 (July 2000) and subsequent amendments

Relevant Australian/NZ standards

TAMS - Landscape Management and Protection Plans (LMPP) - Requirements for the Protection of Public Landscape Assets Adjacent to Development Works

TAMS - Requirements for Soft Landscape Consolidation and Handover

Part 4 - Specifications

Standard Specifications for Urban Infrastructure Works (TAMS)

Part 5 - Procedures

Guidelines for the Preparation of Estate Development Plans - latest version

ACTEW Water Supply and Sewer Standards Release 2 (July 2000) and subsequent amendments

TAMS - Requirements for Submission Requesting Design Acceptance

TAMS - Requirements for Submission Requesting Operational Acceptance of Hard Public Infrastructure Works

TAMS - Requirements for Works as Executed Quality Records

TAMS - Requirements for Submission Requesting Final Acceptance of Hard Landscape Assets and Civil Works

TAMS - Requirements for Soft Landscape Consolidation and Handover

TAMS - Landscape Management and Protection Plans (LMPP) - Requirements for the Protection of Public Landscape Assets Adjacent to Development Works

Part 6 - Acts Applicable to the Territory (a non-exclusive list)

Utilities Act (ACT), 2000

Land Titles Act 1925

Disability Discrimination Act 1992

Environment Protection Act 1997

Environment Protection and Biodiversity Conservation Act 1999

Building Act 2004

Building and Services Act 1924 - Canberra Sewerage and Water Supply Regulations

Roads and Public Places Act 1937

Electricity and Water Act 1988

Electricity Act 1975

Telecommunications Act 1997 (Commonwealth)

Gas Pipelines Access Act 1988

Australian Capital Territory (Planning and Land Management) Act 1988 (Commonwealth)

Motor Vehicle [redacted] sions and Mass) Act 1990

Planning and Development Act 2007 (ACT)

Heritage Objects Act 2004

Nature Conservation Act 1980

Tree Protection Act 2005

Building and Construction Industry Training Levy Act 1999

Community Titles Act 2001

Unit Titles Act 2001

Public Roads Act 1902

Water resources Act 2007

Wherever in the aforementioned material:

- (i) the word "Agent" appears it shall for the purposes of this Deed be deemed to refer to the Developer;
- (ii) reference is made to the preparation of any material by the Authority, the reference shall be deemed to be to the preparation by the Developer at its own cost wherever the context permits.

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APPENDIX (ii)

SECURITY SCALE**FOR ASSESSING SECURITY FOR UNCOMPLETED WORKS**

OUTSTANDING WORKS ESTIMATE (\$)	MULTIPLIER APPLIED AS PER CLAUSE 6.4.2.1 (b)
0 to \$50,000	1.29
0 to \$100,000	1.27
0 to \$150,000	1.25
0 to \$250,000	1.24
0 to \$350,000	1.23
0 to \$500,000	1.22
0 to \$700,000	1.21
0 to \$1,050,000	1.20
0 to \$1,550,000	1.19
0 to \$2,000,000	1.18
\$2,000,000 or greater	1.17

ANNEXURE A1

ESTATE DEVELOPMENT PLAN

A1.1 List of Works (Clause 4.1 of the Deed refers)

The work to be completed by the Developer under the Deed includes the preparation of a detailed Estate Development Plan, engineering design, construction and completion of:

- (a) roadworks, floodways, footpaths, cycleways, equestrian trails, traffic control devices, street signs and temporary traffic management;
- (b) services including sewer reticulation and services, water supply, water services, stormwater; temporary cut-off drains and fire trails, telecommunications reticulation, underground electricity reticulation, substations, street and pathway lighting, gas reticulation and relocation of existing services;
- (c) landscaping and paving including street tree planting, tree removal/surgery, open space landscaping, road verge landscaping including grassing, grassing of other disturbed areas, floodway landscaping and urban edge treatment;
- (d) water quality control measures, erosion and sediment control works for subdivision construction and measures to be left in place for residential building work;
- (e) interdependent works as detailed in **clause A2.3.3 of Annexure A2**;
- (f) offsite works as detailed in **clause A2.3.2 of Annexure A2**;
- (g) studies, investigations and design work in accordance with **clause A2.1.6 of Annexure A2**;
- (h) fencing in accordance with **clauses A2.2.9 and A2.2.10 of Annexure A2**; and
- (i) major assets to be retained or returned to the Territory as detailed in **clause A2.5.4 of Annexure A2**

in accordance with approved plans and specifications.

No detailed engineering design for the Estate has been carried out by the Territory.

All submissions of Estate Development Plans for approval, as well as amendments to a previously approved plan, shall be accompanied by a digital file in the format required by the Land Information Office.

The Developer shall complete a single Estate Development Plan for the whole Estate, that is, Estate Development Plans for individual stages will not be acceptable.

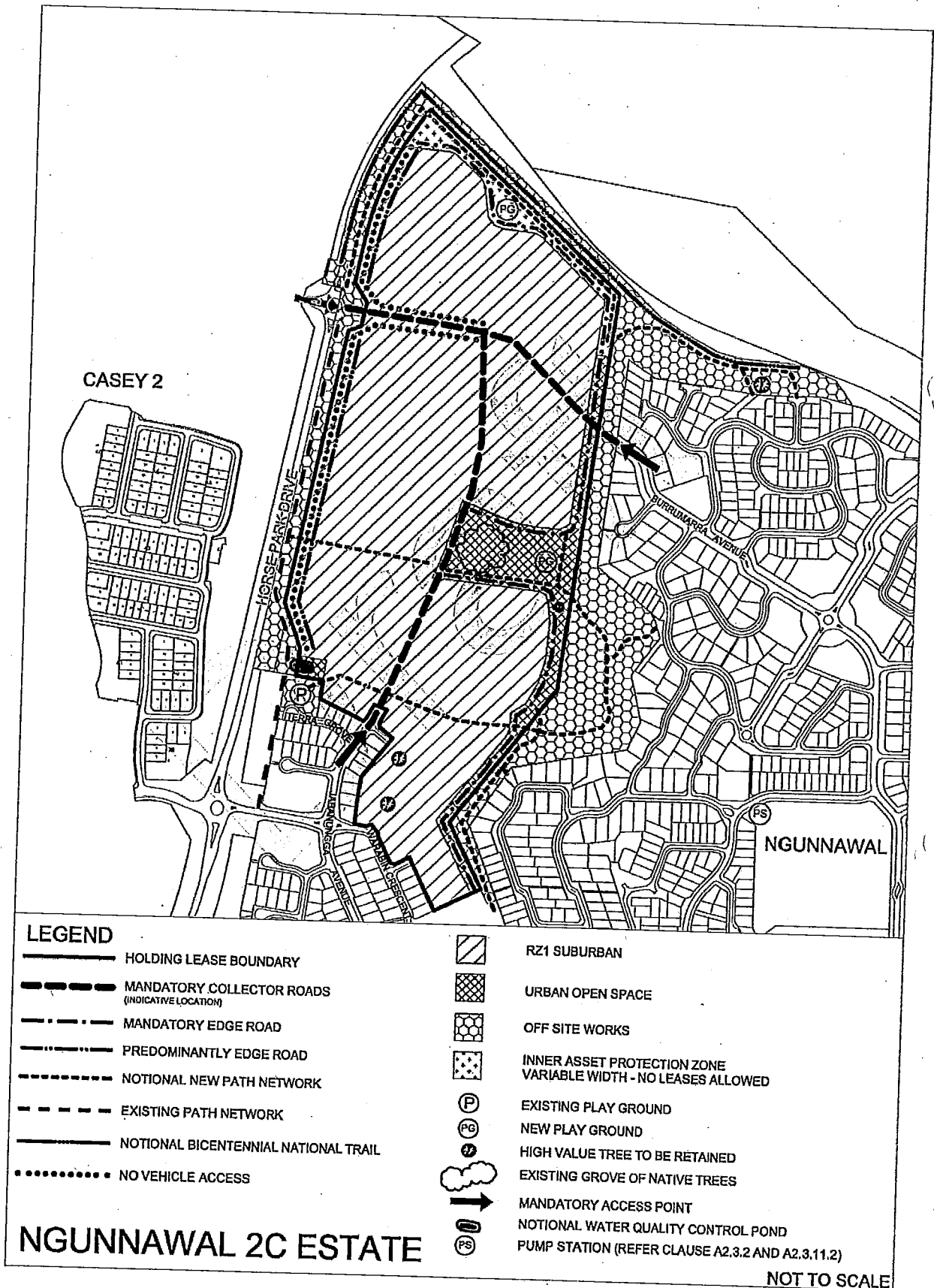
A1.2 Holding Lease

No consequential leases will be granted that encroach outside the Holding Lease Boundary.

A1.3 Building Works

Building works are permitted on the Leased Land by the Lessee in accordance with the Holding Lease and relevant approvals by the Territory. These building works are not included in the works required to be completed under the Deed and are therefore not subject to the issue of a Certificate of Practical Completion under the Deed.

Estate Development Plan



ANNEXURE A2
SPECIAL PROJECT CONDITONS
NGUNNAWAL 2C ESTATE
SHEET 1 OF 39

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ANNEXURE A2
SPECIAL PROJECT CONDITIONS

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A2.1 SPECIAL PLANNING CONDITIONS AND GUIDELINES

A2.1.1 General

For the duration of the design and construction period the Developer shall engage a town planner qualified for corporate membership of the Planning Institute of Australia and with substantial experience in the fields of urban and subdivision design to provide advice on all aspects of the development.

A2.1.2 Estate Development Plan

The Developer shall prepare an Estate Development Plan in accordance with the requirements of **Annexure A1**, and the requirements set out in the latest version of *Guidelines for the Preparation of Estate Development Plans* or its successor and the *Residential Subdivision Development Code* of the Territory Plan.

This plan shall be submitted as a Development Application (DA). The DA will be assessed provided the following requirements and the requirements of all relevant authorities are satisfied:

- a) the proposed land-use shall be consistent with the Territory Plan;
- b) A draft Estate Development Plan (EDP) showing the proposed planning for the entire Estate shall be submitted with the first application;
- c) The Specific Planning Requirements shown on plans included in this **Annexure** are to be complied with. The number of blocks shall be such that the total number of dwellings permitted in the Estate is in accord with the limits of dwellings (as specified in **clause A3.1 of Annexure A3**) and shall be indicated on the Estate Development Plan;
- d) All submissions of Estate Development Plans for approval, as well as amendments to a previously approved plan shall be accompanied by a digital file in the format required by the ACTPLA Surveying and Spatial Data Section (SSD). Digital data for inclusion in the Digital Cadastral Data Base (DCDB) will be provided to SSD in a format complying with the requirements of the ACT Planning and Land Authority Minimum Standards for the Provision of Digital Data for Inclusion in the Cadastral Data Base. Data will be supplied to SSD upon request after approval of the Estate Development Plans; and
- e) The Estate Development Plan shall incorporate a table detailing the number of blocks to be released as consequent leases and the category of the blocks in accordance with **Annexure A3**.

A2.1.3 Specific Planning Requirements

The planning requirements for the estate are articulated in the Ngunnawal 2C Concept Plan, as adopted in the Territory Plan.

To ensure consistency with the Concept Plan, the following Specific Planning Requirements detailed below (no priority order intended) and the key requirements shown on the Specific Planning Requirements Plan must be included in preparing the Estate Development Plan for submission as a Development Application:

- Road connections into Ngunnawal 2C Estate in the locations specified in the Specific Planning Requirements Plan;
- Major and Minor Collector Roads generally along the alignment shown on the Specific Planning Requirements Plan;
- Landscaping of the Urban Open Spaces in accordance with **clause A2.2.3**;
- The provision of rear lanes is to be consistent with the Fire Service Access Requirements for Rear Lanes and Unit Complexes 29 July 2010 - The ACT Fire Brigade;
- Bushfire protection measures as detailed in the Ngunnawal 2C Concept Plan and the Bushfire Risk Assessment Report undertaken by Australian Bushfire Protection Planners Pty Ltd (dated 16 August 2010);
- Estate Development Plans which show roads (other than road connections to the existing network) outside the Holding Lease Boundary will not be approved;
- Path connections required to connect into existing paths in Horse Park Drive, Jabanungga Avenue, Burrumarra Avenue and the open space areas in and around the Ngunnawal 2C Estate; and
- Affordable Housing in accordance with **clause A2.1.8**.

A2.1.4 Variations to Specific Planning Requirements

Where an Estate Development Plan is at variance with the Specific Planning Requirements set out in this section, other than with respect to the quantum of development permitted, then the Territory may approve the Estate Development Plan, provided it meets the requirements of the Territory Plan, or the Territory has agreed prior to the lodgement of the Estate Development Plan, to a Technical Amendment or full Variation to the Territory Plan.

A2.1.5 Background Documents

The following documents are referenced for the subdivision planning and the preparation of the Estate Development Plan:

- North Gungahlin Structure Plan, Territory Plan 2008
- Ngunnawal 2C Concept Plan December 2007 – effective 19 December 2008;
- Ngunnawal 2C Estate Planning Study Preliminary Geotechnical Assessment – Geotechnical Consultants Pty Ltd, June 2003;

- Report on Preliminary Contamination Assessment – Proposed Residential Development Ngunnawal Stage 2C - Douglas Partners, December 2007;
- Phase 2 Report Environmental Site Assessment Ngunnawal 2C, ACT - Coffey Environments Australia Pty Ltd - 10 September 2010;
- Endorsement of Phase 2 Environmental Site Assessment Report – Ngunnawal 2C – Department of the Environment, Climate Change, Energy and Water, letter dated 20 September 2010;
- Stockpile Beneficial Reuse Management Plan Ngunnawal 2C – Coffey Environments Australia Pty Ltd, 14 December 2010;
- Endorsement of Stockpile Management Plan – Ngunnawal Gungahlin – Department of the Environment, Climate Change, Energy and Water, letter dated 22 December 2010;
- Bushfire Protection Measures for the Urban Release Area Ngunnawal 2C Australian Capital Territory – Conacher Travers Pty Ltd, February 2006;
- Bushfire Risk Assessment Review for the Ngunnawal 2C Concept Plan & Background Report, Australian Capital Territory – Australian Bushfire Protection Planners Pty Ltd, 6 November 2007;
- Bushfire Risk Assessment Report for the Ngunnawal 2C Estate Development Plan, Australian Capital Territory – Australian Bushfire Protection Planners Pty Ltd – 16 August 2010;
- Ngunnawal 2C Residential Estate Survey for Archaeological Sites – Navin Officer Heritage Consultants Pty Ltd, June 2003;
- Ngunnawal 2C Estate Salvage Collection and Sub-Surface Investigations – Australian Archaeological Survey Consultants, March 2005;
- Ngunnawal 2C Ecological Assessment – David Hogg Pty Ltd, July 2010;
- Decision on approval – Ngunnawal Residential Estate Stage 2C (EPBC 2010/5648) – Department of Sustainability, Environment, Water, Population and Communities, letter dated 31 March 2011;
- Ngunnawal Residential Estate Stage 2C, Gungahlin, ACT EPBC 2010/5648 Preliminary Documentation – David Hogg Pty Ltd – December 2010;
- Ngunnawal Residential Estate Stage 2C, Gungahlin, ACT Referral under Environmental Protection and Biodiversity Conservation Act 1999 – 10 September 2010;
- Tree Assessment Ngunnawal 2C Estate – DSB Landscape Architects - April 2010;

- Noise Impact Assessment Horse Park Drive Extension – WP Brown and Partners, June 2003; and
- Horse Park Drive – Arrabri St to Burrumurra Ave - Development Application for Procurement Solutions – Approval Granted by ACTPLA 24 April 2009;
- Horse Park Drive Extension – Development Application Report – Brown Consulting (ACT) Pty Ltd, February 2009;
- Ngunnawal 2C Construction Cost Estimate for Off Site Works – Cardno (NSW/ACT) Pty Ltd, 1 April 2011; and
- Letter from the ACT Heritage Council dated 13 October 2010 titled “Heritage Advice Under Section 76 (2) (iv) of the Heritage Act 2004 – Approval of to disturb an Aboriginal Place or Object – Ngunnawal 2C Residential Estate”.

