


# Application by a Responsible Authority for the making of a Recording of an Agreement

Section 181 Planning and Environment Act 1987

Form 21

**AM668230E**

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 use: registers and indexes.  
 mail:

Lodged by:

Name: MADDOCKS  
 Phone: 9258 3555  
 Address: Level 6, 140 William Street, Melbourne, Victoria, 3000  
 Ref: TGM:DJW:6631800  
 Customer Code: 1167E

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: 112-114 and 116-126 Old Warrandyte Road, Donvale Volume 9935 Folios 983-989 (inclusive)  
 Volume 5604 Folio 704, Volume 4019 Folio 687 and Volume 9702 folio 685

Responsible Authority: Manningham City Council of 699 Doncaster Road, Doncaster

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

A copy of the agreement is attached to this application

Signature for the Authority: Chris Potter  
 Name of officer: CHRIS POTTER  
 Position Held: ACTING CHIEF EXECUTIVE OFFICER  
 Date: 3 FEBRUARY 2016

**AM668230E**

31/03/2016 \$169.70 173



**NORTON ROSE FULBRIGHT**

Dated

3 FEBRUARY, 2016.

## **Planning Agreement**

**112-114 and 116-126 Old Warrandyte Road, Donvale  
Mullum Creek Guidelines**

Parties

**Manningham City Council**

**Blackwood Banner Pty Ltd**  
ACN 006 342 409

**Dan Mathews, Steven Mathews and Susan Mathews**

**Ultima Pty Ltd**  
ACN 004 507 699

**Mullum Pty Ltd**  
ACN 004 507 706

Tamara Brezzi/Alexandra Guild  
Norton Rose Fulbright Australia  
RACV Tower, 485 Bourke Street  
Melbourne VIC 3000  
Tel: +61 (0)3 8686 6000  
nortonrosefulbright.com  
Our ref: TNB/AAG/2801596

**AM668230E**

31/03/2016 \$169.70 173



**Agreement** dated 3 FEBRUARY, 2015/6.  
under section 173 of the *Planning and Environment Act 1987 (Act)*

**Parties:** **Manningham City Council**  
of 699 Doncaster Road, Doncaster in the State of Victoria  
(Responsible Authority)

**Blackwood Banner Pty Ltd** ACN 006 342 409

**Dan Mathews**

**Steven Mathews**

**Susan Mathews**

**Ultima Pty Ltd** ACN 004 507 699

**Mullum Pty Ltd** ACN 004 507 706  
of Level 1, 39 Little Collins Street, Melbourne Victoria 3000

### Introduction

- A The Responsible Authority is responsible for the administration and enforcement of the Planning Scheme under the provisions of the Act.
- B The Owners are the registered proprietors or are entitled to be registered as the proprietors of an estate in fee simple of the Land.
- C The Land is subject to registered mortgage no. AK253753B in favour of the Mortgagee. The Mortgagee has consented to the Owners entering into this Agreement.
- D The Land is subject to Design and Development Overlay, Schedule 11 – Mullum Valley Estate (DDO11), under the Planning Scheme. One of the design objectives of DDO11 is to ensure that the development of land is based on ecologically sustainable design principles. The Mullum Creek Guidelines have been developed to support the achievement of this objective of DDO11.
- E It is intended that:
  - (1) the Land will be subdivided into Lots and those Lots will, subject to a planning permit being granted, be developed for Dwellings;
  - (2) the Mullum Creek Guidelines control initial development and use of the Lots; and
  - (3) the Design Review Committee implements the Mullum Creek Guidelines during the initial development and use of the Lots.
- F The parties enter into this Agreement for the purpose of facilitating the objectives set out in Recitals D and E.

