

Contract of sale of land

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

The terms of this contract are contained in the -

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

in that order of priority.

SIGNING OF THIS CONTRACT

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

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

The authority of a person signing -

- under power of attorney; or
- as director of a corporation; or
- as agent authorised in writing by one of the parties - must be noted beneath the signature.

Any person whose signature is secured by an estate agent acknowledges being given by the agent at the time of signing a copy of the terms of this contract.

SIGNED BY THE PURCHASER:

..... on/...../2022

Print name(s) of person(s) signing:

State nature of authority, if applicable:

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

SIGNED BY THE VENDOR:

..... on/...../2022

Print name(s) of person(s) signing: JAMES JOHN WILLIS-SMITH

State nature of authority, if applicable:

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

IMPORTANT NOTICE TO PURCHASERS – COOLING-OFF

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

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

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

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

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

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

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

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NOTICE TO PURCHASERS OF PROPERTY OFF-THE-PLAN

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

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

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

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

Particulars of sale

Vendor's estate agent

Area Specialist Keysborough
Shop 2/481-485 Cheltenham Road, Keysborough, VIC 3173

Email: admin@areaspecialist.com.au

Tel: 03 8586 6411 Mob: 0431 131 157 Fax: Ref:

Vendor

JAMES JOHN WILLIS-SMITH
17 Cormorant Close, Blind Bight, VIC 3980

Email:

Vendor's legal practitioner or conveyancer

Sea Change Conveyancing & Legal Pty Ltd (A.C.N 631 468 463) Trading as Sea Change Conveyancing

1, 78 High Street, Cranbourne VIC 3977

Email: seanne@seachangeconveyancing.com.au

Tel: 0359951687 Mob: Fax: 03 5995 4284 Ref: AS:SR:11426

Purchaser

Name:

.....

Address:

ABN/ACN:

Email:

Purchaser's legal practitioner or conveyancer

Name:

Address:

Email:

Tel: Mob: Fax: Ref:

Land (general conditions 7 and 13)

The land is described in the table below –

Certificate of Title reference				being lot	on plan
Volume	12316	Folio	927	75	831787U
Volume		Folio			

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

The land includes all improvements and fixtures.

Property address

The address of the land is: **35 Giacco Boulevard, Lang Lang 3984**

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

VACANT LAND ONLY

Payment

Price	\$			
Deposit	\$		by	(of which \$ has been paid)
Balance	\$		payable at settlement	

Deposit bond

☐ General condition 15 applies only if the box is checked

Bank guarantee

☐ General condition 16 applies only if the box is checked

GST (general condition 19)

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

- ☐ GST (if any) must be paid in addition to the price if the box is checked
- ☐ This sale is a sale of land on which a 'farming business' is carried on which the parties consider meets the requirements of section 38-480 of the GST Act if the box is checked
- ☐ This sale is a sale of a going concern' if the box is checked
- ☐ The margin scheme will be used to calculate GST if the box is checked

Settlement (general conditions 17 & 26.2)**is due on**

unless the land is a lot on an unregistered plan of subdivision, in which case settlement is due on the later of:

- the above date; and
- the 14th day after the vendor gives notice in writing to the purchaser of registration of the plan of subdivision.

Lease (general condition 5.1)

☐ At settlement the purchaser is entitled to vacant possession of the property unless the box is checked, in which case the property is sold subject to*:

*(*only one of the boxes below should be checked after carefully reading any applicable lease or tenancy document)*

- ☐ a lease for a term ending on with options to renew, each of years
- OR
- ☐ a residential tenancy for a fixed term ending on
- OR
- ☐ a periodic tenancy determinable by notice

Terms contract (general condition 30)

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

Loan (general condition 20)

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

Lender:

(or another lender chosen by the purchaser)

Loan amount: no more than

Approval date:

Building report

☐ General condition 21 applies only if the box is checked

Pest report

☐ General condition 22 applies only if the box is checked

Special Conditions

Instructions: *It is recommended that when adding special conditions:*

- *each special condition is numbered;*
 - *the parties initial each page containing special conditions;*
 - *a line is drawn through any blank space remaining on the last page; and*
 - *attach additional pages if there is not enough space*
-

General Conditions

Contract signing

1. ELECTRONIC SIGNATURE

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

2. LIABILITY OF SIGNATORY

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

3. GUARANTEE

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

4. NOMINEE

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

Title

5. ENCUMBRANCES

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

6. VENDOR WARRANTIES

- 6.1 The vendor warrants that these general conditions 1 to 35 are identical to the general conditions 1 to 35 in the form of contract of sale of land published by the Law Institute of Victoria Limited and the Real Estate Institute of Victoria Pty Ltd in the month and year set out at the foot of this page.
- 6.2 The warranties in general conditions 6.3 and 6.4 replace the purchaser's right to make requisitions and inquiries.
- 6.3 The vendor warrants that the vendor:
 - (a) has, or by the due date for settlement will have, the right to sell the land; and
 - (b) is under no legal disability; and
 - (c) is in possession of the land, either personally or through a tenant; and
 - (d) has not previously sold or granted any option to purchase, agreed to lease or granted a pre-emptive right which is current over the land and which gives another party rights which have priority over the interest of the purchaser; and
 - (e) will at settlement be the holder of an unencumbered estate in fee simple in the land; and
 - (f) will at settlement be the unencumbered owner of any improvements, fixtures, fittings and goods sold with the land.

- 6.4 The vendor further warrants that the vendor has no knowledge of any of the following:
- (a) public rights of way over the land;
 - (b) easements over the land;
 - (c) lease or other possessory agreement affecting the land;
 - (d) notice or order directly or indirectly affecting the land which will not be dealt with at settlement, other than the usual rate notices and any land tax notices;
 - (e) legal proceedings which would render the sale of the land void or voidable or capable of being set aside.
- 6.5 The warranties in general conditions 6.3 and 6.4 are subject to any contrary provisions in this contract and disclosures in the section 32 statement.
- 6.6 If sections 137B and 137C of the *Building Act* 1993 apply to this contract, the vendor warrants that:
- (a) all domestic building work carried out in relation to the construction by or on behalf of the vendor of the home was carried out in a proper and workmanlike manner; and
 - (b) all materials used in that domestic building work were good and suitable for the purpose for which they were used and that, unless otherwise stated in the contract, those materials were new; and
 - (c) domestic building work was carried out in accordance with all laws and legal requirements, including, without limiting the generality of this warranty, the *Building Act* 1993 and regulations made under the *Building Act* 1993.
- 6.7 Words and phrases used in general condition 6.6 which are defined in the *Building Act* 1993 have the same meaning in general condition 6.6.

7. IDENTITY OF THE LAND

- 7.1 An omission or mistake in the description of the property or any deficiency in the area, description or measurements of the land does not invalidate the sale.
- 7.2 The purchaser may not:
- (a) make any objection or claim for compensation for any alleged misdescription of the property or any deficiency in its area or measurements; or
 - (b) require the vendor to amend title or pay any cost of amending title.

8. SERVICES

- 8.1 The vendor does not represent that the services are adequate for the purchaser's proposed use of the property and the vendor advises the purchaser to make appropriate inquiries. The condition of the services may change between the day of sale and settlement and the vendor does not promise that the services will be in the same condition at settlement as they were on the day of sale.
- 8.2 The purchaser is responsible for the connection of all services to the property after settlement and the payment of any associated cost.

9. CONSENTS

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

10. TRANSFER & DUTY

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

11. RELEASE OF SECURITY INTEREST

- 11.1 This general condition applies if any part of the property is subject to a security interest to which the *Personal Property Securities Act* 2009 (Cth) applies.
- 11.2 For the purposes of enabling the purchaser to search the Personal Property Securities Register for any security interests affecting any personal property for which the purchaser may be entitled to a release, statement, approval or correction in accordance with general condition 11.4, the purchaser may request the vendor to provide the vendor's date of birth to the purchaser. The vendor must comply with a request made by the purchaser under this condition if the purchaser makes the request at least 21 days before the due date for settlement.
- 11.3 If the purchaser is given the details of the vendor's date of birth under condition 11.2, the purchaser must
- (a) only use the vendor's date of birth for the purposes specified in condition 11.2; and
 - (b) keep the date of birth of the vendor secure and confidential.

- 11.4 The vendor must ensure that at or before settlement, the purchaser receives –
- (a) a release from the secured party releasing the property from the security interest; or
 - (b) a statement in writing in accordance with section 275(1)(b) of the *Personal Property Securities Act 2009* (Cth) setting out that the amount or obligation that is secured is nil at settlement; or
 - (c) a written approval or correction in accordance with section 275(1)(c) of the *Personal Property Securities Act 2009* (Cth) indicating that, on settlement, the personal property included in the contract is not or will not be property in which the security interest is granted.
- 11.5 Subject to general condition 11.6, the vendor is not obliged to ensure that the purchaser receives a release, statement, approval or correction in respect of personal property -
- (a) that –
 - (i) the purchaser intends to use predominately for personal, domestic or household purposes; and
 - (ii) has a market value of not more than \$5000 or, if a greater amount has been prescribed for the purposes of section 47(1) of the *Personal Property Securities Act 2009* (Cth), not more than that prescribed amount; or
 - (b) that is sold in the ordinary course of the vendor's business of selling personal property of that kind.
- 11.6 The vendor is obliged to ensure that the purchaser receives a release, statement, approval or correction in respect of personal property described in general condition 11.5 if -
- (a) the personal property is of a kind that may be described by a serial number in the Personal Property Securities Register; or
 - (b) the purchaser has actual or constructive knowledge that the sale constitutes a breach of the security agreement that provides for the security interest.
- 11.7 A release for the purposes of general condition 11.4(a) must be in writing.
- 11.8 A release for the purposes of general condition 11.4(a) must be effective in releasing the goods from the security interest and be in a form which allows the purchaser to take title to the goods free of that security interest.
- 11.9 If the purchaser receives a release under general condition 11.4(a) the purchaser must provide the vendor with a copy of the release at or as soon as practicable after settlement.
- 11.10 In addition to ensuring a release is received under general condition 11.4(a), the vendor must ensure that at or before settlement the purchaser receives a written undertaking from a secured party to register a financing change statement to reflect that release if the property being released includes goods of a kind that are described by serial number in the Personal Property Securities Register.
- 11.11 The purchaser must advise the vendor of any security interest that is registered on or before the day of sale on the Personal Property Securities Register, which the purchaser reasonably requires to be released, at least 21 days before the due date for settlement.
- 11.12 The vendor may delay settlement until 21 days after the purchaser advises the vendor of the security interests that the purchaser reasonably requires to be released if the purchaser does not provide an advice under general condition 11.11.
- 11.13 If settlement is delayed under general condition 11.12, the purchaser must pay the vendor -
- (a) interest from the due date for settlement until the date on which settlement occurs or 21 days after the vendor receives the advice, whichever is the earlier; and
 - (b) any reasonable costs incurred by the vendor as a result of the delay -
- as though the purchaser was in default.
- 11.14 The vendor is not required to ensure that the purchaser receives a release in respect of the land. This general condition 11.14 applies despite general condition 11.1.
- 11.15 Words and phrases which are defined in the *Personal Property Securities Act 2009* (Cth) have the same meaning in general condition 11 unless the context requires otherwise.

12. BUILDING WARRANTY INSURANCE

The vendor warrants that the vendor will provide at settlement details of any current builder warranty insurance in the vendor's possession relating to the property if requested in writing to do so at least 21 days before settlement.

13. GENERAL LAW LAND

- 13.1 The vendor must complete a conversion of title in accordance with section 14 of the *Transfer of Land Act 1958* before settlement if the land is the subject of a provisional folio under section 23 of that Act.
- 13.2 The remaining provisions of this general condition 13 only apply if any part of the land is not under the operation of the *Transfer of Land Act 1958*.