The above information will be made available to the Developer if required at scheduled costs.

The Developer shall make his own interpretations, deductions and conclusions from the information made available and shall accept full responsibility for such interpretations, deductions or conclusions.

A2.1.6 Studies and Investigations

The Territory has not undertaken any additional studies or investigations for this site other than those listed in the Ngunnawal 2C Concept Plan and the reports listed in **clause A2.1.5**.

The Developer should be aware that there may be further unrecorded Aboriginal artefacts present in the area (refer **clause A2.5.2**).

The Developer shall prepare and submit for approval to the Estate Manager the following studies and investigations, which will inform the initial Estate Development Plan submission. These studies and investigations include but are not limited to the following:

- A detailed Traffic Assessment is required to be undertaken within the local network (both internal and external to Estate) to determine whether the Developer is required to fund any improvements to accommodate the development of the Estate;
- Any additional noise attenuation assessment required to be undertaken;
- A final Tree Management Plan is to be prepared and submitted to TAMS for consideration consistent with the recommendations of the Tree Assessment Ngunnawal 2C Estate prepared by DSB Landscape Architects dated April 2010. The final Tree Management Plan extends into the off-site works areas as shown on the Specific Planning Requirements Plan. This work also includes any further tree assessment and survey that may be required by the Territory;
- A Stormwater Management Plan is to be provided addressing WSUD targets (refer **clause A2.3.9.3**);

- Any additional Bushfire Risk Assessment Report required to be undertaken by the Developer and endorsed by relevant ACT Government agencies; and
- Geotechnical Investigations as required.

The Developer's attention is drawn to the potential for an Environmental Impact Statement (EIS). Should the Developer trigger a response under *Schedule 4, Planning and Development Act 2007*, ACTPLA may require the Developer to undertake an EIS.

A2.1.7 Urban Design Principles

A2.1.7.1 General

The urban design and planning principles outlined in the Ngunnawal 2C Concept Plan are to be adopted for the final estate designs. The Subdivision design should provide for a high level of integration of housing development with its natural landscape setting in terms of colour, form, material, landscape and layout.

The general principles that will be considered in assessing the Estate Development Plan must be consistent with the Ngunnawal 2C Concept Plan as adopted in the Territory Plan including, but not restricted to the following provisions:

- Development of an integrated diverse community with a strong identity and sense of place by ensuring flexibility to meet changing needs through a diverse housing product, a variety of living options and opportunities for affordable housing;
- Adaptable and solar efficient housing;
- A high level of permeability and connectivity with adjoining suburbs for pedestrians, cyclists and vehicles;
- Safe, compact and walkable residential precincts with easy access to a variety of recreational, commercial and community facilities;
- Provision of local public open space and appropriate hierarchy of play spaces in easily accessible positions, with consideration given to access, inclusion and synergies between a variety of unstructured recreational destinations; and
- Water sensitive urban design solutions.

A2.1.7.2 Development Type

The development type for this estate is to be in accordance with current Territory Plan land use zone for Ngunnawal 2C which allows for:

- Residential RZ1 - Suburban Zone.

In addition to the Ngunnawal 2C Concept Plan development proposals for this site must be consistent with the relevant Land Use Zones, Development, General and Precinct Codes for Ngunnawal 2C including but not limited to the following:

- Multi Unit Housing Development Code;
 - Access and Mobility General Code;
 - Crime prevention through Environmental Design General Code;
 - ACT House Energy Rating Scheme;
 - Residential Boundary Fences General Code;
 - Parking and Vehicle Access General Code;
 - Bicycle Parking General Code;
 - Development Control Code for Best Practice Waste Management in the ACT;
 - Waterways: Water Sensitive Urban Design General Code; or
- any replacement of successor documents.

A2.1.7.3 Public Open Space

All Landscape works shall adhere to the ACT Governments 'Design Standards for Urban Infrastructure' and the 'Standard Specification for Urban Infrastructure Works' to the satisfaction of TAMS Public Asset Integration and Management and City Services and the Estate Manager.

Public open spaces are to be provided in accordance with the *Residential Subdivision Development Code* or its successor of the Territory Plan. Long straight narrow open space areas with rear fences adjoining are to be avoided. Open spaces shall be well modulated and coordinated with the building form by varying setbacks and boundary openings maximising personal security for users of the open space area by enabling casual surveillance of the area from the nearby dwellings.

In designing setbacks the Developer needs to ensure that spaces do not allow for potential entrapment areas.

The Developer should ensure that dwellings front and overlook public open spaces as per the requirements of the Territory Plan and the Ngunnawal 2C Concept Plan.

A2.1.7.4 Interface with Open Space

Where the residential development abuts urban open space it should be designed to:

- complement the character and use of the adjacent open space;
- clearly delineate community access to open space;
- ensure dwellings front and overlook public open space;

- treat the open space as a frontage;
- provide direct pedestrian access;
- avoid claiming or privatisation of the public open space by resident's gardens or overflow uses from abutting dwellings;
- ensure service courts and drying areas are either set back behind the building face fronting the open space or are adequately screened;
- ensure that uniform high quality fencing which is at least 50% transparent is provided if required along the block boundary with an articulated gateway entry provided from the block to the parkland; and
- details of fencing adjacent to public open space are to be included in a public domain strategy.

A2.1.8 Affordable Housing Requirement

A2.1.8.1 Defined Terms

In this section the following words have the following meanings:

Affordable Dwelling means a house and land package on a separately titled block, or unit within a Registered Units Plan, that is offered for sale to an End User for the Affordable Price.

Affordable Housing Action Plan means the Territory's Affordable Housing Action Plan issued in April 2007 and amended and revised from time to time.

Affordable Price means between \$219,000 and \$328,000 as at 1 July 2010 indexed as set out in this section and determined on the date of execution of a contract for sale of each Affordable Dwelling.

Dwellings means any separately titled unit, house or other residential dwelling within the Estate including each house on a block and each unit on a separate unit title within a Registered Units Plan.

End User means a person who purchases the Dwelling with the intention of personally residing in the Dwelling.

Registered Units Plan means a unit plan registered under section 7 of the *Unit Titles Act 2001*.

A2.1.8.2 Development to be consistent with ACT Government's Affordable Housing Action Plan

- (1) The developer shall ensure that the required number of house and land packages, multi-unit dwellings, and land only sales in this estate are sold in a manner that is consistent with the Affordable Housing Action Plan.

- (2) Consistent with sub-clause (1) the developer shall ensure that:
- (a) no less than ten per cent (10%) of the blocks in the Estate (excluding blocks which are subdivided under a Registered Units Plan) will be of an average size not exceeding 200 square metres; and
 - (b) no less than twenty per cent (20%) of the total Dwellings sold to End Users are Affordable Dwellings.
- (3) For the avoidance of doubt, the Developer is not required to personally sell all Affordable Dwellings to End Users, however, the Developer shall ensure that the requirements of sub-clause (2) above are met, notwithstanding any intermediate sale to a person or entity that is not an End User in respect of any Dwelling and that it is able to provide verification of compliance consistent with this section.

A2.1.8.3 Indexation of Affordable Price

- (1) The indexation of the Affordable Price shall occur on the first day of July each year in accordance with the indexation formula as determined by the Department of Land and Property Services and published on the ACT Affordable Housing Website (www.actaffordablehousing.com.au). It will remain current until 30 June of the same financial year.

A2.1.8.4 Territory may withhold leases

- (1) In accordance with Annexure A4.1.3, the Territory may, at its absolute discretion, decline to issue leases for blocks accounting for up to 20 per cent of the total number of Dwellings until the conditions in respect of Affordable Housing set out in this section have been fulfilled to the satisfaction of the Estate Manager.

A2.1.8.5 Certification and Approval by the Estate Manager

- (1) The Developer will produce documentation, to the satisfaction of the Estate Manager, confirming that:
- (a) no less than ten per cent (10%) of the blocks in the Estate (excluding blocks which are subdivided under a registered Sub-Leasing Plan) will be of an average size not exceeding 200 square metres; and
 - (b) no less than twenty percent (20%) of the total Dwellings sold to End Users are Affordable Dwellings.
- (2) For the avoidance of doubt, Dwellings built on the blocks in accordance with sub-clause (1)(a) that are sold as Affordable Dwellings, may be counted towards the requirements of sub-clause (1)(b).

A2.1.8.6 Developer to verify sale of Affordable Dwellings

- (1) The Developer shall, on demand, produce documentation to the satisfaction of the Estate Manager, demonstrating compliance with the terms of this section.

- (2) Documentation required by the Estate Manager to verify compliance may include but is not limited to:
- (a) a schedule of block and sections sold, including sales prices of all Affordable Dwellings; and
 - (b) copies of unconditional contract/s for each sale of an Affordable Dwelling to End Users.

A2.1.9 Housing Type

A range of housing types and densities are required to be provided in the suburb to accommodate a variety of lifestyles and demographic groups.

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A2.2 SPECIAL LANDSCAPE CONDITIONS AND GUIDELINES

A2.2.1 General

For the duration of the Design and Construction period the Developer shall engage a Landscape Architect qualified for corporate membership of the Australian Institute of Landscape Architects with substantial experience in landscape design to provide advice and supervision on all aspects of the Estate landscape design and construction.

All facilities and related landscaping are to be designed and constructed in accordance with the *Design Standards for Urban Infrastructure* published by TAMS. These can be viewed online at http://www.tams.act.gov.au/work/standards_and_procedures/design_standards_for_urban_infrastructure.

A2.2.2 Existing Vegetation

The Ngunnawal 2C Concept Plan (Section 5.5) contains specific requirements for existing trees.

A tree survey and assessment report has been carried out and will be made available to the Developer if required at scheduled cost. The survey identifies and locates the existing trees within the Holding Lease Boundary and those immediately adjacent. The assessment includes the quality of trees and makes recommendations on retention status. Trees which are classified as 'registered' or 'regulated' are defined in accordance with the definitions in the *Tree Protection Act 2005*. The Developer shall make his own interpretations, deductions and conclusions from the information made available and shall accept full responsibility for such interpretations, deductions and conclusions.

The Developer shall employ an arborist acceptable to membership of the National Arborists Association of Australia to carry out a tree survey of the estate and associated areas containing offsite works. The survey shall identify and accurately locate the existing trees within the Holding Lease Boundary and those immediately adjacent. The assessment shall include the quality of trees and make recommendations on retention status. Trees classified as 'registered' or 'regulated', as defined in accordance with the definitions in the *Tree Protection Act 2005*, are to be recorded.

The Developer shall plan the subdivision and develop the Estate to ensure that:

- a) The mandatory tree group location, being the existing grove of native trees centrally located in an area of open space in the Estate and as shown on the Specific Planning Requirements Plan, is to be protected from damage during construction works. This grove of native trees must be fenced prior to and during the construction phase, consistent with the *Tree Protection Act 2005*. Specifically the trees are numbered 281-298 in the Tree Assessment and Tree Management Plan (DSB April 2010). In addition to this group of trees, the three individual trees numbered 50, 52 and 53 in the Tree Assessment and Tree Management Plan (DSB April 2010) are also to be managed consistent with the *Tree Protection Act 2005*;

- b) All regulated trees that are to remain are not impacted upon by the development and are protected (mandatory requirement);
- c) Regulated trees that are to be removed or damaged only if approval to damage or remove the tree has been obtained by application under a Tree Management Plan;
- d) Other trees, assessed as not being regulated are to be retained where possible and require approval from ACT Planning and Land Authority (ACTPLA) before they can be removed;
- e) If all reasonable design alternatives have been considered then the Developer may make an application to ACTPLA requesting that Regulated Trees be removed to achieve a better design outcome; and
- f) The Developer shall abide by any decision made by ACTPLA and/or the Conservator in relation to any regulated tree. The Conservator makes its decision based on the health and safety of the trees.

Registered, Regulated and Culturally Important Trees that are to be retained are required to be adequately fenced to the tree protection zone that is a minimum two metres past the canopy spread. Careful grading of areas adjacent to registered, regulated and culturally important trees is required to ensure minimum ground disturbance and damage to these trees. Under boring or hand digging of services may be required in the vicinity of registered, regulated and culturally important trees, which are to be retained.

Where the tree assessment recommends remedial pruning of a tree to be retained, this shall be undertaken at the Developer's cost. The Developer shall arrange for these works to be carried out by a member of the National Arborist Association of Australia.

A Tree Management Plan is to be prepared for approval by the Conservator of Flora and Fauna. The Developer must obtain approval from the Conservator and/or ACTPLA before commencing works on site or removing trees from the site.

The Developer in preparing the Tree Management Plan, detail how trees are to be protected during construction and any works that may impact on the trees, such as services.

A2.2.3 Type of Landscaping

The Ngunnawal 2C Concept Plan (Section 5) provides indicative landscape principles for the Estate.

The landscape character of the open space within the area of the Holding Lease and off-site works is to be predominantly locally occurring native species for canopy trees. Deciduous trees of a mature stock and standing of at least 3 metres above ground are acceptable as street trees where solar access is required. Street trees on Collector Roads and local streets may incorporate native and exotic species, and should continue the theme established in the existing Ngunnawal Estate. The tree species selected for street trees and other public open spaces shall be responsive to this overarching landscape character as well as the need for solar access and place making.

Landscaping shall be provided by the developer (which may include public art, subject to the approval of the Territory) at the main entry of the Estate from Horse Park Drive. A landscape buffer is to be provided between the urban development and Horse Park Drive.

Playgrounds are to incorporate a variety of plantings that promote summer shade and winter sun. Water quality control ponds are to be edged by native reeds to aid filtration of water and discourage inadvertent access particularly by children. Open space plantings to be planted with water tolerant native trees to create mid and upper canopy.

The existing grove of native trees in the centre of the estate form an important landscape element and are intended to be retained as part of an extended area of public open space. This is mandated by the Specific Planning Requirements Plan.

All public realm spaces are to have planting and surface finishes provided by the Developer, with detail plans approved by Territory and Municipal Services (TAMS) and ACTPLA. Plant species selections and design/layout shall mitigate fire risk and consider the management requirements of various agencies and authorities, including the Emergency Services Agency (ESA) and ActewAGL, which has requirements limiting the proximity of certain species to underground services and overhead powerlines. Tree planting near sewer or water mains shall comply with the ACTEW "Water Supply and Sewerage Standards - Release 2 - July 2000" and later amendments unless otherwise approved in writing by ActewAGL.