**AM668230E**

31/03/2016 \$169.70 173



## It is agreed

### 2 Definitions and interpretation

#### 2.1 Definitions

In this Agreement:

- (1) **Act** means the *Planning and Environment Act 1987* (Vic);
- (2) **Agreement** means this document and any agreement executed by the parties expressed to be supplemental to this document;
- (3) **Building** has the same meaning as in the Act;
- (4) **Building Permit** means a building permit issued under the *Building Act 1993* (Vic);
- (5) **Completion Certificate** means a certificate granted by the Design Review Committee under clause 6.3(3)(b) that confirms that Buildings and Works on a Lot have been completed in accordance with the Design Guidelines and a Design Approval in relation to those Buildings and Works, and comprises a certificate;
- (6) **Council Approval** means, in relation to proposed Building or Works on a Lot:
  - (a) a planning permit;
  - (b) an amendment to a planning permit;
  - (c) an amendment to an application for a planning permit or an application for an amendment to a planning permit; or
  - (d) secondary consent under a planning permit;
- (7) **Design Approval** means an approval granted by the Design Review Committee under clause 6.3(3)(b) for a design for Buildings and Works on a Lot, and comprises a certificate and plans endorsed by the Design Review Committee;
- (8) **Design Guidelines** means the document approved by the Design Review Committee under clauses 6.1(1) or 6.1(2) from time to time;
- (9) **Design Review Committee** means Mullum Pty Ltd or any persons to whom Mullum Pty Ltd delegates the function of Design Review Committee from time to time, subject to any delegation from Mullum Pty Ltd not allowing further delegation;
- (10) **Detailed Requirement** means a detailed requirement specified in the Design Guidelines;
- (11) **Dwelling** has the same meaning as in the Planning Scheme;
- (12) **GST Act** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (as amended) from time to time;
- (13) **Land** means the Land described in Schedule 1;
- (14) **Landscaping Approval** means an approval granted by the Design Review Committee under clause 6.3(5)(b) for a design for landscaping on a Lot, and comprises plans endorsed by the Design Review Committee;

**AM668230E**

31/03/2016 \$169.70 173



- (15) **Lot** means a lot that is created from a subdivision of the Land in accordance with the Planning Permit and is intended to be developed for a Dwelling;
- (16) **Mortgagee** means MECU Ltd;
- (17) **Mullum Creek Vision** means the Mullum Creek Vision set out in the Design Guidelines;
- (18) **Objective** means an objective specified in the Design Guidelines;
- (19) **Owner** means the person or persons registered or entitled to be registered by the Registrar of Titles as proprietor or proprietors of an estate in fee simple of the Land, including of a Lot, or any part of it and includes a mortgagee in possession;
- (20) **Planning Permit** means planning permit PL09/020741, issued by the Responsible Authority on 11 May 2012, as amended from time to time;
- (21) **Planning Scheme** means the Manningham Planning Scheme and any successor instrument or other planning scheme which applies to the Land;
- (22) **Responsible Authority** means Manningham City Council or its successor as the authority responsible for administering and enforcing the Planning Scheme with respect to the Land and includes its agents, officers, employees, servants, workers and contractors;
- (23) **Variation** means a variation to a Detailed Requirement; and
- (24) **Works** has the same meaning as in the Act.

## 2.2 Interpretation

- (1) Reference to:
  - (a) one gender includes the others;
  - (b) the singular includes the plural and the plural includes the singular;
  - (c) a person includes a body corporate;
  - (d) a party includes the party's executors, administrators, successors and permitted assigns;
  - (e) a thing includes the whole and each part of it separately;
  - (f) a statute, regulation, code or other law or a provision of any of them includes:
    - (i) any amendment or replacement of it; and
    - (ii) another regulation or other statutory instrument made under it, or made under it as amended or replaced; and
  - (g) dollars means Australian dollars unless otherwise stated.
- (2) "Including" and similar expressions are not words of limitation.
- (3) Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.

**AM668230E**

31/03/2016 \$169.70 173



- (4) Headings and any table of contents or index are for convenience only and do not form part of this Agreement or affect its interpretation.
- (5) A provision of this Agreement must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of the Agreement or the inclusion of the provision in the Agreement.
- (6) If an act must be done on a specified day which is not a business day, it must be done instead on the next business day.

### 2.3 Parties

- (1) If a party consists of more than 1 person, this Agreement binds each of them separately and any 2 or more of them jointly.
- (2) An obligation, representation or warranty in favour of more than 1 person is for the benefit of them separately and jointly.
- (3) A party which is a trustee is bound both personally and in its capacity as a trustee.