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

Money

14. DEPOSIT

- 14.1 The purchaser must pay the deposit:
- (a) to the vendor's licensed estate agent; or
 - (b) if there is no estate agent, to the vendor's legal practitioner or conveyancer; or
 - (c) if the vendor directs, into a special purpose account in an authorised deposit-taking institution in Victoria specified by the vendor in the joint names of the purchaser and the vendor.
- 14.2 If the land is sold on an unregistered plan of subdivision, the deposit:
- (a) must not exceed 10% of the price; and
 - (b) must be paid to the vendor's estate agent, legal practitioner or conveyancer and held by the estate agent, legal practitioner or conveyancer on trust for the purchaser until registration of the plan of subdivision.
- 14.3 The deposit must be released to the vendor if:
- (a) the vendor provides particulars, to the satisfaction of the purchaser; that either
 - (i) there are no debts secured against the property; or
 - (ii) if there are any debts, the total amount of those debts together with any amounts to be withheld in accordance with general conditions 24 and 25 does not exceed 80% of the sale price; and
 - (b) at least 28 days have elapsed since the particulars were given to the purchaser under paragraph (a); and
 - (c) all conditions of section 27 of the *Sale of Land Act 1962* have been satisfied.
- 14.4 The stakeholder must pay the deposit and any interest to the party entitled when the deposit is released, the contract is settled, or the contract is ended.
- 14.5 The stakeholder may pay the deposit and any interest into court if it is reasonable to do so.
- 14.6 Where the purchaser is deemed by section 27(7) of the *Sale of Land Act 1962* to have given the deposit release authorisation referred to in section 27(1), the purchaser is also deemed to have accepted title in the absence of any prior express objection to title.
- 14.7 Payment of the deposit may be made or tendered:
- (a) in cash up to \$1,000 or 0.2% of the price, whichever is greater; or
 - (b) by cheque drawn on an authorised deposit-taking institution; or
 - (c) by electronic funds transfer to a recipient having the appropriate facilities for receipt.
- However, unless otherwise agreed:

- (d) payments may not be made by credit card, debit card or any other financial transfer system that allows for any chargeback or funds reversal other than for fraud or mistaken payment, and
 - (e) any financial transfer or similar fees or deductions from the funds transferred, other than any fees charged by the recipient's authorised deposit-taking institution, must be paid by the remitter.
- 14.8 Payment by electronic transfer is made when cleared funds are received in the recipient's bank account.
- 14.9 Before the funds are electronically transferred the intended recipient must be notified in writing and given sufficient particulars to readily identify the relevant transaction.
- 14.10 As soon as the funds have been electronically transferred the intended recipient must be provided with the relevant transaction number or reference details.
- 14.11 For the purposes of this general condition 'authorised deposit-taking institution' means a body corporate for which an authority under section 9(3) of the *Banking Act 1959* (Cth) is in force.

15. DEPOSIT BOND

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

16. BANK GUARANTEE

- 16.1 This general condition only applies if the applicable box in the particulars of sale is checked.
- 16.2 In this general condition:
- (a) "bank guarantee" means an unconditional and irrevocable guarantee or undertaking by a bank in a form satisfactory to the vendor to pay on demand any amount under this contract agreed in writing, and
 - (b) "bank" means an authorised deposit-taking institution under the *Banking Act 1959* (Cth).
- 16.3 The purchaser may deliver a bank guarantee to the vendor's legal practitioner or conveyancer.
- 16.4 The purchaser must pay the amount secured by the bank guarantee to the vendor's legal practitioner or conveyancer on the first to occur of:
- (a) settlement;
 - (b) the date that is 45 days before the bank guarantee expires;
 - (c) the date on which this contract ends in accordance with general condition 35.2 [default not remedied] following breach by the purchaser; and
 - (d) the date on which the vendor ends this contract by accepting repudiation of it by the purchaser.
- 16.5 The vendor must return the bank guarantee document to the purchaser when the purchaser pays the amount secured by the bank guarantee in accordance with general condition 16.4.
- 16.6 The vendor may claim on the bank guarantee without prior notice if the purchaser defaults under this contract or repudiates this contract and the contract is ended. The amount paid by the bank satisfies the obligations of the purchaser under general condition 16.4 to the extent of the payment.

- 16.7 Nothing in this general condition limits the rights of the vendor if the purchaser defaults under this contract or repudiates this contract except as provided in general condition 16.6.
- 16.8 This general condition is subject to general condition 14.2 [deposit].

17. SETTLEMENT

- 17.1 At settlement:
- (a) the purchaser must pay the balance; and
 - (b) the vendor must:
 - (i) do all things necessary to enable the purchaser to become the registered proprietor of the land; and
 - (ii) give either vacant possession or receipt of rents and profits in accordance with the particulars of sale.
- 17.2 Settlement must be conducted between the hours of 10.00 a.m. and 4.00 p.m. unless the parties agree otherwise.
- 17.3 The purchaser must pay all money other than the deposit in accordance with a written direction of the vendor or the vendor's legal practitioner or conveyancer.

18. ELECTRONIC SETTLEMENT

- 18.1 Settlement and lodgment of the instruments necessary to record the purchaser as registered proprietor of the land will be conducted electronically in accordance with the Electronic Conveyancing National Law. This general condition 18 has priority over any other provision of this contract to the extent of any inconsistency.
- 18.2 A party must immediately give written notice if that party reasonably believes that settlement and lodgment can no longer be conducted electronically. Special condition 18 ceases to apply from when such a notice is given.
- 18.3 Each party must:
- (a) be, or engage a representative who is, a subscriber for the purposes of the Electronic Conveyancing National Law,
 - (b) ensure that all other persons for whom that party is responsible and who are associated with this transaction are, or engage, a subscriber for the purposes of the Electronic Conveyancing National Law, and
 - (c) conduct the transaction in accordance with the Electronic Conveyancing National Law.
- 18.4 The vendor must open the electronic workspace ("workspace") as soon as reasonably practicable and nominate a date and time for settlement. The inclusion of a specific date for settlement in a workspace is not of itself a promise to settle on that date or at that time. The workspace is an electronic address for the service of notices and for written communications for the purposes of any electronic transactions legislation.
- 18.5 This general condition 18.5 applies if there is more than one electronic lodgment network operator in respect of the transaction. In this general condition 18.5 "the transaction" means this sale and purchase and any associated transaction involving any of the same subscribers.
- To the extent that any interoperability rules governing the relationship between electronic lodgment network operators do not provide otherwise:
- (a) the electronic lodgment network operator to conduct all the financial and lodgment aspects of the transaction after the workspace locks must be one which is willing and able to conduct such aspects of the transaction in accordance with the instructions of all the subscribers in the workspaces of all the electronic lodgment network operators after the workspace locks;
 - (b) if two or more electronic lodgment network operators meet that description, one may be selected by purchaser's incoming mortgagee having the highest priority but if there is no mortgagee of the purchaser, the vendor must make the selection.
- 18.6 Settlement occurs when the workspace records that:
- (a) there has been an exchange of funds or value between the exchange settlement account or accounts in the Reserve Bank of Australia of the relevant financial institutions or their financial settlement agents in accordance with the instructions of the parties; or
 - (b) if there is no exchange of funds or value, the documents necessary to enable the purchaser to become registered proprietor of the land have been accepted for electronic lodgment
- 18.7 The parties must do everything reasonably necessary to effect settlement:
- (a) electronically on the next business day; or
 - (b) at the option of either party, otherwise than electronically as soon as possible –
if, after the locking of the workspace at the nominated settlement time, settlement in accordance with special condition 18.6 has not occurred by 4.00 pm, or 6.00 pm if the nominated time for settlement is after 4.00 pm.
- 18.8 Each party must do everything reasonably necessary to assist the other party to trace and identify the recipient of any missing or mistaken payment and to recover the missing or mistaken payment.
- 18.9 The vendor must before settlement:
- (a) deliver any keys, security devices and codes ("keys") to the estate agent named in the contract,
 - (b) direct the estate agent to give the keys to the purchaser or the purchaser's nominee on notification of settlement by the vendor, the vendors subscriber or the electronic lodgment network operator,

- (c) deliver all other physical documents and items (other than the goods sold by the contract) to which the purchaser is entitled at settlement, and any keys if not delivered to the estate agent, to the vendor's subscriber or, if there is no vendor's subscriber, confirm in writing to the purchaser that the vendor holds those documents, items and keys at the vendor's address set out in the contract, and

give, or direct its subscriber to give, all those documents and items and any such keys to the purchaser or the purchaser's nominee on notification by the electronic lodgment network operator of settlement.

19. GST

- 19.1 The purchaser does not have to pay the vendor any amount in respect of GST in addition to the price if the particulars of sale specify that the price includes GST (if any).
- 19.2 The purchaser must pay to the vendor any GST payable by the vendor in respect of a taxable supply made under this contract in addition to the price if:
 - (a) the particulars of sale specify that GST (if any) must be paid in addition to the price; or
 - (b) GST is payable solely as a result of any action taken or intended to be taken by the purchaser after the day of sale, including a change of use; or
 - (c) the particulars of sale specify that the supply made under this contract is of land on which a 'farming business' is carried on and the supply (or part of it) does not satisfy the requirements of section 38-480 of the GST Act; or
 - (d) the particulars of sale specify that the supply made under this contract is of a going concern and the supply (or a part of it) does not satisfy the requirements of section 38-325 of the GST Act.
- 19.3 The purchaser is not obliged to pay any GST under this contract until a tax invoice has been given to the purchaser.
- 19.4 If the particulars of sale specify that the supply made under this contract is of land on which a 'farming business' is carried on:
 - (a) the vendor warrants that the property is land on which a farming business has been carried on for the period of 5 years preceding the date of supply; and
 - (b) the purchaser warrants that the purchaser intends that a farming business will be carried on after settlement on the property.
- 19.5 If the particulars of sale specify that the supply made under this contract is a 'going concern':
 - (a) the parties agree that this contract is for the supply of a going concern; and
 - (b) the purchaser warrants that the purchaser is, or prior to settlement will be, registered for GST; and
 - (c) the vendor warrants that the vendor will carry on the going concern until the date of supply.
- 19.6 If the particulars of sale specify that the supply made under this contract is a 'margin scheme' supply, the parties agree that the margin scheme applies to this contract.
- 19.7 In this general condition:
 - (a) 'GST Act' means *A New Tax System (Goods and Services Tax) Act 1999* (Cth); and
 - (b) 'GST' includes penalties and interest.

20. LOAN

- 20.1 If the particulars of sale specify that this contract is subject to a loan being approved, this contract is subject to the lender approving the loan on the security of the property by the approval date or any later date allowed by the vendor.
- 20.2 The purchaser may end the contract if the loan is not approved by the approval date, but only if the purchaser:
 - (a) immediately applied for the loan; and
 - (b) did everything reasonably required to obtain approval of the loan; and
 - (c) serves written notice ending the contract, together with written evidence of rejection or non-approval of the loan, on the vendor within 2 clear business days after the approval date or any later date allowed by the vendor; and
 - (d) is not in default under any other condition of this contract when the notice is given.
- 20.3 All money must be immediately refunded to the purchaser if the contract is ended.

21. BUILDING REPORT

- 21.1 This general condition only applies if the applicable box in the particulars of sales is checked.
- 21.2 The purchaser may end this contract within 14 days from the days of sale if the purchaser:
 - (a) obtains a written report from a registered building practitioner or architect which discloses a current defect in a structure on the land and designates it as a major building defect;
 - (b) gives the vendor a copy of the report and a written notice ending this contract; and
 - (c) is not in then in default.
- 21.3 All money paid must be immediately refunded to the purchaser if the contract ends in accordance with this general condition.

- 21.4 A notice under this general condition may be served on the vendor's legal practitioner, conveyancer or estate agent even if the estate agent's authority has formally expired at the time of service.
- 21.5 The registered building practitioner may inspect the property at any reasonable time for the purpose of preparing the report.

22. PEST REPORT

- 22.1 This general condition only applies if the applicable box in the particulars of sale is checked.
- 22.2 The purchaser may end this contract within 14 days from the day of sale if the purchaser:
- (a) obtains a written report from a pest control operator licensed under Victorian law which discloses a current pest infestation on the land and designates it as a major infestation affecting the structure of a building on the land;
 - (b) gives the vendor a copy of the report and a written notice ending this contract; and
 - (c) is not then in default.
- 22.3 All money paid must be immediately refunded to the purchaser if the contract ends in accordance with this general condition.
- 22.4 A notice under this general condition may be served on the vendor's legal practitioner, conveyancer or estate agent even if the estate agent's authority has formally expired at the time of service.
- 22.5 The pest control operator may inspect the property at any reasonable time for the purpose of preparing the report.

23. ADJUSTMENTS

- 23.1 All periodic outgoings payable by the vendor, and any rent and other income received in respect of the property must be apportioned between the parties on the settlement date and any adjustment paid and received as appropriate.
- 23.2 The periodic outgoings and rent and other income must be apportioned on the following basis:
- (a) the vendor is liable for the periodic outgoings and entitled to the rent and other income up to and including the day of settlement; and
 - (b) the land is treated as the only land of which the vendor is owner (as defined in the *Land Tax Act 2005*); and
 - (c) the vendor is taken to own the land as a resident Australian beneficial owner; and
 - (d) any personal statutory benefit available to each party is disregarded in calculating apportionment.
- 23.3 The purchaser must provide copies of all certificates and other information used to calculate the adjustments under general condition 23, if requested by the vendor.