A2.2.4 Landscape Master Plan and Detailed Landscape Plans

The Developer shall prepare and submit with the Estate Development Plan, a Landscape Master Plan for the Estate. This plan shall complement and enhance the principles of urban design identified for the Estate in the Deed.

The Landscape Master Plan and the Detailed Landscape Plans are required to incorporate:

- a) Plantings within public open space reserves on the area of the Holding Lease and off-site works;
- b) Plantings on streets within the estate;
- c) Use advanced sized plant stock for all trees;
- d) All edge road treatments; and
- e) Restriction of vehicle access to public open space in a temporary or permanent nature as required.

New pedestrian lighting shall be provided throughout the site and integrated with other landscape elements and street furniture to the satisfaction of the Territory.

The Detailed Landscape Plans for all public areas including open space and road verges within and adjoining the site shall incorporate the principles established in the Landscape Master Plan and be designed in accordance with the standard Territory practices relating to landscape. After the Detailed Landscape Plans have been endorsed by TAMS, they shall be formally submitted in electronic form to the Estate Manager prior to lease issue.

A2.2.5 Pedestrian and Cycleway Facilities

Pedestrian and Cycleway facilities and related landscaping are to be designed and constructed in accordance with the *Design Standards for Urban Infrastructure* published by TAMS.

Pathways shall be constructed as shown on the Specific Planning Requirements Plan in addition to the normal path requirements for a subdivision.

Pathways should be made attractive and interesting by modulation of the open space corridor, included pathways by the use of landscaping. In these corridors, plants (for example groups of deciduous trees, groups of native species or mixed screen planting) should be grouped in low maintenance mulched beds that are shaped to accommodate maintenance equipment.

Pathways should be efficient to use and shall be built to the ACT standards for lighting, crossings and safety. Pathways should be built to accessible standards detailed in AS1428.2 (walkways/continuous accessible paths). Pathway design should anticipate desire lines.

Pathway corridors should be a minimum width of 6 metres and any stormwater overland flow proposed within these corridors should demonstrate that overland flow will not inundate adjacent leases during the 1 in 100 year rainfall event.

All pathways leading into adjoining open space should have vehicle restriction structures. Where possible, corridors shall allow for emergency vehicle access.

Any fencing, shrub planting, corners, residue spaces, or sudden change of direction that may cause security problems shall not be permitted.

Where it is necessary for pathways to be constructed prior to the completion of dwellings, the pathway must be constructed to a minimum standard of 100mm thick reinforced concrete with design in accordance with the requirements of relevant authorities. Where practical, footpaths are to drain to a pervious area, such as a mulched garden or grassed area, rather than by draining directly to a piped system.

A2.2.6 Playgrounds and other Recreational Facilities

The Ngunnawal 2C Concept Plan (Section 4.7) outlines provisions for playgrounds and other recreation facilities.

The two (2) new neighbourhood playgrounds and the extension to the existing playground including the following;

- Shade;
- Seating;
- Vehicular parking; and
- Service ties where required by the relevant authority

are to be constructed in locations (including off site) as shown on the Specific Planning Requirements Plan in accordance with TAMS Standards, and as approved by the Territory and subsequently handed back to the Territory (TAMS).

A2.2.7 Footpaths and Verge Planting

Footpaths in verges are to be constructed to the requirements of the Relevant Authority. Footpaths are to be to a standard capable of resisting forces occasioned by building activity. Notionally this will involve 100mm thick reinforced concrete to design details acceptable to the Relevant Authorities.

Street trees are to be suitably protected by staking. Stakes shall have a minimum cross section of 65mm x 65mm and 1.8 metres high. Grassing is to be dryland grass in accordance with the requirements of the relevant authority.

Trees shall be planted on the verges of the new residential streets to create a strong identifiable landscape character.

A2.2.8 Fuel Management Zone

A Bush Fire Risk Assessment is to be undertaken at the preparation of the Estate Development Plan and the outcomes incorporated into the design to the satisfaction of the ACTPLA, TAMS Parks, Conservation and Lands - Fire Management Unit and ESA.

The Inner Asset Protection Zone (IAPZ) and associated infrastructure along the northern boundary of the Estate shall be provided within the Holding Lease Boundary.

No leases may be created within the IAPZ, regardless of whether or not the IAPZ is adjacent to future residential development.

Furthermore, the Developer will be required to identify the width of the IAPZ as part of the Estate Development Plan and must only provide Public Open Space assets (e.g. road reserve) within the IAPZ.

A2.2.9 Fencing

A Fencing Plan shall be prepared to the satisfaction of ACTPLA and TAMS specifications and standards. The plan shall be submitted with the draft Estate Development Plan and circulated to agencies for comment. The plan shall be approved separately from the EDP by the Estate Manager.

Permanent and temporary fencing, as approved by TAMS Parks and Conservation is to be constructed to the satisfaction of the Estate Manager around the perimeter of the Holding lease where required or where suitable fencing does not already exist.

The Developer is responsible for the ongoing maintenance of all fencing around the perimeter of the Holding Lease for the duration of the Deed or until the issue of a Final Certificate by the Estate Manager.

The Developer shall ensure that construction traffic is excluded from entering areas of public open space.

The Developer shall liaise with TAMS – Parks and Conservation Service and the Tree Protection Unit with respect to fencing and tree protection.

All fencing works are to be completed to the satisfaction of the Estate Manager prior to any construction works commencing on site.

A2.2.10 Developments Adjacent to Rural Leases

Stock-proof fencing and its alignment, as approved by TAMS Parks and Conservation and Conservation Planning and Research, shall be constructed to the satisfaction of the Territory along the northern perimeter of the Holding Lease.

The Developer shall ensure that construction traffic is excluded from entering adjacent rural land and open space areas.

Fencing between the Estate and the adjacent rural land shall be permanent and remain in place after completion of the subdivision.

The Developer shall liaise with the TAMS Parks and Conservation and/or Tree Protection Unit, respectively, with regard to fencing and tree protection.

All fencing works are to be completed to the satisfaction of the Territory prior to any construction works commencing on site.

All cut-off drains constructed on the northern perimeter of the estate are to be contained within the Holding Lease.

A2.3 SPECIAL ENGINEERING CONDITIONS AND GUIDELINES

A2.3.1 Existing Plans and Information

Details on existing plans and information are provided in **clause A2.1.5** and are available at scheduled costs to the Developer:

The Territory does not warrant or guarantee that the information made available shows completely the existing site or sub-surface conditions.

The Developer shall make his own interpretations, deductions and conclusions from the information made available and shall accept full responsibility for such interpretations, deductions or conclusions. The Territory has not carried out any detailed engineering design for this subdivision. In planning the Estate, the Developer shall examine background documents referred to in **clause A2.1.5** and any master plans prepared by the relevant Authorities.

The Developer will liaise with relevant agencies in respect to detail engineering design.

The Developer is required to identify and remove all obsolete assets located within the Holding Lease Boundary to the satisfaction of the Territory.

A2.3.2 Off-Site Works

The Developer shall carry out the design and construction to the satisfaction of the Territory, of:

- a) Road connections and associated works into Ngunnawal 2C Estate in the locations specified in the Ngunnawal 2C Concept Plan or approved in the Estate Development Plans for Ngunnawal 2C;
- b) Footpaths, cycle ways and associated works connecting to the existing footpath network in Ngunnawal and Horse Park Drive to the west;
- c) Bus stops in locations adjacent to the Estate as required by ACTION (refer clause A2.3.8.1);
- d) Any necessary interface landscaping between the Estate and the existing development in Ngunnawal and Horse Park Drive is to be consistent with the existing landscape;
- e) Stormwater, sewer and water mains required to service the estate including the removal of any mains to be abandoned (refer **clauses A2.3.9, A2.3.10, A2.3.11 and A2.3.12**);
- f) Utilities (i.e. Gas, telecommunications, electricity) to service the estate and including connections from outside the Holding Lease Boundary from future and existing residential areas (refer **clauses A2.3.14, A2.3.15 and A2.3.16**);

- g) Extend the existing floodway in Horse Park Drive to the stormwater culverts in the Horse Park Drive extension accepting stormwater flows from Casey;
- h) Connection of all other stormwater outfalls from the Estate to the existing stormwater drainage system;
- i) Adjustment to the existing creek at the northern edge of the Estate for flood protection;
- j) Permanent water quality control measure adjacent to the existing playground at the southern end of the estate (Itterra Grove) in a location as shown on the Specific Planning Requirements Plan, including associated discharge downstream of the pond and any necessary upstream swales, floodways and cut off drains to treat runoff discharged from the Estate works and future residential areas and open space;
- k) The extension to the existing playground adjacent to Itterra Grove as shown on the Specific Planning Requirements Plan and as detailed in **clause A2.2.6**;
- l) Footpath/cycle network located in areas as shown on the Specific Planning Requirements Plan or the approved Estate Development Plans;
- m) Mandatory tree group locations are shown on the Specific Planning Requirements Plan. The tree groups within areas of offsite works, being native trees along the eastern boundary of the Estate between the Estate and the existing development in Ngunnawal are to be protected from damage during construction works. These groves of native trees must be fenced prior to and during the construction phase, consistent with the *Tree Protection Act 2005*;
- n) Tree management of the heritage tree identified as N2CH1 in Survey for Archaeological Sites – Navin Officer Heritage Consultants Pty Ltd, June 2003. A protective curtilage, including the probable root zone of the tree, is to be established and temporary fencing installed around the curtilage to prevent damage to the area during any adjacent construction works;
- o) Implementation of Bushfire Risk Assessment Report mitigation measures including:
- construction of both temporary and permanent fire trails to the satisfaction of and as approved by the Territory;
 - establishment of the Asset Protection Zones in consultation with the appropriate land managers and lessees regarding the management of these areas;
- p) Temporary and permanent fences as required (refer **clause A2.2.9**);
- q) Relocation of the Bicentennial National Trail to the north of the Estate prior to commencement of development. The Developer is to ensure the trail remains open during the construction phase; and

r) Noise abatement works.

In addition to these works, the Developer is required to decommission and remove the water pumping station and associated works on Yumba Avenue adjacent to the intersection of Yumba Avenue and Warrambul Street to ActewAGL's satisfaction (refer **clause A2.3.11.2**).

A2.3.3 Interdependent and/or Scheduled Engineering Services

- There are no interdependencies.

A2.3.4 Program and Staging

A2.3.4.1 Staging Plan

A Staging Plan is required to be submitted as part of the Estate Development Plan (EDP) submission. This plan shall be circulated with the EDP as supporting documentation and approved separately by the Estate Manager.

The staging plan is to include the blocks to be turned off within a particular stage as well as the scope of works that will be carried out within that stage. Each stage of the estate must be able to be released and surrendered from the holding lease as a stand alone estate with fully functioning services and road network. The batch of leases for issue must be consistent with the approved stage. Partial issue of leases within a stage will not be considered. This does not apply to stages that include only infrastructure works that have been set aside for later completion (e.g. outstanding verge works secured by bonds).

Subsequent amendments to the staging plan shall be submitted to the Estate Manager who will consider approving the amendment subject to the endorsement of all the Relevant Authorities.

A2.3.4.2 Construction Program

Within fourteen (14) calendar days after the date of approval of the Estate Development Plan, the Developer shall submit to the Estate Manager a detailed construction program, in bar chart form, which shall include the Interdependent and Scheduled Engineering Services. For each item of work there shall be a bar chart showing planned progress with planned monthly quantities and with space or other provision for entering actual progress. If the Estate Manager considers that this bar chart is not satisfactory, the Developer may be required to provide an amended bar graph within seven (7) days of being requested to do so.

The Developer shall revise and update the bar chart at monthly intervals, making adjustments in a form satisfactory to the Estate Manager, having regard to actual progress in each item of work for the preceding period, against planned progress.

A2.3.5 Liquidated Damages

There are no liquidated damages payable to the Territory associated with the works to be constructed under this Deed.

A2.3.6 Construction Access

The Developer shall prepare and submit for approval a Construction Access Plan within 14 days of approval of the Estate Development Plan. A Notice to Commence Construction in accordance with clause 4.4 shall not be issued until the Construction Access Plan is approved.

The Developer shall ensure that the construction access point is stabilised to the criteria set out in the Environmental Protection Guidelines for "Construction & Development in the ACT" - August 2007 available from the Environment Protection Authority, telephone 132 281.

The Developer shall consider the access to the Estate in its planning and shall provide continuous access for all authorised traffic entering and leaving the Estate. The Developer shall obtain approval from the TAMS prior to seeking approval from the Estate Manager for all roads and tracks accessing the Estate. These roads and tracks shall be included in the Construction Access Plan.

The Developer shall erect a sign located inside the holding lease boundary stating:

"CONSTRUCTION SITE - AUTHORISED ENTRY ONLY"

There is to be no construction access to the site from Jabanungga Avenue, Warabin Crescent or Burrumarra Avenue (within the existing Ngunnawal suburb). All construction access is to be provided via Horse Park Drive unless otherwise approved by the Estate Manager.

A2.3.7 Co-operation and Co-ordination with the Territory and other Developers

The Developer shall coordinate the Estate works and fully cooperate with all other developers and the Territory involved in carrying out work, which will affect and be affected by the work and other activities of the Developer.

A2.3.8 Road Network

A2.3.8.1 General

The Developer shall take all action required by the Territory to open new public roads or to close existing roads no longer required in accordance with current procedures, Statutes and Regulations. Further advice on procedures and lead times required may be sought from the Office of the Commissioner of Surveys.

The Developer shall meet all costs associated with the opening of public roads including the opening of roads constructed as off-site works.

All roads are to be designed to Territory standards, including the *Residential Subdivision Development Code* or its successor of the Territory Plan, and the approval of TAMS. Suppliers of products and services to TAMS must be pre-qualified to meet ISO9001 Quality Assurance System requirements.

It is the Developers responsibility to nominate the verge width and road reservation width on the Estate Development Plan for approval. The developer is to ensure that all services,

pathways and tree planting required can be provided for within the road and verge widths nominated. In locations where existing trees are to be maintained within verges the Developer will be required to show that services, formalised verge indented parking spaces, pathways and trees can be accommodated in a manner that will allow the tree to be retained in accordance with Tree Retention requirements. The adoption and use of a combination of absolute minimum design standards for designing future TAMS assets are not endorsed.

The roads to be designed as part of the Estate Works (including roads within the Estate and Off-Site Works) will be subject to an independent Road Safety Audit. The Developer is required to commission an independent Road Safety Audit and address all issues raised in the Audit to the satisfaction of TAMS. The Road Safety Audit and the Developer's response to the Audit must be submitted with the Estate Development Plan Detail Design and as part of the request for Operational Acceptance.

Any proposed on-road parallel parking shall have a minimum parking space width of 2.8 metres.

The Developer is required to also liaise with ACT Planning and Land Authority (ACTPLA) and Emergency Services Agency (ESA) regarding the provision of edge roads to open space and the provision of suitable access for emergency services vehicles and provide a road design solution to the approval of ACTPLA, ESA and TAMS. In particular, edge roads as a minimum are to consist of a clear carriageway width of 7.5m plus an indented parking bay of minimum width 2.8m unless ACTPLA, ESA and TAMS specify other requirements or unless approval to do otherwise is obtained.