## 3 Design Approval

### 3.1 The Owner of a Lot must, to the satisfaction of the Design Review Committee:

- (1) obtain Design Approval prior to applying for a Council Approval;
- (2) submit the Design Approval to the Responsible Authority as part of its application for a Council Approval;
- (3) within 10 business days of the issue of a Planning Permit that relates to Building and Works the subject of a Design Approval, provide a copy of the Planning Permit to the Design Review Committee;
- (4) develop its Lot in accordance with the Design Approval;
- (5) where the Owner is the first registered proprietor of the Lot, commence development of its Lot within 2 years of becoming the registered proprietor of the Lot unless otherwise agreed with the Design Review Committee;
- (6) where the Owner is a subsequent registered proprietor of the Lot, commence development of its Lot within 1 year of becoming the registered proprietor of the Lot unless otherwise agreed with the Design Review Committee;
- (7) where the Owner is the first registered proprietor of the Lot, complete development of its Lot within 4 years of becoming the registered proprietor of the Lot unless otherwise agreed with the Design Review Committee;
- (8) where the Owner is a subsequent registered proprietor of a Lot, complete development of its Lot within 2 years of becoming the registered proprietor of the Lot unless otherwise agreed with the Design Review Committee;
- (9) provide a copy of the Design Approval to any building surveyor retained in relation to the Building and Works to which the Design Approval relates;
- (10) within 10 business days of the issue of a Building Permit that relates to Building and Works the subject of a Design Approval, provide a copy of the Building Permit to the Design Review Committee;

**AM668230E**

31/03/2016 \$169.70 173



- (11) within 10 business days of completion of construction of Building and Works the subject of a Design Approval, apply to the Design Review Committee for a Completion Certificate;
  - (12) allow the Design Review Committee access to its Lot for the purpose of determining whether a Completion Certificate should be granted; and
  - (13) comply with any conditions on a Completion Certificate.
- 3.2 If an Owner applies for a Design Approval, it must be to the satisfaction of the Design Review Committee and be:
- (1) in the form and include the information specified in the Design Guidelines; and
  - (2) accompanied by any fee specified in the Design Guidelines.

#### **4 Landscaping Approval**

4.1 The Owner of a Lot must, to the satisfaction of the Design Review Committee:

- (1) apply to the Design Review Committee for Landscaping Approval within 4 calendar months of occupation of a Dwelling on the Lot;
- (2) carry out or cause to be carried out, the landscaping of its Lot in accordance with the Landscaping Approval;
- (3) in relation to the front garden of the Lot:
  - (a) commence landscaping in accordance with the Landscaping Approval within 4 months of receiving Landscaping Approval, or other timeframe with the written consent of the Design Review Committee; and
  - (b) complete landscaping in accordance with the Landscaping Approval by the later of 6 calendar months from occupation of the Dwelling and 4 calendar months of receiving Landscaping Approval, or other timeframe with the written consent of the Design Review Committee;
- (4) in relation to areas other than the front garden of the Lot:
  - (a) commence landscaping in accordance with the Landscaping Approval within 10 calendar months of receiving Landscaping Approval, or other timeframe with the written consent of the Design Review Committee; and
  - (b) complete landscaping in accordance with the Landscaping Approval within 12 calendar months of the occupation of the Dwelling, or other timeframe with the written consent of the Design Review Committee; and
- (5) allow the Design Review Committee access to its Lot for the purpose of determining whether there has been compliance with the Landscaping Approval.

4.2 If an Owner applies for a Landscaping Approval, it must be in the form and include the information specified in the Design Guidelines, to the satisfaction of the Design Review Committee.

**AM668230E**

31/03/2016 \$169.70 173



## **5 Compliance with Design Guidelines**

- 5.1 The Owner must comply with the Design Guidelines to the satisfaction of the Design Review Committee.

## **6 Design Review Committee obligations**

### **Design Guidelines**

- 6.1 Before any development begins on a Lot for, or in association with a Dwelling, the Design Review Committee:
- (1) must approve design guidelines regulating the development and use of the Land generally in accordance with the draft design guidelines dated 13 December 2013;
  - (2) may approve modified design guidelines where necessary or desirable in order to respond to:
    - (a) changes in legal regulations or urban development policies; or
    - (b) advances in ideas and technologies in relation to urban design and sustainability; or
    - (c) to facilitate ease of administration and implementation of the design guidelines,subject to consistency with the Mullum Creek Vision.
- 6.2 The Design Guidelines approved under clause 6.1 become effective upon the later of:
- (1) a copy of the approved Design Guidelines being provided to the Responsible Authority; and
  - (2) a copy of the approved Design Guidelines being made available on the Mullum Creek website.