24. FOREIGN RESIDENT CAPITAL GAINS WITHHOLDING

- 24.1 Words defined or used in Subdivision 14-D of Schedule 1 to the *Taxation Administration Act 1953* (Cth) have the same meaning in this general condition unless the context requires otherwise.
- 24.2 Every vendor under this contract is a foreign resident for the purposes of this general condition unless the vendor gives the purchaser a clearance certificate issued by the Commissioner under section 14-220 (1) of Schedule 1 to the *Taxation Administration Act 1953* (Cth). The specified period in the clearance certificate must include the actual date of settlement.
- 24.3 The remaining provisions of this general condition 24 only apply if the purchaser is required to pay the Commissioner an amount in accordance with section 14-200(3) or section 14-235 of Schedule 1 to the *Taxation Administration Act 1953* (Cth) ("the amount") because one or more of the vendors is a foreign resident, the property has or will have a market value not less than the amount set out in section 14-215 of the legislation just after the transaction, and the transaction is not excluded under section 14-215(1) of the legislation.
- 24.4 The amount is to be deducted from the vendor's entitlement to the contract consideration. The vendor must pay to the purchaser at settlement such part of the amount as is represented by non-monetary consideration.
- 24.5 The purchaser must:
- (a) engage a legal practitioner or conveyancer ("representative") to conduct all legal aspects of settlement, including the performance of the purchaser's obligations under the legislation and this general condition; and
 - (b) ensure that the representative does so.
- 24.6 The terms of the representative's engagement are taken to include instructions to have regard to the vendor's interests and instructions that the representative must:
- (a) pay, or ensure payment of, the amount to the Commissioner in the manner required by the Commissioner and as soon as reasonably and practicably possible, from moneys under the control or direction of the representative in accordance with this general condition if the sale of the property settles;
 - (b) promptly provide the vendor with proof of payment; and
 - (c) otherwise comply, or ensure compliance with, this general condition;
- despite:
- (d) any contrary instructions, other than from both the purchaser and the vendor; and
 - (e) any other provision in this contract to the contrary.
- 24.7 The representative is taken to have complied with the requirements in special condition 24.6 if:
- (a) the settlement is conducted through an electronic lodgement network; and

- (b) the amount is included in the settlement statement requiring payment to the Commissioner in respect of this transaction.
- 24.8 Any clearance certificate or document evidencing variation of the amount in accordance with section 14-235(2) of Schedule 1 to the *Taxation Administration Act 1953* (Cth) must be given to the purchaser at least 5 business days before the due date for settlement.
- 24.9 The vendor must provide the purchaser with such information as the purchaser requires to comply with the purchaser's obligation to pay the amount in accordance with section 14-200 of Schedule 1 to the *Taxation Administration Act 1953* (Cth). The information must be provided within 5 business days of request by the purchaser. The vendor warrants that the information the vendor provides is true and correct.
- 24.10 The purchaser is responsible for any penalties or interest payable to the Commissioner on account of late payment of the amount.

25. GST WITHHOLDING

- 25.1 Words and expressions defined or used in Subdivision 14-E of Schedule 1 to the *Taxation Administration Act 1953* (Cth) or in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning in this general condition unless the context requires otherwise. Words and expressions first used in this general condition and shown in italics and marked with an asterisk are defined or described in at least one of those Acts.
- 25.2 The purchaser must notify the vendor in writing of the name of the recipient of the *supply for the purposes of section 14-255 of Schedule 1 to the *Taxation Administration Act 1953* (Cth) at least 21 days before the due date for settlement unless the recipient is the purchaser named in the contract.
- 25.3 The vendor must at least 14 days before the due date for settlement provide the purchaser and any person nominated by the purchaser under general condition 4 with GST withholding notice in accordance with section 14-255 of Schedule 1 to the *Taxation Administration Act 1953* (Cth), and must provide all information required by the purchaser or any person so nominated to confirm the accuracy of the notice.
- 25.4 The remaining provisions of this general condition 25 apply if the purchaser is or may be required to pay the Commissioner an *amount in accordance with section 14-250 of Schedule 1 to the *Taxation Administration Act 1953* (Cth) because the property is *new residential premise or *potential residential land in either case falling within the parameters of that section, and also if the sale attracts the operation of section 14-255 of the legislation. Nothing in this general condition 25 is to be taken as relieving the vendor from compliance with section 14-255.
- 25.5 The amount is to be deducted from the vendor's entitlement to the contract *consideration and is then taken to be paid to the vendor, whether or not the vendor provides the purchaser with a GST withholding notice in accordance with section 14-255 of Schedule 1 to the *Taxation Administration Act 1953* (Cth). The vendor must pay to the purchaser at settlement such part of the amount as is represented by non-monetary consideration.
- 25.6 The purchaser must:
 - (a) engage a legal practitioner or conveyancer ("representative") to conduct all the legal aspects of settlement, including the performance of the purchaser's obligations under the legislation and this general condition; and
 - (b) ensure that the representative does so.
- 25.7 The terms of the representative's engagement are taken to include instructions to have regard to the vendor's interests relating to the payment of the amount to the Commissioner and instructions that the representative must:
 - (a) pay, or ensure payment of, the amount to the Commissioner in the manner required by the Commissioner and as soon as reasonably and practicably possible, from moneys under the control or direction of the representative in accordance with this general condition on settlement of the sale of the property;
 - (b) promptly provide the vendor with evidence of payment, including any notification or other document provided by the purchaser to the Commissioner relating to payment; and
 - (c) otherwise comply, or ensure compliance, with this general condition;
 despite:
 - (d) any contrary instructions, other than from both the purchaser and the vendor; and
 - (e) any other provision in this contract to the contrary.
- 25.8 The representative is taken to have complied with the requirements of general condition 25.7 if:
 - (a) settlement is conducted through the electronic lodgement network; and
 - (b) the amount is included in the settlement statement requiring payment to the Commissioner in respect of this transaction.
- 25.9 The purchaser may at settlement give the vendor a bank cheque for the amount in accordance with section 16-30 (3) of Schedule 1 to the *Taxation Administration Act 1953* (Cth), but only if:
 - (a) so agreed by the vendor in writing; and
 - (b) the settlement is not conducted through an electronic lodgement network.
 However, if the purchaser gives the bank cheque in accordance with this general condition 25.9, the vendor must:
 - (c) immediately after settlement provide the bank cheque to the Commissioner to pay the amount in relation to the supply; and

- (d) give the purchaser a receipt for the bank cheque which identifies the transaction and includes particulars of the bank cheque, at the same time the purchaser gives the vendor the bank cheque.
- 25.10 A party must provide the other party with such information as the other party requires to:
- (a) decide if an amount is required to be paid or the quantum of it, or
 - (b) comply with the purchaser's obligation to pay the amount,
- in accordance with section 14-250 of Schedule 1 to the *Taxation Administration Act 1953* (Cth). The information must be provided within 5 business days of a written request. The party providing the information warrants that it is true and correct.
- 25.11 The vendor warrants that:
- (a) at settlement, the property is not new residential premises or potential residential land in either case falling within the parameters of section 14-250 of Schedule 1 to the *Taxation Administration Act 1953* (Cth) if the vendor gives the purchaser a written notice under section 14-255 to the effect that the purchaser will not be required to make a payment under section 14-250 in respect of the supply, or fails to give a written notice as required by and within the time specified in section 14-255; and
 - (b) the amount described in a written notice given by the vendor to the purchaser under section 14-255 of Schedule 1 to the *Taxation Administration Act 1953* (Cth) is the correct amount required to be paid under section 14-250 of the legislation.
- 25.12 The purchaser is responsible for any penalties or interest payable to the Commissioner on account of non-payment or late payment of the amount, except to the extent that:
- (a) the penalties or interest arise from any failure on the part of the vendor, including breach of a warranty in general condition 25.11; or
 - (b) the purchaser's reasonable belief that the property is neither new residential premises nor potential residential land requiring the purchaser to pay an amount to the Commissioner in accordance with section 14-250 (1) of Schedule 1 to the *Taxation Administration Act 1953* (Cth)
- The vendor is responsible for any penalties or interest payable to the Commissioner on account of non-payment or late payment of the amount if either exception applies.
-

Transactional

26. TIME & CO OPERATION

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

27. SERVICE

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

28. NOTICES

- 28.1 The vendor is responsible for any notice, order, demand or levy imposing liability on the property that is issued or made before the day of sale, and does not relate to periodic outgoings.
- 28.2 The purchaser is responsible for any notice, order, demand or levy imposing liability on the property that is issued or made on or after the day of sale that does not relate to periodic outgoings.
- 28.3 The purchaser may enter the property to comply with that responsibility where action is required before settlement.

29. INSPECTION

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

30. TERMS CONTRACT

- 30.1 If this is a 'terms contract' as defined in the *Sale of Land Act 1962*:
 - (a) any mortgage affecting the land sold must be discharged as to that land before the purchaser becomes entitled to possession or to the receipt of rents and profits unless the vendor satisfies section 29M of the Sale of Land Act 1962; and
 - (b) the deposit and all other money payable under the contract (other than any money payable in excess of the amount required to so discharge the mortgage) must be paid to a legal practitioner or conveyancer or a licensed estate agent to be applied in or towards discharging the mortgage.
- 30.2 While any money remains owing each of the following applies:
 - (a) the purchaser must maintain full damage and destruction insurance of the property and public risk insurance noting all parties having an insurable interest with an insurer approved in writing by the vendor;
 - (b) the purchaser must deliver copies of the signed insurance application forms, the policies and the insurance receipts to the vendor not less than 10 days before taking possession of the property or becoming entitled to receipt of the rents and profits;
 - (c) the purchaser must deliver copies of any amendments to the policies and the insurance receipts on each amendment or renewal as evidence of the status of the policies from time to time;
 - (d) the vendor may pay any renewal premiums or take out the insurance if the purchaser fails to meet these obligations;
 - (e) insurance costs paid by the vendor under paragraph (d) must be refunded by the purchaser on demand without affecting the vendor's other rights under this contract;
 - (f) the purchaser must maintain and operate the property in good repair (fair wear and tear excepted) and keep the property safe, lawful, structurally sound, weatherproof and free from contaminations and dangerous substances;
 - (g) the property must not be altered in any way without the written consent of the vendor which must not be unreasonably refused or delayed;
 - (h) the purchaser must observe all obligations that affect owners or occupiers of land;
 - (i) the vendor and/or other person authorised by the vendor may enter the property at any reasonable time to inspect it on giving 7 days written notice, but not more than twice in a year.

31. LOSS OR DAMAGE BEFORE SETTLEMENT

- 31.1 The vendor carries the risk of loss or damage to the property until settlement.
- 31.2 The vendor must deliver the property to the purchaser at settlement in the same condition it was in on the day of sale, except for fair wear and tear.
- 31.3 The purchaser must not delay settlement because one or more of the goods is not in the condition required by general condition 31.2, but may claim compensation from the vendor after settlement.
- 31.4 The purchaser may nominate an amount not exceeding \$5,000 to be held by a stakeholder to be appointed by the parties if the property is not in the condition required by general condition 31.2 at settlement.
- 31.5 The nominated amount may be deducted from the amount due to the vendor at settlement and paid to the stakeholder, but only if the purchaser also pays an amount equal to the nominated amount to the stakeholder.
- 31.6 The stakeholder must pay the amounts referred to in general condition 31.5 in accordance with the determination of the dispute, including any order for payment of the costs of the resolution of the dispute.

32. BREACH

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

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

Default

33. INTEREST

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

34. DEFAULT NOTICE

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

35. DEFAULT NOT REMEDIED

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

GUARANTEE and INDEMNITY

I/We, of

And of

being the **Sole Director / Directors** of ACN

(called the "Guarantors") IN CONSIDERATION of the Vendor selling to the Purchaser at our request the Land described in this Contract of Sale for the price and upon the terms and conditions contained therein **DO** for ourselves and our respective executors and administrators **JOINTLY AND SEVERALLY COVENANT** with the said Vendor and their assigns that if at any time default shall be made in payment of the Deposit Money or residue of Purchase Money or interest or any other moneys payable by the Purchaser to the Vendor under this Contract or in the performance or observance of any term or condition of this Contract to be performed or observed by the Purchaser I/we will immediately on demand by the Vendor pay to the Vendor the whole of the Deposit Money, residue of Purchase Money, interest or other moneys which shall then be due and payable to the Vendor and indemnify and agree to keep the Vendor indemnified against all loss of Deposit Money, residue of Purchase Money, interest and other moneys payable under the within Contract and all losses, costs, charges and expenses whatsoever which the Vendor may incur by reason of any default on the part of the Purchaser. This Guarantee shall be a continuing Guarantee and Indemnity and shall not be released by: -

- (a) any neglect or forbearance on the part of the Vendor in enforcing payment of any of the moneys payable under the within Contract;
- (b) the performance or observance of any of the agreements, obligations or conditions under the within Contract;
- (c) by time given to the Purchaser for any such payment performance or observance;
- (d) by reason of the Vendor assigning his, her or their rights under the said Contract; and
- (e) by any other thing which under the law relating to sureties would but for this provision have the effect of releasing me/us, my/our executors or administrators.