The Developer is required to provide a road network suitable for a bus route and generally in accordance with the major collector route shown in the Specific Planning Requirements Plan in this Annexure. The developer will be required to liaise with ACTION and TAMS with respect to provision of and location of bus stops and Local Area Traffic Measures (LATM's) to ensure that the requirements of each agency is addressed adequately.

The Developer will also be required to provide bus stops adjacent to the Estate in locations requested by the Territory.

Subsequent to DA approval, detailed design acceptance for works shall be submitted to TAMS in accordance with its requirements including TAMS documents entitled Ref-04, Ref-06, and Ref-11, Design Standards for Urban Infrastructure and the Standard Specification for Urban Infrastructure Works. All roads and access are to be subject to independent third party Road Safety Audits and audit reports are to accompany various submissions as required by TAMS.

A2.3.9 Stormwater

The Developer shall provide for:

- Stormwater Drainage for the Estate;
- Any stormwater infrastructure that traverses through future leased land shall have an appropriately sized easement and/or reserves created over it and a deposited plan shall be prepared showing the location;

- Stormwater Master Plan including overland flow paths supported by hydrological data;
- The Stormwater Master Plan must also demonstrate that considerations and assessments have been made regarding the proposed stormwater main network and overland flow paths sized in relation to future developments upstream and downstream of this site;
- Cut-off drains to ensure that each stage of construction is protected from runoff from rural land upstream; and
- Water quality improvement measures in accordance with ACT Government guidelines.

Easements shall be in accordance with TAMS requirements. Easements shall be accessible to the Territory for any reconstruction, operation and maintenance at anytime. Plans are to be provided to TAMS Asset Acceptance and to the Estate Manager.

The Developer shall ensure any overland flow greater than the 100 ARI gap flow (i.e. 100 year ARI overland flow where a pipe system is half blocked) does not have any significant adverse effects on any residential block and roadway to the satisfaction of TAMS and the Estate Manager. The Developer shall address all the hydraulic implications of features such as traffic calming devices (e.g. raised brick features in roadways), and provide solutions to these flow obstructions that satisfy all hydraulic standards.

Stormwater is to be connected to the existing stormwater drainage system where provided. Existing details of outlets and pipes are to be checked as necessary.

Engineered waterways shall be designed in accordance with Design Standards for Urban Infrastructure Part 1.7 and to the satisfaction of TAMS Asset Acceptance.

The Developer shall provide a detailed Stormwater Management Strategy Plan for the site to address Developer targets as required by the *Waterways - Water Sensitive Urban Design General Code of the Territory Plan*.

The northern catchment currently drains to the existing creek to the north of the site. Development proposed along the northern boundary of the site must take into account the requirement to be above the ARI 100 year flood level at this location.

As a minimum the Developer is to ensure that post development peak flows do not exceed the pre-development peak flows for events up to the 100 year ARI.

A2.3.9.1 Water Sensitive Urban Design

The ACT Government is committed to the sustainable use and management of water resources and has committed to implementing best practice water management strategies outlined in "*Waterways: Water Sensitive Urban Design General Code*" of the Territory Plan.

The Developer shall ensure that the requirements of this document are included in the Estate Development Plan for all leases within the Estate. The use of the MUSIC (Model for Urban

Stormwater Improvement Conceptualisation - CRCCH) modelling program is strongly recommended to determine the essential details of the proposed stormwater quality measures. The hydrological and hydraulic aspects of the catchments and proposed measures should also be confirmed by calculations and through the use of programs such as XP-RAFTS. The "Waterways: Water Sensitive Urban Design General Code" of the Territory Plan provides detailed guidance here including parameters for use in the modelling tools recommended.

A2.3.9.2 Stormwater Ponds, Floodways and Inlet Structures

The Stormwater drainage system is to be designed to ensure that the Estate does not adversely affect existing and future downstream and upstream systems and mitigates existing problems.

Design of the pond should be in accordance with "Waterways: Water Sensitive Urban Design General Code" of the Territory Plan and TAMS "Design Standards for Urban Infrastructure" requirements.

A2.3.10 Existing and Future Sewers

A2.3.10.1 General

The Developer will be required to enter into a separate Hydraulic Services Deed of Agreement with ACTEW. The Developer is to lodge a security deposit as a requirement of the Hydraulic Services Deed of Agreement with ACTEW.

The Developer shall design and construct sewer mains and services in accordance with the ACTEW "Water Supply and Sewerage Standards Release 2 July 2000" and later amendments and as approved by ActewAGL.

A sewer concept plan shall be submitted with the first EDP submission. A separate sewer masterplan shall be submitted to ActewAGL. A written acceptance of the sewer masterplan by ActewAGL is required to accompany the lodgement of the EDP Development Application.

The Developer shall not commence work on any sewer mains until the sewer masterplan and detailed design has been approved by ActewAGL. The sewer masterplan is to take into account all adjacent catchments and future land releases of estates to the satisfaction of the Territory.

The Developer shall liaise with ActewAGL to determine existing pipe locations and diameters and confirm capacities for the proposed development. The alignments of new sewers are shown as notional only on the Engineering Services Plan. The Developer is to confirm alignments and sewer grades, special structures, and connection points before submitting the sewer masterplan. The Developer is to calculate flood levels and ensure that sewers are above the flood levels in accordance with the ACTEW Water Supply and Sewerage Standards.

The Developer shall liaise with ActewAGL for the execution of any necessary connections or disconnections to the existing network in accordance with the Hydraulic Deed.

Work-As-Executed (WAE) drawings will be required by ActewAGL before handover of these assets and issue of ActewAGL Provisional Certificate. The WAE drawings must be

certified as accurate by the Developer or the Developer's consultant in accordance with the ACTEW Water Supply and Sewerage Standards.

A2.3.10.2 Sewer Project Requirements

The northern sewer is to be constructed and connected into the existing sewer DN225 located adjacent to the northern boundary of Ngunnawal section 148.

A2.3.11 Water Supply

The Developer will be required to enter into a separate Hydraulic Services Deed of Agreement with ACTEW. The Developer is to lodge a security deposit as a requirement of the Hydraulic Services Deed of Agreement with ACTEW.

The Developer shall design and construct new water mains, valves and other fittings and services in accordance with the ACTEW "Water Supply and Sewerage Standards, Release 2 July 2000" and later amendments, and as approved by ActewAGL.

A water supply concept plan shall be submitted with the first EDP submission. A separate water masterplan shall be submitted to ActewAGL. A written acceptance of the water masterplan by ActewAGL is required to accompany the lodgement of the EDP Development Application.

The Developer shall not commence work on any water supply mains until the water supply masterplan and detailed design has been approved by ActewAGL.

The water supply network must be designed to ensure it meets the clearance requirements for any Exceptional and High Value trees that are to be retained.

The Developer shall liaise with ActewAGL for the execution of any necessary connections or disconnections to the existing network in accordance with the Hydraulic Deed.

Work As Executed drawings will be required by ActewAGL before handover of these assets and issue of ActewAGL Provisional Certificate. The WAE drawings must be certified as accurate by the Developer or the Developer's consultant in accordance with the ACTEW Water Supply and Sewerage Standards, and be submitted in the format required by ActewAGL to allow translation to the ACTEW database.

The Developer shall not commence construction work in areas where an adequate public water supply cannot be provided to the satisfaction of the Estate Manager.

The approximate locations of existing and notional new water mains are indicated on the Engineering Services Plan included in Annexure A2.

The Developer in constructing the required services in the existing and future Horse Park Drive road reserve shall install these services to an acceptable depth and backfill compaction providing adequate protection from any future road works.

A2.3.11.1 Water Supply Project Requirements

The Developer shall connect water mains across Horse Park Drive to the proposed high zone watermain in Casey 2 Estate at the mandated entry road into Ngunnawal 2C Estate (future Burrumarra Ave). The Developer shall provide for a future minimum high zone 300 dia connection to the future suburbs Taylor and Moncrieff to the requirements of ActewAGL.

The Developer shall connect to the existing 150 dia high zone water main in Horse Park Drive from Casey 2 Estate at the south west section of the Estate.

A2.3.11.2 Decommission of existing Ngunnawal Pump Station

The existing temporary pump station is to be decommissioned and removed in accordance with approvals by ActewAGL. Work for decommissioning the pump station may commence only when the Ngunnawal 2C Estate water network is connected to the high zone from Casey 2 Estate. This work shall be carried out and completed at the Developers cost.

A2.3.12 Service and Stormwater Easements

The Developer shall create service easements for any service infrastructure (pipes and cables) that are allowed to pass through private leases. The design shall include details of access provisions required for normal maintenance requirements. Easements and open spaces shall be in accordance with TAMS, requirements and other service provider guidelines.

Floodways and overland flows are to be in public open space. Trunk sewers are to be in open space to the requirements of ActewAGL. Easements and public open spaces containing services shall be accessible to the Territory for any reconstruction, operation and maintenance at any time. Easements or open spaces required for other services (such as a trunk sewer) are to be in accordance with the requirements of the service provider and asset owner.

A2.3.13 Spoil Disposal

The Developer is to allow for the disposal of spoil at an approved landfill site in a manner suitable to ACT NoWaste.

Spoil is not to be stockpiled on adjacent unleased Territory land without written approval from the Estate Manager. Where more than 100 cubic metres of soil is placed on land that has a Territory Plan Non Urban Zone or P4 Overlay, an Environmental Authorisation is required. Contact Environment Protection on 132 281. An approved Environmental Authorisation is required to be submitted with the application for approval to stockpile to the Estate Manager where more than 100 cubic metres of spoil is contemplated.

A2.3.14 Natural Gas

The Developer is required to provide suitable excavations to allow Jemena to connect to existing mains.

A2.3.15 Shared Trenching

The Developer shall supply and co-ordinate shared trenches for the installation of underground services including electricity (ActewAGL), telecommunications (Telstra, TransACT and NBN Co.) and natural gas (Jemena). All services within the Estate are to be underground. The Developer shall supply all excavation and backfilling operations necessary to suit the specific requirements of all of the agencies.

The Developer shall obtain copies of the existing plans of all service providers' asset locations. Should it be necessary to relocate an existing asset within the development it is the Developers responsibility to liaise directly with the asset owner and to carry out any works required by the asset owner as part of the Estate development.

A2.3.16 Utility Service Providers

During all stages of contract documentation and construction the Developer is to liaise and co-ordinate with the service providers.

Electricity

Customer Services Manager – Project Management
ActewAGL – Electricity Networks
Cnr Oakden & Anketell Streets
Greenway ACT 2900
Telephone: 02 6293 5738 Fax: 02 6293 5748

Water and Sewer

Manager Hydraulic Asset Acceptance
ActewAGL – Water Division
12 Hoskins Street
Mitchell ACT 2911
Telephone: 02 6242 1499 Fax: 02 6242 1406

Natural Gas

Network Development Manager
Jemena Asset Management
Unit 1 / 5-7 Johns Place
Hume ACT 2620
Telephone: 02 6203 0640 Fax: 02 6203 0601

Telstra

Network & Technology
Telstra Operations
4/52 Railway Parade
Burwood NSW 2134
Telephone: 02 9397 2090 Fax: 02 8217 7188

In addition to the information provided in this clause, Telstra has provided the following additional information:

- Estate is approximately 4.5km from the Crace exchange.
- Telstra can install pit and pipe to NBN Co specifications on a fee for service basis. A quotation can be provided upon request once the Estate Development Plan has been approved.
- However, the Developer is free to choose other contractors for the work.

Early notification of any proposed development will enable Telstra to deliver services with minimal disruption and enable coordination of trenching with other infrastructure. To provide early notification, planned property developments can be registered with Telstra via the www.telstrasmartcommunity.com website.

TransACT Capital Communications

Network Design and Construction Manager, Access Network
TransACT Communications Pty Limited
3rd Floor, TransACT House
470 Northbourne Ave
Dickson ACT 2602
Telephone: 02 6229 8047 Fax: 02 6229 8025

In addition to the information provided in this clause, TransACT has provided the following additional information:

- TransACT are available to discuss with Estate Developers the provision of TransACT services, including Fibre to the Premises services and products for infill and broad acre Greenfield developments.
- TransACT are available to provide pit and pipe Designs and pit and pipe installation services to NBN Co specifications for Estate Developers on a fee for service basis.
- For large scale and high-rise developments TransACT are available to provide internal Designs and installation services to meet Fibre to the Unit requirements.

For further information on TransACT's services for Greenfield Estates, Developers can contact:

Group Manager Network Design and Construction, Access Network
Access Network
TransACT Communications Pty Limited
3rd Floor, TransACT House
470 Northbourne Ave
Dickson ACT 2602
Telephone: 02 6229 8047
Email: rod.barrett@transact.com.au

Or

Network Design Manager
TransACT Communications Pty Limited
3rd Floor, TransACT House

470 Northbourne Ave
Dickson ACT 2602
Telephone: 02 6229 8072
Email: wayne.read@transact.com.au

- For large scale and high-rise developments, communications rooms, with appropriate space and internal facilities, such as internal cable ducting and risers, may be required to be provided by the Developer, to facilitate equipment location and access to each unit.
- Dependant on technology, there may be a requirement for the provision of external street cabinets where suitable locations would need to be determined by TransACT in consultation with the Developer or their agent.

National Broadband Network

NBN Co Limited
Unit 2, 16 National Circuit
Barton ACT 2600
Telephone: 02 9926 1900 Fax: 9926 1901

NBN Co Limited is the wholesale provider of last resort for telecommunication services. The Developer is responsible for the provision of trenching, ducting and pits to NBN specifications.

- Installation of trenches, pit and pipe is the developer's responsibility. Infrastructure is to be installed to NBN Co. specification. Further information can be obtained from the NBN Co. website: <http://nbnco.com.au/wps/wcm/connect/main/site-base/main-areas/home>.
- The developer may request fibre infrastructure from NBN Co by filling in the online application form at the following website: <http://nbnco.com.au/wps/wcm/connect/main/site-base/main-areas/our-services/new-developments/>.

The Developer can choose any other fibre provider providing they meet NBN specifications and open access requirements.

If the Developer chooses NBN Co as its telecommunications provider, early notification to NBN Co Limited of any proposed development will enable the delivery of services with minimal disruption and enable coordination of trenching with other infrastructure providers.

The Developer is required to enter into contractual arrangements with NBN Co prior to the submission of the first Estate Development Plan submission to ensure adequate consultation with the service provider in relation to master planning connection to the network. Written evidence that NBN Co design requirements have been met for pit and pipe is required prior to lodging any detailed design submission to TAMS (refer clause 4.9.5).

A2.3.17 Electricity Supply and Lighting Requirements

All electrical reticulation shall be underground and ActewAGL Electricity Networks will require sites for electrical substations to provide electricity reticulation to the development. The sites will be determined by ActewAGL Electricity Networks in conjunction with the

Developer or their agent. The cost of relocation of any existing assets shall be borne by the Developer. Estate Development Plans for Industrial or Commercial areas require an identified easement to ActewAGL approval to be identified on the plan. This would normally be in addition to the shared trench location.