### **Applications**

- 6.3 The Design Review Committee must:
- (1) following receipt of an application for Design Approval, decide:
    - (a) whether to require further information if necessary; and
    - (b) upon being satisfied with the information provided in support of an application for Design Approval, decide whether to grant, refuse to grant or grant on conditions a Design Approval;
  - (2) in assessing any application for Design Approval, apply the Design Guidelines;
  - (3) following receipt of an application for Completion Certificate, decide:
    - (a) whether to require further information if necessary; and



**AM668230E**

31/03/2016 \$169.70 173



- (b) upon being satisfied with the information provided in support of an application for Completion Certificate, whether to grant, refuse to grant or grant on conditions a Completion Certificate;
- (4) in assessing any application for Completion Certificate:
  - (a) assess the as-built development against the Design Approval; and
  - (b) apply the Design Guidelines;
- (5) following receipt of an application for Landscaping Approval, decide:
  - (a) whether to require further information if necessary; and
  - (b) upon being satisfied with the information provided in support of an application for Landscaping Approval, whether to grant, refuse to grant or grant on conditions a Landscaping Approval;
- (6) in assessing any application for Landscaping Approval, apply the Design Guidelines;
- (7) consider and decide on any Variation sought;
- (8) in assessing a request for a Variation, consider the following:
  - (a) achievement of the Mullum Creek Vision;
  - (b) achievement of the Objectives that relate to the relevant Detailed Requirement;
  - (c) any other decision making criteria set out in relation to the relevant Detailed Requirement;
  - (d) implementation of any guidance provided in the Design Guidelines in relation to the relevant Detailed Requirement; and
  - (e) site-specific characteristics, including but not limited to topography, aspect, drainage, geotechnical characteristics, native vegetation and relationship to public spaces and viewing points; and
- (9) within 20 business days after receiving an application for Design Approval, Landscaping Approval or Completion Certificate, or within 30 business days in the case of an application for Design Approval or Landscaping Approval that proposes a Variation, notify the applicant Owner of its decision.

## Other

- 6.4 The Design Review Committee must behave reasonably in making decisions under this Agreement.

## 7 Inconsistency

- 7.1 In the event of an inconsistency between the Design Guidelines and this Agreement, this Agreement takes precedence.
- 7.2 In the event of an inconsistency between the Design Approval and a Council Approval, the Owner is responsible for obtaining an amendment of the Design Approval and/or the

**AM668230E**

31/03/2016 \$169.70 173



Council Approval to ensure consistency between the approvals, but neither the Design Review Committee nor the Responsible Authority are required to have regard to the other's approval.

## **8 Disputes**

- 8.1 This clause 8 applies if the Owner does not agree with a decision of the Design Review Committee under clause 6 and any reference to 'parties' in clause 8 is a reference only to the Design Review Committee and the Owner.
- 8.2 The Owner may, within 10 business days of the Design Review Committee making a decision under clause 6, give a written notice of the dispute to the Design Review Committee.
- 8.3 If a notice of dispute is given, the parties must confer within 5 business days after the notice is given to try to resolve the dispute.
- 8.4 The Owner may, within 10 business days after a conference being held in accordance with clause 8.3, refer the dispute to mediation by giving written notice to the Design Review Committee. Except with the consent of the parties to the dispute, the mediation must be conducted in Melbourne by a single mediator within 20 business days of the dispute being referred to mediation.
- 8.5 If the parties have not agreed upon the mediator within 5 business days after the dispute is referred to mediation, the mediator is to be a person suitably qualified having regard to the matter in dispute appointed by the Institute of Arbitrators and Mediators, acting on the request of any party to the dispute.
- 8.6 If the dispute is not resolved within 20 business days after the appointment of the mediator, the Owner may, within 25 business days after the appointment of the mediator, refer the dispute to arbitration by giving written notice to the Design Review Committee. Except with the consent of the parties to the dispute, the arbitration must be conducted in Melbourne by a single arbitrator within 20 business days of the dispute being referred to arbitration.
- 8.7 If the parties have not agreed upon the arbitrator within 5 business days after the dispute is referred to arbitration, the arbitrator is the person suitably qualified having regard to the matter in dispute appointed by the Institute of Arbitrators and Mediators, acting on the request of any party to the dispute.
- 8.8 The Institute of Arbitrators and Mediators Australia Mediation and Conciliation Rules (at the date of this Agreement) apply to any mediation or arbitration, except where they conflict with this clause 8.
- 8.9 The parties must bear their own costs of participation in any mediation or arbitration and must share the costs of the mediator and arbitrator equally.
- 8.10 The decision of the arbitrator is final.
- 8.11 If the Owner has the right under this clause 8 to refer a dispute to mediation or to arbitration and does not exercise that right within the time specified, the disputed decision of the Design Review Committee is binding.