IN WITNESS whereof the parties hereto have set their hands and seals

this day of 20.....

SIGNED by the said)
Print Name.....)
Director (Sign)

in the presence of:)
Witness.....)

SIGNED by the said)
Print Name.....)
Director (Sign)

in the presence of:)
Witness.....)

DATED

2022

JAMES JOHN WILLIS-SMITH

to

CONTRACT OF SALE OF LAND

Property: 35 Giacco Boulevard, Lang Lang 3984

**SEA CHANGE CONVEYANCING & LEGAL PTY LTD (A.C.N 631 468 463) TRADING
AS SEA CHANGE CONVEYANCING**

1, 78 High Street
Cranbourne Vic 3977

Tel: 03 5995 1687
Fax: 03 5995 4284
Ref: SR:SR:13967

DATED

2022

JAMES JOHN WILLIS-SMITH

VENDORS STATEMENT

Property: 35 Giacco Boulevard, Lang Lang 3984

**SEA CHANGE CONVEYANCING & LEGAL PTY LTD (A.C.N 631 468 463) TRADING AS
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1, 78 High Street
Cranbourne VIC 3977
Tel: 03 5995 1687
Fax: 03 5995 4284
Ref: SR:SR:13967

Due diligence checklist

What you need to know before buying a residential property

Before you buy a home, you should be aware of a range of issues that may affect that property and impose restrictions or obligations on you, if you buy it. This checklist aims to help you identify whether any of these issues will affect you. The questions are a starting point only and you may need to seek professional advice to answer some of them. You can find links to organisations and web pages that can help you learn more, by visiting the [Due diligence checklist page on the Consumer Affairs Victoria website](http://consumer.vic.gov.au/duediligencechecklist) (consumer.vic.gov.au/duediligencechecklist).

Urban living

Moving to the inner city?

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

Is the property subject to an owners corporation?

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

Growth areas

Are you moving to a growth area?

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

Flood and fire risk

Does this property experience flooding or bushfire?

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

Rural properties

Moving to the country?

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

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

Can you build new dwellings?

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

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

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

Soil and groundwater contamination

Has previous land use affected the soil or groundwater?

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

Land boundaries

Do you know the exact boundary of the property?

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

Planning controls

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

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

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

Are there any proposed or granted planning permits?

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

Safety

Is the building safe to live in?

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

Building permits

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

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

Are any recent building or renovation works covered by insurance?

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

Utilities and essential services

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

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

Buyers' rights

Do you know your rights when buying a property?

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

(04/10/2016)

Vendor Statement

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

This statement must be signed by the vendor and given to the purchaser before the purchaser signs the contract.

The vendor may sign by electronic signature.

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

Land	35 Giacco Boulevard, Lang Lang 3984	
Vendor's name	James John Willis-Smith	Date / /
Vendor's signature		
Purchaser's name		Date / /
Purchaser's signature		
Purchaser's name		Date / /
Purchaser's signature		

1. FINANCIAL MATTERS

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

(a) Their total does not exceed:

\$3,000.00

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

To

Other particulars (including dates and times of payments):

1.3 Terms Contract

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

Not Applicable.

1.4 Sale Subject to Mortgage

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

Not Applicable.

2. INSURANCE

2.1 Damage and Destruction

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

Not Applicable.

2.2 Owner Builder

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

Not Applicable.

3. LAND USE

3.1 Easements, Covenants or Other Similar Restrictions

(a) A description of any easement, covenant or other similar restriction affecting the land (whether registered or unregistered): -

Is in the attached copies of title documents.

(b) Particulars of any existing failure to comply with that easement, covenant or other similar restriction are:

To the best of the vendors knowledge there is no existing failure to comply with the terms of any easement, covenant or other similar restriction.

3.2 Road Access

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

☐

3.3 Designated Bushfire Prone Area

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

☐

3.4 Planning Scheme

Attached is a certificate with the required specified information.

4. NOTICES

4.1 Notice, Order, Declaration, Report or Recommendation

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

Not Applicable.

4.2 Agricultural Chemicals

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

Nil.

4.3 Compulsory Acquisition

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

Nil.

5. BUILDING PERMITS

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

Not Applicable.

6. OWNERS CORPORATION

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

Not Applicable.

7. GROWTH AREAS INFRASTRUCTURE CONTRIBUTION ("GAIC")

Not applicable.

8. SERVICES

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

Electricity supply <input checked="" type="checkbox"/>	Gas supply <input checked="" type="checkbox"/>	Water supply <input checked="" type="checkbox"/>	Sewerage <input checked="" type="checkbox"/>	Telephone services <input checked="" type="checkbox"/>
--	--	--	--	--

9. TITLE

Attached are copies of the following documents:

9.1 (a) Registered Title

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

10. SUBDIVISION

10.1 Unregistered Subdivision

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

Not Applicable.

10.2 Staged Subdivision

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

Not Applicable.

10.3 Further Plan of Subdivision

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

Not Applicable.

11. DISCLOSURE OF ENERGY INFORMATION

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

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

- (a) to be a building or part of a building used or capable of being used as an office for administrative, clerical, professional or similar based activities including any support facilities; and
- (b) which has a net lettable area of at least 1000m²; (but does not include a building under a strata title system or if an occupancy permit was issued less than 2 years before the relevant date):

Not Applicable.

12. DUE DILIGENCE CHECKLIST

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

- ☐ Vacant Residential Land or Land with a Residence
- ☒ Attach Due Diligence Checklist (this will be attached if ticked)

13. ATTACHMENTS

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

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

(Attached is an "Additional Vendor Statement" if section 1.3 (Terms Contract) or section 1.4 (Sale Subject to Mortgage) applies)

--

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

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

VOLUME 12316 FOLIO 927

Security no : 124096769404T
Produced 11/04/2022 04:25 PM

LAND DESCRIPTION

Lot 75 on Plan of Subdivision 831787U.
PARENT TITLE Volume 12159 Folio 536
Created by instrument PS831787U 06/07/2021

REGISTERED PROPRIETOR

Estate Fee Simple
Sole Proprietor
JAMES JOHN WILLIS-SMITH of 17 CORMORANT CLOSE BLIND BIGHT VIC 3980
AU606390L 22/07/2021

ENCUMBRANCES, CAVEATS AND NOTICES

MORTGAGE AU606391J 22/07/2021
AFSH NOMINEES PTY LTD

COVENANT PS831787U 06/07/2021

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

AGREEMENT Section 173 Planning and Environment Act 1987
AE513302S 31/07/2006

DIAGRAM LOCATION

SEE PS831787U FOR FURTHER DETAILS AND BOUNDARIES

ACTIVITY IN THE LAST 125 DAYS

NIL

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

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

Street Address: 35 GIACCO BOULEVARD LANG LANG VIC 3984

ADMINISTRATIVE NOTICES

NIL

eCT Control 18440T MSA NATIONAL

Effective from 22/07/2021

DOCUMENT END

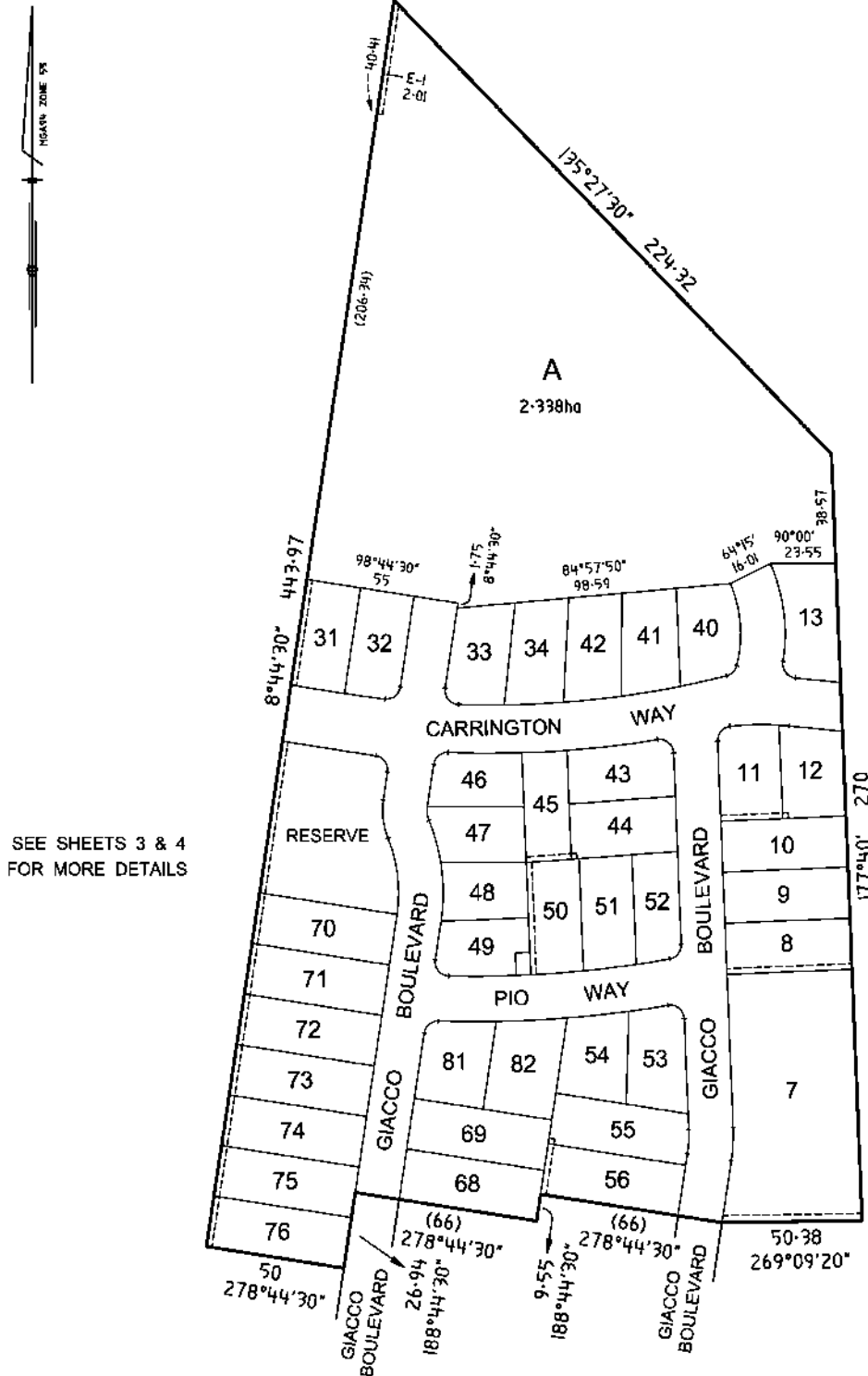
Delivered from the LANDATA® System by InfoTrack Pty Ltd.