The contact for electricity related matters is:

ActewAGL Electricity Networks

Customer Services Manager – Project Management
 ActewAGL Electricity Networks
 Cnr Oakden & Anketell Streets
 Greenway ACT 2900; or
 Postal address: GPO Box 366, Canberra ACT 2601
 Telephone: 02 6293 5738 Fax: 02 6293 5748

All urban municipal lighting shall be designed to AS1158, Design Standards for Urban Infrastructure (DSUI) and the Standard Specification for Urban Infrastructure Works (SSUIW) and constructed to TAMS approval. Control of the obtrusive effect of out door lighting has to be assessed and designed in accordance with current standards. The Developer and/ or agent shall consult TAMS to determine the extent of works and design standards and include in the design submission Iso Lux diagrams for the lighting design and the lighting schedule. The Developer shall obtain connection approval from service provider ActewAGL for network connection. The cost of relocation or damage to any existing assets shall be borne by the Developer. The contact for street lighting matters is TAMS Asset Acceptance.

A2.3.18 House Numbers and Hydrant Markers

At each fire hydrant location adjacent to a road the Developer shall provide and install a hydrant marker. Hydrant markers are to be installed in accordance with the ACTEW Water Supply and Sewerage Standards - Drawing No. WSS 027.

The Developer shall provide and install reflective house numbers on the centre line of all driveway kerbs to blocks within the Estate. This item will be included in the security lodged for outstanding works in accordance with clause 6.4 of this Deed at the time of Practical Completion.

All reflective components shall conform to AS 1906 Retro-reflective Materials and Devices for Road Traffic Control Purposes.

A2.3.19 Information on Environmental Protection

Under the *Environment Protection Act 1997*, a person conducting an activity on a site of 0.3 hectares or more is required to enter into an Environmental Protection Agreement or hold an Environmental Authorisation with the Environment Protection Authority.

The Developer or construction manager shall design, construct and implement all required environment protection measures as necessary to control Water, Air and Noise pollution issues. These measures are set out in the "Information on Environmental Protection", relevant legislation, and the directions of the relevant authorities are in Appendix (i). The

information on Environmental Protection is available from the ACT Planning and Land Authority shopfront.

For each outfall from the Holding Lease with a catchment equal to or in excess of 1 hectare in area, the Developer shall construct a temporary pollution control pond with a minimum capacity of 150 cubic metres per hectare of catchment for the purpose of intercepting all stormwater flows exiting the Holding Lease.

The Developer must allow for the temporary pollution control pond to be wholly contained within the boundaries of the Holding Lease and for all costs associated with the design, construction, management and maintenance, and removal and restoration at the time of expiration of the Holding Lease. These settlement ponds after approved dosing may be discharged into a water quality control pond and under no circumstances shall they be directly discharged into the stormwater system.

Environment Protection Guidelines for "Environment Protection Guidelines for Construction and Land Development in the ACT, 2007" are available from the Environment Protection Authority or can be viewed online at http://www.environment.act.gov.au/data/assets/pdf_file/0019/146233/Construction_and_land_guidelines.pdf.

Any queries in relation to this section can be obtained by contacting:

Environment Protection Authority
Level 3 Annex, Macarthur House
12 Wattle Street
Lyneham ACT 2602
Telephone: 132 281

In accordance with the relevant Environment Protection guidelines the Developer shall prevent dust entering the adjacent estates and suburbs by following a program of continuous dust laying and watering the areas of the Estate being worked.

The Developer shall provide plans detailing what steps are to be taken to secure a source of water for the project during construction. The plan should detail the following:

- recycling of water;
- source of water;
- use of storage dams on site; and
- other methods used to minimise water use (alternative for dust suppression may be to minimise disturbed areas during construction through staging of works).

Where water is to be taken from non potable sources for the purpose of short term construction activities the developer will need to apply for and be granted an Exemption from the requirement for a Licence to take water, before any non-potable water may be taken. If the developer intends on using groundwater, they are required to submit a Bore Work Licence Application. For more information contact the EPA Water Resources Unit on 132 281.

A2.3.20 Protection of Existing Works

Protection of existing works including footpaths, cycle paths, bushfire protection measures, road works, services, grassing, floodways, log barriers, fences and landscaping within and adjacent to the lease boundary shall be the responsibility of the Developer. The Developer must ensure that all existing and new landscape infrastructure is fully protected during the construction process. To assist in the protection of the above works, where applicable, the Developer shall utilise a temporary fencing mechanism to restrict access to unleased Territory Land (open space) areas and/or through existing suburbs to this estate.

The Developer is also responsible for maintaining and the management of fuel loads in the bushfire protection zones and public open spaces until a Final Certificate is issued by the Territory.

A2.3.21 Landscape Management and Protection Plan

The Developer must prepare a Landscape Management and Protection Plan that complies with "Guidelines for the Protection of Public Landscape Assets Adjacent to Development Works Ref-04" to be submitted to Asset Acceptance for approval.

A2.3.22 Acoustic Protection

The Developer shall give consideration to possible traffic noise intrusion into the area of the Holding Lease and provide a noise assessment as part of the Estate Development Plan submission. The Developer shall accommodate any traffic noise intrusion by appropriate high quality urban design and planning of any buildings on consequent leases.

The Developer is to submit sufficiently detailed plans of the measures proposed to the Estate Manager for approval. The plans shall include, amongst others, detail engineering design and material specification.

The Developer shall accommodate any constraints caused by traffic noise intrusion in the planning of consequent lease boundaries or building design controls in conditions contained in the consequent leases.

The Developer shall liaise with the Authority listed below before commencing and concluding acoustic protection design:

- Territory and Municipal Services
- Transport Planning and Strategy Section
- MacArthur house
- 12 Wattle Street
- Lyneham ACT 2602
- Telephone: 02 6207 1720

A2.3.23 Access for Maintenance Authorities

The Developer is required to liaise with and provide access to all service authorities who own assets within the Holding Lease area.

A2.4 CONDITIONS RELATING TO CONSEQUENT LEASES

A2.4.1 General

The Development Application approval of an Estate Development Plan approves the subdivision of the Holding Lease into blocks and the provision of infrastructure. All blocks must comply with the requirements of the Territory Plan and any special planning requirements at variance to current code provisions of the Territory Plan will need approval and the Authority's agreement to a Technical Amendment/s or Full Variation to the Territory Plan prior to the lodgement of the Estate Development Plan as a Development Application. Such Technical Amendments will not actually occur until after the Estate Development Plan has been approved.

The approved staging plan prepared in accordance with Annexure A4 will form the basis of the batch of leases to be issued for each approved stage. The issue of only some leases within an approved stage will not be considered.

A2.4.2 Subdivision – Multi Unit Sites

Prospective lessees are advised that each block is offered for development and retention as a single, unsubdivided lease. An application for subdivision, however, may be made in accordance with the *Unit Titles Act 2001* to create individual parcels for each unit permitted in a multi-unit lease. It should be noted, however, that in such instances the Territory will not accept applications for subdivision into individual leases, the creation of public roads or the vesting of land or services in the Territory unless the following requirements are met:

- a) Plans of the whole site shall be submitted to and approved by the Territory at the time of lodgement of first plans for design and siting consideration which meet the requirements as specified under **clause A2.1.2**; and
- b) In the case of hydraulic services that are to become part of the public system, these must be designed and built in accordance with the current Guidelines published by ActewAGL (for water and sewerage) and by TAMS (for stormwater). All certificates, inspections and approvals required by these documents must be obtained before the services will be accepted by the Territory.

A2.4.3 Alterations to Subdivision

Alterations to the Estate Development Plan shown on **Sheet 4 of Annexure A1** which involve subdivision, the creation of additional public roads or the vesting of further land or services in the Territory will not be considered unless:

- a) each intended consequent lease is separately accessed from an abutting external public road;
- b) each intended consequent lease will be serviced by separate public utility services in accordance with Territory practice;

- c) no concentrated discharge of surface stormwater occurs from one intended lease to an adjacent lease;
- d) proposed public roads have been approved by the Relevant Authority prior to the commencement of works; and
- e) the requirements identified in **clause A2.1.2** can be satisfied.

A2.4.4 Request for Consequent Leases

The Developer is required to submit a written request for consequent leases in each stage. The request will contain the following information:

- Estate Name and Stage;
- a complete schedule of blocks in the stage in accordance with the approved staging plan;
- number of dwellings permitted on each block, including the minimum or maximum number of units and special conditions (e.g. surveillance unit must be built over double garage);
- the purpose clause for each block; and
- any other special lease conditions (e.g. shared driveways, carcourts, Community Title).

A2.5 OTHER SPECIAL PROJECT CONDITIONS AND GUIDELINES

A2.5.2 Places of Heritage/Cultural Significance

The Developer's attention is drawn to the *Heritage Act 2004*. This Act provides for the protection of heritage places through their inclusion in the Heritage Register. Section 51 of the Act requires the reporting of the discovery of any suspected Aboriginal heritage places discovered during the course of development. In this event, the Developer shall immediately stop work in the area and proceed in accordance with the Heritage Management Plan.

Further information on requirements relating to this Act may be obtained from the TAMS Heritage Unit. A Heritage Management Plan addressing these requirements listed above and endorsed by the ACT Heritage Council will be required, prior to the establishment of a Development Plan to allow for the conservation of sites in open space if necessary, and the implementation of other site management strategies.

The Heritage Management plan must be completed and endorsed by the ACT Heritage Council prior to the submission of the first Estate Development Plan.

A2.5.3 Places Ecological Significance

Areas of ecological significance (mature and over mature trees or clumps of trees with native understorey) are to be considered within the design of the suburb.

A2.5.4 Serviced Land to be returned to the Territory

There are no serviced blocks to be returned to the Territory.

A2.5.5 Contamination Assessment and Remediation

A large spoil stockpile exists in the northwest corner of the site adjacent to Horse Park Drive.

The Developer is responsible for the reuse and/or removal of the spoil to a site in a manner suitable to ACT NoWaste and EPA and approved by the Estate Manager.

A preliminary assessment and information on the contamination of the stockpile is available in the background documents referred at **clause A2.1.5**. The Developer is responsible for any further assessments and/or investigations to make its own assessment of the stockpile in relation to its reuse or disposal.

The costs associated with any assessment/investigation, reuse or removal to a Territory approved location, will be at the Developers expense.

A2.5.6 Traffic Noise Attenuation Measures

Traffic noise attenuation along Horse Park Drive/Ngunnawal 2C interface is to be resolved by the Developer in a manner consistent with **clause A2.3.22**.

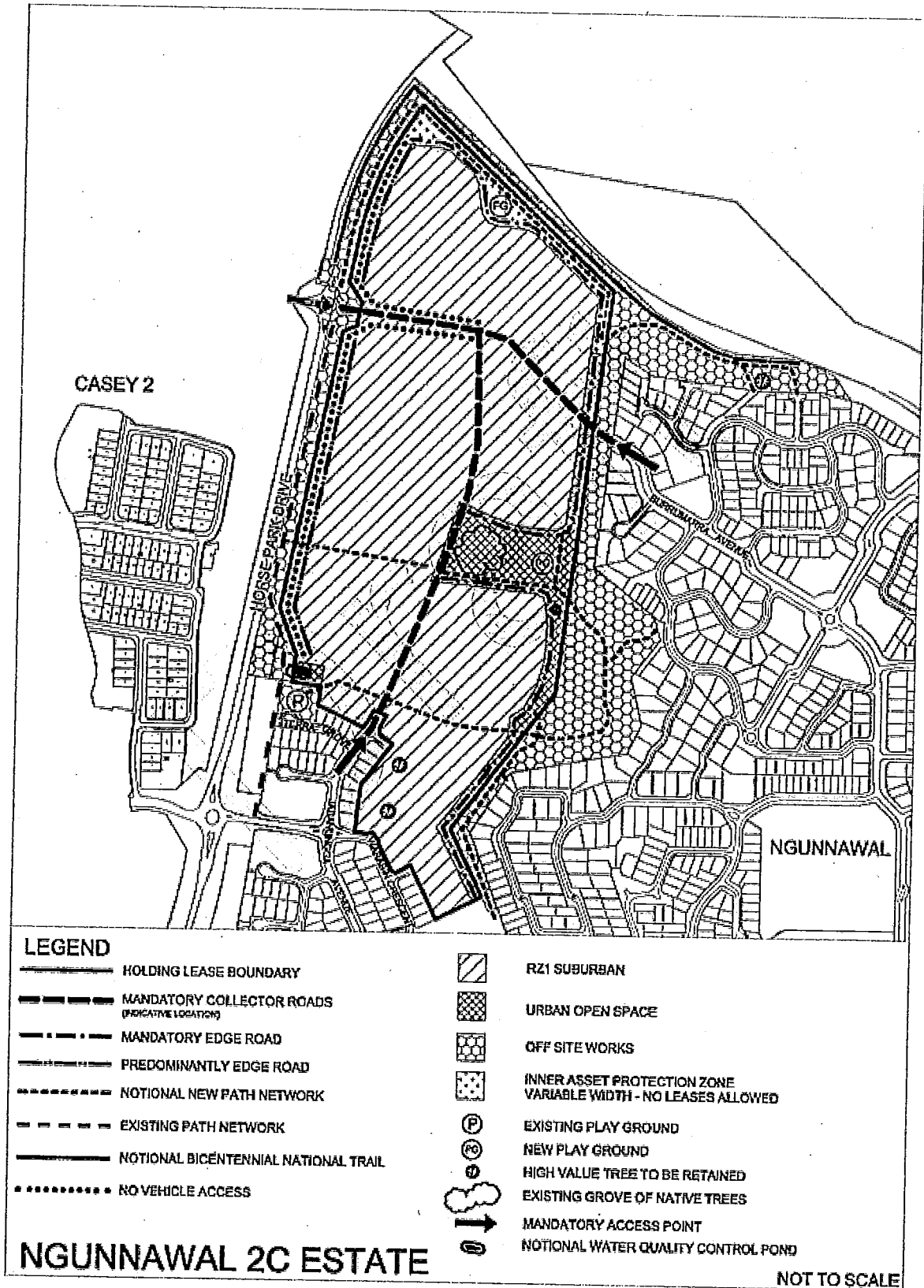
A2.5.7 EPBC Act Clearances

The Developer must comply with the action specified in condition 2 of the EPBC Act Approval letter dated 31 March 2011 on behalf of the Territory (refer to **clause A2.1.5**).