## **9 Council Approvals and Design Approvals**

- 9.1 For the avoidance of doubt, the parties acknowledge that:

**AM668230E**

31/03/2016 \$169.70 173



- (1) the Responsible Authority will not be a participant in the assessment or grant of Design Approvals;
- (2) the Responsible Authority is not responsible for the implementation and enforcement of the Guidelines;
- (3) the grant of a Design Approval for a proposed development does not imply that a Council Approval in relation to the same development will be granted; and
- (4) in assessing an application for a Council Approval, the Responsible Authority is not obliged to give weight to either:
  - (a) a Design Approval; or
  - (b) the views of the Design Review Committee.

## **10 Further Obligations of the Owners**

### **10.1 Notice and registration**

The Owners must bring this Agreement to the attention of all prospective purchasers, mortgagees, transferees and assigns.

### **10.2 Mortgagee to be bound**

The Owners must obtain the consent of any mortgagee to be bound by the covenants in this Agreement if the Mortgagee becomes mortgagee in possession of the Land.

### **10.3 Registration of Agreement**

The Owners must do all things necessary to enable the Responsible Authority to make an application to the Registrar of Titles to make a recording of this Agreement on the Certificate of Title to the Land in accordance with section 181 of the Act including the signing of any further agreement, acknowledgement or other document.

### **10.4 Responsible Authority's costs to be paid.**

The Owner must, promptly following receipt of a written request from the Responsible Authority, pay the Responsible Authority the Responsible Authority's reasonable costs and expenses (including legal expenses) of and incidental to the preparation, drafting, execution and registration of the Agreement.

## **11 Further assurance**

Each party must promptly at its own cost do all things (including executing and if necessary delivering all documents) necessary or desirable to give full effect to this Agreement.

## **12 Agreement under section 173 of the Act**

The parties acknowledge and agree that this Agreement is made under section 173 of the Act.

**AM668230E**



**13 Agreement runs with the land**

- 13.1 The parties acknowledge and agree that the obligations of the Owners under this Agreement, take effect as separate and several covenants which are annexed to and run at law and equity with the Land.
- 13.2 If the Land is subdivided, this Agreement must be read and applied so that each subsequent owner of a lot is only responsible for those covenants and obligations which relate to that owner's lot.

**14 Owners' warranties**

Without limiting the operation or effect which this Agreement has, the Owners warrant that apart from the Owners 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.

**15 Planning objectives**

The parties acknowledge that the provisions of this Agreement are intended to achieve or advance the objectives of planning in Victoria and the objectives of the Planning Scheme.

**16 Successors in title**

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

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

**17 Goods and Service Tax**

**17.1 Definitions and Expressions**

Expressions used in this Agreement that are defined in the *GST Act* have the same meaning as given to them in the *GST Act*, unless expressed to the contrary.

**17.2 Amounts payable do not include GST**

Each amount, of whatever description, specified as payable by one party to the other party under this Agreement is expressed as a GST exclusive amount unless specified to the contrary.

**17.3 Liability to pay any GST**

Subject to clause 17.4, in addition to any amount payable by one party to the other party under this Agreement in respect of a taxable supply, the party liable to pay the amount ("Recipient") must pay to the other party ("Supplier") a sum equivalent to the GST payable, if any, by the Supplier in respect of the taxable supply on the date on which the amount is otherwise payable.

**AM668230E**



**17.4 Tax Invoice**

A party's right to payment under clause 17.3 is subject to a Tax Invoice being delivered to the Recipient.