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PLAN OF SUBDIVISION		LV USE ONLY EDITION 1	PLAN NUMBER PS 831787U
LOCATION OF LAND Parish: LANG LANG Township: - Section: - Crown Allotment: 14 (PART) Crown Portion: - Title Reference: VOL 12159 FOL 536 Last Plan Reference: LOT A ON PS 818404Q Postal Address: GAINSBOROUGH AVENUE, (at time of subdivision) LANG LANG 3984 MGA94 Co-ordinates: E 374 495 Zone: 55 (of approx. centre of land in plan) N 5 762 930		Council Name: Cardinia Shire Council Council Reference Number: S19-160 Planning Permit Reference: T170776 SPEAR Reference Number: S151611M Certification This plan is certified under section 11 (7) of the Subdivision Act 1988 Date of original certification under section 6: 13/07/2020 Public Open Space A requirement for public open space under section 18 of the Subdivision Act 1988 has been made and the requirement has not been satisfied at Certification Digitally signed by: Sonia Higgins for Cardinia Shire Council on 23/11/2020 Statement of Compliance issued: 25/06/2021 Public Open Space A requirement for public open space under section 18 of the Subdivision Act 1988 has been made and the requirement has been satisfied at Statement of Compliance	
VESTING OF ROADS AND/OR RESERVES		NOTATIONS	
IDENTIFIER	COUNCIL / BODY / PERSON		
ROAD R1 RESERVE No.1 RESERVE No.2	CARDINIA SHIRE COUNCIL CARDINIA SHIRE COUNCIL AUSNET ELECTRICITY SERVICES PTY LTD		
NOTATIONS		Lots 1 - 6, 14 - 30, 35 - 39, 57 - 67 & 77 - 80 have been omitted from this plan. Other Purpose of Plan: Creation of Restriction (See Sheet 5) WARNING: The restrictive covenant(s)/restriction(s) in this plan may have been varied or removed. For current information, please refer to the relevant folio(s) of the Register, noting section 88(3) of the Transfer of Land Act 1958	
Depth Limitation: DOES NOT APPLY Staging: This is not a staged subdivision. Planning Permit No. T170776 Survey: This plan is based on survey. This survey has been connected to permanent marks no(s) In proclaimed Survey Area No. 112			
EASEMENT INFORMATION			
LEGEND: A - Appurtenant Easement E - Encumbering Easement R - Encumbering Easement (Road)			
Easement Reference	Purpose	Width (Metres)	Origin
E-1 E-2	DRAINAGE DRAINAGE	2.01 SEE DIAG.	LP22888 & LP36619 THIS PLAN
		Land Benefited / In Favour Of	
		LOTS ON LP 22888 & LP 36619 CARDINIA SHIRE COUNCIL	
Nilsson, Noel & Holmes (Surveyors) Pty. Ltd. A.C.N. 067 949 615 Surveyors, Engineers & Town Planners 8A Codrington Street, Cranbourne 3977 Phone (03) 5996 4133 Email: mail@nnhsurveyors.net.au		REF: 9134 DWG No. 9134S 25/08/2020 Digitally signed by: Stanley George Jeffreys, Licensed Surveyor, Surveyor's Plan Version (05), 02/09/2020, SPEAR Ref: S151611M	ORIGINAL SHEET SIZE: A3 PLAN REGISTERED TIME: 2:54pm DATE: 6/07/2021 A. Ross Assistant Registrar of Titles

PLAN OF SUBDIVISION

PLAN NUMBER
PS 831787U



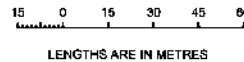
SEE SHEETS 3 & 4
FOR MORE DETAILS

Nilsson, Noel & Holmes (Surveyors) Pty. Ltd.

A.C.N. 067 949 615
Surveyors, Engineers & Town Planners
8A Codrington Street, Cranbourne 3977
Phone (03) 5996 4133
Email: mail@nnhsurveyors.net.au



SCALE
1:1500



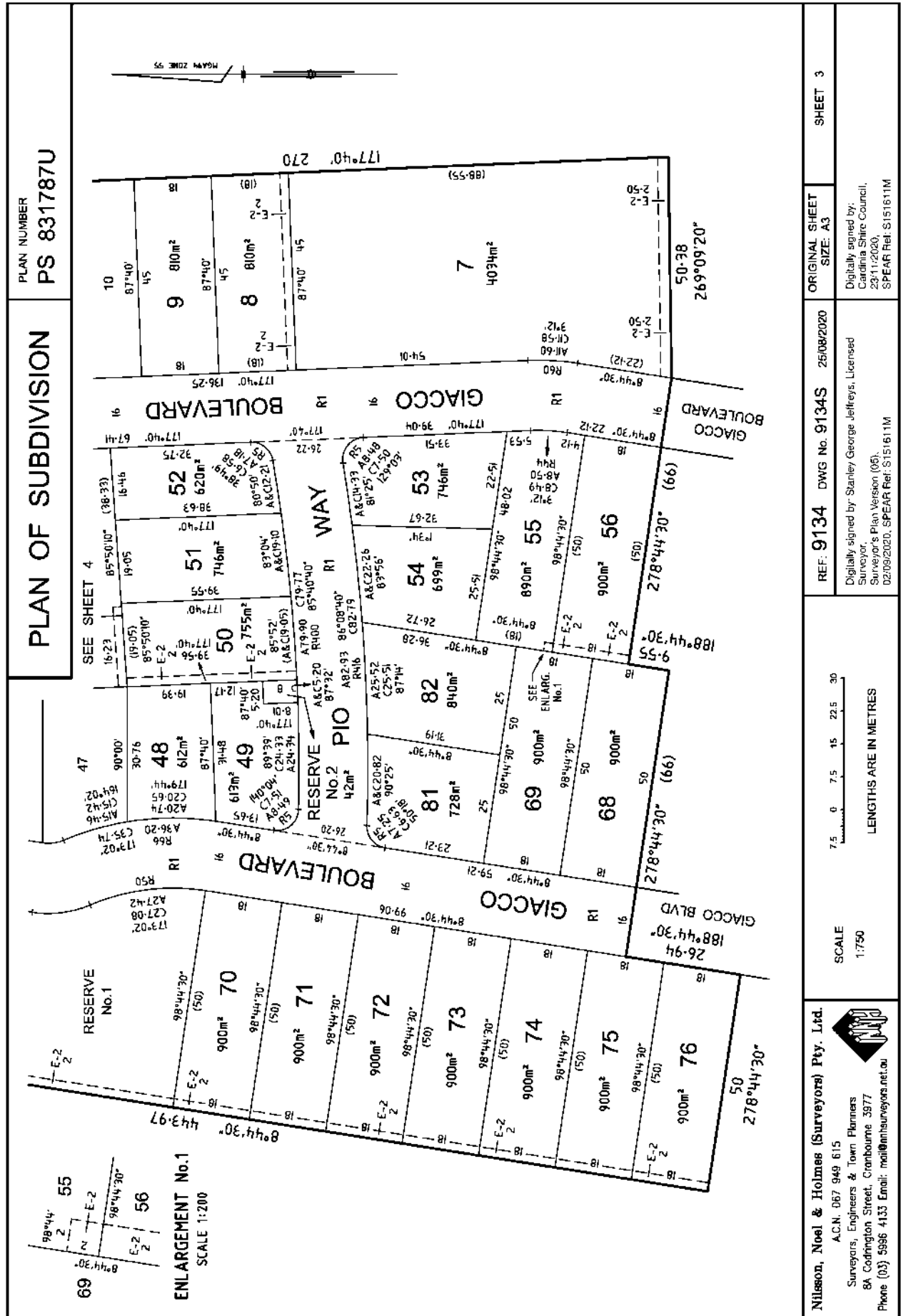
Digitally signed by: Stanley George Jeffreys, Licensed Surveyor,
Surveyor's Plan Version (05),
02/09/2020, SPEAR Ref: S151611M

REF: 9134 DWG No. 9134S 25/08/2020

ORIGINAL SHEET
SIZE: A3

SHEET 2

Digitally signed by:
Gardinia Shire Council,
23/11/2020,
SPEAR Ref: S151611M

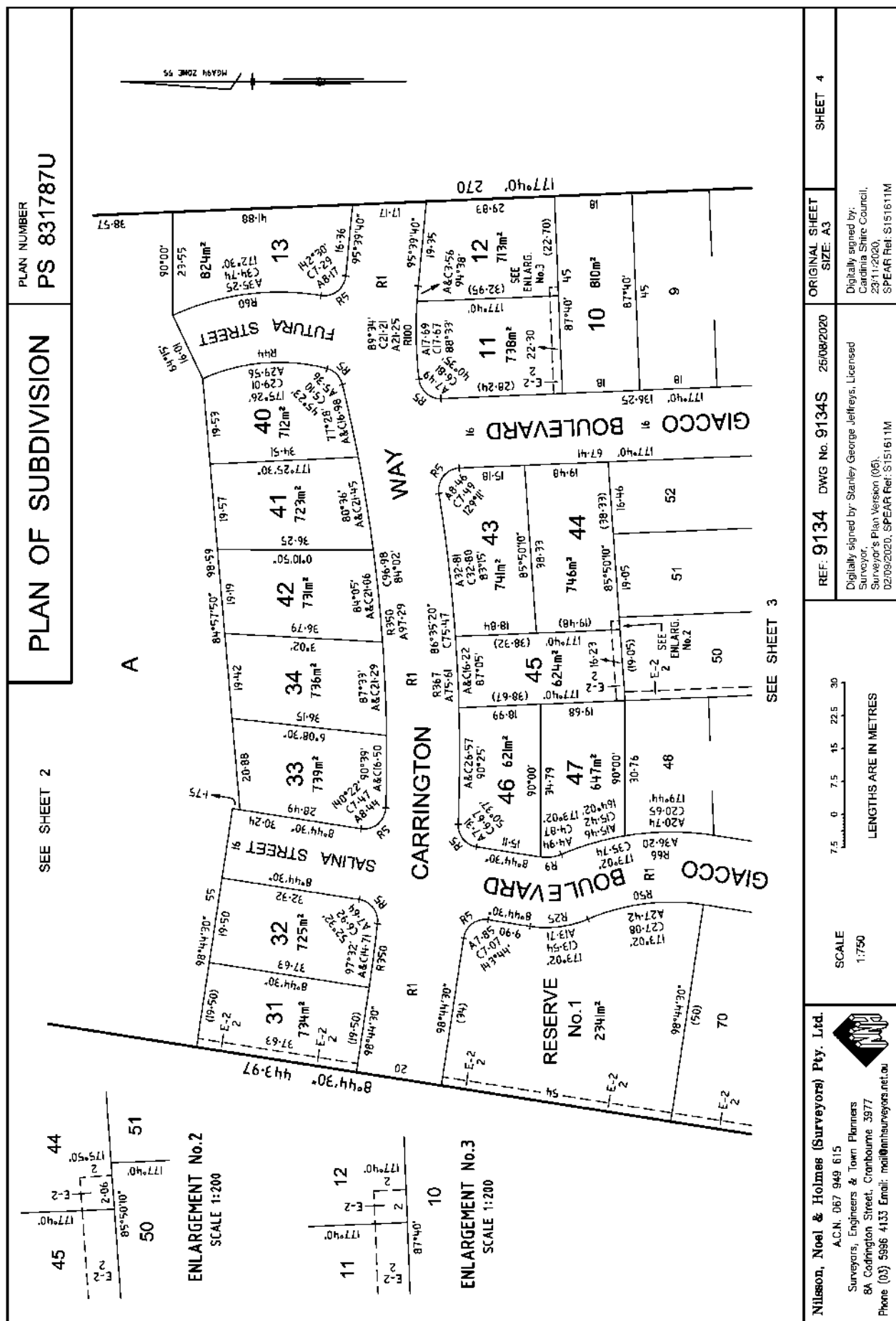


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Surveyors, Engineers & Town Planners
8A Codrington Street, Cranbourne 3977
Phone (03) 5996 4133 Email: mail@nilssonh.com.au

REF: 9134 DWG No. 9134S 25/08/2020
Digitally signed by: Stanley George Jeffreys, Licensed Surveyor
Surveyor's Plan Version (05)
02/09/2020, SPEAR Ref: S151611M

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Surveyor's Plan Version (05)
02/09/2020, SPEAR Ref: S151611M



PLAN OF SUBDIVISION		PLAN NUMBER PS 831787U			
<p>SUBDIVISION ACT 1988 CREATION OF RESTRICTION</p> <p>Upon the registration of this plan the following restriction is to be created.</p> <p>Land to Benefit: Lots 7 - 13, 31 - 34, 40 - 56, 68 - 76, 81 & 82 on this plan</p> <p>Land to be Burdened: Lots 7 - 13, 31 - 34, 40 - 56, 68 - 76, 81 & 82 on this plan</p> <p>Description of the Restriction:</p> <p>The registered proprietor or proprietors for the time being of any burdened Lot on this plan of subdivision shall not:</p> <ul style="list-style-type: none"> a) at any time on the said Lot or any parts thereof construct or extend a dwelling or residential building that does not include the minimum garden area requirement as set out in Clause 39.02-4 of the Cardinia Planning Scheme. b) without the prior written consent of the Responsible Authority, build, construct or erect any dwelling other than in accordance with the following: <ul style="list-style-type: none"> - each dwelling (excluding outbuildings) must be setback a minimum 7.0 metres from the front boundary and minimum 2.5 metres from the side boundaries. 					
Nilsson, Noel & Holmes (Surveyors) Pty. Ltd. A.C.N. 067 949 615 Surveyors, Engineers & Town Planners 8A Codrington Street, Cranbourne 3977 Phone (03) 5996 4133 Email: mail@nnhsurveyors.net.au		<div style="display: flex; justify-content: space-between;"> <div> SCALE NTS LENGTHS ARE IN METRES </div> <div> REF: 9134 DWG No. 9134S 25/08/2020 </div> </div> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; padding: 2px;">ORIGINAL SHEET SIZE: A3</td> <td style="width: 50%; padding: 2px;">SHEET 5</td> </tr> </table> <div style="display: flex; justify-content: space-between; font-size: small;"> <div> Digitally signed by: Stanley George Jeffreys, Licensed Surveyor, Surveyor's Plan Version (05), 02/09/2020, SPEAR Ref: S151611M </div> <div> Digitally signed by: Cardinia Shire Council, 23/11/2020, SPEAR Ref: S151611M </div> </div>		ORIGINAL SHEET SIZE: A3	SHEET 5
ORIGINAL SHEET SIZE: A3	SHEET 5				