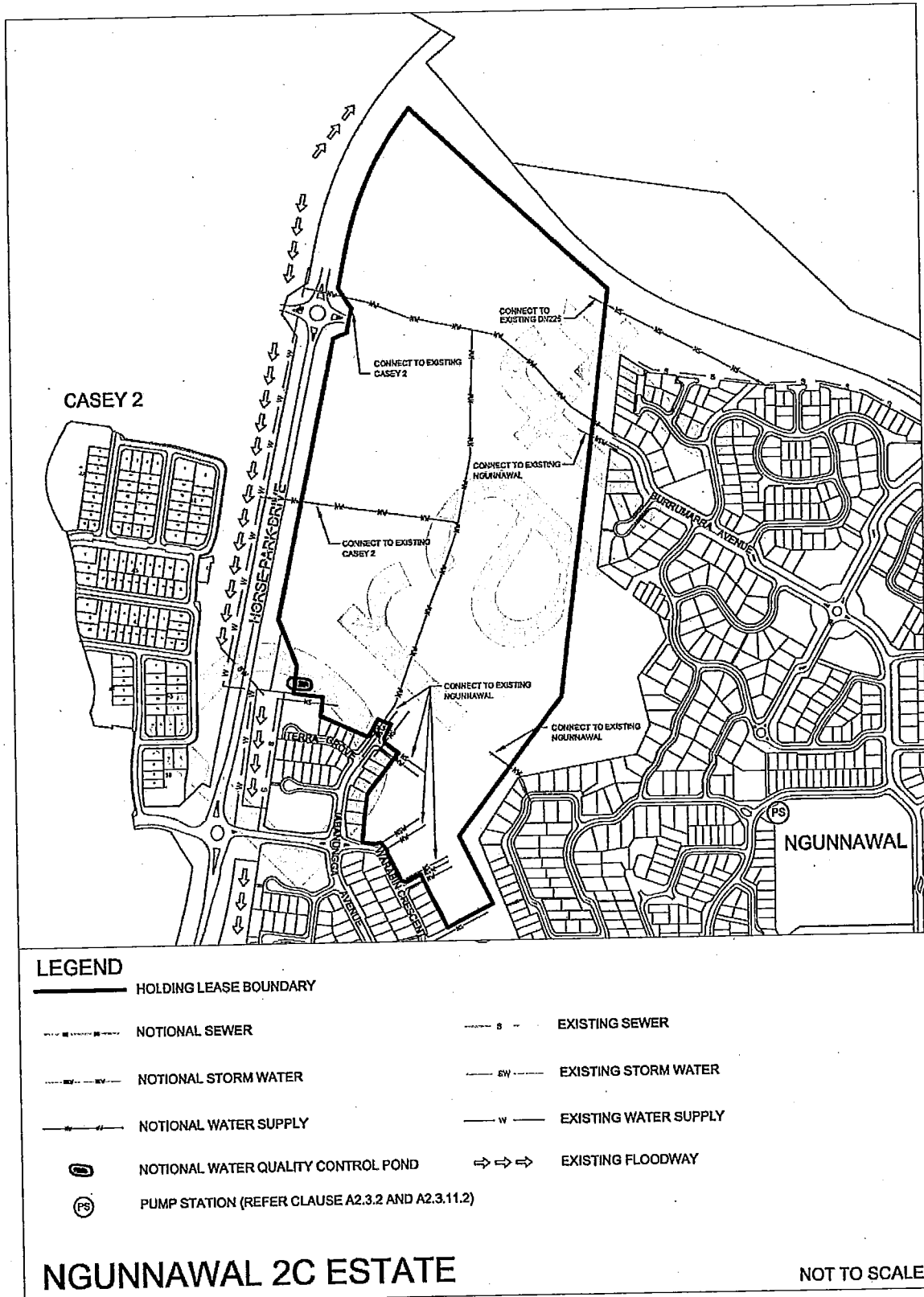
To comply with this condition, the Developer is required to notify the Commonwealth Minister for the Environment in writing, within **10 business days** of the commencement of development (earthworks or other land clearing activity).

Draft

Specific Planning Requirements Plan



Engineering Services Plan



ANNEXURE A3
LEASES PLAN AND LIST

A3.1 LIST OF LEASES

SECTION	BLOCKS	DWELLING
To be completed by Developer	To be completed by Developer	To be completed by Developer

Total Dwellings including multiunit sites is to be a **maximum of 475 dwellings.**

(Including leases to be handed back to the Territory in accordance with **clause A2.5.4 of Annexure A2)**

Notes:

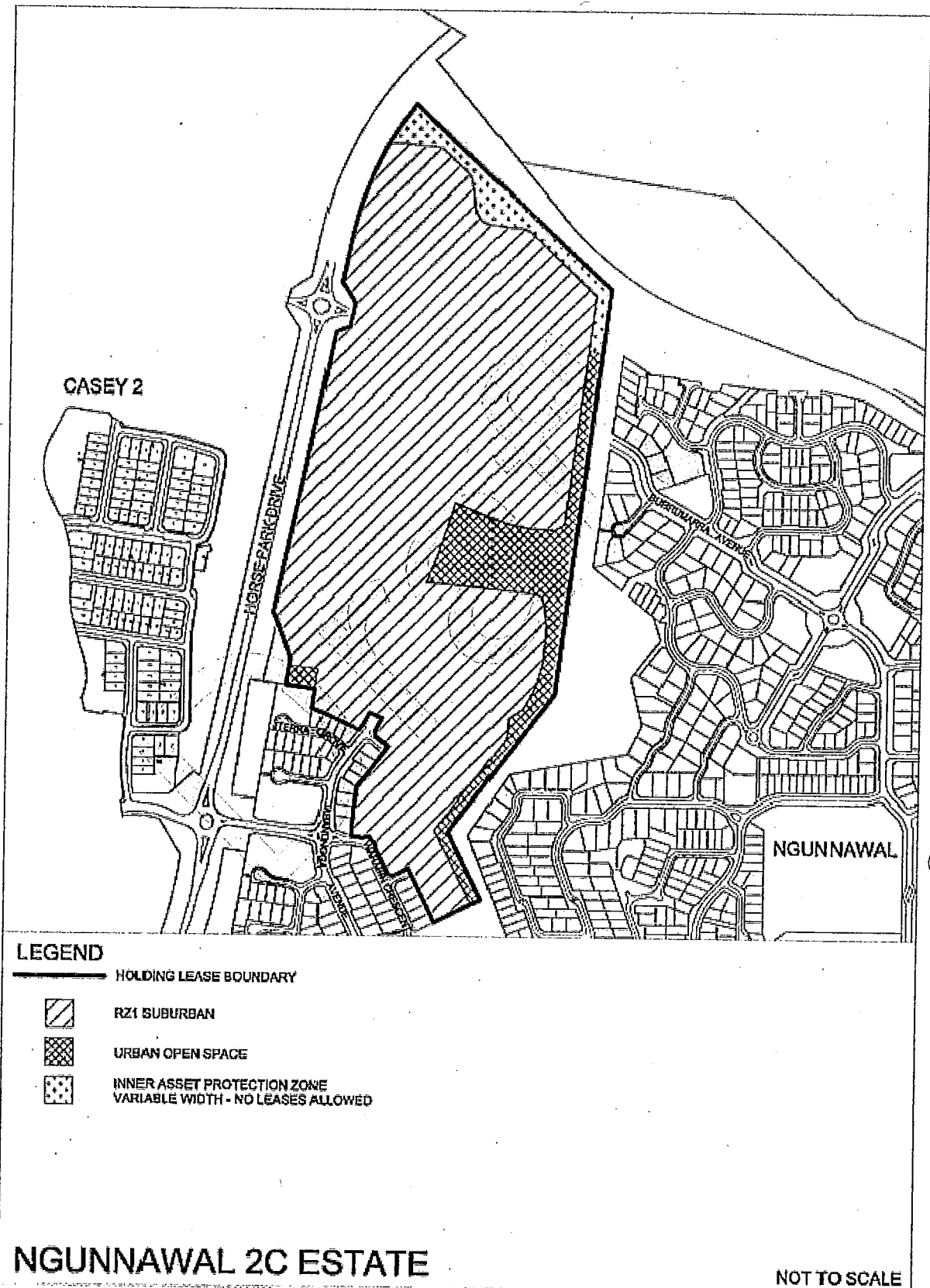
1. The following abbreviations shall be used when completing the list of Leases.

SR1	Single Residential	0 - 250 square metres
SR2	Single Residential	251 - 350 square metres
SR3	Single Residential	351 - 450 square metres
SR4	Single Residential	451 - 650 square metres
SR5	Single Residential	650 + square metres
MU	Multi Unit (number of dwellings)	

A table summarising the blocks by type and quantity is to be included on the EDP submission detailed in Annexure A2.1.2.

2. Block and Section numbers refer to relevant areas depicted and identified on the leases plan.

Lease Plan and List



ANNEXURE A4
STAGES PLAN WITH PROGRAM
NGUNNAWAL 2C ESTATE
SHEET 1 OF 4

ANNEXURE A4
STAGES PLAN WITH PROGRAM

DRAFT

A4.1 STAGES AND PROGRAM

A4.1.1 General

The Developer shall in accordance with the provisions of **clause 3.1** of the Deed prepare a Stages Plan and Program conforming with the requirements of **clauses A4.1.2 and A4.1.3** below.

The Stages Plan mentioned above shall be submitted to the Estate Manager with the Estate Development Plan submission. This plan will be circulated to Relevant Authorities for comment. After consideration of these comments the Estate Manager will give consideration to approval of the Staging Plan separate to the EDP DA approval. Subsequent changes to the approved staging plan will require Agency consultation, support and separate approval by the Estate Manager.

The approved staging plan will form the basis of:

1. Batches of consequent leases to be issued; and
2. Practical Completion of works to be handed back to the Territory.

Definitions

Civil works

All works listed in Annexure A1.1 with the exception of building works, Open Space landscaping, Street Tree planting, drive ways and verge works.

Open space landscaping

All landscaping including the provision and installation of furniture, playgrounds and associated items, on the estate with the exception of street tree planting and verge works.

A4.1.2 Stages

The Works detailed in Annexure A1 shall be completed in at least one or more stages.

- 1) Each of the individual Stages shall contain provision for the issue of leases for not less than **sixty (60)** dwelling units.
- 2) Civil Works and Open Space Landscaping
 - a) All civil works required to be handed back to the Relevant Authority within the stage, including road, hydraulic and other service connections, to the public system necessary for the Stage to operate as a standalone subdivisional unit and/or an integrated component of the public infrastructure.
 - b) Landscaping of public open space (excluding street tree planting) contiguous with a Stage of the civil works shall be carried out as part of that Stage or the succeeding Stage, with the exception of landscaping of public open space contiguous with the final Stage of the civil works, which shall be carried out as part of that Stage.

- c) Careful consideration shall be given by the Developer to criteria relevant to access, hydraulic services and service authority requirements.
- 3) Street Tree Planting, Footpaths and Driveways
- a) Street tree planting and footpaths, unless otherwise specified, shall be combined and carried out during the construction of individual stages.
 - b) Repair of verge grassing and any missing or damaged street trees and footpaths will be carried out progressively upon completion of individual dwellings to the satisfaction of the Estate Manager. The Developer is to provide a schedule of works upon request of the Estate Manager.
 - c) Driveway construction may be carried out progressively upon completion of dwellings erected after the issue of consequent leases.

A4.1.3 Program

1) Civil Works

Stages shall be commenced in numerical order however work on individual stages may proceed concurrently.

- a) The following works will be completed prior to the start of any construction works on the Holding Lease:
 - (i) All fencing works (refer clause A2.2.9).
 - b) No consequent lease shall be issued until all civil works included in any stage are completed to the satisfaction of the Territory.
 - c) Off Site works detailed in clause A2.3.2 shall be completed within thirty six (36) months of the date of execution of the Deed of Agreement. After thirty six (36) months, no further consequential leases shall be issued until these works are completed to the satisfaction of the Territory.
 - d) Leases for up to 20% of the total number of dwelling units will be withheld until affordable housing in accordance with clause A2.1.8 has been fulfilled to the satisfaction of the Estate Manager.
 - e) The whole of the works shall be completed within four (4) years of the date of execution of the Deed.
 - f) In preparing its program the Developer shall take into consideration completion dates for any roads and services being constructed by adjacent Developers and the Territory if relevant. Liaise with the adjacent Developers and the Territory where necessary to ascertain all relevant anticipated completion dates.
- 2) Street Tree Planting, Footpaths and Driveways
- a) Street tree planting and footpaths, unless otherwise specified, shall be combined and carried out during the construction of individual stages.

- b) Driveway construction may be carried out progressively upon completion of dwellings.