**18 General Matters**

**18.1 Service of Notice**

A notice or other communication required or permitted to be served by a party on another party must be in writing and in addition to any other method of service provided by law may be served:

- (1) by delivering it personally on that party; or
- (2) by sending it by pre paid post, addressed to that party at the address set out in this Agreement or subsequently notified to each party; or
- (3) by sending it by facsimile if it confirmed immediately in writing by the sending party by hand delivery or pre paid post.

**18.2 Time of Service**

A notice or other communication is deemed served:

- (1) if delivered personally, on the next following business day;
- (2) if posted within Australia to an Australian address, two business days after the date of posting and in any other case, seven business days after the date of posting;
- (3) if sent by facsimile, on the next following business day unless the receiving party has requested retransmission before the end of that day;
- (4) if received after 6.00pm in the place of receipt or on a day which is not a business day, at 9.00am on the next business day.

**18.3 No Waiver**

Any time or other indulgence granted by the Responsible Authority or the Design Review Committee to an Owner or any variation of the terms and conditions of this Agreement or any judgement or order obtained by the Responsible Authority or the Design Review Committee against the Owner do not in any way amount to a waiver of any of the rights or remedies of the Responsible Authority or the Design Review Committee in relation to the terms of this Agreement.

**18.4 Jurisdiction**

- (1) The law of Victoria governs this Agreement.
- (2) The parties submit to the non-exclusive jurisdiction of the courts of Victoria and of the Commonwealth of Australia.

**18.5 Severability**

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

**AM668230E**

31/03/2016 \$169.70 173



**18.6 No Fettering of 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 applicable to the Land or relating to any use or development of the Land.

**19 Counterparts**

This Agreement may be executed in counterparts. Each counterpart is an original but the counterparts together are one and the same agreement. This Agreement is binding on the parties on the exchange of the executed counterparts. A copy of the original executed counterpart sent by facsimile machine or email:

- (1) must be treated as an original counterpart;
- (2) is sufficient evidence of the execution of the original; and
- (3) may be produced in evidence for all purposes in place of the original.

**20 Commencement of Agreement**

Unless otherwise provided in this Agreement, this Agreement commences from the date of this Agreement.

**21 Amendment**

- 21.1 This Agreement may be amended in accordance with the Act.
- 21.2 If notice of a proposal to amend this Agreement is required pursuant to section 178C of the Act, the parties agree that only the Responsible Authority and the Owner of the Land or that part of the Land that is the subject of the proposal to amend this Agreement, are required to be notified of the proposal.

**22 Ending of Agreement**

- 22.1 This Agreement may be ended in accordance with the Act.
- 22.2 If notice of a proposal to end this Agreement is required pursuant to section 178C of the Act, the parties agree that only the Responsible Authority and the Owner of the Land or that part of the Land that is the subject of the proposal to end this Agreement, are required to be notified of the proposal.
- 22.3 Subject to clause 22.4, Mullum Pty Ltd may specify a future date on which the Agreement ends:
- (1) at any time after 3 years from the date on which every Lot either contains a Dwelling or has been the subject of a Completion Certificate issued by the Design Review Committee; or
  - (2) at any time after 6 years from the date this Agreement commences.
- 22.4 Mullum Pty Ltd must provide the Responsible Authority, all Parties and all Owners with at least 3 calendar months' notice of the date of the ending of the Agreement.

**AM668230E**

31/03/2016 \$169.70 173



22.5 This Agreement comes to an end on:

- (1) the date specified in accordance with clause 22.1; or
- (2) in accordance with clause 22.3;

whichever is the earlier.

22.6 Once this Agreement ends, the Responsible Authority will promptly, following a request from the Owner or Mullum Pty Ltd and at the cost of the Owner or Mullum Pty Ltd (as the case may be), complete and execute all documents necessary to make application to the Registrar of Titles under section 183(2) of the Act to cancel the recording of this Agreement on the Register.

22.7 The Parties acknowledge that it is intended that the recording of this Agreement on the Register be cancelled immediately upon the ending of the Agreement, and agree to do all reasonable things necessary to ensure that this occurs.