Department of Environment, Land, Water & Planning

Electronic Instrument Statement

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Produced 11/04/2022 04:26:18 PM

Status	Registered	Dealing Number	AU606390L
Date and Time Lodged	22/07/2021 02:16:04 PM		

Lodger Details

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

TRANSFER

Jurisdiction	VICTORIA
--------------	----------

Privacy Collection Statement

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

Land Title Reference

12316/927

Transferor(s)

Given Name(s)	JOSEPHINE
Family Name	GIACCO

Estate and/or Interest being transferred

Fee Simple

Consideration

\$AUD 315000.00

Transferee(s)

Tenancy (inc. share)	Sole Proprietor
Given Name(s)	JAMES JOHN
Family Name	WILLIS-SMITH
Address	
Street Number	17
Street Name	CORMORANT



Department of Environment, Land, Water & Planning

Electronic Instrument Statement

Street Type	CLOSE
Locality	BLIND BIGHT
State	VIC
Postcode	3980

Duty Transaction ID
5163990

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

Execution

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

Executed on behalf of	JOSEPHINE GIACCO
Signer Name	JEFFREY WINSTON LEMPRIERE
Signer Organisation	LEMPRIERE LEGAL
Signer Role	AUSTRALIAN LEGAL PRACTITIONER
Execution Date	22 JULY 2021

Execution

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

Executed on behalf of	JAMES JOHN WILLIS-SMITH
Signer Name	SEANNE ROE
Signer Organisation	SEA CHANGE CONVEYANCING
Signer Role	CONVEYANCING PRACTICE
Execution Date	22 JULY 2021

File Notes:
NIL

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

Statement End.



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Application by Responsible Authority
Relevant Authority
Referral Authority or Council
for the making of a recording of an agreement
Section 181(1) Planning and Environment Act 1987

Lodged by:

Name:

Phone:

Address:

Ref:

Customer Code:

3559A

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

Land: Volume 9828 Folio 235

Authority: Cardinia Shire Council, Henty Way Pakenham 3810

Section and Act under which Agreement is made: Section 173 Planning and Environment Act 1987.

A copy of the agreement is attached to this application.

Signature for the Authority:

Tracey Parker

Name of Officer:

Tracey Parker

Date:

15/5/06

MANAGER, DEVELOPMENT SERVICES

WJ17.00

Deed of Agreement

Section 173 Agreement

Cardinia Shire Council

and

**South East Water Limited
ABN 89 066 902 547**

and

Gerardo Giacco and Josephine Giacco

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AE513302S



**DEED OF AGREEMENT
Section 173 Agreement**

DATE

PARTIES

Cardinia Shire Council of Henty Way Pakenham Victoria 3810
(the "**Responsible Authority**");

South East Water Limited ABN 89 066 902 547 of 20 Corporate Drive,
Moorabbin, Victoria, 3189
(the "**South East Water**"); and

Gerardo Giacco and Josephine Giacco of Lot 2 Gainsborough Avenue Lang Lang
Victoria
(the "**Owner**").

RECITALS

- A. The Owner is the registered proprietor of an estate in fee simple of the land known as Lot 2 on Plan of Subdivision LP212146E and being the land described in Certificate of Title Volume 9828 Folio 235 (the "**Land**")
- B. The Responsible Authority is the Responsible Authority, under the *Planning and Environment Act 1987* (the "**Act**"), for the purposes of the Cardinia Planning Scheme (the "**Scheme**"). The Land is affected by the provisions of the Scheme.
- C. South East Water is the holder of a water and sewerage licence pursuant to section 17 of the *Water Industry Act 1994* (Vic). The Land is included in South East Water's licensed area.
- D. The Responsible Authority issued a planning permit T030982 to subdivide the Land into 37 allotments in accordance with plan of Subdivision No.PS527923L (the "**Permit**"). Pursuant to Condition 3 of the Permit, the Owner is required to enter into an agreement with South East Water for the provision of sewerage services to the Land and fulfill all requirements (in relation to the provision of sewerage infrastructure) to South East Water's satisfaction.
- E. At the date of this Agreement, the Land is not encumbered by a Mortgage.
- F. The Responsible Authority, South East Water and the Owner have agreed to enter into this agreement pursuant to section 173 of the Act.

OPERATIVE PROVISIONS

1. DEFINITIONS AND INTERPRETATION

Definitions

"**Act**" means the Planning and Environment Act 1987.

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“Agreement” means this Deed of Agreement.

“Chief General Manager” means the chief General Manager within the meaning of the Health Act 1958

“EPA” means the Environment Protection Authority.

“Land” has the meaning ascribed to it in Recital A save that it does not include a super Lot or a balance Lot shown on a Plan of Subdivision.

“Laws” means Commonwealth, Victorian or local government legislation, regulations, by-laws and other sub-ordinate legislation, codes and policies (including the State Environment Protection Policy (Waters of Victoria)), judicial, administrative or regulatory decrees, judgments or orders from time to time including as amended or modified or re-enacted from time to time.

“Sewage” means sewage as defined in the Water Act 1989 (Vic).

“South East Water” means South East Water Limited ABN 89 066 902 547 of 20 Corporate Drive, Moorabbin, Victoria and includes any delegate of South East Water or any subsequent holder of a water and sewerage license pursuant to section 17 of the Water Industry Act that applies to the Land.

“Transferee” means a person or company who takes transfer of or enters into a Contract of Sale to purchase the Land.

“Water Industry Act” means the Water Industry Act 1994 (Vic).

General Interpretation

In this Agreement, unless the context otherwise requires:

- (a) a reference to any legislation or any legislative provision includes any statutory modification or re-enactment of, or legislative provisions substituted for, and any subordinate legislation issued under, that legislation or legislative provisions;
- (b) the singular includes the plural and vice versa;
- (c) a reference to an individual or person includes a corporation, partnership, joint venture, association, authority, trust, state or government, or vice versa;
- (d) a reference to any gender includes all genders;
- (e) a reference to a recital, clause, schedule, annexure or exhibit is to a recital, clause, schedule, annexure or exhibit of or to this Agreement;
- (f) a recital, schedule, annexure or a description of the parties forms part of this Agreement;

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- (g) a reference to any Agreement or document is to that Agreement or document (and, where applicable, any of its provisions) as amended, innovated, supplemented, or replaced from time to time;
- (h) a reference to any party to this Agreement or any other document or arrangement includes that party's executors, administrators, substitutes, successors and permitted assigns; and
- (i) where an expression is defined, another part of the speech or grammatical form of that expression has a corresponding meaning.

Headings

In this Agreement, headings are for convenience of reference only and do not affect interpretation.

2. CONFIRMATION OF RECITALS

each of the parties to this Agreement confirms the recitals that relate to that party.

3. EFFECT OF THE AGREEMENT AND REGISTRATION

3.1 Agreement Under Section 173 of the Act

The parties agree that without limiting or restricting the respective powers to enter into this Agreement and, in so far as it can be so treated, this Agreement is made pursuant to section 173 of the Act.

3.2 Covenants to Run with the Land

The parties agree and declare that the obligations imposed on the Owner under this Agreement are intended to take effect as covenants which shall be annexed to and run at law and equity with the whole or any part of the Land and bind the Owner, its successors, transferees and permitted assigns, the registered proprietor or proprietors for the time being of the Land.

3.3 Registration memorandum

- (a) An application, pursuant to section 181 of the Act shall be made by the Responsible Authority to the Registrar of Titles for the entry of a memorandum of this Agreement upon the Certificate of Title to the Land.
- (b) The Owner shall do all things necessary to enable the application made by the Responsible Authority to be entered on the Certificate of Title to the Land, including signing any further agreement, acknowledgment or document.

4. COVENANTS

4.1 Owner's Covenants



If a reticulated sewerage system is not provided to the Land, the Owner covenants and agrees with the Council and South East Water as follows:

- (a) It will at the written request of the Council, the Chief General Manager or the EPA, upon 60 days notice, provide proof at the cost of the Owner, and to the satisfaction of the Council, Chief General Manager or the EPA making the request, that:
 - (i) all sewage is being and will continue to be treated and retained within the Land without danger to public health, safety and the environment; and
 - (ii) any treatment systems meet and will continue to meet the relevant requirements of all Laws relating to such systems;
 - (iii) all dwellings and outbuildings must be located within the building envelopes (refer attachment "A") unless the consent to vary the envelope is granted by the Responsible Authority. Waste disposal envelopes shown on attachment "A" must not be built over or driveways constructed or reduced in area without the prior consent of the Responsible Authority.
- (b) For the purpose of providing proof under clause 4.1(a), and without limiting any other form of proof that may be required, it will conduct such tests reasonably required by the Council, the chief General Manager or the EPA at the cost of the Owner;
- (c) It will at the written request of the Council, and at the Owner's cost:
 - (i) repair, replace or upgrade its treatment system; and
 - (ii) take any other steps required by the Council to ensure that:
 - (A) all sewage is being and will continue to be adequately treated and retained within the Land without danger to public health, safety or the environment; and
 - (B) any treatment system it uses meets and will continue to meet the requirements of Laws relating to such systems and the treatment of sewage from time to time;
- (d) Without limiting any powers of the Council under clause 4.1(c), if the Council is not satisfied that:
 - (i) all sewage is being or will continue to be adequately treated and retained within the Land without danger to public health, safety or the environment; or
 - (ii) any treatment system used by the Owner meets and will continue to meet the requirements of all Laws relating to such systems and the treatment of sewage from time to time,

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subject to clause 4.1 (e), the Owner will at the written request of the Council, enter into any agreement with South East Water for the provision of reticulated sewerage services to the Land and fulfill all requirements of South East Water.

- (e) If South East Water provides, agrees to provide, or is legally required to provide reticulated sewerage services to the Land, whether pursuant to any agreement, or backlog or other program or scheme or otherwise, the Owner will pay the cost of extending and connecting the reticulated sewer and associated works to the Land, including pay the cost of any works, and pay the area contribution charge and other charges applicable from time to time.

4.2 Council's and Owner's Agreements and Acknowledgments

The Council and the Owner acknowledge and agree that:

- (a) South East Water shall not be required to enter into any agreement with the Owner for the provision of reticulated sewerage services to the Land except to the extent it is required to do so under the Water Industry Act; and
- (b) nothing in this Agreement shall limit the powers of South East Water under the Water Industry Act, including Section 65(1) of that Act.

4.3 South East Water's Agreement

Any payments required by South East Water under Sections 27 and 29 of the Water Industry Act shall be assessed by South East Water in accordance with those respective provisions of that Act.

5. OWNER'S INDEMNITY AND RELEASE

The Owner agrees not to make any claim for damage or loss of any kind against the Responsible Authority or South East Water arising from or referable to the provision of sewerage services to the Land, this Agreement or any non-compliance with this Agreement. The Owner agrees to hold harmless and keep the Responsible Authority and South East Water indemnified for and against all actions, claims, liability, demands, damages, losses, expenses and/or costs by or at the instance of any person or body whatsoever and howsoever caused, including but without limiting, any claim in negligence or arising from personal injury, arising from or referable to the provision of sewerage services to the Land, this Agreement or any non-compliance with this Agreement.

6. OWNER'S WARRANTIES

- (a) Without limiting the operation or effect of this Agreement, the Owner warrants that apart from the Owner and any other person who has consented in writing to this Agreement, no other person has any interest, either legal or equitable, in the Land which may be affected by this Agreement.
- (b) The Owner covenants to obtain the consent by any mortgagee to be bound by the covenants in this Agreement if the mortgagee becomes a mortgagee in possession of the Land.