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ANNEXURE A5
GENERAL
NGUNNAWAL 2C ESTATE
SHEET 1 OF 2

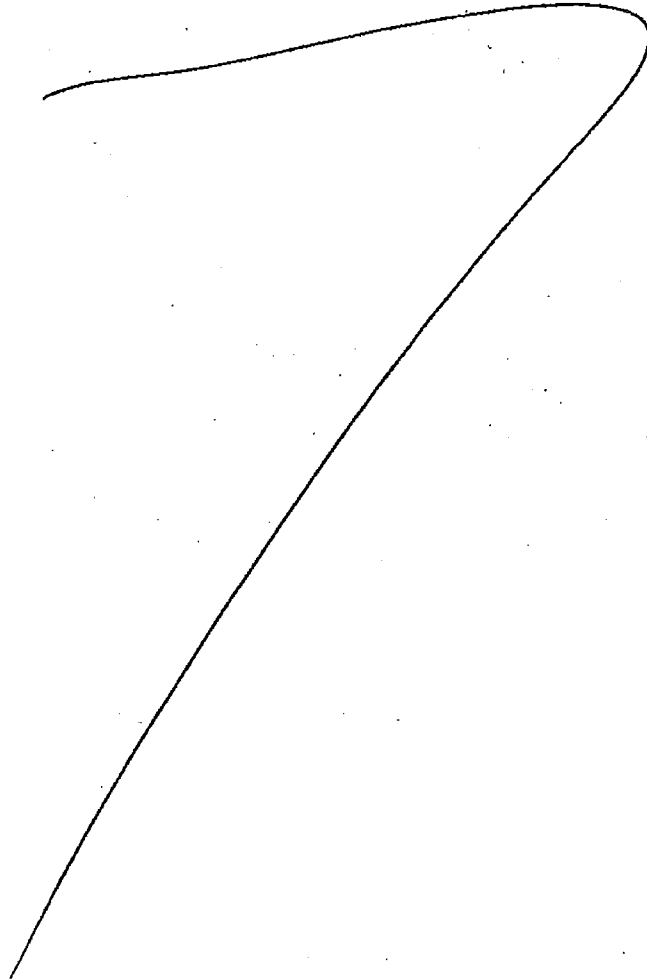
Draft

ANNEXURE A5
GENERAL

A5.1 GENERAL

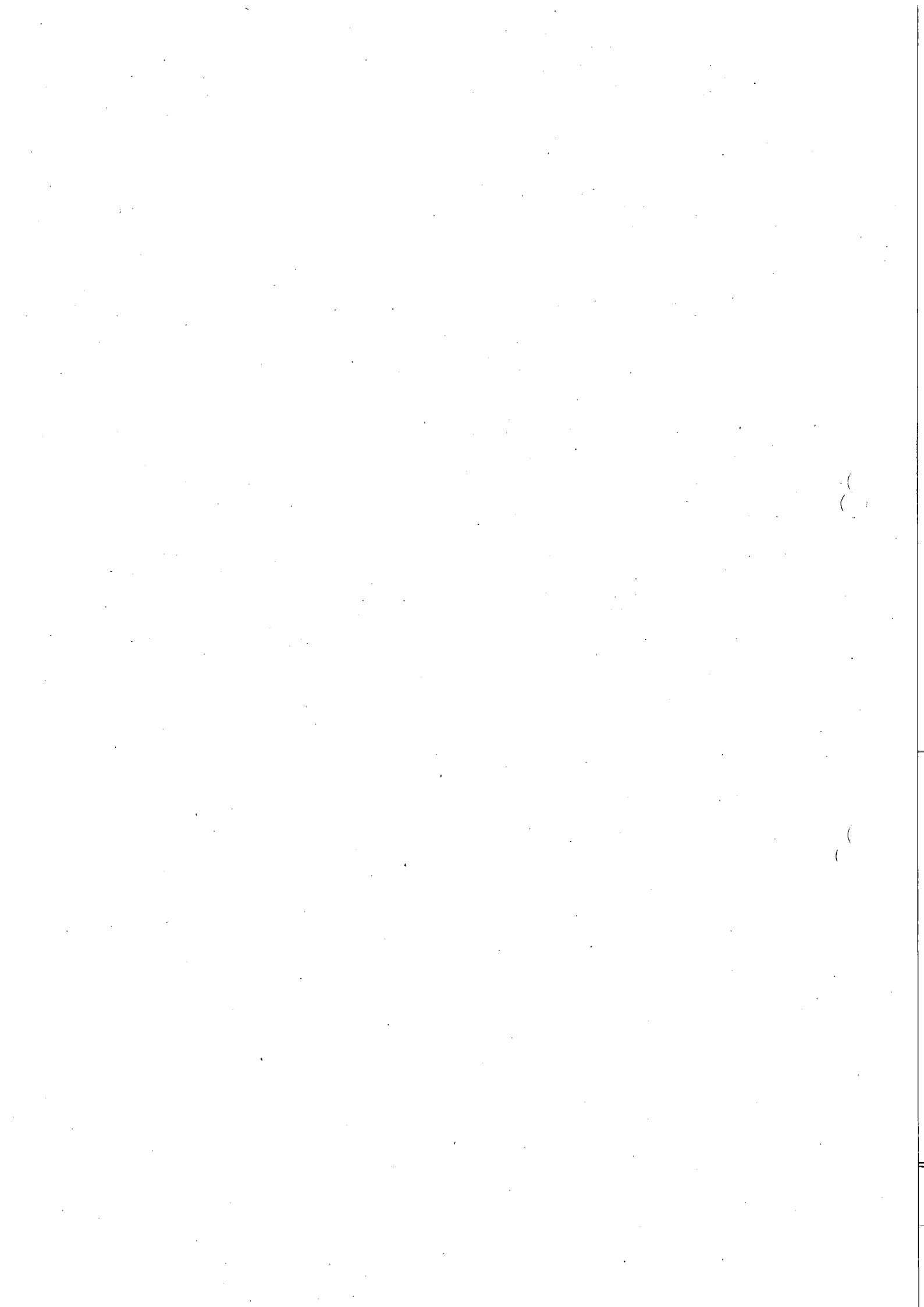
- | | | |
|---|----------|--|
| 1. The Estate Manager shall be: | c.6.20 | Manager
Deed Management Unit
Planning Services Branch
ACT Planning & Land Authority |
| 2. Address for service of documents: | cl.6.7 | 16 Challis Street
Dickson ACT 2602 |
| 3. The amount of security for: | cl.6.4 | |
| General Performance Undertaking | cl.6.4.1 | \$NIL |
| Interdependent works and Scheduled
Engineering Services | cl.6.4.2 | \$NIL |
| 4. The date for giving possession of site is: | cl.4.4 | The date of execution of this Deed by the
latest executing party. |
| 5. The time for completion of the whole of the
Works shall be: | A4 | Reference Annexure A4 |
| 6. The Stages of the Works shall be those set
out in: | A4 | Reference Annexure A4 |
| 7. The Stages of the Works shall be the time
specified in respect of that stage of the
Works in the Stages Plan with Program: | A4 | Reference Annexure A4 |
| 8. The Defects Liability Period in respect of
each Stage of the Works shall be: | cl.6.6 | Fifty two (52) weeks from the relevant
Certificate of Practical Completion |
| 9. Liquidated damages for the Interdependent
Works and Scheduled Engineering Services: | cl.6.4.4 | \$NIL/week |

ANNEXURE B – DEPOSITED PLAN



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A handwritten signature or scribble consisting of a few simple, connected strokes.



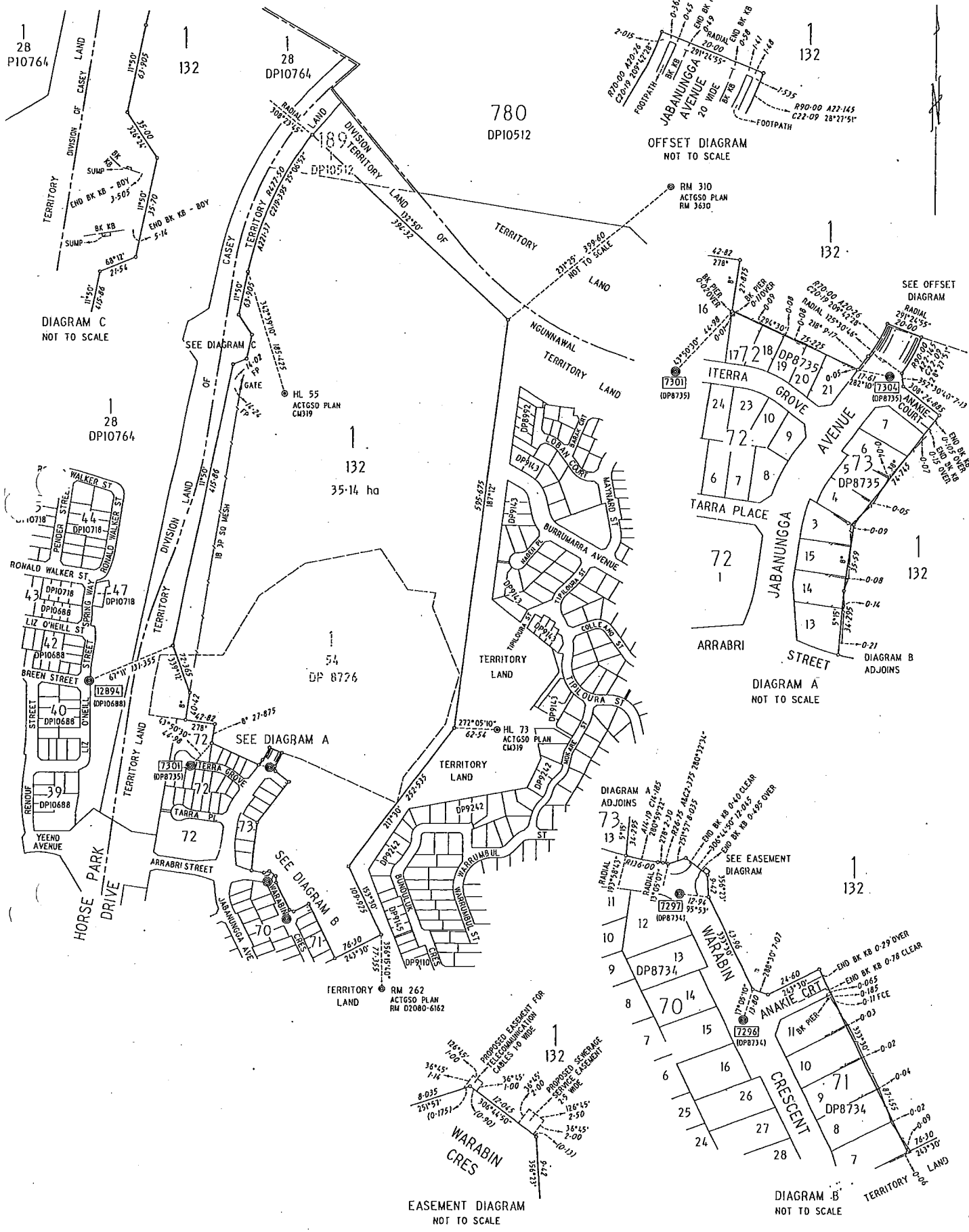
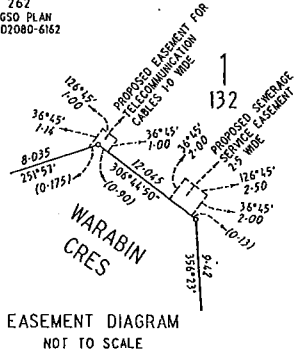


DIAGRAM C
NOT TO SCALE

OFFSET DIAGRAM
NOT TO SCALE

DIAGRAM A
NOT TO SCALE

DIAGRAM B
NOT TO SCALE



EASEMENT DIAGRAM
NOT TO SCALE

- REFERENCE MARKS
- ⊙ Denotes GP - road-to-100-radially-from-TP
 - ⊙ CB - 100 - TP
 - ⊙ PLAGUE IN WEIR
 - ⊙ DEEP-SUMMEN-ROAD
 - ⊙ SWAMP-IN-WEIR
 - (Except as otherwise shown)

I MICHAEL NOLAN LAVIS of CAMBERA SURVEYS PTY LTD a surveyor registered under the Surveyors Act 2003 hereby certify that the survey represented on this plan is accurate and has been completed and made in accordance with the Surveyors Practice Directions and was completed on 14 FEBRUARY 2011

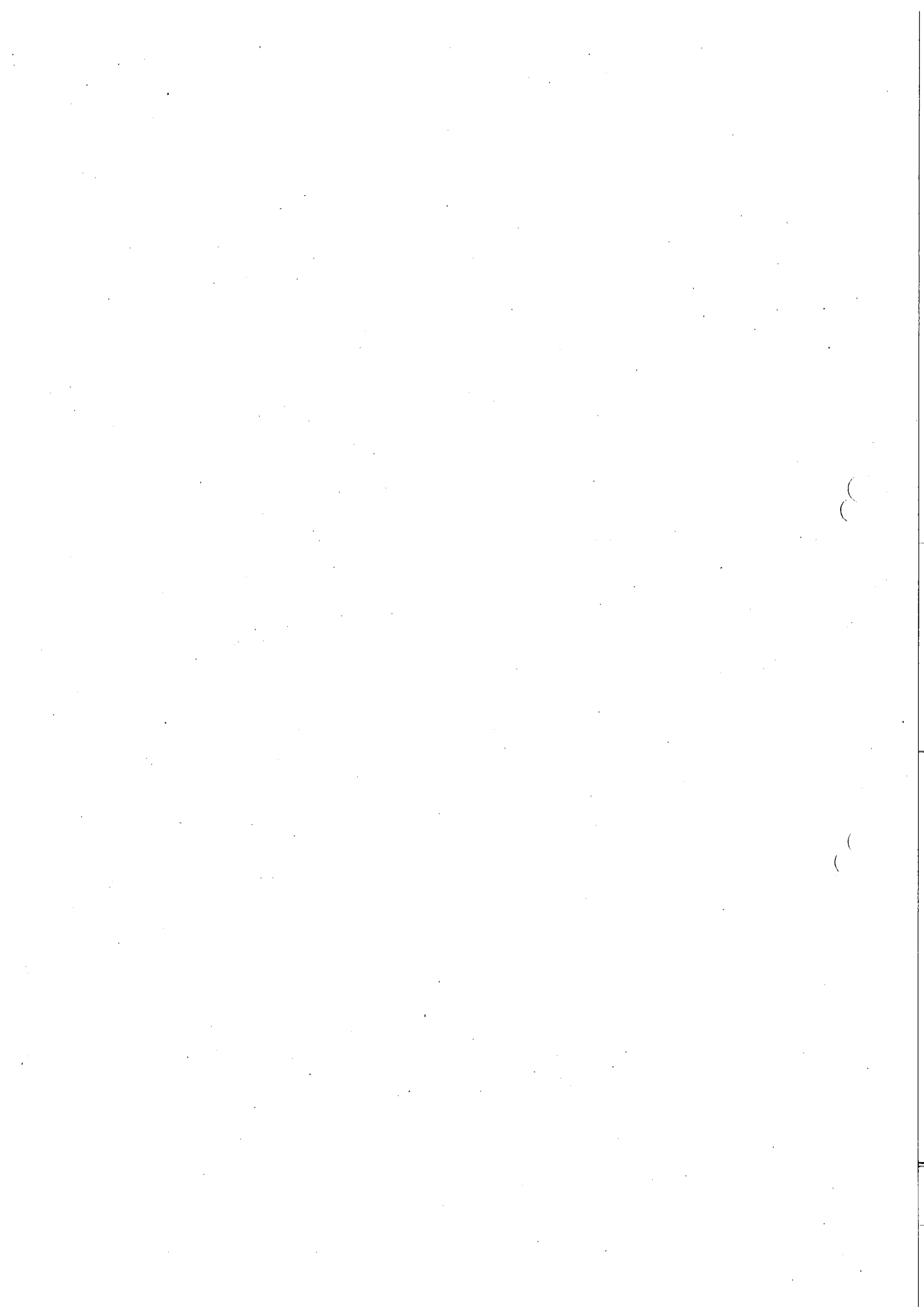
(Signature) *Michael Nolan Lavis* 22-3-11
 Surveyor registered under the Surveyors Act 2003
 I certify that this plan is the plan prepared in accordance with the Districts Act 2002
Michael Nolan Lavis 22-3-2011
 Surveyor - General of the ACT

PLAN OF
 BLOCK 132 SECTION 1
 BEING AN AMENDMENT OF BLOCK 54
 SECTION 1 AND BLOCK 1 SECTION 189
 DIVISION: NGUNNAWAL
 DISTRICT: GUNGALHIN

AUSTRALIAN CAPITAL TERRITORY
 SCALE 1: 3000
 0 50 100 150 200 METRES

Deposited in the office of the Registrar of Titles of Canberra in the Australian Capital Territory the Twenty-eighth day of March 2011 at _____ metres past nine o'clock in the fore noon
 Approved: *Brett Phillips*
 Registrar-General
 Registrar-General

DEPOSITED PLAN
 10780
 AMENDS DP8726 & DP10512



ANNEXURE C – SPECIAL CONDITIONS

1 DEFINITIONS

1.1 The following definitions are in addition to the definitions specified in clause 27 of this Contract:

(a) **EPBC Act Approval** means the Approval Decision Ngunnawal Residential Estate Stage 2C (EPBC 2010/5648) dated 31 March 2011 at Annexure D of this Contract.

2 STOCKPILE OF WASTE ON LAND

2.1 The Buyer acknowledges that preliminary testing of the stockpile of waste has been undertaken on the Land and that the results are set out in the auction documentation made available to the Buyer by the Seller.