AM668230E



**Executed** as a deed and delivered on the date shown on the first page.

Signed sealed and delivered by \_\_\_\_\_  
\_\_\_\_\_ of the Manningham City  
Council, pursuant to an Instrument of  
Delegation authorised by Resolution of  
the Council in the presence of:

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Signature of Council's delegate

\_\_\_\_\_  
Name of witness  
(BLOCK LETTERS)

\_\_\_\_\_  
Address of witness

Executed by **Ultima Proprietary Ltd** ACN  
004 507 699 in accordance with  
section 127 of the *Corporations Act 2001*:

S. Mathews  
Director/company secretary

Dan Mathews  
Director

SUSAN MATHEWS  
Name of director/company secretary  
(BLOCK LETTERS)

DAN MATHEWS  
Name of director  
(BLOCK LETTERS)

Executed by **Blackwood Banner Pty Ltd**  
ACN 006 342 409 in accordance with  
section 127 of the *Corporations Act 2001*:

S. Mathews  
Director/company secretary

Dan Mathews  
Director

SUSAN MATHEWS  
Name of director/company secretary  
(BLOCK LETTERS)

DAN MATHEWS  
Name of director  
(BLOCK LETTERS)



AM668230E

31/03/2016 \$169.70 173



Executed by Dan Mathews in the presence of:

[Signature]                      [Signature]  
Signature of witness

ROBYN DEED  
Name of witness (BLOCK LETTERS)

423 CLARKE ST NORTHCOTE 3070  
Address of witness

Executed by Steven Mathews in the presence of:

[Signature]                      [Signature]  
Signature of witness

MARK BURFORD  
Name of witness (BLOCK LETTERS)

13 JAMES STREET NORTHCOTE 3070  
Address of witness

Executed by Susan Mathews in the presence of:

[Signature]                      [Signature]  
Signature of witness

MARK BURFORD  
Name of witness (BLOCK LETTERS)

13 JAMES ST NORTHCOTE 3070  
Address of witness

Executed by Mullum Pty Ltd ACN 004 507 706 in accordance with section 127 of the Corporations Act 2001:

[Signature]                      [Signature]  
Director/company secretary                      Director

SUSAN MATHIEWS  
Name of director/company secretary (BLOCK LETTERS)

DAN MATHIEWS  
Name of director (BLOCK LETTERS)

**AM668230E**

31/03/2016 \$169.70 173



The Common Seal of Manningham City Council was hereunto affixed in the presence of:

)  
)  
)

..... Mayor/Councillor

*[Handwritten signature]*  
*[Handwritten initials]*

..... Chief Executive Officer



**AM668230E**

31/03/2016 \$169.70 173



**AM668230E**

31/03/2016 \$169.70 173  


**Mortgagee's consent**


MECU Ltd as Mortgagee of registered Mortgage No. AK253753B consents to the Owners entering into this Agreement and in the event that the Mortgagee becomes Mortgagee in possession, agrees to be bound by the covenants and conditions of this Agreement.

**Executed by Mortgagee:**

Signed sealed and delivered for and on behalf of MECU Ltd by its attorney

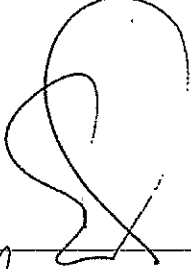
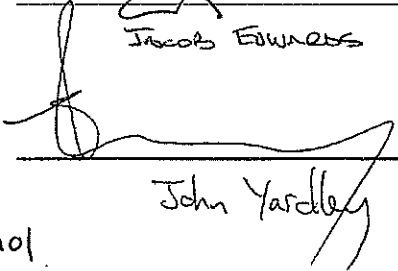
BOOK 277 PAGE 029 ITEM 36  
under power of attorney number

.....  
in the presence of:

  
\_\_\_\_\_  
Signature of witness

Richard Irvine  
\_\_\_\_\_  
Name of witness (BLOCK LETTERS)

c/o 222 High Street, Kew, VIC 3101  
\_\_\_\_\_  
Address of witness

  
\_\_\_\_\_  
Jacob Edwards  
  
\_\_\_\_\_  
John Yardley

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31/03/2016 \$169.70 173



**Schedule 1 – Land**

Title details	Description	Owner
Volume 09935 Folios 983-989	Lots 1-7 on PS 209954P	Blackwood Banner Pty Ltd ACN 006 342 409
Volume 05604 Folio 704 Volume 04019 Folio 687	Lots 1 and 2 on TP 575984E Lot 5 on PS 006095	Dan Mathews Steven Mathews Susan Mathews
Volume 09702 Folio 685	Lot C on PS 149653L	Ultima Proprietary Ltd ACN 004 507 699