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- (c) Without limiting the operation or effect of this Agreement, the Owner must ensure that until a Memorandum of this Agreement is registered on the Certificate of Title to this Land, the Owner will ensure that its Transferees:
- (i) give effect to, do all acts and sign all documents to give effect to this Agreement; and
 - (ii) execute a deed agreeing to be bound by this Agreement.

7. OWNER'S OR TRANSFEREE'S DEFAULT

If the Owner or a Transferee fails to comply with the provisions of this Agreement of any requirement made under the provisions of this Agreement, the Responsible Authority or South East Water may serve a notice on the Owner or a Transferee (as the case may be) specifying the works, matters and things in respect of which the Owner or Transferee is in default. If the alleged default continues for 30 days after the service of such notice, the Responsible Authority or South East Water may by its officers, employees, agents and contractors enter the Land and ensure that the works, matters and things are carried out. The costs incurred by the Responsible Authority or South East Water in undertaking the works as a result of the Owner or Transferee's default will be payable by the Owner or the Transferee.

8. COSTS

The Owner will pay South East Water's and the Responsible Authority's reasonable costs and expenses in relation to the negotiation, preparation, drafting, finalisation, engrossment, execution, registration and enforcement of this Agreement which are and until payable remain a debt due to the Responsible Authority and/or South East Water (as the case may be).

9. NO FETTERING OF THE RESPONSIBLE AUTHORITY'S POWERS

The parties acknowledge and agree that this Agreement does not fetter or restrict the power or discretion of the Responsible Authority to make any decision or impose any requirements or conditions in connection with the granting of any planning approval or certification of any plans of subdivision application to the Land or relating to any use or development of the Land.

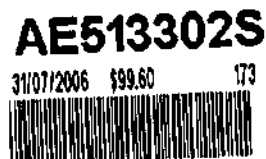
10. NOTICES

Any notice under this Agreement may be served by delivering, either personally or by registered mail to the Parties.

11. SEVERABILITY

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

12. FURTHER ASSURANCE



Each party must promptly execute and deliver all documents and take all other actions necessary or desirable to effect, perfect or complete the transactions contemplated by this Agreement.

13. NO WAIVER

Any time or time indulgence granted by the Responsible Authority or South East Water to the Owner or any variation of the terms and conditions of this Agreement will not in any way amount to a waiver of any of the rights and remedies of the Responsible Entity or South East Water in relation to the terms of this Agreement.

EXECUTED AS A DEED

EXECUTED BY SOUTH EAST WATER

By its' duly appointed Officer

SIGNED by and on behalf, with the authority

of **CARDINIA SHIRE COUNCIL** by Tracey

Parker, in the exercise of power conferred by

An Instrument of Delegation dated

16 October 2000.

Tracey Parker

In the presence of:

L. McKinnon

SIGNED SEALED AND DELIVERED by
GERARDO GIACCO AND JOSEPHINE GIACCO
in the presence of:

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K. Perrott

Witness
Name (print)

Josephine Giacco

Owner
Josephine Giacco

12. FURTHER ASSURANCE

Each party must promptly execute and deliver all documents and take all other actions necessary or desirable to effect, perfect or complete the transactions contemplated by this Agreement.

13. NO WAIVER

Any time or time indulgence granted by the Responsible Authority or South East Water to the Owner or any variation of the terms and conditions of this Agreement will not in any way amount to a waiver of any of the rights and remedies of the Responsible Entity or South East Water in relation to the terms of this Agreement.

EXECUTED AS A DEED

THE COMMON SEAL of [Responsible Authority]
was hereunto affixed by the authority of the
Responsible Authority in the presence of:

Councillor

Name of Councillor

**EXECUTED by SOUTH EAST WATER LIMITED, by
its duly appointed Attorney in the presence of:**

Galina W. Hitchen
Witness

GALINA W. HITCHEN
Name (print)

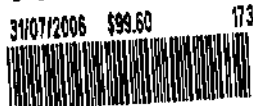
Anthony W. Kelly
Attorney

ANTHONY W. KELLY
Name (print)

Date of Power of Attorney: ~~14 December 2005~~

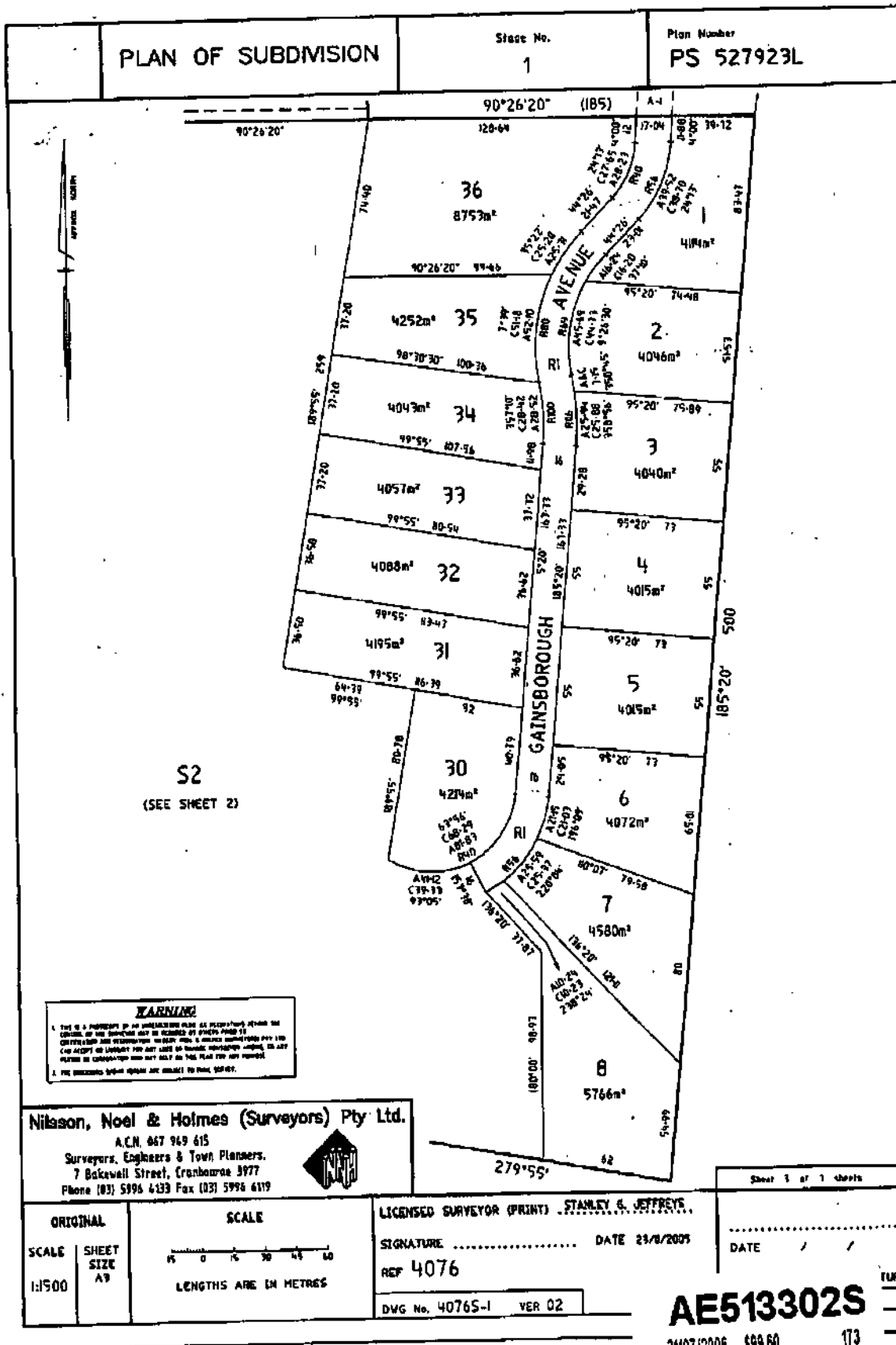
8 May 2006

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31/07/2006 \$99.60 173

PLAN OF SUBDIVISION		STAGE NO 1	LTO use only EDITION	Plan Number PS 527923L
Location of Land Parish: LANG LANG Township: - Section: - Crown Allotment: 14 (PART) Crown Portion: - LTO Base Record: DCNR Title Reference: VOL: 9828 FOL: 235 Last Plan Reference: LOT 2 ON LP 21246E Postal Address: GAINSBOROUGH AVENUE, (at time of subdivision) LANG LANG 3984 MGA Co-ordinates E 974 555 Zone 55 (of approx. centre of land in plan) N 5 762 635		Council Certification and Endorsement Council Name: CARDINIA SHIRE COUNCIL Ref: 1. This plan is certified under section 6 of the Subdivision Act 1988. 2. This plan is certified under section 11(7) of the Subdivision Act 1988. Date of original certification under section 6 / / 3. This is a statement of compliance issued under section 21 of Subdivision Act 1988. OPEN SPACE (1) A requirement for public open space under section 18 of the Subdivision Act 1988 has/has not been made. (2) The requirement has been satisfied. (3) The requirement is to be satisfied in Stage..... Council Delegate Council Seal Date / / Re-certified under section 11(7) of the Subdivision Act 1988. Council Delegate Council Seal Date / /		
Vesting of roads and/or Reserves				
Identifier	Council/Body/Person			
ROAD R1	CARDINIA SHIRE COUNCIL			
Notations				
Staging		This is a staged subdivision Planning Permit No. ,		
Depth Limitation DOES NOT APPLY Lots 9 - 29 have been omitted from this plan.				
WARNING 1. THIS IS A PRELIMINARY PLAN. NO GUARANTEE IS MADE BY THE SURVEYOR THAT THE INFORMATION IS CORRECT OR THAT THE PLAN IS NOT SUBJECT TO CHANGE. THE SURVEYOR'S OFFICE IS NOT RESPONSIBLE FOR ANY LOSS OR DAMAGE SUFFERED BY ANY PERSON OR CORPORATION WHO RELIES ON THIS PLAN FOR ANY PURPOSE. 2. THE SURVEYOR'S OFFICE IS NOT RESPONSIBLE FOR ANY LOSS OR DAMAGE SUFFERED BY ANY PERSON OR CORPORATION WHO RELIES ON THIS PLAN FOR ANY PURPOSE.				
Survey This plan is based on survey This survey has been connected to permanent marks (s/s) In proclaimed Survey Area No.				
Easement Information				
Legend: A - Appurtenant Easement E - Encumbering Easement R - Encumbering Easement (Road)				
Easement Reference	Purpose	Width (Metres)	Origin	Land Benefited/In Favour Of
A-1	WAY	17	LP 21246E	LOTS ON LP 21246E
A-2	DRAINAGE	4.97	C/E NS2048E	
E-1	DRAINAGE	2.01	LP 22888 & LP 36649	LOTS ON LP 22888 & LP 36649
E-2	DRAINAGE	9	LP 21246E	LOTS ON LP 21246E
LTO use only Statement of Compliance/ Exemption Statement Received <input type="checkbox"/> Date / / LTO use only PLAN REGISTERED TIME Date / / Assistant Registrar of Titles				





Approved Payment Receipt



South East Water
smithyxf@live.com

12:42 pm



South East Water

South East Water Payment Receipt

Dear Customer,

We have recently processed a payment on your behalf.

Transaction Details

Payment Time: 08-Apr-2022 12:42:45
Customer Number: 36004296
Credit Card Number:
Credit Card Expiry:
Payment Amount: 79.05
Payment Receipt Number: 76545082

Thank you for your payment

South East Water
ABN 89 066 902 547

↩️ ✓ Reply



PROPERTY REPORT

From www.planning.vic.gov.au at 11 April 2022 04:29 PM

PROPERTY DETAILS

Address: **35 GIACCO BOULEVARD LANG LANG 3984**
Lot and Plan Number: **Lot 75 PS831787**
Standard Parcel Identifier (SPI): **75\PS831787**
Local Government Area (Council): **CARDINIA**
Council Property Number: **5000031768**
Directory Reference: **Vicroads 718 B12**

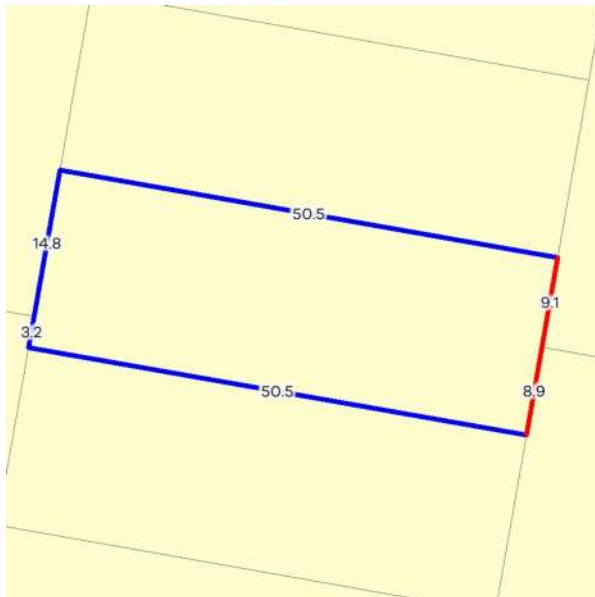
www.cardinia.vic.gov.au

This property is not in a designated bushfire prone area.
No special bushfire construction requirements apply. Planning provisions may apply.