2.2 The Buyer acknowledges that it has made its own enquiries in relation to the stockpile of waste on the Land.

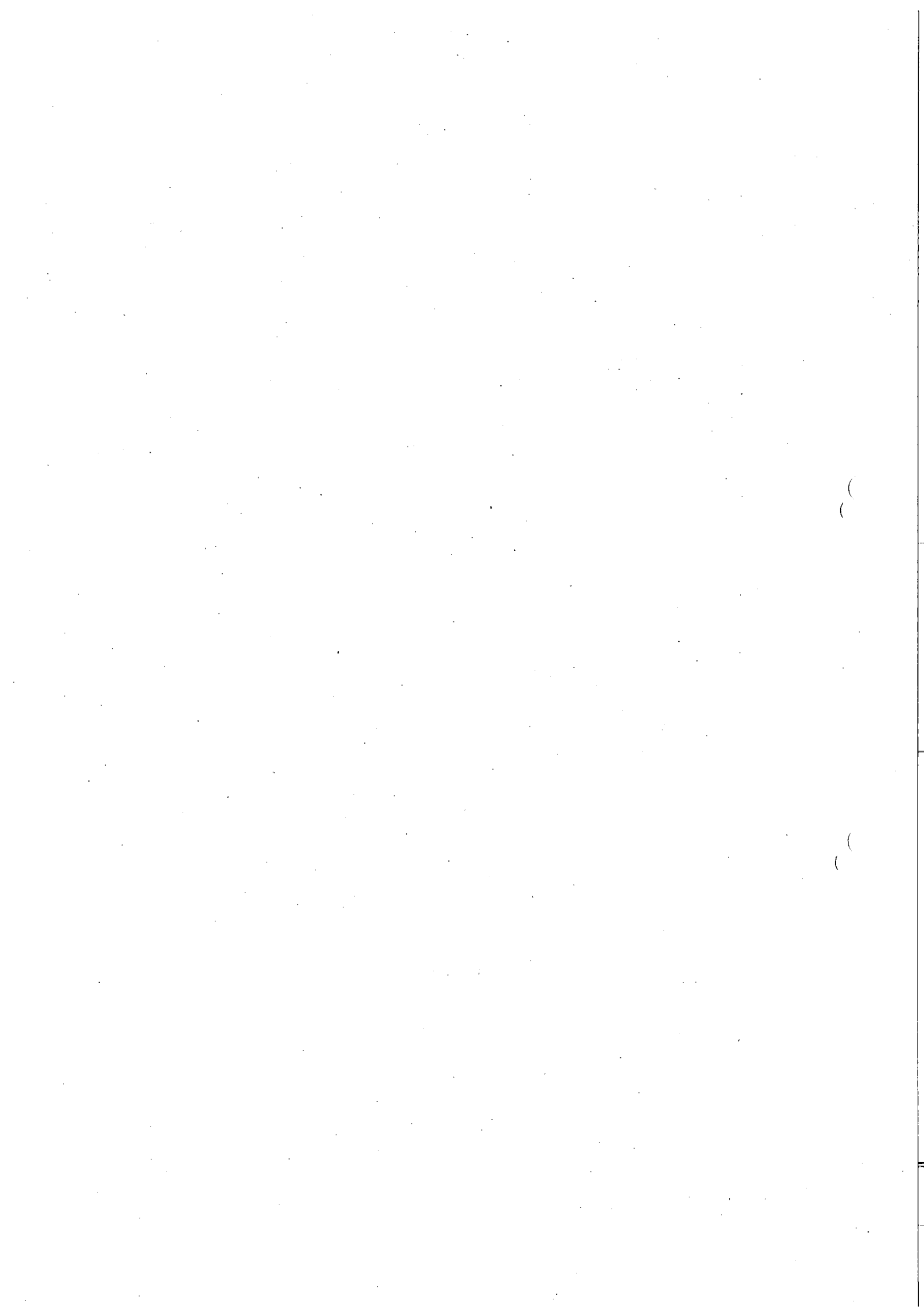
2.3 For the avoidance of doubt, the Buyer acknowledges and agrees that it cannot make a claim or objection or rescind or terminate or make a claim for compensation under clause 18 of this Contract in respect of the stockpile of waste on the Land referred to in clause A2.5.5 of the Deed of Agreement or any preliminary testing of the stockpile of waste.

3 EPBC ACT APPROVAL

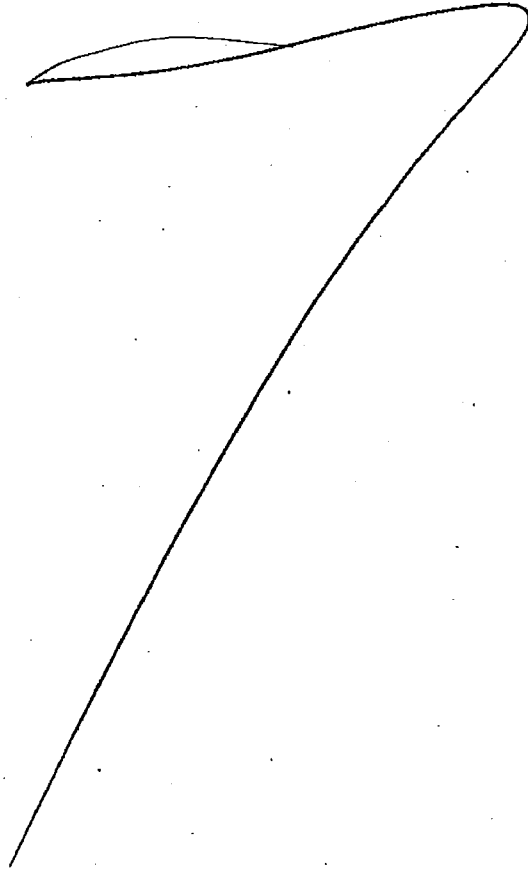
3.1 The Seller must comply with the actions specified in conditions 1 and 3-9 of the EPBC Act Approval.

3.2 The Buyer must comply with the action specified in condition 2 of the EPBC Act Approval on behalf of the Seller. To comply with this condition, the Buyer is required to notify the Commonwealth Minister for the Environment in writing, within 10 business days of the commencement of development (earthworks or other land clearing activity) of the actual date of commencement.

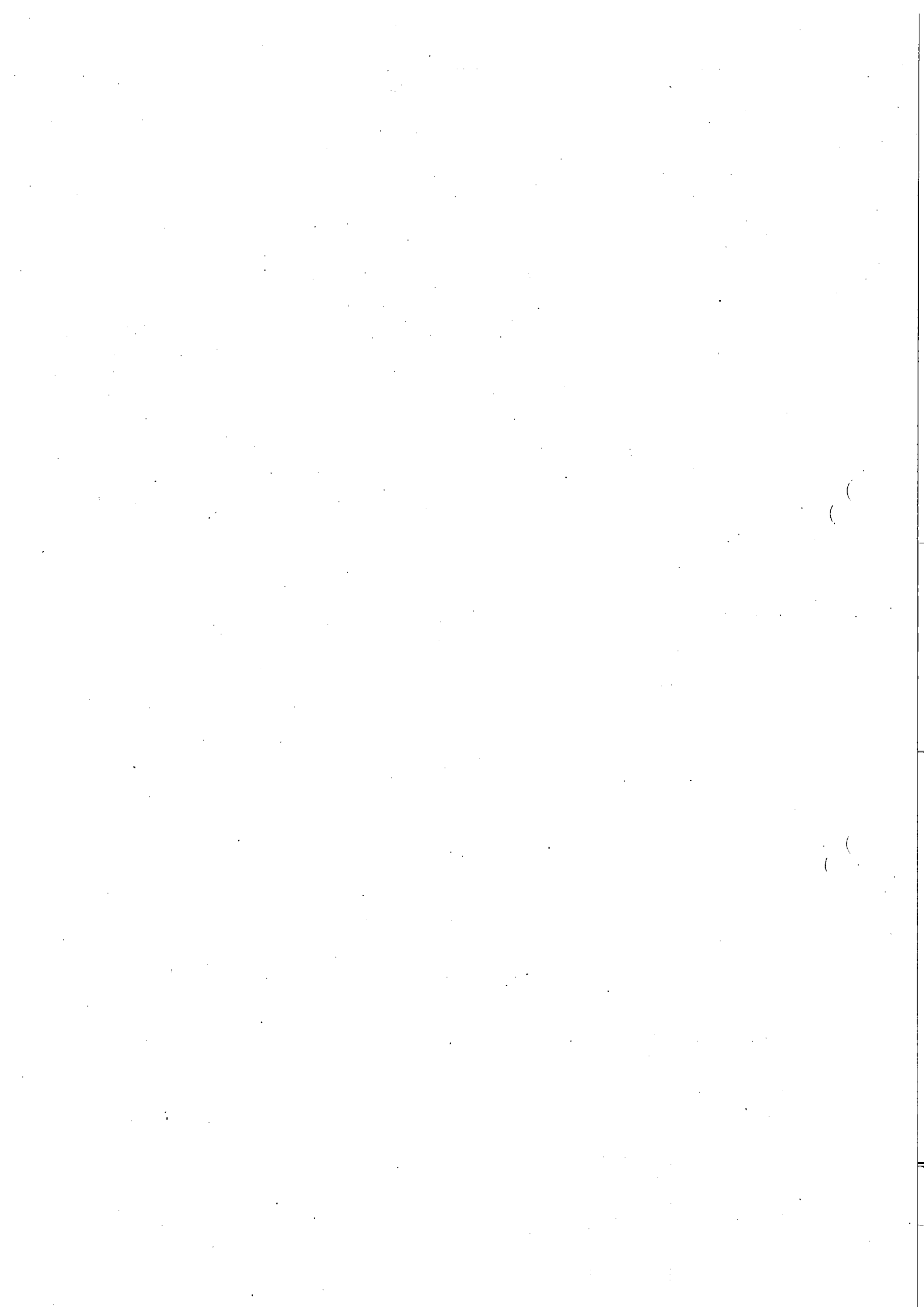
Handwritten signature and initials in black ink, located at the bottom right of the page.



ANNEXURE D – EPBC ACT APPROVAL



Two handwritten signatures in black ink. The first signature is on the left, consisting of several overlapping loops. The second signature is on the right, featuring a prominent vertical loop followed by a few horizontal strokes.





Australian Government

Department of Sustainability, Environment, Water, Population and Communities

Mr Christopher Reynolds
General Manager
Residential Development
Land Development Agency
Level 6, TransACT House
470 Northbourne Avenue
DICKSON ACT 2602

Date: 31/3/2011
EPBC Ref: EPBC 2010/5648
EPBC contact: Melissa Masters
6274 2871
melissa.masters@environment.gov.au

Dear Mr Reynolds

**Decision on approval
Ngunnawal Residential Estate Stage 2C (EPBC 2010/5648)**

I refer to your proposal to develop 32 ha at Ngunnawal (Stage 2C), Gungahlin.

I have considered the proposal in accordance with Part 9 of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) and have decided to grant an approval to the Land Development Agency. The details of my decision are attached. The proposal must be undertaken in accordance with the conditions specified in the approval.

I would appreciate your assistance by informing me when you start the action and who will be the contact person responsible for the administration of the approval decision.

Please note, any plans required as conditions of approval will be regarded as public documents unless you provide sufficient justification to warrant commercial-in-confidence status

You should also note that this EPBC Act approval does not affect obligations to comply with any other laws of the Commonwealth, state or territory that are applicable to the action. Neither does this approval confer any right, title or interest that may be required to access land or waters to take the action.

The department has an active audit program for proposals that have been referred or approved under the EPBC Act. The audit program aims to ensure that proposals are implemented as planned and that there is a high degree of compliance with any associated conditions. You should be aware that your project may be selected for audit by the department at any time and all related records and documents may be subject to scrutiny. Information about the department's audit strategy is enclosed.

If you have any questions about this decision, please contact the project manager and quote the EPBC reference number shown at the beginning of this letter.

Yours sincerely

Michelle Wicks
Assistant Secretary
Environment Assessment Branch



Australian Government

Department of Sustainability, Environment, Water, Population and Communities

Approval Decision

Ngunnawal Residential Estate Stage 2C (EPBC 2010/5648)

This decision is made under sections 130(1) and 133 of the *Environment Protection and Biodiversity Conservation Act 1999*.

Proposed action

Person to whom the approval is granted Land Development Agency

Proponent's ABN 20 419 925 579

Proposed action. To develop 32 ha at Ngunnawal (Stage 2C), Gungahlin, ACT, for a residential subdivision [See EPBC Act referral 2010/5648].

Approval

Controlling Provision	Decision
Listed threatened species and communities (sections 18 & 18A)	Approved

Conditions of approval

This approval is subject to the conditions specified below.

Expiry date of approval

This approval has effect until 31 March 2021.

Decision-maker

Name and position Michelle Wicks
Assistant Secretary
Environment Assessment Branch

Signature

Date of decision

31/3/2011

Conditions attached to the approval

1. To offset impacts on the Golden Sun Moth (*Synemon plana*), the person taking the action must develop a plan, to be approved by the Minister, to protect and manage the offset area at Bonner 4 East for Golden Sun Moth habitat. The plan must include measures to:
 - a. provide a map of the offset area at Bonner 4 East;
 - b. outline the process and timing for incorporating the Bonner 4 East offset area within Mulligans Flat Nature Reserve; and
 - c. conserve the Bonner 4 East offset area as Golden Sun Moth habitat, including contribution of \$200,000 to a trust fund to facilitate fencing and management of the offset area in perpetuity.

Within 6 months of the date of this approval decision, the plan must be submitted to the Minister for written approval. The approved plan must be implemented.
2. Within 10 business days of commencement of the action, the person taking the action must advise the Minister in writing the actual date of commencement.
3. If the person taking the action wishes to carry out any activity otherwise than in accordance with the plan referred to in Condition 1, the person taking the action must submit for the Minister's written approval a revised version of the plan. The varied activity shall not commence until the Minister has approved the varied plan in writing. If the Minister approves a revised plan, that plan must be implemented in place of the plan originally approved. Unless the Minister has approved the revised plan, then the person taking the action must continue to implement the plan originally approved, referred to in Condition 1.
4. If the Minister believes that it is necessary or convenient for the better protection of listed threatened species and ecological communities to do so, the Minister may request that the person taking the action make specified revisions to the plan approved pursuant to Condition 1 and submit the revised plan for the Minister's written approval. The person taking the action must comply with any such request. The revised approved plan must be implemented. Unless the Minister has approved the revised plan, then the person taking the action must continue to implement the plan originally approved, referred to in Condition 1.
5. By 30 April of each year after the commencement of the action, the person taking the action must publish a report on their website addressing compliance with the conditions of this approval over the previous 12 months, including implementation of any management plans as specified in the conditions. Non-compliance with any of the conditions of this approval must be reported to the Department at the same time as the compliance report is published.
6. Upon the direction of the Minister, the person taking the action must ensure that an independent audit of compliance with the conditions of approval is conducted and a report submitted to the Minister. The independent auditor must be approved by the Minister prior to the commencement of the audit. Audit criteria must be agreed to by the Minister and the audit report must address the criteria to the satisfaction of the Minister.
7. Unless otherwise agreed to in writing by the Minister, the person taking the action must publish all management plans and reports referred to in these conditions of approval on their website. Each plan and report must be published on the website within 1 month of being finalised.
8. The person taking the action must maintain accurate records substantiating all activities associated with or relevant to the above conditions of approval, including measures taken to implement the plan required by this approval, and make them available upon request to the department. Such records may be subject to audit by the department or an independent auditor in accordance with section 458 of the EPBC Act, or used to verify compliance with the conditions of approval. Summaries of audits will be posted on the Department's website. The results of audits may also be publicised through the general media.

9. If, at any time after five years from the date of this approval, the Minister notifies the person taking the action in writing that the Minister is not satisfied that there has been substantial commencement of the action, the action must not thereafter be commenced without the written agreement of the Minister.

Definitions:

1. The **EPBC Act** is the *Environment Protection and Biodiversity Conservation Act 1999*.
2. The **Minister** means the Minister responsible for the administration of the EPBC Act.
3. The **Department** means the Australian Government department responsible for administering the EPBC Act.
4. **Commencement of the action** means such time as when any preparatory works required to be undertaken including clearing vegetation, the erection of any on-site temporary structures and the use of heavy duty equipment for the purpose of breaking the ground for buildings or infrastructure commences.
5. **Substantial commencement** of the action occurs at such time when the clearing of vegetation for the action has completed.