Further information about the building control system and building in bushfire prone areas can be found on the Victorian Building Authority website <https://www.vba.vic.gov.au>

SITE DIMENSIONS

All dimensions and areas are approximate. They may not agree with those shown on a title or plan.



Area: 909 sq. m

Perimeter: 137 m

For this property:

— Site boundaries

— Road frontages

Dimensions for individual parcels require a separate search, but dimensions for individual units are generally not available.

Calculating the area from the dimensions shown may give a different value to the area shown above

For more accurate dimensions get copy of plan at [Title and Property Certificates](#)

UTILITIES

Rural Water Corporation: **Southern Rural Water**
Melbourne Water Retailer: **South East Water**
Melbourne Water: **Inside drainage boundary**
Power Distributor: **AUSNET**

STATE ELECTORATES

Legislative Council: **EASTERN VICTORIA**
Legislative Assembly: **BASS**

PLANNING INFORMATION

Planning Zone: [NEIGHBOURHOOD RESIDENTIAL ZONE \(NRZ\)](#)
[NEIGHBOURHOOD RESIDENTIAL ZONE - SCHEDULE 1\(NRZ1\)](#)
Planning Overlay: [DEVELOPMENT PLAN OVERLAY \(DPO\)](#)
[DEVELOPMENT PLAN OVERLAY - SCHEDULE 18 \(DPO18\)](#)

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Read the full disclaimer at <https://www2.delwp.vic.gov.au/disclaimer>

Notwithstanding this disclaimer, a vendor may rely on the information in this report for the purpose of a statement that land is in a bushfire prone area as required by section 32C (b) of the Sale of Land 1962 (Vic).

PROPERTY REPORT

Planning scheme data last updated on 7 April 2022.

A **planning scheme** sets out policies and requirements for the use, development and protection of land. This report provides information about the zone and overlay provisions that apply to the selected land. Information about the State and local policy, particular, general and operational provisions of the local planning scheme that may affect the use of this land can be obtained by contacting the local council or by visiting <https://www.planning.vic.gov.au>

This report is NOT a **Planning Certificate** issued pursuant to Section 199 of the **Planning and Environment Act 1987**. It does not include information about exhibited planning scheme amendments, or zonings that may affect the land. To obtain a Planning Certificate go to Titles and Property Certificates at Landata - <https://www.landata.vic.gov.au>

For details of surrounding properties, use this service to get the Reports for properties of interest.

To view planning zones, overlay and heritage information in an interactive format visit <https://mapshare.maps.vic.gov.au/vicplan>

For other information about planning in Victoria visit <https://www.planning.vic.gov.au>

Area Map



Selected Property

From www.planning.vic.gov.au at 11 April 2022 04:31 PM

PROPERTY DETAILS

Address: **35 GIACCO BOULEVARD LANG LANG 3984**
 Lot and Plan Number: **Lot 75 PS831787**
 Standard Parcel Identifier (SPI): **75\PS831787**
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 Council Property Number: **5000031768**
 Planning Scheme: **Cardinia**
 Directory Reference: **Vicroads 718 B12**

www.cardinia.vic.gov.au

[Planning Scheme - Cardinia](#)

UTILITIES

Rural Water Corporation: **Southern Rural Water**
 Melbourne Water Retailer: **South East Water**
 Melbourne Water: **Inside drainage boundary**
 Power Distributor: **AUSNET**

STATE ELECTORATES

Legislative Council: **EASTERN VICTORIA**
 Legislative Assembly: **BASS**

OTHER

Registered Aboriginal Party: **Bunurong Land Council
Aboriginal Corporation**

[View location in VicPlan](#)

Planning Zones

[NEIGHBOURHOOD RESIDENTIAL ZONE \(NRZ\)](#)

[NEIGHBOURHOOD RESIDENTIAL ZONE - SCHEDULE 1 \(NRZ1\)](#)

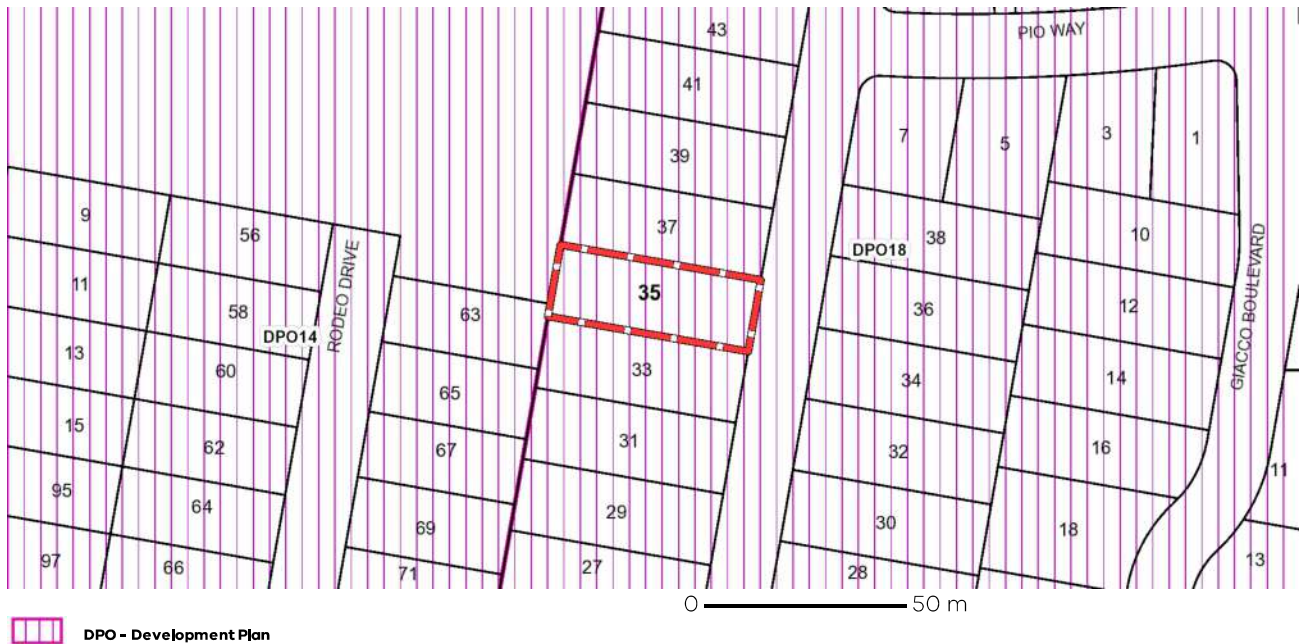


Note: labels for zones may appear outside the actual zone - please compare the labels with the legend.

Planning Overlay

[DEVELOPMENT PLAN OVERLAY \(DPO\)](#)

[DEVELOPMENT PLAN OVERLAY - SCHEDULE 18 \(DPO18\)](#)



Note: due to overlaps, some overlays may not be visible, and some colours may not match those in the legend

Further Planning Information

Planning scheme data last updated on 7 April 2022.

A **planning scheme** sets out policies and requirements for the use, development and protection of land. This report provides information about the zone and overlay provisions that apply to the selected land. Information about the State and local policy, particular, general and operational provisions of the local planning scheme that may affect the use of this land can be obtained by contacting the local council or by visiting <https://www.planning.vic.gov.au>

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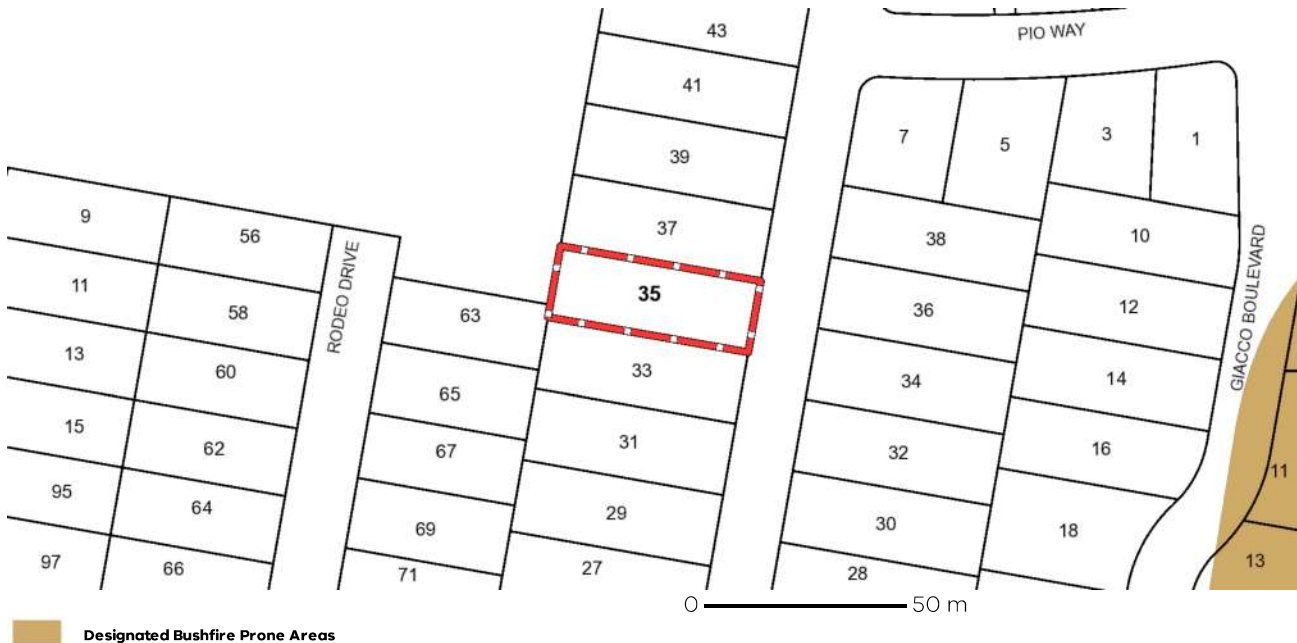
For details of surrounding properties, use this service to get the Reports for properties of interest.

To view planning zones, overlay and heritage information in an interactive format visit <https://mapshare.maps.vic.gov.au/vicplan>

For other information about planning in Victoria visit <https://www.planning.vic.gov.au>

Designated Bushfire Prone Areas

This property is not in a designated bushfire prone area.
No special bushfire construction requirements apply. Planning provisions may apply.



Designated bushfire prone areas as determined by the Minister for Planning are in effect from 8 September 2011 and amended from time to time.

The Building Regulations 2018 through application of the Building Code of Australia, apply bushfire protection standards for building works in designated bushfire prone areas.

Designated bushfire prone areas maps can be viewed on VicPlan at <https://mapshare.maps.vic.gov.au/vicplan> or at the relevant local council.

Note: prior to 8 September 2011, the whole of Victoria was designated as bushfire prone area for the purposes of the building control system.

Further information about the building control system and building in bushfire prone areas can be found on the Victorian Building Authority website <https://www.vba.vic.gov.au>

Copies of the Building Act and Building Regulations are available from <http://www.legislation.vic.gov.au>

For Planning Scheme Provisions in bushfire areas visit <https://www.planning.vic.gov.au>

Native Vegetation

Native plants that are indigenous to the region and important for biodiversity might be present on this property. This could include trees, shrubs, herbs, grasses or aquatic plants. There are a range of regulations that may apply including need to obtain a planning permit under Clause 52.17 of the local planning scheme. For more information see [Native Vegetation \(Clause 52.17\)](#) with local variations in [Native Vegetation \(Clause 52.17\) Schedule](#)

To help identify native vegetation on his property and the application of Clause 52.17 please visit the Native Vegetation Information Management system <https://nvim.delwp.vic.gov.au/> and [Native vegetation \(environment.vic.gov.au\)](https://environment.vic.gov.au) or please contact your relevant council.

You can find out more about the natural values on your property through NatureKit [NatureKit \(environment.vic.gov.au\)](https://environment.vic.gov.au)